

REGULAR MEETING*
BOARD OF ADJUSTMENT
EILEEN DONDERO FOLEY COUNCIL CHAMBERS
MUNICIPAL COMPLEX, 1 JUNKINS AVENUE
PORTSMOUTH, NEW HAMPSHIRE

*Members of the public also have the option to join the meeting over Zoom
(See below for more details)**

7:00 P.M.

November 15, 2022

AGENDA

I. APPROVAL OF MINUTES

- A. Approval of the minutes of the meetings of October 18, 2022 and October 25, 2022.

II. OLD BUSINESS

- A. The request of **Jeffrey M. and Melissa Foy (Owners)**, for property located at **67 Ridges Court** whereas relief is needed for construction of a 518 square foot garage addition which requires the following: 1) A Variance from Section 10.521 to allow a 15.5 foot front yard where 19 feet is required per Section 10.516.10. 2) A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 207 Lot 59 and lies within the Single Residence B (SRB) District. (LU-22-199)

III. NEW BUSINESS

- A. The request of **Emily-Anne Boon (Applicant)** and **Jeanne L. Wescott Revocable Trust (Owner)**, for property located at **118 Maplewood Avenue, Unit C4** whereas relief is needed to allow a medical office which requires the following: 1) A Special Exception from Section 10.440, Use #6.20 to allow a medical office where the use is permitted by Special Exception. Said property is located on Assessor Map 124 Lot 5-C4 and lies within the Character District 4-L1 (CD4-L) and the Historic District. (LU-22-205)
- B. The request **Optima Dermatology (Applicant)**, and **Seacoast Newspapers, Inc. (Owner)**, for property located at **111 New Hampshire Avenue** whereas relief is needed to allow a testing laboratory which requires the following: 1) A Special Exception from Part 303-A.03 (f) of the

Pease Development Authority Zoning Ordinance. Said property is located on Assessor Map 306 Lot 4 and lies within the Pease Industrial (PI) and Airport Business Commercial (ABC) Districts. (LU-22-207)

- C. The request **635 Sagamore Development LLC (Owner)**, for property located at **635 Sagamore Avenue** whereas relief is needed to remove existing structures and construct 4 single family dwellings which requires the following: 1) A Variance from Section 10.513 to allow four free-standing dwellings where one is permitted. 2) A Variance from Section 10.521 to allow a lot area per dwelling unit of 21,198 square feet per dwelling where 43,560 square feet is required. Said property is located on Assessor Map 222 Lot 19 and lies within the Single Residence A (SRA) District. (LU-22-209)
- D. The request **Donald and Rasa Stone Revocable Trust (Owner)**, for property located at **55 Gates Street** whereas relief is needed for the addition of 2 heat pumps which requires the following: 1) A Variance from Section 10.515.14 to allow a 3.5 foot setback where 10 feet is required. Map 103 as Lot 90 and lies within the General Residence B (GRB) and Historic Districts. (LU-22-43)
- E. The request of **Sara Sommer Kaufman Revocable Trust (Owner)**, for property located at **546 Sagamore Avenue** whereas relief is needed to allow a 6 foot fence in the front yard which requires the following: 1) A Variance from Section 10.515.13 to allow a 6 foot fence with a 1 foot front yard setback where 30 feet is required. Said property is located on Assessor Map 222 Lot 10 and lies within the Single Residence B (SRB) District. (LU-22-206)
- F. The request of **Aviation Avenue Group, LLC (Applicant)** and **Pease Development Authority (Owner)**, for property located at **100 New Hampshire Avenue (80 Rochester Avenue)** whereas relief is needed for the construction of an advanced manufacturing facility which requires the following: 1) A Variance from Part 304.03(c) to allow a 51 foot front yard where 70 feet is required. Said property is located on Assessor Map 308 Lot 1 and lies within the Pease Industrial (PI) District.

IV. OTHER BUSINESS

V. ADJOURNMENT

**Members of the public also have the option to join this meeting over Zoom, a unique meeting ID and password will be provided once you register. To register, click on the link below or copy and paste this into your web browser:*

https://us06web.zoom.us/webinar/register/WN_6nRRRu7zRHGf4FPGosqK5A

**MINUTES OF THE
BOARD OF ADJUSTMENT MEETING
EILEEN DONDERO FOLEY COUNCIL CHAMBERS
MUNICIPAL COMPLEX, 1 JUNKINS AVENUE
PORTSMOUTH, NEW HAMPSHIRE**

7:00 P.M.

October 18, 2022

MEMBERS PRESENT: Jim Lee, Vice Chair; David MacDonald; Beth Margeson; Paul Mannle; Phyllis Eldridge; Thomas Rossi; Jeffrey Mattson, Alternate

MEMBERS EXCUSED: None.

ALSO PRESENT: Peter Stith, Planning Department

Vice-Chair Lee stated that Chairman Parrott had resigned and that he would be Acting-Chair for the evening. He welcomed the new board member Jeffrey Mattson.

I. APPROVAL OF MINUTES

A) Approval of the minutes of the meetings of September 20, 2022 and September 27, 2022.

Per Mr. Rossi's request, the September 20 minutes were amended to change a sentence indicating that the view was from the abutter's windows and not the applicant's. The amended sentence reads as follows: Mr. Rossi asked if the deck provided an additional view **from the applicant's windows** that wasn't already there, and Ms. Tapscott agreed. On the September 27 minutes. Ms. Margeson asked that the word diminuous on page 11 be changed to the word **de-minimus**.

The September 20 and 27 minutes were **approved** as amended by unanimous vote, 7-0.

Acting-Chair Lee asked that Petition E, 67 Ridges Court, New Business be addressed out of order so that it could be postponed.

Ms. Margeson moved to **postpone** the petition to the November 15 meeting, seconded by Mr. Mannle. Ms. Margeson said the request to postpone was reasonable in light of last-minute submissions. The motion **passed** by unanimous vote, 7-0.

II. OLD BUSINESS

A. The request of **Kathleen E. Oprea and John Schroeder (Owners)**, for property located at **1344 and 1346 Islington Street** whereas relief is needed to construct a new deck and add detached garage which requires the following: 1) Variances from Section 10.521 to allow:

a) a 28' rear yard for the deck where 30' is required; b) a 2' left side yard where 10' is required for the garage; and c) a Variance from Section 10.521 to allow 30% building coverage where 20% is the maximum allowed. Said property is located on Assessor Map 233 Lot 98 and lies within the Single Residence B (SRB) district. (LU-22-160)

SPEAKING TO THE PETITION

The owner Kathleen Oprea was present to speak to the petition. She showed a map indicating all the nonconforming lot setbacks in the neighborhood. She said she was now asking for a 4' left yard setback because the revised garage plan made the garage narrower by two feet. She said gravel and drywells were added on both sides of the garage to address drainage issues, and a privacy fence was also added. She reviewed the criteria. She said the deck plan was also revised to add an 8-ft privacy screen and bushes in the back of the deck to reduce noise and views for the rear abutting neighbor and to add drainage to reduce the amount of standing water. She reviewed those criteria.

Mr. Mannle asked if any of the houses shown with nonconforming setbacks received variances. Ms. Oprea said that some had and others were predated. Mr. Mannle asked if the houses with nonconforming lot coverage had received variances. Ms. Oprea said at least three of them had.

Acting-Chair Lee opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

No one spoke.

SPEAKING IN OPPOSITION TO THE PETITION

Brad Meade of 1324 Islington Street said he had concerns about not having a survey of the property showing that the garage was four feet away from the property line and the need for a letter stating that a fence would be put up. He said he had mowed the property for 15 years and never saw standing water. He said the drywells would help contain the water but his neighbor was concerned because Melbourne Street had problems with drainage. Mr. Rossi asked Mr. Stith if the applicant's statement that she would have a fence would be a stipulation and whether a survey was typically done. Mr. Stith said a 6-ft fence could go on the property line but not in the front yard, so it would have to meet the front yard setback and then it could be 6 feet to the rear. He said typically an as-built survey for the garage foundation would be required, which would suffice. Mr. Meade said the applicant was basing the property line on where he had put up stakes.

Jill Tapscott of 163 Melbourne Street said her property was directly behind the applicant's property and her concerns included the size of the garage and deck, potential water damage to the abutters, the lack of credible data and information on the proposed drainage system, the fact that the proposed garage would make the property look very different than the surrounding ones and take away open space, and the fact that privacy concerns with the deck had not been addressed.

Ralph Dibernado of 1374 Islington Street said he had never seen standing water on Ms. Tapscott's property. He said he was concerned with the lack of process for verifying the lot lines and thought the submitted drawings didn't seem to have adequate measures for the lot coverage to determine the two front porches and stairs. He wondered if city officials verified those things. He said he hoped to see a clear statement relating to whether there was a hardship to the land.

Barbara Marino of 1345 Islington Street said she lived across the street from the applicant and was concerned about the appearance of an additional garage and fence. She said the house now abutted neighbors on the south side and the driveways were only separated by a fence. She said a view of trees, grass, and space was necessary and that she was opposed to the garage.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Jill Tapscott said there was a flat area on the applicant's property that could have a patio that would lower the noise level and provide more privacy for her and would make the property blend in better with the other single-family homes as opposed to a huge deck. She said the screening would not impact the noise level. She said there were no special conditions regarding the deck's height and the view from her window and no comparison for someone being on an outdoor deck a second story up and looking into her yard. She said it would permanently affect her property's resale value.

Ms. Oprea said she tried to appease her neighbors' concerns by the addition of the fence, screen, and drywells and did not imply that there was standing water on Ms. Tapscott's property but expressed concern that the project might create standing water. She said she would continue to work with her neighbors to make sure the solutions were functioning properly and that she would agree to have stipulations regarding the fences and the drywells. She said she would get a survey before the foundation was poured. She said a duplex required more building and outbuildings and that a deck was the best way to access the outside dining area.

Ms. Tapscott said the two neighbors' decks were nowhere near the size of the proposed deck and that the larger deck would have more activity and noise. She said the proposed arbovitae's size was not clarified and the water was a serious issue.

No one else spoke, and Acting-Chair Lee closed the public hearing.

DECISION OF THE BOARD

Ms. Eldridge said the request seemed mild because an 8-ft deck wasn't enormous and asking for a garage for a home that has no parking on the street seemed very reasonable. She said there isn't a house in Portsmouth in which one doesn't hear their neighbor. She said she had trouble understanding why it was such an intrusion on the neighborhood, because even with an 8-ft deck, there would be 28 feet to the back neighbor's lot line and additional feet from the location of the house in the middle of the lot. She said it was a very reasonable request.

Ms. Margeson moved to **grant** the variances as presented and advertised, with the following **stipulations**:

1. The left side yard shall be four feet;
2. the building coverage shall be 29 percent instead of 30 percent; and
3. the property shall be surveyed.

(Note: the stipulations were added in after the criteria were read).

Mr. Rossi seconded the motion.

Ms. Margeson said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. She noted that, as case law and statute indicated, it's figuring out whether or not the variance requests would markedly be different from the underlying zoning, and whether or not the essential character of the neighborhood would be affected or the public's health, safety, and welfare would be threatened. She said she found that the construction of a garage and a deck to a residence would not alter the essential character of the neighborhood because there are permitted accessory uses to residential uses. She said substantial justice would be done and she didn't see any benefit to the public that would outweigh the loss to the applicant by being able to build the deck and the garage. She said granting the variances would not diminish the values of surrounding properties, noting that the board had no indication that the deck or garage would result in any water issues and no evidence that there would be increased water or drainage issues. She said she sympathized with the abutters for the loss of the view, but the project was an improvement to the house and would not diminish the values of surrounding properties. She said literal enforcement of the provisions of the ordinance would result in unnecessary hardship because the property had special conditions that distinguish it from other properties in the area, and owing to those 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. She said the proposed use of a deck and a garage were reasonable in a residential area, and there are special conditions to the property including that it's a bit larger than some of the other properties in the area, it's a duplex, and the rear yard setback is very de-minimus because it's only two feet less than the minimum allowed by zoning. She said the building coverage does increase by ten percent but some of that increase is due to the deck, and even if the applicant put the deck on the ground floor, they would still need that rear yard setback. She said the left yard setback is significantly less than it currently is but it's necessary to place the garage there. She said it's not four feet based on the revised plans.

Mr. Rossi concurred and had nothing to add. The motion **passed** by unanimous vote, 7-0.

- B.** The request of **Martin Hanssmann (Owner)**, for property located at **130 Gates Street** whereas relief is needed to add an HVAC unit which requires the following: 1) A Variance from Section 10.515.14 to allow a 3' setback where 10' is required. Said property is located on Assessor Map 103 Lot 55 and lies within the General Residence B (GRB) and Historic districts. (LU-22-161)

SPEAKING TO THE PETITION

The applicant Martin Hanssmann was present via Zoom to speak to the application. He said he needed to add air conditioning to his basement and already had an a/c compressor on the third floor,

so the new compressor would be placed next to the existing one. He said a privacy fence would shield both units. He reviewed the criteria and said they would be met.

The Board had no questions. Acting-Chair Lee opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke, and Acting-Chair Lee closed the public hearing.

DECISION OF THE BOARD

Mr. Mannle moved to **grant** the variances as presented, seconded by Mr. MacDonald.

Mr. Mannle referred to Sections 10.233.21 and .22 of the ordinance and said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He said the HVAC unit would be diminished from the current one at three feet. Referring to Section 10.233.23, he said granting the variances would do substantial justice because everyone needed heat. Referring to Section 10.233.24, he said granting the variances would not diminish the values of surrounding properties and would most likely increase the home's value. Referring to Section 10.233.25, he said literal enforcement of the ordinance would result in an unnecessary hardship because the property had special conditions that distinguished it from others in the area, and owing to those special conditions a fair and substantial relationship does not exist between the general public purpose of the ordinance provisions and the specific application of that provision to the property. He said the proposed use was a reasonable one and the hardship does exist, considering the size of the property and where it sits on the lot.

Mr. MacDonald concurred. He said it was New England and one needed control over hot and cold weather with the change of seasons. He said if the air conditioning for the property wasn't adequate, then it needed to be improved. For those reasons, he said the variances should be granted.

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

- C. The request of **Judith A. Mraz Revocable Trust (Owner)**, for property located at **11 Walden Street** whereas relief is needed to install a heat pump which requires the following:
- 1) A Variance from Section 10.515.14 to allow a 1 foot rear yard setback and a 1.5 foot side yard setback where 10 feet is required for each. Said property is located on Assessor Map 101 Lot 17 and lies within the General Residence B (GRB) and Historic districts. (LU-22-177)

SPEAKING TO THE PETITION

Project contractor Jay Aucella was present on behalf of the applicant and said the intent was to install a heat pump system with one outdoor unit and three indoor units. He showed site photos and reviewed the criteria. He said the outdoor unit would be quiet and hidden by two trees.

The Board had no questions, Acting-Chair Lee opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke, and Acting-Chair Lee closed the public hearing.

DECISION OF THE BOARD

Mr. Rossi moved to **grant** the variance as presented, seconded by Ms. Eldridge.

Mr. Rossi said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance. He said he did not believe that the ordinance was intended to prevent the modernization of older properties for the comfort of the homeowner's living, which would be the result of enforcing that when there is such little lot line clearance in older homes. He said substantial justice would be done because there is no benefit to the public that would necessitate the board to create a hardship for the homeowner by denying the variance. He said granting the variance would not diminish the values of surrounding properties because they will not be affected by a quiet, discrete, and hidden unit protruding from the side of the house. He said literal enforcement of the ordinance would result in an unnecessary hardship due to special conditions of the property, namely that the lot line clearance is very small and it's not possible to update the HVAC system without this sort of a variance.

Ms. Eldridge concurred and had nothing to add. The motion **passed** by unanimous vote, 7-0.

III. NEW BUSINESS

- A.** The request of **Lucky Thirteen Properties (Owner)**, for property located at **361 Islington Street** whereas relief is needed for the conversion of use to a restaurant which requires the following: 1) Variances from Section 10.5A41.10A to allow a) a secondary front yard setback of 66 feet where 12 feet is the maximum allowed; b) to allow a front lot line buildout of 32% where 60-80% is required; c) to allow a left yard setback of 30' where 20' is the maximum allowed; and d) 14.5% open space where 25% is the minimum required. 2) A Variance from Section 10.5A44.31 to allow off-street parking spaces to be located in front of the façade of the primary building. 3) A Variance from Section 10.440, Use #9.42 to allow a restaurant with an occupancy load between 50 and 250 3) A Variance from Section 10.5A44.32 to allow parking to be unscreened from the street. 4) A Variance from Section 10.575 to allow a dumpster to be located 19 feet from a residential zoned lot where 20 feet is required. 5) A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 144 Lot 23 and lies within the Character District 4-L2 (CD4-L2) and Historic Districts. (LU-22-195)

SPEAKING TO THE PETITION

Attorney Derek Durbin was present on behalf of the applicant with his project team that included project engineer Eric Weinrieb and the owner Mike Labrie. He reviewed the petition, noting that the building was a gas station before and had deed restrictions and easements that limited what could be done with the property. He said the proposal was similar to the 2017 Lexie's Joint one but was less impactful. He said the petition had to go before the Technical Advisory Committee (TAC) to vet out issues with traffic flow, parking, and landscaping and also before the Historic District Commission (HDC) for the design. He said there would be trash cans and totes instead of dumpsters. He discussed the occupancy load issues at length and reviewed the criteria. He distributed copies of the meeting minutes from the Lexie's Joint petition and the board's concerns at that time.

Mr. MacDonald asked what would happen to the below-ground fuel tanks. Mr. Labrie said the tanks had been removed and there were monitoring wells on the property. He said the contamination levels had diminished over the years and continued to improve and that 200 yards of contaminated soil were removed. He said the Getty Corporation had a standing protocol to put deed restrictions such as having no residential use and so on whenever they sold one of their properties to limit their liability. Ms. Margeson asked why Fisher v. Dover did not apply to denial of what she thought was a different application from the August 2021 one. Attorney Durbin said they reduced the amount of overall seating by 25 percent.

Acting-Chair Lee opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

Max Rice of 56 Fells Road said the project was an overall improvement of the current eyesore and would increase the general feel of the community.

SPEAKING IN OPPOSITION TO THE PETITION

Steve Iandoli of 369 Islington Street said he was also speaking for the residents at 371A and B Islington Street and 366 Islington Street. He said his parking spot shared an easement with the Getty station. He said the applicant wanted to expand the impact on that site and the neighborhood would be negatively impacted. He noted that the board denied similar variances earlier in the year for the Tuckaway Tavern. He said the area couldn't accommodate the size of that business and now the applicant wanted up to 250 people, five times what was allowed. He said it was rumored that the business would be a brewery, which would pose a risk to public health. He said that section of Islington Street was the most dangerous stretch of road in the city and having 250 people entering with cars in that area and seeking parking would cause risk to the neighbors and pedestrians.

Elizabeth Bratter of 159 McDonough Street said the proposal should be more respectful of the 30 residential units surrounding the property and she had concerns with alcohol, the occupancy number, the impact on parking, the garbage totes, and the fact that the variances should be considered separately. She said there was no hardship and that the proposal should be denied.

Sally Elshout of 311 Cabot Street said she had concerns about the design, privacy for the neighbors, parking, traffic, and the fact that more than 50 occupants would be detrimental to the community.

Lenore Bronson of 828 Woodbury Avenue said she agreed with the previous comments and was concerned that the applicant would not be providing less than half the required parking spaces. She said the extra cars would be going into the Cabot Street intersection, where there were already a lot of accidents, and the historic oak tree would be affected by the excavation.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Attorney Durbin said the variances could not be dealt with separately because they were interrelated. He said they were only asking for a total of 74 indoor and outdoor seats, not 250, and were asking for a smaller structure than allowed by the ordinance. He said they could not build it out and that the building had been designed to maximize the parking. He noted that Lexie's Joint's proposed outdoor area was much larger than the applicant's and it wasn't the board's purview to consider the outdoor seating. He said the addition in the rear would create less impact than the proposed Lexie's Joint and the business would involve baking, so they needed more space. He said the previous gas station traffic was much more intense than what they were proposing. He said site plan regulations were created to deal with technical engineering issues.

Project engineer Eric Weinrieb said the trash totes would meet the setback requirements. He said the site was safe for access and they had to keep the Islington Street access open due to the two easements. He said Cabot Street was the best way to bring traffic back out onto Islington Street because it was a safe intersection and no different than hundreds of other intersections in the city that were four-way intersections. He said their plans would be coordinated with the Islington Street project and would also keep the traffic open on the easement for the abutter.

Attorney Durbin clarified that the occupancy load for The Kitchen was 74 and was 98 for Liar's Bench.

Mr. Rossi read the ordinance's definition of occupancy load and asked why the outdoor seating wouldn't be part of the occupancy load. Attorney Durbin said that definition referenced the building code too, which drove the occupancy calculations. He said they were on flat ground, which was the same as a yard area or patio, and the intent was to have proper safety means to get out in case of fire and so on, but that their case was a bit different. He said the Conditional Use Permit process would address it.

James Beal (via Zoom) of 286 Cabot Street said he submitted a letter and thought a few issues seemed to have slipped through, like the fact that the oak tree wasn't mentioned in the site plans, which made him question the totality of the information provided by the applicant. He said the property was encumbered by deed restrictions, which should bear no weight in the request for variances. He said the approval for Lexie's included 16 parking spots and just a small side addition, but the current proposal would provide less than 50 percent of the required parking. He said the total number of persons that may occupy the inside of the building, including outdoors decks, at any one time was 50 people and that the proposal would cause issues with traffic flow.

The owner Jeff Dyer said they would not be a brewery but would be making bagels and wanted to be a good neighbor and make the site a neighborhood enhancement instead of leaving it an eyesore.

Elizabeth Bratter of 159 McDonough Street said the city had new regulations for outdoor seating by including the occupancy of it with the indoor seating. She said whatever was approved would stay with the property, which was the reason the neighbors were concerned.

Steve Iandoli of 369 Islington Street said he had to dodge cars speeding from Islington Street into the Cabot Street easement and thought there was no safe way in or out of the property.

Sally Elshout of 311 Cabot Street said a traffic study of the Cabot and Islington Streets intersection should be done.

No one else spoke, and Acting-Chair Lee closed the public hearing.

DISCUSSION OF THE BOARD

Ms. Margeson said the traffic issues would be dealt with by TAC and the Planning Board. She said the board had no purview over it or over the parking spaces. She said she believed that 10.440, the variance for the occupancy load, did not apply to the project. She said they were proposing 43 interior seats and 31 exterior ones, and the 31 seats were also a CUP for the Planning Board. She said they were not under the board's purview because they were under the 50 threshold for the indoor use that was allowed by zoning. She didn't believe that the project required a variance for the occupancy load. She said the seating involved an outdoor deck, which she thought included the proposed addition, not the seating in front because that wasn't attached to the building, so she didn't think that 10.440 was applicable to the application. In response to Mr. Mannle's question, she agreed that Variance No. 3 was off the table. She said the zoning ordinance was very clear that outdoor dining was a CUP from the Planning Board.

DECISION OF THE BOARD

Ms. Margeson moved to **grant** the variances, with the exception of Variance No.3, as presented and advertised, seconded by Mr. Mannle.

Ms. Margeson said Variance No. 3 did not apply, and the other variances were for the secondary front yard setback, left yard setbacks, open space coverage, and the front line buildout. She said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. She said it was a CD4-L2 district that allowed for residential use on the ground floor and allowed for shallow front yards and shallow medium front yards. She said the applicant was looking for variable private landscaping and outside accessory parking, which would not have shallow yards. She said the purpose of the district was to have buildout, but there were special conditions to the property that counteracted that. She said the CD4-L2 district was meant to preserve and enhance and make for a human scale and a walkable district, and the petition met those criteria because it would preserve the Getty station. She said it would not alter the essential character of the neighborhood because there were many restaurants in the neighborhood and restaurants were allowed by right for up to 50 occupants. She said she did not believe that there were health, safety, and welfare considerations because it was a fairly minor impact allowed by

zoning. She said granting the variances would do substantial justice because the variances were primarily for changes to the setbacks and there was also parking allowed in the front of the restaurant, which Lexie's had, as well as a one-foot variance for the dumpster. She said she did not believe that the public would be benefited by upholding those requirements but thought there would be a substantial detriment to the applicant. She said literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because the property had special conditions that distinguished it from other properties in the area. She said she did not find the deed restrictions as compelling as the special conditions, but she said the easements around the property had to be respected, and that restricted the placement of buildings on the property. Owing to that, she said there was no real fair and substantial relationship between the public purposes of the ordinance and their application to the property. She said the proposed use is a reasonable one because it's a restaurant that is allowed occupancy load by right in the CD4-L2 district.

Mr. Stith suggested a stipulation noting that the design and location of the project may change based on the Planning Board and HD reviews and approvals, and Ms. Margeson agreed.

The motion was **amended** and reads as follows:

Ms. Margeson moved to **grant** the variances, with the exception of Variance No.3, as presented and advertised, with the following **stipulation**:

1. The design and location of the project may change based on the Planning Board and HDC reviews and approvals.

Mr. Mannle seconded. He said a restaurant in that location was a great idea but would impact the residences near it. He asked if the hours of operation could be restricted. Ms. Margeson said the Planning Board could do that. Mr. Rossi said the overriding consideration was that the property was an eyesore and many attempts had been made to make use of it but they all met untimely ends, so he thought that the proposed changes were necessary to make a viable space in that location.

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

- B.** The request of **David A. Sinclair and Nicole J. Giusto (Owners)**, for property located at **765 Middle Street** whereas relief is needed for construction of a new detached garage with dwelling unit above which requires the following: 1) A Variance from Section 10.513 to allow 3 principal dwellings on a lot where only 1 is allowed per lot. 2) Variances from Section 10.521 to allow a) a lot area per dwelling of 5,376 square feet where 7,500 is required per dwelling unit; and b) a 10 foot rear yard where 20 feet is required. Said property is shown on Assessor Map 148 Lot 37 and lies within the General Residence A (GRA) and Historic Districts. (LU-22-196)

SPEAKING TO THE PETITION

Attorney Tim Phoenix was present on behalf of the applicant, along with the project team which included owner David Sinclair. He said they proposed a new 4-car garage with an apartment and

office space above it. He said the driveway and parking area would be expanded and the exterior design would blend with the existing home and carriage house. He said they would go before the Planning Board and Historic District Commission for further review. He reviewed the criteria and said he had letters from seven neighbors who approved the project.

Mr. Rossi asked if the 10-ft setback to the rear yard was the one that bordered 733 Middle Street. Attorney Phoenix agreed and said the rear yard was the one deemed to be opposite the street address front. Ms. Margeson asked if the purpose for the new addition was to rent it out. Mr. Sinclair said the purpose was to park cars and offer someone a place to live. Ms. Margeson asked if there would be one office. Mr. Sinclair said the footprint was large enough to offer the opportunity to cut off one bay of the building and keep it an office or great room space with flexibility.

Acting-Chair Lee opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke, and Acting-Chair Lee closed the public hearing.

DISCUSSION OF THE BOARD

Ms. Margeson said she would not support the application because the zoning ordinance was very clear that there should be one dwelling unit per lot, and it seemed like the proposed building was not in character with the residential area and would be sort of a mini-complex. Mr. Rossi said the proposed building was a beautiful structure on a beautiful lot and would be a nice property in that location. He said he didn't see it as being detrimental to the public good. He said he was surprised that the residents of 733 Middle Street didn't have anything to say because they would have the most impact from the proximity to the lot line, so he presumed that they didn't object to the project. He said he would support it.

DECISION OF THE BOARD

Mr. Rossi moved to **grant** the variances as presented, seconded by Mr. Mannle.

Mr. Rossi said granting the variances would not be contrary to the public interest because of the reasons he mentioned. He said it was a very nice development of the property and it resonated with the intention of the zone in terms of density of housing. He said substantial justice would be done because he didn't see any loss to the public by allowing this to proceed and thought the loss to the applicant would not be outweighed by any potential loss to the public. He said granting the variances would not diminish the values of surrounding properties because there were a lot of abutters who said they were comfortable with the project and the one abutter that he was concerned about remained silent, so he presumed that he had no objection regarding the impact on the value of his property. He said literal enforcement of the ordinance would result in unnecessary hardship. He said the special condition of the property was that it was forcibly combined into one lot and if that

hadn't been done, there would be no issue with adding a dwelling unit in that spot. For those reasons he said he supported granting the variances. Mr. Mannle concurred and had nothing to add.

Acting-Chair Lee said he would not support the motion. He said one dwelling was allowed per zone, and three dwellings were a bridge too far. Mr. Stith asked if the maker of the motion would add a stipulation that the design and location may change because it had to go before the Planning Board and the Historic District Commission, and Mr. Rossi agreed.

The **amended** motion was:

Mr. Rossi moved to **grant** the variances as presented, with the following **stipulation**:

1. The design and location of the garage may change based on Planning Board and Historic District Commission review and approval.

Mr. Mannle concurred and had nothing to add. Mr. Mattson remarked that more than one freestanding building on a lot is generally sacrosanct in the single-family residence zone, but in this case, it was the GRA district and the applicant already had two dwellings on the lot. He said the fact that it was consistent due to the lot size and the number of dwellings per acre still met the intent of the ordinance.

The motion **passed** by a vote of 5-2, with Acting-Chair Lee and Ms. Margeson voting in opposition.

It was moved, seconded, and passed unanimously (7-0) to bypass the 10:00 rule and continue the meeting.

- C. The request of **Cornwall Properties LLC (Owner)**, for property located at **50 Cornwall Street** whereas relief is needed for the addition of a shed dormer which requires the following: 1) A Variance from Section 10.521 to allow a 3 foot right side yard where 10 feet is required. 2) A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 144 Lot 2 and lies within the General Residence C (GRC) District. (LU-22-194)

SPEAKING TO THE PETITION

The applicant Charlie Moreno was present to review the petition and said they wanted to add a small dormer to fit a bathroom in. He said the affected neighbor approved of the project. He reviewed the criteria and said they would be met.

The board had no questions. Acting-Chair Lee opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke, and Acting-Chair Lee closed the public hearing.

DECISION OF THE BOARD

Mr. Mannle moved to **grant** the variances as presented, seconded by Ms. Eldridge.

Mr. Mannle referred to Sections 10.233.21 and .22 of the ordinance and said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He referred to Section 10.233.23 and said substantial justice would be done, considering that the petition had already come before the board and they had granted the variances and were just doing a do-over for the bumpout for the bathroom. He noted that the board had granted a 1-ft side setback and were now doing three, so it was an improvement. He referred to Section 10.233.24 and said granting the variances would not diminish the values of surrounding properties because of the improvement. Referring to Section 10.233.25, he said literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because the property had special conditions that distinguished it from the other properties in the area, and owing to those special conditions, a fair and substantial relationship does not exist between the general public purposes of the ordinance provisions and the specific application of those provisions to the property. He said the proposed use was a reasonable one and thought it was a very small request for an adjustment of the original building plans for the accommodation of a bathroom.

Ms. Eldridge concurred and had nothing to add. The motion **passed** by unanimous vote, 7-0.

- D.** The request of **Lucia Investments LLC (Owner)**, for property located at **3020 Lafayette Road** whereas relief is needed to remove existing deck and stairs and construct new stairs to second floor behind the building and add new HVAC units which requires the following: 1) A Variance from Section 10.521 to allow an 8 foot side yard where 10 feet is required. 2) A Variance from Section 10.515.14 to allow an 8 foot setback for the HVAC units where 10 feet is required. Said property is located on Assessor Map 292 Lot 152 and lies within the Mixed Residential Business (MRB) District. (LU-22-197)

SPEAKING TO THE PETITION

Robert Currao of Lucia Investments was present to speak to the petition. He said the intent was to remove the huge deck and stairs and construct new stairs and that the only abutter was in approval. He said a 4/x5/ landing was proposed to replace the deck and noted that there was an existing 6' fence. He reviewed the criteria and said they would be met.

Mr. MacDonald asked if the building would be repurposed, noting that it had a large residential complex next to it. Mr. Currao said it was a mixed-use project, with a commercial kitchen and bath showroom downstairs and a 3-bedroom apartment upstairs. He said the condenser was 8'2" to the lot line and would replace the two condensers that didn't work properly. He reviewed the criteria.

The board had no further questions. Acting-Chair Lee opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke, and Acting-Chair Lee closed the public hearing.

DECISION OF THE BOARD

Ms. Eldridge moved to **grant** the variances as presented, seconded by Mr. MacDonald.

Ms. Eldridge said what was being asked was simple, despite the fact that the building had been before the board several times. She said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. She said the building needed a staircase and there were limited places where it would be put. She said it was a small change to a building that needed upgrading. She said substantial justice would be done because it would pose no harm to any neighbor and would be a benefit to the applicant. She said granting the variances would not diminish the values of surrounding properties because new stairs would replace the broken ones and there would be new HVAC units instead of the two that didn't work properly, which would improve the property. She said the property had the special condition of having no other place to put the items without making them unusable, noting that they would either infringe on the parking spots or not work with the building. She said that not granting the variances would not benefit anyone else in the neighborhood, and for all those reasons, she moved to grant the variances.

Mr. MacDonald concurred. He said had been watching the building since 1990 when it was a weed lot, and now it was something different. He said the improvements would be something good for the owner and the community and would be a win-win.

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

E. REQUEST TO POSTPONE The request of **Jeffrey M. and Melissa Foy (Owners)**, for property located at **67 Ridges Court** whereas relief is needed for construction of a 518 square foot garage addition which requires the following: 1) A Variance from Section 10.521 to allow a 15.5 foot front yard where 19 feet is required per Section 10.516.10. 2) A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 207 Lot 59 and lies within the Single Residence B (SRB) District. **REQUEST TO POSTPONE** (LU-22-199)

DECISION OF THE BOARD

It was moved, seconded, and passed by unanimous vote (7-0) to **postpone** the petition to the November 15 meeting.

F. The request of **Jessica Kaiser and Andrew McMahon (Owners)**, for property located at **232 Wibird Street** whereas relief is needed for the demolition of existing structures and construction of a new dwelling with attached garage which requires the following: 1) Variances from Section 10.521 to allow a) 66.5 feet of frontage where 100 feet is required; b) a 7 foot right side yard where 10 feet is required; and c) a 12 foot front yard where 15 feet

is required. Said property is located on Assessor Map 149 Lot 14 and lies within the General Residence A (GRA) district. (LU-22-198)

SPEAKING TO THE PETITION

Project architect Tom Emerson was present on behalf of the applicant and stated that the plan was to demolish the existing buildings and build a new single-family home that would better fit into the neighborhood and would diminish the existing nonconformances. He said the main building had hazardous materials and the current configuration didn't work for a young family. He said the garage would be moved forward to eliminate the vehicular/pedestrian intersection and the need for backing out onto Wibird Street. He reviewed the criteria and said they would be met.

The board had no questions, and Acting-Chair Lee opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke. Acting-Chair Lee closed the public hearing.

DECISION OF THE BOARD

Mr. Rossi moved to **grant** the variances as presented, seconded by Mr. Mannle.

Mr. Rossi said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance and would not alter the essential character of the neighborhood in a negative way. He said it would be a substantial improvement over the existing structures and would be more in keeping with the neighborhood. He said substantial justice would be done by improving the property and not creating any impact to the general public, and there would be no harm to the public that would outweigh the harm to the applicant if the application were to be denied. He said granting the variances would not diminish the values of surrounding properties because there would be a substantial improvement to the appearance of the property and the structures on it. He said literal enforcement of the ordinance would result in unnecessary hardship due to the property's special condition of being inherently noncompliant to the 66-1/2' frontage, which forced all the other variances that were required in order to accomplish the project.

Mr. Mannle concurred and said all the proposed changes were less nonconforming than the current condition. Ms. Margeson said she would support the motion, even though she thought it was a shame to lose the existing structure, but it would make the property less nonconforming and the purview of the board was the zoning.

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

- G. The request of Thomas M. Hammer Revocable Trust of 2015 (Owner), for property located at 219 Sagamore Avenue** whereas relief is needed to add an additional dormer to a previously approved garage which requires the following: 1) A Variance from Section

10.573.20 to allow a 9' rear yard where 15' is required for the dormer. 2) A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 221 Lot 19 and lies within the General Residence A District. (LU-22-186)

SPEAKING TO THE PETITION

Project architect Tony Fallon was present on behalf of the applicant. He stated that the garage was rotted and that it was previously proposed to the Board to build a new garage further away from the side setbacks with less lot coverage. He said the previous proposal had one shed dormer but a second dormer was now proposed. He reviewed the criteria and said they would be met.

Mr. Rossi asked how the addition of the dormer would change the rear yard setback from one foot to the proposed nine feet. Mr. Fallon said that was the delta between the old garage and the new one and that nothing in the footprint would change.

Acting-Chair Lee opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke, and Acting-Chair Lee closed the public hearing.

DECISION OF THE BOARD

Mr. Mannle moved to **grant** the variances as presented, seconded by Ms. Eldridge.

Mr. Mannle noted that the board had already seen and approved the proposal and that it was more of an administrative variance by just adding a second dormer to the garage. He referred to Sections 10.233.21 and 22 of the ordinance and said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. Referring to Sections 10.233.23 and .24, he said granting the variances would do substantial justice and would not diminish the values of surrounding properties but would actually improve them. Referring to Section 10.233.25, he said literal enforcement of the provisions of the ordinance would result in unnecessary hardship because the property has special conditions that distinguished it from other properties in the area, and owing to those special conditions, a fair and substantial relationship does not exist between the general public purposes of the ordinance provisions and the specific application of those provisions to the property. He said the proposed use is a reasonable one and, like the previous application, the lot will become less nonconforming. For those reasons, he said the variances should be granted. Ms. Eldridge concurred and had nothing to add.

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

IV. OTHER BUSINESS

There was no other business.

V. ADJOURNMENT

The meeting was adjourned at 11:15 p.m.

Respectfully submitted,

Joann Breault
BOA Recording Secretary

**MINUTES OF THE
BOARD OF ADJUSTMENT MEETING
EILEEN DONDERO FOLEY COUNCIL CHAMBERS
MUNICIPAL COMPLEX, 1 JUNKINS AVENUE
PORTSMOUTH, NEW HAMPSHIRE**

7:00 P.M.

October 25, 2022

MEMBERS PRESENT: Jim Lee, Vice Chair; David MacDonald; Beth Margeson; Paul Mannle; Phyllis Eldridge; Thomas Rossi; Jeffrey Mattson, Alternate

MEMBERS EXCUSED: None.

ALSO PRESENT: Peter Stith, Planning Department

Vice-Chair Jim Lee was Acting-Chair.

I. NEW BUSINESS

- A.** Rehearing of the Appeal of **Duncan MacCallum, (Attorney for the Appellants)**, of the July 15, 2021 decision of the Planning Board for property located at **53 Green Street** which granted the following: a) a wetlands conditional use permit under Section 10.1017 of the Zoning Ordinance; b) preliminary and final subdivision approval; and c) site plan review approval. Said property is shown on Assessor Map 119 Lot 2 and lies within the Character District 5 (CD5).

SPEAKING TO THE PETITION

The appellant's attorney Duncan MacCallum stated that he represented 15 Portsmouth citizens who opposed the project. He said the rule of standing was that the complaining person must be directly affected by the decision of the land use board. He said the abutters automatically have standing but if anyone else is directly affected by the decision, then they have standing to appeal. In the case of the North Mill Pond, he said someone who lived far removed by the location might be offended but not directly affected by the land board's decision, but someone who lived in the immediate vicinity or was directly affected by it had standing to complain. He referred to a letter from an environmental expert who said everyone near the North Mill Pond has standing because the development was an insult to the wetlands buffer and its effects will be felt not only at 53 Green Street but by the entire North Mill Pond neighborhood due to the construction debris that will be carried in by the tide and will destroy plant and animal life around the pond. He said the people he represented had standing.

Attorney Michael Ramsdell was present on behalf of the respondent. He said it wasn't true that everyone on the North Mill Pond had standing. He said it was conceded that none of the appellants

were abutters. He said it was a four-part test comprising whether a person's property was in proximity to the development, the type of change and how the person's property would be affected, the immediacy of an injury, and whether the person participated in previous proceedings. He stated that none of the property owners were within 1500 feet of the development and none participated before the Planning Board; none had a definitive injury or an immediate impact to their property. He said the appellants were instead saying that if something went wrong during construction and the pond was harmed, then their property could be impacted. He said the appellants were not claiming that when the development was finished it would have an adverse impact on their property, which would give them standing. He noted that the definition of an abutter included property across a stream, not a body of water, lake, or pond, and just because someone lived on a pond didn't give them standing from a project 1500 feet away. He said the words from the New Hampshire Supreme Court were definitive, adverse, immediate, and direct. He said the appellants didn't have standing because they were being speculative. Attorney MacCallum said there was nothing speculative about it because it was a fact-based inquiry.

Ms. Margeson asked whether the definition of abutters included those that lived across from a stream, noting that there were two appellants who lived on the banks of the North Mill Pond. She also asked if the city noticed people who lived across water bodies for projects within wetland buffers or a similar body of water. Mr. Stith said for zoning applications, it was typically 300 feet from the subject property but if 300 feet went into the pond, the city wouldn't necessarily notify citizens who were further from that. Ms. Margeson said that, for a Planning Board appeal, one didn't have to be an abutter but just had to be directly impacted. For abutter notices, she said she thought it was 300 feet but a wider range for abutter notices was applied than for just direct abutters. Mr. Stith agreed and said it would include more than just direct abutters.

Assistant City Attorney Trevor McCourt said an abutter may be a person aggrieved, but a person aggrieved was a bit different and would probably include any abutter. Mr. Mannle asked if the issue of legal standing was brought up by the appellant. Attorney McCourt agreed. Mr. Mannle verified that the North Mill Pond is a tidal estuary and the applicant's building is on the North Mill Pond. Ms. Margeson said two of the appellants lived on North Mill Pond but one of the board's criteria was whether those people participated in TAC, Conservation Commission, or Planning Board sessions and she believed that they did not. Attorney MacCallum said participation in any of those meetings was not a requirement. He said one of his clients didn't get a notice and things got lost in the shuffle of the 105 Bartlett Street project. He said several of the appellants had been affected and had the right to appeal and contest the Planning Board's decision.

Mr. Rossi asked for more clarification on the immediacy of the injury claimed. Attorney MacCallum said when the project is finished, it will intrude into the 100-ft wetlands buffer and affect the environment on an ongoing basis, including animal life and plant life. Mr. Rossi said the assertion that it would impact animal life in the North Mill Pond was a strong one and he struggled to find the evidence for that. Attorney MacCallum said he presented the board with a letter from an environmental expert and that other qualified people wrote letters to the board and said the project would affect plant life and animal life and have an adverse effect on the environment. Mr. Mattson asked how Attorney MacCallum would respond to the developers' engineer who said since there was currently no stormwater management, the project would improve the site and would replace

invasive species with native plant life. Attorney MacCallum said those things were not supposed to be a tradeoff of benefits vs tradeoffs and the developer was not supposed to build in the 100-ft buffer unless they qualified for a Conditional Use Permit (CUP). Mr. Mattson asked how it would relate to the grievance from the potential damage to the pond as opposed to the wetland buffer. Attorney MacCallum said stormwater runoff was just one aspect of it and that his environmental expert drew a distinction between the two by noting that in the 105 Bartlett Street case, there would still be damage to the environment if the project went forward, even with stormwater runoff.

Acting-Chair Lee opened the public hearing.

SPEAKING IN FAVOR OF THE STANDING

Bill Downey of 67 Bow Street said, as an owner of a kayak business, he thought the argument that water had to be measured by a certain footage was not applicable because those were for traditional uses. He said the tides usually came it around nine feet and could affect anything beyond 300 feet. He said the city and anyone who was part of the water system would be affected.

Mark Brighton of South Mill Street said he believed there was no hardship to the land and that the project didn't have to intrude upon the wetlands.

Abigail Gindell of 229 Clinton Street said wildlife would be affected by the felled trees and construction as well as the noise and light pollution.

Esther Kennedy of 41 Pickering Avenue said she had a Masters' degree in environmental administration and that she was dependent on the waterway because she owned a marina. She said North Mill Pond was more of an estuary and everyone who paid taxes had standing because there was public land between the high and low tide zones. She said the Master Plan asked that developers not build in buffer zones because it would affect the ecosystem. She said the waterway went on for miles and there were eel and other grasses in the area.

Patricia Bagley of 213 Pleasant Street said she agreed with all the remarks. She said she project violated the purpose of buffer zones and what they were meant to keep out. She said she had standing because she was a resident and walked the North Mill Pond and that the pond was part of Portsmouth's fabric and had tremendous benefits for the residents.

Petra Huda of 280 South Street said it was a tidal estuary, not a pond or a creek, and affected everyone who lived by there. She said there was a reason that there were six criteria to be fully meet in order to get a CUP, and she urged the board to look at the Master Plan and save the estuary.

Dick Bagley of 213 Pleasant Street said the board had a difficult decision to make on standing because it was hard to define. He said the board had an obligation to the citizens by asking if there was an error made in the decision process.

Paige Trace of 27 Hancock Street said the city once had two estuaries but now it only had one that ebbed and flowed into a Class B impaired waterway that had a different set of rules. She said a precedent could be set for other developers until the estuary was entirely gone.

Beth Jefferson of 111 Sparhawk Street said she lived on the west side of the pond and was also an appellant for 105 Bartlett Street. She said she had to have permission to remove an overgrown arborvitae in her yard because it abutted the marshlands of the wetlands, and she expected the same procedure for a large commercial developer.

John Howard of 179 Burkitt Street said the Foundry Street Garage was like having a cruise ship at the end of the pond because it was ablaze ever night. He said light pollution affected everyone.

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

Attorney Ramsdell said standing was a matter of law and that the board took an oath to uphold the law. He said there was a test for standing and that none of the speakers offered a direct, immediate, or definitive adverse consequence of the project but instead the board was asked what would happen to the water. He said the project would do stormwater improvements to the pond and would not adversely affect anyone's property and that the buildings in the project would not be any closer to the water than the current building was. He said the building would in fact be further removed from the water, as would the paved portion of the roadway. He said his client was not asking to further intrude into the buffer, and he asked the board to decide the standing issue by law as required.

Bill Downey of 67 Bow Street said the attorney was being paid to make a good argument and asked how he would feel if it were his town. He said rules were rules and just because one thing was done to improve the situation didn't give an allowance to break the buffer.

Abigail Gindell said trading in a one-story building for a five-story one wasn't the same thing and when something was disturbed, something better had to be done as a matter of course.

Attorney MacCallum said he wasn't aware of a case where participation in a land use meeting was required for standing. He said those meetings moved at a fast pace and word didn't get around. He said anyone adversely affected should be able to have standing to bring an appeal, whether they participated in the prior proceeding before the Planning Board or not.

No one else spoke. Acting-Chair Lee closed the public hearing.

DISCUSSION OF THE BOARD REGARDING STANDING

Mr. Mattson said even though the direct abutters weren't present at the previous meeting, they could still have standing. He said a lot of the arguments seemed to relate to hypothetical harm to the water instead of a definitive, immediate, and direct impact to the water. Mr. Rossi said the letter Attorney McCourt submitted to the board stated non-inclusive factors when considering if a party is aggrieved, and he asked how the word non-inclusive applied. Attorney McCourt said the term

'person aggrieved' didn't provide a lot of guidance to local land use boards but was a factual inquiry that varied from case to case. Mr. Rossi asked if other factors other than the four stated ones could be considered. Attorney McCourt said there could be but that the new Statute required specific written factual findings to be made, and he wasn't sure if that applied to a case of an appeal from the Planning Board to the ZBA but recommended that the board make specific factual findings on the issue of standing. Mr. Rossi said the project hadn't been done yet, so when it came to injury claimed and people didn't have standing to make their case, it was like a Catch-22 because they couldn't prove the injury because they didn't have standing, and they didn't have standing because they couldn't prove the injury. Attorney McCourt said there was a difference between an injury that the community or individual may suffer as a result of some tortuous act. He said an injury in this case was an injury to a person's property rights.

Mr. Mannle asked if all the property owners on the North Mill Pond received abutters' notices. Mr. Stith said they did not. Mr. Rossi said therefore failure to meet one or more of the four criteria would not disqualify the appellants from having standing. Attorney McCourt agreed and said they were factors that the court provided to guide the board as they determined who might be a person aggrieved. Mr. Margeson said those were the factors that the Supreme Court laid down in terms of Superior Court appeal, and she asked if those four factors were in play from a Planning Board to a ZBA appeal. Attorney McCourt said those factors were specific to appeals from the Planning Board or the decision of an administrative official such as the Planning Board to the ZBA and was a different standard. It was further discussed. Ms. Margeson asked if the four criteria applied to the Superior Court or the appeal from the Planning Board to the ZBA. Attorney McCourt said it was the latter appeal. Ms. Margeson said the Superior Court would apply its own analysis as to standing and would not accept the ZBA's findings. Attorney McCourt said a person might have the right to appeal a decision of the Planning Board to the ZBA but not the right to appeal from the ZBA to Superior Court.

Mr. Rossi said the estuary was an interlinked ecological system, so proximity might take on a different meaning in terms of the potential for harm, and it was further discussed. Ms. Eldridge said she didn't think there was standing in this case because if every taxpayer had standing, then no one had standing. She said all the letters she read from people with standing who felt aggrieved used the word 'if' to describe a potential harm. Mr. Mannle said anyone on the pond would have standing because it was a tidal estuary and it was the city's responsibility to inform the public. It was further discussed. Acting-Chair Lee said the memo from the Legal Department stated that standing is a factual issue for the board to decide on a case-by-case basis and that it quoted the RSA as follows: "The court advises that the ZBA weigh in on the following non-inclusive factors when considering if a part is aggrieved." He said that meant that Points 1 through 4 didn't have to be met but were just factors to consider. He said no one was aggrieved because nothing had happened yet, and the cumulative effect was taken into consideration. Ms. Margeson said the board's job was to use the four tests to see if the people had standing. Acting-Chair Lee said that was a factor to consider, and Mr. Rossi agreed. After further discussion, Ms. Margeson said the aggrieved term came from the legislature and the court set out the criteria to figure out what aggrieved means to land use boards. She said it was up to the board to figure out what constituted grievance.

DECISION OF THE BOARD

Mr. Rossi **moved** that the board find that the appealing parties meet the statutory requirements for standing provided under RSA Section 676.5 for the following reasons: some of the appellants have properties that border on the same estuary as the project borders on; estuaries are complex and delicate ecosystems, and this project involves activity within the 100-ft wetland setback, so it has the potential to damage or alter the state of the estuary, and because of this potential, the appellants have standing to make the case of whether or not that will be the case and whether or not the issues as part of the appeal have merit. Mr. MacDonald concurred and had nothing to add.

The motion **passed** by a vote of 4-3, with Ms. Margeson, Ms. Eldridge, and Mr. Mattson voting in opposition.

SPEAKING TO THE APPEAL

Attorney MacCallum said he represented 15 residents who were opposed to the project and were appealing a decision from the Planning Board that granted final site approval to the project. He said the standard of review of the Planning Board's decision was de novo, meaning that the ZBA considered it anew and wasn't required or expected to refer to any of the findings of fact made by the Planning Board in its decision but had the right and the power to substitute their opinion of the facts found by the Planning board and set them aside. He said the zoning ordinance required in this particular zoning district that if the building exceeded 20,000 square feet, a building footprint CUP was required. He said the Planning Board did not do that and did not insist that the developers meet the criteria and obtain a CUP, so the granting of site plan approval was illegal. For that reason, he said the ZBA had to reverse the Planning Board's decision and ask them to do it over. He said the decision to allow more than two stories was the same thing because portions of the building would be within 100 feet of the water line and no more than two stories were allowed in that circumstance. He said the developer claimed that the community space they were giving to the city entitled them to two stories, but it was an overlay district and there was no overlap between the 100-ft water line and the overlay district. He said it was cut and dry that the building wasn't allowed to have more than two stories if the project intrudes into the 100-ft margin. He said when the zoning ordinance provisions are in conflict, the introductory provisions or the ordinance provide that the more restrictive provision is to be followed. He said the more restrictive provision was that there be only two stories. He said the zoning ordinance also had a strong policy of wetland and environmental protections and that the wetlands ordinance is to prevail in the case of a conflict. He said the 100-ft buffer trumped the overlay district and other provisions of the ordinance, but in this case there is no conflict because the 100-ft buffer stops at the borderline of the overlay district, so there is no excuse for allowing more than two stories on the building. He said after his original appeal, it came to light that there was an ineligible Planning Board member sitting on the board, Ray Pezzullo, who voted to approve the project. Under case law, he said it voided the entire vote to approve the project. He said Mr. Pezzullo was ineligible because he was an ex officio member of the board who worked for the City Manager, who was also an ex officio member of the board, and it was a conflict of interest. He said it was also a conflict of the administrative code and the Statute and the administrative code had to yield. He said for those reasons the Planning Board's decision was illegal. He cited the case of Winslow vs the Town of Holderness Planning Board and said it was impossible to assess the impact that the ineligible member's decision may have had on the Planning Board's decision.

Ms. Margeson said the issue was raised in the appeal of the workforce housing for the Portsmouth Housing Authority and the Superior Court did not give the fact that Portsmouth had too many ex officio members on the Planning Board that much merit. Attorney MacCallum said if it wasn't raised, then there was no reason for the court to rule on it. Ms. Margeson said the board's members had changed since February and the information they received about Mr. Pezzullo didn't come to them until later that day. Attorney MacCallum said he sent the information back in April but that he forwarded Planning Board Chairman Chellman's letter to them that day. It was further discussed. Ms. Margeson verified that Attorney MacCallum was only appealing on Counts One and Three. Mr. MacDonald asked about the proposal for trading floor space for height. Attorney MacCallum said the developer's argument had been that the site was going to be better because they would improve the overall project, so they should be entitled to invade the 100-ft buffer. He said detriments should not be traded for benefits but that the zoning ordinance's criteria for a wetlands CUP and the number of stories involved should be followed.

Attorney Ramsdell asked the board to vote on the standing issue again because none of the concerns raised by any board member had anything to do with the two issues that the appellants were pursuing under the appeal but only with the issue related to the wetlands and the buffer. He said it was conceded before the New Hampshire Supreme Court that the ZBA did not have jurisdiction over the Planning Board decision on a CUP. He asked that the board revote on standing with only the two issues of the appeal before the board.

