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.

June 22, 2022

AGENDA

I. APPROVAL OF MINUTES

A) Approval of the minutes of the meetings of April 26, 2022; May 17, 2022 & May 24, 2022.

II. OLD BUSINESS

- A. POSTPONED TO JULY The request of Francis X. Bruton, (Attorney for Appellants), for Appeal of Administrative decision that the merged lot at 1 Congress is not subject to the height allowances (2 stories, 4th short, 45 feet in height) pursuant to Map 10.5A21B and as permitted pursuant to Section 10.5A21.22(a) & (c) of the Zoning Ordinance. Said property is shown on Assessor Map 117 Lot 14 and lies within Character District 4 (CD-4), Character District 5 (CD-5) and the Historic District. POSTPONED TO JULY (LU-22-12)
- **B. POSTPONED TO JULY** The request of **One Market Square LLC (Owner)**, for the property located at **1 Congress Street** whereas relief is needed to construct a 3 story addition with a short 4th story and building height of 44'-11" which requires the following: 1) A Variance from Section 10.5A.43.31 and Map 10.5A21B to allow a 3-story addition with a short 4th and building height of 44'-11" where 2 stories (short 3rd) and 40' is the maximum allowed. Said property is shown on Assessor Map 117 Lot 14 and lies within Character District 4 (CD-4), Character District 5 (CD-5) and the Historic District. **POSTPONED TO JULY** (LU-22-12)
- C. POSTPONED TO JULY The request of Joel St. Jean and Mariele Chambers (Owners), for property located at 108 Burkitt Street whereas relief is needed to demolish existing garage and construct new 13' x 30' garage which requires the following: 1) A Variance from Section 10.573.20 to allow a 1 foot left side yard where 10 feet is required. 2) A Variance from Section 10.321 to allow a nonconforming

structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 159 Lot 30 and lies within the General Residence A (GRA) District. **POSTPONED TO JULY** (LU-22-89)

D. WITHDRAWN The request of 635 Sagamore Development LLC (Owner), for property located at 635 Sagamore Avenue whereas relief is needed to remove existing commercial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. Said property is shown on Assessor Map 222 Lot 19 and lies within the Single Residence A (SRA) District. WITHDRAWN (LU-22-57)

III. NEW BUSINESS

- A. The request of Michael Lucas (Owner), for property located at 45 Coffins Court whereas relief is needed to renovation of the existing structure including new dormers, second story bathroom over an existing one story addition and a new second story open porch which requires the following: 1) Variances from Section 10.521 to allow a) a 1' rear yard where 20' is required; b) a 0' right side yard where 10' is required; c) an 8' left side yard where 10' is required; d) a 3' front yard where 5' is required; and e) 57% building coverage where 35% is the maximum allowed. 2) A Variance from Section 10.321 to allow a nonconforming building or structure to be expanded, reconstructed, or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 135 Lot 55 and lies within the General Residence C (GRC) District. (LU-22-94)
- B. The request of Portsmouth Savings Bank/Bank of NH (Owner), for property located at 333 State Street whereas relief is needed to alter existing internally illuminated wall signs which require the following: 1) A Variance from Section 10.11261.30 to allow signs in the Historic District to be internally illuminated where only external illumination is allowed. 2) A Variance from Section 10.1144.63 to allow luminaires used for sign illumination to be higher than 25 feet where 25 feet is the maximum allowed. 3) A Variance from Section 10.1281 to allow a nonconforming sign to be altered, reconstructed, replaced or relocated without conforming to the Ordinance. Said property is located on Assessor Map 116 Lot 5 and lies within the Character District 4 (CD4), Historic and Downtown Overlay Districts (LU-22-73)
- C. The request of Michael J. Fregeau (Owner), for property located at 1474 Islington Street whereas relief is needed to construct an 8' x 12' shed which requires the following: 1) Variance from Section 10.573.10 to allow a) A 2' left side yard where 5' is required: and b) a 2' rear yard where 5' is required. 2) A Variance from Section 10.521 to allow 22% building coverage where 20% is the maximum allowed. Said property is located on

Assessor Map 233 Lot 107 and lies within the Single Residence B (SRB) District. (LU-22-109)

- **D.** The request of **Karen Butz Webb Revocable Living Trust (Owner)**, for property located at **910 Sagamore Avenue** whereas relief is needed to remove an existing 150 s.f. addition and construct a new 512 s.f. addition with deck and stairs which requires the following: 1) A Variance from Section 10.531 to allow a 20.5' side yard where 30' is required. 2) A Variance from Section 10.321 to allow a nonconforming use to be expanded. 3) 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 223 Lot 26A and lies within the Waterfront Business (WB) District. (LU-22-114)
- E. The request of Blus O'Leary Family Living Trust (Owner), for property located at 225 Wibird Street whereas relief is needed to construct a detached accessory dwelling unit which requires the following: 1) A Variance from Section 10.521 to allow a lot area per dwelling unit of 6,412 where 7,500 square feet is required for each dwelling. Said property is located on Assessor Map 133 Lot 54 and lies within the General Residence A (GRA) District. (LU-22-116)
- F. The request of WSS Lafayette Properties LLC (Owner), for property located at 1900 Lafayette Rd whereas relief is needed for ambulatory Surgical Center use which requires the following: 1) A Special Exception from Section 10.440, Use #6.40 to allow an Ambulatory Surgical Center where the use is permitted by Special Exception. Said property is located on Assessor Map 267 Lot 8 and lies within the Office Research (OR) District. (LU-22-117)
- **G.** The request of **Peter V. Ward (Owner)**, for property located at **15 Central Avenue** whereas relief is needed for vertical expansion of existing dwelling and garage which requires the following: 1) Variances from Section 10.521 to allow a) a 6' front yard where 30' is required; and b) a 4' side yard where 10' is required. 2) A Variance from Section 10.321 to allow a nonconforming building or structure to be expanded, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 209 Lot 4 and is located within the Single Residence B (SRB) District. (LU-22-123)
- H. The request of English and Hopkins LLC (Owner), for property located at 57 Sherburne Avenue whereas relief is needed to construct a new single-family dwelling which requires the following: 1) Variances from Section 10.521 to allow a) 34% building coverage where 25% is the maximum allowed; b) a 16' rear yard where 20' is required; and c) a 5.5' front yard where 15' is required. Said property is located on Assessor Map 113 Lot 22-1 and lies within the General Residence A (GRA) District. (LU-22-122)

- I. The request of Randi and Jeff Collins (Owners), for property located at 77 Meredith Way whereas relief is needed to subdivide one lot into two lots which requires the following: 1) A Variance from Section 10.521 to allow 73 feet of frontage for Lot A and 31 feet of frontage for Lot B where 100 feet is required for both. Said property is located on Assessor Map 162 Lot 16 and lies within the General Residence A (GRA) District. (LU-22-61)
- J. REQUEST TO POSTPONE The request of James William Woods and Anna Roeline Meinardi (Owners), for property located at 1 Walton Alley whereas relief is needed to construct a 1 story, 12' x 18' detached garage which requires the following: 1) Variances from Section 10.573.20 to allow a) a 1.5' side yard where 10' is required; and b) a 5' rear yard where 13'10" is required. Said property is located on Assessor Map 103 Lot 27 and lies within the General Residence B (GRB) and Historic Districts. REQUEST TO POSTPONE (LU-22-124)
- K. WITHDRAWN The request of Coventry Realty LLC (Owner), for property located at 111 State Street requesting an appeal of the administrative decision that variances are required from Section 10.521 for the proposed additions to provide code compliant egress or Variances from Section 10.521 to allow a) 93% building coverage where 90% is the maximum allowed; and b) 3.5% open space where 10% is the minimum 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 107 Lot 50 and lies within the Character District 4 (CD4), and the Historic and Downtown Overlay Districts. WITHDRAWN (LU-22-125)

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_-GmJDv_CRYCfhQM4-ZTFQg

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

7:00 P.M.

April 26, 2022

MEMBERS PRESENT:	Arthur Parrott, Chair; Jim Lee, Vice-Chair; David MacDonald; Beth Margeson; Thomas Rossi; Paul Mannle; Phyllis Eldridge
MEMBERS EXCUSED:	None.
ALSO PRESENT:	Peter Stith, Planning Department

Chairman Parrott called the meeting to order at 7:00 p.m.

Items F and G were taken out of order due to postponement requests.

Mr. MacDonald moved to **grant** *the request for postponement for Item F, 77 Meredith Way, to a future date. Vice-Chair Lee seconded.*

Mr. MacDonald said it was a reasonable request to postpone, and Vice-Chair Lee concurred.

The motion passed by unanimous vote, 7-0.

Mr. Rossi moved to **grant** the request for postponement for Item G, 64 Vaughan Mall LLC, to a future date, seconded by Ms. Eldridge.

Mr. Rossi said it was apparent that the property owner wasn't ready to address some questions and issues, so it was reasonable to postpone the application. Ms. Eldridge concurred.

The motion passed by unanimous vote, 7-0.

I. NEW BUSINESS

A. The request of Amanda J. Telford Revocable Trust (Owner), for property located at 322 Lincoln Avenue whereas relief is needed to amend previously approved demolition of existing carriage house and construction of new accessory structure which requires the following: 1) Variances from Section 10.521 to allow a) 35% building coverage where 25% is the maximum allowed; b) a 3'6" side yard where 10' is required; and c) a 13' rear yard where 20' 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 130 Lot 26 and lies within the General Residence A (GRA) District. (LU-22-59)

SPEAKING TO THE PETITION

The applicant Amanda Telford was present to review the petition. She said it was a resubmission of the previously-approved variances from October 2020 due to a design change and that the proposed building structure was now half the width. She referenced the previously-submitted criteria and noted that the carriage house was about to fall down and the values of surrounding property values would likely be increased. She said literal enforcement of the ordinance would result in an unnecessary hardship due to the special condition of the property being very narrow.

Mr. Rossi referred to Exhibit B, the signature page with notes from abutters who supported the project dated September 2020, and asked if any neighbors had moved since then. The applicant said the neighbors were the same as before and still supported the project. Ms. Margeson said the design was lovely but the porch seemed a bit weird on that kind of structure. She asked if there was any intent to make it an Accessory Dwelling Unit (ADU) at a later time. The applicant said there was no intent to do so. Ms. Margeson noted that if the Board granted the variances, they would grant them based in part on the plans the applicant submitted to them.

Chairman Parrott opened the public hearing.

SPEAKING IN FAVOR OF OR IN OPPOSITION TO THE PETITION or SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke, and Chairman Parrott closed the public hearing.

DECISION OF THE BOARD

Mr. Rossi moved to **grant** *the variances for the application as presented, seconded by Vice-Chair Lee.*

Mr. Rossi said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance because the project would maintain the neighborhood's status quo and would be in keeping with the characteristics of the rest of the surrounding properties. He said substantial justice would be done because there would be no public harm that would outweigh the benefit of the applicant. He said granting the variances would not diminish the values of surrounding properties, noting that the existing structure's revitalization would improve the property's values and have a positive effect on abutting properties. He said literal enforcement of the ordinance would result in unnecessary hardship. He said the unusual circumstance of the petition was that the requested variances were already approved and it was just a resubmission with a slight modification in the design, and it would be an undue hardship to change the Board's approval of the variance after all the time and effort invested by the property

owner. Vice-Chair Lee concurred and had nothing to add. Ms. Margeson said the right yard setback would be more in conformity with the ordinance and the building coverage was quite a bit over what was allowed but was just a slight increase in building coverage

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

B. The request of William S. and Karen C. Bartlett (Owners), for property located at 607 Colonial Drive whereas relief is needed to construct a 24' x 16' rear addition and 10'x 12' deck which requires the following: 1) A Variance from Section 10.521 to allow 25% building coverage where 20% is the maximum allowed. Said property is shown on Assessor Map 260 Lot 26 and lies within the Single Residence B (SRB) District. (LU-22-60)

SPEAKING TO THE PETITION

Amy Bartlett Brownrigg, the owner's daughter, was present on behalf of the owner. The architect Evan Mullen was also present. Ms. Bartlett-Brownrigg said the home was a modest single-family Cape Cod that needed substantial renovations. She said the proposal was to update the kitchen and build an addition for a laundry room and master bath. She reviewed the criteria and said the modest addition would be in the rear and there would be no change to the front of the building. She said substantial justice would be done because the addition would be similar to others in the neighborhood and would improve surrounding property values. She said the home was desired.

Mr. Rossi said the backyard sloped toward the fence and there were a lot of surrounding properties behind the fence, and he asked if the applicant had considered that increasing the coverage would have an impact on drainage and water flow to the neighborhood. Mr. Mullen said a gutter system would be installed as part of the addition to manage any stormwater runoff.

Chairman Parrott opened the public hearing.

SPEAKING IN FAVOR OF OR IN OPPOSITION TO THE PETITION or SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke, and Chairman Parrott closed the public hearing.

DECISION OF THE BOARD

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

Mr. Mannle said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He said substantial justice would be done and the values of

surrounding properties would not be diminished. He said literal enforcement of the ordinance would be an unnecessary hardship. For those reasons, he said he would support the project. Ms. Margeson concurred and said the property, in relation to the surrounding ones, was definitely narrower, which was a special condition that distinguished it from the others.

The motion passed by unanimous vote, 7-0.

C. The request of HCA Health SVC of NH (Owner), for property located at 333 Borthwick Avenue whereas relief is needed for building an addition on the existing hospital which requires the following: 1) A Variance from Section 10.531 to allow a 40' front yard where 50' is required. Said property is shown on Assessor Map 240 Lot 2 and lies within the Office Research (OR) District. (LU-22-35)

SPEAKING TO THE PETITION

Chris Akers was present on behalf of the applicant and said he was a member of the hospital and architectural team. He said the proposed addition would house a radiation/oncology department in the hospital's southeast corner lot and would provide a new service for the hospital. He said the proposed location was due to conditions of a 300-ft electrical easement that ran across the property, and the variance request to go from 50 feet to 40 feet was necessary to meet code. He reviewed the criteria and said they would be met, noting that the addition would provide a new service for the community and that it would not diminish the values of surrounding properties because there were medical buildings across the street, along with an insurance agency. He said the hardship was the power line easement on the entire front of the property.

Mr. MacDonald asked if there was a plan to address the fact that parts of the property ran fairly close to the wetlands. Mr. Akers said they submitted a plan for a Conditional Use Permit (CUP) and would go before the Planning Board and the Technical Advisory Committee (TAC). Chairman Parrott asked if the proposed facility involved the use of large sources, such as cobalt-60. Mr. Akers agreed. Chairman Parrott asked if the nature of the work would include a protocol for periodic surveys outside the perimeter of the building to ensure that there was no leaking radiation. Mr. Akers said they worked with a physicist to make sure that the walls were properly designed and that there would be a monitoring and recordkeeping program.

Chairman Parrott opened the public hearing.

SPEAKING IN FAVOR OF OR IN OPPOSITION TO THE PETITION or SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke, and Chairman Parrott closed the public hearing.

DECISION OF THE BOARD

Vice-Chair Lee moved to grant the variance for the application as presented, seconded by Ms. Margeson.

Vice-Chair Lee said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance. He said it would not conflict with any explicit or implicit purpose of the ordinance and would not alter the essential characteristics of the neighborhood or threaten the public's health, safety, or welfare. He said the values of surrounding properties would not be diminished, noting that it was an exclusive commercial/office/manufacturing area and there were no residences. He said literal enforcement of the ordinance's provisions would result in an unnecessary hardship due to the special conditions of the 300-ft power line easement that went right through the corner of the property and limited the places to put an addition.

Ms. Margeson concurred and had nothing to add.

The motion passed by unanimous vote, 7-0.

D. The request of **Mark Griffin (Owner**), for property located at **728 State Street, Unit 1** whereas relief is needed to demolish existing garage and construct a new garage which requires the following: 1) Variances from Section 10.521 to allow 61.5% building coverage where 35% is the maximum allowed. 2) Variances from Section 10.573.20 to allow a) a 1.5' side yard where 10' is required; b) a 0' front yard (Chatham St.) where 5' is required; and c) a 0.5' front yard (Winter St.) where 5' is required. 3) A Variance from Section 10.571 to allow an accessory structure in the front yard and closer to the street than the principal structure. 4) A Variance from Section 10.321 to allow a nonconforming structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 137 Lot 10-1 and lies within the General Residence C (GRC) District. (LU-22-63)

SPEAKING TO THE PETITION

Attorney Tim Phoenix was present on behalf of the applicant. He reviewed the petition and said the existing garage would be replaced with a new one in the same footprint but would be a bit smaller, with a sloped roof and a dormer. He reviewed the criteria and said they would be met, noting that the new garage would have less volume and would be more code-compliant. He said the hardship was due to the lot's special conditions of being very small, having a very small frontage, and having two front setback requirements and a side street one.

Mr. MacDonald said he looked at the property and agreed that it would benefit from a replacement garage. He asked who would park in the garage spaces. Attorney Phoenix said the applicant would because it was his unit and his garage, and that he would use all three bays. He said the plans indicated a workshop and some storage as well. Mr. MacDonald said there were six parking spaces on the adjoining property and asked how all those factors would play into the neighborhood's parking situation and whether there would be increased congestion or other

issues that might arise from changing the garage. Attorney Phoenix said the number of condo units and parking spaces would not change and the parking would remain the same.

Chairman Parrott opened the public hearing.

SPEAKING IN FAVOR OF OR IN OPPOSITION TO THE PETITION or SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke, and Chairman Parrott closed the public hearing.

DECISION OF THE BOARD

Ms. Margeson moved to **grant** *the variances for the petition as presented and advertised, and Mr. Mannle seconded.*

Ms. Margeson said that at first glance it seemed like a lot of relief asked for, but it was actually for a replacement in kind of a structure. She said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. She said she didn't believe that there would be a marked degree of conflict with the ordinance that would violate its basic zoning objectives or that the project would alter the essential characteristics of the neighborhood or affect the public's health, safety, or welfare. She said the zoning district was one that allowed for multi-family dwellings, moderate densities, and accessory structures, and the proposed project was in keeping with that. She said granting the variances would not diminish the values of surrounding properties because the existing deteriorated garage would be replaced by an improved structure that would be a benefit to the surrounding properties. She said special conditions distinguished the property from others in the area, including that the lot was very tight with frontages on three streets, so there was no fair and substantial relationship between the general public purpose of the ordinance and its specific application in this instance. She said the use was reasonable one because it's an accessory use, which is allowed for a multi-family dwelling in this district. She said granting the variances would do substantial justice because there was no benefit to the public that would outweigh the hardship to the applicant. For those reasons, she said she would vote to approve the variance requests.

Mr. Mannle concurred, adding that the proposal would make a very nonconforming building slightly less nonconforming.

The motion passed by unanimous vote, 7-0.

E. WITHDRAWN The request of Portsmouth Lumber and Hardware LLC (Owner), for property located at 105 Bartlett Street whereas relief is needed to remove two existing accessory structures and replace with one new shed which requires the following: 1) A Variance from Section 10.516.20 to allow a 6' setback where 15' is required from the railroad right of way. Said property is shown on Assessor Map 157 Lot 2 and lies within the Character District 4-W (CD4-W). WITHDRAWN (LU-22-58)

Chairman Parrott read the petition into the record. *The Board acknowledged that it was withdrawn by a vote of 7-0.*

F. REQUEST TO POSTPONE The request of Randi and Jeff Collins (Owners), for property located at 77 Meredith Way whereas relief is needed to construct a second free-standing dwelling which requires the following: 1) A Variance from Section 10.513 to allow a second principal structure on a lot. 2) A Variance from Section 10.1114.31 to allow 2 driveways on a lot where only 1 is allowed. Said property is shown on Assessor Map 162 Lot 16 and lies within the General Residence A (GRA) District. REQUEST TO POSTPONE (LU-22-61)

DECISION OF THE BOARD

It was moved, seconded, and passed unanimously to **postpone** the petition to a future meeting.

G. REQUEST TO POSTPONE The request of 64 Vaughan Mall LLC (Owner), for property located at 64 Vaughan Street whereas relief is needed for the addition of a rooftop penthouse which requires the following: 1) A Variance from Section 10.5A43.30 and Map 10.5A21B to allow a building height of 51'6" where 42' is the maximum allowed for a penthouse. 2) A Variance from Section 10.1530 to allow a penthouse with a 9.5' setback from the edge of the roof where 15 feet is required. Said property is shown on Assessor Map 126 Lot 1 and lies within the Character District 5 (CD-5) and Downtown Overlay and Historic Districts. REQUEST TO POSTPONE (LU-22-65)

DECISION OF THE BOARD

It was moved, seconded, and passed unanimously to **postpone** the petition to a future meeting.

H. The request of William H. Schefer Jr. and Donna Schefer (Owner), for property located at 994 South Street, Unit 2 whereas relief is needed to install a mini-split system which requires the following: 1) A Variance from Section 10.515.14 to allow a 1.5' setback where 10' is required. Said property is shown on Assessor Map 150 Lot 9 and lies within the Single Residence B (SRB) District. (LU-22-54)

SPEAKING TO THE PETITION

The owner Bill Schefer was present to review the petition. He said he and his wife had recently increased their use of air conditioning units and decided that a mini-split system would be a more efficient and quieter way to relieve the summer's heat. He said the unit would be placed in a small 21-inch side area. He said he talked to the abutter who owned a rental building and it was agreed that if the tenants thought the system was too noisy, a vinyl fence would replace the existing chain-link one. He reviewed the criteria, noting that the new unit would not really be noticeable from the street and would take up very little area, would not limit emergency access to

the house, and would raise his property values and not likely affect others. He said he would try to run the conduits through the basement window instead of up the side of the house.

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

SPEAKING IN FAVOR OF THE PETITION

Dexter Robblee of 2 Rand Court said he was a neighbor and in favor of the condenser. He said the applicant could otherwise put in multiple air conditioner units without any permit needed. He said the mini split system would benefit all the neighbors because it would be much quieter than several air conditioning units and would reduce over energy use.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one else spoke, and Chairman Parrott closed the public hearing.

DECISION OF THE BOARD

Mr. Mannle moved to **grant** *the variance for the petition as presented and advertised, seconded by Mr. MacDonald.*

Mr. Mannle said it was a small request and noted that the applicant said he would take care of any problems with the neighbor. He said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance, would do substantial justice, and would not diminish the values of surrounding properties. He said literal enforcement of the ordinance would result in an unnecessary hardship. For those reasons, he said he would vote in approval. Mr. MacDonald concurred and said the project justified itself by having nothing wrong and everything good.

The motion passed by unanimous vote, 7-0.

II. OTHER BUSINESS

Mr. Stith said a new member would soon be joining the Board as an alternate. He said the Legal Department requested a work session with the Board in a month or two, and he suggested starting the work session at 6 P.M. and having the regular meeting follow at 7:00 P.M.

III. ADJOURNMENT

The meeting was adjourned at 8:08 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.

May 17, 2022

MEMBERS PRESENT:	Arthur Parrott, Chair; Jim Lee, Vice Chair; David MacDonald, Beth Margeson, Paul Mannle, and Phyllis Eldridge
MEMBERS EXCUSED:	Thomas Rossi
ALSO PRESENT:	Peter Stith, Planning Department

Chairman Parrott called the meeting to order at 7:00 p.m. He noted that one petition was withdrawn by the applicant and that three items were postponed.

It was moved, seconded, and **passed** unanimously (6-0) to take out of order and **postpone** Old Business Items C, D, and E.

I. APPROVAL OF MINUTES

A) Approval of the minutes of the meetings of April 19, 2022.

The April 19 minutes were approved as presented by unanimous vote, 6-0.

II. OLD BUSINESS

Ms. Margeson recused herself from the following petition, which left only five members to vote. Attorney Chris Mulligan representing the applicant said he would go ahead with the request.

A. 189 Gates Street – Request for Rehearing (LU-22-30)

DECISION OF THE BOARD

Vice-Chair Lee moved to deny the Request for Rehearing, seconded by Mr. Mannle.

Mr. Mannle said there was no prior attempt by the applicant to say that the board did anything wrong or anything was in error. He said the board made a decision to deny the petition and that he didn't see the point of rehearing it. Vice-Chair Lee concurred and said the board explored the petition thoroughly and there was lots of input from both sides.

The motion passed by unanimous vote, 5-0.

Ms. Margeson resumed her voting seat.

B. George and Donna Pantelakos - 138 Maplewood Avenue request a 1-Year extension to the BOA approval of the garage renovation and expansion granted on June 16, 2020. (LU-20-71)

DECISION OF THE BOARD

Mr. Mannle moved to grant the one-year extension, seconded by Ms. Margeson. Mr. Mannle said it was a simple request and that one-year extensions were routinely granted.

The motion passed by unanimous vote, 6-0.

C. REQUEST TO POSTPONE The request of Francis X. Bruton, (Attorney for Appellants), for Appeal of Administrative decision that the merged lot at 1 Congress is not subject to the height allowances (2 stories, 4th short, 45 feet in height) pursuant to Map 10.5A21B and as permitted pursuant to Section 10.5A21.22(a) & (c) of the Zoning Ordinance. Said property is shown on Assessor Map 117 Lot 14 and lies within Character District 4 (CD-4), Character District 5 (CD-5) and the Historic District. REQUEST TO POSTPONE (LU-22-12)

Chairman Parrot said it was an appeal of an administrative decision made by the Planning Board and a request to grant variances. He said the applicant requested that both items be postponed to the July 19 meeting.

DECISION OF THE BOARD

Mr. Mannle moved to **grant** *the request to postpone for both items to the July 19 meeting as requested, seconded by Ms. Eldridge.*

Mr. Manne said it was a routine request. Ms. Eldridge concurred and had nothing to add.

The motion passed by unanimous vote, 6-0.

D. REQUEST TO POSTPONE The request of **One Market Square LLC (Owner),** for the property located at **1 Congress Street** whereas relief is needed to construct a 3 story addition with a short 4th story and building height of 44'-11" which requires the following: 1) A Variance from Section 10.5A.43.31 and Map 10.5A21B to allow a 3-story addition with a short 4th and building height of 44'-11" where 2 stories (short 3rd) and 40' is the maximum allowed. Said property is shown on Assessor Map 117 Lot 14 and lies within Character District 4 (CD-4), Character District 5 (CD-5) and the Historic District. **REQUEST TO POSTPONE** (LU-22-12)

DECISION OF THE BOARD

Mr. Mannle moved to grant the request to postpone, seconded by Ms. Eldridge.

Mr. Manne said it was a routine request. Ms. Eldridge concurred and had nothing to add.

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

E. REQUEST TO POSTPONE The request of 635 Sagamore Development LLC (Owner), for property located at 635 Sagamore Avenue whereas relief is needed to 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. Said property is shown on Assessor Map 222 Lot 19 and lies within the Single Residence A (SRA) District. REQUEST TO POSTPONE (LU-22-57)

DECISION OF THE BOARD

Mr. Mannle moved to grant the request to postpone, seconded by Vice-Chair Lee.

Mr. Mannle said it was a routine request and should be granted. Vice-Chair Lee concurred and said historically the board always granted the first request to postpone.

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

F. WITHDRAWN The request of Randi and Jeff Collins (Owners), for property located at 77 Meredith Way whereas relief is needed to construct a second free-standing dwelling which requires the following: 1) A Variance from Section 10.513 to allow a second principal structure on a lot. 2) A Variance from Section 10.1114.31 to allow 2 driveways on a lot where only 1 is allowed. Said property is shown on Assessor Map 162 Lot 16 and lies within the General Residence A (GRA) District. WITHDRAWN (LU-22-61)

The petition was **withdrawn** by the applicant.

G. The request of 64 Vaughan Mall LLC (Owner), for property located at 64 Vaughan Street whereas relief is needed for the addition of a rooftop penthouse which requires the following: 1) A Variance from Section 10.5A43.30 and Map 10.5A21B to allow a building height of 51'6" where 42' is the maximum allowed for a penthouse. 2) A Variance from Section 10.1530 to allow a penthouse with a 9.5' setback from the edge of the roof where 15 feet is required. Said property is shown on Assessor Map 126 Lot 1 and lies within the Character District 5 (CD-5) and Downtown Overlay and Historic Districts. (LU-22-65)

SPEAKING TO THE PETITION

Attorney John Bosen representing the applicant was present and introduced members of his team, which included Novocure Executive Chair Bill Doyle, project architect Mark Mueller, and contractor Steve Wilson. Attorney Bosen gave a brief history of Novocure and the building and said the plan was to renovate the building for office use. He said they proposed adding a structure to the roof to provide training and classroom space as well as access to private outdoor space. He noted that the flat roof was flat was a logical place to construct the recessed pavilion and that the additional height would still be shorter than any of the surrounding buildings and would be set back and barely visible. He explained why the variances were needed. Executive Chair of Novocure Bill Doyle briefly explained Novocure's history and said the pavilion was needed to train their constituents and to have a cafeteria with outdoor space. Project architect Mark Mueller reviewed the context, setbacks and dimensions. He said the addition would have a mansard expression that would act as a foil for most of the mass. He said the penthouse would have a lot of transparency to make it feel more like a crystalline object on the rooftop. Attorney Bosen reviewed the criteria in detail and explained why they would be met. He said the proposed height wasn't out of line considering that the building had tall floor-to-ceiling heights and was only three stories with a penthouse.

Mr. Mannle said Attorney Bosen noted that if the building was torn down and built to the current zoning, it would be the same height that was requested, yet the zoning stated that the building had to be three stories or forty feet and an extra two feet for a penthouse. Attorney Bosen said there would be three stories and the mansard roof. Mr. Mannle said the building would be 51 feet, not 40. Attorney Bosen said the zoning allowed a mansard roof on three stories. Mr. Wilson said he was the former owner of the property and previously got the building approved as a mixed-use project. He said when he bought the building, it had 14 feet floor to floor when the minimum allowed by zoning was 12 feet, so two feet were squandered; and the next two levels were 12 feet, so 2 feet on each of those levels were squandered. He said all the resulting extra feet was like a bonus fourth floor. Mr. Mannle said the mansard roof was in the new building to the right and the penthouse was for the Cabot Building, which didn't have a mansard roof. Mr. Wilson said the hardship was that the Hanover Street elevation was much lower than the Vaughan Mall site by 3-4 feet but when the buildings that were touching were measured, it was really one building, so they lost a few feet in the average grade.

Ms. Margeson asked Attorney Bosen if he thought Fisher v. Dover applied. Attorney Bosen said it was a different project with a different use and design, so he didn't feel that Fisher v. Dover was applicable. Mr. MacDonald said the board previously considered the project at length with a great deal of discussion amongst themselves and input from residents, and the conclusion was to deny the project at that time, but the applicant was back. He asked what was so different that would justify the project now. Attorney Bosen said the prior project was a mixed-use one and had a fourth story over the entire building, but now they were just seeking the auditorium penthouse over a portion of the building. He said the previous project also had an outdoor park that they were no longer dealing with. He said the building would be entirely office use, which was permitted in the zone, and that they just wanted a penthouse over a portion of it. Mr. Mannle said the previous application that had residential use and park space was denied, and the applicant was flipping the use to strictly business, with no residential and no outdoor space, but wanted the cafeteria on the roof. Attorney Bosen said the park was eliminated because the board had thought it was too small and not applicable. H said the only thing that had changed was the penthouse for the applicant's use. Mr. Mannle said the use had changed and that's why the applicant was back. Attorney Bosen disagreed and said they were permitted by right to do office space in that zone and were now seeking the penthouse.

Chairman Parrott opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

Note: At this time in the meeting, Devan Quinn phoned in via Zoom and said she had her hand raised for Item 1 but wasn't given a chance to speak. Mr. Stith said it was only a discussion among the board, with no public comment.

No one spoke in favor of the petition.

SPEAKING IN OPPOSITION TO THE PETITION

Alison Griffin of 25 Maplewood Avenue said she was an abutter and wondered how a new owner thought they could apply for a new variance when one was previously denied. She said the petition didn't meet the criteria because it was contrary to the public interest. She said the mansard roof was 15 above the maximum height allowed. She said there was no hardship because the applicant bought the property knowing what they were buying. If approved, she said it would set a precedent for height. She said the penthouse would impact the surrounding property values. She said the variances were applied for immediately after she bought her property and that her views would be impacted.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Attorney Bosen showed the view that Ms. Griffin had from her unit and said it was very minimal and would not block her view.

Ms. Griffin showed a view of where she would sit and look at the building, pointing out that the elevator shaft would be higher and there would be more mechanical equipment on the roof. She said she didn't think the applicant's drawings were accurate.

Mr. Wilson said he was the applicant for the 4th story penthouse before, noting that it was a flatroof structure and that the zoning required building within five feet of the property line. He emphasized said no fourth floor would have gone on the previous building unless the park was given away. He said he didn't apply for more building area then and that it was a different purpose to have higher condos. He said he told Ms. Griffin when she bought her place that the building next door would have three stories, yet her building was built under the 3-story zoning and she lived on the fourth story. He said a lot of what she wasn't saying was accurate and that she was ignoring the vanishing point of the applicant's building. He said it was a new application for a new use and that the plans were accurate. He said the post-development buildings were all taller, including Ms. Griffin's building that higher than their proposed building by 4-5 feet.

Ms. Griffin said the proposed building was above her story. Vice-Chair Lee asked what she was told about the applicant's building when she bought her building. Ms. Griffin said she was told the applicant's building would be a 3-story building and that it was also noted in the newspaper.

No one else spoke, and Chairman Parrott closed the public hearing.

DISCUSSION OF THE BOARD

Ms. Margeson asked Mr. Stith if the previous zoning relief was for the fourth floor, and Mr. Stith agreed and said it was also to exceed the maximum front yard setback on Hanover Street. Ms. Margeson said it sounded like a Conditional Use Permit (CUP) situation to her. Mr. Stith said the applicant had proposed to give the city a park in exchange for the extra height. Vice-Chair Lee was the applicant had proposed a small park in exchange for a bonus half; he said to him, it was the 'same horse pulling a different buggy'. Ms. Margeson said the board had to address whether or not Fisher v. Dover applies.

Ms. Margeson moved that Fisher v. Dover did not apply and Mr. Mannle seconded.

Ms. Margeson said Fisher v. Dover required the board to address whether or not they were getting the same application and the applicant couldn't go back for a second bite of the apple once the variance was denied. She defined what Fisher v. Dover was and said the reason she was making the motion was that the previous relief, although it was identical for 52 feet, was for a fourth floor and not a penthouse and was for mixed-use residential units. She said now it was clearly a penthouse for conference space and could not exceed 50 percent of the area of the story below. She said it was at 40 percent and was a different application and that Fisher v. Dover did not apply. Mr. Mannle concurred.

The motion passed by unanimous vote, 6-0. Mr. Lee noted that the City Staff had also concurred.

Vice-Chair Lee said in the previous iteration of the project, the applicant wanted a half variance by giving the city a small park in front of the building. He said there was a lot of discussion that the park wasn't enough of a justification to grant the variance, so it was denied. He said even though Fisher v. Dover would not apply in this case, it was basically the same horse pulling a different buggy and that the applicant was trying to bootstrap the mansard roof item to get the crystal place on the other building adjacent to it. Mr. Mannle said the applicant knew that the Cabot House was already 40 feet tall and that three stories or 40 feet and an extra two feet for the penthouse was allowed by zoning. He said the board would be granting a fourth story because the difference between 40 feet and 53 and a half was another story; it was going up another 11 and a half feet, which was a bridge too far. He said the character-based zoning limited building heights on all downtown buildings because of the immediate neighbors and that there was no objection when it was enacted to the 40-ft height limit. He said he didn't see where the spirit of the ordinance was carried out by granting an 11.5 foot upgrade. Ms. Margeson said she couldn't support the project because it didn't meet the spirit and intent of the ordinance, which was to regulate building heights. She said it was clear that the applicant didn't want the building to go past 40 feet and had even included the contemplation of a penthouse and said they'd give an extra two feet, but there was a real intention to figure out the building height in that particular zoning district and she felt that the project directly contradicted the zoning ordinance as written. Chairman Parrott said he remembered that the board was practically unanimous that the park would be of little or no use due to its location, size, and the likelihood of people finding it useful. Ms. Eldridge said she didn't see how the proposed height was contrary to the public interest because the city was growing and the building heights were changing little by little. On the other hand, she said she had trouble seeing the hardship because it was hard to imagine that there couldn't be room for meeting space within the large building without needing a penthouse.

DECISION OF THE BOARD

Ms. Margeson voted to deny the variances for the petition as presented and advertised, seconded by Vice-Chair Lee.

Ms. Margeson said the spirit of the ordinance was not observed and the applicable provision of the zoning ordinance only allowed for three stories or forty feet and an extra two feet for the penthouse. She said the applicant was proposing 52 feet. She said the penthouse had to be set back at least 15 feet from the edge of the roof and it was nine feet on one side, so it wasn't a slight variation of the ordinance but was in direct conflict with something that was enacted. Vice-Chair Lee concurred, noting that a little bit here and there would be added and would just continue and eventually there would be a significant amount of congestion and overdevelopment, which would be inconsistent with the spirit of the ordinance.

The motion passed by a vote of 5-1, with Chairman Parrott voting in opposition.

III. NEW BUSINESS

A. The request of Adam Fitzpatrick and Emily Smith (Owners), for property located at 96 Sparhawk Street whereas relief is needed to add an addition on the existing dwelling and an addition to a shed which requires the following: 1) Variances from Section 10.521 to allow a) a 4 foot right side yard where 10' is required; and b) an 8 foot front yard where 15 feet is required. 2) Variances from Section 10.573.20 to allow a) a 4 foot right side yard where 9.5 feet is required; and b) a 7 foot rear yard where 9.5 feet is required. 3) 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 159 Lot 16 and lies within the General Residence A (GRA) District. (LU-22-42)

SPEAKING TO THE PETITION

The applicant Adam Fitzpatrick was present and said they had three young children and needed more space. He said the addition for the shed was to have more storage space. He said the home's exterior would be greatly improved and that his neighbors were all in support. He reviewed the criteria and said they would be met. He noted that the house already encroached on the lot lines and that the current deck structure would be removed for the addition.

Ms. Margeson asked if the wall in front of the property was shared by the applicant and his neighbors, and Mr. Fitzpatrick agreed and said the city built it some time ago. He said he wasn't sure what would happen to the wall but that the water and sewer lines went under it and that it would have to be replaced. Mr. Mannle asked what the shed addition was for. Mr. Fitzpatrick said it was for lawn equipment, tool, toys, and so on.

Chairman Parrott opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke, and Chairman Parrott closed the public hearing.

DECISION OF THE BOARD

Ms. Margeson moved to **grant** the variances for the application as presented and advertised, seconded by *Ms.* Eldridge.

Ms. Margeson said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. She said the setback requirements for the application's front, right, and rear yards was to ensure the movement of light and air and the public's health, safety, and welfare. She said the application was bringing forward pre-existing nonconformities on the primary front yard of eight feet and the primary right yard of 4 feet. She said the rear yard was being reduced from 13 feet to seven feet, but the lot was shorter in depth than it was supposed to be per the ordinance and the spirit and intent, and bringing forward these two pre-existing nonconformities and adding, in a very minor way, to the third nonconformity did not violate the public interest or the spirit to the ordinance. She said substantial justice would be done because denying the variances would not be offset by any gain to the public. She said granting the variances would not diminish the values of surrounding properties because improvements to a property generally raised property values immediately around it. She said the application met the hardship test, even though she didn't find that the property itself had special conditions because all the properties in the area were fairly small and they all had a 50-ft lot depth whereas the zoning called for 70 feet. She said the applicant's property couldn't reasonably be used in strict conformance with the ordinance, and a variance was therefore necessary to enable a reasonable use of it. She said the shed in the back where it encroached more into the rear yard setback was permitted for a residential use, and the property itself was 20 feet shorter than it should be in lot depth so it did meet the unnecessary hardship test under those conditions. Ms. Eldridge concurred and had nothing to add.

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

B. The request of **The Lonzoni Family Revocable Trust (Owner)**, for property located at **411 South Street** whereas relief is needed to demolish existing garage and construct new attached garage which requires the following: 1) Variance from Section 10.521 to allow a 6 foot rear yard where 20 feet is required. 2) Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the Ordinance. Said property is shown on Assessor Map 112 Lot 55 and lies within the General Residence A (GRA) District. (LU-22-67)

SPEAKING TO THE PETITION

Project architect Jeremiah Johnson was present on behalf of the owners and said they wanted to replace the garage with a new one and also build a small breezeway at the rear of the property to connect the new garage with the house. He noted that a prior 2017 petition brought before the board included a second-story Accessory Dwelling Unit (ADU) but that the applicant now wanted just a single-story garage. He said the garage's reorientation and modernization would bring a significant benefit to the owners without impeding on the abutters and would be more compliant to zoning. He reviewed the dimensions and setbacks and said only two variances were required instead of the previous four. He reviewed the criteria and said they would be met.

Ms. Margeson asked why Fisher v. Dover didn't apply. Mr. Johnson said there was no ADU being applied for and the garage's orientation was different.

Chairman Parrott opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

Wendy Rolfe of 419 South Street said the area was busy and that she appreciated the communication between the applicant and the neighbors and that all the neighbors appreciated the changes that were made from the 2017 application. At that time, she said she and her husband had been the most affected abutter because the ADU would have looked right into their bedroom, but the new design sought fewer variances and the garage's reorientation would make it less impactful to them. She said she was concerned that the garage would be a bit of a tall straight wall on her property line and thought it could be moved forward a few feet however.

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

No one spoke, and Chairman Parrott closed the public hearing.

Mr. Johnson said he submitted five letters of support from the neighbors, two of which had spoken in opposition to the prior application.

DECISION OF THE BOARD

Ms. Eldridge moved to **grant** *the variances for the application as presented, seconded by Vice-Chair Lee.*

Ms. Eldridge said the variances requested were minor, considering that the garage was at the same setback and it would be an overall improvement to the property. She said granting the variances would not be contrary to the public interest, and the spirit of the ordinance would be observed. She said there was no perceived detriment on the abutting properties and very little change, and the variances were not creating something new that hadn't been lived with for many years. She said substantial justice would be done because it was a modest addition, and the values of surrounding properties would not be diminished because it would be a nice new addition and a new garage. She said literal enforcement of the ordinance would result in an unnecessary hardship due to special conditions, including the curve on South Street, and the garage would allow a straight shot out into the street and let the owners make better use of their property. For those reasons she thought the variances should be granted. Vice-Chair Lee concurred. He said that almost all the applications for porches, garages, second floors and so on that the board had granted in the past made a huge positive impact to the neighborhoods. He said he remembered that the proposed garage in the 2017 petition was massive compared to what was proposed now. Mr. Mannle said the proposed project would make the existing nonconformance less non-conforming and that he would support the motion. Ms. Margeson said Fisher v. Dover did not apply in this case because the ADU was not part of it. Chairman Parrott agreed.

The motion passed by unanimous vote, 6-0.

C. The request of Andrea Hurwitz (Owner), for property located at 129 Aldrich Road whereas relief is needed for a second floor addition with rear addition and deck which requires the following: 1) Variance from Section 10.521 to allow a 5.5 foot left side yard where 10 feet is required. 2) 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 153 Lot 35 and is located within the Single Residence B (SRB) District. (LU-22-71)

SPEAKING TO THE PETITION

Owner/applicant Andrea Hurwitz was present and said the addition would add three bedrooms and a master bath on the second floor, and the rear addition would have a home office with a deck off the back. She said they would only raise the house's roof 23 inches to keep it a simple bungalow but to give it more function. She reviewed the criteria and said they would be met. She noted that the abutter submitted a letter in support of the petition.

There were no questions from the board, and Chairman Parrott opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke, and Chairman Parrott closed the public hearing.

DECISION OF THE BOARD

Mr. Mannle moved to **grant** *the variances for the petition as presented, seconded by Vice-Chair Lee.*

Mr. Mannle said the variance requests were driven by the property and they would not be contrary to the public interest or the spirit of the ordinance because the existing 5-1/2' left yard was exactly what was proposed. He said granting the variances would do substantial justice and the values of surrounding properties would not be diminished and would most likely rise. He said literal enforcement of the ordinance would result in an unnecessary hardship. For those reasons, he said he would support it. Vice-Chair Lee concurred and had nothing to add.

The motion passed by unanimous vote, 6-0.

D. The request of Donald Lowell Stickney III (Owner), for property located at 213 Jones Avenue whereas relief is needed for the addition of a second driveway which requires the following: 1) Variance from Section 10.1114.31 to allow a second driveway on a lot where only one driveway is allowed. Said property is located on Assessor Map 222 Lot 69 and lies within the Single Residence B (SRB) District. (LU-22-34)

SPEAKING TO THE PETITION

Attorney Christopher Mulligan was present on behalf of the applicant, with the applicant Donald Stickney. Attorney Mulligan said the request was for a second driveway on a single lot to accommodate a proposed ADU, and the proposal was to construct a new primary dwelling and convert the existing house to an attached ADU. He noted that the petition, if approved, would go before the Planning Board for a CUP for the ADU and also a secondary CUP for some work within the wetlands buffer. He explained that the second driveway was needed due to certain characteristics of the property and existing dwelling. He said a new State-approved septic system was needed for the primary dwelling that would be placed in-between both structures. He said the property was burdened by the wetlands buffer so it had to be sited closer to Jones Avenue and that was the reason relief was needed for the second dwelling. He reviewed the criteria and emphasized that the special conditions were the existing built environment on the property, the irregular shape of the lot, and the wetlands. He said there was more than twice the amount of frontage on Jones Avenue that required a second driveway that would not be out of character. Mr. Mannle asked where the current septic tank was and where the new one would be. Mr. Stickney said the existing septic system exited the house to a field, and the new septic system would have a pumping tank that both homes would empty into. He said locating it between both buildings was the only feasible location, given the strict State approval criteria.

Chairman Parrott opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke, and Chairman Parrott closed the public hearing.

DECISION OF THE BOARD

Vice-Chair Lee moved to **grant** *the variance for the petition as presented and advertised, and Ms. Margeson seconded.*

Vice-Chair Lee said he was familiar with the property and that there was plenty of room to do what was proposed. He said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance because the proposed use would not conflict with any implicit or explicit purposes of the ordinance and would not alter the essential characteristics of the neighborhood or threaten the public's health, welfare, or safety. He noted that there was a large metal recycling facility directly across from the property as well as mixed-use and residential that would not be diminished. He said literal enforcement of the ordinance would result in unnecessary hardship due to the property's special conditions of being burdened by the wetlands and the topography of the land that drove the need for an additional driveway, so there was no fair and substantial relationship between the purpose of the ordinance and its provisions to the application. He said the proposed use was a reasonable one.

Ms. Margeson concurred. She said it was a huge property and a lot of it wasn't developable, but it was in the Single Residence B zone which allowed for low to moderate uses, and there was more than enough for that. She said the city had decided that detached ADUs were allowable under the zoning ordinance, and this would allow the applicant to make use of a detached ADU, assuming that the Planning Board approved it. She said it was a reasonable use.

The motion passed by unanimous vote, 6-0.

E. The request of Ann Genevieve Becksted Trust of 2004 (Owner), for property located at 9 Schurman Avenue whereas relief is needed to add a 6' x 25' two story addition and side porch which requires the following. 1) A Variance from Section 10.521 to allow a 22 foot front yard where 30 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 located on Assessor Map 260 Lot 158 and lies within the Single Residence B (SRB) District. (LU-22-84)
SPEAKING TO THE PETITION

Project contractor Rick Becksted Sr. was present on behalf of his daughter, the applicant Genevieve Ann Becksted Muske. Mr. Becksted said the house was very small and the addition was needed because there was no room for an inside staircase. He said they also wanted to add a covered porch to mitigate moisture problems. He said there wasn't a way to make the lot conforming due to its size and that most of the neighbors had similar second stories. He reviewed the criteria and gave the board a half-dozen letters of support from the neighbors. The owner Genevieve Ann Musk said there were letters of approval from immediate abutters and photos of other properties in the neighborhood with similar additions and porches.

There were no questions from the board. Chairman Parrott opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

Shawn Muske said he was the co-owner and the addition would replace the existing deck. He said the hardship was that he and his wife were required to maintain home offices due to COVID, which was difficult in their small home.

Genevieve Becksted Muske said it would be helpful to expand in order to maintain the house and operate two small offices.

Sloan Muske, the applicants' daughter, said she wanted a bigger bedroom that she could have room to dance in and room for her friends to visit.

No one else spoke, and Chairman Parrott closed the public hearing.

DECISION OF THE BOARD

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

Mr. MacDonald said the applicant did a great job of explaining why the variances should be granted and how it met the criteria. He said granting the variances would not be contrary to the public interest, noting that the public had a very limited interest in the property that the proposal didn't infringe upon. He said the spirit of the ordinance would be observed because the ordinance had a lot of purposes to lessen congestion, promote health and general welfare, provide adequate light and air, and so on, and that the ones that were applicable to the applicant were satisfied fully. He said granting the variances would do substantial justice because it was perfectly just to allow people to do with their property what was necessary to lead their lives. He said the values of surrounding properties would not be diminished because the project would not impose anything on them and certainly wouldn't diminish their values. He said literal enforcement of the ordinance would result in unnecessary hardship on the property owner because he was about to take a big step and improve his family's lives, which was something the ordinance didn't intend to get in the way of. Ms. Eldridge concurred and said the applicant would get a lot of house for a very small change in the front yard setback and that they were asking very little from the board. She said one should be allowed to dance in her bedroom.

Mr. Stith said the whole house was going up two stories, and the 7-ft rear yard should be advertised but it wasn't. He suggested stipulating that the rear yard shall be seven feet.

The makers of the motion agreed. The **amended** motion was as follows:

Mr. MacDonald moved to **grant** *the variances for the application as presented, seconded by Ms. Eldridge, with the following stipulation:*

1. The rear yard shall be seven feet.

The motion passed by unanimous vote, 6-0.

F. The request of Andrew DiPasquale (Owner), for property located at 80 Fields Road whereas relief is needed to construct rear addition and enclose existing carport to create sunroom with front porch which requires the following: 1) Variances from Section 10.521 to allow a) a 26 foot rear yard where 30 feet is required; b) a 9 foot right side yard where 10 feet is required; c) a 9 foot left side yard where 10 feet is required; d) a 23 foot front yard where 30 feet is required; and e) 29% building coverage where 20% is the maximum allowed. 2) 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 171 Lot 8 and lies within the Single Residence B (SRB) District. (LU-22-76)

SPEAKING TO THE PETITION

The applicants Drew DiPasquale and his wife Katie were present to speak to the petition. Mr. DiPasquale said they wanted to add an addition on the back of the house and also add a sunroom/mudroom off the side. He said the design included a small front porch that extended 5-6 feet and the overall building coverage would be increasing to 29 percent. He reviewed the criteria and said they would be met. Ms. DiPasquale said she was expecting and her current guest room/office would become the nursery, so the board's approval of the addition would help.

Mr. Mannle asked Mr. Stith if the original carport was included in the existing building coverage, and Mr. Stith agreed.

Chairman Parrott opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke, and Chairman Parrott closed the public hearing.

DECISION OF THE BOARD

Vice-Chair Lee moved to grant the variances for the petition as presented and advertised, seconded by Mr. Mannle.

Vice-Chair Lee said granting the variances would not be contrary to the public interest or to the spirit of the ordinance because the project would not conflict with the implicit and explicit purposes of the ordinance and would not threaten the public's health, safety, or welfare. He said substantial justice would be done because the benefit to the applicant was not outweighed by any

harm to the general public or other individuals. He said granting the variances would not diminish the values of surrounding properties but would improve them. He said literal enforcement of the ordinance would result in unnecessary hardship due to the special condition of the size of the property, so there was no fair and substantial relationship between the purposes of the ordinance and its application to the property. He said it was a reasonable request that should be granted. Mr. Mannle concurred. He said his only concern at first was the building coverage going to 29 feet but that he was comfortable with it. Ms. Eldridge said she had always loved the applicant's street because all the additions showed that people loved living there.

