

**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.**

**September 20, 2022**

**AGENDA**

<p><b><u>PLEASE NOTE:</u> ITEMS G. THROUGH O. WILL BE HEARD AT THE SEPTEMBER 27, 2022 BOARD OF ADJUSTMENT MEETING.</b></p>
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**I. APPROVAL OF MINUTES**

**A)** Approval of the minutes of the meetings of August 16, 2022.

**II. OLD BUSINESS**

**A. 266 State Street** - Request for a 1-year extension (LU-19-79)

**B.** 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. (LU-22-89)

**C.** The request of **Jeffrey C. Christensen (Attorney for the Appellants)**, for property located at **225 Banfield Road** for a rehearing of the May 24, 2022 decision of the Zoning Board of Adjustment's granting of a request for variances to demolish the existing building and constructing a new 5 unit commercial building and 60 unit residential building with underground parking which requires the following: 1) 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)

### III. NEW BUSINESS

- A. The request of **Jessica Tia Nashahl (Owner)**, for property located at **1344 and 1346 Islington Street** whereas relief is needed to construct a new deck and add detached garage which requires the following: 1) Variances from Section 10.521 to allow: a) a 28' rear yard for the deck where 30' is required; b) a 2' left side yard where 10' is required for the garage; and c) a Variance from Section 10.521 to allow 30% building coverage where 20% is the maximum allowed. Said property is located on Assessor Map 233 Lot 98 and lies within the Single Residence B (SRB) district. (LU-22-160)
- B. The request of **Martin Hanssmann (Owner)**, for property located at **130 Gates Street** whereas relief is needed to add an HVAC unit which requires the following: 1) A Variance from Section 10.515.14 to allow a 3' setback where 10' is required. Said property is located on Assessor Map 103 Lot 55 and lies within the General Residence B (GRB) and Historic districts. (LU-22-161)
- C. The request of **George Pappas (Owner)**, for property located at **170 Melbourne Street** whereas relief is needed to add a 12 x 12 shed which requires the following: 1) A Variance from Section 10.573.20 to allow an 8' left side yard where 10' is required. 2) A Variance from Section 10.571 to allow an accessory structure to be located in the front yard. 3) A Variance from Section 10.521 to allow 26% building coverage where 20% is the maximum allowed. Said property is located on Assessor Map 233 Lot 69 and lies within the Single Residence B (SRB) district. (LU-22-151)
- D. The request of **Debra Klein and Natan Aviezri Revocable Trust (Applicant and Owner)**, for property located at **75 Monroe Street** whereas relief is needed to extend existing dormers on both sides of the house which requires the following: 1) Variances from Section 10.521 to allow a) an 11.5 foot rear yard where 20 feet is required; and b) a 5.5 foot side yard where 10 feet is required. 2) A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 168 Lot 27 and lies within the General Residence A (GRA) district. (LU-22-162)
- E. The request of **Rob Currao (Applicant)**, and **Bursaws Pantry LLC (Owner)**, for property located at **3020 Lafayette Rd** whereas relief is needed for a proposed retail cabinetry outlet which requires the following: 1) A Special Exception from Section 10.440, Use #8.31 to allow retail sales conducted within a building which is permitted by special exception. Said property is located on Assessor Map 292 Lot 152 and lies within the Mixed Residential Business (MRB) district. (LU-22-158)



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

**THE FOLLOWING ITEMS WILL BE HEARD ON TUESDAY, SEPTEMBER 27, 2022**

- G. The request of **Emily Morgan Revocable Trust of 2021 (Owner)**, for property located at **127 Willard Street** whereas relief is needed to replace the existing front porch with new covered landing with steps which requires the following: 1) A Variance from Section 10.521 to allow a 6 foot secondary front yard where 15 feet 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 149 Lot 37 and lies within the General Residence A (GRA) district. (LU-22-180)
- H. The request of **Anne R. Landau Bellaud (Owner)**, for property located at **55 Aldrich Rd** whereas relief is needed to remove existing front steps and construct new deck and steps which requires the following: 1) A Variance from Section 10.521 to allow a 2.5 foot front yard where 15 feet 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 153 Lot 44 and lies within the General Residence A (GRA) district. (LU-22-181)
- I. The request of **Seth Monkiewicz (Applicant)**, and **Betty Ann Fraser (Owner)**, for property located at **42 Harvard Street** whereas relief is needed for the upward expansion of existing garage and mudroom to create and attached ADU 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 structure or building to be expanded, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 259 Lot 30 and lies within the Single Residence B (SRB) district. (LU-22-176)
- J. The request of **Brian and Charlene Huston (Owners)**, for property located at **44 Harding Road** whereas relief is needed to remove existing deck and construct new deck with stairs which requires the following: 1) A Variance from Section 10.521 to allow 25% building coverage where 20% is the maximum allowed. 2) A Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 250 Lot 75 and lies within the Single Residence B (SRB) district. (LU-22-178)
- K. The request of **Madison Tidwell & Brendan Barker (Owners)**, for property located at **38 Thaxter Road** whereas relief is needed to construct a 14' x 25' rear second story over an existing structure which requires the following: 1) A Variance from Section 10.521 to allow a

23 foot rear yard where 30 feet 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 166 Lot 36 and lies within the Single Residence B (SRB) district. (LU-22-164)

- L.** The request of **ADL 325 Little Harbor Road Trust (Owner)**, for property located at **325 Little Harbor Road** whereas relief is needed to renovate an existing historic barn which requires the following: 1) A Variance from Section 10.628.30 to permit a bottom/basement finished floor elevation of 8 feet where 7.88 feet exist where 9 feet is required. Said property is located on Assessor Map 205 Lot 2 and lies within the Rural (R) district. (LU-21-220)
- M.** The request of **John T. & Mary R. McDonald (Owners)**, for property located at **74 Sunset Road** whereas relief is needed to add a front porch, front dormer and connection to garage which requires the following: 1) Variances from Section 10.521 to allow a) a 16 foot front yard where 30' is required; and b) 26.5% building coverage where 20% 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 153 Lot 14 and lies within the Single Residence B (SRB) district. (LU-22-182)
- N.** The request of **Neila LLC (Owner)**, for property located at **324 Maplewood Avenue** whereas relief is needed to convert the existing garage into a dwelling unit which requires the following: 1) Variances from Section 10.5A41.10A to allow a) a lot area per dwelling unit of 1,780 square feet where 3,000 square feet is required; and b) a 1 foot side yard where 5 feet is required. 2) A Variance from Section 10.1114.21 to allow an 8.5 foot wide by 18 foot long parking space where 8.5 feet by 19 feet is required. Said property is located on Assessor Map 141 Lot 1 and lies within the Character District 4-L2 (CD4-L2) and the Historic district. (LU-22-183)
- O.** The request of **Jeffrey & Melissa Foy (Owners)**, for property located at **67 Ridges Court** whereas relief is needed for the expansion of existing main roof and front porch roof and addition of new roof over side doorway which requires the following: 1) Variances from Section 10.521 to allow a) an 8 foot front yard where 30 feet is required to expand the existing front porch; b) a 13.5 foot front yard where 30 is required to expand the main roof of the house; c) a 13.5 foot front yard where 30 feet is required for a new roof over an existing doorway; and d) a 9.5 foot left side yard where 10 feet is required for a new roof over an existing doorway. 2) A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 207 Lot 59 and lies within the Single Residence B (SRB) district. (LU-22-139)

**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\\_VBpidaJmTDe\\_JscSDrw3oA](https://us06web.zoom.us/webinar/register/WN_VBpidaJmTDe_JscSDrw3oA)

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

**7:00 P.M.**

**August 16, 2022**

**MEMBERS PRESENT:** Arthur Parrott, Chair; Jim Lee, Vice Chair; Beth Margeson; Paul Mannle; Phyllis Eldridge; David MacDonald

**MEMBERS EXCUSED:** Thomas Rossi

**ALSO PRESENT:** Peter Stith, Planning Department

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

**I. APPROVAL OF MINUTES**

A) Approval of the minutes of the meeting of July 19, 2022.

The following amendments to the minutes were requested by Ms. Margeson:

On page 2, first paragraph: "Ms. Margeson said the abutter Pike Industries submitted an option for rehearing that was very comprehensive." The word 'option' was changed to 'motion'. On page 4, first paragraph after Discussion of the Board: "She said the fact that the building was in the District was an extra purpose when the board entertained a variance." The word District was changed to Historic District, and the phrase 'when the board entertained a variance' was changed to 'that the board needed to consider when it entertained a variance.'

Mr. MacDonald moved to **approve** the minutes as amended, and Vice-Chair Lee seconded. The motion **passed** by unanimous vote, 5-0.

**II. OLD BUSINESS**

**A. POSTPONED TO SEPTEMBER** 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. (LU-22-89) **POSTPONED TO SEPTEMBER**

### **DECISION OF THE BOARD**

Mr. Mannle moved to **postpone** the petition to the September meeting, seconded by Vice-Chair Lee. The motion **passed** by unanimous vote, 5-0.

Mr. Mannle said postponement of a petition was a common request and he had no problem postponing it to the September meeting. Vice-Chair Lee concurred.

Mr. MacDonald recused himself from the following petition. The applicant said he would proceed even though there were only five voting board members.

- B.** The request of **Jeffrey M. and Melissa Foy (Owners)**, for property located at **67 Ridges Court** whereas relief is needed to construct a 718 square foot garage addition with living space and deck above which requires the following: 1) A Variance from Section 10.521 to allow a 15.5' front yard where 30' is required. 2) A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 207 Lot 59 and is located within the single residence B (SRB) District. (LU-22-139)

### **SPEAKING TO THE PETITION**

Attorney Tim Phoenix was present on behalf of the applicant and introduced his team, project engineer John Chagnon, realtor Robin Valeri, owners Melissa and Jeff Foss, and property appraiser Peter Stanhope (via Zoom). He reviewed the proposal and the criteria in detail. In response to Ms. Margeson's questions, Attorney Phoenix said 100 percent of the project was within the tidal buffer zone and a very small corner of the house was also in the buffer zone.

Realtor Robin Valeri noted that one of the opposing neighbors said their property would lose over a million dollars in value but said she did an amortization calculation that disproved it. She said just because neighbors could see a property owner's water view didn't mean they had a right to that property view. She said the applicant paid \$26,000 in yearly taxes whereas the neighbor paid \$11,000. She said there was no market evidence to suggest that a partial loss of water view would result in a huge diminution of value. She noted that the neighbors could walk to the beach.

Ms. Margeson asked if the dock was part of the beach. Mr. Chagnon agreed, noting that it was a public beach. Vice-Chair Lee said there was a similar situation involving a view a few years ago, and he had contacted an appraisal expert who opined that the value of a view was between 5-30 percent of the property's value. Ms. Valeri said it would just be a partial loss of view. Ms. Margeson said the subject lot had a water view and was taxed for it, and she asked about Lots 62 and 63 across the street. Ms. Valeri said their property taxes were about \$11,000 but didn't know

if those taxes included a water view, and that neither lot could be marketed with water view easements although they could be taxed with water views.

Peter Stanhope (via Zoom) said he was a certified general appraiser in New Hampshire. He explained that the views extended all the way to the end of Ridge Court, so the project would only result in a partial loss of view. He said he interviewed several realtors, appraisers, and municipal assessors about whether an unowned, uneased view contributed value to a property and was told that it was between 1-30 percent. He explained the definition of market value and reviewed different types of views that included partial, panoramic, and territorial views. He said the issue was a territorial view and the project would remove a very modest part of that greater view. He concluded that there would be no diminution of value in surrounding properties if the variances were granted since there would be no loss of view. He said he found no evidence that the neighbor's 2.3 million-dollar property would have a probability of a million dollar loss and assumed that the realtor wasn't aware that there was a view preserved.

Property owner Jeff Foy said he researched assessed land values in the neighborhood as to whether the current tax assessment was reflective of the view. He said the neighbor Cathy Thomson's assessment for her land was the lowest assessment on a square-footage basis for land for any property on Ridges Court. He said there were much smaller lots on the street and there wasn't a current view assessment going on. Ms. Margeson asked if there was an actual verification of a water view tax assessment on those two properties, and Mr. Foy said he didn't see one. Mr. Mannle asked if Mr. Foy went online or spoke to the city's tax assessor. Mr. Foy said he looked at the figures online and that they were not reflective of anything substantial.

Mr. Parrott opened the public hearing.

### **SPEAKING IN FAVOR OF THE PETITION**

No one spoke.

### **SPEAKING IN OPPOSITION TO THE PETITION**

Attorney Darcy Peyser said she was present on behalf of Kathleen Thomson of 56 Ridges Court, who objected to the project because it failed most of the criteria, especially the hardship one. She said the structure would have a huge detrimental effect on Ms. Thomson's property and that it could be moved back so that it complied with the 30 percent buffer setback. Vice-Chair Lee asked if there would be a different view if one walked ten feet down the street. Attorney Peyser agreed there would be more of the view of Little Harbor.

Robin Hackett of 46 Ridges Court said she lived across the street from the applicant. She read the letter she submitted to the board saying how the addition would negatively impact the neighbors' enjoyment of their properties and water views. She said there wasn't a hardship for adding another porch and living space on top of the garage. She said the property couldn't support that and also maintain environmentally protected setbacks. She said the addition would increase neighboring properties for sale purposes and property taxes would rise.

Mark Hepp of 28 Ridges Court said the variance request would place a 30' high, 3-story building right in the middle of the setback and would not only affect the water view but also the birds and nature. He said the applicant could find another creative way to build an addition without encroaching on the setback. He distributed a drawing that was submitted by the applicant that he marked up to show how it would look if the setbacks were complied with.

Kathleen Thomson of 56 Ridges Court said the project would adversely affect her property value and water views as well as those of nearby property owners. She said it would cause a hardship and significant changes to the neighborhood's quality of life.

Marta Rubinek of 40 Ridges Court said the project would detract from the most-affected neighbors' beautiful views and quality of life and hoped their little corner would be protected.

Nancy Andrews of 161 Sagamore Avenue said that, as a member of the general public, she was harmed when a south end property in a quaint community was having huge pieces of buildings added very close to the street so that the street would soon look like the downtown hotel area.

Warren Wilson of 40 Ridges Court said the addition would be out of scale for the area.

Mike Rainboth said he lived at the end of Ridges Court and had enjoyed the views from Mr. Thomson's deck many nights. He said the addition would block that view.

Dylan Hackett of 46 Ridges Court said the view was a nice one to have.

### **SPEAKING TO, FOR, OR AGAINST THE PETITION**

Owner Jeff Foy stated that a few inaccurate things were said by some of the opposition. He said the addition would return the structure to a garage and would not block 100 percent of anyone's view. He said he actually scaled down his original larger plan to fit entirely on the existing asphalt area. He said the 30' setback was on his lawn and not on the side of the road, and he had worked with that as much as he could. He said the addition would be back from the current house and further from the street than any of the homes that were supposedly impacted.

Attorney Phoenix said the marked-up plan handed in by Mr. Hepp was originally prepared by Ambit engineer John Chagnon and that it was improper for Mr. Hepp to mark up the plan and use it without Ambit's permission, so he asked that it not be taken into evidence. He said the front yard setback purposes did not intend to protect someone's views past their properties but intended to protect air and light. He said some of the existing views would be limited by the project but there would still be views. He said Mr. Stanhope said there would be no diminution of property values and that the concerns about environmental impacts were not within the board's purview. He said the applicant met all the requirements for the variance request and there was no demonstration that there would be any loss of value for surrounding neighbors.

Evan Mullen of 82 Austin Street said he was a building designer and the code of ethics for architects indicated that they had an obligation to the public and environment. He asked that the applicant come up with better alternatives.

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

## **DISCUSSION OF THE BOARD**

Ms. Eldridge said she could not support the variance request because she didn't see a hardship. She said the addition could be built anywhere on the property. Mr. Mannle said the addition was proposed to be fully in the wetlands buffer and if the setback were complied with, it wouldn't need a variance. He said if the Conservation Commission granted approval for a difference of another 10 or 15 feet, he didn't see how it would make a difference because the project was fully in the wetlands buffer. Vice-Chair Lee said back in the 1960s when he was stationed in the Air Force in Florida, one could drive along the miles of dunes and the views of the Gulf of Mexico were the territorial views, but now there were 10-story condos which were the new territorial view. Ms. Margeson said the board did not have any jurisdiction over the views and were tasked with the applicant's request for a front yard setback. She said she shared everyone's concern about building within the wetland buffer and that it was clearly delineated in the ordinance under the environmental protection standards, but the board could not take that into consideration. She said if the tidal buffer zone were pushing the project closer to the main building, she'd have a different view of it, but anything built on the property had to be built within the tidal buffer zone, so she couldn't say it was really a hardship.

## **DECISION OF THE BOARD**

Ms. Eldridge moved to **deny** the request for variances, seconded by Mr. Mannle.

Ms. Eldridge said the hardship just wasn't there. She said the applicant stated that they needed to avoid the buffer zone but were not avoiding it, and they were within the setback where they could be anywhere else within the buffer zone. Mr. Mannle concurred. He said the property was problematic as far as the wetland buffer and the applicant knew the hardship going in yet was asking the board to grant something that was fully in the buffer when it could be moved back and eliminate all the emotional responses from the neighbors.

Chairman Parrott said he wrestled with the hardship aspect, especially the conditions of the property that distinguished it from others in the area, because there were other properties in the area that were similarly situated. He said the structure was already in the setback so it wasn't a unique feature, and there were opportunities to deal with the neighbors' concerns.

The motion **passed** by unanimous vote, 5-0.

## **III. NEW BUSINESS**

- A. REQUEST TO POSTPONE** The request of **Jeffrey C. Christensen (Attorney for the Appellants)**, for property located at **225 Banfield Road** for a rehearing of the May 24, 2022 decision of the Zoning Board of Adjustment's granting of a request for variances to



demolish the existing building and constructing a new 5 unit commercial building and 60 unit residential building with underground parking which requires the following: 1) 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)

#### **REQUEST TO POSTPONE**

#### **DECISION OF THE BOARD**

Mr. Mannle moved to **postpone** the petition to the September meeting, seconded by Vice-Chair Lee.

- B.** The request of **Lonza Biologics (Owner)**, for property located at **101 International Drive** whereas relief is needed for the addition of a 372 square foot wall sign which will result in 487.5 square feet of total sign area which requires the following: 1) A Variance from Section 306.01(d) to allow 487.5 square feet of total sign area where 200 square feet is the maximum allowed per lot. Said property is located on Assessor Map 305 Lot 6 and is located in the Airport Business Commercial (ABC) District. (LU-22-136)

#### **SPEAKING TO THE PETITION**

Brandon Currier of Barlow Signs was present on behalf of the applicant via Zoom, and Kady Harnedy of Barlow Signs was also present. Mr. Currier reviewed the petition, noting that the sign would attract new customers and aid current customers in locating the building. He said they had met with the Pease Development Authority (PDA), who supported the change with the exception that the existing sign be removed. He reviewed the criteria. In response to Chairman Parrott's questions, Mr. Currier said the proposed sign would replace the existing one and that it would be lit internally.

Chairman Parrott opened the public hearing.

#### **SPEAKING IN FAVOR OF OR IN OPPOSITION TO 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 **recommend** approval to the PDA, seconded by Ms. Eldridge.

Vice-Chair Lee referred to the PDA's criteria and said granting the variance would cause no adverse effect or diminish surrounding properties, would benefit the public interest and do substantial justice, and a denial would result in unnecessary hardship to the person seeking the variance. He added that the sign was pretty big but felt that the building's scale justified a sign of

that magnitude. Mr. Mannle concurred and said he saw no reason not to make the sign bigger, especially considering how much Lona had done for the PDA.

The vote to recommend approval to the PDA as presented **passed** by unanimous vote, 6-0.

- C. The request of **Richard P. Fusegni (Owner)**, for property located at **201 Kearsarge Way** whereas relief is needed to subdivide one lot into three lots which requires the following: 1) A Variance from Section 10.521 to allow 82.5 feet of street frontage where 100 feet is required for proposed Lot 3. Said property is located on Assessor Map 218 Lot 5 and lies within the Single Residence B (SRB) District. (LU-22-150)

### **SPEAKING TO THE PETITION**

Attorney Chris Mulligan was present on behalf of the applicant and noted that the same relief requested was received in 2019 but the owner decided back then to preserve all the mature trees on the property that would have had to be removed to accommodate drainage improvements, so the project design was changed to the current one. He reviewed the criteria.

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

### **SPEAKING IN FAVOR OF OR IN OPPOSITION TO 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 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, and would not conflict with the implicit and explicit purposes of the ordinance nor alter the essential character of the neighborhood nor injure public rights. 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 but would likely enhance them. Relating to the hardship, he cited a case where the Supreme Court redefined the definition of a hardship by stating that a hardship exists when special conditions of the land render the use for which the variance is sought to be reasonable. He said he felt that the request was very reasonable and was also a reasonable use of the land, and for those reasons, he moved to grant the variance.

Mr. Mannle concurred but said he didn't agree with the case cited regarding the hardship and thought it was ironic that Lot 3 met the variance and was the biggest lot. Ms. Eldridge said it was admirable that the applicant returned to save the trees. Mr. Margeson said she had struggled with the hardship but would support the application.

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

- D.** The request of **Marcio Goldani Von Muhlen (Owner)**, for property located at **303 Thaxter Road** whereas relief is needed to replace existing entryway with 2-story addition including front landing and steps which requires the following: 1) A Variance from Section 10.521 to allow a 14.5' front yard where 30' is required. Said property is located on Assessor Map 152 Lot 37 and lies within the single residence B (SRB) district. (LU-22-155)

## **SPEAKING TO THE PETITION**

Land surveyor Scott Boudreau was present on behalf of the applicant. He said there were revised plans, which he distributed to the board. He explained that the applicant wanted a 4-ft landing area outside of the addition and the steps would go to the side, so the request was for an 18.5' front yard instead of a 14.5' one. He reviewed the criteria and said they would be met.

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

## **SPEAKING IN FAVOR OF OR IN OPPOSITION TO 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 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. He said substantial justice would be done and the values of surrounding properties would not be diminished and would most likely increase. He said literal enforcement of the ordinance would result in unnecessary hardship because the applicant was only asking for a 1.5' variance off the existing and using the front yard averaging, so it would become slightly less nonconforming. Ms. Eldridge concurred and had nothing to add.

Mr. Stith said that 14.5' was advertised and recommended stipulating that the front yard setback shall be 18.5 feet per the plan submitted that evening. Mr. Mannle and Ms. Eldridge agreed.

Mr. Mannle **amended** his motion as follows:

Mr. Mannle moved to **grant** the variance for the petition as presented, seconded by Ms. Eldridge, with the following **stipulation**:

1. The front yard shall be 18.5' as shown on the revised plans submitted at the meeting.

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

- E.** The request of **John A Signorello (Owner)**, for property located at **22 Maple Street** whereas relief is needed to subdivide one lot into two lots and construct new dwelling which requires the following: 1) Variances from Section 10.521 to allow a) a lot area and lot area per dwelling unit of 8,530 and 10,400 where 15,000 is required for each; b) a lot depth of 85' where 100' is required; c) 98' of continuous street frontage where 100' is required; d) an 18' front yard where 30' is required; and e) a 19' rear yard where 30' is required. Said property is located on Assessor Map 237 Lot 1 and lies within the single residence B (SRB) district. (LU-22-156)

### **SPEAKING TO THE PETITION**

Attorney Tim Phoenix was present on behalf of the applicant and said the variance was necessary to meet the requirement for a certain amount of frontage. He reviewed the petition and explained why the lot should be subdivided into two. He reviewed the criteria.

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

### **SPEAKING IN FAVOR OF THE PETITION**

No one spoke.

### **SPEAKING IN OPPOSITION TO THE PETITION**

Fred McMullen of 1000 Woodbury Avenue said the south side of his lot bordered the applicant's property. He said changing one conforming lot to two nonconforming lots didn't make sense and would crowd the neighborhood. He said the existing trees protected the wetland from erosion and helped the ecology and were a natural barrier for the noise from the turnpike and Pease AFB, and losing them would be a hardship for the entire neighborhood.

Sandra Pantelakos of 5 Meadow Road said her driveway was very close to the applicant's property and she had concerns about intrusiveness and sewage.

James Pantelakos of 5 Meadow Road said the lot was being subdivided for capital gains and that the resulting two smaller lots would be much smaller than the surrounding ones, which would make the neighborhood look bad. He said there was no hardship

Tyler Bradbury of 91 Woodlawn Circle said the petition fell short of all five criteria and would affect the privacy of the neighbors and make the neighborhood congested.

### **SPEAKING TO, FOR, OR AGAINST THE PETITION**

Attorney Phoenix said the owner did speak with a few of the neighbors and was willing to offer Mr. McMullen a fence along the common property line. He cited Section 516.40 of the ordinance stating that in the SRA and SRB zones, terraces, decks, steps and stoops that are uncovered and unenclosed and are less than 3' in height and less than 100 square feet in area only require a 5' front and rear setback. He said the house was 27.6 feet in the front but the rear met the setback. Mr. Stith noted that those were projections into the front yard, so instead of a 30' setback it could be 25 feet. Attorney Phoenix said part of it could still apply. He said it was a good project and thought the people against it just didn't like it but their reasoning did not overcome the property owner's rights. He said the development was in keeping with the neighborhood's characteristics.

Fred McMullen said the applicant didn't quite know what they wanted to do, but the lot and the house were not right and a house on each lot would be crammed together.

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

### **DISCUSSION OF THE BOARD**

Vice-Chair Lee said he had concerns about the application because the conforming lot would be subdivided into two nonconforming lots and most of the house would be in the wetland's buffer zone. He said those two reasons were sufficient enough for him to not support the application. Ms. Margeson said she would support it because she thought there were a lot of things that met zoning in terms of open space and building coverage. She said the applicant had persuaded her that there were a lot of nonconforming lots in the area and she didn't find that the applicant's lot was a new kind of configuration for that neighborhood. Ms. Eldridge said she also would support the application. She said the lot on the tax map looked like many of the other lots in the neighborhood, and in terms of lot coverage, there would be the required amount of open area around the homes. She said the proposal didn't seem intrusive and seemed more like the neighborhood than the current enormous lot. Mr. MacDonald said people who buy a property are entitled to the use and enjoyment of it within the limits of the ordinances but that he could not see any unnecessary hardship on the lot that would entitle the owner to go outside of the ordinances in order to maximize the return on their investment. Vice-Chair Lee said there were similar lots in the neighborhood, and even if every lot in the neighborhood was nonconforming, they were not valid reasons to inject two more nonconforming lots in the neighborhood. Mr. Mannle said 90 percent of Portsmouth lots were nonconforming and it wasn't the board's job to create more nonconforming lots. He said he couldn't see turning an existing conforming lot into two nonconforming lots.

### **DECISION OF THE BOARD**

Vice-Chair Lee moved to **deny** the variance, seconded by Mr. MacDonald.

Vice-Chair Lee stated that just because other lots in the neighborhood were nonconforming was not a reason to inject two more nonconforming lots into the area. He said the petition only had to fail one criteria. Mr. MacDonald concurred, noting that if the board kept granting variances to the ordinances, there would be more properties in Portsmouth that would fail to comply than

those that did comply. He said the board's mission was to evaluate land and building use in Portsmouth to ensure that it was appropriate to the city's vision of where it wanted to go. Vice-Chair Lee said the variance was contrary to the public interest, and the benefit to the applicant was outweighed by harm to the general public, so it failed those two criteria.

Chairman Parrott said he struggled to find a hardship on the lot but couldn't find one because even though the lot was somewhat oversized, it was a perfectly good lot dimensionally and served a public purpose with its drainage area and large trees. Ms. Margeson said the application referred to a hardship that may be found where similar nonconforming uses exist in the neighborhood, and the proposed use would have no adverse effect on the neighborhood. She said that was very different from the traditional analysis of hardship in that the neighborhood had a lot of existing nonconforming lot sizes. Therefore, she felt the applicant met the hardship criteria. She said she found the use reasonable because it was in the SRB zone and she didn't find that anything that would be put into that lot would be any different than what was there now.

The motion to deny **passed** by a vote of 4-2, with Ms. Margeson and Ms. Eldridge voting in opposition to the motion.

## **2. OTHER BUSINESS**

### **A. Potential Dates for Workshop with NH Municipal Association**

Mr. Stith said the City was working with the NH Municipal Association to provide some training with the board, noting that new legislation was forthcoming about how to make motions and how to add more detail to findings of fact and so on. He said he hoped to set up an informal work session at the end of September or early October and would send out a poll to the board members asking which selected dates would be feasible for them.

## **V. ADJOURNMENT**

The meeting was adjourned at 10:15 p.m.

Respectfully submitted,

Joann Breault  
BOA Recording Secretary

**BOSEN & ASSOCIATES, P.L.L.C.**  
ATTORNEYS AT LAW

August 31, 2022

Arthur Parrott, Chair  
Zoning Board of Adjustment  
1 Junkins Ave.  
Portsmouth, NH 03801

**John K. Bosen**  
Admitted in NH & MA

**Christopher P. Mulligan**  
Admitted in NH & ME

**Molly C. Ferrara**  
Admitted in NH & ME

**Austin Mikolaities**  
Admitted in NH

**Bernard W. Pelech**  
1949 - 2021

**RE: 266, 270, 278 State Street & 84 Pleasant Street**  
**Tax Map 107, Lots 77 - 80**  
**PNF Realty Trust of 2013**  
**LU-19-79**

Dear Mr. Parrott:

Please accept this correspondence as our request on behalf of the applicant, PNF Realty Trust of 2013, for a one year extension of the variances granted by this Board on October 20, 2020 relative to the above-referenced property.

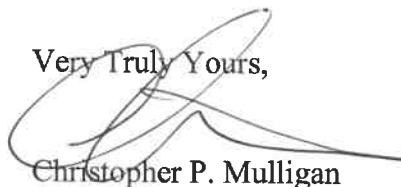
The applicant obtained a certificate of approval from the Historic District Commission in January of 2021 and shortly thereafter attended a TAC work session at which time the necessity and location of an electrical transformer to facilitate the project was identified. As of this date, the applicant has been unable to finally resolve with the City and Eversource the issues relating to the design and placement of the electrical transformer in order to submit the project for formal site review.

Accordingly, the applicant requires additional time to proceed and such time is warranted pursuant to section 10.236 of the ordinance.

Please be advised that this request is made without prejudice to the applicant's claims for relief in the litigation pending in Rockingham County Superior Court, docket no. 218-2018-CV-177.

Thank you for your attention.

Very Truly Yours,



Christopher P. Mulligan

CPM/

cc: PNF Trust of 2013

## OLD BUSINESS

1.

Request of **PNF Trust of 2013 and 282 Middle Street, LLC, Owners**, for properties located at **266, 270 & 278 State Street & 84 Pleasant Street**, wherein relief is needed from the Zoning Ordinance to merge four lots into one as part of a redevelopment project including a four-story addition onto the existing building at 84 Pleasant Street which requires the following: Variances from Section 10.5A41.10C to allow a) an entrance spacing greater than 50' where 50' is the maximum allowed; b) 100% building coverage where 90% is the maximum allowed; c) 0% open space where 10% is the minimum required; d) a 4-story, 45' tall building where 2-3 stories or a short 4th and 45' is the maximum allowed; e) less than 70% shopfront façade glazing where 70% is the minimum required and less than 20% other façade types where 20% is the minimum required; and f) to allow more than 20% of the ground floor use to be residential where 20% is the maximum allowed. Said properties are shown on Assessor Map 107 Lots 77, 78, 79 & 80 and lie within the Character District 4 (CD4) District.

The above referenced variances were granted on October 20, 2020 and a building permit has not been issued for the project. The applicant has submitted a request for an extension which the Ordinance allows for a one-time, one-year extension if the request is acted on prior to the expiration date.