Attorney McCourt said it was within the ZBA's power to vote that the appellants had standing because the entire process of the rehearing set up by the legislature was intended to give the ZBA first crack at correcting any mistakes they may have made. He said if the board believed that the reasons they used to support their decision in the first instance for standing were correct, then they would vote in the same way.

Ms. Margeson said she was disinclined to revisit the issue of standing because she thought that Count one included information about the lot being within 100 feet of the North Mill Pond and did relate to the reasons upon which the board gave standing. Mr. Rossi and Mr. Mattson agreed. Ms. Margeson said the CUP was before the Superior Court but there was a lot of case law stating that the ZBA still had to do the analysis of the zoning ordinances that do not pertain to CUPs before all the administrative remedies had been exhausted prior to going to Superior Court. She said it made sense to continue. Acting-Chair Lee agreed and said the revote would not change anything.

Attorney Ramsdell said he already submitted his position on the two issues before the board and would address the analysis of the ordinance. He said it was plain that the board didn't have jurisdiction over the Chellman issue because it wasn't raised before the Planning Board or the appellant's appeal to the board but was instead raised in the motion for rehearing to the board. He said the board also had appellate jurisdiction by Statute and over what the legislature provided it for jurisdiction. He said the letter from Planning Board Chairman Chellman did not ask for interpretation of the zoning ordinance but involved the composition of the Planning Board, which in no way was determined by the ZBA. He said their jurisdiction did not extend to the issues raised in the Chellman letter or by Attorney MacCallum and wouldn't be part of the rehearing procedure.

Attorney Ramsdell said a CUP was not required for a building greater than 20,000 square feet because it was located in the north end incentive overlay and according to ordinance Section 10.5A46.0, a building over 20,000 square feet is allowed without a CUP if community space requirements are met. He said the appellants were citing the wrong provision and relying on Section 10.5A43.43 that wasn't the proper standard because it dealt with an increased building footprint based on parking requirements. He said his client was not proceeding under that but that the basis of their request was Section 10.5A46.10, the same issue regarding the building height. He said they were entitled to an additional story in height if the development provides community space. He said Sections 10.5A46.10 and .20 governed the proposed development at 53 Green Street because overlay districts apply special rules to manage land use and specific areas that may be portions of a single zoning district or that may overlap two or more zoning districts. Except as specifically provided in the regulations for an overlay district, he said all regulations of the underlying zoning district shall apply. He said when there is a conflict between the regulations of an overlay district and those of the underlying district, the overlay district regulations control. He noted that the word 'trump' was used, and it meant that the overlay districts control or trump the rules for individual districts like 4 and 5. He said that Section 120.5A46 states that in the incentive overlay districts, certain specified development standards may be modified as set forth in Section 10.5A46.10. He said if the development provides community space, then the building structure may be increased to 35 square feet and the building height increased by one story. He said there was a critical difference when a lot was located, adjacent to, or within 200 feet of North Mill Pond. He said the sections of the ordinance didn't conflict but just talked about different lots. He referred to the various sections of the ordinance and concluded that as long as the project is in the overlay district and if it provides a lot adjacent to or within 100 feet of North Mill Pond, the development isn't eligible for the building height and footprint incentives. He said it couldn't be argued that the zoning map controlled. He said the map became part of the zoning ordinance in April 2014 and had been amended several times but none of the amendments impacted the north end overlay district, compared to the amendments made to sections 10.5A46.21 and .22 that became part of the ordinance in August 2018. He said the intent of the 2018 amendment was to provide public access to the North Mill Pond via the greenway/open space and to have the building step down toward the water. He said his client's building was not stepping down to the water but was stepping back and was still within 100 feet of the water mark. He said the development achieved the goals of the zoning amendment. He said the appellants' argument was based on a misinterpretation of Section 10.141, the same as their argument on Section 10.511, and that the conflict argument was irrelevant to the proposed development. He said there was no conflict among the ordinance provisions and his clients had satisfied the criteria for additional square footage and floor height. He said the appeal should be denied. (See recording stamp time 1:45 for further detail).

Ms. Margeson said the board received the Staff Memo about the Planning Board decision the day before and it seemed that the Planning Board may have failed to cite the appropriate zoning ordinances. She said the lot was mostly within the 100 feet of the North Mill Pond and the smaller part of was within the north end incentive overlay district, so under Section 10.611, because it is an overlay, it applies to both portions of the lot, which was Attorney Ramsdell's argument. She said the other argument was that under Section 10.5A46.2, the portion of the lot that lies within 100 feet of the North Mill Pond is eligible to receive incentives to the development standards.

Mr. Rossi referred to the zoning map and said there were parts of the north end incentive overlay district that border directly on the North Mill Pond or Hodgson's Creek, and not every part of the north end overlay incentive district was set 100 feet or more back from the North Mill Pond.

Attorney Ramsdell said he was sure that was correct, and if not, there would be no reason to have the separate provisions of 10.5A46.21 and .22 for lots located adjacent to or within 200 feet or for lots more than 100 feet. Mr. Rossi asked why therefore Section 10.5A46.20 would apply to the portion of the lot that's not in the overlay district. Attorney Ramsdell said he thought they were all within the north end overlay incentive overlay district. Mr. Rossi said the lot of the project is partially within the north end incentive overlay district and partially within 100 feet of the North Mill Pond, and those two areas don't overlap, unlike some other areas where there is an overlap. Attorney Ramsdell said he believed the entire project is within the north end overlay district because it's a development that includes the lot and the building, so the rules for within 100 feet of North Mill Pond apply to the entire development because of the way it's defined in the zoning ordinance. He said the 2018 amendments regarding the north end overlay district including Sections .21 and .22 render the zoning map itself inaccurate. Mr. Rossi said he would agree with that if there were not areas where the incentive overlay district was not set back 100 feet from North Mill Pond.

Acting-Chair Lee said Attorney Ramsdell quoted Section 10.611, the underlying zoning issues where there's a conflict between regulations of an overlay district and the underlying district and the overlay district regulations control. He said he read Article One of the zoning ordinance about purpose and applicability. He said Section 10.141 stated that whenever the provision is more restrictive or imposes a higher standard or requirement on the use or dimensions of a lot, building, or structure that is imposed or required by another ordinance, regulation or permit, the provisions of this ordinance shall conflict. He said it seemed to him that they were in conflict. Attorney Ramsdell said there was only one zoning ordinance but several sections, chapters and so on. He said Section 10.661 talked about districts and rules for districts but they're all within the singular zoning ordinance. He said Section 10.141 says that when a provision of this ordinance is more restrictive than is imposed or required by another ordinance, he said it meant another ordinance, not 'this' ordinance, and that was why there was no conflict. He said 10.611 dealt with districts within 'this' ordinance whereas 10.141 dealt with a conflict within 'this' ordinance and something else. He said the plain language of them eliminates the conflict. He further expounded on whether the word ordinance was capitalized and whether it was 'the' ordinance or 'this' ordinance. (See recording time stamp 2:10).

Acting-Chair Lee opened the public comment.

Esther Kennedy of 41 Pickering Avenue said she questioned the weight of a facility like that on the tidal zones, as well as the impervious layer. She said the CUP process had to be re-evaluated and that the board should send it back to the Planning Board.

Abigail Gindell of 229 Clinton Street said the tall trees would be taken down, which would change the habitat for the birds and damage the whole ecosystem.

Petra Huda of 280 South Street urged the board to look at it from the perspective of the original CUP. She said the Planning Board didn't look at the site's limit of 20,000 square feet and the fact that a CUP was needed to go up to 29,000 square feet, so they should review it again and clarify it.

Paige Trace of 27 Hancock Street said the developer could go a story higher, and the higher up they go, the more money the city makes because there'll be more people paying taxes. She said workforce housing wasn't proposed, and even if harming the ecosystem could be justified, the building wasn't for residents who could afford it or for those people who worked in the city.

Attorney MacCallum explained that the ineligible Planning Board member was part of their appeal. He said he traced the whole history of the event and the law and didn't raise it in his original appeal because at that time he didn't know about it. He said the document was attached to the objection to Stone Creek Realty's motion to reconsider the ZBA's decision on the appellants' motion for rehearing. He said the ineligible member was appointed pursuant to an administrative code provision that conflicted with the Statute, so the case should be voided and returned to the Planning Department. He said Attorney Ramsdell's use of the word 'this' and the capitalization for the word 'ordinance' made the ordinance seem more difficult than it was. He said the more restrictive interpretation in this instance says that if any portion of a building is within 100 feet of the water line, only two stories can be built. He asked the board to overturn the Planning Board's decision. (Recording time stamp 2:33:48).

Ms. Eldridge asked why there should be an overlay district if it's never going to rule, noting that when it's in conflict with anything more restrictive, it won't have its way. Attorney MacCallum said the Wetlands Protection ordinance said the same thing and that the zoning ordinance resolved it by saying that the most restrictive interpretation will control. Ms. Margeson remarked that Attorney MacCallum cited Sections 10.141 and 10.511 which were not in the character zone district. Attorney MacCallum said they were general provisions that cut across the entire zoning ordinance. Ms. Margeson said the ordinance says that for incentive overlay districts, the overlay takes precedence over the other sections of the ordinance. Attorney MacCallum said the Wetlands Protection Ordinance says that in the case of a conflict, it controls the other provisions or the ordinance. Ms. Margeson said they weren't dealing with the wetlands, and the two remaining counts were whether the Planning Board erred by applying Sections 10.5A43.43 vs 46.10. Attorney MacCallum said Sections 10.5A21.10 and .20 of the ordinance were more restrictive and more overt because Section 10.5A21.22B is intended to address the situation where a new structure is erected in the wetlands buffer zone or where the height of the existing structure is increased. He said Sections 10.5A21.10 and .20 prevailed over Section 10.5A46.10, and no building exceeding two stories is allowed. Mr. Mattson said the nuance was important. He said the flood plain district referred to the section where he thought one of the statements of what overrides what referred to an article, and then Section 10.141 referred to the ordinance. He said they may be in conflict but questioned the nuance of section vs article or ordinance. Attorney MacCallum said he didn't know what the ordinance drafters meant when they incorporated other sections by reference.

Attorney Ramsdell said he had forgotten that Attorney MacCallum sent in the prior letter about the ineligible Planning Board member, but it still didn't change the fact that the board had no jurisdiction over that issue. He said Section 10.141 wasn't just about the fact that the letter 'o' was

capitalized in one place and not the other or the word 'this' was referred to in some cases. He said when put together, the specific language was a provision of THIS ordinance vs what's required by another ordinance. He pointed out that there were six or more other ordinances and that the use of the word 'this' or capitalization was because the drafters were making a point and knew what they were doing. He said it was the way a court will decide it and the way the board should decide it.

Mr. Rossi noted that there was no portion of the north end overlay incentive district that bordered directly on the North Mill Pond and that he was thinking of the west end.

No one else spoke. Acting-Chair Lee closed the public comment.

DISCUSSION OF THE BOARD

Ms. Margeson said she would not support the appeal because she didn't believe that the Planning Board erred in applying Sections 10.5A46.10 and 10.5A46.20. She said it was clear that the zoning ordinance allows for the overlay district to apply to the entire lot by virtue of Section 10.5A46.21, so by right, in Counts One and Two, the appellee was entitled to build the building they did. She said she didn't like the project and that kind of building on the North Mill Pond bothered her, but she had to concede that it was what the zoning ordinance allowed for. Mr. Rossi said he didn't think the board was making any kind of a judgment about the merits of the project but that it was a judgment of whether the Planning Board acted in error or in compliance with the zoning ordinance. He said he kept coming back to the map because in Section 10.5A46, the incentive overlay districts are designated on Map 10.5A21b, and in examining that map, it was clear that the west end incentive overlay district bordered directly on the North Mill Pond, so he therefore did not interpret the wording in Sections 10.5A46.21 and .22 to mean that in this particular lot, the area that's not within the incentive overlay district but is within the 100-ft setback is governed by the rules of the incentive overlay district. He said he thought it was governed by the rules of either the wetlands setback or the Character District 5, so he did not believe that the incentive overlay district ordinance really applied to that area of the lot. He said he was in favor of the appellant's position. Acting-Chair Lee said he would support the appeal because there was a reason that Section 120.141 is at the beginning of the zoning ordinance at the part labeled 'purpose and applicability'. He said that section had to do with the purpose and applicability of the whole zoning ordinance. He said the little 'o' in the word ordinance came from when someone was talking about another ordinance further inside the ordinance, so that was saying that if there's another ordinance inside, the provision of Section 10.141 is the prevailing ordinance and shall govern. He said he also thought that 100 feet was 100 feet and there was no gray area, so the development was inside the 100 feet. For those reasons, he said the appeal should go back to the Planning Board for another hearing.

Mr. Rossi said he would make a motion and handle Counts One and Three together because, according to Section 10.5A46 describing the incentive overlay districts, the districts are designated on Map 10.5A21B, and in that map, it's clear that the north end overlay district does not extend into the 100-ft setback from North Mill Pond. Therefore, the specifics of the project would require some additional activity that was not taken, such as a CUP or other exceptions, to allow the building coverage as well as the exceptions to the height restrictions in Character District 5.

Mr. Rossi **moved** that the board finds an error in the enforcement of the zoning ordinance in the July 15 decision of the Planning Board for the following reasons: the north end overlay incentive district does not extend into the 100-ft setback and therefore does not provide provision for the increased building lot coverage, size, square footage, and height.

Mr. MacDonald concurred and had nothing to add.

The motion to grant the appeal for Counts One and Three **failed** by a vote of 4-3, with Mr. Mannle, Ms. Margeson, Ms. Eldridge, and Mr. Mattson voting in opposition.

II. OTHER BUSINESS

There was no other business.

III. ADJOURNMENT

The meeting adjourned at 10:05 p.m.

Respectfully submitted,

Joann Breault
BOA Recording Secretary

OLD BUSINESS

1.

The request of **Jeffrey M. and Melissa Foy (Owners)**, for property located at **67 Ridges Court** whereas relief is needed for construction of a 518 square foot garage addition which requires the following: 1) A Variance from Section 10.521 to allow a 15.5 foot front yard where 19 feet is required per Section 10.516.10. 2) A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 207 Lot 59 and lies within the Single Residence B (SRB) District.

Existing & Proposed Conditions

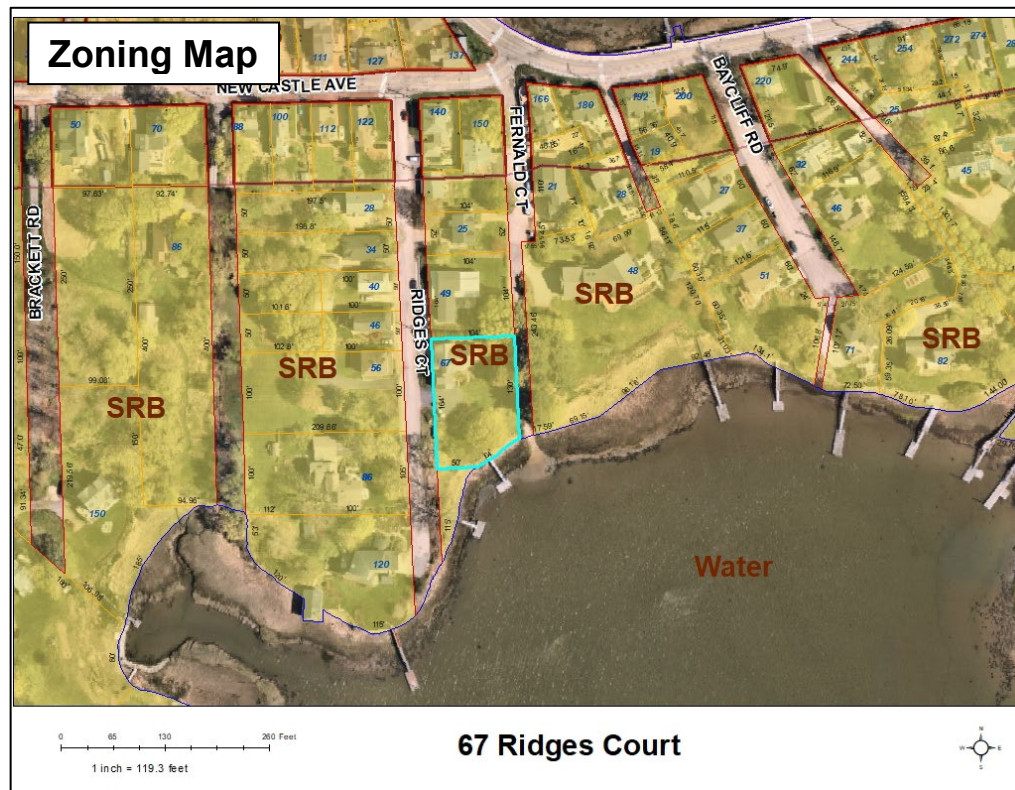
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family	Garage addition	Primarily single residence
<u>Lot area (sq. ft.):</u>	16,500	16,500	15,000 min.
<u>Lot area per dwelling (sq. ft.):</u>	16,500	16,500	15,000 min.
<u>Lot depth (ft.):</u>	109	109	100 min.
<u>Street Frontage (ft.):</u>	164	164	100 min.
<u>Primary Front Yard (ft.):</u>	8	15.5	30 *(19 feet per front yard averaging) min.
<u>Left Yard (ft.):</u>	10	9.5	10 min.
<u>Right Yard (ft.):</u>	95	>67	10
<u>Rear Yard (ft.):</u>	40	40	30 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	14	17.5	20 max.
<u>Open Space Coverage (%):</u>	73	77	40 min.
<u>Parking:</u>	4	4	2
<u>Estimated Age of Structure:</u>	2002	Variance request(s) shown in red.	

Other Permits/Approvals Required

Conservation Commission & Planning Board – Wetland CUP

November 15, 2022 Meeting

Neighborhood Context



November 15, 2022 Meeting

Previous Board of Adjustment Actions

July 15, 1986 – the Board **granted** a Variance to permit the construction of a 20' x 20' addition onto an existing single family dwelling with a front yard of 9' where a 30' front yard is required.

August 20, 2002 – The Board considered request for the following Variance: Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) is requested to allow a 5'9" x 10'3" front porch/entry with an 8'1" front yard where 30' is the minimum required The Board voted the request be **granted** as advertised and presented.

October 15, 2002 – The Board considered request for the following Variance: Article III, Section 10-302(A) is requested to allow the existing single family dwelling to be demolished and rebuilt with a 13'11" front yard where 30' is the minimum required The Board voted the request be **granted** as advertised and presented.

July 19, 2022 - Relief is needed to construct a 718 square foot garage addition with living space and deck above which requires the following:

- 1) A Variance from Section 10.521 to allow a 15.5' front yard where 30' is required.
- 2) A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 2074 Lot 59 and is located within the single residence B (SRB) District.

The Board voted to **grant** the request to **postpone** to the August meeting.

August 16, 2022 The Board voted to **deny** the request of July 19, 2022 because there was no hardship.

September 27, 2022 – The Board voted to **grant** the following with the exception of item "b" which was determined to not be required:

- 1) Section 10.521 to allow a) an 8' front yard where 30' is required to expand the existing front porch; b) a 13.5 foot front yard where 30 is required to expand the main roof of the house; c) a 13.5 foot front yard where 30 feet is required for a new roof over an existing doorway; and d) a 9.5 foot left side yard where 10 feet is required for a new rood over an existing doorway.
- 2) Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance

Planning Department Comments

Staff feels this is a significant enough change that would not evoke Fisher v. Dover, but the Board may want to consider whether Fisher vs. Dover is applicable before this application is considered.

"When a material change of circumstances affecting the merits of the applications has not occurred or the application is not for a use that materially differs in nature and degree from its

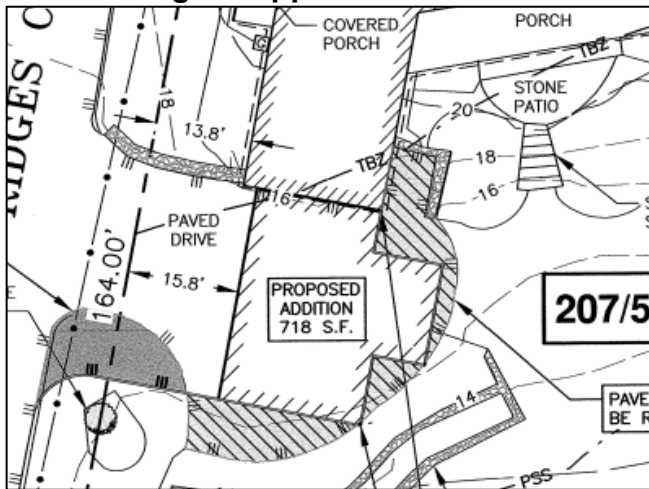
November 15, 2022 Meeting

predecessor, the board of adjustment may not lawfully reach the merits of the petition. If it were otherwise, there would be no finality to proceedings before the board of adjustment, the integrity of the zoning plan would be threatened, and an undue burden would be placed on property owners seeking to uphold the zoning plan.” Fisher v. Dover, 120 N.H. 187, (1980).

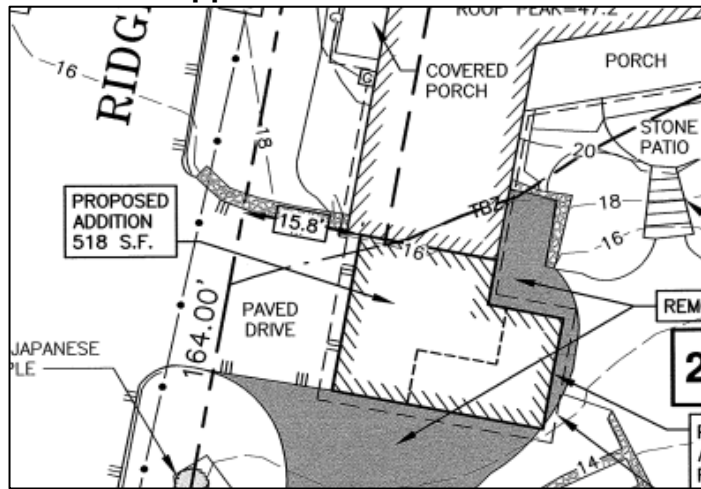
The applicant was before the Board in August for a garage addition that was subsequently denied by the Board. The applicant has revised the scope of work from a 718 square foot two car garage to a 518 square foot one car garage addition. On the original plan there was a deck

After the current application was submitted, a survey of the front yards of adjacent properties was completed to determine the average front yard under Section 10.516.10. The results show an average front yard of 19 feet. In addition, the scope of the main roof expansion has changed and item “b” will not require a variance.

August Application:



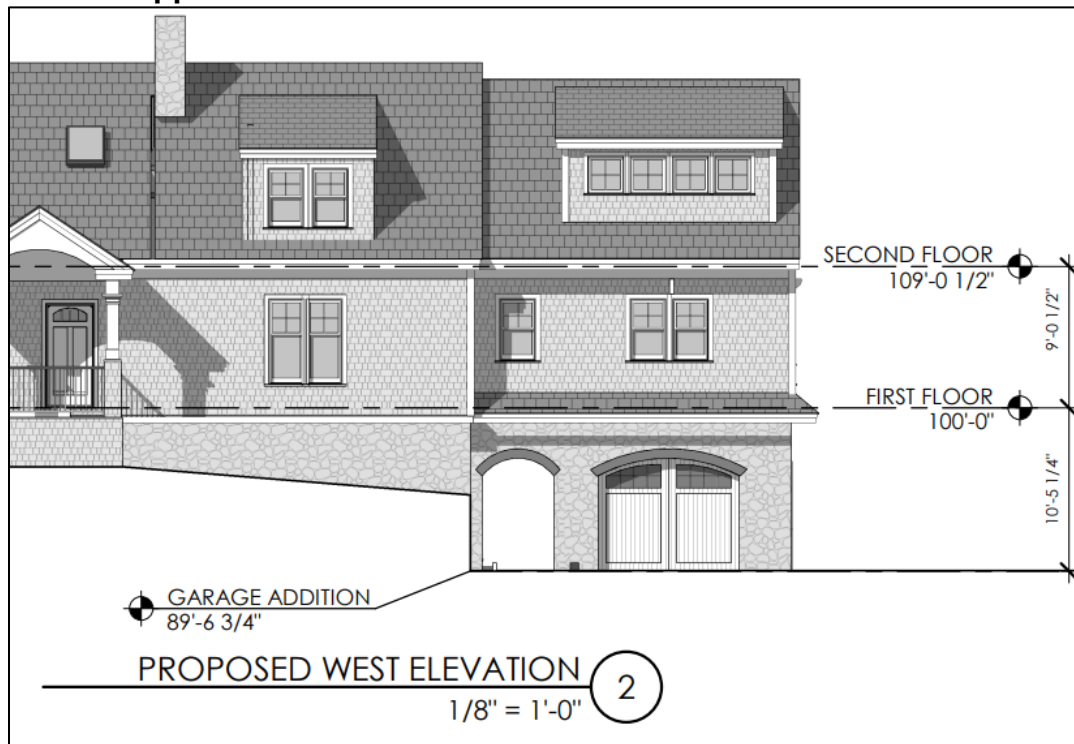
Current Application:



August Application:



Current Application:



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.

10.235 Certain Representations Deemed Conditions

Representations made at public hearings or materials submitted to the Board by an applicant for a special exception or variance concerning features of proposed buildings, structures, parking or uses which are subject to regulations pursuant to Subsection 10.232 or 10.233 shall be deemed conditions upon such special exception or variance.

HOEFLE, PHOENIX, GORMLEY & ROBERTS, PLLC

ATTORNEYS AT LAW

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

October 11, 2022

HAND DELIVERED

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

Re: Jeffrey and Melissa Foy, Owner/Applicant
67 Ridges Court
Tax Map 207/Lot 59
Single Residence B District

Dear Mr. Stith & Zoning Board Members:

On behalf of Jeffrey and Melissa Foy ("Foy"), enclosed please find the following in support of a request for zoning relief:

- 10/5/2022 – Revised Memorandum and exhibits in support of Variance Application

This revision corrects errors in the original Memorandum and incorporates minor plan changes in Exhibits A and B; there is no change to the relief requested.

We look forward to presenting this application to the Zoning Board at its October 18, 2022 meeting.

Very truly yours,



R. Timothy Phoenix

Encl.

cc: Jeffrey and Melissa Foy
Ambit Engineering, Inc.
Destefano Mangel

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

OWNER'S AUTHORIZATION

We, Jeffrey & Melissa Foy, Owners/Applicants of 67 Ridges Court, Tax Map 207/Lot 59, hereby authorize law firm Hoefle, Phoenix, Gormley & Roberts, PLLC to represent me before any and all Portsmouth Representatives, Boards and Commissions for permitting the project.

Respectfully submitted,

Date:

Jeffrey Foy



Date:

Melissa Foy



MEMORANDUM

TO: Portsmouth Zoning Board of Adjustment (“ZBA”)
FROM: R. Timothy Phoenix, Esquire
DATE: October 11, 2022
Re: Jeffrey and Melissa Foy, Owner/Applicant
Property Location: 67 Ridges Court
Tax Map 207, Lot 59
Single Residence B (“SRB”)

Dear Chairman Parrott and Zoning Board Members:

On behalf of Jeffrey and Melissa Foy, Owner/Applicant (“Foy”), we are pleased to submit this memorandum and attached exhibits in support of zoning relief to allow a reduced garage addition at 67 Ridges Court, to be considered by the Portsmouth Zoning Board of Adjustment (“ZBA”) at its October 18, 2022 meeting.

I. EXHIBITS

- A. 10.5.2022 Site Plan Set – issued by Ambit Engineering, Inc.
 - Existing Conditions Plan
 - Variance Plan
- B. Architectural Plan Set – issued by Destefano Mangel.
 - Elevations – North and West
 - Elevations – South and East
 - Front & Rear Perspectives
 - Lower Level Floor Plans
 - First Floor Plans
 - Second Floor Plans
- C. Site Photographs.
- D. Tax Map 207.

II. PROPERTY/PROJECT

67 Ridges Court is a 16,500 s.f. lot located at the end of Ridges Court on Little Harbor in the Single Residence B Zoning District. Upon the lot is a 1.75 story, 1,591 s.f., 3-bedroom, 3 ½ bathroom Cape Cod style home and detached shed located on the left/northerly side of the lot, a dock extending into Little Harbor, and two driveways (the “Property”). Most of the lot is located in the 100 ft. tidal buffer zone from Little Harbor with a corner of the existing home and one of the paved driveways in the tidal buffer zone. The existing home also encroaches on the required front yard. Foy plans intends a 518 s.f. addition incorporating a lower level garage, expanded living room with rear deck and trellis, an additional master bedroom above (the “Project”). This

addition is significantly smaller than the addition previously proposed and denied by the ZBA on August 16, 2022.

The 518 s.f. addition is placed over a portion of paved driveway and is accompanied by significant removal of surrounding pavement in the tidal buffer, replacing a small area with porous parking. The Project meets building coverage requirements, reduces impervious coverage, and complies with open space requirements. In advance of required Conservation Commission Review and Planning Board Approval of a Conditional Use Permit, Foy seeks a variance for an addition 15.8 ft. from the front lot line where 19 ft. is required.¹

III. RELIEF REQUIRED

<u>Variance Section</u>	<u>Required</u>	<u>Existing</u>	<u>Proposed</u>
<u>PZO §10.521</u> <u>Table of Dimensional Standards –</u> <u>Minimum Yard Dimensions</u>	Front 19' ²	13.6' Home 8.2' Porch	15.8' Addition
<u>PZO §10.321</u> <u>Expansion of Nonconforming Structure</u>			

IV. FISHER V. DOVER ANALYSIS

As stated, the ZBA previously considered and denied the prior owner's application for variances in August. Based on the notices of decision and the August 16, 2022 Minutes, ZBA Members heard from abutting lot owners about the impact of the addition on their viewsheds and environmental impacts. The ZBA has no jurisdiction over environmental impacts, which will be the addressed by the Conservation Commission and Planning Board with a Conditional Use Permit, but determined there was no hardship.

In Fisher v. City of Dover, 120 N.H. 187, 190 (1980), the Supreme Court held that once an applicant makes a request to the ZBA and is denied, the ZBA may hear a subsequent variance request only upon a finding "a material change of circumstances" or unless it "materially differs in nature and degree from its predecessor." The court based its decision on concerns that absent a material change in circumstances or the application, there would be no finality to ZBA

¹ PZO §10.516 provides for a yard setback requirement based on the average setback derived from houses within 200 ft. of the lot. We have measured the front setbacks of the three properties within 200 ft. of Foy on the left side of Ridges Court and confirmed with Planner Stith that the required setback is 19 ft.

² PZO §10.516.

proceedings, thus threatening “the integrity of the zoning plan.” Id. In cases subsequent to Fisher, however, the court clarified that this restriction does not apply to “a subsequent application explicitly or implicitly invited by the ZBA and modified to address its concerns.” Hill-Grant Living Trust Small v. Kearsarge Lighting Precinct, 159 N.H. 529, 536 (2009) (citing Morgenstern v. Town of Rye, 147 N. H. 558 (2002)).

In contrast to the previous proposal, the revised Foy Project proposing a 518 s.f. addition is a significant reduction from the previously proposed 718 s.f. addition. It removes one garage bay and relocates the deck and trellis to the rear, presenting less visual impact. Furthermore, removal of pavement reduces impervious coverage compared to existing conditions. In addition, the application of PZO §10.516 exception to the yard setback results Foy’s request for a 3.2 ft. deviation from the required 19 ft. Accordingly, today’s application meets the “material difference” requirement of Fisher v. Dover allowing this Board to consider Foy’s requested relief.

V. VARIANCE REQUIREMENTS

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

The first step in the ZBA’s analysis is to determine whether granting the variances are not contrary to the public interest and are consistent with the spirit and intent of the ordinance, considered together pursuant to Malachy Glen Associates, Inc. v. Town of Chichester, 155 N.H. 102 (2007) and its progeny. Upon examination, it must be determined whether granting the variances “would unduly and to a marked degree conflict with the ordinance such that it violates the ordinance’s basic zoning objectives.” Id. “Mere conflict with the zoning ordinance is not enough.” Id.

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

1. The use of land, buildings and structures for business, industrial, residential and other purposes – The intended use of the property is and will remain residential. The requested relief will allow Foy to add a single garage and increase living space while meeting building coverage and open space requirements. The Project also reduces impervious coverage compared to existing conditions.
2. The intensity of land use, including lot sizes, building coverage, building height and bulk, yards and open space – The lot and intensity of its use will not change, as it will continue to be used as a single-family residence. The addition is set

- back further from the front lot line than the existing home, preserving pedestrian and sight lines on the dead-end street. Building coverage requirements and open space requirements are also met by the Project, which reduces impervious coverage compared to existing conditions.
3. The design of facilities for vehicular access, circulation, parking and loading – The garage will be located where the current paved driveway is situated, ensuring a straight route to the street, eliminating the need for turning radius and additional impervious surfaces. Additional paved surfaces will be removed, with a portion replaced with porous surfaces to accommodate guest parking on the narrow, dead end street.
 4. The impact on properties of outdoor lighting, noise, vibration, stormwater runoff and flooding – There will be no increase in noise or lighting. The Project constructs a smaller addition on an already paved area, removes asphalt, replacing a small section with porous material. As a result, overall impervious coverage is decreased improving stormwater management. The existing stone walls and landscaping on the Property will not be disturbed by the garage addition.
 5. The preservation and enhancement of the visual environment – The design places the garage on the lower level and incorporates a deck and trellis behind the addition, preserving sightlines to Little Harbor.
 6. The preservation of historic districts and building and structures of historic architectural interest – The Property is not in the Historic Overlay District.
 7. The protection of natural resources, including groundwater, surface water, wetlands, wildlife habitat and air quality – Granting the variances will not undermine these purposes of the Ordinance where the existing landscaping will not be disturbed by the Project and impervious coverage will be reduced from 26.6% to 23.0%, well below the required 40% open space minimum requirement.

The intent of the SRB Zone is to “provide areas for single-family dwellings at low to medium densities (approximately 1 to 3 dwellings per acre), and appropriate accessory uses.” PZO §10.410. The Property, like many in the neighborhood, contains a home which does not comply with front setback requirements. **(Exhibit C & D)**. The proposal meets the intent of the SRB Zone because it does not change the intensity of the use and allows Foy to add covered parking and gain more living space. Given these factors, granting the requested variance will not conflict with the basic zoning objectives of the PZO.

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

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

There are numerous other properties in the immediate area that include main or accessory structures that encroach on front, side, or rear setbacks. **(Exhibits C & D)**. The garage will be placed in the current paved driveway area and is accompanied by removal of impervious asphalt decreasing impervious coverage and increasing open space. The Project is located further back from the front lot line than the existing home located on the last residentially developed lot on the east side of this dead-end street . Given the number of buildings in the area encroaching on front, side, or rear setbacks, the proposal is in keeping with the surrounding area. The minimal relief required to accommodate the reduced addition on the last house of a dead end street will not jeopardize sightlines for pedestrians or motorists. Granting the variance neither alters the essential character of the locality nor threatens the public health, safety, or welfare. Accordingly, granting the variance to allow construction of a garage and increased living space is not contrary to the public interest and observes the spirit of the ordinance.

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

The Project adds covered parking/storage, a main bedroom suite, and increases indoor and outdoor living space, thus improving the value of the Property and those around it. The reduced Project incorporating the deck and trellis behind the home retains viewsheds enjoyed by abutting lot owners. The addition is more conforming than the existing home. The 3.2 ft. deviation from the 19 ft. front yard requirement matches the setback of the surrounding homes and will not negatively affect access to air and light. Accordingly, the variances will not diminish surrounding property values.

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

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

More than half the Property is burdened by the 100 ft. tidal buffer zone, and the existing home located on the far left/northern side of the lot in the front yard setback and at the left side setback. These factors drive the location of the proposed addition and combine to create special conditions.

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

The purpose of setback and expansion requirements is to prevent overbulking and overburdening of land and to ensure sightlines for pedestrians and motorists, adequate light and air, and sufficient area for stormwater treatment. The Project is located further back from the lot

line than the existing porch and home in the front yard setback and incorporates a deck/trellis behind allowing ample open space and light and preventing overbulking. Given its location at the end of a dead-end street with minimal traffic, adequate sight lines for pedestrian and vehicular access are maintained. The Project also removes excess asphalt on the Property, reducing impervious coverage and improving stormwater management compared to existing conditions.

Moreover, the neighborhood overall is similarly densely developed with multiple nearby parcels non-conforming for setbacks. See Walker v. City of Manchester, 107 N.H. 382, 386 (1966) (Hardship may be found where similar nonconforming uses exist within the neighborhood and the proposed use will have no adverse effect on the neighborhood). See also Belanger v. City of Nashua, 121 N.H. 389 (1981) (Variance proper where ordinance no longer reflects the current character of neighborhood). Accordingly, there is no fair and substantial relationship between the purposes of the ordinance and its application in this instance.

c. The proposed use is reasonable.

If the use is permitted, it is deemed reasonable. Vigeant v. Hudson, 151 N.H. 747 (2005). Residential use is permitted in the SRB Zone and includes accessory buildings incidental to the permitted use. The proposed addition is reasonably sized, and accompanied by site improvements which reduce impervious compared to existing conditions. Accordingly, the proposed use is reasonable, and denial will result in an unnecessary hardship to Foy.

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

If “there is no benefit to the public that would outweigh the hardship to the applicant” this factor is satisfied. Harborside Associates, L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508 (2011). That is, “any loss to the [applicant] that is not outweighed by a gain to the general public is an injustice.” Malachy Glen, supra at 109.

Foy is constitutionally entitled to the use of the lot as they see fit; including the addition of a garage and expansion of living space, subject only to its effect on the dimensional requirements. “The right to use and enjoy one's property is a fundamental right protected by both the State and Federal Constitutions.” N.H. CONST. pt. I, arts. 2, 12; U.S. CONST. amends. V, XIV; Town of Chesterfield v. Brooks, 126 N.H. 64 (1985) at 68. Part I, Article 12 of the New Hampshire Constitution provides in part that “no part of a man's property shall be taken from him, or applied to public uses, without his own consent, or that of the representative body of the

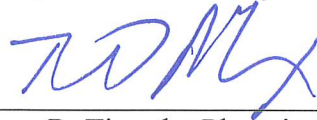
people.” Thus, our State Constitutional protections limit the police power of the State and its municipalities in their regulation of the use of property. L. Grossman & Sons, Inc. v. Town of Gilford, 118 N.H. 480, 482 (1978). “Property” in the constitutional sense has been interpreted to mean not the tangible property itself, *but rather the right to possess, use, enjoy and dispose of it*. Burrows v. City of Keene, 121 N.H. 590, 597 (1981) (emphasis added).

The Project retains the same use and offers additional covered parking and expanded living space indoors and out while complying with building coverage and reducing impervious coverage. In addition, the Project preserves access to air and light, while maintaining sight lines on a waterfront lot at the end of a dead-end street, so there is no harm to the public in granting the variance. Conversely, Foy will be greatly harmed by denial of the variance because they will be unable to expand parking, storage, and living space. Accordingly, substantial justice will be done by granting the variance.

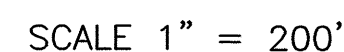
VI. CONCLUSION

For all of the reasons stated, Jeffrey and Melissa Foy respectfully request that the Portsmouth Zoning Board of Adjustment grant the requested variance.


Respectfully submitted,
Jeffrey and Melissa Foy



By: R. Timothy Phoenix



LEGEND:

N/F	NOW OR FORMERLY
RP	RECORD OF PROBATE
RCRD	ROCKINGHAM COUNTY REGISTRY OF DEEDS
	MAP 11 / LOT 21

	RAILROAD SPIKE FOUND
	IRON ROD/IRON PIPE FOUND
	DRILL HOLE FOUND
	STONE/CONCRETE BOUND FOUND
	RAILROAD SPIKE SET
	IRON ROD SET
	DRILL HOLE SET
	GRANITE BOUND SET

MEAN HIGH WATER LINE
NHDES HIGHEST OBSERVABLE TIDE LINE
NHDES 50' PRIMARY STRUCTURE SETBACK
NHDES 100' TIDAL BUFFER ZONE
NHDES 150' NATURAL WOODLAND BUFFER
NHDES 250' PROTECTED SHORELAND
FEMA SPECIAL FLOOD HAZARD AREA LINE

OVERHEAD ELECTRIC/WIRE
CONTOUR
SPOT ELEVATION
EDGE OF PAVEMENT (ELEV)
WOODS / TREE LINE
UTILITY POLE (w/ GUY)

WELL
METER (GAS, WATER, ELECTRIC)
EDGE OF WETLAND FLAGGING
SWAMP / MARSH
ELEVATION
EDGE OF PAVEMENT
FINISHED FLOOR
INVERT
TEMPORARY BENCHMARK
TYPICAL
LANDSCAPED AREA

PLAN REFERENCES:

1) PROPOSED ADDITIONS, CHARLES MCLEOD, 67 RIDGES COURT PORTSMOUTH, NH, PROPOSED SITE PLAN. PREPARED BY AMBIT ENGINEERING, INC. DATED SEPTEMBER 2002. NOT RECORDED.

2) PLAN OF LOTS, RIENZI RIDGE. PREPARED BY JOHN W. DURGIN. DATED MARCH 1976. R.C.R.D. PLAN #0188.

WETLAND NOTES:

1) HIGHEST OBSERVABLE TIDE LINE DELINEATED BY STEVEN D. RIKER, CWS ON 7/1/20 IN ACCORDANCE WITH THE FOLLOWING STANDARDS:

- A) U.S. ARMY CORPS OF ENGINEERS WETLANDS DELINEATION MANUAL. TECHNICAL REPORT Y-87-1 (JAN. 1987). AND REGIONAL SUPPLEMENT TO THE CORPS OF ENGINEERS WETLAND DELINEATION MANUAL: NORTHCENTRAL AND NORTHEAST REGION, VERSION 2.0, JANUARY 2012.
- B) FIELD INDICATORS OF HYDRIC SOILS IN THE UNITED STATES, VERSION 8.2. USDA-NRCS, 2018 AND (FOR DISTURBED SITES) FIELD INDICATORS FOR IDENTIFYING HYDRIC SOILS IN NEW ENGLAND, VERSION 4. NEWPPCC WETLANDS WORK GROUP (2019).
- C) NATIONAL LIST OF PLANT SPECIES THAT OCCUR IN WETLANDS: NORTHEAST (REGION 1). USFWS (MAY 1988).
- D) CLASSIFICATION OF WETLANDS AND DEEPWATER HABITATS OF THE UNITED STATES. USFW MANUAL FWS/OBS-79/31 (1997).
- E) "IDENTIFICATION AND DOCUMENTATION OF VERNAL POOLS IN NEW HAMPSHIRE" (1997). NEW HAMPSHIRE FISH AND GAME DEPARTMENT.

2) WETLAND FLAGS WERE FIELD LOCATED BY AMBIT ENGINEERING, INC.

AMBIT ENGINEERING, INC.

Civil Engineers & Land Surveyors

200 Griffin Road - Unit 3
Portsmouth, N.H. 03801-7114
Tel (603) 430-9282
Fax (603) 436-2315

NOTES:

1) PARCEL IS SHOWN ON THE PORTSMOUTH ASSESSOR'S MAP 207 AS LOT 59.

2) OWNERS OF RECORD:
JEFFREY M. & MELISSA FOY
4 FOX HOLLOW COURT
EAST KINGSTON, N.H. 03827
6325/1066

3) PORTIONS OF THE PARCEL ARE IN A SPECIAL FLOOD HAZARD AREA AE (EL.8) AS SHOWN ON FIRM PANEL 33015C0278F. EFFECTIVE JANUARY 29, 2021.

4) EXISTING LOT AREA:
16,500± S.F. (PLAN REF. 1)
0.3788± ACRES (PLAN REF. 1)

5) PARCEL IS LOCATED IN THE SINGLE RESIDENCE B (SRB) ZONING DISTRICT.

6) DIMENSIONAL REQUIREMENTS:

MIN. LOT AREA:	15,000 S.F.
FRONTAGE:	100 FEET
SETBACKS:	
FRONT	30 FEET
SIDE	10 FEET
REAR	30 FEET
MAXIMUM STRUCTURE HEIGHT:	35 FEET
MAXIMUM STRUCTURE COVERAGE:	20%
MINIMUM OPEN SPACE:	40%

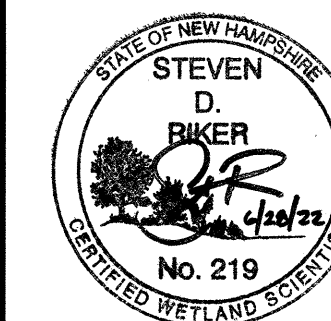
7) THE PURPOSE OF THIS PLAN IS TO SHOW THE EXISTING CONDITIONS ON ASSESSOR'S MAP 207 LOT 59 IN THE CITY OF PORTSMOUTH.

8) VERTICAL DATUM IS NAVD88. BASIS OF VERTICAL DATUM IS REDUNDANT RTN GNSS OBSERVATIONS ($\pm 0.2'$).

EXHIBIT A

PROPOSED GARAGE
FOY RESIDENCE
67 RIDGES COURT
PORTSMOUTH, N.H.

1	ADD FEMA FHZ	6/27/20
0	ISSUED FOR COMMENT	5/18/20
NO.	DESCRIPTION	DATE
REVISIONS		



SCALE 1"=20'

MAY 2022

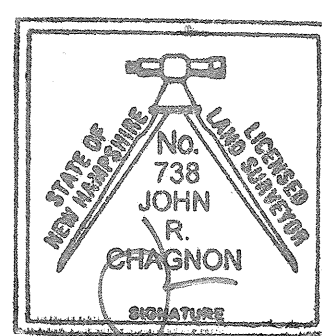
EXISTING CONDITIONS PLAN

C1

"I CERTIFY THAT THIS PLAN WAS PREPARED UNDER MY DIRECT SUPERVISION, THAT IT IS THE RESULT OF A FIELD SURVEY BY THIS OFFICE AND HAS AN ACCURACY OF THE CLOSURE TRAVERSE THAT EXCEEDS THE PRECISION OF 1:15,000."

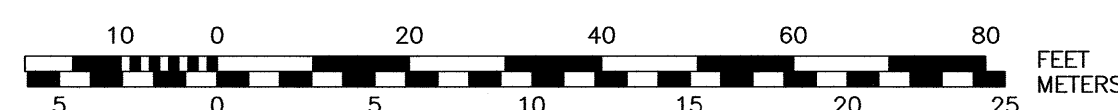
JOHN R. CHAGNON, ILS

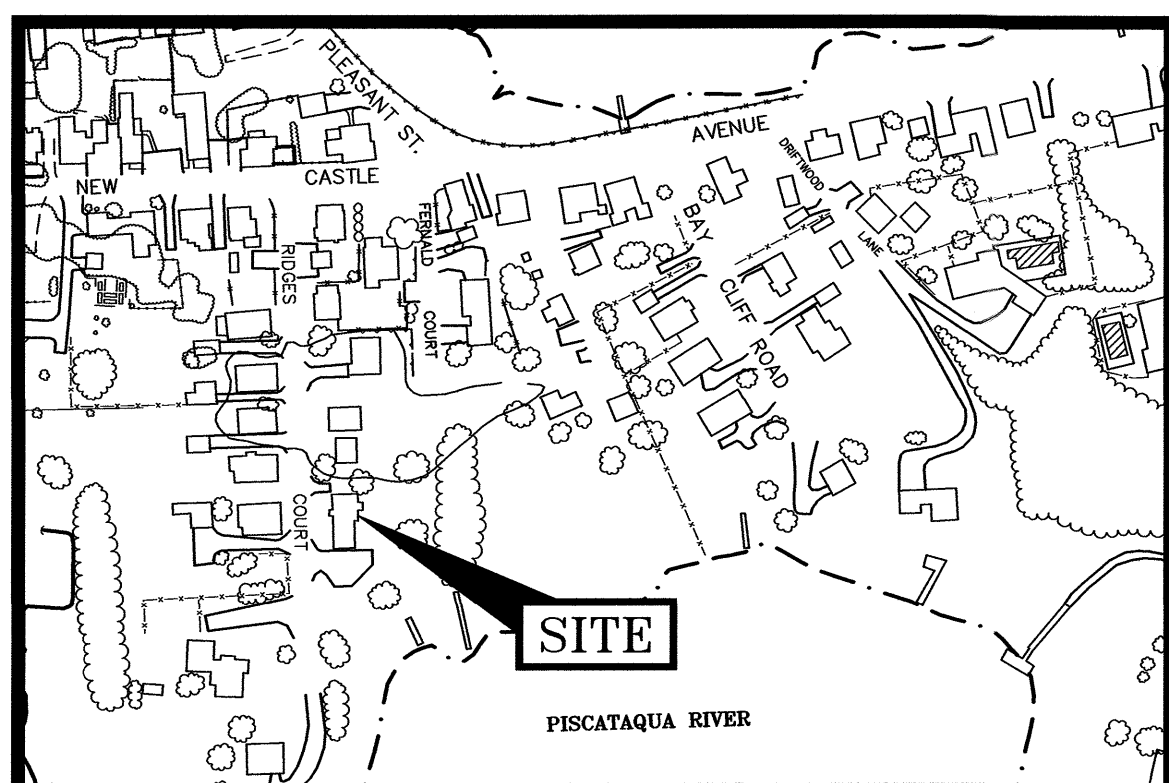
6.27.22
DATE



**LITTLE HARBOR
(TIDAL)**

GRAPHIC SCALE





LOCATION MAP

SCALE 1" = 200'

IMPERVIOUS SURFACE AREAS

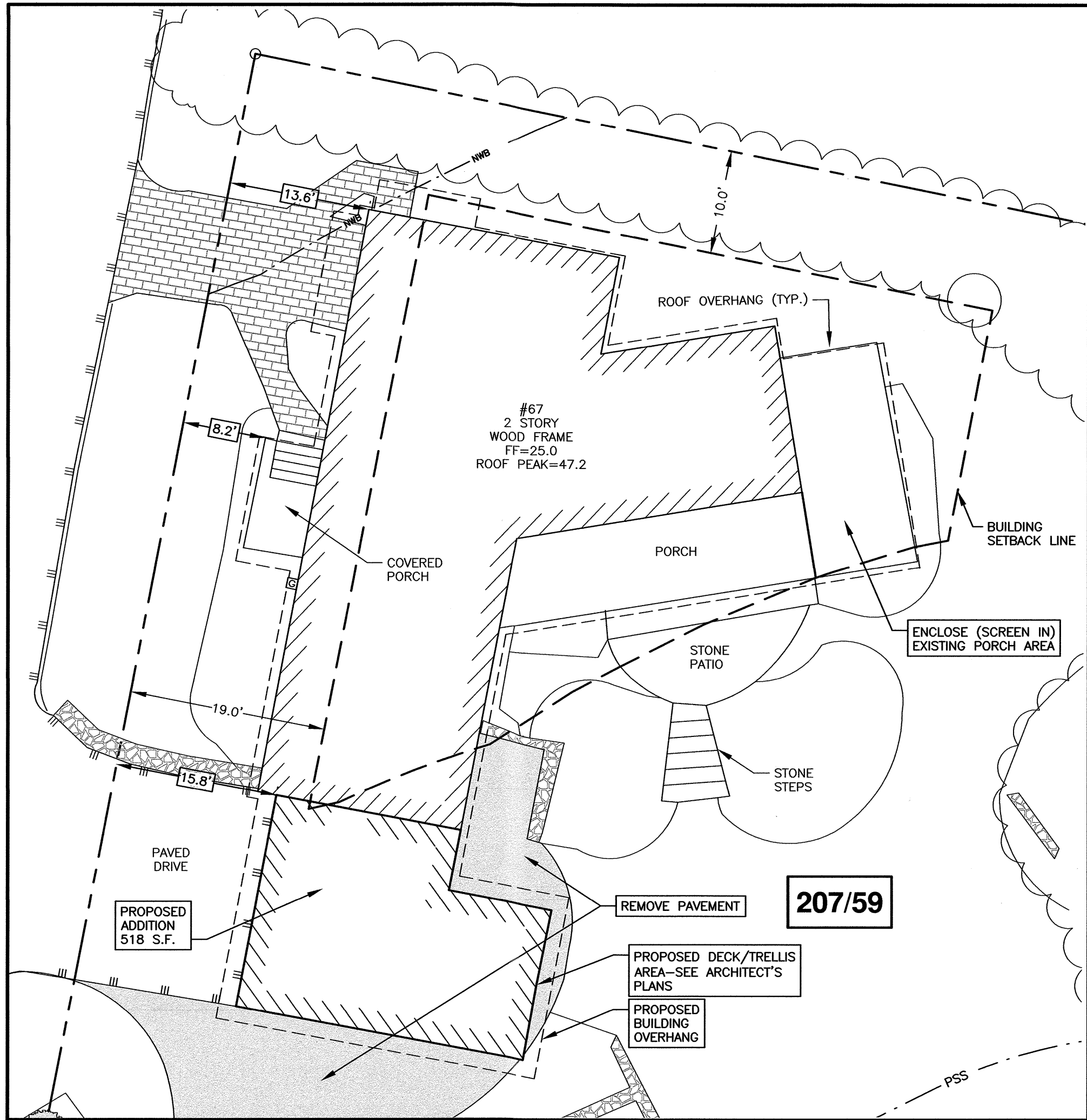
(TO PROPERTY LINE)

STRUCTURE	PRE-CONSTRUCTION IMPERVIOUS (S.F.)	POST-CONSTRUCTION IMPERVIOUS (S.F.)
MAIN STRUCTURE	1,591	2,109
SHED	91	91
PORCHES	513	513
STAIRS	123	123
WALKWAYS	231	231
PAVEMENT	1452	334
RETAINING WALL	212	212
PATIO	109	109
CONCRETE	17	17
EXTERIOR STORAGE	50	50
TOTAL	4389	3789
LOT SIZE	16,500	16,500
% LOT COVERAGE	26.6%	23.0%

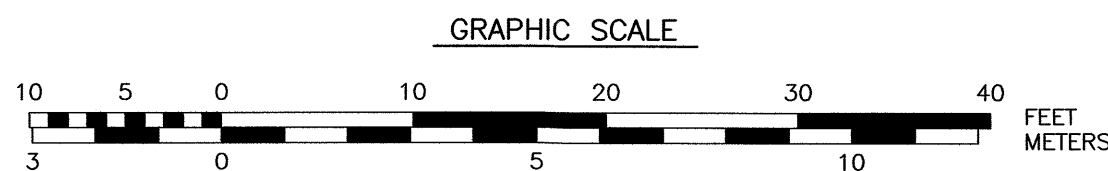
NOTES:

IN ACCORDANCE WITH THE PORTSMOUTH ZONING ORDINANCE, ARTICLE 5, SECTION 10.516.10 FRONT YARD EXCEPTION FOR EXISTING ALIGNMENTS: THE AVERAGE FRONT SETBACK FOR LOT 207/59 IS 19'.