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

G. The request of Pamela J. Katz Revocable Trust (Owner), for property located at 462 Lincoln Ave, Unit 4 whereas relief is needed to install a generator which requires the following: 1) A Variance from Section 10.515.14 to allow a 6 foot setback where 10 feet is required and to allow the generator to be closer to the street that the principal structure. Said property is located on Assessor Map 133 Lot 20-4 and lies within the General Residence A (GRA) District. (LU-22-77)

SPEAKING TO THE PETITION

The applicant wasn't present.

DECISION OF THE BOARD

Mr. Mannle moved to **postpone** *the petition to the May 24 meeting, seconded by Vice-Chair Lee. The motion* **passed** *by unanimous vote,* 6-0.

IV. OTHER BUSINESS

There was no other business.

V. ADJOURNMENT

The meeting was adjourned at 10:08 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.

May 24, 2022

MEMBERS PRESENT:	Arthur Parrott, Chair; Jim Lee, Vice Chair; David MacDonald; Beth Margeson; Paul Mannle; Phyllis Eldridge
MEMBERS EXCUSED:	Thomas Rossi
ALSO PRESENT:	Peter Stith, Planning Department

Chairman Parrott called the meeting to order.

It was moved, seconded, and passed unanimously (6-0) to take Item H, 108 Burkitt Street, out of order and **postpone** it to a future meeting per the applicant's request.

I. OLD BUSINESS

A. The request of Pamela J. Katz Revocable Trust (Owner), for property located at 462 Lincoln Ave, Unit 4 whereas relief is needed to install a generator which requires the following: 1) A Variance from Section 10.515.14 to allow a 6 foot setback where 10 feet is required and to allow the generator to be closer to the street that the principal structure. Said property is located on Assessor Map 133 Lot 20-4 and lies within the General Residence A (GRA) District. (LU-22-77)

SPEAKING TO THE PETITION

The applicant's son Chris Adams was present. He said his mother was on oxygen 24 hours a day and that the generator would alleviate her fears of being without power. He said the generator would be hidden within the fence. He reviewed the criteria and said they would be met. In response to Vice-Chair Lee's question, Mr. Adams said the unit had 65-68 decibels.

Chairman Parrott opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke, and Chairman Parrott closed the public hearing.

DECISION OF THE BOARD

Vice-Chair Lee moved to grant the variance for the petition as presented and advertised, seconded by Mr. Mannle.

Vice-Chair Lee said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance. He said the use of the generator would not be in conflict with implicit or explicit purposes of the ordinance and would not alter the essential characteristics of the neighborhood or threaten the public's health, safety, or welfare. He said substantial justice would be done because the benefit to the applicant would not be outweighed by any harm to the general public. He said granting the variance would not diminish the values of surrounding properties because the generator wouldn't be detected by them. He said the hardship was the resident's medical condition, so there was no fair and substantial relationship between the generator would be operated at 65 decibels, so there would be no problems with noise. For those reasons, he said the variance should be granted. Mr. Mannle concurred and said it was a generator for use in case of emergency. He said he was familiar with the townhouses and noted that the wrought-iron fence enclosed the yard and was permitted by the condo association.

The motion passed by unanimous vote, 6-0.

I. NEW BUSINESS

A. The request of Joseph Ricci (Applicant), for property located at 225 Banfield Road whereas relief is needed to demolish existing building and construct new 5 unit commercial building and 60 unit residential building with underground parking which requires the following: 1) A Variance from Section 10.521 to allow a 45 foot front yard where 70 feet is required. 2) A Variance from Section 10.440 to allow a 60 unit residential building where residential uses are not permitted in the Industrial district. Said property is located on Assessor Map 254 Lot 1 and Map 266 Lot 1 and lies within the Industrial (I) District. (LU-22-91)

SPEAKING TO THE PETITION

Attorney Chris Mulligan was present on behalf of the applicant. The applicant Joseph Ricci and consulting engineer Gregg Mikolaities were also present. Attorney Mulligan said they proposed to merge two contiguous lots on Banfield Road, one of which already had a nonconforming commercial building on it, the Ricci Construction headquarters. He said the other lot was vacant. He said they wanted to place a 60-unit residential apartment building in the rear of the lot and that the existing industrial and commercial usages of the property would remain intact. He said the property was unique because it was ten acres, had frontage in two discontinuous spots on Banfield Road, had wetlands in the western rear of the property, and had a fair amount of ledge, all of which pushed the developable area toward the east Banfield Road. He noted that the surrounding uses in the area were a mix of residential and commercial and what the applicant proposed was a bit of both. He said the project would provide the opportunity to fill the housing need in the community and would also be monitored and maintained by the owner Mr. Ricci. He

said the city previously concluded that solutions were needed for placing diverse housing in unconventional spaces and densities, which was what the applicant proposed to do. He said there would be studios and one-bedroom units of modest size and emphasized that they were not micro units, affordable housing or workforce units but would be more affordable than most of the existing housing in the city. He said the property abutted the rear of the community campus, which would be an amenity to the new residents. He noted that the project would go through full site review and that he had letters of support from two of the abutters. He reviewed the criteria, noting that the proposed industrial use was allowed by right and would be less nonconforming than the existing building and the apartment building would be tucked behind the commercial one to limit its visibility from Banfield Road. He said the hardship was the location of the property, its large size, two noncontiguous frontages, wetlands, and ledge that were all unique characteristics that differentiated the property from others in the neighborhood.

Ms. Eldridge asked why it was necessary to seek the variance for the distance from the road. Attorney Mulligan said the wetlands and ledge forced the developable area to the front, but they also wanted to maintain a suitable separation between the commercial and residential use. He said the goal was to create some degree of safe and healthy separation. Mr. Ricci explained how the project would limit their wetlands impact.

Ms. Margeson asked why the new Ricci Headquarters would be industrial and not office space. Attorney Mulligan said it wouldn't be only the Ricci Headquarters but would be five units that would have warehouse and other industrial uses. Ms. Margeson said it seemed that there was just office space on the property. Mr. Ricci said 25 percent would be office space. Ms. Margeson asked what would be manufactured. Mr. Ricci said they would fabricate panels for clean rooms and plumbing and electrical contractors might use the space. He said it would be more commercial industrial with just a small portion of office. Ms. Margeson asked if that was the type of work that had been previously done on the property, and Mr. Ricci said they had been doing that and similar work for 87 years.

Ms. Margeson said there was a lot of wetlands on the property and environmental contamination was found at the community campus. She asked if that was part of the applicant's property. Mr. Ricci said they hadn't done any environmental assessment but he had owned the property for 70 years, so he knew what was on it. Ms. Margeson said it was a significant use variance from industrial to residential and was located right near Pike Industrials, a heavy industrial company. She said there were many ways to rezone the property and asked why the applicant wouldn't try for a zoning amendment that could go through Planning Board review. Attorney Mulligan said it would take considerable more time and that they couldn't just spot zone the parcel; they'd have to cobble together an argument that some substantial amount of the industrial zone should allow for that type of housing use. He said they had more control of the process if they requested variances because they came piece-by-piece and could be judged case-by-case; otherwise, they would have to figure out where in the industrial zone it made sense to site residential uses.

Ms. Margeson said she was concerned that there were industrial uses going on, like Pike Industrials, and it was hard for her as a Board member to know whether or not industrial uses still had a need in Portsmouth. She said it was a broader question for the City Council or the Planning Board. Attorney Mulligan said they weren't abandoning industrial uses on the property but it was a two-piece puzzle and a significant piece was the commercial building. Ms. Margeson asked why the residential part of the property couldn't be used for industrial. Attorney Mulligan said they didn't have the need for that much industrial development on the property, but if they wanted to, they could put a significant amount of industrial and commercial use on the property that would cause a substantial amount of heavy equipment and traffic and more of an impact on the wetlands. He said they didn't think that was desirable and that they would rather create some diversity in the city's housing stock. Mr. Ricci said the residential piece was about an acre less of impervious, and if they developed it by right, it would be 60 or 70,000 square feet of commercial and industrial with a lot more pavement. He said the residential component filled a need and that having the community campus behind it would have the abutter's support. He said the project also brought the sewer down the road, which eliminated the septic system for the lot and also allowed the housing units across the street to go on sewer, which was another positive impact.

Mr. Mannle said he assumed the setback was because the current building would get demolished and the new one would be more compliant by ten feet. He said the zoning map showed that one side was all industrial, yet there were three residences and a school, so he assumed that all those places got variances. Mr. Stith said the school did but that he couldn't speak to the residences. Mr. Mannle asked if the applicant would consider stipulating that six units would be RSA workforce housing. Attorney Mulligan said sixty units were required to make the project work and that it wouldn't make sense to do it at a lower number. He said if they dedicated a portion of the units as workforce housing, they would have to increase the number of units to 70 to fit them in because in order to qualify for workforce housing the units had to be priced at 60 or 80 percent of the median rentals. Mr. Ricci said he could do a total of 70 units, with six units being studios and three being one-bedrooms that were 80 percent to offset the delta. Mr. Mannle said he'd like to see six out of 70 units at whatever the RSA stated and the remaining units would be priced as originally planned. Mr. Ricci said 60 units were necessary for the rents he wanted to charge and that he'd have to go from 66 units to 70. It was further discussed. Vice-Chair Lee said he saw only four units on the site plan and not five. Attorney Mulligan said it should be four. Vice-Chair Lee asked if there was a conflict with the residential component sharing a common driveway with the commercial. Attorney Mulligan said it would require a site review.

Chairman Parrott opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

No one spoke.

SPEAKING IN OPPOSITION TO THE PETITION

Larry Majors of Pike Industries submitted written comments to the Board. As a direct abutter, he said Pike Industries had to oppose the project. He said the proposal to insert residential housing into an industrial zone violated the intent and spirit of zoning in the community. He said the purpose of zoning was to create areas where similar land uses could co-exist without interruption from inconsistent and potentially adverse neighbors. He said the proposal would be contrary to

the public interest of keeping industrial activities separate from residential housing and that it would violate setback requirements and place residences very close to the property line shared by Pike Industries and Ricci. He said substantial justice would not be done because it would be unjust to place residences in an industrial zone like it would be unjust of Pike Industries to place their asphalt plant in a residential area. He said Pike's property value would be diminished because it was important to have a very large buffer around it. He said there was no hardship except for the placement of the residential facility on Mr. Ricci's property because Mr. Ricci had been at his location for 70 years. He said the proposal was in direct conflict with the intentions of community zoning and should be denied. Mr. Mannle asked if Mr. Majors spoke in opposition when St. Patrick's put in their campus. Mr. Majors said he had not received a public notice and wasn't aware but that they weren't a direct abutter to St. Patrick's like they were to Ricci's.

George Haskell of Leslie Drive said he had lived in Portsmouth all his life and had seen too many changes. He said the only variances granted should be for something like a generator and that the ordinance should be upheld if the requested variances involved big businesses.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke, and Chairman Parrott closed the public hearing.

DISCUSSION OF THE BOARD

Ms. Margeson said she would not support the application because it was a significant change in use and she couldn't think of two more incompatible uses in the city than residential and industrial, largely for the reasons that Mr. Majors stated. She said Attorney Mulligan admitted that the property could be used in the way that it was zoned, industrial, so therefore there was no hardship. She said she was concerned that there would still be industrial uses on the property with a very significant residential apartment building in the back. She said if there were opportunities for rezoning some of the industrial lands, it should be dealt with by the City Council and the Planning Board to see if those lands were suitable for that kind of use. Given that the project was in a heavy industrial zone, the environmental issues with the community campus, and the industrial use by Pike Industries, she said a more deliberative process should be given to the application through a zoning amendment. She said it would go through the Planning Board and TAC but it would be for the purpose of siting the facility, not looking to see whether the land was suitable for that use.

Mr. Mannle said he understood what the applicant was trying to do but after looking at it and taking in Mr. Majors' comments, he said the residential use was at the very back of the property because it was closer to the community campus. He said he didn't know if the project would be better received if it was flipped and wasn't sure if it would change Pike Industries' objections, but Banfield Road was becoming more residential. He thought the petition had some issues given the way it was conceived right now. He suggested a different design, where the residential uses were closer to Banfield Road and the industrial use was closer to Pike Industries.

Ms. Eldridge said she didn't see a problem in putting residential on Banfield Road because there was a school and houses up and down the street, but she had trouble seeing a hardship since the property could be used for industrial purposes. She said she didn't know how she could approve it under the Board's guidelines. Vice-Chair Lee said he was also conflicted for the same reasons but could go either way. Chairman Parrott said the street was evolving in terms of its usage and that it had gone for many decades with little or no change, but now there was a school, housing developments, and two residences. He said it was a very mixed-use district and if someone wanted to develop the property and build an apartment building, they would do so at the risk that it would be a success. He said he supported that approach, even though it wasn't an ideal location but it would encourage or require lower-than-average rents. He said it wasn't an ideal proposal but that he could support it because it would be a better use. Mr. MacDonald said there would be industrial uses at other places on Banfield Road that would increase traffic. He said people would want to make use of the wetlands and would find out that they couldn't. He said the whole project had consequences that hadn't appeared yet, and the Planning Board and the TAC would have to reach an agreement about what was the best way to make that area usable to the most people in the city. He said the applicant's approach was one way of making productive use of the land and that it wasn't the Board's job to decide if it would be acceptable, so he wanted to bounce it back to the Planning Board and TAC.

Attorney Mulligan asked the Board to address the variances separately instead of as a package.

DECISION OF THE BOARD

Vice-Chair Lee moved to **grant** *Variance* #1 *to allow a* 45-*ft front yard where* 70 *feet was required, seconded by Ms. Eldridge.*

Vice-Chair Lee said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance because the use would not conflict with the implicit and explicit purposes of the ordinance, He said there were other residential houses in the immediate neighborhood, so he didn't think granting the variance would alter the essential character of the neighborhood or threaten the public's health, safety, or welfare. He said substantial justice would be done because the benefit to the applicant would not be outweighed by any gain to the general public or anyone else, and the values of surrounding properties would not be diminished. He said literal enforcement of the ordinance would result in an unnecessary hardship because the hardship was the topography of the land and the geology of the wetlands, and the buffer was necessary to limit the pervious materials used and make it more environmentally friendly. He said the variance should be granted for those reasons. Ms. Eldridge concurred and said the setback would be 45 feet, so it would be more conforming.

The motion passed by unanimous vote, 6-0.

Vice-Chair Lee moved to **grant** *Variance* #2 *for the 60-unit residential building, seconded by Ms. Eldridge for discussion.*

Vice-Chair Lee said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance. He said the property was technically zoned industrial but was clearly in a transitional zone because it had residences directly abutting it as well as a large school next to it and a new residential development across the street. He said the industrial area was becoming a transitional one to absorb a mixed use. He said substantial justice would be done because the benefit to the applicant would not be outweighed by any gain to the public, and the gain to the public would be modestly priced housing stock that the city desperately needed. He said that would tie into the values of surrounding properties not being diminished because the apartments would be an asset and would buttress the fact that the area seemed to be a transitional area going to mixed use. He said the special conditions of the property would result in an unnecessary hardship and that the use would be reasonable because residences would be put up at the rear portion of the property that would be away from the commercial use on Banfield Road but would directly abut the residential property to the left of it. He said he saw no fair and substantial relationship between the purpose of the ordinance and its application to the property because the proposed use was a reasonable one. For those reasons, he said the variance should be granted as presented and advertised. Ms. Eldridge concurred and had nothing to add.

Mr. Stith asked if the Board would entertain the stipulation in the Staff Report that the building design including size, scale, location, and site layout may change subject to review by the Conservation Commission and the Planning Board. Vice-Chair Lee and Ms. Eldridge concurred.

The **amended** motion was as follows:

Vice-Chair Lee moved to grant Variance #2 for the 60-unit residential building, seconded by Ms. Eldridge, with the following stipulation:

1. That the building design including size, scale, location and site layout may change subject to review by the Conservation Commission and the Planning Board.

The motion passed by a vote of 4-2, with Ms. Margeson and Mr. Mannle voting in opposition.

B. The request of **Thomas Hammer (Applicant)**, for property located at **219 Sagamore Avenue** whereas relief is needed to demolish the existing garage and deck and construct new garage and entryway which requires the following: 1) A Variance from Section 10.521 to allow 30.5% building coverage where 25% is the maximum allowed. 2) A Variance from Section 10.573.20 to allow a 2.5 foot rear yard where 15 feet is required. 3) A Variance from Section 10.571 to allow an accessory structure to be located closer to a street than the principal structure. 4) 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 (GRA) District. (LU-22-26)

SPEAKING TO THE PETITION

The applicant Thomas Hammer was present via a Zoom call to review the petition. He said he wanted to make the property less nonconforming by installing a new garage. He said the deck would be removed and a smaller deck would be added in the back as a mudroom for access. He said the existing garage was in bad shape and that the project would improve the 35 percent coverage and reduce the non-pervious conditions on the property. He reviewed the criteria and said they would be met.

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

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke, and Chairman Parrott closed the public hearing.

DECISION OF THE BOARD

Mr. Mannle moved to **grant** *the variances for the project as presented and advertised, and Ms. Margeson seconded.*

Mr. Mannle said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He said substantial justice would be done because the applicant would make a nonconforming property less nonconforming by a foot and a half, and the building coverage would not change; and the newly-built garage would replace one that was falling down. He said the values of surrounding properties would not be diminished and would most likely be improved. He said literal enforcement of the ordinance would result in an unnecessary hardship. For those reasons, he said the variances should be granted. Ms. Margeson concurred. She said the building coverage was 30.5 percent, which was over the 25 percent maximum, but it was just carrying forward a pre-existing nonconforming building coverage, and the rear yard setback would be slightly improved. She said the intent of the ordinance provisions was for movement of air and light, and approving the variance would not impinge on that at all.

The motion passed by unanimous vote, 6-0.

C. The request of 2422 Lafayette Road Associates LLC (Owner), for property located at 2454 Lafayette Rd, Unit 5 whereas relief is needed for a proposed veterinary urgent care clinic which requires the following: 1) A Special Exception from Section 10.440 Use #7.50 to allow a Veterinary Care use where the use is allowed by Special Exception. Said property is located on Assessor Map 273 Lot 3-5 and lies within the Gateway Corridor (G1) District. (LU-22-93)

SPEAKING TO THE PETITION

Project architect Nicholas Collins was present on behalf of the applicant. He said they wanted to fill a gap that regular veterinary care might not. He said the unit was 3,670 square feet and would include a lobby reception area, 5-6 exam rooms, rest rooms, a treatment area, pharmacy, x-ray

room, animal recovery space, a vet office, utility space, and a break room for staff. He reviewed the special exception criteria, noting that the facility would not have kennels and that the holding areas were for short-term recovery purposes only. He said any noises would be isolated and the number of required parking spaces would be reduced, and all changes would be on the interior.

The Board had no questions, and Chairman Parrott opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke, and Chairman Parrott closed the public hearing.

DECISION OF THE BOARD

Ms. Margeson moved to **grant** *the special exception for the petition as presented and advertised, seconded by Vice-Chair Lee.*

Ms. Margeson said the standards as provided by the ordinance for the particular use permitted by special exception were met. She said it was a veterinary care clinic, which was allowed by special exemption in that zoning area, and would pose no hazard to the public or adjacent properties on account of potential fire, explosion, or release of toxic materials. She said there were no toxic materials in the facility, and the medical gas, X-rays, and medication would comply with State laws. She said granting the special exception would pose no detriment to property values in the vicinity or change in the essential characteristics of any area including residential neighborhoods, businesses or industrial areas on account of the location and scale of the buildings and other structures, parking areas, accessways, odors, smoke, gas, dust, or other pollutants, noise, vibration and so on. She said there would be no change in the essential character of the business are because it was a strip mall with a pet store at the other end and there was nothing that would create those kinds of nuisances for the abutting property owners. She said there would be no creation of a traffic safety hazard or substantial increase in the level of traffic congestion in the vicinity because the applicant was only required to provide a total of eight parking spaces for every 500-sf use in the vicinity, and the operating times would be less use in that strip mall. She said granting the special exception would pose no excessive demands on municipal services including but not limited to water, sewer, waste disposal, police or fire protection, and schools because there was nothing about the business that would implicate any of those things. She said the project would pose no significant increase of stormwater runoff onto adjacent properties or street because it was just an interior buildout of an existing storefront. Vice-Chair Lee concurred and had nothing to add.

The motion passed by unanimous vote, 6-0.

D. The request of Nicole Giusto (Applicant), and Cooper Malt LLC (Owner), for property located at 650 Islington St, Unit C whereas relief is needed for a proposed veterinary care clinic which requires the following: 1) A Special Exception from Section 10.440 Use #7.50 to allow a Veterinary Care use where the use is allowed by Special Exception. Said

property is located on Assessor Map 155 Lot 5-C1 and lies within the Character District 4-W (CD4W) and the Historic District. (LU-22-92)

SPEAKING TO THE PETITION

Attorney Tim Phoenix was present on behalf of the applicant. He said the proposal was for a regular veterinary office that would take up the first floor of the building, house three employees plus the owner, and have three exam rooms, a surgery suite, a treatment room, and an X-ray room. He said six parking spaces would be required, including four with signage for customers, and were approved by the building owner and condo association. He reviewed the special exception criteria, especially noting that there would be regular business hours; no kennel, training, grooming, or sales; no exterior changes to the building except for signage; and no impact on traffic because it was located in a walkable downtown area.

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

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke, and Chairman Parrott closed the public hearing.

DECISION OF THE BOARD

Mr. Mannle moved to **grant** *the special exception for the petition as presented, and Ms. Eldridge seconded.*

Mr. Mannle said the use was permitted by special exception and that it would pose no hazard to the public or adjacent properties on account of potential fire, explosion, or release of toxic materials. He said granting the special exception would pose no detriment to property values in the vicinity or change in the essential characteristics of any area including residential neighborhoods, businesses or industrial areas on account of the location and scale of the buildings and other structures, parking areas, accessways, odors, smoke, gas, dust, or other pollutants, noise, vibration and so on. He said there would be no creation of a traffic safety hazard or substantial increase in the level of traffic congestion in the vicinity and no excessive demands on municipal services including but not limited to water, sewer, waste disposal, police or fire protection, and schools. He said granting the special exception would pose no significant increase of stormwater runoff onto adjacent properties or streets, especially considering that there use to be the same proposal, just further down the street on the other side. He said he supported the application. Ms. Eldridge concurred and had nothing to add.

The motion passed by unanimous vote, 6-0.

E. The request of Thomas and Lindsey Vickery (Owners), for property located at 37 Orchard Street whereas relief is needed for a proposed addition which requires the following: 1) A Variance from Section 10.521 to allow 26.5% building coverage where

25% is the maximum allowed. Said property is located on Assessor Map 149 Lot 9 and lies within the General Residence A (GRA) District. (LU-22-95)

SPEAKING TO THE PETITION

Designer Amy Dutton was present on behalf of the applicant. She reviewed the petition and explained that the addition would contain an expanded kitchen and a primary bedroom and bath suite and would match the back elevation roofline. She reviewed the criteria, noting that it would blend into the neighborhood and that the abutter who was most affected was in favor of the project. She said the hardship was that the lot was angled.

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

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke, and Chairman Parrott closed the public hearing.

DECISION OF THE BOARD

Mr. Mannle moved to grant the variance for the petition as presented, seconded by Ms. Eldridge.

Mr. Mannle said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance, would do substantial justice, and would not diminish the values of surrounding properties. He said literal enforcement of the ordinance would result in an unnecessary hardship because the applicant only wanted to make a 1.5 percent change in building coverage, which was small for the improvement of the property. He said the variance should be granted. Ms. Eldridge concurred, noting that the small lot was much smaller than the zoning would allow, and any change to the building would increase the coverage.

The motion passed by unanimous vote, 6-0.

F. The request of London Bridge South Inc. (Owner), for the property located at 114 Saratoga Way whereas relief is needed to amend a previously approved application to merge two lots and demo existing structures in order to construct a 4 unit multi family dwelling which requires the following: 1) A Variance from Section 10.521 to allow a lot area per dwelling unit of 3,736 square feet where 5,000 square feet is the minimum required; and 2) A Special Exception from Section 10.440 Use #1.51 to allow 4 dwelling units where the use is allowed by a special exception. Said property is shown on Assessor Map 212 Lot 112 and lies within the General Residence B District. (LU-20-164)

SPEAKING TO THE PETITION

Attorney Tim Phoenix was present on behalf of the applicant. Construction Manager Joel Asadoorian was also present. Attorney Phoenix said they wanted to amend a previously-granted

variance and special exception. He said his client bought the property after the previous approval and went forward with some renovations, but it was determined by the City Staff that some of the physical changes to the building were too much for an administrative approval, so he was asking for approval to amend the site plan. He compared the approved site plan and the changed site plan, noting that the skylights would be replaced by an eyebrow dormer, another dormer would be stretched to the building's edge, a new fence would be installed, and an electrical box would be moved on site. He said a curved roof would have minor window treatments and the wall would come down to get it closer to the front wall. Mr. Asadoorian said he hadn't known that changes weren't allowed, and he explained why the changes were made.

Mr. Mannle said it seemed like the applicant tried to copy the design that was already in Atlantic Heights but then decided not to. Attorney Phoenix said there was discussion at the previous submission of how it fit in with Atlantic Heights, but there was a wood-frame condo townhouse nearby that influenced the new design. He said the Board previously said the design was a nice fit for the area, so the owner made some changes that made the home more livable.

Chairman Parrott opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Steve McGrath of 185 Raleigh Way called in via Zoom and said his backyard abutted the proposed development and that the eyebrow dormer faced the Atlantic Point side and not the Atlantic Heights side. He said it looked like there were more massing on his side, and the building was 15 feet away from his back fence. He noted that the roofline was three stories in a neighborhood of two stories and that it was 13 feet higher than the two-story houses around it. He said he was also concerned about the utility infrastructure and thought the developer precipitated a lot of activity from Eversource because they replaced a dilapidated pole on the corner of his lot and would place another pole on his side boundary. He said he respected the proposal but urged the Board to look at the elevation and the massing and perhaps stipulate that all new utility poles, rigging, and buttress go on the applicant's property or that he be compensated for the new triangle of telephone pole configurations he hadn't planned on.

Attorney Phoenix said the issue was an Eversource one because Eversource determined what they needed for poles. He noted that Mr. McGrath said the original pole was dilapidated. Attorney Phoenix said Eversource was responsible for determining its replacement and location. He said the third floor of the development was within the roofline, so it wasn't a true third-story building. He said the skylights were removed on Mr. McGrath's side and the dormers were moved a bit farther out, so he failed to see how those changes negatively impacted Mr. McGrath compared to what was approved two years before.

Chairman Parrott encouraged Mr. McGrath to call the Division of Public Works, who might be able to help him with his issues. No one else spoke, and he closed the public hearing.

DECISION OF THE BOARD

Ms. Eldridge moved to amend the previously-approved variance and special exception, seconded by Mr. Mannle.

Ms. Eldridge said the changes were made for aesthetic, comfort, and practicality reasons as well as cost reasons. She said it was a different design but didn't really change what was happening to the property. She said the Board wasn't a design review board but that she didn't think the changes would affect the neighborhood and felt that the project could go ahead as planned. Mr. Mannle concurred and had nothing to add.

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

G. The request of **Katherine Nolte and Angela Davis (Owners)**, for property located at **276 Aldrich Road** whereas relief is needed to remove existing mudroom and construct covered front porch which requires the following: 1) Variances from Section 10.521 to allow a) 33% building coverage where 20% is the maximum allowed; b) 7.5 feet left side yard where 10 feet is required; and c) 7.5 feet secondary front yard where 30 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 located on Assessor Map 166 Lot 14 and lies within the Single Residence B (SRB) District. (LU-22-97)

SPEAKING TO THE PETITION

The applicant Kate Nolte was present and said she wanted to replace the mudroom with a covered front porch because the mudroom caused water and structural issues and she wanted a more usable outdoor space. She said they lived on a corner lot and had trouble accessing the exterior from that lot, given the large easement and right-of-way on Sewall and Aldridge Roads. She said they had maintained that easement since 2018, so they wanted to have access like all the other neighbors. She reviewed the criteria and said the porch would not impede on the abutters, would enhance the character of the neighborhood, and would bring the home up to the standards that the rest of the homes on the street had. She said the hardship was the home's elevation and its location on a corner lot that provided no access to an outside area.

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

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke, and Chairman Parrott closed the public hearing.

DECISION OF THE BOARD

Mr. Mannle moved to **grant** *the variances for the petition as presented and advertised, seconded by Mr. MacDonald.*

Mr. Mannle said he drove by the house and thought that replacing the mudroom with a front porch would make the home look like most of the other properties. He said the increase in building coverage would be slight, as with any place on Aldrich Road. He said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance, would do substantial justice, would not diminish the values of surrounding properties, and would result in an unnecessary hardship. He said the variance requests should be approved. Mr. MacDonald concurred and had nothing to add.

The motion passed by unanimous vote, 6-0.

H. REQUEST TO POSTPONE The request of Joel St. Jean and Mariele Chambers (Owners), for property located at 108 Burkitt Street whereas relief is needed to demolish existing garage and construct new 13' x 30' garage which requires the following: 1) A Variance from Section 10.573.20 to allow a 1 foot left side yard where 10 feet is required. 2) A Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 159 Lot 30 and lies within the General Residence A (GRA). REQUEST TO POSTPONE (LU-22-89)

DECISION OF THE BOARD

The petition was **postponed** per the applicant's request by unanimous vote.

I. The request of Thomas J. and Angela Mita (Owners), for property located at 81 Taft Road whereas relief is needed to construct a 235 square foot addition which requires the following: 1) A Variance from Section 10.521 to allow a 17.5 foot secondary front yard where 30 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 located on Assessor Map 247 Lot 87 and lies within the Single Residence B (SRB) District. (LU-22-98)

SPEAKING TO THE PETITION

The construction manager Dave Ciccalone was present on behalf of the applicant. He explained that the property was a nonconforming corner lot and had secondary frontage along Elwyn Avenue and that the addition would extend into that secondary frontage. He reviewed the criteria and noted that the overall footprint of the addition was small and would be built to match the similar additions in the neighborhood. He said the existing fence was too tall and too close to the road and would be removed and that the rear abutter would have a better site line view when merging into traffic. He said the addition would contain a master bedroom and that putting the addition anywhere else on the property would impact the enjoyment of the backyard. The Board had no questions. Chairman Parrott opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke, and Chairman Parrott closed the public hearing.

DECISION OF THE BOARD

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

Ms. Eldridge said it was a modest request and that having a secondary front yard always complicated things and created its own hardship. She said the slight change in the front yard would give the applicant an advantage and would be a good tradeoff. She said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. She said the home would be improved and would not change the character of the neighborhood in any way. She said it would do substantial justice because the change for the family would be far greater than any effect it would have on anyone else and that it would not diminish the values of surrounding properties but would most likely increase them. She said there would be no substantial relationship between the public purposes of the ordinance and that the variances should be granted. Mr. Mannle concurred and said it was a very small request and because the home was on a corner lot, it had a quirky double-sided front yard.

The motion passed by unanimous vote, 6-0.

At this point in the meeting, it was moved, seconded, and passed (6-0) to go past 10:00 p.m.

J. The request of Christopher Mulligan (Applicant), and One Hundred Forty West Road Condos (Owner), for property located at 140 West Road whereas relief is needed to convert existing structure into a private indoor recreation facility which requires the following: 1) A Variance from Section 10.440 Use #4.30 to allow and indoor recreation use where the use is not permitted. 2) A Variance from Section 10.1113.41 to allow parking to be located 2 feet from the front lot line where 50 feet is required. Said property is located on Assessor Map 252 Lot 2-13 and lies within the Industrial (I) District. (LU-22-99)

SPEAKING TO THE PETITION

Attorney Chris Mulligan was present on behalf of the applicant, along with the project team. He said they wanted to convert the former Blitz Trampoline Park into a members-only indoor recreation facility. He said the owner's background included owning and operating fitness centers and clubs, so he had a lot of experience running facilities on a similar membership-only basis. He noted that the owner was also involved with charitable organizations and would make the facility available for charity events. He said internal improvements would be made by adding gaming stations, sport simulators, billiards, arcade games, a gym and accessory lounge area. He said the building was in the industrial zone and was an allowed use there or anywhere in the city. He said the prior owner got a special exception in 2013 to permit the Blitz facility that was a membership model similar to the model the applicant wanted. He said some of the proposed improvements would move the parking area closer to West Road but that it was already an existing nonconforming condition that would be made slightly more nonconforming because the travel aisles would be made more conforming, which was the reason relief was needed for the parking setback. He reviewed the criteria, noting among other things that the building wouldn't change in any material way and that the neighborhood already had diverse commercial uses. He said the nearest abutter who was a plumbing supplier was in favor. He said the tradeoff for the parking setback relief would be the construction of code-compliant maneuvering aisles on the site, which would benefit the public. He said the hardship was the existing built environment situated in a 90-degree bend on West Road.

Ms. Margeson noted that Attorney Mulligan said that private indoor recreation wasn't allowed anywhere in the ordinance. Attorney Mulligan said he misspoke. Ms. Margeson clarified that it was allowed and that there was no distinction between private and public. She said there was another golf place that was a private indoor recreational use and that it was allowed in a lot of the zones in the city, either by special exception or outright permission.

Chairman Parrott opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke, and Chairman Parrott closed the public hearing.

DISCUSSION OF THE BOARD

Mr. Mannle wondered if the Blitz Park had applied for a variance instead of a special exception, then the applicant wouldn't have to apply for it. Mr. Stith said the applicant did because it was a completely different use. Ms. Margeson said the zoning ordinance cited some examples of indoor recreation use, like a bowling alley or arcade, but the list wasn't exhaustive. She said the application was similar in some ways but that she had less of a problem with it because there wasn't the heavy industrial use around the property that was seen earlier in the evening.

DECISION OF THE BOARD

Vice-Chair Lee moved to grant the variances for the petition as presented and advertised, seconded by Mr. Mannle.

Vice-Chair Lee said one variance was to allow indoor recreation where the use was not permitted, and the other variance was to allow parking two feet from the front line. He said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He said the first use was reasonable because it was basically an indoor recreation facility, and the parking location would make the travel lanes more code compliant and easier to maneuver in. He said substantial justice would be done because the benefit to the applicant would not be outweighed by any harm to the general public. He said it was an industrial/retail area and he didn't see that the values of surrounding properties would be diminished in any way. He said the hardship was that the applicant was burdened by the zoning restriction stating that the use was not permitted without a variance, so it would make the property different from similarly-situated properties. He said the proposed use was reasonable and felt that both variances should be granted. Mr. Mannle concurred and had nothing to add. Ms. Margeson noted that the property had been vacant for a while and there were no industries rushing to get in there.

The motion passed by unanimous vote, 6-0.

II. OTHER BUSINESS

There was no other business.

III. ADJOURNMENT

The meeting was adjourned at 10:24 p.m.

Respectfully submitted,

Joann Breault BOA Recording Secretary From: Mike Garrepy [mailto:mgarrepy@gmail.com]
Sent: Wednesday, June 15, 2022 12:17 PM
To: Peter M. Stith cpmstith@cityofportsmouth.com>
Cc: Tim Phoenix tphoenix@hpgrlaw.com>
Subject: Re: 686 Maplewood

Peter,

Per our phone discussion please consider this email our formal request to withdraw the ZBA application for 635 Sagamore while we continue to work with the neighbors. Discussions have been positive but we need more time and I do not want to burden the agenda.

Regards, Mike

Michael Garrepy GARREPY PLANNING CONSULTANTS, LLC (603) 944-7530 1.

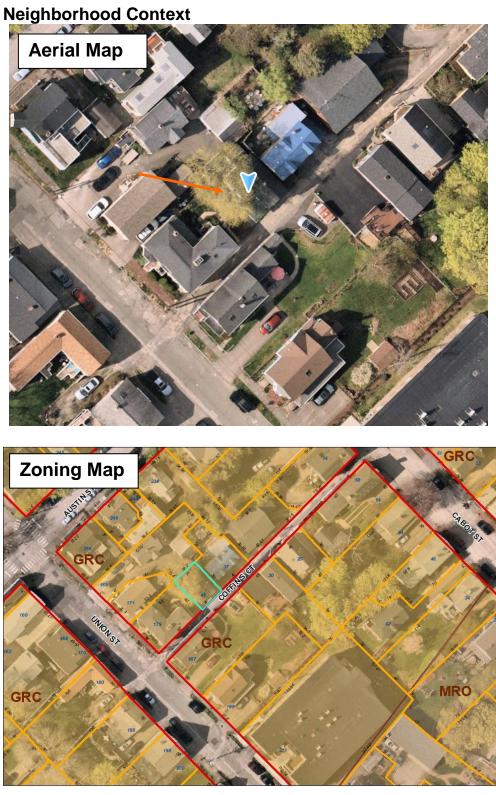
The request of **Michael Lucas (Owner)**, for property located at **45 Coffins Court** whereas relief is needed to renovation of the existing structure including new dormers, second story bathroom over an existing one story addition and a new second story open porch which requires the following: 1) Variances from Section 10.521 to allow a) a 1' rear yard where 20' is required; b) a 0' right side yard where 10' is required; c) an 8' left side yard where 10' is required; d) a 3' front yard where 5' is required; and e) 57% building coverage where 35% is the maximum allowed. 2) A Variance from Section 10.321 to allow a nonconforming building or structure to be expanded, reconstructed, or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 135 Lot 55 and lies within the General Residence C (GRC) District.

	<u>Existing</u>	Proposed	Permitted /	
			Required	
Land Use:	Two family	House	Primarily	
		renovation	residential uses	
Lot area (sq. ft.):	1,307	1,307	3,500	min.
Lot Area per Dwelling	653	653	3,500	min.
Unit (sq. ft.):				
Lot depth (ft):	39.5	39.5	50	min.
Street Frontage (ft.):	28	28	70	min.
Primary Front Yard	3	3	5	min.
<u>(ft.):</u>				
Right Yard (ft.):	0	0	10	min.
Left Yard (ft.):	6	8	10	min.
Rear Yard (ft.):	1	1	20	min.
Height (ft.):	<35	<35	35	max.
Building Coverage (%):	53	57	35	max.
Open Space Coverage	>20	>20	20	min.
<u>(%):</u>				
Parking:	0	0	2	
Estimated Age of	1840	Variance request(s) shown in red.		
Structure:				

Existing & Proposed Conditions

Other Permits/Approvals Required

None



25 1 inch = 46.9 feet

45 Coffins Court

 $W = \bigoplus_{S}^{N} - E$

Previous Board of Adjustment Actions

No prior BOA history found.

Planning Department Comments

The applicant is seeking relief to renovate the existing two family dwelling by adding dormers, a rear porch and second story to an existing one story addition. The existing dwelling is nonconforming and encompasses the majority of the lot. Likely any expansion of the existing structure would require some sort of relief due to the nonconformity.

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.
- The "unnecessary hardship" test:
 (a)The property has <u>special conditions</u> that distinguish it from other properties in the area.
 AND
 - (b) <u>Owing to these special conditions</u>, 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**

<u>Owing to these special conditions</u>, 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.

45 Coffins Ct, Portsmouth – PROJECT DESCRIPTION

Overview

- Renovate an 1840s structure that is currently a duplex. The structure needs extensive repairs to make it habitable and bring up to code. The renovations will keep the two units and create more desirable living space including new walls, floor, a modern kitchen, a properly sized bathroom, and laundry in each unit. Outside decks will be added to the second-floor unit. The renovations will improve the overall housing stock by bringing all structural, insultation, electrical, plumbing, and mechanical systems up to current code.
- Requesting variances to 10.231, for expansion of a nonconforming structure, and 10.521, for the lot dimensions

Work Requiring Variance Request

- Frame new 90 sq ft 2nd floor addition over existing 1st floor 90 sq ft room
- Frame new 70 sq ft 2nd floor open porch over existing 1st floor covered porch
- Frame new 70 sq ft 2nd story open porch at back of house.
- Raise roof ridge by 2' to achieve 8' ceiling heights and frame new attic dormers

Impact of Work

- Front and side setbacks will remain the SAME as preconstruction
- The rear setback will DECREASE from 10' to 3' to accommodate a 2nd floor open deck.
- Total height of building will remain BELOW the 35' max height requirement for a 2 story + short 3rd building.
- Quality and value of living space will be significantly improved

Criteria for a Variance: 10.233

10.233.21: The variance will not be contrary to the public interest

• The improvements requested will not be contrary to the public interest. Rather, the improvements will benefit the public interest by making the property a safer home for occupants and neighbors, providing updated rental living space, increasing the value of the surrounding homes, and generally enhancing the neighborhood.

10.233.22: The spirit of the Ordinance will be observed

• The improvements would strive to meet standards where possible and always be consistent with the spirit of the ordinance. The intent is to improve the property while staying true to the quality of the neighborhood.

10.233.23: Substantial justice will be done

• The improvements requested would not create an unfair advantage or biased conditions on the property as compared to the surrounding neighborhood.

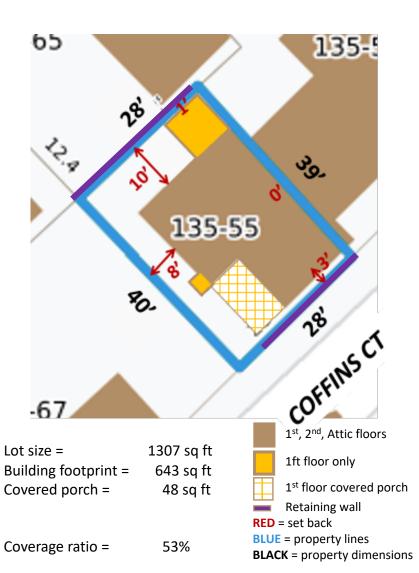
10.233.24: The values of surrounding properties will not be diminished.

 Investing in the improvements to the property should substantially increase its value and, thus also, the values of the surrounding properties and area.

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

- "No fair or substantial relationship exists between the general public purposes of the Ordinance provision and the specific application of that provision to the property."
- The house occupies almost the entire lot therefore any expansion, even to upgrade livability of the building, would result in a variance request.
- The addition is a reasonable request and will result in a safer home, an updated rental living space, improve the value of the surrounding properties, and generally enhance the neighborhood.
- The adjacent neighbors support the project (See emails attached)

CURRENT BUILDING AND SETBACKS



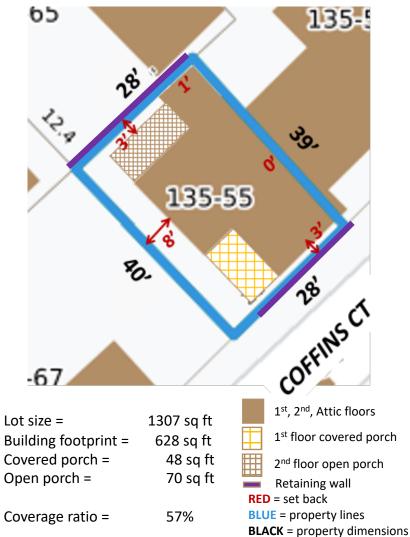
PROPOSED BUILDING AND SETBACKS

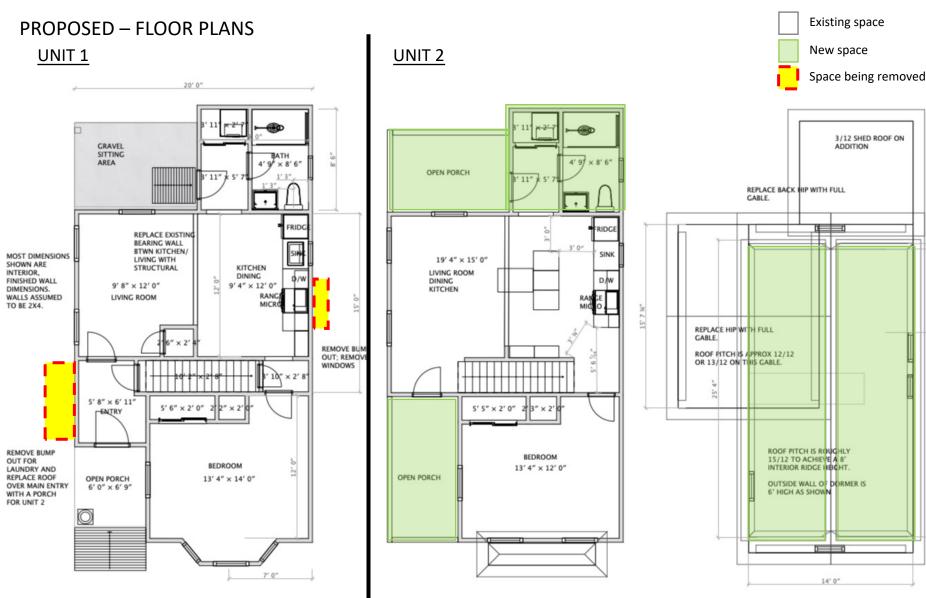
Work that results in NO CHANGE to setbacks and building coverage

- Add 90 sq ft 2nd floor to existing 90 sq ft 1st floor room
- Add 70 sq ft 2nd floor open porch to existing 1st floor covered porch
- Repair front and rear retaining wall. Actual location of the walls are contingent on survey results to ensure any right-of-way is not blocked

Work that results in a CHANGE to the rear setback and building coverage

• Add 70 sq ft 2nd story open porch, less than 12' high with pervious material (gravel) beneath.





1st Floor: 618 sq ft (-25 sq ft from current)

- Remove unnecessary bump outs and reduce overall footprint
- Permeable gravel sitting area under new porch

2nd Floor: 572 sq ft (+90 sq ft to current)

- Remove bathroom from stairway to attic and place above 1st floor bathroom (see Existing Conditions)
- Add laundry to unit
- Add open porches at front and back for access to outside, fresh air and enjoyment

Attic: 300 sq ft (+179 sq ft to current)

- Dormer attic space
- Create home office/studio space

ELEVATIONS – CURRENT



ELEVATIONS – PROPOSED



FRONT REATINING WALL – CURRENT



PROPOSED

- Replace failing concrete retaining wall with a similar, but new poured concrete wall.
- Create a lower threshold in center of wall for the basement access door
- Increase height of basement access door from 3' to 5' high for better service access.



REAR RETAINING WALL – CURRENT

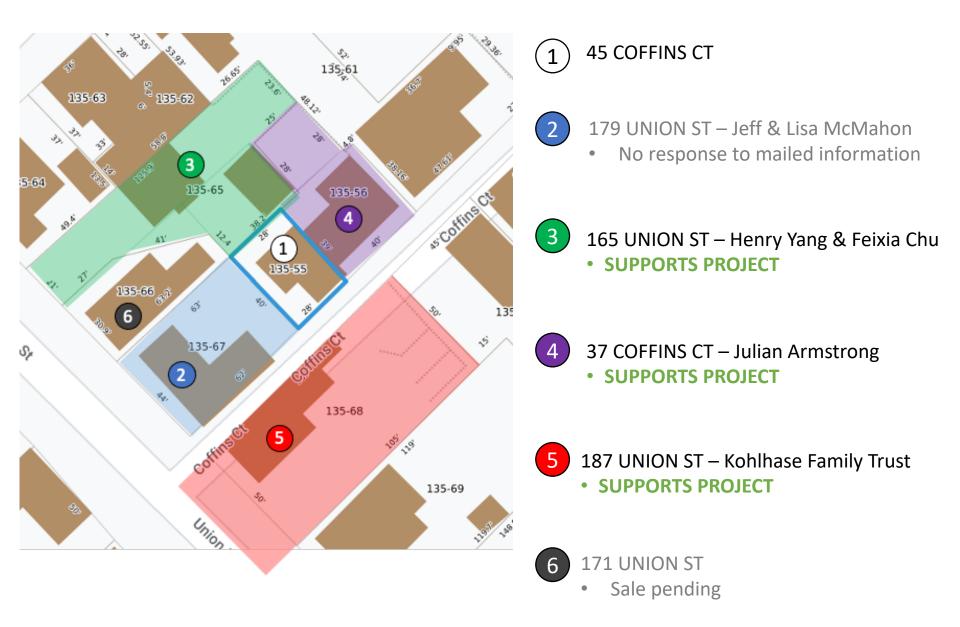


PROPOSED

- Replace failing rock retaining wall with decorative block rated for retaining walls up to 6' in height
- Current wall supports property and driveway of 165 Union St.
- Water drainage from 165 Union St driveway into 45 Coffins Ct to be addressed
- Wall to run the full length of the rear property line of 45 Coffins Ct
- Survey commissioned to identify lot line and any right of ways
- New wall to be professionally installed



NEIGHBORHOOD SUPPORT



NEIGHBORHOOD SUPPORT



 Henry Yang <hyang04@gmail.com> To: mikellucas@yahoo.com

Hi Mike,

Thank you very much for your package in the mail describing your planned renovation project at 45 Coffins Ct. As the owners of the neighboring property 165 Unions Street, we are happy to see your thorough plan to get the property renovated. We firmly believe that investing in improvements of the properties will also improve this beloved historical neighborhood as well. You have our full support and please do not hesitate to reach out for help.

Sincerely, Henry and Feixia

603-818-1248



I met with Julian on 4/15. He verbally approved the plans and stated he "supports the proposal 100%"



Webster Kohlhase <whkjr187@comcast.net> To: Mike Lucas 🖶 Wed, Apr 20 at 8:44 AM 🔺

Fri, Apr 22 at 2:41 PM 🔺

Mike Lucas,

I have looked over your proposal to renovate 45 Coffins Court. I agree that your plan would be a positive change for the Coffins Court neighborhood. I support your project and look forward to seeing it take place.

Regards,

Web Kohlhase 187 Union Street Portsmouth NH 03801

603-436-3497 whkjr187@comcast.net

EXISTING CONDITIONS – ENTRY & UNIT 1

ENTRY

Entry

- Foyer for both units
- Shared washer/dryer in raised, uninsulated bump out
- Remodel plans will remove the shared W/D and place a W/D in each unit

Unit 1

- General poor condition
- Cracking lathe/paster walls
- Pieces of ceiling missing in living and bedroom from previous water damage
- Kitchen plumbing leaking under sink
- Remove fridge bump out
- Bathroom has visual mold and rot; toilet does not have required clearances

LIVING ROOM



BEDROOM







BATHROOM

KITCHEN

EXISTING CONDITIONS – UNIT 2

Unit 2

- Generally better condition than Unit 1
- Normal wall/ceiling wear and tear
- Small kitchen with cracked/aged tile counters
- Bathroom not conforming to code
 - Toilet doesn't have proper clearance ٠
 - Window next to tub not tempered glass
- Only way to access attic area is through bathroom (see next page)
- Purpose of adding new space to back of unit is to move bathroom out of the stairwell and create a compliant bathroom as well as add laundry to the unit

LIVING ROOM





BATHROOM

EXISTING CONDITIONS – UNIT 2, ATTIC

Unit 2, Attic

- Stairs in bathroom lead to attic area
 - Moving bathroom to new rear addition will allow better access to the attic
- Potential to create work/studio space by raising the ridge height and adding dormers on both sides







2.

Request The request of **Portsmouth Savings Bank/Bank of NH (Owner)**, for property located at **333 State Street** whereas relief is needed to alter existing internally illuminated wall signs which require the following: 1) A Variance from Section 10.11261.30 to allow signs in the Historic District to be internally illuminated where only external illumination is allowed. 2) A Variance from Section 10.1144.63 to allow luminaires used for sign illumination to be higher than 25 feet where 25 feet is the maximum allowed. 3) A Variance from Section 10.1281 to allow a nonconforming sign to be altered, reconstructed, replaced or relocated without conforming to the Ordinance. Said property is located on Assessor Map 116 Lot 5 and lies within the Character District 4 (CD4), Historic and Downtown Overlay Districts.

