

**BOARD OF ADJUSTMENT
PORTSMOUTH, NEW HAMPSHIRE**

Remote Meeting Via Zoom Conference Call

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Per NH RSA 91-A:2, III (b) the Chair has declared the COVID-19 outbreak an emergency and has waived the requirement that a quorum be physically present at the meeting pursuant to the Governor's Executive Order 2020-04, Section 8, as extended by Executive Order 2020-21, and Emergency Order #12, Section 3. Members will be participating remotely and will identify their location and any person present with them at that location. All votes will be by roll call.

7:00 P.M.

DECEMBER 15, 2020

AGENDA

I. ELECTION OF OFFICERS

II. APPROVAL OF MINUTES

A) Approval of the minutes of the meetings of November 17 and 24, 2020.

III. OLD BUSINESS

A) Petition of **150 Greenleaf Avenue Realty Trust, Owner**, for property located at **150 Greenleaf Avenue** for Appeal of an Administrative Decision that the following are required: 1) A Variance from Section 10-208 Table 4 - Uses in Business Districts (2009 Ordinance, Section 10.592.20 in current Ordinance) that requires a 200 foot setback from any adjoining Residential or Mixed Residential district for motor vehicle sales. 2) A Variance from Section 10-1201, Off-Street Parking (2009 Ordinance, Section 10.1113.30 in current Ordinance) that requires a 100 foot setback for business parking areas from any adjoining Residential or Mixed Residential district. 3) A Wetland Conditional Use Permit for development within the Inland Wetlands Protection District. Said property is shown on Assessor Map 243 Lot 67 and lies within the Gateway Neighborhood Mixed Use Corridor (G1) District.

B) Petition of **111 Maplewood Avenue, LLC, Owner**, for property located at **145 Maplewood Avenue** wherein relief is needed from the Zoning Ordinance for signage for

new building which requires the following: 1) A Variance from Section 10.1144.63 to allow illuminated signs above 25 feet from grade. Said property is shown on Assessor Map 124 Lot 8-1 and lies within the Character District 5 (CD5) District.

IV. PUBLIC HEARINGS – NEW BUSINESS

- A) Petition of **Jonathan Sandberg, Owner**, for property located at **160 Bartlett Street** whereas relief is needed from the Zoning Ordinance to construct a 6' x 15' mudroom addition on the rear of the house which requires the following: 1) A Variance from Section 10.521 to allow 34% building coverage where 25% is the maximum allowed. 2) A Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 163 Lot 5 and lies within the General Residence A (GRA) District. LU 20-231

- B) Petition of **The Rice Family Revocable Trust of 1988, Owner**, for property located at **25 Morning Street, Unit B** whereas relief is needed from the Zoning Ordinance to construct a 6' x 21' deck which requires the following: 1) Variances from Section 10.521 to allow a) a 2 foot side yard where 10 feet is required; and b) 32% building coverage where 25% is the maximum allowed. 2) A Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 163 Lot 19-2 and lies within the General Residence A (GRA) District. LU 20-233

- C) Petition of **Sean Miller, Owner**, for property located at **303 Thornton Street** whereas relief is needed from the Zoning Ordinance to construct an addition to an existing home which requires the following: 1) A Variance from Section 10.521 to allow a 5 foot front yard where 15 feet is required. 2) A Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 162 Lot 5 and lies within the General Residence A (GRA) District. LU 20-228

V. OTHER BUSINESS

VI. ADJOURNMENT

**BOARD OF ADJUSTMENT MEETING
PORTSMOUTH, NEW HAMPSHIRE**

Remote Meeting via Zoom Conference Call

7:00 P.M.

NOVEMBER 17, 2020

MINUTES

MEMBERS PRESENT: Chairman David Rheame, Vice-Chairman Jeremiah Johnson, Jim Lee, Peter McDonell, Christopher Mulligan, Arthur Parrott, Alternate Phyllis Eldridge, Alternate Chase Hagaman

MEMBERS ABSENT: John Formella

ALSO PRESENT: Peter Stith, Planning Department

I. APPROVAL OF MINUTES

A) Approval of the October 20 and 27, 2020 Meeting Minutes

*It was moved, seconded, and **passed** by unanimous vote (7-0) to **approve** both sets of minutes as presented.*

II. PUBLIC HEARINGS – NEW BUSINESS

Mr. Mulligan recused himself from the following petition, and Alternates Ms. Eldridge and Mr. Hagaman took voting seats.

A) REQUEST TO POSTPONE. Petition of **150 Greenleaf Avenue Realty Trust, Owner**, for property located at **150 Greenleaf Avenue** for Appeal of an Administrative Decision that the following are required: 1) A Variance from Section 10-208 Table 4 - Uses in Business Districts (2009 Ordinance, Section 10.592.20 in current Ordinance) that requires a 200 foot setback from any adjoining Residential or Mixed Residential district for motor vehicle sales. 2) A Variance from Section 10-1201, Off-Street Parking (2009 Ordinance, Section 10.1113.30 in current Ordinance) that requires a 100 foot setback for business parking areas from any adjoining Residential or Mixed Residential district. 3) A Wetland Conditional Use Permit for development within the Inland Wetlands Protection District. Said property is shown on Assessor Map 243 Lot 67 and lies within the Gateway Neighborhood Mixed Use Corridor (G1) District.

Chairman Rheame said the applicant needed additional time and had asked to postpone the petition to the December 20, 2020 meeting.

DECISION OF THE BOARD

*Mr. Lee moved to **grant** the request to postpone, and Ms. Eldridge seconded.*

Mr. Lee said the Board had always granted a first request to postpone and that he saw no reason not to do so this time. Ms. Eldridge concurred.

*The motion **passed** by unanimous vote, 7-0.*

Mr. Mulligan resumed his voting seat. Chairman Rheume recused himself from the following petition, and Vice-Chair Johnson assumed the seat of Acting Chair. Both Alternates returned to alternate status.

B) Petition of **SAI Builders, LLC, Owner**, for property located at **27 Elwyn Avenue** wherein relief was needed from the Zoning Ordinance to install two AC units which requires the following: 1) A Variance from Section 10.521 to allow a 5.5 foot right side yard where 10 feet is required. Said property is shown on Assessor Map 113 Lot 28-1 and lies within the General Residence A (GRA) District.

SPEAKING TO THE PETITION

Pat Nysten representing the applicant was present and reviewed the petition. He said the request was to add two AC condensers to the single-family home. He reviewed the reasons why the variance was needed and referred to his previously-submitted criteria.

Mr. Hagaman noted that the applicant was before the Board in 2019 for a request to build on the lot, and he asked why the AC units weren't included at that time. Mr. Nysten said he had thought the units would fit on the sides of the steps leading to the patio. Mr. Hagaman said everything already looked wired for putting the units in the proposed location. Mr. Nysten said the HVAC team had agreed that the proposed location was the most optimal and that the original location by the steps was too visible to the street. Mr. McDonell asked if the applicant had received comments from the southerly neighbors. Mr. Nysten said a neighbor had a noise concern. He noted that the specifications called for 75 decibels (dB) and that other homes in the neighborhood had condensers in close proximity to the lot line. Vice-Chair Johnson said 75 dB was more like the decibels of a washing machine. He said the proposed unit was more of a fully-sized residential condenser than the quieter mini-split systems that were generally used. Mr. Nysten said his contractor recommended it due to the house's size.

Acting-Chair Johnson opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

Shannon Palace of 35 Elwyn Avenue said she was the southerly neighbor who had emailed the Board earlier. She said she was in favor of the petition but was concerned about the noise because the proposed placement was right under her window on the back side of the house where her son slept. She asked if the condenser could be moved to the middle of the house or if it could be enclosed with fencing to dampen the sound.

SPEAKING AGAINST THE PETITION

No one was present to speak.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Shannon Palace of 35 Elwyn Avenue said if the condenser were moved 14 feet toward the street, it would be in-between another set of windows on that side of the house and farther away from her air-flow window.

No one else was present to speak, and Acting-Chair Johnson closed the public hearing.

DISCUSSION OF THE BOARD

Ms. Eldridge asked if the condenser could be moved. Mr. Nysten said the current location had an area away from the window sill and that Ms. Palace's third floor was far from the ground floor. He didn't know how effective fencing would be because it had to be located 36 inches from the condenser. He said Ms. Palace's house was very close to the lot line and that he felt the proposed location for the condenser was the least obtrusive.

Acting-Chair Johnson said that the Board usually considered window locations of affected properties. He asked if there was flexibility to locate the unit elsewhere. Mr. Nysten said if they moved it to the middle of the house, it would be closer to the neighbor's windows.

Mr. Hagaman said he wasn't inclined to support the petition because he wasn't a big fan of 'build first, ask for forgiveness later'. He said the applicant had received variances the year before and was asking for an additional variance because he miscalculated where the condenser would go. He said the wiring and piping were previously done as well. He said he didn't see the hardship because the applicant created the issue, and that the request also didn't meet the spirit of the ordinance relative to noise and abutting neighbors. He said setbacks were created for a reason and that the two homes so close together with two AC units might create an echo chamber. Mr. Parrott agreed. He said it was new construction and there was full opportunity to anticipate those concerns, but it was dismissed without any real explanation of why the applicant didn't put the units on the back. He said the neighbor's suggestion seemed reasonable and that his only concern with the project was noise because there was nothing to mitigate the sound.

Ms. Eldridge said she didn't agree and thought there was a hardship because there was no room in the backyard to put the unit and it couldn't be put in the front yard. She said the only troublesome window was up on the third floor. Mr. Hagaman said the corner off the rear elevation seemed to be a reasonable place to put it. Acting-Chair Johnson agreed. He said there was the new construction component to the project and that the Board already went through that issue when they dealt with the lot being undersized, but the applicant had still built out the footprint to the side yard setback maximums. He said there were other routes for mechanicals, so he didn't think there was much of a hardship. Relating to substantial justice, he said the most

directly affected neighbor had proposed a revised location that would work better for everyone. He said he wouldn't support the project as presented.

Mr. Lee agreed with Ms. Eldridge. He said every time the distance was doubled away from the sound, it was reduced by 5 dB, so he thought the noise would be decreased considerably. Mr. McDonell said it was frustrating to see a project at 90 percent of the way and then have additional relief requested. He said he would have supported it if it had been requested as a whole package the year before because the only issue at the time was the noise level concern, but the concern was mitigated by the fact that the affected window was on the third floor and that the window faced out the back, so there could be no echo chamber. He said it was reasonable to assume that the neighbor wouldn't be hugely affected by the condenser, but he agreed that better placement of it would be farther up.

DECISION OF THE BOARD

*Mr. Hagaman moved to **deny** the variance request, and Mr. Parrott seconded.*

Mr. Hagaman referenced his previous comments. He said the applicant failed on meeting several criteria. Relating to hardship, he said it was new construction that required variances the first time, so the location of the air conditioners was a failure of design and not the result of an existing property that suddenly had a need for a variance. He said substantial justice would not be done, noting that the neighbor put forth a sound case on reasons why the condenser could have a negative impact on the enjoyment of her property. He said the spirit of the ordinance would not be met because the purpose of the setbacks was to ensure proper light, air, and sound mitigation. He was concerned that a potential echo chamber could have a significant impact on the abutter. He said there were more reasonable locations for the condensers, but the driving force was that the proposed location had already been wired and piped in.

Mr. Parrott concurred. He said it was new construction that started with a blank slate and that the applicant had the opportunity to take into account such problems, with full consideration of the neighbor. He noted that a reasonable compromise was readily available, which was to move the condenser a few feet up the house, but the contractor hadn't offered to do that.

Acting-Chair Johnson said he agreed with Mr. McDonell's point and that he wouldn't have thought twice about approving the variance the first time, but the substantial justice argument would not have been present the first time. He said the negative impact on the abutter from the condenser would have been avoided because the project would have been planned around it, so the substantial justice criteria came up because of the already-constructed factor of the new house. He said the Board evaluated a different property the first time.

*The motion to deny **passed** by a vote of 4-3, with Ms. Eldridge, Mr. McDonell, and Mr. Lee voting in opposition to the motion.*

Note: Acting-Chair Johnson asked that Case D be taken out of order so that he could continue as Acting Chair. It was moved, seconded, and passed to take Case D out of order. However, the

applicant's representative had technical difficulties, so the Board couldn't hear the petition. The applicant for Petition C also had technical difficulties. The Board then voted to take Petition E, 30 Spring Street, out of order and address it.

Alternate Mr. Hagaman took a voting seat for the following petition.

C) Petition of **Bromley Portsmouth, LLC, Owner**, for property located at **1465 Woodbury Avenue** wherein relief was needed from the Zoning Ordinance to construct a standalone automated teller machine (ATM) which requires the following. 1) A Variance from Section 10.1530 to allow an automated teller machine (ATM) as defined in this section to be a principal freestanding structure and not located on the outside of a building, or in an access-controlled entrance to a building, or within a principal use in a building. Said property is shown on Assessor Map 216 Lot 3 and lies within the Gateway Neighborhood Mixed Use Corridor (G1) District.

SPEAKING TO THE PETITION

Michael Pereira was present on behalf of the applicant and reviewed the petition. He said the freestanding ATM enclosure would house the ATM machine and that it had an illuminated canopy. He said the existing precast curb would be replaced with a new curb cut to provide a 22-ft wide continuous drive aisle. He said there would also be a new lawn and additional plantings.

In response to Mr. Hagaman's questions, Mr. Pereira said the bollards would be protection against potential vehicular traffic that could run into the ATM structure itself and that the ATM would be illuminated at night. Mr. Lee asked if the only hardship was the fact that, without the variance, Citizens Bank and the property management company not be able to keep their agreement. Mr. Pereira said it was one of the main hardships. He said there would be no other location within the property, so the contract would be terminated. Mr. Parrott asked if it was in anticipation of further construction of a regular building on the property or nearby, or if it was the total development for Citizen's Bank. Mr. Pereira said it was the total development and was just a walk-up ATM machine.

Chairman Rheume said he wondered if it was really the only location for the ATM because traffic in that location backed up considerably and it was the most trafficked area on the whole site. He asked what drove the idea of putting the ATM on that side instead of on the green strip on the opposite side. Mr. Pereira said it was an agreement between the bank and Bromley properties, and that the easiest route for utilities was the light pole next to Wendy's because if they put the ATM on the green strip, they would have to run power that would cross over Woodbury Avenue. Chairman Rheume said the applicant didn't need a financial institution to have an ATM as an accessory use and that it could be a grocery store and so on. Mr. Pereira said the contract between the bank and the property management company was beyond their discussions and that the bank wanted the freestanding ATM so that they could control it more. Chairman Rheume said the ordinance did not like freestanding ATM machines and that he didn't understand the hardship because a hardship was something about the property that distinguished it from others. He said he was concerned that if the Board approved the

freestanding ATM for the applicant, it could set a precedent. He said there had to be something unique about the property. Mr. Pereira said the property's high visibility and the shopping mall were attractive to the bank and that the stores would benefit from the ATM. He said the location was a barren lawn area, so the footprint wouldn't take up a lot of space.

Chairman Rheume opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one was present to speak, and Chairman Rheume closed the public hearing.

DISCUSSION OF THE BOARD

Mr. Lee said he was struggling with the hardship, noting that the applicant's representative was basically saying that Citizens Bank would fire him if the variance wasn't approved. Mr. Parrott agreed and said the hardship had to be inherent in the way the land was developed.

Mr. Mulligan said he didn't think the proposed use was the problem. He understood that a freestanding ATM was not a permitted use, but he thought there were some characteristics of the property that might lend themselves to a freestanding ATM in an appropriate location. He said much of the large amount of parking space wasn't used, and a lot of retail space was getting used less and less. He could see that there might be some benefit to permitting those types of creative use in order to drive a little extra traffic to a retail location that might really need it. He said he could get behind the petition if the location wasn't where it was proposed, which was very visible and would impact traffic on two different corridors. He said he didn't think the applicant made a compelling case for hardship, though. He agreed with Chairman Rheume's concern about the location but knew that the proposal also had to go before the Planning Board and the Technical Advisory Committee. Mr. Hagaman agreed with Mr. Mulligan and Chairman Rheume and said it came down to the location, which was a huge issue. He said two out of three of the entrances had constant backup of cars, and he thought there were more suitable locations for a freestanding ATM. Chairman Rheume said if the Board denied the petition, the applicant could rework it to avoid a Fisher v. Dover scenario.

Mr. Pereira said the agreement was that they could not construct the ATM within the parking lot area. He said the bank understood the traffic concern but felt that it was a freestanding ATM and not a branch bank location. He said the traffic would be the same as at a typical branch location but that transactions were quick at ATM machines.

Vice-Chair Johnson said it wasn't a special exception and that a plaza like that with a bunch of different uses could be a perfect argument for a hardship to have an ATM, but it needed a slam dunk. He said it was the worst location for a freestanding ATM, traffic-wise and safety-wise. Mr. Lee said there was already an agreement in place but that it didn't mean it couldn't be changed for a new location. Chairman Rheume said there were other things to consider per the criteria, and part of the problem was the short transactions at an ATM machine that would cause more traffic and have cars going in all directions.

DECISION OF THE BOARD

*Mr. Lee moved to **deny** the variance for the petition, and Mr. Parrott seconded.*

Mr. Lee said the petition had to pass the five criteria. He said it would be contrary to the public interest because the location was probably the worst one in the 16-acre parcel and had great potential for traffic congestion, and that he couldn't find any hardship at all.

Mr. Parrott concurred and referred to his previous comments.

*The motion to deny **passed** by unanimous vote, 7-0.*

Chairman Rheume and Mr. Mulligan recused themselves from the following petition. Vice-Chair Johnson assumed the seat of Acting Chair and both alternates took voting seats.

D) Petition of **Michael Petrin, Owner**, for property located at **239 Northwest Street** wherein relief was needed from the Zoning Ordinance to demolish a rear addition and construct a new two-story rear addition which requires the following: 1) Variances from Section 10.521 to allow: a) 1.5 foot rear yard where 20 feet is required; b) 48% building coverage where 25% is the maximum allowed; and c) 28% open space where 30% is the minimum required. 2) A Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 122 Lot 3 and lies within the General Residence A (GRA) District.

SPEAKING TO THE PETITION

Attorney Bernie Pelech was present on behalf of the applicant. He said the house had an encroachment into the State's right-of-way and also had a zero front yard setback. He said the hardship was that the home was built in 1830 and taken by the State in 1939, so the structure was nonconforming and there was a hardship inherent in the land. He reviewed the criteria. He said the petition received positive feedback from the Historic District Commission (HDC)

Acting-Chair Johnson asked for a status update on the HDC approval and the shoreland buffer. Attorney Pelech said the HDC put the petition on hold pending the BOA's decision, and he didn't think a Conditional Use Permit (CUP) was necessary because the house's footprint wasn't being increased by more than 25 percent and the addition was no closer to the water than the main structure. Mr. Stith noted that environmental planner Peter Britz was weighing in on the need for a CUP. Acting-Chair Johnson asked if there were exterior and interior renovations, and Attorney Pelech said there would be a full renovation. Mr. Hagaman asked if there were concerns about the safety of the property relative to the Route One Bypass and if the property was in the way of the road building process. Attorney Pelech said the 1939 right-of-way was sufficient and that there didn't seem to be a history of safety issues. He said there was a considerable grade change between the bridge and the rear of the house and about 50 feet of

green space, so he didn't think the State would have gone forward if they thought there were safety issues.

Acting-Chair Johnson opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one was present to speak, and Acting-Chair Johnson closed the public hearing.

DECISION OF THE BOARD

*Mr. Hagaman moved to **grant** the variances for the petition, and Mr. McDonell seconded.*

Mr. Hagaman said granting the variances would not be contrary to the public interest, and the spirit of the ordinance would be observed. He said the variance would not violate basic zoning objectives or alter the essential characteristics of the neighborhood or threaten the public's health, safety, or welfare. He said building a two-story addition was a residential use in a residential area. He said it would be close to the Route One Bypass but there was no record of safety issues, and there was green space between the property and the road itself. He said substantial justice would be done because there would be no gain to the public that would outweigh the loss to the applicant if he couldn't remodel the house. He said much of the property had been taken in the past for the bypass. He said granting the variances would not diminish the value of surrounding properties, noting that no evidence was heard that abutting properties would be impacted. He said literal enforcement of the provisions of the ordinance would result in unnecessary hardship because much of the property was taken, so it was undersized, and the property line went through part of the garage, so any alteration to the property would require a variance. He saw no fair and substantial relationship between the general public purpose of the ordinance and its specific application to the property. He said it was remodeling and adding an addition to a single-family home, which was a reasonable use.

Mr. McDonell concurred with Mr. Hagaman. He said the taking by the State was a special condition but not the special condition that dictated the relief, and that it was more the fact of what currently existed. He said he could envision a piece of raw land where there was a taking that made a very narrow lot that had a proposed structure that didn't meet the setback requirement. He said that would be a special condition but less of the sort of thing that would be a hardship, whereas the applicant definitely had a hardship.

Acting-Chair Johnson noted that the applicant had owned the property for forty years, and typically the Board saw that type of property bought and a lot of pressure to develop it with multi-family homes. He said it was a great project and that he would support the motion.

*The motion **passed** by unanimous vote, 6-0.*

*It was moved, seconded, and passed unanimously (7-0) to **suspend** the ten o'clock meeting ending rule.*

Mr. Mulligan recused himself from the following petition, and both Alternates took voting seats.

E) Petition of **Jessica Kaiser and John Andrew McMahon, Owners**, for property located at **30 Spring Street** wherein relief was needed from the Zoning Ordinance to construct covered front porch and add dormers to existing dwelling which requires the following: 1) Variances from Section 10.521 to allow a) 28.5% building coverage where 25% is the maximum allowed; b) a 0 foot front yard where 15 feet is required; and c) a 0 foot side yard where 10 feet is required. 2) A Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 130 Lot 13 and lies within the General Residence A (GRA) District.

SPEAKING TO THE PETITION

Attorney John Bosen was present on behalf of the applicant and the applicant Ms. Kaiser was also present. Attorney Bosen reviewed the petition and said the need for a home office space was driving the request for variances. He reviewed the criteria and said they would be met.

Chairman Rheume said the staff report indicated that the 28.5% building coverage requested relief should be 29 percent. Attorney Bosen said he would agree to a stipulation for 29 percent. Chairman Rheume said he was concerned about the porch being off to one side and asked whether the side area was really necessary, noting that there was a zero-foot setback. Attorney Bosen said it was to create a better streetscape and to give it more function. He said it would just wrap around a bit to gain a little room. Chairman Rheume said the Board would have to weigh that against the zero-foot setback because the property line was already tight.

Chairman Rheume opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

The owner Jessica Kaiser said her young children spent a lot of time outdoors, especially with the pandemic, and that the expanded porch would be great for her to watch them.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one else was present to speak, and Chairman Rheume closed the public hearing.

DISCUSSION OF THE BOARD

Vice-Chair Johnson said he was split, noting that the project itself was very modest but that he couldn't get behind the entry addition. He said the Board had a hard time approving a zero-foot lot line, and the pre-made footings for the porch actually crossed the lot line. He said it could be done differently and not have to request as much relief. Mr. McDonnell said he had less of a concern about the side setback. He said the porch was reasonably sized for what the applicant wanted, but he was having trouble seeing a better way to do it because the bay window

prevented the porch from going to the center of the house. He thought the variance request was reasonable, noting that it looked like the lot line was a few feet over and that there was a fence that wasn't right on the lot line. He said it seemed to be less of an issue, especially for construction of something that would be easier to deal with if something down the road prevented reconstruction of it or improvement to it.

Mr. Hagaman asked if the existing porch and steps were all the way to the front lot line. Chairman Rheame said they went slightly beyond the line but there was some City-owned property there, so it felt like it had some distance to the street and that there could be some mitigation. He said he was fine with the front entryway and understood the reasons for the porch but was hesitant to allow the new construction into the zero-foot property line. He said there were other effective ways to do the same thing. He noted that the Board would approve it in perpetuity and that the applicant needed the space for only a few years until her kids got older, after which time the utility of that space would be minimal. He said they were adding a lot of complications for the big picture.

Ms. Eldridge said she agreed with Mr. McDonell that there was still a decent space between the neighbor and the porch and that she couldn't see it impacting the house very much. Mr. Lee said if they added the side porch, it would bring the house more in conformance with other homes in the neighborhood, so he could support it.

DECISION OF THE BOARD

*Mr. Lee moved to **grant** the variance for the petition, and Ms. Eldridge seconded.*

After some discussion, it was decided to add a stipulation, and the makers of the motion agreed. Mr. Lee amended his motion as follows:

*Mr. Lee moved to **grant** the variance for the petition, with the following stipulation:*

- *That the maximum building coverage be 29 percent instead of 28.5% as advertised.*

Ms. Eldridge seconded.

Mr. Lee said that, since COVID, a lot of people wanted either a bigger house for office space or play space for the kids, so the request was reasonable. He said granting the variances would not be contrary to the public interest or the spirit of the ordinance and would not alter the essential characteristics of the neighborhood. He said it would bring the house more in conformance with nearby houses. He said substantial justice would be done because the benefit to the applicant would not be outweighed by any harm to the general public. He said granting the variances would not diminish the values of surrounding properties because it would bring the house more in line with future buyer expectations. He said the hardship would be to deny the homeowner the use of a home office and the space to stay out of the elements while watching over the children.

Ms. Eldridge concurred and had nothing to add.

There were additional comments. Vice-Chair Johnson said he would not support the motion. He said he agreed with many of the comments supporting the motion and all the aesthetic comments of how it fit visually, but what crossed the line for him was the legal ramifications and physical ramifications of the zero lot line. He said someone had fallen off a ladder and gotten hurt doing work on the side of his house, and he thought the Board would facilitate that same sort of setup. He did not think that denying the porch would deny the applicant's enjoyment of the outside. He said the Board was preventing a very specific use in a very specific dimension that could be done in other ways and other places on the site. Mr. Parrott said he had a problem with going over the property line because it would have a negative impact on the adjacent property if a future owner wanted to put a fence up six inches off the property line and the side porch was there. He said he liked the design of the proposed project, but not the idea of forcing people to go on the property line to do maintenance and so on. Mr. Hagaman agreed with Mr. Parrott and Vice-Chair Johnson, noting that he had a lot of concerns about going over and under the property line.

*The motion **failed** by a vote of 4-3, with Vice-Chair Johnson, Mr. Hagaman, Mr. Parrott, and Chairman Rheume voting in opposition.*

Vice-Chair Johnson suggested that the variances be addressed separately and that the dormers go forward but that the porch not be brought up to the property line. The Board discussed stipulating a proposed setback relief of 4'5" for the dormers.

*Vice-Chair Johnson moved to **grant** the variances for the petition as presented, with the following stipulation:*

- *There shall be a right side yard setback of 4'5" for the dormers.*

Mr. Hagaman seconded.

Vice-Chair Johnson referred to his previous comments. He said the reason the zero-foot front yard setback wasn't an issue was mostly because of where the property line fell in relation to the actual public used land on the street, as well as dealing with air and ground vertical rights. He said there were less things and less reasons that a conflict could occur, as opposed to the side zero-foot setback. He said the dormers were reasonable and their locations were more set in stone for functional reasons due to the existing building use as opposed to the front entry. He said the addition of dormers was a tasteful addition to the front entry and would not conflict with the purpose of the ordinance or alter the essential characteristics of the neighborhood, and that it would observe the spirit of the ordinance. He said the rest of the project checked all the boxes. He said it was a modest increase of a single-family home in a neighborhood with plenty of dormers, and it made sense to have the dormers where they were because they needed to function for certain rooms. He said granting the variances would do substantial justice because the homeowner would benefit and the neighbors or public would not be negatively affected. He said the value of surrounding properties would not be diminished because the renovation was modest and the dormer additions were a nice touch. He said literal enforcement of the ordinance would result in an unnecessary hardship if the owner could not do the vertical expansion. He said the property had special conditions, including the siting of the house being extremely far to one side of the property and its skewed angle to the streetfront, as well as the skewed property lines. He

said the proposed use was a reasonable one, with minor changes to a single-family home in a residential neighborhood, and that the petition should be approved.

Mr. Hagaman concurred and had nothing to add.

Chairman Rheume said there was a slight tilt to the property line and was concerned that the applicant could have a hard time extending the front porch out a bit with a 4'5" setback. He thought 4 feet or 4-1/4 feet would be more appropriate and suggested that the motion be amended. Vice-Chair Johnson and Mr. Hagaman agreed.

The **amended** motion was as follows:

*Vice-Chair Johnson moved to **grant** the variances for the petition as presented, with the following stipulation:*

- *There shall be a right side yard setback of 4 feet for the dormers.*

Mr. Hagaman seconded. The motion passed by unanimous vote, 7-0.

Chairman Rheume suggested postponing a few of the more complicated petitions to a future meeting due to the late hour.

*It was moved, seconded, and passed unanimously (7-0) to **postpone** Petitions H and I to the November 24, 2020 meeting.*

(Note: The Board then addressed Petition C).

Alternate Ms. Eldridge took a voting seat for the next petition.

F) Petition of **Thomas Murphy, Owner**, for property located at **95 Dodge Avenue** wherein relief was needed from the Zoning Ordinance to demolish existing home and construct a new home with an attached accessory dwelling unit which requires the following: 1) A Variance from Section 10.1114.30 to allow two driveways where only one per lot is permitted. Said property is shown on Assessor Map 258 Lot 39 and lies within the Single Residence B (SRB) District.

SPEAKING TO THE PETITION

Attorney Derek Durbin was present on behalf of the applicant to review the petition. The applicant Thomas Murphy was also present. Attorney Durbin noted that a second driveway was needed because if the primary driveway were extended and widened, it would reduce much of the yard space. He reviewed the criteria and said they would be met.

Mr. Hagaman asked why the applicant wouldn't just make the additional driveway the only driveway on the property. Attorney Durbin said there was already a driveway to access the front of the existing structure. He said there would be a rebuilt structure almost within that footprint, and that having a second driveway to the rear made more sense logistically and for access.

Chairman Rheume asked who would park where. Attorney Durbin said it hadn't been determined and that there was a mixed access for the ADU. Chairman Rheume asked what drove the need for having a driveway in the front. Attorney Durbin said the driveway was very short and more like a space for two cars to pull up to the front. Mr. Murphy said the original intent was for the back drive to service the ADU, but his parents would be the residents, so the reason for the front driveway was so that they didn't have to climb stairs. In response to further questions from Chairman Rheume, Mr. Murphy said the stairs in front of the ADU would be three feet tall and that the ADU would have a doorway connecting it to the main unit.

Mr. Hagaman asked if it was common for an ADU to get its own dedicated driveway. Attorney Durbin said he hadn't come across a property quite like the applicant's due to the topography and grade change, and he wasn't aware of any other ADUs having their own driveway. Mr. Hagaman asked if the applicant had considered a different design that would omit the garage under the structure and would utilize the existing driveway instead. Mr. Murphy said it wasn't considered because he wanted the ADU to be smaller than the primary structure, so it was ideal to put the garage under the ADU to make it look secondary to the house.

Chairman Rheume opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one was present to speak, and Chairman Rheume closed the public hearing.

DECISION OF THE BOARD

Chairman Rheume said it was a decent request. He said the grade change was a big driver, and having the continued short parking area in front made sense, especially for someone who had difficulty with stairs

*Mr. Mulligan moved to **grant** the variances for the petition as presented and advertised, and Mr. Parrott seconded.*

Mr. Mulligan said granting the variances would not be contrary to the public interest or to the spirit of the ordinance and the essential characteristics of the neighborhood would not be altered and would be improved because it was a well-designed project. He said the public's health, safety and welfare would not be threatened. He said there was sufficient reason to separate the parking areas from the ADU and the main unit, and the property had unique characteristics that permitted that without overburdening the land or producing any negative effect on the public. He said granting the variances would do substantial justice because the loss to the applicant if he were denied the variance would not be outweighed by any gain to the public by requiring strict conformance with the driveway requirements. He said granting the variances would not diminish the values of surrounding properties because they wouldn't be affected at all by what was proposed. He said the primary driveway on the front of the home would now be the secondary one and would be a small parking area, with no negative effect. Relating to hardship, he said the property's special conditions were that it was a corner lot and there was a significant grade

change on one side where the new driveway was proposed, which were special conditions that distinguished the property from others, so there was no fair and substantial relationship between the purpose of the driveway requirement to have only one driveway per lot and its application to the property. He said it was beneficial to have the separate units with separate parking that didn't conflict with one another. He said it was a reasonable and permitted use, a residential use in a residential zone, and met all the criteria.

Mr. Parrott concurred and had nothing to add.

Vice-Chair Johnson said the project gave him a different angle due to the ADU involvement, and he thought it was important to review what the intent of an ADU was, which he thought allowed more flexibility when reviewing potential small variance requests when those were part of what the program was.

*The motion **passed** unanimously, 7-0.*

Alternate Mr. Hagaman assumed a voting seat for the following petition.

G) Petition of **Summit 501 Islington, LLC, Owner**, for property located at **501 Islington Street** wherein relief was needed from the Zoning Ordinance for a 900 square foot expansion of an existing medical office in an existing building which requires the following: 1) A Special Exception from Section 10.440 Use #6.20 to allow a medical office where the use is allowed by special exception. Said property is shown on Assessor Map 157 Lot 6 and lies within the Character District 4-L2 (CD4-L2) District.

SPEAKING TO THE PETITION

The owner of the building Todd Baker was present to review the petition. He said the building was a 3-story mixed-use one and that the resident doctor wanted to expand into the adjacent vacant office. He said it would be a very minor change and would take up about three percent of the building. He reviewed the criteria and said they would be met.

The Board had no questions. Chairman Rheaume opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one was present to speak, and Chairman Rheaume closed the public hearing.

DECISION OF THE BOARD

*Mr. McDonell moved to **grant** the special exception, and Mr. Parrott seconded.*

Mr. McDonell said it was just an expansion of an existing use that was permitted by special exception. He said granting the special exception would pose no hazard to the public or adjacent properties on account of fire, explosion, or release of toxic materials. He said there was nothing

to suggest any of that. He said there would be no detriment to property values in the vicinity or change to the essential characteristics of the area on account of the possible changes. He said he had not heard anything and it was just an expansion of an existing use, so he could not imagine those occurrences happening. He said granting the special exception would not create a traffic safety hazard or a substantial increase in traffic in the vicinity. He said the 900 s.f. increase in use would be a counterpart to a 900 s.f. decrease in use in the building from some other use, so he didn't see any traffic hazards or increase in the level of traffic. He said granting the special exception would pose no excessive demand on municipal services including water, sewer, waste disposal, police and fire protection, or schools. He said he had not heard anything to that effect. He said it would pose no significant increase of stormwater runoff onto adjacent properties or streets. For all those reasons, he said the Board should approve the petition.

Mr. Parrott concurred and had nothing to add.

*The motion **passed** by unanimous vote, 7-0.*

H) Petition of **Gregory & Amanda Morneault, Owners**, for property located at **137 Northwest Street** wherein relief is needed from the Zoning Ordinance to subdivide one lot into two lots and construct a new two family dwelling which requires the following: 1) Variances from Section 10.521 to allow: a) a lot depth of 44.7 feet for Lot 1 and 23.4 feet for Lot 2 where 70 feet is required for each; b) a lot area per dwelling unit of 5,317 square feet for proposed Lot 2 where 7,500 square feet per dwelling is required; c) a 2.5 foot front yard for proposed Lot 2 where 15 feet is required; and d) a 4 foot rear yard for proposed Lot 2 where 20 feet is required. Said property is shown on Assessor Map 122 Lot 2 and lies within the General Residence A (GRA) District.

DECISION OF THE BOARD

*It was moved, seconded, and passed unanimously (7-0) to **postpone** the petition to the November 24, 2020 meeting.*

I) Petition of **111 Maplewood Avenue, LLC, Owner**, for property located at **145 Maplewood Avenue** wherein relief is needed from the Zoning Ordinance for signage for new building which requires the following: 1) A Variance from Section 10.1251.20 to allow a 57 square foot freestanding sign where 20 square feet is the maximum allowed. 2) A Variance from Section 10.1242 to allow wall signs above the ground floor on all sides of the building. 3) A Variance from Section 10.1242 to allow wall signs above the ground floor on a side of a building not facing a street. 3) A Variance from Section 10.1144.63 to allow illuminated signs above 25 feet from grade. Said property is shown on Assessor Map 124 Lot 8-1 and lies within the Character District 5 (CD5) District.

DECISION OF THE BOARD

*It was moved, seconded, and passed unanimously (7-0) to **postpone** the petition to the November 24, 2020 meeting.*

III. OTHER BUSINESS

There was no other business.

IV. ADJOURNMENT

The meeting was adjourned at 11:00 p.m.

Respectfully submitted,

Joann Breault
BOA Recording Secretary

**BOARD OF ADJUSTMENT MEETING
PORTSMOUTH, NEW HAMPSHIRE**

Remote Meeting via Zoom Conference Call

7:00 P.M.

NOVEMBER 24, 2020

MINUTES

MEMBERS PRESENT: Chairman David Rheume, Vice-Chairman Jeremiah Johnson, Jim Lee, Peter McDonell, Christopher Mulligan, Arthur Parrott, Alternate Phyllis Eldridge, Alternate Chase Hagaman

MEMBERS EXCUSED: John Formella

ALSO PRESENT: Peter Stith, Planning Department

I. PUBLIC HEARINGS – NEW BUSINESS

Chairman Rheume recused himself from the following petition, and Vice-Chair Johnson took his place as Acting Chair. Alternates Ms. Eldridge and Mr. Hagaman took voting seats.

A) Petition of **Gregory & Amanda Morneault, Owners**, for property located at **137 Northwest Street** wherein relief was needed from the Zoning Ordinance to subdivide one lot into two lots and construct a new two family dwelling which requires the following: 1) Variances from Section 10.521 to allow: a) a lot depth of 44.7 feet for Lot 1 and 23.4 feet for Lot 2 where 70 feet is required for each; b) a lot area per dwelling unit of 5,317 square feet for proposed Lot 2 where 7,500 square feet per dwelling is required; c) a 2.5 foot front yard for proposed Lot 2 where 15 feet is required; and d) a 4 foot rear yard for proposed Lot 2 where 20 feet is required. Said property is shown on Assessor Map 122 Lot 2 and lies within the General Residence A (GRA) District.

SPEAKING TO THE PETITION

Attorney Tim Phoenix was present on behalf of the applicant. Also present were the owners Gregory and Amanda Morneault, lot purchasers Darrell and Reggie Moreau, project engineer Paul Dobberstein, and City Staff Attorney Trevor McCourt. Attorney Phoenix reviewed the petition and explained why the variances were needed. He said the project was a reasonable use for the land, noting that there were many existing homes on nearby small lots that didn't meet the density requirements or were too close to the lot line, and that allowing a duplex would let two families buy a home at the market rate and let the existing owners recoup the long and narrow lot. He reviewed the criteria and said they would be met. He said the applicant would also go before the Planning Board and the Historic District Commission (HDC).

Mr. Mulligan asked whether there was an easement for the vehicle turnaround on the eastern edge of Lot 2. Attorney McCourt said there was no easement and that the City's Public Works department wanted to keep the turnaround as a full or hammerhead turnaround but was willing to work with the applicant. Mr. Mulligan said the design could be reconfigured once it got to the HDC. He asked why there were two units proposed instead of one, noting that it didn't look like there was a lot of outdoor space for two families to enjoy. Attorney Phoenix said it had to do with the balance of the location and the costs of acquisition and construction. He said the buyers Darrell and Reggie thought two homes would make more sense, given that the location included the bypass and a lot of density. He said each unit could sell for a bit less than a single-family home, which made it more affordable as a starter home.

Mr. Hagaman asked how big the yard would be on each side of the duplex. Mr. Dobberstein said the gravel drive would come close to Unit 2, but there would be some room in the back and that the turnaround might be reconfigured. He said the project would go before the Technical Advisory Committee (TAC) and that the drive may be eliminated. Mr. Hagaman asked if the applicant had discussed working out an easement for the turnaround. Attorney Phoenix said the City seemed to be willing to work with the applicant on an easement.

Acting-Chair Johnson opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

No one was present to speak.

SPEAKING IN OPPOSITION TO THE PETITION

Attorney Joseph Russell said he represented Mary Ann Mahoney of 206 Northwest Street who lived directly across from the proposed structure. He said Ms. Mahoney felt that the project did not meet any of the five criteria. He said the front of the structure would be 27 feet from her front door and that the 2.9-ft setback would align with her driveway, so there would be negative impacts from noise and light, and her health, safety and welfare would be impacted. He said the project would not preserve the essential character of the District because the historic homes on the street ranged from 1664 to 1870, and a duplex with a 4-car garage would not fit. He said she also had concerns about emergency access to her home and about her property's value and thought the only hardship was created by the subdivision.

Katie Petrin of 239 Northwest Street said she and her husband recently bought their house and were concerned that their property's value would be diminished by the project.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Attorney Phoenix said the City wanted to work with the applicant to deal with access issues and allow a greater yard. He said the lot was presently overgrown, which related to the public interest, and that the project would fall in line with the other houses on the street. He said the

project was consistent in terms of density and setbacks in the overall area and that the ages of the surrounding homes were not a factor.

No one else was present to speak, and Acting-Chair Johnson closed the public hearing.

DISCUSSION OF THE BOARD

Mr. Hagaman asked how far the house was from the street. Mr. Stith said it was about twenty feet from the garage to the edge of the pavement. Mr. Hagaman said he was leery because the property-size-per-dwelling unit was misleading if more than half of the property was taken up by a turnaround and the Board didn't know if there would be an easement. Acting-Chair Johnson said the property had a hardship due to the dimensional setbacks and its proximity to the bypass but that he was having a harder time with the use. He said the density variance was backed into by the use and that it was hard to justify why two units were needed instead of one, but he thought there would be a dramatic change to the look of the structure once the HDC was done with its review. Mr. Parrott said there was practically no traffic on Northwest Street and there were topography challenges, both of which were factors that caused him to support the project. He said he had spent time looking at the property and thought the proposed use of the vacant lot was appropriate. Mr. Lee agreed, adding that the property was burdened by the bypass, with all its shining headlights and traffic light, and that the location had a special hardship.

Mr. McDonell said he generally agreed with the points made by Mr. Parrott and Mr. Lee and thought the project might change once the HDC reviewed it, but he didn't think the application met a lot of the criteria. He said the Board had to judge it on whether it would be a change to the character of the neighborhood. He said he disagreed with the applicant that one should look to the density of the property along Maplewood Avenue. He said there would be change in the character of the micro neighborhood that would cause diminution of property values across the street and possibly up and down the street, notwithstanding that it might be good for the City as a whole to have a duplex with more affordable units. He said he didn't think there was a hardship, although there were special conditions that distinguished it from other lots in the area. He said it had to meet the criteria of having no fair and substantial relationship between the purpose of the ordinance and the way its provisions were applied, and he felt that the density and setback requirements in the ordinance were reasonable. He said he did not think that the proposed residential use in a residential area was reasonable in that particular location. He said the petition failed quite a few criteria and that he could not support it.

Mr. Lee disagreed about the diminution of property values in that area. He said that a vacant lot carried no guarantee that it would always be vacant, and he thought that placing a reasonably-priced duplex on it would not diminish property values in the neighborhood. Ms. Eldridge agreed but had trouble believing that the petition would look the same once it was reviewed by the HDC. Acting-Chair Johnson said he had the same concern.

DECISION OF THE BOARD

*Mr. Parrott moved to **grant** the variances for the petition as presented, and Ms. Eldridge seconded.*

Mr. Parrott referred to his earlier comments. He said the ordinance was designed to deal with the odd situation that did not meet the zoning requirements, and he thought the lot complied in spades with that. He said granting the variances would not alter the essential characteristics of the neighborhood because the homes in the neighborhood were old but didn't have much in common, and the structure would look entirely different from them, like any new construction. He said he was having trouble with the public rights in the area because the property was off an embankment to the highway and was seldom used. He said granting the variances would do substantial justice because the applicant had a great deal to gain, whereas the public didn't have much interest in the little-used area. He said he understood that the neighbors were fond of the area but that it was a vacant overgrown lot that would not change the experience of folks in that area. He said the building would be three feet to the property line and not three feet off the street. He said granting the variances would not diminish the values of surrounding properties, noting that the Board hadn't heard expert testimony that they would, other than Mr. Lee's experience as a realtor, and that after the proposed structure was built and the area was landscaped, there would not be a change in the value of surrounding properties. He said the hardship was the physical property itself that was an unusually long and narrow lot and right up against public property, the embankment to the highway, and against a dead-end street, so it was hard to find how it related to other similar properties. He said the use of the vacant lot was appropriate and met the criteria.

Ms. Eldridge concurred and had nothing to add.

Mr. Hagaman said he would not support the motion. He said the City did need additional housing but that he didn't think the property was the right place to squeeze a duplex in. He said the shape of the property was long and narrow, but half of it couldn't have a house and the other half had a public use that wasn't known if it would change or not. He said the duplex would be sandwiched between a road and a berm up against the bypass, and the spirit of the ordinance was to ensure that properties like that were being properly utilized. He said it was the wrong thing to do with the property. Mr. Lee said that building a duplex was a very creative use on a very challenging property and that it would be an asset to the area and the City, so he would support the motion.

*The motion was **denied** by a vote of 4-3, with Mr. Hagaman, Mr. McDonell, Mr. Mulligan, and Acting-Chair Johnson voting against the motion to approve.*

Acting-Chair Johnson asked for another motion.

*Mr. McDonell moved to **deny** the variance requests, and Mr. Hagaman seconded.*

Mr. McDonell said he would incorporate his previous comments. He said the proposed duplex would alter the essential characteristics of the neighborhood because there was nothing else like it in the area, notwithstanding the fact that there was more dense development in a few places down the street and on Maplewood Avenue. He said the project would diminish surrounding property values, especially the value of the home directly across the street, and in general most

of the properties up and down the street. He said there was no hardship because the special conditions did not have a fair relationship between the purpose of the ordinance and its application to the property. He said it was an economically-driven request but that it wasn't enough. He said he didn't think one could get over the hump of the density and setback requirements, and he didn't think the duplex use in that location was a reasonable one. Mr. Hagaman concurred and said he would incorporate his remarks from the previous motion.

*The motion **passed** by a vote of 4-3, with Ms. Eldridge, Mr. Lee, Mr. Parrott voting in opposition to the motion.*

Chairman Rheaume assumed his seat as Chair, Acting-Chair Johnson resumed his seat as Vice-Chair, and Mr. Hagaman returned to alternate status.

B) Petition of **111 Maplewood Avenue, LLC, Owner**, for property located at **145 Maplewood Avenue** wherein relief was needed from the Zoning Ordinance for signage for new building which requires the following: 1) A Variance from Section 10.1251.20 to allow a 57 square foot freestanding sign where 20 square feet is the maximum allowed. 2) A Variance from Section 10.1242 to allow wall signs above the ground floor on all sides of the building. 3) A Variance from Section 10.1242 to allow wall signs above the ground floor on a side of a building not facing a street. 3) A Variance from Section 10.1144.63 to allow illuminated signs above 25 feet from grade. Said property is shown on Assessor Map 124 Lot 8-1 and lies within the Character District 5 (CD5) District.

SPEAKING TO THE PETITION

Attorney Chris Boldt was present on behalf of the applicant. The Chief Operating Officer of the Kane Company Eric Nelson and the project architect Chris Lizotte were also present.

Mr. Lizotte reviewed the petition. He said the building would be a 4-story multi-tenant building and that most of the tenants wanted signage that was associated with their uses. He said the building would also have mounted lights that were previously approved by the HDC. Attorney Boldt noted that the textual signs were less square footage than technically allowed and that the lighted signs were classified by the ordinance as signs and were approved by the HDC. He said they also needed approval from the Board for a freestanding sign. He said the special conditions of the building included its location and having three fronts, with a fourth not being on a street. He reviewed the criteria and said they would be met.

Chairman Rheaume verified all the sign locations with Attorney Boldt to see which ones were below street level, at street level, or above street level. Mr. Hagaman asked whether each sign for a particular tenant faced the street or was a potential entry point for the tenant or the public. Attorney Boldt said the main entrance was off the pedestrian alley, which most people would use. He said there were two potential tenant spaces on the first floor and a lower-level tenant on the Vaughan Street elevation that would each have an outside door. Mr. Hagaman asked why

such a large freestanding sign was needed if there was lighted signage for every tenant. Attorney Boldt said it would help designate the address itself and that it made sense due its location at the end of the pedestrian mall alleyway and the size of the building. Mr. Hagaman asked how many of the wall wash lighting on the upper floors were decorative instead of for lighting or security uses. Attorney Boldt pointed out the all the lights on all the elevations and said more than half of them would be for lighting purposes.

Ms. Eldridge asked whether the signs on the building for the tenants would be the same or would use each tenant's logo and font. Attorney Boldt said he didn't know. Ms. Eldridge said it was important to know because the Board had no idea what the signs above grade would look like and whether they would be bright or subtle. Mr. Nelson said the signs would be tenant-driven and that they would have to go before the HDC, and he pointed out a few signs that would be used for the tenants on the third and fourth floors.