## Garage Plans

Joel St. Jean & Mariele Chambers

108 Burkitt St.

Portsmouth, NH

4.25.2022

Updated: 8.14.2022

2.

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).

### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family	Demo garage/Construct new garage	Primarily single residence
<u>Lot area (sq. ft.):</u>	5,227	5,227	7,500 min.
<u>Lot area per dwelling (sq. ft.):</u>	5,227	5,227	7,500 min.
<u>Lot depth (ft.):</u>	50	50	70 min.
<u>Street Frontage (ft.):</u>	102	102	100 min.
<u>Primary Front Yard (ft.):</u>	6 (house) 30 (garage)	31	15 min.
<u>Right Yard (ft.):</u>	3	35 (garage)	10 min.
<u>Left Yard (ft.):</u>	0	<b>1</b>	10
<u>Rear Yard (ft.):</u>	50	45	20 min.
<u>Height (ft.):</u>	8.5	12	35 max.
<u>Building Coverage (%):</u>	25	<b>28</b>	25 max.
<u>Open Space Coverage (%):</u>	>30	>30	30 min.
<u>Parking:</u>	2	2	2
<u>Estimated Age of Structure:</u>	1900	<b>Variance request(s) shown in red.</b>	

### Other Permits/Approvals Required

None.

## Neighborhood Context

Aerial Map



Zoning Map



## Previous Board of Adjustment Actions

No prior BOA history found.

## Planning Department Comments

The applicant is seeking to demolish the existing nonconforming garage and construct a new, 13' x 30' garage in approximately the same location, with a proposed 1 foot left side yard setback. The building coverage with the larger garage will increase to 28%, where 25% is the maximum allowed. Since the initial submission, a survey has been completed and the proposed setback is 2 feet. If the Board grants approval, staff would recommend the following stipulation:

**The left side yard shall be 2 feet.**

## Review Criteria

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

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

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

**AND**

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

**OR**

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

## 10.235 Certain Representations Deemed Conditions

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

To The Planning Board of Portsmouth and To Whom It May Concern:

Thank you for taking the time to consider our Land Use Application for variance at 108 Burkitt St.

**\*\*10.233.21** The variance will not be contrary to the public interest;

- Because given the age, materials used, and the size of the garage, rebuilding under the new plan will improve the function, use, and safety. It will assist in the overall neighborhood function and appeal. Building to modern-day standards will provide the ability to house modern day cars, transportation, and overall usability.

**\*\*10.233.22** The spirit of the Ordinance will be observed;

- Because it does not threaten the health, safety, nor welfare of the general public, neighbors. In fact, abating the friable asbestos and removing the rot, mold, and mildew covered structure will rid the public and owners of these hazards.

**\*\*10.233.23** Substantial justice will be done;

- Because it does not threaten the health, safety, nor welfare of the general public, nor the current or future owners and neighbors. The building of this new garage will benefit the image, appeal, and state of the Burkitt St. neighborhood as well as create a structure that is more functional to today's standards of home care.

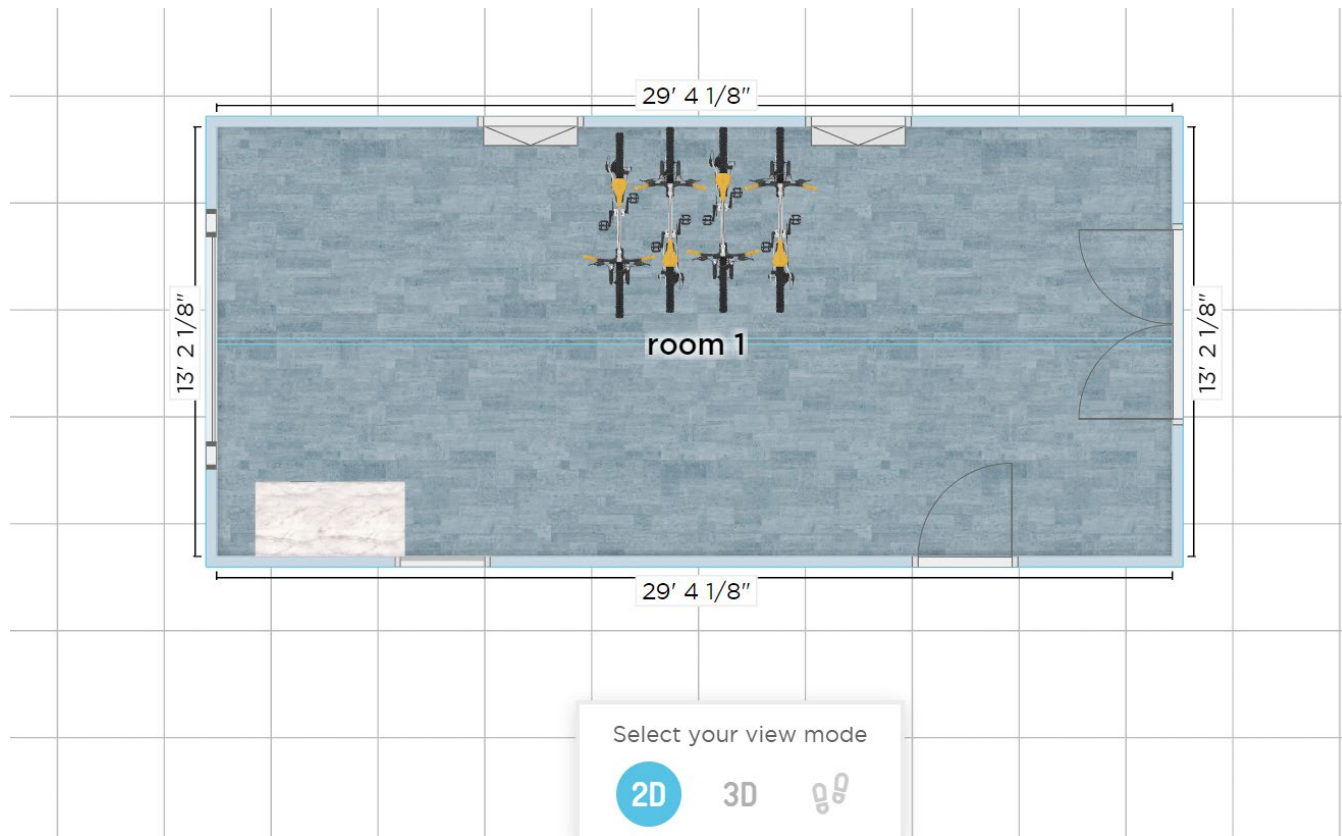
**\*\*10.233.24** The values of surrounding properties will not be diminished;

- In fact, the updating to use of modern-day building techniques and materials should only help make the area safer and more appealing.

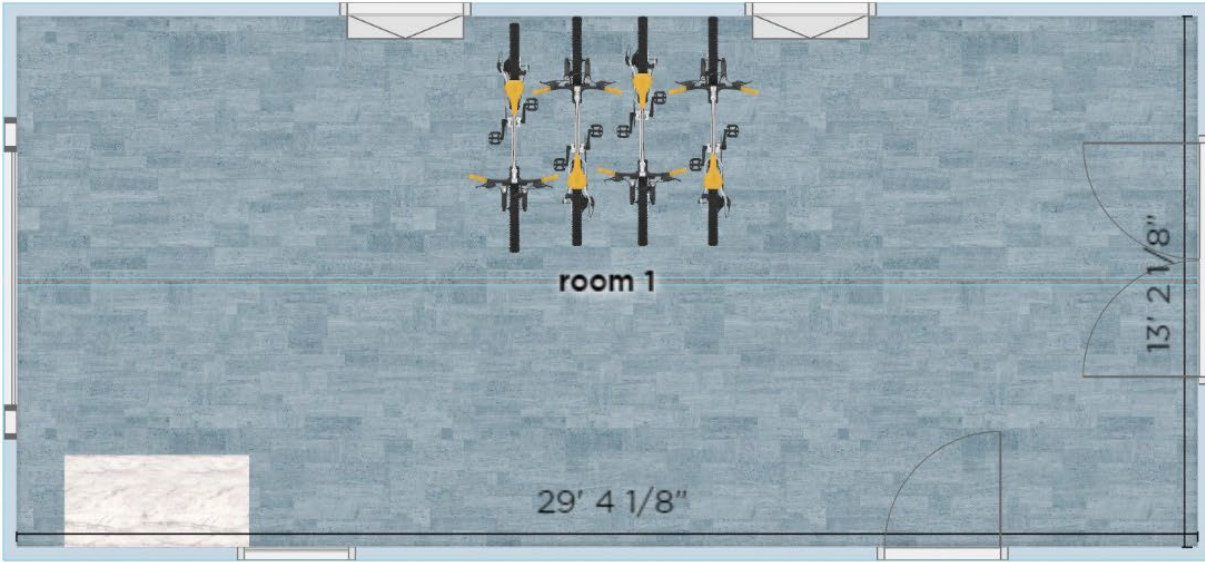
**\*\*10.233.25** Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship.

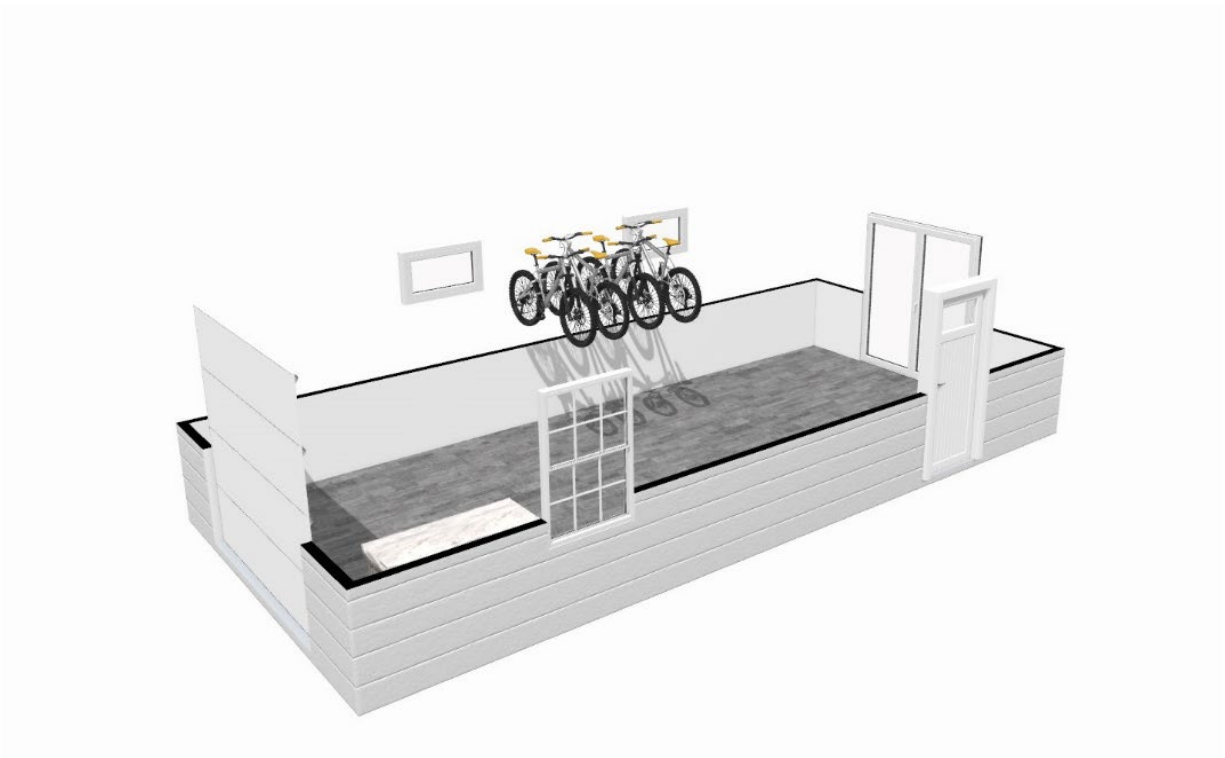
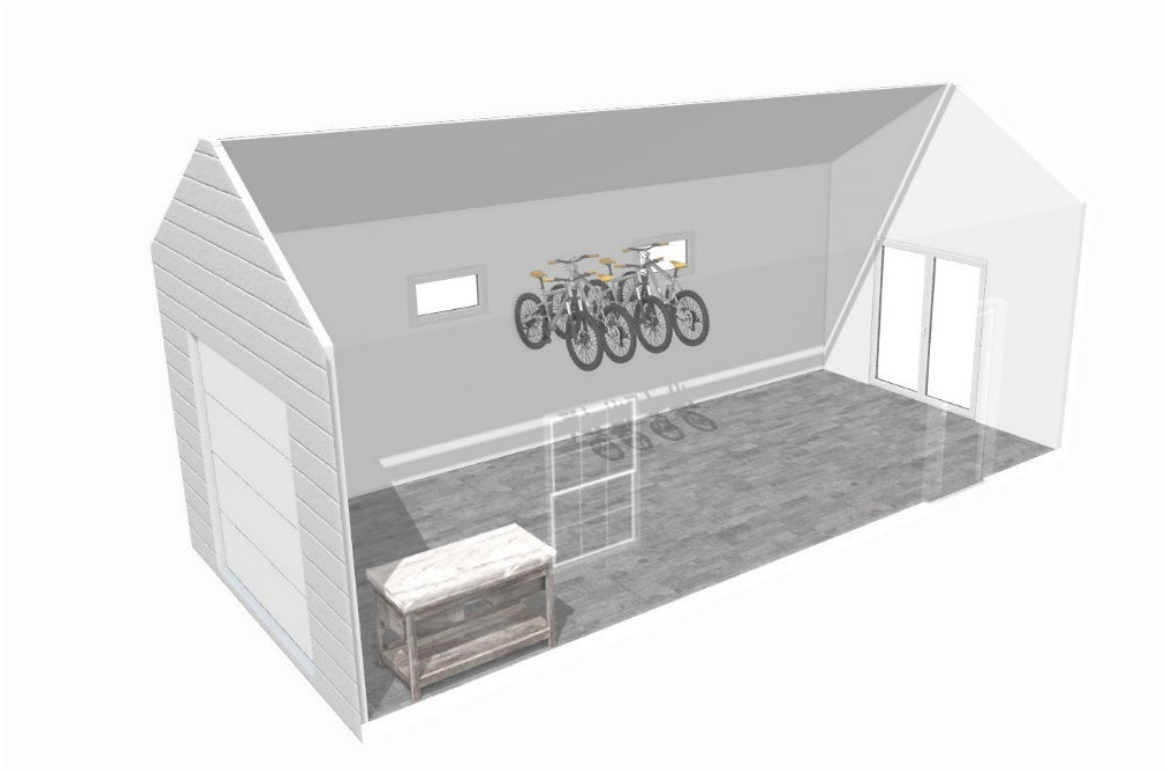
- As it currently stands, water gathers around the foundation due to poor drainage. It is also causing the rot on the garage door, wooden structure and outer siding. By removing the current garage and placing the new one, the foundation will be fixed to standards which allow the structure to withstand all New England seasons and complement the topography of the property for many years ahead. This will appropriately direct water from the new garage, the current standing main house, to the back yard and side plants. Water will not be stagnant.

In addition, the use of this garage would significantly improve the quality of life for the current owners given my height.

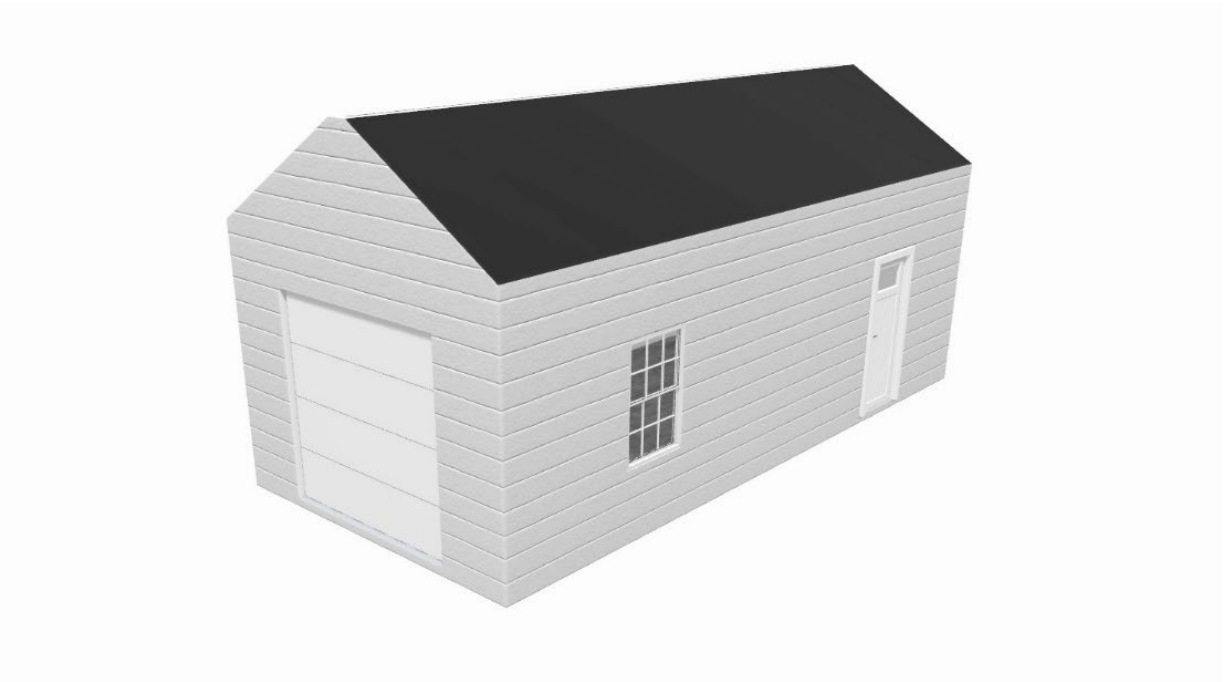












Front and Side (Facing Main House) Elevations



Rear and Side (Facing Main House) Elevations



Rear and Side (Facing 122 Burkitt) Elevations

Conditions of Garage

(As of 8.23.2022)

- **Friable asbestos siding has been properly removed**
  - **108 Burkitt St. Survey has been completed**
- Roof continues to leak (age of garage roof unknown)
  - Wood rot in structure and garage door





Concrete foundation sinking/warped (does not allow for proper water movement/management)







- Current Rear Elevation





-Current Front Elevation













### Conditions of Garage

(As of 6.15.2022)

- Friable asbestos siding (abatement will be needed)
- Damaged roof (age of garage roof unknown)
  - Wood rot in structure and garage door
- Concrete foundation sinking / warped (does not allow for proper water movement/management)













Stairs leading to garage





Side of garage adjacent the Property Line to Brady/Wilson Lot.

A 2-foot setback is requested





Friable Asbestos siding

Zoning Board of Adjustment  
Planning Department  
1 Junkins Ave, 3<sup>rd</sup> Floor  
Portsmouth, NH 03801  
July 19, 2022

I / We (name(s)) Bonita Cook at

(address) 117 Burkitt Street

support 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  
shown on Assessor Map 159 Lot 30 and lies withing the General Residence A (GRA) District. The  
address of said property is at 108 Burkitt St. Portsmouth, NH 03801.

Sincerely,

DocuSigned by: 7/18/2022 | 9:27 AM EDT  
Signature(s) Bonita Cook  
89B972F06186415...

*\*\* If you care to share some words about us or the project, please do so below.*

As the homeowner's garage is currently within the 10-foot setback and the proposed expansion is away from the road and toward their own property I think this project is thoughtful to the neighborhood. The proposed structure is appropriately scaled and designed to fit in with the vernacular of the area.

With the changing times I believe we need to be adaptive to the way spaces are used. Allowing this variance will give the homeowners the ability to use the space in a way that supports their own health and wellbeing which is something I wholeheartedly support.

Bonita Cook, AIA

## Garage Plans



## Property Information

Property ID 0159-0030-0000  
 Location 108 BURKITT ST  
 Owner ST JEAN JOEL



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

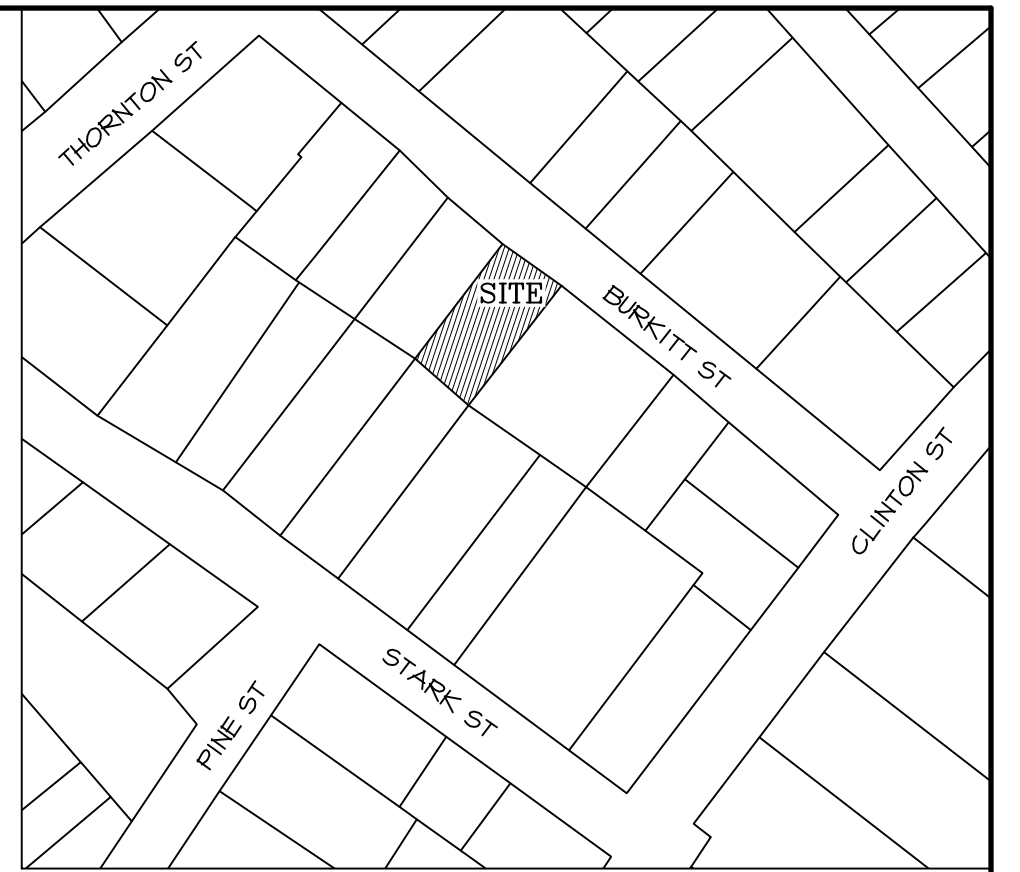
Print map scale is approximate.  
 Critical layout or measurement activities should not be done using this resource.

SEE NOTE 2



### LEGEND

- MONUMENT FOUND
- UTILITY POLE
- FIRE HYDRANT
- METAL FENCE POST
- CHAIN LINK FENCE
- WOODEN FENCE



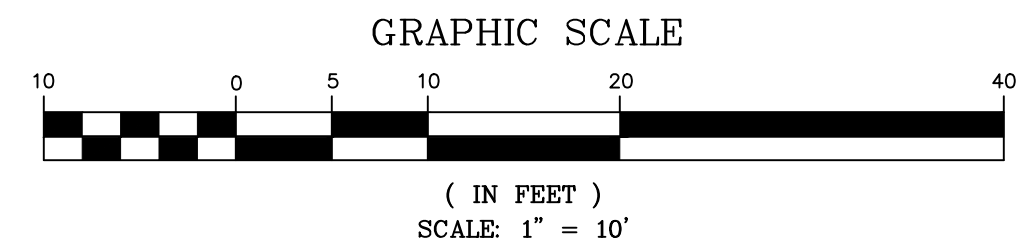
LOCUS PLAN  
N.T.S.

### NOTES

- OWNER OF RECORD:  
JOEL ST JEAN & MARIELE CHAMBERS  
TAX MAP 159, LOT 30  
108 BURKITT ST  
PORTSMOUTH, NH 03801  
RCRD: 6168-2764  
AREA: 5,379 SF, 0.12 ACRES
- BASIS OF BEARING HELD FROM PLAN REFERENCE #1.
- PARCEL IS IN GENERAL RESIDENTIAL A ZONE (GRA):  
MINIMUM LOT AREA.....1,500 SF  
MIN. LOT AREA PER DWELLING UNIT.....1,500 SF  
MINIMUM FRONTAGE.....100 FT  
MINIMUM DEPTH.....70 FT  
SETBACKS:  
FRONT.....15 FT  
SIDE.....10 FT  
REAR.....20 FT  
MAXIMUM BUILDING HEIGHT:  
SLOPED ROOF.....35 FT  
FLAT ROOF.....30 FT  
MAXIMUM BUILDING COVERAGE.....25%  
MINIMUM OPEN SPACE.....30%
- THE PARCEL IS NOT WITHIN A FEMA FLOOD ZONE, AS PER FLOOD INSURANCE RATE MAP #33015C0254F, PANEL 254 OF 681, DATED JANUARY 29, 2021. VERTICAL DATUM IS NAVD 1988.

### REFERENCE PLANS

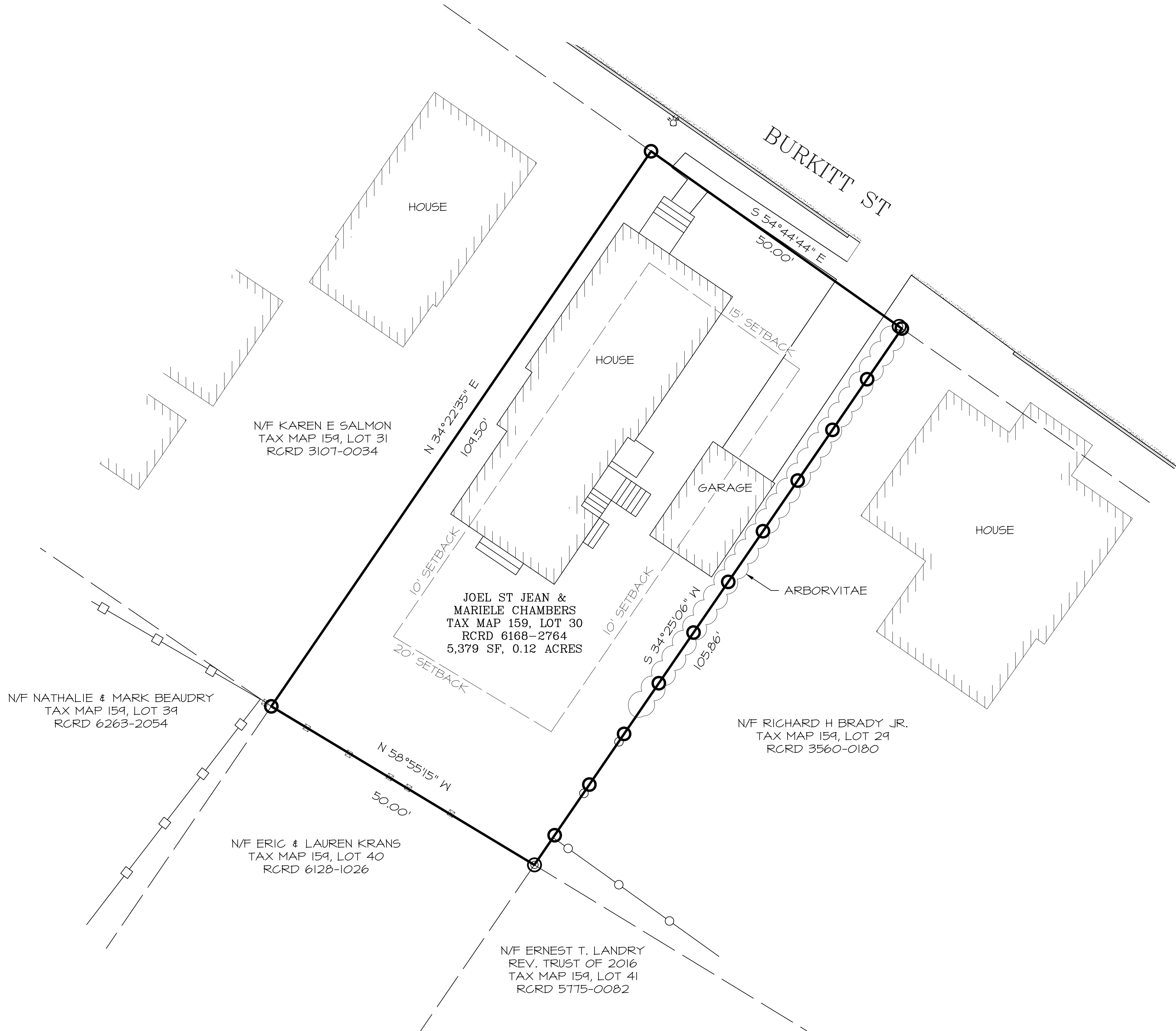
- "PLAT OF LAND FOR RICHARD H. BRADY, JR & MARY BETH WILSON" BY STOCKTON SERVICES. DATED DECEMBER 14, 2011. RCRD C-37087
- "LOT LINE REVISION PLAN - 80 BURKITT ST & 161 THORNTON ST" BY JAMES VERRA AND ASSOCIATES, INC. DATED SEPTEMBER 8, 2020. RCRD D-42544



1	8/10/2022	FOR REVIEW	
ISS.	DATE	DESCRIPTION OF ISSUE	
SCALE	1" = 10'		
CHECKED	A.ROSS		
DRAWN	D.D.D.		
CHECKED			
ROSS ENGINEERING, LLC Civil/Structural Engineering & Surveying 909 Islington St. Portsmouth, NH 03801 (603) 433-7560			
CLIENT MARIELE CHAMBERS 108 BURKITT ST PORTSMOUTH, NH 03801			
TITLE EXISTING CONDITIONS PLAN 108 BURKITT ST PORTSMOUTH, NH 03801 TAX MAP 159, LOT 30			
JOB NUMBER	DWG. NO.	ISSUE	
22-051	1 OF 1	1	

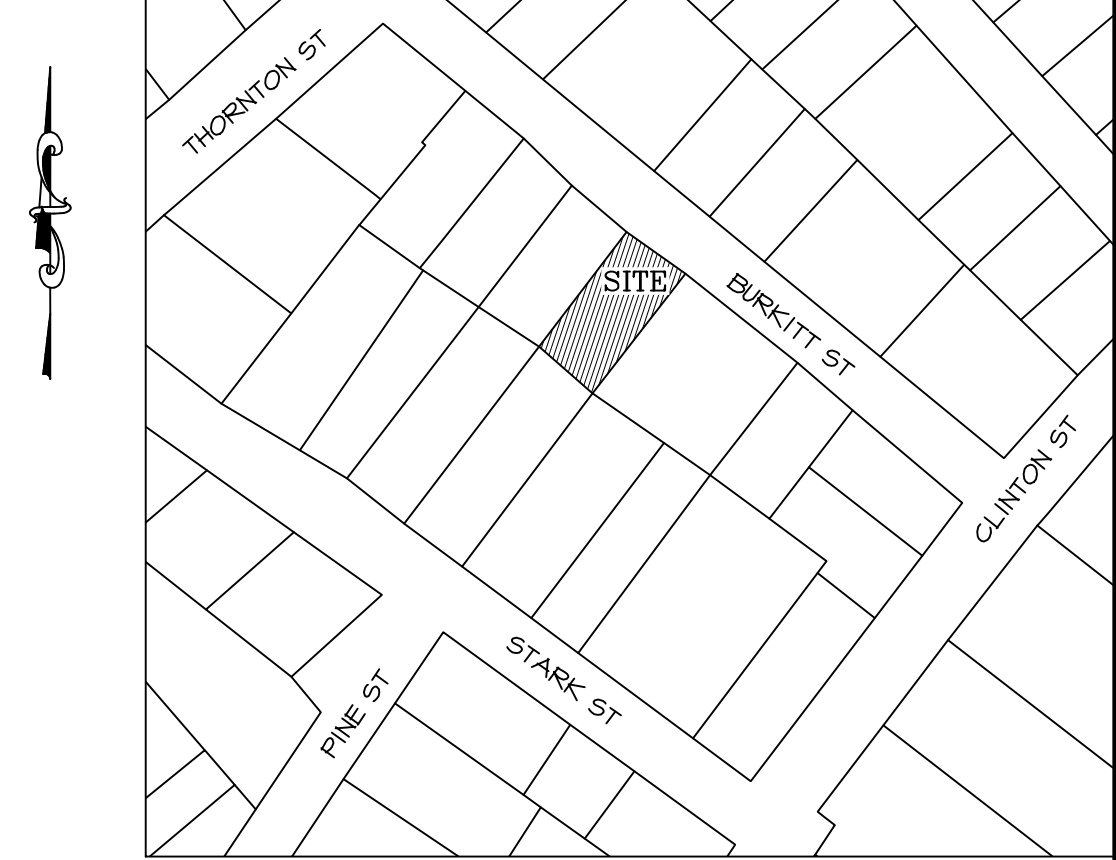


SEE NOTE 2



LEGEND

- MONUMENT FOUND
- UTILITY POLE
- FIRE HYDRANT
- METAL FENCE POST
- CHAIN LINK FENCE
- WOODEN FENCE



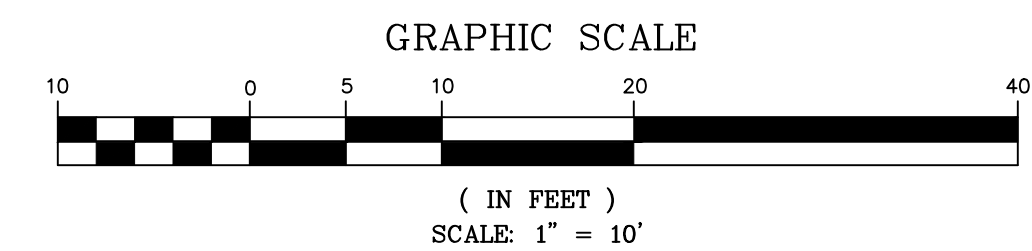
LOCUS PLAN  
N.T.S.