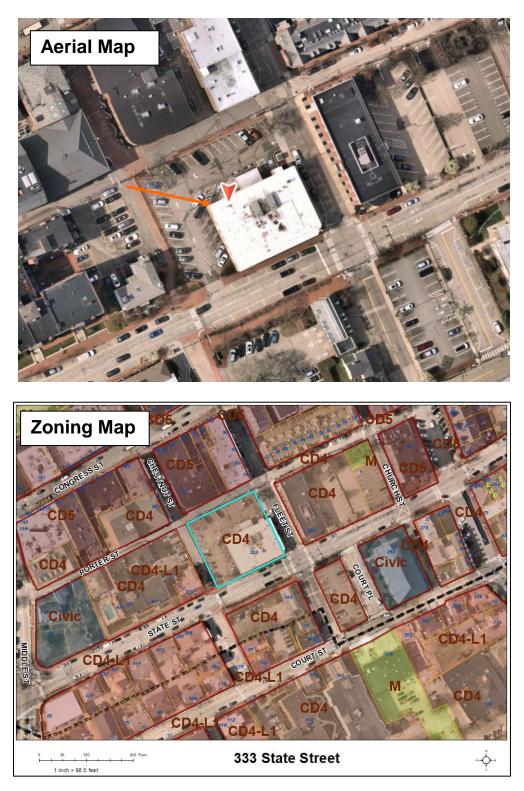
	Existing	Proposed	Permitted / Required	
Land Use:	Bank	Alter existing signage	Primarily mixed use	
Lot area (sq. ft.):	24,393	24,393	NR	
Sign District:	3	3	3	
Illumination Type:		Internal Illumination	External (HDC)	
Height (ft.):		35	25	max.
Estimated Age of Structure:	1953	Variance request(s) show	wn in red.	

Existing & Proposed Conditions

Other Permits/Approvals Required

Historic District Commission

Neighborhood Context



Previous Board of Adjustment Actions

June 19, 2007 – Relief from Zoning Ordinance concerning:

1. Article IX, Section 10-901(I) and Article I, Section 10-102(A) wherein the City has determined that the green band surrounding the building is signage

2. Article IX, Section 10-901(I) is requested to calculate the sign without the banding The Board voted the Appeal be **denied**.

Planning Department Comments

The applicant is proposing a complete update of the signage on the property for the TD Bank, the majority of which complies with the sign regulations in the Zoning Ordinance. Two signs do not comply and need relief for the location and illumination type in the Historic District. One sign is currently 35 feet high, where 25 feet is the maximum allowed. This sign will be replaced with a new sign that is slightly larger by 2.5 square feet. The second sign will be slightly smaller than what currently exists, but since it is a brand new sign, it must comply with the illumination type in the Historic District, and internal illumination is not permitted. This will need HDC approval if the variances are granted.

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 <u>special conditions</u> that distinguish it from other properties in the area. **AND**

(b) <u>Owing to these special conditions</u>, 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**

<u>Owing to these special conditions</u>, 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.

City of Portsmouth

Zoning Board

1 Junkins Ave

Portsmouth NH 03801

June 1, 2022

Members,

As a supplement to my application for Variance for TD Bank, please note the following:

Sign Item F01- Internally Illuminated Wall Sign:

• Removal of (1) 25.27 SF Internally Illuminated wall sign, replacement with one 27.86 SF Internally Illuminated wall sign:

Variances required: Alteration of an existing Internally Illuminated wall sign (no longer permitted per the sign ordinance); Alteration of existing wall sign, located greater than 25' from grade where 25' maximum permitted. Reface would be permitted by right.

Sign Item F02- Internally Illuminated Wall Sign:

• Removal of (1) 17.21 SF Internally Illuminated wall sign, replacement with (1) 13.6 SF Internally Illuminated wall sign:

Variance required: Alteration of an existing Internally Illuminated wall sign (no longer permitted per the sign ordinance) Reface would be permitted by right.

The remainder of signage presented in the ZBA Application is for visual history purposes only and does not require variances.

Barlo Signs

Jenn Robichaud

jenn@barlosigns.com



Sign Advertising

Electronic Message Centers

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

Members,

On behalf of TD Bank located at 333 State St, Barlo Signs respectfully requests your consideration of variance relief to alter existing signage at TD Bank's Portsmouth Location, which the Building Inspector has deemed to be legal non-conforming signage as at this time, signs within the Historic Zone cannot be internally illuminated.

National updates to TD Bank's signage program require the removal of signage and replacement with new corporate standards.

Proposed changes are near replacements-in-kind of non-illuminated existing awnings, parking signs, directional plaques, two internally illuminated wall signs and the painting of existing storefronts which are in disrepair.

We look forward to addressing the ZBA to further discuss how our proposal will not be contrary to the public interest, as our proposal cleans up facias in disrepair, and updates existing signage; Meets the spirit of the ordinance as proposed changes are almost entirely in kind updates to existing signage; Allows for substantial justice as approval of proposed changes will allow TD Bank to maintain the identity they enjoy throughout New England, and maintain the signage they currently have (but forth slight cosmetic changes); Will not diminish the value of the surrounding properties as proposed changes are improvements to existing conditions; And prevent unnecessary hardship by allowing TD Bank to maintain the important identification they currently have and require to attract the way-finding public.

Sincerely,

Barlo Signs Jenn Robichaud Brandon Currier 158 Greeley St Hudson NH 03051 jenn@barlosigns.com

> CORPORATE OFFICE: 158 Greeley Street, Hudson, NH 03051-3422 (603) 882-2638 *or* 800-227-5674 FAX (603) 882-7680 Email: your_image@barlosigns.com Website: www.barlosigns.com











To Whom It May Concern:

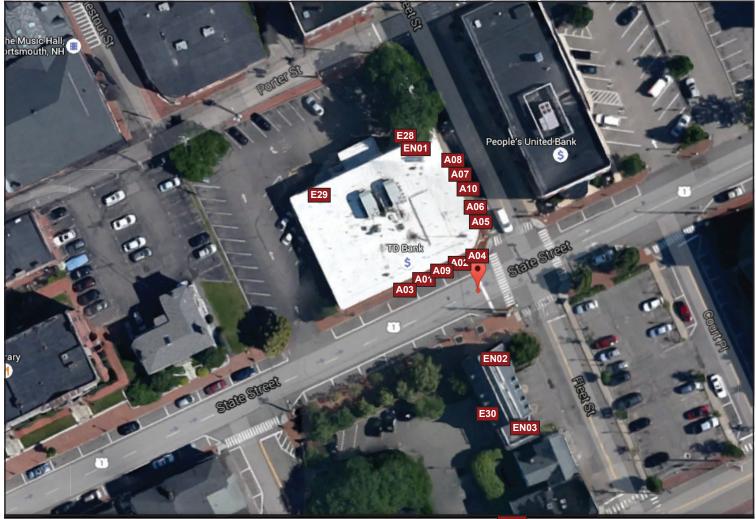
<u>Steven Prouse</u>, being duly sworn, deposes and says that he acts as the agent of the owner of the premises designated at the following Site# 2010,Portsmouth - 333 State Street, Portsmouth, NH,03801

to which this application applies; that he is duly authorized to make this application and that the statements contained in the papers submitted herein are true to the best of his knowledge and believes that the work will be performed in the manner set forth in the application and in the plans and specifications filed therewith, in accordance with the State Building Code and all other applicable laws, ordinances, and regulations of the municipality.

Owner/Authorized Agent: STEVEN PROUSE
Owner/Authorized Agent: JTEVEN TROUST
Signature:
\bigcirc
State of: South Carolina
County of: Kichland
Sworn to and subscribed before me
this 21st day of december, 2021
Notary Public: Rachil Gamble
My Commission Expires: 04/10/2029
[~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~
Rachel L. Gamble
State of South Carolina, Richland County
My Commission Expires April 10, 2029
130 Pinnacle Point Court, Suite 101, Columbia, SC 29223 Phone: 803.790.2121
www.imageresourcegroup.com
2598 E. Sunrise Blvd., Suite 210-A, Ft. Lauderdale, FL 33304 Florida Registration: F03000005018

841 Prudential Drive, 12 floor, Jacksonville, FL 32207





EN04

Site Plan









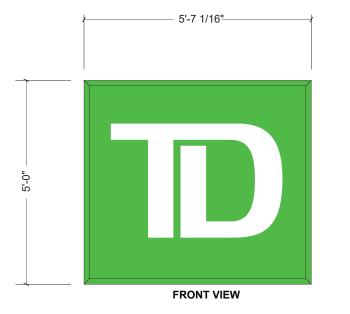
COMPOSITE PHOTOGRAPH with PROPOSED SIGNAGE

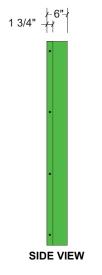
	F0	1	
Existing Illuminated Overall: 4'-4 OSquare Foo	Wall Sign 3" tall 5'-5" wi		
REMOVE REPLACE NEW WH MATCHE COMPAN	CH S		

SPECIAL CONDITIONS

Technical Survey Required prior to manufacture.

ORIGINAL PHOTOGRAPH





TD-1S.0007 Extruded wall cabinet with acrylic face.

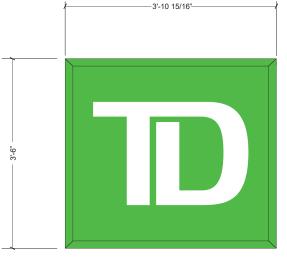




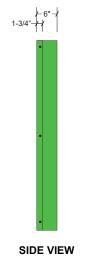


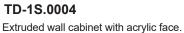


ORIGINAL PHOTOGRAPH



FRONT VIEW





13.6 sq.ft. Ο



SPECIAL CONDITIONS Technical Survey Required prior to manufacture.





Тес



COMPOSITE PHOTOGRAPH with PROPOSED SIGNAGE

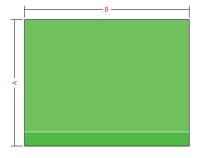
F03

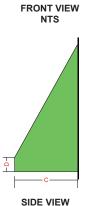
Existing Signage: Awning Overall: TBD tall TBD wide Square Footage: TBD sq.ft.

ORIGINAL PHOTOGRAPH 🔿

SPECIAL CONDITIONS

Technical Survey Required prior to manufacture.





NTS

RESKIN ALL EXISTING AWNINGS NO NEW COPY

chnical Survey Dimensions	Α	В	С	D	FACE	STYLE
A01					FLEX FACE	FABRIC
A02					FLEX FACE	FABRIC
A03					FLEX FACE	FABRIC
A04					FLEX FACE	FABRIC
A05					FLEX FACE	FABRIC
A06					FLEX FACE	FABRIC
A07					FLEX FACE	FABRIC
A08					FLEX FACE	FABRIC
A09					FLEX FACE	FABRIC
A10					FLEX FACE	
TD-A.RF TBD sq.ft.			METHOD OF ATTACHMENT			
Existing awning to be recovered like for like materials.				FABRIC		



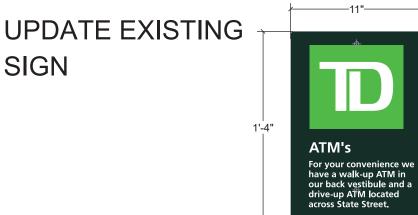


ORIGINAL PHOTOGRAPH



COMPOSITE PHOTOGRAPH with PROPOSED SIGNAGE





FRONT VIEW Scale- 1 1/2"=1'-0"

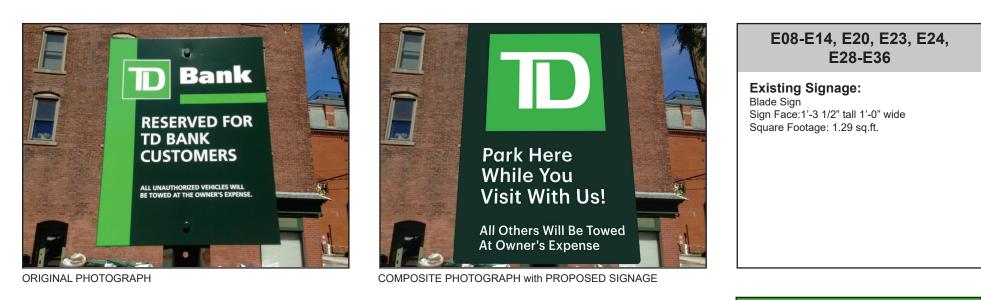
XCUS-TD-P.ATM

1.22 sq.ft.

.125" thk aluminum panel painted TD Dark Green MP62874 V1.0 Satin finish. Vinyl graphics applied to first surface. Mounted using (2) 1/4" x 2" long aluminum studs welded to back of panel.







SPECIAL CONDITIONS

Straighten pole during install

UPDATE EXISTING SIGN

1.22 sq.ft.

.125" thk aluminum panel painted TD Dark Green MP62874 V1.0 Satin finish. Vinyl graphics applied to first surface. Mounted using (2) 1/4" x 2" long aluminum studs welded to back of panel.







 BANDING REQUIREMENTS: Paint all existing striping on site to match TD LIGHT GREEN Infill Address Letters with paint to match TD DARK GREEN



BANDING REQUIREMENTS: Paint all existing striping on site to match TD LIGHT GREEN Infill Address Letters with paint to match TD DARK GREEN

PAINTING SCOPE SPECIAL CONDITIONS

ALL UL AND MANUFACTURERS LABELS TO BE MASKED PRIOR TO PAINTING. ALL LA-BELS TO REMAIN READABLE AND INTACT

Review paint plan with the township to confirm this is allowed

FIX EXISTING CONDITIONS



BANDING REQUIREMENTS: Paint all existing striping on site to match TD LIGHT GREEN Infill Address Letters with paint to match TD DARK GREEN



BANDING REQUIREMENTS: Paint all existing striping on site to match TD LIGHT GREEN Infill Address Letters with paint to match TD DARK GREEN







E03 / Side A / East



E04 / Side A / West



E26 / Side A / West



E08 / Side A /



F01 / Side A / North



F02 / Side A / North

 D
 Bank

 Image: Constraint of the second se



F04 / Side A / West




F05 / Side A / South

EXISTING SIGNS
























Request of **Michael J. Fregeau (Owner)**, for property located at **1474 Islington Street** whereas relief is needed to construct an 8' x 12' shed which requires the following: 1) Variance from Section 10.573.10 to allow a) A 2' left side yard where 5' is required: and b) a 2' rear yard where 5' is required. 2) A Variance from Section 10.521 to allow 22% building coverage where 20% is the maximum allowed. Said property is located on Assessor Map 233 Lot 107 and lies within the Single Residence B (SRB) District.

	<u>Existing</u>	Proposed	Permitted /	
			Required	
<u>Land Use</u> :	Single family	8' x 12' shed	Primarily	
			residential	
Lot area (sq. ft.):	6,098	6,098	15,000	min.
Lot Area per Dwelling	6,098	6,098	15,000	min.
Unit (sq. ft.):				
Lot depth (ft):	99	99	100	min.
Street Frontage (ft.):	68	68	100	min.
Primary Front Yard	26	26	30	min.
<u>(ft.):</u>				
Right Yard (ft.):	13	13	10	min.
Left Yard (ft.):	11	2	5 (shed)	
			min.	
Rear Yard (ft.):	34	2	5 (shed)	min.
Height (ft.):	<35	8 (shed)	35	max.
Building Coverage (%):	20.7	22	20	max.
Open Space Coverage	>40	>40	40	min.
(%):				
Parking:	2	2	2	
Estimated Age of	1951	Variance request(s) shown in red.		
Structure:		• • • • •		

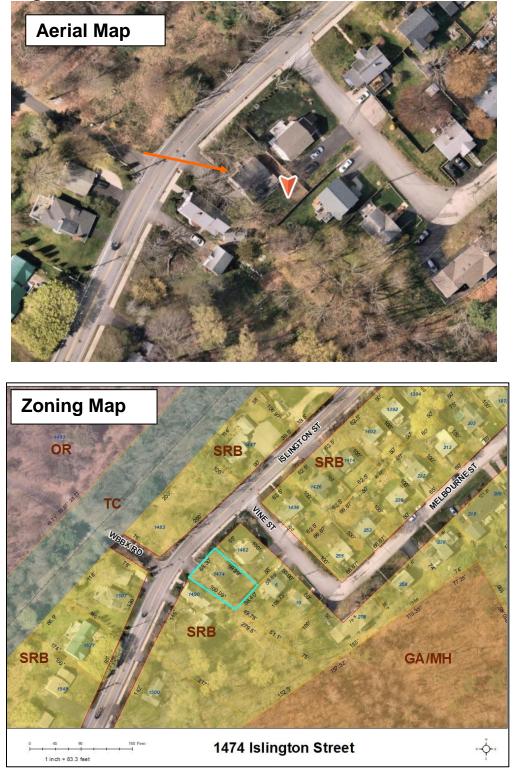
Existing & Proposed Conditions

Other Permits/Approvals Required

None.

3.

Neighborhood Context



Previous Board of Adjustment Actions

No prior BOA history found.

Planning Department Comments

The applicant is proposing to locate a shed 2' from the left side and 2' from the rear yard where 5' is required for a shed that is 100' square feet or less and less than 10' in height.

The proposed shed height is 8' and it will be 96 square feet in size. Privacy fences run along the left side and rear of the property lines between both abutting properties.

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.
- The "unnecessary hardship" test:
 (a) The property has <u>special conditions</u> that distinguish it from other properties in the area.
 AND
 - (b) <u>Owing to these special conditions</u>, 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

<u>Owing to these special conditions</u>, 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.

Michael Fregeau <u>1474 Islington St.</u> <u>Portsmouth, NH 03801</u>

Request for two variances related to installation of an 8' x 12' shed in the corner of my back yard at 1474 Islington St.:

- 1. Lot coverage: the proposed shed will cover 21.6% of the lot which is above the 20% coverage limit
- 2. Setbacks: the shed will be installed within the 5' property line setbacks (it will be installed 2' from the rear and side property lines)

Property 🔞 1474 ISLINGTON ST X * Market Delineation Property \wedge Location 1474 ISLINGTON ST 0233-0107-0000 Vision Account 30472

 \sim

Ownership Owner FREGEAU MICHAEL J FREGEAU LAURA M Address 1474 ISLINGTON ST, PORTSMOUTH, NH 03801

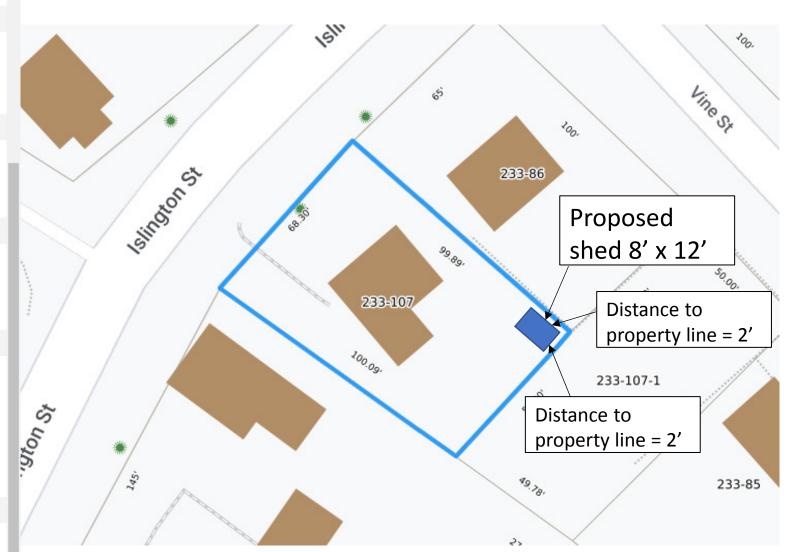
Map-Lot

Number

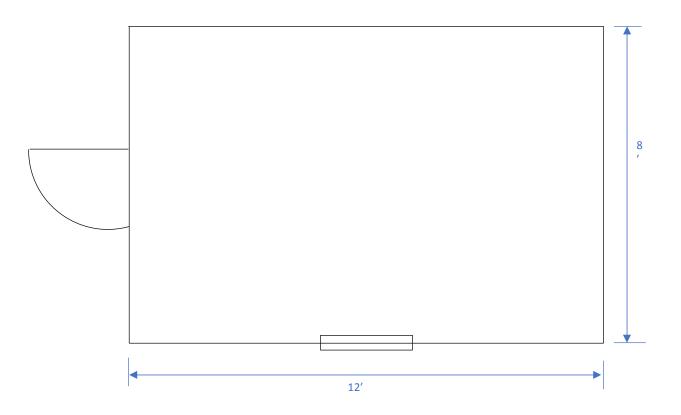
SRB

Valuation		^
Total	\$398,200	
Last Sale	\$485,000 on 2021-04-19	
Deed Date	2021-04-19	
Book/Page	6266/1448	
Land		^
Land Use	1010	
Land Use Description	SINGLE FAM MDL-01	
Market Delineation	123	
Local District	R	
Parcel Area (AC)	0.14	
Zoning		^
Zoning		

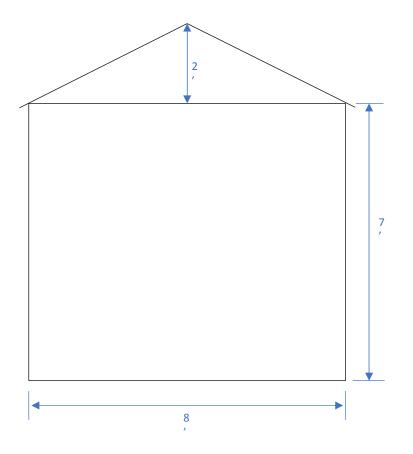
Site Plan – shed installation



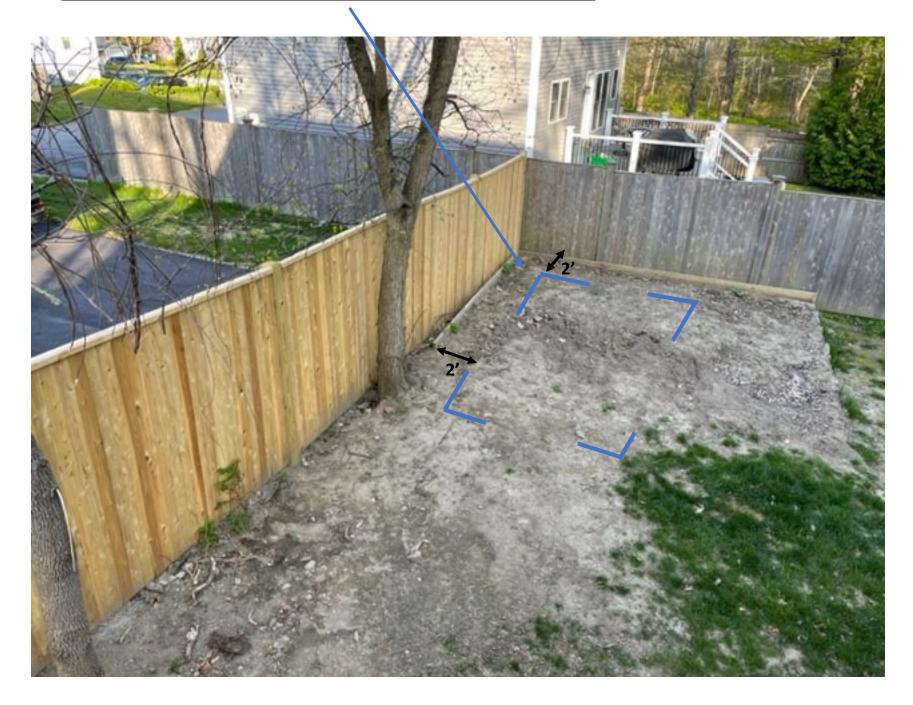
SHED PLAN (PLAN VIEW)



SHED PLAN (ELEVATION VIEW)



Shed installation location photo – rear yard, left corner



Written statement of compliance with requirements of the zoning ordinance criteria for variances per Article 2

- 1. 10.233.21 The variances will not be contrary to the public interest
 - The granting of the variances are not contrary to the public interest because it will not alter the character of the neighborhood and will not encroach on or otherwise impact the neighbor's property. I have consulted with all 3 neighbors that I share a property line with and all of them have verbally approved the shed plan.
- 2. 10.233.22 The spirit of the Ordinance will be observed
 - The spirit of the ordinance will be observed because it will not threaten the health, safety, or welfare of the neighborhood or the general public.
- 3. 10.233.23 Substantial justice will be done
 - Substantial justice will be done because approval of the variance request does not pose a loss to the general public such as a denial to my variance request does not provide the general public any gain
- 4. 10.233.24 The values of surrounding properties will not be diminished
 - The values of surrounding properties will not be diminished because there is no decrease in property value as the shed will not alter the character of the neighborhood
- 5. 10.233.25 Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship.
 - There is not a fair and substantial relationship that exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because the property is unique as the setback requirement would place the shed directly behind the house and all of the space between the property line and the shed becomes dead space. Due to the small size of my lot, the resulting dead space would be an unreasonable waste of space and shed would look unsightly if placed that far into the middle of my yard. Please note that I purchased the shed used so it would be an unreasonable amount of work to reconstruct the shed in a smaller footprint. The proposed use of my back yard space is reasonable.

4.

Request of **Karen Butz Webb Revocable Living Trust (Owner)**, for property located at **910 Sagamore Avenue** whereas relief is needed to remove an existing 150 s.f. addition and construct a new 512 s.f. addition with deck and stairs which requires the following: 1) A Variance from Section 10.531 to allow a 20.5' side yard where 30' is required. 2) A Variance from Section 10.321 to allow a nonconforming use to be expanded. 3) 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 223 Lot 26A and lies within the Waterfront Business (WB) District.

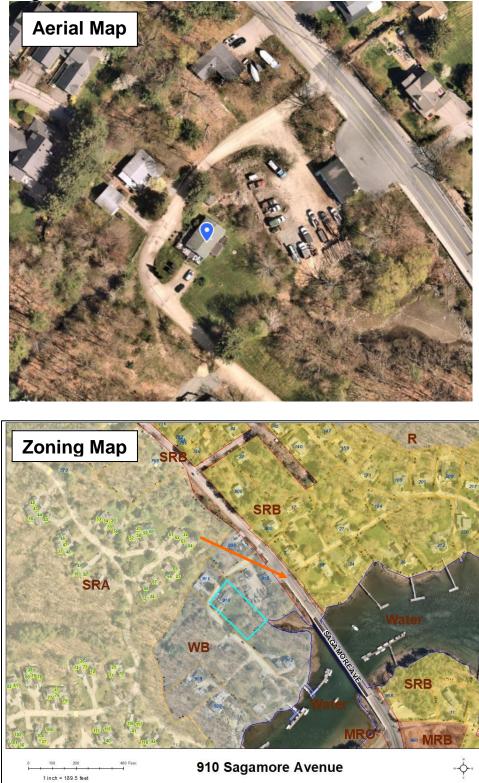
	Existing	Proposed	Permitted / Required	
Land Use:	Single family	Rear addition	Primarily water related uses	
Lot area (sq. ft.):	26,237	26,237	20,000	min.
Lot Area per Dwelling Unit (sq. ft.):	26,237	26,237	No Requirement	min.
Lot depth (ft):	105	105	100	min.
Street Frontage (ft.):	350	350	100	min.
Primary Front Yard (ft.):	19	19	30	min.
Left Yard (ft.):	17	21.5 (20.5 advertised)	30 min.	
Rear Yard (ft.):	>150	>150	20	min.
Height (ft.):	<35	<35	35	max.
Building Coverage (%):	8.5	10	30	max.
Open Space Coverage (%):	82	80	20	min.
Parking:	2	2	2	
Estimated Age of Structure:	1978	Variance request(s) shown in red.		

Existing & Proposed Conditions

Other Permits/Approvals Required

Planning Board – Wetland CUP (granted on October 21, 2021) Conservation Commission –Wetland CUP

Neighborhood Context



Previous Board of Adjustment Actions

No prior BOA history found.

Planning Department Comments

The applicant is seeking to demolish a rear addition and construct a larger addition with a small deck and stairway. The applicant was granted a wetland conditional use permit in October of 2021 by the Planning Board. The property is located in the Waterfront Business district, where residential uses are not permitted, however many exist in this district. The expansion of the residential use requires a variance in addition to the expansion of the nonconforming structure. The advertised setback was 20.5' and the plan shows 21.7'. If granted approval, staff would recommend stipulating a 21.5' setback variance for the addition.

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 <u>special conditions</u> that distinguish it from other properties in the area. **AND**

(b) <u>Owing to these special conditions</u>, 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**

<u>Owing to these special conditions</u>, 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

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

May 25, 2022

HAND DELIVERED

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

Re: Karen Butz Webb, Owner/Applicant 910 Sagamore Avenue Tax Map 223/Lot 26A Waterfront Business District

Dear Mr. Stith & Zoning Board Members:

On behalf of Karen Butz Webb ("Webb"), enclosed please find the following in support

of a request for zoning relief:

- Digital Application submitted earlier today.
- Owner's Authorization.
- 05/25/2022 Memorandum and exhibits in support of Variance Application

We look forward to presenting this application to the Zoning Board at its June 22, 2022 meeting.

ery truly yours, · ~ Al

R. Timothy Phoenix Monica F. Kieser Stephanie J. Johnson

Encl.

cc: Karen Butz Webb Ross Engineering, LLC

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

OF COUNSEL: SAMUEL R. REID JOHN AHLGREN

OWNER'S AUTHORIZATION

I, Karen Butz Webb, Trustee of the Karen Butz Webb Revocable Living Trust, Owner/Applicant of 910 Sagamore Avenue, Tax Map 223/Lot 26A, hereby authorize law firm Hoefle, Phoenix, Gormley & Roberts, PLLC, to represent me before any and all City of Portsmouth Representatives, Boards and Commissions for permitting the project.

Date: 5.13.22

Respectfully submitted, <

Karen Butz Webb, Trustee

MEMORANDUM

TO: FROM:	Portsmouth Zoning Board of Adjustment ("ZBA") R. Timothy Phoenix, Esquire Monica F. Kieser, Esquire
	Stephanie J. Johnson, Esquire
DATE:	May 25, 2022
Re:	Karen Butz Webb, Owner/Applicant
	Property Location: 910 Sagamore Avenue
	Tax Map 223, Lot 26A
	Zoning District Waterfront Business Zone ("WB")

Dear Chairman Parrott and Zoning Board Members:

On behalf of Karen Butz Webb, Owner/Applicant ("Webb"), we are pleased to submit this memorandum and attached exhibits in support of Zoning Relief to allow construction of an addition for consideration by the Portsmouth Zoning Board of Adjustment ("ZBA") at its June 22, 2022 meeting.

I. EXHIBITS

A. <u>Site Plan Set – issued by Ross Engineering, LLC</u>.

- Boundary Survey and Existing Conditions
- Site Plan
- Disturbance Area
- Stormwater Management Plan
- Erosion Control Plan
- B. <u>Architectural Plan Set issued by Yankee Construction, LLC.</u>
 - General Notes Exterior Elevations
 - Site Survey
 - Site Survey Details
- C. Site Photographs.
- D. <u>Tax Map 223</u>.
- E. <u>10/28/2021 Planning Board Notice of Decision Wetland Conditional Use Permit</u>
- F. <u>10/6/2021 Conservation Commission Recommending Approval of Wetland CUP.</u>

II. <u>PROPERTY/PROJECT</u>

910 Sagamore Avenue is a 0.62-acre lot situated in the Waterfront Business ("WB") district. The lot contains a 1,232 s.f. single-family residence dating back to 1978 with 150 s.f. bump out, 580 s.f. attached deck, and 150 s.f. shed ("the Property"). The existing house and deck encroach on the Waterfront Business District's 30 ft. yard setbacks. Webb intends to replace the 150 s.f. bump out with a 512 s.f. elevated addition including a deck and stairs leading

to the yard as well as other site improvements (the "Project"). The addition's design includes gutters to direct stormwater to a stone infiltration area below and an infiltration trench will channel storm water to new wetland buffer plantings. The non-tidal wetlands beyond the new plantings will be restored and dedicated as a "no-mow" area. Webb will also tie into the City's Sagamore Sewer Line Extension and cease using a leach field in the wetland buffer.

Webb previously obtained a positive recommendation from the Conservation Commission for the Project and a Conditional Use Permit from the Planning Board. (Exhibits E-F). Subsequently, Webb identified additional zoning relief would be required to proceed. City Staff has confirmed that the Project requires variances for expansion of a residential use in the Waterfront Business District, expansion of a nonconforming structure, and relief from the 30 ft. side yard setback requirements.

III. <u>RELIEF REQUIRED</u>

Variance Section	Required	Existing	Proposed
PZO §10.321 Expansion of Nonconforming Structure	30' Side Setback	17' House 17.2' Stairs	17' House 20.1' Stairs 23.1' Addition
PZO §10.331 Expansion of Nonconforming Use	Business Use	1382 s.f. Single- Family Residence (includes existing 150 s.f. bump-out)	1744 s.f. Single- Family Residence (includes 512 s.f. addition)
PZO §10.531 Side Setback	30'	17' House 17.2' Stairs	17' House 20.1' Stairs 23.1' Addition

IV. VARIANCE REQUIREMENTS

1. <u>The variances will not be contrary to the public interest.</u>

2. <u>The spirit of the ordinance is observed</u>.

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 <u>Malachy Glen Associates</u>, 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." <u>Id</u>. "Mere conflict with the zoning ordinance is not enough." <u>Id</u>.

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. <u>The use of land, buildings and structures for business, industrial, residential and other purposes</u> The single-family home has existed since 1978 and no change in use is proposed. The 388 s.f. increase in living area will simply provide a more functional layout.
- 2. The intensity of land use, including lot sizes, building coverage, building height and bulk, yards and open space – Most of the addition is within the building envelope. At 23.1 ft. and 20.1 ft., the addition and its stairs will be further from the side lot line than the existing left side of the home preserving ample access to air and light. Building coverage will increase just slightly to 10.0%. Natural woodland area will remain at 1,065 s.f. Invasive species will be removed, the septic system will be disconnected, plantings will be installed along the wetland delineation line, and 2,350 s.f. of non-tidal mowed grass will be restored to a wetland which promotes the environmental health of the area.
- 3. <u>The design of facilities for vehicular access, circulation, parking and loading</u> The location of the addition causes no changes to vehicular access, circulation, parking and loading.
- 4. <u>The impact on properties on of outdoor lighting, noise, vibration, stormwater</u> <u>runoff and flooding</u> – Use of the property will not change. A stone infiltration area will be placed below the addition to ensure stormwater runoff is detained and treated on the lot.
- 5. <u>The preservation and enhancement of the visual environment</u> The addition will replace the bump out and will improve the appearance of the Property. Adding plantings along the wetland delineation line, restoring a mowed grass area to wetland, and removing invasive species will promote the environmental health of the area and enhance its visual appearance.
- 6. <u>The preservation of historic districts and building and structures of historic</u> <u>architectural interest</u> – 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 – The Conservation Commission recommended, and the Planning Board approved a Wetland Conditional Use Permit for the Project which includes a stormwater management plan, wetland buffer plantings, and implementation of a no-mow area. In addition, use of the septic system will be discontinued when the home connects to the Sagamore Avenue Sewer Extension line.

The intent of the WB Zone is to "accommodate and support business uses that depend on the ocean or Piscataqua River for transport or resources." PZO §10.410. There are approximately eight properties in this area on the west side of Sagamore Avenue zoned Waterfront Business, four of which are single-family residences sandwiched between Tidewatch Condominiums and a residential neighborhood across Sagamore Avenue. The Property, like the three other single-family residences on Sagamore Avenue near Sagamore Creek, contains a home and accessory building, but has minimal frontage on a finger of tidal Sagamore Creek. The minimal expansion of the nonconforming use and structure is reasonable, in keeping with the neighborhood, and will not impede nearby businesses utilizing Sagamore Creek for access to the Piscataqua River or the ocean. The proposal also results in greater protection for the wetland areas located close to the Property and restoring a mowed grass area to its wetland state. Given these factors, granting the requested variances 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," <u>Malachy Glen, supra</u>, also held:

One way to ascertain whether granting the variance would violate basic zoning objectives is to determine whether it would <u>alter the</u> <u>essential character of the locality</u>... 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 three other properties in the immediate area being used for residential purposes. The addition will add more living space to the residence without overburdening the land. The proposal includes removing the threat posed to the wetland from the aging septic system and invasive plant species, as well as restoring a mowed grass area to wetland, thus improving over existing conditions. Given the residential use of neighboring parcels, particularly 911 Sagamore Avenue, 912 Sagamore Avenue, and 913 Sagamore Avenue, the proposal is in keeping with the surrounding area. Granting the variances neither alters the essential character of the locality nor threatens the public health, safety, or welfare. In fact, the proposal enhances the public health, safety, and welfare by increasing protections for the wetland areas, detaining stormwater runoff, disconnecting an aging septic system, and removing invasive plant species. Accordingly, granting the variances to allow an addition 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 slight expansion will not alter the long-standing residential use of the Property. The Project slightly increases living space, is no closer to the side yard setback, restores wetland, captures stormwater runoff, disconnects an old septic system, and removes invasive species, thus improving the value of the Property and those around it. The slight expansion of the residential use and structure will match existing conditions. Accordingly, the variances will not diminish surrounding property values.

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

a. <u>Special conditions distinguish the property from others in the area.</u>

The Property contains a small single-family residence in proximity to other residential lots on an oversized Waterfront Business lot burdened by the wetland buffer from Sagamore Creek but with minimal Creek frontage. The existing home encroaches on front and left side yard setbacks and drives the location of any addition. These circumstances combine to create special conditions

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

Limitations on the expansion of nonconforming uses exist to ensure uniformity and compatibility of uses, while yard setbacks and limitations on expansion of nonconforming structures exist to prevent "over bulking" and overburdening of land, preserve access to adequate air, light, separation between neighbors, and provide space for stormwater treatment. Here a small group of properties is in the Waterfront Business District, but half are residential properties and all are located between other residential neighborhoods. The slight expansion will not change the use of this Property, impede nearby businesses, or negatively affect abutting properties. Building coverage and open space requirements are well below/above that which is required. Implementation of a stormwater management plan, cessation of septic system use, and the addition of buffer plantings and removal of invasives more than off-sets this small addition and improves environmental conditions on the lot. Accordingly, there is no fair and substantial relationship between the purposes of the ordinance and its application in this instance.

c. <u>The proposed use is reasonable.</u>

The single-family residence currently on the lot was built in 1978. The Property has been used as a single-family residence since that time. The proposed addition represents minimal expansion of the use and structure, and does not negatively affect surrounding properties. Thus, the proposal is reasonable and the hardship element of the criteria is satisfied.

5. <u>Substantial justice will be done by granting the variances.</u>

If "there is no benefit to the public that would outweigh the hardship to the applicant" this factor is satisfied. <u>Harborside Associates, L.P. v. Parade Residence Hotel, LLC</u>, 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." <u>Malachy Glen, supra</u> at 109.

Webb is constitutionally entitled to the use of the lot as she sees fit; including adding onto the property, subject only to its effect on the wetland and surrounding properties. "The right to use and enjoy one's property is a fundamental right protected by both the State and Federal Constitutions." <u>N.H. CONST. pt. I, arts. 2, 12; U.S. CONST. amends. V, XIV; Town of</u> <u>Chesterfield v. Brooks</u>, 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. <u>L. Grossman & Sons, Inc. v. Town of Gilford</u>, 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*. <u>Burrows v.</u> <u>City of Keene</u>, 121 N.H. 590, 597 (1981) (emphasis added).

The slight expansion of the home and its nonconforming use creates more living space for Webb and does not negatively affect abutting properties nor impede the ability of nearby businesses to access the ocean or Piscataqua River. The Conservation Commission recommended, and the Planning Board approved, the Project which includes a stormwater management plan, addition of buffer plantings, and restoration of the wetland. Thus, there is no gain to the public from denying the requested variances. Conversely, Webb will be greatly harmed by denial of any of the variances because she will be unable to modestly expand her small home. Without question, substantial justice will be done by granting the variances.

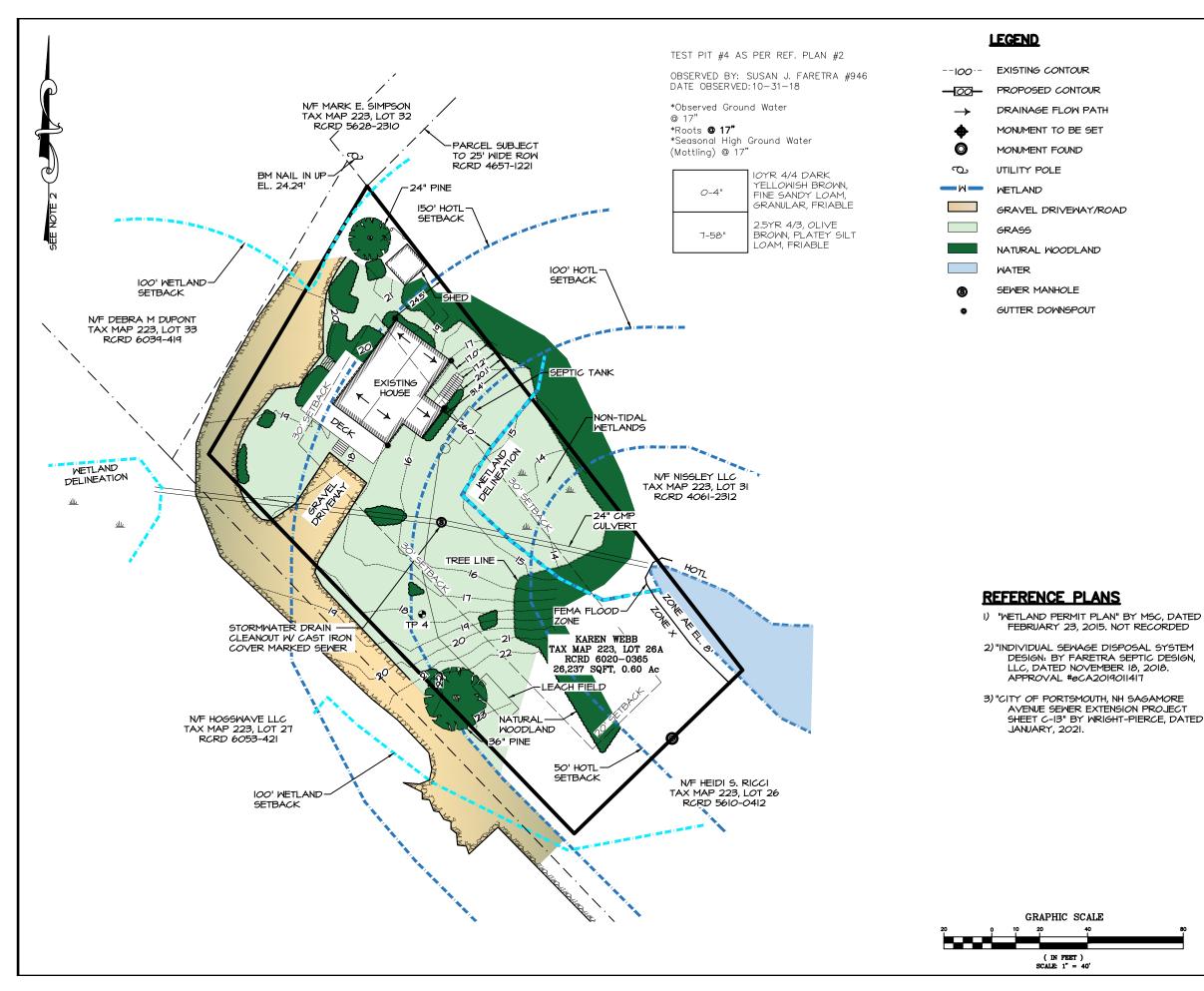
Page 7 of 7

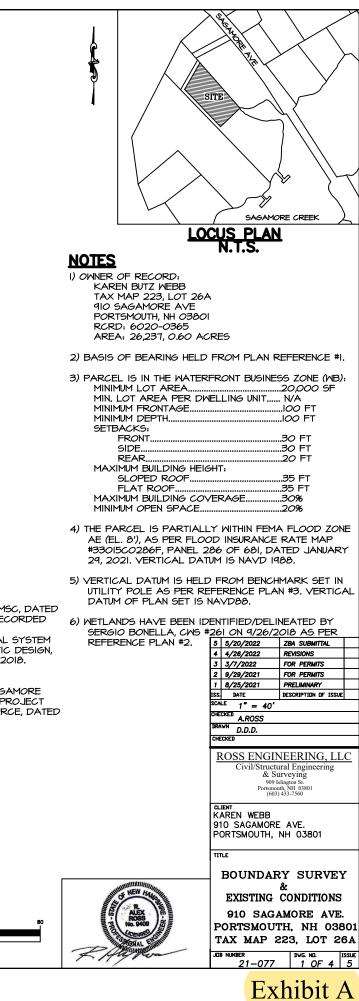
VI. <u>CONCLUSION</u>

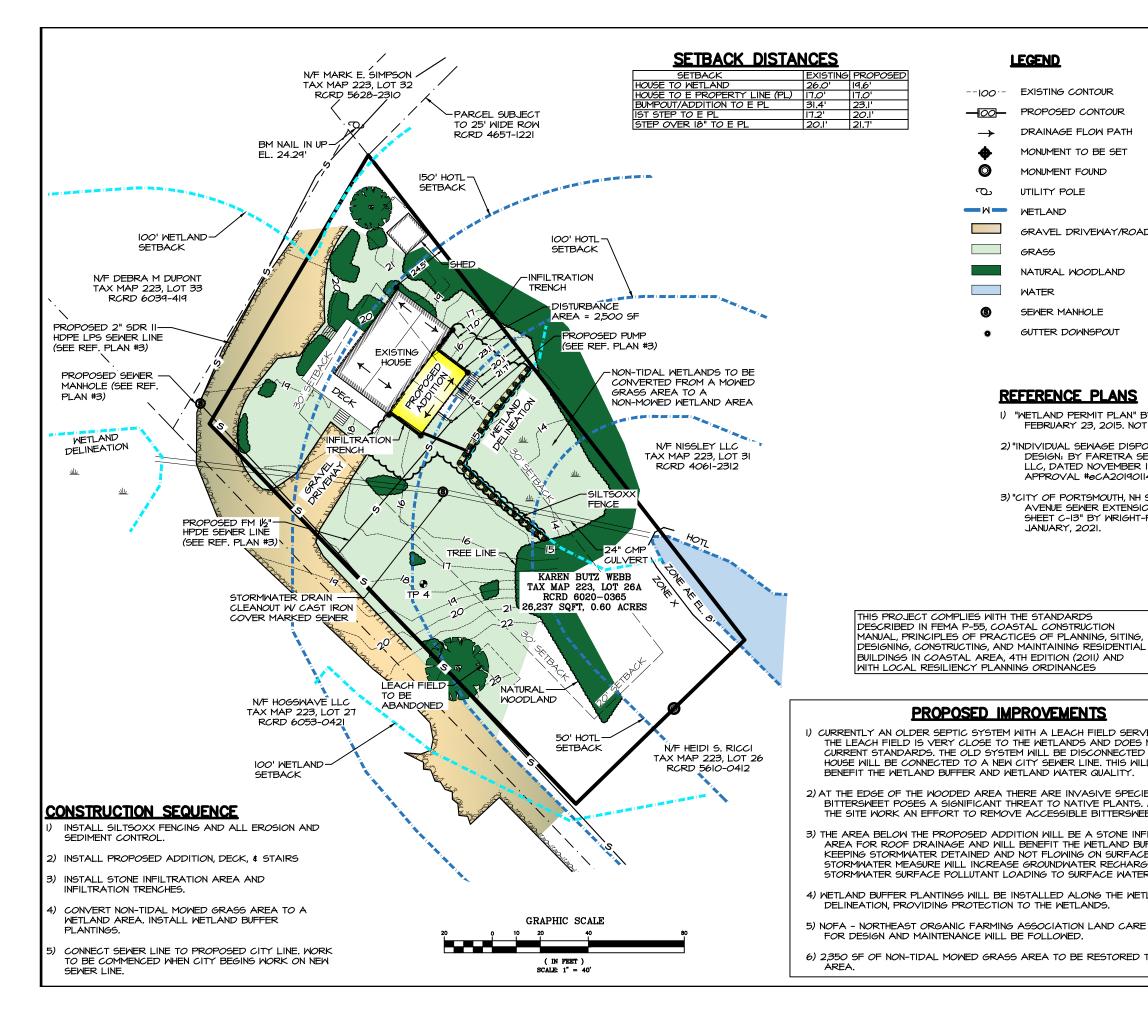
For all of the reasons stated, Karen Butz Webb respectfully requests that the Portsmouth Zoning Board of Adjustment grant the requested variances.