Mr. Lee asked whether all the signs would be illuminated and whether they would be on all night. Attorney Boldt said they would be illuminated but would not be on all night. Mr. Lee said he was concerned about the impact on the surrounding residents. Attorney Boldt said the lights faced downward and weren't intended to shine onto the outer streets. Chairman Rheume said the ordinance allowed for illuminated lights but that they couldn't be on during certain hours. He asked whether the lights would be in compliance with the ordinance in terms of brightness. Attorney Boldt agreed, noting that they just needed a variance for the height. Chairman Rheume read the ordinance section that referred to mounted lights and asked if the wall wash lighting would comply, and Attorney Boldt agreed. Chairman Rheume asked if they would be internally illuminated and whether the signs at the top of the building would meet the allowable illumination nits. Attorney Boldt said he anticipated that they would meet that requirement.

Mr. McDonell said there were two requests for variances, the wall signs above the ground floor and the wall signs on the side of the building that didn't face the street. He asked whether the ordinance allowed one wall sign per side of the building above the ground floor. Mr. Stith agreed. Mr. McDonell concluded that the only real request presented was only for any sign above the ground floor on the alleyway and the fact that there were two signs. Chairman Rheume said the wall wash scones were also considered signs. Ms. Eldridge asked if the lights would be on all night, including the internal spaces for the tenants. Attorney Boldt said he didn't know. Mr. Nelson said he thought that most of the lights in the internal spaces would be on timers and would go off once the tenants vacated the premises. He said the lights in the lobby, on the Maplewood Avenue side, and over the parking garage entrance would most likely stay on.

Mr. Parrott said the freestanding sign was listed at 6'4"x9' and shown as three separate elements. He said it was hard to imagine how it would take up that much volume. Mr. Lizotte said the sign was the size was the rectangle that it constituted in total. He said he thought the sign would be in three pieces but wasn't sure because they hadn't ordered it yet. Mr. Parrott asked if the sign would be lighted. Mr. Lizotte said he didn't believe so. Mr. Parrott asked how the sign could be strong to stand up on that corner, with snow plows and so on. Mr. Lizotte said it would look like it was shown in the rendering. Attorney Boldt said the sign would be on a pedestal. Chairman Rheume said it was essentially a piece of sculpture but with an identification purpose for the

property and that it would be internally lit. Mr. Lizotte said it would most likely be internally lit. Mr. Parrott asked whether signs E5 and E6 would have the names of the tenants or would be advertising that would change three times a day. Mr. Lizotte said the signs were not electronic and would not be for advertising purposes. Mr. Parrott said the Board had experience with other locations where they thought one thing would happen and it turned out to be very different.

Mr. Mulligan confirmed that, other than the freestanding sign, no relief was necessary in terms of aggregate sign area, and that the size of the wall signs conformed to the ordinance. Attorney Boldt agreed, noting that the sign was no greater than the 20 square footage allowed. He said there was no feedback from the HDC yet, other than the wall wash signage. Chairman Rheume asked if there was additional signage for the parking garage. Mr. Lizotte said the garage was only for the tenants and there was no reason to identify it. Chairman Rheume asked if there was any sub-signage for the freestanding sign. Mr. Lizotte said no and that the M2, M3 and M4 signs would be available to future tenants. Chairman Rheume said the placement of the freestanding sign was easy to see for someone heading north on Maplewood Avenue but not coming from the bypass, and he asked if the applicant had considered putting signage on that elevation of the building to help identify the address. Mr. Lizotte said they had not and didn't see any point to it.

Chairman Rheume opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

No one was present to speak in favor.

SPEAKING IN OPPOSITION TO THE PETITION

Bruce Oeko of 233 Vaughan Street said the wall wash lights all around the building and the illumination signs above a certain height would make the building look like a Christmas tree and that he didn't see a hardship for it. He said the applicant said the lights illuminating the east wall of the building would not face down a street, but he said they really were facing Vaughan Street and the front of his property and would also wash the walk area below. He noted that the Board had asked many questions but had gotten a lot of vague responses of 'likely' and 'we don't believe so', and he thought the project was too uncertain to approve.

Mr. Stith noted that the Board also received a letter in opposition to the project.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Attorney Boldt said the letter of opposition was submitted from Mr. Downs who lived on the opposite side of Route 95. He said the Vaughan Street side of the building had very few lights and the Maplewood Avenue side had two wall wash lights on the third level. He said it was his understanding that the lights would not be on all night.

Mr. Lizotte said none of the wall washing lights would light the ground and that the pedestrian alley was lit by four short light poles that were not on the building.

No one else was present to speak, and Chairman Rheume closed the public hearing.

DISCUSSION OF THE BOARD

Mr. Lee said the building had a lot of windows that had a potential for a lot of light coming through and, combined with the wall wash lights, could make the building a great glowing one. He was also concerned about the impact on property values for the residences on Maplewood Avenue and Vaughan Street. Chairman Rheume said there was nothing in the ordinance about glazing size. Mr. Mulligan said the freestanding sign was reasonable and was properly scaled to the building. He said the wall signs seemed reasonable, given that they were less aggregate sign area than the building was entitled to, and that it made sense to move them around the way the applicant had. He said he didn't see any problem with putting signs on the pedestrian mall side of the building because they gave the public the opportunity to see which tenants were in the building. He said the wall wash lighting would be approved by the HDC and that the applicant had said they would not exceed the level of lumens required. He said those two facts combined gave him enough comfort that the project would not have a negative impact on the surrounding properties. He said he understood Ms. Eldridge's point but that it was difficult for the Board to know what they were approving when they didn't see the actual signs. He noted that the HDC would also have to approve the sign designs. He said the specific request from the applicant was where to place the signs, and he didn't see a problem with it.

Mr. Parrott said he was concerned with the 31 decorative lights and that he had not heard a good explanation as to why so much light was needed. He said it was clear that there would be light from the signs and offices, but he didn't see the purpose of adding all those additional wall wash lights around the building, especially at those heights. He said it would detract from the overall appearance of the building and wasn't in the public's interest to have something so garish.

Chairman Rheume said the variance requests looked like a lot of relief but that a lot of it came from some of the weaknesses in the ordinance. He said the applicant was allowed to have illuminated signs, a certain square footage of signs, and signage on the pedestrian mall side that was below grade level. He said the only thing from a sign standpoint for exception was the ability to have signs high up on the wall that didn't have a street in front of it. He said the exceptions were for the two signs at a higher level, if the wall wash signs weren't considered. He said the ordinance considered wall wash lights signs, probably to prevent decorative illumination on a building, like a gas station's lit strip around its building. He said if the ordinance were better segregated in what lighting was and what a sign was, it would be better, and if the wall wash lights were not considered signs, they would be fully allowable because they were below a lumen level. He felt that the wall wash lights would be low intensity and would be more about creating an ambiance, but that it would have helped to see renderings of the building at night.

DECISION OF THE BOARD

Mr. Mulligan said he would address three of the four variances requested and perhaps make a separate motion on the fourth variance.

*Mr. Mulligan moved to **grant** the variances for the freestanding sign and the wall signs as presented and advertised, and Ms. Eldridge seconded.*

Mr. Mulligan said the relief requested was reasonable, even though it looked like there was a lot of it, which was mostly driven by the building's design elements. He said it was a unique property, given that it had frontage on three public ways and also had interesting architectural design elements. He said the request for the freestanding sign made a lot of sense, given the building's size. He said the wall signs made sense, given how much signage the applicant was entitled to, and that it was just placing them around the building in a different manner than otherwise allowed. He said granting the variances would not be contrary to the public interest or to the spirit of the ordinance. He said the essential characteristics of the neighborhood would not be altered, nor the public's health, safety, or welfare threatened or the public negatively impacted by a freestanding sign larger than otherwise permitted or wall signs in locations otherwise not permitted. He said the driver for those decisions had to do with the built environment and the fact that the property had frontage on multiple public ways, and that it was reasonable for the applicant and the tenants to have appropriate signage where the public could see it. He said granting the variances would do substantial justice because there would be a loss to the applicant against the gain to the public if the Board required strict compliance with the freestanding sign ordinance. He said if the applicant was limited to what was required, they would have a very small sign. He said the purpose for the freestanding sign was mostly directional and that it was tastefully designed. He said if the applicant was required to have strict compliance with the height of the wall signs by keeping them at ground-floor level on all sides of the building, the signs wouldn't be useful because the public would be confused as to which tenants were where. He said that, due to the property's location on Maplewood Avenue and Raines Street, it was almost natural to have signs up high so that people coming into town could see them. He said the public also had to find the businesses by using the signs on the pedestrian side of the building, so there was no gain to the public by frustrating that goal. He said granting the variances would not diminish the values of surrounding properties because they wouldn't be impacted in any way. He said the hardship was due to the property's special conditions, including that it was surrounded on three sides by public ways and that the building was designed in such a way that the amount of glazing and the various setbacks and recessions of the floors made it a natural place for signs to be sited on its façade. He said leaving the signs where the ordinance permitted them at the ground floor on the sides of the building that fronted the street sides didn't make a lot of sense, so there was no fair and substantial relationship between the purposes of the ordinance and their application to the property. He said the use was a reasonable one and met all the criteria.

Chairman Rheume pointed out that there was a typographical error in the Staff Report, the agenda, and the public notice that denoted Variance 4 as Variance 3, making two Variance 3s. He said the intent of Mr. Mulligan's motion was that the Board would grant the exception for a freestanding sign, the wall signs, and the wall signs on the side of the building that didn't face the street. Mr. Mulligan agreed.

Ms. Eldridge said she was reassured by Chairman Rheume's and Mr. Mulligan's comments that the requested variances were not that large and also by the fact that the HDC would weigh in.

*The motion **passed** by a vote of 5-2, with Mr. Lee and Mr. Parrott voting in opposition to the motion.*

Chairman Rheume said that left the fourth variance to be approved or denied. Mr. Mulligan clarified that the Board was granting variances for wall signs in various locations and that wall signs were permitted to be illuminated without any relief. Mr. Stith agreed but said they were above 25 feet, which kicked back to the ordinance section that was referenced. Chairman Rheume said it was an oddity in that section of the ordinance and was the only place that the wording appeared. He said he didn't know why, except that it was perhaps to keep illuminated signs low. Mr. Mulligan said he was trying to separate the luminaires from the wall wash lights from the wall signs, even though they were arguably the same kind. Chairman Rheume said a luminaire was defined in the general section of the ordinance as a light and its associated fixture and thought the City Staff had to work with the Planning Board to figure out a way to identify the difference between signs and luminaires.

Attorney Boldt said they would like to return for approval for the fourth variance at a future meeting so that they could present a night vision of the building lit up, along with which signs were true wall wash lighting. The Board agreed.

*Ms. Eldridge moved to **postpone** consideration of Variance 4 to a later meeting so that the applicant could return with more information. Mr. Lee seconded.*

Ms. Eldridge said the information was important to get a better idea of what was asked of the Board. Mr. Lee concurred and noted that the New Hampshire Legislature passed a dark sky policy the previous year to minimize light pollution. Mr. Stith noted that it was in the ordinance.

*The motion **passed** by a vote of 7-0*

II. OTHER BUSINESS

There was no other business.

III. ADJOURNMENT

The meeting was adjourned at 9:42 p.m.

Respectfully submitted,

Joann Breault
BOA Recording Secretary

TO: Zoning Board of Adjustment
FROM: Peter Stith, AICP, Planning Department
DATE: December 9, 2020
RE: Zoning Board of Adjustment December 15, 2020 Meeting

OLD BUSINESS

1. 150 Greenleaf Avenue
2. 145 Maplewood Avenue

NEW BUSINESS

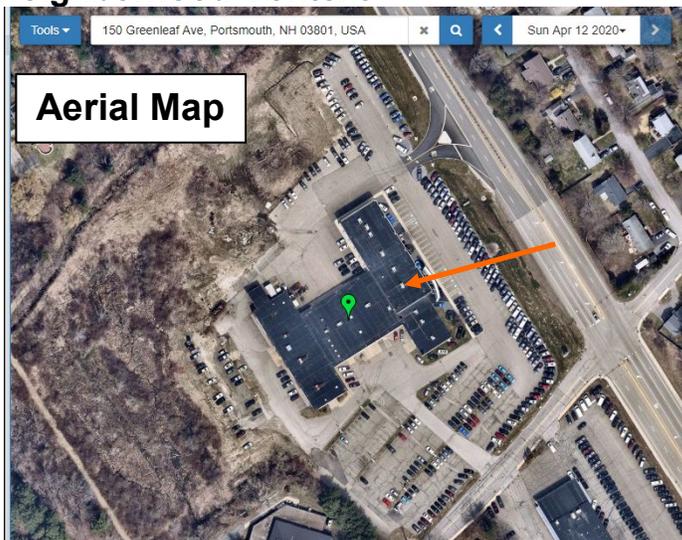
1. 160 Bartlett Street
2. 25 Morning Street
3. 303 Thornton Street

OLD BUSINESS

1.

Petition of **150 Greenleaf Avenue Realty Trust, Owner**, for property located at **150 Greenleaf Avenue** for Appeal of an Administrative Decision that the following are required: 1) A Variance from Section 10-208 Table 4 - Uses in Business Districts (2009 Ordinance, Section 10.592.20 in current Ordinance) that requires a 200 foot setback from any adjoining Residential or Mixed Residential district for motor vehicle sales. 2) A Variance from Section 10-1201, Off-Street Parking (2009 Ordinance, Section 10.1113.30 in current Ordinance) that requires a 100 foot setback for business parking areas from any adjoining Residential or Mixed Residential district. 3) A Wetland Conditional Use Permit for development within the Inland Wetlands Protection District. Said property is shown on Assessor Map 243 Lot 67 and lies within the Gateway Neighborhood Mixed Use Corridor (G1) District.

Neighborhood Context



Planning Department Comments

The appellant is appealing a determination of the Planning Director that variances are needed as well as a Wetland conditional use permit for further development of the subject property. The Planning Director's original letter that is being appealed is included in the appellant's submission. A separate memo from the Legal Department is included which provides the Board additional background on the property.

2.

Petition of **111 Maplewood Avenue, LLC, Owner**, for property located at **145 Maplewood Avenue** wherein relief is needed from the Zoning Ordinance for signage for new building which requires the following: 1) A Variance from Section 10.1251.20 to allow a 57 square foot freestanding sign where 20 square feet is the maximum allowed. 2) A Variance from Section 10.1242 to allow wall signs above the ground floor on all sides of the building. 3) A Variance from Section 10.1242 to allow wall signs above the ground floor on a side of a building not facing a street. 4) A Variance from Section 10.1144.63 to allow illuminated signs above 25 feet from grade. Said property is shown on Assessor Map 124 Lot 8-1 and lies within the Character District 5 (CD5) District.

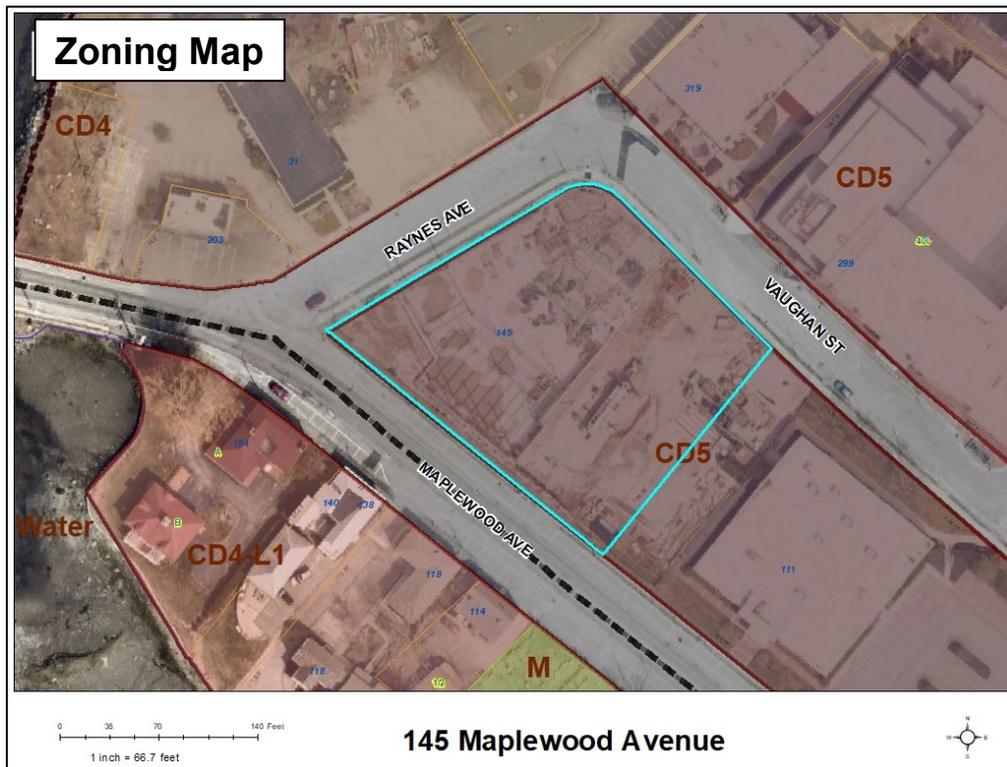
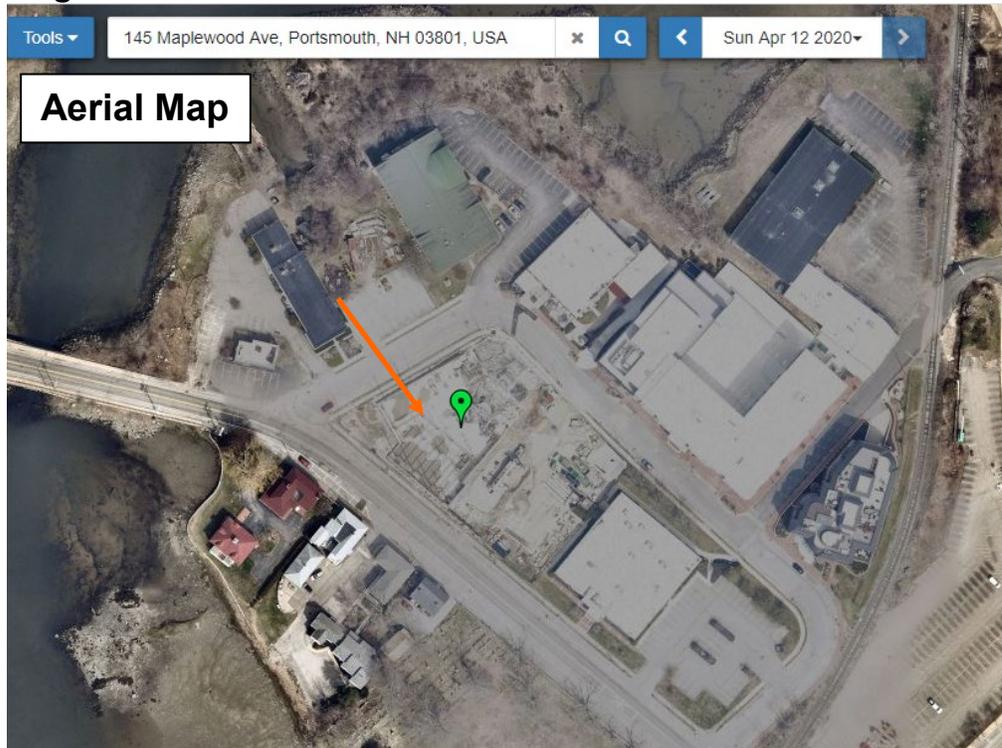
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	New commercial building	Signage for new building	Primarily mixed use
<u>Free standing sign (sq. ft.):</u>	NA	57*	20 max.
<u>Wall Sign Location:</u>	NA	5 signs and 31 decorative lights above ground floor*	One wall sign permitted above ground floor
<u>Illuminated Sign height (ft.):</u>	NA	>25	20 max.
			Variance requests shown in red. *Variances granted Nov. 24, 2020

Other Permits/Approvals Required

HDC

Neighborhood Context



Previous Board of Adjustment Actions

November 24, 2020 – The Board approved the following: 1) A Variance from Section 10.1251.20 to allow a 57 square foot freestanding sign where 20 square feet is the maximum allowed. 2) A Variance from Section 10.1242 to allow wall signs above the ground floor on all sides of the building. 3) A Variance from Section 10.1242 to allow wall signs above the ground floor on a side of a building not facing a street.

Planning Department Comments

The first 3 variances were granted at the previous meeting in November, with the fourth request being postponed until the applicant can provide a night time rendering for the Board to consider. Per Section 10.1144.60, luminaires can be mounted up to 20 feet above grade if they comply with the lumen standards referenced in the section. Section 10.1144.63 states the following:

10.1144.63 **Luminaires** used primarily for **sign illumination** may be mounted at any height to a maximum of 25 feet, regardless of **lumen** rating.

The applicant states the luminaires will comply with the lumen requirements and questions the need for relief from the section above, however the section clearly states that the maximum height for luminaires is 25 feet, regardless of the lumen rating.

Review Criteria

This application must meet all five of the statutory tests for a **variance** (see Section 10.233 of the Zoning Ordinance):

1. *Granting the variance would not be contrary to the public interest.*
2. *Granting the variance would observe the spirit of the Ordinance.*
3. *Granting the variance would do substantial justice.*
4. *Granting the variance would not diminish the values of surrounding properties.*
5. *The “unnecessary hardship” test:*
 - (a) *The property has special conditions that distinguish it from other properties in the area.*

AND

 - (b) *Owing to these special conditions, a fair and substantial relationship does not exist between the general public purposes of the Ordinance provision and the specific application of that provision to the property; and the proposed use is a reasonable one.*

OR

Owing to these special conditions, the property cannot be reasonably used in strict conformance with the Ordinance, and a variance is therefore necessary to enable a reasonable use of it.

NEW BUSINESS

1.

Petition of **Jonathan Sandberg, Owner**, for property located at **160 Bartlett Street** whereas relief is needed from the Zoning Ordinance to construct a 6' x 15' mudroom addition on the rear of the house which requires the following: 1) A Variance from Section 10.521 to allow 34% building coverage where 25% is the maximum allowed. 2) A Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 163 Lot 5 and lies within the General Residence A (GRA) District.

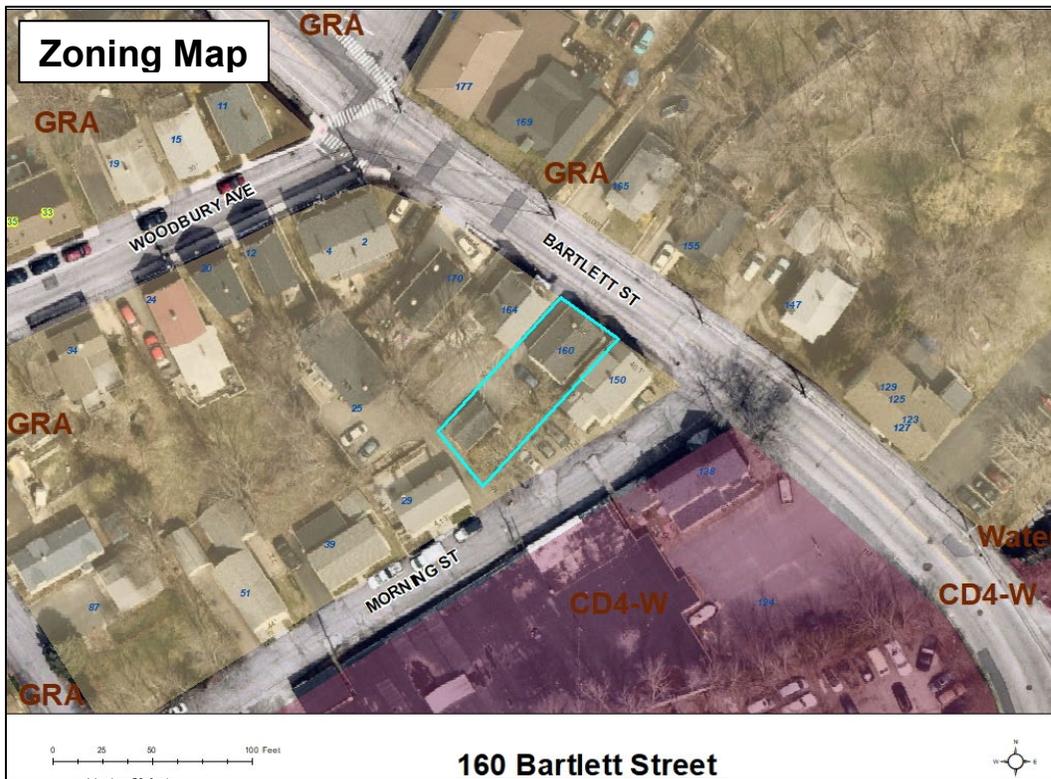
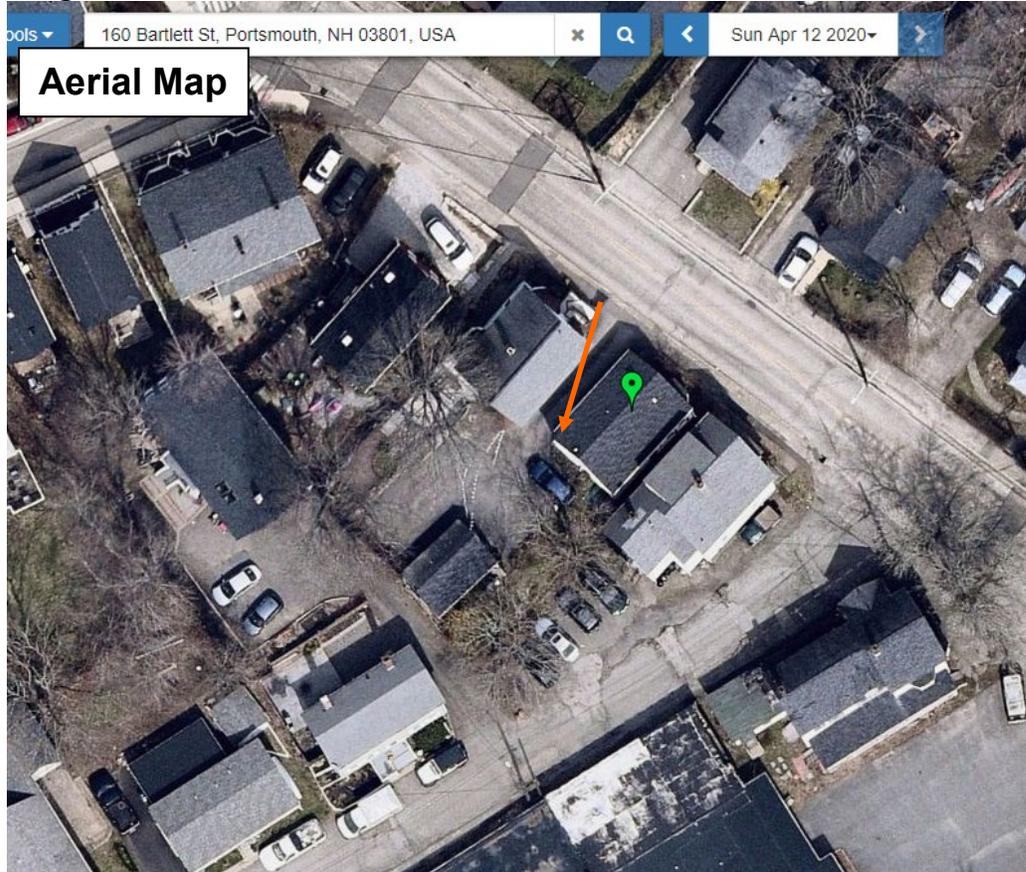
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family	Construct rear addition	Primarily residential uses
<u>Lot area (sq. ft.):</u>	3,484	3,484	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	3,484	3,484	7,500 min.
<u>Street Frontage (ft.):</u>	36	36	100 min.
<u>Lot depth (ft.):</u>	98	98	70 min.
<u>Front Yard (ft.):</u>	3	3	15 min.
<u>Right Yard (ft.):</u>	10	10	10 min.
<u>Left Yard (ft.):</u>	1	10	10 min.
<u>Rear Yard (ft.):</u>	62	56	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	31	34	25 max.
<u>Open Space Coverage (%):</u>	>30	>30	30 min.
<u>Parking</u>	2	2	1.3
<u>Estimated Age of Structure:</u>	1832	Variance request shown in red.	

Other Permits/Approvals Required

None.

Neighborhood Context



Previous Board of Adjustment Actions

No BOA history found.

Planning Department Comments

The applicant is proposing a mudroom on the rear of the house that will comply with yard requirements but will increase the building coverage to 34% where 25% is the maximum allowed in the district.

Review Criteria

This application must meet all five of the statutory tests for a **variance** (see Section 10.233 of the Zoning Ordinance):

1. *Granting the variance would not be contrary to the public interest.*
- Planning Department Comments* 2. *Granting the variance would observe the spirit of the Ordinance.*
3. *Granting the variance would do substantial justice.*
4. *Granting the variance would not diminish the values of surrounding properties.*
5. *The “unnecessary hardship” test:*

(a) The property has special conditions that distinguish it from other properties in the area.

AND

(b) Owing to these special conditions, a fair and substantial relationship does not exist between the general public purposes of the Ordinance provision and the specific application of that provision to the property; and the proposed use is a reasonable one.

OR

Owing to these special conditions, the property cannot be reasonably used in strict conformance with the Ordinance, and a variance is therefore necessary to enable a reasonable use of it.

2.

Petition of **The Rice Family Revocable Trust of 1988, Owner**, for property located at **25 Morning Street, Unit B** whereas relief is needed from the Zoning Ordinance to construct a 6' x 21' deck which requires the following: 1) Variances from Section 10.521 to allow a) a 2 foot side yard where 10 feet is required; and b) 32% building coverage where 25% is the maximum allowed. 2) A Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 163 Lot 19-2 and lies within the General Residence A (GRA) District.

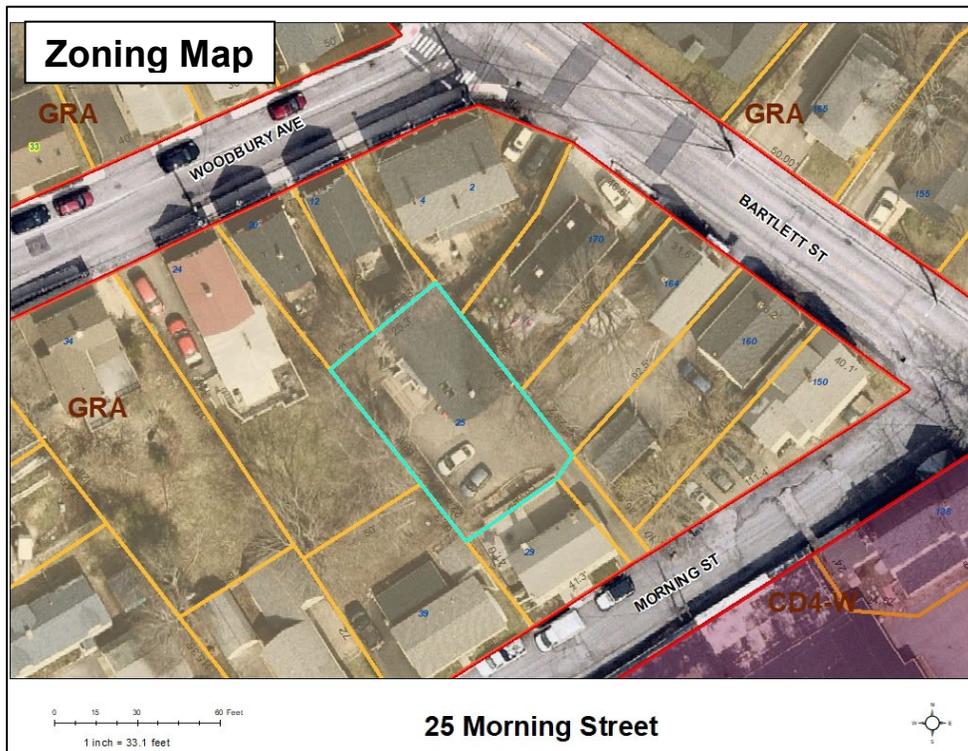
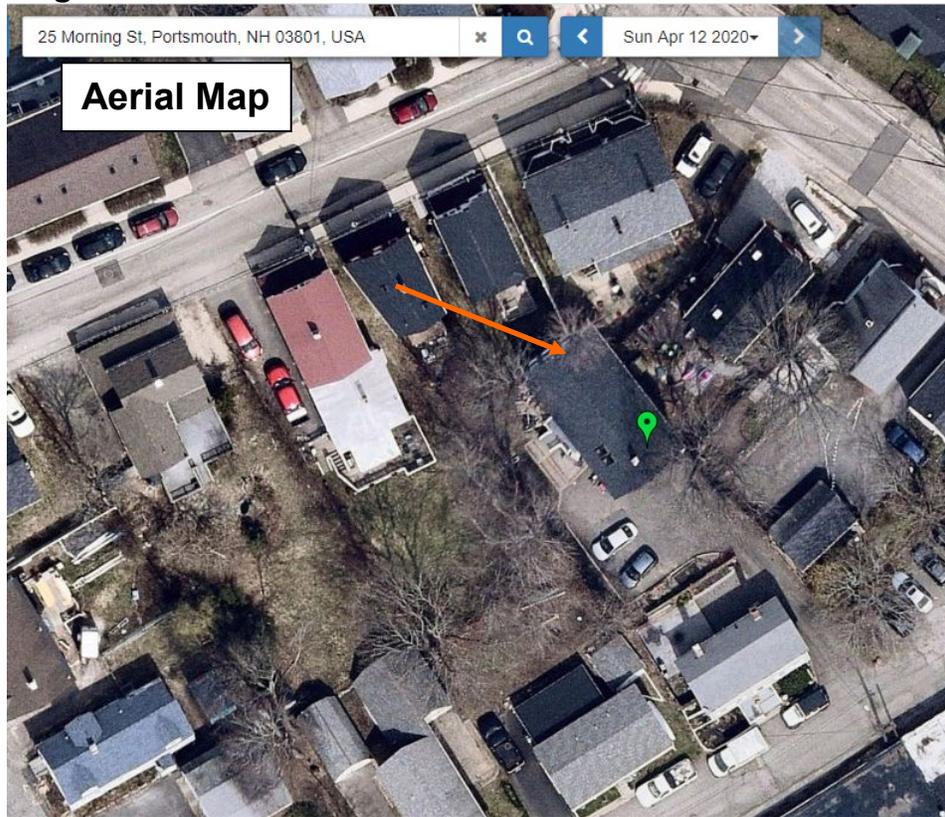
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Two family	Construct deck	Primarily residential uses
<u>Lot area (sq. ft.):</u>	4160	4160	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	2080	2080	7,500 min.
<u>Street Frontage (ft.):</u>	10	10	100 min.
<u>Lot depth (ft.):</u>	80	80	70 min.
<u>Front Yard (ft.):</u>	38	32	15 min.
<u>Right Yard (ft.):</u>	1	2	10 min.
<u>Left Yard (ft.):</u>	14	14	10 min.
<u>Rear Yard (ft.):</u>	1	1	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	28.5	32	25 max.
<u>Open Space Coverage (%):</u>	>30	>30	30 min.
<u>Parking</u>	4	4	3
<u>Estimated Age of Structure:</u>	1900	Variance request shown in red.	

Other Permits/Approvals Required

None.

Neighborhood Context



Previous Board of Adjustment Actions

No BOA history found.

Planning Department Comments

The applicant is proposing to construct an attached deck on the existing structure which will increase the building coverage to 32% where 25% is the maximum allowed in the district. The existing structure is approximately 1 foot off of the right side property line and the proposed deck will be 2 feet from the side lot line.

Review Criteria

This application must meet all five of the statutory tests for a **variance** (see Section 10.233 of the Zoning Ordinance):

1. *Granting the variance would not be contrary to the public interest.*
- Planning Department Comments* 2. *Granting the variance would observe the spirit of the Ordinance.*
3. *Granting the variance would do substantial justice.*
4. *Granting the variance would not diminish the values of surrounding properties.*
5. *The “unnecessary hardship” test:*
 - (a) *The property has special conditions that distinguish it from other properties in the area.*

AND

- (b) *Owing to these special conditions, a fair and substantial relationship does not exist between the general public purposes of the Ordinance provision and the specific application of that provision to the property; and the proposed use is a reasonable one.*

OR

Owing to these special conditions, the property cannot be reasonably used in strict conformance with the Ordinance, and a variance is therefore necessary to enable a reasonable use of it.

3.

Petition of **Sean Miller, Owner**, for property located at **303 Thornton Street** whereas relief is needed from the Zoning Ordinance to construct an addition to an existing home which requires the following: 1) A Variance from Section 10.521 to allow a 5 foot front yard where 15 feet is required. 2) A Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 162 Lot 5 and lies within the General Residence A (GRA) District.

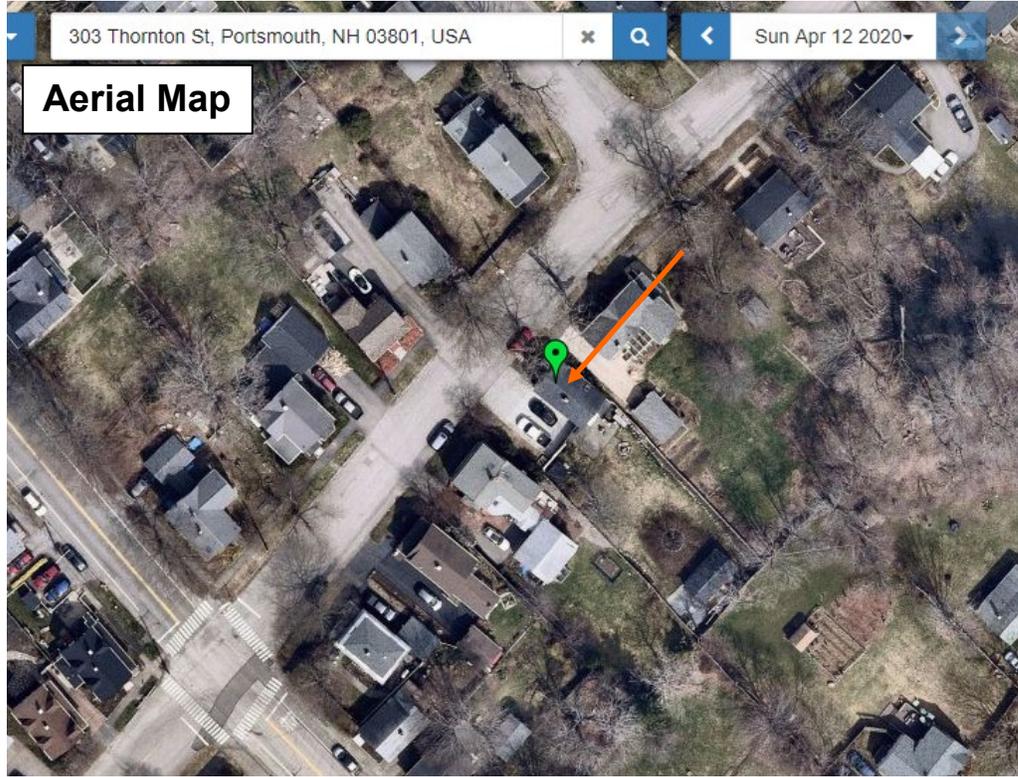
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family	Add front addition	Primarily residential uses
<u>Lot area (sq. ft.):</u>	8,276	8,276	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	8,276	8,276	7,500 min.
<u>Street Frontage (ft.):</u>	60	60	100 min.
<u>Lot depth (ft.):</u>	150	150	70 min.
<u>Front Yard (ft.):</u>	5	5	15 min.
<u>Right Yard (ft.):</u>	27	15	10 min.
<u>Left Yard (ft.):</u>	6	6	10 min.
<u>Rear Yard (ft.):</u>	112	112	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	7.6	12	25 max.
<u>Open Space Coverage (%):</u>	>30	>30	30 min.
<u>Parking</u>	2	2	1.3
<u>Estimated Age of Structure:</u>	1860	Variance request shown in red.	

Other Permits/Approvals Required

None.

Neighborhood Context



Previous Board of Adjustment Actions

No BOA history found.

Planning Department Comments

The applicant is proposing to right side front addition in line with the exiting front of the house. The lot exceeds the minimum lot size, however the existing location of the house is 5 feet from the front property line. The project will conform to all other dimensional requirements of the Ordinance and will not encroach further into the front yard than the existing alignment. The application of Section 10.516.10 for existing front yard alignments does not benefit the applicant, as the average is greater than 5 feet. However, most of the adjacent homes on either side are just as close, if not closer to the front lot line.

Review Criteria

This application must meet all five of the statutory tests for a **variance** (see Section 10.233 of the Zoning Ordinance):

1. *Granting the variance would not be contrary to the public interest.*
2. *Granting the variance would observe the spirit of the Ordinance.*
3. *Granting the variance would do substantial justice.*
4. *Granting the variance would not diminish the values of surrounding properties.*
5. *The “unnecessary hardship” test:*
 - (a) *The property has special conditions that distinguish it from other properties in the area.*

AND

- (b) *Owing to these special conditions, a fair and substantial relationship does not exist between the general public purposes of the Ordinance provision and the specific application of that provision to the property; and the proposed use is a reasonable one.*

OR

Owing to these special conditions, the property cannot be reasonably used in strict conformance with the Ordinance, and a variance is therefore necessary to enable a reasonable use of it.

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Duxbury, Massachusetts 02332

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Cell: 508 245-2105

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October 1, 2020

Zoning Board of Appeals
Municipal Complex
1 Junkins Ave.
Portsmouth, NH 03801

Re: Appeal of Decision of Official

Dear Mr. Chairman and Members of the Board

Please be advised that I represent James G Boyle, Trustee of the 150 Greenleaf Avenue Realty Trust. This letter constitutes an appeal of the decision of the Planning Director, Juliet Walker, contained in a letter dated August 18, 2020. As background, in 2009, Mr. Boyle submitted a site plan application for the addition of a second automobile dealership on his site. Due to litigation concerning the City's sewer line which was built on his property without an easement, review of the application was suspended. Ultimately, the Supreme Court affirmed the Trial Court's decision that the sewer line was illegally trespassing. With determination of this issue, Mr. Boyle sought to reactivate review of his proposed site plan. Some changes were made to the plan over the years. Accordingly, he submitted the new plans for informal feedback from the Planning Director prior to formally reactivating the application. The Planning Director provided the requested in her July 21 letter. Thereafter, Mr. Boyle submitted a new land use application to revive the earlier 2009 discussions and also to modify those plans.

Three issues raised in the letter are being appealed: (1) a determination that the plan would require a variance because it expanded an automotive use into a 200' buffer from a residential zone, (2) a determination that the plan would require a variance because it showed cars displayed within a 100' buffer from a residential zone, and (3) a determination that a conditional use permit would be required. All three issues raise discrete questions of law, and, as will be demonstrated below, must be resolved in Mr. Boyle's favor.

The August 18 letter also addresses the completeness of the application. The Planning Director has informed the applicant that these are not appealable issues. Mr. Boyle will not

actively address them in this appeal other than to raise the issue solely to preserve his rights should these later be characterized as appealable.

Finally, the August 18 letter addresses Mr Boyle's request that the third building of the development be disregarded. He did this to save time and effort but when advised new plans and drainage calculations would be needed, he now withdraws that request and asked the plans be reviewed as submitted. This is identified in this letter solely so there will be a clear record.

1. The Planning Director Erred In Determining That A 200' Buffer From Residential For Automotive Use Would Apply.

There are several reasons why the 200' Buffer does not apply. First, the Planning Director uses the wrong version of the ordinance. In 2006 and 2009, the ordinance was amended. However, these amendments were ineffective as they were not validly adopted. The City Charter which must be strictly followed when enacting an ordinance provides that the public is to be notified of the availability of a copy of the proposed amendment at no charge. This was never done so that the purported amendments never became effective. Failure to give notice as required by a statute, in this case the City Charter is grounds for invalidating an amendment to a zoning ordinance. *V.M. Stevens, Inc., v. Town of South Hampton*, 114 N.H. 118 (1974).

Thus, the version of the ordinance used by Mr. Boyle in his analysis applies. The Planning Director did not analyze the 200 foot buffer in Section 10-208 Table 4, use 35. Clearly the use of automobile sales is permitted. There is a single proviso separated from the permitted use by a semicolon and then a comma. It reads "...; provided, outdoor storage areas are located at least forty feet from the street right-of-way and two hundred feet from any Residential or Mixed Residential district;..." Grammatically, by use of the separator punctuation and there being no comma after right-of-way establishes that the 200 foot limit applies only to outdoor storage areas. It does not apply to the entirety of the use. There will be no outdoor storage within 200 feet of Residential. While the current version of the ordinance clarifies that the limit applies to the use, that version of the ordinance does not apply to the area in question as it was shown on the plan and the Board has determined it is governed by the pre-2010 ordinance.

The proposed third building meets the 200 foot limit. Moreover, in the original site plan approval for the dealership, no conditions were placed on the use which limited to the buildings and paved areas. The entire site was approved for automotive use. In fact, on many occasions and for varying length of time Mr. Boyle stored vehicles on unpaved portions of the site. In particular he regularly used the area where the third building is proposed for automotive use. He is not changing a use but rather continuing the same approved use but in a building. Thus, the location of the building is permissible even if it otherwise might violate the 200 foot buffer.

Further, the Supreme Court has already held that by displaying cars, Mr. Boyle is not engaging in outdoor storage. *Boyle, Trustee, 150 Greenleaf Avenue Realty Trust v. City of*

Portsmouth, 154 N.H. 390; 910 A.2d 1229 (2006). A copy is attached for your convenience. This ruling applies to the entire property as it did not distinguish any physical areas. Thus, the 200 foot exclusion cannot apply as a matter of law.

Second, the proposed amendments cannot be enforced against Mr. Boyle. The amendments related to a lawsuit in which Mr. Boyle's interpretation of the ordinance prevailed. These amendments were retaliation for the lawsuit and designed so that Mr. Boyle would have difficulty in developing his property. This type of amendment in bad faith cannot be enforced. *PMC Realty Trust v. Town of Derry*, 125 N.H. 126 (1984).

Finally, the Planning Director mischaracterizes the proposed development as expansion of a use. The entire site was used for automotive including the unpaved areas. Cars for repairs or processing due to recall were routinely stored on unpaved areas. Adding pavement does not change the use. Likewise adding a building does not change the use, even though there may be more volume of automobiles associated with it. Moreover the City is estopped from claiming the proposed development is a change of use for the undeveloped portions of the property. In the sewer line lawsuit between Mr. Boyle and the City, the City strenuously argued that Toyota of Portsmouth was using all of the property. For all of the above reasons, there is no 200' setback for displaying cars.

2. The Planning Director Erred In Determining That A 100' Buffer From Residential For Parking Would Apply.

Section 10-1201 of the 2009 ordinance prohibits parking within 100 feet of a residential zone. However, the vehicles within this buffer, as a matter of law, are not parked. Any vehicles in that area will be either inventory or display vehicles. It will not be "parking" as the term is commonly used. *Galinsky Family Real Estate, LLC v. City of Des Moines Zoning Bd. of Adjustment*, 797 N.W.2d 622 (Iowa App. 2011) ("Galinsky II") which held display lots do not constitute as off-street parking under a zoning ordinance. But see: *Galinsky Family Real Estate, LLC v. City of Des Moines Zoning Bd. of Adjustment*, 797 N.W.2d 621 (Iowa App. 2011). (Dissent agreeing with Galinsky II.) Since Galinsky II is the later published opinion, it controls. The concept of parking versus storage or display was extensively treated and discussed in *Incorporated Village v. Green*, 8 Misc.2d 356, 166 N.Y.S.2d 219 (1957). The Court stated:

'When automobiles are left for months on end¹ at a given place, there is no doubt that they are stored and not parked. Parking is of short duration and measured by hours or at most a day or two. It has in it the element of an automobile in use, being temporarily placed until it is about to be again put into service and use. The cars which have been on the lot and about which the complaint is concerned are not cars ready for the road. They

¹ The average time for a new car at Mr. Boyle's dealership being on the lot is 160 days; used cars, 39 days.

are not licensed for the road, they are not cleaned greased and oiled for the road. The use of the lot for these cars is not parking but storage, storage awaiting the time when they will be withdrawn for sale and delivery. There is a substantial distinction, clearly cognizable, between the meaning ‘storage’ and ‘parking’. One has a certain degree of permanency, while the other denotes transience. At 166 N.Y.S.2d 221.

In this case, customers can walk around the vehicles and look at different colors and configurations. The Supreme Court has already determined that they are permissible display vehicles and not storage. Clearly, they are not parked in the ordinary use of the word.

Parking is not defined in the ordinance. When terms are not defined, they are ascribed their ordinary and common meaning. *Boyle v. City of Portsmouth*, 154 N.H. 390 (2006). In this instance the 2009 ordinance shed light on its meaning. Reading the totality of Chapter XII of the Ordinance, and in particular how required parking is contemplated, it is clear that the term “parking” encompasses employees coming to work and leaving their car as well as customers and third parties who have business at the facility. The cars are registered and actively being used until they are stopped and an individual performs whatever tasks he or she needs to perform on site. In contrast, the cars displayed in this area are not in active use. They are rarely moved. - certainly not on a daily basis. Thus, they do not create the kind of noise, traffic and other impacts that might occur in a normal parking lot, thus obviating any concerns of cars in the area. Thus, the cars are not violating any parking setback.