MAP/LOT	SETBACK (FT)	AVG
207/58	13	
207/57	25	
2	38	19

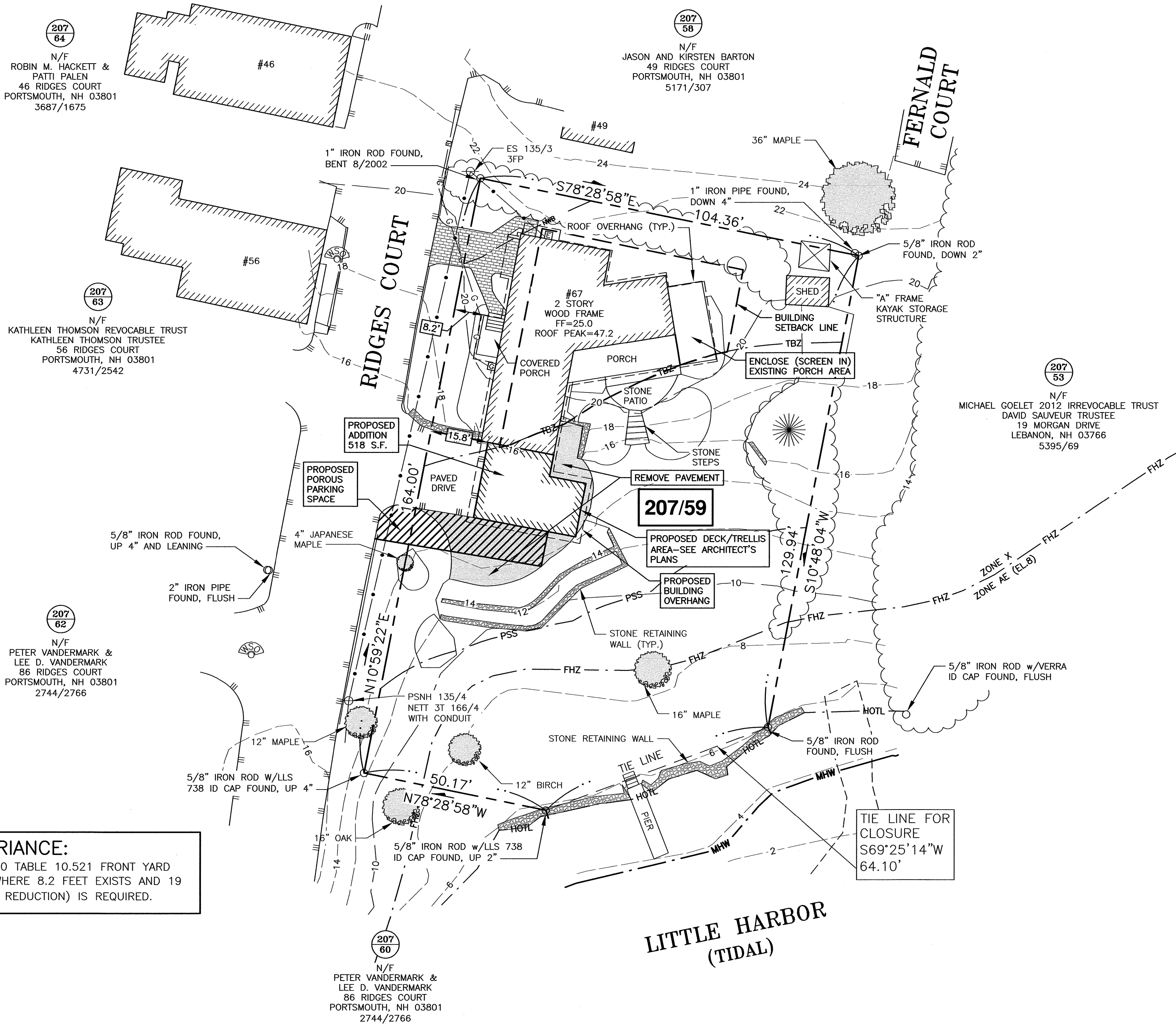


BUILDING DETAIL 1"=10'

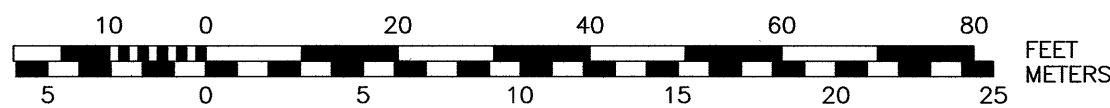


REQUESTED VARIANCE:

ARTICLE 5 SECTION 10.520 TABLE 10.521 FRONT YARD SETBACK OF 15.8 FEET WHERE 8.2 FEET EXISTS AND 19 FEET (SECTION 10.516.10 REDUCTION) IS REQUIRED.

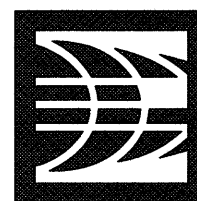
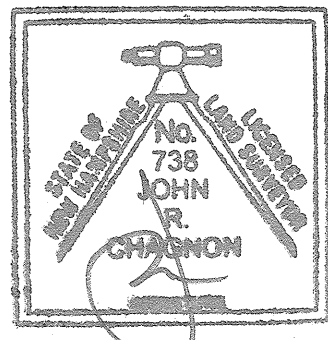


GRAPHIC SCALE



"I CERTIFY THAT THIS PLAN WAS PREPARED UNDER MY DIRECT SUPERVISION, THAT IT IS THE RESULT OF A FIELD SURVEY BY THIS OFFICE AND HAS AN ACCURACY OF THE CLOSED TRAVERSE THAT EXCEEDS THE PRECISION OF 1:15,000."

JOHN R. CHAGNON, LLS DATE 10-5-22



AMBIT ENGINEERING, INC.

Civil Engineers & Land Surveyors

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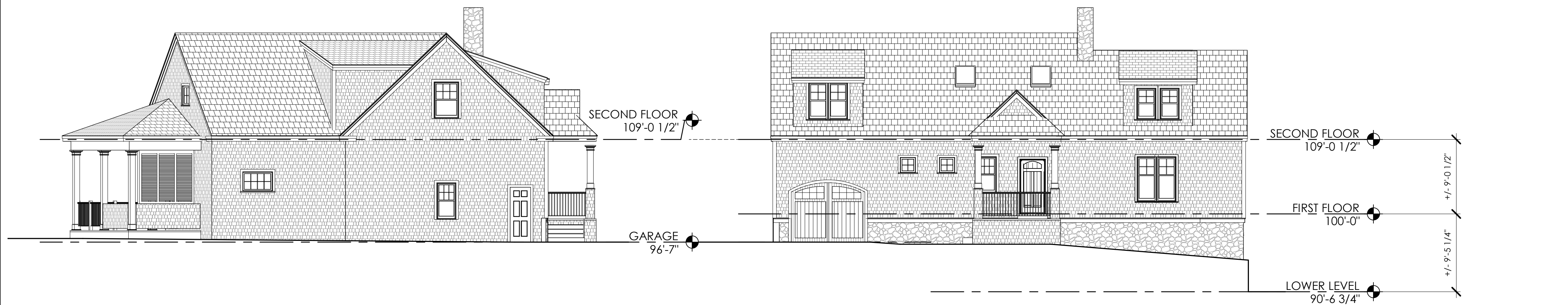
NOTES:

- 1) PARCEL IS SHOWN ON THE PORTSMOUTH ASSESSOR'S MAP 207 AS LOT 59.
- 2) OWNERS OF RECORD:
JEFFREY M. & MELISSA FOY
4 FOX HOLLOW COURT
EAST KINGSTON, N.H. 03827
6325/1066
- 3) PORTIONS OF THE PARCEL ARE IN A SPECIAL FLOOD HAZARD AREA ZONE AE (EL. 8) AS SHOWN ON FIRM PANEL 33015C0278F. EFFECTIVE JANUARY 29, 2021.
- 4) EXISTING LOT AREA:
16,500± S.F. (PLAN REF. 1)
0.3788± ACRES (PLAN REF. 1)
- 5) PARCEL IS LOCATED IN THE SINGLE RESIDENCE B (SRB) ZONING DISTRICT.
- 6) DIMENSIONAL REQUIREMENTS:
MIN. LOT AREA: 15,000 S.F.
FRONTAGE: 100 FEET
SETBACKS: FRONT 30 FEET
SIDE 10 FEET
REAR 30 FEET
MAXIMUM STRUCTURE HEIGHT: 35 FEET
MAXIMUM STRUCTURE COVERAGE: 20%
MINIMUM OPEN SPACE: 40%
- 7) THE PURPOSE OF THIS PLAN IS TO SHOW A PROPOSED ADDITION ON ASSESSOR'S MAP 207 LOT 59 IN THE CITY OF PORTSMOUTH.
- 8) VERTICAL DATUM IS NAVD88. BASIS OF VERTICAL DATUM IS REDUNDANT RTN GNSS OBSERVATIONS (±0.2').
- 9) PROPOSED GARAGE FROM PLAN BY DESTEFANO MAGUEL ARCHITECTS DATED SEPTEMBER 28, 2022.
- 10) OFF SITE STRUCTURE LOCATIONS BASED ON CITY DATABASE LOCATIONS.

PROPOSED ADDITIONS
FOY RESIDENCE
67 RIDGES COURT
PORTSMOUTH, N.H.

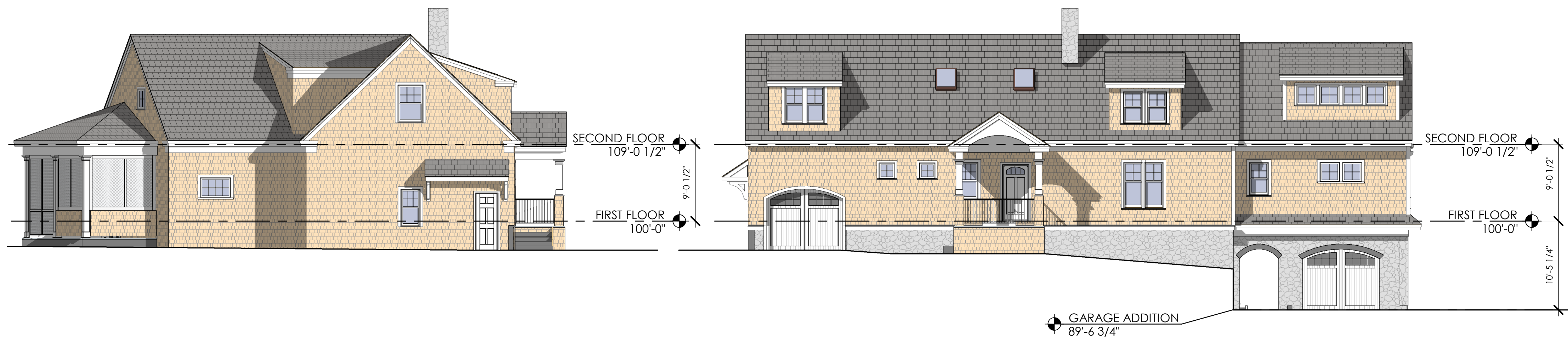
NO.	DESCRIPTION	DATE
1	DRIVEWAY WIDTH	10/5/22
0	ISSUED FOR COMMENT	9/28/22
REVISIONS		

SCALE 1"=20'		SEPTEMBER 2022
VARIANCE PLAN		C2



EXISTING NORTH ELEVATION

EXISTING WEST ELEVATION



PROPOSED NORTH ELEVATION
1/8" = 1'-0" 1

PROPOSED WEST ELEVATION
1/8" = 1'-0" 2

EXHIBIT B - REV. 2

SCHEMATIC DESIGN FOR
FOY RESIDENCE
67 RIDGES CT
PORTSMOUTH, NH

ELEVATIONS
1/8" = 1'-0"

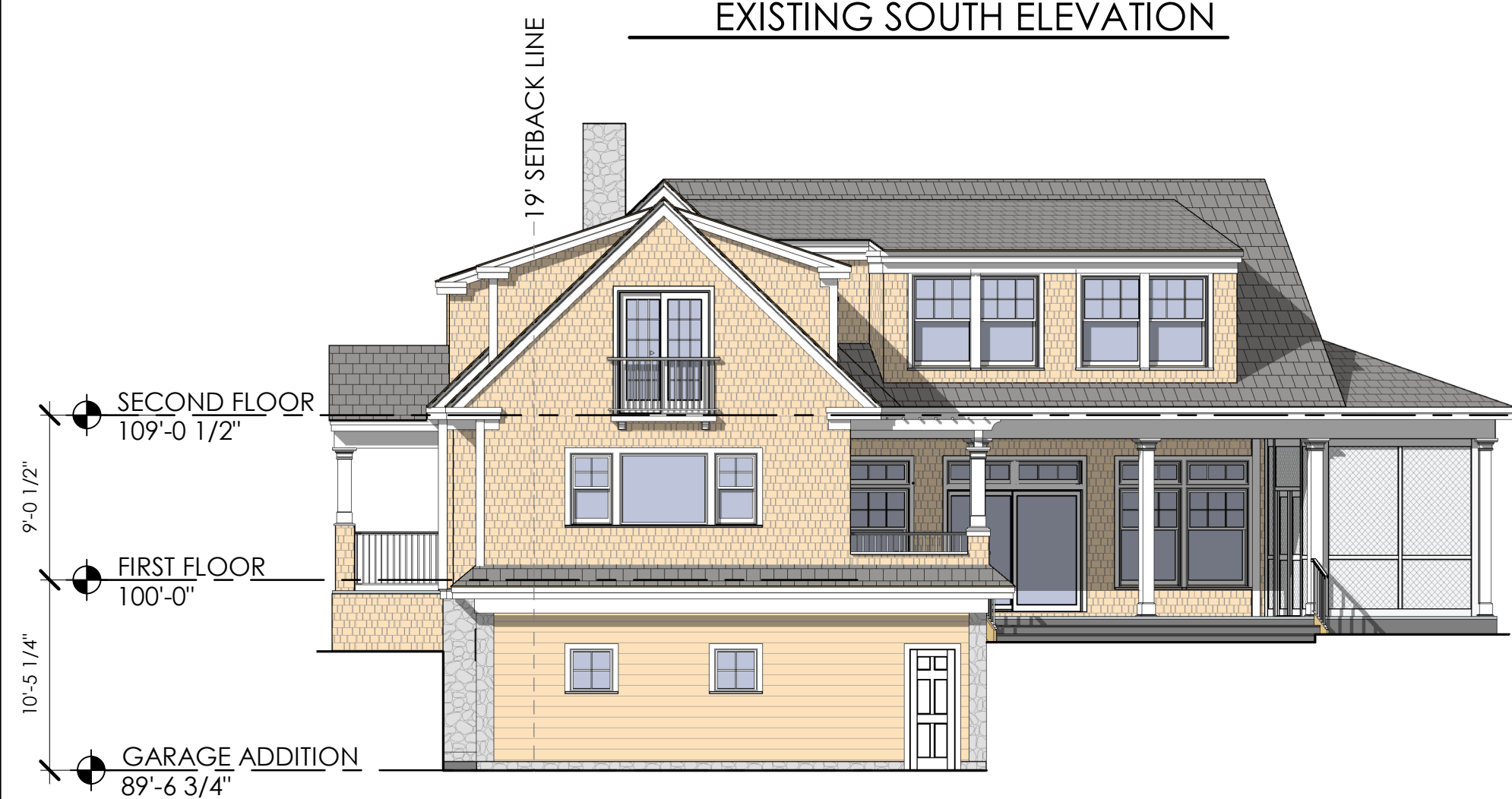
OCTOBER 11, 2022



EXISTING SOUTH ELEVATION



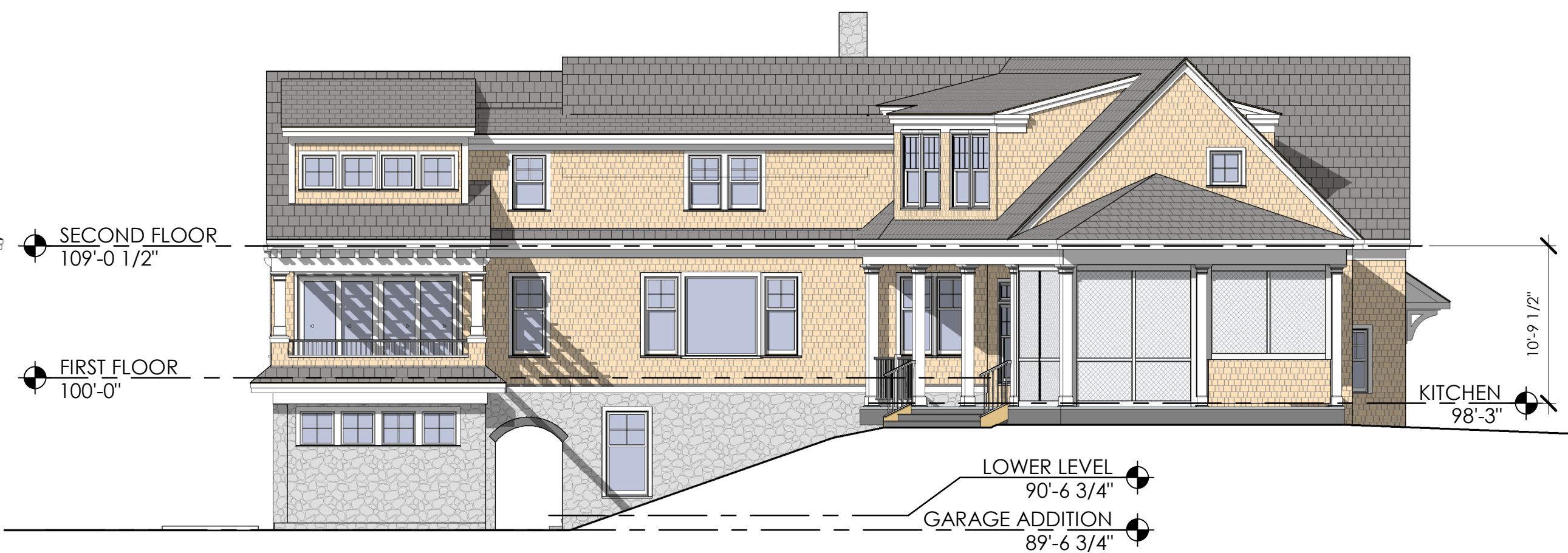
EXISTING EAST ELEVATION



PROPOSED SOUTH ELEVATION

1/8" = 1'-0"

3



PROPOSED EAST ELEVATION

1/8" = 1'-0"

4

SCHEMATIC DESIGN FOR FOY RESIDENCE

67 RIDGES CT
PORTSMOUTH, NH

ELEVATIONS

1/8" = 1'-0"

OCTOBER 11, 2022

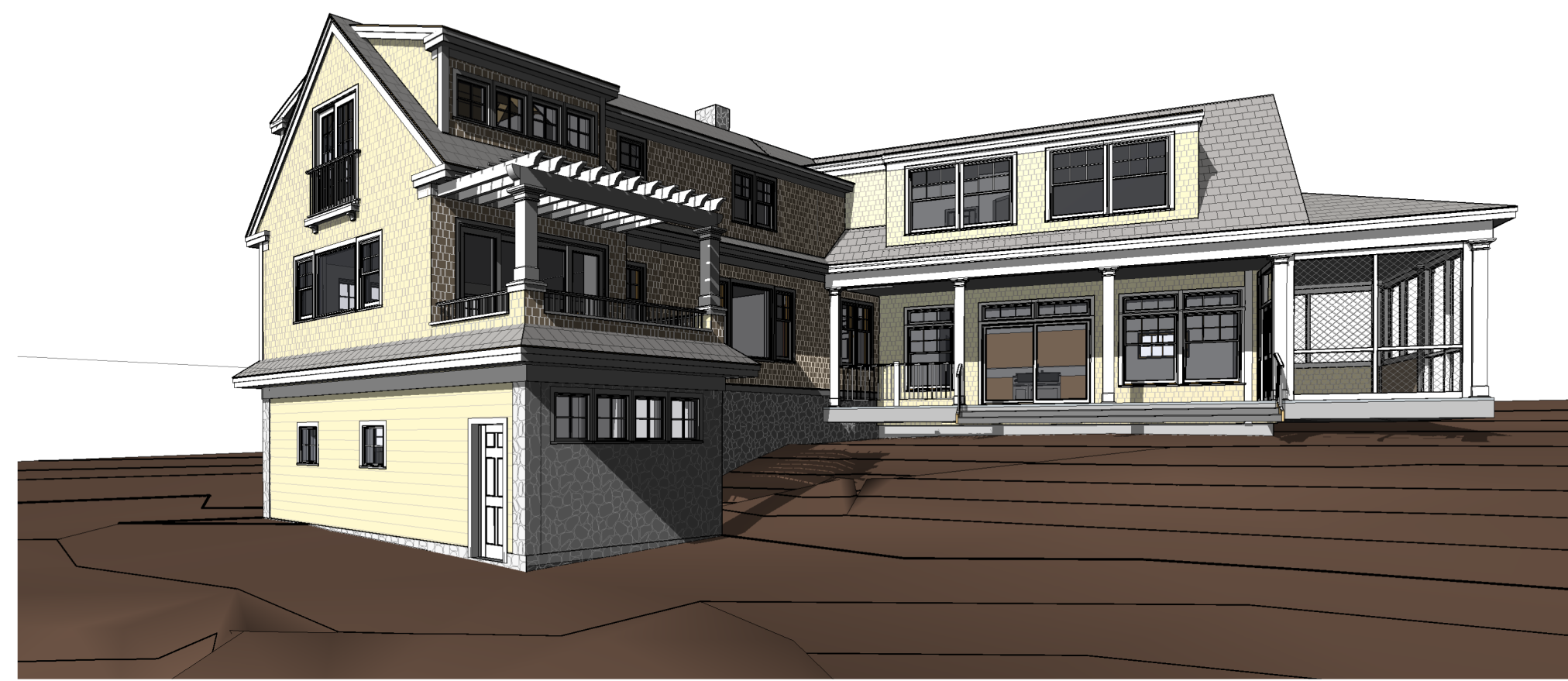
21177

D|M|A
DESTEFANO
MAUGEL
ARCHITECTS

© 2022



PROPOSED FRONT VIEW



PROPOSED REAR PERSPECTIVE

SCHEMATIC DESIGN FOR
FOY RESIDENCE
 67 RIDGES CT
 PORTSMOUTH, NH

PERSPECTIVES

OCTOBER 11, 2022

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 DESTEFANO
 MAUGEL
 ARCHITECTS

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SCHEMATIC DESIGN FOR FOY RESIDENCE

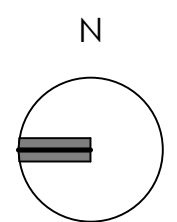
67 RIDGES CT
PORTSMOUTH, NH

FLOOR PLAN

1/8" = 1'-0"

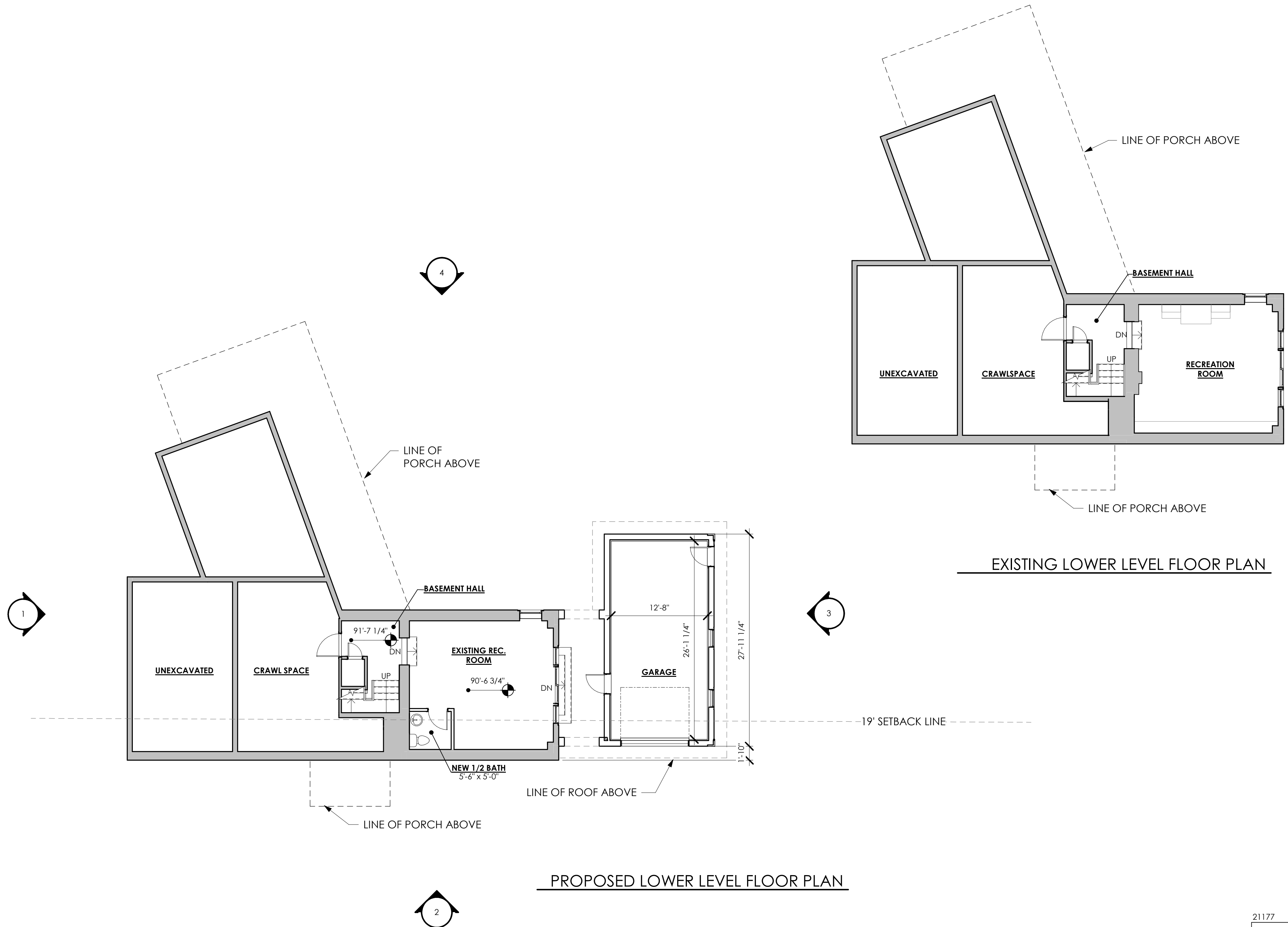
OCTOBER 11, 2022

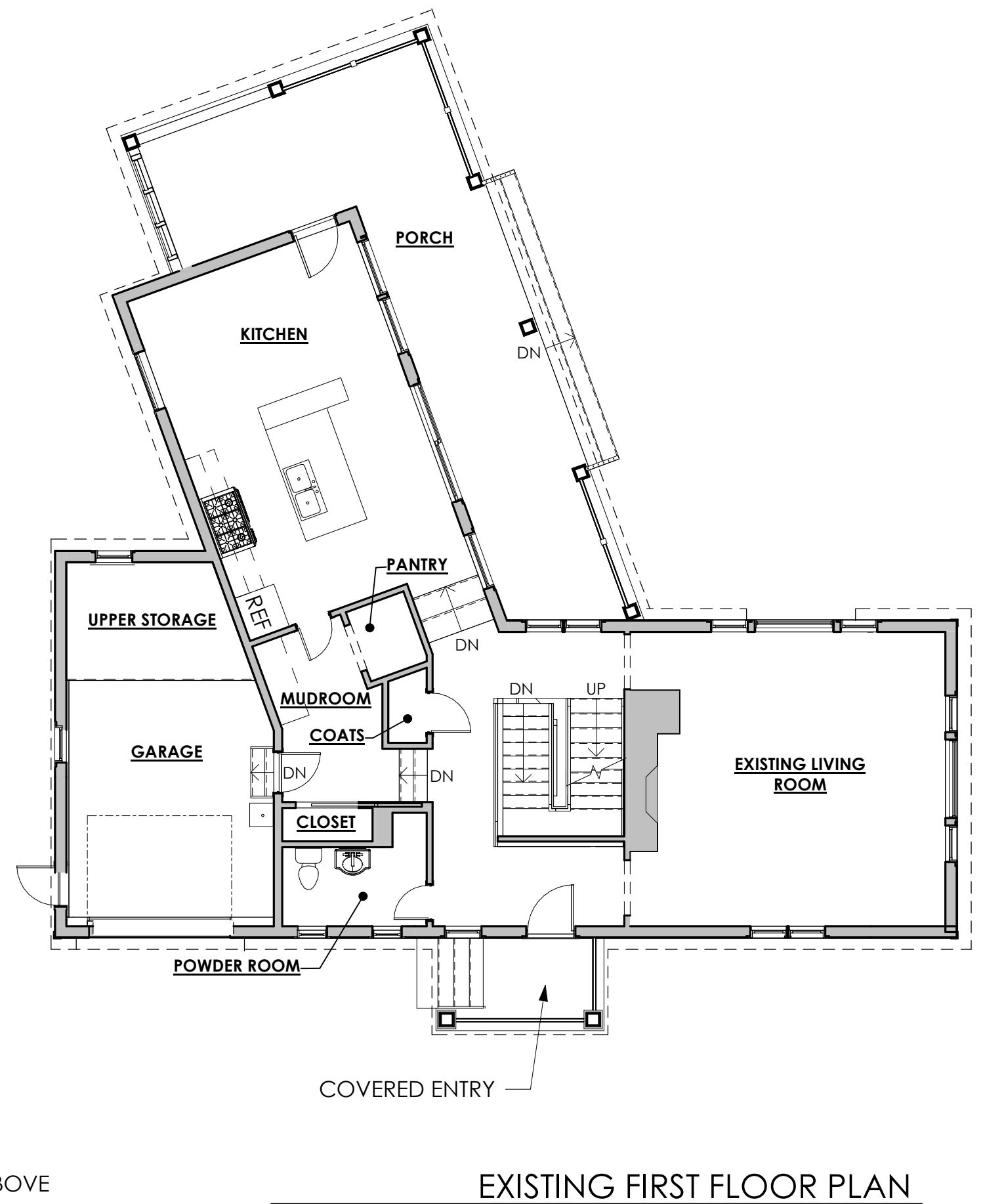
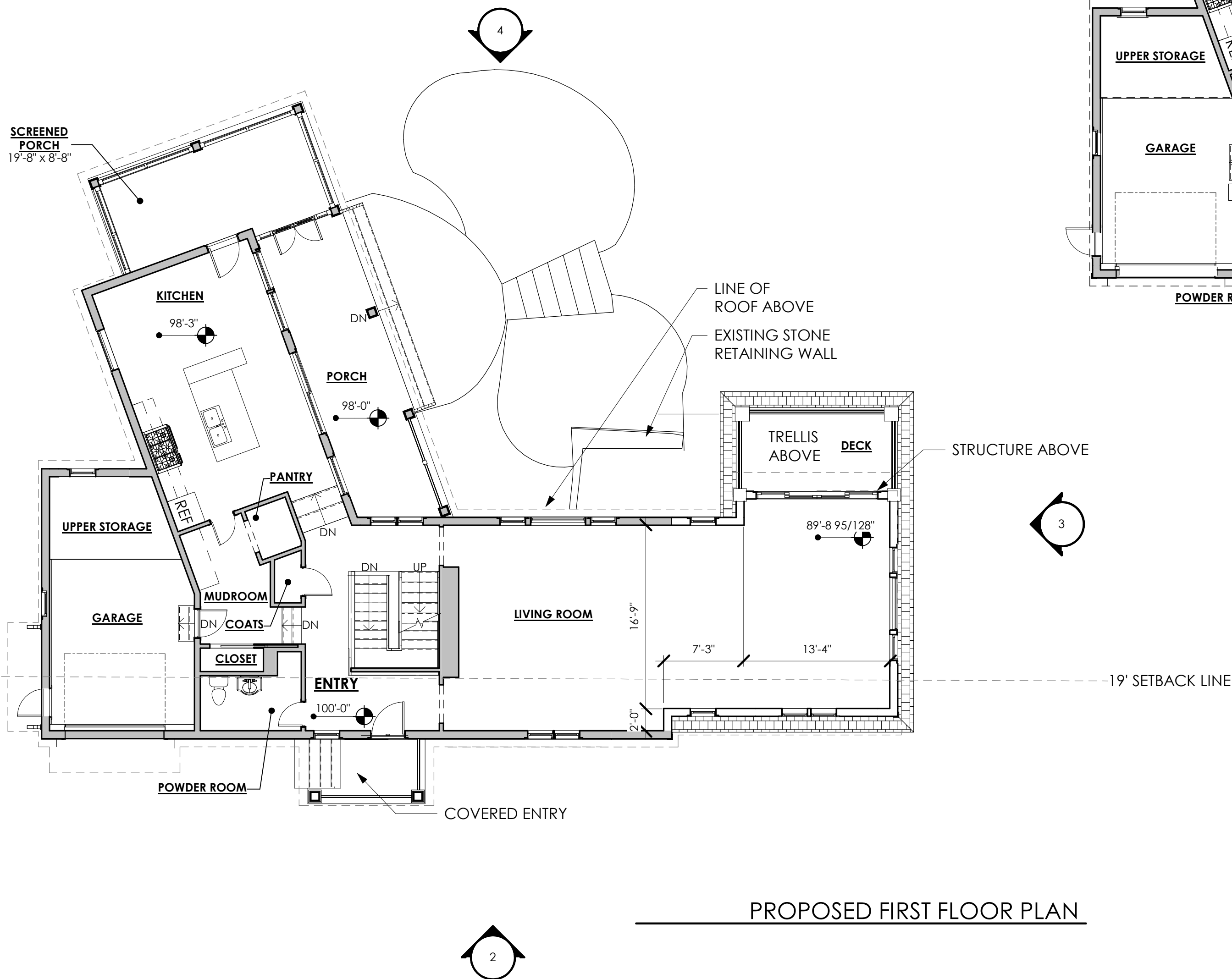
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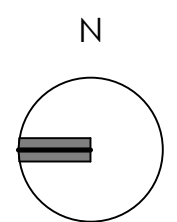




SCHEMATIC DESIGN FOR
FOY RESIDENCE
67 RIDGES CT
PORTSMOUTH, NH

FLOOR PLAN
1/8" = 1'-0"

OCTOBER 11, 2022



21177

DMA
DESTEFANO
MAUGEL
ARCHITECTS

SCHEMATIC DESIGN FOR
FOY RESIDENCE
 67 RIDGES CT
 PORTSMOUTH, NH

FLOOR PLAN
 1/8" = 1'-0"

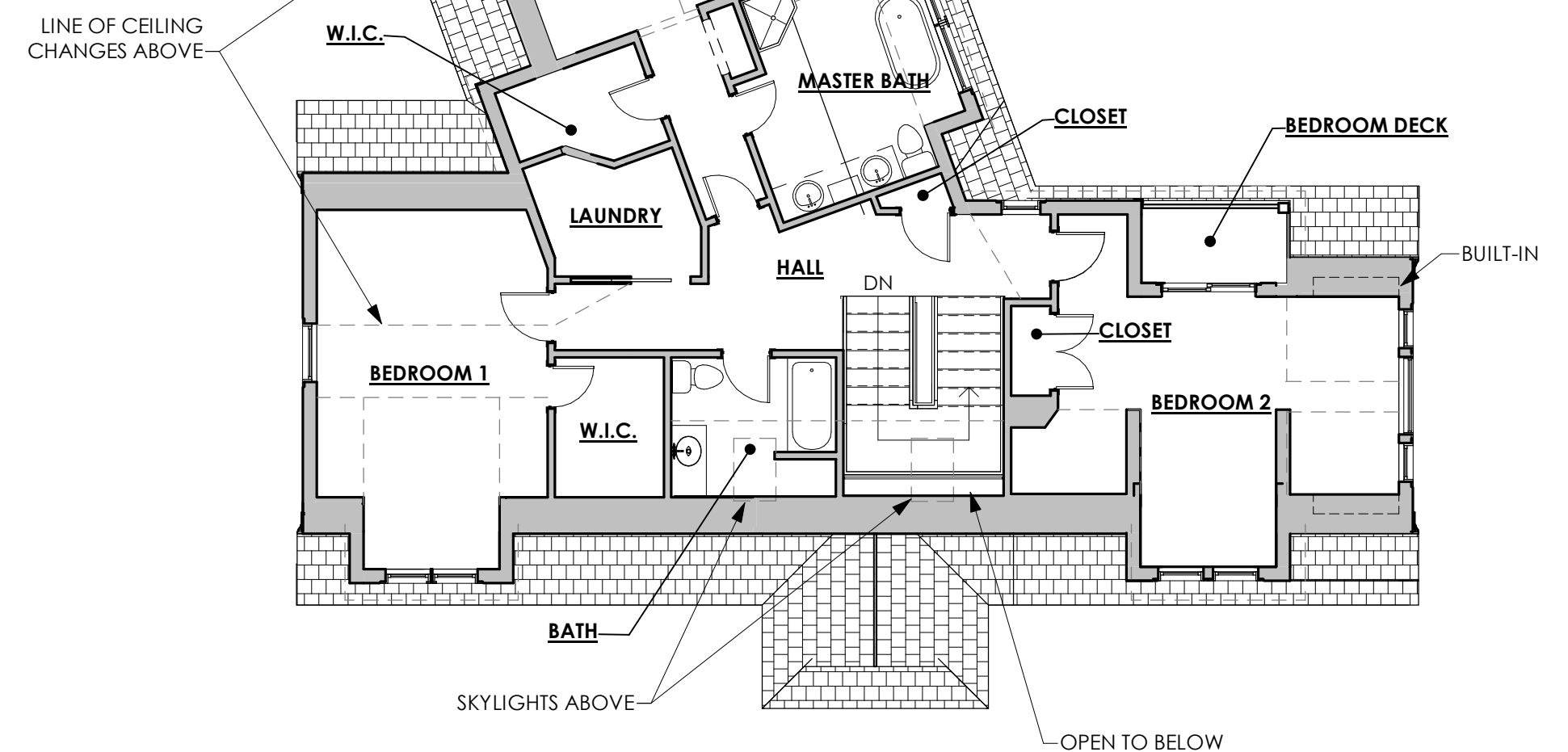
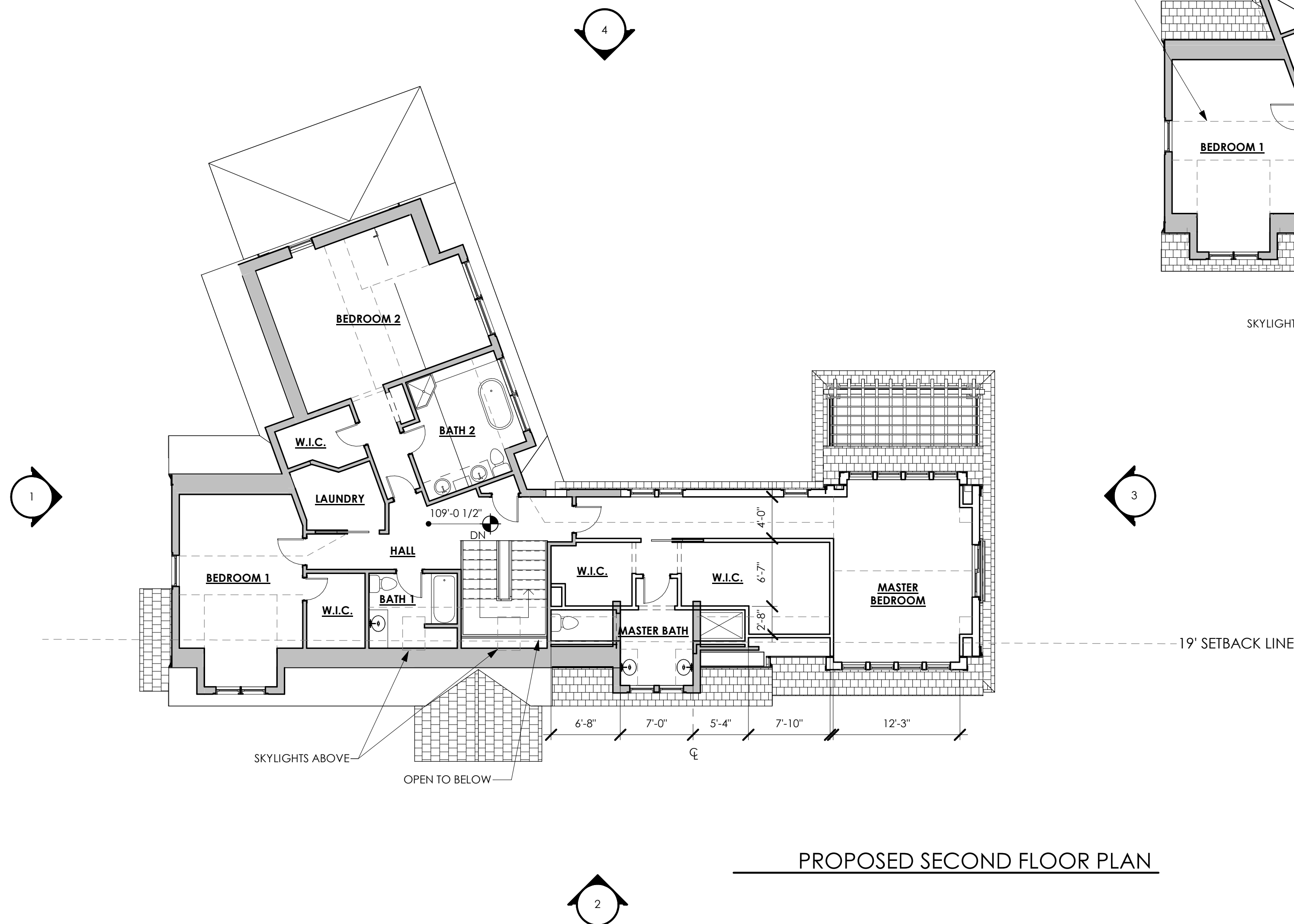
OCTOBER 11, 2022

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N

D|M|A
 DESTEFANO
 MAUGEL
 ARCHITECTS

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Imagery ©2022 Maine GeoLibrary, Maxar Technologies, U.S. Geological Survey, Map data ©2022 50 ft

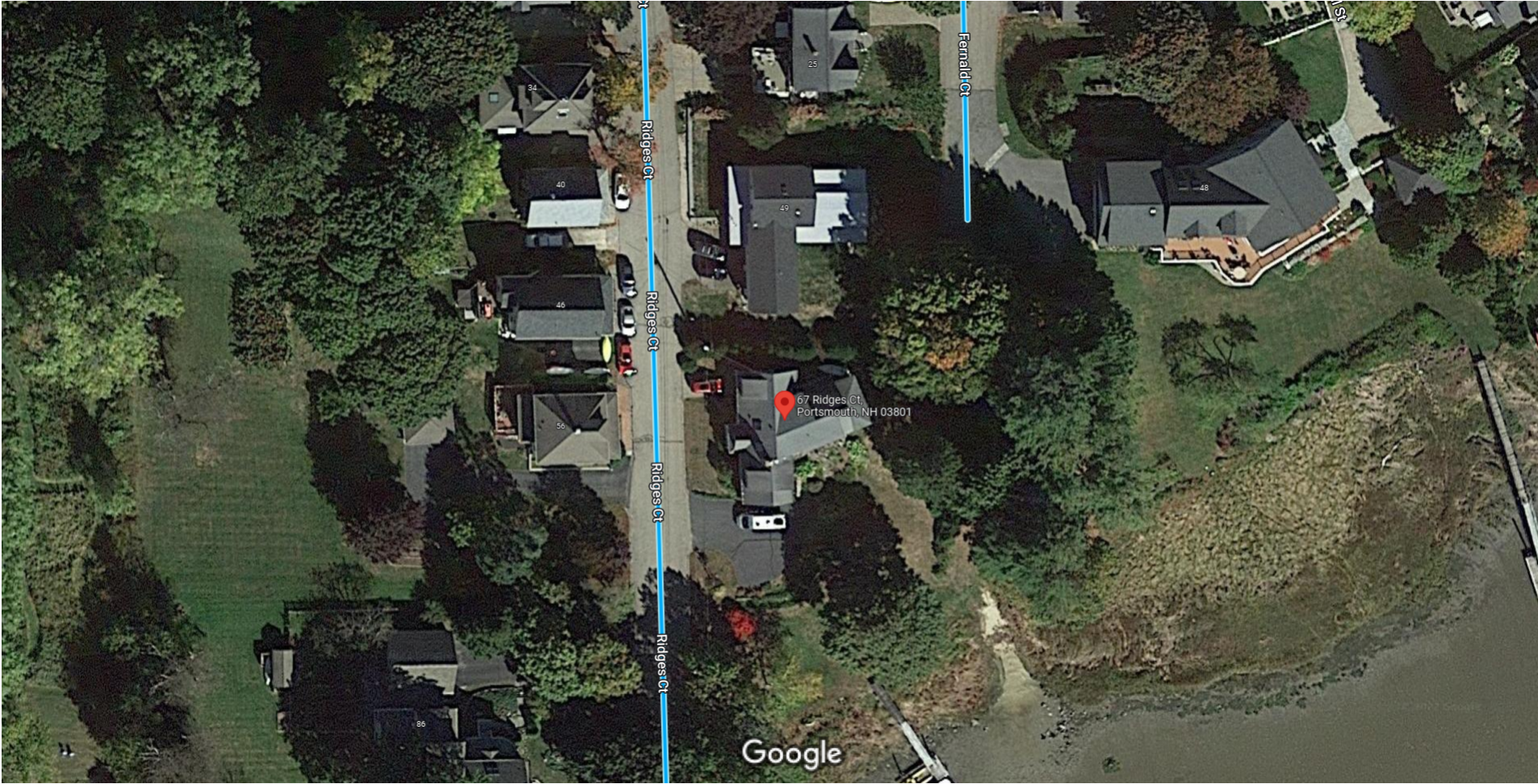




Image capture: Sep 2011 © 2022 Google

Portsmouth, New Hampshire

Google

Street View - Sep 2011



Image capture: Sep 2011 © 2022 Google

Portsmouth, New Hampshire

Google

Street View - Sep 2011

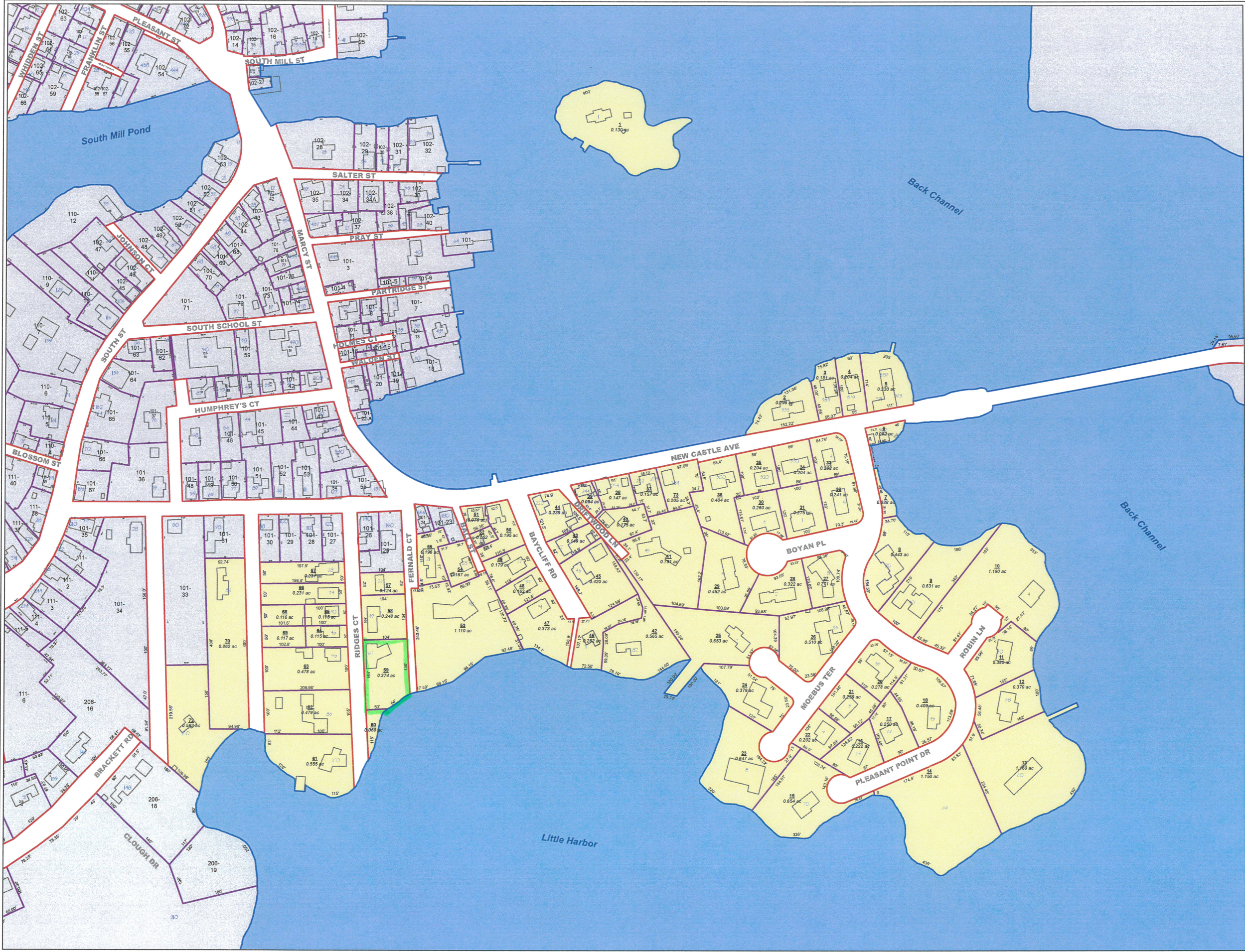


Image capture: Sep 2011 © 2022 Google

Portsmouth, New Hampshire

Google

Street View - Sep 2011



Partial Legend
See the cover sheet for the complete legend.

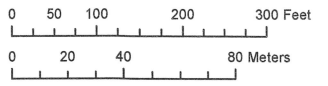
7-5A Lot or lot-unit number
2.56 ac Parcel area in acres (ac) or square feet (sf)
75 Address number
233-137 Parcel number from a neighboring map
88 Parcel line dimension

SIMS AVE Street name

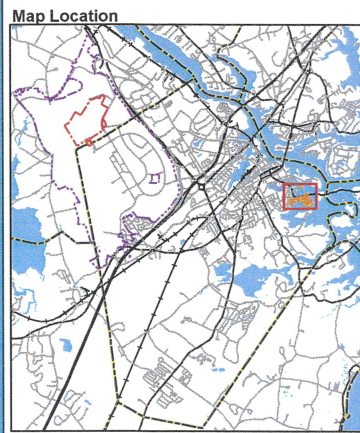
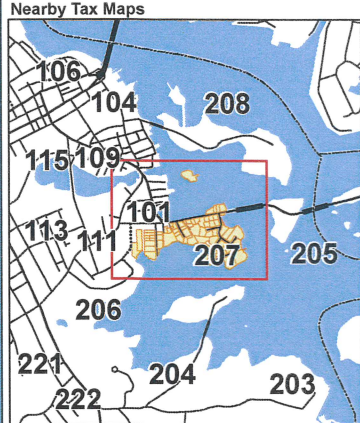
Parcel/Parcel boundary
Parcel/ROW boundary
Water boundary
Structure (1994 data)

Parcel covered by this map
Parcel from a neighboring map (see other map for current status)

EXHIBIT D



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



HOEFLE, PHOENIX, GORMLEY & ROBERTS, PLLC

ATTORNEYS AT LAW

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

November 4, 2022

HAND DELIVERED

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

Re: Jeffrey and Melissa Foy, Owner/Applicant
67 Ridges Court
Tax Map 207/Lot 59
Single Residence B District
LU-22-199

Dear Mr. Stith & Zoning Board Members:

On behalf of Jeffrey and Melissa Foy ("Foy"), enclosed please find the following in support of a request for zoning relief:

- **EXHIBIT B-Rev. 2** 10/11/2022 Architectural Plans (interior changes & color renderings).
- 11/4/2022 – Supplemental Memorandum and Exhibits in Support of Variance Application.

For your convenience, we will upload an updated complete application to Viewpoint.

We look forward to presenting this application to the Zoning Board at its November 15, 2022 meeting.

Very truly yours,



R. Timothy Phoenix

Encl.

cc: Jeffrey and Melissa Foy (via email)
Ambit Engineering, Inc. (via email)
Destefano | Mangel (via email)
Durbin Law (via email)

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

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

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

OF COUNSEL:
SAMUEL R. REID
JOHN AHLGREN

SUPPLEMENTAL MEMORANDUM

TO: Portsmouth Zoning Board of Adjustment (“ZBA”)
FROM: R. Timothy Phoenix, Esquire
DATE: November 4, 2022
Re: Jeffrey and Melissa Foy, Owner/Applicant
Property Location: 67 Ridges Court
Tax Map 207, Lot 59
Single Residence B (“SRB”)

Dear Chairman Parrott and Zoning Board Members:

On behalf of Jeffrey and Melissa Foy, Owner/Applicant (“Foy”), we are pleased to submit this Supplemental Memorandum and attached exhibits, which responds to the October 17, 2022 Letter submitted to the ZBA by Attorney Darcy Peyser on behalf of Kathleen Thompson.