Respectfully submitted, Karen Butz Webb

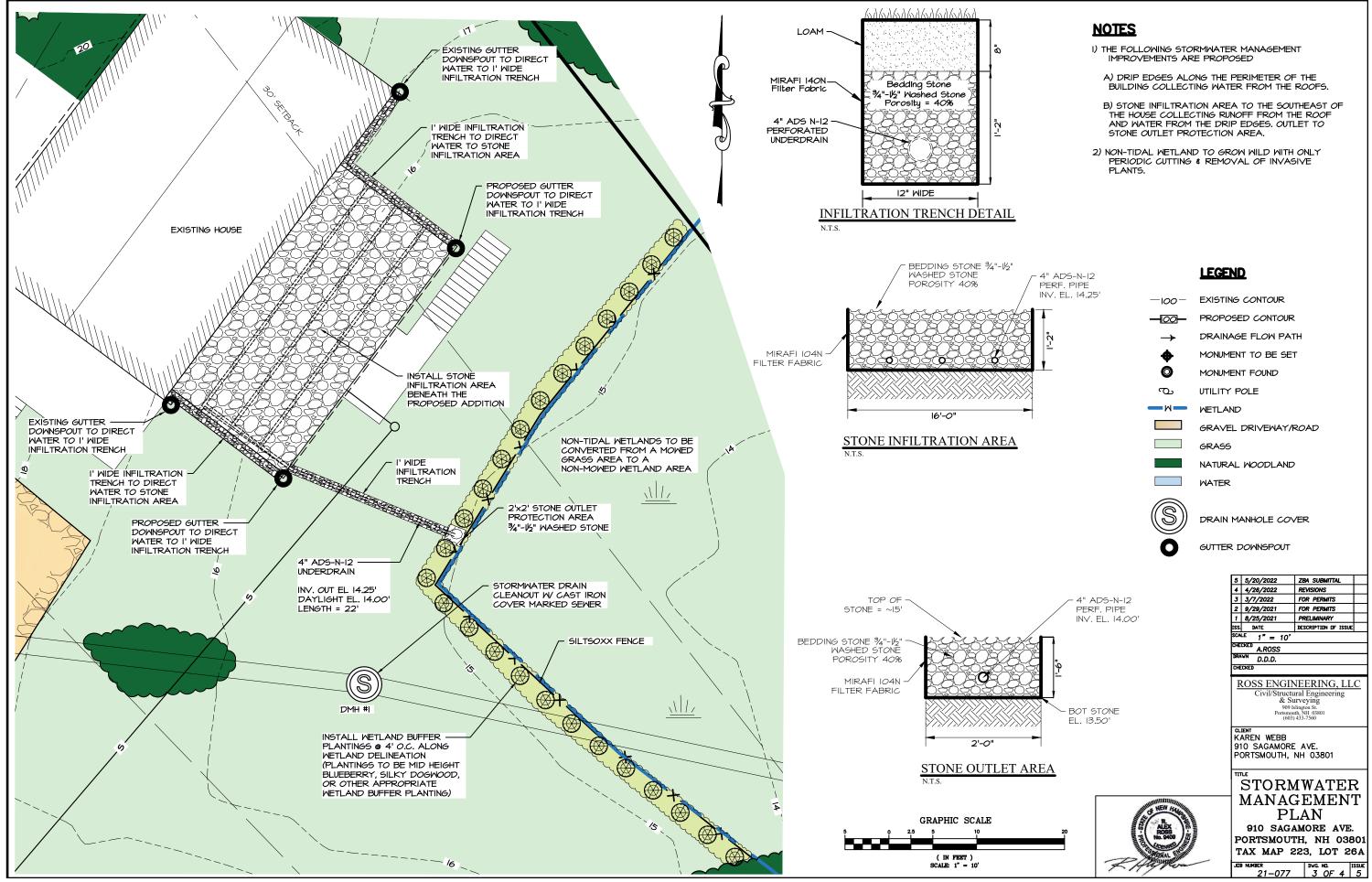
By: R. Timothy Phoenix Monica F. Kieser Stephanie J. Johnson







	NOTES	
	I) PARCEL IS IN THE WATERFRO	
	MINIMUM LOT AREA MIN. LOT AREA PER DWEL	
	MIN. LOT AREA PER DHEL MINIMUM FRONTAGE	
	MINIMUM PRONTAGE MINIMUM DEPTH	
	SETBACKS:	
	FRONT	
	SIDE	
	REAR	
	MAXIMUM BUILDING HEIGHT	Γ:
	SLOPED ROOF	35 FT
	FLAT ROOF	
	MAXIMUM BUILDING COVER	
	MINIMUM OPEN SPACE	
	2) THE ENTIRE PROPERTY IS W	ITHIN THE 250' HOTL
	BUFFER.	
Ð		
-	3) COVERAGES BUILDING COVERAGE	
	EXISTING	
	HOUSE	1232 SF
	DECK	
	STAIRS	
	BUMP OUT	
		150 SF
	TOTAL	2231 SF
	BUILDING COVERAGE	8.5%
	PROPOSED	
	HOUSE	
	DECK	
	STAIRS	
	SHED	
	ADDITION	512 SF
		2611 SF
ay Mar natto	BUILDING COVERAGE	10.0%
BY MSC, DATED		
T RECORDED	LOT COVERAGE EXISTING	
OGAL CYCTEM	BUILDING COVERAGE	2231 65
OSAL SYSTEM EPTIC DESIGN,	GRAVEL	
18, 2018.	TOTAL	4782 SF
10, 2010. 1417	LOT COVERAGE	18.2%
SAGAMORE	PROPOSED	
ON PROJECT	BUILDING COVERAGE	
-PIERCE, DATED	<u>GRAVEL</u>	2551 SF
	TOTAL	5162 SF
	LOT COVERAGE	19.7%
	4) NATURAL WOODLAND REQU	
	NATURAL WOODLAND PROVI	IVEV = 1,065 SF
	5) AREA MARKED AS NATURAL	
	REMAIN IN AN UNALTERED	RED STATE. AS PER RSA RED STATE IS DEFINED AS
	"NATIVE VEGETATION ALL CUTTING, LIMBING, TRIMMIN	
.	OTHER SIUMILAR ACTIVITI	
_		INTAIN OR IMPROVE PLANT
-1	HEALTH."	r
		5 5/20/2022 ZBA SUBMITTAL
		4 4/26/2022 REVISIONS
		3 3/7/2022 FOR PERMITS
	-	2 9/29/2021 FOR PERMITS
		1 8/25/2021 PRELIMINARY ISS. DATE DESCRIPTION OF ISSUE
		$\frac{135.1}{\text{SCALE}} \frac{1}{1} = 40'$
/ES THE HOUSE.		
NOT MEET		A.ROSS
AND THE		D.D.D.
L GREATLY		CHECKED
		ROSS ENGINEERING, LLC
		Civil/Structural Engineering
IES. INVASIVE		& Surveying
AS PART OF		909 Islington St. Portsmouth, NH 03801 (603) 433-7560
ET WILL OCCUR.		(603) 433-7560
		CLIENT
FILTRATION		KAREN WEBB
JFFER AREA BY		910 SAGAMORE AVE.
ES. THIS		PORTSMOUTH, NH 03801
SE AND REDUCE		10.5
RS NEARBY.		TITLE
rland		SITE PLAN
	SUMMER NEW HAR	
E PRACTICES	E ALEX A	910 SAGAMORE AVE.
	第四日 ROSS No. 9400) 店屋	PORTSMOUTH, NH 03801
	Conse al	
TO A WETLAND	THE ONAL ENTITIE	TAX MAP 223, LOT 26A
	- fully and	JOB NUMBER DWG. ND. ISSUE
		21-077 2 OF 4 5



EROSION AND SEDIMENTATION CONTROL CONSTRICTION PHASING AND SEQUENCING

- SEE TEOSION AND SEDIMENTATION CONTROL GENERAL NOTES" WHICH ARE TO BE AN INTEGRAL PART OF THIS PROCESS.
 INSTALL SILTSOXX FENCING AS PER DETAILS AND AT SEDIMENT MIGRATION.
- CONSTRUCT TREATMENT SWALES, LEVEL SPREADERS AND DETENTION STRUCTURES AS DEPICTED ON DRAWINGS.
- STRUCTURES AS DEPICIED ON DRAWINGS.
 STRUP AND STOCKPILE TOPSOLL STABILIZE PILES OF SOIL CONSTRUCTION MATERIAL & COVER WHERE PRACTICABLE.
 MINIMIZE DUST THROUGH APPROPRIATE APPLICATION OF WATER OR OTHER DUST SUPPRESSION TECHNIQUES ON SITE.
 ROUGH GRADE SITE. INSTALL CULVERTS AND ROAD DITCHES.

- ROUGH GRADE STIE. INSTALL CALVERTS AND ROAD DITCHES.
 FINISH GRADE AND COMPACT STIE.
 RE-SPREAD AND ADD TOPSOL TO ALL ROADSIDE SLOPES, TOTAL
 TOPSOL THICKNESS TO BE A MINIMUM OF FOUR TO SIX INCHES.
 STABILIZE ALL AREAS OF BARE SOL WITH MULCH AND SEEDING.
 RE-SEED PRE REGION AND SEDIMENTATION CONTROL GENERAL NOTES.
 SILT SOXX FENCING TO REMAIN AND BE MAINTAINED FOR TWENTY FOUR
 SULT SOXX FENCING TO REMAIN AND BE MAINTAINED FOR TWENTY FOUR
- MONTHS AFTER CONSTRUCTION TO ENSURE ESTABLISHMENT OF ADEQUATE SOIL STABILIZATION AND VEGETATIVE COVER. ALL SILT SOXX FENCING ARE THEN TO
- REMOVED FROM THE SITE AND PROPERLY DISPOSED OF. PERIMETER CONTROLS SHALL BE INSTALLED PRIOR TO EARTH MOVING
- OPERATIONS. ALL TEMPORARY WATER DIVERSION (SWALES, BASINS, ETC. MUST BE USED
- ALL TENFORMAT MALES INTERPOLATION (SMALES) BASING, ETC. MOST BE USED AS INCESSARY INTIL AREAS ARE STABILIZED.
 I4. PONDS AND SWALES SHALL BE INSTALLED EARLY ON IN THE CONSTRUCTION SEQUENCE BEFORE ROUGH GRADING THE SITE.
 I5. ALL DITCHES AND SWALES SHALL BE STABILIZED PRIOR TO DIRECTING RUNOFF TO THEM
- ALL ROADWAYS AND PARKING LOTS SHALL BE STABILIZED WITHIN 12 HOURS OF ACHIEVING FINISHED GRADE.
- ALL CUT AND FILL SLOPES SHALL BE SEEDED/LOAMED WITHIN T2 HOURS OF HEVING FINISH GRADE. ALL EROSION CONTROLS SHALL BE INSPECTED WEEKLY AND AFTER EVERY
- HALF-INCH OF RAINFALL.
- THE SMALLEST PRACTICAL AREA SHALL BE DISTURBED DURING
- THE SMALLEST PRACTICAL AREA SHALL BE DISTURBED DURING CONSTRUCTION, BUT IN IN C ASE SHALL EXCEED 5 ACRES AT ANY ONE TIME BEFORE DISTURBED AREAS ARE STABILIZED.
 LOT DISTURBANCE, OTHER THAN THAT SHOWN ON THE APPROVED PLANS, SHALL NOT COMMENCE INTIL AFTER THE ROADWAY HAS THE BASE COURSE TO DESIGN ELEVATION AND THE ASSOCIATED DRAINAGE IS COMPLETE AND STABLE.

PLANTING NOTES:

LEANNING INCIDE: I. ALL PLANT MATERIALS SHALL BE FIRST QUALITY NURSERY GROWN STOCK. 2. ALL PLANTS SHALL BE PLANTED IN ACCORDANCE WITH NEW HAMPSHIRE LANDSCAPE ASSOCIATION STANDARDS AND GUARANTEED FOR ONE YEAR BY THE LANDSCAPE CONTRACTOR

LANDSCAFE CONTRACTOR. 3. ALL TREES AND SHRUBS SHALL HAVE WATER SAUCERS BUILT AROUND THEIR BASES AND THESE SHALL BE MULCHED WITH 4" OF DARK BROWN AGED BARK MULCH, MULCH MUST BE KEPT 2" AWAY FROM THEIR TRUNKS.

ALL TREES AND SHRUBS SHALL BE PLANTED AND MULCHED BEFORE LAWN IS SEEDED

MAINTENANCE REQUIREMENTS:

I. ALL TREES, SHRUBS, AND PERENNIALS MILL NEED TO BE WATERED THROUGH THANKSGIVING DURING THE FIRST SEASON IN WHICH THEY ARE INSTALLED. 2. AN UNDERSROUND DRIP IRRIGATION SYSTEM IS RECOMMENDED. IF AN INDERSROUND DRIP IRRIGATION SYSTEM IS NOT INSTALLED, SOAKER HOSES WOUND THROUGHOUT PLANTING BEDS ARE ACCEPTABLE, ALTHOUGH OVERHEAD SPRINKLERS ARE RECOMMENDED FOR LAWN AREAS. THEY ARE NOT ACCEPTABLE FOR IRRIGATING TREES AND SHRUBS.

SEEDING AND STABILIZATION FOR LOAMED SITE:

FOR TEMPORARY & LONG TERM SEEDINGS USE AGMAY'S SOIL CONGERVATION GRASS SEED OR EQUAL COMPONENTS: ANNUAL RYE GRASS, PERENNIAL RYE GRASS, WHITE CLOVER, 2 FESCUES, SEED AT A RATE OF 100 POUNDS PER ACRE

FERTILIZER & LIME:

NITROGEN (N) 50 LB5/ACRE, PHOSPHATE (P205) 100 LB5/ACRE, POTASH (K20) 100 LB5/ACRE, LIME 2000 LB5/ACRE

MULCH HAY OR STRAW 1.5-2 TONS/ACRE

A) GRADING AND SHAPING

I) SLOPES SHALL NOT BE STEEPER THAN 2:1; 3:1 SLOPES OR FLATTER ARE PREFERRED. WHERE MOWING WILL BE DONE, 3.1 SLOPES OR FLATTER ARE

B) SEED BED PREPARATION I) SURFACE AND SEEPAGE WATER SHOULD BE DRAINED OR DIVERTED FROM SURFACE AND SEEPAGE WATER SHOULD BE DRAINED OR DIVERTED FROM THE SITE TO PREVENT DROWNING OR WINTER KILLING OF THE PLANTS.
 STONES LARGER THAN 4 INCHES AND TRASH SHOULD BE REMOVED BECAUSE THEY INTERFERE WITH SEEDING AND FUTURE MAINTENANCE OF THE AREA, WHERE FEASIBLE, THE SOIL SHOULD BE TILLED TO A DEPTH OF ABOUT 4 INCHES TO PREPARE A SEEDBED AND MIX FERTILIZER AND LIME INTO THE SOIL. THE SEEDBED SHOULD BE LEFT IN A REASONABLY FIRM AND SMOOTH CONDITION. THE LAST TILLAGE OPERATION SHOULD BE PERFORMED ACROSS THE SLOPE WHEREVER PRACTICAL.

EROSION AND SEDIMENTATION CONTROL GENERAL NOTES

CONDUCT ALL CONSTRUCTION IN A MANNER AND SEQUENCE THAT CAUSES THE LEAST PRACTICAL DISTURBANCE OF THE PHYSICAL ENVIRONMENT, BUT IN NO CASE SHALL EXCEED 2 ACRES AT ANY ONE TIME BEFORE DISTURBED AREAS ARE STABILIZED

ALL AREAS SHALL BE STABILIZED WITHIN 45 DAYS OF INITIAL DISTURBANCE

DISTURBANCE. 3. ALL DITCHES, SWALES AND PONDS MUST BE STABILIZED PRIOR TO DIRECTING FLOW TO THEM. 4. ALL GROUND AREAS OPENED UP FOR CONSTRUCTION WILL BE STABILIZED MITHIN 24 HOURS OF EARTH-DISTURBING ACTIVITES DEING CEASED, AND WILL BE FULLY STABILIZED NO LONGER THAN 14 DAYS AFTER INITIATION, (SEE NOTE II FOLL 5 ADULIZED NO CONSER TRAN 14 DATS AFTER INITIATION, (SEE NOTE IT FOR DEFINITION OF STABLE), ALL SOILS FINISH GRADED MIST BE STABILIZED WITHIN SEVENTY TWO HOURS OF DISTURBANCE, ALL TEMPORARY OR LONG TERM SEEDING MUST BE APPLIED TO COMPLY WITH "WINTER CONSTRUCTION NOTES" (SEE MINTER CONSTRUCTION NOTES). EMPLOY TEMPORARY EROSION AND SEDIMENTATION CONTROL DEVICES AS DETAILED ON THIS PLAN AS NECESSARY UNTIL ADEQUATE STABILIZATION HAS BEEN ASSURED (SEE NOTE II FOR DEFINITION

OF STABLE). TEMPORARY & LONG TERM SEEDING: USE SEED MIXTURES, FERTILIZER, LIME

 TEMPORARY & LONG TERM SEEDING USE SEED INCLUSES, LANDALES, LAND WHEREVER POSSIBLE A VEGETATED STRIP OF AT LEAST TWENTY FIVE FEET IS TO BE KEPT BETWEEN SILTSOXX AND ANY EDGE OF WET AREA

T SEEDED AREAS WILL BE FERTILIZED AND RE-SEEDED AS NECESSARY TO ENSURE VEGETATIVE ESTABLISHMENT. 8. SEDIMENT BASIN(S), IF REQUIRED, TO BE CHECKED AFTER EACH SIGNIFICANT

RAINFALL AND CLEANED AS NEEDED TO RETAIN DESIGN CAPACITY

KAINFALL AND CLEANED AS INEEDED TO KETAIN DESIGN CAPACITY. 9. SILTSOXX FENCING MILL BE CHECKED REGULARLY AND AFTER EACH SIGNIFICANT RAINFALL. NECESSARY REPAIRS WILL BE MADE TO CORRECT UNDERNINING OR DETERIORATION OF THE DARRIER AS NELL AS CLEANING, REMOVAL. AND PROPER DISPOSAL OF TRAPPED SEDIMENT. 10. TREATMENT SWALES WILL BE CHECKED MEEKLY AND REPAIRED WHEN DEFERGANCE UNTIL DEFENSION TO THE ADDRESS AND SET AND SEDIMENT.

NECESSARY UNTIL ADEQUATE VEGETATIVE COVER HAS BEEN ESTABLISHED AN AREA SHALL BE CONSIDERED FULLY STABLE IF ONE OF THE FOLLOWING HAS OCCURRED.

BASE COURSE GRAVELS HAVE BEEN INSTALLED IN AREAS TO BE PAVED A MINIMUM OF 85% VEGETATED GROWTH HAS BEEN ESTABLISHED A MINIMUM OF 3" OF NON-EROSIVE MATERIAL SUCH AS STONE OR RIP RAP HAS BEEN INSTALLED.

EROSION CONTROL BLANKETS HAVE BEEN PROPERLY INSTALLED.

 LEROSION AND SEDIMENTATION CONTROL MEASURES IN THE PLAN SHALL MEET THE DESIGN BASED ON STANDARDS AND SPECIFICATIONS SET FORTH IN THE STORM WATER MANAGEMENT AND EROSION AND SEDIMENTATION CONTROL HANDBOOK FOR URBAN AND DEVELOPING AREAS IN NEW HAMPSHIRE (DECEMBER 2008 OR LATEST) PREPARED BY ROCKINGHAM COUNTY CONSERVATION DISTRICT. N.H. DES AND NRCS

WINTER CONSTRUCTION NOTES

ALL PROPOSED VEGETATED AREAS WHICH DO NOT EXHIBIT A MINIMUM OF 55% VEGETATIVE GROWTH BY OCTOBER ISTH, OR WHICH ARE DISTUBED AFTER OCTOBER ISTH, SHALL BE STABILIZED BY SEEDING AND INSTALLING EROSION CONTROL BLANKETS ON SLOPES GREATER THAN 3:1, AND SEEDING AND PLACING 3 TO 4 TONS OF MULCH PER ACRE, SECURED WITH ANCHORED NETTING, ELSEWHERE, THE INSTALLATION OF EROSION CONTROL BLANKETS OR MULCH AND NETTING SHALL NOT OCCUR OVER ACCUMULATED SNOW OR ON EROZEN GROUND AND SHALL BE COMPETED IN ADVANCE OF THAN OR SPRING MELT EVENT, AND SHALL BE COMPETED IN ADVANCE OF THAN OR SPRING MELT EVENT, 2. ALL DITCHES OR SHALES WHICH DO NOT EXHIBIT A MINIMUM OF 85% VEGETATIVE GROWTH BY COTOBER 15TH, OR WHICH ARE DISTURBED AFTER OCTOBER 15TH, SHALL BE STABILIZED TEMPORARILY WITH STONE OR EROSION CONTROL BLANKETS APPROPRIATE FOR THE DESIGN FLOW CONDITIONS: AFTER OCTOBER 15TH, INCOMPLETE ROAD OR PARKING SURFACES, WHERE WORK HAS STOPPED FOR THE WINTER SEASON SHALL BE PROTECTED WITH A MINIMUM OF 3 INCHES OF CRUSHED GRAVEL PER NHDOT ITEM 304.3.

LONG TERM SEEDING *WELL TO MODERATELY WELL DRAINED SOILS

FOR CUT AND FILL AREA AND FOR WATERWAYS AND CHANNELS

SEEDING	MIXTURE	С	

SEEDING MIXTURE C			
	Ib/ACRE	16/10005F	
TALL FESCUE	20	0.45	
CREEPING RED FESCUE	20	0.45	
RED CLOVER (ALSIKE)	20	0.45	
TOTAL	48	1.35	

LIME, AT 2 TONS PER ACRE OR IOO LBS PER LOOD SE HERTILIZER: 10 20 (NITROGEN, PHOSPHATE, POTASH AT 500# PER ACRE. MULCH: HAY OR CLEAN STRAW; 2 TONS/ACRE OR 2 BALES/1000 S.F.

GRADING AND SHAPING

- ING AND SHAPING; SLOPES SHALL NOT BE STEEPER THAN 2 TO I, 3 TO I OR FLATTER SLOPES ARE PREFERRED. SEEDED PREPARATION: SURFACE AND SEEPAGE MATER SHOULD BE DRAINED OR DIVERTED FROM THE SITE TO PREVENT DROWNING OR WINTER KILLING OF THE
- PLANTS. STONES LARGER THAN FOUR INCHES AND TRASH SHOULD BE REMOVED.
- SIGNED LARGER THAT TOK INCHES AND INCHES TO REPARE SOD SHOLD BE TILLED TO A DEPTH OF FOUR INCHES TO PREPARE SEEDBED. FERTILIZER & LINE SHOLD BE MIXED INTO THE SOIL. THE SEEDBED SHOLD BE LEFT IN A REASONABLY FIRM AND SMOOT CONDITION. THE LAST TILLAGE OPERATION SHOLD BE PERFORMED ACROSS THE SLOPE WHEREVER PRACTICAL.

FROM: STORMWATER MANAGEMENT AND EROSION AND SEDIMENTATION CONTROL HANDBOOK FOR URBAN AND DEVELOPING AREAS IN NEW HAMPSHIRE, DECEMBER 2008.

SEEDING MIXTURE C		
FOR APRIL I - AUGUST 15	<u>#/ACRE</u>	<u>#/10005F</u>
ANNUAL RYE GRASS	40	1
FOR FALL SEEDING		
WINTER RYE	112	2.5

LIME: AT I TON PER ACRE OR IOO LBS PER 1,000 S.F. FERTILIZER, IO IO IO NITROGEN PHOSPHATE POTAGH AT 500# PER ACRE MULCH: HAY OR CLEAN STRAW; 2 TONS/ACRE OR 2 BALES/1000 S.F

GRADING AND SHAPING:

SLOPES SHALL NOT BE STEEPER THAN 2 TO I. 3 TO I OR FLATTER SLOPES ARE PREFERRED.

SEEDBED PREPARATION

EU PREPARATION: SURFACE AND SEEPAGE WATER SHOULD BE DRAINED OR DIVERTED FROM THE SITE TO PREVENT DROWNING OR WINTER KILLING OF THE PLANTS. STONES LARGER THAN FOUR INCHES AND TRASH SHOULD BE REMOVED. SOD SHOULD BE TILLED TO A DEPTH OF FOUR INCHES TO PREPARE SEEDBED. FERTILIZER & LIME SHOULD BE MIKED INTO THE SOLL. THE SEEDBED SHOULD BE LIEFT IN A REASONABLY FIRM AND SMOOTH CONDITION. THE LAST TILLAGE OPERATION SHOULD BE PERFORMED ACROSS THE SLOPE WHEREVER PRACTICAL.

* FROM: STORMWATER MANAGEMENT AND EROSION AND SEDIMENTATION CONTROL HANDBOOK FOR URBAN AND DEVELOPING AREAS IN NEW HAMPSHIRE, DECEMBER

WHEN PROPOSED FOR ALTERATION DURING CONSTRUCTION AS BEING INFESTED WITH INVASIVE SPECIES SHALL BE MANAGED APPROPRIATELY USING THE DISPOSAL PRACTICES IDENTIFIED IN "NHDOT - BEST MANAGEMENT PRACTICES FOR ROADSIDE INVASIVE PLANTS -2008" AND "METHODS FOR DISPOSING NON-NATIVE INVASIVE PLANTS - UNH COOPERATIVE EXTENSION - 2010"

SEED MIXES SHALL NOT CONTAIN ANY SPECIES IDENTIFIED BY THE NEW HAMPSHIRE PROHIBITED INVASIVE PLANT SPECIES LIST.

FILTREXX SILTSOXX NOTES

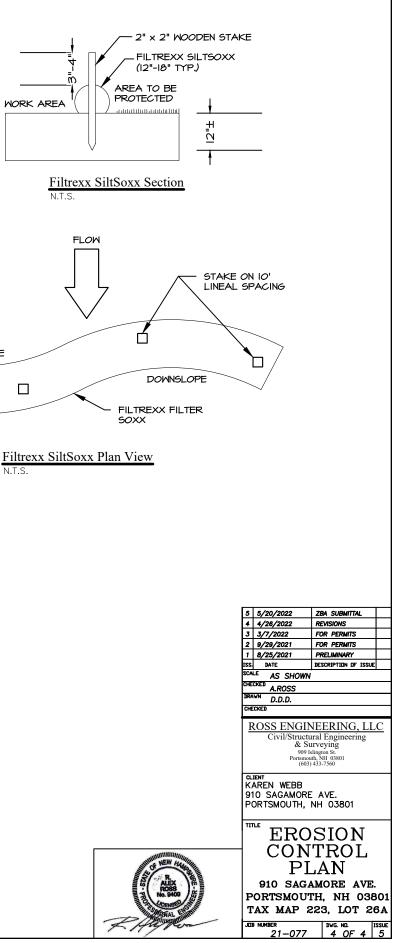
I) ALL MAERTIAL TO MEET FILTREXX SPECIFICATIONS

2) SILTSOXX COMPOST, SOIL, ROCK, SEED FILL TO MEET APPLICATION REQUIREMENTS

UPSLOPE

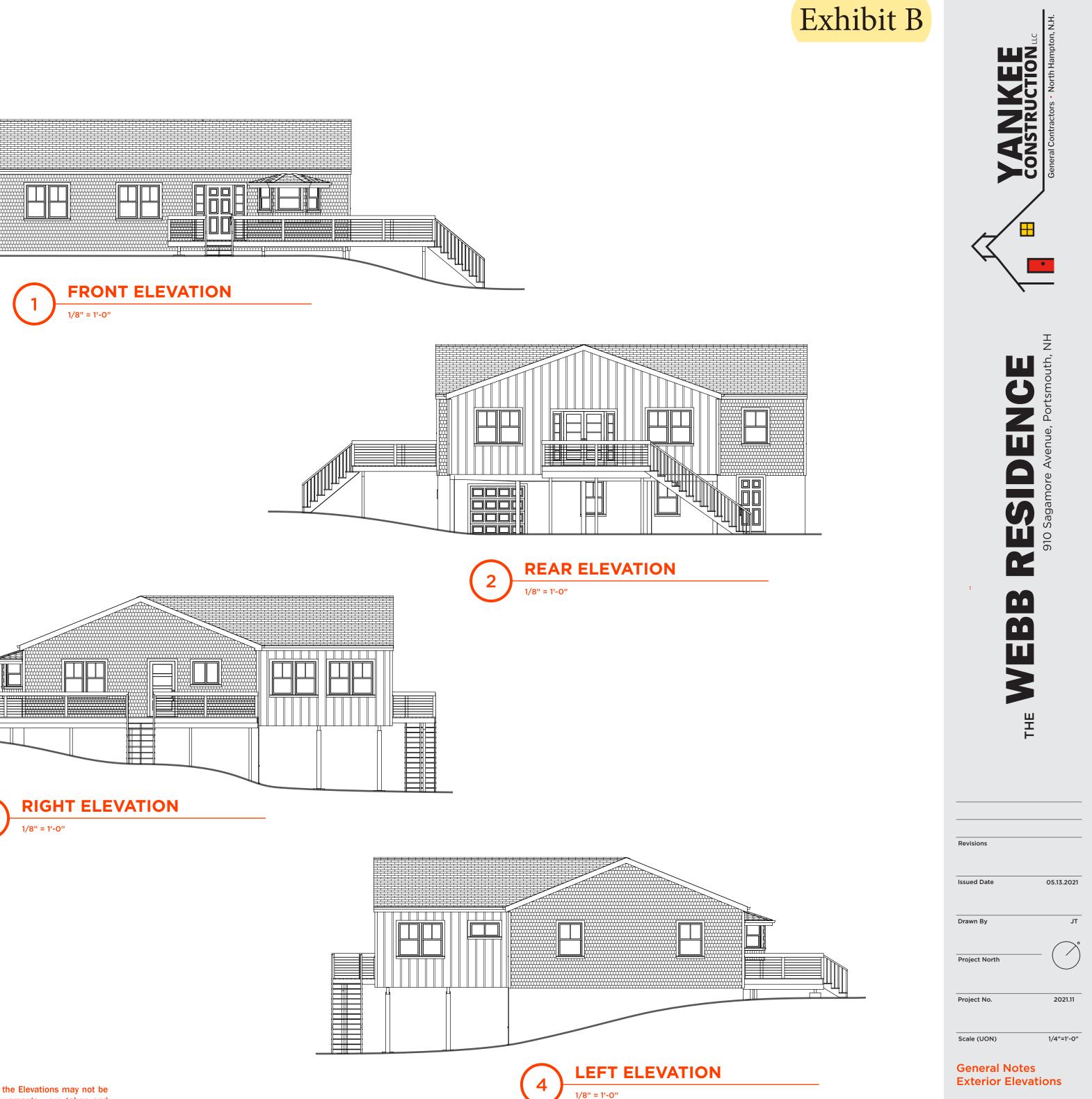
SHORT TERM SEEDING *WELL TO MODERATELY WELL DRAINED SOILS

FOR CUT AND FILL AREA AND FOR WATERWAYS AND CHANNELS

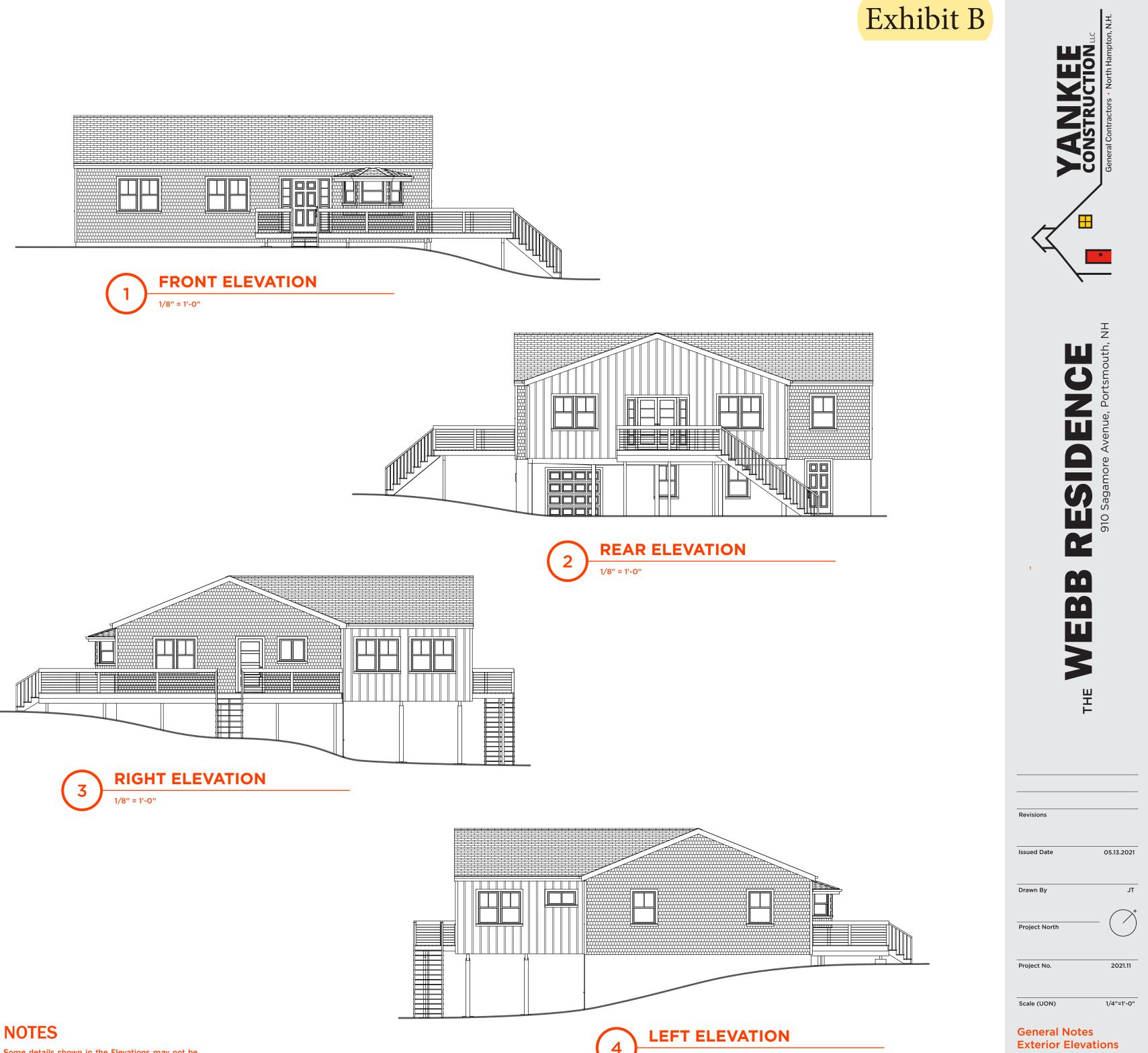


GENERAL NOTES

- 1. All work shall comply with State and local Building Codes, fire department regulations, utility company standards, and the best trade practices.
- 2. Yankee Construction LLC shall arrange all inspections and tests as specified or required by the building department and shall pay all costs and fees for same. Yankee Construction LLC shall secure all building permits and upon completion of the project (prior to final payment) deliver to the Owner a Certificate of Occupancy or Use from the building department.
- 3. All plumbing and electrical work shall be performed by State licensed contractors. Yankee Construction LLC shall submit all required permits, certificates, and sign-offs to Owner for their records.
- 4. Yankee Construction LLC shall verify all dimensions and be familiar with the existing conditions. The Drawings reflect conditions reasonably inferred from the existing visible conditions. Drawings may be scaled for estimating purposes and for general reference only. All dimensions to be verified in the field. Yankee Construction LLC shall lay out all work and be responsible for all dimensions and conditions for trades such as electrical, plumbing, etc.
- 5. Yankee Construction LLC shall provide and maintain access to the premises at all times. The Construction Manager shall make the premises secure from the elements and trespass on a daily basis.
- 6. Yankee Construction LLC shall keep the construction site free and clear of all debris and keep out all unauthorized persons. Upon completion of Work, the entire construction area is to be thoroughly cleaned and prepared for occupancy by Owner. All materials and debris resulting from the Contractor's work shall be removed from the site and disposed of properly. Care shall be taken during construction that no debris or materials are deposited in any Right of Way area.
- 7. Yankee Construction LLC shall be responsible for protecting all existing and new conditions and materials on the site. Any damage caused by or during the execution of the Work is the Contractor's responsibility and shall be repaired to the **Owner's satisfaction at the Contractor's expense.**
- 8. All utilities shall be connected to provide gas, electric, and water to all equipment whether said equipment is in Contract or not. Equipment shall be guaranteed to function properly upon completion.
- 9. Manufacturer's standard specifications and materials approved for project use are hereby made part of these Notes with same force and effect as if written out in full herein. All appliances, fixtures, equipment, hardware, etc. shall be installed in accordance with Manufacturer's specifications and procedures.
- **10.** Written words take precedence over drawn lines. Large-scale details and plans take precedence over smaller details and plans. Should a conflict arrive between the Specifications and Drawings, the requirements deemed most stringent shall be used.
- 11. Minor details not usually shown or specified but necessary for proper and acceptable construction, installation, or operation of any part of the Work as determined by the Designer shall be included in the Work as if it were specified or indicated on the Drawings.
- **12**. All dimensions are to face of stud or centerline of structure unless otherwise noted (UON).
- 13. Door and window details are indicated on the Door and Window Schedules.
- 14. Door and window dimensions are to centerlines of units UNO.

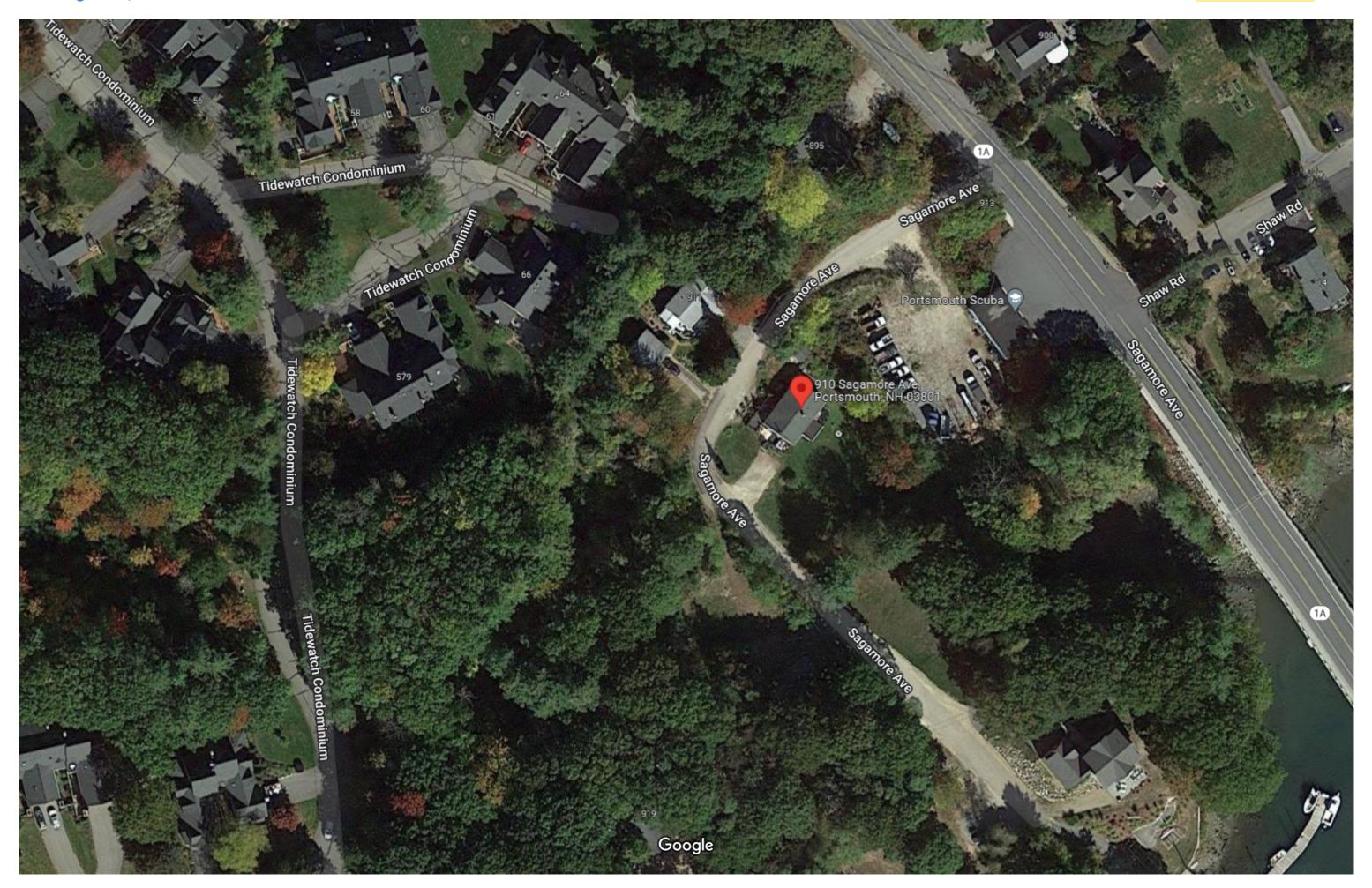






Some details shown in the Elevations may not be accurate. Rough measurements were taken and assumed to build existing elements of the house, outside of the Addition area.

Sheet No.





Google Maps Google



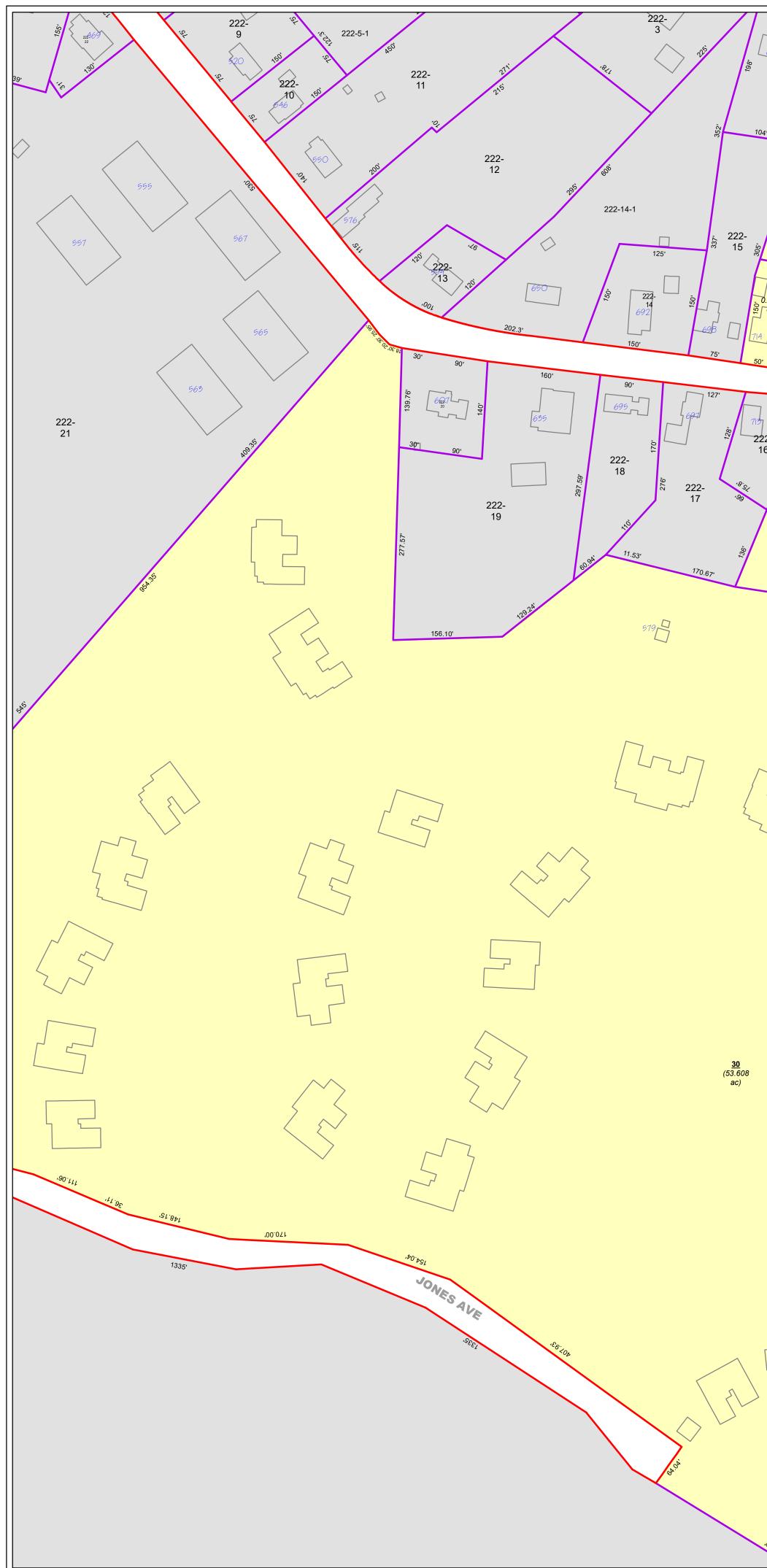
Google Maps Google





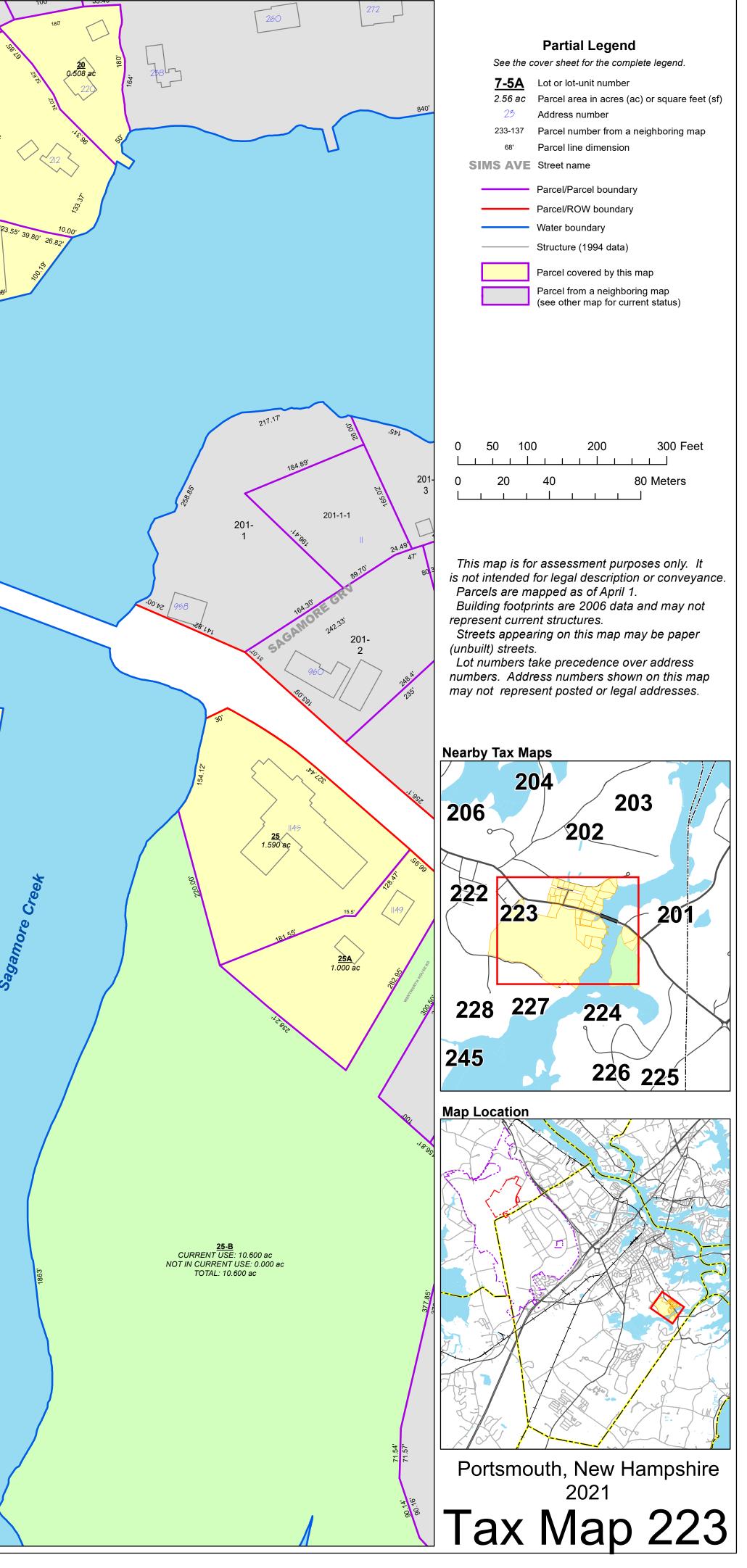
Google Maps Google

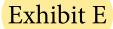




202 10 202-202-4 0.443 ac 222-202-2 ò 8 202. 5 159 202-6 100' 0.385 ac 89 0.320 ac <u>11</u> 0.415 ac <mark>21</mark> 1.490 ac <u>19</u> 0.325 ac 127.6' 62.4' CLIFF RD 140 0.664 ac 0.449 ac 0.409 ac <u>18</u> 1.260 ac <u>22</u> 0.912 ас 0.273 ac <u>13</u> 1.030 ас , 27] 38.7 95.8' <u>م</u> 0.338 ac ² 0.279 ac 0.328 ac 23 0.475 ac 0.783 ac 766 <u>14</u> 0.916 ас 808 <u>15</u> 0.267 ac 222-SAGAMORE AVE 749 <u>16</u> 0.321 ac 100' <mark>24</mark> 0.770 ас 46.68' 132.00' <u>36</u> 1.310 ас 34.80' 895 34 0.342 ac <u>31</u> 1.050 ас 72.50' 110' 264 <u>33</u> 0.339 ac 911 <mark>26А</mark> 0.624 ас <u>26</u> 1.200 ас pH2 <mark>27</mark> 3.320 ac \bigwedge 919 <u>29</u> 0.750 ас <u>28</u> 0.844 ас







CITY OF PORTSMOUTH



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

PLANNING BOARD

October 28, 2021

Karen Butz Webb Revocable Trust Karen Butz Webb Trustee 910 Sagamore Avenue Portsmouth, NH 03801

RE: Wetland Conditional Use Permit for property located at 910 Sagamore Avenue (LU-21-170)

Dear Ms. Webb:

The Planning Board, at its regularly scheduled meeting of **Thursday**, **October 21**, **2021**, considered your application for Wetland Conditional Use Permit according to article 10.1017 to expand an enclosed living space by 362 square feet which will create a disturbance of 3,375 square feet within the inland wetland buffer. The living space is supported by piles over an area of crushed stone to allow infiltration of stormwater. The roof runoff will be captured in gutters which will be directed to stone infiltration trenches with 4'x4' stone outlet area for any stormwater that does not infiltrate. The applicant is disconnecting the existing septic system and will connect to a new City sewer line. The mowing of the wetland at the rear of the property will be discontinued and the area will be planted with wildflowers and other buffer plantings. Said property is shown on Assessor Map 106, Lot 54 and lies within the Waterfront Business district. As a result of said consideration, the Board voted **grant** the wetland Conditional Use Permit with the following stipulations:

1) NOFO standards shall be maintained.

2) Install and maintain wetland buffer plantings along the delineation line as marked in the application every 4 ft. (recommended plantings).

3) The stone infiltration, as shown on the plan, shall be terminated at the wetland delineation line.

The Board's decision may be appealed up to thirty (30) days after the vote. Any action taken by the applicant pursuant to the Board's decision during this appeal period shall be at the applicant's risk. Please contact the Planning Department for more details about the appeals process.

Unless otherwise indicated, applicant is responsible for applying for and securing a building permit from the Inspection Department prior to starting any project work. All stipulations of approval must be completed prior to issuance of a building permit unless otherwise indicated.

This approval shall expire one year after the date of approval by the Planning Board unless a building permit is issued prior to that date. The Planning Board may grant a one-year extension of a conditional use permit if the applicant submits a written request to the Planning Board prior to the expiration date. The minutes and audio recording of this meeting are available by contacting the Planning Department.

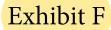
Very truly yours,

,Ly1

Dexter R. Legg, Chairman of the Planning Board

cc: Paul Garand, Interim Chief Building Inspector Rosann Maurice-Lentz, City Assessor

Alex Ross



CITY OF PORTSMOUTH



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

CONSERVATION COMMISSION

October 6, 2021

Karen Butz Webb Revocable Trust Karen Butz Webb Trustee 910 Sagamore Avenue Portsmouth, NH 03801

RE: Wetland Conditional Use Permit for property located at 910 Sagamore Avenue (LU-21-170)

Dear Ms. Webb:

The Conservation Commission, at its regularly scheduled meeting of **Wednesday**, **September 15, 2021**, considered your application for a Wetland Conditional Use Permit according to article 10.1017 of the Zoning Ordinance to expand an enclosed living space by 362 square feet which will create a disturbance of 3,375 square feet within the inland wetland buffer. The living space is supported by piles over an area of crushed stone to allow infiltration of stormwater. The roof runoff will be captured in gutters which will be directed to stone infiltration trenches with 4'x4' stone outlet areas for any stormwater that does not infiltrate. The applicant is disconnecting the existing septic system and will connect to a new City sewer line. The mowing of the wetland at the rear of the property will be discontinued and the area will be planted with wildflowers and other buffer plantings. Said property is shown on Assessor Map 106, Lot 54 and lies within the Waterfront Business district. As a result of said consideration, the Commission voted to recommend **approval** of the Wetland Conditional Use Permit to the Planning Board with the following stipulations.

1. NOFA standards shall be maintained.

2. Install and maintain their wetland delineation buffer plantings with (along the delineation line as marked in the application) every 4 ft. (recommended plantings).

3. The stone infiltration shall be terminated at the wetland delineation line.

This matter will be placed on the agenda for the Planning Board meeting scheduled for **Thursday, October 21, 2021**. One (1) hard copy of any revised plans and/or exhibits as well as an updated electronic file (in a PDF format) must be filed in the Planning Department and uploaded to the online permit system no later than Wednesday, September 29, 0221.

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

Very truly yours,

Baulara McMillon

Barbara McMillan, Chair

Conservation Commission

cc:

HOEFLE, PHOENIX, GORMLEY & ROBERTS, PLLC

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

June 1, 2022

DELIVERED VIA E-MAIL

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

Re: Karen Butz Webb, Owner/Applicant 910 Sagamore Avenue Tax Map 223/Lot 26A Waterfront Business District

Dear Mr. Stith & Zoning Board Members:

On behalf of Karen Butz Webb ("Webb"), enclosed please find the following additional materials in support of a request for zoning relief:

- Department of Environmental Services Wetlands and Non-Site Specific Permit Exhibit G
- Department of Environmental Services Shoreland Impact Permit Exhibit H

We look forward to presenting this application to the Zoning Board at its June 22, 2022 meeting.

Very truly yours,

R. Timothy Phoenix Monica F. Kieser Stephanie J. Johnson

Encl.

cc: Karen Butz Webb Ross Engineering, LLC

DANIEL C. HOEFLE R. TIMOTHY PHOENIX LAWRENCE B. GORMLEY STEPHEN H. ROBERTS R. PETER TAYLOR KIMBERLY J.H. MEMMESHEIMER KEVIN M. BAUM GREGORY D. ROBBINS

MONICA F. KIESER SAMUEL HARKINSON JACOB J.B. MARVELLEY DUNCAN A. EDGAR STEPHANIE J. JOHNSON

OF COUNSEL: SAMUEL R. REID JOHN AHLGREN





The State of New Hampshire
Department of Environmental Services

Robert R. Scott, Commissioner



WETLANDS AND NON-SITE SPECIFIC PERMIT 2022-00684

NOTE CONDITIONS

PERMITTEE:	KAREN B WEBB 910 SAGAMORE AVE PORTSMOUTH NH 03801	
PROJECT LOCATION:	910 SAGAMORE AVE, PORTSMOUTH TAX MAP #223, LOT #26A	
WATERBODY:	SAGAMORE CREEK	
APPROVAL DATE:	MAY 27, 2022	EXPIRATION DATE: MAY 27, 2027

Based upon review of permit application 2022-00684 in accordance with RSA 482-A and RSA 485-A:17, the New Hampshire Department of Environmental Services (NHDES) hereby issues this Wetlands and Non-Site Specific Permit. To validate this Permit, signatures of the Permittee and the Principal Contractor are required.