NOTES

- OWNER OF RECORD:  
JOEL ST JEAN & MARIELE CHAMBERS  
TAX MAP 159, LOT 30  
108 BURKITT ST  
PORTSMOUTH, NH 03801  
RCRD: 6168-2764  
AREA: 5,379 SF, 0.12 ACRES
- BASIS OF BEARING HELD FROM PLAN REFERENCE #1.
- PARCEL IS IN GENERAL RESIDENTIAL A ZONE (GRA):  
MINIMUM LOT AREA.....1,500 SF  
MIN. LOT AREA PER DWELLING UNIT.....1,500 SF  
MINIMUM FRONTAGE.....100 FT  
MINIMUM DEPTH.....70 FT  
SETBACKS:  
FRONT.....15 FT  
SIDE.....10 FT  
REAR.....20 FT  
MAXIMUM BUILDING HEIGHT:  
SLOPED ROOF.....35 FT  
FLAT ROOF.....30 FT  
MAXIMUM BUILDING COVERAGE.....25%  
MINIMUM OPEN SPACE.....30%
- THE PARCEL IS NOT WITHIN A FEMA FLOOD ZONE, AS PER FLOOD INSURANCE RATE MAP #33015C0254F, PANEL 254 OF 681, DATED JANUARY 29, 2021. VERTICAL DATUM IS NAVD 1988.

REFERENCE PLANS

- "PLAT OF LAND FOR RICHARD H. BRADY, JR & MARY BETH WILSON" BY STOCKTON SERVICES. DATED DECEMBER 14, 2011. RCRD C-37087
- "LOT LINE REVISION PLAN - 80 BURKITT ST & 161 THORNTON ST" BY JAMES VERRA AND ASSOCIATES, INC. DATED SEPTEMBER 8, 2020. RCRD D-42544



1	8/10/2022	FOR REVIEW	
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SCALE	1" = 10'		
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ROSS ENGINEERING, LLC Civil/Structural Engineering & Surveying 909 Islington St. Portsmouth, NH 03801 (603) 433-7560			
CLIENT MARIELE CHAMBERS 108 BURKITT ST PORTSMOUTH, NH 03801			
TITLE  EXISTING CONDITIONS PLAN  108 BURKITT ST PORTSMOUTH, NH 03801 TAX MAP 159, LOT 30			
JOB NUMBER	DWG. NO.	ISSUE	
22-051	1 OF 1	1	



1) OWNER OF RECORD:

JOEL ST JEAN & MARIELE CHAMBERS  
TAX MAP 159, LOT 30  
108 BURKITT ST  
PORTSMOUTH, NH 03801  
RCRD: 6168-2764  
AREA: 5,379 SF, 0.12 ACRES

2) BASIS OF BEARING HELD FROM PLAN REFERENCE #1.

3) PARCEL IS IN GENERAL RESIDENTIAL A ZONE (GRA):

MINIMUM LOT AREA.....7,500 SF  
MIN. LOT AREA PER DWELLING UNIT.....7,500 SF  
MINIMUM FRONTAGE.....100 FT  
MINIMUM DEPTH.....70 FT

SETBACKS:

FRONT.....15 FT  
SIDE.....10 FT  
REAR.....20 FT

MAXIMUM BUILDING HEIGHT:

SLOPED ROOF.....35 FT  
FLAT ROOF.....30 FT

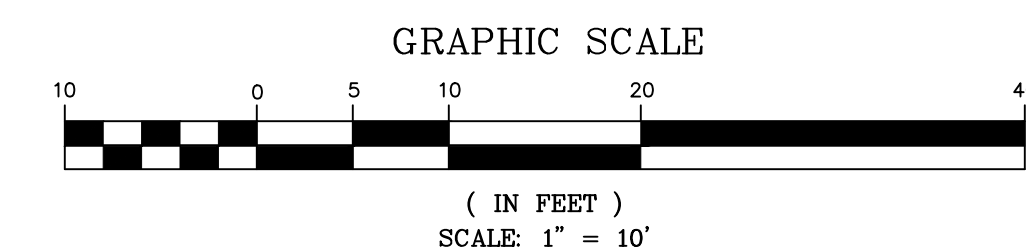
MAXIMUM BUILDING COVERAGE.....25%  
MINIMUM OPEN SPACE.....30%

4) THE PARCEL IS NOT WITHIN A FEMA FLOOD ZONE, AS PER FLOOD INSURANCE RATE MAP #33015C0259F, PANEL 259 OF 681, DATED JANUARY 29, 2021. VERTICAL DATUM IS NAVD 1988.

1) "PLAT OF LAND FOR RICHARD H. BRADY, JR & MARY BETH WILSON" BY STOCKTON SERVICES, DATED DECEMBER 14, 2011. RCRD C-37087

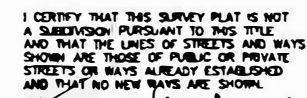
2) "LOT LINE REVISION PLAN - 80 BURKITT ST & 161 THORNTON ST" BY JAMES VERRA AND ASSOCIATES, INC. DATED SEPTEMBER 8, 2020. RCRD D-42594

ISS.	8/10/2022	FOR REVIEW	
DATE	DESCRIPTION OF ISSUE		
SCALE	1" = 10'		
CHECKED	A.ROSS		
DRAWN	D.D.D.		
CHECKED			
<u>ROSS ENGINEERING, LLC</u> Civil/Structural Engineering & Surveying 909 Islington St. Portsmouth, NH 03801 (603) 433-7560			
CLIENT MARIELE CHAMBERS 108 BURKITT ST PORTSMOUTH, NH 03801			
TITLE  EXISTING CONDITIONS PLAN  108 BURKITT ST PORTSMOUTH, NH 03801 TAX MAP 159, LOT 35			
JOB NUMBER	DWG. NO.	ISSUE	
22-051	1 OF 1	1	



LOCATION  
PLAN

- RCRD 0387-0092  
RCRD 0406-0312  
RCRD 0410-0307  
RCRD 0383-0421  
RCRD 0397-0086  
RCRD 0394-0474  
RCRD 0410-0236  
RCRD 0410-0312  
RCRD 0406-0372  
RCRD 0383-0421  
RCRD 0401-0455



ANNE W. BIALOBRZESKO LLS #752 DATE 12/14/201



PREPARED BY STOCKTON SERVICES  
 BOX 1306 HAMPTON, NH 03843-1306  
 (603) 929-7404

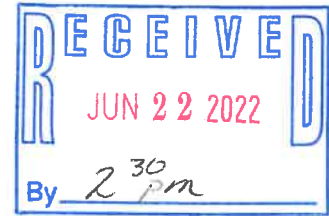
1 INCH = 20 FEET

C-37087





CLEVELAND, WATERS AND BASS, P.A.  
ATTORNEYS AT LAW



JEFFREY C. CHRISTENSEN, ESQUIRE  
(603) 224-7761 EXT. 1070  
(603) 224-6457 FACSIMILE  
CHRISTENSENJ@CWBPA.COM

TWO CAPITAL PLAZA, P.O. BOX 1137  
CONCORD, NEW HAMPSHIRE 03302-1137

June 22, 2022

**HAND-DELIVERED**

Arthur Parrott, Chair  
City of Portsmouth, ZBA  
1 Junkins Ave., 3<sup>rd</sup> Floor  
Portsmouth, NH 03801

RE: In the Matter of the Variance Application of JRDEV, LLC  
225 Banfield Road, Portsmouth, NH (Tax Lot: 266-1 & 254-1)

Dear Mr. Parrott:

Enclosed is a Motion for Rehearing with regard to the above. Thank you for your attention to this matter.

Sincerely,

Jeffrey C. Christensen

JCC/sm

Enclosure

cc: Pike Industries, Inc.  
Peter Stith, Principal Planner

4895-8524-8806, v. 1

3.

The request of **Jeffrey C. Christensen (Attorney for the Appellants)**, for property located at **225 Banfield Road** for a rehearing of the May 24, 2022 decision of the Zoning Board of Adjustment's granting of a request for variances to demolish the existing building and constructing a new 5 unit commercial building and 60 unit residential building with underground parking which requires the following: 1) 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.

### Existing & Proposed Conditions

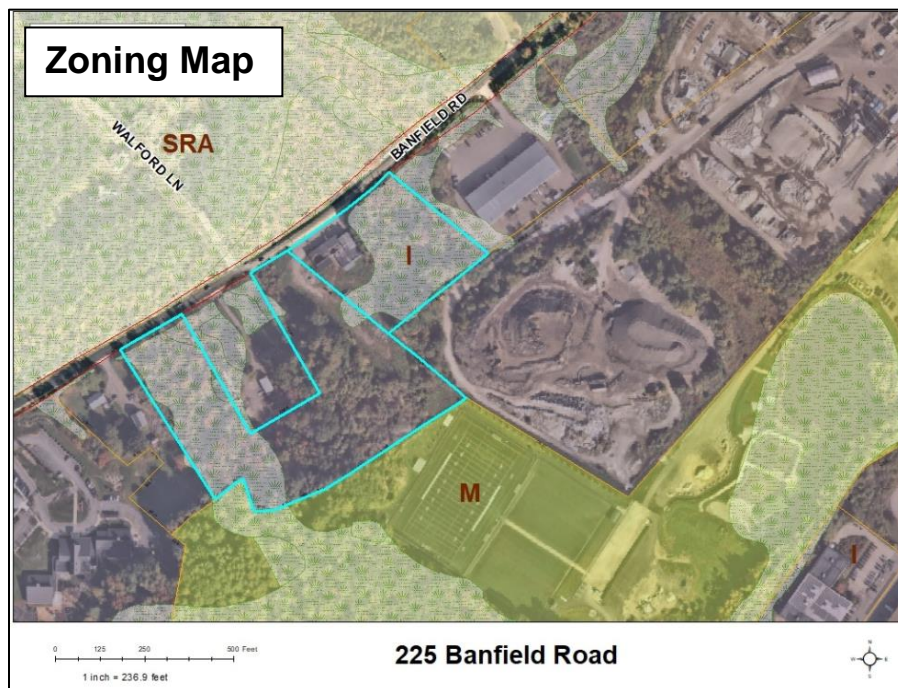
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Commercial business	Demo existing/Merge lots & construct new industrial and <b>60 unit residential</b>	Primarily industrial uses
<u>Lot area (sq. ft.):</u>	9.76	9.76 acres	2 Acres min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	NA	NA	NA min.
<u>Lot depth (ft.):</u>	>200	>200	200 min.
<u>Street Frontage (ft.):</u>	>200	>200	200 min.
<u>Primary Front Yard (ft.):</u>	34.5'	<b>45 (granted in May)</b>	70 min.
<u>Right Yard (ft.):</u>	10	>50	50 min.
<u>Left Yard (ft.):</u>	>50	>50	50 min.
<u>Rear Yard (ft.):</u>	>50	>50	50 min.
<u>Height (ft.):</u>	<70	<70	70 max.
<u>Building Coverage (%):</u>	<50	<50	50 max.
<u>Open Space Coverage (%):</u>	>20	>20	20 min.
<u>Parking:</u>		107*	107*
<u>Estimated Age of Structure:</u>	1962	<b>Variance request(s) shown in red.</b> *will be verified with tenants for commercial building	

### Other Permits/Approvals Required

Planning Board/TAC – Site Plan

Planning Board/Conservation Commission - Wetland Conditional Use Permit

## Neighborhood Context



## Previous Board of Adjustment Actions

May 24, 2022 - Relief from Zoning Ordinance including:

*September 20, 2022 Meeting*

Demolishing the existing building and constructing a 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 shown on Assessor 254 Lot 1 and Map 266 Lot 1 and lies within the Industrial (I) District.

The Board voted to 1) **grant** Variance #1; and 2) **grant** Variance #2 with the following stipulation:

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

July 19, 2022 – The Board **granted** a rehearing on the above matter.

### **Planning Department Comments**

The proposal includes merging two lots, demolishing the existing structure and constructing a new commercial building with 4 units and a 60 unit residential building. The property is zoned industrial, where residential uses are not permitted. The intent of the Industrial zone is *“to accommodate industrial, wholesale and storage uses whose operational and physical characteristics do not have detrimental impacts on surrounding areas”*. Permitted uses in the Industrial district include light industrial, food processing, and manufacturing. Adjacent uses include an asphalt plant and a welding business. The Community Campus property abuts the subject property to the east.

This project will need to go before the Conservation Commission as well as TAC and Planning Board and will likely see changes to the site plan and possibly building design and location. The original approval included the following stipulation:

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

At the July meeting, the Board granted the rehearing request submitted by Pike Industries. The appellants are not challenging the front yard variance, only the approval of the residential use on the property. If the Board upholds the original decision, the following should be considered as stipulations:

- 1. Move the residential building to the front of the property, using the 45 foot front yard setback previously granted.**
- 2. Require opaque vegetative screening along the property line between the subject property and Pike Industries to be reviewed and approved by the Planning Department.**

## Review Criteria

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

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

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

**AND**

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

**OR**

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

## 10.235 Certain Representations Deemed Conditions

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

THE STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS.

CITY OF PORTSMOUTH  
ZONING BOARD OF ADJUSTMENT  
APPLICATION NO. LU-22-91

In the Matter of the Variance Application of JRDEV, LLC  
225 Banfield Road, Portsmouth, NH (Tax Lot: 266-1 & 254-1)

**MOTION FOR REHEARING**

Pike Industries, Inc. (“Pike” or the “Abutter”), by and through its attorneys, Cleveland, Waters, and Bass, P.A., respectfully moves, pursuant to RSA 677:2 and the City of Portsmouth Zoning Ordinance (the “Ordinance”), for a rehearing of the May 24, 2022 decision of the City of Portsmouth Zoning Board of Adjustment (the “Board”) granting the request for a variance in connection with the real property located at 225 Banfield Road (Tax Map and Lot 266-1 and 254-1; the “Ricci Property”) to construct a 60-unit apartment building (the “Residential Building”) in the Industrial Zoning District where such uses are broadly and expressly prohibited pursuant to Section 10.440.1 of the Ordinance. In support thereof, the Abutter states as follows:

**BACKGROUND AND INTRODUCTION**

1. The Ordinance identifies several different residential uses, all of which are expressly prohibited in the Industrial District where the Ricci Property lies. See Ordinance, §10.440.1. Nevertheless, the applicant, JRDEV, LLC, on behalf of the property owner, Ricci Construction Co., Inc. (collectively, the “Applicant”), proposes to construct sixty (60) residential dwellings on the Ricci Property in violation of those provisions. Pike owns the abutting property located at 650 Peverly Hill Road (Tax Map and Lot 254-7, the “Pike Property”) whereupon Pike operates a construction aggregate recycling and distribution yard, hot mix asphalt pavement plant, and equipment repair facility which has served the construction materials needs of the seacoast area since the 1930’s. Attached hereto as Exhibit 1 are photographs of the Pike Property

and the activities that will be adjacent to this residential development. The construction of multiple residential dwellings adjacent to the Pike Property will have significant detrimental impacts on Pike's operations and the value of the Pike Property.

2. The purpose of creating zoning districts is to provide space for uses and structures which are compatible with each other, combining compatible uses into a district, and separating each class of use into its appropriate geographic area. See 3 Arden H. Rathkopf, et al., *Rathkopf's The Law of Zoning and Planning* §10.1 (4<sup>th</sup> ed. 2017). There are various benefits to the segregation of incompatible uses, such as "promotion of the health and security from injury of children and others by separating dwelling houses from territory devoted to trade and industry; ... the enforcement of street traffic regulations and other general welfare ordinances; aiding the health and safety of the community, by excluding from residential areas the confusion and danger of fire, contagion, and disorder, which in greater or less degree attach to the location of stores, shops, and factories" and because "the construction and repair of streets may be rendered easier and less expensive, by confining the greater part of the heavy traffic to the streets where business is carried on." Vill. of Euclid, Ohio v. Ambler Realty Co., 272 U.S. 365, 391 (1926).

3. In short, segregating residential and industrial uses from each other is to the benefit of both. Residents of the City can safely enjoy their homes without risk of safety concerns, while industrial businesses can operate without the burdens created by residential neighbors, such as complaints about the noise and or the safety of children wandering just outside their backyard into an industrial area. Similarly, the City is saved from trying to accommodate the needs of residential uses, such as fire safety and emergency access, in an area where risks may be heightened due to industrial uses and access may be occasionally blocked by the movement of industrial vehicles.



4. Additionally, designating territory for specific uses reserves land for necessary but perhaps less profitable uses. It is necessary for the orderly functioning of a city and the provision of supplies for there to be local, accessible uses of all sorts. Pike, for example, provides necessary construction materials to the seacoast area, without which construction and maintenance needs would become more burdensome due to the expense and delay inherent in shipping materials from elsewhere. If the City does not reserve and protect space for such industrial uses, it risks vital resources becoming crowded out by more individually profitable uses, at a loss to the public.

5. Variances are intended to be an “escape hatch” or “safety valve” designed to avoid unjust applications of general zoning regulations. See 2P. Salkin, *Anderson’s American Law of Zoning*, §13:1 (5<sup>th</sup> ed.). As such, it should be limited to cases where unusual or exceptional circumstances exist to justify deviation from otherwise applicable zoning laws. Id. Absent such circumstances, allowing a single parcel to engage in a use different from that of the rest of the zoning district for the benefit of the owner of that parcel can constitute impermissible “spot zoning”. Id., §6.12.

6. As discussed below, however, the Board’s decision to grant the Applicant’s variance is contrary to the applicable law. Accordingly, the Board should reconsider and rehear the Applicant’s request for a variance from Section 10.440 of the Ordinance. Upon doing so, for the reasons set forth below, the Board should find that the Applicant is not entitled to a variance.

## **DISCUSSION**

7. To be granted a variance, an applicant must show that: “(1) the variance will not be contrary to the public interest; (2) special conditions exist such that literal enforcement of the ordinance results in unnecessary hardship; (3) the variance is consistent with the spirit of the

ordinance; (4) substantial justice is done; and (5) granting the variance will not diminish the value of surrounding properties” Nine A, LLC v. Town of Chesterfield, 157 N.H. 361, 365 (2008); RSA 674:33, I. The applicant, not the abutters nor anyone else, bears the sole burden of presenting evidence to support each and every one of the five variance criteria. Nine A, 157 N.H. at 365. If an applicant fails to meet any single criterion, the variance must be denied. Id.

**I. There is no unnecessary hardship.**

8. A variance may only be granted when, among other criteria, “literal enforcement of the ordinance would result in an unnecessary hardship.” RSA 674:33, I(a)(2)(E). “Unnecessary hardship” means that, “owing to the special conditions of the property that distinguish it from other properties in the area: (i) no fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and (ii) the proposed use is a reasonable one.” Id. “Generally, a use variance requires a greater showing of hardship than an area variance because of the potential impact on the overall zoning scheme.” Harrington v. Town of Warner, 152 N.H. 74, 80 (2005). “Use variances pose a greater threat to the integrity of a zoning scheme because the fundamental premise of zoning laws is the segregation of land according to uses.” Id.

**A. There is nothing unique about the Ricci Property that makes a residential use reasonable.**

9. “The reasonable use factor is the critical inquiry for determining whether unnecessary hardship has been established.” Garrison v. Town of Henniker, 154 N.H. 26, 32 (2006) (internal quotations omitted). “The reasonable use factor requires a determination of whether the hardship is a result of the unique setting of the property.” Id. (internal quotations omitted). “The applicant must show that the hardship is a result of specific conditions of the property and not the area in general.” Id. (internal quotations omitted). A use is presumptively

reasonable only if it is otherwise permitted by the Ordinance. See Malachy Glen Assocs., Inc. v. Town of Chichester, 155 N.H. 102, 107 (2007). If, as is the case here, the proposed use is not otherwise permitted, the variance may be denied if the Board disagrees with using the Ricci Property for residential purposes. See id.

10. The Applicant identified several allegedly unusual characteristics of the Ricci Property: the fact that it comprises two lots containing wetlands, and has frontage on Banfield Road in two different locations. These factors, however, are unrelated to the proposed development of a sixty-unit residential building. For example, although the Ricci Property has frontage on Banfield Road in two different locations, the proposed residential use would use the same frontage and the same driveway as the existing commercial or industrial uses of the Ricci Property. Nor does the construction of sixty residential dwellings protect the nearby wetlands. It is not enough that the Ricci Property be different or unique compared to other properties, but the hardship must arise out of that difference. See Garrison, 154 N.H. at 32. Here, regardless of whether these conditions are unique, they do not create a hardship.

11. The Applicant also identifies the proximity of the Community Campus and other recreational opportunities as unique conditions of the Ricci Property. Several properties in the area abut the Community Campus. Proximity to nearby recreation is true for the entire area. The Ricci Property is not meaningfully closer to recreational opportunities than the other nearby properties. The Applicant's hardship must arise as a "result of specific conditions of the property and not the area in general." Garrison, 154 N.H. at 32. They do not. Arguments, such as raised by the Applicant, that this area is generally suitable for residential use or is evolving beyond its designated industrial purpose are not applicable to an application for a variance. This Board does not have the authority to rezone the district or "spot zone" the Applicant's property. Unless the

City rezones the area, the Applicant must establish that the hardship arises directly from the specific and unique conditions of the Ricci Property itself.

12. Additionally, the Applicant identifies no reason why the proposed residential portion of the Ricci Property could not be used for any of the permitted uses in the Industrial District. It appears that the reason to instead insert a residential use into the Ricci Property is simply because it would be more profitable and as stated by Ricci, more expedient than seeking to have the area rezoned. Monetary advantage, however, is insufficient to qualify for a variance. See Rowe v. Town of N. Hampton, 131 N.H. 424, 428 (1989) (“The uniqueness of the land, not the plight of the owner, determines whether a hardship exists”). There is nothing unique about the Ricci Property that makes it more suitable to a residential use than the other nearby properties in the Industrial District. There is no hardship.

B. Residential use of the Ricci Property is contrary to the purposes of the Ordinance.

13. The general purpose of the Industrial District is to “accommodate industrial, wholesale, and storage uses”. See Ordinance, §10.410. As mentioned above, the purpose of creating zoning districts in general is to provide space for compatible uses, while protecting such spaces from incompatible uses. See 3 Arden H. Rathkopf, et al., *Rathkopf’s The Law of Zoning and Planning* §10.1 (4<sup>th</sup> ed. 2017).

14. Inserting a large-scale residential building into an industrial zone is directly contradictory to those purposes. It will likely be detrimental to both the residents and to the neighboring industrial uses. As the Supreme Court has recognized, there are several good reasons to separate residential and industrial uses. Vill. of Euclid, 272 U.S. at 391. Among these reasons are the “promotion of the health and security from injury of children and others by separating dwelling houses from territory devoted to trade and industry” and “aiding the health

and safety of the community, by excluding from residential areas the confusion and danger of fire, contagion, and disorder, which in greater or less degree attach to the location of stores, shops, and factories.” Id. Children who wish to play outside the newly created sixty residential dwellings, or who are traveling by foot to the nearby Community Campus, risk inadvertently wandering into the surrounding industrial areas where children are unexpected and at risk. Similarly, residents of all ages in the new sixty dwellings would be at risk from the spread of fire or other hazards from adjacent properties.<sup>1</sup>

15. At the same time, isolating industrial uses is beneficial to industry as well as to residents. Property owners in an industrial district benefit by being able to operate without the likelihood of children wandering into the area from next door, without residential neighbors complaining of the noise, and without the other burdens of having neighbors of incompatible uses. Inserting sixty dwellings next door to the Pike Property and its facility means there will be sixty families who will be expecting Pike to operate as if it were in a residential neighborhood. This situation will be to nobody’s benefit.

16. The Applicant identifies no reason why the Ricci Property could not be used entirely for any of the permitted uses in the Industrial District and should instead be used for residential purposes. It appears that the reason to instead seek to insert a residential use into the Property is because it would be more profitable. Allowing the Industrial District to be used for residential purposes, in direct contradiction to the Ordinance, simply because it is more profitable risks crowding industrial uses out of the area entirely. As a direct result, landowners in the Industrial District will seek to repurpose their land, reducing the supply of industrial space in

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<sup>1</sup> The chance of these hazards spreading across Banfield Road are much lower than spreading to adjacent properties without the barrier and separation of the street. For this reason, a residential use inside the Industrial District cannot be compared to residential uses on the other side of Banfield Road. It may be reasonable to have residential uses in a residentially zoned development across the street but not in a property next door without such a clear separation.

the City. Those that do not will experience conflicts with their new residential neighbors that will require City resources and potential litigation for all parties. The proximity and commingling of residential uses will further disincentive industrial uses in the area, further driving out industrial uses and making the industrial zone less attractive and marketable for resale in this City. This is contrary to one of the reasons for creating a zoning district, to reserve space for uses, like industrial uses, which are meaningful and necessary for the City and the surrounding area, but should not be commingled with other uses. See Harrington, 152 N.H. at 81 (“because the fundamental premise of zoning laws is the segregation of land according to uses, the impact on the character of the neighborhood is central to the analysis of a use variance”).

17. There are good, valid, and legitimate reasons residential uses are prohibited from the Industrial District. There is nothing unique about the Ricci Property that makes those reasons inapplicable. There is no undue hardship justifying the Applicant’s variance.

## **II. The variance will diminish nearby property values.**

18. A variance must not diminish the value of surrounding properties. See RSA 674:33, I(a)(D). As discussed above, commingling industrial and residential uses creates burdens on the industrial businesses, not only on the residents. These burdens, or the possibility of these burdens, will reduce the value of the remaining properties in the Industrial District. For example, if Pike were to market the Pike Property and the industrial facility thereon for sale, the proximity of sixty residential dwellings next door would be a significant impairment. Potential buyers would be concerned that, if they were to run industrial equipment at night, they would receive complaints from sixty families in the morning. They would be concerned about the increased safety costs of having to operate so close to residential uses where children may inadvertently wander onto the Pike Property. Anyone considering purchasing the Pike Property for

redevelopment would be concerned about sixty-residential abutters opposing any redevelopment that is inconsistent with what would be, in those residents' minds, a residential space. Reduction of risk and leveraging certainty are hallmarks of sound business decision strategy. This proposal will increase risk and uncertainty for any potential buyer in the future, negatively impacting Pike's ability to sell and value of the Pike Property or other nearby properties.

19. All of these concerns would lead potential purchasers to prefer industrial properties that are not commingled with residential uses and all of the complications that come with having sixty neighbors just over the boundary. As Pike indicated at the original hearing on this matter, if there had been a sixty-unit residential building next door prior to Pike's ownership of the Pike Property, that would have deterred Pike from purchasing it in the first place. See Roy v. State, 104 N.H. 513, 517 (1963) (holding that a landowner is qualified to offer evidence as to the value of their own property). Instead, Pike purchased the Pike Property relying upon the Ordinances express prohibition on residential uses in the Industrial District. As a result of this variance, the market value of the Pike Property and other nearby properties in the Industrial District will be diminished.

### **III. The variance is contrary to the public interest and the spirit of the ordinance.**

20. An applicant is not entitled to a variance if the proposal is contrary to the public interest or inconsistent with the spirit of the ordinance. RSA 674:33, I(a)(2)(A)-(B). The requirement that the variance not be "contrary to the public interest" is "related to the requirement that the variance be consistent with the spirit of the ordinance." See Nine A, supra, 157 N.H. at 366. A variance is contrary to the public interest when it unduly, and in a marked degree conflicts with the ordinance such that it violates the ordinance's basic zoning objectives. Id. There are two methods for determining whether a variance would violate an ordinance's basic



zoning objectives: (1) “whether granting the variance would alter the essential character of the neighborhood” or (2) “whether granting the variance would threaten the public health, safety or welfare”. Harborside Assocs., L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508, 514 (2011).

21. The proposal to add sixty residential dwellings to the Industrial District would alter its essential character. While the Applicant points to nearby residential uses on the other side of Banfield Road, those are in the Single Residence A Zoning District, and separated from the Industrial District. There is a material difference between having a single-family residential development nearby and having a sixty-unit residential building right next door. The single-family development here is well set back off Banfield Road and enjoys a forested buffer from the Industrial District, so even those homes that are closest to the Industrial Zone are protected. This proposal, however, places all sixty dwellings directly adjacent to a shared property line with a heavy construction aggregates facility. Residences separated by a street and trees are less likely to result in problems, such as those discussed above, than residences next door. Likewise, residences built in a residential district do not crowd out industrial uses from the Industrial District, as this variance threatens to do. This alteration of the essential character of the neighborhood will have a detrimental impact on the utility and value of the neighboring industrial properties.

22. The variance also threatens the public health, safety, and welfare. As discussed above, there are certain inherent risks associated with industrial uses, such as fire and other hazards. This is one of the reasons for isolating residential uses from industrial uses, as recognized by the Supreme Court. See Vill. of Euclid, 272 U.S. at 391. Those engaged in industrial activities are aware of and prepared for those risks. Residential tenants are, frequently, not so informed or prepared.

23. Moreover, industrial activities often involve large equipment and vehicles that could be an impediment to emergency vehicle access, especially where the residential building shares a driveway with other commercial or industrial uses. Industrial equipment or commercial vehicles are often in positions that are more difficult or slower to move out of the way of emergency vehicles than traffic associated with residential use. A large construction vehicle in the driveway could impair emergency access much more significantly than the ordinary traffic of cars going into an apartment building. This problem is compounded when such impairments impact sixty different residential dwellings.