I. EXHIBITS

- E. View Exhibit Plan Set – issued by Ambit Engineering, Inc.
 - 1. 46 Ridges Court Viewshed – June 29th application
 - 2. 56 Ridges Court Viewshed – June 29th application
 - 3. 46 Ridges Court Viewshed – September 28th application
 - 4. 56 Ridges Court Viewshed – September 28th application
- F. 8/14/2022 Letter – Real Estate Broker Robin Valeri.
- G. 8/15/2022 Technical Analysis Report – by Peter Stanhope, NH Certified General Appraiser.

II. FISHER V. DOVER

Consideration of subsequent petitions by a zoning board are limited to those which present a material change in circumstances affecting the application, propose a use materially different in nature or degree, or are implicitly or explicitly invited by the ZBA. Fisher v. Dover, 121 N.H. 187 (1980); Hill-Grant Living Trust v. Kearsarge Lighting Precinct, 159 N.H. 529 (2009). However, the limitation is not to be technically and narrowly imposed. Bois v. Manchester, 113 N.H. 339, 341 (1973) (holding a youth residential center for 15 boys referred by social services and supervised by 3 live-in staff materially different in nature and degree than a rooming house for 15 court-referred youths). Material changes also include the law applicable at the time of the application. Brandt Development Company v. City of Somersworth, 162 N.H. 553 (2011) (approving a project identical to one previously denied in light of changes in applicable law resulting from Simplex Techs., Inc. v. Town of Newington, 145 N.H. 727 (2001)).

Given the legal framework governing subsequent petitions to the ZBA, the previous

concerns articulated by the ZBA and the changes presented in the current proposal, Foy's application meets the requirements of Fisher v. Dover and its progeny and therefore merits consideration. The Board denied Foy's June application representing a 14.5 ft. deviation from the Ordinance. **(July and August Staff Memo)**. With the applicable averaging, Foy's September 28th application represents a 3.5 ft. deviation from the Ordinance, a material change in circumstances. Additionally, the reduction in size removes nearly half the bulk from front yard setback compared to the June application, and it increases the distance from any impervious surface to Little Harbor. Contrary to Thomson's assertions, Foy's current proposal does not increase impervious coverage, it decreases impervious coverage compared to existing conditions and the June application. Foy's June application proposed 25.1% overall lot coverage, a reduction from the existing 26.6% lot coverage; Foy now proposes a further reduction to 23.0% through conversion of an area the impervious paving to a porous parking area for guests. Accordingly, there has been a material change in circumstances and Foy's current application is worthy of consideration. Fisher v. Dover, 121 N.H. 187 (1980).

When deliberating on the June application, the ZBA heard evidence on the effect of the addition on abutters' viewsheds and expressed concern about buffer impacts with a majority determining there was no hardship. While no abutter is entitled to a particular view absent an easement, the reduced proposal is less impactful because of its reduced size and because it represents minimal deviation from the Ordinance requirements. **(Compare Exhibit E1/E2 to E3/E4)**. Wetland buffer impacts, though not within the ZBA's purview, are also reduced by Foy's current proposal, which increases distance to the harbor and utilizes porous materials benefitting the Harbor even when compared to existing conditions. The current proposal is therefore responsive to the concerns raised by the ZBA and warrants full consideration. Hill-Grant Living Trust v. Kearsarge Lighting Precinct, 159 N.H. 529 (2009).

With respect to the submission of multiple applications, Attorney Phoenix was clear in his presentation to the ZBA on September 27th that two minor details requiring zoning relief were erroneously excluded from the June 29th variance application despite their presence on the plan set submitted with that application. **(Exhibit B to June 29, 2022 submission)**. The items requiring relief were a roof overhang on the left side of the existing home and a roof overhang in front of the existing front garage door; both were approved by the ZBA on September 27th. The left-side overhang is depicted on the current application, while the garage overhang remains

under consideration. Attorney Phoenix clearly advised the ZBA that Foys would be returning with a smaller addition the following month, but sought to “clean-up” the minor requests related to the two overhangs. The minor requests, the absence of any effect of those minor requests on Thomson, and Attorney Phoenix’s candor to the ZBA clearly disprove Thomson’s claim that Foy employed an improper strategy.

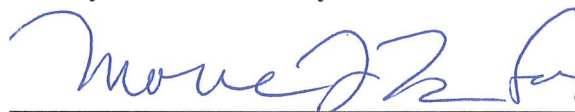
III. OPINION REGARDING PROPERTY VALUES

Realtor Robin Valeri and NH Certified Appraiser Peter Stanhope submitted reports demonstrating that the larger addition previously sought would not diminish the value of surrounding properties. Those expert opinions are equally applicable to the reduced proposal presently before the ZBA and are attached for the Board’s consideration. **(Exhibits F, G).**

IV. CONCLUSION

For all the reasons stated here and in our September 28, 2022 submission, we urge the ZBA to consider Foy’s variance application on the merits and grant the requested front yard setback relief. We look forward to presenting the Project on November 15, 2022.

Respectfully submitted,
Jeffrey and Melissa Foy



By: R. Timothy Phoenix

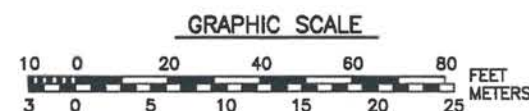
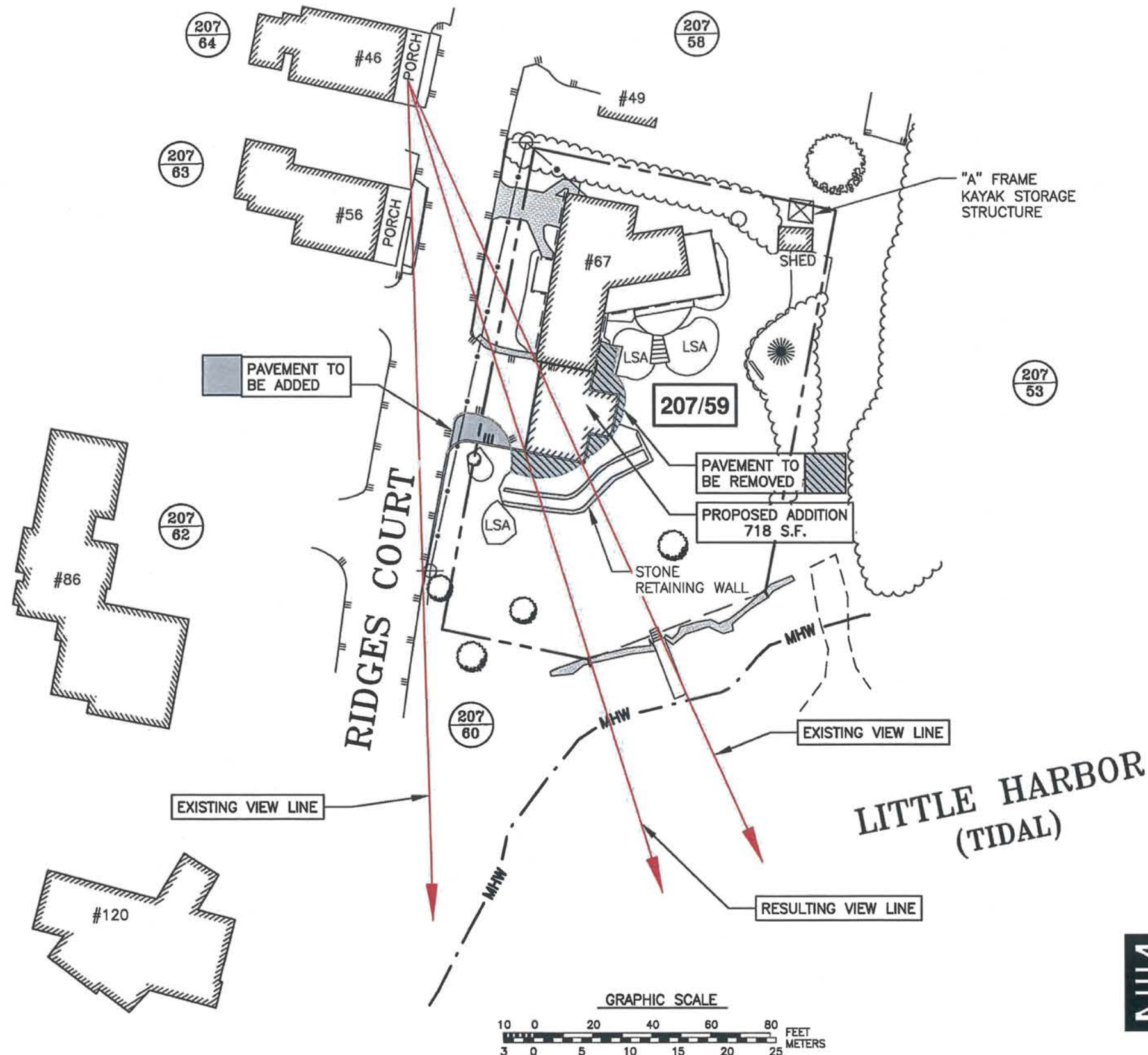
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46 RIDGES COURT ABUTTER VIEW SHED

OWNER: JEFFREY M. & MELISSA FOY
PROPERTY LOCATION: 67 RIDGES COURT
CITY OF PORTSMOUTH
COUNTY OF ROCKINGHAM
STATE OF NEW HAMPSHIRE

EXHIBIT E



SCALE: 1"=40' 10 AUGUST, 2022



AMBIT ENGINEERING, INC.
Civil Engineers & Land Surveyors

200 Griffin Road - Unit 3
Portsmouth, N.H. 03801-7114
Tel (603) 430-9282
Fax (603) 436-2315

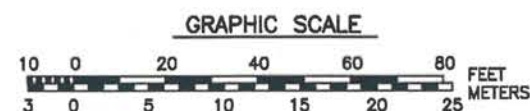
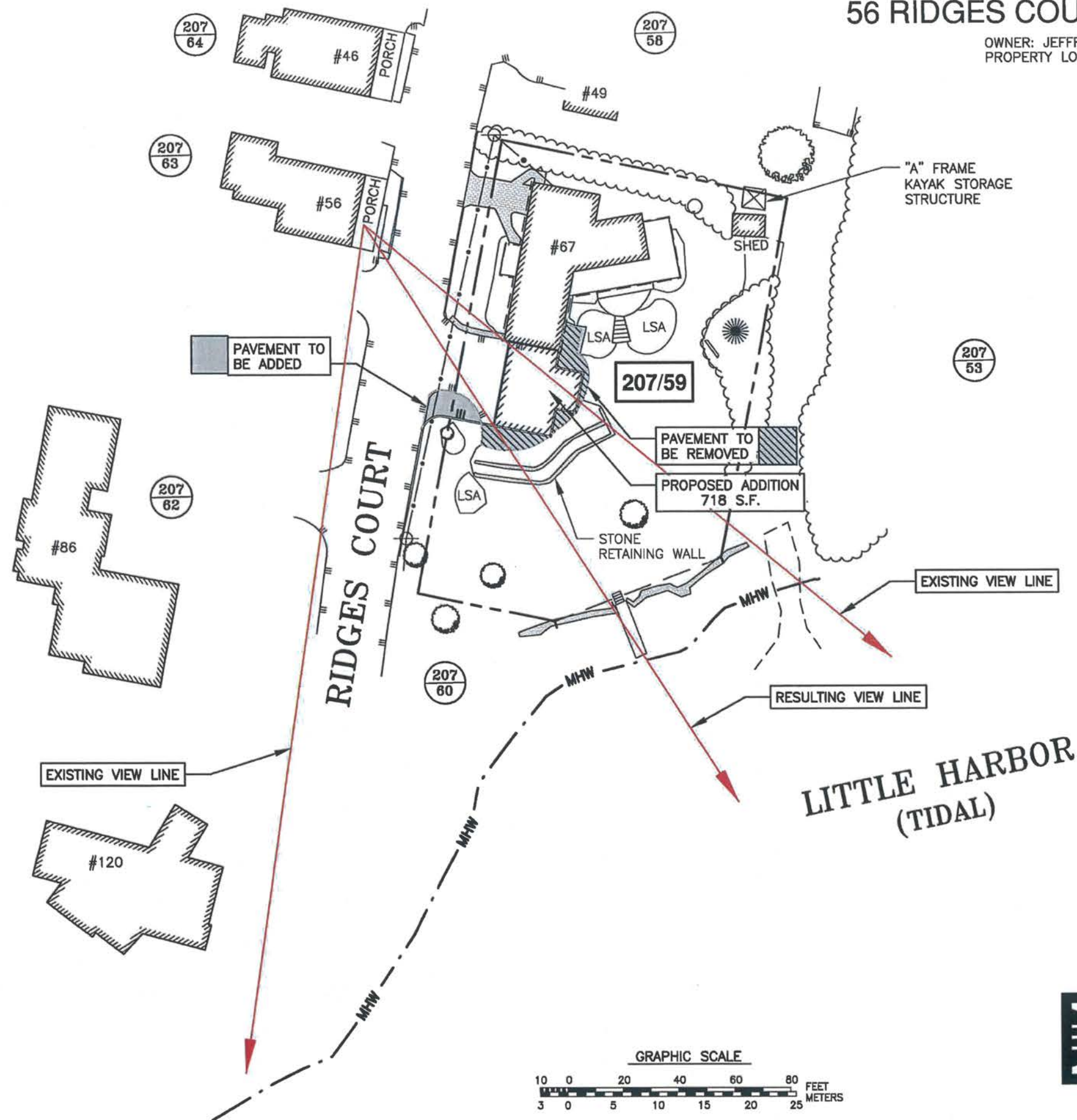
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56 RIDGES COURT ABUTTER VIEW SHED

OWNER: JEFFREY M. & MELISSA FOY
PROPERTY LOCATION: 67 RIDGES COURT
CITY OF PORTSMOUTH
COUNTY OF ROCKINGHAM
STATE OF NEW HAMPSHIRE



SACLE: 1"=40'

10 AUGUST, 2022



AMBIT ENGINEERING, INC.
Civil Engineers & Land Surveyors

200 Griffin Road - Unit 3
Portsmouth, N.H. 03801-7114
Tel (603) 430-9282
Fax (603) 436-2315

2

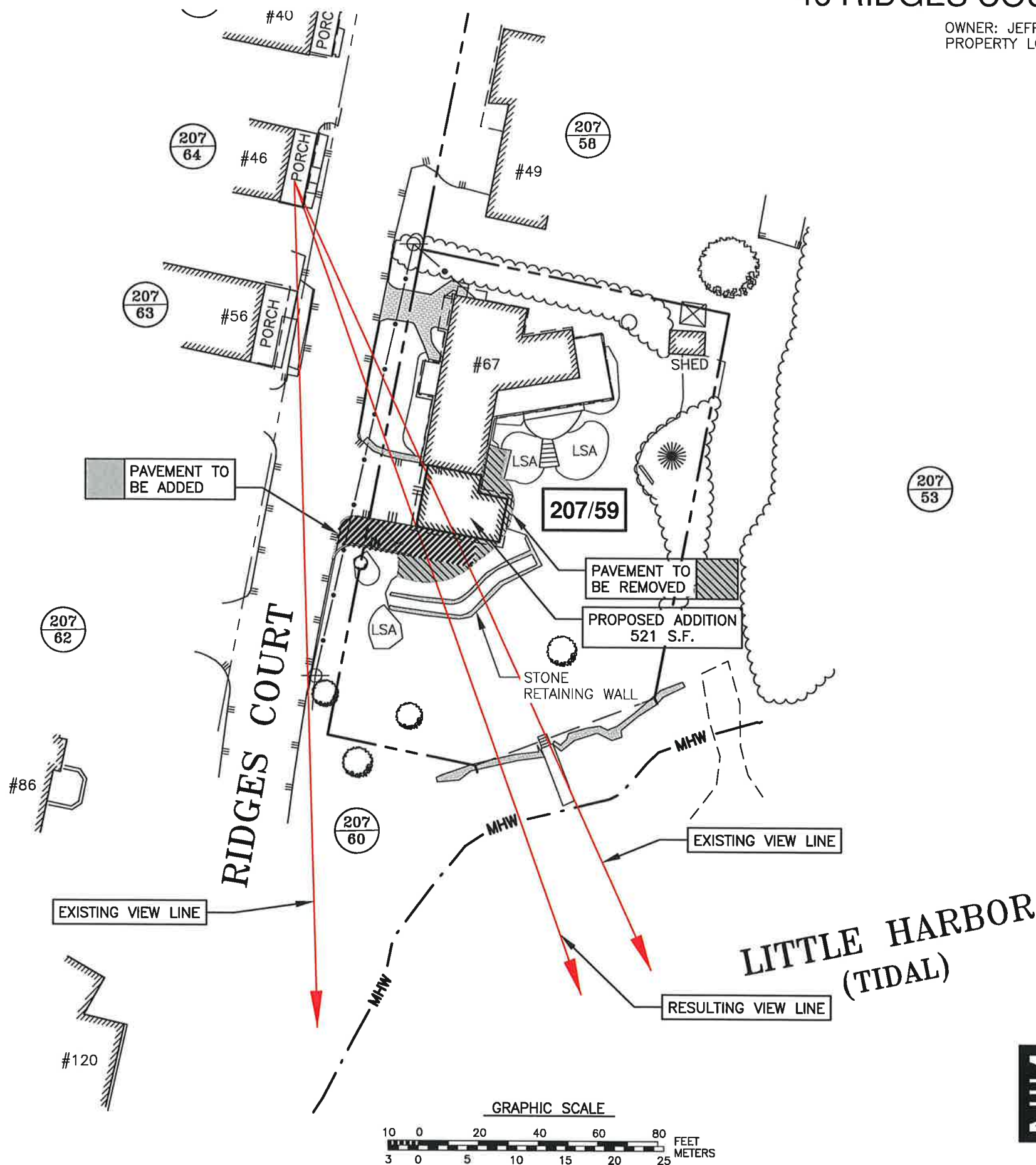
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46 RIDGES COURT ABUTTER VIEW SHED

OWNER: JEFFREY M. & MELISSA FOY
PROPERTY LOCATION: 67 RIDGES COURT
CITY OF PORTSMOUTH
COUNTY OF ROCKINGHAM
STATE OF NEW HAMPSHIRE



SCALE: 1"=40' 1 NOVEMBER, 2022



AMBIT ENGINEERING, INC.
Civil Engineers & Land Surveyors

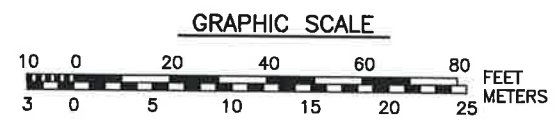
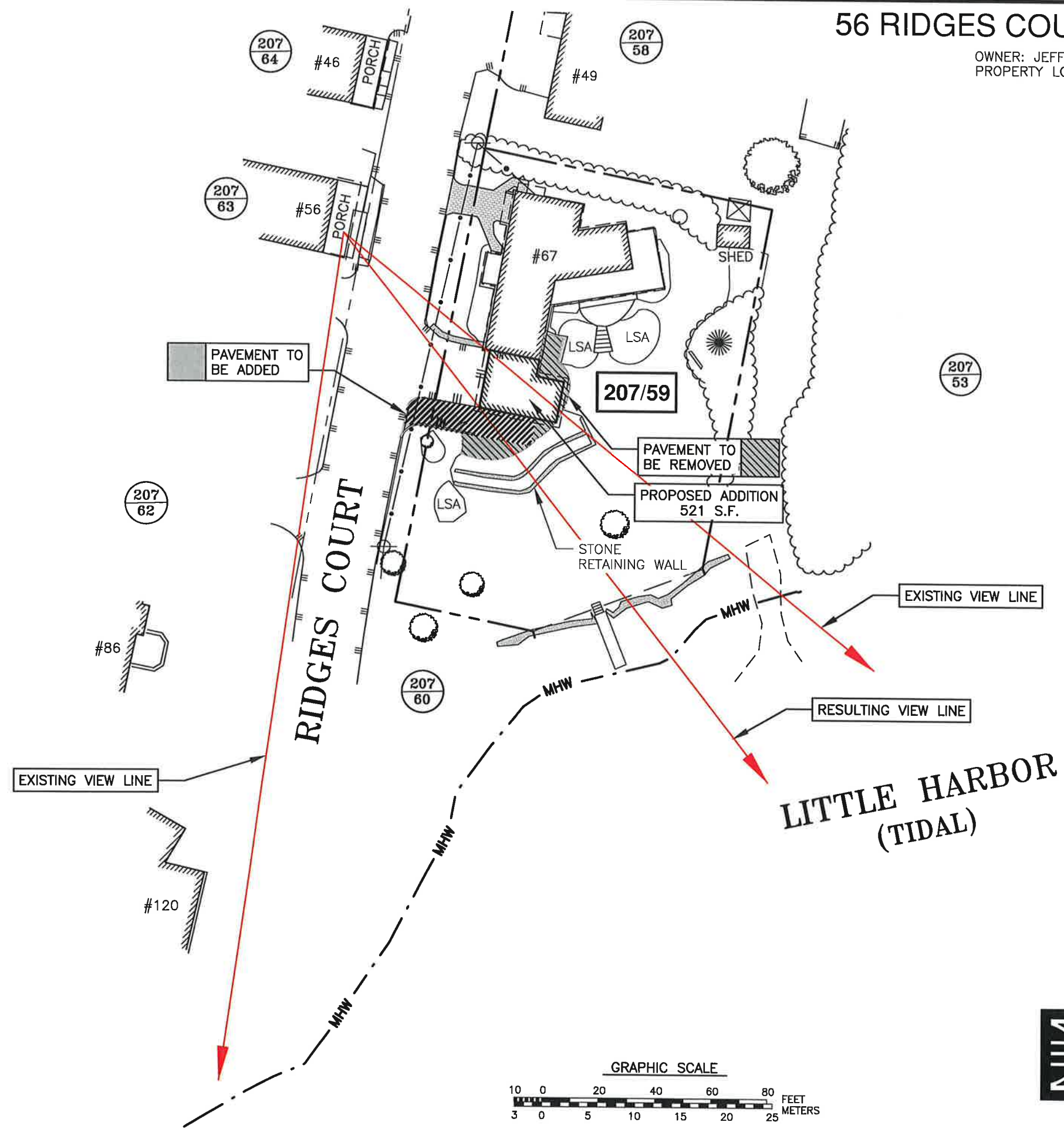
200 Griffin Road - Unit 3
Portsmouth, N.H. 03801-7114
Tel (603) 430-9282
Fax (603) 436-2315

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56 RIDGES COURT ABUTTER VIEW SHED

OWNER: JEFFREY M. & MELISSA FOY
PROPERTY LOCATION: 67 RIDGES COURT
CITY OF PORTSMOUTH
COUNTY OF ROCKINGHAM
STATE OF NEW HAMPSHIRE



SACLE: 1"=40' 1 NOVEMBER, 2022



AMBIT ENGINEERING, INC.
Civil Engineers & Land Surveyors
200 Griffin Road - Unit 3
Portsmouth, N.H. 03801-7114
Tel (603) 430-9282
Fax (603) 438-2315



750 Lafayette Rd, Ste 201
Portsmouth, NH 03801
Direct: (603) 610-8560

August 14, 2022

City of Portsmouth Zoning Board of Adjustment
1 Junkins Ave.
Portsmouth, NH 03801

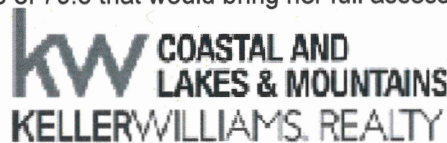
Dear Zoning Board of Adjustment Members,

I am writing as a Broker familiar with the Portsmouth area as I live in the city, and have been with Keller Williams Coastal and Lakes & Mountain Realty for the past seven years. I was the buyer's real estate broker for the Foy's purchase of 67 Ridges Court in 2021.

There are several reasons as to why their proposed construction should be approved. First, the letter from Mrs. Thomson's real estate broker stating that the addition will "directly block the water views" is incorrect as the entire view will not be blocked. However, as the property has never been deeded as a water view easement, there should be no diminishment to her property value as it can not be marketed as ever having a deeded view. Mrs. Thomson has a view through the Foy's property and that has never been guaranteed, as construction or vegetation may occur at any time and the price for her home needs to be reflective of this. Whenever a home is being contemplated or shown, this fact is always part of any real estate conversation. For example, if someone is interested in purchasing a property abutting conservation land or land that is in current use, I always make certain that the potential buyers are aware that it is not their land and whoever owns the land can, within zoning laws, develop or sell the land however they want. Unless there is a view easement, a view is not guaranteed.

In addition, any neighbor had ample time to speak and negotiate with the previous owner of 67 Ridges when the property was on the market for over 85 days prior to going under contract, to purchase a water view easement. There was plenty of notice as there was a large sign stating the home was for sale. According to city records, Mrs. Thomson has lived in her home for many years and has had plenty of time to secure an easement for water view from the previous owners of 67 Ridges if she was so concerned about her view as there is nothing in the deed that secures water view rights.

Mrs. Thomson's real estate broker wrote there would be a diminished property value of \$800,000 to \$1 million dollars if her water view across the Foy's property was partially lost. This does not seem realistic based on recent comparable sales in the South End. The Foy's are increasing the value of their home which in turn has a positive impact on comparables in that neighborhood. The Foy's also pay in property taxes for their water frontage and view. They live on 0.374 acres and pay over \$26,000, whereas Mrs. Thomson lives directly across the street on 0.48 acres and pays approximately \$11,000. When reviewing the Portsmouth tax assessment records, I found Mrs. Thomson's home at 56 Ridges Court plus two additional adjacent vacant land parcels to be assessed for just under \$800,000. When applying the 2021 Portsmouth equalization ratio of 79.5 that would bring her full assessed market value to just under \$1M.



Main Office: (603) 610-8500

Each Office is Independently Owned and Operated

This is not intended as a solicitation if your home is currently listed.



750 Lafayette Rd, Ste 201
Portsmouth, NH 03801
Direct: (603) 610-8560

Desirable properties in Portsmouth in the current real estate market are generally selling for higher than full assessed market value even after applying the equalization ratio. For example, the Foy's home at 67 Ridges Court has a tax assessment of just under \$1.8M. After applying the equalization ratio, their full assessed market value would be just over \$2.25M. The Foy's bought their home for \$2.65M or roughly 17-18% higher than the full assessed value.

If I were to apply the same percentage to Mrs. Thomson's property, her property would be worth in today's market just under \$1.2M or perhaps as high as \$1.3M, although I have never been inside the home to know the current condition of the property or the systems. I know the Foy's home was fully updated in 2002. Therefore, I feel the market value of Ms. Thomson's home is between \$1.2M - \$1.3M and that value of \$1.2M or \$1.3M would not diminish with a partial loss of water view.

In conclusion, it is my opinion that the Foy's proposed construction will definitely not diminish home values and should only have a positive effect on bringing up property values and enhancing the desirability of the neighborhood.

Sincerely,

Robin Valeri

Broker

Keller Williams Coastal and Lakes & Mountain Realty

TECHNICAL ANALYSIS REPORT

PROBABILITY OF DIMINUTION IN VALUE BY EXPANDING THE FOOTPRINT OF REAL ESTATE LOCATED AT MAP 207 LOT 59, 57 RIDGES COURT, PORTSMOUTH, NH.

Prepared for

R. Timothy Phoenix, Esquire
Hoefle, Gormley, Phoenix & Roberts, PLLC
127 Parrott Avenue
Portsmouth, NH 03801

Prepared by

Peter E. Stanhope, NHCG-31
The Stanhope Group, LLC
500 Market Street, Unit 1C
Portsmouth, NH 03801
File #220591

CLIENT: R. Timothy Phoenix, Esquire for Jeffrey & Melissa Foy

INTENDED USERS: Client, Jeffrey & Melissa Foy, Portsmouth Zoning Board of Adjustment

PROBLEM TO BE SOLVED: The purpose of this report is to determine if diminution in market value is evident within the submarket to abutters 56 & 46 Ridges Court, Portsmouth, NH 03801 based upon proposed 718 SF (+/-) garage addition added to Lot 207/59.

INTENDED USE: The intended use includes assisting the client in determining if any diminution is recognized within the submarket. The appraiser does not intend use of this report by any other party than those disclosed above, or for any other purpose by the client.

DATE OF INSPECTION: August 8th, 2022

DATE OF REPORT: August 15th, 2022

USPAP COMPLIANCE: As there is no individual parcel of real estate appraised, this analysis is not a USPAP Standard 1 or Standard 2 Appraisal Report.

DEFINITION OF MARKET VALUE

As defined by the Federal Register and FIERRA (1989) (12 C.F.R. Part 34.42(g); 55 *Federal Register* 34696, August 24, 1990, as amended at 57 *Federal Register* 12202, April 9, 1992; 59 *Federal Register* 29499, June 7, 1994) as follows:

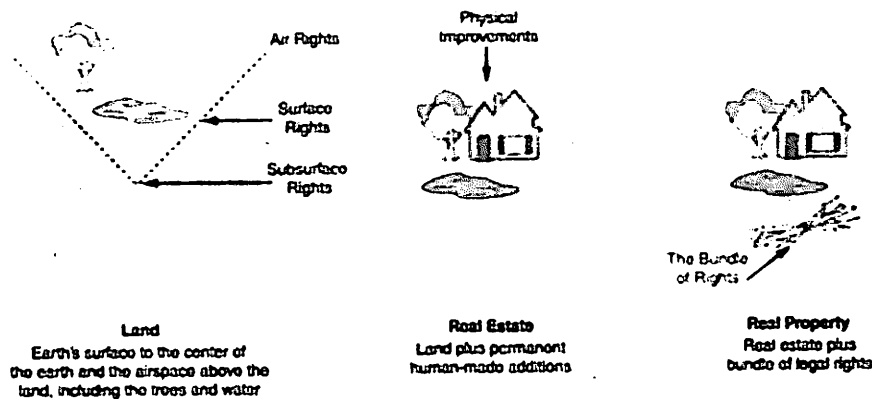
The most probable price which a property should bring in a competitive and open market under all condition's requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

1. The buyer and seller are typically motivated;
2. Both of the parties are well informed or well advised, and are each acting in what they consider to be their own best interest;
3. A reasonable period of time is allowed for exposure in the open market;
4. Payment is made in terms of cash in U. S. dollars or in terms of financial arrangement comparable thereto; and
5. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

LAND, REAL ESTATE AND REAL PROPERTY

As defined in Real Estate Practice, 19th edition, real estate is defined as land plus all human-made improvements to the land that are permanently attached to it. Real property is the interest, benefits, and rights that are automatically included in the ownership of real estate. Ownership rights of real property are included in bundle of legal rights, which include the following rights:

- **Right to possession;**
- **Right to control the property within the framework of the law;**
- **Right of enjoyment (to use the property in any legal manner),**
- **Right of exclusion (to keep others from entering or using the property);**
- **Right of disposition (to sell, will, transfer, or otherwise dispose of or encumber the property).**



Addition to the bundle of rights, land is defined as the earth's surface extending downward to the center of the earth, and upward to infinity (Filmore, G.; Wellington, A.; Robert, K. 19th ed. Modern Real Estate Practice). This includes subsurface rights, as well as air rights, or view rights. This is particularly important in the practice of real estate when dealing with easements, which is the right to use the land of another for a particular purpose. An easement is created by a written agreement between the parties that establishes the easement right.

No noted view easements on legal description of either 56 Ridges Court, Portsmouth, NH 03801 or 46 Ridges Court, Portsmouth, NH 03801. See attached legal descriptions.

SCOPE OF WORK:

I have visited the subject neighborhood and am familiar with its character having previously resided on the adjoining street.
I have interviewed Realtors, assessors and appraisers to form my concluded opinion.

**BASIS OF
CONCLUSIONS:**

The “right of a view” of natural air and light has been debated by government agencies, Realtors and before courts for many years. More recently a number of states have adapted view descriptions with this language for non-owned or non-eased views: **a landowner has no right of light or natural air over adjoining property.**

A review of deeds for real estate located on the westerly side of Ridges Court with any view over map 207 lot 59 identified no easements to view over this lot. These views are sometimes referred to Territorial Views or views that can be seen from the subject but are subject to interruption.

Everyone is entitled to a territorial view from owned real estate but ownership acquires no view right over the non-owned property of others.

Not all views are equal. The following view description are often used:

- Peek-A-Boo View, a sliver over only one limited area of property and not widely visible.
- Partial View, typically obstructed by other buildings, landscaping and natural growth but not similar to non-owned or non-eased views from real estate on the westerly side of Ridges Court over the easterly side real estate.
- Panoramic View, typically wide non-obstructed owned views from all areas of a site. In the case of Ridges Court, waterfront real estate.

View impact on market value of the fee simple interest in national published data for owned or eased views vary widely depending on what is viewed. The range for owned or eased is reported to be 1% to 2.5% for open space to 10%-30% for panoramic ocean or sunset views. These are the premium over non-view properties.

There is no consistent published data for a premium for real estate having a non-owned or non-eased territorial view as these views are not included in the fee simple bundle of rights owned.

A visit to the subject neighborhood and a review of plans prepared by AMBIT Engineering, Inc. shows a non-owned or non-eased views over lots 207/59 and 207/60 to the end of Ridges Court and beyond. The proposed improvements to lot 207/59 make a small reduction on what is visible water from porch areas of lots 207/63 and 64. The area of these views over a second lot, lot 207/60 is a narrow strip of area on the east side of Ridges Court that fails to have development potential. Without landscaping modification to this lot, a portion of non-owned or non-eased territorial views has the potential to be preserved. This portion of the view along with the non-owned or non-eased view area of lot 207/59 are not included in the fee simple bundle of rights of 207/63 and 64 due to the shape and zoning requirements. Non-owned and non-eased views cannot be included in the valuation of either lots 207/63 and 64 in fee simple. To

represent that these properties have owned or eased views is a misrepresentation. The appraisal of either parcels of real estate in fee simple would exclude any non-owned or non-eased right to view natural air and light or in this case, the water.

**REALTOR ESTIMATED
LOSS IN VALUE:**

An opinion of a Realtor has been put on the record that approval for an increase in the size of the footprint of lot 207/59 would impact the fair market value of 207/63 and 64 parcels by a reduction of \$1,000,000. First, lots 207/63 and 64 do not own either the view over lot 207/59 or lot 207/60, therefore you cannot lose what you don't own. The Realtor is quoted in The Durbin Law Variance Application as 207/63 having "6 parcels". The municipal tax records and mapping are inconsistent with 6 lots. In addition to the approved lot 207/63, there are two additional owned lots on a ROW to the rear of the improved lot. They are 207/68 and 69. These are also valuable parcels of real estate and may have been included in the \$2,300,000 estimate. They are not influenced by the view issue and are excluded from consideration here.

Even if lots 207/63 and 64 had owned or eased view rights, the \$1,000,000 loss in value is not supported. What the Realtor's opinion lacks is sufficient data supporting their conclusion. I have independently examined the data and cite the following in regards to their conclusion:

The following is relevant data that demonstrates the \$2,300,000 is not supported, nor is the \$1,000,000 supported.

EXTRAORDINARY ASSUMPTIONS

The term Extraordinary Assumption is defined by USPAP (2017-2018 Edition) as "an assumption, directly related to a specific assignment, which, if found to be false, could alter the appraiser's opinions or conclusions." USPAP explains further by stating that "Extraordinary Assumptions presume as fact otherwise uncertain information about physical, legal, or economic characteristics of a property; or about conditions external to the property, such as market conditions or trends; or about the integrity of data used in an analysis."

The appraiser has used an extraordinary assumption that the abutter property to the subject located at 56 Ridges Court is of average interior conditions and quality.

DECRPTION OF ABUTTER 56 RIDGES COURT

56 Ridges Court, Portsmouth, NH 03801 abuts the subject to the West, across Ridges Court, - Tax Map-207/Lot 63, legal description Book 4731; Page 2542-2543, total site area of approximately 0.48 acres (+/-), with no owned waterfront access and partial views of Little Harbor. **No view or water easement noted on legal description.** Per public records, the dwelling is a colonial build, constructed in 1927, consisting of 3 bedrooms, 1 bath, and 1596 SF (+/-) of gross living area. Based on exterior inspection from the street, original characteristics of the dwelling were observed, including brick

foundation and clapboard siding. The exterior of the dwelling is of fair-average quality based off exterior inspection from the street. Interior quality and conditions noted as average based upon an extraordinary assumption that the exterior and interior updating is of equivalent nature. Public tax assessments records indicate interior conditions as average.



ABUTTER'S DATA

LOCATION:	56 Ridges Court, Portsmouth, NH 03801
ACCESS:	East on New Castle Ave, turn right onto Ridges Court
HIGHEST & BEST USE:	Residential Use
SALE DATE:	None
LIST PRICE:	None
SALE PRICE:	None
SALE PRICE/SF:	None
DEED TYPE	Quitclaim
VIEW EASEMENTS:	None noted on legal description

SALE CONDITIONS:	No recent sales
STATUS AT SALE:	No recent sales
SOURCES:	Public records
CONFIRMED BY:	Monica Rose Marcheterre (08/10/2022)
MAP/LOT:	Tax Map 207/Lot 63
LOT SIZE:	.48 acres (+/-)
WATER FRONTAGE:	No direct water access
SHAPE:	Mostly rectangular
TOPOGRAPHY:	Moderately flat
CHARACTER:	Partial water view
IMPROVEMENTS:	Original construction
VISIBILITY:	Partial views of Little Harbor
COMMENTS:	No identified recent sales of abutter 56 Ridges Court, Portsmouth, NH 03801 per public records. Exterior inspection from street notes partial views of Little Harbor from front of dwelling.

SALES COMPARISON APPROACH & MARKET DATA

The value of partial-water views within the marketplace is highly subjective, with quantitative data not available using the extraction method. This is due to the nature of the contributions, with other contributing factors of real property that influence value, (i.e., improvements, location, amenities, land) within the subject's submarket of high end valued real estate. It is known to the appraiser through research, the appraiser's knowledge, competency, and experience within the area, that a property with owned waterfront would sell for a significant premium over a property with partial water views within the marketplace. Due to limited inventory within the subject's and abutters submarket, waterfront and partial water-view sales are limited. Properties with partial territorial water views within the submarket of Portsmouth have been analyzed, studied, and applied within this report. Each sale chosen will be analyzed for property rights conveyed, market conditions, date and time of sale, location, design of build, quality of construction, age of construction, gross living area, bedroom and bath counts, functional utility, views, and amenities. The sales below are the comparable sales to 56 Ridges Court, Portsmouth, NH 03801 based upon an extraordinary assumption.



SALE #1:

LOCATION:	39 Holmes Court, Portsmouth, NH 03801
ACCESS:	North on Marcy Street, turn right onto Holmes Court
HIGHEST & BEST USE:	Residential Use
SALE DATE:	03/22
LIST PRICE:	\$800,000
SALE PRICE:	\$800,000
SALE PRICE/SF:	\$663.90/SF
SALE CONDITIONS:	Cash/none
STATUS AT SALE:	Improved residential
SOURCES:	Public records
CONFIRMED BY:	Monica Marcheterre (08/11/2022)
MAP/LOT:	Map 0207- Lot 0062
LOT SIZE:	0.48 acre
WATER FRONTAGE:	No direct water frontage
SHAPE:	Mostly rectangular
TOPOGRAPHY:	Moderately flat

CHARACTER:
IMPROVEMENTS:
VISIBILITY:
SCHOOL DISTRICT:
COMMENTS:

Partial water views
Original construction
Partial views of Piscataqua River
Little Harbor
Recent sale of 39 Holmes Court, Portsmouth, NH 03801
on 03/22/2022 for \$800,000 (NEREN MLS#4902025).
Sold as a package deal with 43 Holmes Court, Portsmouth,
NH 03801 for a total of \$2,000,000. 43 Holmes Court has
direct water access. Realtor confirmation of direct water
views from third floor of 38 Holmes Court. This is kept in
the appraiser's work file.



SALE #2:

LOCATION:	43 Whidden Street, Portsmouth, NH 03801
ACCESS:	SE on Pleasant Street, take right onto Whidden Street
HIGHEST & BEST USE:	Improved residential
SALE DATE:	05/13/2022
LIST PRICE:	\$1,430,000
SALE PRICE:	\$1,430,000
SALE PRICE/SF:	\$816.21/sf
SALE CONDITIONS:	Conventional/none
STATUS AT SALE:	Improved residential
SOURCES:	Public records
CONFIRMED BY:	Monica Rose Marcheterre (08/11/2022)
MAP/LOT:	Map 0109/0002
LOT SIZE:	2,613 SF (+/-)

WATER FRONTAGE:	No direct water frontage
SHAPE:	Mostly square
TOPOGRAPHY:	Mostly flat
CHARACTER:	Partial water views South Mill Pond
IMPROVEMENTS:	Original construction
VISIBILITY:	Partial water views
SCHOOL DISTRICT:	Little Harbor
COMMENTS:	Recent sale of 43 Whidden Street, Portsmouth, NH 03801, in local NEREN MLS #4909895 sold on 05/13/2022 for \$1,430,000. Partial water views disclosed on listing and noted by appraiser from exterior site inspection.



LISTING #3:

LOCATION:	260 Marcy Street, Portsmouth, NH 03801
ACCESS:	SE on Pleasant Point Drive, turn left onto Marcy Street
HIGHEST & BEST USE:	Improved residential
SALE DATE:	Active
LIST PRICE:	\$1,750,000
SALE PRICE:	Active listing
SALE PRICE/SF:	N/A
SALE CONDITIONS:	N/A
STATUS AT SALE:	N/A
SOURCES:	Public records
CONFIRMED BY:	Monica Rose Marcheterre (08/11/2022)
MAP/LOT:	Map 0103/Lot 0049
LOT SIZE:	3,049 SF (+/-)
WATER FRONTAGE:	No direct water frontage
SHAPE:	Mostly square moderately
TOPOGRAPHY:	Flat
CHARACTER:	Partial water views

IMPROVEMENTS:

VISIBILITY:

SCHOOL DISTRICT:

COMMENTS:

Original construction

Partial water views

Little Harbor

An active listing within the submarket of Portsmouth, NH with accessibility to Little Harbor School district. 260 Marcy Street is listed on local NERENMLS# 4901665 for \$1,750,000 with 142 days on market. This listing is confirmed to have partial water views from the second and third floor of the dwelling by the listing broker. This is kept in the appraisers work file.

Two other properties were considered. See map and comments below.

The appraiser has selected comparable sales to the subject property that are competing properties. The appraiser conducted an extensive search of comparable properties (up to 18 months), that were similar style, location, GLA, age, utility and similar partial water views to 56 Ridges Court, Portsmouth, NH 03801. Consideration given to all comparables, all located under 1 mile from subject.



Comparable 1 a 1900's New Englander, noted with 3 bedrooms, 1 full bath, 1 half bath, 1205 SF (+/-) of living area, and partial water views. Comparable 2 noted as a 1760 colonial build, with 2 bedrooms, 2 full baths, 1 half bath, 1752 SF (+/-) of living area, and partial water views. Comparable 3 noted with 3 bedrooms, 2 full baths, 1 half bath, 2,210 SF (+/-) of living area, and partial water views from second and third floor. All comparables with accessibility to Little Harbor School.

Two other considered sales, 491 Marcy Steet, Portsmouth, NH 03801 NERENMLS#4898626, an active listing within 1 mile distance, listed for \$895,000 DOM 170, with partial water views disclosed on listing. Not further weighted due to utility differences, a single family converted into a two-unit. This listing is a 1750's colonial build, with 1800 SF (+/-), with partial water views similar to subject. This listing was noted and analyzed.

1B Jackson Hill Street, Portsmouth, NH 03801 NERENMLS#4924378 also considered, an active listing within 1 mile distance, listed for \$1,399,000 DOM 4, with water views and water access. This is a 1725 colonial build with original characteristics. This was chosen for similar attributes to 56 Ridges Court, with similar gross living area noted at 1374 SF (+/-). This listing is noted with superior water access, however, was noted and analyzed for other similarities.

These sales are the best market data properties identified to 56 Ridges Court, Portsmouth NH 03801. All comparables within 1-mile, similar age, style, partial water views, and would attract a similar purchaser in the marketplace. **Based on these comparable properties, the Realtor's estimated fair market value of \$2,300,000 for 56 Ridges Court, Portsmouth NH 03801 is not supported based upon an extraordinary assumption the dwelling is of average interior conditions. The appraiser's conclusions are supported by sales, listings, and pending properties within the submarket of Portsmouth, and stated in this report.**

I have considered the math in the Realtor's conclusions. First, even using the \$2,300,000 which is not supported, if the total view was lost, again this is not the case in this situation, a loss of \$100,000 would indicate a no view value of \$1,300,000. South End Portsmouth properties in similar high value neighborhoods are demanding price premiums without views substantially higher than the \$1,300,000. The only conclusion that can be drawn from this is the \$2,300,000 and \$1,000,000 are unfounded.

RECONCILIATION

There is no market evidence that suggests a partial loss of a partial view within the marketplace would result in a diminution of value. A purchaser of 56 Ridges Court, Portsmouth, NH would pay the same premium price for a partial territorial view, with and without the addition garage added to 67 Ridges Court.

The garage addition to 67 Ridges Court, Portsmouth suggests no negative influence on surrounding property values based on relevant data. Remodeling and upgrading dwellings is supported by the theory of the principle of progression and regression, which suggests that

superior high-quality builds will have a positive influence on values and marketability on inferior quality dwellings within the immediate area. Additionally, both the abutters lots will have additional, unobstructed territorial water views from Tax Map 207/ Lot 60, a 0.07-acre lot which does not meet current zoning requirements for future development.

FINAL CONCLUSIONS

Granting of the variance will not result in diminution in fair market value to any neighborhood property for partial loss of non-owned or non-eased views.

I can find no support for lot 207/63 Realtor valuation conclusions.

Respectfully,

A handwritten signature in black ink, appearing to read "Peter E. Stanhope".

Peter E. Stanhope, NHCG-31

Enclosures: Addenda
Curriculum Vitae
NH Certification

REPORT ADDENDA

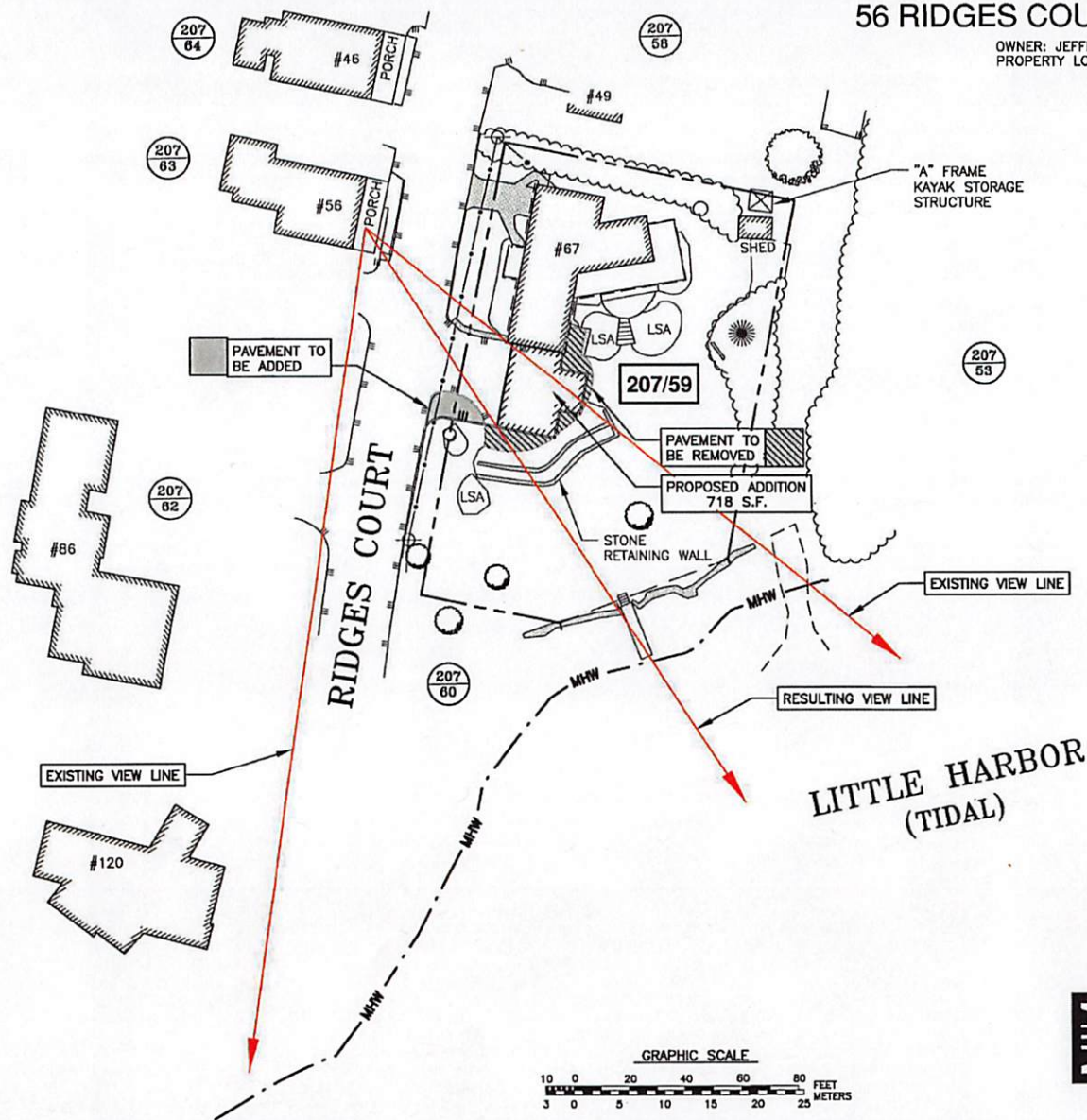
COMMENTS:

67 Ridge's Court was originally listed for \$2,950,000 on 05/27/2021, with 94 days on market, and closed on 09/03/2021 for \$2,650,000 through cash transaction. Market conditions during listing months were increasing at 1% a month, 12 % annually rounded. The subjects market value was identified by recent sale, and estimated at \$2,650,000 retrospectively at time of sale.

2002
REF. 1
N
MAGNETIC
PLAN

56 RIDGES COURT ABUTTER VIEW SHED

OWNER: JEFFREY M. & MELISSA FOY
PROPERTY LOCATION: 67 RIDGES COURT
CITY OF PORTSMOUTH
COUNTY OF ROCKINGHAM
STATE OF NEW HAMPSHIRE



SACLE: 1"=40' 10 AUGUST, 2022

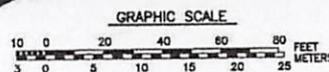
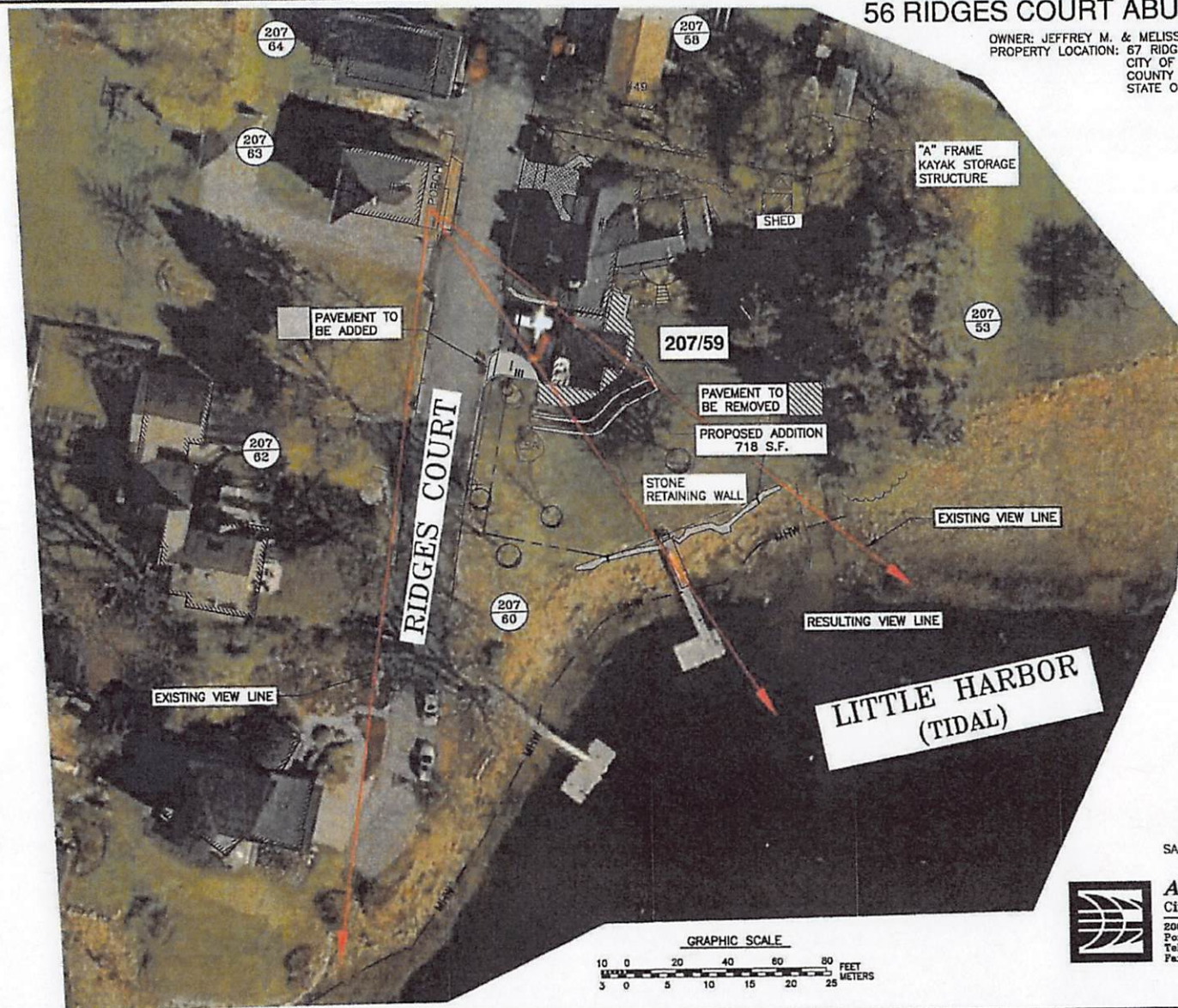


AMBIT ENGINEERING, INC.
Civil Engineers & Land Surveyors
200 Griffin Road - Unit 3
Portsmouth, N.H. 03801-7114
Tel (603) 430-9282
Fax (603) 436-2315

56 RIDGES COURT ABUTTER VIEW SHED

OWNER: JEFFREY M. & MELISSA FOY
PROPERTY LOCATION: 67 RIDGES COURT
CITY OF PORTSMOUTH
COUNTY OF ROCKINGHAM
STATE OF NEW HAMPSHIRE

2002
MAGNETIC
PLAN
REF. 1



SACLE: 1"=40'

10 AUGUST, 2022

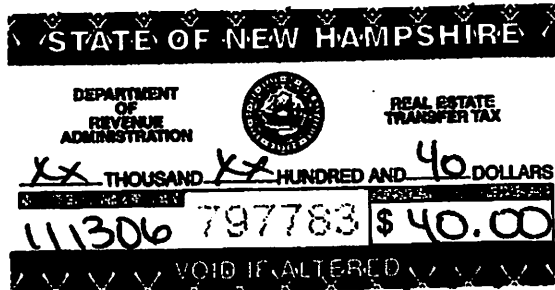


AMBIT ENGINEERING, INC.
Civil Engineers & Land Surveyors

200 Griffin Road - Unit 3
Portsmouth, N.H. 03801-7114
Tel (603) 430-9282
Fax (603) 430-2316

FB 222 PG 66

1153.02

**QUITCLAIM DEED**

KNOW ALL PERSONS BY THESE PRESENTS, THAT I, KATHLEEN Y. THOMSON, single, of 56 Ridges Court, Portsmouth, Rockingham County, New Hampshire, 03801

For consideration paid, grant to **KATHLEEN Y. THOMSON, TRUSTEE OF THE KATHLEEN Y. THOMSON REVOCABLE TRUST OF 2006**, u/d/t November 7, 2006, of 56 Ridges Court, Portsmouth, Rockingham County, New Hampshire, 03801

With Quitclaim Covenants,

Four certain lots of land with the buildings thereon, situate in said Portsmouth, being Lots number 41, 42, 55 and 56 on a Plan of Lots owned by Rienzi Ridge, and recorded in Rockingham County Registry of Deeds, Plan Book 1, Page 77. Said lots described as one parcel are bounded and described as follows:

Beginning in the Easterly side of a proposed new street as shown on said Plan, leading southerly from New Castle Avenue, at a point 313 feet southerly from the southerly sideline of said Avenue, thence running easterly by Lot 43 and 54 on said Plan 207.32 feet, more or less, to another proposed new street, as shown on said Plan, at a point 313 feet southerly from said southerly sideline of said Avenue; thence turning and running southerly by said proposed new street 100 feet to Lot 57 on said Plan; thence turning and running westerly by Lots 57 and 40 on said Plan 209.66 feet, more or less, to said first named proposed new street, and then northerly by said new street 100 feet to the point begun at.