PERMIT DESCRIPTION:

Impact 59 square feet (SF) within previously developed tidal buffer in order to construct a new deck and stairs and install a stone protection area at the outlet of a french drain. In addition, temporarily impact 1,049 SF of previously developed tidal buffer to remove an existing septic tank, install a french drain, install wetland buffer plantings, and for construction access.

THIS PERMIT IS SUBJECT TO THE FOLLOWING PROJECT-SPECIFIC CONDITIONS:

- 1. In accordance with Env-Wt 307.16, all work shall be done in accordance with the revised plans dated May 25, 2022, by Ross Engineering, LLC., as received by the NH Department of Environmental Services (NHDES) on May 25, 2022.
- 2. In accordance with Env-Wt 314.02(b) and (c), for projects in the coastal area, the permittee shall record any permit issued for any work in the tidal buffer zone at the Rockingham County Registry of Deeds. Any limitations or conditions in the permit so recorded shall run with the land beyond the expiration of the permit. The permittee shall provide the department with a copy of the permit stamped by the registry with the book and page and date of receipt.
- 3. In accordance with Env-Wt 307.07, all development activities associated with any project shall be conducted in compliance with applicable requirements of RSA 483-B and Env-Wq 1400 during and after construction.
- 4. In accordance with Env-Wt 310.03(a), no other work shall be done on the subject property pursuant to another expedited permit (EXP) for a period of 12 months from the date the EXP was issued unless the property owner submits information, including a plan, to demonstrate that the proposed work is wholly unrelated to and separate from the work already done under the EXP; and the proposed work and the work already done under the EXP do not, when combined, constitute a project for which a standard permit is required.
- 5. In accordance with Env-Wt 310.03(b), the work shall comply with all applicable conditions specified in Env-Wt 307.
- 6. No activity shall be conducted in such a way as to cause or contribute to any violation of surface water quality standards per Env-Wt 307.03(a).
- 7. All work including management of soil stockpiles, shall be conducted so as to minimize erosion, minimize sediment transfer to surface waters or wetlands, and minimize turbidity in surface waters and wetlands per Env-Wt 307.03(b).

File Number: 2022-00684 May 27, 2022 Page **2** of **3**

- In accordance with Env-Wt 307.03(c)(3), water quality control measures shall be installed prior to start of work and in accordance with the manufacturer's recommended specifications or, if none, the applicable requirements of Env-Wq 1506 or Env-Wq 1508.
- 9. In accordance with Env-Wt 307.03(c)(1), water quality control measures shall be selected and implemented based on the size and nature of the project and the physical characteristics of the site, including slope, soil type, vegetative cover, and proximity to jurisdictional areas.
- 10. In accordance with Env-Wt 307.03(c)(5), water quality control measures shall be maintained so as to ensure continued effectiveness in minimizing erosion and retaining sediment on-site during and after construction.
- 11. In accordance with Env-Wt 307.03(c)(6), water quality control measures shall remain in place until all disturbed surfaces are stabilized to a condition in which soils on the site will not experience accelerated or unnatural erosion by achieving and maintaining a minimum of 85% vegetative cover using an erosion control seed mix, whether applied in a blanket or otherwise, that is certified by its manufacturer as not containing any invasive species; or placing and maintaining a minimum of 3 inches of non-erosive material such as stone.
- 12. In accordance with Env-Wt 307.03(c)(7), temporary water quality control methods shall be removed upon completion of work when compliance with Env-Wt 307.03(c)(6) is achieved.
- 13. In accordance with Env-Wt 307.05(e), to prevent the use of soil or seed stock containing nuisance or invasive species, the contractor responsible for work shall follow Best Management Practices for the Control of Invasive and Noxious Plant Species (Invasive Plant BMPs).
- 14. In accordance with Env-Wt 307.11(a), fill shall be clean sand, gravel, rock, or other material that meets the project's specifications for its use; and does not contain any material that could contaminate surface or groundwater or otherwise adversely affect the ecosystem in which it is used.
- 15. In accordance with Env-Wt 307.11(b), limits of fill shall be clearly identified prior to commencement of work and controlled in accordance with Env-Wt 307.03 to ensure that fill does not spill over or erode into any area where filling is not authorized.
- 16. In accordance with Env-Wt 307.11(e), fill shall be not placed so as to direct flows onto adjacent or down-current property.
- 17. In accordance with Env-Wt 307.12(i), areas where permanent impacts are not authorized shall be restored to their pre-impact conditions and elevation by replacing the removed soil and vegetation in their pre-construction location and elevation such that post-construction soil layering and vegetation schemes are as close as practicable to pre-construction conditions.
- 18. In accordance with Env-Wt 307.03(e), all exposed soils and other fills shall be permanently stabilized within 3 days following final grading.
- 19. In accordance with Env-Wt 307.03(g)(1), the person in charge of construction equipment shall inspect such equipment for leaking fuel, oil, and hydraulic fluid each day prior to entering surface waters or wetlands or operating in an area where such fluids could reach groundwater, surface waters, or wetlands.
- 20. In accordance with Env-Wt 307.03(g)(2), the person in charge of construction equipment shall repair any leaks prior to using the equipment in an area where such fluids could reach groundwater, surface waters, or wetlands.
- 21. In accordance with Env-Wt 307.03(g)(3) and (4), the person in charge of construction equipment shall maintain oil spill kits and diesel fuel spill kits, as applicable to the type(s) and amount(s) of oil and diesel fuel used, on site so as to be readily accessible at all times during construction; and train each equipment operator in the use of the spill kits.
- 22. In accordance with Env-Wt 307.03(h), equipment shall be staged and refueled outside of jurisdictional areas (unless allowed) and in accordance with Env-Wt 307.15.

THIS PERMIT IS SUBJECT TO THE FOLLOWING GENERAL CONDITIONS:

- 1. Pursuant to RSA 482-A:12, a copy of this permit shall be posted in a secure manner in a prominent place at the site of the approved project.
- 2. In accordance with Env-Wt 313.01(a)(5), and as required by RSA 482-A:11, II, work shall not infringe on the property rights or unreasonably affect the value or enjoyment of property of abutting owners.

File Number: 2022-00684 May 27, 2022 Page **3** of **3**

- 3. In accordance with Env-Wt 314.01, a standard permit shall be signed by the permittee, and the principal contractor who will build or install the project prior to start of construction, and will not be valid until signed.
- 4. In accordance with Env-Wt 314.03(a), the permittee shall notify the department in writing at least one week prior to commencing any work under this permit.
- 5. In accordance with Env-Wt 314.08(a), the permittee shall file a completed notice of completion of work and certificate of compliance with the department within 10 working days of completing the work authorized by this permit.
- 6. In accordance with Env-Wt 314.06, transfer of this permit to a new owner shall require notification to, and approval of, the NHDES.
- 7. The permit holder shall ensure that work is done in a way that protects water quality per Env-Wt 307.03; protects fisheries and breeding areas per Env-Wt 307.04; protects against invasive species per Env-Wt 307.05; meets dredging activity conditions in Env-Wt 307.10; and meets filling activity conditions in Env-Wt 307.11.
- 8. This project has been screened for potential impact to known occurrences of protected species and exemplary natural communities in the immediate area. Since many areas have never been surveyed, or only cursory surveys have been performed, unidentified sensitive species or communities may be present. This permit does not absolve the permittee from due diligence in regard to state, local or federal laws regarding such communities or species. This permit does not authorize in any way the take of threatened or endangered species, as defined by RSA 212-A:2, or of any protected species or exemplary natural communities, as defined in RSA 217-A:3.
- 9. In accordance with Env-Wt 307.06(a) through (c), no activity shall jeopardize the continued existence of a threatened or endangered species, a species proposed for listing as threatened or endangered, or a designated or proposed critical habitat under the Federal Endangered Species Act, 16 U.S.C. §1531 et seq.; State Endangered Species Conservation Act, RSA 212-A; or New Hampshire Native Plant Protection Act, RSA 217-A.
- 10. In accordance with Env-Wt 307.02, and in accordance with federal requirements, all work in areas under the jurisdiction of the U.S. Army Corps of Engineers (USACE) shall comply with all conditions of the applicable state general permit.

APPROVED:

Kowst Ding

Kristin L. Duclos Wetlands Specialist, Wetlands Bureau Land Resources Management, Water Division

THE SIGNATURES BELOW ARE REQUIRED TO VALIDATE THIS PERMIT (Env-Wt 314.01).

PERMITTEE SIGNATURE (required)

PRINCIPAL CONTRACTOR SIGNATURE (required)



The State of New Hampshire
Department of Environmental Services

Robert R. Scott, Commissioner



SHORELAND IMPACT PERMIT 2022-00691

NOTE CONDITIONS

PERMITTEE:	KAREN B WEBB 910 SAGAMORE AVE PORTSMOUTH NH 03801	
PROJECT LOCATION	910 SAGAMORE AVE, PORTSMOUTH TAX MAP #223, LOT #26/A	
WATERBODY:	SAGAMORE CREEK	
APPROVAL DATE:	MAY 27, 2022	EXPIRATION DATE: MAY 27, 2027

Shoreland Permit Application 2022-00691 has been found to meet or exceed the requirements of RSA 483-B as required per RSA 483-B:6, II. The New Hampshire Department of Environmental Services (NHDES) hereby issues this Shoreland Impact Permit with conditions pursuant to RSA 483-B:6, II.

PERMIT DESCRIPTION:

Impact 1,392 square feet of protected shoreland in order to remove an existing deck and stairs and construct an addition to an existing primary structure with associated deck and stairs, and install a stormwater infiltration area beneath the addition.

Impervious Surface Percentage Approved: 19.7%

Natural Woodland Area Required per RSA 483-B:9,V, (b): 1,065 square feet

THE FOLLOWING PROJECT-SPECIFIC CONDITIONS HAVE BEEN APPLIED TO THE PERMIT PURSUANT TO ENV-WQ 1406.15(c):

- 1. All work shall be in accordance with plans by Ross Engineering, LLC., revised through May 25, 2022, as received by the New Hampshire Department of Environmental Services (NHDES) on May 25, 2022, pursuant to Env-Wq 1406.15(f).
- 2. Within three days of final grading or temporary suspension of work in an area that is in or adjacent to wetlands or surface waters, all exposed soil areas shall be stabilized by seeding and mulching during the growing season, or if not within the growing season, by mulching with tack or netting and pinning on slopes steeper than 3:1 as required pursuant to RSA 483-B:9, V(d) Erosion and Siltation, (1).
- 3. This permit shall not be interpreted as acceptance or approval of any impact that will occur within wetlands jurisdiction regulated under RSA 482-A including all wetlands, surface waters and their banks, the tidal-buffer zone, and sand dunes. The owner is responsible for maintaining compliance with RSA 482-A and Administrative Rules Env-Wt 100 900 and obtaining any Wetland Impact Permit that may be required prior to construction, excavation or fill that will occur within Wetlands jurisdiction as required pursuant to RSA 483-B:6, I(b).
- 4. This permit shall not preclude NHDES from taking any enforcement or revocation action as authorized pursuant to 483-B:5, I, if NHDES later determines that any of the structures depicted as "existing" on the plans submitted by the applicant were not previously permitted or grandfathered.

File Number: 2022-00691 May 27, 2022 Page 2 of 2

THE FOLLOWING STANDARD PROJECT CONDITIONS SHALL BE MET PURSUANT TO ENV-WQ 1406.20:

- 1. Erosion and siltation control measures shall be installed prior to the start of work, be maintained throughout the project, and remain in place until all disturbed surfaces are stabilized.
- 2. Erosion and siltation controls shall be appropriate to the size and nature of the project and to the physical characteristics of the site, including slope, soil type, vegetative cover, and proximity to wetlands or surface waters.
- 3. No person undertaking any activity in the protected shoreland shall cause or contribute to, or allow the activity to cause or contribute to, any violations of the surface water quality standards established in Env-Wq 1700.
- 4. Any fill used shall be clean sand, gravel, rock, or other suitable material.
- 5. For any project where mechanized equipment will be used, orange construction fence shall be installed prior to the start of work at the limits of the temporary impact area as shown on the approved plans; be maintained throughout the project; and remain in place until all mechanized equipment has been removed from the site.

ANY INDIVIDUAL CONDUCTING WORK UNDER THIS PERMIT IS ADVISED OF THE FOLLOWING:

- 1. During construction, a copy of this permit should be posted on site in a prominent location visible to inspecting personnel.
- 2. This permit does not convey a property right, nor authorize any injury to property of others, nor invasion of rights of others.
- 3. Pursuant to Env-Wq 1406.21, transfer of this permit to a new owner requires notification to, and approval of, the NHDES.
- 4. This project has been screened for potential impact to **known** occurrences of protected species and exemplary natural communities in the immediate area. Since many areas have never been surveyed, or only cursory surveys have been performed, unidentified sensitive species or communities may be present. This permit does not absolve the permittee from due diligence in regard to state, local or federal laws regarding such communities or species. This permit does not authorize in any way the take of threatened or endangered species, as defined by RSA 212-A:2, or of any protected species or exemplary natural communities, as defined in RSA 217-A:3.

APPROVED:

Kristin L. Duclos Wetlands Specialist, Shoreland Program Wetlands Bureau, Land Resources Management Water Division

5.

Request of **Blus O'Leary Family Living Trust (Owner)**, for property located at **225 Wibird Street** whereas relief is needed to construct a detached accessory dwelling unit which requires the following: 1) A Variance from Section 10.521 to allow a lot area per dwelling unit of 6,412 where 7,500 square feet is required for each dwelling. Said property is located on Assessor Map 133 Lot 54 and lies within the General Residence A (GRA) District.

	Existing	Proposed	Permitted /	
			<u>Required</u>	
Land Use:	Single	Detached ADU	Primarily	
	family		residential	
Lot area (sq. ft.):	12,824	12,824	7,500	min.
Lot Area per Dwelling	12,824	6,412	7,500	min.
<u>Unit (sq. ft.):</u>				
Lot depth (ft):	157	157	70	min.
Street Frontage (ft.):	71	71	100	min.
Primary Front Yard	13	13	15	min.
<u>(ft.):</u>				
Secondary Front Yard	8.6	8.6	15	min.
<u>(ft.):</u>				
Left Yard (ft.):	3	3	10	
Rear Yard (ft.):	44	20	20	min.
Height (ft.):	31	31	35	max.
Building Coverage (%):	11.6	17	25	max.
Open Space Coverage	76	67	30	min.
<u>(%):</u>				
Parking:	3	3	3	
Estimated Age of	1900	Variance request(s)	shown in red.	
<u>Structure:</u>				

Existing & Proposed Conditions

Other Permits/Approvals Required

Planning Board – CUP for DADU

Neighborhood Context





Previous Board of Adjustment Actions

No prior BOA history found.

Planning Department Comments

The applicant is seeking to construct a detached ADU at the back of the property. In order to construct a detached ADU, the lot must conform to the lot area per dwelling for both the existing dwelling and the proposed. In the GRA district, the lot area per dwelling is 7,500 square feet. The existing lot size is 12,824 which will result in a lot are per dwelling of 6,412. All other dimensional requirements of the Ordinance will be in compliance. The applicant will need approval from the Planning Board through a conditional use permit and modifications may be made or requested through that process. If granted approval, staff recommends consideration of the following stipulation:

The design and location of the ADU may change based on review and approval from the Planning Board.

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 <u>special conditions</u> that distinguish it from other properties in the area. **AND**

(b) <u>Owing to these special conditions</u>, 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**

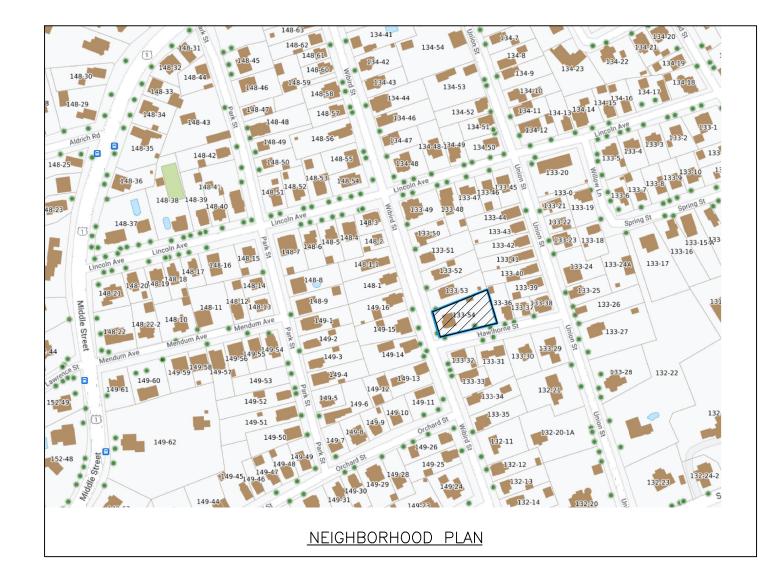
<u>Owing to these special conditions</u>, the property cannot be reasonably used in strict conformance with the Ordinance, and a variance is therefore necessary to enable a reasonable use of it.

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.

DRAWING LIST:

- 1.0 NEIGHBORHOOD PLAN / ZONING INFORMATION
- 1.1 EXISTING SITE PLAN
- 1.2 PROPOSED SITE PLAN
- 2.1 PHOTOS EXISTING HOUSE & SHED
- 2.2 PHOTOS ADJACENT PROPERTIES
- 3.1 ADU PROPOSED PLAN
- 4.1 ADU FRONT & RIGHT SIDE ELEVATIONS
- 4.2 ADU REAR & LEFT SIDE ELEVATIONS
- 5.1 PROPOSED MASSING COMPARISONS
- 6.1 SECTION 10.233.20 VARIANCE CRITERIA



ZONING INFORMATION

ZONING DATA PER CITY OF PORTSMOU (LAST AMENDED JANUARY 11, 2021):	BUILDING COVERAGE AND OPE ALL EXISTING DATA & CALCUL DATED 3-21-2022:			
BASE ZONE: GENERAL RESIDENCE A ((GRA)			
REQUIREMENTS:	REQUIRED	EXISTING	PROPOSED	LOT AREA
MINIMUM LOT AREA MIN. LOT AREA PER DWELLING UNIT MINIMUM STREET FRONTAGE MINIMUM LOT DEPTH MINIMUM FRONT SETBACK SECONDARY FRONT MINIMUM SIDE SETBACK MINIMUM REAR SETBACK	7500 SF 7500 SF 100 FEET 70 FEET 15 FEET 15 FEET 10 FEET 20 FEET	12824 SF 7500 SF 71 FEET 157.64 FT. 13.7 FEET 8.6 FEET 3.2 FEET 44.9 FEET	12824 SF 6412 SF 71 FEET 157.64 FT. 13.7 FEET 8.6 FEET 3.2 FEET 20 FEET	HOUSE SHED PORCH UPPER DECK OVERHANG AT BSMT DOOR <u>ADU</u> TOTAL BUILDING COVERAGE
MAXIMUM RULAN SELECT MAXIMUM BUILDING HEIGHT MAXIMUM BUILDING COVERAGE MINIMUM OPEN SPACE	35 FEET 25% 30%	31.6 FEET 11.6% 76.1%	31.6 FEET 17.4% 67.9%	PAVEMENT / CONCRETE LOWER DECK BRICK WALKWAYS WOOD STEPS / LANDING PETANNING WALKS

RETAINING WALLS TOTAL OTHER IMPERVIOUS

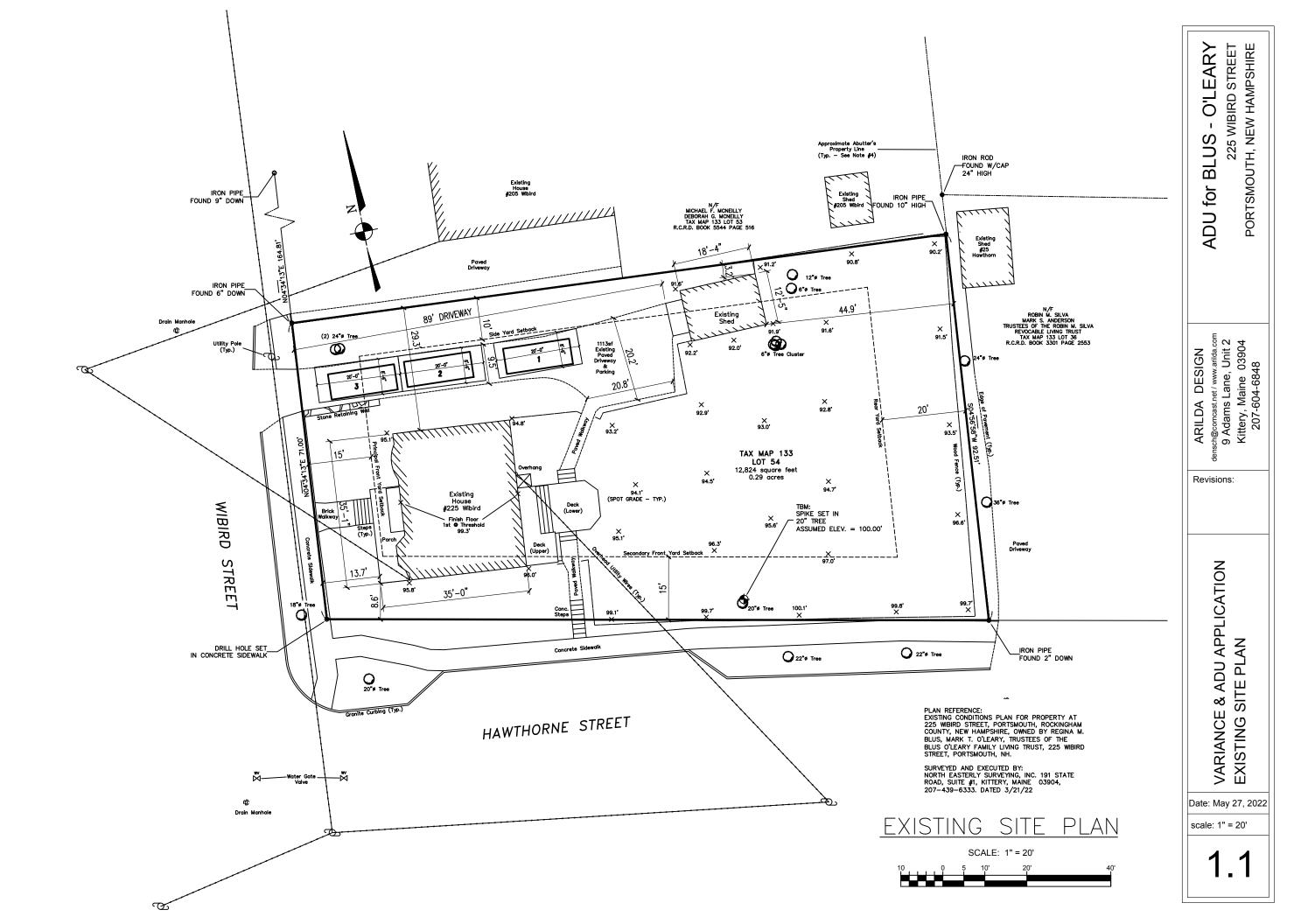
TOTAL LOT COVERAGE

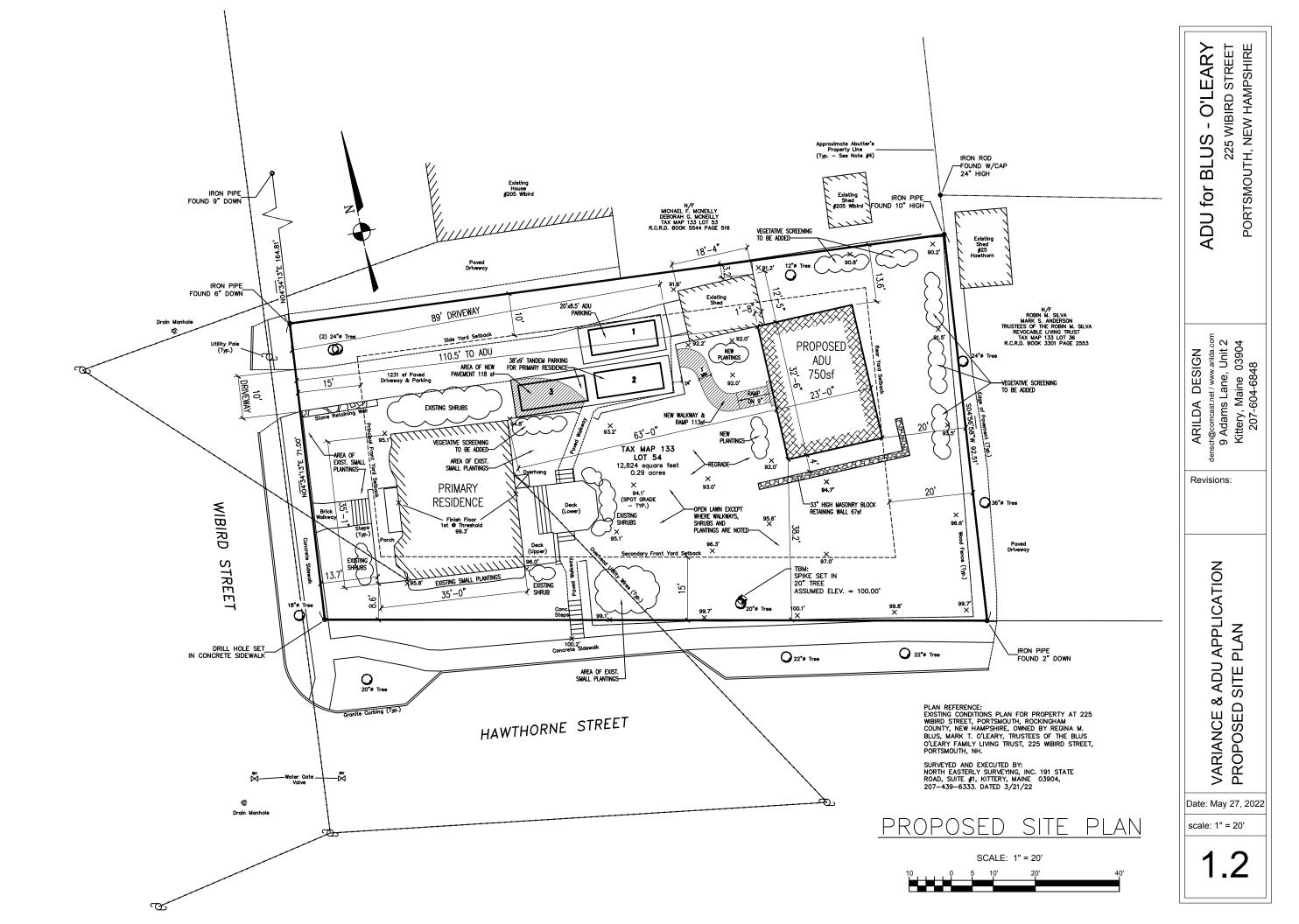
OPEN SPACE

OPEN SPACE CALCULATIONS CULATIONS FROM NORTH EASTERLY SURVEYING, INC. PLAN

EXISTING	PROPOSED
12824 SF ±1003 SF ±227 SF ±142 SF ±104 SF ±10 SF	12824 SF ±1003 SF ±227 SF ±142 SF ±104 SF ±10 SF 750 SF
±1486 SF (11.6%)	±2236 SF (17.4%)
±1253 SF ±129 SF ±57 SF ±112 SF ±27 SF	±1371 SF ±129 SF ±170 SF ±112 SF ±94 SF
±1578	±1876
±3064 SF	±4112 SF
76.1%	67.9%

NO SCALE	VARIANCE APPLICATION FOR ACCESSORY DWELLING UNIT - MAP 133, LOT 54 NEIGHBORHOOD PLAN / ZONING INFORMATION	ARILDA DESIGN densch@comcast.net/www.arlida.com 9 ADAMS LANE, UNIT 2 KITTERY, MANNE 03904 207-604-6848	ACCESSORY DWELLING UNIT FOR: BLUS - O'LEARY 225 WIBIRD STREET PORTSMOUTH, NH 03801
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EXISTING HOUSE FRONT



EXISTING HOUSE RIGHT SIDE (LEFT SIDE SIMILAR)

NOTE: ALL EXISTING SHUTTERS TO BE REMOVED







Date: May 27, 2022

Photographs - Sheet

Existing Structures

Variance Application

PORTSMOUTH, NH 03801

225 WIBIRD STREET

ADU for BLUS - O'LEARY

densch@comcast.net / www.arilda.com 9 Adams Lane, Unit 2

ARILDA DESIGN

Kittery, Maine 03904 207-604-6848

EXISTING HOUSE REAR

EXISTING SHED FRONT & LEFT

EXISTING SHED RIGHT SIDE & REAR

ADU for BLUS - O'LEARY 225 WIBIRD STREET PORTSMOUTH, NH 03801

ARILDA DESIGN Jensch@comcast net / www.arilda.com 9 Adams Lane, Unit 2 Kittery, Maine 03904 207-604-6848

Variance Application Photographs - Sheet 2 Adjacent Properties

Date: May 27, 2022

NO SCALE

2.2



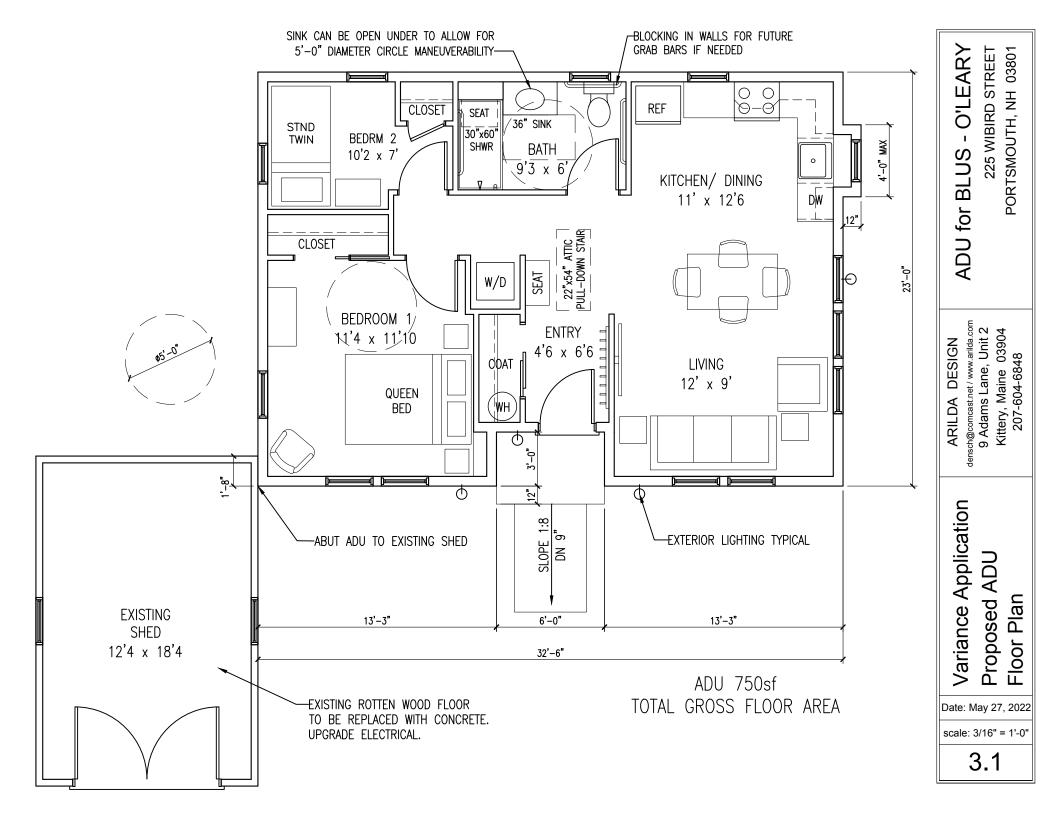


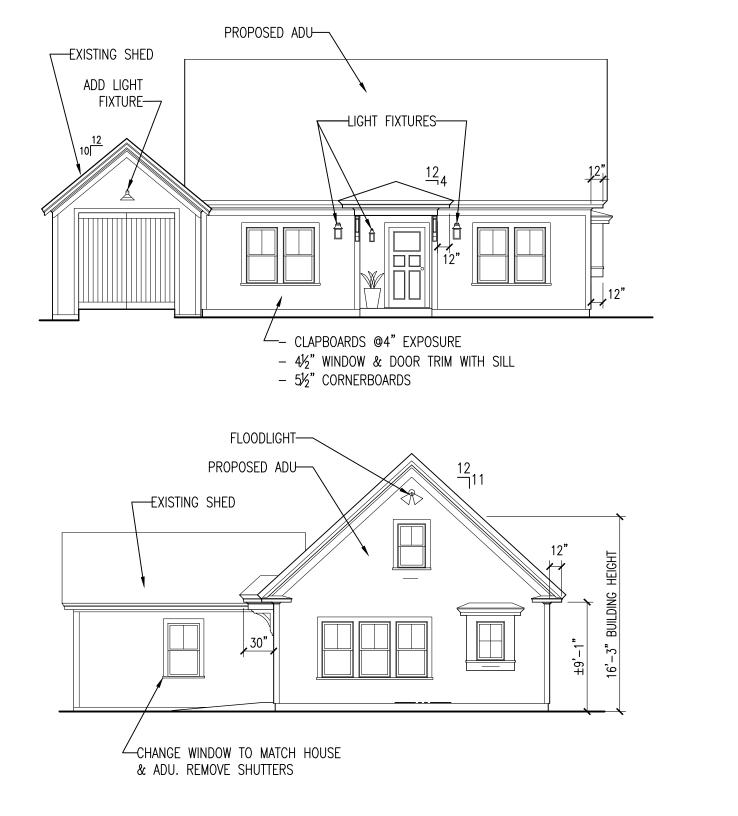
205 WIBIRD STREET - ON LEFT SIDE



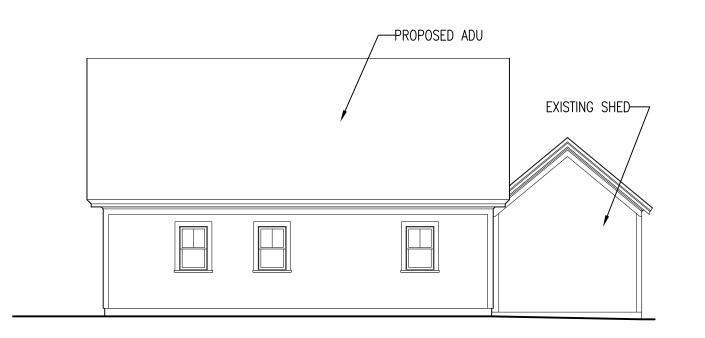
<u>232 WIBIRD – ACROSS WIBIRD ST</u>

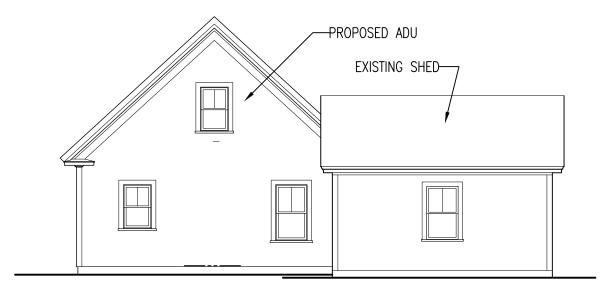
243 WIBIRD - ACROSS HAWTHORNE ST



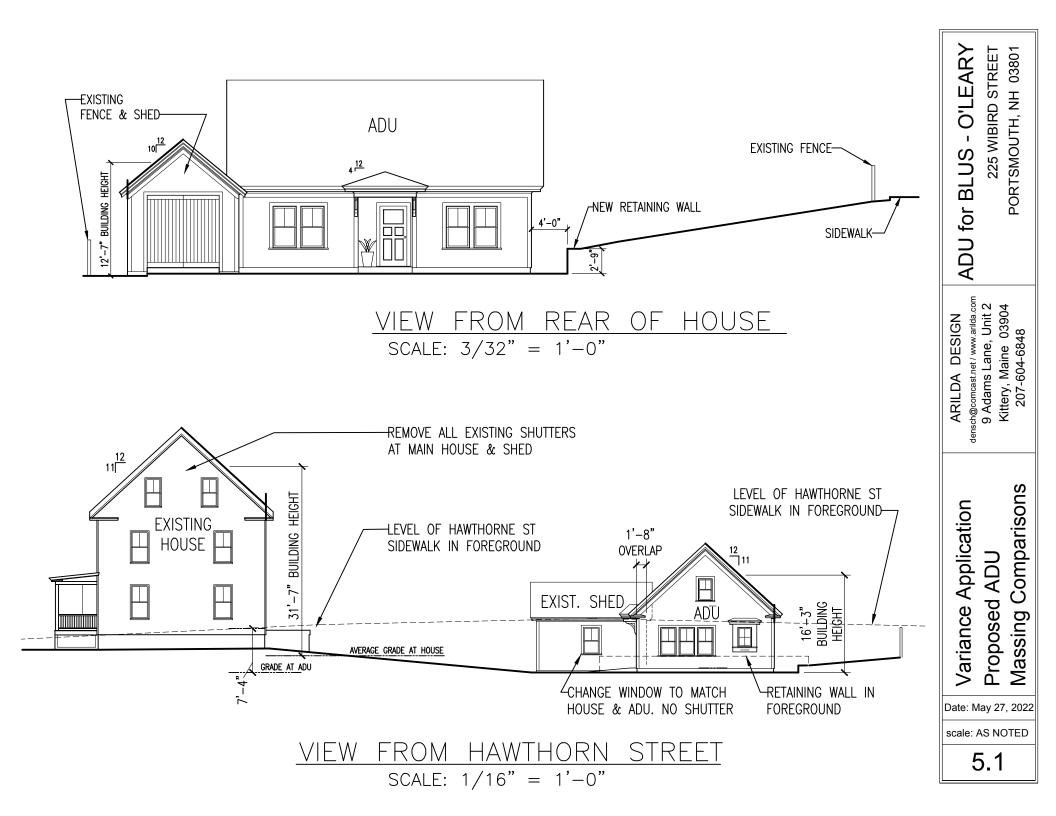


ADU for BLUS - O'LEARY PORTSMOUTH, NH 03801 225 WIBIRD STREET densch@comcast.net / www.arilda.com 9 Adams Lane, Unit 2 Kittery, Maine 03904 207-604-6848 ARILDA DESIGN Front & Right Elevations Variance Application Proposed ADU Date: May 27, 2022 scale: 1/8" = 1'-0" 4.1





Variance ApplicationARILDA DESIGNVariance ApplicationARILDA DESIGNProposed ADU9 Adams Lane, Unit 2 Kittery, Maine 03904 207-604-6848	
Variance Application Proposed ADU Rear & Left Elevations	Variance Propose Date: Wax 52, 2025
	-



Zoning Ordinance Criteria to be met, as per City Ordinance Section 10.233.20:

10.233.21 The variance will not be contrary to the public interest. The property at 225 Wibird Street, is Tax Map 133, Lot 54 in General Residence A (GRA). It is 71' wide at the front, 92' wide at the rear and 157' long and is a corner Lot. The rear area of the yard has good space for a 750sf ADU and is 7 to 8 feet below the level of the adjacent sidewalk. These conditions will make an ADU less visible to the surrounding properties and neighborhood. Screening shrubs will be added at the side property lines to further obscure the new structure and maintain privacy. If a variance is granted to allow an ADU on a 12,824sf lot, where 7500sf is required per dwelling unit (= 15,000sf total), the variance will not be contrary to the public interest.

10.233.22 The spirit of the ordinance will be observed. A modest ADU, designed to complement the existing details of the main residence, and positioned in the rear of the property, will be in keeping with the density and character of the neighborhood. In this way the spirit of the ordinance will be observed.

10.233.23 Substantial justice will be done. 12,824sf is a relatively large lot for this neighborhood. The main residence has a fairly small footprint and there is no garage, only a small shed. With an ADU the property will still be well within the required building coverage and open space requirements for GRA and it's easy to fit the required off-street parking. Section 10.814.531 requires "the façade area of the DADU that faces a street on which the lot has frontage shall be no more than 40% of the combined visible façade areas of the principal single-family dwelling and the DADU facing the same street". Because 225 Wibird is a corner lot this would be required from both streets which is not dimensionally possible given the relatively small facade of the principal dwelling viewed from Wibird. The only clear view of the ADU will be from Hawthorne Street and from that street the facade of the DADU complies with 10.814.531. By allowing this variance request to be granted substantial justice will be done.

10.233.24 The values of surrounding properties will not be diminished. Because care is being taken to position the ADU as much out-of-the-way as possible, keep it modest in size and complementary in style and detailing to the main residence and screen it with shrubs, the values of surrounding properties will not be diminished.

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

10.233.31 a) The general public purposes of the ordinance provision, requiring 7500sf of land for each dwelling unit, and requiring the facade to be no more than 40% of the combined totals of the visible facades from the street, is to keep this property from becoming too congested for zone GRA. While the Lot at 225 Wibird is 12824sf rather than 15000sf, adding an ADU will make the building coverage only 17.4% where a 25% maximum is required and the open space will be a generous 67.9% where a minimum of 30% open space is required. 10.233.31 b) The proposed ADU in the rear of the yard constitutes a reasonable expansion of this modest single-family residence. Therefore literal enforcement of the provisions of the ordinance would result in an unnecessary hardship for the owners.

ARILDA DESIGN densch@comcast.net / www.arilda.com 9 Adams Lane, Unit 2 Kittery, Maine 03904 207-604-6848

Variance Application Proposed ADU 10.233.20 Criteria

NO SCALE

6.

Request of **WSS Lafayette Properties LLC (Owner)**, for property located at 1900 **Lafayette Rd** whereas relief is needed for ambulatory Surgical Center use which requires the following: 1) A Special Exception from Section 10.440, Use #6.40 to allow an Ambulatory Surgical Center where the use is permitted by Special Exception. Said property is located on Assessor Map 267 Lot 8 and lies within the Office Research (OR) District.

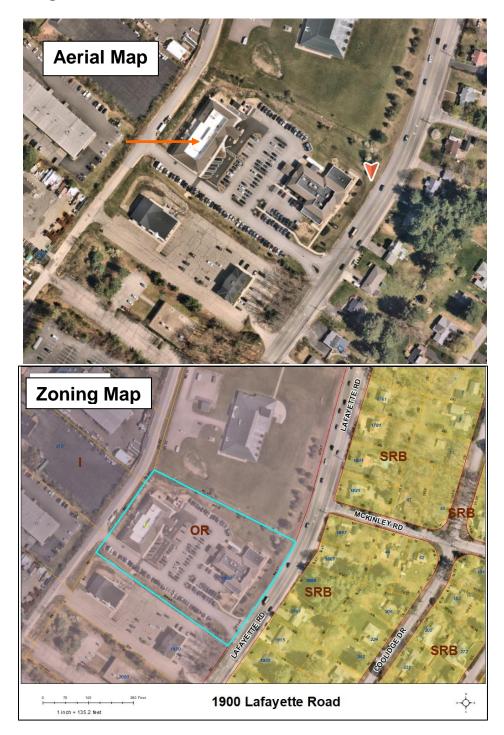
	Existing	Proposed	Permitted /	
			<u>Required</u>	
Land Use:	Medical	Medical	Primarily	
	office/Ambulatory	office/Ambulatory	office use	
	surgical center	surgical center		
Lot area (sq. ft.):	4 acres	4 acres	3 acres	min.
Lot depth (ft):	495	495	300	min.
Street Frontage (ft.):	387	387	300	min.
Primary Front Yard	>80	>80	50/80 from CL	min.
<u>(ft.):</u>			of Lafayette	
			rd.	
Right Yard (ft.):	>75	>75	75	min.
Left Yard (ft.):	>75	>75	75	
Rear Yard (ft.):	50	50	50	min.
<u>Height (ft.):</u>	<60	<60	60	max.
Building Coverage (%):	15	15	30	max.
Open Space Coverage (%):	43	43	30	min.
Parking:	138	138	130	
Estimated Age of Structure:	2020	Special Exception red.	request(s) showr	n in

Existing & Proposed Conditions

Other Permits/Approvals Required

None.

Neighborhood Context



Previous Board of Adjustment Actions October 15, 2002 – Request for Special Exception concerning:

Article VIII, Section 10-802 to allow more than 100 cubic yards of fill to be placed on the property where such use is only allowed by Special Exception.

The Board voted the request be **granted** as presented and advertised with the following stipulations:

- That the granting of this variance is subject to the approval of the City Engineer
 - That a dust control plan be submitted;
 - That the composition of the proposed fill be determined

Planning Department Comments

The two buildings at 1900 Lafayette were originally approved as medical office buildings and were constructed in phases, with Phase I being completed in 2015. Prior to starting the second building, an amended site plan approval request was submitted, reducing the building from two stories to one story, with a slightly larger footprint. The permit application and plans submitted for the amended plan described the use as ambulatory surgical center. The Zoning Ordinance has an ambulatory surgical center use in the table of uses, however there is not a definition for the use. It is permitted by Special Exception in the OR district.

		Р	= Pen	nitted	S =	Specia	l Exce	ption	CU	= Cond	itional	l Use F	Permit	N =	Prohi	bited			
	Use	R	SRA SRB	GRA GRB	GRC (A)	GA/ MH	MRO CD4- L1	CD4- L2	MRB	CD5 CD4	GB	G1	G2	B CD4- W	WB	OR	I	WI	Supplemental Regulations
6.20	Medical offices and clinics (outpatient only)	N	N	N	N	N	s	s	s	Р	Р	Р	Р	Р	N	P	N	N	
6.30	Clinics with inpatient care	Ν	Ν	Ν	Ν	Ν	N	Ν	Ν	Ν	s	S	Ν	S	Ν	s	Ν	Ν	
6.40	Ambulatory surgical center	Ν	Ν	Ν	Ν	Ν	N	Ν	Ν	Ν	S	S	Ν	S	Ν	s	Ν	N	
6.50	Substance abuse treatment facility	Ν	Ν	Ν	Ν	Ν	N	Ν	Ν	Ν	Ν	Ν	Ν	Ν	Ν	Ν	Ν	Ν	
6.60	Psychiatric hospital for the criminally insane	Ν	Ν	Ν	Ν	Ν	N	Ν	Ν	Ν	Ν	Ν	Ν	Ν	Ν	Ν	Ν	Ν	

The Ordinance does have a use for medical office and clinics (outpatient only) and it is permitted by right in the OR zone. Definition of an outpatient clinic is below:

Clinic

A facility providing care and treatment for sick or injured human patients, not including a **medical** office, hospital or substance abuse treatment facility.

Outpatient clinic

A **clinic** providing care and treatment on an outpatient basis, including ambulatory care or similar medical services that generally require a stay of less than 24 hours, that does not include overnight care facilities.

As the applicant states, the property is under contract to be sold and this issue arose out of the due diligence by the buyer. It is staffs opinion that this use is a medical clinic and that an ambulatory surgical center is synonymous with a medical outpatient clinic.

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.



THOMAS W. HILDRETH Direct Dial: 603.628.1177 Email: thomas.hildreth@mclane.com Admitted in NH, MA and ME 900 Elm Street, P.O. Box 326 Manchester, NH 03105-0326 T 603.625.6464 F 603.625.5650

May 27, 2022

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

Via UPS Overnight Delivery

Applicant/	WSS Lafayette Properties, LLC
Owners:	Noerdlinger Real Estate, LLC
	GDC Lafayette Properties, LLC
	Sastry Holding, LLC
	Clark Point Real Estate, LLC, and
	LCE Holdings, LLC
Property:	1900 Lafayette Road, Tax Map 267, Lot 8 (the "Property")
Zone:	Office Research ("OR")
Request:	Special Exception for Ambulatory Surgical Center

Dear Ladies and Gentlemen:

PURPOSE

The purpose of this letter is to provide an overview of the above-referenced request and an inventory of the materials submitted in support. The letter and supporting materials were uploaded along with the related on-line application on Friday, May 27, 2022. A hard copy will be delivered by UPS overnight delivery to arrive at your office on Wednesday, June 1, before the 4:30 P.M. deadline in order for the matter to be included on the Board of Adjustment's agenda for its meeting on June 22.

In addition to this letter and the online application, please find herewith the following:

- 1. Letter of Authorization
- 2. Site Development Plans signed by the City of Portsmouth Planning Board on November 5, 2015, and recorded in the Rockingham County Registry of Deeds ("RCRD") as Plan #D-39176, with the following pages:
 - a. C-2A, Site Plan Phase 1
 - b. C-2B, Site Plan Phase 2
 - c. C-3A, Layout & Materials Plan, Phase 1
 - d. C-3B, Layout & Materials Plan, Phase 2
 - e. C-8A, Landscape Plan Phase 1
 - f. C-8B, Landscape Plan Phase 2

- 3. Amended Site Plans signed by the City of Portsmouth Planning Board on March 3, 2020, and recorded in the RCRD as Plan #D-42046, with the following pages:
 - a. C-06-A
 - b. C-06-B
- 4. Documents locating and depicting the Property from City GIS maps:
 - a. Excerpt from GIS mapping system, highlighting Zoning for the property
 - b. Excerpt from GIS mapping system, highlighting the Property
- 5. We will promptly pay the filing and notification fees upon advice of same.

The application seeks a special exception to operate an ambulatory surgical center on the Property in the OR zone, in accordance with Section 6.40 from the Table of Uses in the City's zoning ordinance.

PROPERTY

The Property is shown on the City of Portsmouth Tax Maps as Map 267, Lot 8, and contains approximately 3.98 acres, according to the tax card. The Property lies on the westerly side of Lafayette Road between Hoover Drive and McKinley Road in the Office Research (OR) Zone. As the GIS map shows, the parcel has two existing structures, one located near the front of the parcel and the other toward the rear. The front structure was constructed in 2015, and contains approximately 21,296 SF in two-stories. The rear building was completed last year and encompasses a little more than 11,000 SF in a single story.

HISTORY

According to the site plans, in 2015 the Property was a vacant lot. At that time, the owners secured site plan approval for a two phase development. Phase 1 consisted of the 2 story, 21,000 SF front building, with an intended use as medical and professional offices. At the time of the 2015 site plan, Phase 2 was proposed to be a second 2 story office building with two floors each containing 10,000 SF.

In 2019, the site plan was amended to reduce the size of the second building to 11,175 SF on a single floor. The amended site plan labels the proposed use of the second building as "ambulatory surgical center" ("ASC"). Following approval of the amended site plan in March of 2020, the owners obtained a building permit, completed construction of the building, received a certificate of occupancy, and Atlantic Orthopedics has been performing same-day surgeries there regularly for months.

None of the participants in the 2019 process – the owner, the planning department staff, the planning board, code enforcement officers, no one – questioned the proposed use of the building as an ASC. Now, however, the owners of the Property have entered into a contract to sell, and the buyer has flagged the use issue after completing its due diligence. The basis of the buyer's concern is the fact that "ambulatory surgical center" is called out as a separate use in the Table of Uses. According to the Table, the ASC use is permitted in no zone by right, but it is permitted in four zones with a special exception, including the OR zone where this Property is located.

City of Portsmouth May 27, 2022 Page 3

RESERVATION OF RIGHTS

While this present application seeks a special exception to use the Property for an ASC, it also reserves the owners' right to contest the requirement and assert that no special exception is, in fact required. There are at least two theories which would support that position.