3. The Planning Director Erred In Determining That A Conditional Use Permit Is Needed.

Mr. Boyle’s proposed work involves dredging and filling manmade drainage structures and in the area of nuisance created by the City. Normally, a conditional use permit would be required. Under fairly unique circumstances, a conditional use permit for filling the manmade ditch is not required here because one if it was denied, Mr. Boyle could still proceed with his development project. In 2013, Mr. Boyle and NHDES entered into a Consent Decree concerning the property, which was approved by the Rockingham Superior Court and entered as an order of the Court. A copy is attached to this appeal. The Consent Decree required development of the property as shown on Mr. Boyle’s plans and further required NHDES to issue both the AoT and wetlands 44 permits which were required. NHDES has issued those permits. A remedial consent decree entered as a court order trumps municipal permits. *Metro. Housing Development Corp. v. Village of Arlington Heights*, 496 F. Supp. 836 (N.D. Ill. 1979). Thus, the permitting process would be a waste of City resources and time.

Moreover, Mr. Boyle’ experts have extensively studied the site. Their conclusion is that leaving the site as is constitutes an environmental hazard as well as a safety hazard. NHDES agrees and concluded Mr. Boyle’s development is the best solution to all the concerns being raised about the site. It would be irrational for the Planning Board to go against the great weight of the evidence and anything but approval would get reversed. Thus, in the interest saving time

and money for all involved, the Board should determine under the unique circumstances here, that a permit is not needed.

Nevertheless, despite the waste, Mr. Boyle is willing to seek a conditional use permit as long as the Board postpones decision on the merits of this issue until after the decision on the conditional use permit so that's right to appeal it is preserved. If the permit is granted, it will make the relief sought here moot. If it is not granted, then the Board would have to decide the issue.

Accordingly, on behalf of Mr. Boyle, I ask that the Board reverse the decision of the Planning Director on the two buffer issues and that it take no action on the conditional use permit pending a determination by the Conservation Commission. Thank you.

Sincerely,

/s/ John Kuzinevich

John Kuzinevich

Copy to: client



CITY OF PORTSMOUTH

Planning Department
1 Junkins Avenue
Portsmouth, New Hampshire
03801
(603) 610-7216

John J. Kuzinevich, Esq.
Law Offices of John Kuzinevich
71 Gurnet Road
Duxbury, MA 02332

September 18, 2020

RE: Application for Amended Site Plan Review for 150 Greenleaf Ave

Dear Attorney Kuzinevich:

I have reviewed the updated site plan review application that you submitted on September 11, 2020 on behalf of your client for a proposed expansion of your client's automobile dealership at 150 Greenleaf Avenue. As we have previously confirmed, an application for amended site plan review approval was originally submitted to the Planning Department in October of 2009 (along with an application fee of \$2,500). While those plans received preliminary review by both the Site Plan Review Technical Advisory Committee (TAC) and the Planning Board, the project did not complete the site plan review and approval process. In order to receive final approvals, the updated application will need to complete the public hearing and approval process with both TAC and the Planning Board.

As decided by the Board of Adjustment in July 2010, the original application that was filed in October 2009 is subject to the Zoning Ordinance in effect in 2009. The original application included expansion of the parking area and the addition of one new building located to the north of the existing building. As such, we would apply the 2009 Zoning Ordinance for that portion of the project unless the current Zoning Ordinance is more permissive or would otherwise benefit the project.

The addition of a proposed third building to the west (rear) of the existing building was not on the original plans submitted to the Planning Board, and therefore would be subject to the requirements of the current Zoning Ordinance. You have explained in your cover letter that, although a third building is shown on the revised plan set submitted with your updated application, your client is not intending to proceed with approvals for the third building at this time. We have reviewed this application with that understanding. However, in order for the project to proceed through the land use review process, we require an updated plan set that does not show the third building and the supporting drainage analysis should be updated accordingly.

As submitted, the site plan review application is missing some information that is required in order for the application to be considered complete according to the City's Site Plan Review regulations. We also require that one complete hard copy of all of the information submitted via the online permit be provided for the Planning Department files. Per Section 2.5.4 (4) the

applicant shall either submit the required information or request that the Planning Board grant a waiver from the requirements. The following information is missing from or is incomplete in the application package submitted on September 11, 2020:

- 2.5.3.1A Green building statement;
- 2.5.3.1B Gross floor area and dimensions of all buildings and a statement of uses and floor area for each floor;
- 2.5.3.1E Names and addresses of all direct abutting property owners and holders of existing conservation, preservation, or agricultural preservation restrictions affecting the subject property [NEEDS UPDATING];
- 2.5.3.1H List of names and contact information of all public or private utilities servicing the site;
- 2.5.4.1D Plans stamped by a NH licensed civil engineer;
- 2.5.4.1E Stamp verifying that wetlands have been delineated by a NH certified wetlands scientist;
- 2.5.4.3B Building elevations (height, massing, materials, lighting, façade treatments);
- 2.5.4.3C AASHTO truck turning templates;
- 2.5.4.3D Parking calculations (number required and number provided);
- 2.5.4.3J Outdoor lighting plan;
- 2.5.4.3K Landscaping plan;
- 2.5.4.3M Open space calculations;
- 2.5.4.3O Location of snow storage areas;
- 3.2.1-2 Traffic generation report or traffic impact study;
- 7.4.4.1 Stormwater Management and Erosion Control Plan.

Please note, the above list does not preclude the TAC or Planning Board requesting additional information based on further review of the application.

As referenced in Section 2.9 (1) of the Site Plan Review Regulations, in order to grant site plan review approval, the TAC and Planning Board must find that the application is in compliance with all City Ordinances and Codes. Therefore, if any project as proposed does not meet the City's Zoning Ordinance, such project cannot receive site plan review approval unless appropriate relief is granted by the Zoning Board of Adjustment thereby bringing the project into compliance.

Upon review of the application, I have found that the following zoning relief will be required before this project can proceed to site plan review approval:

- 1) Setbacks from motor vehicle sales (Section 10-208 Table 4 – Uses in Business Districts in 2009 Ordinance, Section 10.592.20 in current Ordinance)
 - The site plan shows parking, display, and/or storage of vehicles within the required 200-foot setback from a Single Residence B (SRB) district. The ordinance requires such uses to be no closer than 200 feet from any adjoining Residential or Mixed Residential district.
- 2) Setbacks for Business Parking Areas (Section 10-1201 – Off-Street Parking in 2009 Ordinance and Section 10.1113.30 in current Ordinance)
 - The site plan shows parking spaces and accessways between 50 and 100 feet from the adjoining SRB district. The ordinance requires such uses to be no closer than 100 feet from any adjoining Residential or Mixed Residential district.

In addition to the zoning relief listed above, the application will also require a wetland conditional use permit for development within the Inland Wetlands Protection District. The proposed site plan shows extensive alterations to jurisdictional wetlands (labeled as manmade ditch). As defined by the Zoning Ordinance, man-made drainage structures are part of the Inland Wetlands Protection District, but until the 2010 Ordinance, did not require a buffer zone. A separate application will need to be submitted for this approval, which requires Conservation Commission review prior to the Planning Board. The Planning Board can consider an application for wetland conditional use permit approval at the same time as the site plan review application as long as all of the application requirements have been satisfied.

Please feel free to reach out to discuss any of these items further.

Sincerely,

A handwritten signature in black ink, reading "Juliet T. Walker". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Juliet T.H. Walker, AICP
Planning Director

Cc: Robert P. Sullivan, City Attorney

**CITY OF PORTSMOUTH
LEGAL DEPARTMENT
MEMORANDUM**

DATE: December 9, 2020

TO: DAVID REHEAUME, BOARD OF ADJUSTMENT CHAIR

FROM: ROBERT P. SULLIVAN, CITY ATTORNEY
SUZANNE M. WOODLAND, DEPUTY CITY ATTORNEY 

RE: ADMINISTRATIVE APPEAL OF PLANNING DIRECTOR WALKER
PROPERTY ADDRESS: 150 GREENLEAF AVENUE

This memorandum confirms that the Legal Department supports the conclusions of the Planning Director Juliet Walker as expressed in her communication of September 18, 2020 to the applicant's legal counsel John Kuzinevich. It is our understanding that Planning Director Walker will be available at the Board of Adjustment (BOA) appeal hearing scheduled for December 17, 2020 to provide any further explanation that may be required by the BOA. In addition, the City Attorney and the Deputy City Attorney will also be available at the meeting in the event of questions. In order to assist further in consideration of this appeal, the Legal Department provides the following background and analysis.

An Appendix is included with this Memorandum to provide referenced documents.

BACKGROUND

Existing Use of the Property

James Boyle as Trustee of the 150 Greenleaf Avenue Realty Trust ("Boyle") purchased the 13.78 parcel at the intersection of Greenleaf Avenue and the Route 1 Bypass in December 2003. The property was occupied by multiple commercial tenants at the time of acquisition, but Boyle promptly established an automotive dealership at the site in 2004. Non-automotive tenancies were wound down and building permits were obtained over several years to expand the automobile use on the site. A copy of the 2003 Existing Conditions Plan prepared by Boyle to support the change in use and initial building permit can be found in the Appendix. (The plan happens to show the 200' setback for automobile uses which was in existence at the time of Boyle's acquisition of the parcel.)

In August of 2008, the Planning Board approved improvements to the site including new parking areas, lights and drainage. In September of 2017, the Planning Director administratively approved the addition of a new driveway off of Route 1 Bypass, a

driveway permit having been issued by the State of New Hampshire Department of Transportation.

The 2009 Site Plan Application and the Board of Adjustment Decision of 2010

Boyle submitted a site plan application in the fall of 2009 for a second dealership and new extensive associated parking/inventory storage (2009 Application). This 2009 Application was notable for the extensive area the applicant proposed for parking and storing vehicles. A copy of sheet C2 from the 2009 Application is included in the Appendix to show generally the scope of the 2009 Application request.

While Boyle was developing plans for expanding his dealership, the City was in the process of amending its site plan regulations and zoning ordinance; those changes subsequently became effective January 2010. Mr. Boyle and his counsel participated in that lengthy public process, commenting in 2009 on various components of the proposed ordinance update.

Boyle argued that the 2009 zoning ordinance should apply to his pending 2009 Application. The Planning Director at the time, Rick Taintor, and the Planning Board disagreed finding that the new 2010 zoning ordinance applied. Boyle appealed the decision of the Planning Board to use the 2010 zoning ordinance to the BOA.

The BOA on July 20, 2009, by a vote of 4 to 3, agreed to grant Boyle's appeal and apply the 2009 zoning ordinance to the 2009 Application. A copy of the minutes are included in the Appendix.

Due to unrelated pending litigation concerning the City's sewer line that crosses the rear of the parcel Boyle asked the City to place his 2009 Application on hold and the Planning Board voted in 2010 to postpone the application indefinitely at the request of the applicant. As of the granting of that request, the application had only received preliminary review by the Technical Advisory Committee and the Planning Board. A complete application had not yet been submitted.

The Revised Plan and Land Use Application 2020

In August of 2011, Boyle undertook without benefit of local or state permits certain site work on the rear of his property in areas considered jurisdictional wetlands by both the City and NH Department of Environmental Services (NH DES). NH DES subsequently issued a finding of violation. Boyle and the NH DES reached a Consent Decree which allowed Boyle the opportunity to submit a plan for NHDES wetlands permit approval as part of a process and means to resolve the violation. Boyle submitted a plan to NH DES that varied from the 2009 Application, in particular it reduced the amount of proposed outdoor storage of inventory area/parking area and included a third building ("Revised Plan"). In March of 2020 the NH DES issued a wetlands permit based on the Revised Plan.

Boyle seeks to proceed with the work shown on the Revised Plan. The applicant consulted with the Planning Director to determine the appropriate process forward and, after a preliminary review of the application, the Planning Director advised that the

Revised Plan appeared to be incomplete and would also likely require variances and a wetland conditional use permit. In order to reactivate the land use review process, the Planning Director properly advised that Boyle should commence a new land use application. As a starting point and to facilitate the process of review, the Planning Director recommended that Boyle use the Revised Plan as a basis for the new land use application. Boyle did so on September 11, 2020 (2020 Land Use Application) and the Planning Director's subsequent land use code review of the application (issued on September 18, 2020) is the subject of this appeal. A copy of sheet C3 from the 2020 Land Use Application showing generally the revised parking scheme and third building is included in the Appendix.

ANALYSIS

The Planning Director has correctly determined that two variances are required for the pending 2020 Land Use Application as well as a wetlands conditional use permit. In short, the Planning Director has respected the BOA 2010 decision and applied the 2009 zoning ordinance to those portions of the 2020 Land Use Application that is consistent with the postponed 2009 Application.

As a preliminary matter, Boyle suggests that the Planning Director has applied the wrong zoning ordinance with regard to his 2020 Land Use Application. He makes a somewhat confused argument that the City should look back to an ordinance that predates his 2009 Application. The Legal Department disagrees with this proposition.

The BOA determined in 2010 that the 2009 version of the ordinance would apply to the 2009 Application. The Planning Director has given Boyle the benefit of that prior BOA decision, specifically, to the extent his 2020 Land Use Application presents the same configuration of parking and buildings shown in the 2009 Application the 2009 zoning ordinance will apply.

Even if the BOA were inclined not to give weight to its prior decision, Boyle provides no convincing evidence that a different ordinance should apply. He has supplied no documents or other support that the City failed to promulgate its zoning ordinances in accord with the City of Portsmouth Charter or State law. To the contrary, the City staff would be prepared to submit to the BOA the necessary proof of posting and publishing of the 2009/2010 ordinance changes should the BOA wish it. The City points out that Boyle misstates the conditions set forth of the Charter and refers the BOA to Portsmouth Charter Section 4.5. Boyle raised this argument before in multiple forums without success.

Staff is also prepared to discuss the history of the ordinance changes from 2006 to 2009 relative to outdoor storage of vehicles relative to dealership uses if the BOA is inclined to explore that history and not rely on the BOA's previous action in 2010. Staff reaffirms that all proper procedures were followed to amend the zoning ordinance over the years and the references interlaced in the appeal relative to bad faith are simply attempts to move this Board beyond a straightforward consideration of Planning Director Walker's interpretation.

200' foot Buffer from Residential for Automobile Use

The Planning Director determined as follows:

Setbacks from motor vehicle sales (Section 10-208 Table 4 – Uses in Business Districts in 2009 Ordinance, Section 10.592.20 in current Ordinance)

The site plan shows parking, display, and/or storage of vehicles within the required 200-foot setback from a Single Residence B (SRB) district. The ordinance requires such uses to be no closer than 200 feet from any adjoining Residential or Mixed Residential district.

Boyle argues that the placement of the semicolon in the ordinance demands a different conclusion than the one reached by Planning Director Walker. The section, which is from the Table of Uses, allows as follows:

Motor vehicles sales, renting or leasing, including accessory repair services, for vehicles not requiring tractor registration plates and weighing less than 32,000 pounds; provided, areas of parking, display, and/or storage of vehicles, equipment, goods materials are located at least forty feet from the street right-of-way and two hundred feet from any Residential or Mixed Residential district; and all accessory uses are located within a building.

See the Appendix for a copy of the relevant section of the 2009 ordinance.

Words in the ordinance are entitled to their plain meaning and are viewed in the context of the whole ordinance. The Planning Director's interpretation is consistent with that of the previous Planning Director. Each Planning Director relied on the plain reading of the relevant ordinance language.

Boyle's argument that *Boyle, Trustee 150 Greenleaf Avenue Realty Trust v. City of Portsmouth* 154 N.H. 390 (2006) dictates a different interpretation is wrong. The City amended the ordinance on which that case was decided prior to Boyle's 2009 Application. Therefore, the Planning Director's determination which is based on the plain language of the 2009 ordinance is the correct one.

Finally, Boyle makes the unusual argument that if one violates the City zoning laws long enough (by parking cars outside of the approved parking areas) the property owner gets the benefit of that non-enforcement when a land use application is filed. Parking areas that are approved and constructed for the purpose of parking cars are to be used for parking vehicles. The fact that Boyle may have parked vehicles on other portions of his property in violation of his site approval doesn't mean he now has a right to lawfully use the entire property parking and other automotive sales purposes.

100' Foot Buffer From Residential for business parking areas

The Planning Director determined as follows:

Setbacks for Business Parking Areas (Section 10-1201 – Off-Street Parking in 2009 Ordinance and Section 10.1113.30 in current Ordinance)

The site plan shows parking spaces and accessways between 50 and 100 feet from the adjoining SRB district. The ordinance requires such uses to be no closer than 100 feet from any adjoining Residential or Mixed Residential district.

The ordinary and common meaning of parking (in the context of a vehicle), is a vehicle that is stationary. This section of the ordinance is applicable to all business parking (ie not specific to automobile sales and leases), it provides the design criteria for parking and accessways on a property, and a common sense interpretation of that term is to be applied.

Merriam-Webster defines a parking space as “a place to park a car, truck, etc.” The verb, “park” is further defined in part as “to leave temporarily on a public way or in a parking lot or garage”. Ordinance Section 10-1201 provides the technical requirements for where vehicles may be temporarily left including prohibiting temporarily leaving vehicles within 100 feet of a residential district. Whether a property owner characterizes this act as storing, displaying, or parking a vehicle, each of these terms falls under the broad umbrella of “to leave temporarily”, and as a result the property owner must still do so within a space designated for parking. To do otherwise would contravene the site plan approval and be contrary to the zoning ordinance.

Wetland Conditional Use Permit

The Planning Director has determined that a wetland conditional use permit is required to construct the improvements shown in the Land use Application 2020. The City has consistently taken the position that the area behind the existing Toyota dealership is compromised in large part of jurisdictional wetlands as defined under the City’s zoning ordinance. There are no grounds for treating this 2020 Land Use Application differently from the 2009 Application. Moreover, there are no grounds for treating the 2020 Land use Application differently from the many land use applications filed by other property owners across the City.

The NH Supreme Court has made it abundantly clear that local jurisdictions have the authority to regulate wetlands in the same manner or more stringently than the State of New Hampshire. Girard v. Plymouth, 172 NH 576 (2019). The Consent Decree referenced by Boyle is an agreement between the NHDES and Boyle to resolve a state law violation of the laws relating to wetlands permitting. The City was not a signatory to it. Citing a 1979 case from the State of Illinois is unpersuasive.

The City further points out that at paragraph 4, under the section entitled *General Conditions that Apply to All NHDES Wetlands Permits* on the Wetlands Permit issued by the NH DES on March 5, 2020, the following language can be found: “This permit does not relieve the applicant from the obligation to obtain other local, state or federal permits, and/or consult with other agencies....” See Appendix. It could not be clearer that NH DES permitting does not displace the need for local permitting and approvals including the issuance of a conditional use permit.

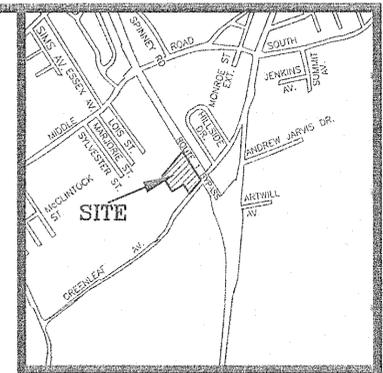
Finally, as background and to clarify the record, the City and its wetlands consultant Mark West have long identified the wetlands behind the existing Toyota dealership as

having important functional values. Included in the Appendix is the 2006 Functional Assessment that was performed by NH Certified Wetland Scientist Mark West along with the resource inventory data sheet also prepared by Mark West in 2017 relative to the property.

Addition of "Third Building"

In contradiction to the application submitted on September 11, 2020, Mr. Boyle's appeal to the BOA notes that the applicant has changed his mind about the so-called "third building" included on the plans submitted. The applicant had previously indicated that, although a third building is shown on the revised plan set submitted with the Revised Application, he was not intending to proceed with approvals for the third building at this time. As a result, Planning Director Walker's review letter of September 18th did not include comments related to zoning and land use compliance for that building.

The addition of a proposed third building to the west (rear) of the existing building was not on the original plans submitted to the Planning Board in 2009, and therefore would be subject to the requirements of the City's current Zoning Ordinance. The Planning Director has completed her review of the third building and Boyle is not appealing any elements of that review.



LOCATION PLAN

NOTES:

1. THE PARCEL IS LOCATED IN THE GENERAL BUSINESS (GB) ZONE.
2. THE PARCEL IS AS SHOWN ON THE CITY OF PORTSMOUTH ASSESSOR'S MAP 243 AS LOT 67.
3. THE PARCEL IS NOT LOCATED IN A FLOOD HAZARD ZONE AS SHOWN ON FLOOD INSURANCE RATE MAP - MAP INDEX COMMUNITY-PANEL NUMBERS 330139 0001-0030 WITH AN EFFECTIVE DATE OF MAY 17, 1982.
4. OWNER OF RECORD: MSM BROTHERS, INC. P.O. BOX 5033 PORTSMOUTH, NH 03801 RCRD. BK.2765 PG.1109
- OPTION HOLDER: JAMES G. BOYLE 3612 LAFAYETTE RD. PORTSMOUTH, NH 03801
5. ZONING REQUIREMENTS:
 MINIMUM LOT SIZE: 43,560 SF
 MINIMUM FRONTAGE: 200'
 MINIMUM SETBACKS:
 FRONT YARD: 70'
 SIDE YARD: 30'
 REAR YARD: 50'
 MINIMUM DEPTH: 100'
 MAXIMUM COVERAGE: 30%
6. TOTAL PARCEL AREA: 600,413 S.F. 13.78 ACRES
7. WETLAND DELINEATION WAS DONE BY COVE ENVIRONMENTAL SERVICES, INC. IN ACCORDANCE WITH THE 1987 CORPS OF ENGINEERS WETLAND DELINEATION MANUAL AND FIELD LOCATED BY MILLETTE, SPRAGUE & COLWELL, INC.

PLAN REFERENCES:

1. "PLAN OF LAND FOR STATE OF NEW HAMPSHIRE PORTSMOUTH VOC. TECH. SCHOOL, GREENLEAF AVENUE PORTSMOUTH, NEW HAMPSHIRE" SURVEYED DEC. 1982, PLAN DATED JAN. 1983 BY K.E. MOORE. RCRD PLAN #0-11259.
2. "PROSPECT PARK PORTSMOUTH, NH BELONGING TO LEAMITT, WOODWORTH & SWEATT" SURVEYED APRIL 30, 1903 BY JOHN N. MCCLINTOCK, A.M.C.E., FIELD WORK BY EDWARD H. SAMPTON, BOSTON, MASS. RCRD PLAN #00225.
3. "SUBDIVISION PLAN LOCATED IN PORTSMOUTH, NH FOR PORTSMOUTH BUSINESS CENTER" DATED 6/25/85 BY KIMBALL CHASE COMPANY, INC. RCRD PLAN #0-14108.
4. "LOT LINE REVISION 500 MIDDLE ROAD PORTSMOUTH, NEW HAMPSHIRE FOR JULIA KORONA REALTY TRUST" DATED 6/2/01 BY JAMES VERRA AND ASSOCIATES, INC. RCRD PLAN #0-29143.
5. "MARIE - NEW HAMPSHIRE INTERSTATE BRIDGE AUTHORITY PISCATAQUA RIVER BRIDGE KITTERY, MAINE - PORTSMOUTH, NH RIGHT OF WAY MAPS N.H. APPROACH" DATED 1954 BY MOULTON ENGINEERING CO.
6. "GREENLEAF AVENUE IMPROVEMENTS, CITY OF PORTSMOUTH, PORTSMOUTH, NH" DATED AUG. 2000 BY HOYLE, FANNER & ASSOCIATES, INC. ON FILE WITH THE CITY OF PORTSMOUTH.
7. "PLAN OF LAND, RIDGEWOOD APARTMENTS CO., GREENLEAF AVENUE, PORTSMOUTH, N.H." DATED SEPTEMBER 16, 1974 BY MCKENNA ASSOCIATES. RCRD PLAN #0-4736.
8. "SITE PLAN PREPARED FOR PORT CITY CHRYSLER/DOODGE, PORTSMOUTH, N.H." DATED JULY 30, 1993 BY TF MORAN, INC. ON FILE WITH THE CITY OF PORTSMOUTH.
9. "PROPERTY LINE & SEWER EASEMENT PLAN, CONTINENTAL CABLEVISION, PORTSMOUTH, N.H." DATED 9/15/98 BY KIMBALL CHASE ON FILE WITH THE CITY OF PORTSMOUTH.

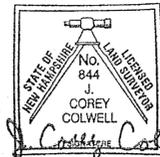
MILLETTE, SPRAGUE & COLWELL, INC.
 CIVIL ENGINEERS LAND SURVEYORS

EXISTING FEATURES PLAN

FOR
JAMES G. BOYLE
 GREENLEAF AVE. / U.S. ROUTE 1 BY-PASS
 COUNTY OF ROCKINGHAM
 PORTSMOUTH, NH



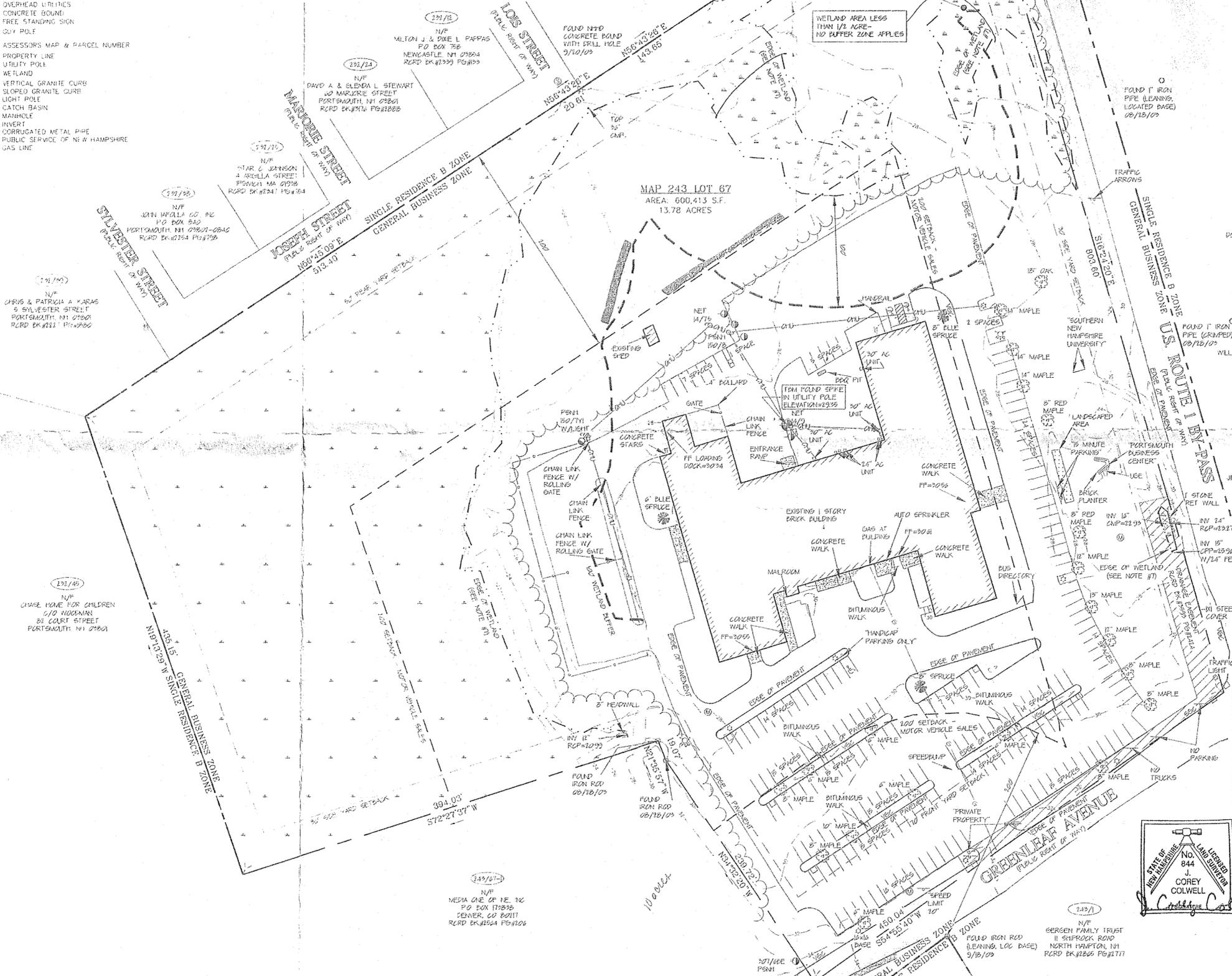
SCALE: 1" = 50'
 DATE: SEPTEMBER 11, 2003
 JOHN HART MANSION, 403 - THE HILL, P.O. BOX 471, PORTSMOUTH, N.H. (603)431-2277
<http://www.msceinginc.com>



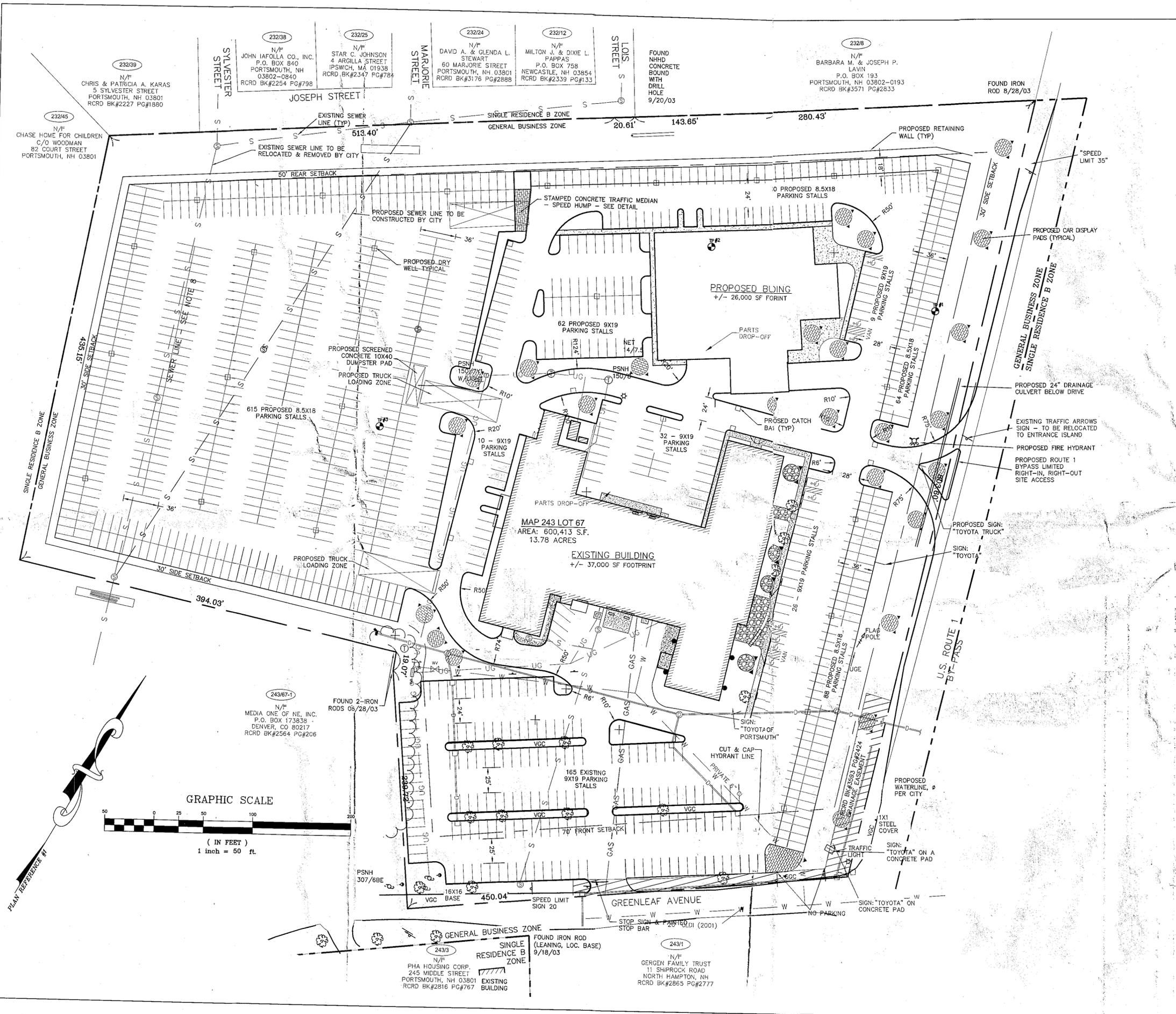
LEGEND

- BK 2562/PG 2783 BOOK NO./PAGE NO.
- FF FINISHED FLOOR
- LS LANDSCAPED
- N/O NOW OR FORMERLY
- N/HD NEW HAMPSHIRE HIGHWAY DEPARTMENT
- R/RD ROCKINGHAM COUNTY REGISTRY OF DEEDS
- S/S SQUARE FEET
- OU OVERHEAD UTILITIES
- CB CONCRETE BOUND
- FS FREE STANDING SIGN
- GP GUY POLE
- MAP/LOT ASSESSOR'S MAP & PARCEL NUMBER
- PL PROPERTY LINE
- UP UTILITY POLE
- W/WETLAND
- VGC VERTICAL GRANITE CURB
- S/SLOPED GRANITE CURB
- L/LIGHT POLE
- C/CATCH BASIN
- M/MANHOLE
- I/INVERT
- CMP CORRUGATED METAL PIPE
- PSNH PUBLIC SERVICE OF NEW HAMPSHIRE
- G/GAS LINE

MAP 243 LOT 67
 AREA: 600,413 S.F.
 13.78 ACRES



ETIC SEPTEMBER 2003



PLAN REFERENCES:

- "SITE CONSTRUCTION PLANS FOR 150 GREENLEAF AVENUE REALTY TRUST" DATED JAN. 27, 2009 BY MSC ON FILE WITH THE CITY OF PORTSMOUTH.
- "PLAN OF LAND FOR STATE OF NEW HAMPSHIRE PORTSMOUTH VOC. TECH. SCHOOL GREENLEAF AVENUE PORTSMOUTH, NEW HAMPSHIRE" SURVEYED DEC. 1982, PLAN DATED JAN. 1983 BY K.E. MOORE. RCRD PLAN #11299.
- "PROSPECT PARK PORTSMOUTH, NH BELONGING TO LEAVITT, WOODWORTH & SWEATT" SURVEYED APRIL 30, 1903 BY JOHN N. MCCLINTOCK, A.M.C.E., FIELD WORK BY EDWARD N. SAMPSON, BOSTON, MASS. RCRD PLAN #00225.
- "SUBDIVISION PLAN LOCATED IN PORTSMOUTH NH FOR PORTSMOUTH BUSINESS CENTER" DATED 6/25/85 BY KIMBALL CHASE COMPANY, INC. RCRD PLAN #14106.
- "LOT LINE REVISION 500 MIDDLE ROAD PORTSMOUTH, NEW HAMPSHIRE FOR JULIA KORONA REALTY TRUST" DATED 6/2/01 BY JAMES VERRA AND ASSOCIATES, INC. RCRD PLAN #1-29143.
- "MAINE - NEW HAMPSHIRE INTERSTATE BRIDGE AUTHORITY PISCATAQUA RIVER BRIDGE KITTERY, MAINE - PORTSMOUTH, NH RIGHT OF WAY MAPS N.H. APPROACH" DATED 1954 BY MOULTON ENGINEERING CO.
- "GREENLEAF AVENUE IMPROVEMENTS, CITY OF PORTSMOUTH, PORTSMOUTH, NH" DATED AUG. 2000 BY HOYLE, TANNER & ASSOCIATES, INC. ON FILE WITH THE CITY OF PORTSMOUTH.
- "PLAN OF LAND, RIDGEWOOD APARTMENTS CO., GREENLEAF AVENUE, PORTSMOUTH, N.H." DATED SEPTEMBER 16, 1974 BY MCKENNA ASSOCIATES. RCRD PLAN #1-4736.
- "SITE PLAN PREPARED FOR PORT CITY CHRYSLER/DODGE, PORTSMOUTH, N.H." DATED JULY 30, 1993 BY TF MORAN, INC. ON FILE WITH THE CITY OF PORTSMOUTH.
- "PROPERTY LINE & SEWER EASEMENT PLAN, CONTINENTAL CABLEVISION, PORTSMOUTH, N.H." DATED 9/15/88 BY KIMBALL CHASE ON FILE WITH THE CITY OF PORTSMOUTH.

NOTES:

- OWNER OF RECORD: 150 GREENLEAF AVENUE REALTY TRUST, JAMES G. BOYLE TRUSTEE, 150 GREENLEAF AVENUE, PORTSMOUTH, NH 03801, RCRD BK#4215 PG#0227, CITY OF PORTSMOUTH ASSESSOR'S MAP 243 AS LOT 67.
- THE PARCEL IS LOCATED IN THE PORTSMOUTH GENERAL BUSINESS (GB) ZONE.
- THIS PARCEL IS NOT IN A FLOOD HAZARD ZONE PER FEMA FLOOD INSURANCE RATE MAP 33015c0259, MAY 17, 2005.
- WETLAND DELINEATION PERFORMED BY GOVE ENVIRONMENTAL SERVICES, INC. (GES) ON AUGUST 23, 2005, IN ACCORDANCE WITH THE 1987 CORPS OF ENGINEERS WETLAND DELINEATION MANUAL AND FIELD LOCATED BY MSC CIVIL ENGINEERS & LAND SURVEYORS, INC. (MSC).
- SURVEY FIELD WORK PREVIOUSLY CONDUCTED BY MSC AND REVISED BY EMANUEL ENGINEERING, INC. (EE) IN 2009.
- THIS IS NOT A BOUNDARY PLAN. SEE BOUNDARY SURVEY PLAN.
- PLAN DATUM ELEVATION TIED TO MSC REFERENCE PLAN #10.
- UNDERGROUND FACILITIES, UTILITIES AND STRUCTURES HAVE BEEN LOCATED FROM FIELD OBSERVATIONS AND THEIR LOCATIONS MUST BE CONSIDERED APPROXIMATE ONLY. IT IS THE RESPONSIBILITY OF THE CONTRACTOR TO HAVE ALL UNDERGROUND UTILITIES OR STRUCTURES LOCATED PRIOR TO EXCAVATION WORK BY CALLING 1-888-DIG-SAFE.
- THIS PLAN WAS PREPARED WITH ONSITE FIELD SURVEY AND EXISTING PLANS. THE CONTRACTOR SHALL NOTIFY EMANUEL ENGINEERING, INC. DURING CONSTRUCTION OF ANY DISCREPANCIES TO THE PLAN FOUND ON SITE.
- ZONING REQUIREMENTS:
 - MINIMUM LOT SIZE: 43,560 SF.
 - LOT SIZE PROVIDED: 600,413 S.F., 13.78 AC.
 - MINIMUM FRONTAGE: 200'
 - FRONTAGE PROVIDED: 450.04'
 - FRONT YARD MINIMUM SETBACK: 70'
 - SIDE YARD MINIMUM SETBACK: 30'
 - REAR YARD MINIMUM SETBACK: 50'
 - MINIMUM LOT DEPTH: 100'
 - LOT DEPTH PROVIDED: 186.60'
 - MAXIMUM STRUCTURE COVERAGE: 30%
 - PROPOSED STRUCTURE COVERAGE: 10.4%
- PARKING REQUIREMENTS:
 - 847 DISPLAY 8.5X18 SPACES
 - 269 SERVICE/EMPLOYEE 9X19 SPACES *
 - 35 CUSTOMER 9X19 SPACES
 - (* SOME SERVICE & EMPLOYEE SPACES MAY BE UTILIZED FOR DISPLAY PURPOSES)
- ALL SITE CONSTRUCTION TO BE TO LOCAL, STATE AND FEDERAL DESIGN SPECIFICATIONS, STANDARDS, & REQUIREMENTS.
- ALL NEW UTILITIES TO BE BURIED BELOW GRADE.
- SEE SITE AND PAVEMENT PLANS FOR LIMITS OF PERVIOUS PAVEMENT.

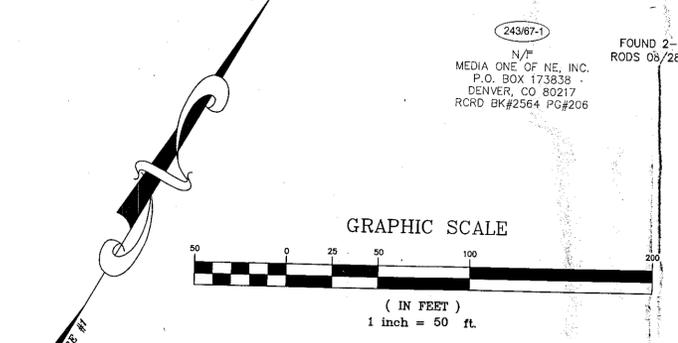
2	FEB. 16, 2010	FOR APPROVAL	
1	OCT 23, 2009	PRELIMINARY WORK	
ISS. DATE:		DESCRIPTION OF ISSUE:	CHK.
DRAWN:	BDS	DESIGN:	BDS
CHECKED:	DFE	CHECKED:	DFE

EMANUEL ENGINEERING, INC.
 CIVIL & STRUCTURAL CONSULTANTS
 118 PORTSMOUTH AVE.
 STRATHAM, NH 03885
 Tel: (603) 772-4400 Fax: (603) 772-4487
 www.emanuelengineering.com

CLIENT:
150 Greenleaf Avenue Realty Trust
 150 Greenleaf Avenue
 Portsmouth, NH 03801
 (603) 431-6100

TITLE:
SITE PLAN FOR TOYOTA OF PORTSMOUTH 150 GREENLEAF AVENUE PORTSMOUTH, NH 03801

PROJECT:	SCALE:	SHEET:
09-026	1"=50'	C2



**MINUTES OF THE BOARD OF ADJUSTMENT MEETING
PORTSMOUTH, NEW HAMPSHIRE**

MUNICIPAL COMPLEX, 1 JUNKINS AVENUE

EILEEN DONDERO FOLEY COUNCIL CHAMBERS

7:00 p.m.

July 20, 2010

MEMBERS PRESENT: Chairman Charles LeBlanc, Vice Chairman David Witham, Carol Eaton, Thomas Grasso, Alain Jousse, Charles LeMay, Arthur Parrott, Alternate: Derek Durbin

EXCUSED: Alternate: Robin Rousseau

ALSO PRESENT: Principal Planner, Lee Jay Feldman

I. APPROVAL OF MINUTES

A) Board of Adjustment Meeting April 20, 2010

It was moved, seconded and passed by unanimous voice vote to accept the Minutes as presented.

B) Board of Adjustment Meeting April 27, 2010 not available for vote.

It was moved, seconded and passed by unanimous voice vote to postpone review of these Minutes until July 27, 2010.

II. OLD BUSINESS

5) Case #6 -5

Petitioners: Houston Holdings, LLC, Daniel Houston, President

Property: 653 Islington Street Assessor Plan 164, Lot 5

Zoning district: Business

Request: Variance: 10.440 Table of Uses 10.18.24 to allow two (2) temporary structures to remain on the premises for not more than 180 days, which is not allowed by Ordinance.

Variance: 10.531 Table of Dimensional Standards, to allow a 4' right side setback where 15' is required

Variance: 10.531 Table of Dimensional Standards, to allow a 4' left side

setback where 15' is required

6) Case #6 -6

Petitioners: Houston Holdings, LLC, Daniel Houston, President

Property: 653 Islington Street Assessor Plan 164, Lot 5

Zoning district: Business

Request: Variance: 10.321 to allow the expansion of a nonconforming structure.

Variance: 10.531 Table of Dimensional Standards, to allow a 25' x 20' addition with a 4' right side setback where 15' is required

Variance: 10.531 Table of Dimensional Standards, to allow a 4' left side setback for the addition where 15' is required

These petitions were postponed from June 15 meeting. Motion was made, seconded and passed by unanimous voice vote to bring them again before the Board. It was requested that Case # 6-6 be discussed in conjunction with the above. Chairman LeBlanc indicated the Board would hear arguments for both cases at the same time, but would vote on them separately.

SPEAKING IN FAVOR OF THE PETITION

Attorney Jack McGee stated he was appearing on behalf of Houston Holdings, LLC, and was there along with the applicants. The lot in question was a tight lot at the intersection of Islington and Bartlett. This has been a subject of a great deal of activity this year because of the City's sewer project. During that project, it had been pointed out to Mr. Houston that the storage trailers that he had been using were not appropriate for the Ordinance and it was suggested that he take remedial action. After discussions with Planning officials, Mr. Houston was attempting to enclose the trailers within a single structure which would be permanent and, within that, would be the removable storage trailers. Attorney McGee furnished a portion of the plan as well as schematics for the proposed building for the Board, stating that the lot was very odd-shaped and tight. The building as it existed was already up against the boundary line on Islington and the old West End Café. Mr. Houston has discussed this with the owners of West End Café property and he advised they do not have any objections, nor had they heard any objections from Gilford Transportation which was the side abutter.

Attorney McGee reiterated that the plan was to legitimize this storage area under the zoning Ordinance by encapsulating the storage trailers into a permanent structure. The setbacks in the area were 15 feet and the structure would be on the property to the back with a side setback of 4'. This area would be up against the drive way of the West end Café property and the 4 feet on the back/side area up against the Gilford Transportation property. They were asking that the storage trailers be allowed to remain there for 180 days which would give Mr. Houston a chance to build this permanent structure, hopefully obtaining a variance from this Board. Approval would also be required from the Historic District Commission and possibly Site Review. These variances would allow a business, which has served the community for quite a while to stay in existence. It needed storage and the trailers have provided that storage and there was no other location to put a storage area in this building. While the trailers had been there for some time, the applicant was unaware that they were contrary to the zoning Ordinance. They hadn't posed a problem to anyone at this point and it was not conceivable that, encased, they would pose a problem in the future.

Addressing the special conditions requirement under the Boccia criteria, Attorney McGee stated that the shape and size of this lot was unique for that particular area of town. It was a lot which had been seriously affected by the City's sewer project, which made it difficult to do anything with the lot due to the easements that the City had taken by eminent domain. He stated that there was no other way to do this. He and the applicant had met with the Planning Department to explore various ideas and this proposal was something that appeared feasible. Hopefully, the Board would view it that way and grant approval. Attorney McGee that granting the variances would be consistent with the spirit of the Ordinance in that nobody wants to see a business shut down for this type of lack of storage. A long-standing business, it served a good number of members of the community and hopefully would be allowed to stay there and operate as it had for a number of years. Substantial justice would be served by allowing the business to be maintained there. Attorney McGee felt the real criteria was whether anyone was going to be hurt by this. As an indication that it was not going to hurt surrounding properties, he noted that the most affected abutters were not there. He stated that the building would look better in appearance, which would be good for the area. It would solve the applicant's problem while being consistent with what the City was attempting to accomplish. For all those reasons, they asked that the Board grant both variances.

Mr. Grasso asked about cars he had observed parked along where the proposed addition was behind the building. The applicant, Mr. Houston, indicated that when the City took the front of their parking lot by eminent domain there was no access to the parking lot. The West End Café had given him temporary right to use their driveway so that the City vehicles could park there during the sewer project. When that project was completed, there would be no vehicles there.

In response to further questions from Chairman LeBlanc, Mr. LeMay and Mr. Jousse, Mr. Houston indicated that the trailers would be where they were during construction. They had been moved for the sewer project but would be moved back after construction. The plans showed the old location of the trailers. The spaces on the plan marked 14 through 16 were parking spaces. He confirmed they had looked into going up for storage rather than out of the building but either way a variance would be needed and this was preferred as it would be more difficult to get to the storage trailers if they were up.

SPEAKING IN OPPOSITION TO THE PETITION, OR SPEAKING TO, FOR OR AGAINST THE PETITION

With no one rising, the public hearing was closed.

DECISION OF THE BOARD

For Case # 6-5: Mr. Parrott made a motion to grant the petition as presented and advertised which was seconded by Ms. Eaton.

Mr. Parrott stated that this petition seemed simple and straightforward. The petition asking for a 180-day extension to remain where they were currently was temporary in nature. He stated that there was no serious public interest involved as the trailers had been there for some time without causing any trouble to the public. The spirit of the Ordinance would be observed as this would aid the business to transition in a new expansion and allow a place for temporary storage. Substantial justice would be done and there were no overriding private or public interests that

would be harmed by granting these variances. The value of the surrounding properties would not be diminished or there would be no negative impact on the surrounding properties. The hardship was that the City through their work on the sewer had impacted this lot adversely and in a manner that was out of the control of the owner. The trailers were there because they were needed for storage. Ms. Eaton agreed and had nothing to add.

Mr. Grasso asked the maker and second to add a stipulation that the trailers would be 8' x 20' instead of "two (2) temporary structures" as previously read. Mr. Parrott and Ms. Eaton agreed.

The motion to grant the petition as presented and advertised, with the stipulation that the size of the two temporary structures would be 8' x 20', was passed by a unanimous vote of 7-0.

For Case # 6-6: Mr. Parrott made a motion to grant the petition as presented and advertised which was seconded by Mr. Witham.