Being the same premises described in deed of William A. Thomson, Jr., Executor of the Estate of Florence M. Thomson to William A. Thomson and Kathleen Thomson, dated August 31, 1976, recorded in Rockingham County Registry of Deeds, Book 2265, Page 79. William A. Thomson died June 17, 1995, at Boston, Massachusetts. See death certificate recorded herewith.

This is a non-contractual transfer pursuant to NH RSA 78-B.

070093

2006 NOV 13 PM 12:30

ROCKINGHAM COUNTY
REGISTRY OF DEEDS

Signed this 7th day of November, 2006.


Kathleen Y. Thomson

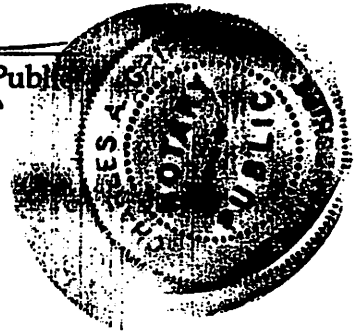
STATE OF NEW HAMPSHIRE
ROCKINHAM, SS

Personally appeared KATHLEEN Y. THOMSON before me this 7th day of November, 2006, known to me or satisfactory proved to be the person whose name is subscribed to the foregoing instrument and executed the same for the purposes therein contained.

Before me,


Charles A. Griffin, Notary Public

My commission expires: 02/11/09



56 RIDGES CT

Location 56 RIDGES CT

Mblu 0207/ 0063/ 0000/ /

Acct# 28716

Owner THOMSON KATHLEEN Y
REVOC TRUST 2006

PBN

Assessment \$757,200

Appraisal \$757,200

PID 28716

Building Count 1

Current Value

Appraisal			
Valuation Year	Improvements	Land	Total
2021	\$227,300	\$529,900	\$757,200
Assessment			
Valuation Year	Improvements	Land	Total
2021	\$227,300	\$529,900	\$757,200

Owner of Record

Owner THOMSON KATHLEEN Y REVOC TRUST 2006
Co-Owner THOMSON KATHLEEN Y TRUSTEE
Address 56 RIDGES CT
PORTSMOUTH, NH 03801

Sale Price \$0
Certificate
Book & Page 4731/2542
Sale Date 11/13/2006

Ownership History

Ownership History				
Owner	Sale Price	Certificate	Book & Page	Sale Date
THOMSON KATHLEEN Y REVOC TRUST 2006	\$0		4731/2542	11/13/2006

Building Information

Building 1 : Section 1

Year Built: 1927
Living Area: 1,596
Replacement Cost: \$333,824
Building Percent Good: 65

Replacement Cost
Less Depreciation: \$217,000

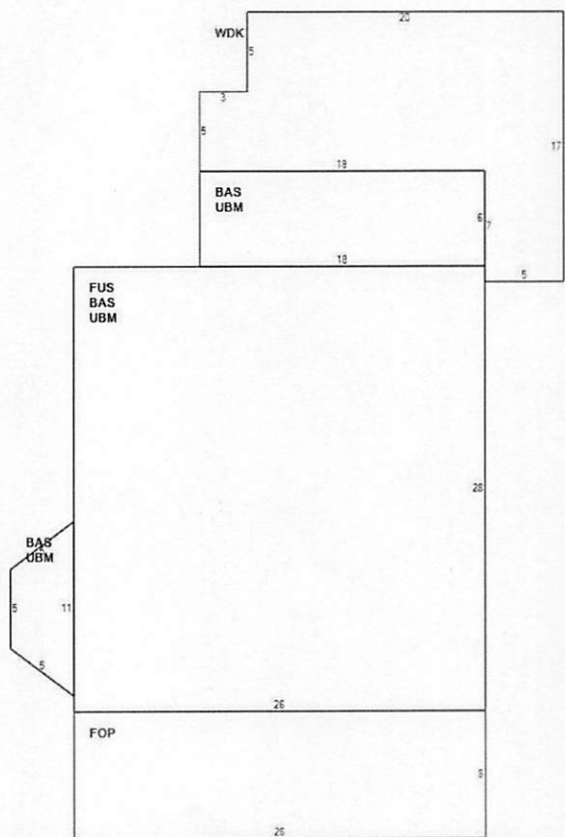
Building Attributes	
Field	Description
Style	Conventional
Model	Residential
Grade:	B
Stories:	2
Occupancy	1
Exterior Wall 1	Asbest Shingle
Exterior Wall 2	
Roof Structure:	Gable/Hip
Roof Cover	Asph/F Gls/Cmp
Interior Wall 1	Plastered
Interior Wall 2	
Interior Flr 1	Carpet
Interior Flr 2	Hardwood
Heat Fuel	Gas
Heat Type:	Steam
AC Type:	None
Total Bedrooms:	3 Bedrooms
Total Bthrms:	1
Total Half Baths:	1
Total Xtra Fixtrs:	1
Total Rooms:	6
Bath Style:	Avg Quality
Kitchen Style:	Avg Quality
Kitchen Gr	
WB Fireplaces	0
Extra Openings	0
Metal Fireplaces	0
Extra Openings 2	0
Bsmt Garage	

Building Photo



(<https://images.vgsi.com/photos2/PortsmouthNHPhotos/A00\00\02\59.JPG>;

Building Layout



(ParcelSketch.ashx?pid=28716&bid=28716)

Building Sub-Areas (sq ft)			Legend
Code	Description	Gross Area	Living Area
BAS	First Floor	868	868
FUS	Upper Story, Finished	728	728
FOP	Porch, Open	208	0
UBM	Basement, Unfinished	868	0
WDK	Deck, Wood	250	0
		2,922	1,596

Extra Features

Extra Features				Legend
Code	Description	Size	Value	Bldg #
REC	REC ROOM	140.00 S.F.	\$2,300	1

Land

Land Use

Use Code 1012
Description SFR WATERINFL
Zone SRB
Neighborhood 101
Alt Land Appr No
Category

Land Line Valuation

Size (Acres) 0.48
Frontage
Depth
Assessed Value \$529,900
Appraised Value \$529,900

Outbuildings

Outbuildings						Legend
Code	Description	Sub Code	Sub Description	Size	Value	Bldg #
FGR1	GARAGE-AVE	02	DETACHED	440.00 S.F.	\$6,800	1
SHD1	SHED FRAME			180.00 S.F.	\$1,200	1

Valuation History

Appraisal			
Valuation Year	Improvements	Land	Total
2020	\$227,300	\$529,900	\$757,200
2019	\$227,300	\$529,900	\$757,200
2018	\$203,300	\$463,200	\$666,500

Assessment			
Valuation Year	Improvements	Land	Total
2020	\$227,300	\$529,900	\$757,200
2019	\$227,300	\$529,900	\$757,200
2018	\$203,300	\$463,200	\$666,500



July 13, 2022

City of Portsmouth Zoning Board of Adjustment
1 Junkins Ave.
Portsmouth, NH 03801

Dear Zoning Board of Adjustment Members,

I am writing on behalf of Kathleen Thomson, owner of 56 Ridges Court, Portsmouth, NH. 56 Ridges Court is located directly across the street from 67 Ridges Court.

Mrs. Thomson and four generations of the Thomson family have enjoyed nearly 100 years of scenic water views of Little Harbor from their home at 56 Ridges Court. In recent years, the property and home across the street at 67 Ridges Court has evolved significantly, with each new owner expanding the overall square footage and footprint of the home as well as different garage configurations. The addition proposed by the Foy's in the current variance request is the most ambitious renovation proposed to date. If this proposed addition is erected it will, for the first time, directly block the water views from Mrs. Thomson's property, as well as views from several neighbors. The proposed expansion will diminish sight lines / water views between Mrs. Thomson's front porch, living room, dining room, and bedrooms and Little Harbor. The proposed expansion also reduces the overall ambience and openness to the water, which been a unique neighborhood feature for this cluster of homes that dead-end into Little Harbor.

Water views are highly coveted in the Seacoast area. Therefore, the substantial change in water views also has a significant impact in the market value of these neighboring properties and has the most direct impact on the market value of Mrs. Thomson's home. The average price difference between a home with a water view and a similar home in the same neighborhood with no water view is between \$800,000 and \$1 million dollars. Based on comparable sales in the South End from the past 18 months, Mrs. Thomson's fair market value for her home on 6 parcels is \$2.3 million. Should the Foy's variance be granted, Mrs. Thomson's market value would decrease to \$1.4 million. That is a significant amount of lost value.

In sum, the Foy's proposed expansion at 67 Ridges Court will be highly detrimental to the neighborhood, result in loss of property value for 56 Ridges Court, and diminish the enjoyment that Mrs. Thomson and her family have treasured from Little Harbor views for nearly a century.

Sincerely,

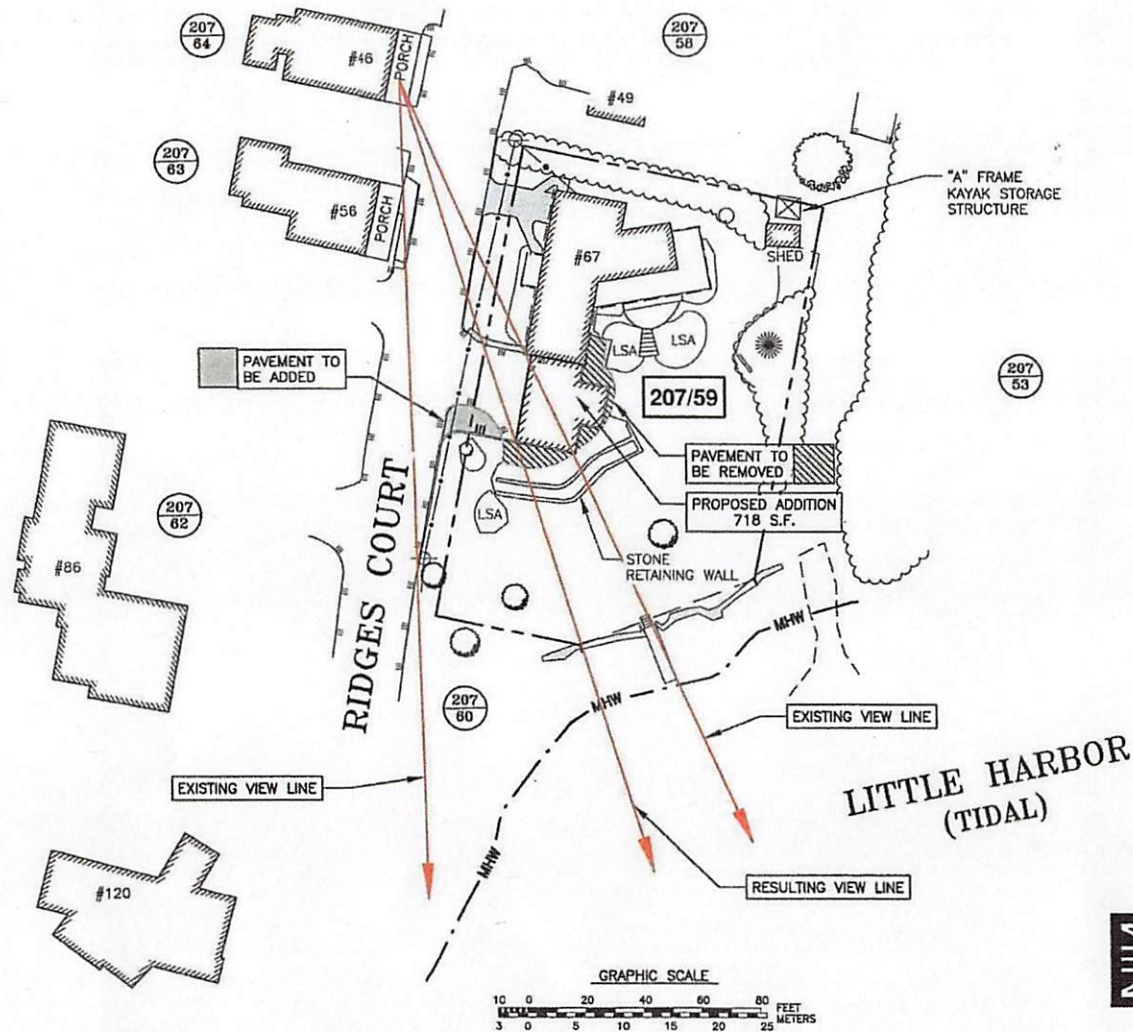
A handwritten signature in cursive script that reads "Ali Goodwin".

Ali Goodwin, Realtor® • Luxury Division
Haven Homes + Lifestyle at Keller Williams Coastal and Lakes & Mountains Realty
Cell: 603-957-8466 • Email: ali@aligoodwin.com

2002
MAGNETIC
PLAN
REF. 1

46 RIDGES COURT ABUTTER VIEW SHED

OWNER: JEFFREY M. & MELISSA FOY
PROPERTY LOCATION: 67 RIDGES COURT
CITY OF PORTSMOUTH
COUNTY OF ROCKINGHAM
STATE OF NEW HAMPSHIRE



SCALE: 1"=40' 10 AUGUST, 2022



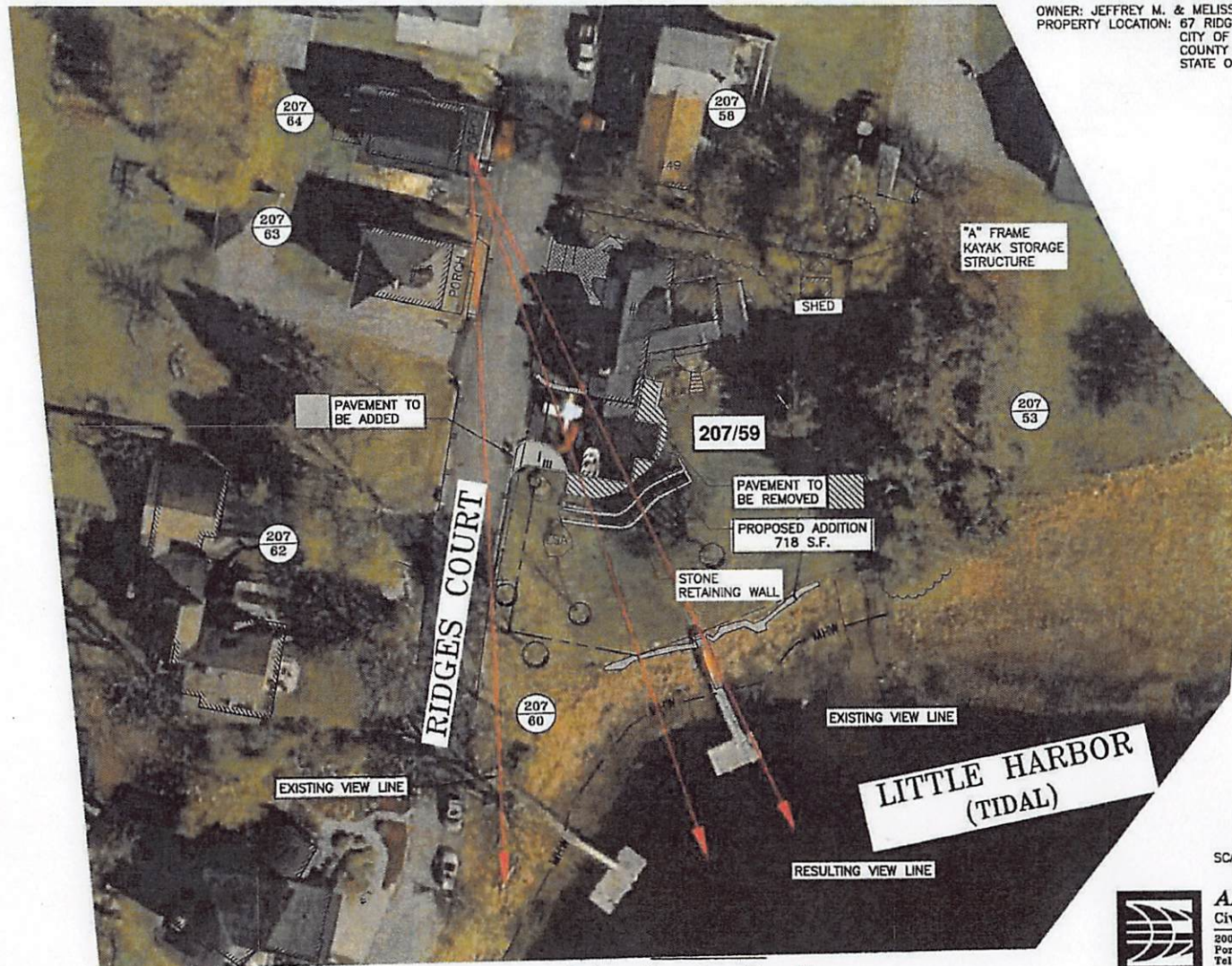
AMBIT ENGINEERING, INC.
Civil Engineers & Land Surveyors
200 Griffin Road - Unit 3
Portsmouth, N.H. 03801-7114
Tel (603) 430-9282
Fax (603) 438-2315

FB 222 PG 66 1153.02

46 RIDGES COURT ABUTTER VIEW SHED

OWNER: JEFFREY M. & MELISSA FOY
 PROPERTY LOCATION: 67 RIDGES COURT
 CITY OF PORTSMOUTH
 COUNTY OF ROCKINGHAM
 STATE OF NEW HAMPSHIRE

2002
 REF. 1
 MAGNETIC
 PLAN

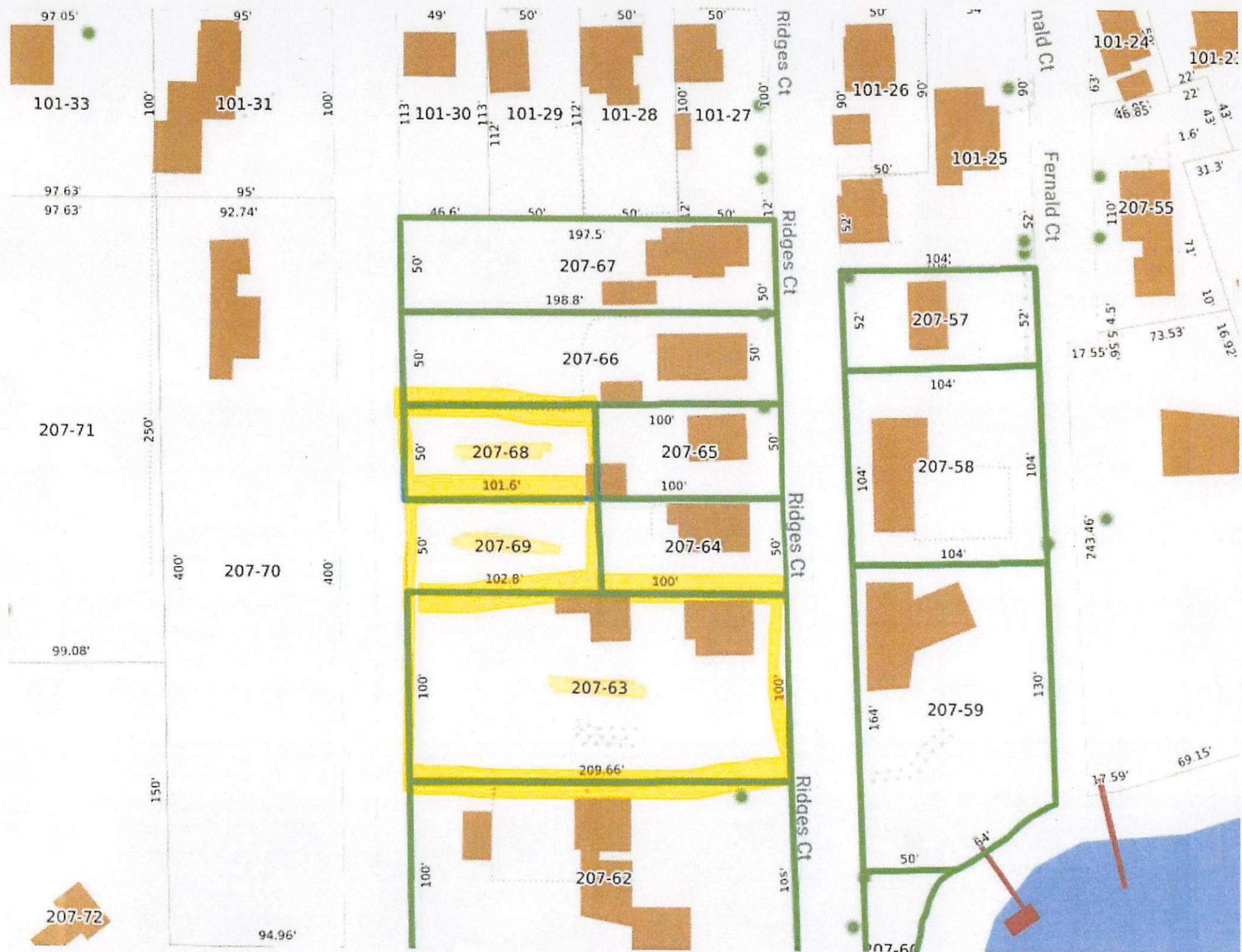


10 0 20 40 60 80 FEET
 3 0 5 10 15 20 25 METERS

SCALE: 1"=40' 10 AUGUST, 2022



AMBIT ENGINEERING, INC.
 Civil Engineers & Land Surveyors
 200 Griffin Road - Unit 3
 Portsmouth, N.H. 03801-7114
 Tel (603) 430-9282
 Fax (603) 430-2315



Peter E. Stanhope, Certified General Appraiser
(NHCG-31 and MECG-647)

EDUCATION:

American Institute of Real Estate Appraisers	1980 - 1984
University of New Hampshire	1960 - 1964

EXPERIENCE:

The Stanhope Group - Chief Appraiser	1967 - Present
--------------------------------------	----------------

Appraisal of complex residential, industrial and commercial real estate throughout northern New England for corporations, government agencies, financial institutions, law firms, and private individuals.

RELATED EXPERIENCE:

Adjunct Faculty, University of New Hampshire	1981 - 1999
Adjunct Faculty, Real Estate Center, University of Maine	1983 - 1990

ADDITIONAL EXPERIENCE:

National Business Institute
Foreclosure: Appraisal Review, Webinar Speaker
Appraisals in Estate Planning and Administration, Webinar Speaker
Maine Public Television
Format development and moderator of a six hour television special on residential and income property valuation
New Hampshire Commercial Investment Board of Realtors
Program presenter for "A Look at the Rate Value Relationship"
New Hampshire Bar Association
Program presenter for "The Appraisal In Tax Abatement", "Introduction and Overview of Divorce Litigation", and "Use of Experts in Divorce Litigation"
New Hampshire Trial Lawyers Association
Program presenter for the Annual Family Law Forum
Expert Witness (Testimony Before):
State of New Hampshire
Circuit Courts and Superior Courts
Board of Taxation and Land Appeal
State of Maine - York and Cumberland Superior Courts
U.S. Bankruptcy Court - Manchester, NH; Rutland, VT and Portland, ME
U.S. District Court - Concord, NH; Boston, MA, Worcester, MA

DESIGNATIONS, CERTIFICATIONS & AFFILIATIONS:

Appraisal Institute
Practicing Affiliate Member
National Association of Realtors, Appraisal Section
General Accredited Member
State of New Hampshire
Certified General Real Estate Appraiser
Licensed Real Estate Broker
State of Maine
Certified General Real Estate Appraiser

OFFICERSHIPS, COMMITTEES & ACTIVITIES:

New Hampshire Mortgage Banker's Association
Former Board of Directors Member
New Hampshire Commercial and Industrial Realtors
Former Board of Directors Member
New Hampshire Housing Finance Authority
Reverse Elderly Equity Loan Study Committee, Single Family Committee
National Association of Realtors
National Appraisal Committee Appraisal Section, Former NH Delegate
City of Portsmouth Economic Development Loan Program
Former Loan Review Board Member
Strafford County Regional Planning Commission Former Member
Town of Durham
Historic District Commission (Chairman 2012 - 2017) 2011 - 2018
Oyster River Advisory Committee
NH Rivers Management and Protection Program 2011 - 2012

NEW BUSINESS

1.

The request of **Emily-Anne Boon (Applicant)** and **Jeanne L. Wescott Revocable Trust (Owner)**, for property located at **118 Maplewood Avenue, Unit C4** whereas relief is needed to allow a medical office which requires the following: 1) A Special Exception from Section 10.440, Use #6.20 to allow a medical office where the use is permitted by Special Exception. Said property is located on Assessor Map 124 Lot 5-C4 and lies within the Character District 4-L1 (CD4-L1) and the Historic District.

Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	office	Medical office	Primarily mixed uses
<u>Lot area (sq. ft.):</u>	19,067	19,067	3,000 min.
<u>Primary Front Yard (ft.):</u>	4	4	15 max.
<u>Right Yard (ft.):</u>	50	50	5 - 20 max.
<u>Left Yard (ft.):</u>	10	10	5 - 20 max.
<u>Rear Yard (ft.):</u>	74	74	Greater of 5 ft. from the rear lot line or 10 ft. from center line of alley
<u>Height (ft.):</u>	ok	ok	2 stories/ 35' max.
<u>Building Coverage (%):</u>	<60	<60	60 max.
<u>Open Space Coverage (%):</u>	>25	>25	25 min.
<u>Parking:</u>	26	26	26
<u>Estimated Age of Structure:</u>	1996	Special Exception request shown in red.	

Other Permits/Approvals Required

None.

Neighborhood Context



November 15, 2022 Meeting

Previous Board of Adjustment Actions

No previous BOA history found.

Planning Department Comments

The application is seeking to locate a medical office use at this location where similar uses exist. The applicant is proposing an appointment only practice, seeing up to 8 patients per day, 1-2 days per week. The use is permitted in the Ordinance by special exception in the CD4-L1 and the proposal is consistent with other uses on the property.

Review Criteria

The application must meet all of the standards for a **special exception** (see Section 10.232 of the Zoning Ordinance).

1. *Standards as provided by this Ordinance for the particular use permitted by special exception;*
2. *No hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials;*
3. *No detriment to property values in the vicinity or change in the essential characteristics of any area including residential neighborhoods or business and industrial districts on account of the location or scale of buildings and other structures, parking areas, accessways, odor, smoke, gas, dust, or other pollutant, noise, glare, heat, vibration, or unsightly outdoor storage of equipment, vehicles or other materials;*
4. *No creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity;*
5. *No excessive demand on municipal services, including, but not limited to, water, sewer, waste disposal, police and fire protection and schools; and*
6. *No significant increase of stormwater runoff onto adjacent property or streets.*

Application for Special Exception City of Portsmouth, NH

Subject Property - 118 Maplewood Ave Unit #C4

- Valuation of New Construction (for non-residential projects)
 - *\$0.00 No New Construction*
- Lot area
 - *Unknown*
- Description of existing and proposed land uses
 - *This specific unit has been primarily used as office space, most recently by Great Bridge Properties, LLC*
 - *Other adjacent businesses utilizing the lot include an accountant, insurance agency, Mortgage broker, Dental Office, MD Medical Office*
- Location and gross floor area of the area devoted to the existing and proposed land uses
 - *556 SqFt*
- Existing and proposed number of parking spaces
 - *1 Designated Spot and 25 Spaces Total*
- Project representatives – names and contact information
 - **DO. Emily-Anne Boone**
 - *Owner of business and lessee of space*
 - *617-850-5941*
 - *bemilyanne@yahoo.com*
 - **Drew Fortin**
 - *Husband to Emily, Broker, Assisting with application*
 - *860-716-5379*
 - [*DrewFortinRE@gmail.com*](mailto:DrewFortinRE@gmail.com)

- 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).
 - We believe this request complies with the requirements of the zoning ordinance as provided in article 2 section 10.232.20. This will be a “by appointment only” establishment for 1 patient at a time. All medical services will be outpatient only. No exterior construction, additional parking, or other changes are needed to begin running this business. In addition, the business meets the standards within article 2 section 10.232.20 and sub sections 10.232.21 through 10.232.26 as follows.
 - ***10.232.21 Standards as provided by this Ordinance for the particular use permitted by special exception;***
 - This unit falls under use # 6.20 under the category of outpatient medical office and is within zoning CD4-L1 that would allow for special exception.
 - ***10.232.22 No hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials;***
 - This business will not pose a hazard to public or adjacent properties as it will not be dealing with materials that will cause fire, explosions or release of toxic materials.
 - ***10.232.23 No detriment to property values in the vicinity or change in the essential characteristics of any area including residential neighborhoods or business and industrial districts on account of the location or scale of buildings and other structures, parking areas, accessways, odor, smoke, gas, dust, or other pollutant, noise, glare, heat, vibration, or unsightly outdoor storage of equipment, vehicles or other materials;***
 - This business will not require any exterior structural changes or upgrades. Being a medical office it will be private and quiet in nature and will not cause any

disturbance due to excess noise, foot traffic, gas, dust, heat or any other environmental disturbance.

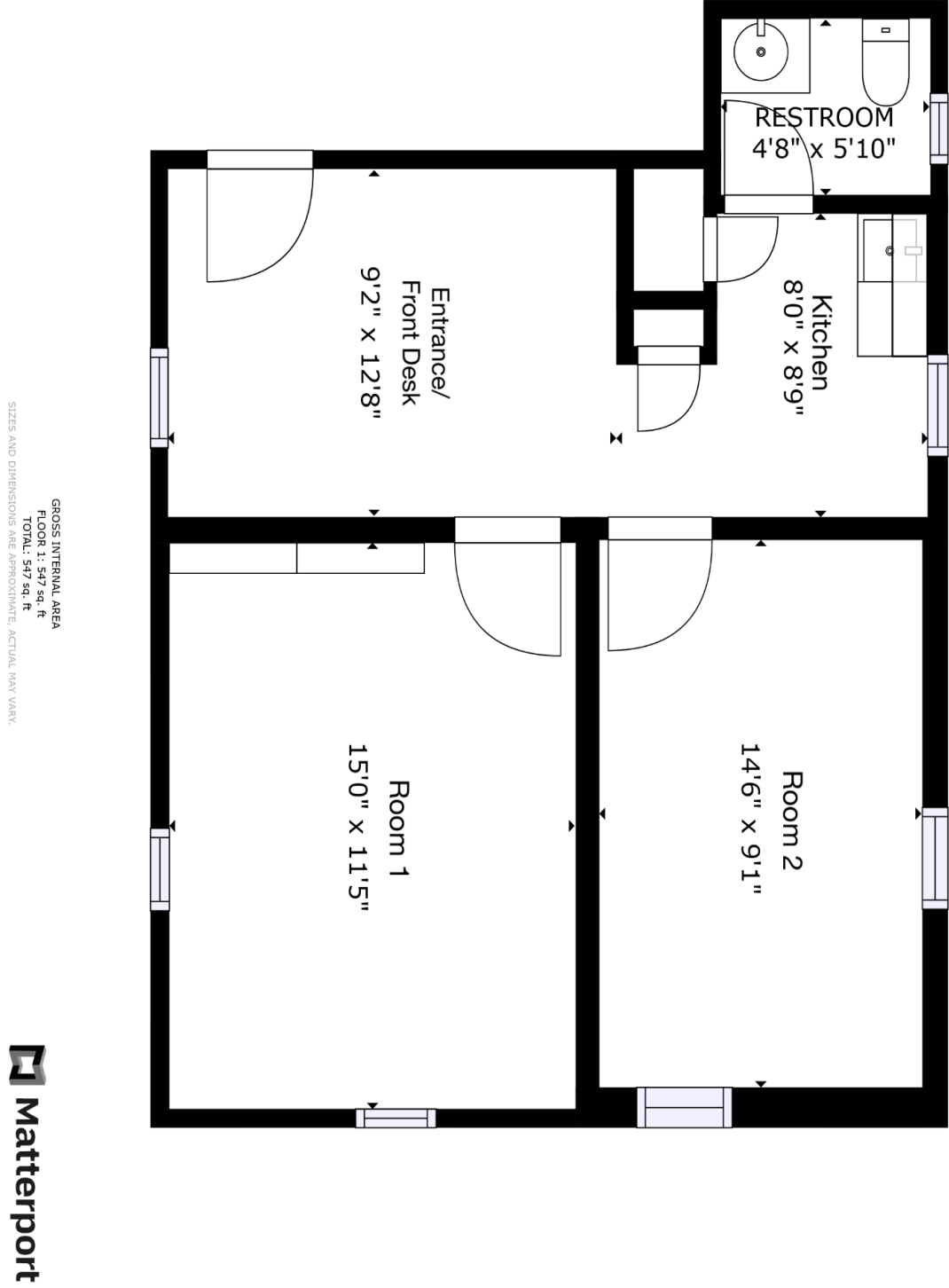
■ **10.232.24 No creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity;**

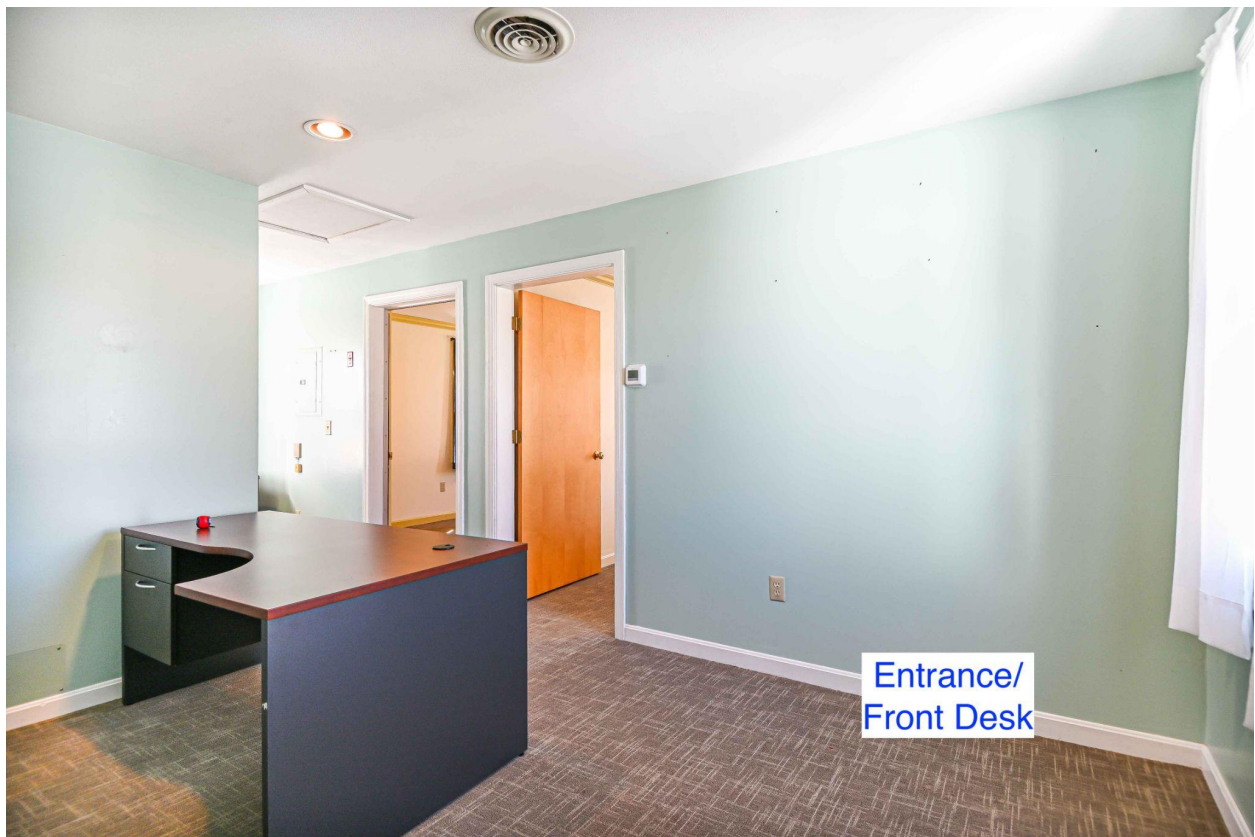
- This location serves the business perfectly as it will not need any additional parking or require new traffic patterns. There will only be one patient present at the business location at a time. Dr. Boone will only be seeing patients 1-2 days per week, seeing a maximum of 8 patients in one day. Dr. Boone may on occasion have one administrative assistance present at the business to greet/process these patients. Because the business location is in walking distance to the personal residence of Dr. Boone there will be times she walks to the location leaving designated parking free for her patients.
- **10.232.25 No excessive demand on municipal services, including, but not limited to, water, sewer, waste disposal, police and fire protection and schools;**
 - Seeing patients only a few days per week we do not anticipate the business activity will create excessive demand on any municipal services.
- **10.232.26 No significant increase of stormwater runoff onto adjacent property or streets.**
 - Given the lack of any structural changes we don't see how this business would create any significant increase in stormwater runoff.

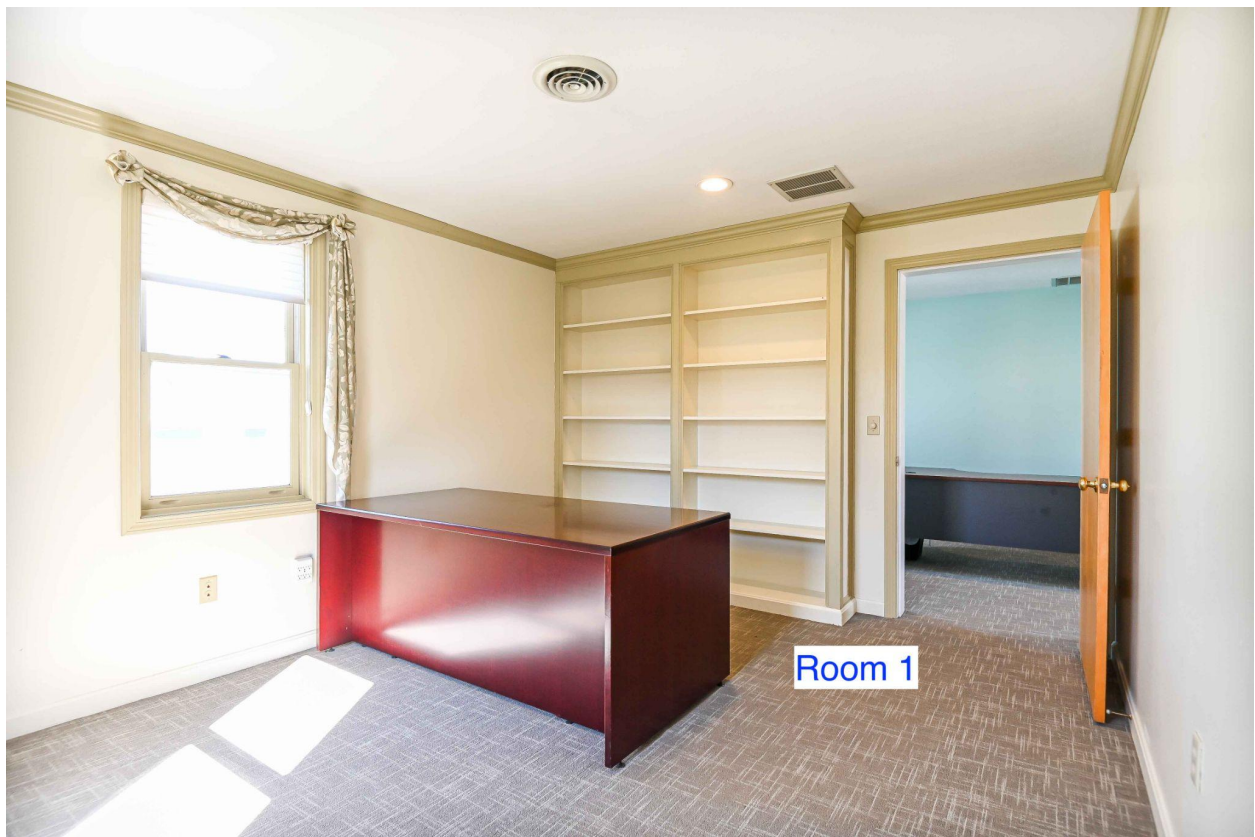
- Site Plan showing dimensions and location of parking spaces including the scale (the scale is the ratio of the drawing's size relative to the actual size)

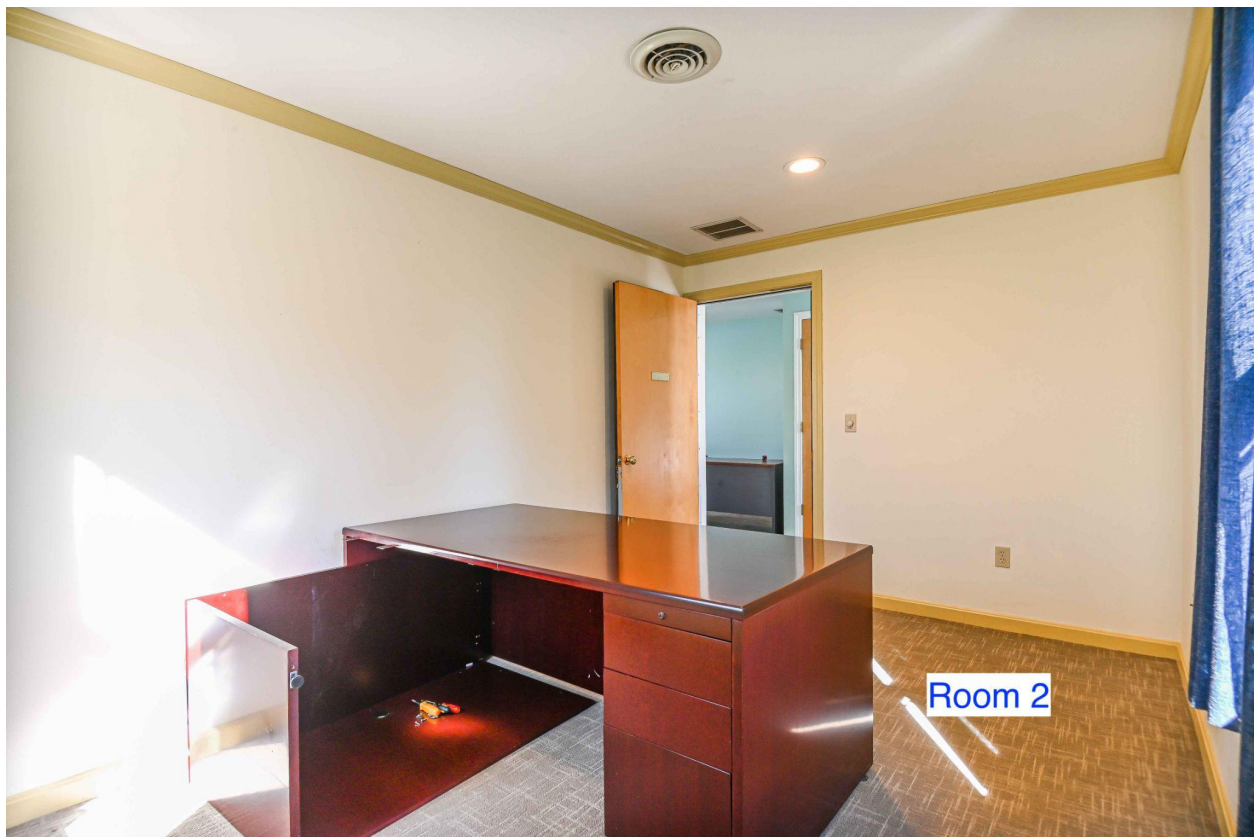


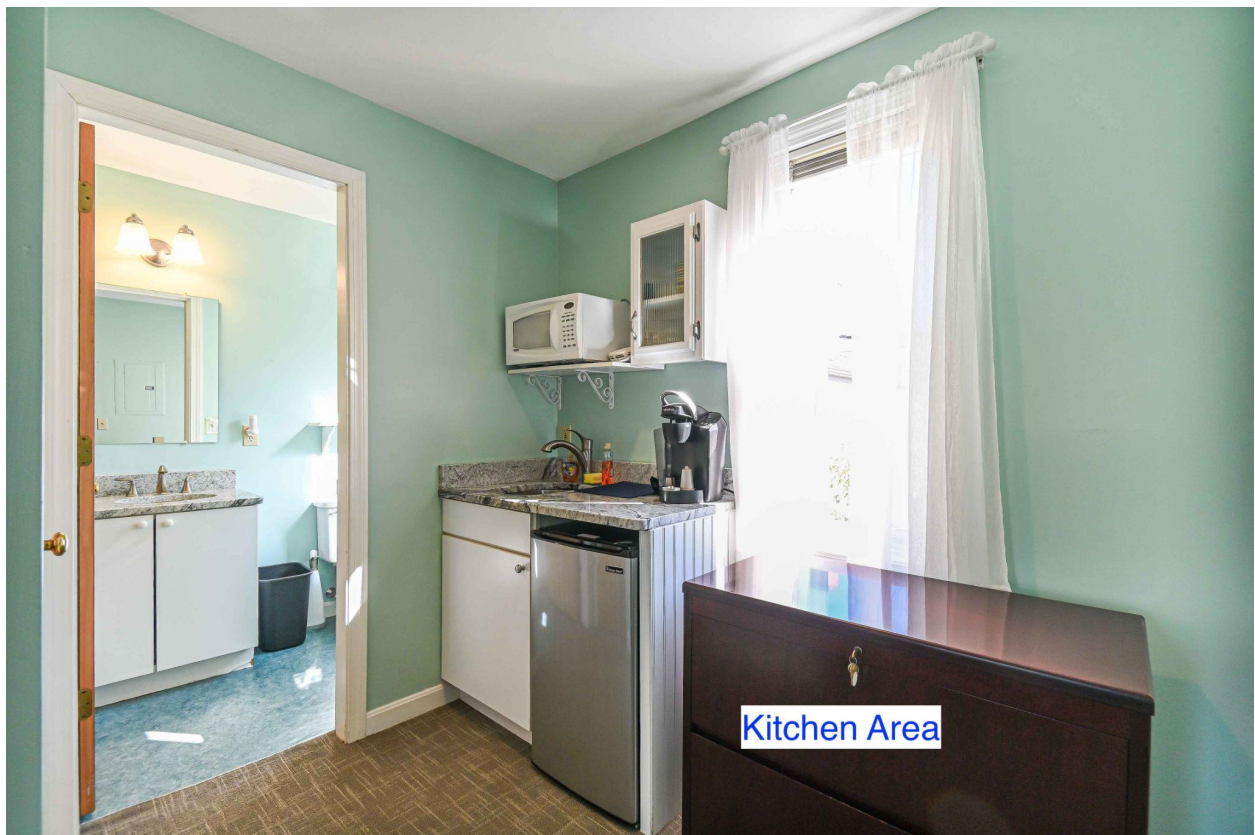
- Interior floor plans and/or exterior site plans showing the location of the proposed use(s)













2.

The The request **Optima Dermatology (Applicant)**, and **Seacoast Newspapers, Inc. (Owner)**, for property located at **111 New Hampshire Avenue** whereas relief is needed to allow a testing laboratory which requires the following: 1) A Special Exception from Part 303-A.03 (f) of the Pease Development Authority Zoning Ordinance. Said property is located on Assessor Map 306 Lot 4 and lies within the Pease Industrial (PI) and Airport Business Commercial (ABC) Districts.

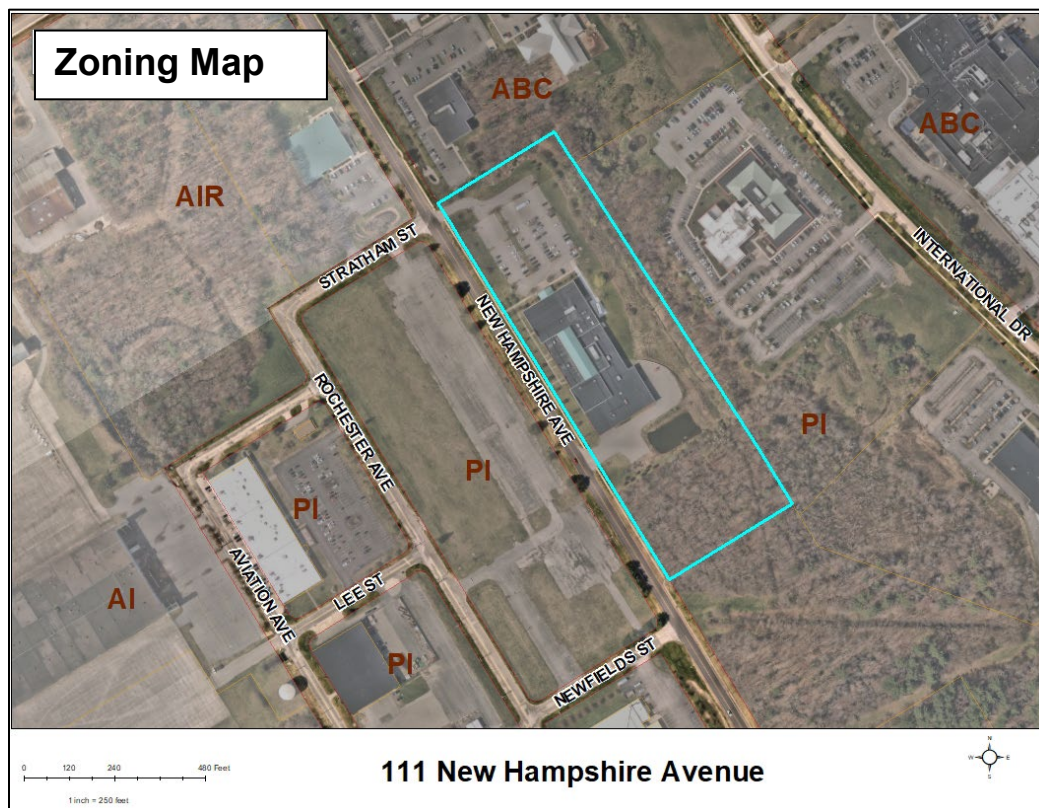
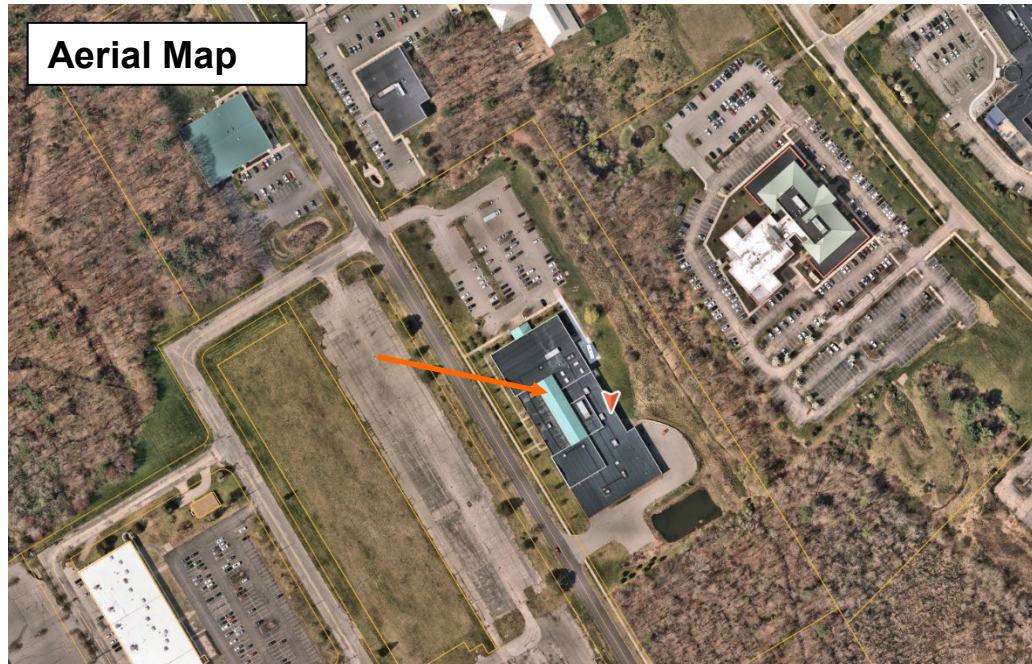
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family	Testing laboratory	Primarily commercial uses
<u>Lot area (acres):</u>	10	10	10 min.
<u>Street Frontage (ft.):</u>	1,066	1,066	200 min.
<u>Primary Front Yard (ft.):</u>	40	40	70 min.
<u>Right Yard (ft.):</u>	410	410	50 min.
<u>Left Yard (ft.):</u>	340	340	50 min.
<u>Rear Yard (ft.):</u>	150	150	50 min.
<u>Height (ft.):</u>	ok	Ok	Not to exceed FAA criteria
<u>Open Space Coverage (%):</u>	>25	>25	25 min.
<u>Estimated Age of Structure:</u>	2006	Special Exception request(s) shown in red.	