The first theory is that of municipal estoppel, stemming from the City's approval of the site plan, building permit, and occupancy permit. In 2019, the owners presented a plan which clearly labeled the proposed use of the building as an ambulatory surgical center. All of the municipal stakeholders who approved the plan, the building, and the occupancy did so with full knowledge of the intended use. The owners, in reasonable reliance on the municipal actions to approved the project, spent considerable sums on site work, construction, outfitting and operation of the building, and the City should now be estopped from taking any position adverse to the ASC use.

The second theory comes from the zoning ordinance itself. The ordinance permits medical offices and outpatient clinics in the OR zone by right. The ordinance permits inpatient clinics and ASCs in the OR zone with a special exception. The ordinance defines inpatient and outpatient clinics as follows:

Clinic

```
    A facility providing care and treatment for sick or injured human patients, not including a medical office, hospital or substance abuse treatment facility.
    Outpatient clinic

            A efficie providing care and treatment on an outpatient basis, including ambulatory care or similar medical services that generally require a stay of less than 24 hours, that does not include overnight care facilities.

    Inpatient clinic

            A efficie that may include overnight care facilities.
```

There is no definition in the ordinance for ambulatory surgical center. And there is a decent argument that the defined term "outpatient clinic" already embraces the same uses of an "ambulatory surgical center." It is hard to know how a definition of ambulatory surgical center would differ from that of an outpatient clinic.

Under the principles set forth in *Stephen Bartlett, et al. v. City of Manchester*, 164 N.H. 634 (2013), the board of adjustment could decide that no special exception is required for use of the Property as an ambulatory surgical center because the use is subsumed by the ordinance's defined term "outpatient clinic" which is a use permitted by right in the OR district.

SPECIAL EXCEPTION

If the board is not so inclined, it should nevertheless have no difficulty finding that the use of the Property as an ambulatory surgical center easily satisfies the criteria for a special exception set forth in Section 10.230 of the zoning ordinance, as follows:

§10.232.10 Use of the property as an ASC is in harmony with the general purpose and intent of the ordinance, and meets the specified standards.

City of Portsmouth May 27, 2022 Page 4

§10.232.21	ASCs are permitted by special exception in the OR zone.
§10.232.22	No hazard to the public or adjacent property exists on account of potential fire, explosion, or release of toxic materials.
§10.232.23	There is no detriment to property values in the vicinity or any change in the essential character of the area.
§10.232.24	No traffic safety hazard is created by operation of the ASC.
§10.232.25	The ASC imposes no excessive demand on municipal services.
§10.232.26	Use of the property as an ASC has caused no significant increase in storm water runoff.

All of the foregoing statements are not merely prospective conjecture. The Property has been operating as an ambulatory surgical center for several months now and has proven by its operation to satisfy all of these standards.

CONCLUSION

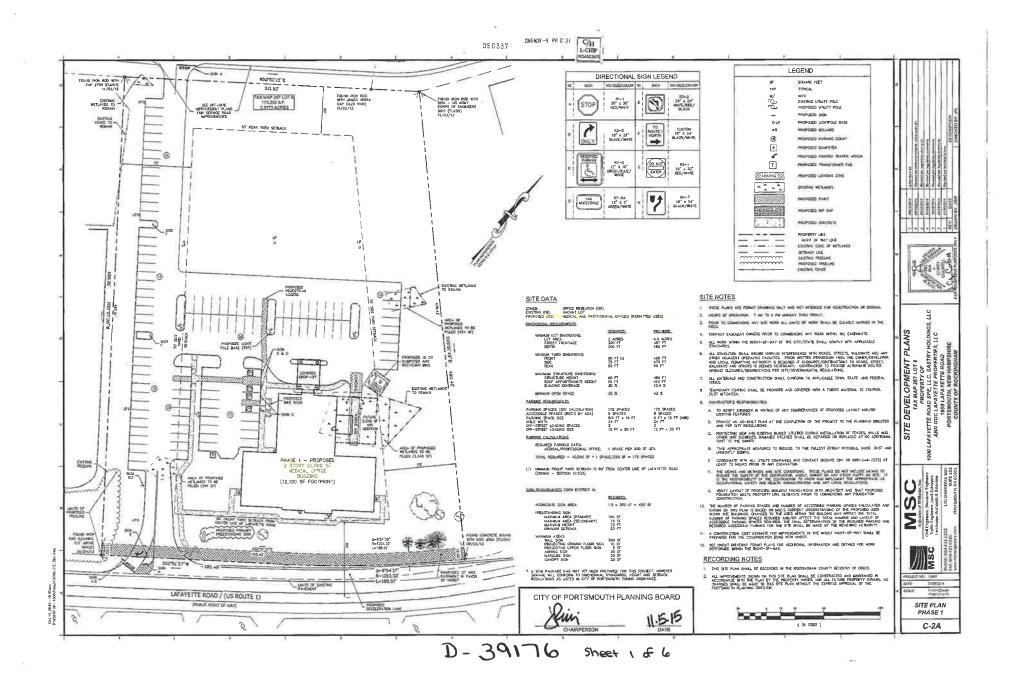
Based on the foregoing, we respectfully request that the board either decide that ambulatory surgical center is a permitted use already embraced by the defined term "outpatient clinic"; or, alternatively, that the use of the Property as an ambulatory surgical center satisfies the relevant standards for a special exception and grant an affirmative special exception here.

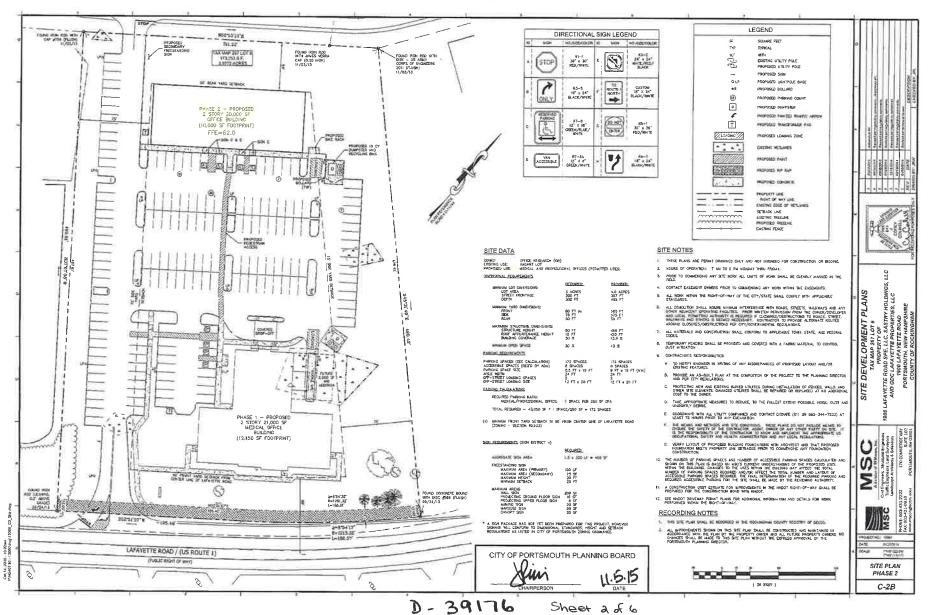
If you have any questions about this submission or require additional information in advance of hearing, please be in touch. Otherwise, thank you for your attention to and assistance with the processing of this application. We will look forward to speaking with you further about it at your meeting in June.

Sinderely yours,

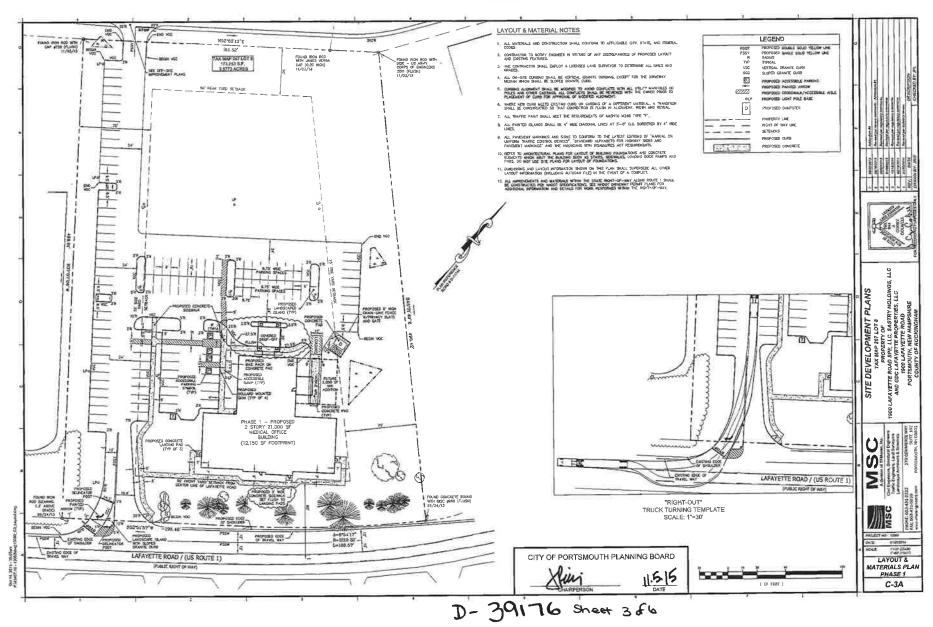
Thomas W. Hildreth

TWH: Enclosures ec: M. Lane

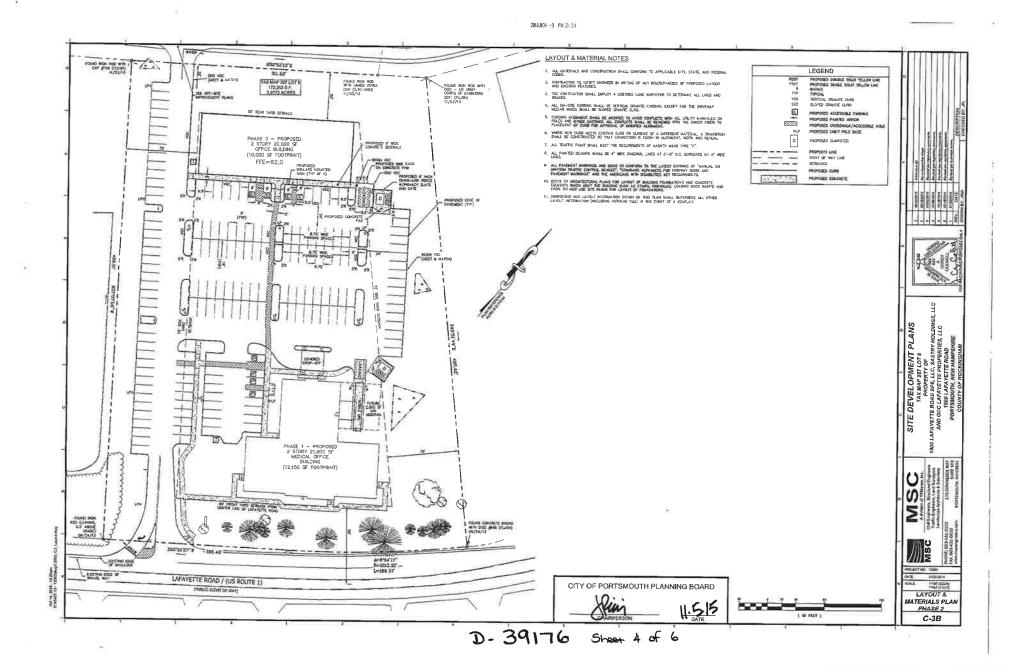


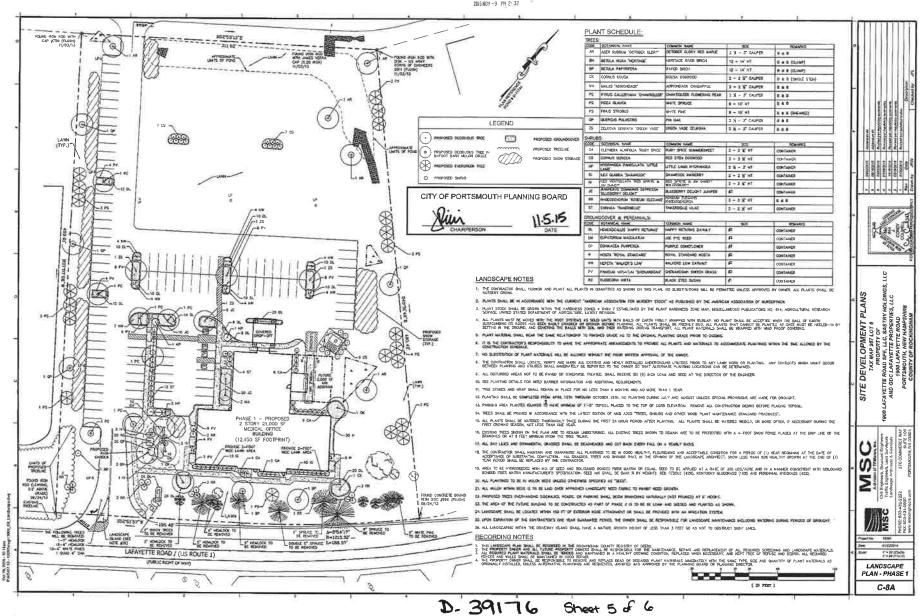


2015 KGY ~ 9 PH 2: 31



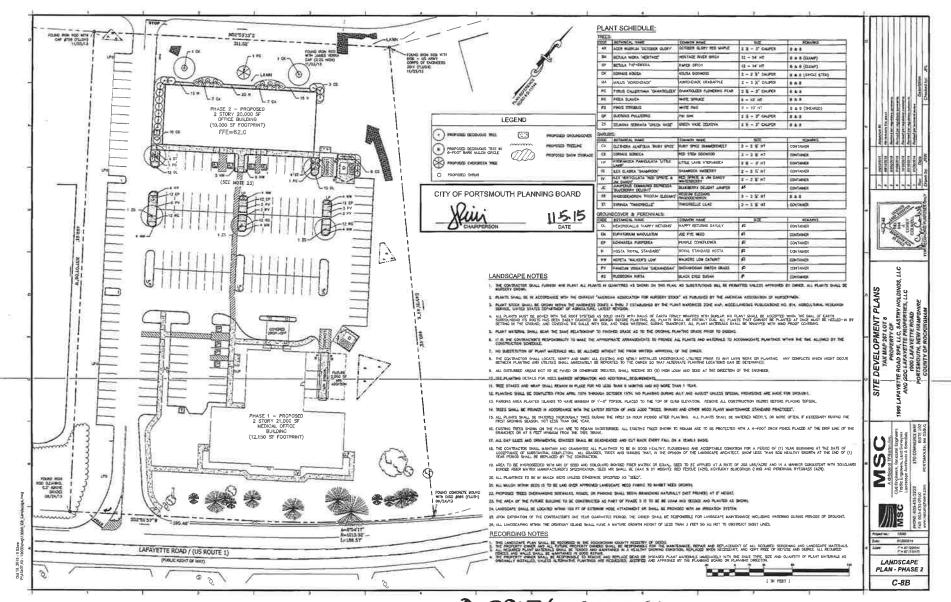
2015 NOY -9 PH 2: 31



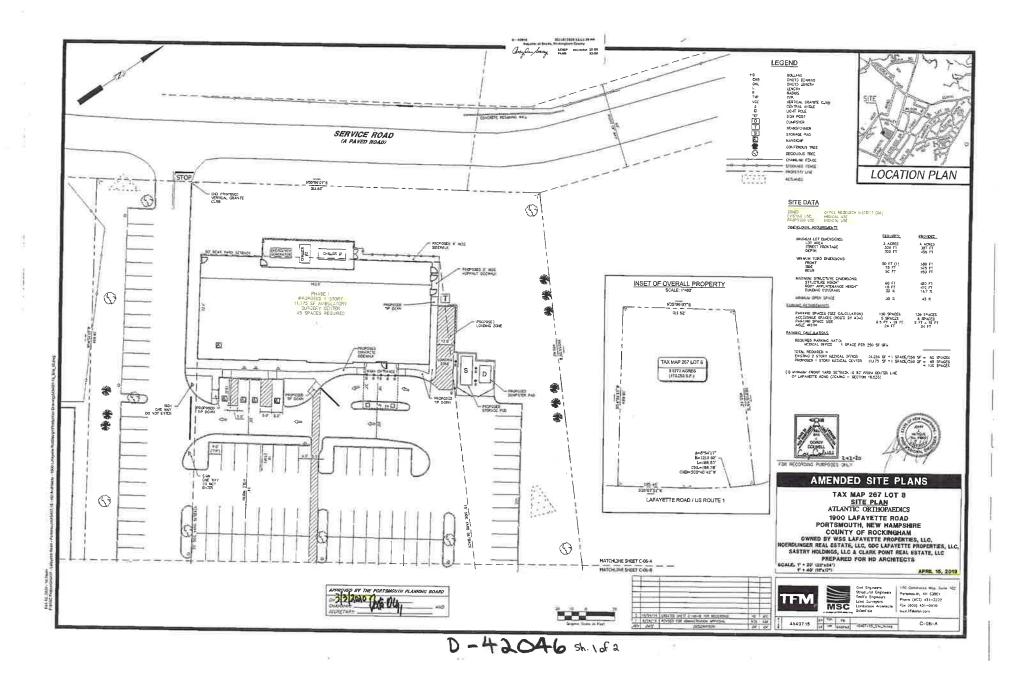


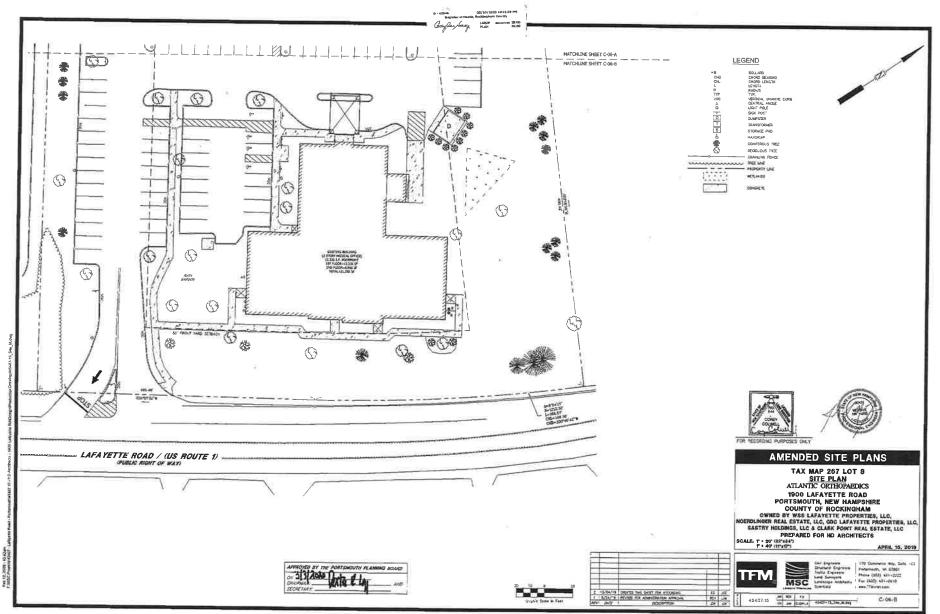
2015 HOY -9 PH 2: 32

2015 KOV - 9 PM 2: 32



D-39176 Sheet 6 of 6





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D-42046 Sh. 2 of 2



Property Information

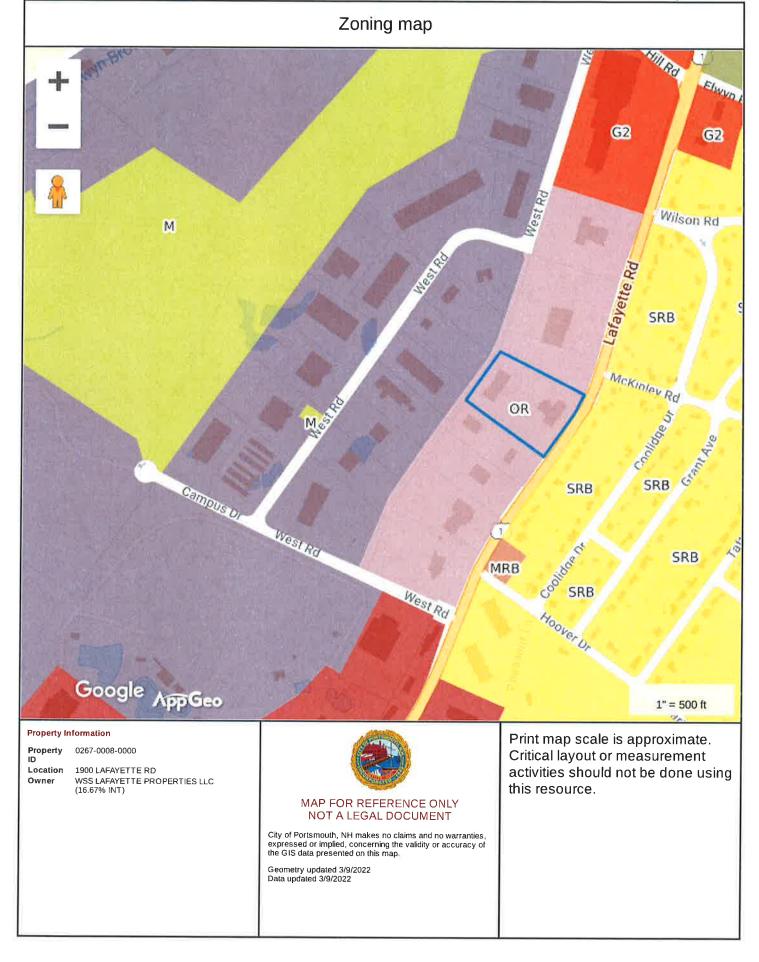
Property ID	0267-0008-0000
Location Owner	1900 LAFAYETTE RD WSS LAFAYETTE PROPERTIES LLC (16.67% INT)



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.



Map Theme Legends

Zoning

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

City of Portsmouth

7.

Request of **Peter V. Ward (Owner)**, for property located at **15 Central Avenue** whereas relief is needed for vertical expansion of existing dwelling and garage which requires the following: 1) Variances from Section 10.521 to allow a) a 6' front yard where 30' is required; and b) a 4' side yard where 10' is required. 2) A Variance from Section 10.321 to allow a nonconforming building or structure to be expanded, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 209 Lot 4 and is located within the Single Residence B (SRB) District.

	Existing	Proposed	Permitted /				
			Required				
Land Use:	Single	Vertical expansion	Primarily				
	family	and garage	residential				
	-	addition					
Lot area (sq. ft.):	15,476	15,476	15,000	min.			
Lot area per dwelling	15,476	15,476	15,000	min.			
<u>(sq. ft.):</u>							
Lot depth (ft):	147.5	147.5	100	min.			
Street Frontage (ft.):	100	100	100	min.			
Primary Front Yard	6	6	30	min.			
<u>(ft.):</u>							
Right Yard (ft.):	8	4	10	min.			
Left Yard (ft.):	11	11	10				
Rear Yard (ft.):	98	98	30	min.			
Height (ft.):	<35	<35	35	max.			
Building Coverage (%):	17	17.5	20	max.			
Open Space Coverage	>40	>40	40	min.			
<u>(%):</u>							
Parking:	4	4	3				
Estimated Age of	1935	Variance request(s)	shown in red.				
Structure:							

Existing & Proposed Conditions

Other Permits/Approvals Required

Planning Board – CUP for ADU

Neighborhood Context



Previous Board of Adjustment Actions

No prior BOA history found.

Planning Department Comments

The applicant is seeking to vertically expand the dwelling and add living space above the garage to create an attached accessory dwelling unit. The new stairs proposed to provide access to the garage will encroach into the side yard. The applicant will need approval from the Planning Board through a conditional use permit and modifications may be made or requested through that process. If granted approval, staff recommends consideration of the following stipulation:

The design and location of the ADU may change based on review and approval from the Planning Board.

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.
- The "unnecessary hardship" test:
 (a) The property has <u>special conditions</u> that distinguish it from other properties in the area.
 AND
 - (b) <u>Owing to these special conditions</u>, 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**

<u>Owing to these special conditions</u>, 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.

Durbin Law Offices, P.L.L.C. 144 Washington Street P.O. Box 1222 Portsmouth, NH 03802 www.durbinlawoffices.com



Derek R. Durbin, Esq. 603.287.4764 derek@durbinlawoffices.com *Also admitted in MA

BY: VIEWPOINT & HAND DELIVERY

June 1, 2022

City of Portsmouth c/o Peter Stith Zoning Board of Adjustment 1 Junkins Avenue Portsmouth, NH 03801

RE: Variance Application of Peter Ward 15 Central Avenue, Tax Map 209, Lot 5

Dear Peter,

Our Office represents Peter Ward, owner of the property located at 15 Central Avenue in Portsmouth. Enclosed herewith, please find the following materials for submission to the Zoning Board of Adjustment for consideration at its next regularly scheduled meeting:

- 1) Landowner Letter of Authorization;
- 2) Narrative to Variance Application;
- 3) Site Plan;
- 4) Floor Plans and Elevations;
- 5) GIS Map; and
- 6) Photographs of the Property.

One (1) copy of the application submission is being hand-delivered to the Planning Department contemporaneously with the electronic filing through Viewpoint. Should you have any questions or concerns regarding the enclosed application materials, do not hesitate to contact me at your convenience.

Sincerely,

)unti-

Derek R. Durbin, Esq.

www.durbinlawoffices.com

LANDOWNER LETTER OF AUTHORIZATION

Peter Ward, record owner of property located at 15 Central Avenue, Portsmouth, NH, identified on Portsmouth Tax Map 209, as Lot 4 (the "Property"), hereby authorizes Durbin Law Offices PLLC and Matthew Beebe and their agents and representatives, to file any building, zoning, planning or other municipal permit applications with the City of Portsmouth for said Property and to appear before its land use boards. This Letter of Authorization shall be valid until expressly revoked in writing.

to Wal

May 26, 2022

Peter Ward

CITY OF PORTSMOUTH ZONING BOARD OF ADJUSTMENT APPLICATION NARRATIVE

Peter Ward (Owner/Applicant) Tax Map 209, Lot 5 15 Central Avenue Portsmouth, NH 03801

INTRODUCTORY STATEMENT

Peter Ward (the "Applicant") is the owner of the property located at 15 Central Avenue (the "Property") The Property is in the Single-Family Residence B ("SRB") Zoning District. It is approximately 0.36 acres in size (15,476 square feet) and has a single-family home on it in which the Applicant resides.

The Property is uniquely situated. It is directly abutted to the north (right) by a paper street that was never constructed. It is the Applicant's belief that ownership of this land reverted back to the abutting property owner(s) some time ago by operation of law as a result of the City never having made use of it. However, for purposes of the foregoing zoning application, the Applicant has shown this land as still being owned by the municipality in his Site Plan and calculated the yard setback(s) accordingly since the City has never expressly released its interest in it. The Applicant currently maintains the land now or formerly owned by the City, which is fenced in and incorporated into his property. The Property to the right of the paper street is an unimproved parcel that is also owned by the Applicant (Tax Map 209, Lot 5). To the west (rear), the Property is abutted by I-95.

The existing single-family home with attached garage is non-conforming with respect to the front and side yard setbacks. As a result of how the home and garage are situated on the Property, little can be done to improve the structures without requiring one or more setback variances.

The Applicant is proposing several improvements to the Property. He would like to like to add living space above the existing home and garage. The finished space above the garage would serve an accessory dwelling unit. In order to improve the home and garage as proposed, the Applicant needs the following variances:

- 1) Section 10.521 a right yard setback of 4' + /- where 10 is required;
- 2) Section 10.521 a front yard setback of 6'+/-where 30' is required; and
- 3) Section 10.321 expansion of a non-conforming structure.

VARIANCE CRITERIA

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

In the case of *Chester Rod & Gun Club, Inc. v. Town of Chester*, the Court observed that "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; and (2) examining whether granting the variance would threaten the public health, safety, or welfare."

The primary purpose behind imposing building setbacks is to ensure that adequate light, air and space is maintained between structures on abutting properties. The proposed vertical expansion of the house and garage will have no impact upon the light, air and space of structures on abutting properties. The structures on the abutting properties to the south (left) and across Central Avenue to the east (front) are a considerable distance away and are not affected in any way by a vertical expansion of the Applicant's home. There are no structures on the land to the north, closest to where the second floor ADU will be located. Moreover, it is fair to assume that the land to the north can never be built upon in the future. The new staircase and deck that will access the ADU above the garage will only minimally encroach further into the right yard setback than the existing garage.

The proposed additions are designed to improve the appearance of the existing home while providing additional living space for the Applicant and an ADU. Many other homes in the neighborhood are more than one story in height. For these reasons, the vertical expansion of the home and garage to accommodate additional living space and an ADU will not alter the essential character of the neighborhood. There are really no public health, safety or welfare concerns implicated by a project of the nature proposed.

Substantial justice will be done by granting the variance relief.

Any loss to the individual that is not outweighed by a gain to the general public is an injustice. New Hampshire Office of State Planning, The Board of Adjustment in New Hampshire, A Handbook for Local Officials (1997); Malachy Glen Assocs., Inc. v. Town of Chichester, <u>155</u> N.H. 102 (2007).

Denying the variances would have no public benefit. The home and attached garage on the Property are already non-conforming with respect to the front and side yard setbacks, which is a common characteristic in the neighborhood. There are very few ways, if any, in which these structures could be improved without requiring variance relief. The most reasonable and realistic way to improve upon and add living space to these structures given their orientation on the Property is to expand upon them vertically within the height limits of the Zoning Ordinance. There are many examples of similarly situated properties in the neighborhood with structures greater than one story in height. The vertical expansion of the structures will have minimal to no impact upon abutting properties. Therefore, the loss to the Applicant in denying the variances outweighs any potential gain to the public.

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

The proposed design for the vertical expansion of the home and garage is architecturally compatible with other structures in the neighborhood. The re-design of these structures will improve the appearance of the Property from the street and abutting properties. If anything, the values of surrounding properties may be increased as a result of granting the variances.

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

There are conditions of the Property that make it unique within the context of the neighborhood. The Property is bordered to the west by I-95. The abutting land constituting the paper street to the north of the Property has been, for all intents and purposes, abandoned by the City. It is arguably owned by the Applicant by operation of law. This land is fenced in and incorporated into the Applicant's yard. It has existed this way and been maintained by the Applicant throughout his ownership of the Property. Even if the City does still claim an interest in the paper street, it cannot be built upon. The land on the other side of it is also owned by the Applicant and cannot be built upon. Therefore, the Property is buffered to the north by unbuildable green space and a relatively dense tree buffer.

In addition, the Property is one of the few in the neighborhood that meets the 15,000 square foot land area requirement yet many of the other properties have homes, garage and other structures that encroach into one or more setbacks. The nearest structures to the Applicant's home and garage are a considerable distance away and would not be affected by any vertical expansion of these structures. As a result of these special conditions of the Property, there is no fair and substantial relationship between the setback provisions of the Ordinance and their application to what is proposed.

The proposed use is reasonable.

Single-family homes with accessory dwelling units are permitted and encouraged within the SRB Zoning District. The Property has sufficient land area to sustain the proposed use. The proposed ADU will be located on the north side of the Property which is abutted by unbuildable land. Therefore, the new AUD use of the Property is reasonable in light of the right yard setback variance requested.

CONCLUSION

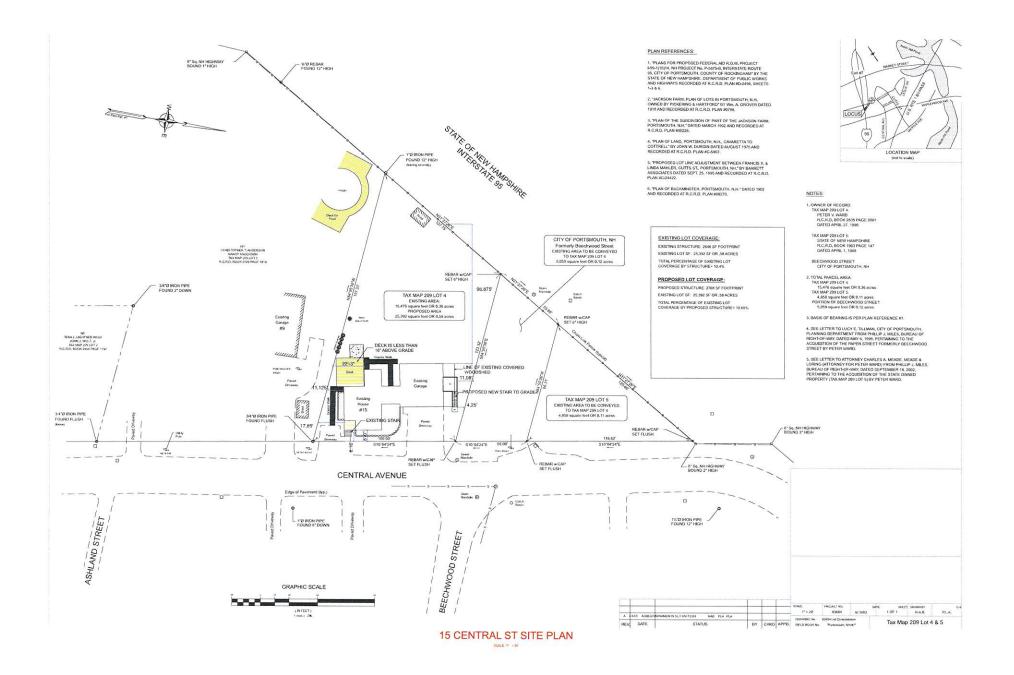
In conclusion, the Applicant has demonstrated that he has met the five (5) criteria for granting the variances requested. Accordingly, he respectfully requests that the Board approve his requests.

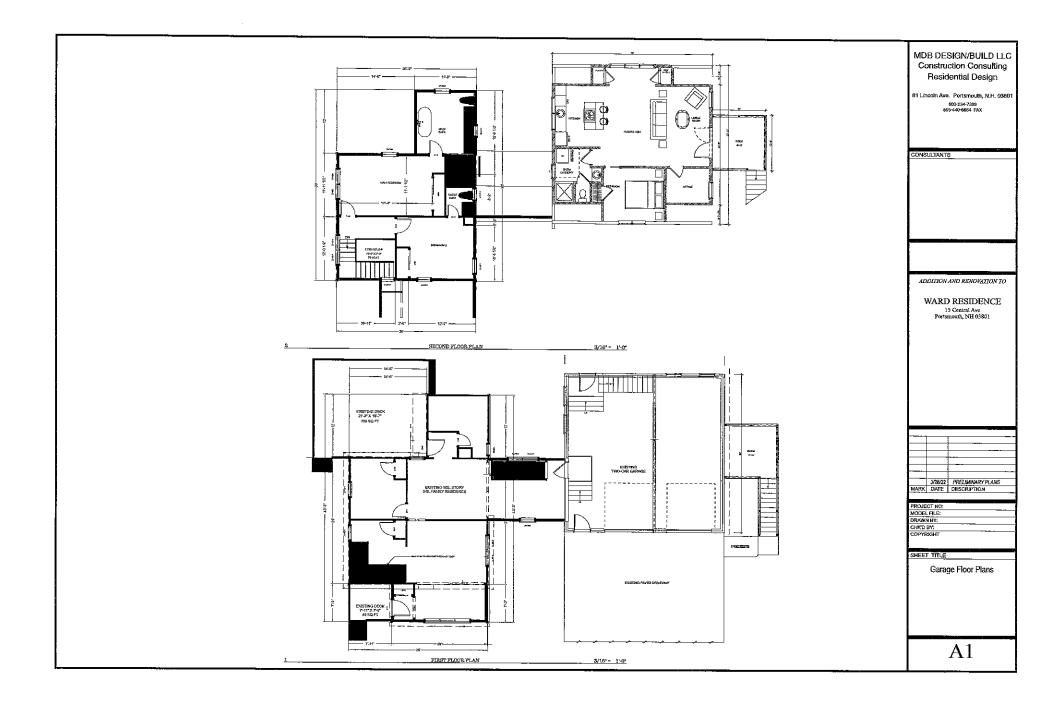
Respectfully Submitted,

Dated: June 1, 2022

Peter Ward huled

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





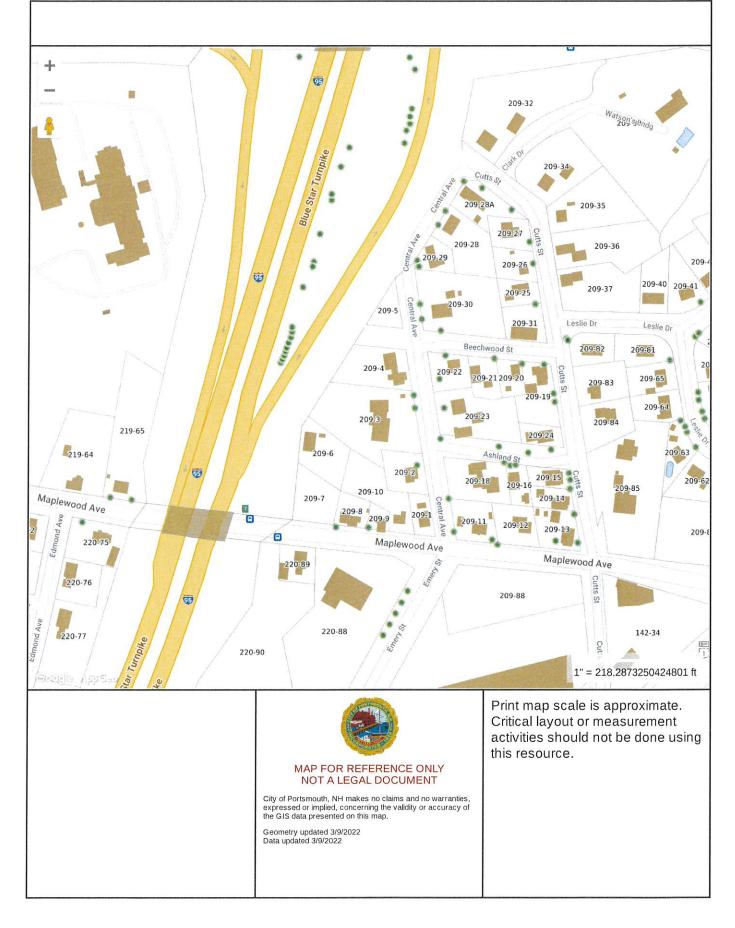


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Front (East) Elevation from Central Avenue



West (Rear) Elevation



Right Side (North) Elevation



South (Left) Side Elevation from Central Street



View of Right Side Yard and Paper Street Land (North)



Right Side Yard View (North)

8.

Request of **English and Hopkins LLC (Owner)**, for property located at **57 Sherburne Avenue** whereas relief is needed to construct a new single-family dwelling which requires the following: 1) Variances from Section 10.521 to allow a) 34% building coverage where 25% is the maximum allowed; b) a 16' rear yard where 20' is required; and c) a 5.5' front yard where 15' is required. Said property is located on Assessor Map 113 Lot 22-1 and lies within the General Residence A (GRA) District.

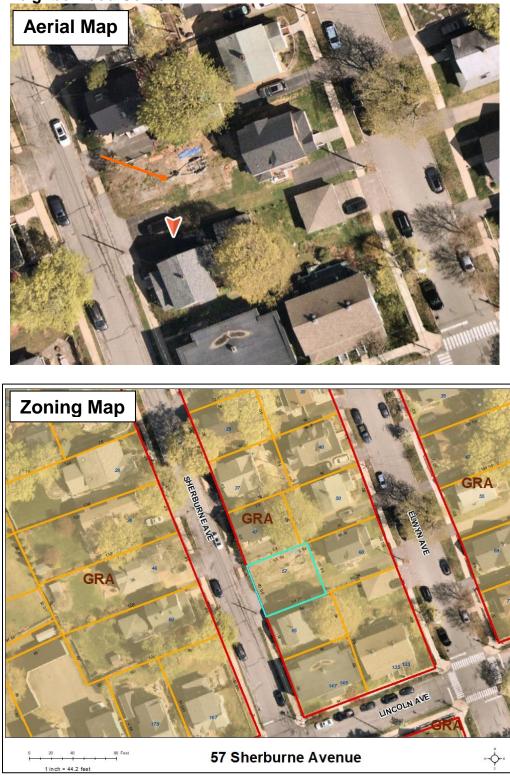
	<u>Existing</u>	Proposed	Permitted /	
Land Use:	Vacant	Single family	Required Primarily residential	
Lot area (sq. ft.):	2,943	2,943*	7,500	min.
Lot area per dwelling (sq. ft.):	2,943	2,943*	7,500	min.
Lot depth (ft):	58	58*	70	min.
Street Frontage (ft.):	50	50*	100	min.
Primary Front Yard (ft.):	NA	5.5	15	min.
Right Yard (ft.):	NA	10	10	min.
Left Yard (ft.):	NA	10	10	
Rear Yard (ft.):	NA	16	20	min.
Height (ft.):	NA	<35	35	max.
Building Coverage (%):	0	34	25	max.
Open Space Coverage (%):	100	47	30	min.
Parking:	NA	2	2	
Estimated Age of Structure:	NA	Variance request(s) shown in red. *Prior variances granted per subdivision		

Existing & Proposed Conditions

Other Permits/Approvals Required

None.

Neighborhood Context



Previous Board of Adjustment Actions

<u>June 18, 2019 –</u> The Board **granted** the request to subdivide one lot into two lots. Variances from Section 10.521 to allow the following:

- a) 3,457± s.f. lot area and lot area per dwelling unit where 7,500 s.f. is the minimum required;
- b) 2,943± s.f. lot area and lot area per dwelling unit where 7,500 is the minimum required;
- c) 50'± of continuous street frontage where 100' is required;
- d) lot depths of 58'± and 68'± where 70' is the minimum required; and
- e) 30%± building coverage where 25% is the maximum allowed.

Planning Department Comments

The applicant is seeking to construct a single family dwelling on the vacant lot that was created as a result of the subdivision in 2019. Variances were granted for lot area, lot area per dwelling, frontage and depth. The applicant is seeking relief for building coverage, front and rear setbacks for the proposed dwelling.

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.
- The "unnecessary hardship" test:
 (a) The property has <u>special conditions</u> that distinguish it from other properties in the area.
 AND
 - (b) <u>Owing to these special conditions</u>, 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**

<u>Owing to these special conditions</u>, 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.

Durbin Law Offices, P.L.L.C. 144 Washington Street P.O. Box 1222 Portsmouth, NH 03802 www.durbinlawoffices.com



Derek R. Durbin, Esq. 603.287.4764 derek@durbinlawoffices.com *Also admitted in MA

BY: VIEWPOINT & HAND DELIVERY

June 1, 2022

City of Portsmouth c/o Peter Stith Zoning Board of Adjustment 1 Junkins Avenue Portsmouth, NH 03801

RE: Variance Application of English & Hopkins, LLC 57 Sherburne Avenue, Tax Map 111, Lot 22-1

Dear Peter,

Our Office represents English & Hopkins, LLC. Enclosed herewith, please find the following materials for submission to the Zoning Board of Adjustment for consideration at its next regularly scheduled meeting relative to the property at 57 Sherburne Avenue:

- 1) Landowner Letter of Authorization;
- 2) Narrative to Variance Application with Exhibits A & B;
- 3) Site Plan;
- 4) Floor Plans and Elevations;
- 5) GIS Map; and
- 6) Photographs of the Property.

One (1) copy of the application submission is being hand-delivered to the Planning Department contemporaneously with the electronic filing through Viewpoint. 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.

www.durbinlawoffices.com

LANDOWNER LETTER OF AUTHORIZATION

English & Hopkins LLC, record owner of property located at 57 Sherburne Avenue, Portsmouth, NH, identified on Portsmouth Tax Map 113, as Lot 22-1 (the "Property"), hereby authorizes Durbin Law Offices PLLC and Altus Engineering and their agents and representatives, to file any building, zoning, planning or other municipal permit applications with the City of Portsmouth for said Property and to appear before its land use boards. This Letter of Authorization shall be valid until expressly revoked in writing.

Inkerney

May 26, 2022

Timothy Keaveney, Member Duly Authorized

CITY OF PORTSMOUTH ZONING BOARD OF ADJUSTMENT APPLICATION NARRATIVE

English & Hopkins LLC (Owner/Applicant) Tax Map 113, Lot 22-1 57 Sherburne Avenue Portsmouth, NH 03801

INTRODUCTORY STATEMENT

English & Hopkins, LLC ("Applicant") is the owner of the property located at 57 Sherburne Avenue ("Lot 22-1"). The Property is in Portsmouth's General Residence A ("GRA") Zoning District. It is approximately 0.07 acres in size (2,943 square feet).

2019 Variance Approvals

On June 18, 2019, the ZBA granted multiple variances to John Marden to allow for the creation of Lot 22-1. <u>Exhibit A</u>. Lot 22-1 was part of the adjacent house lot owned by Mr. Marden at 60 Elwyn Avenue. Following the ZBA's approval, Mr. Marden received subdivision approval from the Planning Board on September 19, 2019. <u>Exhibit B</u>.

As can be seen in the plans that were approved by the ZBA and Planning Board in 2019, Mr. Marden's sole intent for subdividing the property at 60 Elwyn Avenue was to allow for the construction of a modest single-family on what is now Lot 22-1. This was also made clear in the application submissions and presentations before the boards. The proposed home for Lot 22-1 was to have a footprint of 917+/- square foot. Based on this footprint, building coverage was calculated and shown on the plans that were approved as 31.2%. A building coverage variance for Lot 22-1 was never applied for or legally advertised with John Marden's application to the ZBA yet the plans were approved. It is believed that the coverage variance was not applied for at the time because Mr. Marden had yet to finalize his house design plans based on the fact that no stairs or other accessory features to the home were shown on the 2019 plans.

Current Proposal

The Applicant is seeking to construct a single-family home on the same footprint that was shown on the plans submitted to and approved by the ZBA and Planning Board in 2019. In addition, the Applicant would like to place a 48 square foot shed in the right rear side of the Property. This shed was not shown on the 2019 subdivision plans but is desired by the current Applicant due to the modest size of the home and the relative lack of storage that would exist for outdoor tools and the like.

To make way for the proposed home and shed, and in reliance on the approvals that were granted in 2019, the Applicant has removed the hot tub structure that previously encroached into

the 10' left yard setback. The existing shed which encroaches into the left yard setback will also be removed.

Summary of Zoning Relief

In order to construct the proposed home, the Applicant needs a building coverage variance of 33.7+/- where 25% is required and a rear yard setback of 16' where 20' is required. Out of an abundance of caution, the Applicant is also requesting a front yard setback variance of 5.8' where 15' is required by Section 10.520 of the Ordinance. However, it is the Applicant's position that the required front yard setback is 1.6' and that no variance is required based on Article 10.516.10, which states as follows:

"If existing **principal buildings** on the same side of the same **street**, in the same zoning district, and within 200 feet of a **lot** are located closer to the **street** than the minimum required **front yard** specified in this Article, the required **front yard** for the **principal building** on such **lot** shall be the average of the existing alignments of all such **principal buildings**, rounded to the nearest foot. For the purpose of this provision, **buildings** on the subject **lot** shall not be included in the average of existing alignments."

It is important to note that the deviation in building coverage shown on the current plans (33.7%) versus what was shown on the approved plans in 2019 (31.2%) is the result of the front stairway, rear stairway and landing, AC condensing unit pads and garden shed being added. The footprint of the proposed home itself has not changed. Likewise, the 4' rear yard setback variance pertains to the back entryway (stairway and deck) to the house. Because the building envelope on Lot 22-1 is so tight, there is no realistic way to place a reasonably sized single-family home on it without needing a front or rear yard setback variance.

VARIANCE CRITERIA

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

In the case of *Chester Rod & Gun Club, Inc. v. Town of Chester*, the Court observed that "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; and (2) examining whether granting the variance would threaten the public health, safety, or welfare."

The goal of GRA Zoning is "to provide areas for **single-family**, **two family** and **multifamily dwellings**, with appropriate **accessory uses**, at moderate to high densities." Lot 22-1 is consistent in size with the other properties between Elwyn and Sherburne Avenues that immediately surround it, except for Lot 113-21 which has a duplex on it. A majority of the surrounding properties have single-family homes on them. Of the 11 other properties on this block, 5 exceed 33.7% in building coverage (Lots 113-21, 113-20, 113-18, 113-24 and 113-16) based on the City's assessing cards. An additional 3 properties exceed the 25% building coverage requirement. Only 3 properties comply. Therefore, the prevailing building density in this block of the neighborhood is not reflective of the zoning, as a majority of the properties are non-

conforming. Building coverage on Lot 22-1 will be consistent with the essential character of the neighborhood which consists of relatively small, densely developed lots with narrow, tall homes.

In addition, many of the structures on the Elwyn/Sherburne block, whether it be the homes or outbuildings such as garages, decks or sheds, encroach into one or more required setbacks. In the present instance, the rear yard setback encroachment is very minor at 4' particularly when you consider the fact that it is associated with a stairway and deck that will serve as the rear entry to the proposed home. While it is a "structure" in name, it does not have the same impact that a building would have within the setback, as it will not in any way impinge on the nearest abutter's light, air and space. It should be noted that the directly abutting property to the rear is owned by Timothy and Amy Keaveney, who are the two members of English and Hopkins, LLC, the owner of Lot 22-1. The property at 60 Elwyn Avenue serves as their primary residence. They have lived in this neighborhood for the past 10 years.

Granting the variances will neither alter the essential character of the neighborhood nor create any undue demand on municipal services or threat to the public, health, safety or welfare.

Substantial justice will be done by granting the variance relief.

Any loss to the individual that is not outweighed by a gain to the general public is an injustice. *New Hampshire Office of State Planning, The Board of Adjustment in New Hampshire, A Handbook for Local Officials* (1997); *Malachy Glen Assocs., Inc. v. Town of Chichester,* <u>155</u> <u>N.H. 102</u> (2007).

Denying the variances sought would lead to unduly harsh result. It was understood in 2019 when the subdivision of 60 Elwyn Avenue was approved that the intent was for a single-family home with a footprint of 917 square feet to be built upon Lot 22-1. Following recording of the subdivision plan, Lot 22-1 was sold as a "buildable" lot and taxed as such by the City. The current tax assessment is on a land value of \$379,900.

If the variances were denied, it would be extremely difficult if not impossible for the Applicant to build a reasonably sized home on Lot 22-1. Regardless, it is without question that the Applicant would suffer a financial loss that is not outweighed by any tangible gain to the public given the high cost of purchasing land in Portsmouth and the anticipated return, if any, on its investment. The equitable balancing test for determining whether substantial justice is done weighs in favor of the Applicant.

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

The construction of a tastefully designed, modest-sized single-family home on Lot 22-1 will not negatively impact the surrounding properties. To the contrary, precedence in Portsmouth strongly suggests that the values of the surrounding properties are likely to increase.

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

Lot 22-1 is a non-conforming lot of record that was approved by the City of Portsmouth in 2019 with the understanding that a single-family home would be built upon it with a footprint of 917 square feet. Only one lot in the neighborhood is smaller in dimension. Given the relatively small size of Lot 22-1 in comparison with surrounding properties and its limited building envelope, it would be extremely difficult if not impossible to construct a reasonably sized home with modern amenities and a shed for storage of outdoor tools. As a result of these special conditions of the property, there is no fair and substantial relationship between the general purposes of the building coverage and rear yard setback requirements and their application to Lot 22-1.

The proposed use is reasonable.

Single-family homes are permitted by right within the GRA Zoning District. As such, the proposed use of Lot 22-1 is reasonable.

CONCLUSION

In conclusion, the Applicant has demonstrated that it has met the five (5) criteria for granting the variances requested. Accordingly, it respectfully requests that the Board approve its requests.