Mr. Parrott indicated that the reason for proposing such a small setback in the back was that it went up against an embankment to the railroad track. That land had no productive use and had no impact on neighbors. In the same manner the right side setback was adjacent to a neighboring business' parking lot and also had no impact. Addressing the criteria, similar to the previous discussion on the storage containers, he saw no negative impact on the public interest. In fact, most of the public would not see this addition. The spirit of the Ordinance would be observed as a variance was needed to allow the business to operate. He felt that, in the substantial justice test, the balance tipped to the applicant as there is no public or private interest that would be adversely affected. The value of surrounding properties would not be diminished. The structure would be out of sight, would be more attractive than the current trailers, and would be appropriate to the rest of the building. He stated that literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship. In this case there would be no alternative for this lot. It had been impacted by City work, was an odd-shaped lot and backed up against railroad tracks.

Mr. Witham added that he did not see any way that this variance would have any adverse impact on the two abutters. Further confirming this was the fact that the abutter's property had 24 more feet toward the railroad tracks and a structure could be built nine feet closer than what was being proposed and still be in conformance. He noted that the height of the tracks would be the same height as the roof of this structure so there was no impact on light and air. It was a good solution to a unique problem.

The motion to grant the petition as presented and advertised was passed by a unanimous vote of 7 to 0.

III. PUBLIC HEARINGS

- 1) Case # 7-1
Petitioners: Kara L. Hutchins
Property: 40 Mill Pond Way Assessor Plan 143, Lot 6
Zoning district: General Residence A
Requests: Variance from Section 10.321 to allow the expansion of a nonconforming structure
 Variance from Section 10.521 to construct a front porch with a 10' setback

from the front lot line where a 15' front yard is required

Mr. Jousse stepped down and Mr. Durbin sat in on this case.

SPEAKING IN FAVOR OF THE PETITION

Ms. Kara L. Hutchins stated she lived at 40 Mill Pond Way and was there to ask permission to add a porch to the front of her house. Part of the challenge of the house was its location as the street cut diagonally across her property. One corner had a 25-foot setback and the other corner had a 15-foot setback. The porch she wanted to add was in part of the 15-foot setback. This was the next step in renovations to improve the value of her home. She had spoken to her neighbors and she provided to the Board a petition signed by the neighbors saying they did not object to this addition. Ms. Hutchins also indicated that she felt the addition of a porch would not be contrary to the public interest as it would be similar to other homes in the vicinity.

In response to a question from Ms. Eaton as to why she needed the porch to go into that setback area, Ms. Hutchins indicated she was planning a traditional farmer's porch across the whole front of her house and to have the porch stay within the setback, she would have to start the porch half-way in on her house. This would make it start right in front of her front door, which was in the middle of the house.

SPEAKING IN OPPOSITION TO THE PETITION, OR SPEAKING TO, FOR OR AGAINST THE PETITION

With no one rising, the public hearing was closed.

DECISION OF THE BOARD

Mr. Grasso made a motion to grant the petition as presented and advertised which was seconded by Mr. Durbin.

Mr. Grasso stated that about one-third of the house was in the setback area. The applicant wanted a full porch and he didn't feel it made sense to start the porch in front of her front door. There were unique conditions on the property and the house was not parallel to the street. This would not be contrary to public interest as how the porch was set should not affect and the street was not well-traveled. The spirit of the Ordinance would be observed as there was just one end of the porch that fell within the setback. Mr. Grasso stated that, in the justice test, there would be no benefit to the public in denying the variance. The values of surrounding property would not be diminished. Literal enforcement of the provisions of the Ordinance would result in unnecessary hardship as it would not be an attractive design to start the porch in the middle of the door or a window.

Mr. Durbin agreed, adding that where the home was placed on the lot was probably the only place on the lot to build. The property was unique in relation to how the road ran along the lot. It was different from the other homes in vicinity and created a special condition on the property that did, along with the other criteria, justify a variance.

Mr. Witham noted that the area that the public actually used, the road, was an additional 10 feet away from the property line and this was one of those situations where the property owner maintained the property all the way up to the pavement. At the edge of the public right of way the porch was in conformance and an open structure would have no impact on light and air.

The motion to grant the petition as presented and advertised was passed by a unanimous vote of 7 to 0.

Mr. Jousse resumed his seat and Mr. Durbin resumed his status as an alternate.

2) Case # 7-2

Petitioner: Kayla Realty, LLC, owner, and Heather Lessard, applicant, dba Tulips

Property: 60-62 Market Street Assessor Plan 117, Lot 34

Zoning district: Central Business B

Request: Variance from Section 10.1253.50 to allow a projecting sign to project 42” from the building where 36” (one-third of the sidewalk width) is the maximum allowed

SPEAKING IN FAVOR OF THE PETITION

Ms. Heather Lessard stated the sign in question was painted by her mother, built by her father and had been hanging in Portsmouth for 30 years. The business had to move because their lease was lost on Bow Street and they were not allowed to grandfather the sign. The applicant felt it was her heritage as the sign had been there for such a long time and been a part of the city that they support.

**SPEAKING IN OPPOSITION TO THE PETITION, OR
SPEAKING TO, FOR OR AGAINST THE PETITION**

With no one rising, the public hearing was closed.

DECISION OF THE BOARD

Mr. Witham made a motion to grant the petition as presented and advertised which was seconded by Ms. Eaton.

Mr. Witham recalled that when he received the packet and began to read this petition he wondered why these people couldn't just build the sign at 36 inches and felt that the only way he could support it was if the sign were a preexisting sign from another location, which turned out to be the case. He didn't feel the variance would be contrary to the public interest in any way and the spirit of the Ordinance would be still be observed by the granting of this variance. He indicated substantial justice would be done because he felt the harm to the applicant if the petition were denied would not be outweighed by any benefit to the general public. There was no reason to believe that the value of surrounding property would be diminished in any way. Considering the literal enforcement of the provisions of the Ordinance resulting in unnecessary hardship, he gave weight to the fact that this was a sign that was part of a business that was

relocating, a sign that it has been successfully hung in this city for 30 years without any problems and felt it could be done again. Again, if this were a brand new sign, he would probably look at it differently but, in this case, he was willing to give the 6 inches over the sidewalk.

Ms. Eaton indicated she had the same initial reaction that it would not be something that would be supportable, but finding out it was the original Tulips sign that was just moving across the street, she thought it could also be said the essential character of the neighborhood would be altered by removing it.

The motion to grant the petition as presented and advertised was passed 6-1, with chairman LeBlanc voting against the motion.

3) Case # 7-3

Petitioner: 150 Greenleaf Avenue Realty Trust, James G. Boyle Trustee

Property: 150 Greenleaf Avenue Assessor Plan 243, Lot 67

Zoning district: Gateway

Request: Appeal under RSA 676:5(III) of the determination by the Planning Board that the Zoning Ordinance adopted by the City Council on December 21, 2009, and effective January 1, 2010, is applicable to a site plan review application submitted on October 23, 2009

Mr. Jousse stepped down for this petition and Mr. Durbin assumed a voting seat.

SPEAKING IN FAVOR OF THE PETITION

Attorney Bernard Pelech stated he was appearing on behalf of the applicant 150 Greenleaf Avenue Realty Trust, James G. Boyle Trustee. Mr. Boyle was present with additional counsel, Attorney John Kuzinevich. Mr. Boyle is the owner of 150 Greenleaf Avenue Realty Trust which is the site of Portsmouth Toyota. Citing RSA 676.5, Attorney Pelech stated they were present to appeal the decision of the Planning Board in their determination as to which zoning Ordinance applied to a site plan filed by Mr. Boyle. Under the statute, if the Planning Board made a determination as to the application or interpretation of a zoning Ordinance, remedies must be exhausted before an appeal could be taken to the Superior Court, which placed the burden on the Board of Adjustment to hear that appeal.

Attorney Pelech stated that discussions were had with the City of Portsmouth in the summer of 2009 regarding filing a new site plan. At the time, the City was also in discussion regarding revising the zoning Ordinance. Mr. Boyle's site plan was filed and stamped by the City on October 23, 2009. On November 20, 2009, the clerk in the Planning Department posted notice of their site review application before the Technical Advisory Committee and also sent out notices via certified mail to abutters. On the same day, the City Clerk's office posted a notice of a public hearing of the City Council on zoning amendments. No one knew which was posted first on that day. Attorney Pelech stated that City Attorney Robert Sullivan had indicated in a November 20, 2009 memorandum that on that day the City Council posted a notice on the second reading of the revised zoning Ordinance and therefore, he determined that once the notice of the public hearing had been posted, and before the effective date of the revised Ordinance, one must comply with

the new Ordinance. Attorney Sullivan further stated that the requirement to compliance with the proposed revised Ordinance didn't apply to "...a structure shown on a plan or application for which notice of a public hearing by the Planning Board, such as for site plan approval, was posted prior to November 20." Attorney Pelech stated that the problem was that the City's posting of the proposed public hearing on the revised Ordinance was not sufficient under the City Charter nor was it sufficient under the state statute. NH RSA 675:7 required "notice of each public hearing should be published in a paper of general circulation in a municipality and should be posted in at least two public places." He maintained that the fact that the notice of public hearing was posted on November 20, 2009 was of no consequence because it was not published in the Portsmouth Herald until November 23, 2009. The City Charter, in Section 4.5, also explicitly required publication of the proposed Ordinance in a local newspaper and that did not occur until November 23, 2009.

Attorney Pelech stated that, when the petitioners went before the Planning Board in May, 2010, the Planning Department submitted a memo which dealt with the applicable zoning Ordinance and site plan review regulations. It stated that it was the opinion of both the Planning and Legal Departments that the current zoning Ordinance and site plan review regulations applied to this development proposal. He maintained that this was directly contrary to what Attorney Sullivan, in his memo, stated on November 20, 2009. Attorney Pelech stated that there should be no arguments made that evening regarding the criteria as this was not a legal argument but a fact argument. He reiterated what he and the applicant maintain were the posting dates for the site review application and the legal notice of the public hearing on the revised zoning Ordinance. Attorney Pelech noted that there was also a case pending in the Superior Court regarding the filing.

Mr. Witham commented that the situation was the race to who could get posted first. Attorney Pelech agreed and stated it was beyond the petitioner's control as there were two separate city employees doing the postings and probably neither one looked to see what else had been posted that day. Mr. Witham noted that the City council had first, second and third readings and he could not find anywhere in the NH zoning regulations where it said a petition had to come before a given reading. He asked when the first reading had been posted and Attorney Pelech advised that, unlike the second reading, the first reading of a proposed zoning Ordinance did not require posting of a notice of a public hearing to the public. He had no knowledge of a posted first reading.

Chairman LeBlanc cited a section of the statutes which indicated that once a plan had been accepted by the Planning Board and there was a structure on it, then that became in essence grandfathered. Attorney Pelech confirmed that was correct. Chairman LeBlanc asked if there was a structure proposed on the plans submitted in November. Attorney Pelech corrected that they were submitted in October, and there was a structure.

Attorney John Kuzinevich introduced himself as also representing Mr. Boyle. He stated that plain language of Section 4.5 of the City Charter said, "Notwithstanding any other provisions of law, publication for the purposes of this section shall mean publication of the notice in any daily newspaper in the City of Portsmouth." This whole section outlined how the City was to adopt and amend Ordinances. He felt that, by the terms of the express and unambiguous language of the City Charter, there was no notice of the second reading, the operative reading, until three days after notice of the TAC review. Attorney Kuzinevich stated his reasons for also believing that the

entire 2010 revision of the zoning Ordinance was not adopted validly and was subject to challenge by anyone coming before this Board. Citing RSA 676:12 and a court case regarding interpretation of the zoning statutes and grandfathering, he stated that the legislative history revealed that the statute was intended to prevent municipalities from retroactively amending local land use regulations for the purpose of stopping proposed projects or developments while an application was under consideration. He stated that the petitioner did not control the timing of any of this, other than submitting their site plan application a month before any of the notice issues came to pass. It was something discussed with the City all summer as a form of resolving some of the other outstanding issues. He stated that in a pending lawsuit, they had asked the Court to consider which zoning Ordinance applied as the question of law. While the judge could have decided it, she said perhaps the City was not going to apply the new Ordinance and perhaps would apply the old one. Attorney Kuzinevich felt the Court was giving the City the opportunity to do follow the plain language of the law so that there was not yet another continuing controversy. He maintained that application of the old zoning Ordinance would save the City significant money and narrow the issues in dispute.

Mr. LeMay asked if he was clear on the allegation that this zoning Ordinance that was adopted on January 1, 2010 was not legal and anyone could appeal it. Attorney Kuzinevich confirmed the allegation. When Mr. LeMay asked if it was because of the posting, he stated, “no.” It was due to the failure to follow the City Charter by making copies available free of charge to anyone who wanted them. The Courts strictly construe the process by which you adopt and Attorney Kuzinevich felt the process was not followed. There was a brief discussin about how copies of, or information about, the proposed new Ordinance had been, or should have been, provided.

Mr. LeMay asked if it were Attorney Kuzinevich’s position that the Technical Advisory Committee was one and the same with the Planning Board? Attorney Kuzinevich replied that the statute RSA 676:12 extended the grandfathering to when notices were given for a design review committee, which was not defined but it was clear to him that the entire purpose of the Technical Advisory Committee was to review the design and provide. He felt that TAC clearly qualified under the grandfathering provisions, which made sense because by the time you got to public notice of a TAC hearing, you’ve invested a lot in the plan so that it should not be changed willy-nilly. In the instance of this petition, Attorney Kuzinevich stated that the biggest thing was changing the use buffer for residential zones so that automotive uses were not allowed within 200 feet of a residential zone. The prior version of the zoning Ordinance only prohibited certain types of parking or storage or display, not all uses, so that the applicant could label his building as a chain pharmacy, a non-automotive use, and physically build the exact same building that he was proposing with the same external impact on the neighborhood.

Mr. Parrott asked if it was their position that they were unaware of what the City was doing and were surprised by these changes, or were they informed along the way and treated in a respectful and proper manner by the Planning Dept. In other words, did they feel they were “tricked” into not knowing what was going on? Attorney Kuzinevich indicated that they were tricked in that the rug was pulled out from under them, but they weren’t tricked at the beginning of the process. They kept watching for when the Planning Board made its recommendations for the Ordinance changes and then passed it on to the City Council. So it is relatively easy to predict when an Ordinance was ready for the public hearing and adoption. Mr. Boyle actually paid the engineers overtime to rush during the summer to get the project in and filed before they went to second reading. Mr. Parrott asked if Attorney Kuzinevich would agree that the applicant was well

represented by a very experienced, very knowledgeable land-use counsel who did business in the City on a regular basis and Attorney Kuzinevich answered “yes.”

Mr. Parrott read from a paper prepared by outside counsel, “in order to be exempt from the changes in the zoning Ordinance in the site review process, an applicant needs to have an approved site plan by the Planning Board after a public hearing prior to the adoption of the new zoning Ordinance pursuant to RSA 674:13. In this case, plaintiff did not have an approved site plan by the Planning Board before January 1, 2010, when the zoning Ordinance became effective. Plaintiff’s pending site plan application has not been reviewed by the TAC or the Planning Board due to postponements requested by the applicant. The application has never been accepted, reviewed or denied by the Planning Board at a public hearing. Therefore, how could it have been deemed, vested or approved if it didn’t exist?” Mr. Parrott stated that his understanding was that it didn’t exist until it had been approved and asked for Attorney Kuzinevich’s reaction, which was to cite RSA676:12. Mr. Parrott indicated that every lawyer has their favorite laws and he would like for him to respond to this particular one.

Attorney Kuzinevich stated that he thought outside counsel, Attorney Bower, was wrong on the basis that other sections of the statute expressly allowed it. He stated that Attorney Sullivan had informed the world that it was a matter of posting and, Attorney Kuzinevich stated, there was a municipal estoppel argument there. Attorney Bower did not address the failure to comply with the City Charter when adopting it and whether the zoning Ordinance at all was effective. Mr. Parrott asked if this is confusing a site plan with a building permit. Attorney Pelech responded that they were not confusing it. They were going by Attorney Sullivan’s memo. Regarding Attorney Bower, he was outside counsel and was totally unfamiliar with the procedures of the Portsmouth Planning Board. Mr. Parrott would know as a former Chairman that the Portsmouth Planning Board did not follow the state statute and it never voted to accept a plan which started a 60-day clock running. When Mr. Parrott indicated he did not know that, Attorney Pelech countered that he should. Attorney Pelech indicated that he had appeared before the Portsmouth Planning Board for 30 years and that procedure was never followed as it was done in most other towns. What happened in Portsmouth was you filed a site review application and it went to the Technical Advisory Committee. With a recommendation from that committee, you were automatically put on the Planning Board agenda. They do not vote to accept or not accept the plan as being complete because TAC has already done that. The Planning Board holds a hearing on the merits and you can walk away in one night with your site review approval. In most other towns, it takes at least two meetings. Attorney Pelech stated that he didn’t think Attorney Bower knew that. He also stated that, regarding the timeline, he had been in the hospital and not involved in the application but the applicant was represented by competent counsel. Mr. Parrott noted that the City’s business with regard to the Ordinance was in full view of the public with information on the website and in newspaper articles. The applicant was doing its private business thing, as it should, but the City had no influence whatsoever over the speed with which those plans were developed. To turn around and say that the City was somehow wrong because it proceeded in an orderly fashion and the dates fell as they did, he found a hard argument to buy. Attorney Pelech stated they were not saying the City was wrong. They were saying that they didn’t follow the law, the City Attorney’s memo, or the City Charter.

Mr. Parrott asked if the website and the posting at the library was all irrelevant and Attorney Kuzinevich replied that was correct. He wanted to clarify something, which was that the City was participating with them in developing their plans for the second building. Mr. Boyle and he

hand-sketched them out with Attorney Sullivan over the summer. He stated that Attorney Sullivan was well aware and they talked about getting something filed immediately for consideration and all of this is in the context of trying to settle a pending sewer line case. He maintained that, just as much as they knew the Ordinance was being amended, the City at every step of the way knew what they were doing. Mr. Parrott stated that reinforced his earlier point that the Planning Department was entirely supportive as, to his knowledge, it was with all applicants.

Mr. Witham stated that it seemed to him that the attorneys and Mr. Boyle were well aware within hours of when they needed to submit this application to fall under the previous zoning, by following when the reading was going to happen. Attorney Kuzinevich disagreed that it was within hours, because they submitted in October. Mr. Witham stated that what he was saying was that the petitioner was following this very closely and had the ability to gauge when the second reading was going to happen. Attorney Kuzinevich replied that yes, they projected it out. They knew and they beat it. They accomplished their goal. They got it submitted. Mr. Witham stated that when Mr. Kuzinevich said he accomplished his goal, to him it got to where it was, “We have to get it in now, pencils down, wherever we are, submit it.” Attorney Kuzinevich stated that they followed the regulations in terms of what had to be submitted. Mr. Witham added that it had been stated that Mr. Boyle paid overtime to get these in and get it done. But then if you look at the minutes from some of the TAC meetings where some of the information was missing and incomplete, it was a very long list. Mr. Witham understood that some of those were things that got worked out in the process. But a storm water drainage study was something that was part of a complete application, not something you worked out along the way. Attorney Pelech had talked about the two-step process most towns have with a complete application and the next time they voted on it. As Mr. Witham saw things, this application would have never been deemed complete even with a two-step process because there were some major elements that weren’t part of the application. When the TAC meeting minutes were looked at with the pieces of information that were not submitted with the application and the petitioner kept asking for postponements to put together more information to make it more complete, Mr. Witham felt that the petitioner got to the point of “OK pencils down, submit.” It was submitted incomplete, knowing it was incomplete, in order to stay with the previous zoning Ordinance.

Attorney Kuzinevich stated that Mr. Witham’s statements were incorrect as to completeness and he used drainage calculations as an example. They were still under the old site review regulations and procedures, which did not call for submission of drainage calculations. The regulations said that TAC may require drainage calculations. Therefore a plan without drainage calculations was fully complete in terms of what had to be submitted for a plan. He felt that the City wasn’t following the rules when it said you have to have drainage calculations for a complete application as that was not what the regulations said. It was understood that TAC would then after the fact say they needed certain other information. Attorney Kuzinevich stated that it wasn’t “put down the pencils.” It was when the engineer took the site review regulation and went to where it said what applications should contain. They checked off everything in the regulations and, due to time pressures, they did not put in optional stuff. He referred to a 6-page letter from the Planning Director indicating that there were several things missing. He stated that most of these were under the 2010 amended Site Review Regulations that required things that were never required under the regulations that existed at the time they submitted. He alleged that the City was “seesawing” them between one regulation that they submitted under and then the change of regulations, which was exactly why it was important to say that things were frozen at a point in

time. He stated they were not asking for an unreviewed project or to do anything that was harmful to the City. They were trying to follow the rules and put a second building on the site.

When Mr. Witham asked if during the review process the petitioners were trying to provide 2010 requirements for the 2009 application. Attorney Kuzinevich stated that the whole process disintegrated when an agreement couldn't be had on what version of the zoning applied, because they were talking building what would constitute a second automobile dealership. If that building couldn't go on, it was going to affect how much parking you needed and the drainage calculations. It was radically different if there are two buildings or only one building and a slight expansion. They really were postponing on most of the technical grounds to try and get to the point of determining which Ordinance applied. He stated that it didn't make sense for them to draw up a 2009 plan for a 2010 review or the City to engage in 2009 review when it really meant 2010. That was why they were in front of this Board on the narrow issue of which statute applied. The Planning Board had granted his request to say that what they were doing was a question of law. They decided the question of the 2009 Ordinance, but they basically tabled the rest of the plan review, so that it was currently an open plan. If the 2010 Ordinance applied, they had to go make drastic revisions to it. If 2009 applied, then they went into the normal refinement and the give and take that typically occurs at TAC. Mr. Witham, asked regarding all the minutes from TAC showing the incompleteness of the application based on the 2010 requirements, if they had said at that point, "Time out, we're not playing right now. We have to go see the judge and see what rules we're playing under," but the TAC kept going and produced all these minutes about all the things you were missing?" Attorney Kuzinevich answered yes.

Chairman LeBlanc asked if 675:7 was the statute that sets up the criteria for grandfathering an application. Attorney Kuzinevich confirmed it was. Chairman LeBlanc asked what was the trigger that brought that into action? Was it the mere submittal of the plan to the Planning Board or did the Planning Board have to actually act on the plan that the applicant has given? Attorney Kuzinevich stated that, because the whole notion of acceptance had already been addressed and as he didn't have a copy of the statute in front of him, he was hesitant to answer that question directly. Chairman LeBlanc felt that it was absolutely crucial because the only thing able to be dealt with now was whether or not the Planning Board applied the correct Ordinance to the case. If the petitioner couldn't say that this submittal was what triggered the grandfathering under the pre-2010 zoning Ordinance, then the Planning Board was correct in going with the 2010. Attorney Kuzinevich stated that section of the Ordinance applies to towns and has not been adopted by the City. There was a question of whether that was the trigger or not or that it even applied. They believe the triggering statute was 676:12:6 and also the analysis in the memo from the City Attorney that said the triggering event was notice of the public hearing. Chairman LeBlanc asked then if an application that was submitted before the legal notice of the change of the Ordinance meant that the application submitted prior to that date had to go under the old Ordinance? Attorney Kuzinevich answered, "no." The triggering event was the notice of TAC for the application. It was not the submittal of the application but the notice of the TAC meeting.

Mr. LeMay stated that this was strictly notice by the Planning Board, and not an advisory board that triggered this. Was there any posted meeting by the Planning Board for a hearing for the petitioner? Attorney Kuzinevich stated that, under 676:12, it was the Planning Board or design review committee. Mr. LeMay stated he did not see that in this Ordinance. It didn't say reviewed by anybody except the Planning Board and he thought agreement could be had that TAC and Planning Board were two differently constituted boards, even though he agreed that they both

review the material. Attorney Kuzinevich cited the sentence “the provisions of this paragraph shall also apply to proposals submitted to a Planning Board for design review pursuant to 676:4 provided that formal application filed with the Planning Board within 12 months of the design review process.” He concluded that the statute did tie into design review and that was the sole function of TAC. They don’t submit a separate application for TAC to review a plan. They submit the application for site review, which in Portsmouth’s process was review by TAC and then to the Planning Board.

Mr. LeMay quoted from the legal memo on file, “...On November 20, 2009, a letter was sent to all applicants, including plaintiff, advising them of the likely effective date and application of the new zoning Ordinance.” In that letter it was noted, “It is the approval and recording of the plan, not the mere submission of the plan, to the Planning Board which provides the exemption from regulatory changes.” He stated that was from the affidavit of Mr. Taintor. None of them were under oath tonight, but Mr. Taintor was when he signed it. Mr. LeMay asked if Mr. Taintor, as head of the Planning Dept. was not the expert in that area with respect to the timing and submission of the plan and what constituted a exemption from an Ordinance change. Attorney Kuzinevich replied that he was not in a position to evaluate his expertise. When Mr. LeMay asked if by position. Attorney Kuzinevich replied, “no”, a title didn’t mean somebody had expertise. He cited past cases where, he believed, the Court had found the City’s experts to be wrong. He stated that the Planning Director was contradicting Attorney Sullivan’s memo regarding notice. He stated that the mere submission of a plan accepted by the clerk was acceptance of a plan for review, under the Portsmouth process. He felt that a plan was accepted by the Planning Board, maybe not approved, but accepted upon the date of filing. They agreed with Attorney Sullivan who apparently disagreed with Mr. Taintor about the notice being the triggering the triggering event. Mr. LeMay stated if that were the case, nothing would ever get done because many of these, especially larger projects go through numerous revisions. The Board has sat and been confused with an applicant who was either not straight in his own mind or trying to see what would stick if they threw it. Which of these was the official plan? Anybody who’s been involved in the design process understood that there could be draft upon draft and at some point you have to say “OK. This is the one we’re going with.” Attorney Kuzinevich maintained that the official plan didn’t matter. What mattered was the plan that was submitted for determining which Ordinance applied. There may be revisions but those revisions got measured in the light of whether the 2009 or 2010 Ordinance was applicable. Mr. LeMay asked if Attorney Kuzinevich would say that once a plan was recorded then it achieves a certain status and it has a legal standing? Attorney Kuzinevich answered he didn’t think Portsmouth recorded its approved site plans, so he thought that was an irrelevant question. When Mr. LeMay stated it was a general question. Attorney Kuzinevich stated he hated to answer general questions because he has tried to be prepared on the law for Portsmouth and he wasn’t a general New Hampshire attorney. Mr. LeMay then asked, even though earlier Attorney Kuzinevich stated he was an expert, he didn’t know what recording a plan at Rockingham Courthouse meant? Attorney Kuzinevich answered he knew what recording meant and he also knew that Portsmouth didn’t record plans at Rockingham. Mr. LeMay stated that he personally has recorded plans at Rockingham. Attorney Kuzinevich replied that Mr. LeMay may have voluntarily, but there is no requirement for it.

Mr. Boyle then introduced himself to the Board. He stated he rushed his team to get stuff done because he had a handshake deal with the City Manager to make this stuff go away. He felt the City Manager was aware of mistakes made in the past. He stated that he had made the plans in

question in a hurry to accommodate the City and felt the City had backed out. As the Board was probably aware, a judge in Rockingham would determine what happened. Mr. Boyle outlined his pride in his past accomplishments and the sacrifices made by employees and countless friends who had helped produce them over the past six years. He felt that in Portsmouth well-grounded development was out of style and some people thought growth and development weren't good. Mr. Boyle outlined his vision for his business, which he felt stood as a "beacon of the American dream," and for the City of Portsmouth. He maintained that this roadblock that had brought them to this Board was wrong and unnecessary. He detailed how he felt his business had created jobs, helped the environment and increased the tax base while providing opportunity. He asked the Board to not blindly follow the advice of the Legal and Planning Departments as, he maintained, they had been wrong every time regarding this project. He asked that the Board do the right thing and go forward and keep building Portsmouth as a great city.

SPEAKING IN OPPOSITION TO THE PETITION, OR SPEAKING TO, FOR OR AGAINST THE PETITION

With no one rising, the public hearing was closed.

DECISION OF THE BOARD

Chairman LeBlanc addressed the Board and stated there was a question before them. Did the Planning Board make an error when they decided that the 2010 Ordinance was applicable to this project or not?

Mr. LeMay made a motion to support the Planning Board in their recommendation that the 2010 zoning be applied to this property. Chairman LeBlanc then clarified that the motion was that 2010 was the governing statute in this case and asked for a second. Ms. Eaton seconded the motion.

Mr. LeMay stated he understood the arguments about the notice and the postings and so forth and essentially the postings were simultaneous as mentioned by the attorneys. He thought that all participants were probably operating in good faith and that the City was proceeding on its schedule and the applicant was proceeding on his schedule. He also thought there was a distinction between the Technical Advisory Committee and the Planning Board. He wasn't certain that there was a legal obligation of the Advisory Board to post notice. In other words, like the Historical District Commission who had work sessions, one got a notice from them that they are having a work session. There might be discussions but no decisions were made at that time. There was a period of time when an application was in flux and they were trying to get it worked out in a particular way that was acceptable to all parties as a complete application. He thought that was similar in a project of this complexity and probably should have been anticipated by the applicant, although he wasn't saying the applicant should be penalized. When an application was made, certainly that could be voted up or down. But as a practical matter you had a lot of time to work through the details to get to the point where you've got a complete application. With these large projects, there were multiple spins and multiple revisions of a plan as time goes on and it was probably reasonable to the Planning Board that this would only occur at a time down the road when the plan would be finalized. So he felt the right decision was made

Addressing her second, Ms. Eaton thought it was clear that the TAC review committee and the Planning Board were completely separate and had different intent. She viewed the TAC more as a preliminary check to make sure there was a complete application which she thought was very important. Anybody can throw an application up and try to start a clock ticking, and that was the whole basis of deeming an application complete or acknowledging that. In this case, she was clear this was not a complete application and there wasn't a building permit issued or applied for. With all the questions that were there, she thought the Planning Board's decision was valid and she supported it.

Mr. Witham stated he would not be supporting the motion. He couldn't separate the TAC and Planning Board entities in terms of triggering the starting point for all of this. As the petitioner stated, there's one application that you fill out and that's to get the process rolling to go before the Planning Board. He didn't think it was fair to say that because it hadn't gone to TAC yet or TAC hadn't deemed it complete then you weren't before the Planning Board. He thought the petitioner knew what they had to do to get this project to fall under the 2009 guidelines and he thought they did it. He stated that his questions had been answered in terms of the completeness of the application because what he had read was based on completeness in terms of the 2010 requirements. The petitioners know they were under a microscope and he doubted they would haphazardly submit something knowing that it would be shot down. They could split hairs but the bottom line was that the petitioners filled out an application for something to go before the Planning Board. The first notice was published on the 20th, the same day the second reading of the zoning changes was posted. Although it didn't make it to the paper until the 23rd, essentially they got posted on the same day. He didn't think you could say to them you didn't get it in on time. It was the same day and those other parts about building permit or not having Planning Board approval, he personally didn't see that as the triggering point of getting things done. So whether he liked the dealership or not, seeing it expand and the residents' outcry over the years, it was not a factor in this situation. It was merely did they get an application in on time for the 2009 zoning Ordinance and he felt they did.

Chairman LeBlanc agreed with Mr. Witham. He thought that the applicant did due diligence and got the plan in when it was supposed to be in. It was submitted in October and the staff had until the 20th of November to look this over and talk to the applicant and say well you're missing this, that or the other thing. It did or didn't happen, he didn't know, but there was a notice given that TAC was going to look at this and to his mind that implied that the application was complete and he will not support the motion.

Mr. Parrott stated that from everything he has read, he saw ample evidence that the application was not anywhere near complete and he saw no reason to believe that these Minutes and these affidavits they had all seen were in any way inaccurate. The Ordinance revision job was a long, complex, multi-faceted thing done in full view of the public with numerous public hearings, notice in the papers, televised workshops, etc. This applicant nor any other applicant could not conceivably claim that they didn't understand that it was getting near the end road and, if they had a project that they wished to do under the old Ordinance, they needed to speed it up and get it in. Any implication that maybe the City should have slowed up and stretched out its process so that some of these things could be completed and submitted, he thought was just unreasonable. It was unfortunate to come to this point, but he thought the Legal Dept. and the Planning Dept. both acted in good faith and certainly in a most public way. He thought at some point, you have to say this is the cut off. There was substantial knowledge by all parties involved and to say it wasn't in

the newspaper for three days, even though it was on TV and even though it was posted for the public to see and even though anybody could pick up the phone and call the Planning Dept., it was a very thin reed to lean on and say therefore everything was invalid because the local newspaper didn't have it published on a certain day. He thought the Planning Board and the Planning Dept. acted entirely in good faith. They worked with the applicant as demonstrated on numerous occasions. For all those reasons, he took the position that the Planning Board did not err and he would support them.

Mr. Witham stated he wasn't looking at making a rebuttal, but he had brought up a similar point and didn't think it was fair to say that the application was incomplete based on the Minutes, which is what he brought up, because the Minutes were based on the 2010 zoning Ordinance. He thought it was irrelevant to apply that criteria to an application that was assumed to be submitted under the 2009 Ordinance. He also felt that the idea that the applicant should have gotten it in sooner was irrelevant because they knew what was going on. The zoning change/revisions had been in the work for years and how do you arbitrarily pick when it's coming. He stated that bottom line was that it was spelled out clearly what the criteria was to get it in on time and if the criteria said notice in a newspaper, a judge was going to ask a simple question of yes or no. He didn't feel the petitioner dragged their feet or too long. He reiterated his feeling that they knew what they had to do and he felt they did it.

The motion to affirm that the Planning Board applied the proper zoning Ordinance that was effective January 1, 2010 to a site review application submitted on October 23, 2009 failed to pass by a vote of 3 to 4 with Chairman LeBlanc and Messrs Witham, Grasso and Durbin voting against the motion.

Chairman LeBlanc stated this was a positive motion that failed. Mr. Witham offered to make a new motion and Chairman LeBlanc didn't think one was needed because they were done. The pre-2010 Zoning Ordinance was what should apply. Mr. Witham mentioned that, since the petitioner had a request before the Board for an appeal, it seemed to him that it would need a positive motion in that an appeal had been granted.

Mr. Witham then made a motion to grant the appeal as presented, which was seconded by Mr. Durbin.

Mr. Witham requested to carry forward his previous comments. Mr. Durbin added that the Board needed to give a plain reading of the statutes that were particularly involved in this case and the City Ordinance and he thought they clearly read in favor of the applicants. For that reason he was in support of the motion on the table.

Chairman LeBlanc stated this was a motion to grant the appeal and, in effect, establish that the pre-2010 Ordinance applied in this particular case.

Mr. Parrott wanted to go back to when he was reading earlier from the Legal Dept. memo, prepared by outside counsel. He wanted it noted on the record that this outside opinion was endorsed by Suzanne Woodland, Assistant City Attorney who practiced in the City. He was relying on this legal memo prepared by Attorney Charles P. Bower and the law as it was cited, interpreted and explained in there as it was endorsed by one of the City's own assistant City Attorneys. So when an attorney for the plaintiff, who doesn't even practice in the City, says

that's all wrong, it presented him with a major problem. He stated that he believed that what Attorney Bower said was correct and it coincided with his reading of the law, but the important thing, again, was that the opinions in that were endorsed by Attorney Woodland on behalf of the City, so he thought it had a lot of validity and the applicant could not rebut the comments other than saying they were wrong. Mr. Parrott just wanted that on the record.

Mr. Witham had a final comment in that he was disappointed that the City wasn't able to have legal counsel there for the Board. He knew there was a 100-page packet that was supposed to be reviewed and understood by the members but a lot of it was in legal jargon. He could read the same sentence 10 times and still not know what it meant. It would have been advantageous to have some legal counsel there so that layman-type questions could be asked and get an answer that the Board could understand instead of having 100 pages of memo that was really hard to grasp at times. Mr. Parrott seconded that statement and several other members concurred.

Chairman LeBlanc stated this was a motion to grant the appeal of the determination of the Planning Board and, in effect, to establish the applicability of the pre-2010 Ordinance to a site review application for 150 Greenleaf Avenue which was submitted on October 23, 2009. The motion to grant the appeal was passed by a vote of 4 to 3, with Ms. Eaton and Messrs. Grasso and Parrott voting against the motion.

 Mr. Jousse resumed his seat. Mr. Parrott recused himself from the following hearing and Mr. Durbin retained a voting seat

4) Case # 7-4

Petitioners: 75 New Hampshire Avenue, LLC

Property: 75 New Hampshire Avenue Assessor Plan 306, Lot 4

Zoning district: Pease Industrial

Requests: Variance from Section 10.1243 to allow more than 1 freestanding sign per lot
 Variance from Section 10.1253.10 to allow a freestanding sign to be 12'6"
 from a lot line where 20' is the minimum setback allowed
 Variance from Section 306.01(d) of the Pease Development Authority Zoning Ordinance to allow 218.9 square feet of aggregate sign area where 200 square feet is the maximum sign area allowed

SPEAKING IN FAVOR OF THE PETITION

Mr. Tim Sullivan introduced himself as an employee of Barlo Signs and was representing Pixel Media and their location at 75 New Hampshire Avenue in the Pease Industrial Trade Port. He stated that they were seeking 3 variances for this location. The first was Section 10.1243 to allow more than 1 freestanding sign per lot. This property was just under 14 acres with numerous buildings, numerous tenants, and numerous entrances. It was important that each tenant had an identification to the driveway or to the entrance on their part of the property to avoid confusion as one drove around the 14 acre-area. Their intention was to identify the entrance into the Pixel Media part of the property to provide motorists with an easy egress into the facility. With respect to Section 10.1253.10, the setback of 20 feet really could not be maintained where this entrance was. The setback would actually put the sign into the parking spaces. With respect to where it was actually located, they were 12.5' from the property line, but from the sidewalk itself it was

12.5' so they were actually 24' off the sidewalk. Finally, the sign they were proposing would bump them up over the existing 200-square foot aggregate to 218. The proposed sign was 27 s.f. so it wasn't terribly large and was in keeping with the size of the other signs in that area and within the park itself. Their proposals had been approved by the Pease Development Authority, but they needed to come before the Board because they are within the City of Portsmouth.

**SPEAKING IN OPPOSITION TO THE PETITION, OR
SPEAKING TO, FOR OR AGAINST THE PETITION**

With no one rising, the public hearing was closed.

DECISION OF THE BOARD

Mr. Grasso made a recommendation to recommend to the Pease Development Authority that the petition be granted as presented and advertised. Mr. Witham seconded the motion.

Mr. Grasso agreed with the applicant that a business needed to be recognized and have its location known. The previous signage on the property took them close to the allowed 200 square feet. The sign was close to 25 s.f., bringing them to 218.9 s.f. Addressing the criteria, he stated that the variance would not be contrary to the public interest. The public interest in this would be in knowing where this business was located. The spirit of the Ordinance was observed as the sign was being located within the setback due to parking and sidewalk constraints in the area. Substantial justice would be done as there was no great benefit to the general public in denying the petition. The values of surrounding property would not be diminished. With regard to unnecessary hardship, Mr. Grasso thought the proposed location was the right place for the sign and, given the layout of the current parking lot and the existing signs on the property, this was the way to go.

Mr. Witham stated there were three variances here. He thought it was very reasonable for a property of 14 acres with numerous entrances and buildings, to have more than one freestanding sign to help people identify it, especially on a corner lot. If you were coming down one street and the sign was on the other street, it made it difficult to find. So for traffic and safety reasons, he felt it was appropriate. With regard to the 20-foot setback along the lot line, the reality was that it was 25' from the sidewalk, so he felt the spirit and intent of the Ordinance was observed. Concerning the square footage of the aggregate sign, he thought on a property of 14 acres with numerous buildings to ask for less than 10% relief for square footage was also reasonable.

The motion to recommend approval of the petition as presented and advertised to the Pease Development Authority was passed unanimously.

Mr. Parrott rejoined the Board. Chairman LeBlanc recused himself from the following hearing and Mr. Durbin retained a voting seat. Vice-Chairman Witham assumed the Chair.

5) Case # 7-5

Petitioners: Gerald W. Howe

Property: 45 Miller Avenue Assessor Plan 129, Lot 33

Zoning district: General Residence A

Request: Variance from Section 10.331 to allow the expansion of a nonconforming use
Variances from Section 10.521, Table of Dimensional Standards, to allow the construction of a new garage with:

- A setback of 3'4" from the right side lot line where a 10' side yard is required
- A setback of 4'8" from the left side lot line where a 10' side yard is required
- A setback of 19'1" from the rear lot line where a 20' rear yard is required
- Building coverage of 28.8% where 25% is the maximum coverage allowed

SPEAKING IN FAVOR OF THE PETITION

Mr. Gerald Howe introduced himself and submitted to the Board an affidavit of support from the abutting neighbors. He felt granting the petition would improve the neighborhood because he would be able to get everything on his property currently outside and place it inside the garage. He did not submit a drawing of the current garage so he then distributed to the Board front and side views of the existing structure he wanted to replace while extending it 1.5' in width and 6' in length. Mr. Witham asked about height and Mr. Howe indicated there was no change in height. It is would stay at 9'. He concluded that that he needed a variance because it was a pre-existing nonconforming use.

Mr. Grasso stated that he had tried to find the property. In the aerial view given, was it on Miller Ave now or is it on a separate lot? Mr. Howe indicated it was a separate lot and he received two separate tax bills. Mr. Grasso asked if it was connected to 45 Miller? Mr. Howe confirmed it was. He believed the Planning Department called it "0 Miller Ave."

Mr. Parrott indicated the lot was small and the garage that was currently on there took up most of the very small setbacks as it was. Why was the applicant deciding to go bigger? Mr. Howe indicated he wanted to go bigger so that he could get all the stuff that was outside inside so that he can improve the streetscape for the neighbors.

**SPEAKING IN OPPOSITION TO THE PETITION, OR
SPEAKING TO, FOR OR AGAINST THE PETITION**

With no one rising, the public hearing was closed.

DECISION OF THE BOARD

Mr. Parrott made a motion to deny the petition as presented and advertised, which was seconded by Mr. Grasso.

Mr. Parrott's concerns were simple in that this was an extremely small lot. Whether it was a separate lot without frontage or it was landlocked or it was merely an appendage to the other lot didn't matter. It had boundaries. The present garage was 4'8" on one side and 6'2" on the other

side. It provided very minimal clearances, much less than the Ordinance these days required. He stated that not only was there a request to replace it, but also to enlarge it by a fairly substantial amount and cut down the already small 6' 2" setback on the side toward the 129-34 lot to 3' 6". The same applied off the back and the 4' 8" was retained on the other side. The Board's concerns were supposed to be with light and air and overcrowding and overbuilding and so forth, and unfortunately, this was a small lot, so the applicant was sort of limited to what he can do with it. This proposal just didn't meet the test of compliance with the Ordinance and there was no hardship inherent in the lot that was claimed and none when you looked at it.

Mr. Grasso agreed with Mr. Parrott. The garage currently was about 20'X20' and the applicant was proposing to go 22' X 26'. With the size and the existing setbacks, he couldn't support this as it stood right now. He could perhaps support replacement with the existing size, but definitely not the enlargement.

Mr. Jousse also supported the motion. If it was just to replace the garage on the existing footprint or maybe extending the length of the garage by a few feet and still be able to meet the setback requirement behind the garage, he would go along with it, but this was too much more of an encroachment than what existed in the side yard.

Ms. Eaton stated that the Board could not grant a variance on "this is what I want to have" unfortunately. In this case expanding the nonconforming use was not supportable.

The motion to deny the petition as presented and advertised was denied unanimously.

Chairman LeBlanc rejoined the Board as Chair and Mr. Durbin resumed alternate status.

II. ADJOURNMENT

It was moved, seconded and passed by unanimous voice vote to adjourn the meeting at 9:30 p.m.

Respectfully submitted,

Patty Coughlin, Acting Secretary

These minutes were approved at the Board of Adjustment meeting on February 15, 2011.