Other Permits/Approvals Required

Pease Development Authority

Neighborhood Context



November 15, 2022 Meeting

Previous Board of Adjustment Actions

No previous BOA history found.

Planning Department Comments

The applicant proposing to add a testing laboratory use in the existing building, which is located at Pease and requires a special exception per their regulations.

The PDA has its own land use and zoning regulations and is exempt from the City's regulations ordinance. For certain parcels in Pease, variance and special exception requests are sent to the City for a recommendation from the BOA. A motion to approve or deny will be a recommendation and the recommendation will become an approval by the PDA Board after 14 days unless the applicant or PDA Board member requests a hearing (see Part 314.04 below).

The Chapter in the Pease Land Use Controls regarding the process for a special exception is below. Part 314.04(a) states the BOA will use apply the standards in Part 314.03(c) in its review of the application. These standards are attached hereto under Review Criteria.

314.04 Special Exceptions Referred to Local Municipalities for Review and Recommendation

- (a) For parcels located within the Industrial Zone, Business and Commercial Zone, Natural Resource Protection Zone and those portions of the Airport Industrial Zone not acquired by Pease Development Authority pursuant to Section 13(g) of the Surplus Property Act, completed applications for a Special Exception shall be referred by the Authority to the Zoning Board of Adjustment of the municipality in which the parcel is located for review and recommendation in accordance with the provisions of this Section.
- (b) The applicable Zoning Board of Adjustment shall, in its review and recommendation, apply the substantive provisions of this zoning regulation.
- (c) At least one public hearing shall be held on the application during the municipal review process.
- (d) Notice to abutters and the public shall be required for any public hearing on an application for Special Exception in accordance with the requirements of Section 314.03(c).

- (e) Recommendation to the Board regarding requests for a Special Exception shall be made by the applicable zoning board of adjustment within sixty (60) days of referral. Notice of the recommendation shall be provided to the applicant and the Board within 48 hours of the decision.
- (f) The recommendation of the applicable zoning board of adjustment shall be deemed a final decision of the Board upon the expiration of fourteen (14) days from the date of notice, unless the applicant or a member of the Board requests a hearing by the Board.
- (g) Where a hearing has been requested, the Board shall conduct a public hearing and render a final decision on the request for a Special Exception within thirty (30) days.
- (h) At the discretion of the Board the time period for rendering a final decision may be extended an additional thirty (30) days, or such additional time as may be consented to by the applicant.
- (i) The Board may approve, conditionally approve or deny the application notwithstanding the recommendation of the applicable zoning board of adjustment. In the case of denial of any application by the Board or where the Board elects not to follow the recommendation of the applicable zoning board of adjustment, the ground(s) for such action shall be stated on the record and provided to the applicant and to the applicable zoning board of adjustment in writing.

Review Criteria

This application must meet the criteria for a Special Exception under Part 314.01(c) 1-4 from the Pease Development Authority Ordinance below:

(c) A use permissible only through the granting of a Special Exception shall be not approved or recommended for approval unless it meets the following criteria:

- (1) No adverse effect or diminution in values of surrounding properties would be suffered.
- (2) The use does not create a traffic or other health or safety hazard.

50

-
- (3) The proposed site is an appropriate location for the use and provides safe and proper access and egress for the use.
 - (4) The use meets any additional standards provided in this Zoning Regulation for the zone in which it is situated.

(d) Reasonable conditions necessary to meet one or more of the standards in subsection (c) above may be attached to the approval of a Special Exception.



TO: City of Portsmouth Board of Adjustment

FROM: Optima Dermatology

RE: Special Exception criteria

1. There will be no Increased hazard to the public or the occupants of the building. The functions of the lab create no special hazards.
2. Property values in the vicinity will not change as there will be no change to the existing building on the exterior, except for adding a sign on a door stating deliveries. This sign will not be visible from the street.
3. There will be no Increased traffic to the building or surrounding streets. All deliveries are by national delivery companies (Fed Ex, UPS, etc.). Employee traffic will be reduced from the current occupants as we have fewer employees.
4. There will be no greater demand on Public Safety and municipal services than the current tenant.
5. There will no Increase In stormwater runoff onto streets or adjacent properties as we are not making any exterior changes.

Paul Colby

From: Mike Mates <M.Mates@peasedev.org>
Sent: Thursday, October 20, 2022 2:14 PM
To: John Crowley
Cc: Paul Colby; Samantha Burgner; Anthony Blenkinsop; Peter M. Stith; Patrick M. Crimmins; Beth Demaine
Subject: RE: Special Exception application - Optima Dermatology/ Seacoast Newspapers
Attachments: 111 NH Ave.pdf

Hello John,

Attached is your approved PDA Special Exception Application. You should include this in your application to the City of Portsmouth so they know we've signed off on your submission. Please include a copy to us when do submit.

Please let me know if you have any questions.

Thanks,
Mike

MICHAEL R. MATES, P.E.

Pease Development Authority
Pease International Tradeport
55 International Drive
Portsmouth, NH 03801
T:(603) 766-9292 | F:(603) 427-0433
www.peasedev.org



From: John Crowley [mailto:jcrowley@optimadermatology.com]
Sent: Friday, October 14, 2022 1:35 PM
To: Mike Mates <M.Mates@peasedev.org>
Cc: Paul Colby <pcolby@optimadermatology.com>; Samantha Burgner <sburgner@optimadermatology.com>; Anthony Blenkinsop <A.Blenkinsop@peasedev.org>
Subject: Special Exception application - Optima Dermatology/ Seacoast Newspapers

EXTERNAL: Do not open attachments or click on links unless you recognize and trust the sender.

Hi Mike,

Please see attached special exception application for our proposed lab space at 111 New Hampshire Ave. I have also attached a proposed lease amendment to the lease between Pease Development Authority and Seacoast Newspapers adding testing laboratories and facilities as a proposed use. Please let us know if there are any additional comments to the lease agreement between Seacoast Newspapers and Optima Dermatology Partners that we sent over previously to Anthony. I have noted to our attorney that we would need to remove the term "medical office" in the lease agreement between Optima Dermatology and Seacoast Newspapers to read "pathology laboratory and general business office purposes" as a proposed use. Let me know if you need any additional documentation and what the fee schedule is for this application. Looking forward to the meeting on the 20th.

Thanks,

John Crowley

Pease Development Authority
55 International Drive, Portsmouth, NH 03801, (603) 433-6088



Application for Special Exception

For PDA Use Only:		
Date Submitted: <u>10/14/22</u>	Municipal Review:	
Application Complete:	Date Forwarded: <u>10/20/22 MRN</u>	Check #:

Applicant Information

Applicant: Optima Dermatology Partners	Contact Name: John Crowley
Address: 290 Heritage Ave Suite 102, Portsmouth, NH 03801	Description of Property: Industrial Office
Other Interested Parties: Seacoast Media Group	Phone: 603-801-6814

Site Information

Address: 111 New Hampshire Ave, Portsmouth, NH 03801	Frontage: 1203	Rear: 1203
	Left Side: 352	Right Side: 382
Zone(s) Location: Industrial	Lot #: 308/04	Assessors Plan #: 38190
Existing Use: General Business Office	Proposed Use: Testing laboratories and facilities	Lot Area: 459,546 SF +/-
Traffic and Air Quality Impact Study Required:	Yes / <input checked="" type="radio"/> No	

Request for Special Exception:

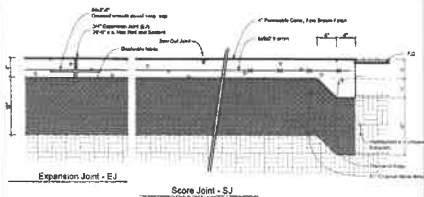
Special Exception for which approval is sought: Testing laboratory to be operated as a pathology lab. No walk-in patients will be seen at this location.
As provided in Article <u>303-A.03</u> Section <u>(F)</u>
Reason(s) why Special Exception should be granted including evidence that all required criteria are met:
1) The laboratory use is allowed as a special exception in the Industrial Zone where the building is located.
2)
3)
4)

Please attach any required site plans or drawings to this application with a fee of \$ _____. All forms must be completely filled out and signed by the applicant or their agent before they will be accepted. Additional sheets may be attached if required. Completed forms must be returned to the PDA for a hearing by the PDA Zoning Adjustment and Appeals Committee or referral to the appropriate municipality. The applicant or their agent is required to attend the Public Hearing for the Appeal/Variance. If you have any questions, please contact the PDA Engineering Department at 603-433-6088.

I hereby certify under the penalties of perjury that the foregoing information and accompanying plans, documents, and supporting data are true and complete to the best of my knowledge.		
<u>10/14/22</u> Date	 Signature of Applicant	<u>John Crowley</u> Printed Name

N:\Engineer\Special Exception Application.xlsx

Optima Dermatology Path Lab Proposed Floor Plan
111 New Hampshire Avenue
Portsmouth, NH 03801
A101
2022-05-10



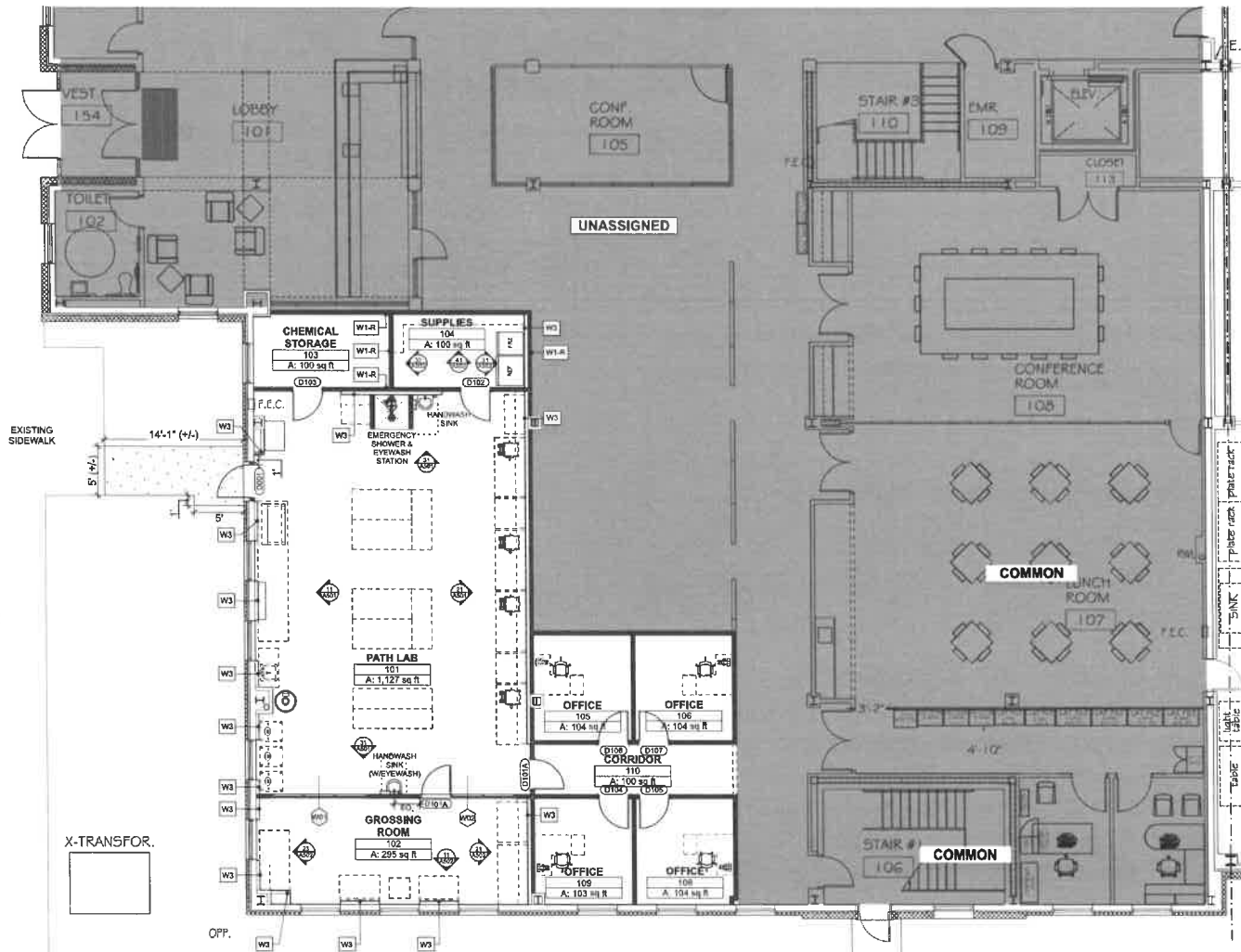
1 Concrete Sidewalk Detail

PARTITION SCHEDULE - WALL TYPES LEGEND:

- W1** 5/8" TYPE 2 GWS PARTITION (ETC 43-20)
5/8" TYPE 2 GWS TO 4" ABOVE CEILING BOTH SIDES OF
3/8" 20 GA MIN. STEEL STUDS @ 16" OC UP TO OR BRACED TO STRUCTURE ABOVE.
3/4" 1/2" INSULATED SOUND ATTENUATION BATT'S
PERIMETER JOINTS AND PENETRATIONS CAULKED WITH ACOUSTICAL SEALANT.
(MOISTURE RESISTANT GWS AT PLUMBING FIXTURE LOCATIONS /
TYPICAL PARTITION UNLESS OTHERWISE NOTED)
- W1-R** 1/2" TYPE 1 RATED 45 MIN. GWS PARTITION (ETC 43-20)
UL DESIGN U1-R
5/8" TYPE 1 GWS TIGHT TO DECK ON BOTH SIDES OF
3/8" 20 GA MIN. STEEL STUDS @ 16" OC TIGHT TO STRUCTURAL DECK ABOVE.
FULL CAVITY DEPTH MINERAL FIBER INSULATION TO FULL HEIGHT OF WALL.
UL CLASSIFIED FIRE CAULK AND FIRE SAFING AT PERIMETER AND PENETRATIONS.
FIRE-RATING BETWEEN DECK FLUTES & TOP OF WALL.
- W2** 5/8" TYPE 2 GWS PARTITION
5/8" TYPE 2 GWS TO 4" ABOVE CEILING ON ONE SIDE OF
3/8" 20 GA MIN. STEEL STUDS @ 16" OC TO 4" ABOVE CEILING.
(MOISTURE RESISTANT GWS AT PLUMBING FIXTURE LOCATIONS)

Proposed Floor Plan

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



ARCHITECT
lo
KRYNCHAK
ARCHITECTURE
111 New Hampshire Avenue
Portsmouth, NH 03801
603.435.1111
loarchitect.com

CLIENT:
Optima
DERMATOLOGY
Corporate Office
111 New Hampshire Avenue
Portsmouth, NH 03801

PROJECT
**Optima Dermatology Path Lab
Proposed Path Lab**
111 New Hampshire Avenue
Portsmouth, NH 03801

SEAL:

Proposed Floor
Plan

DATE FOR PROGRESS:
DATE DATE: 10/10/22
REVISIONS

A101

PROJECT# 2022-05-10

Property Location 111 NEW HAMPSHIRE AVE
 Vision ID 38190 Account # 38190

Map ID 0306/ 0004/ 0000/ /
 Bldg # 1

Bldg Name
 Sec # 1 of 1 Card # 1 of 2

State Use 4000
 Print Date 11/23/2021 12:01:14

CURRENT OWNER		TOPO	UTILITIES	STRT / ROAD	LOCATION	CURRENT ASSESSMENT				2229 PORTSMOUTH, NH VISION																																																																							
SEACOAST NEWSPAPERS INC		1 Level	0 All Public	1 Paved	2 Suburban	Description	Code	Appraised	Assessed																																																																								
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16-1321-1-	10-27-2016	EL	Electric	6,700	12-21-2016	100	04-03-2017	REWORK SPACE TO WORK																																																																									
16-1321-2-	10-25-2016	PL	Plumbing	1,200	12-21-2016	100	04-03-2017	RELOCATE (1) KITCHEN SIN																																																																									
LAND LINE VALUATION SECTION <table border="1"> <thead> <tr> <th>B</th> <th>Use Code</th> <th>Description</th> <th>Zone</th> <th>Frontage</th> <th>Depth</th> <th>Land Units</th> <th>Unit Price</th> <th>Size Ad</th> <th>Site</th> <th>Cond.</th> <th>ST Idx</th> <th>S.I. Adj.</th> <th>Notes- Adj</th> <th>Special Pricing</th> <th>Adj Unit P</th> <th>Land Value</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>4000</td> <td>FACTORY</td> <td>PI</td> <td></td> <td></td> <td>0 SF</td> <td>0</td> <td>1.0000</td> <td>0</td> <td>1.00</td> <td>307</td> <td>0.220</td> <td>402</td> <td></td> <td>0.0000</td> <td>0</td> </tr> <tr> <td colspan="16"> Total Card Land Units 0 AC Parcel Total Land Area 0 Total Land Value 0 </td> </tr> </tbody> </table>										B	Use Code	Description	Zone	Frontage	Depth	Land Units	Unit Price	Size Ad	Site	Cond.	ST Idx	S.I. Adj.	Notes- Adj	Special Pricing	Adj Unit P	Land Value	1	4000	FACTORY	PI			0 SF	0	1.0000	0	1.00	307	0.220	402		0.0000	0	Total Card Land Units 0 AC Parcel Total Land Area 0 Total Land Value 0																																					
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Property Location 111 NEW HAMPSHIRE AVE
 Vision ID 38190 Account # 38190

Map ID 0306/ 0004/ 0000/ /
 Bldg # 1

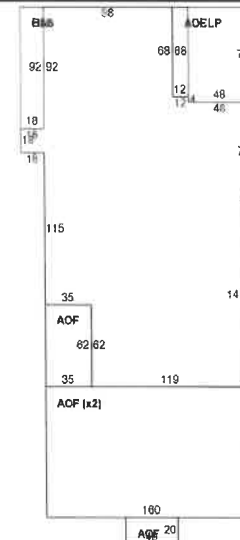
Bldg Name
 Sec # 1 of 1

Card # 1 of 2

State Use 4000
 Print Date 11/23/2021 12:01:14

CONSTRUCTION DETAIL			CONSTRUCTION DETAIL (CONTINUED)		
Element	Cd	Description	Element	Cd	Description
Style:	40	Light Indust			
Model	96	Industrial			
Grade	B	B			
Stories:	2				
Occupancy	1.00				
Residential Unit					
Exterior Wall 1	27	Pre-finish Metl			
Exterior Wall 2	15	Concr/Cinder			
Roof Structure	01	Flat			
Roof Cover	04	T & Grv/Rubbr			
Interior Wall 1	05	Drywall/Sheet			
Interior Wall 2					
Interior Floor 1	03	Concr-Finished			
Interior Floor 2	14	Carpet			
Heating Fuel	03	Gas			
Heating Type	04	Forced Air-Duc			
AC Type	03	Central			
Bldg Use	4020	IND OFFICE			
Total Rooms					
Total Bedrms					
Total Baths					
Kitchen Grd					
Heat/AC	01	HEAT/AC PKGS			
Frame Type	05	STEEL			
Baths/Plumbing	02	AVERAGE			
Ceiling/Wall	03	SUS-CEIL/MN WL			
Rooms/Prtns	02	AVERAGE			
Wall Height	24.00				
% Conn Wall					
1st Floor Use:					
Class					

MIXED USE		
Code	Description	Percentage
4000	FACTORY	100
		0
		0
COST / MARKET VALUATION		
Adj. Base Rate		83.06
RCN		8,199,292
Year Built		2006
Effective Year Built		2009
Depreciation Code		A
Remodel Rating		
Year Remodeled		
Depreciation %		10
Functional Obsol		
External Obsol		
Trend Factor		1
Condition		
Condition %		
Percent Good		90
RCNLD		7,379,400
Dep % Ovr		
Dep Ovr Comment		
Misc Imp Ovr		
Misc Imp Ovr Comment		
Cost to Cure Ovr		
Cost to Cure Ovr Comment		



OB - OUTBUILDING & YARD ITEMS(L) / XF - BUILDING EXTRA FEATURES(B)										
Code	Description	L/B	Units	Unit Price	Yr Blt	Cond	% Gd	Gr	Gr Adj	Appr. Value
LDL1	LOAD LEVELERS	B	2	3900.00	2009	A	90	C	1.00	7,000
ELV2	ELEVATOR FRGHT	B	2	10200.00	2009	A	90	C	1.00	41,800
SPR1	SPRINKLERS-WET	B	77,422	1.75	2009	A	90	C	1.00	121,900
LD4	TRUCK WELLS	B	1	5600.00	2009	A	90	C	1.00	5,000
LT1	LIGHTS-IN W/PL	L	28	1125.00	2006	4	75	C	1.00	23,600
PAV1	PAVING-ASPHALT	L	37,000	1.75	2006	4	75	C	1.00	48,600
MEZ1	MEZZANINE-UNF	B	1,200	13.00	2009	00	90	C	1.00	14,000
MEZ3	W/PARTITIONS	B	2,088	34.00	2009	00	90	C	1.00	63,900
LDL1	LOAD LEVELERS	B	2	3900.00	2009	00	90	C	1.00	7,000
LT2	W/DOUBLE LIGHT	L	2	1750.00	2006	4	75	C	1.00	2,600

BUILDING SUB-AREA SUMMARY SECTION						
Code	Description	Living Area	Floor Area	Eff Area	Unit Cost	Undeprec Value
AOF	Office	35,466	35,466	58,519	137.04	4,860,307
BAS	First Floor	38,668	38,668	38,668	83.06	3,211,578
CLP	Loading Platform, Finished	0	5,112	1,534	24.92	127,407
Ttl Gross Liv / Lease Area		74,134	79,246	98,721		8,199,292



Property Location 111 NEW HAMPSHIRE AVE
 Vision ID 38190 Account # 38190

Map ID 0306/ 0004/ 0000/ /
 Bldg # 1

Bldg Name
 Sec # 1 of 1 Card # 2 of 2

State Use 4000
 Print Date 11/23/2021 12:01:14

CURRENT OWNER		TOPO	UTILITIES	STRT / ROAD	LOCATION	CURRENT ASSESSMENT				2229 PORTSMOUTH, NH VISION							
SEACOAST NEWSPAPERS INC 111 NEW HAMPSHIRE AVENUE PORTSMOUTH NH 03801		1 Level	0 All Public	1 Paved	2 Suburban	Description	Code	Appraised	Assessed								
						INDUSTR.	4000	7,742,600	7,742,600								
						INDUSTR.	4000	74,800	74,800								
		SUPPLEMENTAL DATA															
		Alt Prcl ID 0306-0004-0000-0000 OLDACTN PHOTO WARD PREC. 1/2 HSE GIS ID 38190				CONDO C INLAW Y/ LOT SPLIT 2015 Reval V JM Ex/Cr Appli Assoc Pid#											
						Total				7,817,400	7,817,400						
RECORD OF OWNERSHIP		BK-VOL/PAGE	SALE DATE	Q/U	V/I	SALE PRICE	VC	PREVIOUS ASSESSMENTS (HISTORY)									
								Year	Code	Assessed	Year	Code	Assessed	Year	Code	Assessed	
								2020	4000	7,742,600	2019	4000	7,742,600	2019	4000	8,794,800	
									4000	74,800		4000	74,800		4000	74,800	
						Total				7,817,400	Total		7,817,400	Total		8,869,600	
EXEMPTIONS				OTHER ASSESSMENTS				This signature acknowledges a visit by a Data Collector or Assessor									
Year	Code	Description	Amount	Code	Description	Number	Amount	Comm Int									
Total																	
ASSESSING NEIGHBORHOOD								APPRAISED VALUE SUMMARY									
Nbhd	Nbhd Name		STREET INDEX NAME		Tracing		Batch		Appraised Bldg. Value (Card)				7,482,000				
307									Appraised Xf (B) Value (Bldg)				260,600				
								Appraised Ob (B) Value (Bldg)				74,800					
								Appraised Land Value (Bldg)				0					
								Special Land Value				0					
								Total Appraised Parcel Value				7,817,400					
								Valuation Method				I					
								Total Appraised Parcel Value				7,817,400					
BUILDING PERMIT RECORD								VISIT / CHANGE HISTORY									
Permit Id	Issue Date	Type	Description	Amount	Insp Date	% Comp	Date Comp	Comments	Date	Id	Type	Is	Cd	Purpost/Result			
LAND LINE VALUATION SECTION																	
B	Use Code	Description	Zone	Frontage	Depth	Land Units	Unit Price	Size Ad	Site	Cond.	ST Idx	S.I. Adj.	Notes- Adj	Special Pricing	Adj Unit P	Land Value	
Total Card Land Units						AC	Parcel Total Land Area						Total Land Value				0

State Use 4000
Print Date 11/23/2021 12:01:14

111 New Hampshire Ave
Portsmouth, New Hampshire



Google

Street View · Sep 2019







3.

The request **635 Sagamore Development LLC (Owner)**, for property located at **635 Sagamore Avenue** whereas relief is needed to remove existing structures and construct 4 single family dwellings which requires the following: 1) A Variance from Section 10.513 to allow four free-standing dwellings where one is permitted. 2) A Variance from Section 10.521 to allow a lot area per dwelling unit of 21,198 square feet per dwelling where 43,560 square feet is required. Said property is located on Assessor Map 222 Lot 19 and lies within the Single Residence A (SRA) District.

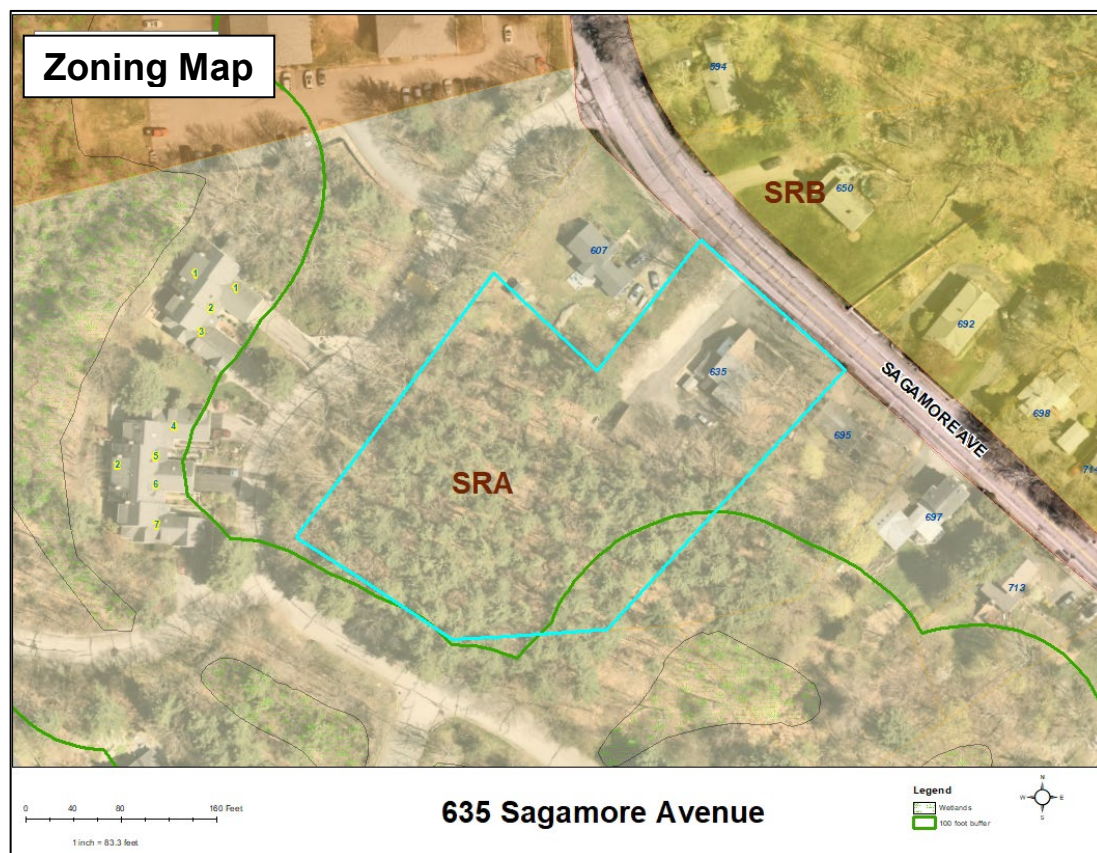
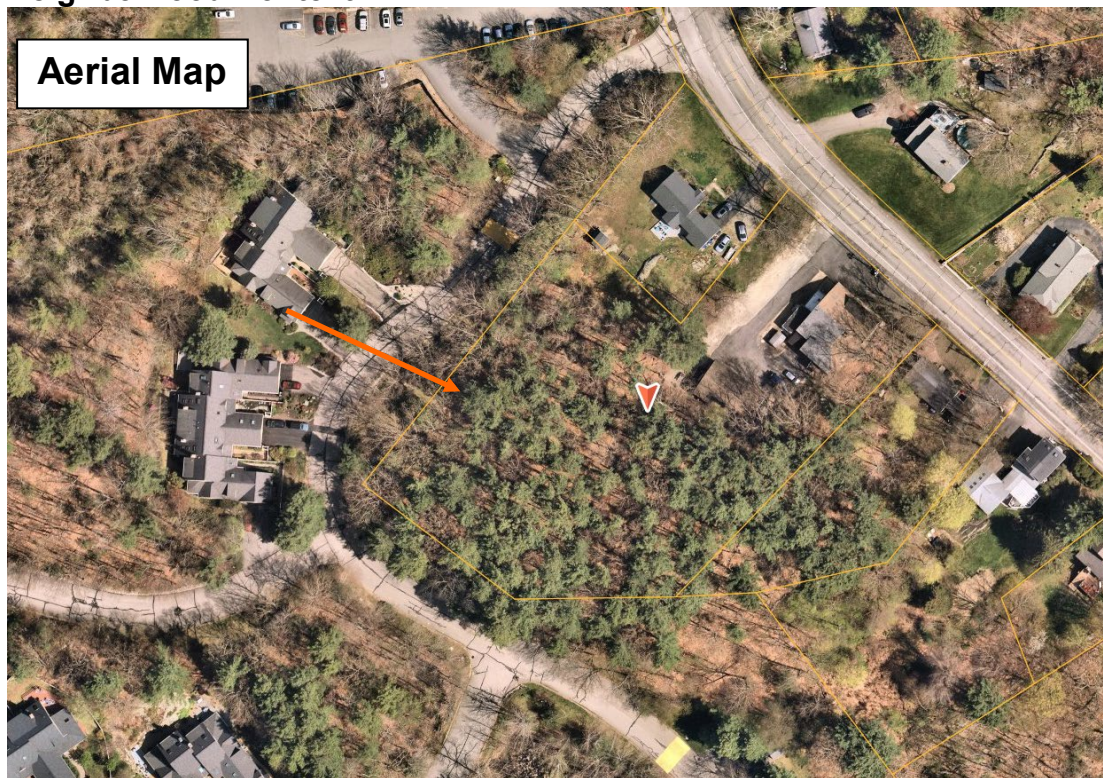
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Commercial w/ 1 apartment	4 single family dwellings	Primarily residential
<u>Lot area (sq. ft.):</u>	84,795	84,795	43,560 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	84,795	21,198	43,560 min.
<u>Lot depth (ft.):</u>	358	358	200 min.
<u>Street Frontage (ft.):</u>	160	160	150 min.
<u>Primary Front Yard (ft.):</u>	28	>30	30 min.
<u>Right Yard (ft.):</u>	60	>20	20 min.
<u>Left Yard (ft.):</u>	30	21	20
<u>Rear Yard (ft.):</u>	219	>40	40 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	4	9.2	10 max.
<u>Open Space Coverage (%):</u>	>50	81	50 min.
<u>Parking:</u>	4+	16	6
<u>Estimated Age of Structure:</u>	1950	Variance request(s) shown in red.	

Other Permits/Approvals Required

TAC/Planning Board – Site Plan Review

Neighborhood Context



November 15, 2022 Meeting

Previous Board of Adjustment Actions

April 19, 2022 – The ZBOA considered your application for remove existing commercial structure and construct 5 new single-family dwellings which requires the following: 1) A Variance from Section 10.513 to allow 5 principal structures on a lot where only 1 is permitted. 2) A Variance from Section 10.521 to allow a lot area per dwelling unit of 22,389 square feet where 1 acre per dwelling is required. The Board granted your request to **postpone** to the May meeting.

May 17, 2022 – The Board **granted** your request to postpone to the June meeting

June 22, 2022 – The Board voted to acknowledge the **withdrawal** of the application.

Planning Department Comments

As shown in the history above, the applicant was before the Board this past spring with a proposal to construct 5 single family dwellings on one lot. Due to concerns from the abutters, the application was withdrawn so they could work on addressing concerns from the abutters. The new application proposes to demolish the existing structures and construct 4 free standing single family dwellings. The SRA zone requires 1 acre per dwelling unit and only allows 1 principal structure on a single lot. With 4 dwellings, the proposed lot area per dwelling will be 21,198, where 43,560 is required. With the exception of the density, all other dimensional requirements are in compliance with the proposed layout. This will require site plan review before TAC and Planning Board if the variances are granted. If granted approval, staff recommends the following stipulation for consideration:

1. The design and location of the dwellings may change as a result of Planning Board review and approval.

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.

10.235 Certain Representations Deemed Conditions

Representations made at public hearings or materials submitted to the Board by an applicant for a special exception or variance concerning features of proposed buildings, structures, parking or uses which are subject to regulations pursuant to Subsection 10.232 or 10.233 shall be deemed conditions upon such special exception or variance.

November 15, 2022 Meeting

HOEFLE, PHOENIX, GORMLEY & ROBERTS, PLLC

ATTORNEYS AT LAW

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

October 26, 2022

HAND DELIVERED

Peter Stith, Principal Planner
Portsmouth Zoning Board of Adjustment
1 Junkins Avenue
Portsmouth, NH 03801

Re: 635 Sagamore Development, LLC, Owner/Applicant
Project Location: 635 Sagamore Avenue
Tax Map 222, Lot 19
General Residence A (GRA Zone)

Dear Mr. Stith and Zoning Board Members:

On behalf of 635 Sagamore Development, LLC, applicant, enclosed please find the following documents in support of a request for zoning relief:

- Portsmouth Land Use Application uploaded to Viewpoint today.
- Owner Authorization.
- 10/26/2022 – Memorandum and exhibits in support of zoning relief.

Very truly yours,



R. Timothy Phoenix
Monica F. Kieser

Enclosures

cc 635 Sagamore Development, LLC
Jones & Beach Engineers, Inc.
Artform Architecture, Inc.

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

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

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

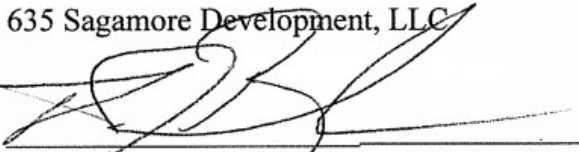
OF COUNSEL:
SAMUEL R. REID
JOHN AHLGREN

Letter of Authorization

635 Sagamore Development, LLC, owner of property located at 635 Sagamore Avenue in Portsmouth, NH, known as Tax Map 222, Lot 19, do hereby authorize Jones & Beach Engineers, Inc. ("JBE"), Garrepy Planning Consultants, LLC ("GPC"), and Hoefle, Phoenix, Gormley & Roberts, PLLC ("HPGR") to act on its behalf concerning the previously mentioned property.

I hereby appoint JBE, GPC and HPGR as agents to act on behalf of 635 Sagamore Development, LLC in the Planning Board and Zoning Board application process, to include any required signatures.

635 Sagamore Development, LLC



Timothy J. Black, Duly Authorized

January 5, 2022

Date

MEMORANDUM

To: Portsmouth Zoning Board of Adjustment (“ZBA”)
From: R. Timothy Phoenix, Esq.
Monica F. Kieser, Esq.
Date: October 26, 2022
Re: 635 Sagamore Development, LLC, Owner/Applicant
Project location: 635 Sagamore Avenue
Tax Map 222, Lot 19
Single Residence A (SRA) District

Dear Chairman Parrott and Zoning Board Members:

On behalf of 635 Sagamore Development, LLC (“635 Sagamore” or “Applicant”) we are pleased to submit this memorandum and the attached exhibits in support of zoning relief to be considered by the ZBA at its November 15, 2022 meeting.

I. EXHIBITS

- A. Plan Set – by Jones and Beach Engineers
 - C1 – Existing Conditions Plan
 - C2 – ZBA Site Plan
 - C3 – Topographic Site Plan
- B. Architectural Elevations and Floor Plans–by ArtForm Architecture, Inc.
 - Renderings
 - First Floor
 - Second Floor
 - Foundation Plan
 - Elevations
- C. Site photographs
- D. Tax Assessors Card
- E. City GIS Map – identifying nearby zoning districts and surrounding area

II. PROPERTY/BACKGROUND

635 Sagamore Avenue is an 84,795 s.f lot with 150 ft. of frontage containing two buildings in poor condition; the front building contains Luster King, an automobile detailing shop and upstairs apartment, and behind a large service garage (the “Property”). The Luster King building is located partially within the front yard setback, access to it is over the entire frontage, and the use of the Property does not conform to the requirements of the Single Residence A District. 635 Sagamore proposes to remove the existing commercial building and garage and redevelop the Property with four new single-family homes with access via a private roadway from Sagamore Avenue (the “Project”). **(Exhibit A)**. The Project is more compatible

with the neighborhood which includes the westerly abutter, Tidewatch Condominiums with 122 Units, and the Sagamore Court Condominium with 144 Units. **(Exhibit D)**. Other nearby abutters are largely developed with single family residences with similar density as the proposed project. The Luster King building is still served by septic, but municipal sewer service has been extended to the Property which will serve the proposed dwellings.

In March of this year, 635 Sagamore filed a variance application seeking relief from §10.513 and §10.521 (Dimensional Table) to permit five dwellings on the Property where one dwelling is required and 16,959 s.f. per dwelling unit where 43,560 s.f. per dwelling is required. Thereafter, Tidewatch Condominium Association (“Tidewatch”) objected, through Counsel Brian Bouchard. 635 Sagamore withdrew the previous application in order to spend time working with Tidewatch to address its concerns. 635 Sagamore now proposes a twenty percent (20%) reduction four-unit residential development which retains a significant tree buffer and adds a mix of trees on the south and west side of the lot (the “Revised Project”). Given the reduction in units and generous plantings, Tidewatch Condominium Association has withdrawn its objection to the Revised Project, provided 635 Sagamore continues to coordinate with Tidewatch on issues related to landscaping and stormwater management.

The Revised Project requires similar relief as before as four dwelling units are proposed on a ± 1.947 acre lot (2.06 units per acre or 21,198 s.f. per dwelling). This density is less than nearby densely developed Sagamore Court Condominium (144 units/15.01 acre = 9.59 units per acre or 4,542 s.f. per dwelling) to the north and Tidewatch Condominium (122 units/53.59 acre = 2.27 units per acre or 19,189 s.f. per dwelling) directly to the west. Notably, the SRB Zone, located across Sagamore Avenue, permits a lot area of 15,000 square feet per dwelling unit or approximately 2.9 units per acre. The proposal at 21,198 s.f. square feet per unit falls between the single-family homes opposite the lot and the more densely developed condominium associations. Thus, in addition to cleaning up a long distressed and non-conforming site, including narrowing the current open frontage curb cut, the proposal creates a natural transition between the SRB Zone across Sagamore, the existing multi-building condominium developments to the north and west (rear) of the Property and the nearby single-family home lots.

III. RELIEF REQUIRED

The Project meets setback, lot coverage, and open space requirements. **(Exhibit A)**. Relief is required to allow the proposed structures on a single lot and for lot area per dwelling unit.

- 1.) **PZO §10.513 One Freestanding Dwelling/Lot** – to permit four dwellings on a 1.947 acre lot.
- 2.) **PZO §10.521 (Table of Dimensional Standards) Lot Area Per Dwelling Unit** – to permit four dwellings on 1.947 acres (21,198 s.f./dwelling area) where 43,560 s.f. is required for each dwelling.

IV. VARIANCE REQUIREMENTS

1. **The variance will not be contrary to the public interest**
2. **The spirit of the ordinances observed**

The first step in the ZBA's analysis is to determine whether granting a variance is not contrary to the public interest and is consistent with the spirit and intent of the ordinance, considered together pursuant to Malachy Glen Associates, Inc v. Town of Chichester, 155 NH 102 (2007) and its progeny. Upon examination, it must be determined whether granting a variance "would unduly and to a marked degree conflict with the ordinance such that it violates the ordinances basic zoning objectives." Id. "Mere conflict with the ordinance is not enough." Id.

The Portsmouth Zoning Ordinance was enacted for the general purpose (PZO§10.121) of promoting the health, safety and welfare in accordance with the Master plan by regulating:

1. **The use of land, buildings and structures for business, industrial, residential and other purposes** – The Property currently houses a non-conforming commercial auto detailing business and service garage. **(Exhibit C)**. The proposal would replace those buildings with brand new, to code, residences consistent with surrounding uses.
2. **The intensity of land use, including lot sizes, building coverage, building height and bulk, yards and open space** – The Project complies with building coverage, height, yards and open space requirements. The reduced proposal with four dwellings on a single lot, at 2.06 dwelling units per acre is consistent with surrounding properties and less than the density permitted by right across Sagamore Avenue.
3. **The design of facilities for vehicular access, circulation, parking and loading-** The Project will be served by a private roadway from Sagamore Avenue. **(Exhibit A)**. There is currently no defined curb cut on the property so the redevelopment will improve driveway distances, site lines, and overall traffic safety from the Property compared to the existing commercial and residential use. **(Exhibit D)**. The driveway will undergo further review as part of the Planning Board and NHDOT review processes.

4. The impacts on properties of outdoor lighting, noise, vibration, stormwater runoff and flooding – The Property is currently used as a commercial auto detailing facility in the middle of a residential area. The Project will convert the Property to residential use with lighting, noise, and other conditions more appropriate for the neighborhood. A generous buffer will be preserved between the Project and Tidewatch Condominium. The Project maintains 81.3% open space. Stormwater runoff will be improved over the current development which is significantly paved and use of commercial cleaning chemicals will cease.
5. The preservation and enhancement of the visual environment – The Project vastly improves the visual environment for the immediate abutters on either side and across the street. In addition, a generous vegetated buffer is retained for the south/west abutters. Sagamore further screens the developed area with the addition of a significant tree buffer. **(Exhibit A).**
6. The preservation of historic districts buildings and structures of historic or architectural interest – The Property and the existing structures to be removed are of no known historic or architectural interest.
7. The protection of natural resources, including groundwater, surface water, wetlands, wildlife habitat and air quality – The Project will significantly improve conditions by terminating the use of commercial grade cleaning chemicals in favor of a compatible residential uses served by municipal sewer.

In considering whether variances "in a marked degree conflict with the ordinance such that they violate the ordinances basic zoning objectives." Malachy Glen, supra, the New Hampshire Supreme Court also held:

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

The Property is located on a busy street in a densely developed residential area. While there are some other nearby commercial use properties, they are located closer to Sagamore Creek in the Waterfront Business Zone, are largely less impactful and are more buffered from nearby residences than the current business operations on the Property. The Project would convert a long-standing commercial use that is grossly incompatible with the character of the locality to a residential use consistent with the surrounding area including two large condominium developments. The commercial traffic and the use of commercial grade cleaning chemicals will cease, thus improving the public health, safety and welfare. The wide open curb

cut accessing the lot will be reduced to a controlled entry/exit. The Project creates a natural transition between these condominium developments and the adjoining GRB zone. Thus, permitting four code compliant, single-family dwellings on ±1.947 acres does not alter the essential character of the locality nor will it threaten the public health, safety or welfare.

3. Granting the variances will not diminish surrounding property values

The commercial buildings currently located on the Property are distressed, incongruent with the surrounding residential neighborhood and frankly an eyesore. The Project cleans up the site, removes commercial buildings/uses and replaces them with brand new tastefully designed residences. In consultation with Tidewatch, a generous vegetated buffer is retained, which is supplemented by the addition of a robust landscape buffer plan. Given the termination of the commercial use, removal of the distressed structures, and efforts to screen the residential structures, the Project will increase the value of surrounding properties. Accordingly, this element of the variance criteria is satisfied.

4. Denial of the variances results in an unnecessary hardship

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

This portion of the SRA District on the north side of Sagamore Creek is comprised of only seven properties. **(Exhibit E)**. Discounting Tidewatch with 122 units on 53.59 acres, the 1.947 acre L-shaped lot significantly larger than the remaining five properties, yet contains just over the required frontage. Although zoned SRA and subject to a 43,560 s.f. minimum lot area and lot area/dwelling unit requirement, this neighborhood is bounded by the Sagamore Condominium Development with 144 Units on 15.01 acres, a handful of lots in the Waterfront Business District, and the SRB district across Sagamore Avenue with its reduced density requirement of just 15,000 s.f./dwelling unit. See Walker v. City of Manchester, 107 N.H. 382, 386 (1966) (hardship may be found where similar nonconforming uses exist within the neighborhood and the proposed use will have no adverse effect on the neighborhood). The parcel size, shape, and location near other densely developed residential parcels combine to create special conditions.

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

The purpose of the requirements for one free standing dwelling per lot and lot area per dwelling unit is to prohibit overcrowding, allow for air, light, and separation between neighbors,

and to permit stormwater treatment. The Project meets all lot area, building and open space coverage, height and external setback requirements. Additionally, the proposal provides for voluntary setbacks between each of the four new buildings of at least 20 feet, consistent with the side setback requirement for the district. Thus, adequate area for air, light, separation between neighbors and stormwater treatment is provided. The proposed density is also consistent with the surrounding area, which includes many smaller sized lots with homes located in relatively close proximity. **(Exhibit E)**. Moreover, granting the requested variances will significantly improve the Property and surrounding area by removing two blighted, non-conforming commercial structures and replacing them with four brand new, homes where housing is sorely needed. The Property will be completely redeveloped, thus it follows that there is no reason to apply the strict requirements of the ordinance. This transitional location, located near and adjoining two densely development condominiums and across Sagamore Avenue from the SRB Zone is well suited for the proposed four building single-family development.

c. The proposed use is reasonable

If the use is permitted, it is deemed reasonable. Vigeant v. Hudson, 151 NH 747 (2005). The proposal is a residential use in a residential zone and thus is reasonable. Accordingly denial would result in an unnecessary hardship.

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

If “there is no benefit to the public that would outweigh the hardship to the applicant” this factor is satisfied. Harborside Associates, L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508 (2011). That is, “any loss to the [applicant] that is not outweighed by a gain to the general public is an injustice.” Malachy Glen, supra at 109.

“The right to use and enjoy one's property is a fundamental right protected by both the State and Federal Constitutions.” N.H. CONST. pt. I, arts. 2, 12; U.S. CONST. amends. V, XIV; Town of Chesterfield v. Brooks, 126 N.H. 64 (1985) at 68. Part I, Article 12 of the New Hampshire Constitution provides in part that “no part of a man's property shall be taken from him, or applied to public uses, without his own consent, or that of the representative body of the people.” Thus, our State Constitutional protections limit the police power of the State and its municipalities in their regulation of the use of property. L. Grossman & Sons, Inc. v. Town of Gilford, 118 N.H. 480, 482 (1978). “Property” in the constitutional sense has been interpreted to

mean not the tangible property itself, *but rather the right to possess, use, enjoy and dispose of it*. Burrows v. City of Keene, 121 N.H. 590, 597 (1981) (emphasis added). Sagamore is constitutionally entitled to the use of the lot as it sees fit subject only to the effect of the lot size and density requirements.

The Project: removes blighted buildings and a nonconforming commercial use; complies with all other dimensional requirements; maintains generous open space and vegetated buffers; provides additional screening with a robust planting plan, there will be no benefit to the public from denial and no harm to the public by granting the variances. Conversely, denial of the variances causes great harm to 635 Sagamore and its abutters by continuing the nonconforming commercial use of the Property. Accordingly, substantial justice is done by granting the variances.

V. CONCLUSION

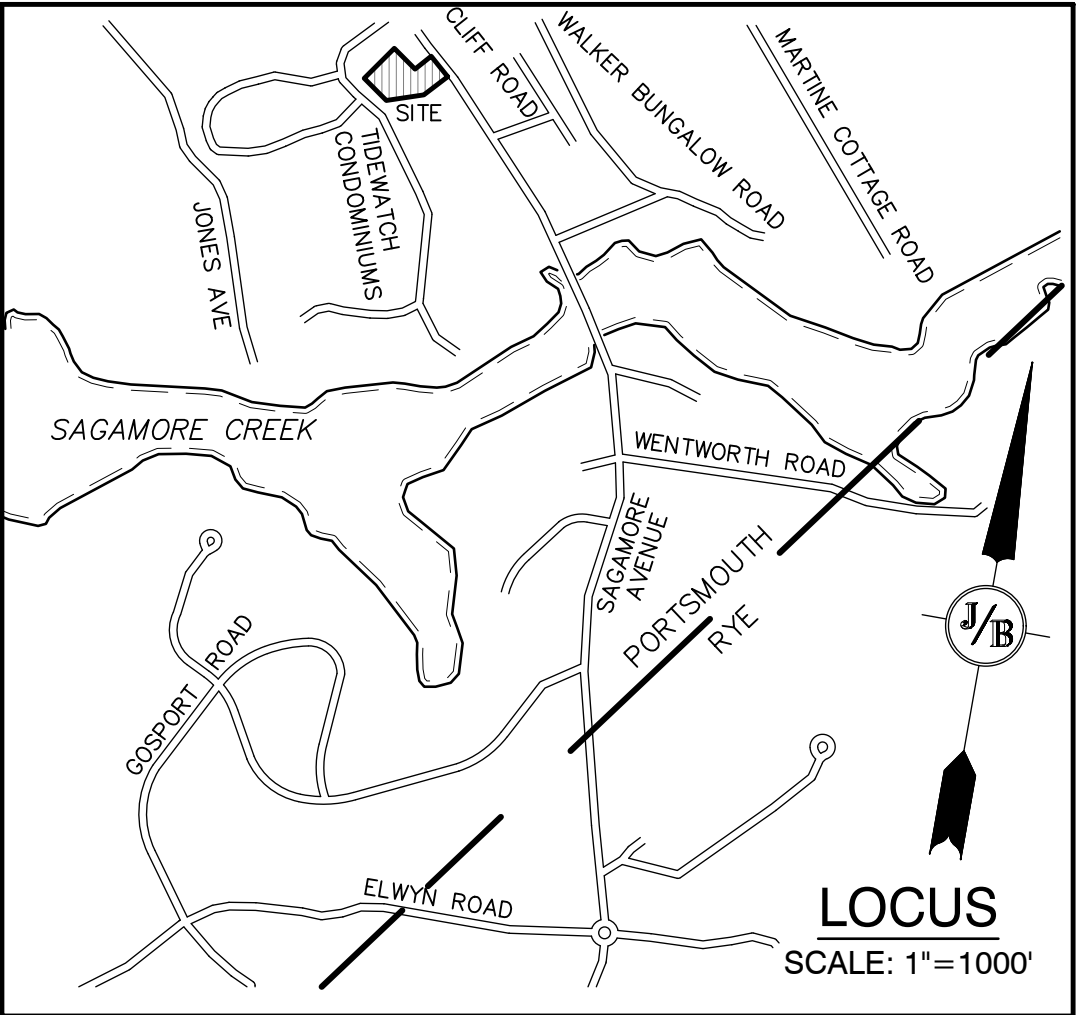
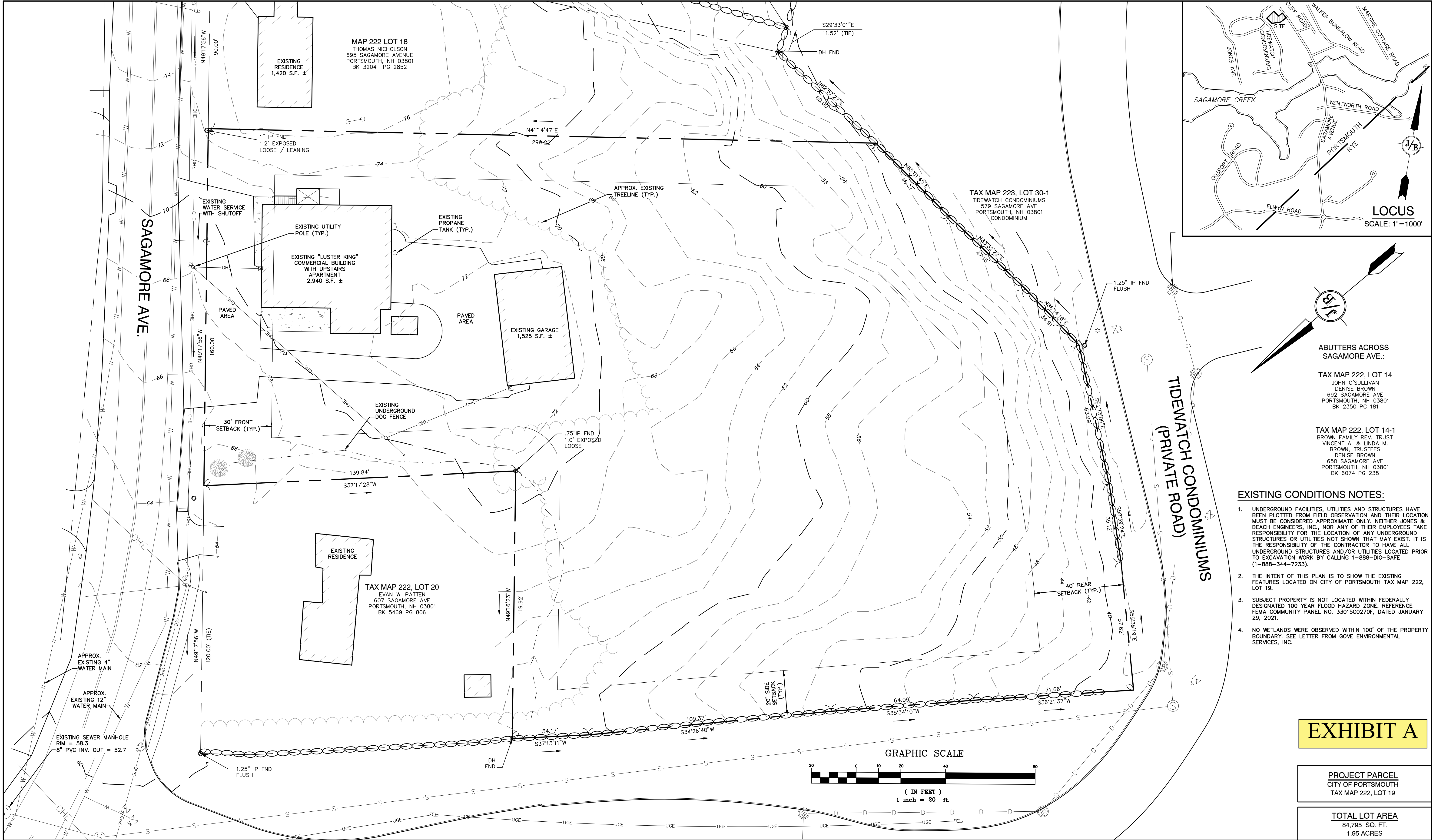
For all of the reasons herein stated, Sagamore respectfully requests that the Portsmouth Zoning of Adjustment grant the requested variances.