#### **IV. The variance is not consistent with substantial justice.**

24. A variance must do substantial justice to be granted. RSA 674:33, I(a)(2)(C). The “substantial justice” element of a variance is guided by two rules: that any loss to the individual that is not outweighed by a gain to the general public is an injustice, and whether the proposed development was consistent with the area’s present use. Malachy Glen, 155 N.H. at 109. As discussed above, the proposed development of a sixty-unit residential building is not consistent with the present use of the Industrial District. Separately, there is a public interest that outweighs the loss to the Applicant by denying the development of the Apartment building.

25. As discussed above, there is a need for industrial uses in the City of Portsmouth and surrounding area. These uses are beneficial to and support all of the other uses and development in the area. There is a reason why the City deemed it necessary to dedicate space to industrial uses and specifically designate a district for the purpose of “accommodate[ing] industrial, wholesale, and storage uses”. See Ordinance, §10.410. Allowing such space to be converted to residential use will crowd out industrial uses, both by reducing the amount of land available for such use, and discouraging the use of adjacent land that is now less desirable due to

the close proximity of incompatible uses. It further signals to other potential developers that they cannot rely upon the City's Ordinance when it excludes incompatible uses. This will reduce the feasibility of industrial uses in the area, harming the public that depends on those uses. If the public cannot rely on local industrial suppliers, all personal and business activity that depends on those uses will bear the increased costs and delays of relying on industries at a distance (especially given the current dramatic increase in fuel costs and supply chain disruptions). These costs outweigh the loss to the Applicant, which is merely the inability to use the Ricci Property for a use that was known to be prohibited and for which the Applicant has alternatives. As discussed above, there is no evidence presented that alternative, non-residential uses of the Ricci Property are unavailable or impractical; the only benefit to the Applicant is monetary. The Applicant's individual financial gain does not outweigh the impact to the overall zoning scheme. See Harrington, 152 N.H. at 80.

26. The Applicant has argued that the proposal creates a public benefit by increasing the housing supply. While increasing the housing supply is generally a legitimate goal, the housing supply should be increased by development in appropriate areas, not inserted into an Industrial District that is ill-suited to residential use and will surely render adverse repercussions for all parties. The new residential development in the residential zone on the other side of Banfield Road demonstrates that there are appropriate areas for residential development in the City. The Industrial District is not one of them. Accordingly, the variance is not consistent with the principles of substantial justice. See Malachy Glen, 155 N.H. at 109.

## CONCLUSION

27. The Applicant did not present sufficient evidence to show that the five elements necessary for a variance were satisfied. The Board should reconsider its decision and, upon a rehearing, deny the requested variance.

WHEREFORE, Pike Industries, Inc. respectfully requests that the Board:

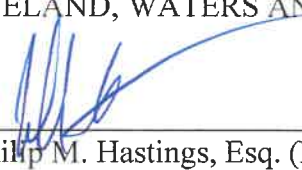
- A. Grant the foregoing motion and schedule a rehearing on the variance application;  
and
- B. Upon rehearing, deny the variance.

Respectfully submitted,

PIKE INDUSTRIES, INC.

By its attorneys,  
CLEVELAND, WATERS AND BASS, P.A.

Dated: June 22, 2022

By:   
Philip M. Hastings, Esq. (NH Bar #10003)  
Jeffrey C. Christensen, Esq. (NH Bar #265308)  
Two Capital Plaza  
P.O. Box 1137  
Concord, NH 03302-1137  
(603) 224-7761











# John G. Cronin, Esquire Memos for Submission





## *Memorandum*

Date: September 6, 2022

To: Portsmouth Zoning Board of Adjustment

From: John G. Cronin, Esquire

Re: Variance Application – Banfield Road, Portsmouth, New Hampshire

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The Applicant submits the following ad-valorem tax analysis for consideration on the case on re-hearing. The facts relied upon for the analysis are as follows:

1. Projected vertical construction costs of \$200,000.00 per unit;
2. The Portsmouth 2021 tax rate of \$15.03 of valuation; and,
3. DRA Median Ratio for 83.8%.

The Applicant proposes 60 units of rental housing for an indicated cost of \$16,000,000. After application of the ratio of 83.8%, the indicated assessed value for ad valorem taxes is \$13,408,000.00. The resulting annual tax revenue based on a mil rate of \$15.03 total of \$201,522.24.

It should be noted that the land was not included as it already subject. The projected costs of construction are estimates and are subject to change based on market conditions up to and during the time of construction.

End.



## *Memorandum*

Date: September 6, 2022

To: Portsmouth Zoning Board of Adjustment

From: John G. Cronin, Esquire

Re: Variance Application – Banfield Road, Portsmouth, New Hampshire

---

The Applicant provides notice of its willingness to accept the following conditions of approval that will encumber the property that is the subject of the pending application:

1. The Applicant agrees to include capitalized and bold language in all residential leases that requires the residents to acknowledge the proximity to an active industrial site and waive any claims that may be related to the industrial operation; and,
2. The Applicant agrees to enter into an indemnity agreement with the industrial abutter holding it harmless from any claims from the residential tenants and providing appropriate indemnification.

End.



# **FOUGERE PLANNING & DEVELOPMENT Inc.**

## **Mark J. Fougere, AICP**

253 Jennison Road Milford, New Hampshire 03055  
phone: 603-315-1288 email: Fougereplanning@comcast.net

### **JRDEV, LLC – Multi-family Residential Portsmouth, NH September 7, 2022**

#### **Estimated School Age Children**

Development Program: Construction of 60 garden style apartment units within a mixed use development. The unit mix program planned for the residential community will include both studio and one bedroom units at outlined in Table One.

Table One  
Unit Mix Profile - Garden

Studios	20
One Beds	40
Total	60

#### **Schools**

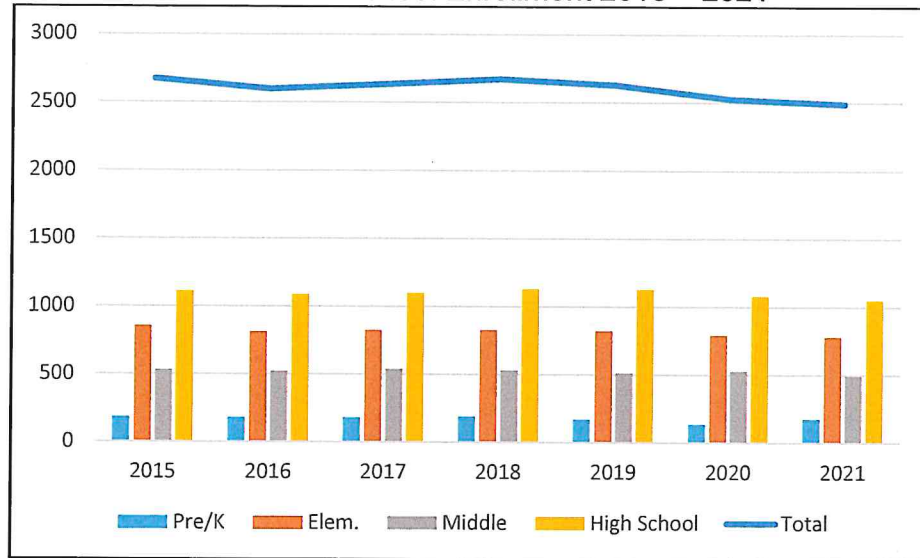
Reviewing school enrollments over the last seven years demonstrates that census peaked in 2015 as outlined in Table Two and Figure One, with the greatest declines occurring at the elementary school level.

Table Two  
School Enrollment 2015 - 2021<sup>1</sup>

Year	Pre/K	Elem.	Middle	High School	Total
2015	181	854	529	1,110	2,674
2016	179	811	521	1,087	2,598
2017	179	823	536	1,096	2,634
2018	189	824	531	1,128	2,672
2019	169	821	512	1,129	2,631
2020	134	790	525	1,078	2,527
2021	174	778	491	1,049	2,492

<sup>1</sup> NH Dept. of Education Enrollment data

Figure One  
Portsmouth School Enrollment 2015 – 2021



### School Age Children (SAC)

To estimate the number of school age children that may reside within the proposed apartment complex, we reviewed data from a statewide enrollment Report prepared by AER<sup>2</sup>. It should be noted that studio and one-bedroom units generate few School Age Children (SAC). Based on the data researched for multi-family apartments, a per unit SAC ratio of 0.04 was derived<sup>3</sup>. Applying this Ratio to the proposed development generates an estimated 3 (2.4) SAC. Given the declining enrollment trends seen in the community, these students will not impact school capacity.

<sup>2</sup> Housing and School Enrollment in NH, June 2012 Prepared for NHHFA, Appendix PUMS data, Renter Occupied Units.

<sup>3</sup> This low SAC ratio tracks with similar data found in Massachusetts, where data from over 1,000 apartments showed a studio/one-bedroom unit SAC ratio of .009 students per unit.





**ISSUED FOR REVIEW**  
JANUARY 16, 2025

PROFESSIONAL ENGINEER FOR  
ALLEN & MAJOR ASSOCIATES, INC.

REV	DATE	DESCRIPTION

APPLICANT/OWNER

**RICCI CONSTRUCTION**  
PORTSMOUTH, NH

PROJECT

**SITE DEVELOPMENT**  
225 BANFIELD ROAD  
PORTSMOUTH, NH

PROJECT NO.	3055-01	DATE	06/23/23
SCALE:	1" = 40'	DWG. CODE	UNREVIEWED
DRAWN BY:	JG	CHECKED BY:	MAAM

PREPARED BY

**AM**  
**ALLEN & MAJOR ASSOCIATES, INC.**  
civil engineering & landscape architecture  
professional consulting & landscape architecture  
www.a-m-a.com  
400 BARNESVILLE ROAD  
MANCHESTER, NEW HAMPSHIRE 03103  
TEL: (603) 673-3300  
FAX: (603) 673-3301

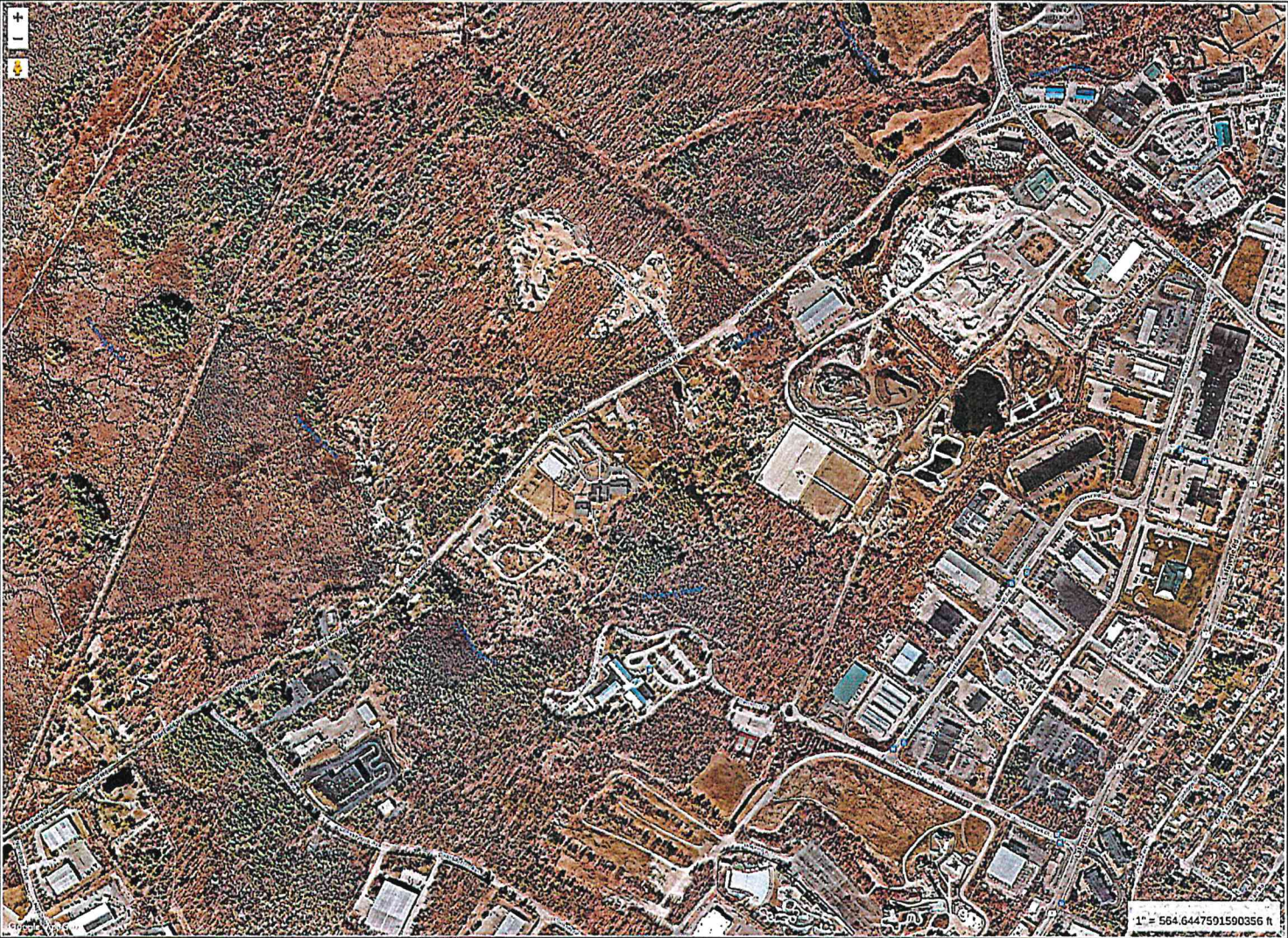
SHOWN IN A. & M. MAPS. ALL RIGHTS RESERVED. NH.  
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DRAWING TITLE:  
**CONCEPTUAL SITE PLAN  
OPTION 7**

SHEET NO.  
**1**



Banfield-Peverly to Constitution



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.



[illegible]

## NOTES: CONTINUED

ALL CONSTRUCTION AND MATERIALS SHALL BE IN ACCORDANCE WITH ALL STATE AND LOCAL CODES.

THE CONTRACTOR SHALL BE RESPONSIBLE FOR VERIFYING AND DETERMINING THE EXISTENCE AND DEPTHS OF ALL EXISTING UTILITIES, BEFORE OR NOT SHOWN ON PLANS. PRIOR TO THE START OF ANY CONSTRUCTION, THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND FOR THE PROPOSED CONSTRUCTION TO DETERMINE APPROPRIATE ACTION TO BE TAKEN TO AVOID DAMAGE TO EXISTING UTILITIES.

ALL UTILITY COMPANIES NEEDED: INDIVIDUAL CONTRACTOR IS TO COORDINATE WITH TELEPHONE, DRAINAGE, AND ELECTRIC COMPANIES REGARDING THE LOCATION OF EXISTING UTILITIES TO THE INSTALLATION OF ANY CONSTRUCTION.

THE CONTRACTOR SHALL BE RESPONSIBLE FOR COORDINATING WITH ALL UTILITY COMPANIES AND DISSEMINATE PRIOR TO ANY EXCAVATION. EXCAVATION TO CONTACT BENEATH AT LEAST 75 HOURS TO THE UTILITY COMPANIES.

FOR THE STABILIZATION OF APPROVED UNLOADING, LOADING, AND METHODS OF WELDS BRIDGING MATERIALS TO THE JOB, SHOULD NOT BE ON THE BRIDGEWAY OF THE BRIDGE.

VERNON  
ROUTE 33  
P.O. BOX 307  
GIRTLAND, NM 87040  
CONTACT: RALPH WICKMIRE  
(803) 417-2000

NORTHERN UTILITIES, INC.  
325 WEST 8000  
PORTSMOUTH, NH 03801  
CONTACT: JEFF INGLIS  
(803) 438-0310

WATER: PORTSMOUTH, DEPARTMENT OF PUBLIC WORKS  
100 COMMERCE WAY  
PORTSMOUTH, NH 03801  
CONTACT: KYLE JENNIS

CABLE: MEDIA ONE  
100 COMMERCE WAY  
PORTSMOUTH, NH 03801  
CONTACT: GEORGE KIRKWOOD  
(803) 433-2168

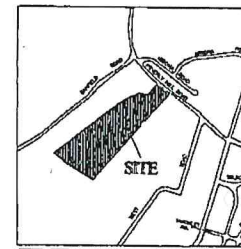
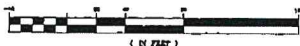
▲

SEWER	FORTSMOUTH DEPT. OF PUBLIC WORKS 880 FLEURY HILL ROAD FORTSMOUTH NH 03801 CONTACT: MRS. SCHWABE (603) 521-1892
ELECTRIC	PUBLIC SERVICE CO. OF NH 1700 LAFAYETTE ROAD FORTSMOUTH NH 03801 CONTACT: MAYNARD WILKINS TRANSMISSION LINE ENGINEER (603) 438-5880

MAP 8-54 (11)  
M/F RICE CONSTRUCTION CO. INC.  
225 BANFIELD RD.  
PORTSMOUTH, NH 03801  
PORTION OF ROAD 1743-0192

MAP R-66 LOT 1  
M/F RICE CONSTRUCTION CO. INC.  
325 BARNFIELD RD.  
PORTSMOUTH, NH 03801  
RCD 2521-122

NOTE RE: BASE PLAN BY TFM/MSC  
48 CONSTITUTION DR., BEDFORD, NH 03110  
PROJECT #07112  
DATE 4/23/2007



### LOCATION PLAN

RCRO RODDINGHAM COUNTY REGISTRY OF DEEDS  
 3093-1228 BOOK NO./PAGE NO.  
 ECI SEE EASEMENT CURVE TABLE  
 ELI SEE EASEMENT LENGTH TABLE  
 EP EDGE OF PARCELS  
 ETW EDGE OF TRAVELED WAY  
 N/F NOW OR FORMERLY  
 S.F. SQUARE FEET  
 TYP. TYPICAL  
 W EXISTING WATER MAIN  
 NG NATURAL GAS  
 OH OVERHEAD UTILITY  
 276 HYDRANT  
 MAP 252 LOT 5 ASSESSORS MAP & PARCEL NUMBER  
 U.P. PROPERTY LINE  
 EI UTILITY POLE  
 CATCH BASIN  
 OH OVERHEAD UTILITY  
 R.O.W. RIGHT OF WAY  
 UGE UNDERGROUND ELECTRIC  
 GUY GUY  
 Δ CENTRAL ANGLE  
 R RADIUS  
 L LENGTH  
 TIR TO BE REMOVED  
 EXISTING DRAIN MANHOLE  
 EXISTING SEWER MANHOLE  
 TRAFFIC FLOW ARROW  
 VGR VERTICAL GRANITE CURBING  
 EXISTING TREE  
 PROPOSED TREE  
 EXISTING STOCKADE FENCE  
 PROPOSED STOCKADE FENCE  
 EXISTING CONC. CURB  
 PROPOSED CONC. CURB  
 52  
 APR 10 20

## SCALE RELOCATION PLAN

MAP 254 LOT 7  
Pike Industries, Inc.  
650 PEVERLY HILL ROAD  
PORTSMOUTH, NH 03801

Approval no: 4/30/9  
Approved by: J. Tuller TH Walker  
App: subject to conditions in letter of approval  
DRAWN BY: APPROVED BY:  
RA JTO

SHEET:	DATE:	REVISED
1 OF 1	2/19/19	REVISED

PREPARED BY:  
Pike Industries, Inc.  
3 Eastgate Park Road  
Belmont, New Hampshire  
803/527-5100



03/04/2010 10:00



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## Having the 'hottest housing market' means you don't have enough houses

BLOG, FEATURED, HOUSING, LOCAL GOVERNMENT



New Hampshire has the top two hottest housing markets in the country, as rated by real estate search website [realtor.com](http://realtor.com) [<http://realtor.com>]. These ratings should be taken with a grain of salt, as they're based in part on search queries on a single listings website. But even if the rankings are an accurate representation of the market, that's not really great news for Granite Staters, as it's further confirmation that the state suffers from a severe housing shortage.

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market. Demand is just one side of the coin. Supply is the other, and that's a big reason why New Hampshire has claimed the top two spots on the list.

The demand side of the [realtor.com](http://realtor.com) [http://realtor.com] rankings is based on unique viewers per property on that website only (which is a serious limitation). Concord tops the list at 3.2 views per property. Manchester is second at 2.6.

The proxy for the supply side of the ranking is based on how long homes stay on the market. Median time spent on the market in Concord is 13 days, according to the site. For Manchester it's 12 days.

Rochester, N.Y., has a median time on the market of 12 days, making it the only other community in the site's list of top 20 hottest markets that is close to the Concord and Manchester numbers.

Such a short time spent on the market indicates not just high demand, but an extremely low supply. A balanced market is considered one that has at least six months of inventory. It would take less than a month to sell every home on the market in New Hampshire, according to the New Hampshire Housing Finance Authority.

The [realtor.com](http://realtor.com) [http://realtor.com] ranking shows Concord and Manchester to be in the top four communities for price, behind two other New England metropolitan areas. That's another sign that our supply is extremely low.

The top median listing prices were Portland, Maine, at \$549,000, Burlington, Vt., at \$484,000, Manchester at \$478,000, and Concord at \$457,000.

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A [housing growth map](https://www.axios.com/2022/07/18/housing-construction-us-map?utm_source=newsletter&utm_medium=email&utm_campaign=newsletter_axios&stream=top) [[https://www.axios.com/2022/07/18/housing-construction-us-map?utm\\_source=newsletter&utm\\_medium=email&utm\\_campaign=newsletter\\_axios&stream=top](https://www.axios.com/2022/07/18/housing-construction-us-map?utm_source=newsletter&utm_medium=email&utm_campaign=newsletter_axios&stream=top)] published this week by Axios helps illustrate the underlying supply problem. It shows the percent change in housing units from last July to this July, by county.

Only three counties in New England experienced at least a 1% increase in housing units in the last year. Grafton County was the only one in the Granite State.

The New Hampshire Housing Finance Authority's annual [Housing Market](https://www.nhhfa.org/wp-content/uploads/2022/06/NH-Housing-Market-Report-06-2022.pdf) [<https://www.nhhfa.org/wp-content/uploads/2022/06/NH-Housing-Market-Report-06-2022.pdf>] report, released last month, again noted that it "would take at least 20,000 housing units to achieve a balanced market" in the state.

New Hampshire is indeed a highly desirable place to live. The combination of remote work and the pandemic have boosted demand for homes in the Granite State. With remote work now a permanent and growing feature of white collar employment, and [blue state refugees seeking low-tax jurisdictions from which to live and work](https://jbartlett.org/2022/07/irs-data-show-migration-from-high-tax-to-lower-tax-states-including-new-hampshire/) [<https://jbartlett.org/2022/07/irs-data-show-migration-from-high-tax-to-lower-tax-states-including-new-hampshire/>], demand for homes in New Hampshire is likely to remain elevated for years.

But it's important for policymakers and voters to understand that this is not the cause of New Hampshire's housing shortage or high prices. Housing prices in the state have risen steadily since 2012. The recent bump in demand just adds to the previously existing imbalance.

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Being labeled home to the nation's "hottest housing market" would be nice if that term measured demand only. In reality, it's further confirmation that we don't have enough housing.

JULY 19, 2022

BY ANDREW CLINE

**Share this entry**



**Concord Monitor – February 20, 2022**

## **Zeroing in on housing crunch**

Business leaders want more stick than carrot to solve project jams

By DAVID BROOKS

The state's housing situation has gotten so tight that businesses almost have to be real estate agents for new employees, but easing the shortage may require forcing communities to allow multi-family or more clustered housing even if locals don't like it.

Those were among the items that came up during an hour-long webinar Thursday titled "What N.H. Business Can Do to Help Solve the Housing Crisis," held by New Hampshire Business Review.

The half-dozen participants were unanimous in lamenting the difficulty of finding housing of any type in many parts of the state and how that is making it hard for businesses to thrive.

"(Human resource) departments are adding almost a Realtor function to their job," said Michael Skelton, the new director of the New Hampshire Business and Industry Association. "Nowadays, many discussions with (prospective employees) span into: 'Do you have a place to live, and can we help you solve that issue, because we want to be able to hire you.'"

Possible solutions mentioned in the webinar ranged from businesses getting a developer to build housing on land that it owns to trying to change minds in the local town or city about the need to allow more housing.

"Speaking out is really critical. Joining local land-use boards, or speaking out in the news about the importance of new housing as a real public good, a place their workers need – that's important," said Rob Dapice, director of NH Housing, a quasi-government agency that supports affordable housing.

Speakers were enthusiastic about some current legislative action, including SB400 that would create an affordable housing "toolkit," including state support and training for local land-use boards that are often filled by volunteers with little experience in the field. They also praised Gov. Chris Sununu's announcement in his State of the State address shortly before the webinar that federal money would be used to create a \$100 million affordable housing fund, although details are scant.



But some speakers said more aggressive action was needed to overcome local opposition. "We have a lot of carrots; we don't have a lot of sticks," said Darren Winham, economic development director in Exeter. "We need sticks."

Winham pointed to communities in the Seacoast area that have regulations such as two-acre minimum zoning and opposition to sewer or municipal water systems, which makes it almost impossible to build anything but a relatively small number of expensive single-family homes. "They want to see other people to solve the problem; they don't want to solve the problem themselves," he said.

Several speakers praised the Housing Appeals Board created by the legislature in 2020 to provide a quicker, cheaper way to appeal decisions by local planning boards. The board has drawn criticism from those who think it overrides local control and would be disbanded or curtailed under several bills being considered by the legislature. Skelton said it was among NHBIA's "highest priority" to keep the appeal board operating as it does.

While New Hampshire has a law that requires communities to create a reasonable amount of "workforce housing," Dapice said its effect is limited. "There is a lot of confusion about what exactly compliance looks like."

Opposition to cluster or multi-family housing often carries concern that it will lower the value of existing houses in the area. Dapice said overcoming this fear is a necessary step.

"Exeter is a great example of a place where people want to be," he said. The new housing "contributes to the vibrancy of the community and that increases property



values." A development on Pleasant Street in Greenville has put up its first phase of new housing.

ASHLEY SAARI / Monadnock Ledger-Transcript

# BUSINESS PERSPECTIVE: TROUBLE AHEAD IF NH DOESN'T SOLVE HOUSING CRISIS

[Back to News Releases \(https://members.biaofnh.com/news-releases\)](https://members.biaofnh.com/news-releases)

 By Rick Fabrizio  10/4/2021



Since May, I have traveled to all corners of the state meeting with chamber of commerce leaders and learning about top issues facing their member companies. From Portsmouth to Colebrook, Nashua to North Conway, the answers were all the same: Lack of workers and lack of housing.

There may not be a greater long-term threat to New Hampshire's economy than the lack of a diversified housing stock. Employers are struggling to fill open positions and soon it will slow the overall economy. The lack of affordable housing within a reasonable commuting distance to work is one contributing factor adding to staffing difficulties employers face. The Business and Industry Association, New Hampshire's statewide chamber of commerce and leading business advocate, ranks the need for more workforce housing among its top issues.

The 2021 BIA Forum on Workforce Housing: New Hampshire's Housing Crisis and the Economy will be held Wednesday, Oct. 6 from 11:30 a.m. to 1 p.m. The event, sponsored by New Hampshire Housing, will be held in-person at the DoubleTree by Hilton Manchester Downtown Hotel. Cost to attend the luncheon is \$40 for BIA and BIA Capitol Connect members, members of partnering organizations and regional housing coalitions. Cost for the general public is \$55. For more information and to register, visit <https://bit.ly/BIA-Housing> (<https://bit.ly/BIA-Housing>).

The stagnant supply of lower-cost, workforce housing is a chronic issue, dating back at least 20 years. It's now showing up in the most pronounced way. Employers can't find workers because workers can't find affordable places to live. They can barely find any place to live.

What housing goes to market sells at record prices in days. The state's median home sale price rose above \$400,000 this summer. The vacancy rate for apartments is less than 1% (5% is considered a balanced market), drawing tens of applicants for those that are available and driving up cost. Businesses are doing the best they can, pushing the state's de facto minimum wage to and above \$15 an hour. Many manufacturing companies are offering around \$20 an hour or more. It's still not enough.

NH Housing's 2021 Rental Survey Report showed the statewide median gross rent (including utilities) at \$1,498 for two-bedroom units, up 6% over 2020. It's \$1,672 in Rockingham County and \$1,643 in Hillsborough County. Statewide, a studio costs \$876; a 1-bedroom unit costs \$1,118.

There's not much economy in a barren desert. People are the economy and declining populations lead to withering economies. New Hampshire is approaching that risk.

The state's population increased just 4.6% from 2010-2020, the lowest since 2.9% in 1910-1920. This followed 2000-2010 when New Hampshire saw 6.5% population growth, while 1990-2000 saw 11.4%. The 1960s, 1970s and the 80s, each saw increases of more than 20%. Population growth has largely ground to a halt in the Granite State, but its economy expands decade after decade. Thus, you get the problem we're seeing now, and it's getting worse.

Manufacturers can't fill orders in a timely fashion because they don't have full staffing. This is true in the state's populous southern tier and rural northern tier where an infusion of well-paying jobs would be a new economic lifeline. Many hospitality businesses can't open for full hours due to the lack of workers; some are even closing.

The 1960s in New Hampshire saw population increase 21.5%, followed by 24.8% in the 1970s and 20.5% in the 80s. That's the origin of the problem as residents moved to outlying towns that went from rural to "bedroom communities."

Claire Monier, executive director of New Hampshire Housing from 1988 to 2007, recently told me those decades of growth, particularly in rural towns, prompted the rise in land-use restrictions. These restrictions effectively



eliminated starter-home subdivisions of the 60s and 70s, giving rise to larger, more expensive homes, and many fewer of them.

The state is seeing an increase in new market-rate apartments, particularly in its southern tier. It helps but there's a long way to go. N.H. Housing says the state needs 20,000 new single-, multi- and special-needs homes to achieve a balanced market. That should include a true mix, from affordable housing via local housing authorities, to market-rate apartments, to starter homes. If the state only sees new market-rate apartments, which is largely what's being built now, it's not solving the problem. Workers who live in apartments will want to move to starter homes as they start their families.

As Monier told me: "If you want a stable community you have to have home ownership. That will foster community harmony. Homeownership is very important."

##

## ADDITIONAL INFO

Media Contact : Rick Fabrizio, [rfabrizio@biaofnh.com](mailto:rfabrizio@biaofnh.com)

## NEW HAMPSHIRE'S STATEWIDE CHAMBER OF COMMERCE

Business & Industry Association

📍 122 North Main Street | Concord, NH 03301  
(<https://goo.gl/maps/Zx7I98pqTvptG9xK6>)

☎ 603.224.5388 (tel:603.224.5388)

✉ [mail@BIAofNH.com](mailto:mail@BIAofNH.com)  
(mailto:[mail@BIAofNH.com](mailto:mail@BIAofNH.com))



# BIA TO HOST WORKFORCE HOUSING FORUM AS CRISIS CONTINUES

[Back to News Releases \(https://members.biaofnh.com/news-releases\)](https://members.biaofnh.com/news-releases)

 By Rick Fabrizio  9/14/2021



The 2021 BIA Forum on Workforce Housing: New Hampshire's Housing Crisis and the Economy is scheduled for Wednesday, Oct. 6. The event, sponsored by the New Hampshire Housing, will be held in-person from 11:30 a.m. to 1 p.m. at the DoubleTree by Hilton Manchester Downtown Hotel.

The lack of a diversified housing stock with more affordable options for workers remains one of New Hampshire's biggest challenges, if not its biggest one, and it threatens the Granite State's economic growth. The Business and Industry Association, New Hampshire's statewide chamber of commerce and leading business advocate, ranks the need for more workforce housing among its top issues.

"BIA members, including chambers of commerce, across the state put the housing crisis among the most pressing issues in New Hampshire," said BIA Interim President David Juvet. "The difficulty in securing workers for open positions is directly tied to the lack of adequate housing options in the state for working people. The lack of housing is restraining economic development in New Hampshire."