Section 10-208 Table 4
Uses in Business Districts

P = Permitted Uses
S = Special Exception
N = Not Permitted

USES	CBA	CBB	GB	B	WB
1) Retail sales; excluding, motor vehicles, recreational vehicles, marine craft and mobile home sales, if conducted within a building and with no limitation as to gross floor area; except, as contained in Article III.	P	P	P	P	N
2) Retail sales conducted within a building, limited to 2,000 sf. of gross floor area and in and in compliance with Article III for the following:	P	P	P	P	P
a. Marine goods, groceries and ice.					
b. Fresh or frozen fish, shellfish or lobster; provided, the hours of operation shall not exceed twelve (12) hours per day.					
c. The sale of baked, boiled or steamed: shellfish or lobster and fish or seafood chowder as prepared on the premises; provided, the hours of operation shall be limited to 8 AM to 9 PM and the consumption of these products shall not take place within the building or on the property.					
3) Permitted retail sales, as listed in 10-208(1)(2), with a maximum gross floor area of wholesale space devoted to that retail use as noted.	P 20%	P 20%	P 40%	P 40%	S 40%
4) Convenience Goods I.					
a. Hours of operation between 6 AM and 11 PM.	P	P	P	P	N
b. 24 hours per day operation.	S	P	P	S	N
5) Convenience Goods II.					
a. Hours of operation between 6 AM and 11 PM.	P	P	P	P	N
b. 24 hours per day operation.	S	S	S	S	N
6) Business, real estate and professional offices.	P	P	P	P	N
7) Financial Institutions.	P	P	P	P	N
8) Consumer services; including, hair salons, shoe repair shops and similar service establishments.	P	P	P	P	N

Section 10-208 Table 4
 Uses in Business Districts

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USES	CBA	CBB	GB	B	WB
9) Laundry and dry cleaning establishments with the following possible combinations:					
a. Drop off/pick up only for items to be dry cleaned or laundered off site;	P	P	P	P	N
b. Self service coin operated laundry and dry cleaning establishments for use by the general public; and,	N	S	P	P	N
c. Drop off/pick up for items to be dry cleaned or laundered on site (no self-service) with a maximum floor area devoted to this use of 2,000 sf.	N	P	P	P	N
10) A nightclub, bar or tavern, as a principal use, and serving non-alcohol based drinks. This use is based on the maximum occupancy that is permissible for the space under the City's Building Code.					
a. Occupancy for less than 250 persons and which shall not be located on a lot which directly abuts a Residential or Mixed Residential district or on a lot located within the indicated setback for the appropriate district.	P N/A	P N/A	P 200'	N	N
b. Occupancy for 250 to 500 persons and which shall not be located on a lot which directly abuts a Residential or Mixed Residential district or on a lot located within the indicated setback for the appropriate district.	S N/A	S N/A	S 200'	N	N
11) A nightclub, bar or tavern, as a principal use, and serving alcohol based drinks, shall not be located on a lot which directly abuts a Residential or Mixed Residential district or on a lot located within 200 feet of one of these districts. This use is regulated based on the maximum occupancy that is permissible for the space under the City's Building Code.					
a. Occupancy for less than 250 persons and which shall not be located on a lot which directly abuts a Residential or Mixed Residential district or on a lot located within the indicated setback for the appropriate district.	P N/A	P N/A	P 200'	N	N

Section 10-208 Table 4
 Uses in Business Districts

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USES	CBA	CBB	GB	B	WB
b. Occupancy for 250 to 500 persons and which shall not be located on a lot which directly abuts a Residential or Mixed Residential district or on a lot located within the indicated setback for the appropriate district.	S N/A	S N/A	S 200'	N	N
12) Boarding house.	N	P	N	P	N
13) Conversion of structures existing prior to January 1, 1980, to a Bed and Breakfast Inn for no more than ten sleeping rooms. Dining facilities, as an accessory use to the principal use of overnight lodging, are allowed; provided, the dining facilities can accommodate no more than twenty-five persons.	P	P	P	P	N
14) Hotels and Motels, including accessory uses, with the exception that nightclubs, bars, taverns, places of public assembly or function rooms are not permitted.	P	P	P	S	N
15) Hotels and Motels, including accessory uses, nightclubs, bars, taverns, places of public assembly or function rooms whose total combined occupancy, exclusive of the hotel/motel occupancy, would be less than 500 persons.	S	P	S	N	N
16) Hotels and Motels, including accessory uses, nightclubs, bars, taverns, places of public assembly or function rooms whose total combined occupancy, exclusive of the hotel/motel occupancy, would exceed 500 persons.	S	P	S	N	N
17) Restaurants - Take out only.	P	P	P	P	N
18) Restaurants with no accessory uses and with no nightclub, bar, tavern, place of public assembly or function room.	P	P	P	P	N
19) Restaurants, including accessory uses, bars, taverns, places of public assembly and function rooms.	P	P	P	S	N
a. Combined occupancy for less than 250 persons and which shall not be located on a lot which directly abuts a Residential or Mixed Residential district or on a lot located within the indicated setback for the appropriate district.	N/A	N/A	200'		

Section 10-208 Table 4
 Uses in Business Districts

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USES	CBA	CBB	GB	B	WB
20) Restaurants, including accessory uses, bars, taverns, nightclubs, places of public assembly and function rooms.					
a. Combined occupancy for less than 500 persons and which shall not be located on a lot which directly abuts a Residential or Mixed Residential district or on a lot located within the indicated setback for the appropriate district.	S N/A	P N/A	S 200'	N	N
b. Combined occupancy would exceed 500 persons and which shall not be located on a lot which directly abuts a Residential or Mixed Residential district or on a lot located within the indicated setback for the appropriate district.	S N/A	S N/A	S 200'	N	N
21) Outdoor entertainment shall meet the following requirements: outdoor entertainment is restricted to the hours of 4:00 PM to 11:00 PM; all outdoor entertainment areas shall be located no less than two hundred (200) feet from a Residential or Mixed Residential district; shall not be located in a required yard area; parking for outdoor entertainment shall meet the requirements of Article XII; the use shall comply with Article V; and, combined occupant load, including outside entertainment areas, shall meet the following.					
a. Less than 250 persons.	S	S	S	N	N
b. For 250 to 500 persons.	S	S	S	N	N
22) Non-Inspectable vessels, used as restaurant, bar or tavern and having for an occupant load, according to the City's Building Code, of less than 250 persons.	S	N	N	N	N
23) Fraternal and service organizations, lodges and clubs; provided, principal activities are limited to their membership and no activities are conducted that constitute a use customarily carried on as a business.	N	P	N	S	N
24) Trade, craft and general service establishments; including, shops for plumbers, electricians, painters, paper hangers, upholsterers, sign painters and	N	P	P	P	N

Section 10-208 Table 4
 Uses in Business Districts

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USES	CBA	CBB	GB	B	WB
monument works; provided, such use provides for the storage of materials and equipment within a building.					
25) Undertaking establishments, funeral parlor or mortuary chapel, but excluding crematoriums.	N	N	P	P	N
26) Health Clubs.	P	P	P	S	N
27) Indoor amusement or recreation uses; including, cinemas, theaters and similar entertainment provided noise is confined to the building and the lot is located not less than two hundred feet from a Residential or Mixed Residential district.	P	P	P	P	N
28) Reserved for future use.					
29) Cultural facility/outdoor shall meet the following requirements: the use is restricted to the hours of 4:00 PM to 11:00 PM; the lot shall be located no less 500 feet from a Residential or Mixed Residential district; shall not be located in a required yard area; parking for the facility shall meet the requirements of Article XII; the use shall comply with Article V; and, the outdoor cultural facility capacity shall not exceed the maximum occupancy as described below.					
a. Occupancy for 500 or less persons.	S	S	S	N	N
b. Occupancy for more than 500 persons.	N	S	S	N	N
30) Cultural facility/indoor shall meet the following requirements: the use is restricted to the hours of 8:00 AM to 11:00 PM; the lot shall be located no less than 200 feet from a Residential or Mixed Residential district; parking shall meet the requirements of Article XII; the use shall comply with Article V; and, the capacity shall not exceed the maximum allowable design capacity in the City's Building Code as as described below.					
a. Occupancy for 500 or less persons.	S	P	S	S	N
b. Occupancy for more than 500 persons.	S	S	S	N	N

Section 10-208 Table 4
 Uses in Business Districts

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USES	CBA	CBB	GB	B	WB
31) Commercial greenhouses and nurseries; provided, all outdoor displays are set back at least thirty (30) feet from the street right-of-way.	N	N	P	P	N
32) Manufacture of goods sold at retail on the premises; such as, pottery, handcrafts and bakery products; provided, not more than five (5) persons shall be employed in such manufacture.	P	P	P	P	N
33) Group day care facilities (no age restriction) between the hours of 7 AM and 7 PM; provided, adequate off-street parking is available to allow a safe passage from the parking area to the facility and outdoor recreation areas are fenced.	P	P	P	P	N
34) Veterinary hospital; including, animal crematory sale and boarding of animals; provided, all kennels are located within an enclosed building and the lot is located at least 200 feet from any Residential or Mixed Residential district.	N	N	S	S	N
35) Motor vehicles sales, renting or leasing, including accessory repair services, for vehicles not requiring tractor registration plates and weighing less than 32,000 pounds; provided, areas for parking, display, and/or storage of vehicles, equipment, goods or materials are located at least forty feet from the street right-of-way and two hundred feet from any Residential or Mixed Residential district; and, all accessory uses are located within a building.	N	N	P	S	N
36) Motor vehicle service stations, repair garages, washing facilities and sale of Convenience Goods I and II as an accessory use; principally, for vehicles not requiring tractor registration plates and weighing less than 32,000 pounds and located on lots of not less one acre in area provided:	N	N	S	S	N
a. All repairs and service work shall take place within an enclosed building.					
b. No vehicles in an inoperative condition are to remain on the site for more than a two week period; unless, enclosed in a building and repaired					

Section 10-208 Table 4
Uses in Business Districts

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or rebuilt vehicles shall not be sold upon the premises.					
c. Screening as delineated in Article V, Section 10-504 shall be placed on side and rear property lines which separate the site from properties used residentially or from any Residential or Mixed Residential district.					
d. All pump islands shall be set back at least 40 feet from all property lines.					
e. There shall be no more than two, 40 foot wide curb cuts or access or egress points on each abutting street.					
f. The minimum front yard shall be 50 feet, side and rear yards shall be 50 feet, except, as required by Section 10-301(8).					
37) Media studios, publishing facilities and similar electronic production operations, but excluding any transmitting antennae tower.	P	P	P	P	N
38) Marina on lots equal to or greater than two acres with the following possible combinations.					
a. Marine storage on land or water.	N	N	S	N	P
b. Marine storage in water.	P	N	P	N	P
c. Rental of marine craft located on land or water.	S	N	S	N	P
d. Repair and servicing of marine pleasure craft.	N	N	S	N	S
e. Fueling of marine pleasure craft.	S	N	S	N	S
f. Sale of marine pleasure craft located in the water.	S	N	P	N	S
g. Sale of marine pleasure craft located on the land.	N	N	S	N	S
h. Facility for the repair of marine related structures.	N	N	N	N	S
39) Excursion boats and boats for passenger transport located in the water, including related docking	S	N	S	N	P

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facilities; provided, parking conforms to Article XII.					
40) Docking and mooring facilities only; provided, there is sufficient off street parking.	S	N	S	N	P
41) Landing of commercial fishing craft with the following associated activity involving no more than five employees.					
a. Fish preparation (refer to Article I) conducted within an enclosed building.	N	N	S	N	S
b. Fish preparation (refer to Article I) conducted within an enclosed building.	N	N	S	N	S
42) Oceanographic laboratories and other marine related facilities.	P	P	N	N	P
43) New residential dwelling units constructed on a vacant lot with no non-residential uses; provided, the following minimum requirements are met:	P	P	N	N	N
a. There is 500 sf. of gross floor area per dwelling unit.					
b. Comply with Article III.					
c. Lot area requirement per dwelling unit.	N/A	N/A		N/A	
44) New residential dwelling units and non-residential uses constructed on a vacant lot (only in the Business District there shall be a minimum of 1/3 of the total building square footage devoted to nonresidential uses); provided, the following minimum requirements are met:	P	P	N	P	N
a. There is 500 sf. of gross floor area per dwelling unit.					
b. Comply with Article III.					
c. Lot area requirement per dwelling unit.	N/A	N/A		2,500 sf	

Section 10-208 Table 4
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USES	CBA	CBB	GB	B	WB
45) Conversion of existing buildings to all residential dwelling units with no non-residential uses; provided, the following requirements are met: a. There is 500 sf. of gross floor area per dwelling unit. b. Comply with Article III. c. Lot area requirement per dwelling unit.	P	P	N	N	N
	N/A	N/A		N/A	
46) Conversion of existing buildings to residential dwelling units and non-residential uses (only in the Business District there shall be a minimum of 1/3 of the total building square footage devoted to nonresidential uses); provided, the following minimum requirements are met: a. There is 500 sf. of gross floor area per dwelling unit. b. Comply with Article III. c. Lot area requirement per dwelling unit.	P	P	N	P	N
	N/A	N/A		2,500 sf	
47) New additions to existing buildings for residential dwelling units with no non-residential uses in the addition; provided, the following requirements are met. a. There is 500 sf. of gross floor area per dwelling unit. b. Comply with Article III. c. Lot area requirement per dwelling unit.	P	P	N	N	N
	N/A	N/A		N/A	
48) New additions to existing buildings for residential dwelling units and non-residential uses in the addition (only in the Business District there shall be a minimum 1/3 of the total building square footage devoted to nonresidential uses); provided , the following minimum requirements are met: a. There is 500 sf. of gross floor area per dwelling unit.	P	P	S	P	N

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USES	CBA	CBB	GB	B	WB
b. Comply with Article III.					
c. Lot area requirement per dwelling unit.	N/A	N/A		2,500 sf	
49) Schools.	P	P	P	P	P
50) Historic houses and structures which are owned and/or maintained by non-profit agencies for preservation purposes may conduct the following activities.	P	P	P	P	P
a. Live in caretaker.					
b. Conduct periodic events and displays as an accessory use.					
c. Maintain an accessory office space for activities related to the operation of the historic house.					
51) Public or private transformer station, substation, pumping station, satellite dish greater than 42 inches in diameter or automatic telephone exchange; provided, that such service structure or building is essential to service the area in which it is located and that no business office nor any storage yard or storage building is operated in connection therewith.	S	S	S	S	S
52) Sexual oriented businesses, which include the following and comply with Article XI.	N	N	S	N	N
a. Adult arcade.					
b. Adult bookstore or adult video store.					
c. Adult cabaret.					
d. Adult theater.					
e. Sexual encounter centers.					
53) Carts or trailers; including, outdoor display area, used for the seasonal sale of dry goods, Christmas trees, flowers, fruits, vegetables, seasonal products and	P	P	P	P	N

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USES	CBA	CBB	GB	B	WB
<p>prepared food; provided, the following conditions are met.</p> <p>a. Yards and coverage shall be in compliance with Article III.</p> <p>b. Sign areas shall be in compliance with Article IX and shall be located on the sidewalls of the carts or trailers only.</p> <p>c. That a one hundred dollar bond be posted to cover the cost for the removal of the cart or trailer.</p> <p>d. The use shall be in compliance with Article V.</p> <p>e. The outdoor display area shall be limited to a six foot strip directly abutting and around the cart or trailer with the exception of Christmas trees.</p> <p>f. There shall be a minimum available lot area of 2,000 square feet per cart or trailer.</p>					
<p>54) Temporary structures, if a bond or other form of security, as required by the Code Official, is posted to insure their removal and the restoration of grounds to their original condition. Such structure shall not be construed to mean mobile homes (except as related to temporary construction activities).</p>					
<p>a. A term up to thirty (30) days.</p>	P	P	P	P	P
<p>b. A term up to ninety (90) days.</p>	S	S	S	S	S
<p>55) Construction trailers in conformance with Article IV.</p>	P	P	P	P	P
<p>56) Earth Products Removal and Placement in conformance with Article VIII.</p>	P	P	P	P	P
<p>57) Satellite dish receivers that have a diameter equal to or less than 42 inches and which will be located on the ground and meet the appropriate yard requirements in Article III.</p>	S	S	S	S	S

Section 10-208 Table 4
 Uses in Business Districts

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USES	CBA	CBB	GB	B	WB
68) The following customary accessory uses for 1-52 above which are incidental to the permitted principal use on a lot, provided said use is in conformance with Article III.	P	P	P	P	P
a. Off-street parking as required in Article XII.					
b. Signs as permitted in Article IX.					
c. Customary accessory uses incidental to permitted principal uses but not including any outdoor storage.					
d. Satellite dish receivers that have a diameter equal to or less than 42 inches and have a maximum height less than or equal to four feet from the roof surface.					
e. Periodic, Special Events; such as, concerts, fairs, auctions or fundraisers; provided, the Performance Standards as contained in Article V are complied with.					
f. Whip antennae not greater than 30' in height.					
g. Household pets.					
h. Outdoor storage of lobster traps, lobster buoys, and/or rope as well as the associated repair of the stored traps; provided, the outdoor storage is screened from the public in accordance with Article V.	N	N	P	P	P

City Council Adopted: 18 December 95,
 Revised: 15 December 97, 9 November 98, 7 August 06, 16 October 06, 21 May 07

Article XII *Off-Street Parking and Loading*

Section 10-1201 *Off-street Parking*

A. All new buildings and structures, as well as, additions to or changes in use or intensification of use in existing buildings and structures shall be provided with off-street parking spaces in accordance with the following specifications. A use, which is non conforming as to the requirements for off-street parking, shall not be enlarged or altered; unless, off-street parking is provided for the original building, structure or use(s) and all expansions, intensification or additions sufficient to satisfy the requirements of this Ordinance.

1. **Location:**

Parking facilities shall be located on the same lot as the principal use they are required to serve except, however;

- a. Where the applicant and the City agree on the terms and conditions under which a municipally owned covered parking facility shall be constructed as part of the overall development project; or
- b. Where the Board of Adjustment authorizes a Special Exception for the provision of required parking on another lot in the same ownership as the lot in question; provided, all parking spaces lie within 300 feet of the property line of the lot in question. In no case, shall parking be permitted within any Residential or Mixed Residential District other than that which is accessory to the allowed principal use(s).

In the Office Research/Mariner's Village District, parking will be permitted on a separate lot if one or more lots are used together in a campus like design and layout. There shall be no building setback required for parking structures adjacent to a railroad right of way or other land zoned for office research use and in common ownership with the land which is the site of the parking structure. The setbacks for the Industrial District shall apply to any parking structure where it abuts an industrial zone.

2. **Design Standards:**

The design standards in this section shall apply to required parking in all districts; unless, otherwise noted.

Parking areas and access drives shall be surfaced with a bituminous binder, concrete, asphalt, gravel or crushed stone.

Handicap parking shall comply with either the City's Building Code or the Code for the State of New Hampshire Architectural Barrier Free Design which ever is more restrictive.

Parking spaces and maneuvering aisles shall be laid out in compliance with the minimum dimensions set forth in the following table.

MINIMUM PARKING SPACE AND AISLE DIMENSIONS FOR PARKING AREAS			
<i>Angle of Parking</i>	<i>Width of Parking Space</i>	<i>Depth of Parking Space</i>	<i>Width of Maneuvering Aisle</i>
61 - 90 degrees	8.5'	19'	24' (2 way)
46 - 60 degrees	8.5'	19'	18' (1 way)
Parallel	10'	20'	14'

3. Layout:

a) General

- 1) With the exception of one and two family dwellings, access to and egress from all parking areas shall be only via driveways which meet the design standards of this section.
- 2) A required common driveway that services more than one lot shall be exempt from side yard requirements as used in this Article.
- 3) With the exception of one and two family dwellings, each required off-street parking space shall be designed so that any motor vehicle may proceed to and from said parking space without requiring the moving of any other vehicle or the passing over of any other parking space.
- 4) With the exception of one and two family dwellings, each parking area shall be designed to provide a circulation system within the lot so that vehicles may exit onto the adjacent street or way by being driven in a forward direction. No vehicle shall enter or leave by backing into the street.
- 5) With the exception of one and two family dwellings, all parking spaces shall be marked and maintained to provide delineation between parking stalls and aisles.
- 6) Fire lanes, as required by the Fire Department, shall be properly identified.

- b) **All Residential Districts and the Overlay District Mariner's Village Component**
 - 1) **Off-street parking spaces for any Home Occupation use shall be located no closer than 10 feet from side and rear property lines and shall be screened in accord with Article V.**

- c) **All Mixed Residential Districts**
 - 1) **Off-street parking spaces and accessways for any non-residential use shall be located no closer than 50 feet from a Residential or Mixed Residential lot line and shall be screened in accord with Article V.**
 - 2) **Off-street parking, maneuvering space and traffic aisles shall not be located within ten feet of the front property line. The resulting buffer area shall be landscaped. This landscaping shall consist of 10% of the buffer being planted with a minimum of 2 inch caliper deciduous trees and/or 5' - 6' conifer trees with additional shrubs, bushes or evergreens and with the remaining area to be grass or vegetative beds of flowers.**

- d) **Business District**
 - 1) **Off-street parking spaces and accessways shall be located no closer than 50 feet to any adjoining Residential or Mixed Residential district and shall be screened in accord with Article V.**
 - 2) **Off-street parking, maneuvering space and traffic aisles shall not be located within twenty feet of the front property line. The resulting buffer area shall be landscaped. This landscaping shall consist of 10% of the buffer being planted with a minimum of two inch caliper deciduous trees and/or 5' - 6' conifer trees with additional shrubs, bushes or evergreens and with the remaining area to be grass or vegetative beds of flowers.**

- e) **General Business District**
 - 1) **Off-street parking spaces and accessways shall be located no closer than 100 feet to any adjoining Residential or Mixed Residential district and shall be screened in accord with Article V.**
 - 2) **Off-street parking, maneuvering space and traffic aisles shall not be located within 40 feet of the front property line. The resulting buffer area shall be landscaped. This landscaping shall consist of 10% of the buffer being planted with a minimum of two inch caliper deciduous trees and/or 5' - 6' conifer trees with additional**

shrubs, bushes or evergreens and with the remaining area to be grass or vegetative beds of flowers.

f) **All Industrial Districts and the Overlay District Office Research Component**

- 1) Off-street parking spaces and accessways shall be located no closer than 100 to any adjoining Residential or Mixed Residential district and shall be screened in accord with Article V.
- 2) Off-street parking, maneuvering space and traffic aisles shall not be located within 50 feet of the front property line. The resulting buffer area shall be landscaped. This landscaping shall consist of 10% of the buffer being planted with a minimum of 2 inch caliper deciduous trees and/or 5' - 6' conifer trees with additional shrubs, bushes or evergreens and with the remaining area to be grass or vegetative beds of flowers.

g) **All Airport Districts**

- 1) Off-street parking spaces and accessways shall be located no closer than 100 feet to any adjoining Residential or Mixed Residential district and shall be screened in accord with Article V.
- 2) Off-street parking, maneuvering space and traffic aisles shall not be located within 50 feet of the front property line. The resulting buffer area shall be landscaped. This landscaping shall consist of 10% of the buffer being planted with a minimum of two inch caliper deciduous trees and/or 5' - 6' conifer trees with additional shrubs, bushes or evergreens and with the remaining area to be grass or vegetative beds of flowers.

4. **Rules of Interpretation:**

For the purposes of determining the requirement for off-street parking, loading and accessway setbacks; the measurement shall be taken from the appropriate lot line to the off-street parking, loading or accessway.

Where individual seats are not provided for each patron, then every 18 inches of benches, bar rails or other similar seating or stand up space shall be considered as one seat.

In the case of mixed uses, required off-street parking shall be the sum of the requirements for the various individual uses, computed separately (except developments designed as a multi-use shopping center).

A multi-use shopping center, as defined in Article I, shall be required to provide off-street parking as required in Section 10-1204 Table 15.

Where the computation of required off-street parking results in a fractional number, the fraction of one-half or more shall be counted as one space.

For any permitted use not covered by Section 10-1204 Table 15, the Code Official shall determine the closest similar use listed in that table and require off-street parking accordingly.

5. **Parking Spaces Required.**

Parking spaces shall be provided as determined in Section 10-1204 Table 15; except, as listed in the following:

Central Business A and Central Business B districts: Within these, an initial total parking threshold figure shall be calculated by a Code Official using one of the two following procedures depending on which is most appropriate to the administration and enforcement of this Article as determined from a review of City records for purposes of determining what relief, if any, has been authorized from off-street parking requirements.

Procedure One - a lot not subject to relief from off-street parking spaces by Variance or Special Exception: An initial total parking threshold figure is calculated by totaling the number of necessary off-street parking spaces that are required as determined from Section 10-1204 Table 15 for each use located on that lot. This calculation shall be performed on all legally established preexisting uses, including, legally established non-conforming uses, which were established on that lot no later than June 1, 1997. The number from this calculation shall then be adjusted by adding to it the number of conforming off-street parking spaces which currently exist as of June 1, 1997. This resulting number shall constitute the initial total parking threshold figure for that lot as of June 1, 1997. This figure shall be used in the future as a basis for determining whether a change of use in the lot will produce a greater parking need. If greater parking needs are shown as a part of this analysis, then, an unmet parking need shall be deemed to exist that shall be satisfied by applying credits and or fees as authorized in this Article.

Procedure Two - a lot currently subject to relief from off-street parking spaces by Variance or Special Exception: In this instance, the total amount of parking relief that has been granted prior to December 18, 1995 by the Board of Adjustment shall constitute a component of the initial total parking threshold figure. A second component includes any additional conforming off-street parking spaces which may have been provided following an action by the Board of Adjustment on the particular lot and as a third component any additional off street parking that would have been required due to a Change of Use or Building Permit issued during the

period from December 18, 1995 and June 1, 1997. As appropriate, these component figures shall be added together and shall comprise the initial parking threshold figure as of June 1, 1997. This figure shall be used in the future as a basis for determining whether a change of use in the lot will produce a greater parking need. If greater parking needs are shown as a part of this analysis, then, an unmet parking need shall be deemed to exist that shall be satisfied by applying credits and or fees as authorized in this Article.

- a) **Unmet Parking Need Calculation:** The initial total parking threshold as established for June 1, 1997 or a current total parking threshold figure shall be used to determine whether an unmet parking need exists due to changes on a lot which are regulated by this Ordinance and or Article. Such calculations shall be completed as part of the Building Permit and Change of Use Application process. This determination shall be made by calculating from Section 10-1204 Table 15 a current total parking requirement that is based on all existing legally recognized uses. When the resulting calculation produces a figure greater than the initial total parking threshold, then, the difference between the figures constitutes an unmet parking need which shall be addressed as follows in this Section. Upon its provision, the current total parking requirement shall become the current total parking threshold figure and it replaces the initial total parking threshold for purposes of this Section (see subsequent sections as it pertains to this process).
- b) **Current Total Parking Threshold Requirement:** On providing credit(s) necessary to address an unmet parking need, the new current total parking threshold figure shall represent the off-street parking credit for that lot; until, such time as a new current total parking requirement is calculated that would exceed that credit. The highest total parking threshold figure, either an initial one or a new current one, shall remain in effect, until it is exceeded; or, unless the credits, on which it is based, are changed by some action. In those instances, a new current parking requirement shall be calculated and compared to a prior recognized total parking threshold credit.
- c) **Parking requirements that are less than a prior total parking threshold calculation:** A total threshold parking figure, that is based on legally established uses and where any unmet parking need requirement has been satisfied, shall constitute compliance with this Article for all subsequent off-street parking calculations that are less than or equal to that figure so long as all credits continue to be applicable. Therefore, for use(s) on a lot, whose current total parking requirement is determined to be less than or equal to this figure as calculated for June 1, 1997, the providing of additional off-street parking shall not be required.

- d) Issuance of a Building Permit and or Change of Use Permit based on parking credits: The highest authorized total threshold parking credit shall be used as a basis from which to calculate a subsequent new total threshold parking figure.
- e) Vacant Lot: For purposes of this Section, a vacant lot or a lot with no legally recognized uses as of June 1, 1997 shall be deemed to have an initial parking threshold credit of zero.
- f) Effect on Transferability and Subdivision: For purposes of this Article, off-street parking credit(s) for a particular lot shall be transferable to future owner(s) of that lot. In instances where lots are proposed to be consolidated in a manner that does not require Subdivision Approval from the Planning Board, the total parking threshold credit for each lot shall be combined to form a current total parking threshold credit for the resulting lot. In instances where a lot(s) is proposed to be subdivided in a manner that requires Subdivision Approval by the Planning Board, the total parking threshold credit for each lot shall equal the number of required off-street parking spaces that would be required for each lot. If there are insufficient parking credits; then, an unmet parking need shall be deemed to exist and shall be subject to the requirements of this Section.

Section 10-1202 *Off-Street Parking Innovation: Inter Modal Transportation Credit for Central Business A and Central Business B Districts*

- A. Within these districts, the City's policy shall be to create a dedicated municipal revenue fund whose purpose is to secure and to provide for necessary and appropriate transportation related improvements within the Central Business A, Central Business B Districts. These efforts are intended to reduce congestion, to increase the supply of available public and private parking spaces and to promote activities that assist in the attainment of Federal Air Quality Standards for this region. It is intended that all property owners should participate in these endeavors. Such improvements shall include, but are not necessarily limited to, the following.
 - 1. To provide adequate, safe, off-street parking facilities for use within the Central Business districts by its residents, patrons and visitors;
 - 2. To provide convenient, safe, off-street parking facilities and or structures which are located in proximity to the Central Business districts;
 - 3. To encourage the design of such structures in ways that recognize their location, the areas distinctive urban character and which recognizes the objectives of Article X. Historic District Ordinance;
 - 4. To support mass transit initiatives and support services; and,



The State of New Hampshire
Department of Environmental Services



Robert R. Scott, Commissioner

=====

WETLANDS AND NON-SITE SPECIFIC PERMIT 2015-02195

NOTE CONDITIONS

PERMITTEE: 150 GREENLEAF AVENUE REALTY TRUST
ATTN JAMES BOYLE TTEE
150 GREENLEAF AVE
PORTSMOUTH NH 03801

PROJECT LOCATION: 150 GREENLEAF AVENUE, PORTSMOUTH
TAX MAP #243, LOT #67

WATERBODY:

APPROVAL DATE: MARCH 05, 2020

EXPIRATION DATE: MARCH 05, 2025

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Based upon review of the above referenced application, in accordance with RSA 482-A and RSA 485-A:17, a Wetlands Permit and Non-Site Specific Permit was issued by the New Hampshire Department of Environmental Services (NHDES). This permit shall not be considered valid unless signed as specified below.

PERMIT DESCRIPTION: Fill 2,900 square feet of palustrine forested wetland for commercial lot development.

THIS APPROVAL IS SUBJECT TO THE FOLLOWING PROJECT SPECIFIC CONDITIONS:

1. All work shall be in accordance with plans by Emanuel Engineering dated December 16, 2016 as received by the NH Department of Environmental Services (NHDES) on February 12, 2020.
2. Work shall comply with the amended consent decree dated February 28, 2020 and granted March 2, 2020 entered by the Rockingham County Superior Court in the matter of State of New Hampshire Department of Environmental Services v. James Boyle, Individually and as Trustee 150 Greenleaf Avenue Trust. Docket No. 2012-CV-00015.
3. This permit is not valid and effective until it has been recorded with the Rockingham County Registry of Deeds by the applicant. Prior to starting work under this permit, the permittee shall submit a copy of the recorded permit to the NHDES Wetlands Program by certified mail, return receipt requested.
4. No person undertaking any activity shall cause or contribute to, or allow the activity to cause or contribute to, any violations of the surface water quality standards in RSA 485-A and Env-Wq 1700.
5. Not less than 5 state business days prior to starting work authorized by this permit, the permittee shall notify the NHDES Wetlands Program and the local conservation commission in writing of the date on which work under this permit is expected to start.
6. Prior to construction, all wetland and surface water boundaries adjacent to construction areas shall be clearly marked to prevent unintentional encroachment on adjacent wetlands and surface waters.
7. Prior to starting any work authorized by this permit, the permittee shall place orange construction fencing at the limits of construction to prevent unintentional encroachment on wetlands.
8. There shall be no further alteration of wetlands for lot development, driveways, culverts, or septic setback.
9. Extreme precautions shall be taken within riparian areas to prevent unnecessary removal of vegetation during construction. Areas cleared of vegetation must be revegetated with like native species within three days of the completion of the disturbance.

www.des.nh.gov

29 Hazen Drive • PO Box 95 • Concord, NH 03302-0095

NHDES Main Line: (603) 271-3503 • Subsurface Fax: (603) 271-6683 • Wetlands Fax: (603) 271-6588

TDD Access: Relay NH 1 (800) 735-2964

- 10. Construction equipment shall be inspected daily for leaking fuel, oil, and hydraulic fluid prior to entering surface waters or wetlands or operating in an area where such fluids could reach groundwater, surface waters, or wetlands.
- 11. The permittee's contractor shall maintain appropriate oil/diesel fuel spill kits on site that are readily accessible at all times during construction, and shall train each operator in the use of the kits.
- 12. All refueling of equipment shall occur outside of surface waters or wetlands during construction. Machinery shall be staged and refueled in upland areas only.
- 13. Faulty equipment shall be repaired immediately prior to entering areas that are subject to RSA 482-A jurisdiction.
- 14. Any fill used shall be clean sand, gravel, rock, or other suitable material.
- 15. Discharge from dewatering of work areas shall be to sediment basins that are: a) located in uplands; b) lined with hay bales or other acceptable sediment trapping liners; c) set back as far as possible from wetlands and surface waters, with a preferred undisturbed vegetated buffer of at least 50 feet and a minimum undisturbed vegetative buffer of 20 feet.
- 16. Precautions shall be taken to prevent import or transport of soil or seed stock containing nuisance or invasive species such as Purple Loosestrife, Knotweed, or Phragmites. The contractor responsible for work shall appropriately address invasive species in accordance with the NHDOT Best Management Practices for Roadside Invasive Plants (2008).
- 17. To prevent the introduction of invasive plant species to the site, the permittee's contractor(s) shall clean all soils and vegetation from construction equipment and matting before such equipment is moved to the site.
- 18. The permittee shall control invasive plant species such as Purple loosestrife (*Lythrum salicaria*) and Common reed (*Phragmites*) by measures agreed upon by the NHDES Wetlands Program if any such species is found in the stabilization areas during construction or during the early stages of vegetative establishment.

GENERAL CONDITIONS THAT APPLY TO ALL NHDES WETLANDS PERMITS:

- 1. A copy of this permit shall be posted on site during construction in a prominent location visible to inspecting personnel;
- 2. This permit does not convey a property right, nor authorize any injury to property of others, nor invasion of rights of others;
- 3. The NHDES Wetlands Bureau shall be notified upon completion of work;
- 4. This permit does not relieve the applicant from the obligation to obtain other local, state or federal permits, and/or consult with other agencies as may be required (including US EPA, US Army Corps of Engineers, NH Department of Transportation, NH Division of Historical Resources (NH Department of Cultural Resources), NHDES Alteration of Terrain, etc.);
- 5. Transfer of this permit to a new owner shall require notification to and approval by NHDES;
- 6. This project has been screened for potential impacts to known occurrences of protected species and exemplary natural communities in the immediate area. Since many areas have never been surveyed, or have only received cursory inventories, unidentified sensitive species or communities may be present. This permit does not absolve the permittee from due diligence in regard to state, local or federal laws regarding such communities or species;
- 7. Review enclosed sheet for status of the US Army Corps of Engineers' federal wetlands permit.

APPROVED:



David Price
Wetlands Bureau
Land Resources Management

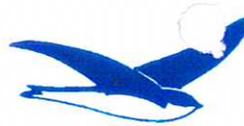
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BY SIGNING BELOW, I HEREBY CERTIFY THAT I HAVE FULLY READ THIS PERMIT AND AGREE TO ABIDE BY ALL PERMIT CONDITIONS.

OWNER'S SIGNATURE (required)

CONTRACTOR'S SIGNATURE (required)

WEST ENVIRONMENTAL INC.



122 Mast Road, Suite 6, Lee, NH 03824
603-659-0416 ♦ Fax 603-659-0418 ♦ mark@westenv.net

Suzanne Woodland
Assistant City Attorney
City of Portsmouth
1 Junkins Avenue
Portsmouth, NH 03801

October 19, 2006

RE: Portsmouth Toyota site, 150 Greenleaf Avenue

Dear Ms. Woodland:

At your request, West Environmental, Inc. performed a functional assessment of the wetlands on the above referenced site. We conducted two field inspections during which time data was collected and photographs were taken. The first inspection was conducted on June 22, 2006 and was attended by Jim Gove, Peter Britz, Suzanne Woodland and Mark West. The second inspection was conducted on August 30, 2006 and was attended by Jim Gove, Peter Britz and Mark West. We have attached the following information:

- A photolog of the wetlands on the site, taken on 8-30-06
- Wetland Functional Assessment Inventory and Data Forms
- An aerial photo of the site dated 4-21-06 at a scale of 1"=400' identifying the wetlands on the site

The onsite wetlands were separated into three main systems. These were evaluated utilizing the US Army Corps of Engineers New England Divisions Highway Methodology Workbook Supplement as an outline for functional assessment. This evaluation was based on collection of data on the physical characteristics of the wetland through field inspections, research of existing information and best professional judgment. Seven functions were evaluated including:

Groundwater recharge/discharge
Floodflow alteration
Sediment/toxicant/pathogen retention
Nutrient removal/retention/transformation
Production export
Sediment/shoreline stabilization
Wildlife habitat

Wetland 1 includes the majority of the wetlands on the site and is associated with the stream that enters the site in the northeast corner and flows west and then south exiting the site in the southwest corner. This wetland includes forested and scrub-shrub / emergent plant communities with good plant species diversity. Fish were observed in the stream, which is a tributary to Sagamore Creek. Although there exists historical disturbances to this wetland, it currently provides habitat for a variety of wildlife.

Wetland 1 was found to have principal functions for six of the seven functions as evaluated. This wetland's most important feature is its water quality and habitat functions associated with a tributary to Sagamore Creek. The presence of organic soils and dense herbaceous vegetation adjacent to the stream enable this wetland to provide water quality renovation functions that help to clean the water draining from and moving through the site. The stream system flowing through this wetland increases its functions and values above smaller and more isolated wetlands within the city. This wetland clearly meets the definition of Inland Wetlands found in the Portsmouth Zoning Ordinance at Article VI (Section 10-604) "Freshwater areas that have hydric soils, hydrophytic vegetation, and wetland hydrology as defined in the Federal Manual." In addition, its function meets the Purpose and Intent Article VI Section 10-603 including...maintaining the quality of surface waters...land which provide flood protection...to protect wildlife habitats...to protect shellfish and fisheries.

Wetland 2 is a forested wetland located in the northwest corner of the site that is drained by a ditch along the western property boundary. This wetland extends west and east off of the site. This wetland provides three principal functions out of the seven evaluated. It is less diverse than Wetland 1 and does not have a stream running through it. This wetland also meets the city's definition of Inland Wetland.

The isolated wetland (Wetland 3) in the northeastern corner of the site does not meet the size criteria under the City of Portsmouth Inland Wetland Protection Regulations. Although a functional analysis was not performed on this wetland it ponds with up to 12 inches of water and it provides flood storage, water quality and wildlife habitat functions, which are only limited by its smaller size. Amphibians were observed utilizing this wetland.

This concludes our report at this time. If you have any questions or require further clarification, please call our office at (603) 659-0416. Thank you.

Sincerely,
West Environmental, Inc.

Mark C. West, President
NH Certified Wetland Scientist

WETLAND INVENTORY DATA FORM

WETLAND ID: 1

CLASSIFICATION: PFO1/SS1/EM1E

ACREAGE: 2.25

WEI PROJECT #: 06-035NH

SCIENTIST: Mark West

DATE:

WETLAND TYPE:

- | | | | |
|--|---|--|---|
| <input checked="" type="checkbox"/> WOODED SWAMP | <input checked="" type="checkbox"/> Deciduous | <input type="checkbox"/> Evergreen | <input checked="" type="checkbox"/> Scrub-Shrub |
| <input type="checkbox"/> MARSH | <input type="checkbox"/> Freshwater Shallow | <input type="checkbox"/> Freshwater Deep | <input type="checkbox"/> Tidal |
| <input type="checkbox"/> WET MEADOW | <input type="checkbox"/> Ditched | <input type="checkbox"/> Grazed | |
| <input type="checkbox"/> RIVER | <input type="checkbox"/> Upper Perennial | <input type="checkbox"/> Lower Perennial | Order: |
| <input checked="" type="checkbox"/> STREAM | <input type="checkbox"/> Perennial | <input checked="" type="checkbox"/> Intermittent | |
| <input type="checkbox"/> POND | Name: | | |
| <input type="checkbox"/> LAKE | Name: | | |
| <input type="checkbox"/> VERNAL POOL | <input type="checkbox"/> Documented | <input type="checkbox"/> Potential | |
| <input type="checkbox"/> HUMAN MADE or OTHER | Description: | | |

WETLAND PLANT COMMUNITY DATA Forested Portion

TREE LAYER

Red maple
American elm
White ash

SAPLING LAYER

Grey birch
Speckled alder
Willow
Quaking aspen

SHRUB LAYER

Northern arrowwood
Winterberry
Willow
Glossy leaved buckthorn

HERBACEOUS LAYER

Sensitive fern
Sedges
Reed canary grass
Beggars' tick
Cattail
Eastern burweed
Tearthumb

WETLAND PLANT COMMUNITY DATA Scrub-Shrub Portion

TREE LAYER

SAPLING LAYER

Quaking aspen
Speckled alder
Willow

SHRUB LAYER

Meadowsweet
Arrowwood

HERBACEOUS LAYER

Tussock sedge
Rattlesnake grass
Purple loosestrife
Cattail

WETLAND SOILS DATA

Poorly & very poorly drained silt loam
Mapped as Maybid silt loam

WETLAND HYDROLOGY DATA:

Seasonally flooded / saturated with pockets of ponded water
A small floodplain is associated with the main stream channel

WILDLIFE SIGNIFICANCE / ADDITIONAL NOTES:

Stream has fish
Amphibian habitat is abundant
Songbirds inhabit scrub-shrub area – green heron and woodcock habitats observed

WETLAND FUNCTIONAL ASSESSMENT DATA FORM

WETLAND ID: 1

WEI PROJECT #: 06-035NH

GROUNDWATER RECHARGE/DISCHARGE

Geology	Hydrology	Function Present	Principal Function
Restrictive Layer? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Groundwater Relationship? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Subsoil Type Present <input type="checkbox"/> Clay	Variable Water Levels? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
Other Geologic Features:	Springs/Seeps Observed? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Discharge	

FLOODFLOW ALTERATION

Watershed Information	Topographic Information	Function Present	Principal Function
Land Cover In Catch. Area <input type="checkbox"/> Urban	Constricted Outlet? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Assoc. w/ Water Course? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Topography of Watershed: Flat		
Other Catch. Storage? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Topography of Wetland: Flat		
Watershed Position <input checked="" type="checkbox"/> H <input type="checkbox"/> M <input type="checkbox"/> L			

SEDIMENT/TOXICANT/PATHOGEN RETENTION

Soils	Setting	Function Present	Principal Function
Organic Soils? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Sed./Tox./Path. Upstream? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Broad Boundary Trans.? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Erosion/Sed. Observed? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
Vegetation	Diffuse Flows/Veloc. Drop? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
Dense Herb. Vegetation? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Does Wetland Flood? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		

NUTRIENT REMOVAL/RETENTION TRANSFORMATION

Hydrology	Transformers	Function Present	Principal Function
Open Water Present? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Organic Soils? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Slow Moving Water? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Aquatic Vegetation? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
Nutrients Upslope? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Abundant Vegetation? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		

PRODUCTION EXPORT

Vegetation	Export	Function Present	Principal Function
Food Source? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Detritus? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Density: <input checked="" type="checkbox"/> H <input type="checkbox"/> M <input type="checkbox"/> L	Aquatic Plants? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
Interspersion: <input type="checkbox"/> H <input checked="" type="checkbox"/> M <input type="checkbox"/> L	Signs of Export? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
Diversity: <input checked="" type="checkbox"/> H <input type="checkbox"/> M <input type="checkbox"/> L			

SEDIMENT/ SHORELINE STABILIZATION

Associated w/ stream? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Description of Bank	Function Present	Principal Function
If No, STOP, if yes, stream characteristics:	Bank Present? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Elev. Change Present? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Bank Vegetated? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
High Flows Present? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Bank Eroded? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Channelized Flow? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			
Open Water Fetch? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			

WILDLIFE HABITAT

Diversity	Connections	Function Present	Principal Function
Aquatic Insect Habitat? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Corridor? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Amphibian Habitat? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Wetland Connections? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
Fisheries Habitat? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Upland Connections? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
Cavity Trees? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Island? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
Vernal Pool? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
Buffer	Degradation		
Type: Urban / wooded	Present? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
Width: 50-100'	Type: Old ditching & filling		
Comments:			

WETLAND INVENTORY DATA FORM

WETLAND ID: 2

CLASSIFICATION: PFO1E

ACREAGE:

WEI PROJECT #: 06-035NH

SCIENTIST: Mark West

DATE:

WETLAND TYPE:

- | | | | |
|--|---|--|--------------------------------------|
| <input checked="" type="checkbox"/> WOODED SWAMP | <input type="checkbox"/> Deciduous | <input type="checkbox"/> Evergreen | <input type="checkbox"/> Scrub-Shrub |
| <input type="checkbox"/> MARSH | <input type="checkbox"/> Freshwater Shallow | <input type="checkbox"/> Freshwater Deep | <input type="checkbox"/> Tidal |
| <input type="checkbox"/> WET MEADOW | <input type="checkbox"/> Ditched | <input type="checkbox"/> Grazed | |
| <input type="checkbox"/> RIVER | <input type="checkbox"/> Upper Perennial | <input type="checkbox"/> Lower Perennial | Order: |
| <input checked="" type="checkbox"/> STREAM | <input type="checkbox"/> Perennial | <input checked="" type="checkbox"/> Intermittent | |
| <input type="checkbox"/> POND | Name: | | |
| <input type="checkbox"/> LAKE | Name: | | |
| <input type="checkbox"/> VERNAL POOL | <input type="checkbox"/> Documented | <input type="checkbox"/> Potential | |
| <input type="checkbox"/> HUMAN MADE or OTHER | Description: | | |

WETLAND DESCRIPTION

This forested wetland extends north and west of the site and is drained by an excavated ditch at its southern end.

WETLAND PLANT COMMUNITY DATA

TREE LAYER

Red maple
American elm
White ash

SAPLING LAYER

Speckled alder
Quaking aspen

SHRUB LAYER

Northern arrowwood
Winterberry
Highbush blueberry
Multiflora rose

HERBACEOUS LAYER

Sensitive fern
Cinnamon fern
Sedges

WETLAND SOILS DATA

Mapped as Maybid silt loam, very poorly drained.

WETLAND HYDROLOGY DATA:

Seasonally flooded / saturated
No defined stream channel

WILDLIFE SIGNIFICANCE / ADDITIONAL NOTES:

Wooded swamp habitat

WETLAND FUNCTIONAL ASSESSMENT DATA FORM

WETLAND ID: 2

WEI PROJECT #:

GROUNDWATER RECHARGE/DISCHARGE

Geology Restrictive Layer? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Subsoil Type Present Clay Other Geologic Features:	Hydrology Groundwater Relationship? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Variable Water Levels? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Springs/Seeps Observed? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Function Present <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Principal Function <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
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FLOODFLOW ALTERATION

Watershed Information Land Cover In Catch. Area Residential/Woodland Assoc. w/ Water Course? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Other Catch. Storage? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Watershed Position <input checked="" type="checkbox"/> H <input type="checkbox"/> M <input type="checkbox"/> L	Topographic Information Constricted Outlet? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Topography of Watershed: Gentle slopes Topography of Wetland: Flat	Function Present <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Principal Function <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
--	--	--	--

SEDIMENT/TOXICANT/PATHOGEN RETENTION

Soils Organic Soils? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Broad Boundary Trans.? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Vegetation Dense Herb. Vegetation? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Setting Sed./Tox./Path. Upstream? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Erosion/Sed. Observed? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Diffuse Flows/Veloc. Drop? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Does Wetland Flood? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Function Present <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Principal Function <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
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NUTRIENT REMOVAL/RETENTION TRANSFORMATION

Hydrology Open Water Present? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Slow Moving Water? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Nutrients Upslope? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Transformers Organic Soils? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Aquatic Vegetation? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Abundant Vegetation? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Function Present <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Principal Function <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
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PRODUCTION EXPORT

Vegetation Food Source? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Density: <input type="checkbox"/> H <input checked="" type="checkbox"/> M <input type="checkbox"/> L Interspersion: <input type="checkbox"/> H <input type="checkbox"/> M <input checked="" type="checkbox"/> L Diversity: <input type="checkbox"/> H <input checked="" type="checkbox"/> M <input type="checkbox"/> L	Export Detritus? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Aquatic Plants? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Signs of Export? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Function Present <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Principal Function <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Berries
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SEDIMENT/ SHORELINE STABILIZATION

Associated w/ stream? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If No, STOP, if yes, stream characteristics: Elev. Change Present? <input type="checkbox"/> Yes <input type="checkbox"/> No High Flows Present? <input type="checkbox"/> Yes <input type="checkbox"/> No Channelized Flow? <input type="checkbox"/> Yes <input type="checkbox"/> No Open Water Fetch? <input type="checkbox"/> Yes <input type="checkbox"/> No	Description of Bank Bank Present? <input type="checkbox"/> Yes <input type="checkbox"/> No Bank Vegetated? <input type="checkbox"/> Yes <input type="checkbox"/> No Bank Eroded? <input type="checkbox"/> Yes <input type="checkbox"/> No	Function Present <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Principal Function <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
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WILDLIFE HABITAT

Diversity Aquatic Insect Habitat? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Amphibian Habitat? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Fisheries Habitat? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Cavity Trees? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Vernal Pool? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Buffer Type: Wooded/residential Width: 100+	Connections Corridor? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Wetland Connections? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Upland Connections? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Island? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Degradation Present? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Type: Ditch exiting wetland	Function Present <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Principal Function <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
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Comments:



1. This is a view of the stream as it enters the northern boundary of the site.



2. This photo shows a stream channel which has a stony bottom.



3. This is another view of the stream onsite after it discharges from the culvert along the northern boundary.



4. This is a view of the scrub-shrub portion of Wetland 1 below the stream culvert. Pockets of standing water were still present in August.



5. This is a view of Wetland 1 in the eastern portion of the site. Areas of emergent wetland are present within the forested swamp.



6. This photo was taken looking at the stream channel in the western portion of Wetland 1. The stream bottom is loamy muck in this area.



7. This is a view of the thick herb and shrub layers in Wetland 1.



8. This is a view of Wetland 2 along the western property boundary.



9. This is a view of Wetland 3 located in the northeast corner of the site.



10. This photo shows the isolated wetland with pockets of standing water and emergent vegetation.

PULA RESOURCE INVENTORY DATA SHEET

PARCEL ID: 94
TAX MAP/LOT #: Map 243 Lot 67-2
ADDRESS: 150 Greenleaf ave rear

ACREAGE: 4.6
GROUP ID:

DATE: 6-8-17
AERIAL PHOTO #:
SCIENTIST: M. West

Nearest Road:

On site Adjacent to site Distance from Road: 20 feet Boundary ID present

Type of Road:

Dirt 2-lane paved 4-lane paved Interstate
 Access Description: acces from end of Lois Street

Existing Structures on Site:

Historical features
 Other: Sewer Line

Adjacent Land Uses (check all that apply):

Forest Shrubland Grassland Residential
 Pasture Freshwater Wetland Open Water Industrial/Commercial
 Cropland Tidal Wetland Abandoned/Disturbed Other:

Habitat Types Present:

Forest 10% Shrub/Old Field 20% Grass/Forb _____% Cultivated _____%
 Pasture _____% Wetland 70% Open Water _____% Other _____%

Topography:

Streams:

None Intermittent Perennial River
 Ephemeral Presence of fish

Water Bodies:

None Small pond Beaver flowage Clamming/oyster beds
 Estuary

Wetlands:

None Sedge meadow Shallow marsh Deep marsh
 Shrub swamp Bog Forested wetland Atlantic white cedar swamp
 Prime wetland Vernal pool Wet meadow

Description: Red maple swamp with areas of scrub-shrub and emergent vegetation.

Dominant Upland Forest :

Early successional 30% Northern hardwood 30% Red maple 10% Hemlock _____%
 Oak-pine _____% White pine 30% Other _____%

Description:

Forest Age Class:

Regeneration-seedling _____% Sapling-pole 60% Mature 40% Older growth _____%

Logging Evidence:

Recent 10-20 years ago 20+ years ago Previous Agricultural use
 Clear cut Diameter cut Selective cut

NH Natural Heritage Data:

Rare Plant Community?

PULA RESOURCE INVENTORY DATA SHEET (cont.)

PARCEL ID: 94

Wildlife Habitat

Existing Critical Habitat Yes No **Type:**
 Critical Habitat Features Yes No
 Vertical Stratification Low Moderate High

Specific Habitat Features:

Highest Ranked Habitat: State Biological Region

Connectivity

Corridor (through or adj.)? Yes No
 Wetland Connectivity? Yes No
 Upland Connectivity? Yes No

Wildlife Observations:

Stream salamanders, fish

Habitat Degradation

% of Buffer w/Encroachment: 40%
 Activities Adversely Affecting Wildlife Function: Yes No
 Significant Disturbance? Yes No
 Structures Obstructing Wildlife Movement? Yes No
 Prox. to Beaver/Mink/Otter? Yes No
 Dumping? Yes No
 ATV Activity? Yes No
 Invasive Species: numerous species of shrub and herbaceous invasives Yes No

Recreational Value/Potential

Parking Available? Yes No
 Watercraft Access? Yes No
 Fishing Available? Yes No
 Hunting Permitted? Yes No
 Walking/Biking Trails? Yes No
 Passive Recreation? Yes No
 Tidal Access? Yes No
 Potential Ballfield? Yes No
 Existing Conservation Land? Yes No
 Describe Access:

Restoration/Property Potential

Description: culvert in stream at end of Lois Sreet could be removed.

Recommendation(s) to improve access or overall potential:

Development Potential

Description:

Storm Water Data

Watershed ID: Sagamore Creek
 Upstream Sources of Poll.? Yes No
 Erosion/Sed. Observed? Yes No
 Stabilization needed? Yes No
 BMP needed/modified? Yes No
 BMP type?
 Description:

Additional Natural Resource Data Layers

Adjacent Conservation Land Yes No
 Soils Yes No
 Underlying Aquifers and Transmissivity Yes No
 Sand & Gravel Deposits Yes No

Potential property liabilities:

Homeless Activity Describe:
 Safety Hazard Describe:
 Hazardous Waste Possible Describe:

Comments:



Looking northwest from the eastern property boundary along the sewerline which is also used as a trail.