Respectfully Submitted,

Dated: June 1, 2022 English and Hopkins, LLC By: Derek R. Durbin, Esq. DURBIN LAW OFFICES PLLC 144 Washington Street Portsmouth, NH 03801 (603)-287-4764 derek@durbinlawoffices.com



Community Development Department (603) 610-7281 **EXHIBIT**

PLANNING DEPARTMENT

CITY OF PO

June 21, 2019

Andrew J .Marden 60 Elwyn Avenue Portsmouth, New Hampshire 03801

Re: Property at 60 Elwyn Avenue, Permit #LU 19-113 Assessor Plan 113, Lot 22

Dear Applicant:

The Board of Adjustment at its regular meeting on June 18, 2019 completed its consideration of your application described as follows:

Application:

8) Case 6-8	
Petitioners:	Andrew J. Marden
Property:	60 Elwyn Avenue
Assessor Plan:	
District:	General Residence A
Description:	Subdivide one lot into two lots.
Requests:	Variances and/or Special Exceptions necessary to grant the required
	relief from the Zoning Ordinance including variances from Section
	10.521 to allow the following:
	a) $3,457\pm$ s.f. lot area and lot area per dwelling unit where 7,500 s.f. is
	the minimum required;
	b) $2,943 \pm$ s.f. lot area and lot area per dwelling unit where 7,500 is the
	minimum required;
	c) $50^{\circ}\pm$ of continuous street frontage where 100' is required;
	d) lot depths of $58' \pm$ and $68' \pm$ where 70' is the minimum required; and
	e) 30%± building coverage where 25% is the maximum allowed.

Andrew J .Marden - Page Two June 21, 2019

Action:

The Board voted to grant the petition as presented and advertised.

Review Criteria:

The petition was granted for the following reasons:

- Granting the variances will not be contrary to the public interest and the spirit of the ordinance will be observed. There are similar lots in the area so that the essential character of the neighborhood will not be altered.
- Substantial justice will be done and the value of surrounding properties will not be diminished. The loss to the applicant by requiring strict compliance with the ordinance in an area of nonconforming properties would not be balanced by any gain to the general public. The proposed would not result in any noticeable increase in the amount of density in the neighborhood.
- Literal enforcement of the ordinance would result in unnecessary hardship due to special conditions of the property which include its frontage on two parallel streets. The existing dwelling is located close to and facing Elwyn Avenue thus the empty portion of the lot adjacent to Sherburne Avenue is naturally situated to create a buildable lot, similar to subdivisions of nearby properties. Due to the special conditions, there is no fair and substantial relationship between the general purposes of the ordinance and their specific application to this property.

As provided for in NH RSA Chapter 677, the Board's decision may be appealed 30 days after the vote. Any action taken by the applicant pursuant to the Board's decision during this appeal period shall be at the applicant's risk. Please contact the Planning Department for more details about the appeals process. Construction drawings or sketches must be reviewed and approved by the Building Inspector prior to the issuance of a building permit. Approvals by other land use boards may also be required prior to the issuance of a building permit.

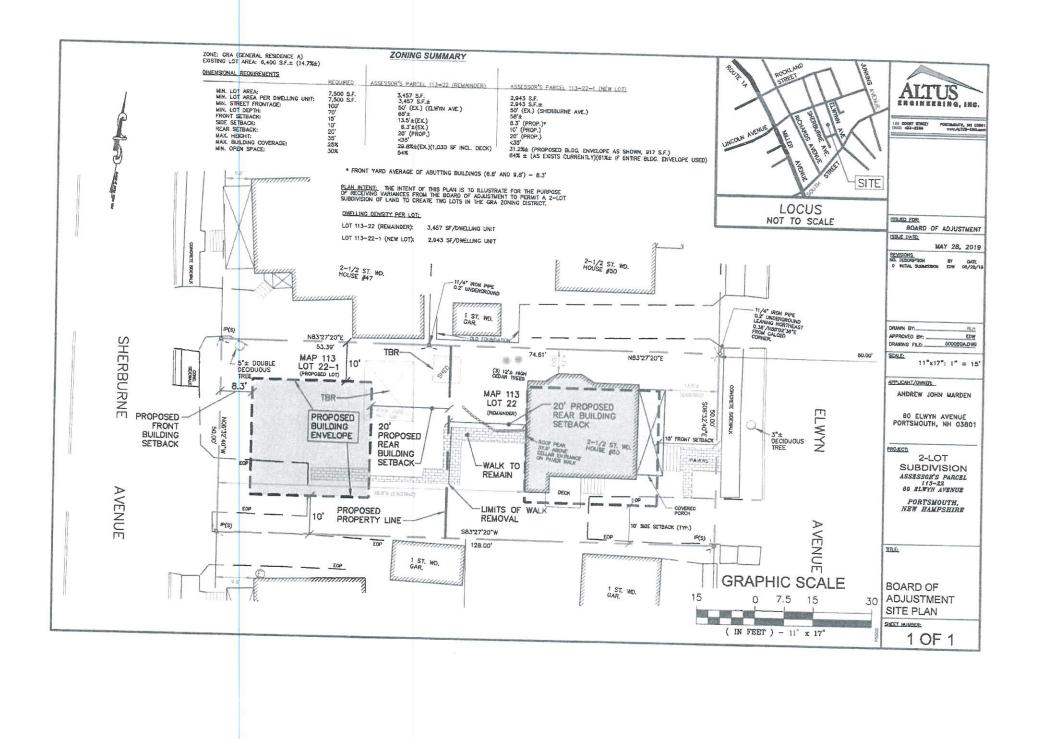
The minutes and tape recording of the meeting may be reviewed in the Planning Department.

Very truly yours,

David Rheaume, Chairman Board of Adjustment

mek

c: Robert Marsilia, Chief Building Inspector Roseann Maurice-Lentz, City Assessor Derek R. Durbin, Esg.





CITY OF PORTSMC



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

PLANNING BOARD

September 24, 2019

Andrew Marden 60 Elwyn Avenue Portsmouth, NH 03801

RE: Preliminary and final subdivision approval for property located at 60 Elwyn Avenue

Dear Mr. Marden:

The Planning Board, at its regularly scheduled meeting of Thursday, September 19, 2019, considered your application for preliminary and final subdivision approval to subdivide one lot into two (2) lots as follows: Lot 22 as shown on Assessor Map 113 decreasing in area from 6,400 s.f. to 3,457 s.f. with 50' of continuous street frontage on Elwyn Avenue; and proposed lot 22-1 as shown on Assessor Map 113 with 2,943 s.f. in area and 50' of continuous street frontage on Sherburne Avenue. Said property is shown on Assessor Map 113 Lot 22 and lies within the General Residence A (GRA) District. As a result of said consideration, the Board voted to grant Preliminary and Final Subdivision Approval with the following stipulations:

1) Lot numbers as determined by the Assessor shall be added to the final plat.

2) Property monuments shall be set as required by the Department of Public Works prior to the filing of the plat.

3) GIS data shall be provided to the Department of Public Works in the form as required by the City.

4) The final plat shall be shall be reviewed for pre-approval by the Rockingham County Registry of Deeds and subsequently recorded by the City or as deemed appropriate by the Planning Department.

The Board's decision may be appealed up to thirty (30) days after the vote. Any action taken by the applicant pursuant to the Board's decision during this appeal period shall be at the applicant's risk. Please contact the Planning Department for more details about the appeals process.

All stipulations of subdivision approval, including recording of the plat as required by the Planning Department, shall be completed within six (6) months of the date of approval, unless an extension is granted by the Planning Director or the Planning Board in accordance with Section III.D of the Subdivision Rules and Regulations. If all stipulations have not been completed within the required time period, the Planning Board's approval shall be deemed null and void.

This subdivision approval is not final until the Planning Director has certified that the

applicant has complied with the conditions of approval imposed by the Planning Board.

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

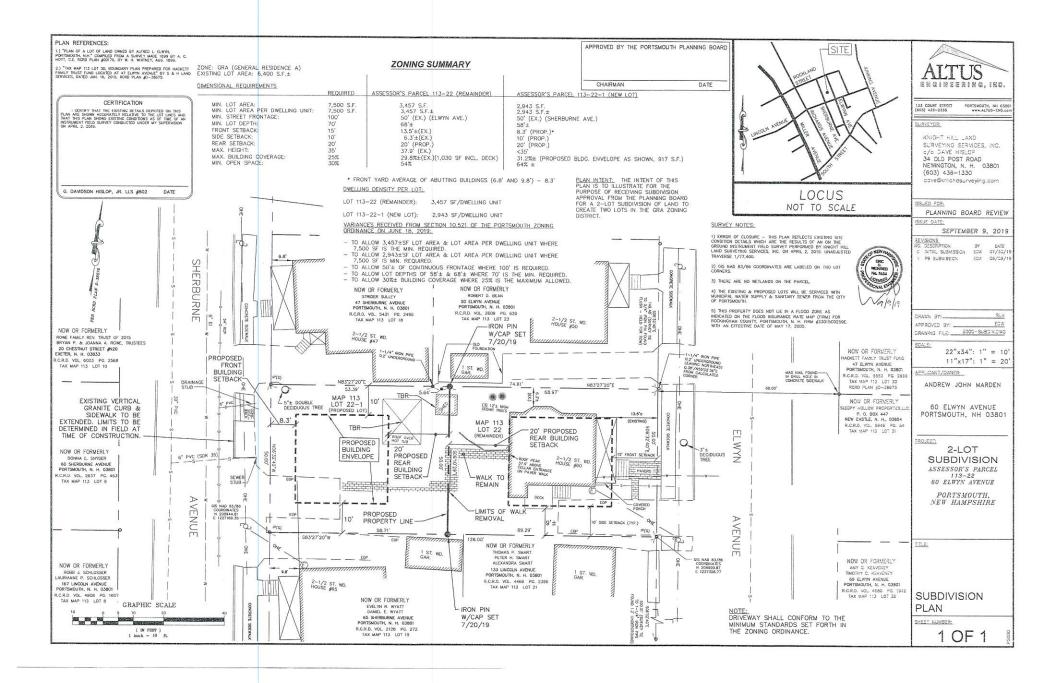
Very truly yours,

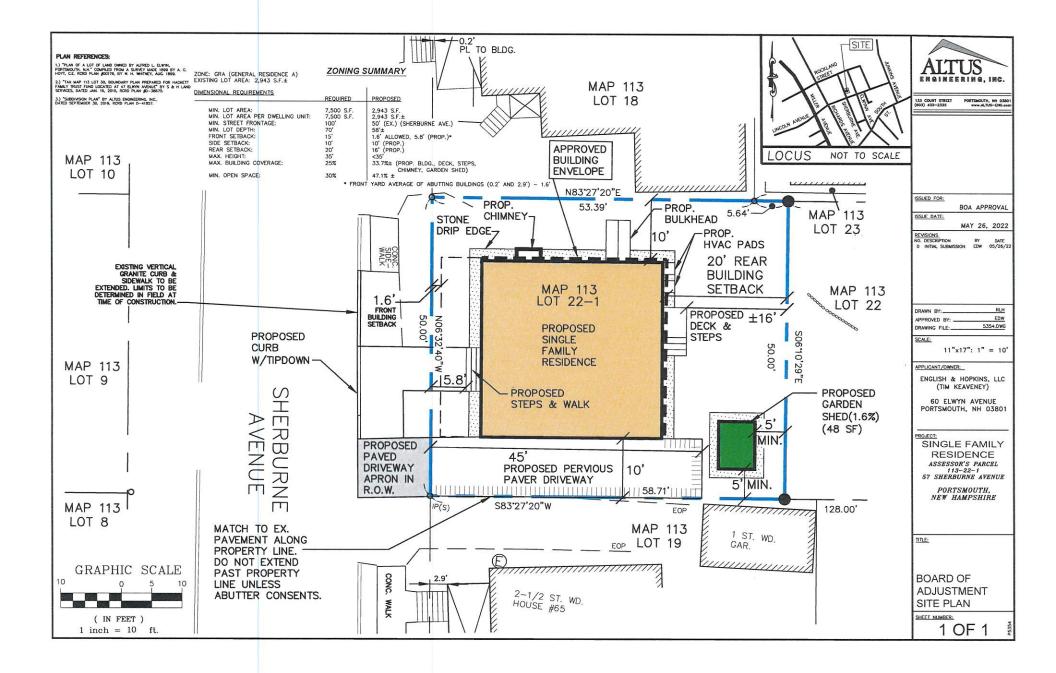
Weit T. Wal

for Elizabeth Moreau, Vice Chair of the Planning Board

cc: Rosann Maurice-Lentz, City Assessor

Eric Weinrieb, PE, Altus Engineering, Inc.





GENERAL NOTES

BUILDER SHALL CONSULT AND FOLLOW THE BUILDING CODE AND OTHER REGULATIONS IN EFFECT FOR THE BUILDING SITE FOR ALL CONSTRUCTION DETAILS NOT SHOWN ON THESE DRAWINGS, REQUIREMENTS DESCRIBED HERE ARE SPECIFIC TO THIS DESIGN AND/OR PROVIDED AS REFERENCE. ADDITIONAL BUILDING CODE OR LOCAL REQUIREMENTS MAY APPLY

CONTRACTOR SHALL OBTAIN ALL REQUIRED PERMITS AND INSPECTIONS. CONTRACTOR TO HAVE WORKMANS COMP. AND LIABILITY INSURANCE AND CONSTRUCTION SUPERVISOR'S LICENSE, AND 19 RESPONSIBLE FOR CODE COMPLIANCE AND WORKMANSHIP OF ALL WORK PERFORMED, INCLUDING THAT OF SUBCONTRACTORS.

CONTRACTOR TO REMOVE AND PROPERLY DISPOSE OF ALL CONSTRUCTION AND DEMOLITION DEBRIS IN WORKMANLIKE FASHION

CONTRACTOR TO CHECK AND VERIFY ROUGH OPENING SIZES FOR WINDOWS AND DOORS WITH MANUFACTURER'S REPRESENTATIVES.

CONTRACTOR'S BIDS TO INCLUDE SPECIFIC INFORMATION REGARDING WOODWORK, FLOORING, FINISHES, DOOR STYLES, AND PLUMBING FIXTURES, WITH ALLOWANCES FOR TILE WORK, CABINETRY, COUNTERTOPS, LIGHTING, AND APPLIANCES INCLUDED WITH PROPOSED WORK.

ANDERSEN CATALOG	UNIT SIZE W X H	ROUGH OPENING WXH	NOTES
TW2452 **	2'-52"×5'-4]"	2'-6="×5'-4]"	SINGLE DOUBLE HUNG
TW2652-2 **	5'-32"×5'-42"	5'-38"×5'-4]"	DOUBLE-WIDE DOUBLE HUNG
TW2446-2	4'-112"×4'-83"	4'-112"×4'-8]"	DOUBLE-WIDE DOUBLE HUNG
TW2646 **	2'-78"×4'-81"	2'-8 × 4'-8	SINGLE DOUBLE HUNG
TW2442	2'-5 * × 4'-4 "	2'-6 "× 4'-4"	SINGLE DOUBLE HUNG
TW2646-2	5'-32"×4'-81"	5'-32"×5'-3]"	DOUBLE-WIDE DOUBLE HUNG
FWH3168	3'-0" × 6'-7"	3'-1" × 6'-B"	HINGED PATIO DOOR
C245	4'-Ø" × 4'-4	4'-0" × 4'-52"	CASEMENT WINDOW
TW2Ø42	2'-18"×4'-43"	2'-2 ¹ / ₈ "×4'-4 ¹ / ₈ "	SINGLE DOUBLE HUNG
AW31	2'-112"×2'-42"	3'-0" × 2'-4	AWNING WINDOW

VERIFY THAT WINDOW MEETS BEDROOM EGRESS REQUIREMENT OF MIN. 24W" x 20H" CLEAR OPENING. ••

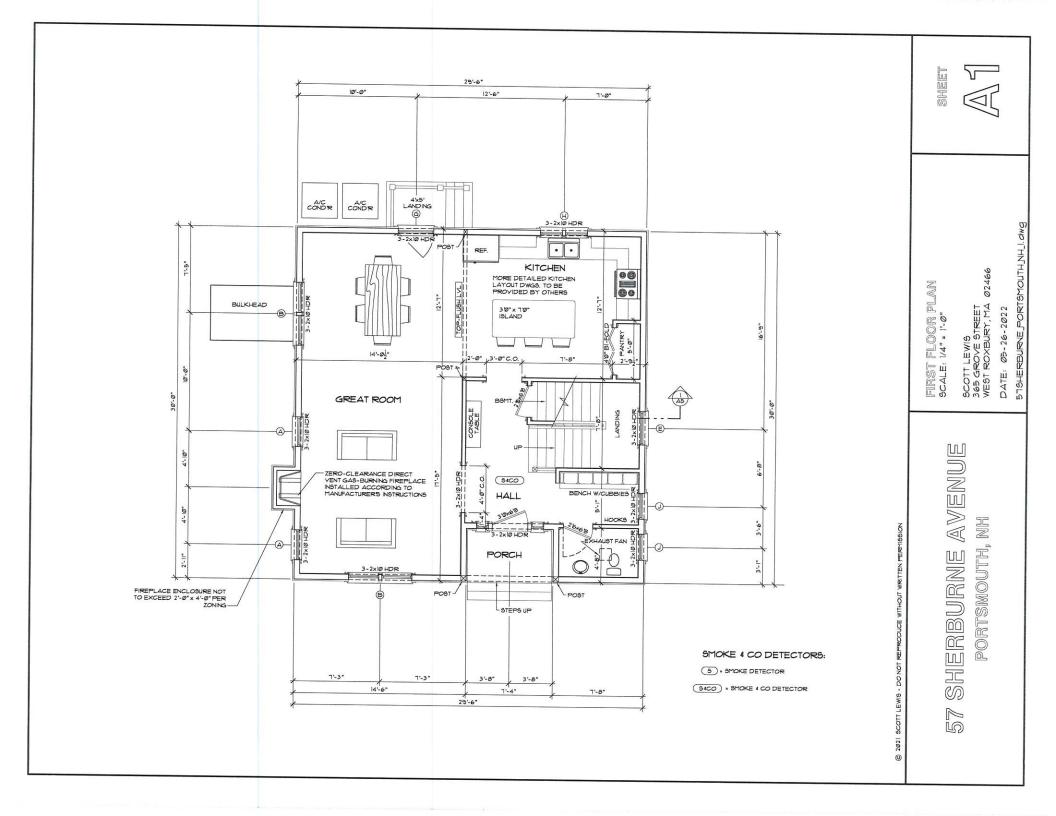
... TEMPERED GLASS REQUIRED OVER BATH TUB

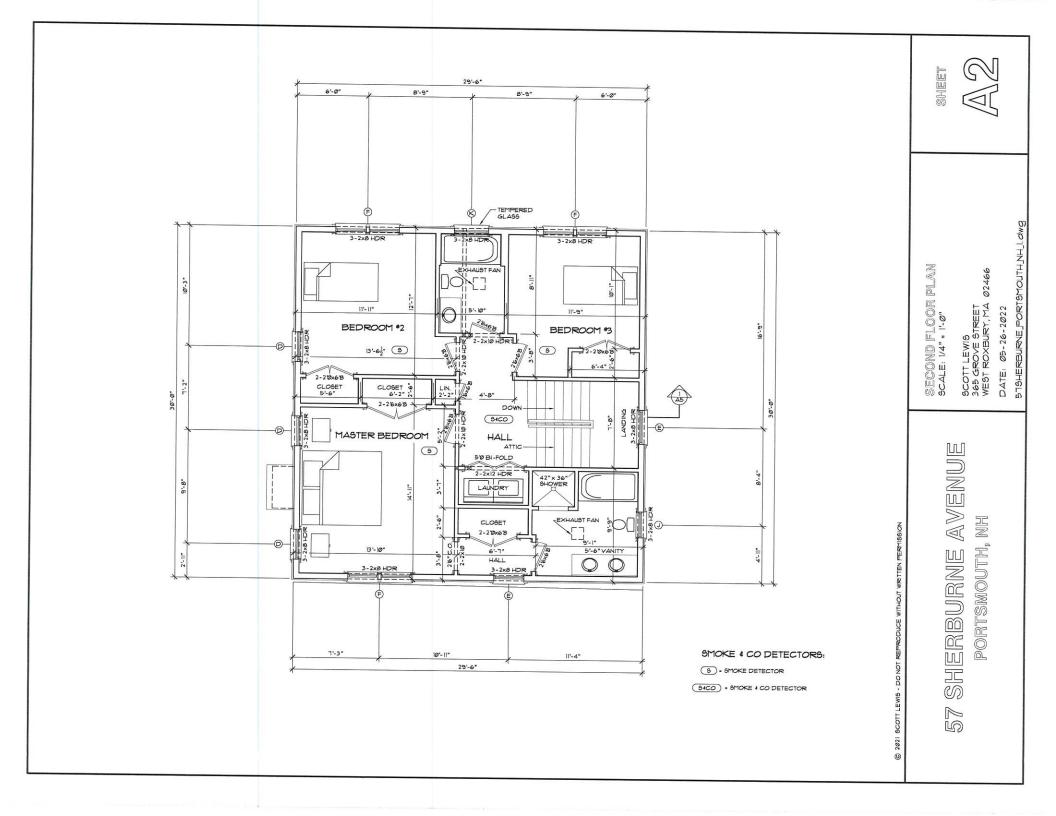
.... VERIFY MIN. 2'-8" WIDE FOR REQUIRED EGRESS

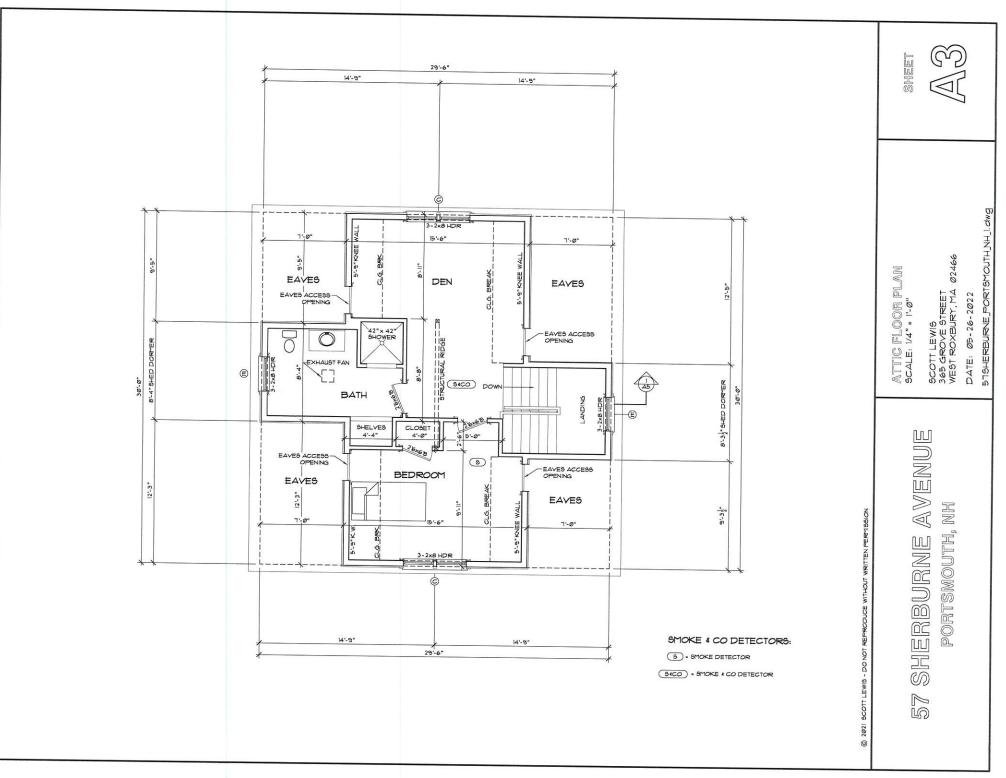


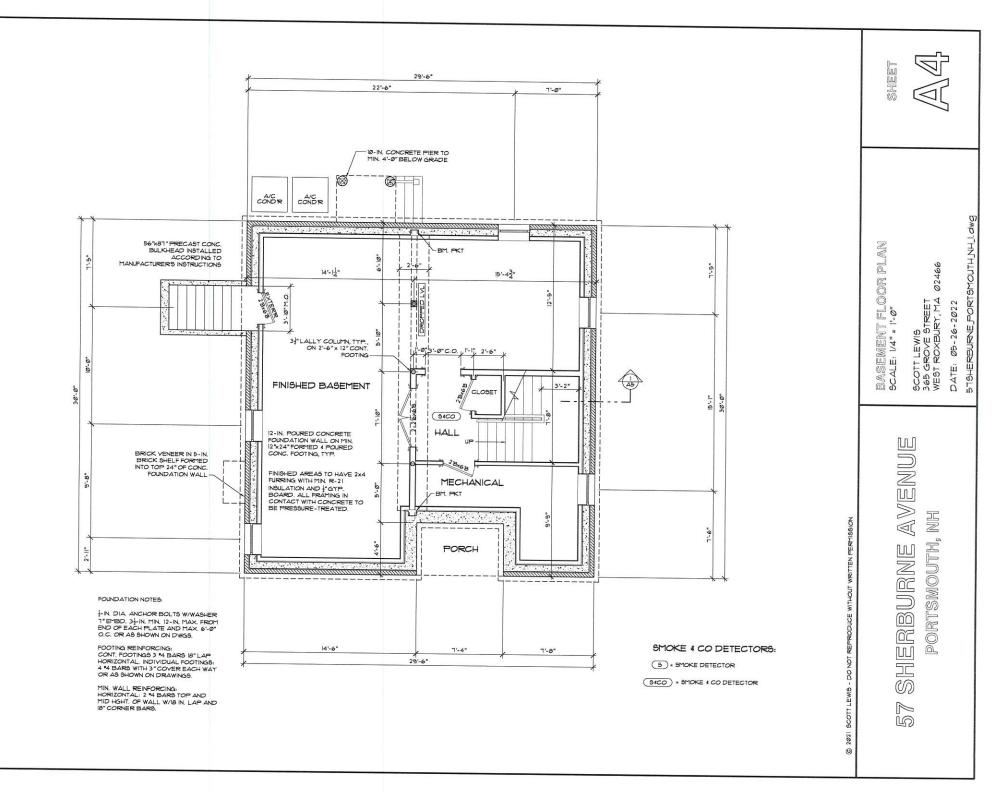
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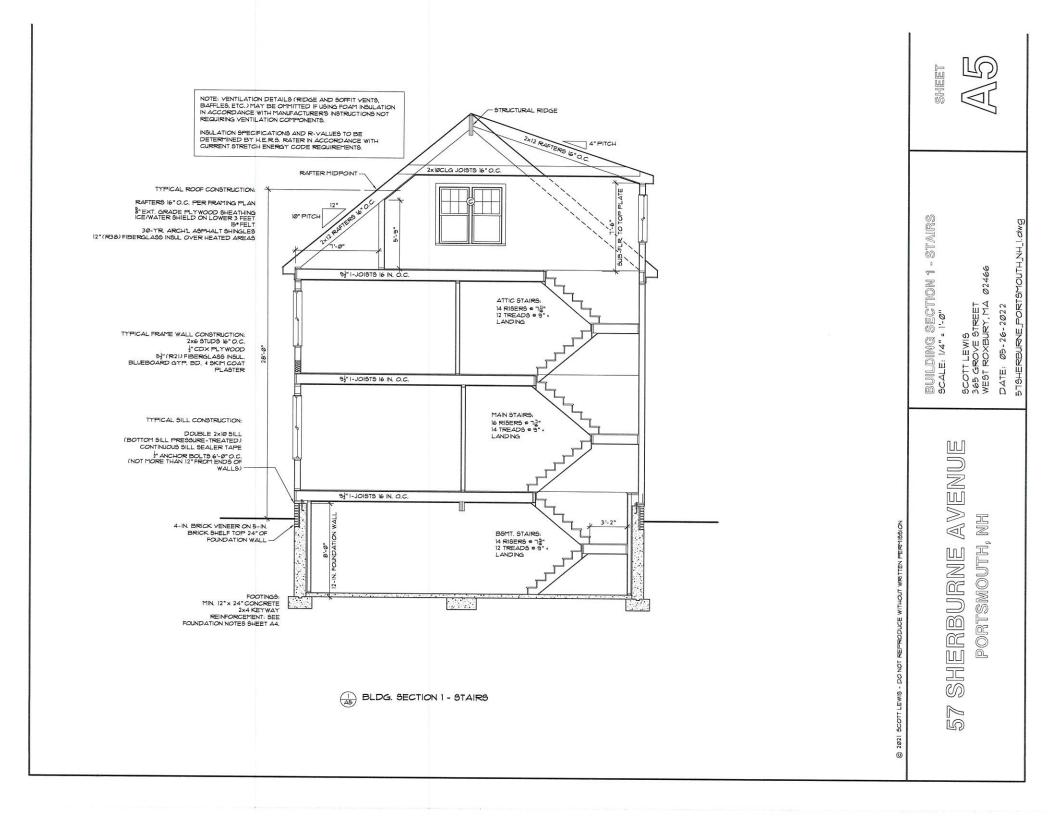
	NEW CONSTRUC 57 SHERBURN PORTSMOUT	e ave. (C)		
DRAWING LIST: C COVER SHEET A1 FIRST FLOOR PLAN A2 SECOND FLOOR PLAN A3 ATTIC FLOOR PLAN	COVER PAGE SCALE: VARIES DATE: 11-03-2021 SCHEMATIC DESIGN REV.: 05-26-2022 DESIGN DEVELOPMENT REV.: NOT FOR CONSTRUCTION REV.: .			
 A4 BASEMENT FLOOR PLAN A5 BUILDING SECTION 1 - STAIRS A6 FRONT ELEVATION A1 RIGHT SIDE ELEVATION A3 REAR ELEVATION A9 LEFT SIDE ELEVATION F1 FIRST FLOOR FRAMING F2 SECOND FLOOR FRAMING F3 ATTIC FLOOR FRAMING F4 ROOF FRAMING 	PROJECT DESIGN: SCOTT LEWIS 365 GROVE STREET WEST ROXEURY, MA Ø2132 (617) 293-6371	STEHERBURNE_PORTSHOUTH, NH. dwg CLIENT: TIM KEAVENEY ENGLIGH AND HOPKING, LLC 60 ELWYN AVENUE PORTSMOUTH, NH 03801 (603) 957-8882		

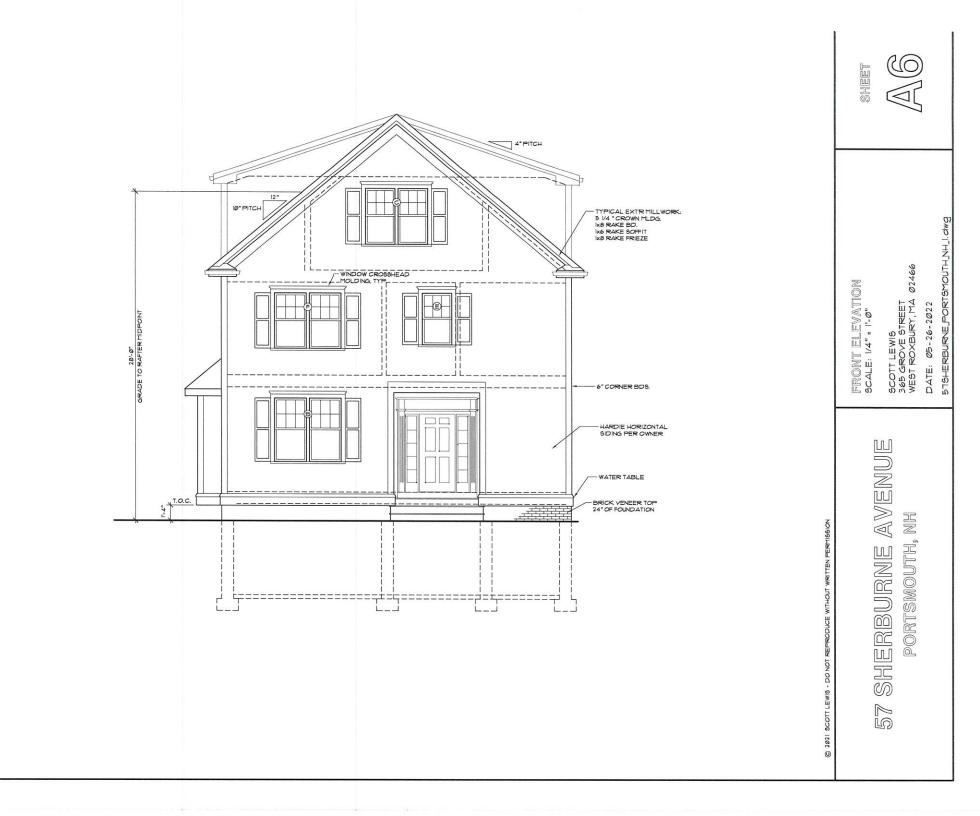


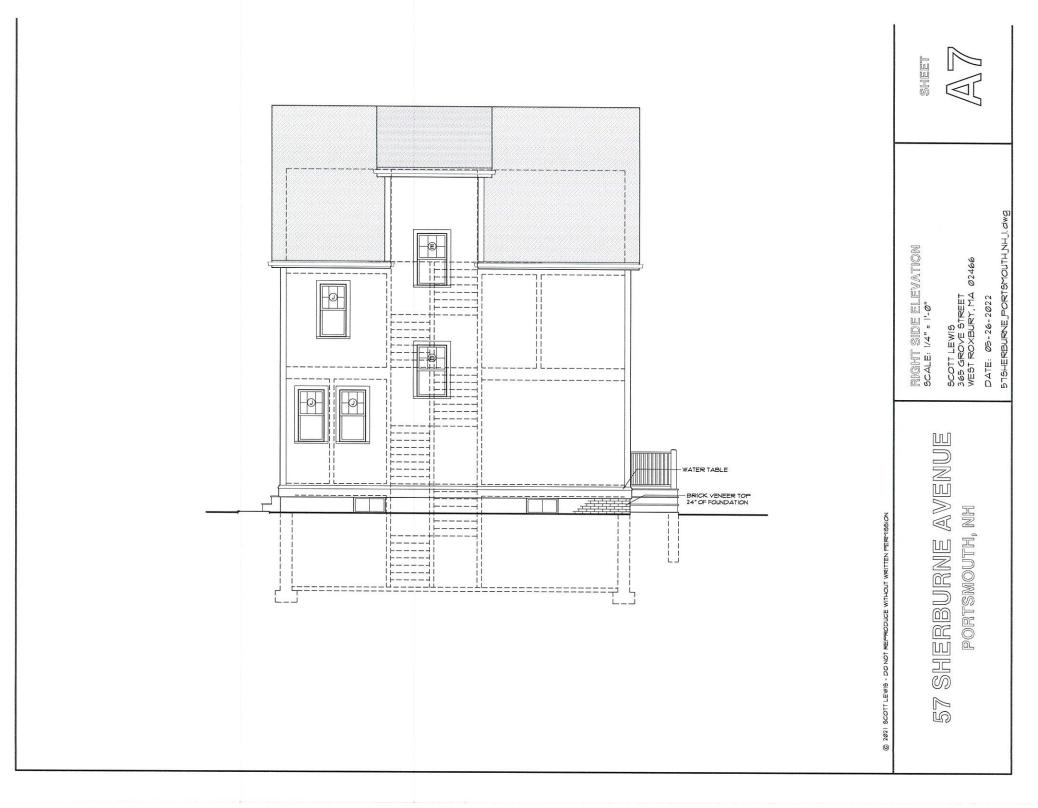






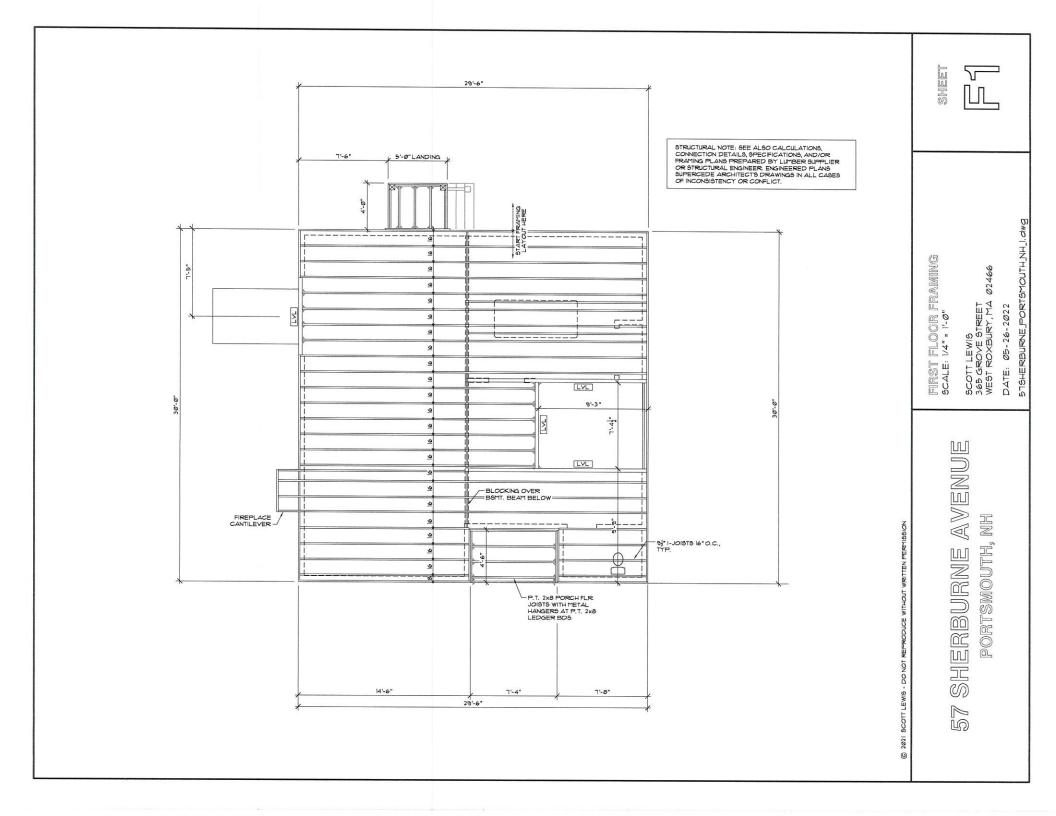


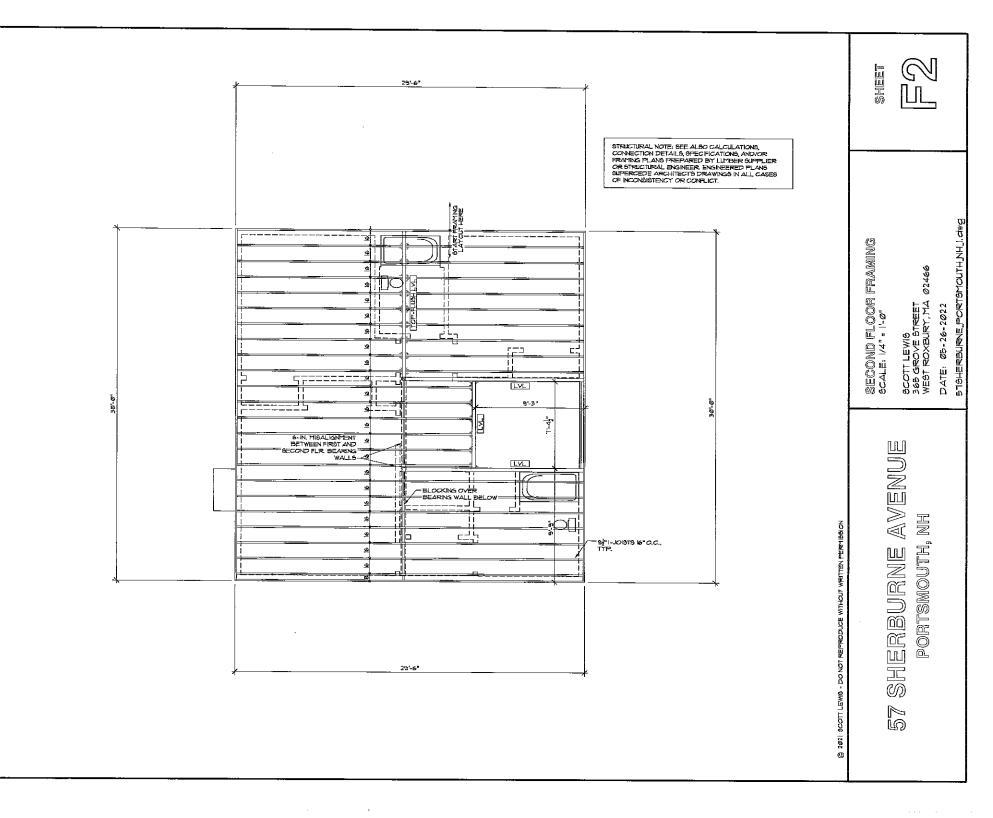


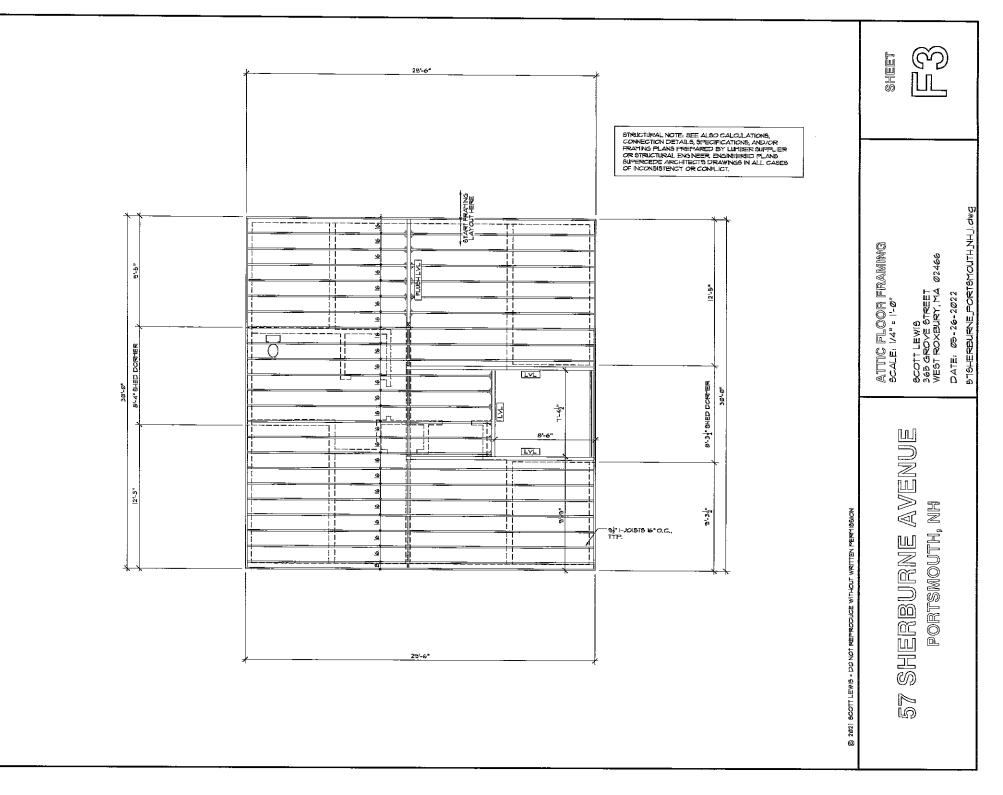




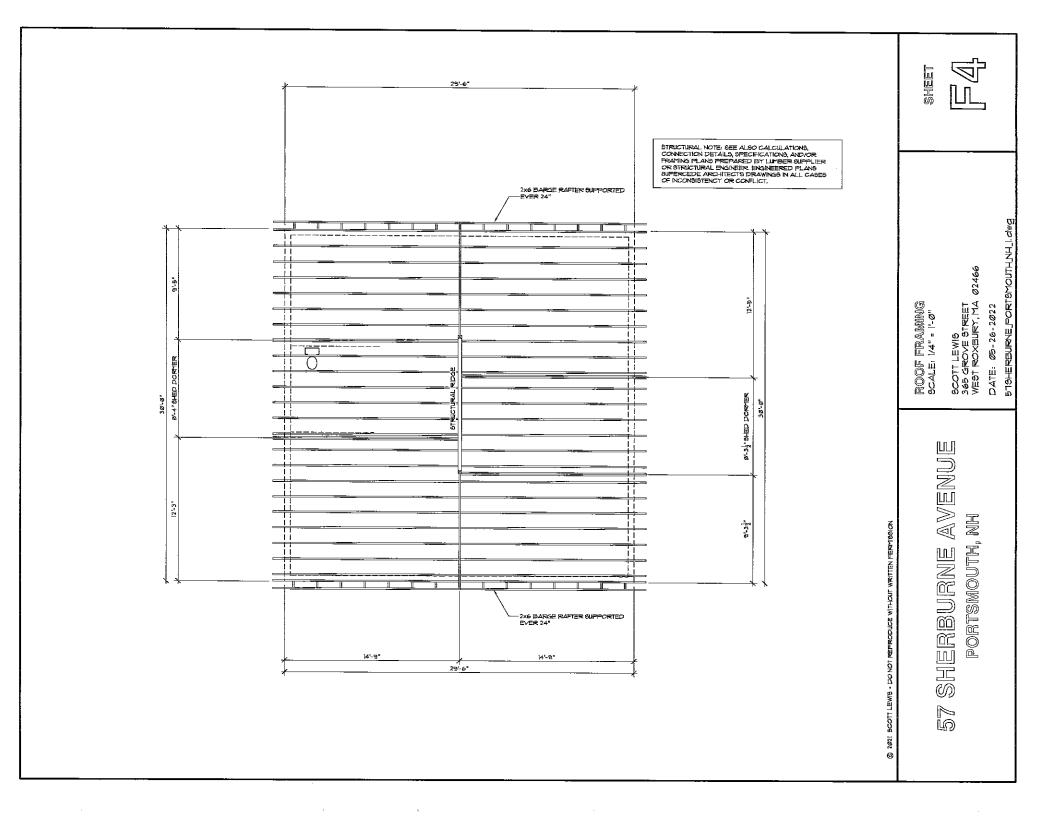


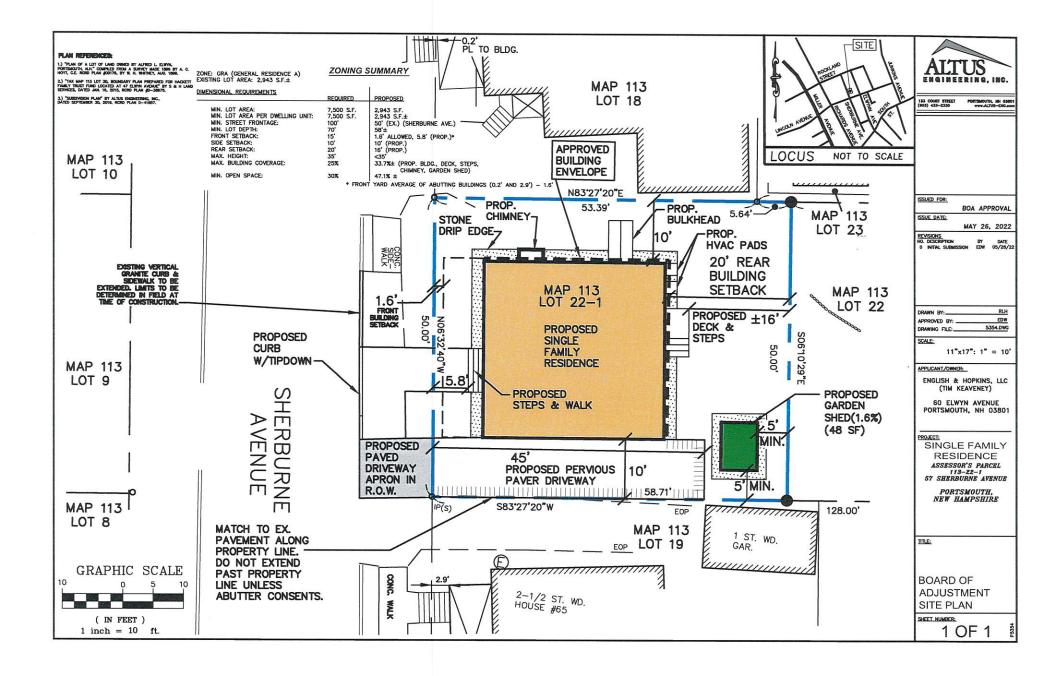






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View of Lot 22-1 From Sherburne Avenue (West)



South View of Lot 22-1



North View of Lot 22-1



View of Lot 22-1 From Sherburne Ave (West) Prior to Removal of Fence and Hot Tub Structure

9.

Request of **Randi and Jeff Collins (Owners)**, for property located at **77 Meredith Way** whereas relief is needed to subdivide one lot into two lots which requires the following: 1) A Variance from Section 10.521 to allow 73 feet of frontage for Lot A and 31 feet of frontage for Lot B where 100 feet is required for both. Said property is located on Assessor Map 162 Lot 16 and lies within the General Residence A (GRA) District.

	Existing	Propose	<u>ed</u>	Permitted / Required	
Land Use:	Single family	Subdivide into two lots Lot A Lot B		Primarily single residence	
Lot area (sq. ft.):	22,400	11,198		7,500	min.
Lot area per dwelling (sq. ft.):	22,400	11,198	11,265	7,500	min.
Lot depth (ft):	151	151	152	70	min.
Street Frontage (ft.):	37	73	31	100	min.
Primary Front Yard (ft.):	26	22	22	15	min.
Left Yard (ft.):	11.5	>10	>10	10	min.
Right Yard (ft.):	102	23	23	10	
Rear Yard (ft.):	86	69	70	20	min.
Height (ft.):	<35	<35	<35	35	max.
Building Coverage	3.5	21	21	25	max.
Open Space Coverage (%):	>30	70	70	30	min.
Parking:	2	2	2	2	
Estimated Age of Structure:	1870	Varianc	e request	(s) shown in red.	

Existing & Proposed Conditions

Other Permits/Approvals Required

TAC/Planning Board – Subdivision



Previous Board of Adjustment Actions

<u>June 16, 2020</u> – The Zoning Board of Adjustment, at its regularly scheduled meeting of Tuesday, June 16, 2020, considered your request to withdraw the application to subdivide one lot into two lots which requires the following: A Variance from Section 10.521 to allow 0' of continuous street frontage for both lots where 100' is required for each. As a result of said consideration, the Board voted **to accept withdrawal** of the application.

April 26, 2022 – Relief from Zoning Ordinance concerning:

- 1. Variance from Section 10.513 to allow a second principal structure on a lot.
- 2. Variance from Section 10.1114.31 to allow 2 driveways on a lot where only 1 is allowed.

The Board voted to **postpone** to the May meeting.

<u>May 17, 2022</u> – Request to withdraw application submitted April 2022 for construction of a second free-standing dwelling concerning:

- 1. Variance from Section 10.513 to allow a second principal structure on a lot.
- 2. Variance from Section 10.1114.31 to allow 2 driveways on a lot where only 1 is allowed.

The Board voted to acknowledged the **withdraw** of the application.

Planning Department Comments

The applicant is seeking to subdivide the existing lot into two lots. Meredith Way currently ends approximately 37 feet in front of the existing lot. The applicant is proposing to extend Meredith Way an additional 73 feet to provide access to proposed Lot B. The packet shows proposed dwellings for each lot that would conform to the dimensional standards for the district, however the applicant states that these are conceptual and if the Board approves the requested variances, staff recommends the following for consideration:

The proposed house plans are conceptual and may change from what was presented to the Board as long as they conform to the requirements of the Zoning Ordinance.

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.
- The "unnecessary hardship" test:
 (a)The property has <u>special conditions</u> that distinguish it from other properties in the area.
 AND
 - (b) <u>Owing to these special conditions</u>, 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**

<u>Owing to these special conditions</u>, 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.

APPLICATION OF RANDI and JEFFREY COLLINS 77 Meredith Way, Portsmouth Map 162, Lot 16

APPLICANT'S NARRATIVE

I. <u>THE PROPERTY</u>:

The applicants, Randi and Jeffrey Collins, seek approvals to subdivide the existing parcel at 77 Meredith Way to facilitate the construction of a second, single family residential dwelling on the resulting second lot. This requires a variance from section 10.521 to allow continuous street frontage of 73.79 feet on "Lot A" (the southeastern most lot) and 31.61 feet on "Lot B" where 100 feet is required and 31.7 feet exists.