A panel of experts will discuss the impact of housing on hiring; how cost and availability of housing affects working professionals' decisions on where to live; and how communities are planning for their future housing needs. The panel will discuss practical options for how employers, housing advocates and community planners can increase the availability of workforce housing in communities. Panelists include:

David Duncan, Vice President, Facilities Management, Dartmouth Hitchcock

Bill Weidacher, N.H. Association of Realtors

Greg Michael, Chair, State of New Hampshire Housing Appeals Board

Rob Dapice, Managing Director, Management & Development, New Hampshire Housing

Event partners include Housing Action NH, the N.H. Association of Realtors, N.H. Automobile Dealers Association, N.H. Lodging and Restaurant Association, Vital Communities and the Workforce Housing Coalition of the Greater Seacoast.

Cost to attend the luncheon program is \$40 for BIA and BIA Capitol Connect members, members of partnering organizations and regional housing coalitions. Cost for the general public is \$55. Members of the media can attend at no cost and should email Rick Fabrizio for details. For more information and to register, visit <https://bit.ly/BIA-Housing> (<https://bit.ly/BIA-Housing>).

## ADDITIONAL INFO

Media Contact : Rick Fabrizio, [rfabrizio@biaofnh.com](mailto:rfabrizio@biaofnh.com)

## NEW HAMPSHIRE'S STATEWIDE CHAMBER OF COMMERCE

Business & Industry Association

📍 122 North Main Street | Concord, NH 03301  
(<https://goo.gl/maps/Zx7l98pqTvptG9xK6>)

☎ 603.224.5388 (tel:603.224.5388)

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(mailto:[mail@BIAofNH.com](mailto:mail@BIAofNH.com))

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OPINION**



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fax 603 647 4325

28 Deer Street, Suite 301  
Portsmouth, NH 03801  
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fax 603 431 3122

[www.nainorwoodgroup.com](http://www.nainorwoodgroup.com)

September 7, 2022

John G. Cronin, Esquire  
Cronin, Bisson & Zalinsky, P.C.  
722 Chestnut Street  
Manchester, New Hampshire 03104

Re: Applicant Name – Variance for 60 Unit Multi Family Development in the Industrial  
Zone 225 Banfield Road, Portsmouth, New Hampshire

Dear Attorney Cronin:

At your request, I reviewed the ZBA Application proposed to develop sixty (60) multi-family units on properties zoned industrial located at 225 Banfield Road, Portsmouth, New Hampshire (LU-22-91). The Applicant proposes to consolidate the lots if the project is approved. It is my understanding that the Zoning Board of Adjustment considered the application and granted the requested variances. However, an industrial abutter filed a request for re-hearing that was subsequently granted.

You requested that I review the application and plans and make a determination based on my education, training, experience and residency in Portsmouth whether the variances, if granted, will diminish the value of the adjacent industrial facility. I have reviewed the plans and the application and understand that the unit mix proposed is 20 studio units and 40 single bedroom units. I am familiar with the site and the location as an almost 12 year resident of the community. My children participate in youth sports and I visit the community fields on a regular basis.

The adjacent industrial site, operated by Pike Industries, is an active industrial site that has been in operation for many years. Since Pike Industries started operations at the site, the real estate environment in the community has changed dramatically with demand for housing far outpacing supply. The waterfront location, bustling downtown and continuing improvements make Portsmouth one of the most desirable communities in New England. Young professionals are attracted to the seacoast in general and Portsmouth in particular for the lifestyle and employment opportunities. It is no secret that there is an inadequate supply of housing to meet demand and there is an employment crisis throughout the State of New Hampshire. The proposal for smaller studio and one-bedroom



units provides diversity in the housing stock and provides housing opportunities that are attractive to young professionals and recent graduates seeking to enter the workforce.

I am sensitive to the concerns of the industrial abutter who may be concerned that having residential units close to their active operation could generate complaints about noise, smell and impacts from industrial operations. If this were a fee simple project where units were sold to third party purchasers, the concern would have merit. As a rental community on property also occupied by the owner for non-residential uses, the issue is less of a concern. You have advised the Applicant is willing to agree to conditions that requires every lease to include an acknowledgment of the abutting industrial use and waiver of any complaints arising from the industrial use. My understanding is the Applicant is also willing to consider an indemnification provision to protect the industrial abutter from any complaints.

There is a suggestion that a residential use would lower the potential resale value of the Pike Industries parcel. In their motion for rehearing the abutter, through their attorney states in Paragraph 18:

*"Anyone considering purchasing the Pike Property for redevelopment would be concerned about sixty-residential abutters opposing any redevelopment that is inconsistent with what would be, in their minds, a residential space."*

Having been at the abutting community campus fields for countless practices and games in the fall and spring, I can say for certainty that there is no question of the industrial use to the area. Pike Industries towers over the landscape. Physically their piles stand above the trees of the subject property and the city field. When their crews are working it is audible from adjacent parcels. When it is dusk there are light stations up. In short, the current use a Pike Industries makes it known by all that this is an industrial zone. In any sort of redevelopment of the Pike Industries parcel to a different industrial use, it is more likely than not, that the use would be more discreet than the current one. But even if it were to be of the same type of manufacturing, there is an expectation that has been set in the area because of the visibility of what Pike Industries does on site.

Another consideration for concern, was safety and its impact on value. Elsewhere in the same paragraph the abutter, through their attorney states:

*"[Potential buyers] would be concerned about the increased safety costs of having to operate so close to residential uses where children may inadvertently wander into the Pike Property."*

I disagree with the general premise that an industrial user would turn down a site because of proximity to children. But if I were to grant that concern merit, I would suggest the larger contributor would be the existing abutter in the ball fields, not the proposed apartment use. Children are not a large concern in studio and one-bedroom units. However more to the point, if there are safety concerns for children the likely source would be the playing fields. And while there are parents and coaches watching the players, there are always siblings on site at these events.

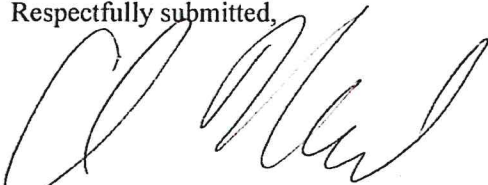
Lastly in the same Paragraph 18 discussing diminution of value, there is a general concern that "...comingling industrial and residential uses creates burdens to the industrial businesses..." I would suggest that the area around Banfield Road is already a comingling of industrial and residential

uses. In addition to the projects outlined already in this letter there is a housing project across Banfield near the subject. There are industrial projects south of the projects. There are also other non-residential and non-industrial uses that also are nearby including a school and a kids camp. In short the area has already been comingled.

The area, like the entire seacoast, is in transition and recent developments in the immediate area include a successful housing project directly across the street that sold out in record time. Also, the community fields and the children that use them are more likely to be impacted by the industrial operations and certainly the fields would not have been developed if there was any concern for public health, safety and welfare. Based on my education, training and over 20 years in the real estate industry it is my opinion these uses can co-exist without any diminution to their respective property values.

The conditions of approval, buffers and long distances to actual operations within the industrial site bolster my opinion. Thank you for your consideration.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Chris Norwood', written over a light blue horizontal line.

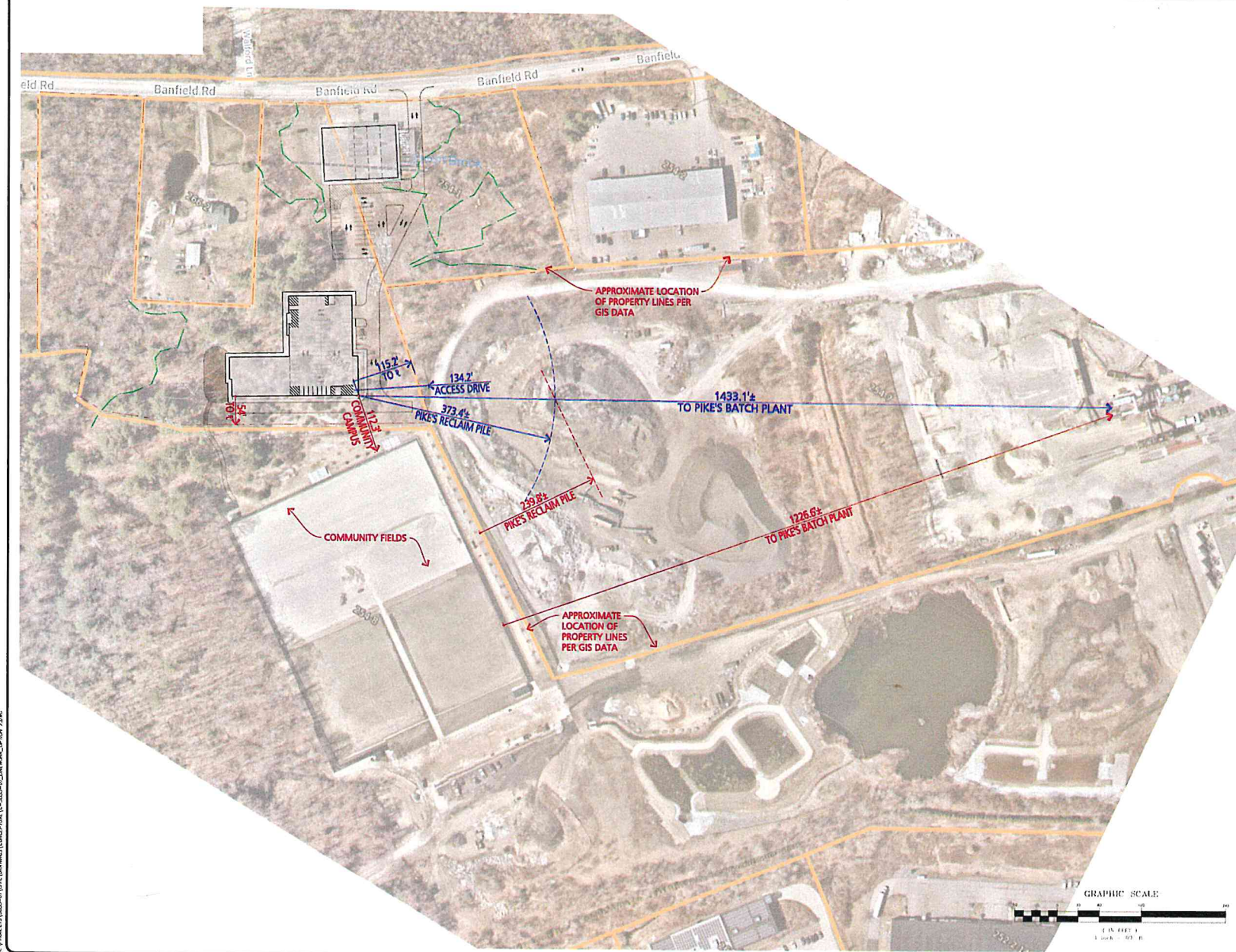
Chris Norwood, CCIM

President

NAI Norwood Group, Inc.

**JRDEV, LLC**  
**AERIAL DIMENSIONS TO**  
**ABUTTING PROPERTIES**





**ISSUED FOR  
REVIEW**

PROFESSIONAL ENGINEER FOR  
ALLEN & MAJOR ASSOCIATES, INC.

REV	DATE	DESCRIPTION

REV	DATE
APPLICANT/OWNER:	

**RICCI CONSTRUCTION  
PORTSMOUTH, NH**

PROJECT:

**SITE DEVELOPMENT**  
225 BANFIELD ROAD  
PORTSMOUTH, NH

PROJECT NO.	3055-01	DATE:	04-22-22
SCALE:	1" = 40'	DWG. :	C3055-01_LINWORK_OPTION 1
DRAFTED BY:	JG	CHECKED BY:	MAM

PREPARED BY:



ALLEN & MAJOR  
ASSOCIATES, INC.

civil engineering & land surveying  
environmental consulting & landscape architecture  
[www.allenmajor.com](http://www.allenmajor.com)

400 HARVEY ROAD  
MANCHESTER, NH 03103  
TEL: (603) 627-5500  
FAX: (603) 627-5501

WOBURN, MA • LAKEVILLE, MA • MANCHESTER, NH

THIS DRAWING HAS BEEN PREPARED IN ELECTRONIC FORMAT. CLIENTS/CLIENTS REPRESENTATIVE OR CONSULTANT MAY REQUEST PROVIDED COPIES OF DRAWINGS AND SPECIFICATIONS ON MAGNETIC MEDIA FOR REVIEW INFORMATION AND USE FOR SPECIFIC APPLICATION TO THIS PROJECT. DUE TO THE POTENTIAL THAT THE MAGNETIC INFORMATION MAY BE MODIFIED UNINTENTIONALLY OR OTHERWISE, ALLEN & MAJOR ASSOCIATES, INC. MAY REMOVE ALL INDICATION OF THE DOCUMENTS AUTHORSHIP ON THE MAGNETIC MEDIA. PRINTED REPRESENTATIONS OF THE DRAWINGS AND SPECIFICATIONS ISSUED SHALL BE THE ONLY RECORD COPIES OF ALLEN & MAJOR ASSOCIATES, INC.'S WORK PRODUCT.

**DRAWING TITLE:**  
**CONCEPTUAL SITE PLAN  
OPTION 7**

SHEET No.	1
-----------	---



Pike Concrete Plant

Pike Asphalt Plant

~1,500 feet

~1,450 feet

JRDEV, LLC  
Proposed Apartment  
Building





**JRDEV, LLC**  
**PROPOSED APARTMENT**  
**BUILDING ELEVATION PHOTOS**





**First Floor Window Sill Elevation  
Northeast View**





**Second Floor Window Sill Elevation  
Northeast View**









**Second Floor Window Sill Elevation  
Southeast View**



To Whom It May Concern:

I hereby authorize Alpha Contracting Services to submit the attached variance or special exception application on my behalf, and on behalf of all the owners of 1344-1346 Islington St, Portsmouth, NH 03801.

Sincerely,

Kathleen Oprea



## NEW BUSINESS

1.

The request of **Jessica Tia Nashahl (Owner)**, for property located at **1344 and 1346 Islington Street** whereas relief is needed to construct a new deck and add detached garage which requires the following: 1) Variances from Section 10.521 to allow: a) a 28' rear yard for the deck where 30' is required; b) a 2' left side yard where 10' is required for the garage; and c) a Variance from Section 10.521 to allow 30% building coverage where 20% is the maximum allowed. Said property is located on Assessor Map 233 Lot 98 and lies within the Single Residence B (SRB) district.

### Existing & Proposed Conditions

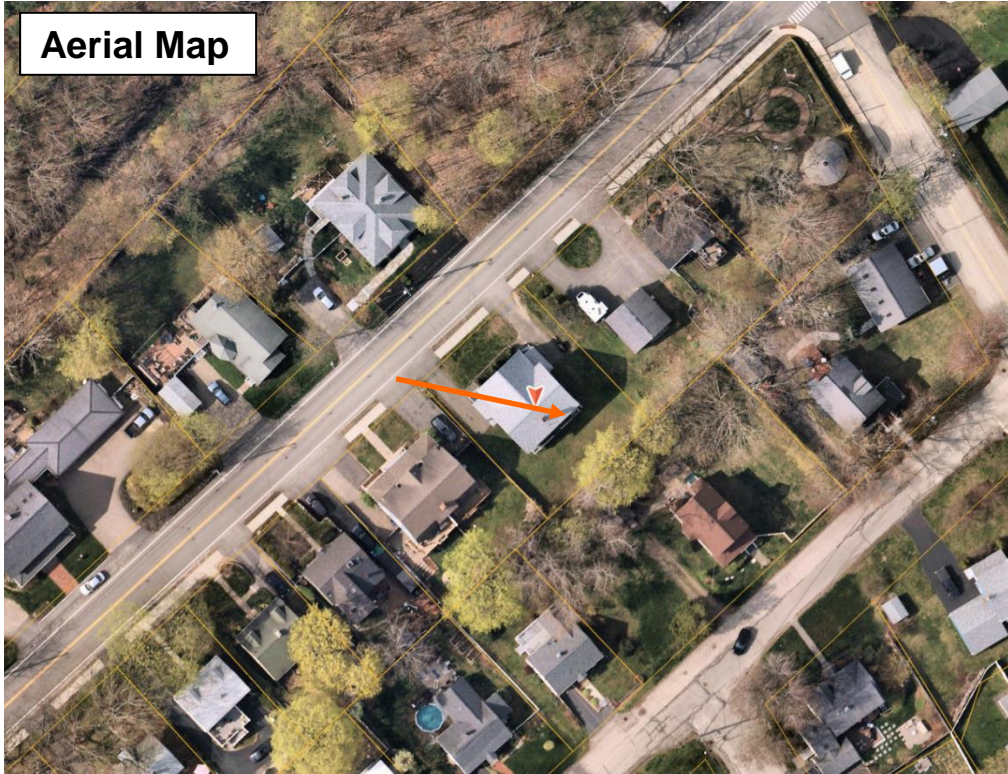
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Two family	New deck and detached garage	Primarily residential uses
<u>Lot area (sq. ft.):</u>	7,500	7,500	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	3,750	3,750	15,000 min.
<u>Lot depth (ft.):</u>	100	100	100 min.
<u>Street Frontage (ft.):</u>	75	75	100 min.
<u>Primary Front Yard (ft.):</u>	23	23	30 min.
<u>Right Yard (ft.):</u>	12	11	100 min.
<u>Left Yard (ft.):</u>	20	2	10 min.
<u>Rear Yard (ft.):</u>	36	28	30 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	20	30	20 max.
<u>Open Space Coverage (%):</u>	>40	>40	40 min.
<u>Parking:</u>	4	4	3
<u>Estimated Age of Structure:</u>	1910	Variance request(s) shown in red.	

### Other Permits/Approvals Required

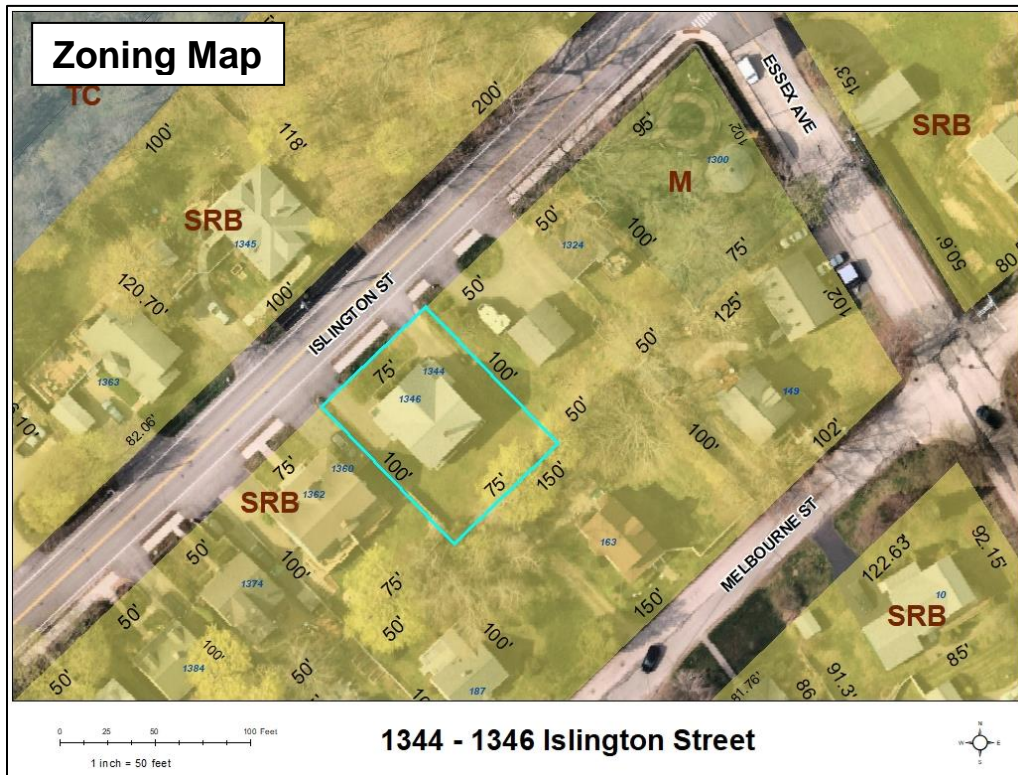
None.

## Neighborhood Context

Aerial Map



Zoning Map



## Previous Board of Adjustment Actions

No previous BOA history found.

## Planning Department Comments

The application is seeking relief to add a rear deck and a detached garage, which will result in 30% building coverage where 20% is the maximum. Both new structure will need setback relief, the deck will encroach 2 feet into the required 30 foot rear yard and the garage is proposed to be located 2 feet off of the left side yard. At 7,500 square feet, the lot is half the size of what is required for the SRB zone, making it challenging to comply with the dimensional standards based on a 15,000 square foot lot.

## Review Criteria

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

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

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

**AND**

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

**OR**

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

## 10.235 Certain Representations Deemed Conditions

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



## **Applicant's Statement of Hardship**

Please see attachment: Letter of Practical Difficulty

In summary: to accommodate a proposed 8 ft by 32 ft rear deck, a variance is needed to reduce the setback from neighbor's lot by 2 ft. This is the smallest possible footprint for a deck which will accommodate a dining table large enough for a multi-generational household. Our requested variance of 2 feet will have minimal impact and is offset by having stairs on the side.

## **Letter of Practical Difficulty**

To Whom it May Concern:

I am writing to seek a deck variance for my two-family home at 1344-46 Islington in Portsmouth, NH. Current zoning rules say that decks must be no more than 20 feet from the setback line; I respectfully request to install a deck that is 18 feet from the setback line. We are requesting a variance for the above address to seek relief of the required rear yard setback, for the reasons detailed below, the proposed reduction of the rear yard setback would allow the property owner to replace the current pair of back stairs with a single deck that would be in character with the surrounding homes along Islington Road and neighboring streets. The landings which were previously attached to the house were in poor repair and unsafe, so they needed to be replaced immediately and have already been removed from the house.

The side-by-side duplex at 1344-1346 Islington Street is jointly owned by parents, John and Jan Oprea, and my husband, John Schroeder, and me. My parents live in 1344 while my husband and I, along with our small children live in 1346. This arrangement will allow my parents to assist with the care of my children. In addition, my husband and I will be able to assist my parents and allow them to remain at home as they age. My parents, ages 68 and 67, will occupy 1344 Islington Street, and I occupy 1346 Islington Street along with my husband, our three-year-old son, and expected newborn daughter.

Our multi-generational family shares many meals together and we would like to have a deck that is large enough to hold a single table for both households and still have clearance to safely walk around the table. The need for outdoor social space has become increasingly apparent during the COVID-19 pandemic, where one family member may become ill and would otherwise be socially isolated in the absence of a safe outdoor dining space. This deck also provides easier access between the first floor dwellings of both sides of the duplex so that the two families can easily transfer large or heavy items between their homes.

Our requested variance of 2 feet will have minimal impact and is offset by having stairs on the side. Due to the shape and narrowness of this lot combined with the required rear setback of 20 ft. the strict application of the requirements of this applicable zoning chapter would deprive the existing property owner of rights and privileges currently enjoyed on this site and by other property owners in the same zoning district. We are

requesting a reduction in the required rear setback to 18 Ft. for the deck and steps from the zoning code requirement of 20 Ft.

Granting the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the zoning district in which the subject property is located. The granting of the variance would have no effect on any adjoining properties. The property in question behind our house contains a shed directly adjacent to the lot line which provides ample privacy from the house where those neighbors reside. From our proposed deck we will not have a direct line of sight into the neighbor's residence.

This zoning relief requested will not cause any detriment to the common good, as the literal interpretation and strict application of the applicable zoning requirements of this chapter would cause substantial undue and unnecessary hardship to the current property owner, not just a casual/discretionary inconvenience to the property owner.

Sincerely,

Kathleen Oprea

**Applicant's Statement of Hardship**

Please see attachment: Letter of Practical Difficulty

In summary: to accommodate a proposed 20 foot by 22 foot garage, a variance is needed to reduce the setback from neighbor's lot. This is the smallest possible footprint for a two-car garage. As this is a multi-family dwelling, to be occupied by a multi-generational family consisting of two senior citizens and a family with two small children, both families require covered parking spaces in the garage.

**Letter of Practical Difficulty**

To Whom It May Concern,

The side-by-side duplex at 1344-1346 Islington Street is jointly owned by my parents, John and Jan Oprea, and my husband, John Schroeder, and me. This arrangement will allow my parents to assist with the care of my children. In addition, my husband and I will be able to assist my parents and allow them to remain at home as they age. My parents, ages 68 and 67, will occupy 1344 Islington Street, and I occupy 1346 Islington Street along with my husband, our three-year-old son, and expected newborn daughter. We share much of the outdoor space on the property and would like a place to keep our family cars covered during the hot summer months and the snowy winter months.

We have explored all the options for placement of a minimum size two-car garage on the property and the area directly adjacent to the house (with a minimum distance of 3 ft between the house and garage to allow for access to the walls and water flow between the buildings). It was not possible to place the garage further away from the house, as the lot slopes downward and would be difficult for a car to pull in or out of. The proposed area is also well-suited to siting a garage as it is made up of ledge rock, which provides good footing for a foundation.

My parents are senior citizens and will soon not have the physical capacity to clean snow from their car during the winter or be subjected to extreme heat in the car during the summer if it is left outside. As well, for a family with young children, it is safer for us to not encounter a snowy or hot car while we are helping our children into the car.

We do not expect that this garage will inconvenience our direct neighbors, Brad and Carol Meade, as currently we have a direct line of sight into his yard from our dining room window. This garage would provide a partial sight barrier, providing additional privacy from our house. The garage will be in alignment with the current lane of the driveway on the 1344 side of the house and set back from the road so it will have minimum impact on the character or look of the neighborhood.

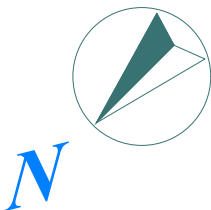
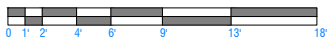
Sincerely,

Kathleen Oprea

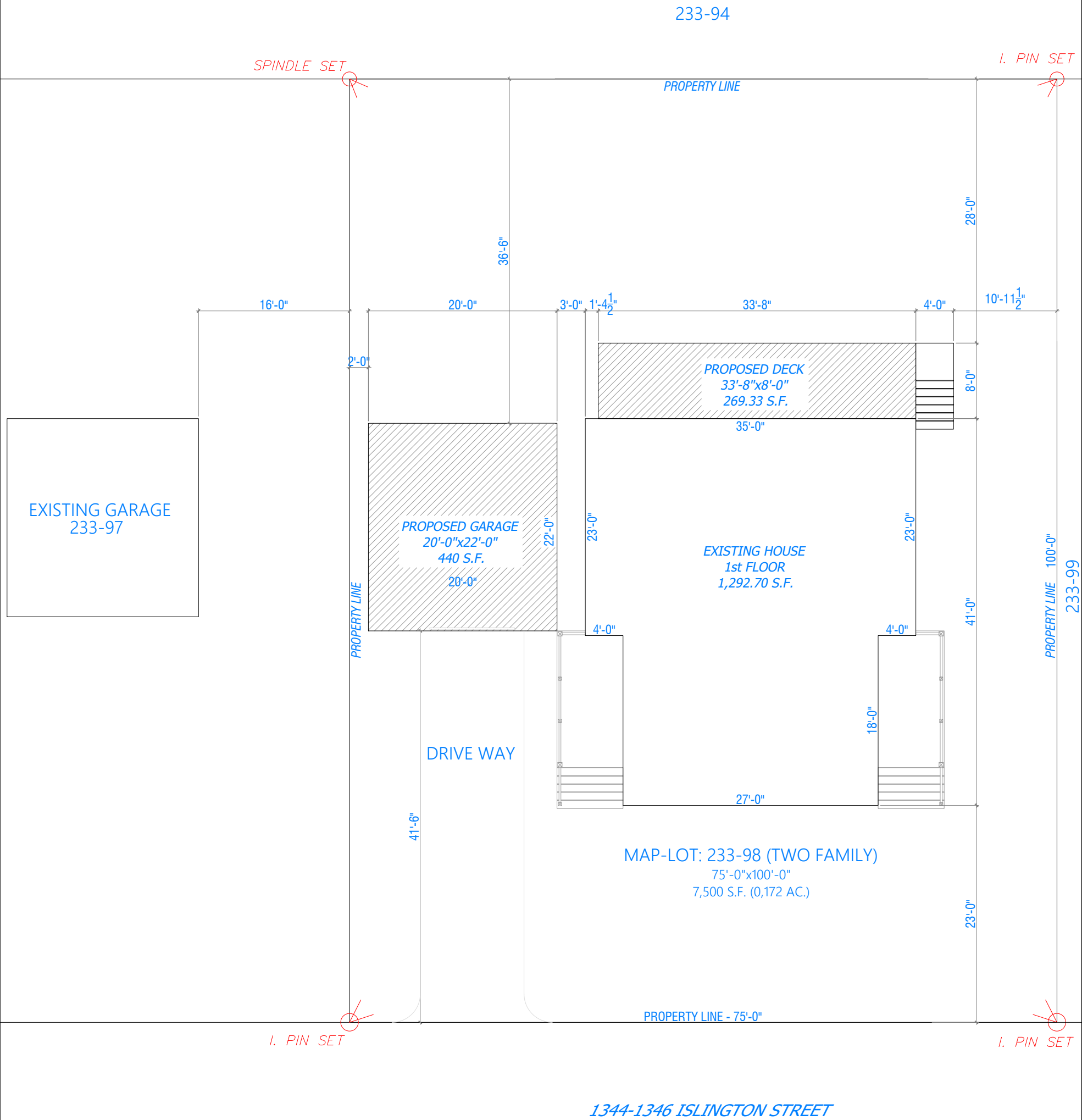


PLOT PLAN  
MAP-LOT  
615-63

NASDAHL JESSICA T/A
1344 -1346 ISLINGTON ST
PORTSMOUTH, NH 03801
DATE: 07/26/2022
DRAWING BY: ALPHA CONTRAC.
SCALE: 3/32=1'-0" (SHEET/1X17")

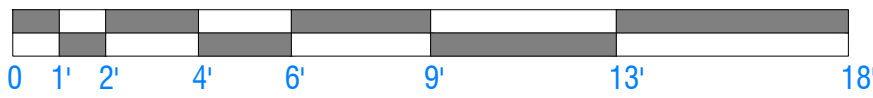


ALPHA CONTRACTING SERVICES
301 Daniel Webster Hwy
Merrimack - NH - 03054
(833) 928-0821 / (978) 580-7732
alpha@alphacontractingsvc.com
www.alphacontractingsvc.com