Looking north through the thick vegetation at the dealership buildings in the far background.



Looking northwest along the sewerline which is bordered by thick invasive shrubs.



This is a view of the red maple swamp south of the sewerline in the southwestern portion of the site.



This is a view of the ditched stream in along the southern property boundary.



Looking north at the scrub-shrub wetland between the sewerline and the dealership.



Looking northeast where the sewerline takes an eighty degree turn along the northwestern boundary.



Looking at northern most portion of the site where the ditched stream extends to the Route 1 bypass.



CELEBRATING OVER 35 YEARS OF SERVICE TO OUR CLIENTS

HAND DELIVERED

LIZABETH M. MACDONALD
JOHN J. RATIGAN
DENISE A. POULOS
ROBERT M. DEROSIER
CHRISTOPHER L. BOLDT
SHARON CUDDY SOMERS
DOUGLAS M. MANSFIELD
KATHERINE B. MILLER
CHRISTOPHER T. HILSON
HEIDI J. BARRETT-KITCHEN
JUSTIN L. PASAY
ERIC A. MAHER
BRENDAN A. O'DONNELL
ELAINA L. HOEPPNER

RETIRED
MICHAEL J. DONAHUE
CHARLES F. TUCKER
ROBERT D. CIANDELLA
NICHOLAS R. AESCHLIMAN

October 28, 2020

David Rheaume, Chair
Zoning Board of Adjustment
City of Portsmouth
1 Junkins Avenue
Portsmouth, NH 03801

RE: 145 Maplewood Avenue (a/k/a portion of 111 Maplewood Avenue
Tax Map 124, Lot 8)

Dear Chair Rheaume and Board Members:

Enclosed please find supporting materials to accompany the information submitted via the City's on-line permitting system for variance relief regarding the proposed signage scheme at the above referenced property.

We respectfully request that this matter be placed on the Board's November 17, 2020 agenda. In the meantime, if you have any questions or require additional information do not hesitate to contact me.

Very truly yours,
DONAHUE, TUCKER & CIANDELLA, PLLC

Justin L. Pasay
JLP/sac
Enclosures

cc: 111 Maplewood Avenue, LLC
Christopher Lizotte, ProCon, Inc.

S:\RM-RZ\RW Norfolk LLC\Maplewood Avenue\Signage Variance\2020_10_28_zba letter.docx

DONAHUE, TUCKER & CIANDELLA, PLLC

16 Acadia Lane, P.O. Box 630, Exeter, NH 03833
111 Maplewood Avenue, Suite D, Portsmouth, NH 03801
Towle House, Unit 2, 164 NH Route 25, Meredith, NH 03253

83 Clinton Street, Concord, NH 03301

VARIANCE APPLICATION FOR
111 MAPLEWOOD AVENUE, LLC (the “Applicant”)

The Applicant requests variances from Sections 10.1251.20, 10.1242 (two variances requested) and 10.1144.63, as detailed below, to accomplish its signage proposal for the property located at 145 Maplewood Avenue (shown as a portion of 111 Maplewood Avenue on the City assessing cards), further identified as City Assessor Map 124, Lot 8 (the “Property”), as depicted in **Enclosures 1 and 2**, which include detailed signage plans and renderings.

A. Introduction

The Property is situated in the City’s North End within Character District 5 (“CD5”), the Downtown Overlay District, the North End Incentive Overlay District, the Historic District, and Sign District 3. The Property consists of .98 acres of lot area and, uniquely, it is both a through and corner lot under the City’s Zoning Ordinance, as it has frontage along Maplewood Avenue, Raynes Avenue and Vaughn Street. The eastern side of the building is the only side with no frontage, yet it provides primary access to the 4-story office building currently under construction on the Property (the “Building”) via a driveway off Vaughn Street and a Pedestrian Alley. The Property is bound to the southeast by the office building at 111 Maplewood Avenue, to the northeast by the AC Hotel by Marriot, 3S Artspace and Barrio Restaurant, to the northwest by the Vanguard Key Club and office building at 31 Raynes Avenue, and to the southwest by various commercial and residential uses.

In May of 2019, the Property received Site Plan Approval from the City’s Planning Board to construct the Building and related paving, lighting, utilities, landscaping, drainage and associated site improvements. That same month the Building received a Certificate of Approval from the City’s Historic District Commission (the “HDC”). In September of 2019, the Property received amended Site Plan Approval from the City of Portsmouth to permit minor changes to the parking layout and building footprint. In May of 2020, the HDC provided administrative approval for changes to the previously approved design of the Building to include the lighting discussed in this application. *See Enclosure 3*. We note that the HDC has not reviewed the rest of the Applicant’s signage proposal for the Property so the Applicant would anticipate, as a condition of approval, the requirement to obtain additional review and approval of the proposed signage from the HDC pursuant to Section 10.1221.30 of the Zoning Ordinance.

The Building will be predominately office use but there will be some commercial/retail use as well, and several tenants are anticipated throughout the Building. In light of the anticipated occupation of the Building, the Applicant has produced the enclosed Signage Plans and reviewed the same with City Staff. *See Enclosure 2*. Complementing **Enclosure 2** is **Enclosure 3**, which comprises additional renderings of the proposed sign locations and Building lighting.

As depicted in these Enclosures, the Applicant’s signage proposal reflects the size and scale of the building, its location in the North End, its orientation towards downtown and its anticipated occupation. Moreover, effort was taken to ensure a proposal that is well within the parameters for permitted aggregate signage square footage per building side and permitted mean

lumens per net acre. However, upon review by the City, it was determined that the following variances are needed to accommodate the Applicant's signage plan.

- 1) **Variance from §10.1251.20 to permit a freestanding sign with 56.97 s.f. of sign area where 20 s.f. is the maximum in Sign District 3:** §10.1251.20 of the Zoning Ordinance provides a maximum sign area for individual freestanding signs in Sign District 3 of 20 s.f. The Applicant proposes to construct a freestanding sign depicting "145", the Property's address along Maplewood Avenue, on the eastern side of the building facing the office building at 111 Maplewood Avenue and downtown (the "Freestanding Sign"). The Freestanding Sign, labeled "FS-1" in **Enclosures 2 and 3**, will be viewable by foot and vehicular traffic along Maplewood Avenue and is proposed to be 56.97 s.f. A similar sign complying with the 20 s.f. maximum sign area requirement in §10.1251.20 is depicted in **Enclosure 2** for comparison purposes.
- 2) **Variance from §10.1242 to permit wall signs above the ground floor on all Building sides:** §10.1242 of the Zoning Ordinance states that "[e]ach side of a building facing a street may have one parapet sign . . . or one wall sign above the ground floor." §10.1252.80 of the Zoning Ordinance states that "decorative lighting on a building or structure, including neon and other accent lighting, and any illuminated building panel, shall be considered a wall sign for the purposes of [the Zoning Ordinance], and shall be counted as part of the aggregate sign area allowed." "Ground floor or story" is defined by the Zoning Ordinance as "[a]ny floor or story of a building in which the floor is less than six feet above or below the finished grade at any street entrance of the building." Zoning Ordinance, §10.1530.

As depicted in **Enclosure 2**, the Applicant proposes 31 decorative lights (labeled "W1" and "WP2") above the ground floor across the four Building sides. The Applicant also proposes five (5) wall mounted signs above the ground floor across the four Building sides to include R-1, E-5, E-6, V-1, and M-1.

- 3) **Variance from §10.1242 to permit wall signs above the ground floor on a side of a building not facing a street (east elevation):** §10.1242 of the Zoning Ordinance states that "[e]ach side of a building *facing a street* may have one parapet sign . . . or one wall sign above the ground floor." The Applicant proposes nine (9) decorative lights above the ground floor and two (2) wall signs, depicted as Signs E-5 and E-6, on the eastern elevation of the Building facing 111 Maplewood Avenue and downtown. *See Enclosure 2.*
- 4) **Variance from §10.1144.63 to permit illuminated signs above 25' from grade:** In discussions with the City it was maintained that if "wall signs are illuminated above 25' from grade, [the Applicant] will need a variance from Section 10.1144.61." Section 10.1144.61 states that the maximum mounting height of a luminaire is 20' above grade, except that flood or spot luminaires rated at 900 lumens or less, and other luminaires rated at 1800 lumens or less, may be used without restriction to mounting height. Section 10.1144.63, however, states that "[luminaires] used

primarily for sign illumination may be mounted at any height to a maximum of 25 feet, regardless of lumen rating.”

The Applicant anticipates that all of its wall mounted signs will be illuminated including the five signs above 25’ from grade depicted in **Enclosures 2 and 3** (Signs R-1, E-5, E-6, M-1 and V-1). That said, the luminaires illuminating all wall mounted signs will comply with the lumen requirements of §10.1144.61, thus begging the question of whether variance relief from §10.1144.63 is required in the first instance.

Because the Applicant’s signage proposal would not be inconsistent with the essential character of the surrounding area, will not compromise the public health in any way, will provide substantial justice, will not compromise the property values of surrounding properties, and because there is no rational connection between the intent of the City’s Sign Ordinance and its application to the Property under the unique circumstances of this case, as outlined below, we respectfully request that these variances be granted.

B. Variance Criteria

Pursuant to Article 2, Section 10.233 of the Zoning Ordinance, and RSA 674:33, to obtain a variance in New Hampshire, an applicant must show that: (1) the variance will not be contrary to the public interest; (2) the spirit of the ordinance is observed; (3) substantial justice is done; (4) the values of surrounding properties are not diminished; and (5) literal enforcement of the provisions of the ordinance would result in an unnecessary hardship, where said term means that, owing to special conditions of the property that distinguish it from other properties in the area: no fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and the Proposed use is a reasonable one; or if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it. *See* RSA 674:33, I (b).

While four (4) individual variances are sought, we address the statutory criteria together as they are a part of a comprehensive signage proposal for the Property.

1. The variances will not be contrary to the public interest.

The New Hampshire Supreme Court has indicated that the requirement that a variance not be “contrary to the public interest” is coextensive and related to the requirement that a variance be consistent with the spirit of the ordinance. *See* Chester Rod & Gun Club v. Town of Chester, 152 N.H. 577, 580 (2005); Malachy Glen Associates, Inc. v. Town of Chichester, 155 N.H. 102, 105-06 (2007); and Farrar v. City of Keene, 158 N.H. 684, 691 (2009). A variance is contrary to the public interest only if it “unduly, and in a marked degree conflicts with the ordinance such that it violates the ordinance’s basic zoning objectives.” Chester Rod & Gun Club, 152 N.H. at 581; Farrar, 158 N.H. at 691. *See also* Harborside Associates, L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508, 514 (2011) (“[m]ere conflict with the terms of the ordinance is insufficient.”) Moreover, these cases instruct boards of adjustment to make the

determination as to whether a variance application “unduly” conflicts with the zoning objectives of the ordinance “to a marked degree” by analyzing whether granting the variance would “alter the essential character of the neighborhood” or “threaten the public health, safety or welfare” and to make that determination by examining, where possible, the language of the Zoning Ordinance.

The purpose of the City’s Sign Ordinance is to “maintain and enhance the character of the City’s commercial districts and residential neighborhoods and to protect the public from hazardous and distracting displays.” Zoning Ordinance, §10.1211. This express purpose of the Sign Ordinance is substantially similar to the standard of review, outlined above, that the Board of Adjustment must use in determining whether the requested variance will be contrary to the public interest and whether the spirit of the Ordinance is observed, which is whether the proposed signage will alter the essential character of the neighborhood or threaten the public health, safety or welfare. The Applicant’s signage proposal for the Property will do neither.

First, as depicted in **Enclosure 2**, the size of the Freestanding Sign complements the scale of the Building and will be located between the Building and the office building to the east at 111 Maplewood Avenue. As proposed, this sign will not constitute a hazardous or distracting display and it will be consistent with the ongoing development in the North End. Certainly, the Freestanding Sign will not alter the essential character of the neighborhood or threaten the public health, safety or welfare. On the contrary, the sign will preserve the same, be consistent with the neighborhood, and be more suited for the Building than a 20 s.f. version of the same, thus fulfilling its purpose of orienting vehicular and pedestrian traffic to the Building and its access from Vaughn Street. *See Enclosure 2.*

Similarly, the requested variances from §10.1242 of the Zoning Ordinance, relating to the number of wall signs above the ground floor on all sides of the Building, will not constitute a hazardous or distracting display, and will not alter the essential character of the neighborhood or compromise public health or safety. Important to note here is that all of the Building sides with the exception of the eastern elevation facing 111 Maplewood Avenue, only have one true wall mounted sign above the ground floor identified as R-1 (Raynes Avenue elevation), V-1 (Vaughn Street elevation), and M-1 (Maplewood Avenue elevation), which is consistent with the Zoning Ordinance. The eastern elevation, facing 111 Maplewood Avenue and downtown, has two (2) true wall-mounted signs identified as E-5 and E-6. The rest of the “signs” are decorative lighting, as depicted in **Enclosures 2 and 3**, which lighting has been reviewed and approved by the HDC. Regardless, the Building side with the most signs is the eastern elevation which provides one of the primary entrances and faces the Building’s parking lot and downtown. Moreover, the size of the proposed signage on each of the Building sides is conservative, and well within the aggregate total square footage permitted by the Zoning Ordinance. *See Enclosure 2.* Similarly, despite their designation as “signs”, the decorative lighting is well within the permitted lumens allowed for the Property. *Id.* More specifically, incorporating the square footage of the actual wall mounted signs proposed and the decorative lighting, 98.65 s.f. of signage remains available for the Vaughn Street elevation, 314.9 s.f. of signage remains available for Raynes Avenue elevation, and 7.3 s.f. remains available for Maplewood Avenue elevation.¹

¹ We note that the calculation for the Building’s Maplewood Avenue elevation incorporates all of the signage for the Building’s eastern elevation and there is still a surplus.

Finally, the five (5) illuminated wall mounted signs (R-1, E-5, E-6, M-1 and V-1) above 25' from grade will not constitute hazardous or distracting displays, and will not alter the essential character of the neighborhood or compromise public health or safety. As noted above, all of the illuminated wall mounted signs will comply with the lumen requirements of §10.1144.61 of the Zoning Ordinance and thus appear similar to other luminaires that would be permitted by right at the underlying heights. Additionally, two (2) of the five (5) signs will face the downtown and the illumination and appearance of all of these signs will be consistent with and complement the decorative lighting that was reviewed and approved by the HDC. Finally, despite the aggregate square footage of the wall mounted signs and decorative lighting, there is still a surplus of available sign square footage for each of the Building sides.

The Applicant's sign proposal promotes the public health by incorporating a thoughtful design that promotes vehicular and pedestrian traffic whilst preserving meaningful signage for anticipated tenants.

As the Applicant's signage proposal will uphold the City's Sign Ordinance by maintaining the character of the City's commercial districts and residential neighborhoods and not creating hazardous and distracting displays, and as the proposal will not alter the essential character of the neighborhood or threaten the public health or safety, the Applicant respectfully submits that it would be reasonable and appropriate for the Board of Adjustment to conclude that granting the variances will not be contrary to the public interest.

2. The spirit of the Ordinance is observed.

As referenced in Section 1, above, the requested variances observe the spirit of the Sign Ordinance and New Hampshire jurisprudence regarding the "public interest" prong of the variance criteria because the Applicant's signage proposal will not compromise the character of the City's commercial or residential neighborhoods and will not alter the essential character of the neighborhood or threaten the public health, safety, or welfare. As the New Hampshire Supreme Court has indicated in both Chester Rod & Gun Club and in Malachy Glen, the requirement that the variance not be "contrary to the public interest" is coextensive and is related to the requirement that the variance be consistent with the spirit of the ordinance. *See Chester Rod & Gun Club*, 152 N.H. at 580. A variance is contrary to the spirit of the ordinance only if it "unduly, and in a marked degree conflicts with the ordinance such that it violates the ordinance's basic zoning objectives." *Chester Rod & Gun Club*, 152 N.H. at 581; *Farrar*, 158 N.H. at 691. As discussed above, the requested variances are consistent with the spirit of the Sign Ordinance because of the reasons stated in Section 1. As a result, for the reasons stated above, the Applicant respectfully asserts that it would be reasonable and appropriate for the Board of Adjustment to conclude that the requested variances will observe the spirit of the Zoning Ordinance.

3. Substantial justice is done.

As noted in Malachy Glen, *supra*, "perhaps the only guiding rule [on this factor] is that any loss to the individual that is not outweighed by a gain to the general public is an injustice." Malachy Glen, *supra*, citing 15 P. Loughlin, New Hampshire Practice, Land Use Planning and

Zoning § 24.11, at 308 (2000) (quoting New Hampshire Office of State Planning, *The Board of Adjustment in New Hampshire, A Handbook for Local Officials* (1997)). In short, there must be some gain to the general public from denying the variance that outweighs the loss to the Applicant from its denial.

In this case, the public does not stand to gain anything from denying the variances requested. Despite the scale of the Building, the Applicant's signage proposal is below the maximum parameters for total aggregate sign square footage permitted per building side and permitted lumens under the Zoning Ordinance. See **Enclosure 2**. In other words, more signage and more light is permitted by right under the Zoning Ordinance. Rather than maxing these parameters out, however, the Applicant is pursuing signage that will complement and beautify the Building and the area. Further, the lighting scheme has been reviewed and approved by the HDC and the signage proposal is tastefully designed to orient people to the Building and its future tenants, which will benefit the public. The signage will complement the Building and not be contrary to the essential character of the City's North End.

On the other hand, the Applicant's proposed signage will be of great benefit to the Applicant, which endeavors to complete conservative and complementary signage to further beautify the Building and accommodate the tenants it anticipates will eventually occupy the same.

As there is no gain to the general public from denying the variance that outweighs the loss to the Applicant from its denial, granting the requested variance will accomplish substantial justice.

4. The proposal will not diminish surrounding property values.

Given the nature of the neighborhood, the size and scale of the Building on the Property, and the fact that the Applicant could achieve more lumens and sign square footage along the Raynes Avenue, Vaughn Street and Maplewood Avenue Building sides by right, none of the surrounding properties will suffer any diminution in value as a result of granting these variances. Certainly, the Applicant is aware of no evidence to the contrary. Accordingly, the Applicant respectfully requests that the Board of Adjustment find that the requested variance will not diminish surrounding property values.

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

As set forth in the provisions of RSA 674:33, I, there are two options by which the Board of Adjustment can find that an unnecessary hardship exists:

- (A) For purposes of this subparagraph, "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area:
 - (i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and
 - (ii) The Proposed use is a reasonable one.

or,

(B) If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

The “special conditions” of the Property for purposes of this variance criterion include the size and scale of the Building vis-à-vis the size of the Property, the Property’s nature as both a through and corner lot, the complicated and undulating nature of the Building’s facades, and the fact that the Building’s eastern elevation provides one of the primary accesses to the Building and faces the Building’s parking lot and downtown.

In Harborside Assocs. v. Parade Residence Hotel, the New Hampshire Supreme Court upheld the Portsmouth Board of Adjustment’s finding that the physical improvements on a property, in that case the size of a building when compared to other buildings in the area within the context of sign variance request, could be considered “special circumstances.” Affirming the analysis of the Board of Adjustment, the Supreme Court stated:

The [Respondent] is not attempting to meet the ‘special conditions’ test by showing that its *signs* would be unique in their settings, but that its *property* – the hotel and conference center – has unique characteristics that make the signs themselves a reasonable use of the property.

Harborside, 162 N.H. at 518 (emphasis added). Cf Farrar, 158, N.H. 689 (where variance sought to convert large, historical single use residence to mixed use of two residence and office space, size of residence was relevant to determining whether property was unique in its environment).

Here, like the size of the building in Harborside, and the size of the residence in Farrar, the Property’s physical characteristics and improvements make the proposed signage reasonable under the circumstances. To start, with more than 20,000 s.f. of building footprint, the Building occupies a significant portion of the Property and is in very close proximity to Raynes Avenue, Vaughn Street, and Maplewood Avenue. As a through and corner lot, vehicular and foot traffic will be able to navigate around the entirety of the Building but will gain primary access to the same via the driveway and Pedestrian Alley off Vaughn Street. Further, the complicated design of the Building and its undulating and varying facades, though beautiful, require a thoughtful approach to signage to accommodate future tenants.

Due to these special conditions of the Property, there is no fair and substantial relationship between the public purposes of the underlying ordinances and their specific application to the Property. On the contrary, despite its lack of conformity, the Applicant’s proposed signage scheme is consistent with the public purposes of the relevant Zoning Ordinances because to effectively activate the streetscape, promote public health and traffic safety, promote the purpose of the City’s Sign Ordinance, and provide meaningful signage for

the Building's anticipated tenants, a thoughtful and deliberate approach must be advanced. In that context, rather than proposing bigger, brighter or more obvious signage, the Applicant is proposing more thoughtful and complementary signage and is proposing *less* sign square footage than would be permitted by right under the Ordinance.

Specifically, the Freestanding Sign is large enough to be discernible from Maplewood Avenue considering the size of the Building, but not too big, and will alert vehicular and pedestrian traffic to the address of the Building, which will in turn orient people down Vaughn Street or Raynes Avenue to gain access. Similarly, of the "signs" proposed above the ground floor on any of the Building sides, only one Building side, the eastern elevation, actually has more than one wall mounted sign above the ground floor. The rest of the "signs" are decorative lighting which has been reviewed and approved by the HDC. Where this is more than one wall mounted sign above the ground floor, on the eastern elevation of the Building, their placement is logical in light of the Building's parking lot on that side and that Building side's service as a primary access point, and they face downtown where they have the smallest impact to surrounding property. All of the signage, illuminated wall mounted signs or decorative lighting alike, will emit lumens that are consistent with the Zoning Ordinance. Moreover, the aggregate sign square footage proposed is less than that which could be obtained by right under the Ordinance. Accordingly, the Applicant's signage proposal is consistent with the Ordinance's purposes because it will maintain the character of the City's commercial districts and residential neighborhoods and protect the public from hazardous and distracting displays, and will encourage public safety while providing meaningful signage.

Put another way, strictly enforcing the underlying Zoning Ordinances will not advance the public purposes of the Sign Ordinance, but granting the requested variances will.

The Applicant respectfully reminds the Board of Adjustment that the mere fact that the Applicant is seeking a variance from the express provisions of the Zoning Ordinance is not a valid reason for denying the variance. *See Malachy Glen Associates, Inc. v. Town of Chichester*, 155 N.H. 102, 107 (2007); *see also Harborside Associates*, 162 N.H. at 2011 ("mere conflict with the terms of the ordinance is insufficient").

Finally, because the Applicant's proposed signage will be conservatively and tastefully sited on the Building, and will be within the size and lumen parameters established by the Zoning Ordinance, it is reasonable under the circumstances. *See Vigeant v. Town of Hudson*, 151 N.H. 747, 752 - 53 (2005); and *Malachy Glen*, 155 N.H. at 107; *see also Harborside* at 518-519 (applicant did not need to show signs were "necessary" rather only had to show signs were a "reasonable use").

Accordingly, the Applicant respectfully asserts that its application complies with the standard for Option A of the unnecessary hardship criterion and the Board of Adjustment should so find.

C. Conclusion

The Applicant respectfully submits that all five criteria for the variance as requested have been met such that its Variance Application should be granted.

SIGNAGE ELEVATION TABLE

ELEVATION	SIGNAGE	SIZE	SIGN SF	AGGREGATE TOTAL ALLOWED PER STREET	SIGN SF REMAINING	DECORATIVE LIGHTING SF PER SECTION 10.1252.80	SIGN SF REMAINING
FREESTANDING SIGN	FS-1	6'-4" x 9'-0"	56.97 SF				
EAST	E-1	1'-2" x 3'-10"	4.5 SF				
EAST	E-2	1'-2" x 5'-2"	6 SF			WI = 9.0 x 9 = 81.0 SF	
EAST	E-3	1'-2" x 5'-2"	6 SF			WP2 = 2.8 x 5 = 14.0 SF	
EAST	E-4	1'-5" x 5'-2"	8 SF				
EAST	E-5	1'-5" x 11'-4"	12.3 SF				
EAST	E-6	1'-1" x 11'-4"	8.2 SF				
EAST	E-7	1'-2" x 7'-0"	8.2 SF				
			TOTAL = 62.1 SF				
VAUGHN STREET	V-1	1'-10" x 19'-6"	35.75 SF	79 x 2 = 158 SF	158 - 35.75 = 122.25 SF	WI = 9.0 x 2 = 18.0 SF WP2 = 2.8 x 2 = 5.6 SF	122.25 - 18.0 - 5.6 = 98.69 SF
RAYNES AVE	R-1	1'-1" x 14'-6"	15.7 SF	187.5 x 2 = 375 SF	375 - 15.7 = 359.3 SF	WI = 9.0 x 4 = 36.0 SF WP2 = 2.8 x 3 = 8.4 SF	359.3 - 36 - 8.4 = 314.9 SF
MAPLEWOOD	M-1	1'-10" x 19'-8"	36 SF			WI = 9.0 x 6 = 54.0 SF WP2 = 2.8 x 5 = 14.0 SF	170.3 - 54 - 14.0 = 81.0 - 14.0 = 7.3 SF
MAPLEWOOD	M-2	2'-8" x 5'-10"	15.6 SF	142 x 2 = 284 SF	284 - 51.6 - 62.1 = 170.3 SF		
			TOTAL = 51.6 SF				

ZONING DISTRICT:
 CHARACTER DISTRICT 5 (CD5)
 DOWNTOWN OVERLAY DISTRICT
 NORTH END INCENTIVE OVERLAY DISTRICT
 HISTORIC DISTRICT
 SIGN DISTRICT 3

10.1252 MEASUREMENT OF SIGN AREA
 10.1252.10 SIGN AREA SHALL BE MEASURED IN ONE OF THE FOLLOWING WAYS, AT THE APPLICANT'S DISCRETION:

(a) THE AREA THAT CAN BE ENCLOSED BY ONE POLYGON WITH NO MORE THAN EIGHT SIDES; OR

(b) THE AREA THAT CAN BE ENCLOSED BY A CIRCLE, OVAL, TRIANGLE OR RECTANGLE, OR ANY TWO SUCH SHAPES, INCLUDING NEON AND OTHER ACCENT LIGHTING, AND ANY ILLUMINATED BUILDING PANEL, SHALL BE CONSIDERED A WALL SIGN FOR THE PURPOSES OF THIS SECTION, AND SHALL BE COUNTED AS PART OF THE AGGREGATE SIGN AREA ALLOWED.

10.1252.80 DECORATIVE LIGHTING ON A BUILDING OR STRUCTURE INCLUDING NEON AND OTHER ACCENT LIGHTING, AND ANY ILLUMINATED BUILDING PANEL, SHALL BE CONSIDERED A WALL SIGN FOR THE PURPOSES OF THIS SECTION, AND SHALL BE COUNTED AS PART OF THE AGGREGATE SIGN AREA ALLOWED.

ZONING DISTRICT'S	MAXIMUM MEAN LUMENS PER NET ACRE
AIRPORT DISTRICT (AIR)	EXEMPT
ALL BUSINESS DISTRICTS, EXCEPT WITHIN THE HISTORIC DISTRICT	300,000
ALL INDUSTRIAL DISTRICTS	
AIRPORT INDUSTRIAL REUSE INDUSTRIAL, AIRPORT BUSINESS COMMERCIAL	
ALL RESIDENTIAL DISTRICTS	65,000
ALL MIXED RESIDENTIAL DISTRICTS	
ALL CONSERVATION DISTRICTS	
HISTORIC DISTRICT	

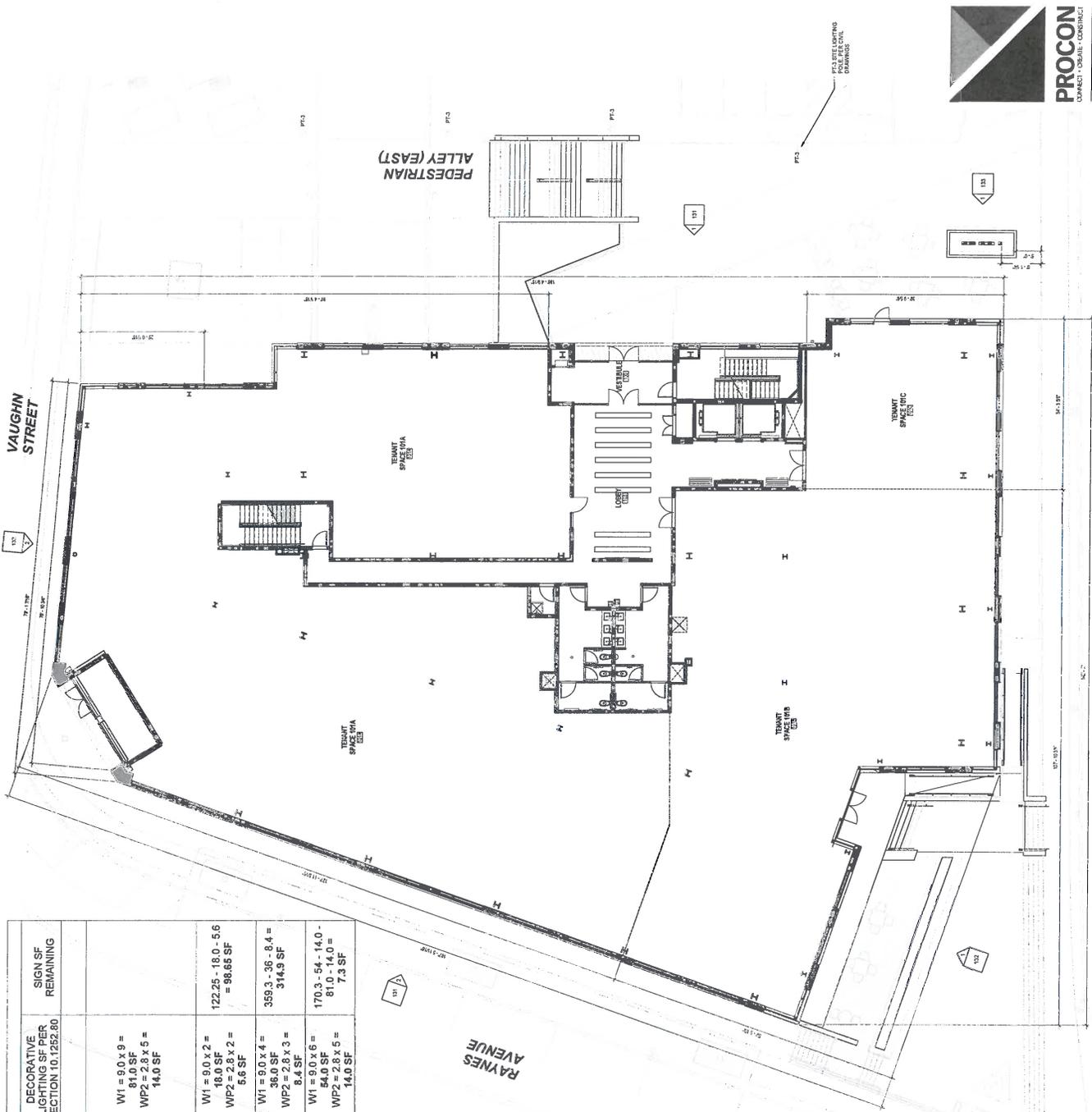
SITE SIZE = 0.98 ACRES
 0.98 x 55,000 = 53,900 TOTAL LUMENS ALLOWED

LUMEN TABLE

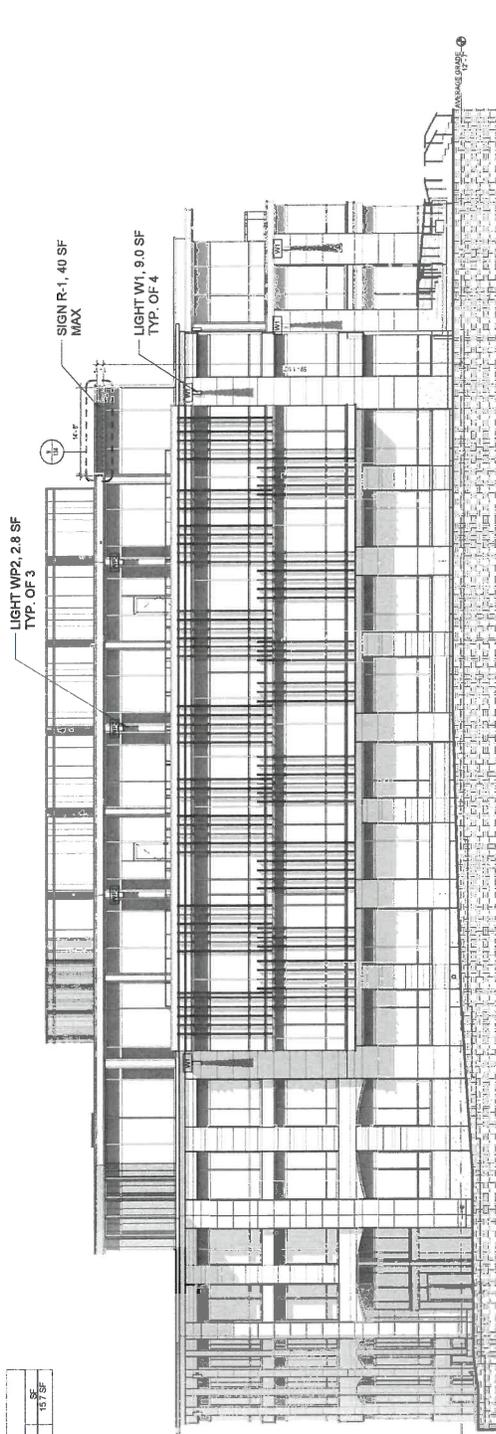
SITE POLES
 PT-3 - 800 EACH: 4 x 800 = 3,200 TOTAL

BUILDING MOUNTED
 WI - 130 EACH: 21 x 130 = 2,730 TOTAL
 WP2 - 1720 EACH: 15 x 1720 = 10,800 TOTAL

OVERALL TOTAL: 2,730 + 3,200 + 10,800 = 16,730 LUMENS
 TOTAL LUMENS REMAINING = 53,900 - 16,730 = 37,170 LUMENS REMAINING

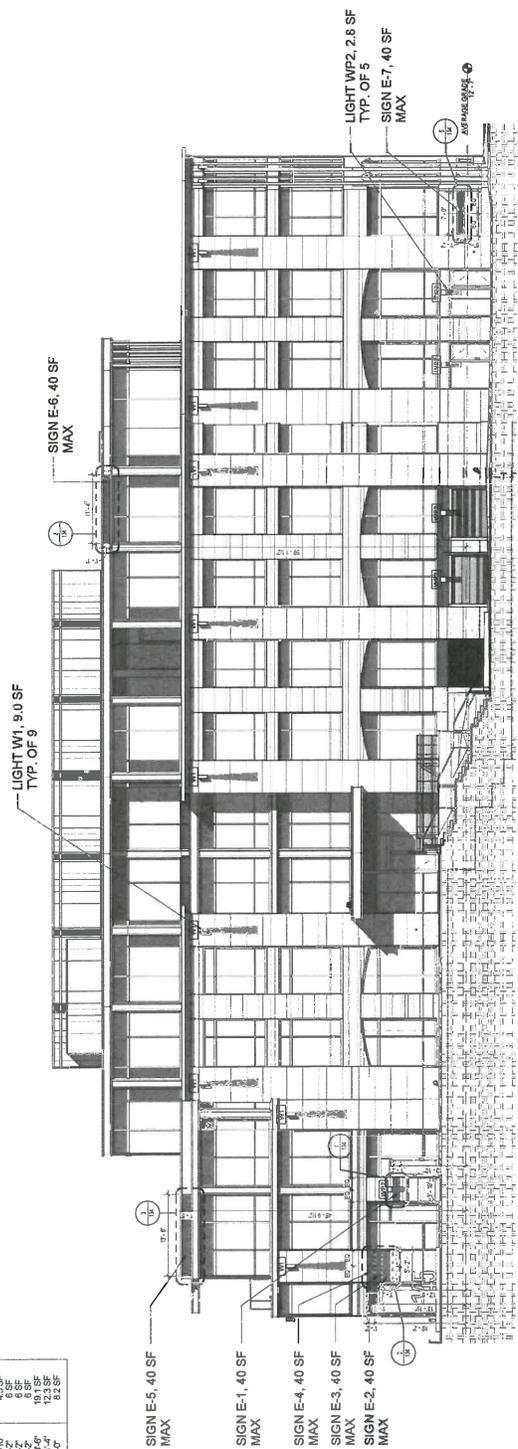


SIGNAGE ELEVATION TABLE	
SIGNAGE	SF
RAYNES AVENUE	137 SF
ENTRY PASSAGE	137 SF



2 SIGNAGE ELEVATION - RAYNES AVENUE
 1/8" = 1'-0"

SIGNAGE ELEVATION TABLE	
SIGNAGE	SF
E-1	40 SF
E-2	40 SF
E-3	40 SF
E-4	40 SF
E-5	40 SF
E-6	40 SF
E-7	40 SF



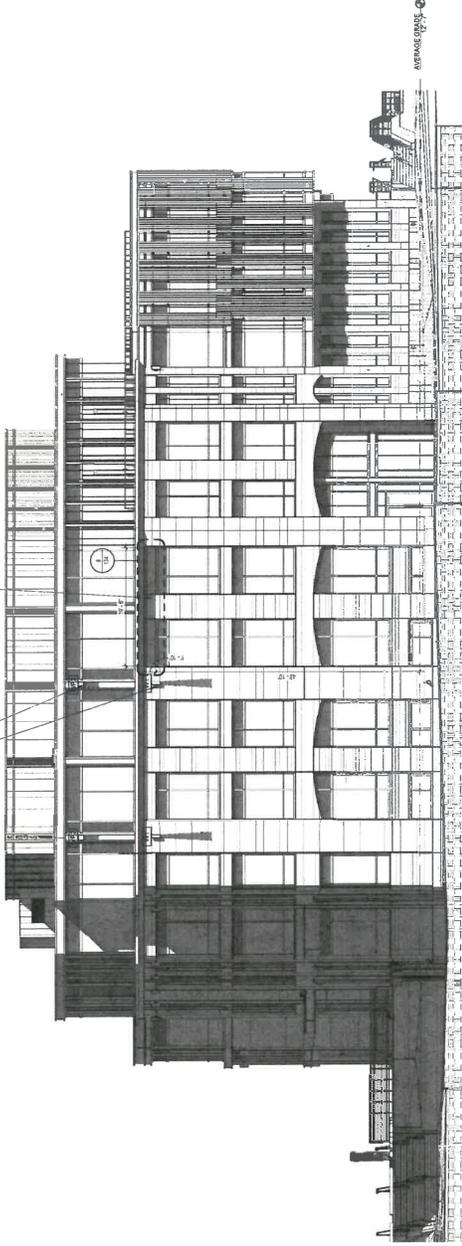
1 SIGNAGE ELEVATION - ENTRY PASSAGE
 1/8" = 1'-0"

SIGNAGE ELEVATION TABLE		
ELEVATION	SIZE	SF
V-1 VAUGHAN STREET	10'0" x 19'0"	36.75 SF

LIGHT WP2, 2.8 SF
TYP. OF 2

LIGHT W1, 9.0 SF
TYP. OF 2

SIGN V-1, 40 SF
MAX



2 SIGNAGE ELEVATION - VAUGHAN STREET
1/8" = 1'-0"

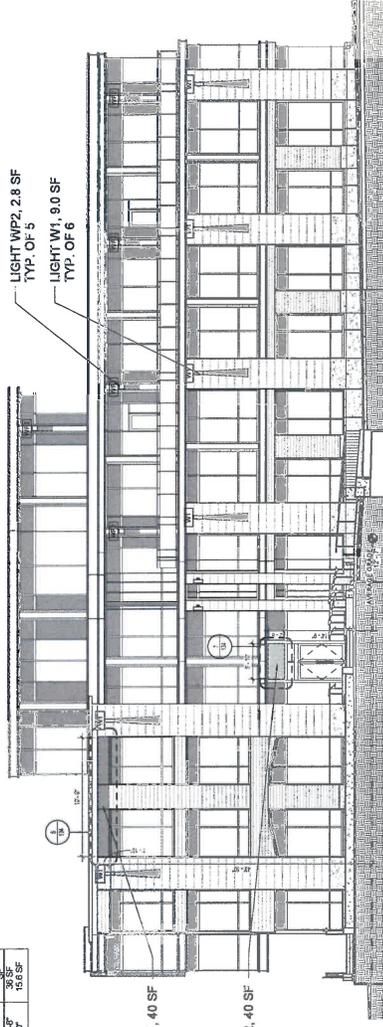
SIGNAGE ELEVATION TABLE		
ELEVATION	SIZE	SF
M-1 MAPLEWOOD	15'0" x 25'0"	37.5 SF
M-2	2'0" x 5'0"	10.0 SF

LIGHT WP2, 2.8 SF
TYP. OF 5

LIGHT W1, 9.0 SF
TYP. OF 6

SIGN M-1, 40 SF
MAX

SIGN M-2, 40 SF
MAX



1 SIGNAGE ELEVATION - MAPLEWOOD AVE
1/8" = 1'-0"



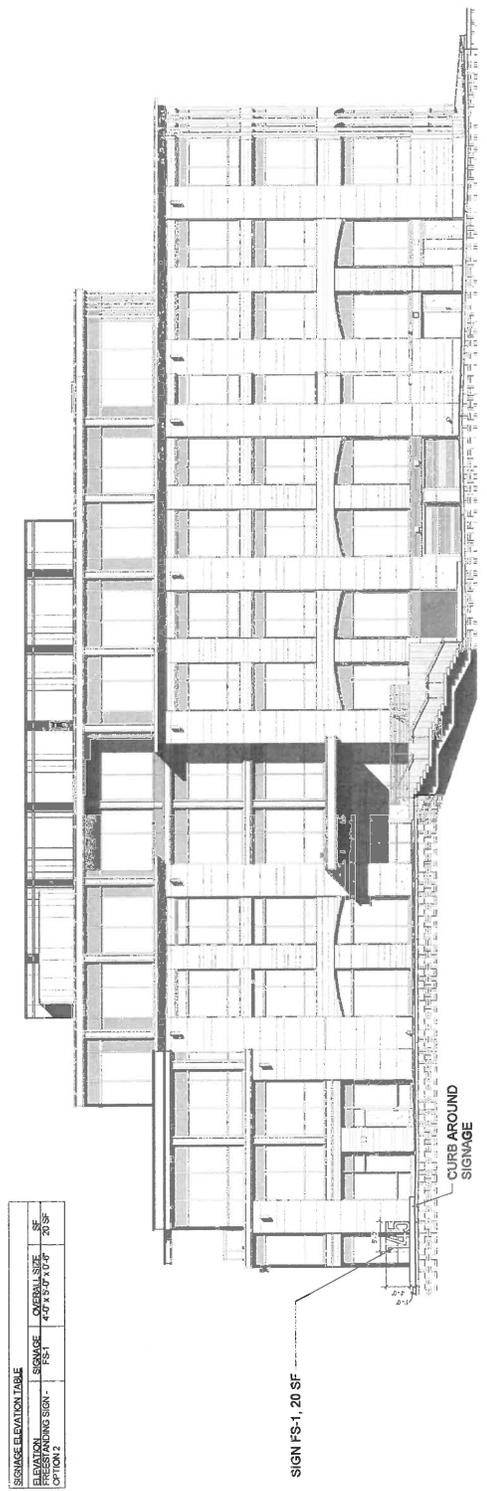
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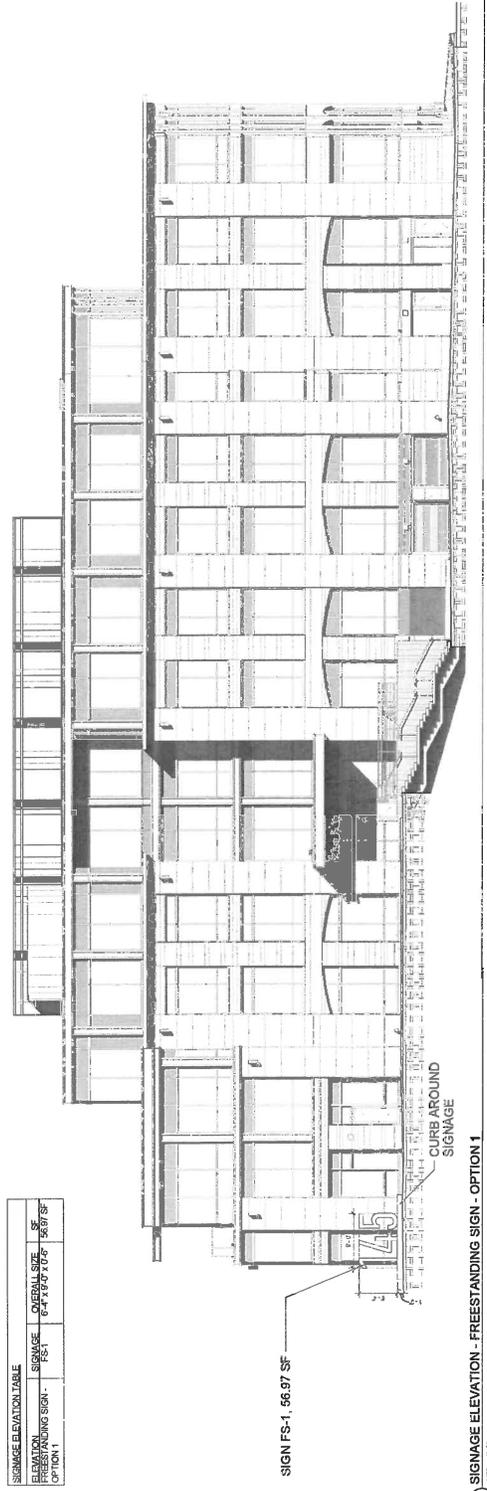


SIGNAGE ELEVATION TABLE		
ELEVATION	SIGNAGE	CURB AROUND SIGNAGE
OPTION 2	FS-1	4'0" x 3'0" x 0'6"
		20 SF

SIGN FS-1, 20 SF

CURB AROUND SIGNAGE

2 SIGNAGE ELEVATION - FREESTANDING SIGN - OPTION 2
 1/8" = 1'-0"



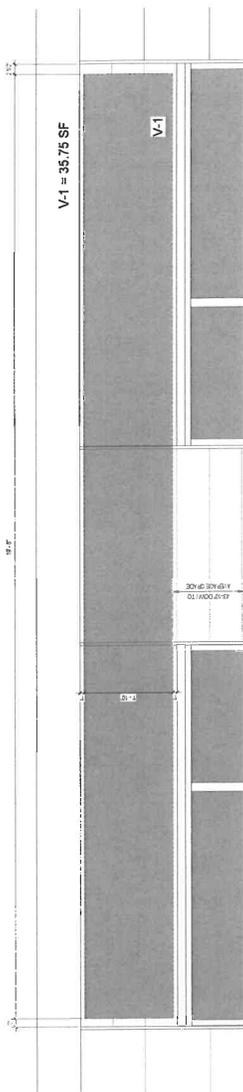
SIGNAGE ELEVATION TABLE		
ELEVATION	SIGNAGE	CURB AROUND SIGNAGE
OPTION 1	FS-1	6'4" x 9'0" x 0'6"
		56.97 SF

SIGN FS-1, 56.97 SF

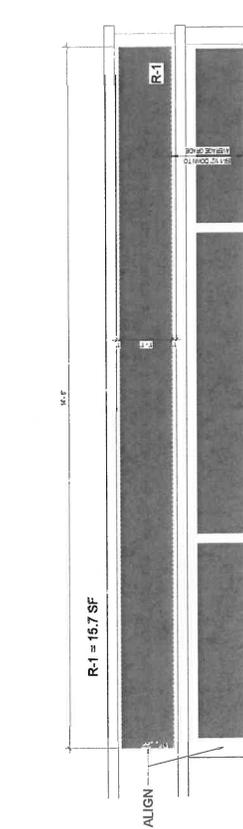
CURB AROUND SIGNAGE

1 SIGNAGE ELEVATION - FREESTANDING SIGN - OPTION 1
 3/8" = 1'-0"

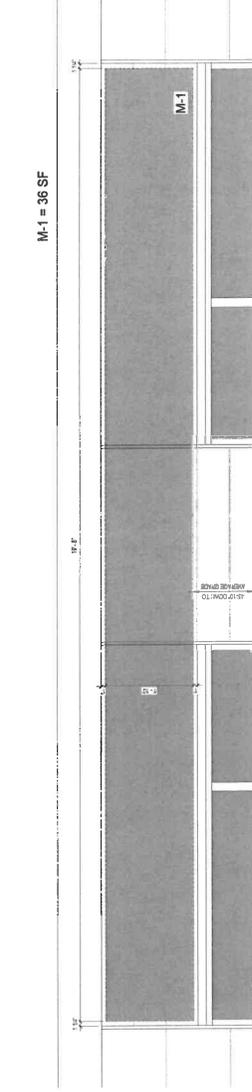
SIGNAGE ELEVATIONS



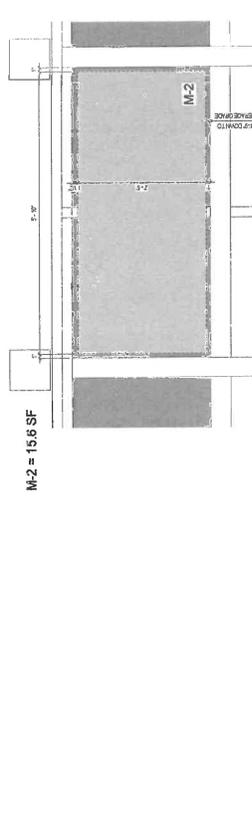
8 ENLARGED SIGNAGE ELEVATION - V-1
1" = 1'-0"