Respectfully submitted,
635 Sagamore Development, LLC

By:



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



ABUTTERS ACROSS
SAGAMORE AVE.:

TAX MAP 222, LOT 14
JOHN O'SULLIVAN
DENISE BROWN
692 SAGAMORE AVE
PORTSMOUTH, NH 03801
BK 2350 PG 181

TAX MAP 222, LOT 14-1
BROWN FAMILY REV. TRUST
VINCENT A. & LINDA M.
BROWN, TRUSTEES
DENISE BROWN
650 SAGAMORE AVE
PORTSMOUTH, NH 03801
BK 6074 PG 238

- EXISTING CONDITIONS NOTES:**
1. UNDERGROUND FACILITIES, UTILITIES AND STRUCTURES HAVE BEEN PLOTTED FROM FIELD OBSERVATION AND THEIR LOCATION MUST BE CONSIDERED APPROXIMATE ONLY. NEITHER JONES & BEACH ENGINEERS, INC., NOR ANY OF THEIR EMPLOYEES TAKE RESPONSIBILITY FOR THE LOCATION OF ANY UNDERGROUND STRUCTURES OR UTILITIES NOT SHOWN THAT MAY EXIST. IT IS THE RESPONSIBILITY OF THE CONTRACTOR TO HAVE ALL UNDERGROUND STRUCTURES AND/OR UTILITIES LOCATED PRIOR TO EXCAVATION WORK BY CALLING 1-888-DIG-SAFE (1-888-344-7233).
 2. THE INTENT OF THIS PLAN IS TO SHOW THE EXISTING FEATURES LOCATED ON CITY OF PORTSMOUTH TAX MAP 222, LOT 19.
 3. SUBJECT PROPERTY IS NOT LOCATED WITHIN FEDERALLY DESIGNATED 100 YEAR FLOOD HAZARD ZONE. REFERENCE FEMA COMMUNITY PANEL NO. 33015C0270F, DATED JANUARY 29, 2021.
 4. NO WETLANDS WERE OBSERVED WITHIN 100' OF THE PROPERTY BOUNDARY. SEE LETTER FROM GOVE ENVIRONMENTAL SERVICES, INC.

EXHIBIT A

PROJECT PARCEL
CITY OF PORTSMOUTH
TAX MAP 222, LOT 19

TOTAL LOT AREA
84,795 SQ. FT.
1.95 ACRES

Design: JAC	Draft: DJM	Date: 12/07/2021
Checked: JAC	Scale: AS NOTED	Project No.: 18134.1
Drawing Name: 18134-CONCEPT-8.dwg		
THIS PLAN SHALL NOT BE MODIFIED WITHOUT WRITTEN PERMISSION FROM JONES & BEACH ENGINEERS, INC. (JBE). ANY ALTERATIONS, AUTHORIZED OR OTHERWISE, SHALL BE AT THE USER'S SOLE RISK AND WITHOUT LIABILITY TO JBE.		

6	10/25/22	REVISED PLAN NAME	DJM
5	6/23/22	REVISED CONCEPTUAL LAYOUT	DJM
4	6/2/22	ADDED UTILITY INFORMATION	DJM
3	3/21/22	REVISED CONCEPTUAL LAYOUT	DJM
2	2/10/22	REVISED CONCEPTUAL LAYOUT	DJM
REV.	DATE	REVISION	BY

J/B Jones & Beach Engineers, Inc.

Designed and Produced in NH

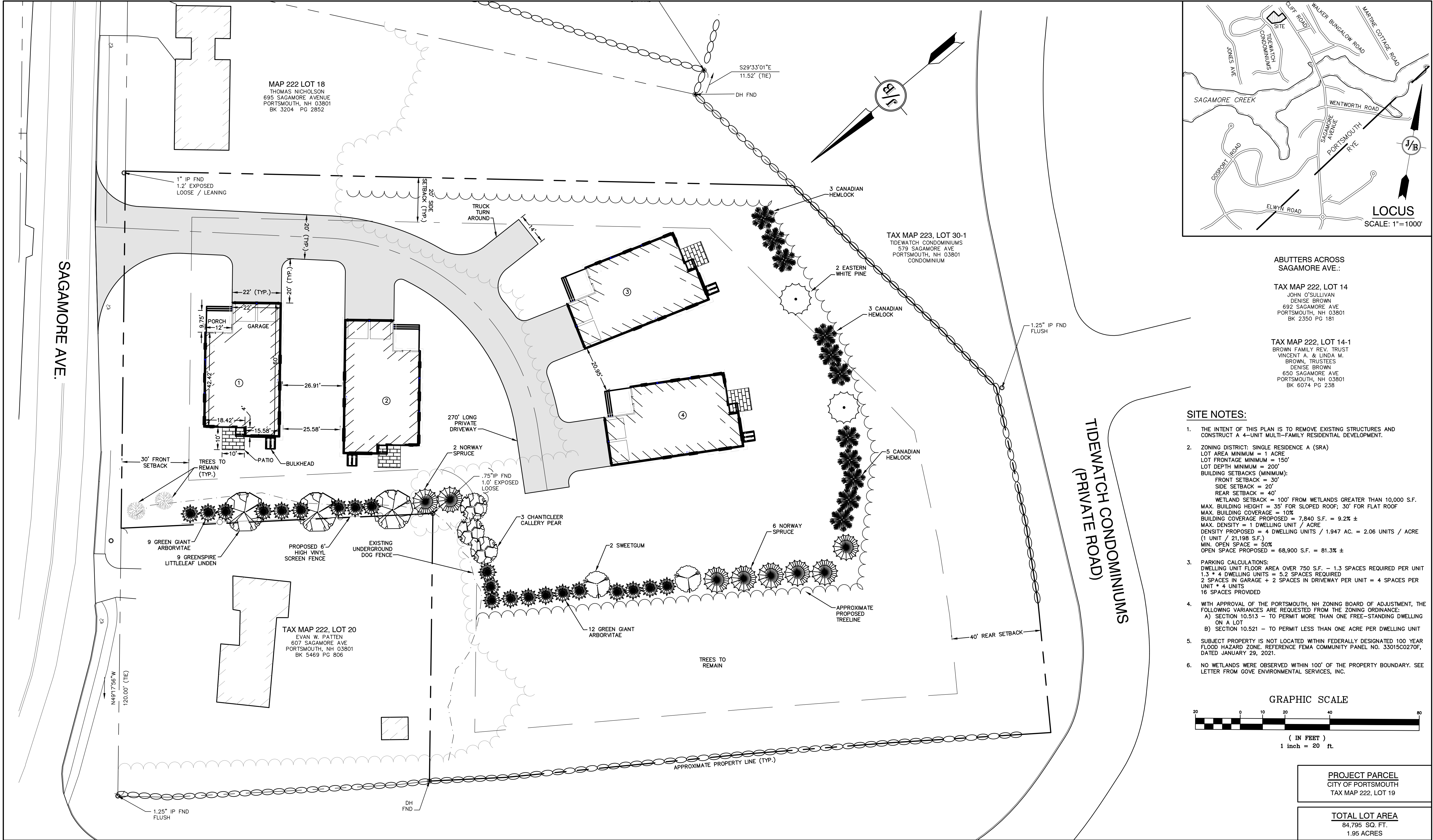
85 Portsmouth Ave.
PO Box 219
Stratham, NH 03885

Civil Engineering Services

603-772-4746
FAX: 603-772-0227
E-MAIL: JBE@JONESANDBEACH.COM

Plan Name:	EXISTING CONDITIONS PLAN
Project:	4-UNIT RESIDENTIAL SITE 635 SAGAMORE AVE., PORTSMOUTH, NH
Owner of Record:	3612 LAFAYETTE RD., DEPT 4, PORTSMOUTH, NH 03801 BK 6332 PG 1158

DRAWING No.
C1
SHEET 1 OF 3 JBE PROJECT NO. 18134.1



Design: JAC	Draft: DJM	Date: 12/07/2021
Checked: JAC	Scale: AS NOTED	Project No.: 18134.1
Drawing Name: 18134-CONCEPT-8.dwg		
THIS PLAN SHALL NOT BE MODIFIED WITHOUT WRITTEN PERMISSION FROM JONES & BEACH ENGINEERS, INC. (JBE). ANY ALTERATIONS, AUTHORIZED OR OTHERWISE, SHALL BE AT THE USER'S SOLE RISK AND WITHOUT LIABILITY TO JBE.		

REV.	DATE	REVISION	BY
6	10/25/22	REVISED PLAN NAME	DJM
5	6/23/22	REVISED CONCEPTUAL LAYOUT	DJM
4	6/2/22	ADDED UTILITY INFORMATION	DJM
3	3/21/22	REVISED CONCEPTUAL LAYOUT	DJM
2	2/10/22	REVISED CONCEPTUAL LAYOUT	DJM
REV.	DATE	REVISION	BY

J/B

Jones & Beach Engineers, Inc.

Designed and Produced in NH

85 Portsmouth Ave.
P.O. Box 219
Stratham, NH 03885

Civil Engineering Services

603-772-4746
FAX: 603-772-0227
E-MAIL: JBE@JONESANDBEACH.COM

Plan Name:	ZBA SITE PLAN
Project:	4-UNIT RESIDENTIAL SITE 635 SAGAMORE AVE., PORTSMOUTH, NH
Owner of Record:	635 SAGAMORE DEVELOPMENT, LLC 3612 LAFAYETTE RD., DEPT 4, PORTSMOUTH, NH 03801 BK 6332 PG 1158

DRAWING No.
C2
SHEET 2 OF 3 JBE PROJECT NO. 18134.1



Design: JAC	Draft: DJM	Date: 12/07/2021
Checked: JAC	Scale: AS NOTED	Project No.: 18134.1
Drawing Name: 18134-CONCEPT-8.dwg		
THIS PLAN SHALL NOT BE MODIFIED WITHOUT WRITTEN PERMISSION FROM JONES & BEACH ENGINEERS, INC. (JBE). ANY ALTERATIONS, AUTHORIZED OR OTHERWISE, SHALL BE AT THE USER'S SOLE RISK AND WITHOUT LIABILITY TO JBE.		

REV.	DATE	REVISION	BY
6	10/25/22	REVISED PLAN NAME	DJM
5	6/23/22	REVISED CONCEPTUAL LAYOUT	DJM
4	6/2/22	ADDED UTILITY INFORMATION	DJM
3	3/21/22	REVISED CONCEPTUAL LAYOUT	DJM
2	2/10/22	REVISED CONCEPTUAL LAYOUT	DJM

J/B

Jones & Beach Engineers, Inc.

Designed and Produced in NH

85 Portsmouth Ave.
PO Box 219
Stratham, NH 03885

Civil Engineering Services

603-772-4746
FAX: 603-772-0227
E-MAIL: JBE@JONESANDBEACH.COM

Plan Name:	ZBA TOPOGRAPHIC SITE PLAN
Project:	4-UNIT RESIDENTIAL SITE 635 SAGAMORE AVE., PORTSMOUTH, NH
Owner of Record:	635 SAGAMORE DEVELOPMENT, LLC 3612 LAFAYETTE RD., DEPT 4, PORTSMOUTH, NH 03801 BK 6332 PG 1158

DRAWING No.

C3

SHEET 3 OF 3
JBE PROJECT NO. 18134.1

1/27/2022

Sea Watch

419.126.v14 GL (1/27/2022)

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603-431-9559



Dear Builders and Home Buyers,

In addition to our Terms and Conditions (the "Terms"), please be aware of the following:

This design may not yet have Construction Drawings (as defined in the Terms), and is, therefore, only available as a Design Drawing (as defined in the Terms and together with Construction Drawings, "Drawings"). It is possible that during the conversion of a Design Drawing to a final Construction Drawing, changes may be necessary including, but not limited to, dimensional changes. Please see Plan Data Explained on www.ArtformHomePlans.com to understand room sizes, dimensions and other data provided. We are not responsible for typographical errors.

Artform Home Plans ("Artform") requires that our Drawings be built substantially as designed. Artform will not be obligated by or liable for use of this design with markups as part of any builder agreement. While we attempt to accommodate where possible and reasonable, and where the changes do not denigrate our design, any and all changes to Drawings must be approved in writing by Artform. It is recommended that you have your Drawing updated by Artform prior to attaching any Drawing to any builder agreement. Artform shall not be responsible for the misuse of or unauthorized alterations to any of its Drawings.

Facade Changes:

- To maintain design integrity, we pay particular attention to features on the front facade, including but not limited to door surrounds, window casings, finished porch column sizes, and roof friezes. While we may allow builders to add their own flare to aesthetic elements, we don't allow our designs to be stripped of critical details. Any such alterations require the express written consent of Artform.
- Increasing ceiling heights usually requires adjustments to window sizes and other exterior elements.

Floor plan layout and/or Structural Changes:

- Structural changes always require the express written consent of Artform
- If you wish to move or remove walls or structural elements (such as removal of posts, increases in house size, ceiling height changes, addition of dormers, etc), please do not assume it can be done without other additional changes (even if the builder or lumber yard says you can).

1/27/2022

Sea Watch

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1/27/2022

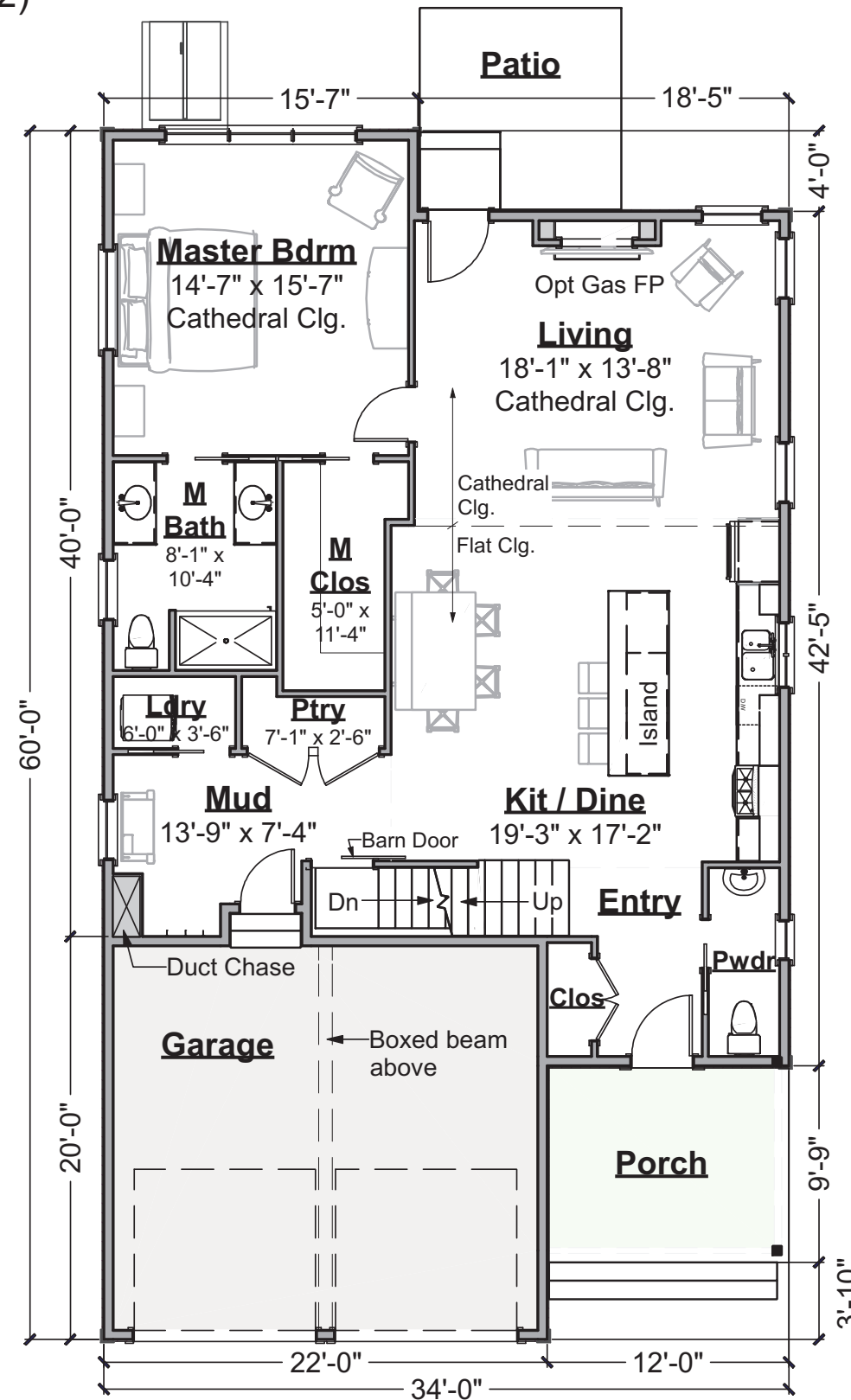
Sea Watch

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603-431-9559



Living Area This Floor: 1370 sq ft
9 ft Ceilings, unless noted otherwise

First Floor Plan
Scale: 3/32" = 1'-0"

1/27/2022

Sea Watch

419.126.v14 GL (1/27/2022)

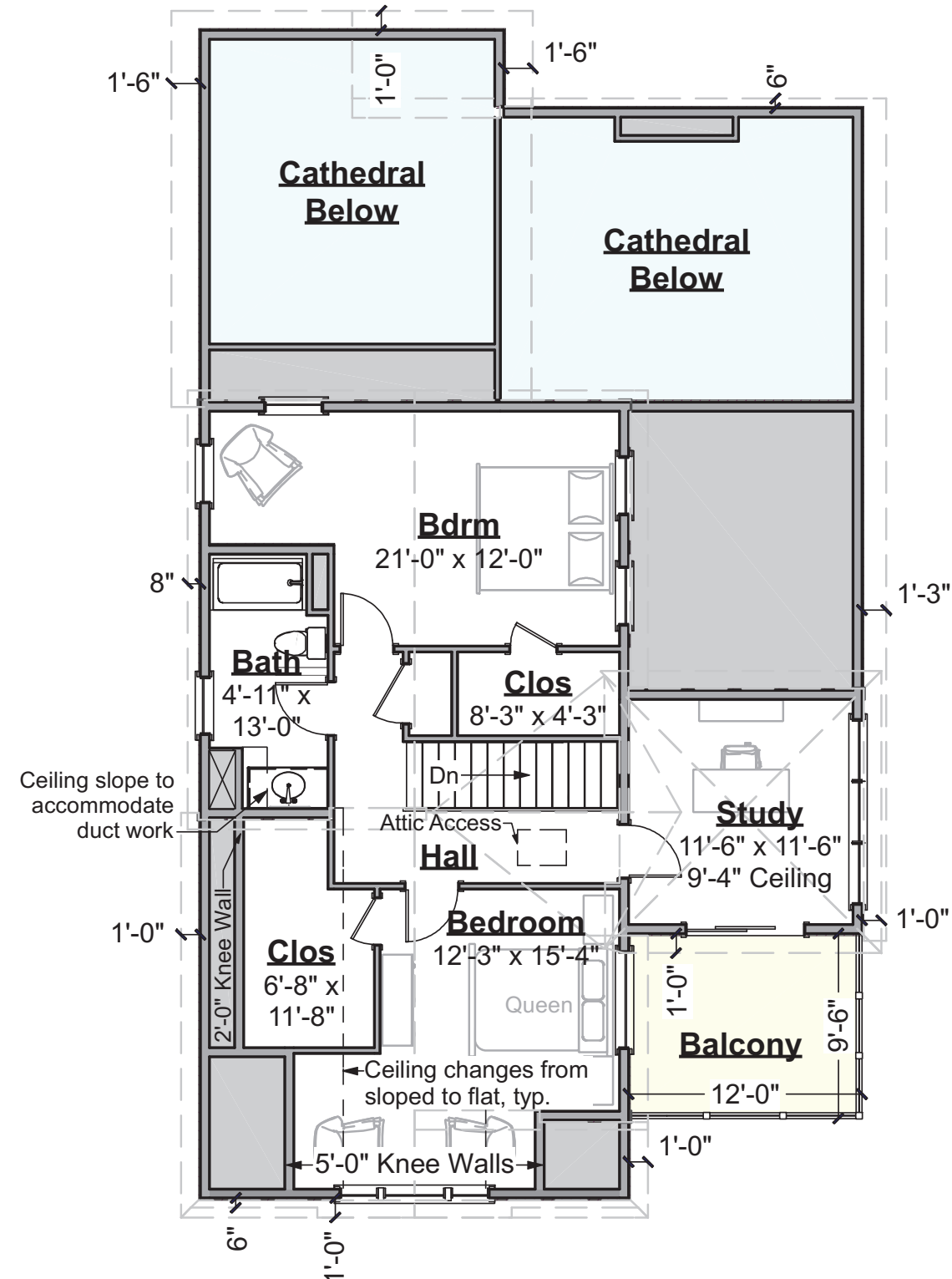
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Living Area This Floor: 979 sq ft

8 ft Ceilings, unless noted otherwise



Second Floor Plan

Scale: 3/32" = 1'-0"

1/27/2022

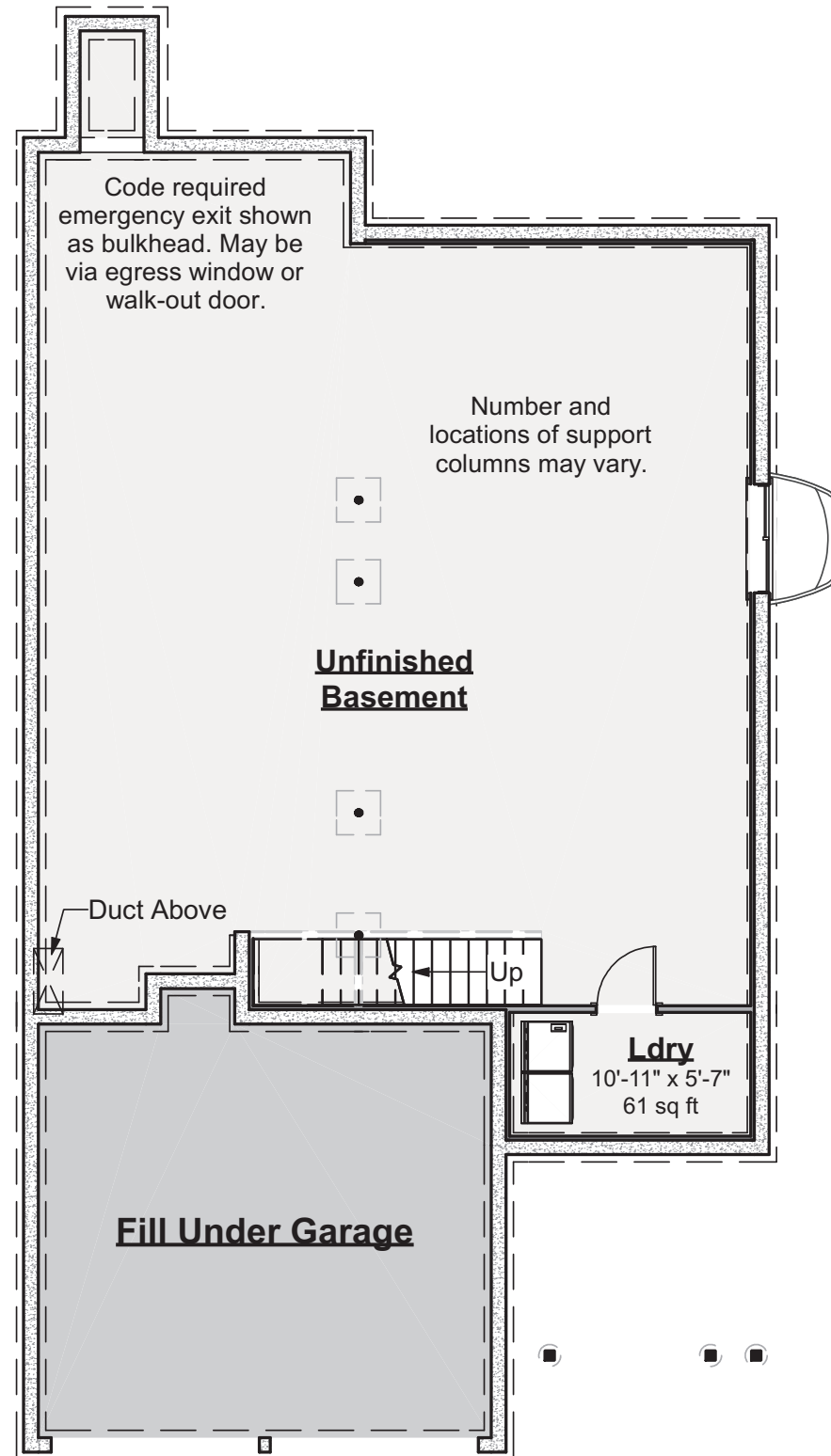
Sea Watch

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603-431-9559



Foundation Plan

Scale: 3/32" = 1'-0"

1/27/2022

Sea Watch

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Front Elevation

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

1/27/2022

Sea Watch

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Right Elevation

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

1/27/2022

Sea Watch

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603-431-9559



Rear Elevation

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

1/27/2022

Sea Watch

419.126.v14 GL (1/27/2022)

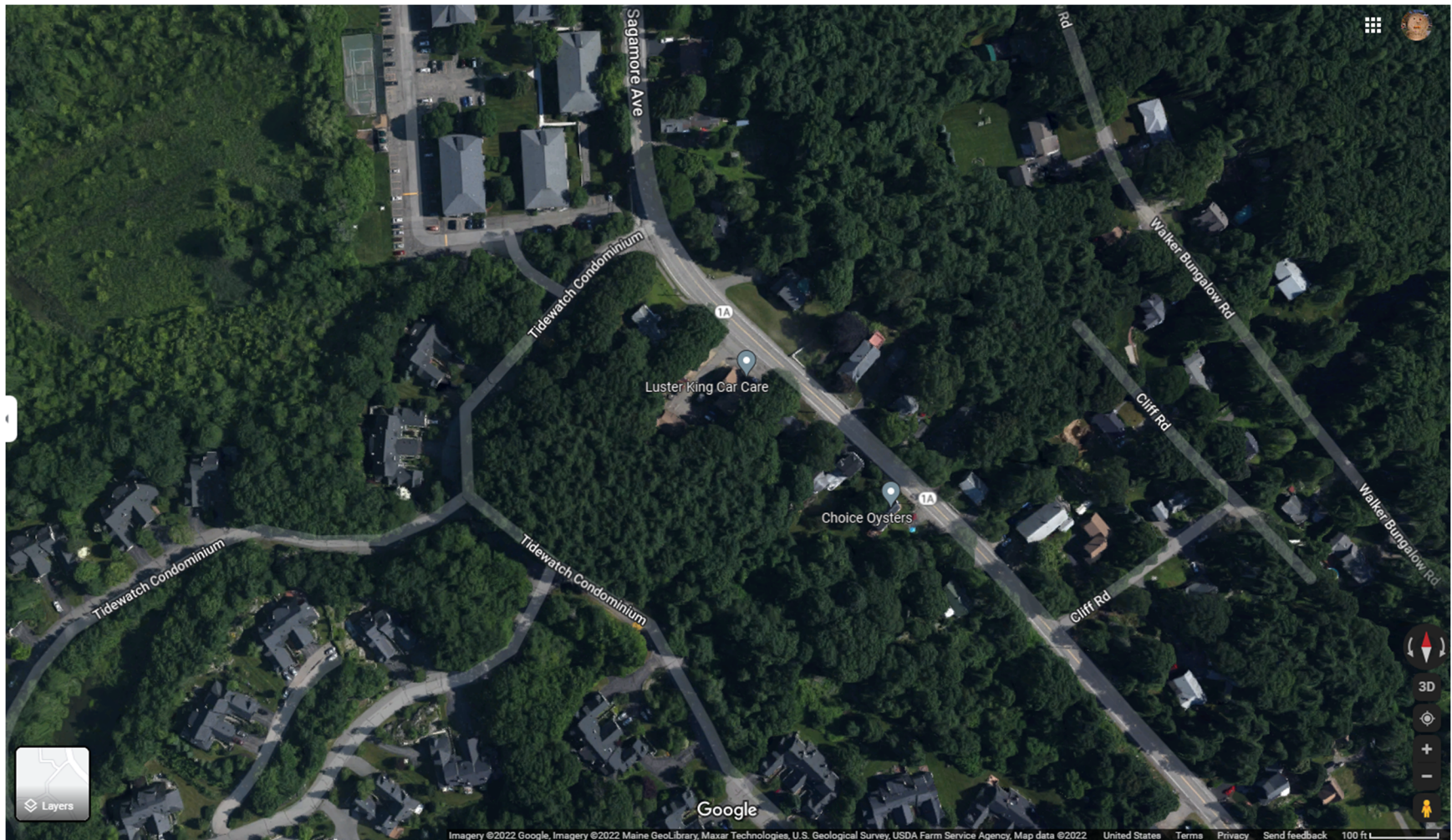
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Left Elevation
Scale: 1/8" = 1'-0"



Aerial view of Property



Front View of Property (Sagamore Ave)



Front View of Property



Front View of Property



Side View of Property



View of Service Garage and Shed



Rear View of Property

1/27/2022

Sea Watch

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603-431-9559



635 SAGAMORE AVE

Location 635 SAGAMORE AVE

Mblu 0222/ 0019/ 0000/ /

Acct# 35416

Owner 635 SAGAMORE
DEVELOPMENT LLC

PBN

Assessment \$682,800

Appraisal \$682,800

PID 35416

Building Count 2

Current Value

Appraisal			
Valuation Year	Improvements	Land	Total
2020	\$407,600	\$275,200	\$682,800
Assessment			
Valuation Year	Improvements	Land	Total
2020	\$407,600	\$275,200	\$682,800

Owner of Record

Owner 635 SAGAMORE DEVELOPMENT LLC
Co-Owner
Address 3612 LAFAYETTE RD DEPT 4
PORTSMOUTH, NH 03801

Sale Price \$387,133
Certificate
Book & Page 6332/1158
Sale Date 09/24/2021

Ownership History

Ownership History				
Owner	Sale Price	Certificate	Book & Page	Sale Date
635 SAGAMORE DEVELOPMENT LLC	\$387,133		6332/1158	09/24/2021
HINES FAMILY REVO TRUST	\$0		4885/1538	02/11/2008

Building Information

Building 1 : Section 1

Year Built: 1950
Living Area: 4,477

Replacement Cost: \$513,721

Building Percent Good: 54

Replacement Cost

Less Depreciation: \$277,400

Building Attributes	
Field	Description
Style:	Retail/Apartment
Model	Commercial
Grade	C
Stories:	2
Occupancy	3.00
Residential Units	
Exterior Wall 1	Vinyl Siding
Exterior Wall 2	Pre-Fab Wood
Roof Structure	Gable/Hip
Roof Cover	Asph/F GlS/Cmp
Interior Wall 1	Drywall/Sheet
Interior Wall 2	
Interior Floor 1	Inlaid Sht Gds
Interior Floor 2	Carpet
Heating Fuel	Oil
Heating Type	Hot Water
AC Type	Unit/AC
Bldg Use	PRI COMM
Total Rooms	
Total Bedrms	
Total Baths	
Kitchen Grd	
Heat/AC	NONE
Frame Type	WOOD FRAME
Baths/Plumbing	AVERAGE
Ceiling/Wall	CEIL & WALLS
Rooms/Prtns	AVERAGE
Wall Height	10.00
% Comn Wall	
1st Floor Use:	
Class	

Building 2 : Section 1

Year Built: 2000

Living Area: 1,650

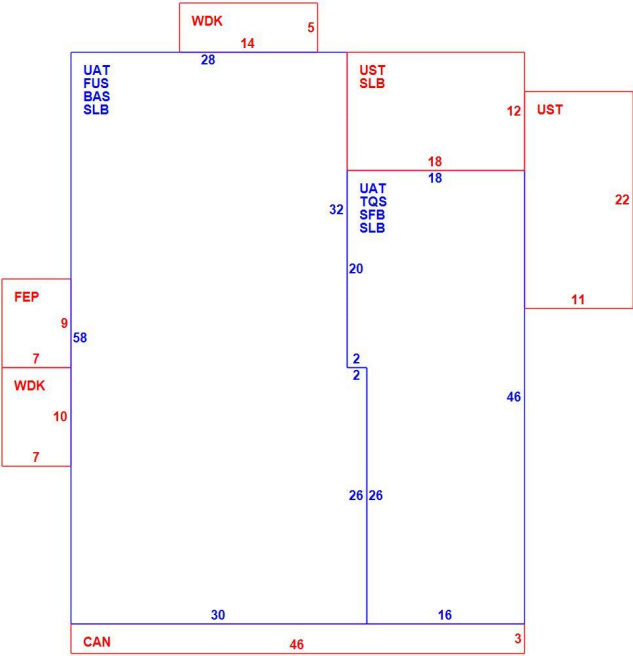
Replacement Cost: \$153,450

Building Photo

 Building Photo

(http://images.vgsi.com/photos2/PortsmouthNHPhotos///0033/DSC01732_;

Building Layout




(ParcelSketch.ashx?pid=35416&bid=35416)

Building Sub-Areas (sq ft)			Legend
Code	Description	Gross Area	Living Area
BAS	First Floor	1,676	1,676
FUS	Upper Story, Finished	1,676	1,676
TQS	Three Quarter Story	776	582
SFB	Base, Semi-Finished	776	543
CAN	Canopy	138	0
FEP	Porch, Enclosed	63	0
SLB	Slab	2,668	0
UAT	Attic	2,452	0
UST	Utility, Storage, Unfinished	458	0
WDK	Deck, Wood	140	0
		10,823	4,477

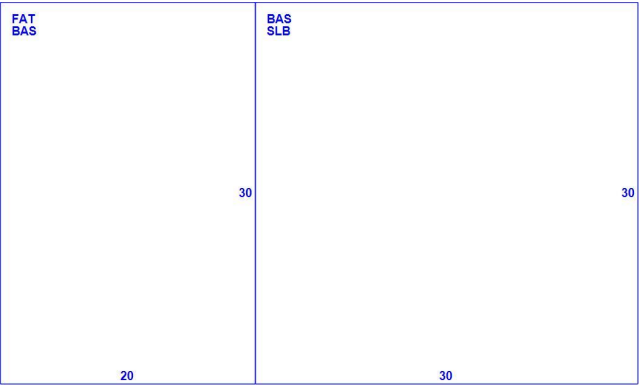
Building Percent Good: 84
Replacement Cost
Less Depreciation: \$128,900

Building Attributes : Bldg 2 of 2	
Field	Description
Style:	Service Shop
Model	Commercial
Grade	C
Stories:	1
Occupancy	1.00
Residential Units	
Exterior Wall 1	Vinyl Siding
Exterior Wall 2	
Roof Structure	Gable/Hip
Roof Cover	Asph/F GlS/Cmp
Interior Wall 1	Drywall/Sheet
Interior Wall 2	
Interior Floor 1	Concr-Finished
Interior Floor 2	Carpet
Heating Fuel	Oil
Heating Type	Hot Water
AC Type	None
Bldg Use	AUTO S S&S
Total Rooms	
Total Bedrms	
Total Baths	
Kitchen Grd	
Heat/AC	NONE
Frame Type	WOOD FRAME
Baths/Plumbing	AVERAGE
Ceiling/Wall	CEIL & WALLS
Rooms/Prtns	AVERAGE
Wall Height	12.00
% Comn Wall	
1st Floor Use:	
Class	

Building Photo

 Building Photo
(http://images.vgsi.com/photos2/PortsmouthNHPhotos///0033/DSC01731_;

Building Layout



(ParcelSketch.ashx?pid=35416&bid=40140)

Building Sub-Areas (sq ft)			<u>Legend</u>
Code	Description	Gross Area	Living Area
BAS	First Floor	1,500	1,500
FAT	Attic	600	150
SLB	Slab	900	0
		3,000	1,650

Extra Features

Extra Features	<u>Legend</u>
----------------	---------------

Land

Land Use

Use Code 0310
Description PRI COMM
Zone SRA
Neighborhood 306
Alt Land Appr No
Category

Land Line Valuation

Size (Acres) 1.93
Frontage
Depth
Assessed Value \$275,200
Appraised Value \$275,200

Outbuildings

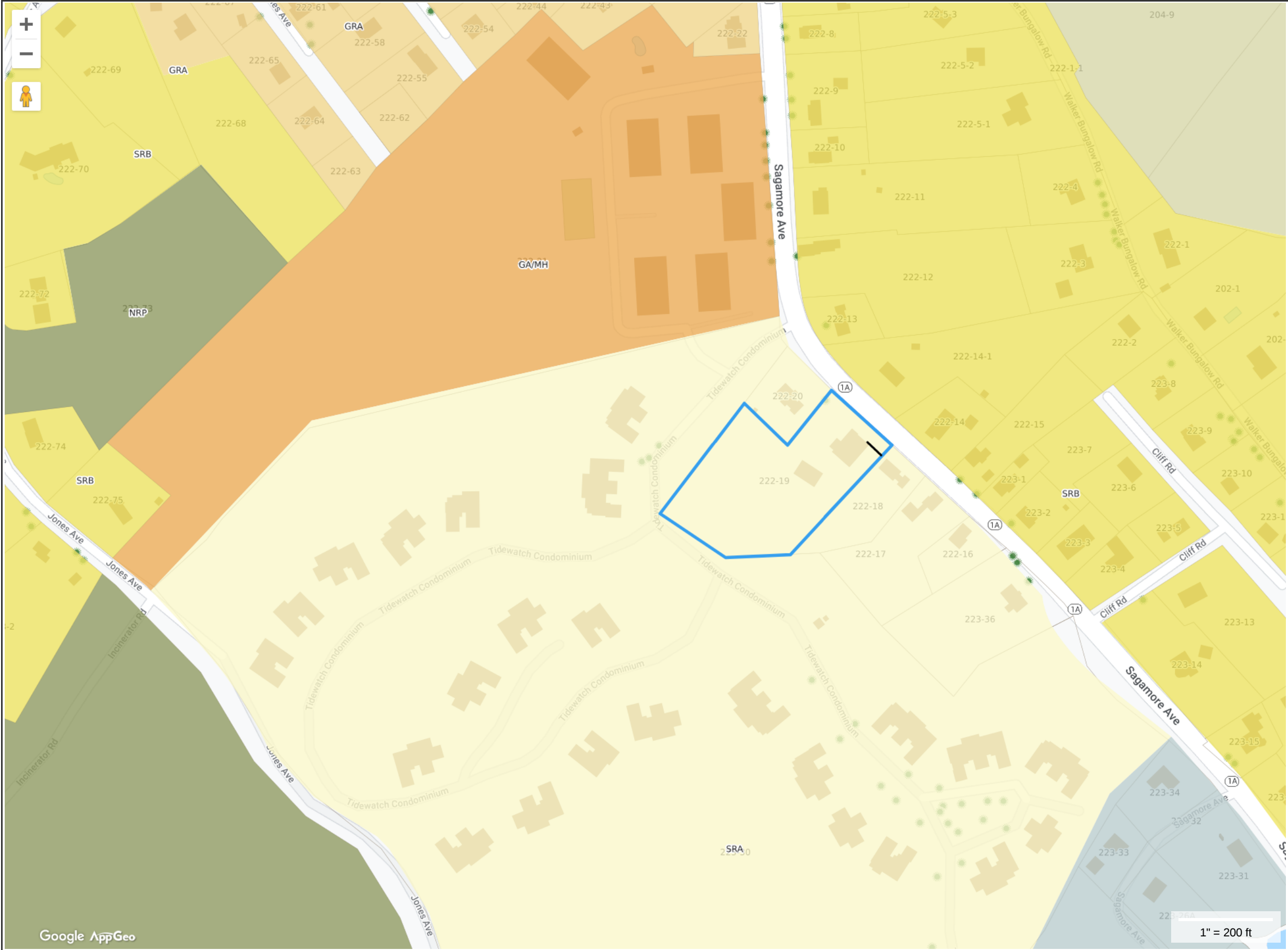
Outbuildings						<u>Legend</u>
Code	Description	Sub Code	Sub Description	Size	Value	Bldg #
PAV1	PAVING-ASPHALT			1344.00 S.F.	\$1,200	1
SHD1	SHED FRAME			96.00 S.F.	\$100	1

Valuation History

Appraisal			
Valuation Year	Improvements	Land	Total
2020	\$418,400	\$275,200	\$693,600
2019	\$418,400	\$275,200	\$693,600
2018	\$391,100	\$254,800	\$645,900

Assessment			
Valuation Year	Improvements	Land	Total
2020	\$418,400	\$275,200	\$693,600
2019	\$418,400	\$275,200	\$693,600
2018	\$391,100	\$254,800	\$645,900

635 Sagamore Avenue



Property Information	
Property ID	0222-0019-0000
Location	635 SAGAMORE AVE
Owner	635 SAGAMORE DEVELOPMENT LLC



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 3/9/2022
Data updated 3/9/2022

Print map scale is approximate. Critical layout or measurement activities should not be done using this resource.

EXHIBIT E

4.

The request **Donald and Rasa Stone Revocable Trust (Owner)**, for property located at **55 Gates Street** whereas relief is needed for the addition of 2 heat pumps which requires the following: 1) A Variance from Section 10.515.14 to allow a 3.5 foot setback where 10 feet is required. Map 103 as Lot 90 and lies within the General Residence B (GRB) and Historic Districts.

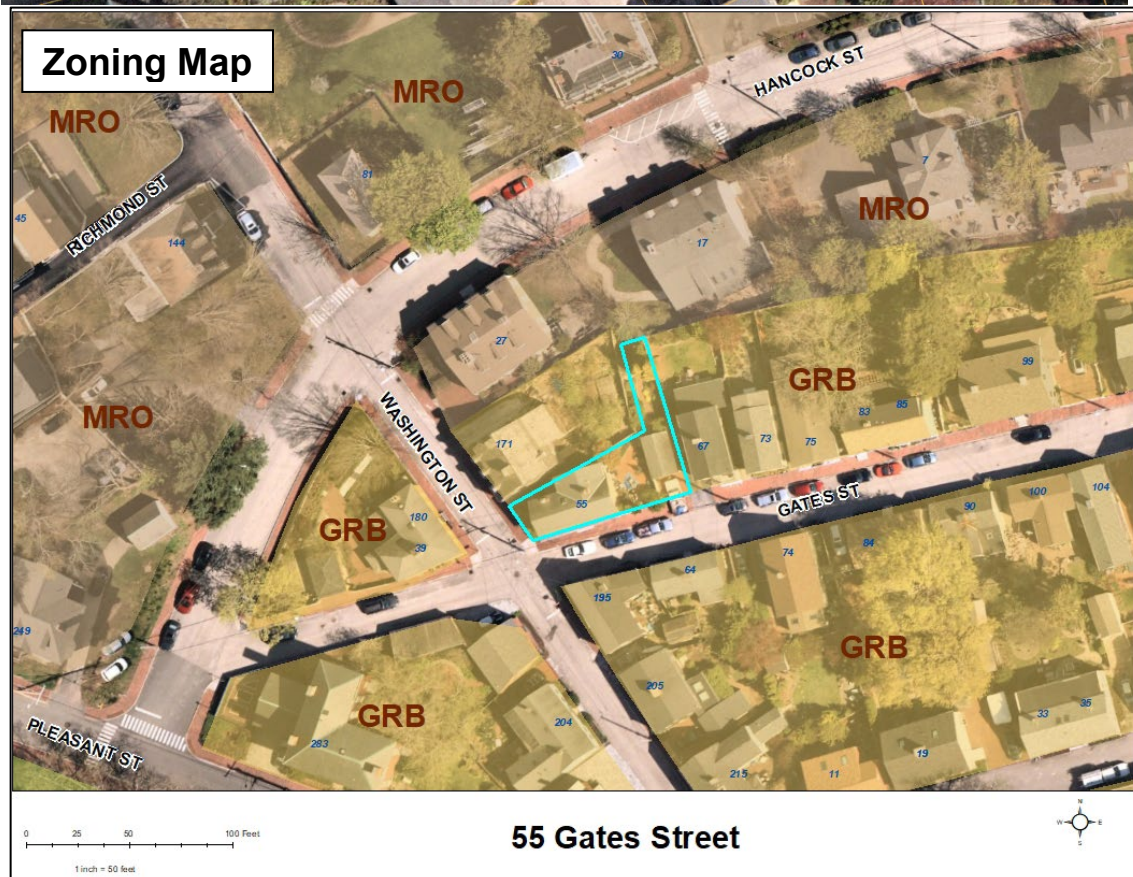
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	single-family	HVAC	Primarily Residential Uses
<u>Lot area (sq. ft.):</u>	3,049	3,049	5,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	3,049	3,049	5,000 min.
<u>Street Frontage (ft.):</u>	100	100	80 min.
<u>Lot depth (ft.):</u>	60	60	60 min.
<u>Primary Front Yard (ft.):</u>	0	0	5 min.
<u>Secondary Front Yard (ft.):</u>	4	4	5 min.
<u>Right Yard (ft.):</u>	1	1	10 min.
<u>Rear Yard (ft.):</u>	0	3.5	10 (for units) min. 25 (house)
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	37	37	30 max.
<u>Open Space Coverage (%):</u>	37	37	25 min.
<u>Parking</u>	2	2	2
<u>Estimated Age of Structure:</u>	1780	Variance request shown in red.	

Other Permits/Approvals Required

HDC

Neighborhood Context



November 15, 2022 Meeting

Previous Board of Adjustment Actions

No previous BOA history found.

Planning Department Comments

The applicant is proposing 2 HVAC units to be located on the rear of the existing dwelling. The house and lot are both nonconforming with the house located over the front lot line and on or over the rear lot line. The units are proposed to be located on the back side of the house and will be fenced from view.

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.

10.235 Certain Representations Deemed Conditions

Representations made at public hearings or materials submitted to the Board by an applicant for a special exception or variance concerning features of proposed buildings, structures, parking or uses which are subject to regulations pursuant to Subsection 10.232 or 10.233 shall be deemed conditions upon such special exception or variance.

**55 Gates Street
Map 103 Lot 90**

To permit the following:

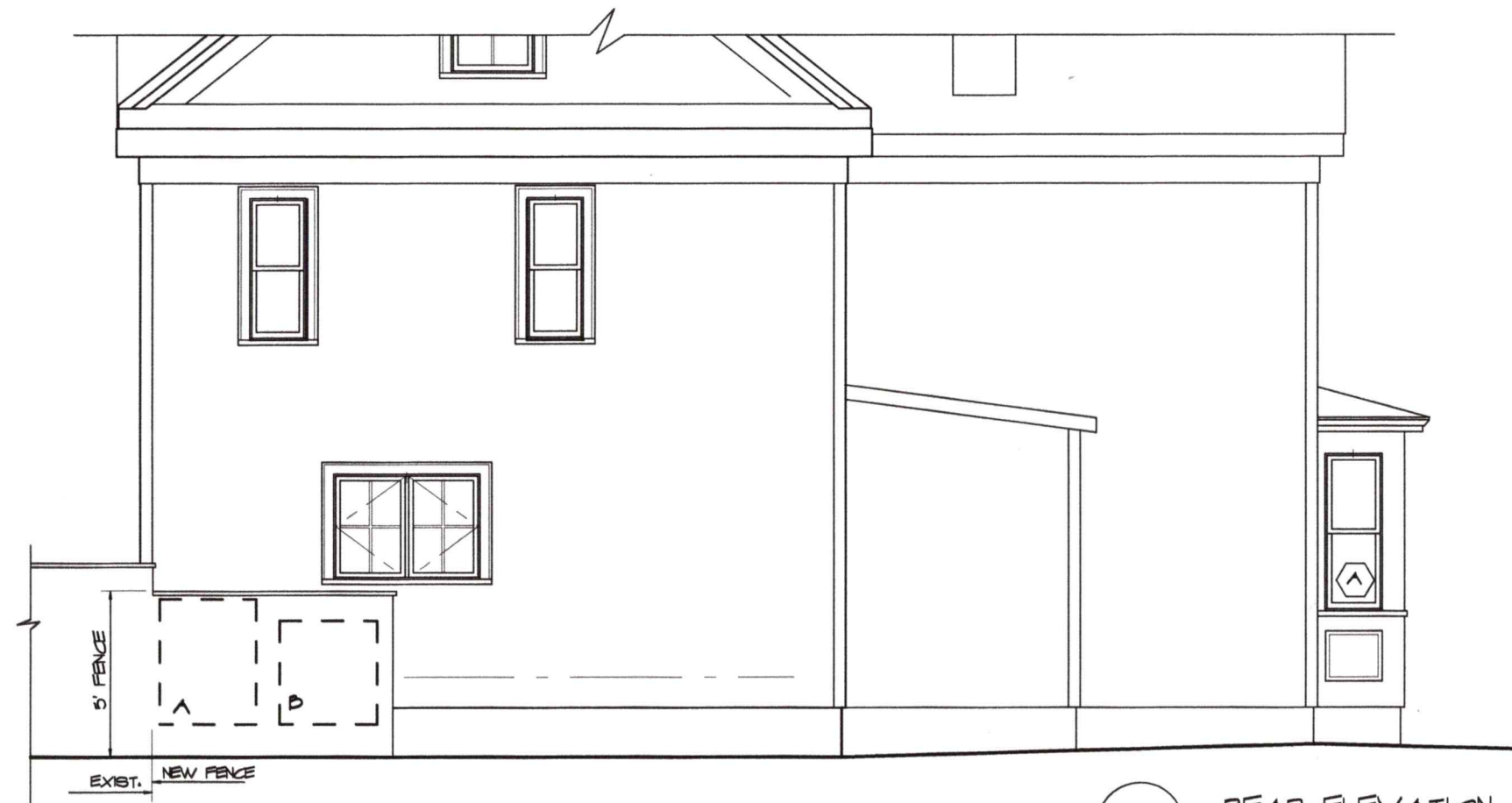
1. Heat Pump with a Rear Setback of +/- 3.5 feet where 10' is required.

The undersigned agrees that the following circumstances exist.....

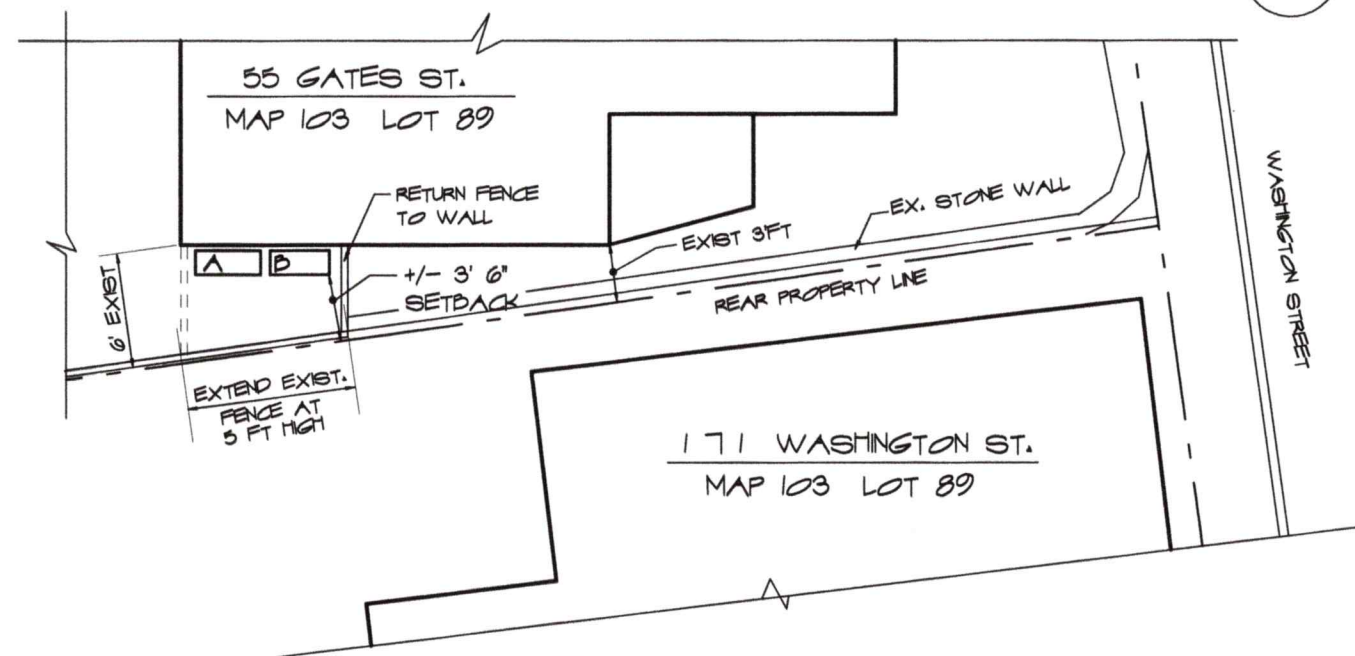
1. This irregular shaped corner lot has few locations to locate the required Heat Pumps. The location shown is out of any public view and screened by extending the existing rear fence. All piping to the Units will run inside the residence and there is room to service the Units..