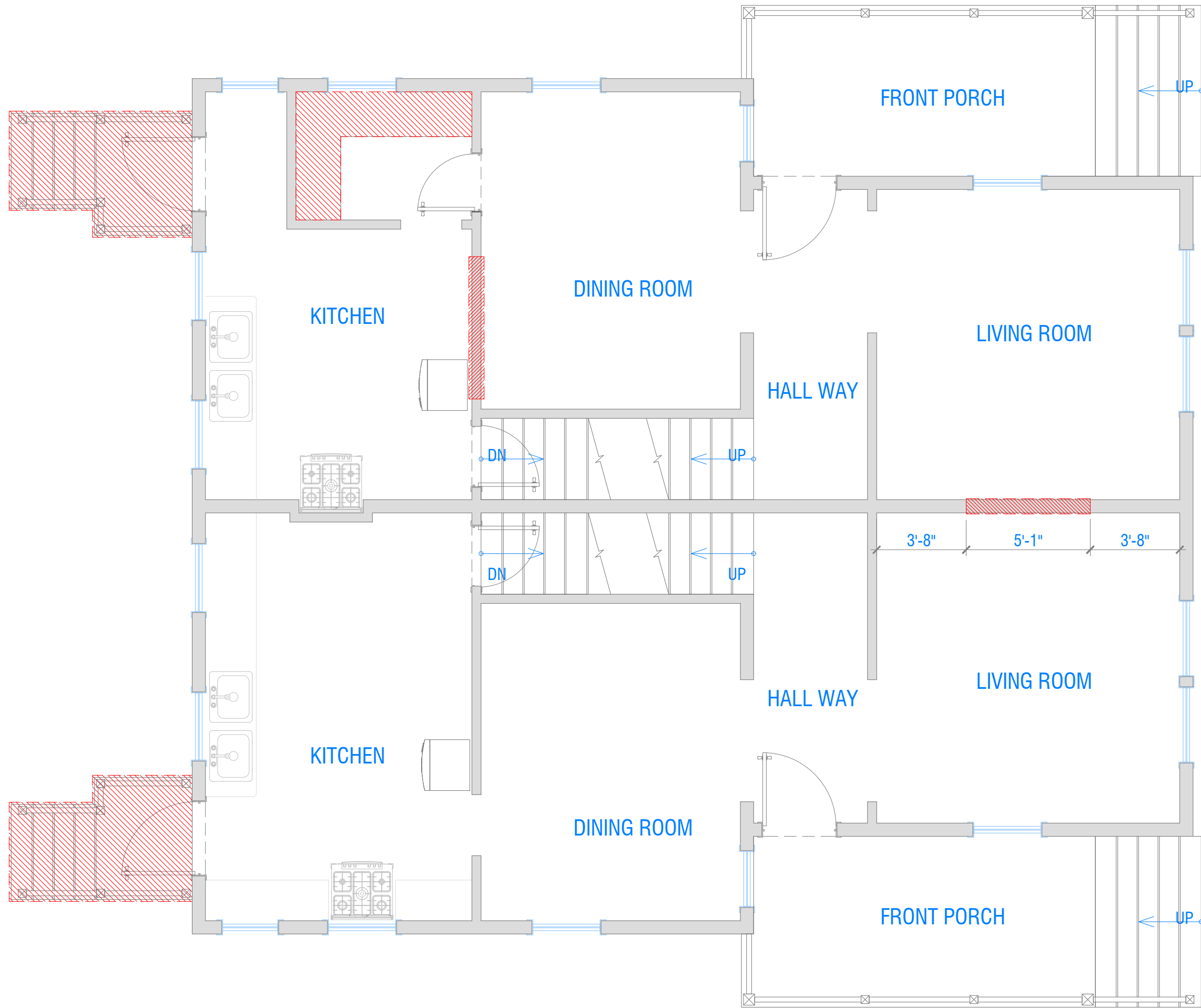


DEMOLITION NOTES

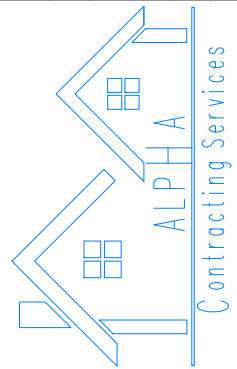
1. CONTRACTOR TO SEQUENCE DEMOLITION FROM TOP DOWN, AS REQUIRED, & PROVIDE ALL SHORING & BRACING AS REQUIRED TO SUPPORT REMAINING STRUCTURE.
2. UNLESS NOTED OTHERWISE, SALVAGE ALL OF THE FOLLOWING FOR POSSIBLE REUSE DURING RENOVATION: PLUMBING FIXTURES, APPLIANCES, DOORS/DOOR HARDWARE, CLOSET BRACKETS/RODS, WINDOWS, FLOORING, & ANY SALVAGEABLE MATERIAL TO BE USED IN RENOVATION.
3. CONTRACTOR SHALL PROMPTLY REPORT DIRECTLY TO THE DESIGNER ANY DISCOVERIES THAT MAY BE RELATED TO FIRE & LIFE SAFETY, INCLUDING BUT NOT LIMITED TO, ELECTRICAL & STRUCTURAL ISSUES



DEMOLITION PLAN KEY:	
	EXISTING WALL TO REMAIN
	EXISTING WALL/CABINETS/DECK TO BE DEMOLISHED
	NEW WALL
	LAND LIMIT



1 1st FLOOR PLAN - EXISTING  
1/4" = 1'-0"



REVISION TABLE	
NUMBER	DESCRIPTION

Interior Renovation & Deck  
1344 Islington  
Portsmouth, NH

1st FLOOR PLAN - EXISTING

DRAWINGS PROVIDED BY:  
**ALPHA CONTRAC SERVICES**  
301 Daniel Webster Hwy  
Merrimack - NH - 03054  
(833) 928-0821 / (978) 580-7732

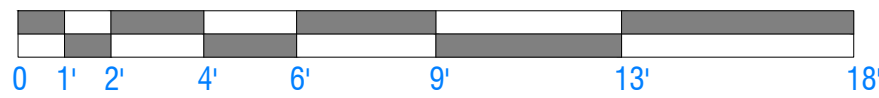
DATE:  
07/12/2022

SCALE:  
AS NOTED

SHEET:  
A1.00

DEMOLITION NOTES

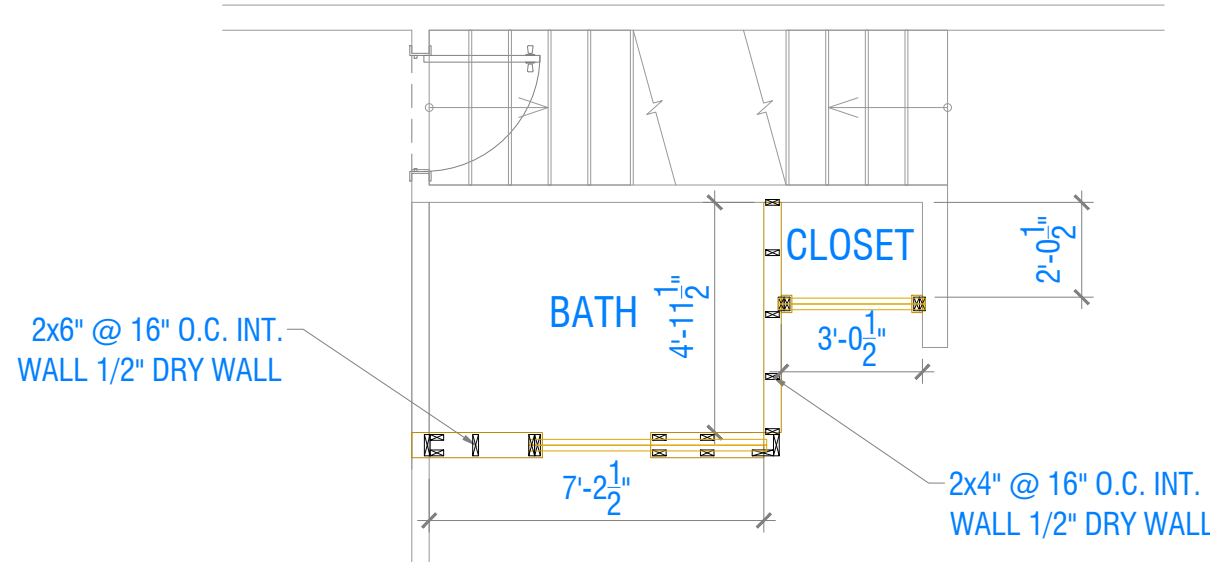
1. CONTRACTOR TO SEQUENCE DEMOLITION FROM TOP DOWN, AS REQUIRED, & PROVIDE ALL SHORING & BRACING AS REQUIRED TO SUPPORT REMAINING STRUCTURE.
2. UNLESS NOTED OTHERWISE, SALVAGE ALL OF THE FOLLOWING FOR POSSIBLE REUSE DURING RENOVATION: PLUMBING FIXTURES, APPLIANCES, DOORS/DOOR HARDWARE, CLOSET BRACKETS/RODS, WINDOWS, FLOORING, & ANY SALVAGEABLE MATERIAL TO BE USED IN RENOVATION.
3. CONTRACTOR SHALL PROMPTLY REPORT DIRECTLY TO THE DESIGNER ANY DISCOVERIES THAT MAY BE RELATED TO FIRE & LIFE SAFETY, INCLUDING BUT NOT LIMITED TO, ELECTRICAL & STRUCTURAL ISSUES



DEMOLITION PLAN KEY:	
	EXISTING WALL TO REMAIN
	EXISTING WALL/CABINETS/DECK TO BE DEMOLISHED
	NEW WALL
	LAND LIMIT

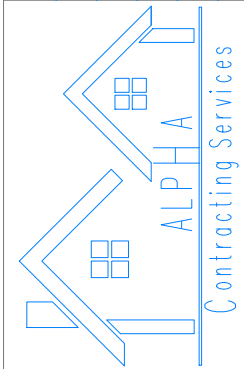
DOOR SCHEDULE							
NUMBER	QTY	FLOOR	SIZE	R/O	DESCRIPTION	HEADER	MANUFACTURER
D01	1	1st	60" x 80"	62" x 83"	DOUBLE POCKET DOOR	(3) 2" x 6" x 67"	TBD
EXIST	1	1st	28" x 80"	30" x 83"	TBD PANEL - HINGE	(2) 2" x 6" x 35"	REMAIN
D02	1	1st	28" x 80"	30" x 83"	POCKET DOOR	(2) 2" x 6" x 60"	TBD
D03	1	1st	30" x 80"	32" x 83"	BI-FOLD DOUBLE DOOR	(2) 2" x 6" x 38"	TBD
D04	1	Deck	36" x 36"	38"	DECK GATE	-	TBD

WINDOW SCHEDULE						
NUMBER	QTY	FLOOR	SIZE	R/O	DESCRIPTION	MANUFACTURER
EXIST	-	-	-	-	EXISTING WINDOWS TO REMAIN	-



1st FLOOR BATHROOM WALL FRAMING

2 1st FLOOR PLAN - PROPOSED  
1/4" = 1'-0"



REVISION TABLE		DESCRIPTION
NUMBER	DATE	

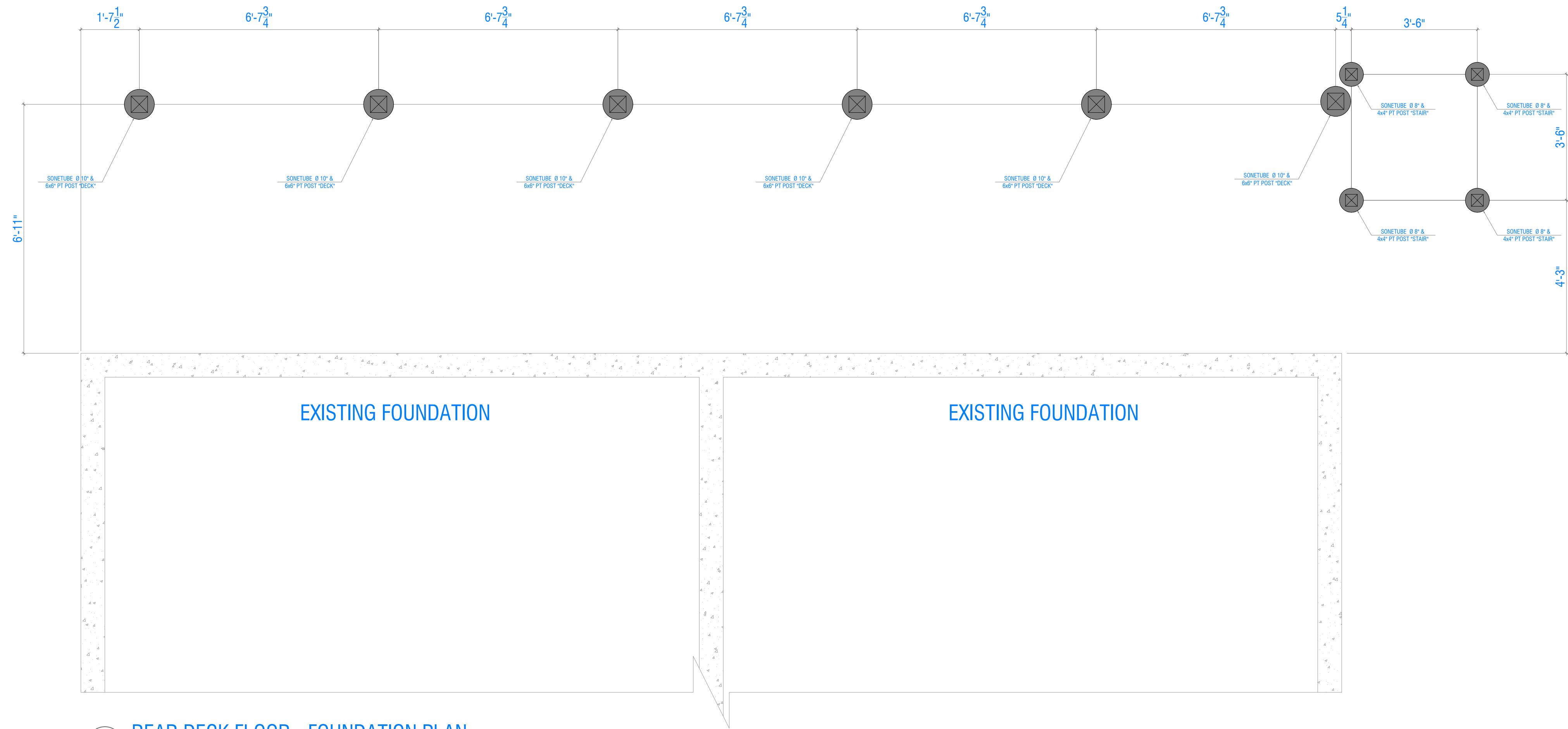
Interior Renovation & Deck  
1344 Islington  
Portsmouth, NH

1st FLOOR PLAN - PROPOSED

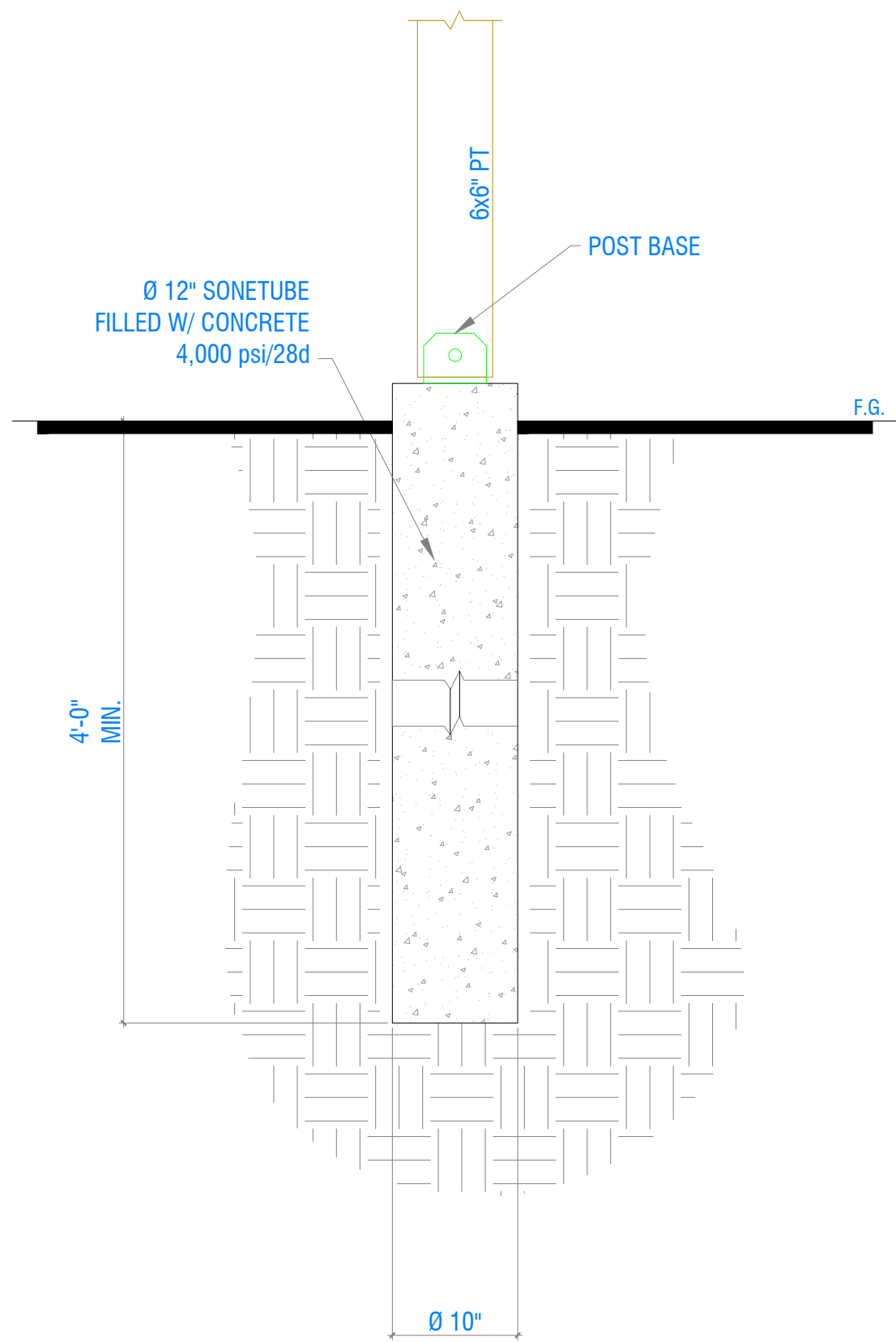
DRAWINGS PROVIDED BY:  
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Merrimack - NH - 03054  
(833) 928-0821 / (978) 580-7732

DATE:
07/12/2022
SCALE:
AS NOTED
SHEET:
A2.00

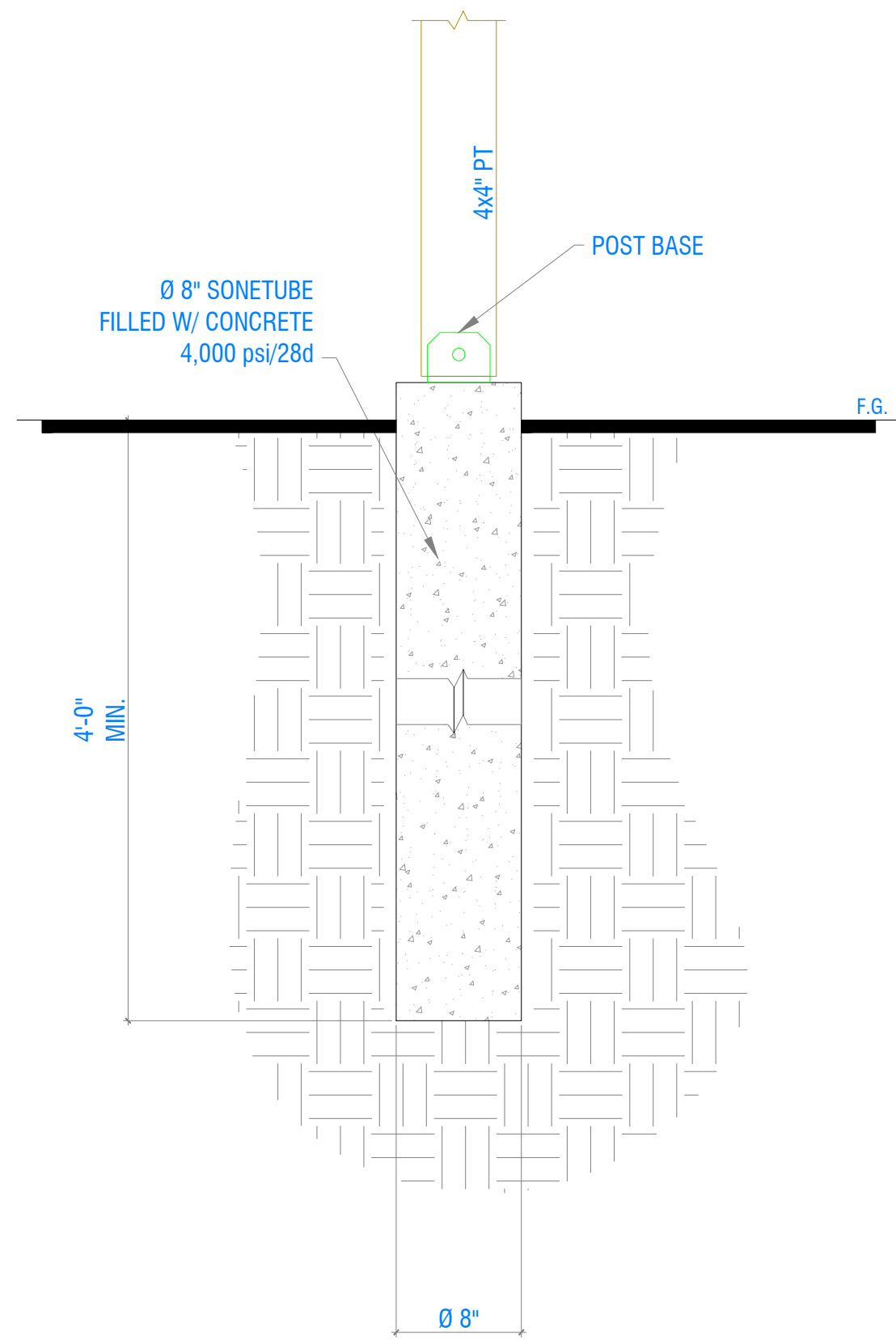




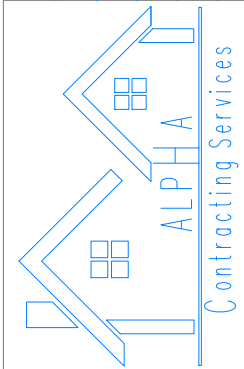
1 REAR DECK FLOOR - FOUNDATION PLAN  
1/2" = 1'-0"



TYPICAL DECK SONETUBE



TYPICAL STAIR SONETUBE



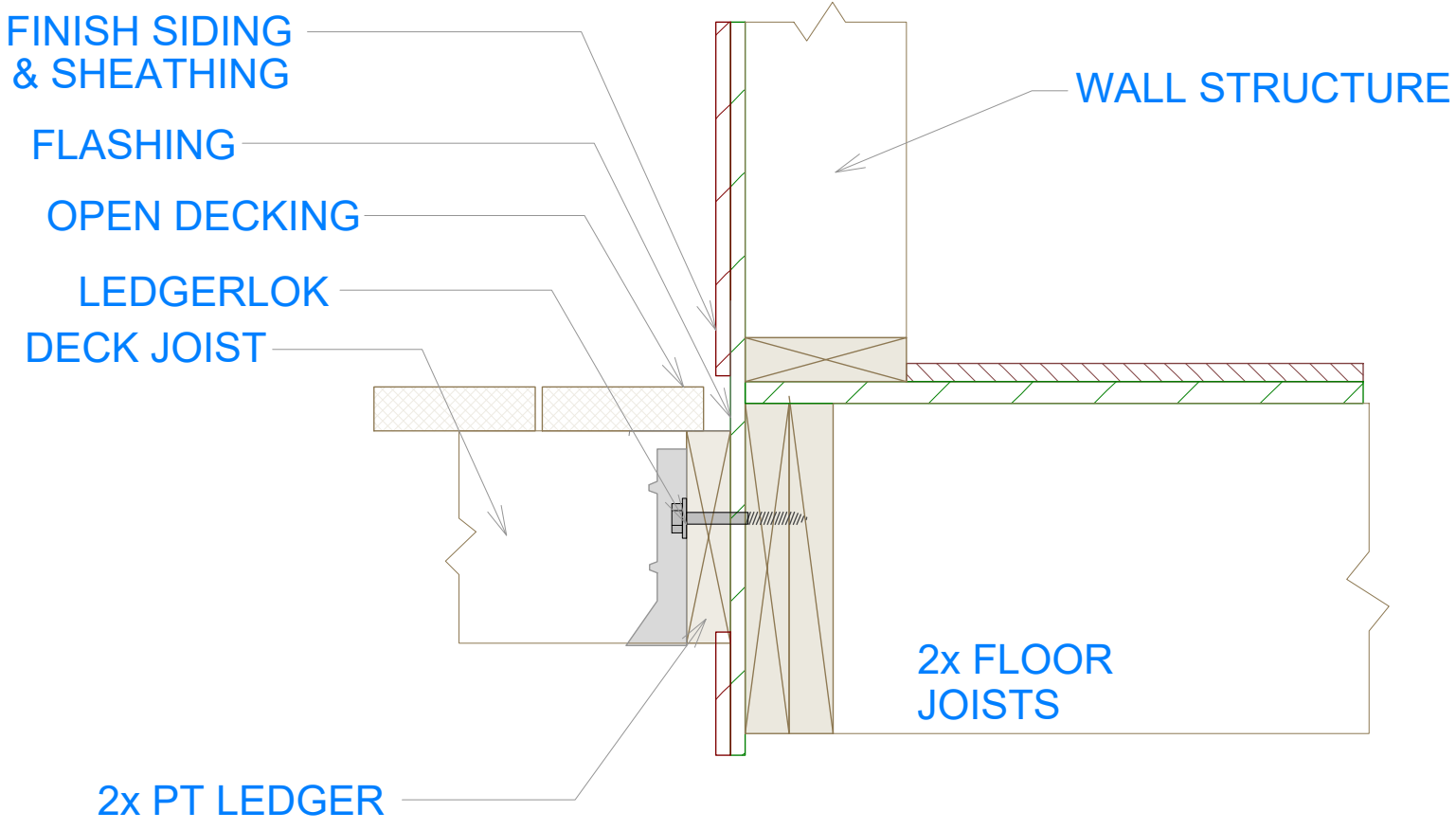
REVISION TABLE		
NUMBER	DATE	REVISED BY
		DESCRIPTION

Interior Renovation & Deck  
1344 Islington  
Portsmouth, NH

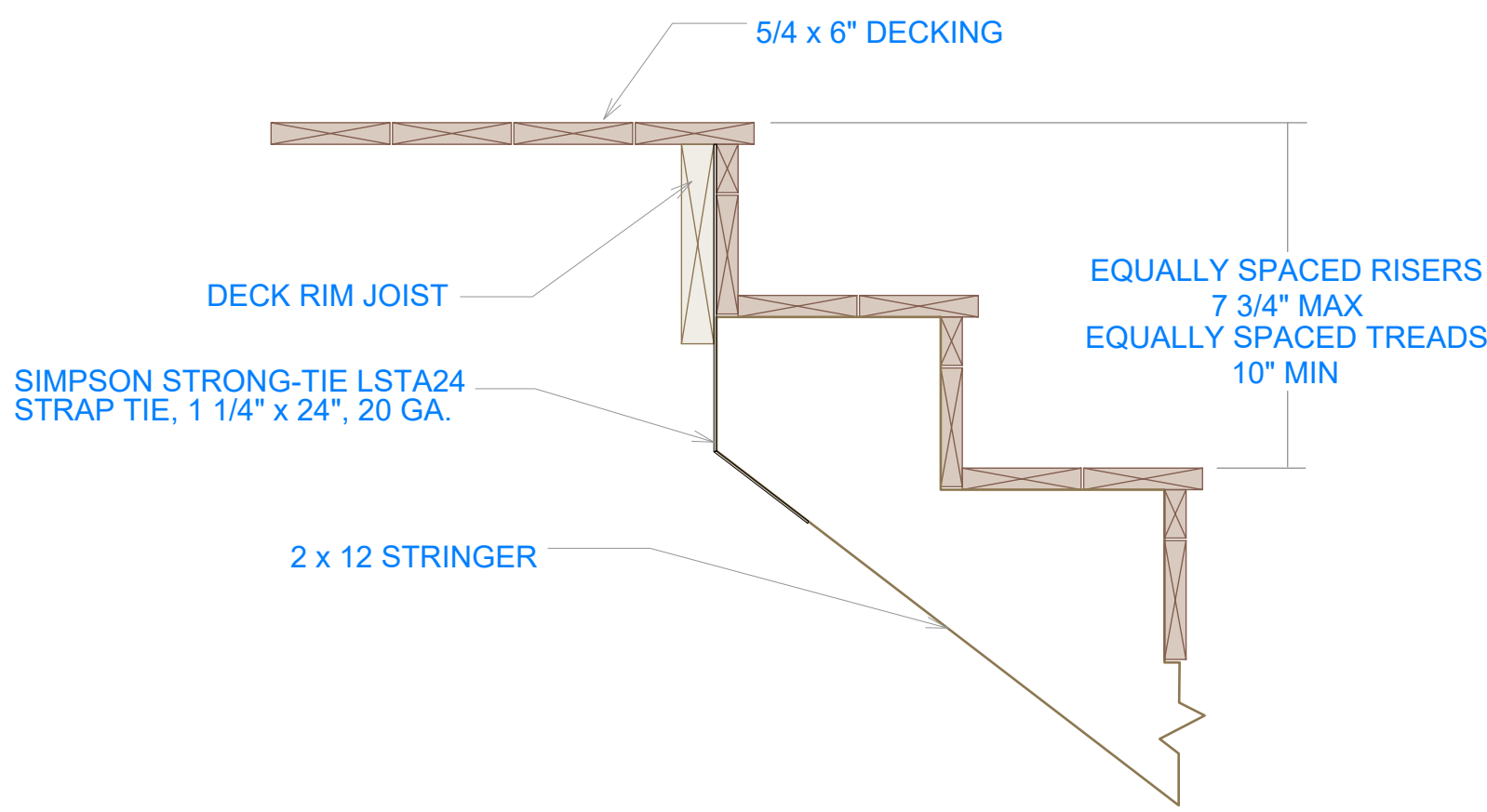
DECK FOUNDATION

DRAWINGS PROVIDED BY:  
**ALPHA CONTRAC SERVICES**  
301 Daniel Webster Hwy  
Merrimack - NH - 03054  
(833) 928-0821 / (978) 580-7732

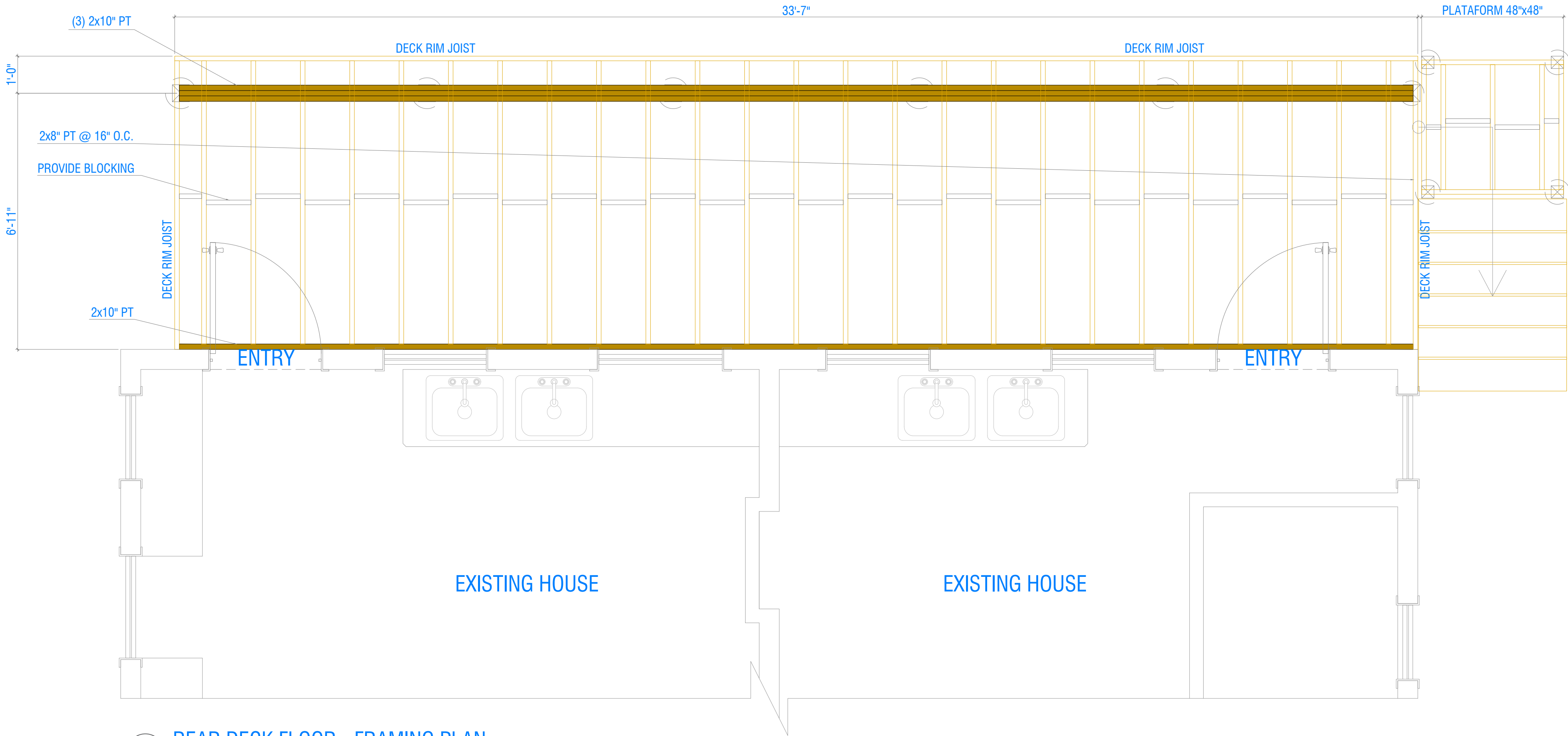
DATE:
07/12/2022
SCALE:
AS NOTED
SHEET:
\$1.00