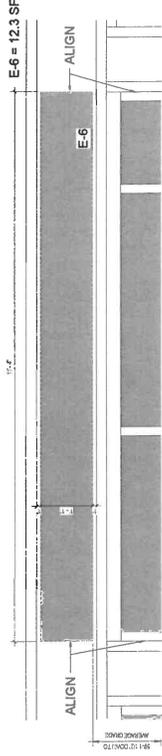
9 ENLARGED SIGNAGE ELEVATION - R-1
1" = 1'-0"



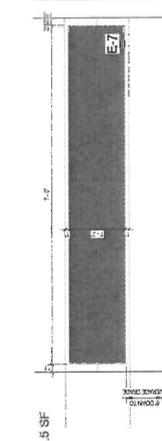
6 ENLARGED SIGNAGE ELEVATION - M-1
1" = 1'-0"



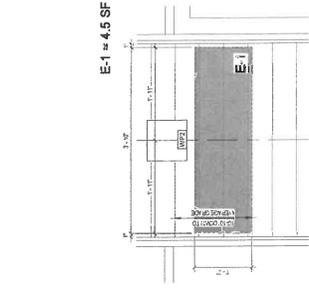
7 ENLARGED SIGNAGE ELEVATION - M-2
1" = 1'-0"



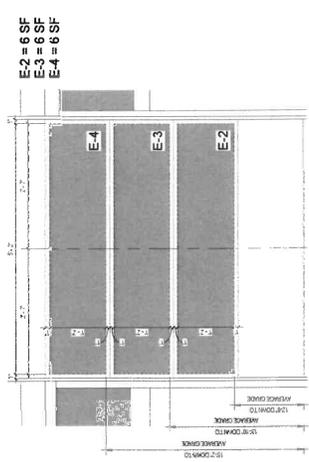
4 ENLARGED SIGNAGE ELEVATION - E-6
1" = 1'-0"



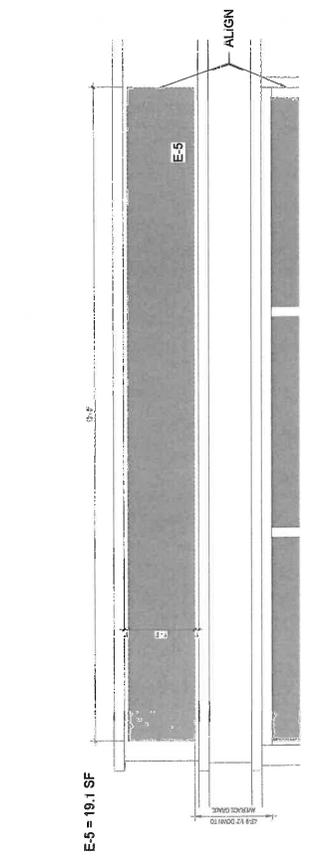
5 ENLARGED SIGNAGE ELEVATION - E-7
1" = 1'-0"



1 ENLARGED SIGNAGE ELEVATION - E-1
1" = 1'-0"



2 ENLARGED SIGNAGE ELEVATION - E-2
1" = 1'-0"



3 ENLARGED SIGNAGE ELEVATION - E-5
1" = 1'-0"



SIGNAGE ELEVATIONS



SOUTHEAST STREET VIEW



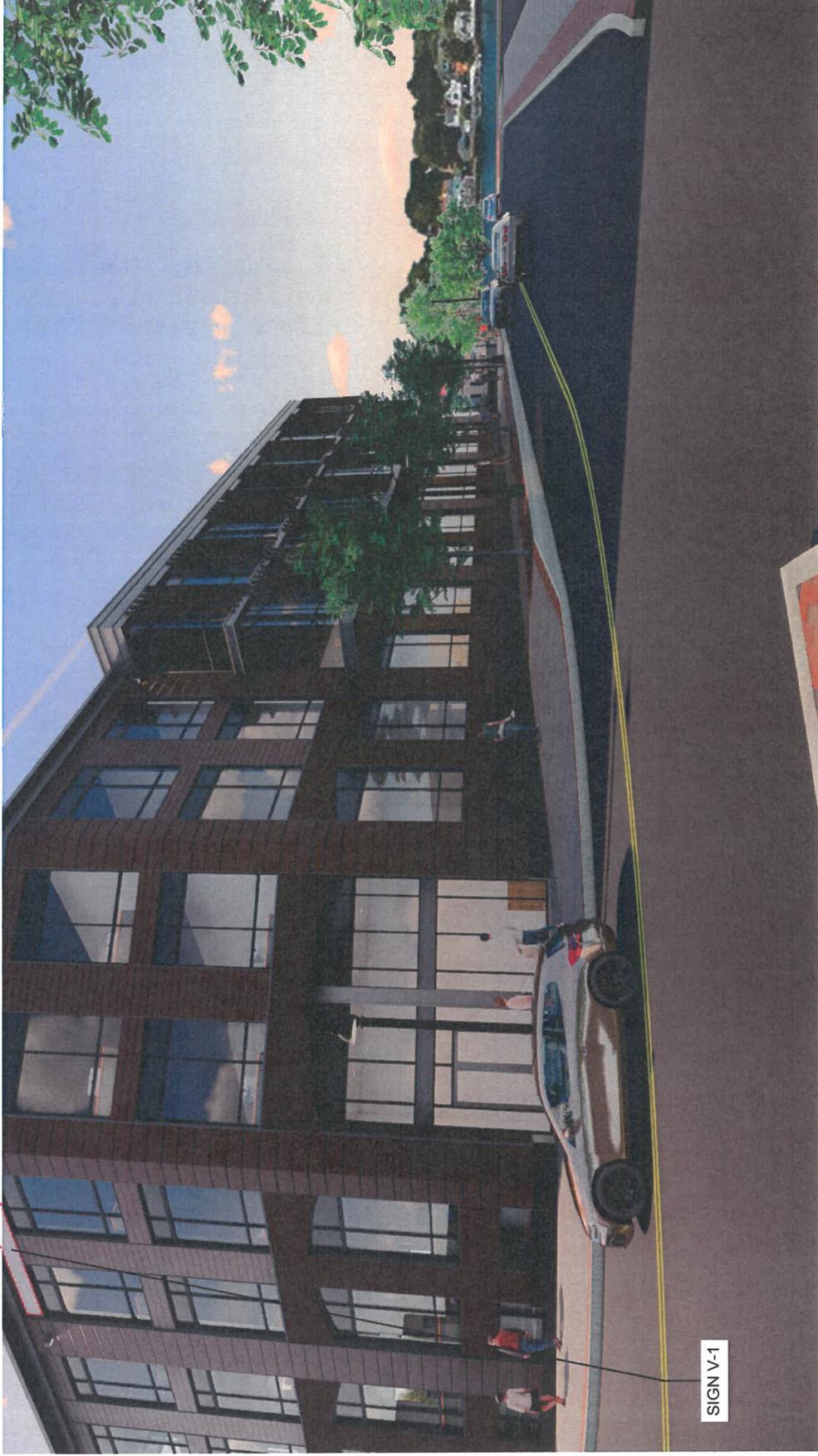
SOUTHEAST STREET VIEW 2



SOUTHWEST AERIAL VIEW



SOUTHWEST STREET VIEW



NORTHWEST STREET VIEW



NORTHEAST STREET VIEW 1



NORTHEAST STREET VIEW 2



NORTHEAST STREET VIEW 3

5/27/2020



CITY OF PORTSMOUTH

Planning Department
1 Junkins Avenue
Portsmouth, New
Hampshire 03801

(603) 610-7216

HISTORIC DISTRICT COMMISSION

May 27, 2020

RJF Maplewood, LLC
30 Temple Street , Suite 400
Nashua, NH 03060

RE: 111 Maplewood Avenue (LUHD-143)

Dear Owner:

The Historic District Commission, at its regularly scheduled meeting of **Wednesday May 20, 2020**, considered your request for administrative approval for changes to a previously approved design. Miscellaneous changes were proposed including:(the penthouse screen, railing location, curtain-wall fin system, terracotta arches, doors, windows, mechanical termination louvers and lighting). As a result of said consideration, the Commission voted to **grant** the Administrative Approval as presented.

The minutes and audio recording of this meeting are available by contacting the Planning Department.

Very truly yours,

Nicholas J. Cracknell, AICP, Principal Planner
for Vincent Lombardi, Chairman of the Historic District Commission

cc:

Eric Nelson, RW Norfolk Holdings, LLC

East Side of Building from Vaughan Street



View from Vaughan at AC Hotel



View from Raynes Avenue



View from Maplewood Avenue



View from Maplewood Avenue





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Total Number of Dwelling Units (for residential projects): 1

Lot area:3,484 square feet

Description of proposed project:

The goal of this project is to add a small mudroom/vestibule to the entryway at the rear of the house. Currently the primary egress gives way directly from the kitchen into the driveway. Because of this the house loses a lot of heat in the winter and a lot of dirt and debris easily comes into the house. Hopefully the added room will help insulate the house to make it more energy efficient and also keep it cleaner.

I am applying for a variance because my house is built on a nonconforming lot and the coverage is already far greater than the 25% limit and so adding to it even a little bit would push the property further into noncompliance. The footprint of the house is 773 square feet and there is a detached shed/garage that takes up 308 square feet which adds up to 1,081 square feet on a 3,484 square foot lot which calculates to 31% coverage. The mudroom addition would add 90 square feet to the house resulting in 1,171 square feet of structure and 34% of coverage.

Description of existing land use: The dwelling house was originally constructed in 1832. Sometime in the early 1980's a garage was constructed at the back of the property. It is currently inhabited by my wife and myself.

Project representatives – Jonathan Sandberg & Anne Poubeau

Description and dimensions of existing and proposed buildings (including building footprint, total gross floor area, and height)

The house footprint is currently 800 square feet and is one and a half stories high. The mudroom/vestibule would add an additional 90 square feet and will be one story high (10 feet)

Existing and proposed distance to property line.

Current distance to north side: 10 ft.

Proposed distance to north side: 10 ft.

rear setback / yard dimensions (this is the distance from a structure to the lot line)

Current rear setback: 62 feet

Proposed rear setback: 56 feet

Site Plan(s) showing existing and proposed conditions including:

Abutting street(s) and street names

Driveways / accessways

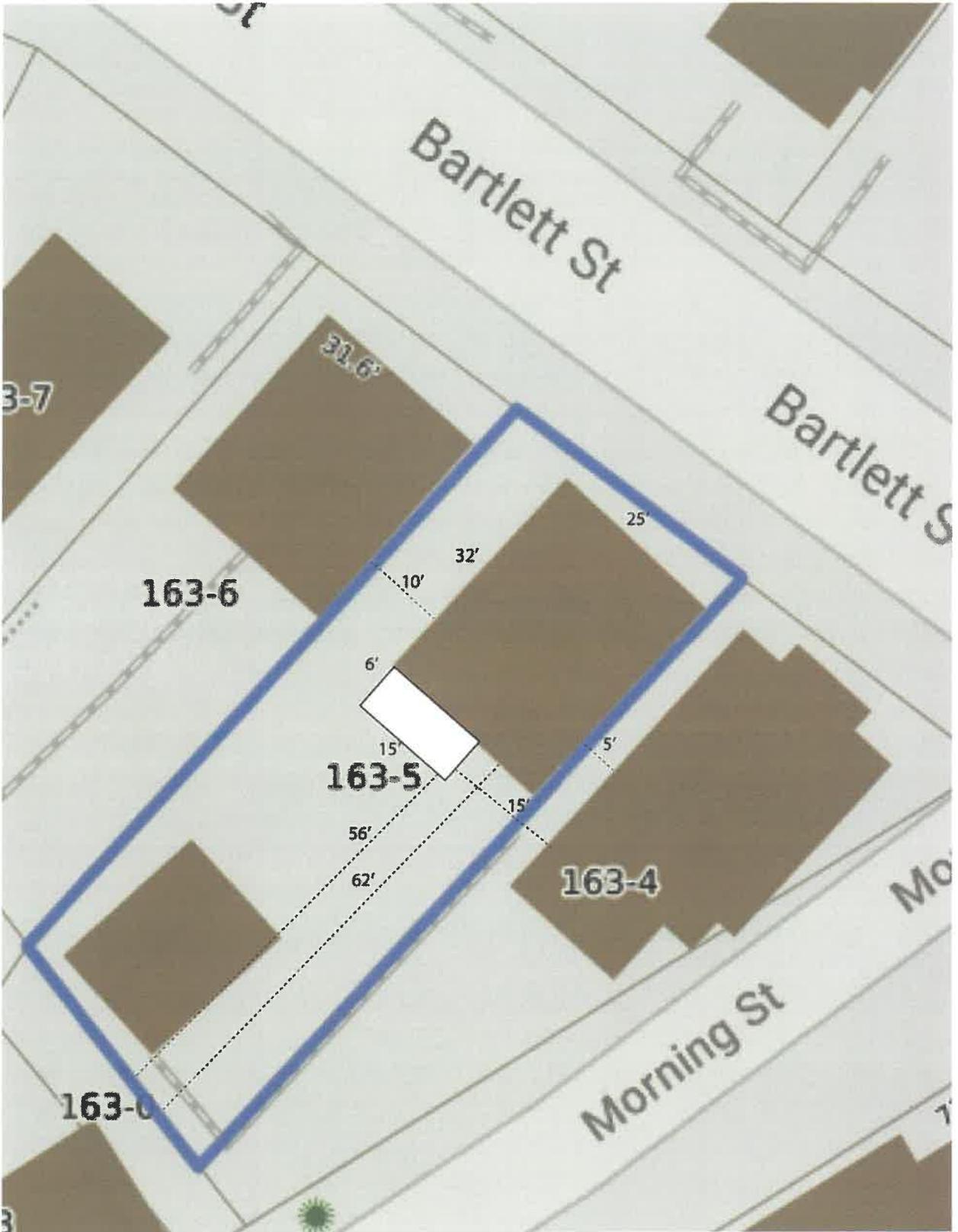
Dimensions (size and height) of structures



Dimensions and location of parking spaces

There is currently enough parking space for four cars (although we only own one). There will be no change to the parking capacity.

Scale of all drawings and plans (the scale is the ratio of the drawing's size relative to the actual size)





Labeled photo(s) of existing conditions

The plan is to build a mudroom that starts at the left corner of the house, extends six feet out to about where the asphalt driveway ends and to the right as far as the bulkhead on the right.



Here you can see how close the house is to our nearest neighbor to the north. Note the mudroom added to the neighboring house.



Here you can see the proximity of the house to the abutting structure to the south. The house was built facing south and so the original front door opens only a few feet from the nextdoor building.



Here you can see the rear of the property and the garage on the property.



Many neighboring houses have mud rooms/enclosed porches added to the rear.



More rear additions on nearby houses.

Written statement explaining how the request complies with the requirements of the Zoning Ordinance as provided in Article 2 (see Section 10.233.20 for Variances, Section 10.232.20 for Special Exceptions).

10.233.31

10.233.32

Owing to special conditions of the property that distinguish it from other properties in the area, (a) no fair and substantial relationship exists between the general public purposes of the Ordinance provision and the specific application of that provision to the property; and (b) the proposed use is a reasonable one. (Under this provision, an unnecessary hardship shall be deemed to exist only if both elements of the condition are based on the special conditions of the property.)

- (a) I am not sure what the general public purpose of the application of this ordinance is, but it should not apply to this neighborhood since virtually no properties on my block are in compliance with it.

(b) It's hard to say that there are special conditions that distinguish it from other properties on the same block in that none of them are in compliance with the 25% maximum coverage requirement. Except that many of them have rear additions whereas mine does not.

This is an unusual property since the structure predates the structures on the abutting properties creating a very dense neighborhood. It is completely reasonable to seek to insulate the property from harsh weather conditions with a mud room/vestibule as has been done on many other nearby properties.

Zoning Board of Adjustments
City of Portsmouth 1
Junkins Avenue
Portsmouth, NH 03801

RE: 25-27 Morning Street Portsmouth
MLB 0163--0019--0000- Book
Page 5346/2990

Proposed Improvement:

We seek to build a 21 x 6 foot wooden deck on the Southeastern side of the condominium. This is a two family/two unit condominium. This deck will allow our family a private area on our side of the building. The common area of the two unit house is split in a way that the small yard has a walkway through our side for both units to the parking. The deck will be on the first floor and will not impede parking. The Association for the Condominiums agrees to all parts of the planned improvement and a letter certifying that is attached. The property is already nonconforming as to, building coverage and side yard setbacks. Many of the houses in this small neighborhood are as well. The deck is tastefully designed and will conform to the general characteristics of the neighborhood - all of the yards face each other and have the feel of a village. We have spoken to many neighbors who support for our desire to more enjoy the outside and have more light and sun in our house that this project will give. We have lived and worked in Portsmouth throughout decades since the 1970's and we hope to spend our retirement years in this beautiful home.

Variance Relief

1. **Setback:** .to allow a two foot setback for the side of the deck where a 10 foot setback is required. (Current setback of house is 1 foot)
2. **Building Coverage:** to allow a 31.6% where a 25% is required. (Current building coverage is 28.5%)

10.233.21 The variance will not be contrary to the public interest; and 10.233.22 The spirit of the Ordinance will be observed:

There are many houses in this neighborhood that do not comply with the setback or coverage requirement. The house was built more than a hundred years ago as were many around it. This whole neighborhood is quirky and smaller houses were squeezed into nonconforming lots. The proposed improvement will remain consistent with the character of the neighborhood and will not or threaten the health, safety and welfare of the public. This improvement will observe the spirit of the Ordinance and not be contrary to public interest. The essentially residential characteristics of the neighborhood would not be altered by this improvement.

10.233.23 Substantial justice will be done;

The requested setback and building coverage relief is reasonable. The house was built before many of the surrounding houses and lots were all nonconforming regarding setbacks and

building coverage. The proposed deck is within the existing non-conforming footprint and will not increase the non-conforming setbacks at all. A deck will allow privacy from the other condominium and it is reasonable for the Board to conclude that substantial justice will be done by granting this variance.

10.233.24 The values of surrounding properties will not be diminished;

Our home was refurbished recently and contributes to the property values in the area. The windows, siding and roof have all been updated. The proposed deck will increase the value of the house and may help maintain, or raise the values of the surrounding properties. It is reasonable for the Board to conclude that the values of the surrounding properties will not be diminished.

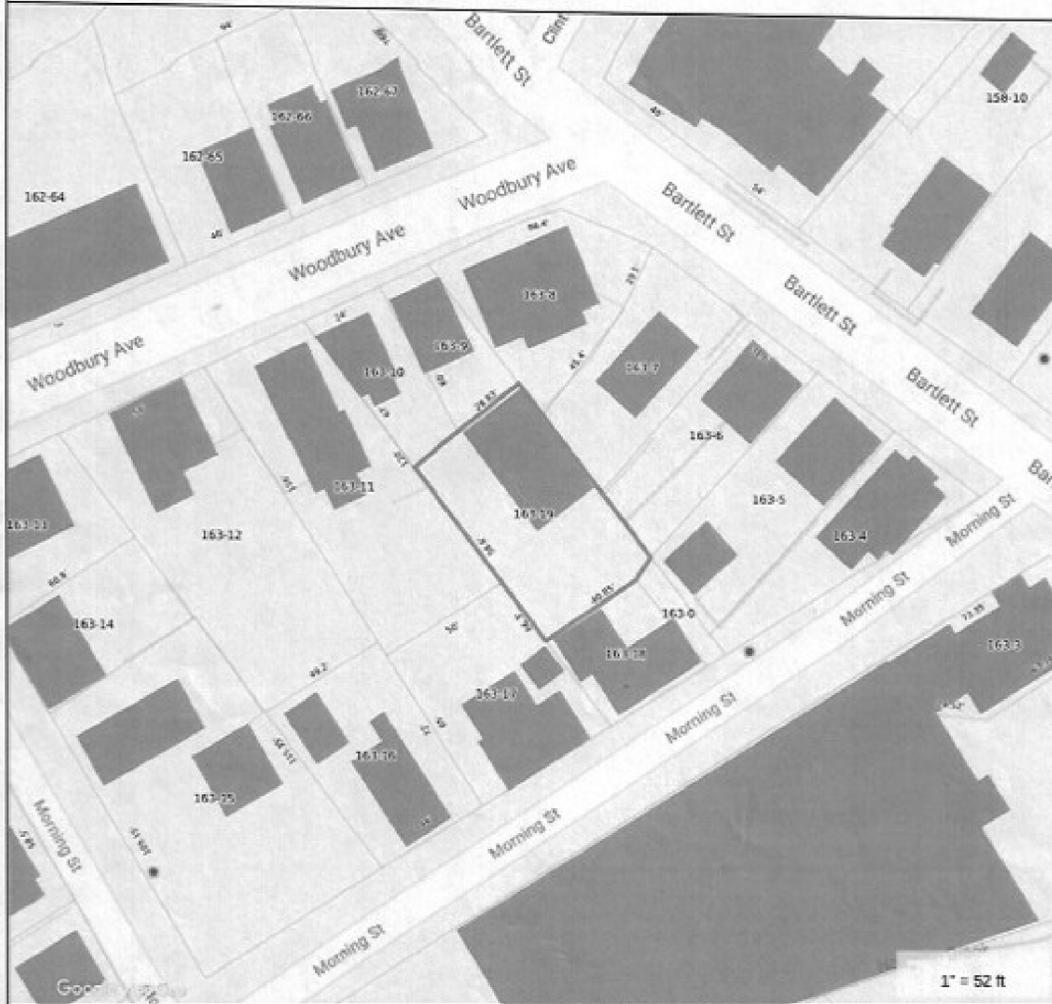
10.233.25 Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship.

This hundred year old house and lot are unique. The building is up against the property lines on two sides. The doors lead from southern side and the only way to reach the parking is through the small yard. We are lucky to have nice neighbors and we all make the quaint setup work. This unique situation does not allow our family a private outdoors space. There is no other way to achieve that because of the walkway and the parking. Literal enforcement of the provisions of the Ordinance will result in an unnecessary hardship.

In conclusion, please consider approving the variances we are seeking. We hope to enjoy this house in this quirky neighborhood in Portsmouth for many years to come. Thank you for your consideration.

Carla and Edward Rice.

25 Moring St B



Property Information
Property ID: 0163-0019-0002
Location: 25 MORNING ST #B
Owner: RICE FAMILY REVOCABLE TRUST OF 1988



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 4/1/2019
Data updated 7/17/2019



NOTES:

- THIS PLAN DOES NOT SHOW ANY UNRECORDED OR UNWRITTEN EASEMENTS WHICH MAY EXIST. A REASONABLE AND DILIGENT ATTEMPT HAS BEEN MADE TO DISCOVER ANY APPARENT VISIBLE EASEMENTS OF THE LAND. HOWEVER, THIS DOES NOT CONSTITUTE A GUARANTEE THAT NO SUCH EASEMENTS EXIST.
- THE LOCATION OF THE UNDERGROUND SERVICE LINES ON THIS PARCEL ARE APPROXIMATE ONLY. SEE LEGEND BELOW.

PLAN REFERENCES:

PLAN OF LOTS NO. 26 MORNING ST. PORTSMOUTH, NH. SCALE: 1"=40' DATED DEC. 1942 BY JOHN W. DUNN ASSOCIATES, INC. FILE NO. 242 PLAN NO. 4323 NOT RECORDED.

PLAN OF LOT PORTSMOUTH, N.H. FOR JAMES S. GREER & HIS SUCCESSORS. SCALE: 1"=10' DATED JANUARY 7, 1960 BY JOHN W. DUNN ASSOCIATES, INC. C-3229.

RECORD OWNERS

TIMOTHY C. GAUDREAU & ATLANTA MOURRATH
209 JONES AVENUE
PORTSMOUTH, NH 03801
BK. 5317 PL. 3314

LOU A. CLARK
27 MORNING STREET
PORTSMOUTH, NH 03801
BK. 5317 PL. 3314
BK. 5346 PL. 2560

4.160 S.F.
0.10 ACRES

TOTAL LCA

UNIT A 906 S.F.

UNIT B 909 S.F.

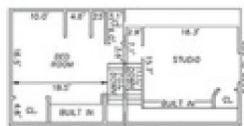
COMMON AREA 1,353 S.F.

LEGEND

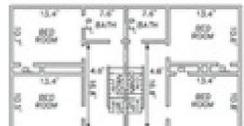
- UP FIND ASSESSORS MAP AND PARCEL
- SEWER MANHOLE
- SEWER SERVICE LOCATION IS UNKNOWN
- APPROXIMATE EXISTING WATER SERVICE
- APPROXIMATE GAS SERVICE (LOCATION AS PER INFORMATION PROVIDED BY UNITS)
- UTILITY POLE
- OVER HEAD WIRE

UTILITIES NOTE:

THE LOCATION OF UTILITIES SHOWN HEREON IS BASED ON INFORMATION PROVIDED BY OWNERS, AND WHERE POSSIBLE FROM MEASUREMENTS TAKEN IN THE FIELD, AND ARE FOR INFORMATIONAL PURPOSES ONLY. THE CONTRACTOR SHALL CONTACT "GOSWART" AT 1-888-264-7222 AT LEAST 72 HOURS PRIOR TO ANY EXCAVATION TO REQUEST MARKING OF UNDERGROUND UTILITIES. MILLENNIUM ENGINEERING, INC. ASSUMES NO RESPONSIBILITY FOR ANY DAMAGES INCURRED DIRECTLY OR INDIRECTLY RESULTING THEREFROM.



UNIT A 427 S.F. UNIT B 310 S.F.
3RD FLOOR 3RD FLOOR



UNIT A 477 S.F. UNIT B 477 S.F.
2ND FLOOR 2ND FLOOR



UNIT A 475 S.F. UNIT B 475 S.F.
1ST FLOOR 1ST FLOOR



UNIT A 482 S.F. UNIT B 478 S.F.
BASEMENT BASEMENT



PURSUANT TO RSA 478:16-I AND RSA 478:14 I CERTIFY THAT THIS SURVEY PLAT IS NOT A SUBMISSION PURSUANT TO THIS TITLE AND THAT THE LINES OF STREETS AND WAYS SHOWN ARE THOSE OF PUBLIC OR PRIVATE STREETS OR WAYS ALREADY ESTABLISHED AND THAT NO NEW WAYS ARE SHOWN.

I CERTIFY THAT THIS ACTUAL SURVEY WAS MADE ON THE GROUND IN OCTOBER OF 2013.

THAT THIS PLAT CONFORMS TO THE RULES AND REGULATIONS OF THE REGISTER OF DEEDS.

THAT THIS SURVEY AND PLAT CONFORM TO THE REQUIREMENTS FOR ACCOUNT FOR THIS URBAN SURVEY AND IS IN COMPLIANCE WITH THE PROVISIONS OF NEW HAMPSHIRE RSA 288:8(a)(2) & (c) AND THAT UNITS A & B ARE SUBSTANTIALLY COMPLETE.

CONDOMINIUM PLAN
IN
PORTSMOUTH, NH

SHOWING
UNITS A & B OF THE
25 & 27 MORNING STREET CONDOMINIUM
AT 25 & 27 MORNING STREET
(ASSESSORS MAP 163 LOT 16)

RECORD OWNERS
TIMOTHY C. GAUDREAU & ATLANTA MOURRATH
209 JONES AVENUE PORTSMOUTH, NH 03801
LOU CLARK
27 MORNING STREET PORTSMOUTH, NH 03801

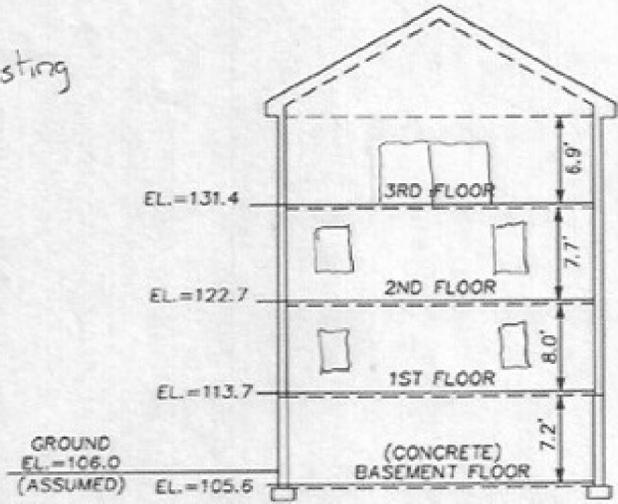
MILLENNIUM ENGINEERING INC.
ENGINEERS AND LAND SURVEYORS
P.O. BOX 740, 13 HAMPTON ROAD, EXETER, NH 03833
PHONE: (603) 778-0028 FAX: (603) 772-0059 WEB: ME-INC-NH.COM

SCALE: 1"=10' CALC. BY: R.H.B. PROJECT: E131532
DATE: OCT. 13, 2013 CHRG. BY: P.O.B. SHEET: 1 OF 1

NO.	DATE	DESCRIPTION	BY

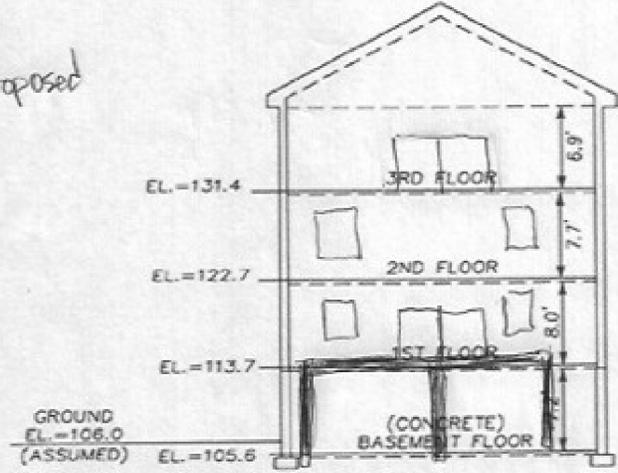
25 & 27 Morning St - 2 Fam Condo Elevation

Existing



END ELEVATION (SOUTHERLY)
NOT TO SCALE

Proposed

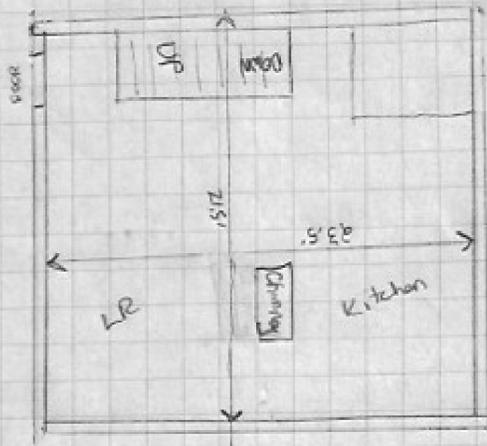


2x6 Deck on 1st floor

END ELEVATION (SOUTHERLY)
NOT TO SCALE

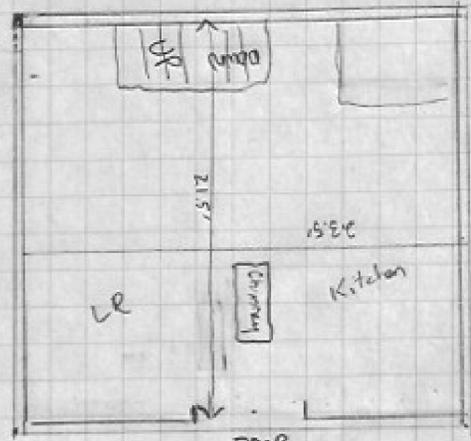
25 & 27 Morning St. 2FAM CONDO - Interior

Existing
475 S.F.



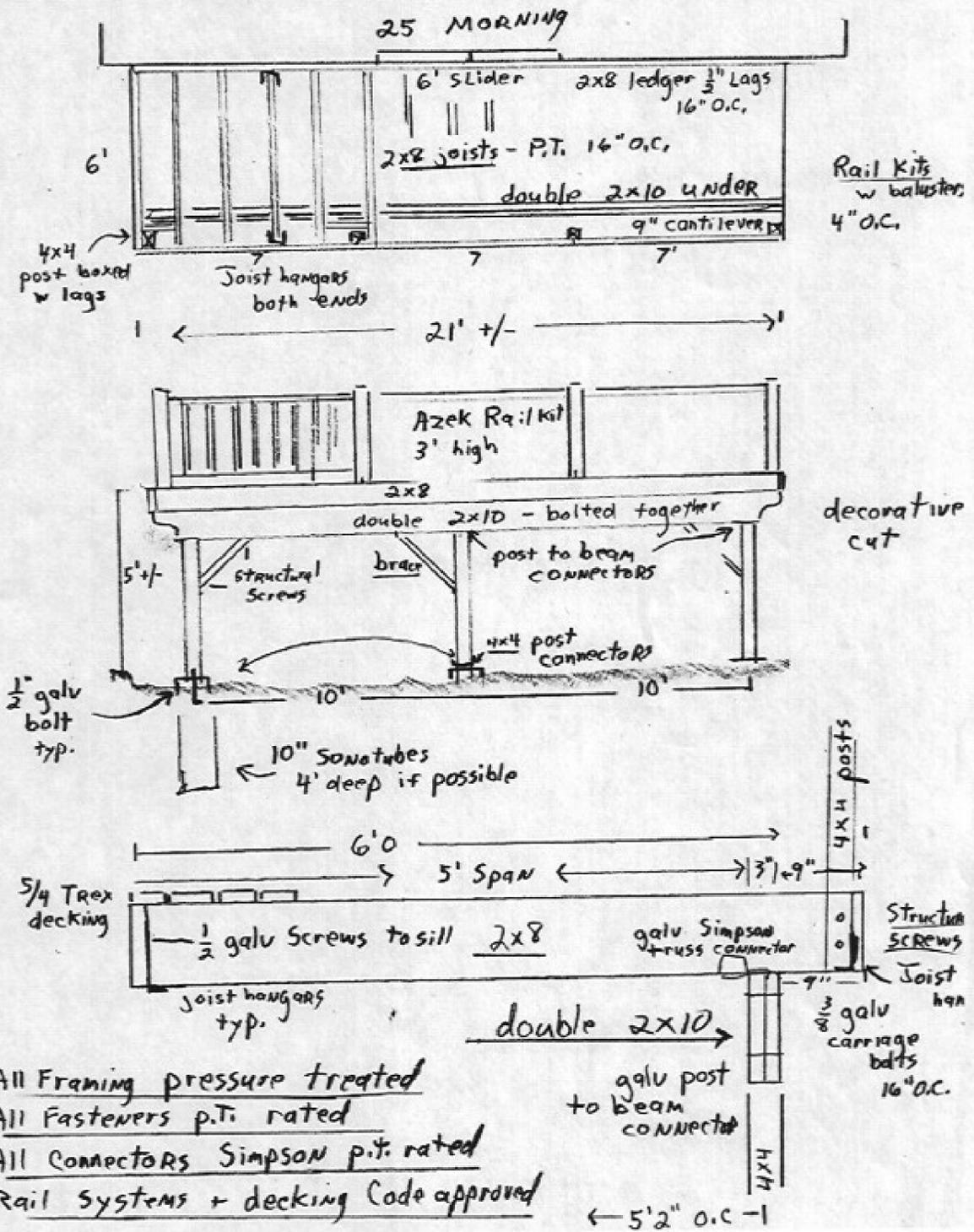
Proposed

475 SF

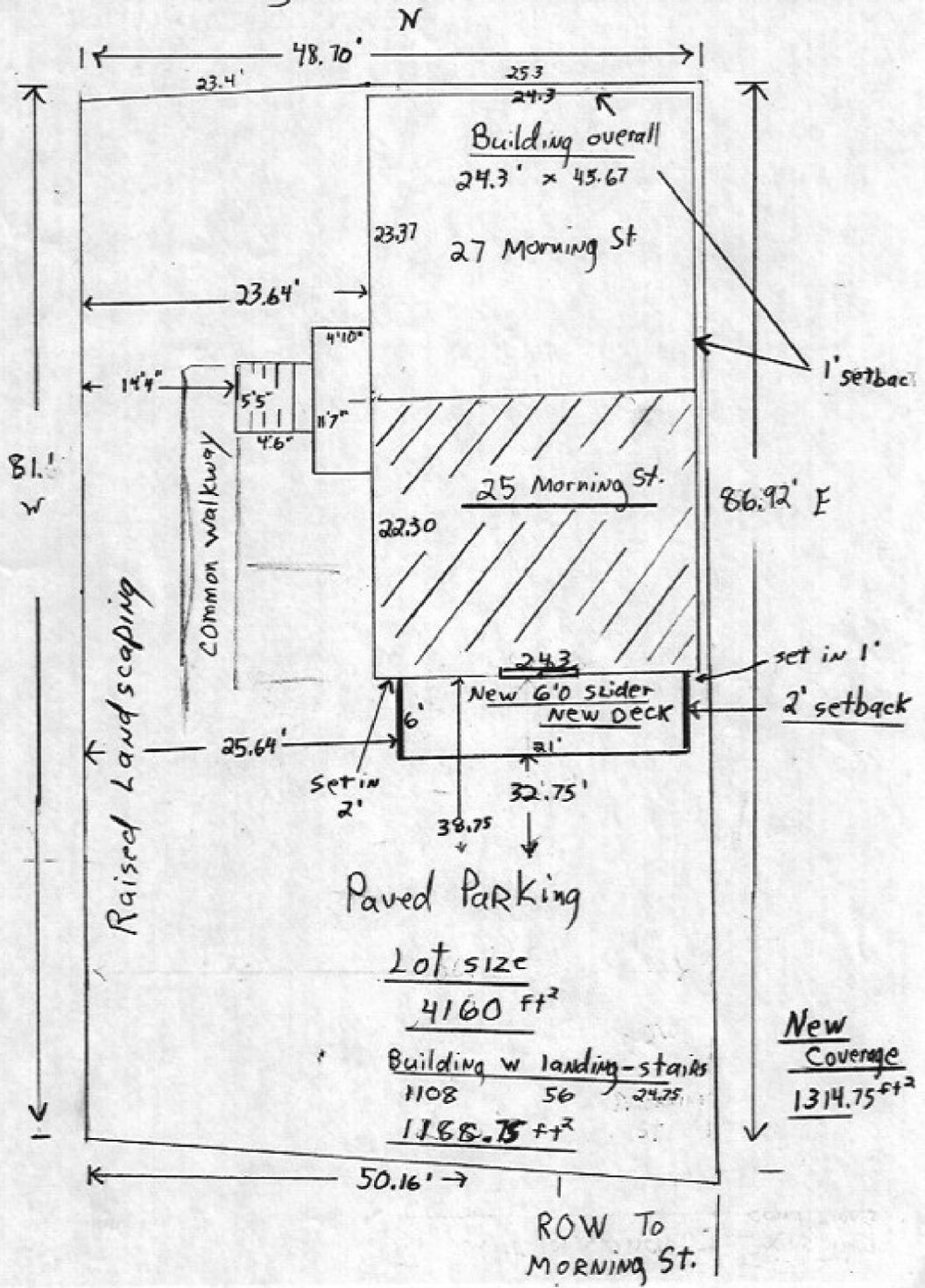


DOOR
6 FT SLIDER

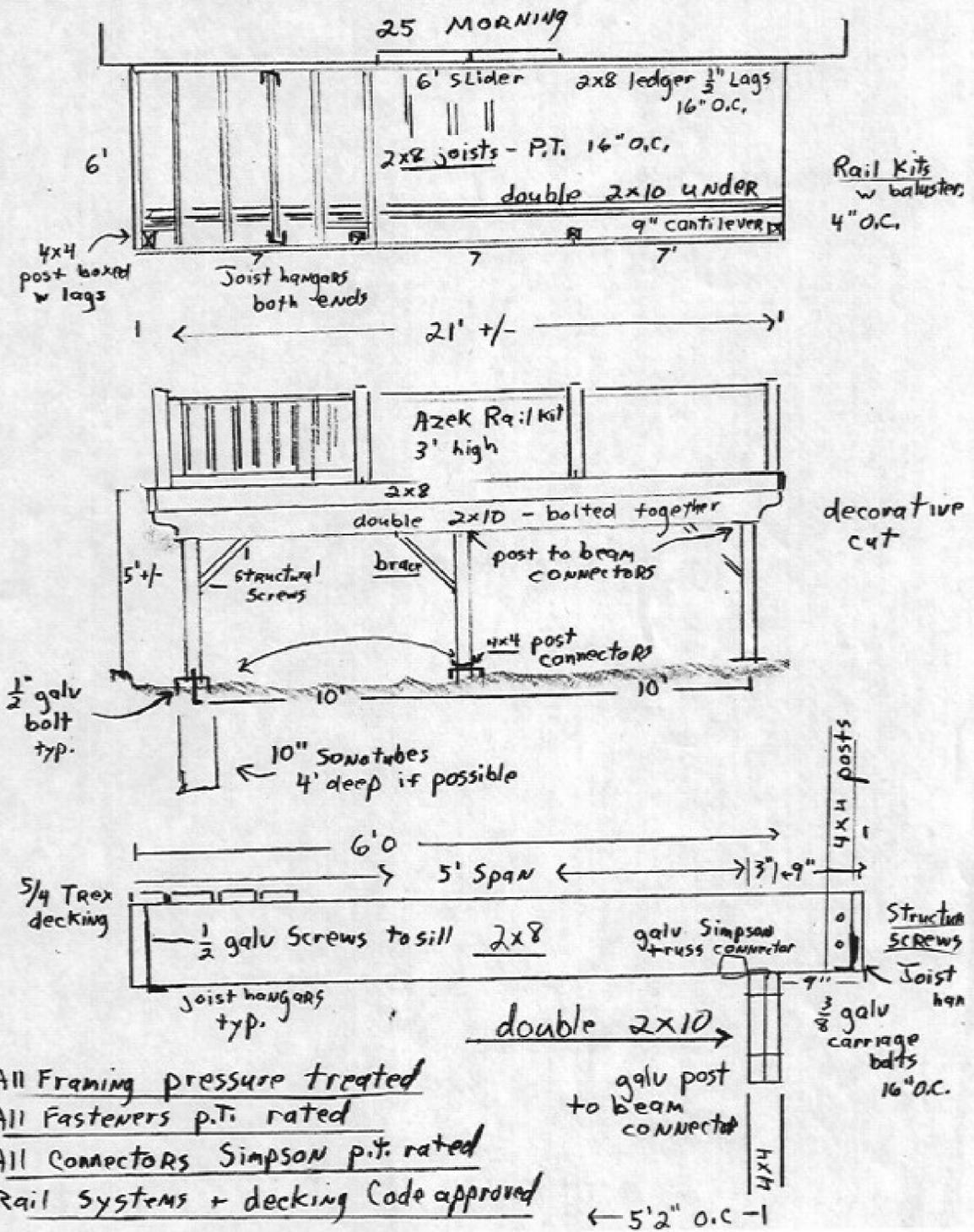
25+ 27 Morning St. - 2 Fam Condo - Deck Framing pk



25 + 27 Morning St. - 2 Fam. Condo w. New 6x21 deck



25 + 27 Morning St. - 2 Fam Condo - Deck Framing pk







Chairman of the Board of Adjustment
C/O Planning Department City of Portsmouth
1 Junkins Ave.
Portsmouth, NH 03801

Date: November 24, 2020

To the Chairman of the Board of Adjustment,

Please find this Letter of Intent in support of Request for Variance for 303 Thornton St, Portsmouth, NH 03801.

This Letter of Intent is in support of relief from front setback for a proposed addition onto our existing non-conforming home. The intent of this addition is to expand by 12' x 30', adding two stories to our existing structure. As such, based on the current code, I am seeking relief from section 10.521 for the addition to be constructed within the front setback.

My current home is built on a non-complying lot of record located in a "GRA" residential district. The current zoning requirement effective for the "GRA" lot district calls for a 15-foot setback, and although not a requirement for my lot, would keep in spirit of the intent and would remain consistent with "GRA" zoning and my neighborhood. As a result of the site plan, it would require a variance on the west side (front) to allow for a 5-foot setback.

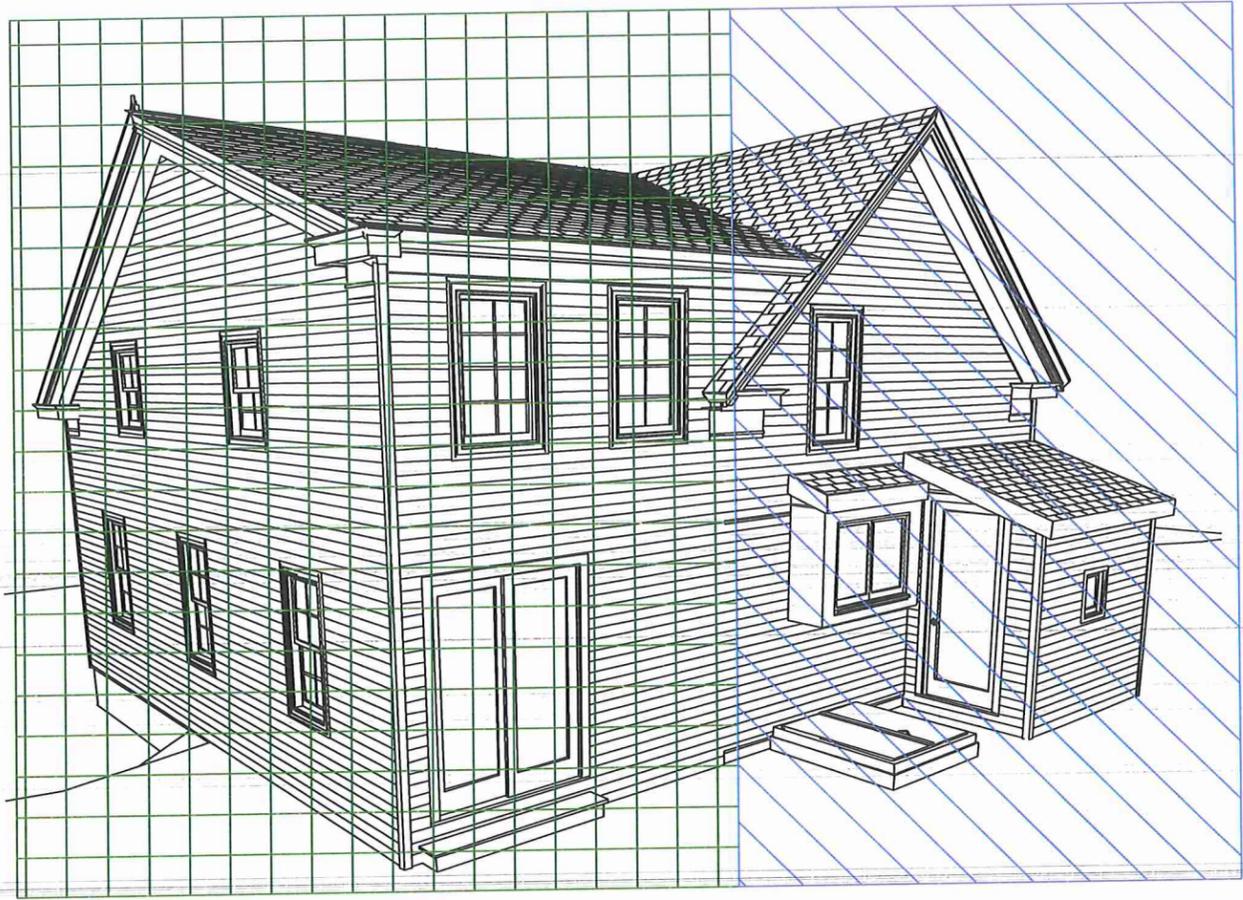
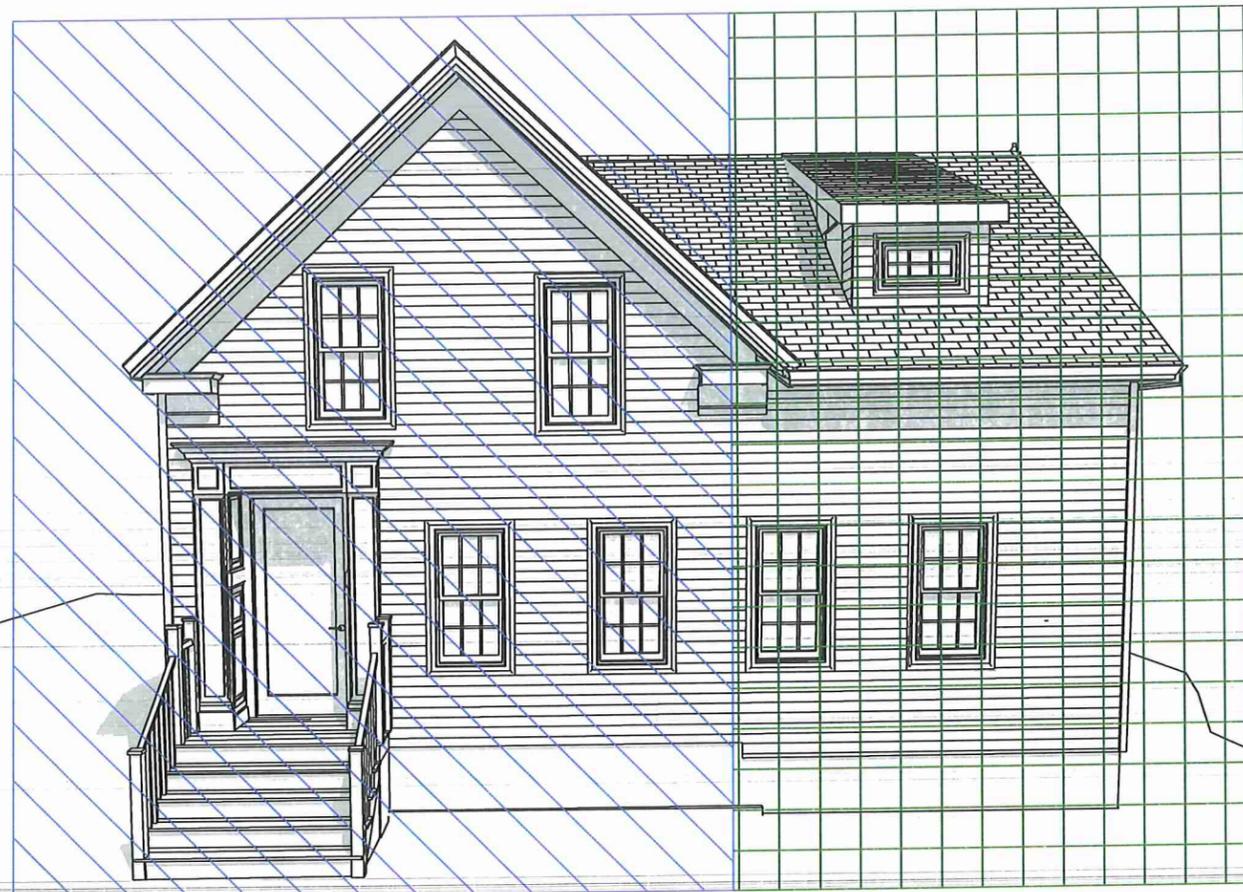
With the proposed addition I am asking for relief in full respect to the board criteria:

- (1) that the new addition is intended to stay within the character of the neighborhood and comply with section 10.233.20 of the city of Portsmouth, NH Zoning ordinance agreement
- (2) with our community growing, the investment to the property would positively impact our existing neighborhood
- (3) the proposed style and structure of the house is in conjunction with the existing neighborhood
- (4) the proposed project would result in an overall increase in property value and tax base created by these improvements.
- (5) given the existing non-conforming placement of the home sitting within the front property setback our hardship cannot be avoided. The only to cost effectively expand our modest footprint on the first floor living space and a second floor to add a 3rd bedroom is to stay within the existing front footprint line. The barriers that exist at the back are the location of the bulkhead and the existing 2nd floor bathroom and additionally the left side of the property is also within setback equally forcing us to seek a variance. After much review, an addition off the front is cost-effective, stays with the spirit of the neighborhood and the original design of the home.