Criteria for the Variance:

1. The Variances are not contrary to the public interest in that this location will have no the public view of the Heat Pumps and will be fenced from the Abutter's rear yard.
2. The Variances are consistent with the spirit of the ordinance as noted in Item 1.
3. Substantial justice will be done, as this work will allow the upgrade of the existing. mechanical system without impacting the neighborhood.
4. This Variances will not diminish the value of surrounding properties.
5. The special condition of this property is the existing non-conforming Rear Setback, the Front & Left Sides are on Streets and there is not room on the small Right Side yard.



REAR ELEVATION
SCALE: 3/16" = 1'-0"



PROPOSED HEAT PUMP LOCATION
SCALE: 1" = 10'-0"
NOTE: LOT PLAN GENERATED FROM TAX MAP AND FIELD MEASUREMENT BY ANNE WHITNEY ARCHITECT

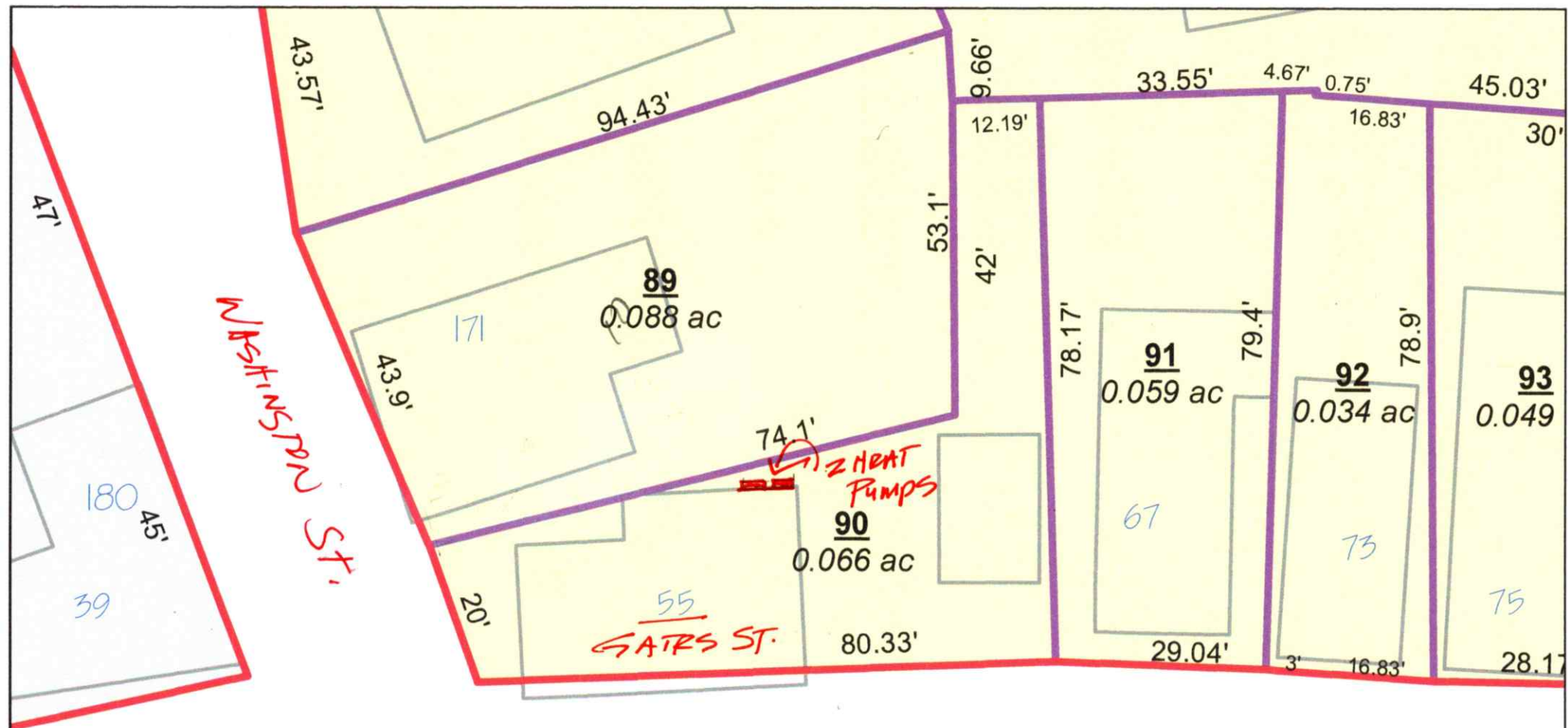


RIGHT SIDE & REAR ELEVATION

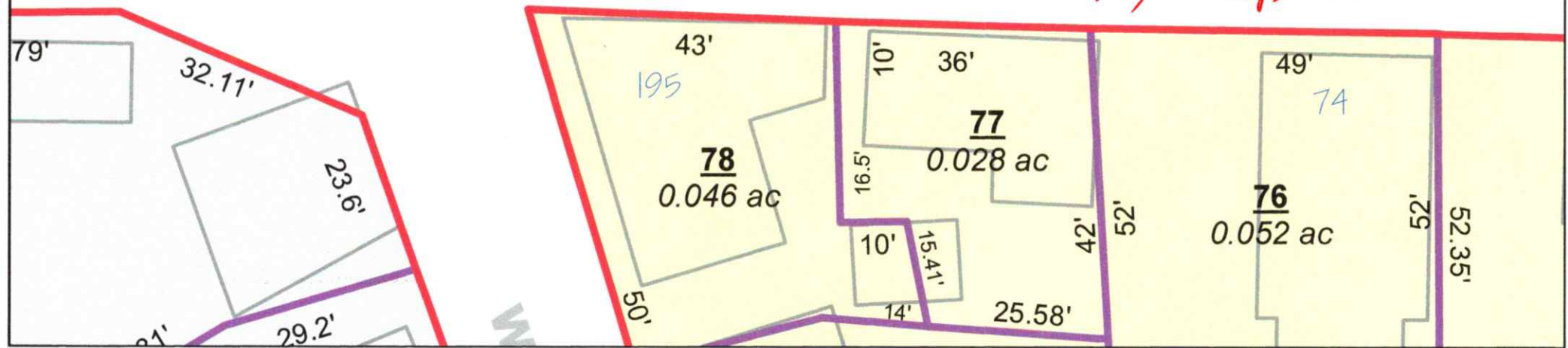


VIEW FROM MANCOCK STREET

<p>HDC ADMIN. HEATPUMPS</p> <p>RENOVATIONS, STONE RESIDENCE</p> <p>55 GATES STREET</p>	<p>801 Islington St, Suite 32 Portsmouth, NH 03801 603-502-4387 archwhit@aol.com</p>	<p>Project: 2110</p> <p>Revisions:</p>	<p>Date: 10/26/22</p>
	<p>ANNE WHITNEY ARCHITECT</p>		
	<p>PORTSMOUTH, NH</p>		



TAX MAP 103



Samsung "Max Heat" FJM Series, 4 Port Condensing Unit

Job Name _____
 Purchaser _____
 Submitted to _____
 Unit Designation _____

Location _____
 Engineer _____
 Reference ☐ Approval ☐ Construction ☐
 Schedule # _____

Model	US Code		JXH36S4B
	Model Number		AJ036BXS4CH/AA
Performance*	Capacity (standard / max.)	Cooling (Btu/h)	34,000 / 39,600
		Heating (Btu/h)	36,000 / 36,600
	Heating Capacity at 5°F OA, 70° Indoor DB (Btu/h)		36,600
	Heating Capacity at -13°F OA, 70° Indoor DB (Btu/h)		25,590
	Minimum Cooling Capacity (Btu/h)		6,500
	Minimum Heating Capacity (Btu/h)		7,500
	SEER (Ducted / Mixed / Non-ducted)		18.0 / 19.0 / 20.0
	EER (Ducted / Mixed / Non-ducted)		11.0 / 11.75 / 12.5
	HSPF (Ducted / Mixed / Non-ducted)		9.1 / 9.8 / 10.5
Power	Voltage	(v/Hz)	1 / 208-230 / 60
	Nominal Current ¹	Cooling (A)	13.0
		Heating (A)	12.2
	Max. Breaker	Amps	40
	Minimum Circuit Ampacity (A)		36.5
Dimensions	W X H X D	Inches	37 x 47 5/8 x 13
	Weight	lbs.	192.9
Noise Level	Cooling	dB (A)	52
	Heating	dB (A)	55
Operating Temperatures	Cooling		14 ~ 114.8°F (-5 ~ 46.0°C)
	Heating		-13 ~ 75°F (-25 ~ 24.0°C)
Pipe Connections	High Side		1/4" X 4
	Low Side (suction)		3/8" X 2 + 1/2" X 2
	Maximum Individual Line Set Length		82 ft
	Maximum Line Set Length (total)		230 ft
	Maximum Vertical Separation	Outdoor to Indoor	49 ft
		Highest to lowest indoor	25 ft
	Included Pipe Adapters		2 - 1/2" X 3/8", 2 - 1/2" X 5/8"
Condenser Fan	Motor		BLDC With Propeller Fan (2)
	Output	Watts / FLA	125 X 2 / 1.28 X 2
		CFM	3,885
Compressor	Type		Twin BLDC Rotary Inverter
	RLA	Amps	25.6
Heat Exchanger	Type	Aluminum Fin - Copper Tube	
Refrigerant	Type		R410A
	Control Method		Electronic Expansion Valve
	Factory Charge		127 oz
	Charged for		164 ft
	Additional Refrigerant		0.22 oz/ft over 164 ft
Accessories	Wall Bracket		<input type="checkbox"/> CKN-250
	Wind Baffle	Front	<input type="checkbox"/> WBF-1M2
		Back	<input type="checkbox"/> WBB-2M-B
Certifications	Safety		ETL (UL 1995)
	AHRI Certification Number	Non-Ducted	207349920
		Ducted	207350085
		Mixed	207350834
	ENERGY STAR® Certification		Applies to AHRI non ducted listing
Warranty	10 Years compressor, 10 year parts, 1 year limited labor (registration required)		

* Certified in accordance with the AHRI Unitary Small Air-Source Heat Pumps (USHP) Certification Program which is based on the latest edition of AHRI Standard 210/240. Refer to www.AHRIdirectory.org for current reference numbers.

¹ Rated current is based on highest combination ratio of non-ducted indoor units.

Samsung HVAC maintains a policy of ongoing development, specifications are subject to change without notice.



A

General Information

- The Samsung Max Heat system shall provide high heating capacity at -13°F outside temperature
- The outdoor unit shall supply power individually to the indoor units via 14 AWG X 3 power wire
- The outdoor unit shall have a base pan heater as standard to ensure optimal defrost cycle water drainage
- Auto-restart after power loss
- Available maximum current setting option to reduce operating current.
- System energy consumption can be viewed using Samsung SmartThings mobile app (not revenue grade, for reference only).
- Soft-start to reduce current demand during compressor start
- Optional snow accumulation prevention setting to prevent snow drifting against idle outdoor units
- Auto or manual addressing of indoor units

Construction

- The outdoor unit shall be galvanized steel with a baked on powder coated finish for durability

Heat Exchanger

- The heat exchanger shall be mechanically bonded fin to copper tube

Controls

- Control signal shall be a DDC type signal
- Interconnect control wire between outdoor and indoor units shall be 16AWG X 2
- Controls shall integrate with a BMS system
- The system shall integrate with the Samsung Controls solution

Refrigerant System

- The refrigerant shall be R410A
- The compressor shall be hermetically sealed, inverter controlled, Twin BLDC Rotary
- Refrigerant flow shall be controlled by 4 separate electronic expansion valves at outdoor unit

Indoor Unit Compatibility

Will only operate with Samsung evaporator model numbers:
 AR**TSFABWKNCV (RNS**ABT): 7,000 - 24,000 Btu/h models
 AR**BSFCMWKNCV (RNS**CMB): 7,000 - 24,000 Btu/h models
 AR**TSFYBWKNCV (RNS**YBT): 7,000 - 24,000 Btu/h models
 AC0**BNNDCH/AA (CNH**NDB): 9,000 - 18,000 Btu/h models
 AC0**BN1DCH/AA (CNH**1DB): 9,000 - 12,000 Btu/h models
 AC0**BNJDCH/AA (CNH**JDB): 9,000 - 18,000 Btu/h models
 AC0**BNLDCH/AA (CNH**LDB): 9,000 - 18,000 Btu/h models
 AC0**BNZDCH/AA (CNH**ZDB): 12,000 - 24,000 Btu/h models
 AJ0**BNHDCH/AA (JNH**HDB): 9,000 - 18,000 Btu/h models

Proper sizing and installation of equipment is critical to achieve optimal performance. Split system air conditioners and (excluding ductless systems) must be matched with appropriate coil components to meet ENERGY STAR® criteria. Ask your contractor for details or visit www.energystar.gov.



Samsung "Max Heat" FJM Series, 4 Port Condensing Unit

Job Name _____
 Purchaser _____
 Submitted to _____
 Unit Designation _____

Location _____
 Engineer _____
 Reference ☐ Approval ☐ Construction ☐
 Schedule # _____

Model	US Code		JXH30S4B
	Model Number		AJ030BXS4CH/AA
Performance*	Capacity (standard / max.)	Cooling (Btu/h)	28,400 / 28,400
		Heating (Btu/h)	28,600 / 28,600
	Heating Capacity at 5°F OA, 70° Indoor DB (Btu/h)		28,600
	Heating Capacity at -13°F OA, 70° Indoor DB (Btu/h)		20,000
	Minimum Cooling Capacity (Btu/h)		6,500
	Minimum Heating Capacity (Btu/h)		7,500
	SEER (Ducted / Mixed / Non-ducted)		17.0 / 18.0 / 19.0
	EER (Ducted / Mixed / Non-ducted)		10.5 / 11.5 / 12.5
	HSPF (Ducted / Mixed / Non-ducted)		9.8 / 10.4 / 11.0
Power	Voltage	(v/Hz)	1 / 208-230 / 60
	Nominal Current ¹	Cooling (A)	10.9
		Heating (A)	10.0
	Max. Breaker	Amps	30
Dimensions	W X H X D	Inches	37 x 39 5/16 x 13
	Weight	lbs.	173.1
Noise Level	Cooling	dB (A)	54
	Heating	dB (A)	58
Operating Temperatures	Cooling		14 ~ 114.8°F (-10 ~ 46.0°C)
	Heating		-13 ~ 75°F (-25 ~ 24.0°C)
Pipe Connections	High Side		1/4" X 4
	Low Side (suction)		3/8" X 2 + 1/2" X 2
	Maximum Individual Line Set Length		82 ft
	Maximum Line Set Length (total)		230 ft
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Condenser Fan	Motor		BLDC With Propeller Fan (1)
	Output	Watts / FLA	125 / 1.28
		CFM	2,493
Compressor	Type		Twin BLDC Rotary Inverter
	RLA	Amps	18.4
Heat Exchanger	Type	Aluminum Fin - Copper Tube	
Refrigerant	Type		R410A
	Control Method		Electronic Expansion Valve
	Factory Charge		119.9 oz
	Charged for		131 ft
	Additional Refrigerant		0.22 oz/ft over 131 ft
Accessories	Wall Bracket		<input type="checkbox"/> CKN-250
	Wind Baffle	Front	<input type="checkbox"/> WBF-2M-B
		Back	<input type="checkbox"/> WBB-11M
Certifications	Safety		ETL (UL 1995)
	AHRI Certification Number	Non-Ducted	207349919
		Ducted	207350083
		Mixed	207350096
	ENERGY STAR® Certification		Applies to AHRI non ducted listing
Warranty	10 Years compressor, 10 year parts, 1 year limited labor (registration required)		

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 AC0**BNLDCH/AA (CNH**LDB): 9,000 - 18,000 Btu/h models
 AC0**BNZDCH/AA (CNH**ZDB): 12,000 - 18,000 Btu/h models
 AJ0**BNHDCH/AA (JNH**HDB): 9,000 - 18,000 Btu/h models

Proper sizing and installation of equipment is critical to achieve optimal performance. Split system air conditioners and (excluding ductless systems) must be matched with appropriate coil components to meet ENERGY STAR® criteria. Ask your contractor for details or visit www.energystar.gov.



5.

The request of **Sara Sommer Kaufman Revocable Trust (Owner)**, for property located at **546 Sagamore Avenue** whereas relief is needed to allow a 6 foot fence in the front yard which requires the following: 1) A Variance from Section 10.515.13 to allow a 6 foot fence with a 1 foot front yard setback where 30 feet is required. Said property is located on Assessor Map 222 Lot 10 and lies within the Single Residence B (SRB) District.

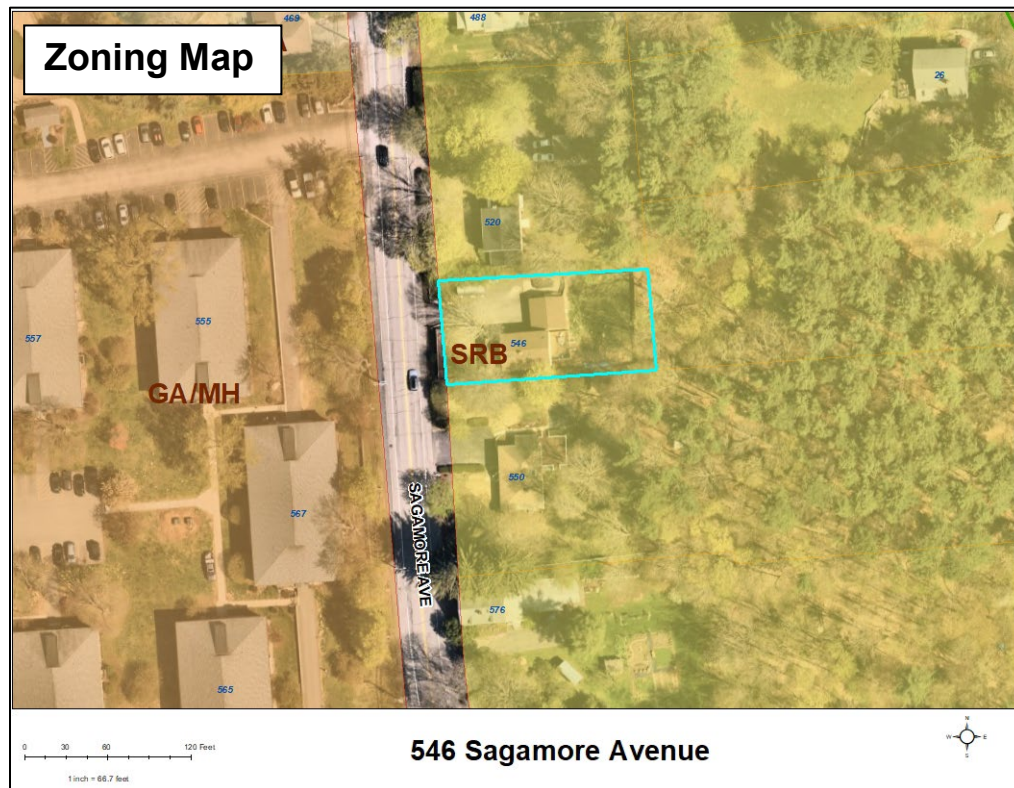
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family	6' fence in front yard	Primarily single family uses
<u>Lot area (sq. ft.):</u>	11,401	11,401	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	11,401	11,401	15,000 min.
<u>Street Frontage (ft.):</u>	75	75	100 min.
<u>Lot depth (ft.):</u>	152	152	100 min.
<u>Front Yard (ft.):</u>	>30	1 (fence)	30 min.
<u>Left Yard (ft.):</u>	20	20	10 min.
<u>Right Yard (ft.):</u>	4.5	4.5'	10 min.
<u>Rear Yard (ft.):</u>	56	50	30 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%)</u>	17.8	18.4	20 max.
<u>Open Space Coverage (%)</u>	67.5	66	40 min.
<u>Parking</u>	2+	2+	2
<u>Estimated Age of Structure:</u>	1890	Variance request(s) shown in red.	

Other Permits/Approvals Required

None.

Neighborhood Context



November 15, 2022 Meeting

Previous Board of Adjustment Actions

July 27, 2021 – The ZBOA considered your application to add a rear addition and vertical expansion of the garage which requires the following: 1) A Variance from Section 10.521 to allow a 4.5' right side yard where 10' 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. The Board granted your request to **postpone** to the August meeting.

August 17, 2021 – The Board voted to **grant** of the application as presented and advertised.

Planning Department Comments

The applicant is requesting an after the fact variance for a 6 foot tall fence located in the front yard where only a 4 foot fence is permitted. Per Section 10.515.13 below, a fence taller than 4 feet must meet the front yard requirements, which in this district is 30 feet.

10.515.13 Fences not over 4 feet in height shall be exempt from **front yard** requirements, and fences not over 6 feet in height shall be exempt from side and **rear yard** requirements.

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.

10.235 Certain Representations Deemed Conditions

Representations made at public hearings or materials submitted to the Board by an applicant for a special exception or variance concerning features of proposed buildings, structures, parking or uses which are subject to regulations pursuant to Subsection 10.232 or 10.233 shall be deemed conditions upon such special exception or variance.

BY: VIEWPOINT & HAND DELIVERY

October 24, 2022

City of Portsmouth
Attn: Peter Stith, Planner
Zoning Board of Adjustment
1 Junkins Avenue
Portsmouth, NH 03801

**RE: Variance Application of Sara Sommer Kaufman, Trustee, Sara Sommer Kaufman
Revocable Trust
546 Sagamore Avenue, Tax Map 222, Lot 10**

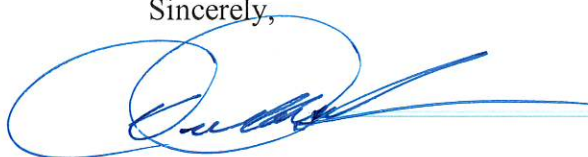
Dear Peter,

Our Office represents Sara Kaufman, of the property located at 546 Sagamore Avenue. Enclosed for submission to the ZBA for its November meeting, please find the following materials relative to this property:

- 1) Landowner Letter of Authorization;
- 2) Narrative to Variance Application;
- 3) Site Plan;
- 6) Photographs of the Property.

A copy of the application submission is delivered to the City before Wednesday's submission deadline. Should you have any questions or concerns regarding the enclosed application materials, do not hesitate to contact me at your convenience.

Sincerely,



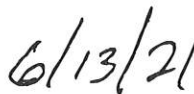
Derek R. Durbin, Esq.

LETTER OF AUTHORIZATION

Sara Sommer Kaufman, Trustee of the Sara Sommer Kaufman Revocable Trust, the owner of the property located at 546 Sagamore Avenue, Portsmouth, NH 03801, shown on Tax Map 222 as Lot 10 (the "Property"), hereby authorizes Durbin Law Offices PLLC to act as his agent and representative in connection with our application to the City of Portsmouth Zoning Board of Adjustment. Said Letter of Authorization shall be valid until expressly revoked in writing.



Printed Name: Sara Sommer Kaufman



Date

**CITY OF PORTSMOUTH
ZONING BOARD OF ADJUSTMENT
APPLICATION NARRATIVE**

**Sara Sommer Kaufman, Trustee of
the Sara Sommer Kaufman Revocable Trust**
(Owner/Applicant)
Tax Map 222, Lot 10
546 Sagamore Avenue
Portsmouth, NH 03801

INTRODUCTORY STATEMENT

The Property

Sara Sommer Kaufman (the “Applicant”) is the owner of property located at 546 Sagamore Avenue, identified on Portsmouth Tax Map 222, as Lot 10 (the “Property”). The Property contains a single-family home with attached garage and is located within Portsmouth’s Single Family Residence B (“SRB”) Zoning District. The Applicant purchased the Property in 2016.

In July 2020, the Applicant hired Brentwood Fence Company to install a fence along a portion of the western boundary of the Property behind an existing stone wall along Sagamore Avenue. The fence was installed by the Applicant to provide some privacy screening and to help prevent trash and other debris from Sagamore Avenue and other properties from accumulating on the Property. It was not known at the time of its installation, that the fence required a variance from the front yard setback requirement set forth in Section 10.521 of the Portsmouth Zoning Ordinance due to its height. Per Section 10.515.13, “[f]ences not over 4 feet in height shall be exempt from **front yard** requirements, and fences not over 6 feet in height shall be exempt from side and **rear yard** requirements.” The fence is believed to be approximately 6’ in height.

The Applicant made an honest error when she had the fence installed. This is evidenced by the fact that the error was not picked up on by the survey team or other professionals assisting the Applicant over the past two years. The City Inspections picked upon this error recently, which the Applicant now seeks to correct.

Summary of Zoning Relief

The Applicant seeks a variance from Section 10.521 to allow a front yard setback of 1.0’ (+/-) where 30’ is the minimum required.

VARIANCE CRITERIA

Granting the variances will not be contrary to the public interest and will observe the spirit of the Ordinance.

“There are two methods of ascertaining whether granting a variance would violate an ordinance’s basic zoning objectives: (1) examining whether granting the variance would alter the essential character of the neighborhood or, in the alternative; (2) examining whether granting the variance would threaten the public health, safety, or welfare.” *Harborside Assoc v. Parade Residence Hotel*, 162 N.H. 508, 514 (2011).

The fence serves an important purpose for the Applicant. It provides privacy screening for the Applicant’s home from Sagamore Avenue and protects her property from accumulating debris. Sagamore Avenue is a heavily traveled thruway that connects the southern section of Portsmouth and the Town of Rye to the City’s downtown. The Applicant’s home is highly visible from Sagamore Avenue, hence the Applicant’s desire to provide for some privacy screening. Because the Property does have 75’ of frontage on Sagamore Avenue, it is also susceptible to trash and other debris blowing into it from the street and other properties. Once scattered throughout the Property, the debris becomes challenging to manage.

By applying the setback provisions of Section 10.521 of the Ordinance to fences, the City is able to better prevent boundary-related disputes which are not uncommon in densely populated areas. The setback provisions also help the City to control “spite fences”, which are prohibited by statute in New Hampshire.

In the present case, it is clear that the Applicant’s only intentions behind the installation of the fence are to have better privacy screening and protection for her property. The same concerns that might be applicable to a person’s side yard in a more densely settled neighborhood in Portsmouth are not present with respect to the front yard of the Applicant’s property. Therefore, the public purposes of the Ordinance are preserved by granting the variance sought by the Applicant. It is also relevant to note that the fence does not negatively impact the site lines of the Property. The fence does not inhibit the ability of vehicles to safely turn into or out of the Property from Sagamore Avenue.

Granting the setback relief sought by the Applicant will not alter the essential character of the neighborhood. The nearest abutter to the front of the Property is Beechstone, which is a large apartment complex. The light, air and space of abutting properties is not negatively impacted by the fence. The building on the Beechstone property are a considerable distance away and are situated downgrade from the Applicant’s home. Fences of a similar nature are not uncommon in Portsmouth.

Substantial justice will be done by granting the variance relief.

There would be no gain realized by the general public if the setback variance were denied. Granting the variance will enable the Applicant to better protect her property for the reasons described above. In the present instance, the loss that the Applicant would suffer by denying the variance outweighs any perceived gain to the public.

The values of surrounding properties will not be diminished by granting the variance relief.

The fence is made of wood and is tastefully designed and is in keeping with the character of other fences in the area. It does not impose upon surrounding properties. Therefore, it is fair and just for the Board to conclude that it would not diminish surrounding property values.

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

The Property has special conditions that distinguish it from surrounding properties such that there is no fair and substantial relationship between the general purposes of the front yard setback requirement and its application in the present case. The Property slopes uphill from front to back. The home is situated a considerable distance back from Sagamore Avenue. To provide privacy screening, a fence taller than what is allowed by the Ordinance is needed along the front boundary. A shorter fence would provide very little, if any, privacy screening. The fence itself is limited to just the southwesterly portion of the front boundary, thus preserving the site lines of the Property. The front yard setback requirement is intended to prevent against "spite fences" and resulting boundary disputes. As outlined above, those concerns are not present with the location of this fence given the fact that the only impacted abutter, the Beechstone Apartments, is a considerable distance away, across Sagamore Avenue. The use of the Property is also reasonable. The use of the Property will remain the same, which is consistent with zoning.

CONCLUSION

In conclusion, the Applicant has demonstrated that she has met the five (5) criteria for granting the variance and respectfully requests that the Board approve her application.

Respectfully Submitted,

Dated: October 24, 2022

Sara Sommer Kaufman, Trustee
Sara Sommer Kaufman Revocable Trust

A handwritten signature in blue ink, appearing to read 'Derek R. Durbin', is written over a large, loopy blue oval that serves as a signature line or stamp.

By: Derek R. Durbin, Esq.
DURBIN LAW OFFICES PLLC
144 Washington Street
Portsmouth, NH 03801
(603)-287-4764
derek@durbinlawoffices.com

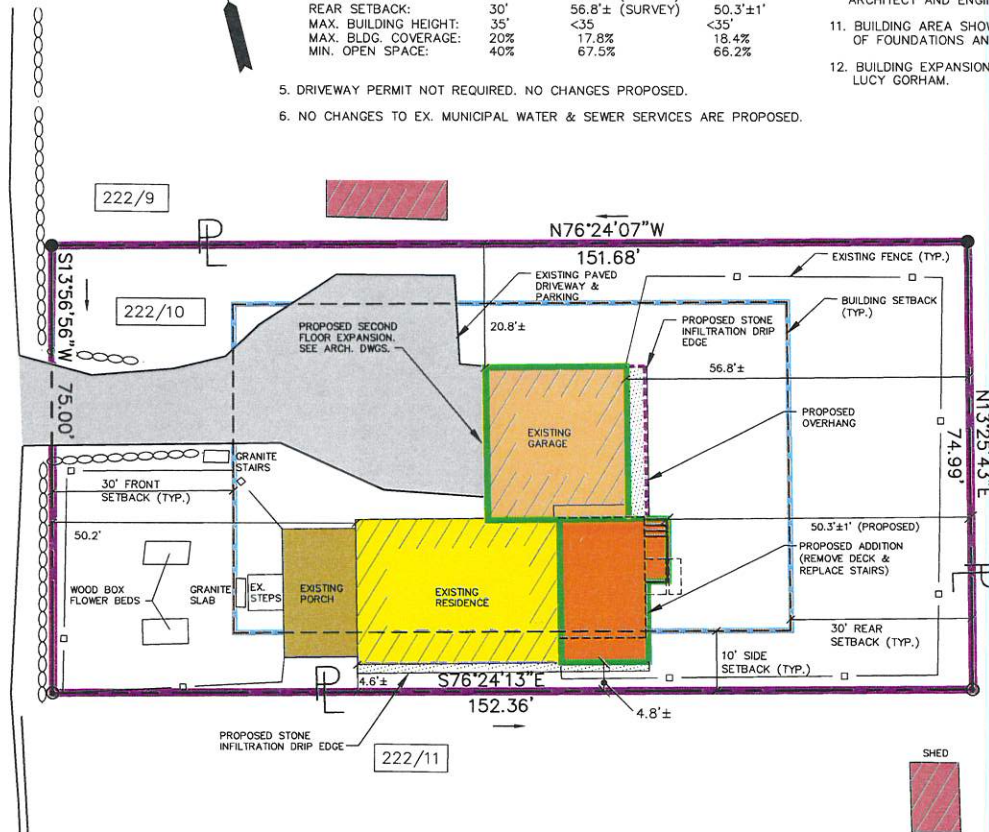
ABUTTERS LIST		
MAP-LOT	OWNER OF RECORD	DEED REF.
222-5-1	JESSICA FAE & RICHARD SNELL HAYES II 40 WALKER BUNGALOW RD, PORTSMOUTH, NH 03801	6007/1787
222-9	ELIZABETH ANN CUMMINGS & JAMES RALPH LEE 520 SAGAMORE AVE., PORTSMOUTH, NH 03801	5447/1489
222-11	F. MOUFLOUZE, T. ALEX, P. CAMERON, TRUSTEES FRANCES E. MOUFLOUZE REV. TRUST OF 2015 550 SAGAMORE AVENUE, PORTSMOUTH, NH 03801	5660/2227
222-21	SAGAMORE COURT LTD. PARTNERSHIP c/o FOREST PROPERTIES MANAGEMENT, INC. 625 MOUNT AUBURN ST. SUITE 210, CAMBRIDGE, MA 02138	3199/2011

SITE NOTES

- DESIGN INTENT - THIS PLAN IS INTENDED TO DEPICT PROPOSED RESIDENCE IMPROVEMENTS.
- APPROXIMATE LOT AREA: 11,401 S.F.± (0.26 AC.±)
- ZONE: SINGLE RESIDENCE B (SRB)
- DIMENSIONAL REQUIREMENTS:


	REQUIRED	EXISTING	W/ADDITION
MIN. LOT AREA:	15,000 SF	11,401 SF	11,401 SF
MIN. STREET FRONTAGE:	100'	75'	75'
MIN. LOT DEPTH:	100'	151'±	151'±
FRONT SETBACK:	30'	50.2'± (SURVEY)	50.2'±
SIDE SETBACK:	10'	4.6'± (SURVEY)	4.8'±
REAR SETBACK:	30'	56.8'± (SURVEY)	50.3'±1'
MAX. BUILDING HEIGHT:	35'	<35'	<35'
MAX. BLDG. COVERAGE:	20%	17.8%	18.4%
MIN. OPEN SPACE:	40%	67.5%	66.2%
- DRIVEWAY PERMIT NOT REQUIRED. NO CHANGES PROPOSED.
- NO CHANGES TO EX. MUNICIPAL WATER & SEWER SERVICES ARE PROPOSED.
- THE FOLLOWING VARIANCE FROM THE PORTSMOUTH ZONING ORDINANCE IS REQUESTED:
- SECTION 10.521 - TO ALLOW THE PROPOSED STRUCTURE TO BE 4.8- FEET FROM THE SIDE LOT LINE.
- ALL BONDS AND FEES SHALL BE PAID/POSTED PRIOR TO INITIATING CONSTRUCTION.
- THE CONTRACTOR SHALL VERIFY ALL BENCHMARKS AND TOPOGRAPHY IN THE FIELD PRIOR TO CONSTRUCTION.
- THE CONTRACTOR SHALL VERIFY ALL BUILDING DIMENSIONS WITH THE ARCHITECTURAL AND STRUCTURAL PLANS PRIOR TO CONSTRUCTION. ALL DISCREPANCIES SHALL BE IMMEDIATELY BROUGHT TO THE ATTENTION OF THE ARCHITECT AND ENGINEER FOR RESOLUTION.
- BUILDING AREA SHOWN IS BASED ON FOOTPRINT MEASURED TO THE EDGE OF FOUNDATIONS AND/OR SLABS. ACTUAL INTERIOR SPACE WILL DIFFER.
- BUILDING EXPANSION AREA PER PRELIMINARY ARCHITECTURAL DRAWINGS BY LUCY GORHAM.

SAGAMORE AVENUE (NH ROUTE 1A)



PLAN REFERENCE

- "BOUNDARY PLAN", BY ECKMAN ENGINEERING, LLC DATED NOVEMBER 7, 2020. CAD FILE OBTAINED FROM SURVEYOR AND USED WITH PERMISSION.

ENGINEER:	
	
133 Court Street Portsmouth, NH 03801 (603) 435-2355 www.altus-eng.com	
ISSUED FOR:	
B.O.A. APPROVAL	
ISSUE DATE:	
JUNE 14, 2021	
REVISIONS	
NO. DESCRIPTION	BY DATE
0 DISCUSSION	EDW 06/14/21
DRAWN BY: RLH	
APPROVED BY: EDW	
DRAWING FILE: 5216.DWG	
SCALE:	
11" x 17" - 1" = 20'	
OWNER/APPLICANT:	
SARA SOMMER KAUFMAN, TRUSTEE	
SARA SOMMER KAUFMAN REVOCABLE TRUST	
546 SAGAMORE AVENUE	
PORTSMOUTH, N.H. 03801	
ASSESSOR'S PARCEL 222-10	
DEED REF: 5710/1787	
PROJECT:	
SINGLE FAMILY RESIDENCE ADDITION WITH LIVING SPACE ABOVE GARAGE	
TITLE:	
BOARD OF ADJUSTMENT SITE PLAN	
SHEET NUMBER:	
1 OF 1	

P5216







6.

The request of **Aviation Avenue Group, LLC (Applicant)** and **Pease Development Authority (Owner)**, for property located at **100 New Hampshire Avenue (80 Rochester Avenue)** whereas relief is needed for the construction of an advanced manufacturing facility which requires the following: 1) A Variance from Part 304.03(c) to allow a 51 foot front yard where 70 feet is required. Said property is located on Assessor Map 308 Lot 1 and lies within the Pease Industrial (PI) District.

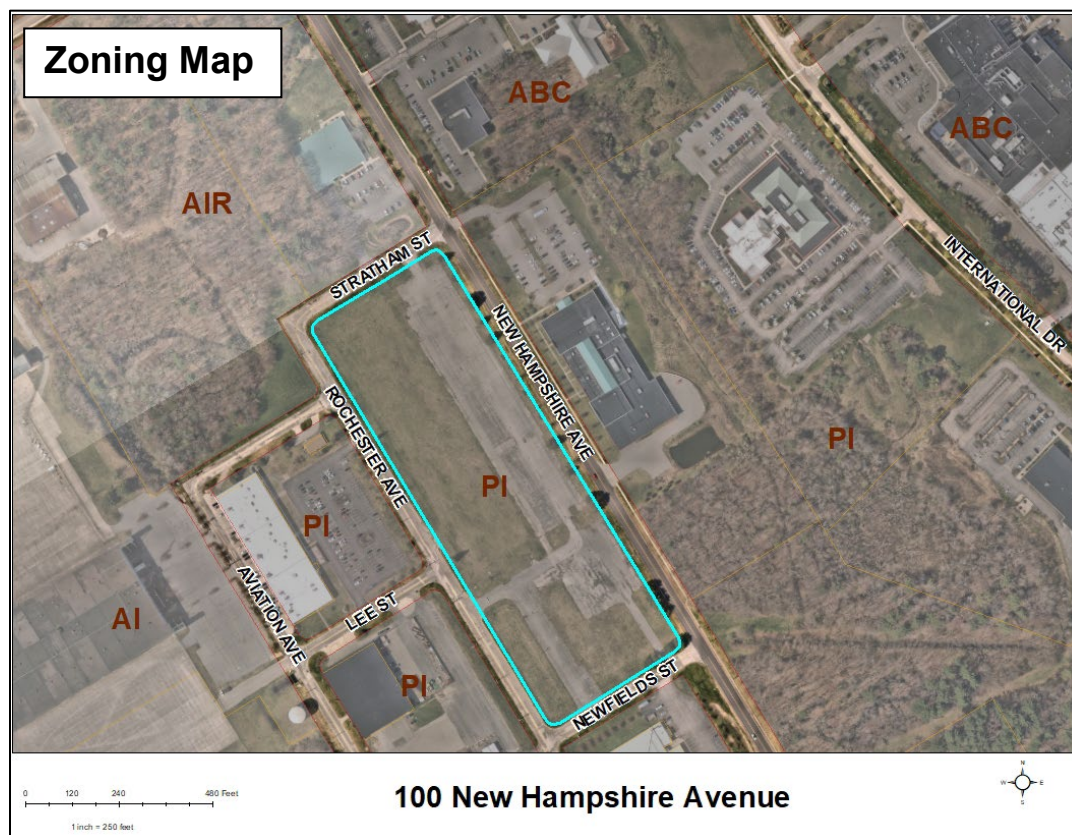
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Vacant	New construction	Primarily Industrial
<u>Lot area (acres):</u>	11.4	11.4	10 acres min.
<u>Street Frontage (ft.):</u>	1,200	1,200	200 min.
<u>Primary Front Yard (ft.):</u>	NA	51	70 min.
<u>Left Yard (ft.):</u>	NA	202	50 min.
<u>Right Yard (ft.):</u>	NA	330+	50 min.
<u>Rear Yard (ft.):</u>	NA	50	50 min.
<u>Height (ft.):</u>	NA	36	Not to exceed FAA criteria
<u>Open Space Coverage (%):</u>	>25	35	25 min.
<u>Parking:</u>	NA	147	147
<u>Estimated Age of Structure:</u>	NA	Variance request(s) shown in red.	

Other Permits/Approvals Required

Pease Development Authority
TAC/Planning Board – Site Review

Neighborhood Context



Previous Board of Adjustment Actions

No previous BOA history found.

Planning Department Comments

The applicant is seeking to construct a new building to house an advance manufacturing facility. This parcel is identified as 80 Rochester in the City's tax records, but the applicant is in the process of changing the address to 100 New Hampshire Avenue, where the principal frontage will be located and is where relief is being sought for the front yard.

The PDA has its own land use and zoning regulations and is exempt from the City's regulations. For certain parcels in Pease, variance requests are sent to the City for a recommendation from the BOA. A motion to approve or deny will be a recommendation and the recommendation will become an approval by the PDA Board after 14 days unless the applicant or PDA Board member requests a hearing (see Part 317.03(f) below).

The Chapter in the Pease Land Use Controls regarding the process for a variance is below. Part 317.03(c) states the BOA will use apply the standards in Part 317.01(c) in its review of the application. These standards are attached hereto under Review Criteria.

(a) For parcels located within the Industrial Zone, Business and Commercial Zone, Natural Resource Protection Zone or portions of the Airport Industrial Zone not acquired by the Pease Development Authority pursuant to Section 13(g) of the Surplus Property Act, requests for a variance from the provisions of this zoning rule shall be referred to the zoning board of adjustment for the municipality in which the parcel is situated for administration in accordance with the provisions of this section.

(b) Applications for a variance for parcels referred to in Subsection (a) shall be filed with the Pease Development Authority Building Inspector on forms prescribed by the Board and referred to the applicable zoning board of adjustment.

(c) The zoning board of adjustment to which the application for a variance has been referred shall, in its review of the request, apply the substantive provisions of this Chapter.

(d) Recommendations to the Board regarding requests for a zoning variance shall be made by the applicable zoning board of adjustment within sixty (60) days of referral. Notice of the recommendation shall be provided to the applicant and the Board within 48 hours of the decision.

(e) The recommendation of the applicable zoning board of adjustment shall be forwarded to the Board along with a written report detailing the reasons for any recommendation for denial or approval with conditions.

(f) A recommendation of the applicable zoning board of adjustment shall be deemed a final decision of the Board upon the expiration of fourteen (14) days from the date of notice, unless the applicant/developer or a member of the Board requests a hearing by the Board.

(g) Where a hearing has been requested, the Board shall conduct a hearing and render a final decision on the variance request within thirty (30) days.

(h) At the discretion of the Board the time period for rendering a final decision may be extended an additional thirty (30) days, or such additional time as may be consented to by the applicant.

(i) The Board may approve, conditionally approve or deny the application notwithstanding the recommendation of the applicable zoning board of adjustment. In the case of denial of any application by the Board or where the Board elects not to follow the recommendation of the applicable zoning board of adjustment, the ground(s) for such action shall be stated in writing.

Review Criteria

This application must meet the criteria for a **variance** of Part 317.01(c) of the Pease Land Use Controls below.

PART 317. VARIANCES FROM ZONING PROVISIONS

317.01 General Provisions

- (a) Requests for a variance from the provisions of this zoning rule shall be filed with the Pease Development Authority Building Inspector on forms prescribed by the Board.
- (b) Applications for zoning variance approval shall set forth the specific provision of the rule or regulation involved and reasons why a variance should be granted.
- (c) A variance shall not be approved or recommended for approval unless it is in harmony with the general purpose and intent of these regulations and meets the following criteria:
 - (1) No adverse effect or diminution in values of surrounding properties would be suffered.
 - (2) Granting the variance would be of benefit to the public interest.
 - (3) Denial of the variance would result in unnecessary hardship to the person seeking it.
 - (4) Granting the variance would be substantial justice.
 - (5) The proposed use would not be contrary to the spirit of this zoning rule.
- (d) Reasonable conditions necessary to meet one or more of the standards in subsection (c) above may be attached to approval of a variance.

APPLICATION OF AVIATION AVENUE GROUP, LLC

100 New Hampshire Avenue, Tax Map 308, Lot 1

APPLICANT'S NARRATIVE

I. THE PROPERTY.

The Applicant Aviation Avenue Group, LLC proposes to build a manufacturing facility at 100 New Hampshire Avenue located in the PDA Industrial Zone.

The property is currently a vacant 11.4-acre parcel that will be redeveloped for an "Advanced Manufacturing" facility where intensive unskilled labor manufacturing has been substituted by robotized assembly requiring few, but more highly skilled and highly compensated employees. This project has been before the Pease Development Authority Board on October 20th where it received Conceptual Approval.

II. RELIEF REQUESTED.

The Applicant is seeking a variance from the provisions of Article 304.03(c) of the Pease Development Authority Zoning Ordinance for a front yard setback of 51 feet, where 70 feet is required.

The proposal meets all other requirements of the zoning ordinance.

The need for the variance is driven by the dimensional requirements of the Advanced Manufacturing building and the fact that a municipal sewer main and stormwater management system, servicing the surrounding businesses and roadways, are located in the rear of the site. In addition to avoiding the municipal infrastructure, there are wetland buffers across Stratham Avenue that the project is trying to avoid. The site layout and proposed setback relief are also consistent with other developed parcels in the vicinity, including the building located across the street at 111 New Hampshire Avenue.

III. ARGUMENT.

It is the Applicant's position that the five criteria necessary for the granting of the requested variances as set forth in Article 317.01(c) of the PDA Zoning Ordinance are met by the within Application.

1. No adverse effect or diminution in values of surrounding properties would be suffered.

Granting the requested variance would not in any way diminish the value of surrounding properties. All surrounding properties are Industrial/Commercial in

nature and have similar setbacks to what the applicant is proposing, which in no way effect surrounding property values.

2. Granting the variance would be of benefit to the public interest.

Granting the requested variance would not substantially alter the characteristics of the neighborhood nor would granting the variance threaten public health, safety, or welfare. The Property sits in the Industrial Zone where manufacturing is permitted and consistent with other uses in this zone. Thus, granting the variance would not be contrary to the spirit and intent of the ordinance and it would be a benefit to the public interest.

3. Denial of the variance will result in unnecessary hardship to the person seeking it.

Owing to special conditions of this property that distinguish it from other properties in the area, no fair and substantial relationship exists between the general public purposes of the ordinance and the specific application of that provision to this property.

The Special conditions of the property are the fact that the property is burdened with wetlands that could be compromised if the building were pushed back further to accommodate the setbacks. Also, the Right of Way is 80 feet wide, which is approximately 20 feet wider than a typical Right of Way. The combination of these two factors is unique and creates special conditions from other properties in the area. Because of these special conditions, the property cannot be reasonably used in strict conformance with the ordinance and a variance is therefore necessary to enable the property to have a reasonable use.

4. Granting the variance would be substantial justice.

Granting the requested variance will result in substantial justice being done. The hardship upon the Applicant were the variance to be denied is not outweighed by some benefit to the general public in denying the requested variance.

5. The proposed use would not be contrary to the spirit of this zoning rule.

The Property sits in the Industrial Zone where manufacturing is permitted and consistent with other uses in this zone. Thus, granting the variance would not be contrary to the spirit and intent of the ordinance.

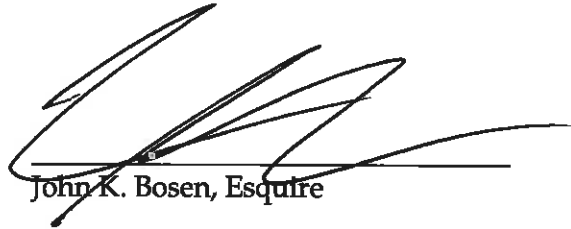
IV. CONCLUSION.

For the foregoing reasons, the applicant respectfully requests the Board recommend the variance be approved as requested and advertised.

Respectfully submitted,

Dated: October 25, 2022

By:



John K. Bosen, Esquire

MEMORANDUM

To: Paul E. Brean, Executive Director *PEB*
From: Michael R. Mates, PE, Engineering Manager *MRM*
Date: October 13, 2022
Subject: 100 New Hampshire Avenue Concept Approval

In January of this year, the PDA Board of Directors authorized entry into an Option Agreement with Aviation Avenue Group, LLC, regarding potential development at 14 Aviation Avenue, 7 Lee Street, and 100 New Hampshire Ave. Consistent with the intent of the agreement, staff recently received concept plans from the developer regarding a development on 100 New Hampshire Avenue. The developer is proposing to create a parcel of approximately 11.4 acres and construct a 209,750 square foot building as shown on the attached plans. An end user has not been identified at this juncture as explained by the developer in the attached correspondence. The intended uses include 18,144 square feet of office space and 191,606 square feet of advanced manufacturing space, both of which are allowed uses in the Industrial Zone.

The site will be accessed from both New Hampshire Avenue and Rochester Avenue. New Hampshire Avenue will serve as the main entrance for general passenger vehicles and Rochester Avenue will be used for access to the loading areas. Sidewalk access has been provided along the entire frontage on New Hampshire Avenue as well as along Stratham Street with two connections to the building at the north and south ends. In addition, site improvements include six loading docks at both the north and south ends of the facility, 147 parking stalls, utilities, lighting, landscaping, and other appurtenances. As part of the site design, stormwater management and treatment measures will be provided by filtration best management practices in accordance with NHDES and PDA rules and regulations. A Traffic Impact Assessment (attached) was conducted by Tighe & Bond, Professional Engineers licensed in NH, who estimate that the development is expected to generate 149 passenger vehicle trips and 6 truck trips during the weekday, peak hour. This estimate is based on formulas and data presented in the Institute of Transportation Engineers (ITE) Handbook for historical manufacturing and office uses. The actual number of trips may differ once a specific end user is identified. If the Board grants conceptual approval for this development, PDA will engage VHB, our on call transportation engineer, to complete a third party peer review of the assessment.

There are no wetlands on the subject parcel so there will be no wetland or wetland buffer impacts associated with this proposal. Parking and open space requirements have been met.

One variance is requested to reduce the front yard setback from 70' to 51'±. According to the project memo submitted by the applicant and attached hereto, the most common layout for these types of advanced manufacturing buildings includes 50' x 50' bays and a building footprint with a 2 to 1 length to width ratio. It is for this reason the applicant is seeking relief from the front yard setback.

Staff has reviewed the proposal and we believe the use is appropriate for this site and the development can be constructed in conformance with PDA's Land Use Controls with the exception of the front yard setback. If received favorably by the PDA Board, Aviation Avenue Group, LLC will continue with design work and, with staff concurrence, submit plans for a variance, as well as subdivision and site review applications to the City of Portsmouth for consideration.

Representatives from Aviation Avenue Group, LLC will be at the October meeting to present the project and answer questions.

At the October PDA Board of Directors meeting, please ask the Board to provide concept approval for the proposed development at 100 New Hampshire Avenue.

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**PROPOSED ADVANCED
MANUFACTURING FACILITY
100 NEW HAMPSHIRE AVENUE
PORTSMOUTH, NEW HAMPSHIRE**

CONCEPTUAL SITE PLAN

<u>SITE DATA:</u>			<u>PARKING REQUIREMENTS:</u>		<u>REQUIRED</u>	<u>PROPOSED</u>
LOCATION: TAX MAP 308, LOT 1 80 ROCHESTER AVENUE PORTSMOUTH, NEW HAMPSHIRE			PARKING STALL LAYOUT: • STANDARD 90°		WIDTH: 8.5' MIN AREA: 160 SF MIN	9' x 18' (162 S
ZONING DISTRICT: INDUSTRIAL			DRIVE AISLE WIDTH: • 90° (2-WAY TRAFFIC)		24 FT	24 FT (MIN)
ALLOWED USE: INDUSTRIAL / WAREHOUSE						
<u>DIMENSIONAL REQUIREMENTS:</u>			<u>PARKING SPACE REQUIREMENTS:</u>			
MINIMUM LOT AREA:	<u>REQUIRED</u> 10 ACRES	<u>PROPOSED</u> ±11.4 ACRES	INDUSTRIAL: 2 / 3 EMPLOYEES (LARGEST SHIFT) + 1 / COMPANY-OWNED-VEHICLE = 161 EMPLOYEES x 2/3 EMPLOYEES) + 2 COMPANY-OWNED-VEHICLE =		110 SPACES	
MINIMUM STREET FRONTAGE:	200 FT	±1,200 FT				
MINIMUM SETBACKS:						
• FRONT:	70 FT	±51 FT ⁽¹⁾				
• SIDE:	50 FT	±202 FT				
• REAR:	50 FT	±50 FT ⁽²⁾				
MAXIMUM BUILDING HEIGHT:	PER FAA	36 FT	<u>OFFICE:</u> 1 / 2 EMPLOYEES = 73 EMPLOYEES x (1 / 2 EMPLOYEES) =		37 SPACES	
MINIMUM OPEN SPACE:	25%	±35%	TOTAL REQUIRED PARKING:		147 SPACES	147 SPACES ⁽¹⁾
			(1) - SIX (6) ADA SPACES PROVIDED			