In consultation with the City's Technical Advisory Committee during a work session held in May, the applicants have chosen to propose extending Meredith Way approximately 73 feet beyond its current terminus.

The existing dwelling on the lot, built in 1870 according to city tax records, is grossly substandard and unsuitable for the applicants' needs. For example, the half story second floor has slanted ceilings with only six feet of head room at the highest point, and the stairway is at a very steep, non-code compliant pitch. The home is simply inadequate for an older couple like the Collins. Their objective is to take advantage of the unusually large lot to construct a second, modern dwelling for themselves.

The property is within the General Residence A Zone and is depicted as Lots 55, 56, and 57 on the 1856 subdivision plan submitted herewith, and as Lot 16 on current tax map 162 submitted herewith.¹

Meredith Way has never been completed as it was originally laid out. Because Meredith Way as it exists on the ground does not extend significantly beyond applicant's driveway, it is the Planning Department's position that the property and the existing dwelling thereon does not have the required 100 feet of continuous street frontage and, therefore, the lot is nonconforming within the meaning of Section 10.311. The property both as it exists now and if this project is approved otherwise complies with all other dimensional requirements as to lot area, lot area per dwelling, depth, setbacks, building height, open space and building coverage.² As shown on the submitted site plans, the

¹ The applicants' request to the City Council to restore the lots to their pre-merger status pursuant to RSA RSA674:39-aa has been withdrawn without prejudice. This variance application, if granted, would render that request moot.

 $^{^{2}}$ The shed depicted in the northwest corner of the property is less than ten feet in height and less than 100 square feet in area, so it qualifies for the five foot setback under 10.573.10. It is currently 4.9 feet from the

property's lot area is 22,400 square feet. Given that a portion of Meredith Way abutting the property has never been built, title to one-half ($\frac{1}{2}$) of the unbuilt way where it abuts the lot actually increases the lot area from that depicted on the site plan. Accordingly, the property has more than three times the required minimum lot area and lot area per dwelling unit (7,500 square feet). It is abutted to the southeast by a city park, so there is practically no concern that a second lot will present any kind of overcrowding at all. If approved, this would be just the third dwelling with road access from Meredith Way.

It should be noted that the applicants are entitled by right in the GRA zone to construct a two-family dwelling on the lot with building coverage that greatly exceeds what is proposed here. There is enough lot area that a town house or three family dwelling would be permitted by special exception. Accordingly, the increase in residential density by a single household will not exceed what is already allowed in this location, and there should be no related concerns regarding increases in traffic, noise, overcrowding, etc. In fact, what is proposed here - a second, stand-alone single family dwelling oriented on the property in a manner similar to the existing homes on the block - is more consistent with the neighborhood and is far preferable to these other alternatives.

The applicant has submitted herewith a site plan and building plans which demonstrate *possible* building design elements. The project will require subdivision approval from the Planning Board, and exact location and dimensions of the proposed improvements are subject to change as the proposal moves forward. However, the proposed dwellings will meet all applicable setback, height and lot coverage requirements. The dwelling footprints will be within the 25% building coverage requirement. The dwellings will have a height no greater than 35 feet. The dwellings will require no relief from the setback, height and lot coverage requirements. The property is abutted to the southeast by a city park which cannot be developed, so there is practically no concern that a second dwelling will present any kind of overcrowding or other externalities at all.

II. <u>CRITERIA</u>:

The applicant believes the within Application meets the criteria necessary for the Board to grant the requested variance.

<u>Granting the requested variance will not be contrary to the spirit and intent</u> of the ordinance nor will it be contrary to the public interest. The "public interest" and "spirit and intent" requirements are considered together pursuant to <u>Malachy Glen</u> <u>Associates v. Chichester</u>, 152 NH 102 (2007). The test for whether or not granting a variance would be contrary to the public interest or contrary to the spirit and intent of the ordinance is whether or not the variance being granted would substantially alter the

left side lot line. The applicants are willing to relocate the shed to bring this into full compliance, if necessary.

characteristics of the neighborhood or threaten the health, safety and welfare of the public.

In this case, were the variance to be granted, there would be no change in the essential characteristics of the neighborhood, nor would any public health, safety or welfare be threatened. A second dwelling lot is entirely appropriate and consistent with the existing residential subdivision in which this property sits and does not increase the amount of residential density beyond what is permitted by right. Thus, the essentially residential character of the neighborhood will not be altered and the health, safety and welfare of the public will not be threatened.

<u>Substantial justice would be done by granting the variance</u>. Whether or not substantial justice will be done by granting a variance requires the Board to conduct a balancing test. If the hardship upon the owner/applicant outweighs any benefit to the general public in denying the variance, then substantial justice would be done by granting the variance. It is substantially just to allow a property owner the reasonable use of his or her property. The applicants are entitled by right to build a two family structure with far more lot coverage than what is here proposed. A second, stand-alone dwelling on its own lot is far more in keeping with the established neighborhood.

In this case, there is no benefit to the public in denying the variances that is not outweighed by the hardship upon the owner.

<u>The values of surrounding properties will not be diminished by granting the</u> <u>variance</u>. A newly constructed, fully code-compliant home with appropriate landscaping, vegetation and screening will increase property values in the neighborhood. The values of the surrounding properties will not be negatively affected in any way by the relief requested. To the contrary, values would be enhanced if this project were to be approved, especially given the available alternatives.

<u>There are special conditions associated with the property which prevent the</u> <u>proper enjoyment of the property under the strict terms of the zoning ordinance</u> <u>and thus constitute unnecessary hardship</u>. The property in question is located at the terminus of a dead end and on a partially unbuilt paper street and abuts a substantial amount of undevelopable park land. It has more than three times the required lot area per dwelling for the GRA zone. These are special conditions that distinguish it from others in the area.

<u>The use is a reasonable use</u>. Residential use is permitted in this zone and is identical in character and consistent with the existing use of the adjacent and abutting properties.

<u>There is no fair and substantial relationship between the purpose of the</u> <u>ordinance as it is applied to this particular property</u>. The purpose of the 100 foot road frontage requirement within the GRA zone is presumably to protect from overcrowding and overburdening lots and maintaining appropriate residential densities. Given the size of this lot, its location at the terminus of a dead end, its proximity to undevelopable park land and the uses available by right, none of these purposes are frustrated by this project. Thus, there is no fair and substantial relationship between the purpose of the restriction and its application to this property.

III. <u>Conclusion.</u>

For the foregoing reasons, the applicant respectfully requests the Board grant the variances as requested and advertised.

Respectfully submitted,

Dated: 6-1-2022

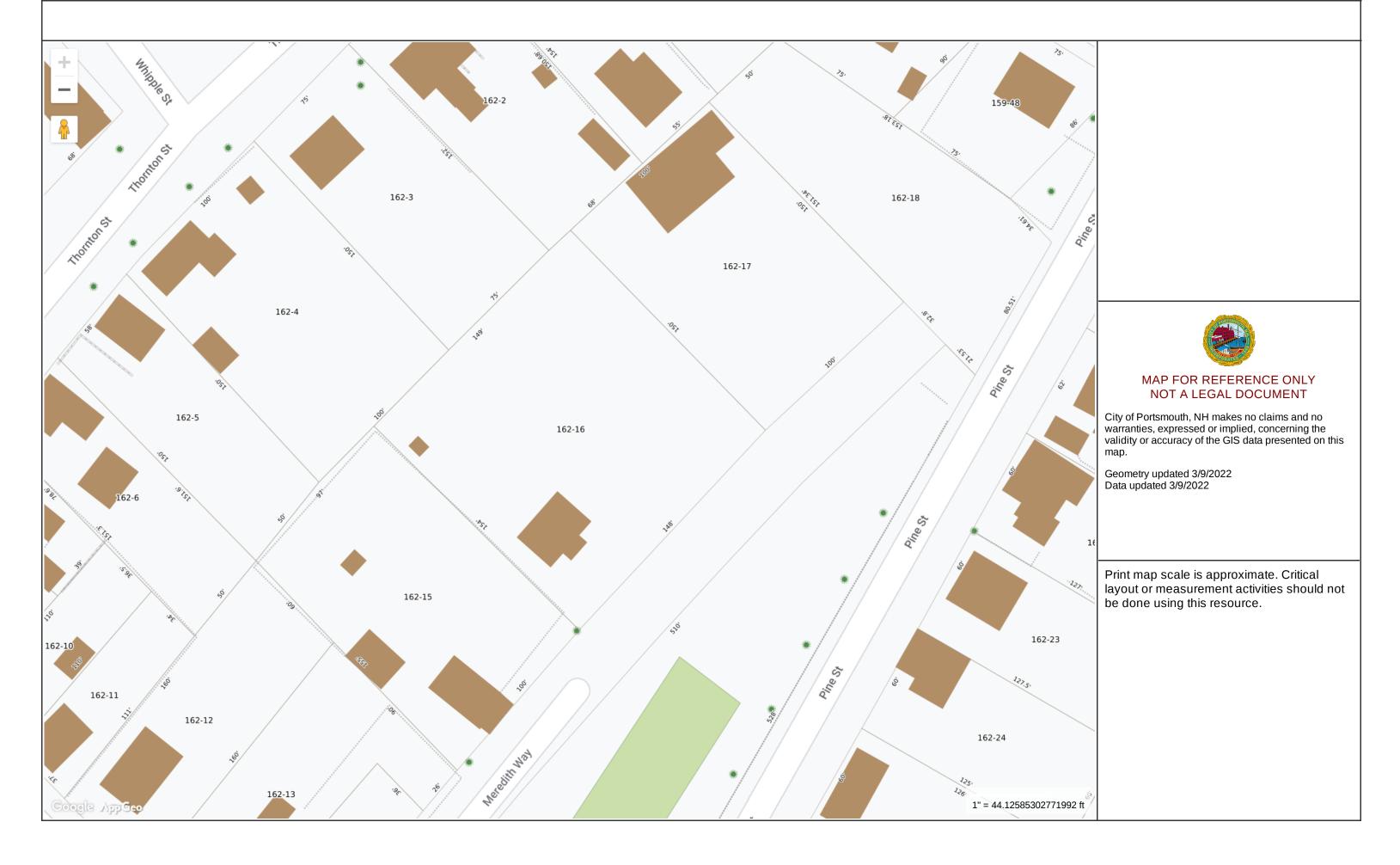
Christopher P. Mulligan

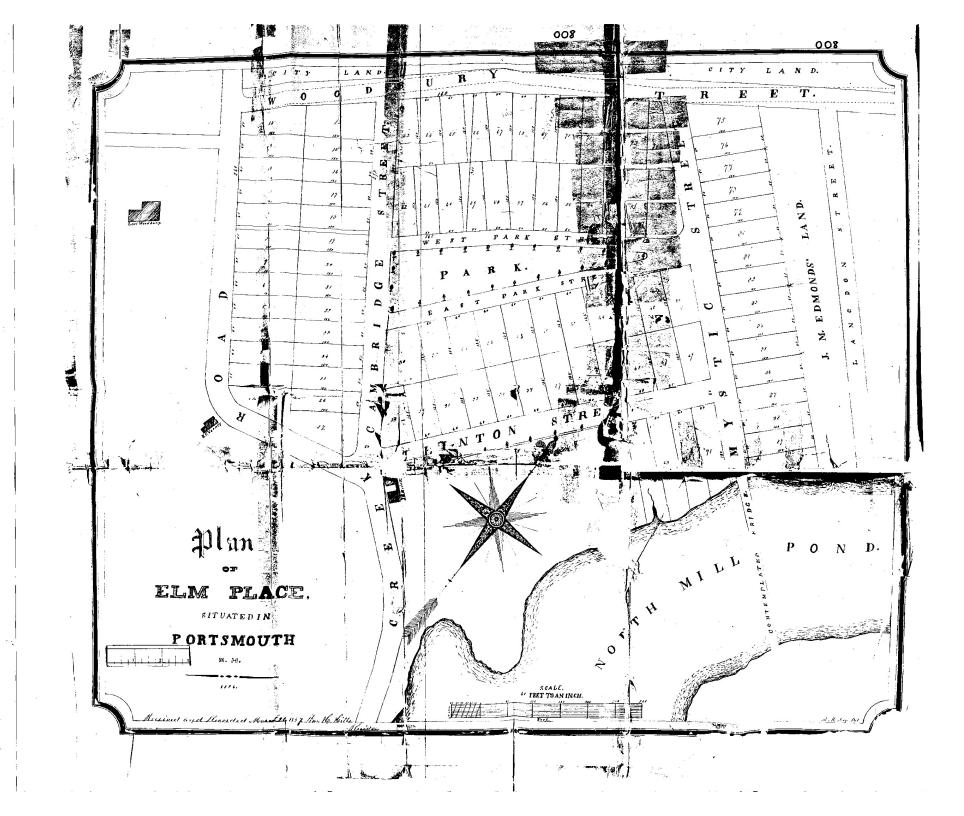
Christopher P. Mulligan, Esquire

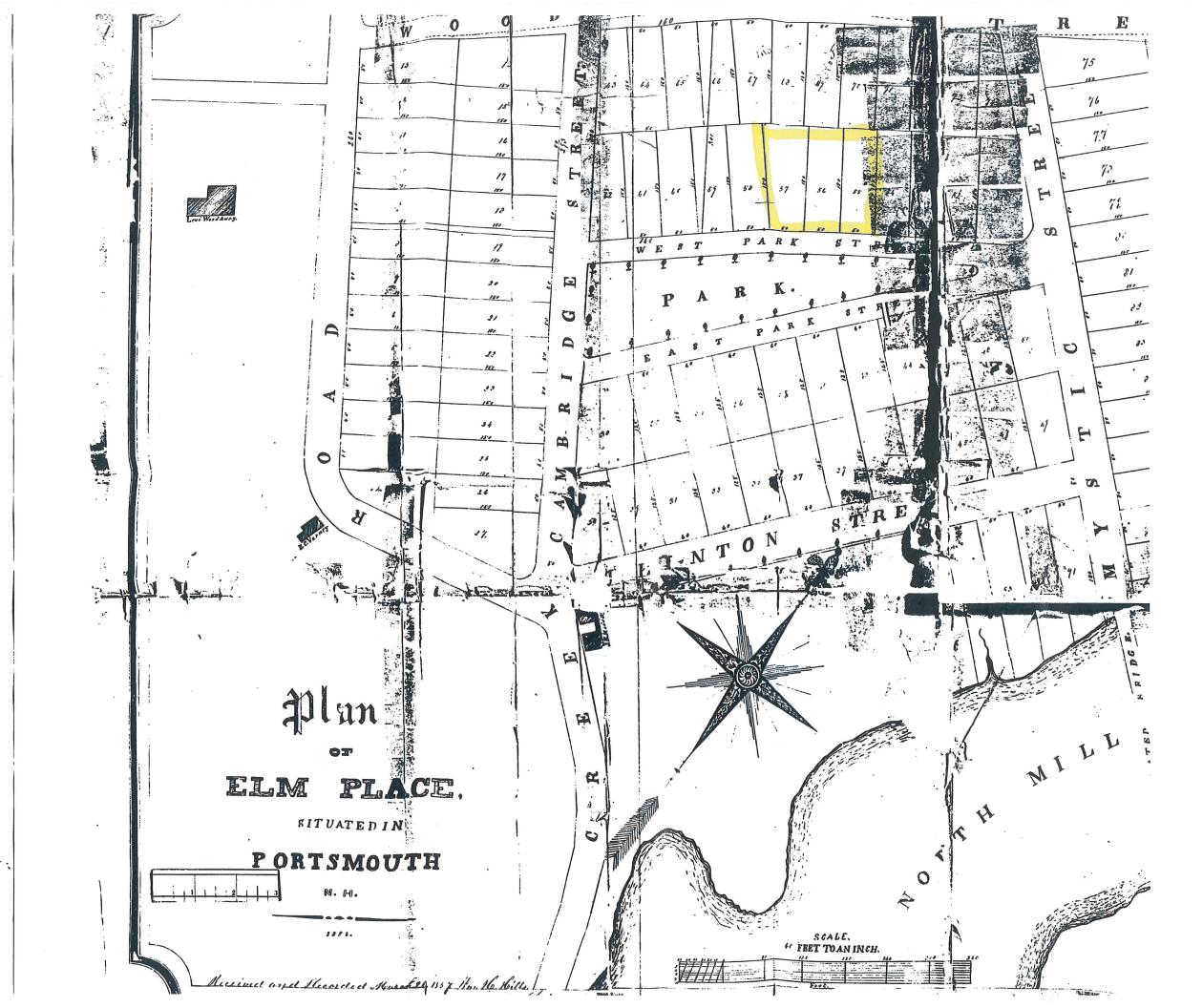












GENERAL INFORMATION

OWNER/APPLICANT

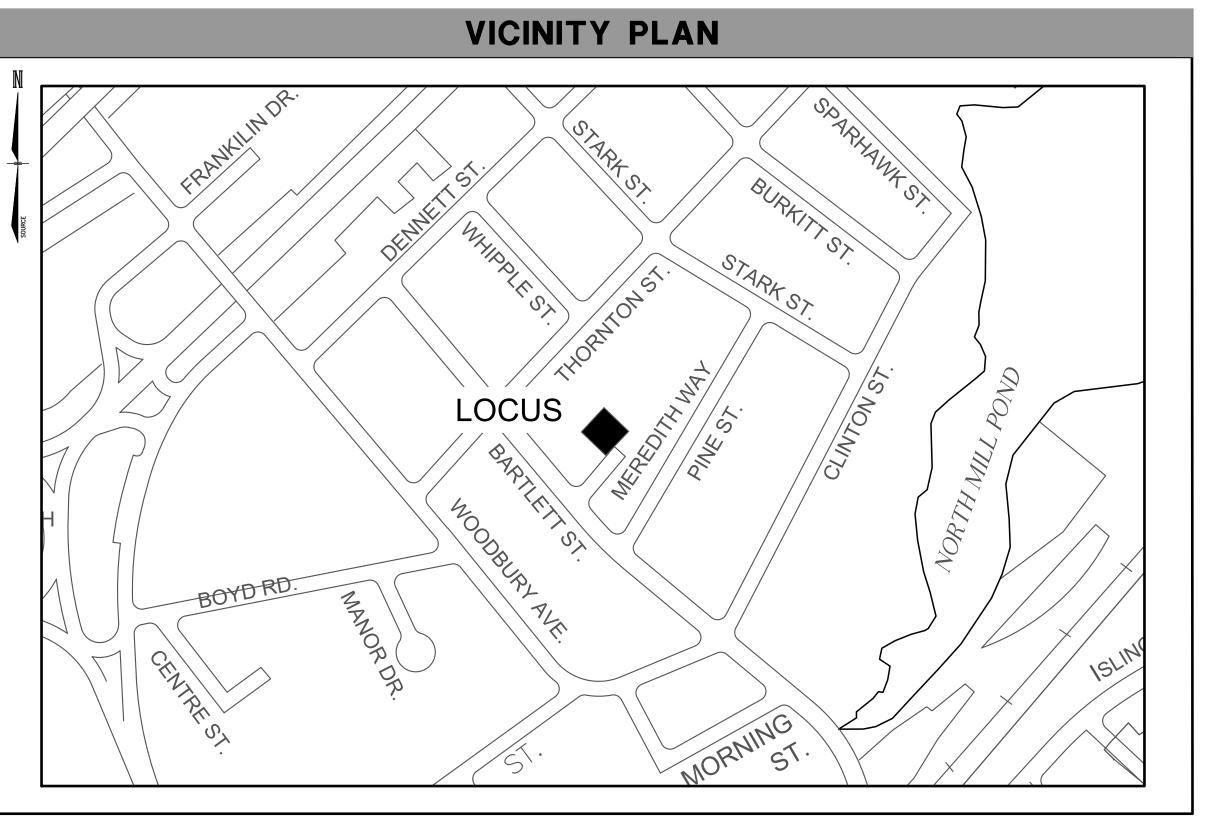
RANDI & JEFF COLLINS 77 MEREDITH WAY PORTSMOUTH, NH 03801 RCRD BK.#6274 PG.#1666

RESOURCE LIST

PLANNING/ZONING DEPARTMENT 1 JUNKINS AVENUE PORTSMOUTH, NH 03801 (603)-610-7216 JULIET WALKER, PLANNING DIRECTOR

ATTORNEY

CHRISTOPHER P. MULLIGAN, ESQUIRE BOSEN & ASSOCIATES 266 MIDDLE STREET PORTSMOUTH, NH 03801 (603)-427-5500



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Jun 01, 2022 - 2:09pm :\MSC Projects\47442 - 77 Meredith Way - Portsmouth\47442-00 -Collins - 77 Meredith Way\Carlson Survey\Dwgs\47442-00 Survey.dwg

ZONING RELIEF PLANS TWO LOT SUBDIVISION

RANDI & JEFF COLLINS

77 MEREDITH WAY PORTSMOUTH, NH 03801

JUNE 1, 2022



170 COMMERCE WAY, SUITE 102 PORTSMOUTH, NH 03801 Phone (603) 431-2222 Fax (603) 431-0910 www.tfmoran.com

INDEX OF SHEETS

SHEET

S-0

S-1

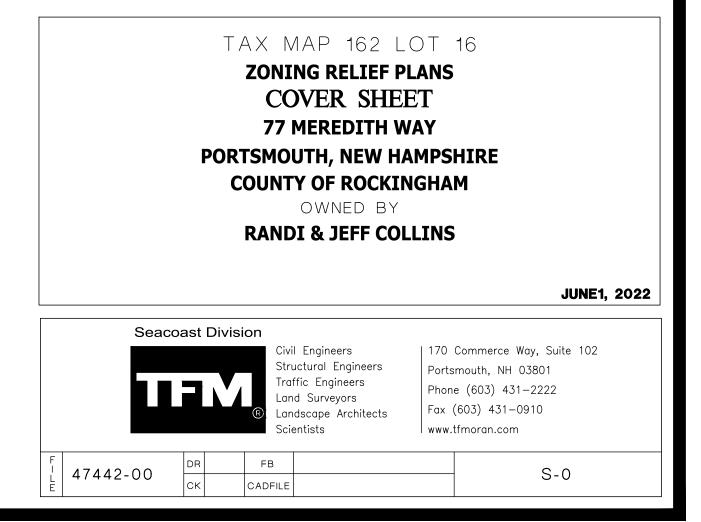
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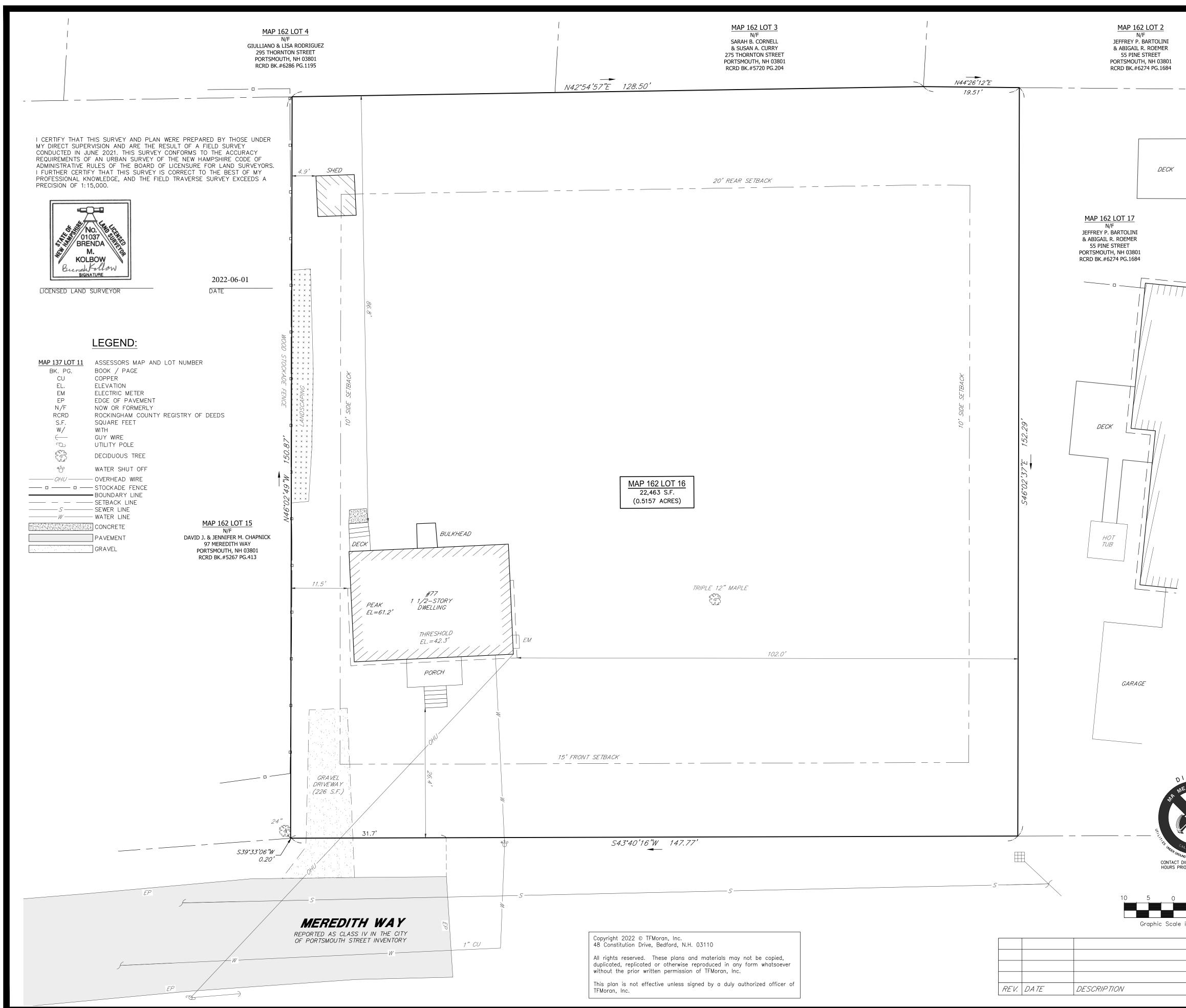
SHEET TITLE COVER SHEET EXISTING CONDITIONS PROPOSED CONDITIONS

VARIANCES REQUESTED

RELIEF IS REQUESTED FROM THE FOLLOWING SECTIONS OF THE CITY OF PORTSMOUTH ZONING ORDINANCE:

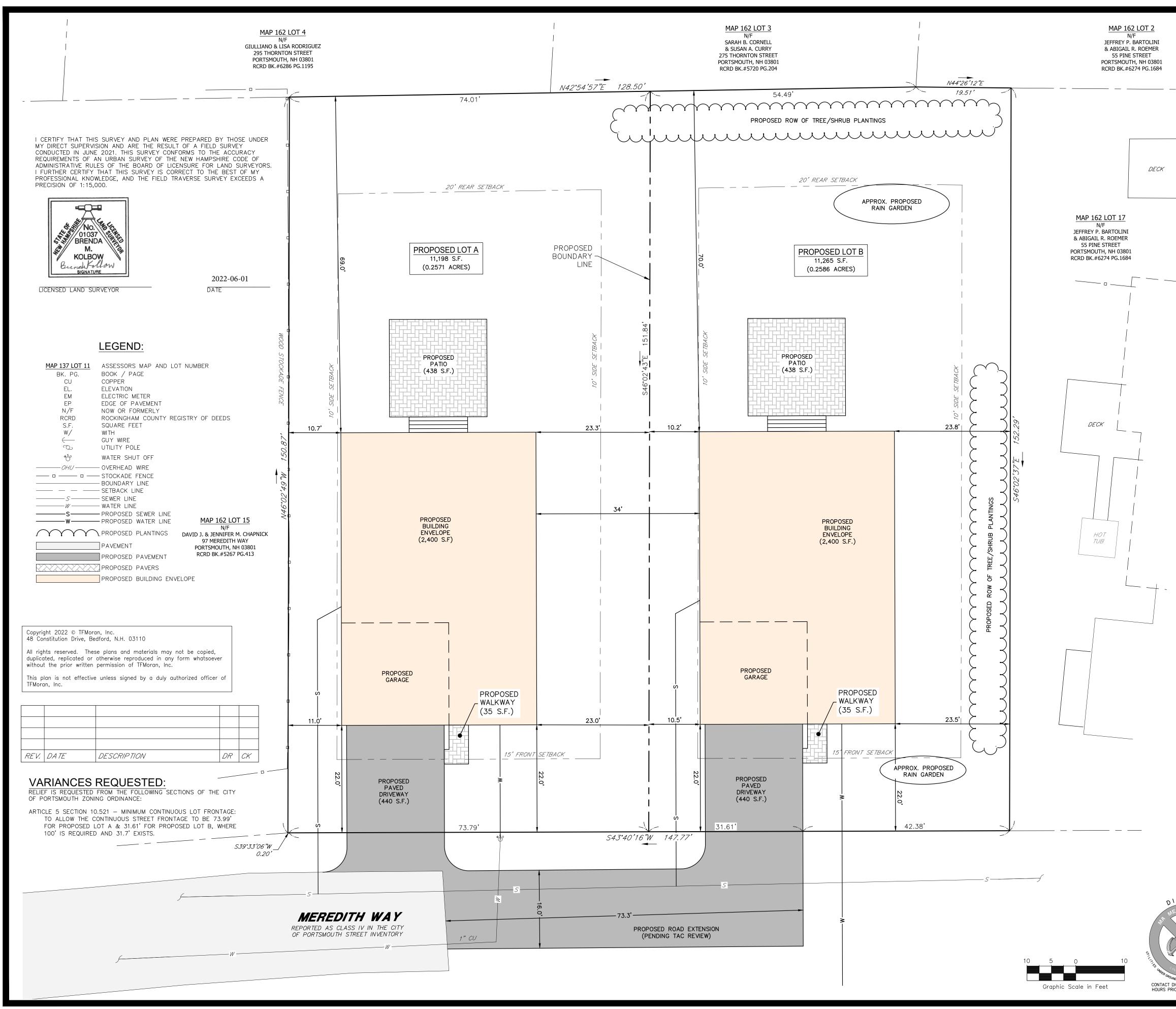
ARTICLE 5 SECTION 10.521 – MINIMUM CONTINUOUS LOT FRONTAGE: TO ALLOW THE CONTINUOUS STREET FRONTAGE TO BE 73.99' FOR PROPOSED LOT A & 31.61' FOR PROPOSED LOT B, WHERE 100' IS REQUIRED AND 31.7' EXISTS.

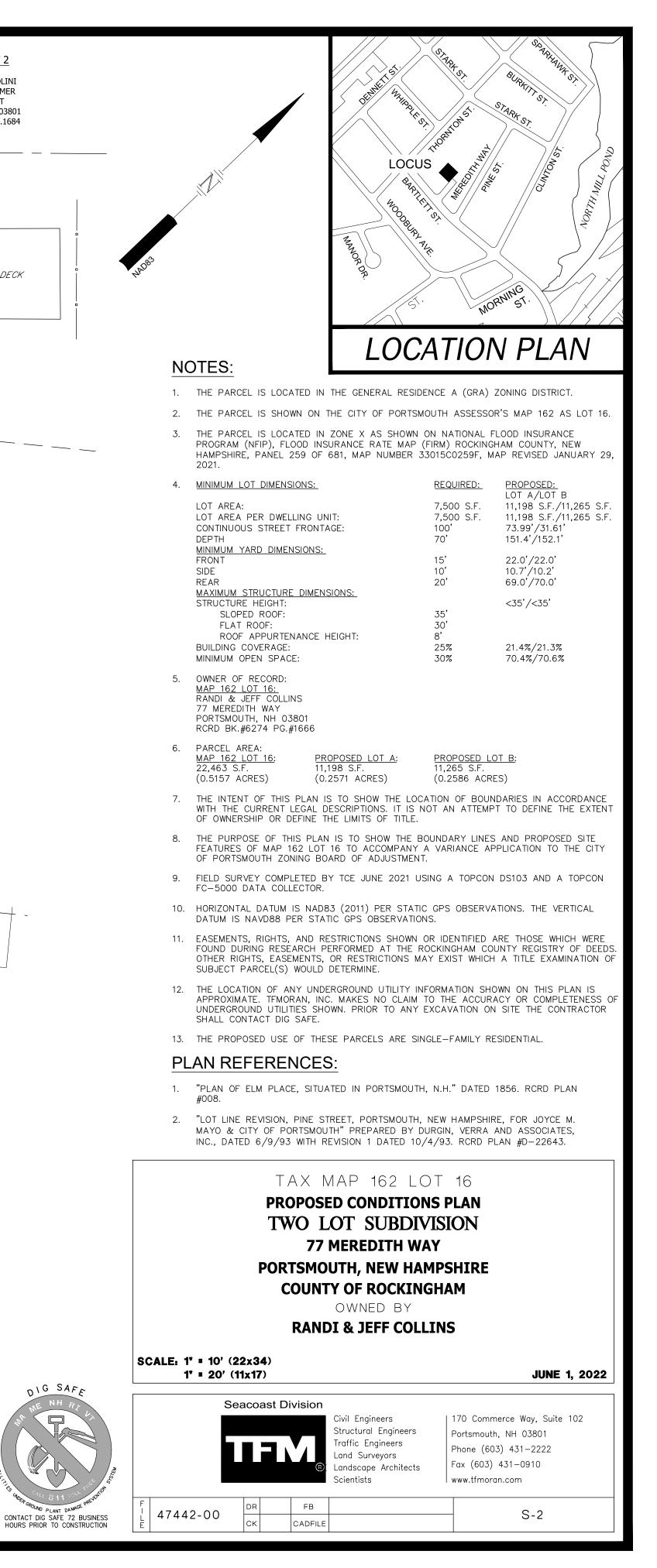


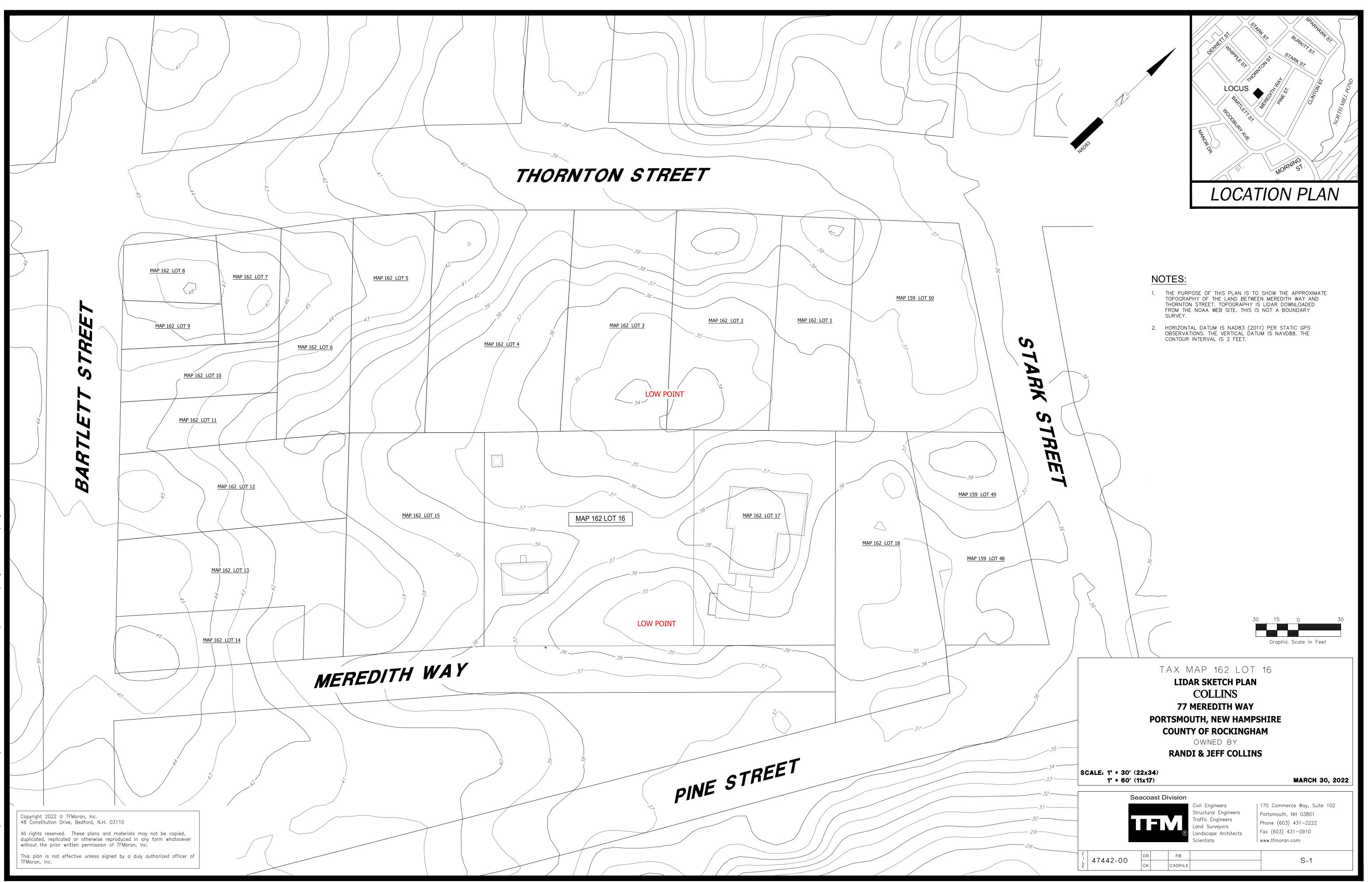


Jun 01, 2022 - 9:43am ∹\MSC Projects\47442 - 77 Meredith Way - Portsmouth\47442-00 -Collins - 77 Meredith Way\Carlson Survey\Dwgs\47442-00 Survey.dwg

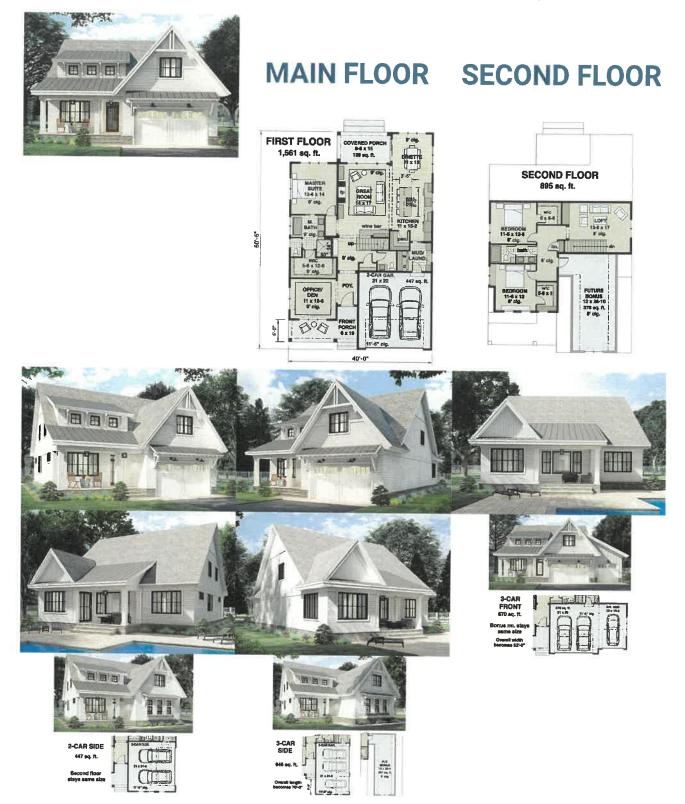
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	NOTES:		TION P	
	 THE PARCEL IS LOCATED IN THE PARCEL IS SHOWN ON LOT 16. 			
	3. THE PARCEL IS LOCATED IN PROGRAM (NFIP), FLOOD IN	ISURANCE RATE MAP (FIRM	1) ROCKINGHAM CO	UNTY, NEW
	 HAMPSHIRE, PANEL 259 OF JANUARY 29, 2021. 4. <u>MINIMUM LOT DIMENSIONS:</u> LOT AREA: LOT AREA PER DWELLING U CONTINUOUS STREET FRONT DEPTH <u>MINIMUM YARD DIMENSIONS</u> FRONT SIDE REAR <u>MAXIMUM STRUCTURE DIMEN</u> STRUCTURE HEIGHT: SLOPED ROOF: FLAT ROOF: 	RE 7, 7, TAGE: 10 70 <u>-</u> 15 10 20	EXISTI 500 S.F. 22,46 500 S.F. 22,46 0' 31.7' 151.6' 26.4' ' 11.5'/ ' 86.8' 5' 35'	<u>NG:</u> 3 S.F. 3 S.F.
<i>#55</i>	ROOF APPURTENANCE BUILDING COVERAGE: MINIMUM OPEN SPACE: 5. OWNER OF RECORD: <u>MAP 162 LOT 16:</u> RANDI & JEFF COLLINS 77 MEREDITH WAY PORTSMOUTH, NH 03801 RCRD BK.#6274 PG.#1666	HEIGHT: 8'		
	 PARCEL AREA: <u>MAP 162 LOT 16</u>: 22,463 S.F. (0.5157 ACRES) THE INTENT OF THIS PLAN 	IS TO SHOW THE LOCATIO	N OF BOUNDARIES	IN
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	12. THE LOCATION OF ANY UNI IS APPROXIMATE. TFMORAN COMPLETENESS OF UNDERG ON SITE THE CONTRACTOR	DERGROUND UTILITY INFOR , INC. MAKES NO CLAIM TO ROUND UTILITIES SHOWN. I	MATION SHOWN ON D THE ACCURACY (PRIOR TO ANY EXC	THIS PLAN DR
	13. THE EXISTING USE OF THIS		Y RESIDENTIAL.	
	1. "PLAN OF ELM PLACE, SITU #008.		H." DATED 1856. R	CRD PLAN
	2. "LOT LINE REVISION, PINE S MAYO & CITY OF PORTSMO INC., DATED 6/9/93 WITH	UTH" PREPARED BY DURG	N, VERRA AND ASS	SOCIATES,
G SAFE NH RILLA B SAFE P LANT DANNOE PROPRIMUM G SAFE 72 BUSINESS DR TO CONSTRUCTION	TAX MAP 162 LOT 16 EXISTING CONDITIONS PLAN TWO LOT SUBDIVISION 77 MEREDITH WAY PORTSMOUTH, NEW HAMPSHIRE COUNTY OF ROCKINGHAM OWNED BY RANDI & JEFF COLLINS			
10	SCALE: 1" = 10' (22x34) 1" = 20' (11x17)			JUNE 1, 2022
in Feet	Seacoast Division		170 Commerce Way Portsmouth, NH 03 Phone (603) 431– Fax (603) 431–09 www.tfmoran.com	801 2222
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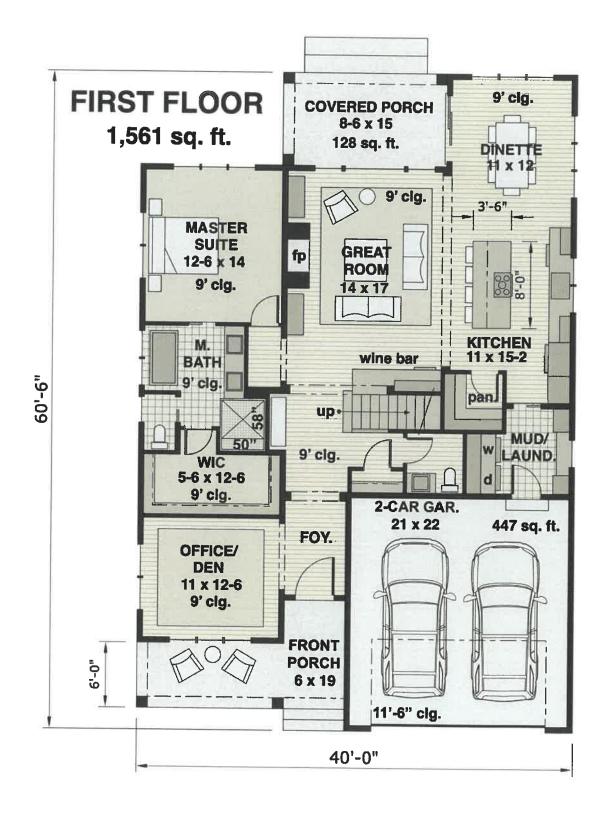


Mar 30, 2022 - 12:08pm F:\MSC Projects\47442 - 77 Meredith Way - Portsmouth\47442-00 -Collins - 77 Meredith Way\Carlson Survey\Dwgs\47442-00 Survey

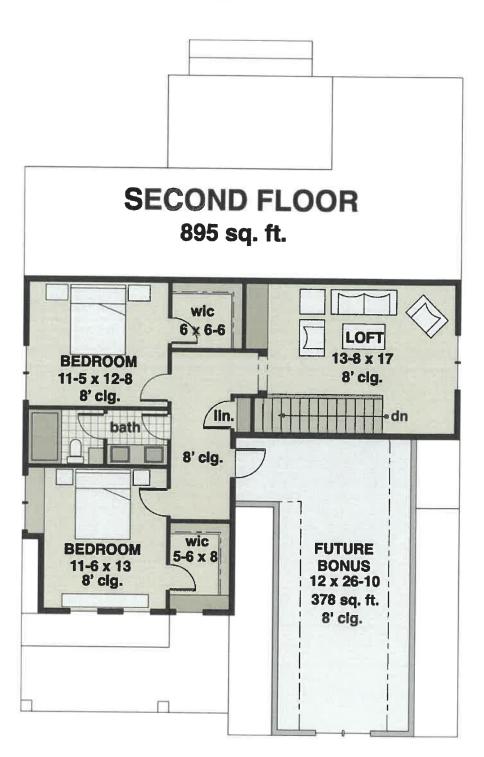


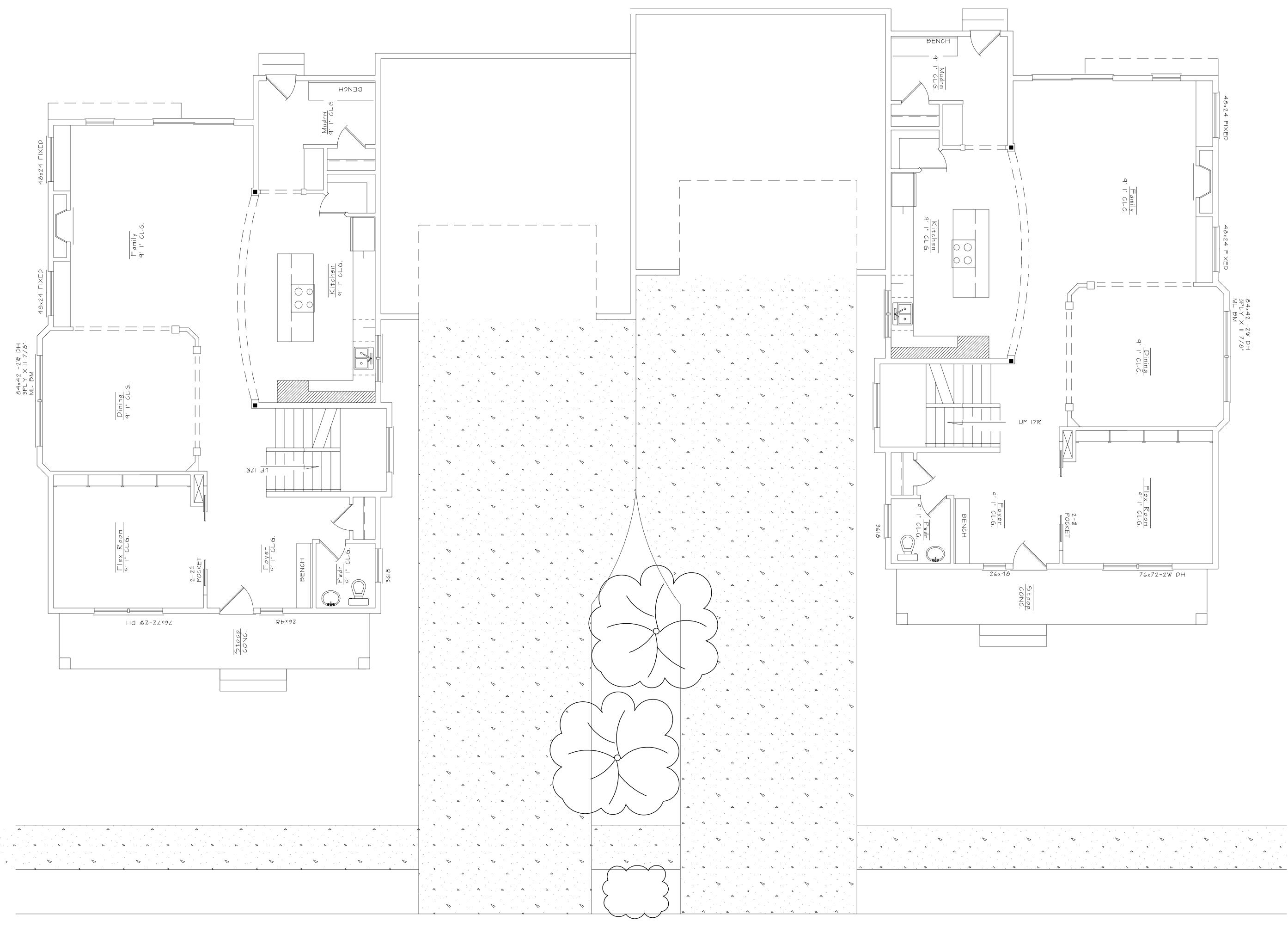
Images copyrighted by the designer. Photographs may reflect a homeowner modification.

MAIN FLOOR



SECOND FLOOR





Two-family permitted by right

From:	<u>Kimberli Kienia</u>
To:	Kimberli Kienia
Subject:	FW: 1 Walton
Date:	Wednesday, June 15, 2022 2:37:52 PM
Attachments:	image001.png

From: Tim Phoenix [mailto:TPhoenix@hpgrlaw.com]
Sent: Wednesday, June 15, 2022 1:18 PM
To: Peter M. Stith pmstith@cityofportsmouth.com>
Cc: Monica Kieser <<u>MKieser@hpgrlaw.com</u>>; Nicholas J. Cracknell
<<u>njcracknell@cityofportsmouth.com</u>>
Subject: RE: 1 Walton

For Woods, 1 Walton Alley, hereby formally request a continuance. We need to do so work on the submission. We ask that the packet not be sent out to the board so we can substitute documents. If there is an additional cost for a re-notice, that is fine.

Nick,, Let me know what works for you next week. Thanks, Tim

HOEFLE, PHOENIX, GORMLEY & ROBERTS, PLLC

R. Timothy Phoenix, Esq.

Hoefle, Phoenix, Gormley & Roberts, PLLC 127 Parrott Avenue P.O. Box 4480 Portsmouth, NH, 03802-4480 t: (603) 436-0666 d: (603) 766-9102 e: tphoenix@hpgrlaw.com w: https://hpgrlaw.com/

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FRANCIS X. BRUTON, III CATHERINE A. BERUBE JOSHUA P. LANZETTA

Bruton & Berube, PLLC

ATTORNEYS AT LAW

601 Central Avenue Dover, NH 03820

TEL (603) 749-4529 (603) 743-6300 FAX (603) 343-2986

www.brutonlaw.com

June 15, 2022

Arthur Parrott, Chair City of Portsmouth Zoning Board of Adjustment 1 Junkins Avenue Portsmouth, NH 03801

RE: Appeal of Administrative Decision & Application for Variance Owner/Applicant: Coventry Realty, LLC Property: 111 State Street, Portsmouth, NH Tax Map 117, Lot 50 Zoning District: CD4 Case No. LU-22-125

Dear Chairman Parrott:

Please accept this letter on behalf of our client, Coventry Realty, LLC, the Applicant with respect to the above referenced case, as a request to withdraw its applications to the Zoning Board of Adjustment for Variances and an Appeal of an Administrative Decision.

8incerely Francis X. Bruton, III, Esquire

E-mail: <u>fx@brutonlaw.com</u>

FXB/mas

cc: Coventry Realty, LLC Peter M. Stith, AICP, Principal Planner

OF COUNSEL JAMES H. SCHULTE