Thank you for your time. I appreciate the Boards' consideration in this matter.

Respectfully submitted,

Sean C Miller
303 Thornton Street
Portsmouth, NH 03801



OVERVIEW FRONT VIEW

SCALE: NTS

SPECIFICATIONS + NOTES

- *ROOFING MATERIAL: TO MATCH EXISTING
- *ALL TRIM PACKAGE: TO MATCH EXISTING
- *SIDING: TO MATCH EXISTING
- *BRACKETS: ProWood Market - Bracket 02T9 - P 32", H:42", T: 5.5" (Pld: WHITE)

*WINDOWS ALL NEW

- _MANUFACTURER: MATTHEW BROTHERS
- _EXT. FINISH: WHITE
- _INT. FINISH: WHITE

*DOORS ALL NEW

- _MANUFACTURER: REEB WOOD (INTERIOR) JELD-WEN (EXT. SLIDER)
- _EXT. FINISH: WHITE
- _INT. FINISH: WHITE

*BATHROOMS:

- _FLOORING: TILE
- _SHOWER FLOOR: TILE
- _SHOWER WALLS: TILE
- _SHOWER HEADS: KOHLER OR EQ.
- _SHOWER NICHE VS. SHELVES
- _SHOWER DOOR
- _NOTE: MAJOR PLUMBING CHANGES

*FLOORING:

- _1ST FLOOR: TO MATCH EX.
- _2ND FLOOR: TO MATCH EX.

*KITCHEN:

- _CABINETS: Specs to be prepared on 11 x 17 doc.
- _BUILT-IN NOTES:
- _APPLIANCES: TO REMAIN
- *MANTLE: TO BE DESIGNED AS CORNER UNIT
- *FIREPLACE: JACKSONS
- _GAS
- _WOOD: INT. FIREBOX: RED BRICK VS. YELLOW BRICK
- _HEARTH: RAISED VS. FLUSH

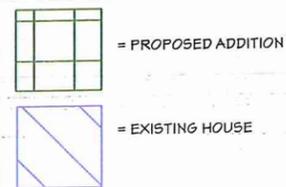
NOTES:

- *CEILING HEIGHTS: 1ST FLOOR: 8' | 2ND FLOOR: EXISTING: 6'2" | ADDITION: 9'6"
- *CORNER BOARDS: 6" TYP
- *WATER TABLE: TO MATCH EXISTING
- *RAKE BOARD: TO MATCH EXISTING
- *SOFFIT - BEADBOARD AZEC OR EQ.
- *ROOF VENT - RIDGE VENT VS. BROSCO LOUVERED VENT VS. SOFFIT VENT
- *ARCHITECTURAL DETAIL:
- *WINDOW TRIM: TO MATCH EXISTING

TOTAL LIVING AREA:

- EXISTING: 956 SF
- PROPOSED: 1,662 SF
- DISTURBED AREA: 353 SF

CAD BLOCK KEY



GENERAL NOTES:

1. DO NOT SCALE DRAWINGS
2. ALL TRASH GENERATED BY THE CONTRACTOR WILL BE PLACED IN A TRASH CONTAINER PROVIDED BY THE CONTRACTOR ON SITE AT THE END OF EACH DAY.
3. VERIFY ALL DIMENSIONS, CONDITIONS, AND UTILITY LOCATIONS ON THE JOB SITE PRIOR TO BEGINNING ANY WORK OR ORDERING ANY MATERIAL. NOTIFY DESIGNER OF ANY CONFLICTS OR DISCREPANCIES IN THE DOCUMENTS IMMEDIATELY.
4. ALL ELECTRICAL AND MECHANICAL WORK SHALL BE PERFORMED BY SUB-CONTRACTOR AND COORDINATED BY THE GENERAL CONTRACTOR AND INTERIOR DESIGNER WITH RESPECT TO LIGHTING AND CEILING DETAILS.
5. COORDINATE ALL ELECTRICAL AND MECHANICAL FIXTURES TO FIT WITHIN CEILING, FLOOR, AND WALL SPACES. VERIFY LOCATIONS WITH DESIGNER.
6. IT IS THE INTENT AND MEANING OF THESE DOCUMENTS THAT THE CONTRACTOR AND EACH SUBCONTRACTOR PROVIDE ALL LABOR, TRANSPORTATION, SUPPLIES, EQUIPMENT, ETC. TO COMPLETE THE WORK WITHIN THE RECOGNIZED STANDARDS OF THE CONSTRUCTION INDUSTRY.

PRELIMINARY SET FOR BID SET ONLY - NOT FOR CONSTRUCTION USE.



OVERVIEW

DRAWING INDEX

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- 2 SITE PLAN
- 3 DEMO
- 4 FOUNDATION
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- 6 SECOND FLOOR
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- 8 SCHEDULE
- 9 ELEVATIONS
- 10 ELEVATIONS
- 11 SECTION
- 12 FRAMING
- 13 OVERVIEW
- 14 ROOFS
- 15 DETAILS
- 16 KITCHEN
- 17 BATH
- 18 CABINETRY
- 19 PERSPECTIVES

CLIENT:

SEAN MILLER & DEE VENELLO
503 THORNTON STREET
PORTSMOUTH, NH

CONTACT:

AMY DUTTON HOME
9 WALKER STREET | KITTERY, ME
amy@amyduttonhome.com
207.703.0646

DATE:

12/4/20

SCALE:

SCALED FOR:
24" x 36"

DRAWING SCALE

SHEET:

A1

CALCULATIONS

ZONING MAXIMUMS:

front setback: 15'
 rear setback: 20'
 side setbacks: 10'
 lot coverage: 25%

EXISTING CONDITIONS:

LOT SIZE: 0.14
 ANTICIPATED DISTURBED AREA: 353 SF
 FRONT/REAR HEIGHT: 21'-11" FRONT | 22'-0" BACK
 LIVABLE SF: 956 SF
 FIRST FLOOR 543 SF
 3/4 STORY 413 SF
 BASEMENT 0 SF
 PORCH, ENCLOSED 0 SF
 PORCH, OPEN 0 SF
 GROSS SF: 1,643 SF
 FIRST FLOOR 543 SF
 3/4 STORY 551 SF
 BASEMENT 551 SF
 PORCH, ENCLOSED 40 SF
 PORCH, OPEN 0 SF

EXISTING SETBACKS:

FRONT: 5'-1"
 REAR: 112'-7"
 LEFT: 6'-1"
 RIGHT: 21'-2"

AREA OF FOOTPRINT: 629 SF
 EXISTING LOT COVERAGE: 7.60%

PROPOSED CONDITIONS:

ROOF: 21'-11" FRONT | 22'-0" BACK

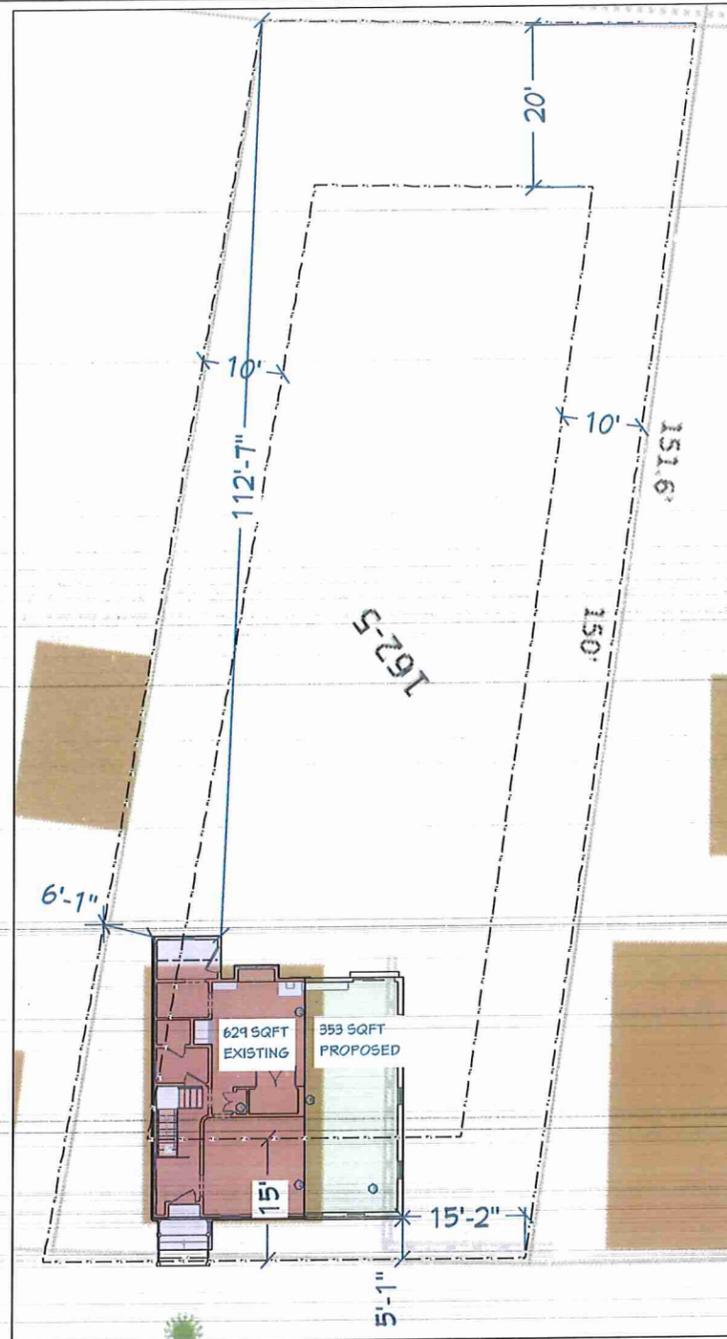
FRONT/REAR HEIGHT:

LIVABLE SF: 1,662 SF
 FIRST FLOOR 896 SF
 3/4 STORY 766 SF
 BASEMENT 0 SF
 PORCH, ENCLOSED 0 SF
 PORCH, OPEN 0 SF
 GROSS SF: 2,732 SF
 FIRST FLOOR 896 SF
 3/4 STORY 904 SF
 BASEMENT 904 SF
 PORCH, ENCLOSED 40 SF
 PORCH, OPEN 0 SF

PROPOSED SETBACKS:

FRONT: 5'-1"
 REAR: 112'-7"
 LEFT: 6'-1"
 RIGHT: 15'-2"

AREA OF FOOTPRINT: 982 SF
 EXISTING LOT COVERAGE: 11.87%

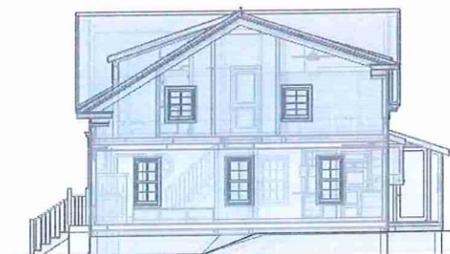


SITE PLAN

SCALE: 1" = 10'-0"



GOOGLE SATELITE SITE PLAN



GLASS HOUSE ELEVATION - SIDE VIEW

PRELIMINARY SET FOR BID SET ONLY - NOT FOR CONSTRUCTION USE.



SITE PLAN

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CLIENT:

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 303 THORNTON STREET
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 9 WALKER STREET | KITTERY, ME
 amy@amyduttonhome.com
 207.703.0646

DATE:

12/4/20

SCALE:

SCALED FOR
 24" X 36"

DRAWING SCALE

SHEET:

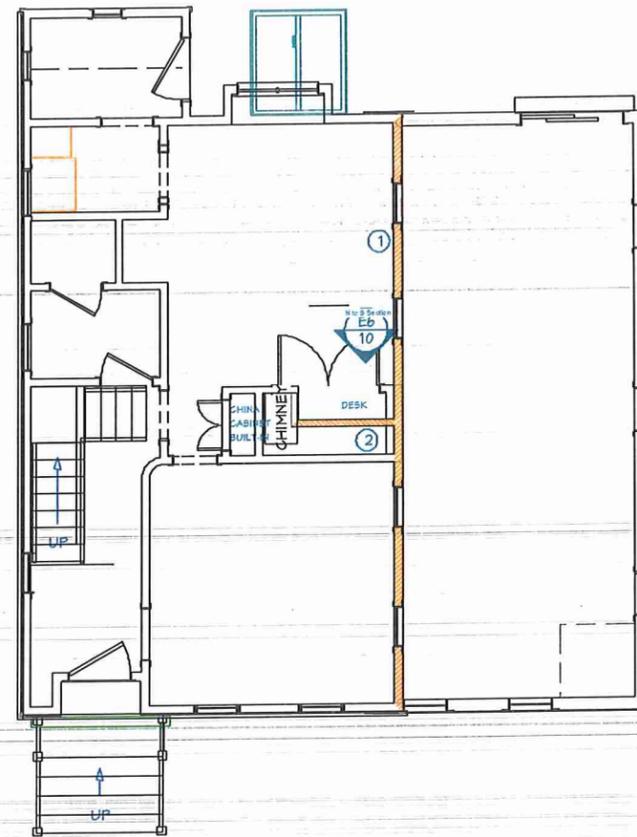
A2

DEMOLITION NOTES

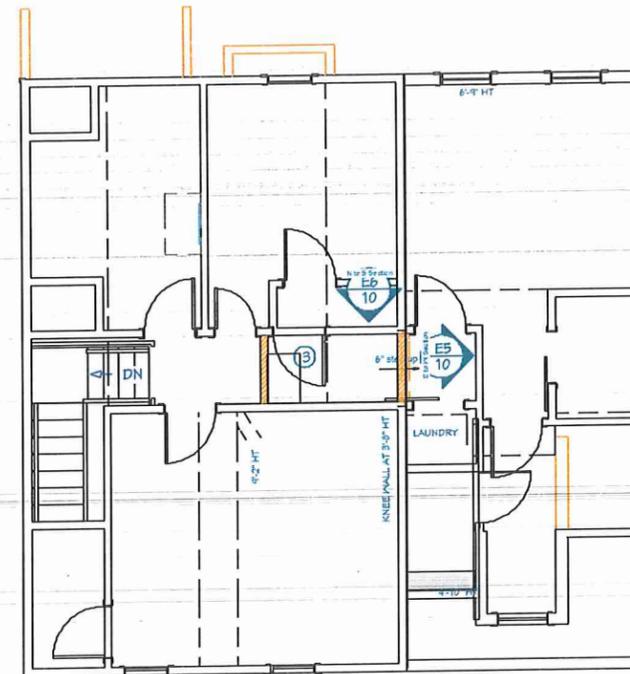
GENERAL NOTES

1. PROVIDE SELECTIVE DEMOLITION TO REMOVE EX. FLOOR, WALLS, CEILING, WINDOWS AND ROOF SYSTEMS IDENTIFIED. CONFIRM EXACT LOCATION W/ DESIGNER AND CIVIL ENGINEER PRIOR TO SELECTIVE DEMOLITION COMMENCEMENT. CONSULT WITH DESIGN PROFESSIONAL FOR ALL REQUIRED TEMPORARY SHORING AND SUPPORTS.
2. CUT EXISTING FOUNDATION TO LOCATION IDENTIFIED AND PREPARE FOR NEW FOUNDATION WALL.
3. EXISTING FOUNDATION WALL TO BE CUT AND REMAIN IN PLACE. REMOVE SILL PLATES OR OTHER LUMBER AND CUT BACK ANCHOR BOLTS TO TOP OF WALL. FILL VOID WITH SAND AND/ OR SOILS CONSISTENT WITH SURROUNDING MATERIALS.

DEMOLITION NOTES	
①	REMOVE EX. EXTERIOR WALL, POST @ 10' WALL IN PANTRY. BURY NEW LVL INTO FLOORING SYSTEM ABOVE
②	REMOVE EXISTING CHIMNEY
③	REMOVE EXISTING WALLS AT SECOND FLOOR OF CLOSETS TO CREATE NEW HALLWAY W/ STEP UP TO MASTER SUITE



FIRST FLOOR



SECOND FLOOR

DEMOLITION PLAN

SCALE: 1/4" = 1'-0"

WALL LEGEND

	= EXTERIOR WALL
	= INTERIOR 6
	= INTERIOR 4
	= DEMO WALL
	= GLASS TOP TILE BOTTOM PONY WALL
	= GLASS SHOWER WALL



DEMO

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903 THORNTON STREET
PORTSMOUTH, NH

CONTACT:
AMY DUTTON HOME
9 WALKER STREET | KITTERY, ME
amy@duttonhome.com
207.703.0646

DATE:

12/14/20

SCALE:

SCALED FOR
24" X 36"

DRAWING SCALE

SHEET:

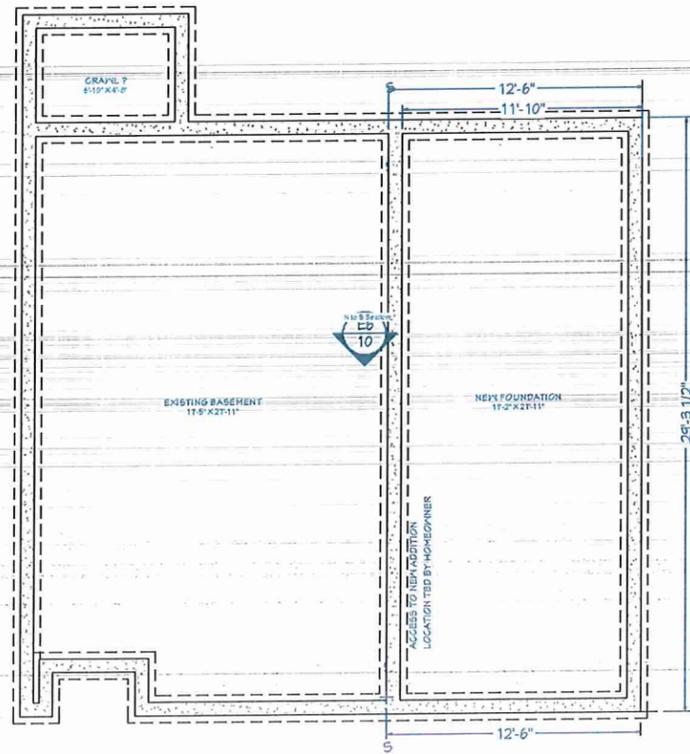
A3

PRELIMINARY SET FOR BID SET ONLY - NOT FOR CONSTRUCTION USE.



EXISTING FOUNDATION PLAN

SCALE: 1/8" = 1'-0"



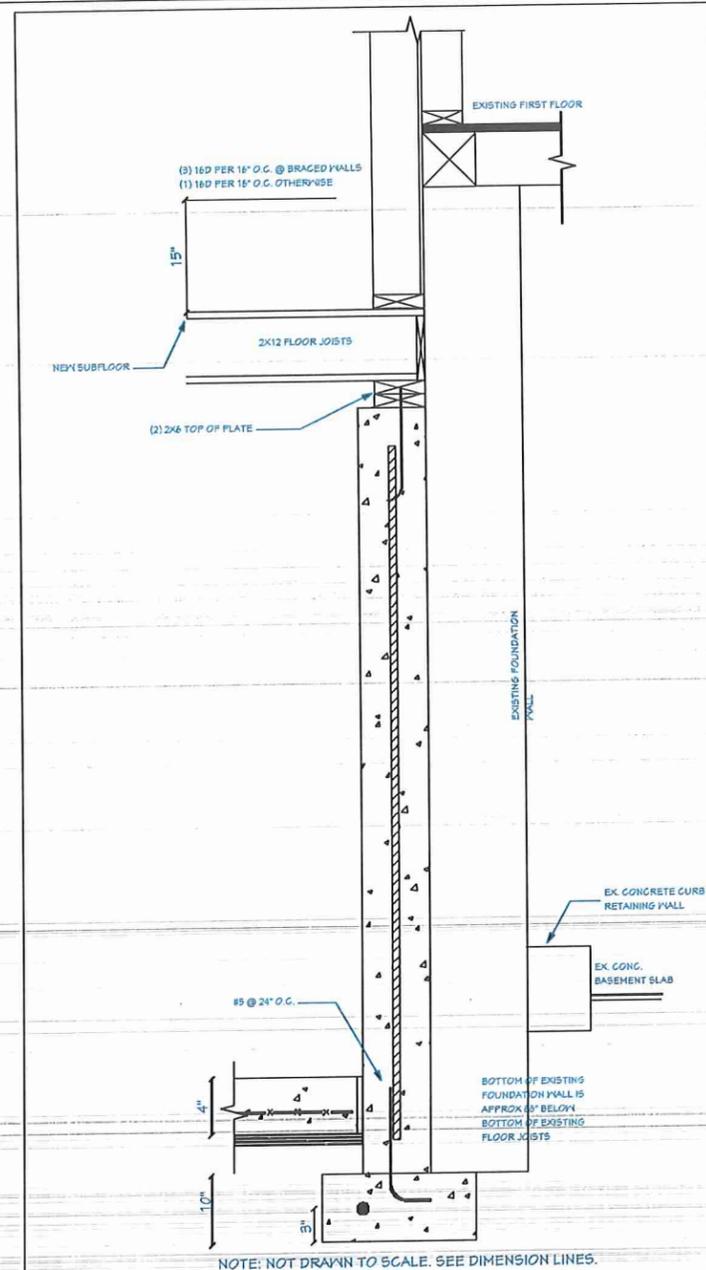
NEW FOUNDATION LINEAL FEET: 52'-11 1/2"

DISTURBED AREA FOR ADDITION: 353 SF

PROPOSED FOUNDATION PLAN

SCALE: 1/4" = 1'-0"

LIVING AREA
100 SQ FT



CONNECTION BETWEEN EX. HOUSE FOUNDATION & NEW FOUNDATION

PRELIMINARY SET FOR BID SET ONLY - NOT FOR CONSTRUCTION USE.



FOUNDATION

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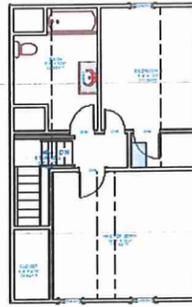
DATE:
12/4/20

SCALE:
SCALED FOR
24" X 36"

DRAWING SCALE

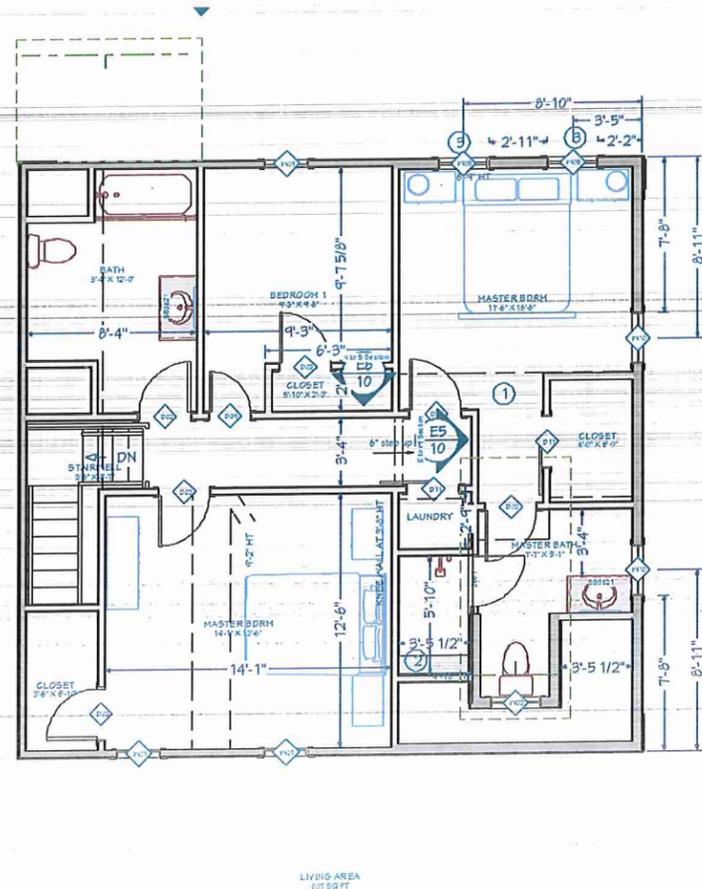
SHEET:

A4



EXISTING SECOND FLOOR PLAN

SCALE: 1/8" = 1'-0"



PROPOSED SECOND FLOOR PLAN

SCALE: 1/4" = 1'-0"



PERSPECTIVE VIEW

SCALE: NTS

SECOND FLOOR NOTES	
1	10'-0" CEILING HT THROUGHOUT 2ND FLOOR ADDITION
2	BENCH SEAT - STONE TO MATCH
3	EGRESS WINDOWS

WALL LEGEND	
	= EXTERIOR WALL
	= INTERIOR 6
	= INTERIOR 4
	= DEMO WALL
	= GLASS TOP TILE BOTTOM PONY WALL
	= GLASS SHOWER WALL

PRELIMINARY SET FOR BID SET ONLY - NOT FOR CONSTRUCTION USE.



SECOND FLOOR

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9	ELEVATIONS
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DATE:
12/14/20

SCALE:
SCALED FOR
24" X 36"

DRAWING SCALE

SHEET:

A6
SECOND FLOOR PLAN

EXTERIOR ELEVATION	NUMBER	FLOOR	WIDTH	HEIGHT	EGRESS	DESCRIPTION
	W01	3	26"	52"	YES	DOUBLE HUNG
	W02	1	30"	16"		SINGLE AWNING
	W03	2	30"	45"	YES	SINGLE CASEMENT HR
	W05	1	49"	56"		DOUBLE CASEMENT LHLRHR
	W06	1	11"	20"		SINGLE CASEMENT HR
	W07	1	26"	52"		DOUBLE HUNG
	W08	1	24"	24"		FIXED GLASS AT
	W04	1	23"	52"		DOUBLE HUNG
	W10	2	30"	36"		DOUBLE HUNG

WINDOW NOTES:

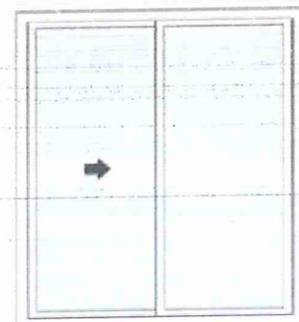
- 1 WOOD INTERIOR WITH GLAD EXTERIOR
- 2 FULL SCREENS ON ALL WINDOWS
- 3 INTERIOR WINDOW COLOR: WHITE
- 4 EXTERIOR WINDOW COLOR: WHITE
- 5 HARDWARE MATERIAL: WHITE
- 6 MANUFACTURER: MATTHEW BROTHERS
- 7 WINDOW ROUGH OPENING: 1/2" FOR TOP/BOTTOM & 1/2" FOR SIDES
- 8 BEDROOM WINDOWS SILL FINISHED MUST BE WITHIN 44" OF THE FLOOR AND PROVIDE MINIMUM CLEAR OPENINGS OF 5.1 SQFT WITH HEIGHT DIMENSION NOT LESS THAN 24" AND WIDTH DIMENSION NOT LESS THAN 20" AS TO MEET EGRESS

DOOR NOTES:

- 1 DOORS SHALL BE 80"
- 2 ALL DOORS SHALL BE SOLID CORE 1-3/4" THICK - BROSCO
- 3 INTERIOR DOORS SHALL BE PTD. OR STAINED, VERIFY WITH DESIGNER
- 4 ALL GLAZING WITHIN 18IN. OF THE FLOOR AND/OR WITHIN 24 IN. OF ANY DOOR ARE TO HAVE SAFETY GLAZING
- 5 ALL TUB AND SHOWER ENCLOSURES ARE TO BE GLAZED WITH SAFETY GLASS
- 6 BARN DOORS, MEASURE TO FIT OPENING. ALL HARDWARE TO BE STAINLESS
- 7 EXTERIOR DOOR: JELD WEN SLIDER
- 8 INTERIOR DOOR: REEB PR82A 1-3/8"

EXTERIOR ELEVATION	NUMBER	FLOOR	WIDTH	HEIGHT	DESCRIPTION	
	D01	1	60"	80"	EXT. SLIDER-GLASS PANEL	
	D02	2	30"	80"	HINGED DOOR P04	
	D04	1	2	30"	HINGED DOOR P04	
	D05	1	1	36"	42"	EXT. HINGED PANEL
	D06	1	1	36"	83"	EXT. HINGED-GLASS PANEL
	D07	1	1	60"	80"	DOUBLE HINGED-DOOR P04
	D09	2	1	24"	80"	HINGED DOOR P04
	D11	2	2	30"	80"	BARN DOOR P04

WINDOW AND DOOR SCHEDULES



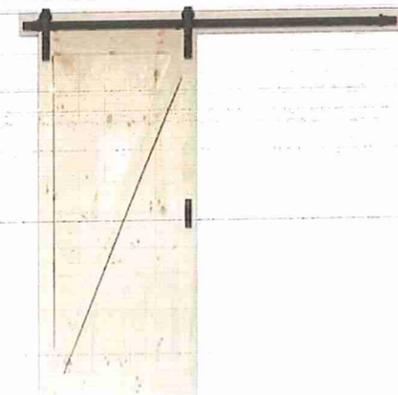
Two Panel Door

GLASS SLIDER - PD5068
MATTHEW BROTHERS



PR82A 1-3/8"
9/16" Raised Panel,
Ovolo Sticking

INTERIOR DOOR
REEB PR82A 1-3/8"



BARN DOOR
LOWES - HARDWARE ATTACHED

PRELIMINARY SET FOR BID SET ONLY - NOT FOR CONSTRUCTION USE.



WINDOW & DOOR
SCHEDULE

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PORTSMOUTH, NH

CONTACT:
AMY DUTTON HOME
4 WALKER STREET | KITTERY, ME
amy@duttonhome.com
207.703.0646

DATE:

12/14/20

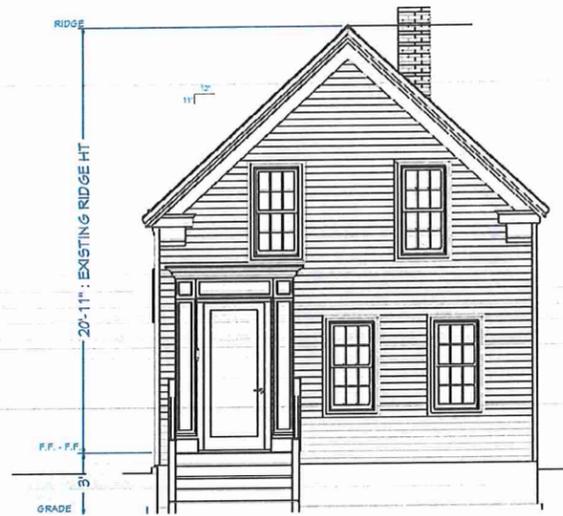
SCALE:

SCALED FOR
24" X 36"

DRAWING SCALE

SHEET:

A7



NORTH ELEVATION | EXISTING
SCALE: 1/4" = 1'-0"



SOUTH ELEVATION | EXISTING
SCALE: 1/4" = 1'-0"



NORTH ELEVATION | PROPOSED
SCALE: 1/4" = 1'-0"



SOUTH ELEVATION | PROPOSED
SCALE: 1/4" = 1'-0"

PRELIMINARY SET FOR BID SET ONLY - NOT FOR CONSTRUCTION USE.



ELEVATIONS

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CLIENT:
SEAN MILLER & DEE VENELLO
303 THORNTON STREET
PORTSMOUTH, NH

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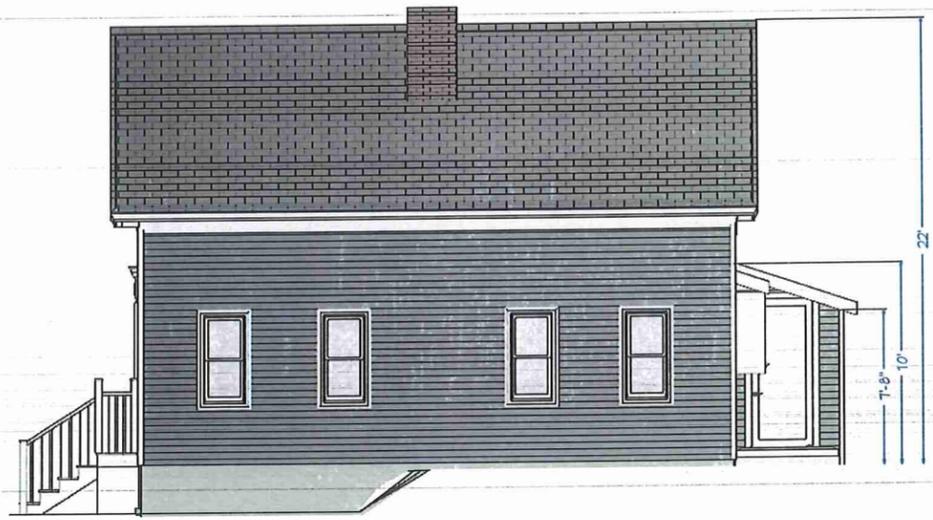
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DRAWING SCALE

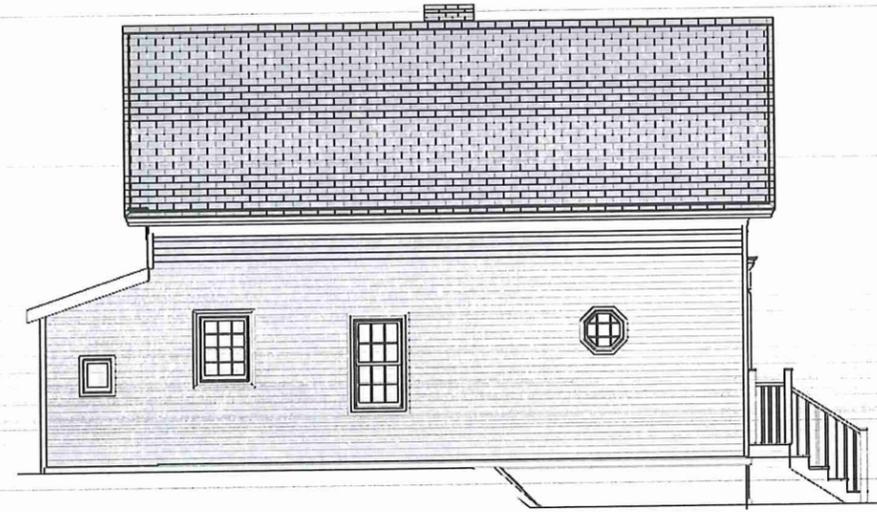
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A8
ELEVATIONS



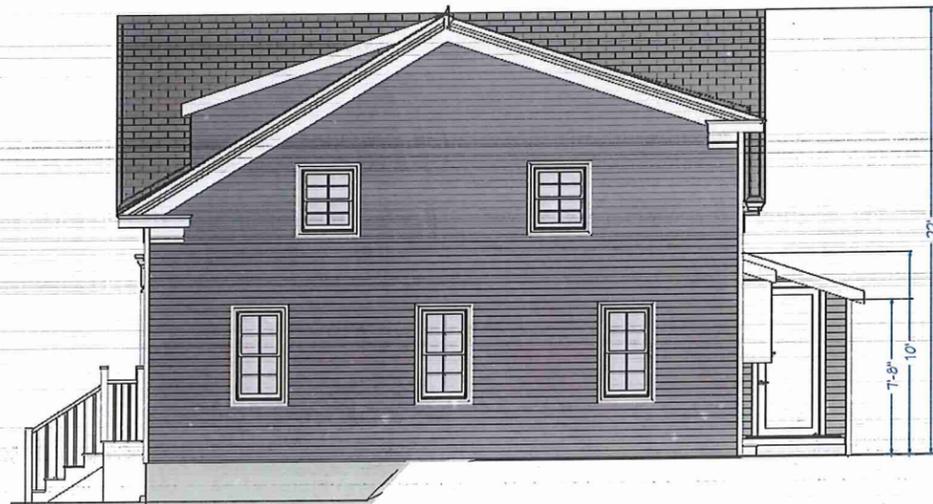
EAST ELEVATION | EXISTING

SCALE: 1/4" = 1'-0"



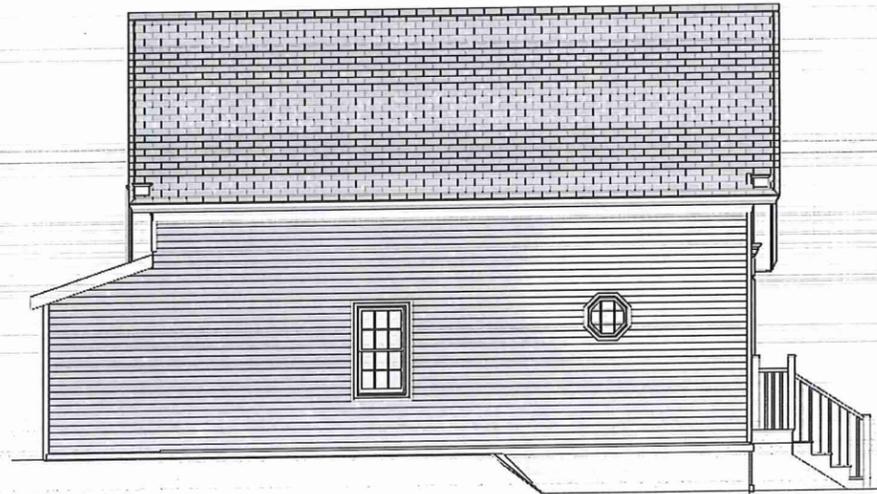
WEST ELEVATION | EXISTING

SCALE: 1/4" = 1'-0"



EAST ELEVATION | PROPOSED

SCALE: 1/4" = 1'-0"



WEST ELEVATION | PROPOSED

SCALE: 1/4" = 1'-0"

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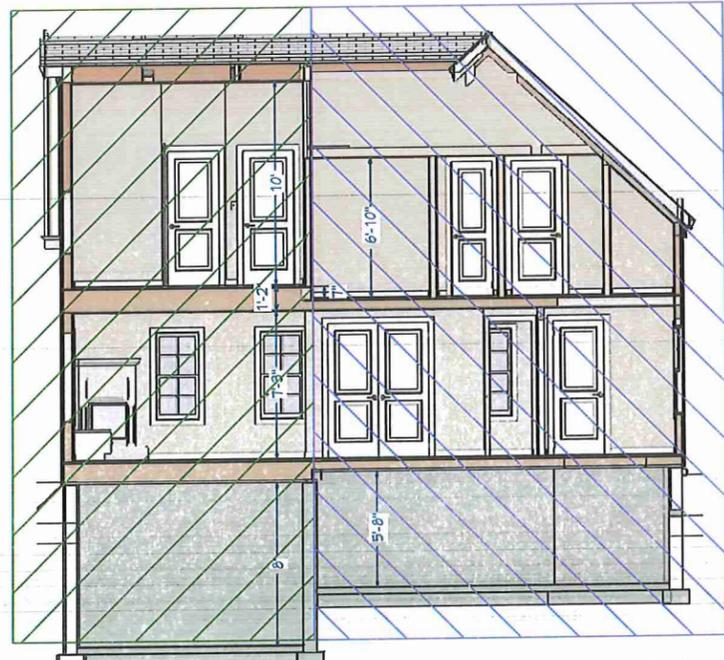
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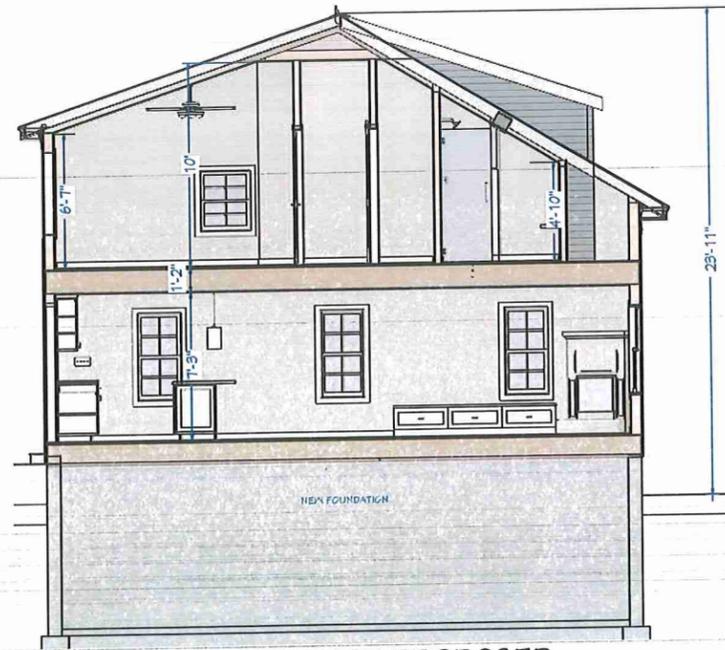
DRAWING SCALE

SHEET:

A9
ELEVATIONS



51 SECTION PROPOSED NEXT TO EXISTING



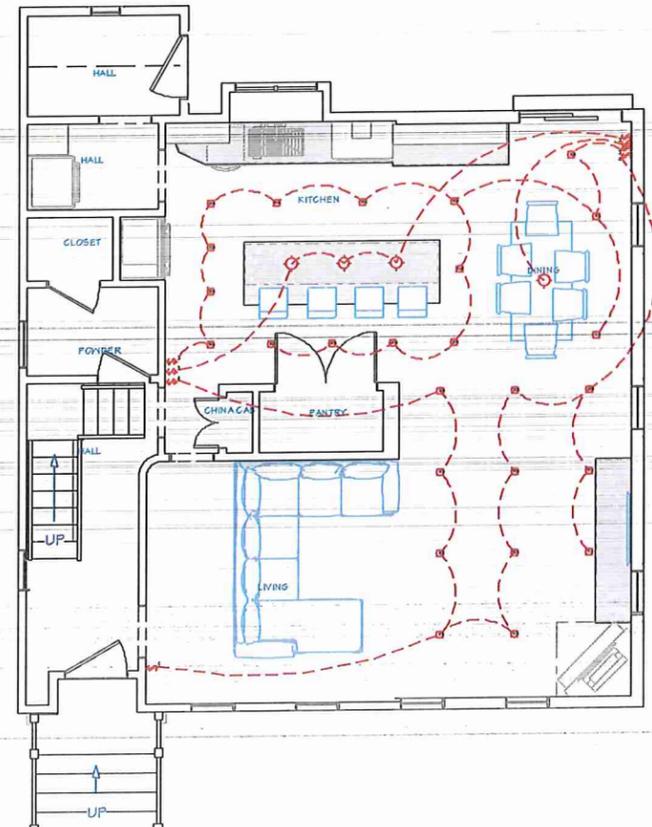
52 SECTION THROUGH PROPOSED

CAD BLOCK KEY

= PROPOSED ADDITION

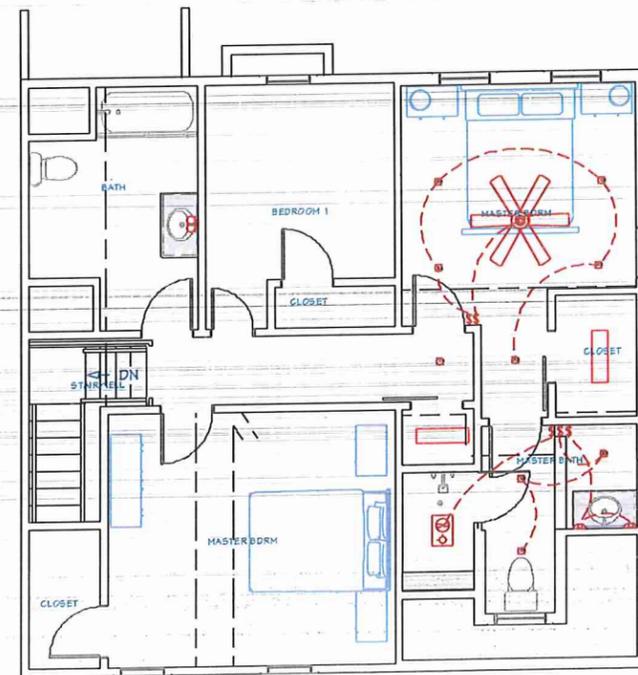
= EXISTING HOUSE

SECTIONS
SCALE: 1/4" = 1'-0"



FIRST FLOOR ELECTRICAL PLAN
SCALE: 1/4" = 1'-0"

ELECTRICAL PLAN
SCALE: 1/4" = 1'-0"



SECOND FLOOR ELECTRICAL PLAN
SCALE: 1/4" = 1'-0"

ELECTRICAL NOTES:

- 1 ALL APPLIANCES TO BE ON DEDICATED CIRCUITS - REFER TO APPLIANCE SPECS FOR AMP/VOLTAGE REQUIREMENTS
- 2 ELECTRICAL RECEPTACLES IN BATHROOMS, KITCHENS, FOUNDATION, AND GARAGE SHALL BE G.F.C.I. PER NATIONAL ELECTRICAL CODE REQUIREMENTS
- 3 ALL BEDROOM OUTLETS AND LIGHTS BE ARCH FAULT PROTECTED
- 4 ALL VENTILATION FANS SHALL BE ON TIMER SWITCHES
- 5 PROVIDE ONE SMOKE DETECTOR AND CARBON MONOXIDE DETECTOR IN EACH ROOM AND ONE IN EACH CORRIDOR ACCESSING BEDROOMS. CONNECT SMOKE DETECTORS TO HOUSE POWER AND INTER-CONNECT SMOKE DETECTORS TO HOUSE POWER SO THAT WHEN ANY ONE IS TRIPPED, THEY WILL ALL SOUND. PROVIDE BATTERY BACKUP FOR ALL UNITS.
- 6 CIRCUITS SHALL BE VERIFIED WITH DESIGNER PRIOR TO WIRE INSTALLATION
- 7 FINAL SWITCHES FOR TIMERS AND DIMMERS SHALL BE VERIFIED WITH DESIGNER
- 8 FIXTURES TO BE SELECTED BY DESIGNER AND HOME OWNER
- 9 ALL LIGHTING SHALL BE DIMMABLE AND USE LED BULBS

ELECTRICAL LEGEND	
SYMBOL	DESCRIPTION
	Ceiling Fan
	Ventilation Fans: Ceiling Mounted, Wall Mounted
	Ceiling Mounted Light Fixtures: Surface/Pendant, Recessed, Heat Lamp, Low Voltage
	Wall Mounted Light Fixtures: Flush Mounted, Wall Sconce
	Garage Door
	Fluorescent Light Fixture
	240V Receptacle
	110V Receptacles: Duplex, Weather Proof, GFCI
	Switches: Single Pole, Weather Proof, 3-Way, 4-Way
	Switches: Dimmer, Timer

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