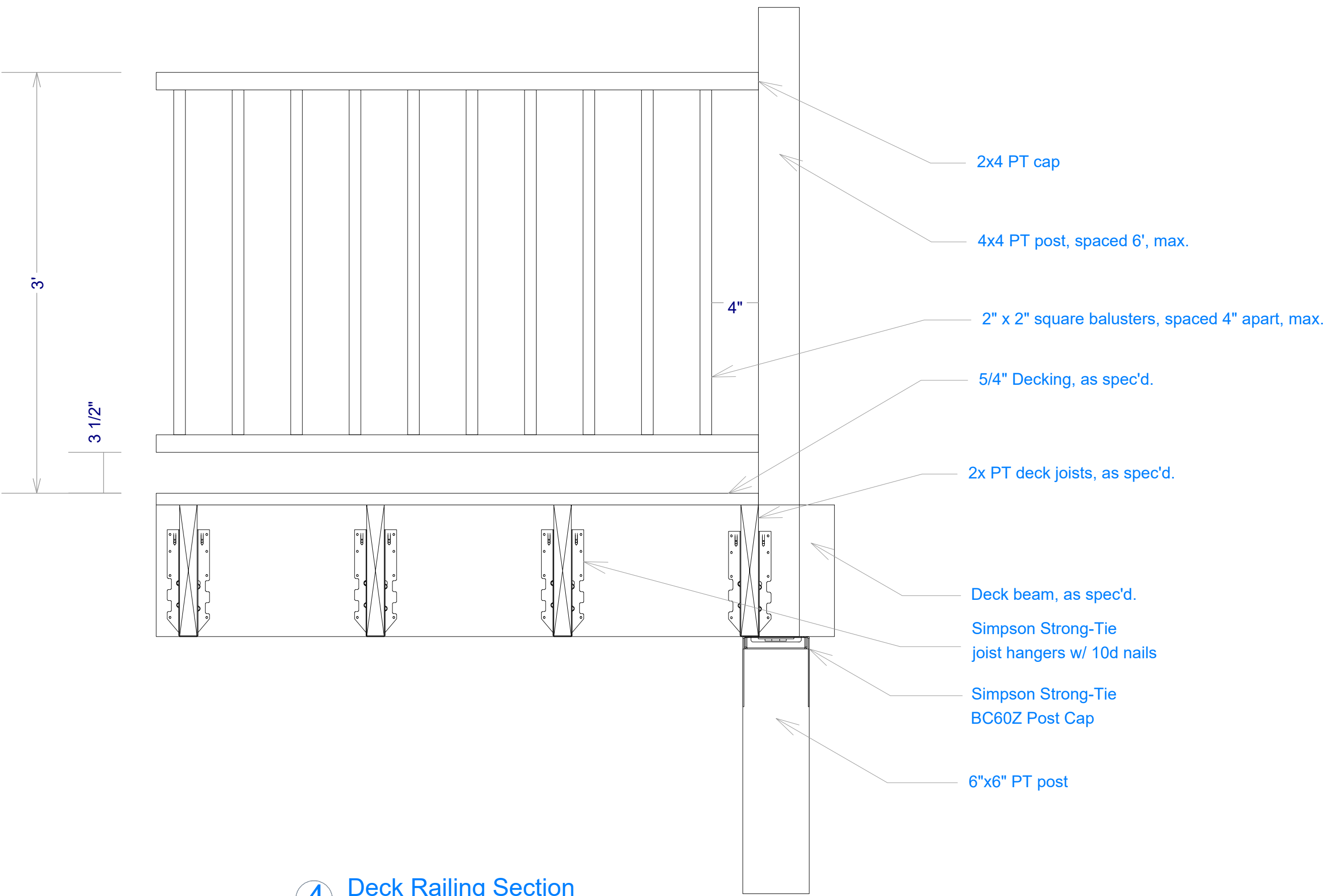
2 Typical Ledger Attachment



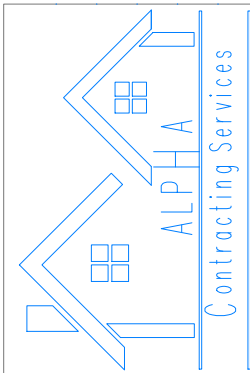
3 Typical Stair Attachment



1 REAR DECK FLOOR - FRAMING PLAN  
1/2" = 1'-0"



4 Deck Railing Section



REVISION TABLE		DESCRIPTION
NUMBER	DATE	REVISED BY

Interior Renovation & Deck  
1344 Islington  
Portsmouth, NH

DECK FRAMING

DRAWINGS PROVIDED BY:  
**ALPHA CONTRAC. SERVICES**  
301 Daniel Webster Hwy  
Merrimack - NH - 03054  
(833) 928-0821 / (978) 580-7732

DATE:

07/12/2022

SCALE:

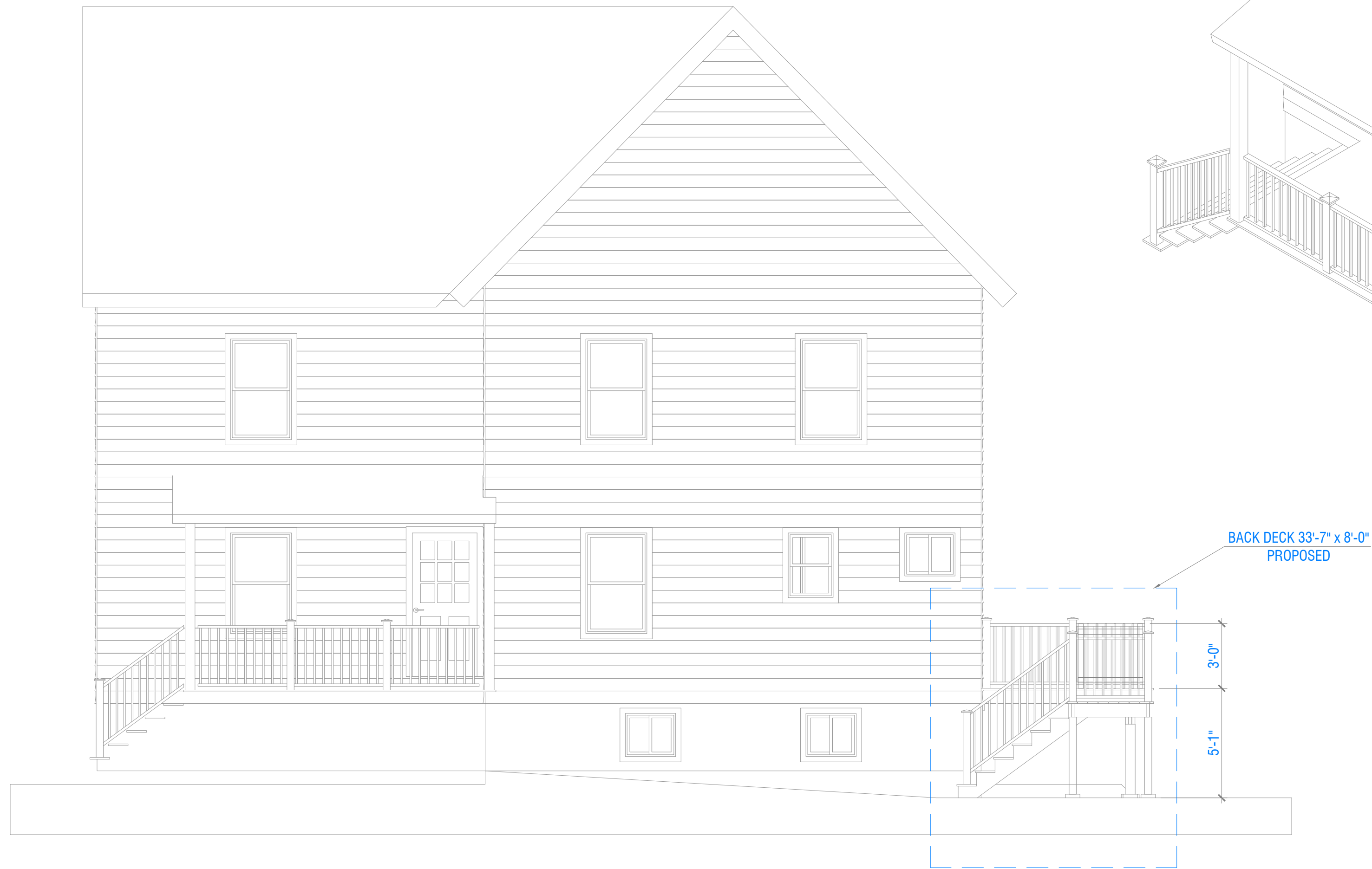
AS NOTED

SHEET:

\$2.00



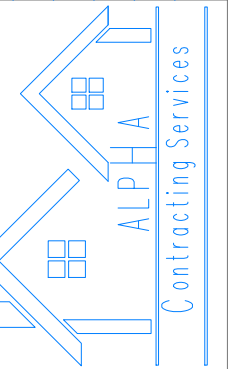
2 REAR ELEVATION - PROPOSED  
1/4" = 1'-0"



1 RIGHT ELEVATION - PROPOSED  
1/4" = 1'-0"



3 3D VIEW  
NOT TO SCALE



DESCRIPTION

REVISION TABLE

NUMBER DATE REVISED BY

Interior Renovation & Deck  
1344 Islington  
Portsmouth, NH

ELEVATIONS & 3D

DRAWINGS PROVIDED BY:  
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301 Daniel Webster Hwy  
Merrimack - NH - 03054  
(833) 928-0821 / (978) 580-7732

DATE:

07/12/2022

SCALE:

AS NOTED

SHEET:

33.00





















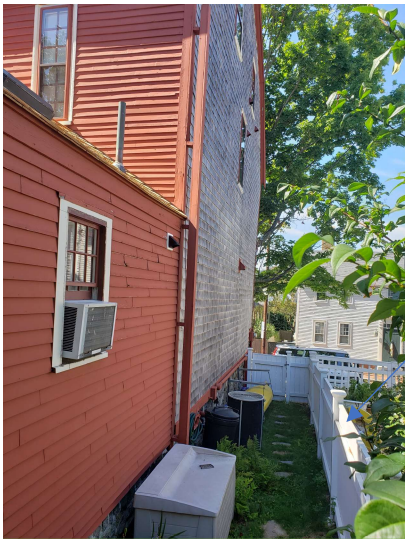


Supplementary Information for HDC AC Application for 130 Gates St., Portsmouth

**Project:** Replace 40+ year old furnace with a new, more efficient one and add an additional AC that is both more efficient and quieter than the existing 3<sup>rd</sup> floor unit. This new HVAC system will only service the first floor. There are additional furnaces for the second and third floor as well as an existing AC system for the third floor. All systems are forced air, ducted systems.

**Request for Planning Variance::** Install an additional AC external compressor in the same area as the existing unit. Tis unit will have a clearance of 36” to the property line which requires the approval of a variance.

**Timeline:** Pettigrew HVAC has agreed to commence this project as of September 1 and has initiated the permitting process with the planning department. It will take approximately 10 days to install the system



View of proposed installation of new AC compressor

Existing 5 ft solid fence that obscures view and noise



Detailed view of proposed installation of new AC compressor

Existing AC compressor

Proposed location of new AC compressor

Distance form Compressor to property line is 36 inches



Existing furnace Intake/Vent



Proposed new furnace Intake/Vent



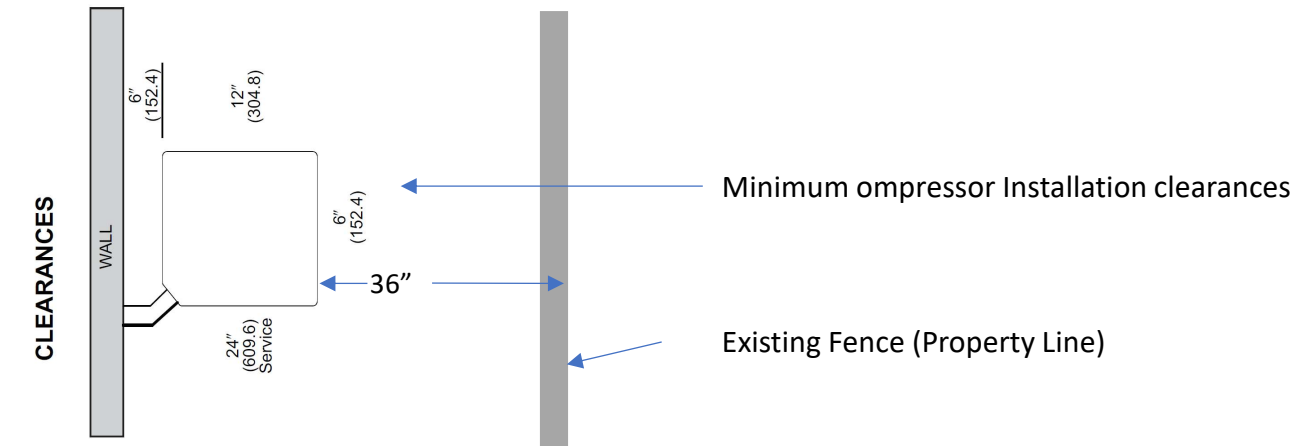
AC Compressor Specifications:



Rheem, RA 16 Series, , 30k BTU

Unit Size			
Model No:	H (Height)	W (Width)	L (Length)
RA1630A	27 inches	35.75 inches	35.75 inches

TYPICAL OCTAVE BAND SPECTRUM	Standard	Typical Octave Band Spectrum						
Rating (dBA)		125	250	500	1000	2000	4000	8000
RA1630A	74.3	48.4	57.4	62.6	64.5	61.5	56.5	51.5



Home is located on corner of Gates St and Manning St.

Existing/New AC Compressor location

2.

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

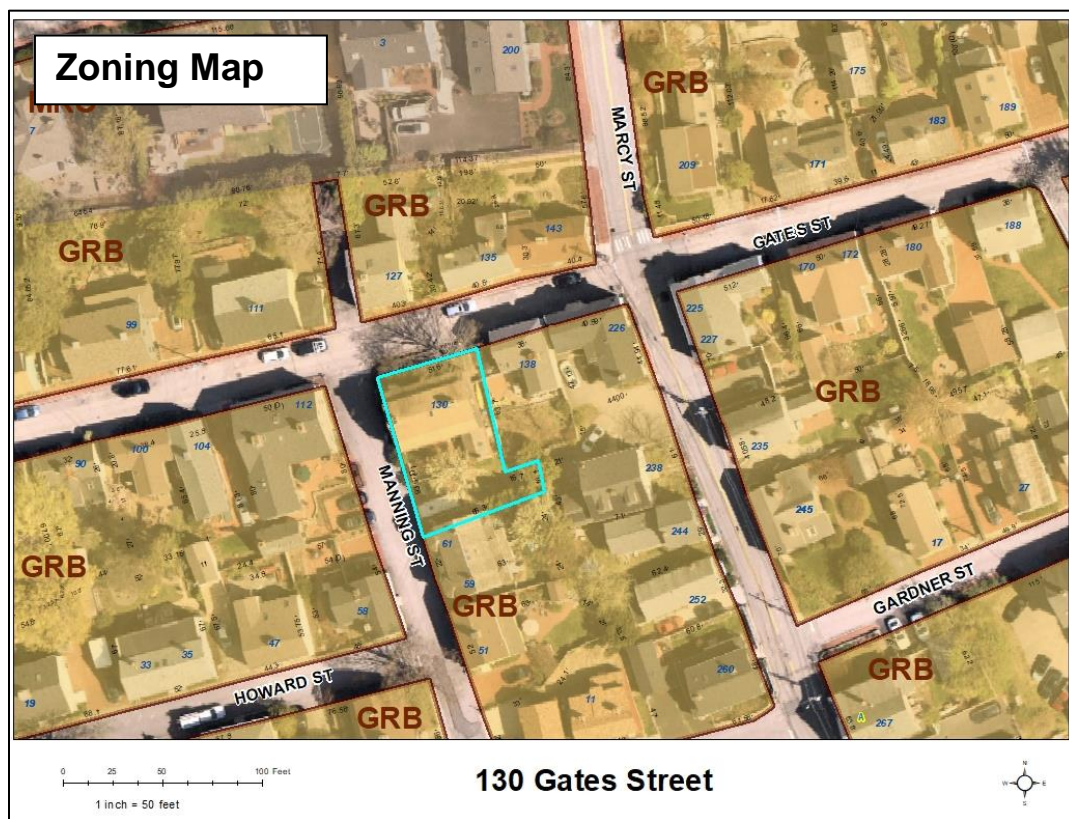
### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family	HVAC unit	Primarily residential uses
<u>Lot area (sq. ft.):</u>	4,356	4,356	5,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	4,356	4,356	5,000 min.
<u>Lot depth (ft.):</u>	63	63	60 min.
<u>Street Frontage (ft.):</u>	144	144	80 min.
<u>Primary Front Yard (ft.):</u>	8	8	5 min.
<u>Secondary Front Yard (ft.):</u>	2	2	5 min.
<u>Left Yard (ft.):</u>	6	3	10 min.
<u>Rear Yard (ft.):</u>	20	20	25 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	32	32	30 max.
<u>Open Space Coverage (%):</u>	>25	>25	25 min.
<u>Estimated Age of Structure:</u>	1730	Variance request(s) shown in red.	

### Other Permits/Approvals Required

Historic District Commission

## Neighborhood Context





## Previous Board of Adjustment Actions

No previous BOA history found.

## Planning Department Comments

The applicant proposing to add an HVAC unit that will be located on the left side of the house adjacent to an existing unit. The house is nonconforming to all setbacks and locating the unit in a conforming location would put it in the middle of the patio on the back of the house.

## Review Criteria

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

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

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

**AND**

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

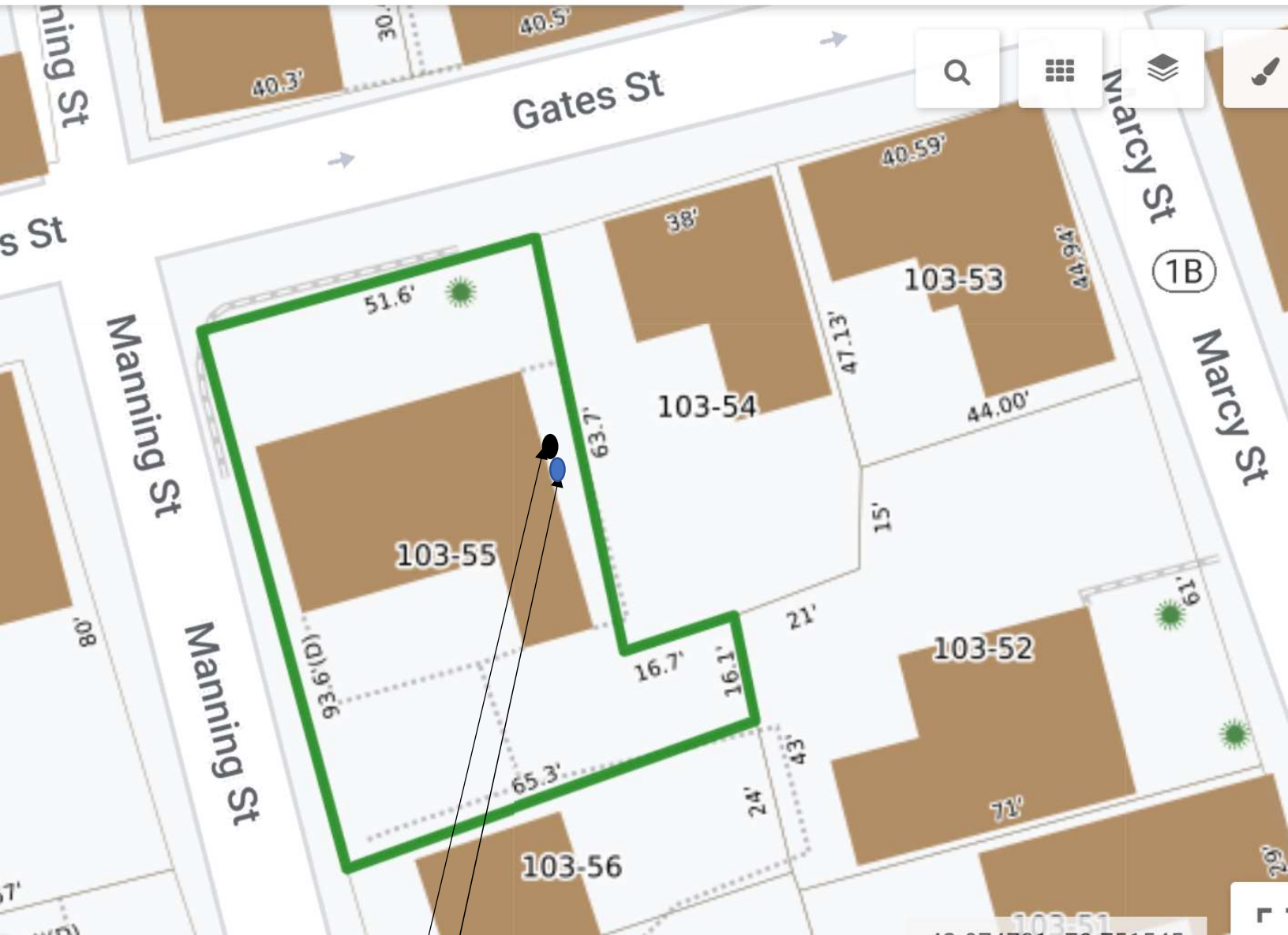
**OR**

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

## 10.235 Certain Representations Deemed Conditions

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

130 Gates St Map



Proposed new AC Compressor location

Existing AC Compressor location

## **Zoning Ordinance Review for 130 Gates St.**

The following have been considered with respect to the requested variance:

### **10.233.21 The variance will not be contrary to the public interest;**

The proposed AC compressor location is in the same area as an existing location. When replacing the fence between 130 Gates St. and 138 Gates St. several years ago it was constructed of solid wood to create a visual and acoustic barrier. The compressor is not visible from any public location

### **10.233.22 The spirit of the Ordinance will be observed;**

The proposed AC compressor location already has an existing compressor. The new unit is much quieter and will become the dominant AC in use thereby reducing the overall noise.

### **10.233.23 Substantial justice will be done;**

The proposed location installation of the compressor will be as close as possible to the house (6" minimum offset required) leaving 36 inches between the compressor and the property line.

### **10.233.24 The values of surrounding properties will not be diminished;**

The AC compressor will not be visible from any public location and is only minimally visible from neighbor's upper floor windows. There are a multitude of existing AC compressor located throughout this neighborhood which have been installed in the last few years that are either more visible (including from public locations) or from neighboring lots. These have not diminished property values. Location of the new AC compressor has been discussed with our neighbors Rick and Sandra Wiese at 138 Gaes St. who are minimally impacted by the noise and they have provided us with their consent to install the additional AC compressor in the proposed location.

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

It would not be reasonable to install the compressor in any other location as it would be much more visible either publicly (as the property abuts both Gates St. and Manning St.) or from neighboring lots. It would also greatly complicate the installation. Finally, the home location is already in variance with current ordinances with respect to the property line between 130 Gates St. and 138 Gates St.



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

Because the appearance and location of the shed will not negatively impact my direct neighbors or visitors to our neighborhood. The public health, safety and welfare will not be threatened.

**10.233.22 The spirit of the Ordinance will be observed:**

Because it will not be overcrowded and the existing fence buffer on the side would remain which will protect the privacy for both sides.

**10.233.23 Substantial justice will be done:**

Because the approval of this variance request does not pose a loss to the general public such as a denial to my variance request does not grant the general public any gain.

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

Because three of the abutting properties on Melbourne Street have sheds/outbuildings so therefore it would be bring up my property to the level of my neighbors

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

Denying the variance request would result in an undue hardship as the property is unique in the shape of the lot and the lack of conforming land. We currently use our garage for storage of equipment for maintaining our property, this renders it unavailable to a car. The new shed will allow use the garage for parking one of our vehicles.

3.

The request of **George Pappas (Owner)**, for property located at **170 Melbourne Street** whereas relief is needed to add a 12 x 12 shed which requires the following: 1) A Variance from Section 10.573.20 to allow an 8' left side yard where 10' is required. 2) A Variance from Section 10.571 to allow an accessory structure to be located in the front yard. 3) A Variance from Section 10.521 to allow 26% building coverage where 20% is the maximum allowed. Said property is located on Assessor Map 233 Lot 69 and lies within the Single Residence B (SRB) district.

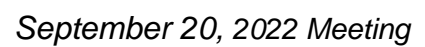
### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use</u>	Single family	shed	Primarily residential
<u>Lot area (sq. ft.):</u>	6,078	6,078	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	6,078	6,078	15,000 min.
<u>Lot depth (ft.):</u>	98	98	100 min.
<u>Street Frontage (ft.):</u>	151	151	100 min.
<u>Primary Front Yard (ft.):</u>	14	14	30 min.
<u>Secondary Front Yard (ft.):</u>	6	6	30 min.
<u>Left Yard (ft.):</u>	20	<b>8</b>	10
<u>Rear Yard (ft.):</u>	29	29	30 min.
<u>Height (ft.):</u>	<35	11 (shed)	35 max.
<u>Building Coverage (%):</u>	23	<b>26</b>	20 max.
<u>Open Space Coverage (%):</u>	>40	>40	40 min.
<u>Parking:</u>	2	2	2
<u>Estimated Age of Structure:</u>	1950	<b>Variance request(s) shown in red.</b>	

### Other Permits/Approvals Required

None.

## An aerial photograph of a residential neighborhood with yellow property boundary lines. A red arrow points to a specific property in the center, which is marked with a red outline and a red heart icon. The property is situated on a street corner and features a dark roof and a small garden area. Other houses and trees are visible in the surrounding area.





## Previous Board of Adjustment Actions

Jan 20 2004 – Relief from Zoning Ordinance including:

A Variance from Article III, Section 10-302(A) is requested to allow a 7' x 12' one story addition creating 22.4% building coverage where 20% is the maximum allowed.

The Board voted that your request be **granted** as presented and advertised.

## Planning Department Comments

The applicant is proposing a 12 x 12 shed to the left of the dwelling where it would be 8 feet from the lot line where 10 is required. It will be setback from the front of the house 2 feet, however it will be located in the front yard, where accessory structures are not permitted. As stated in the history above, relief was granted for building coverage in 2004 to exceed the 20% maximum. The addition of the shed will result in 26% coverage.

## Review Criteria

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

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

**AND**

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

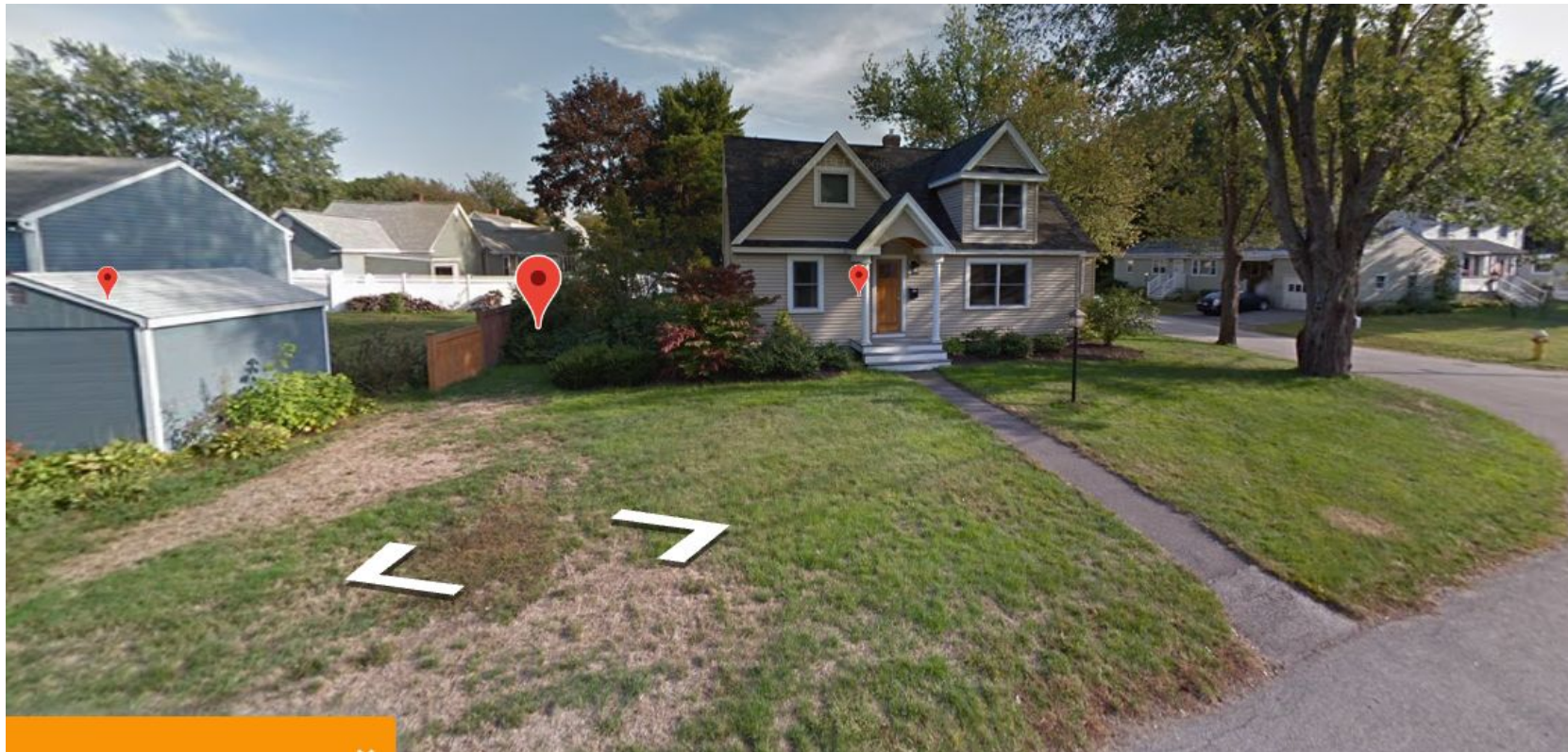
**OR**

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

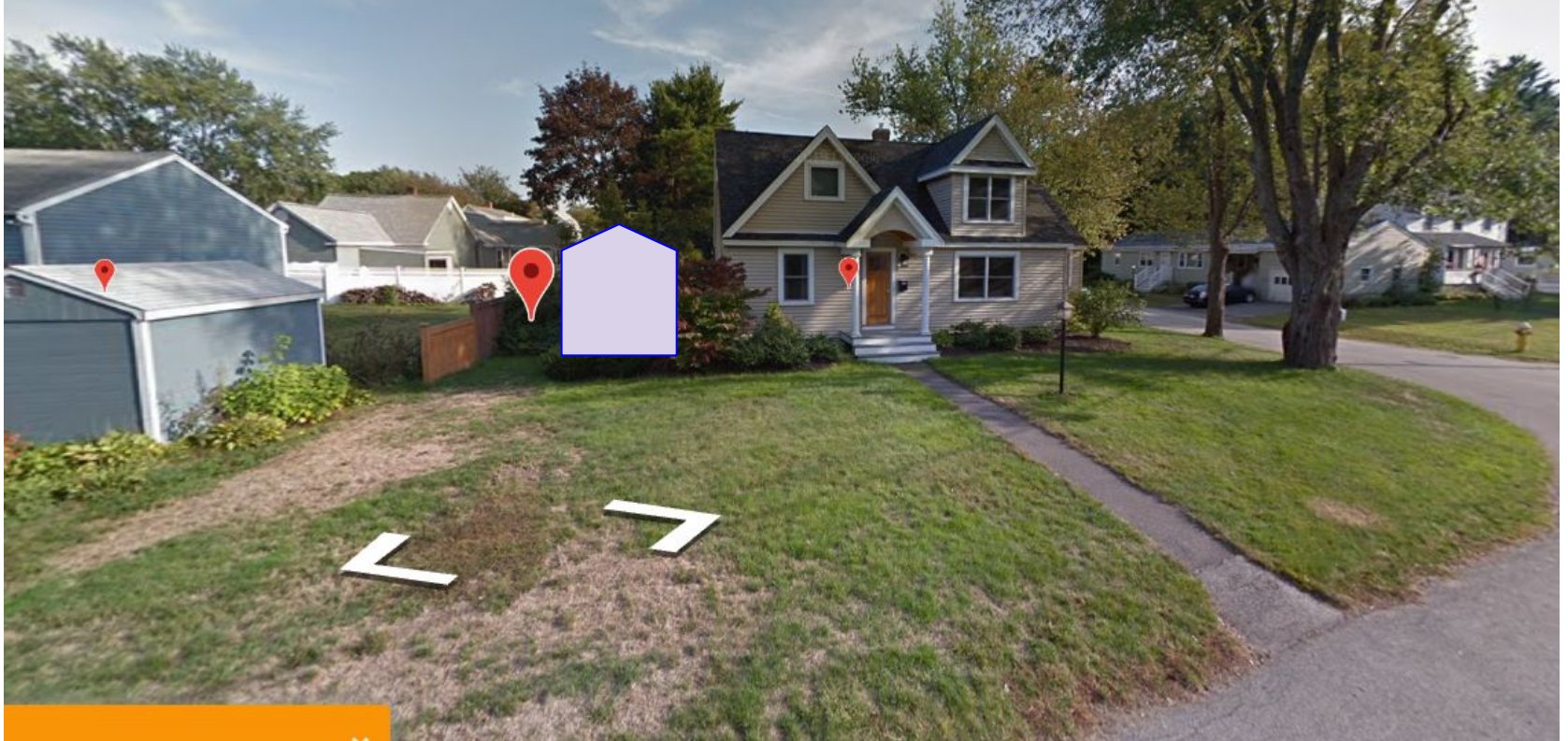
## 10.235 Certain Representations Deemed Conditions

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

# 170 Melbourne Street - Street View



# 170 Melbourne Street - Street View - with Shed

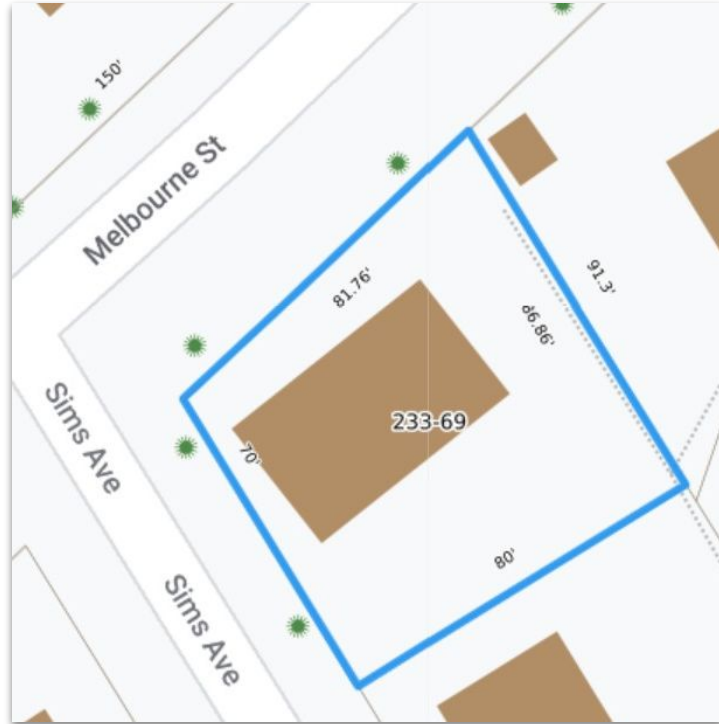




# Shed Design



# Current Lot Coverage



Maximum Lot Coverage	20%
Lot Size	6,078 ft <sup>2</sup>
Home Size*	1,440 ft <sup>2</sup>
Total Lot Coverage	23%

Home Size = First Floor + Garage + Open Porch

# Perceived Lot Coverage



Maximum Lot Coverage	20%
Lot Size	9,561 ft <sup>2</sup>
Home Size*	1,440 ft <sup>2</sup>
Total Lot Coverage	15%

Home Size = First Floor + Garage + Open Porch



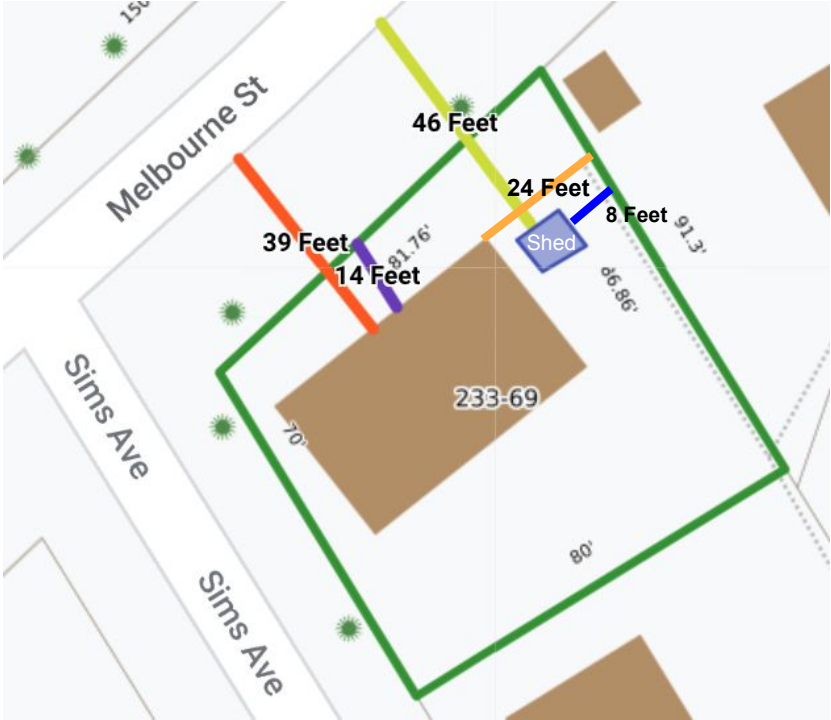
# Perceived Lot Coverage with Shed



Maximum Lot Coverage	20%
Lot Size	9,561 ft <sup>2</sup>
Home Size* + 12'x12' Shed	1,584 ft <sup>2</sup>
Total Lot Coverage	16.6%

Home Size = First Floor + Garage + Open Porch

# Shed Position and Setbacks



Shed Footprint	12' x 12'
Shed Height	
- Wall	7'4"
- Peak	12'9"
- Average/Midpoint	11"
Requested Setback	8'

\*The shed will be set 2 feet behind the plane of the front of the home

## MEMORANDUM

**TO:** Portsmouth Zoning Board of Adjustment (“ZBA”)  
**FROM:** Monica F. Kieser, Esquire  
**DATE:** August 31, 2022  
**RE:** Natan Aviezri Revocable Trust, Natan Aviezri & Debra Klein, Trustees  
75 Monroe Street  
Tax Map 168/Lot 27  
Zoning District General Residence A (“GRA”)

Dear Chairman Parrott and Zoning Board Members:

On behalf of the Natan Aviezri Revocable Trust, Natan Aviezri & Debra Klein Trustees, (“Aviezri”), we are pleased to submit this supplemental memorandum and attached exhibits in support of the variance application submitted by Debra Klein to allow expansion of the nonconforming structure for consideration by the Portsmouth Zoning Board of Adjustment (“ZBA”) at its September 20, 2022 meeting.

### **I. EXHIBITS**

- A. 2016 Variance Plan issued by Millennium Engineering, Inc.
- B. Email & Proposed Conditions Sketch – issued by Millennium Engineering, Inc.
- C. Photographs.
  - Satellite view
  - Front/rear view
  - Sketch of expansion
- D. Tax Map 168.

### **II. PROPERTY/PROJECT**

75 Monroe Street is a 16,964 s.f. lot located at the corner of Monroe and Ward Place which contains an apartment building, paved parking lot, and another dwelling accessible from Ward Place (the “Property”). (**Exhibit A**). The Property derives from a larger lot of involuntarily merged parcels which were unmerged and consolidated pursuant plans approved by the City in 2016. Today’s application relates to the small (approximately 32 ft. by 20 ft.) 1 ¾ story dwelling accessed from Ward Place behind the apartment building. The dwelling dates back to 1920, is outdated and in need of renovations. Aviezri intends to renovate the home, expand the existing front and rear shed dormers by approximately 76” inches on either side to match the existing wall and roof lines (the “Project”). Because the existing dwelling is located within the existing side and rear yard setback, relief from the Portsmouth Zoning Ordinance (“PZO”) is required to expand the nonconforming structure within the applicable yard setbacks.



Orientation of the small dwelling is toward Ward Place so its right side is the rear lot line and its left side is a side lot line.

### III. RELIEF REQUIRED

1. **PZO §10.321, Expansion of a Nonconforming Structure** – to allow expansion of the existing front and rear second floor dormers within the side and rear yard setbacks.
2. **PZO §10.520, Dimensional Standards, §10.521, Table**
  - **Rear lot line** - to allow expansion of front and back shed dormers on right side of home to match existing roof/wall line at and 11.97 ft./13.22 ft. (front) and 11.87 ft./13.02 ft. (back) from the rear lot line where 20 ft. is required.
  - **Side lot line** – to allow expansion of front and back shed dormers on left side of home to match existing roof/wall line at 5.7 ft./7.00 where 10 ft. is required.

### IV. VARIANCE REQUIREMENTS

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

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

The purpose of the Portsmouth Zoning Ordinance as set forth in PZO §10.121 is "to promote the health, safety and the general welfare of Portsmouth and its region in accordance with the City of Portsmouth Master Plan... [by] regulating":

1. The use of land, buildings and structures for business, industrial, residential and other purposes – The Project renovates and slightly expands the second floor of an existing residence.
2. The intensity of land use, including lot sizes, building coverage, building height and bulk, yards and open space – Building footprint, coverage, height will remain unchanged by the slight expansion of the dormers on the second floor.
3. The design of facilities for vehicular access, circulation, parking and loading – No changes are proposed.
4. The impacts on properties of outdoor lighting, noise, vibration, stormwater runoff and flooding – The structure exists now. The slight second floor expansion will have no negative effect on abutters compared to existing conditions.

5. The preservation and enhancement of the visual environment – The Project will renovate the existing dwelling on the Property improving its appearance. The minimal expansion of dormers will not undermine these purposes of the Ordinance.
6. The preservation of historic districts, and buildings and structures of historic or architectural interest – The Property is outside the Historic District.
7. The protection of natural resources, including groundwater, surface water, wetlands, wildlife habitat and air quality – Renovating the existing dwelling in place and slightly expanding the second floor dormers has no impact compared to existing conditions.

The Project meets the intent of the GRA Zone by permitting the improvement of an existing residence and maintaining the existing density on the Property. Like many in the neighborhood, the Property is nonconforming with respect to the left side setback and rear yard setback. The Project on the second floor simply matches the existing dimensions below representing a very slight increase in the nonconformity. 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,” Malachy Glen, supra, also held:

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

There will be no threat to the public health, safety, or welfare by granting the requested variances, which will merely permit additional livable space within an existing home. They will allow Aviezri to improve a small, dated residence with renovations bringing it up to code and slightly expanding the second floor. The requested dimensional relief is within the existing footprint and represents a *de minimus* effect. Clearly, the requested variances neither alter the essential character of the locality nor threaten the public health safety or welfare. Accordingly, none of the requested variances are contrary to the public interest and all observe the spirit of the ordinance.

**3. Granting the variance will not diminish surrounding property values.**

The proposal will renovate the exiting older structure while maintaining consistency with the surrounding area. If anything, the addition will improve the value of the Property, and thus,



the values of the surrounding properties. Given the overall improvements to the building and limited scope of the requests, the variances will not diminish surrounding property values.

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

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

The Property is over twice the size of the required minimum lot size but oddly shaped with a long existing dwelling nestled in one corner close to rear and side lot lines. These circumstances combine to create special conditions such that no upward expansion is possible without relief.

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

All of Aviezri's requested relief relates to the rear and side yard setbacks. Yard requirements promote adequate air, light, space between neighbors and separation for stormwater treatment. None of these purposes are impaired by granting the requested variances. The building exists and is already non-conforming with the rear and side lot line. Moreover, the neighborhood overall is similarly densely developed with multiple nearby parcels non-conforming for setbacks. See Walker v. City of Manchester, 107 N.H. 382, 386 (1966) (Hardship may be found where similar nonconforming uses exist within the neighborhood and the proposed use will have no adverse effect on the neighborhood). See also Belanger v. City of Nashua, 121 N.H. 389 (1981) (Variance proper where ordinance no longer reflects the current character of neighborhood). Accordingly, there is no fair and substantial relationship between the purposes of the ordinance and its application in this instance.

- c. The proposed use is reasonable.

If the use is permitted, it is deemed reasonable. Vigeant v. Hudson, 151 N.H. 747 (2005). Residential use is permitted in the GRA Zone; this Property includes an apartment building with this small residence. Aviezri proposes simply to renovate the long existing nonconforming residence on the Property and expanding the second floor dormers upstairs to create more livable space. Accordingly, the proposed use is reasonable and denial of the variances creates an unnecessary hardship.

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

If "there is no benefit to the public that would outweigh the hardship to the applicant" this factor is satisfied. Harborside Associates, L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508

4.

The request of **Debra Klein and Natan Aviezri Revocable Trust (Applicant and Owner)**, for property located at **75 Monroe Street** whereas relief is needed to extend existing dormers on both sides of the house which requires the following: 1) Variances from Section 10.521 to allow a) an 11.5 foot rear yard where 20 feet is required; and b) a 5.5 foot side yard where 10 feet is required. 2) A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 168 Lot 27 and lies within the General Residence A (GRA) district.

### Existing & Proposed Conditions

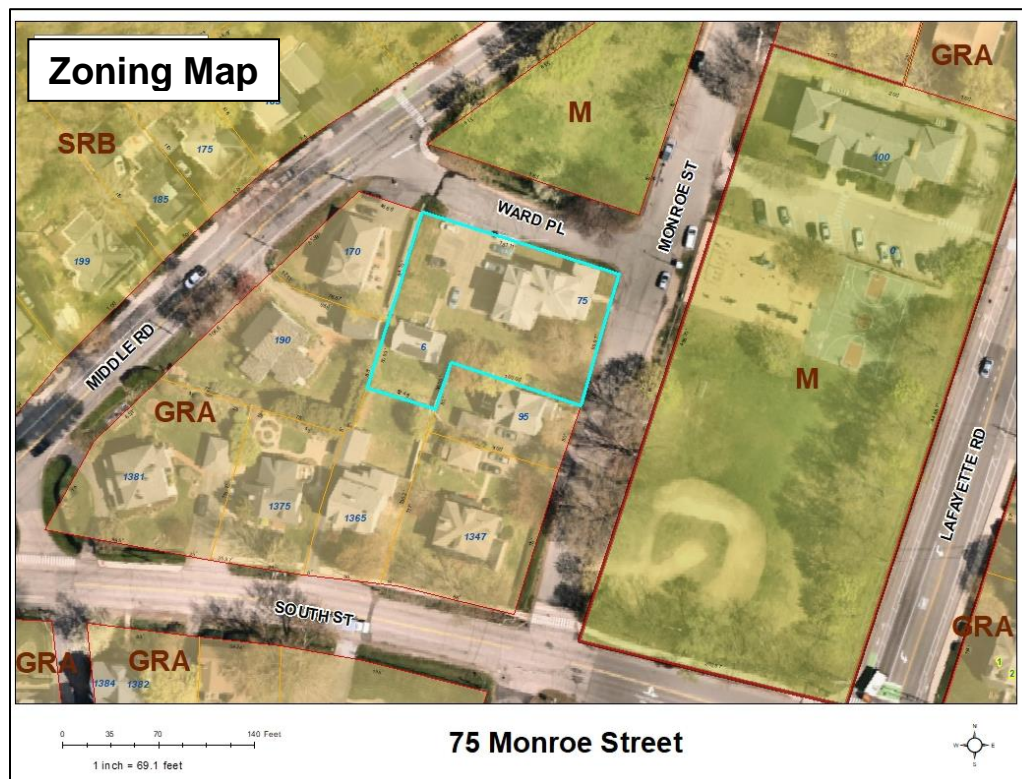
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use</u>		Extend front and rear dormers	Primarily residential
<u>Lot area (sq. ft.):</u>	16,964	16,964	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	2,120	2,120	7,500 min.
<u>Lot depth (ft.):</u>	150	150	70 min.
<u>Street Frontage (ft.):</u>	299	299	100 min.
<u>Primary Front Yard (ft.):</u>	11	11	15 min.
<u>Secondary Front Yard (ft.):</u>	4	4	15 min.
<u>Left Yard (ft.):</u>	5.5	<b>5.5</b>	10
<u>Rear Yard (ft.):</u>	11.5	<b>11.5</b>	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	16	16	25 max.
<u>Open Space Coverage (%):</u>	>30	>30	30 min.
<u>Parking:</u>	12	12	11
<u>Estimated Age of Structure:</u>	1920	<b>Variance request(s) shown in red.</b>	

### Other Permits/Approvals Required

None.



## Neighborhood Context



## Previous Board of Adjustment Actions

February 16, 2016 – Relief from the Zoning Ordinance, including the following:

1. A Variance from Section 10.521 to allow a lot area of 6,022± s.f. where 7,500 s.f. is required.
2. A Variance from Section 10.521 to allow a lot area per dwelling unit of 6,022± s.f. where 7,500 s.f. per dwelling unit is required.
3. A Variance from Section 10.521 to allow continuous street frontage of 93.6'± where 100' of continuous street frontage is required.

The Board **granted** variances to allow the construction of a single family home and garage on two re-merged lots with a lot area and lot area per dwelling unit of 6,022± s.f. (7,500s.f. required) and 93.6'± continuous street frontage (100' required). The Board requested that the Planning Board in their review specify the location of the driveway cut.

April 26, 2016 – Relief from the Zoning Ordinance, including the following:

1. A Variance from Section 10.521 to allow a lot area of 5,954± s.f. where 7,500 s.f. is required.
2. A Variance from Section 10.521 to allow a lot area per dwelling unit of 5,954± s.f. where 7,500 s.f. per dwelling unit is required.
3. A Variance from Section 10.521 to allow continuous street frontage of 85.59'± where 100' of continuous street frontage is required.

The Board voted to **postpone** the petition to the May 17, 2016 meeting at your request, with less than six voting members present providing just cause under the Board of Adjustment Rules and Regulations to grant the request.

May 17, 2016 – Relief from the Zoning Ordinance, as listed for April 26, 2016 meeting:

The Board determined that the modification to the variances granted at the February 16, 2016 meeting was slight so that the variances as currently presented and advertised should be **granted**.

## Planning Department Comments

The applicant is seeking to extend existing dormers on the front and rear of the dwelling that has access off of Ward Place. The dormer extensions will not encroach beyond the existing wall plane of the dwelling. The 1920s structure is tucked into a narrow portion of the lot where it is nonconforming to both the side and rear yard. Although the structure faces and has access off of Ward Place, the principal front is off of Monroe and the rear yard is opposite the lot line with the address, or the Monroe Street lot line.

## Review Criteria

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

1. *Granting the variance would not be contrary to the public interest.*
2. *Granting the variance would observe the spirit of the Ordinance.*
3. *Granting the variance would do substantial justice.*



4. *Granting the variance would not diminish the values of surrounding properties.*

5. *The “unnecessary hardship” test:*

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

**AND**

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

**OR**

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

### **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.

(2011). That is, “any loss to the [applicant] that is not outweighed by a gain to the general public is an injustice.” Malachy Glen, supra at 109. “The right to use and enjoy one's property is a fundamental right protected by both the State and Federal Constitutions.” N.H. CONST. pt. I, arts. 2, 12; U.S. CONST. amends. V, XIV; Town of Chesterfield v. Brooks, 126 N.H. 64 (1985) at 68. Part I, Article 12 of the New Hampshire Constitution provides in part that “no part of a man's property shall be taken from him, or applied to public uses, without his own consent, or that of the representative body of the people.” Thus, our State Constitutional protections limit the police power of the State and its municipalities in their regulation of the use of property. L. Grossman & Sons, Inc. v. Town of Gilford, 118 N.H. 480, 482 (1978). “Property” in the constitutional sense has been interpreted to mean not the tangible property itself, but rather the right to possess, use, enjoy and dispose of it. Burrows v. City of Keene, 121 N.H. 590, 597 (1981). (emphasis added). The Supreme Court has held that zoning ordinances must be reasonable, not arbitrary and must rest upon some ground of difference having fair and substantial relation to the object of the regulation. Simplex Technologies, Inc. v. Town of Newington, 145 N.H. 727, 731 (2001); Chesterfield at 69.

Granting the requested variance allows for a slight expansion on the second floor of an existing residence on the Property in a manner consistent the purposes of the zoning district and surrounding area. Given that the only change to the Property is the slight upward expansion to accommodate expanded dormers, there is no benefit to the public from denial. Conversely, Aviezri will be greatly harmed by denial as they will lose the opportunity improve an aging structure and bring it to code. Accordingly, there is no benefit to the public that outweighs the harm to the owner from denial.

## VI. CONCLUSION

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

Respectfully submitted,  
NATAN AVIEZRI REVOCABLE TRUST/  
Natan Aviezri & Debra Klein, Trustees



By: Monica F. Kieser, Esq.



LOCUS MAP  
NOT TO SCALE

168  
15

N/F

PATRICK B. LYONS  
KAREN A. LYONS  
185 MIDDLE ROAD  
PORTSMOUTH, NH 03801  
BK. 5391 PG. 0160

NOTES:

1) THIS PLAN DOES NOT SHOW ANY UNRECORDED OR UNWRITTEN EASEMENTS WHICH MAY EXIST. A REASONABLE AND DILIGENT ATTEMPT HAS BEEN MADE TO OBSERVE ANY APPARENT VISIBLE USES OF THE LAND; HOWEVER, THIS DOES NOT CONSTITUTE A GUARANTEE THAT NO SUCH EASEMENTS EXIST.

168  
17

N/F

CRAIG S. HODGSON  
CHRISTINE A. HODGSON  
165 MIDDLE ROAD  
PORTSMOUTH, NH 03801  
BK. 5391 PG. 0162

### PLAN REFERENCES

"PLAN OF A LOT OF LAND OWNED BY  
ALBERT AND ARTHUR W. WALKER  
PORTSMOUTH, NH"  
SCALE: 1"=50' DATE: NOV. 14, 1898  
BY: A.C. HOYT, SURVEYOR  
00412

"LOT PLAN, 75 MONROE ST.  
PORTSMOUTH, NH"  
SCALE: 1"=20' DATE: MAY 1936  
BY: JOHN W. DURGIN  
FILE NO. 1885-1

PLAN NOTE:

THIS PLAN SHOWS THE VOLUNTARY MERGER OF LOTS 30, 32 & 33 INTO 1 LOT (LOT B) AND LOTS 34 & 35 INTO 1 LOT (LOT A).  
THE PLAN ALSO SHOWS THE ADJUSTMENT OF THE COMMON PROPERTY LINE BETWEEN LOT A AND LAND OF TOIVANEN  $\frac{168}{01}$ .

### RECORD OWNERS

NATAN AMEZRI REVOCABLE TRUST  
DEBRA KLEIN & NATAN AMEZRI,  
TRUSTEES  
697 SAGAMORE AVENUE  
PORTSMOUTH, NH 03801  
BK. 5486 PG. 0562

LOT A	LOT B
REMAINING PORTION	LOTS 30, 32 & 33
LOTS 34 & 35	16,964 S.F.
6,022 S.F.	0.39 ACRES
0.14 ACRES	

# EXHIBIT A

THE CERTIFICATIONS SHOWN HEREON ARE INTENDED TO MEET REGISTRY OF DEEDS REQUIREMENTS AND ARE NOT A CERTIFICATION TO TITLE OR OWNERSHIP OF PROPERTY SHOWN. OWNERS OF ADJOINING PROPERTIES ARE ACCORDING TO CURRENT TOWN/CITY ASSESSORS' RECORDS.

PURSUANT TO RSA 676:18 III AND RSA 672:14  
I CERTIFY THAT THIS SURVEY PLAT IS NOT A SUBDIVISION  
PURSUANT TO THIS TITLE AND THAT THE LINES  
OF STREETS AND WAYS SHOWN ARE THOSE OF PUBLIC  
OR PRIVATE STREETS OF WAYS ALREADY ESTABLISHED  
AND THAT NO NEW WAYS ARE SHOWN.

I CERTIFY:

THAT THIS ACTUAL SURVEY WAS MADE  
ON THE GROUND BETWEEN DECEMBER  
OF 2015 AND MARCH OF 2016.

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

THAT THIS SURVEY CONFORMS TO THE  
REQUIREMENTS FOR ACCURACY FOR  
N.H. URBAN SURVEY.

STATE OF NEW HAMPSHIRE  
904  
HENRY  
SURVEY

H.  
BOYD, JR.

SIGNATURE

LICENSED LAND SURVEYOR

### VARIANCE PLAN

IN  
PORTSMOUTH, NH

SHOWING  
A PARCEL CONVEYANCE AND LOT MERGER  
75 MONROE STREET  
(ASSESSORS MAP 168 LOT 27)

RECORD OWNERS  
NATAN AMIEZRI REVOCABLE TRUST  
DEBRA KLEIN & NATAN AMIEZRI, TRUSTEES  
697 SAGAMORE ROAD PORTSMOUTH, NH 03801

MILLENNIUM ENGINEERING INC.  
ENGINEERS AND LAND SURVEYORS

P.O. BOX 745 13 HAMPTON ROAD EXETER, NH 03833  
PHONE:(603)778-0528 FAX:(603)772-0689 WWW.MEI-NH.COM

SCALE: 1"=20'	CALC. BY: H.H.B.	PROJECT: E151772
---------------	------------------	------------------

DATE: MAR, 28, 2016	CHKD. BY: P.D.B.
---------------------	------------------

---

**Monica Kieser**

---

**From:** Henry Boyd <hboyd@mei-nh.com>  
**Sent:** Monday, August 29, 2022 9:14 AM  
**To:** Monica Kieser  
**Subject:** RE: 75 Monroe  
**Attachments:** NATANMONROE.pdf

Hi Monica,

Here is a sketch showing the setback form the existing roof and building lines.

Hope this helps.

H

---

**From:** Monica Kieser <MKieser@hpgrlaw.com>  
**Sent:** Sunday, August 28, 2022 11:17 AM  
**To:** Henry Boyd <hboyd@mei-nh.com>  
**Subject:** 75 Monroe

Henry,

Nathan Aviezri and Debra Klein are expanding the small house at 75 Monroe by expanding the dormer the second floor. Portsmouth requires a new variance for expansion of a non-conforming home and the town says I need a dimension from the rear? side? Setback. From the small house to the boundary line between it and lot 21.

Debra filed this on her own and then contact me, the city wants me to check the dimension.

I'm not sure whether the plan the city sent me is a proper half-size plan that would allow me to enlarge it and properly scale it.

Do you have a version of this plan with the dimension or is your plan is still in your computer can you tell me the dimension?

IMPORTANT NOTICE: This communication may contain material protected by attorney-client privilege. It is privileged and confidential, and is intended only for the recipient(s) listed above. If you are neither the intended recipient(s) nor a person responsible for the delivery of this transmission to the intended recipient(s), any unauthorized distribution or copying of this transmission is prohibited. If you have received this transmission in error, please notify us immediately and permanently delete this communication. If tax or other legal advice is contained in this email, please recognize that it may not reflect the level of analysis that would go into more formal advice or a formal legal opinion and is not intended to meet IRS requirements for formal tax advice.



N/F  
KATHLEEN M. TOIVANEN REV. TRUST  
KATHLEEN M. TOIVANEN, TRUSTEE  
190 MIDDLE ROAD  
PORTSMOUTH, NH 03801  
BK. 4231 PG. 2550

I.P. FND. ———  
3' HIGH (LEANING)  
LOCATED AT GROUND

I.P. FND. ———  
4' HIGH (LEANING)  
LOCATED AT GROUND

N/F  
RICHARD HOPLEY  
BARBARA ROSS

$$\frac{168}{27}$$

— ABUTT,  
APPEA  
ONTO

1 ROD :  
(03-20

$$\frac{168}{26}$$



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













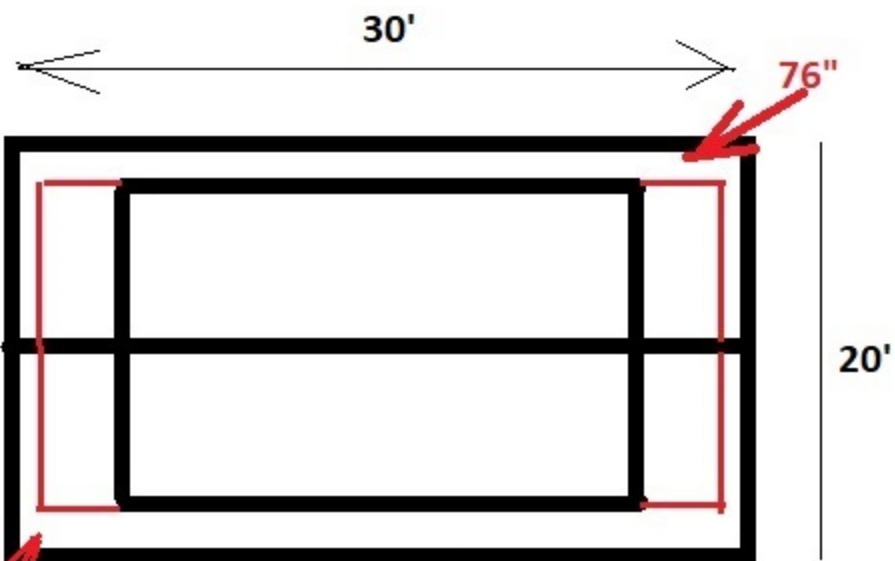










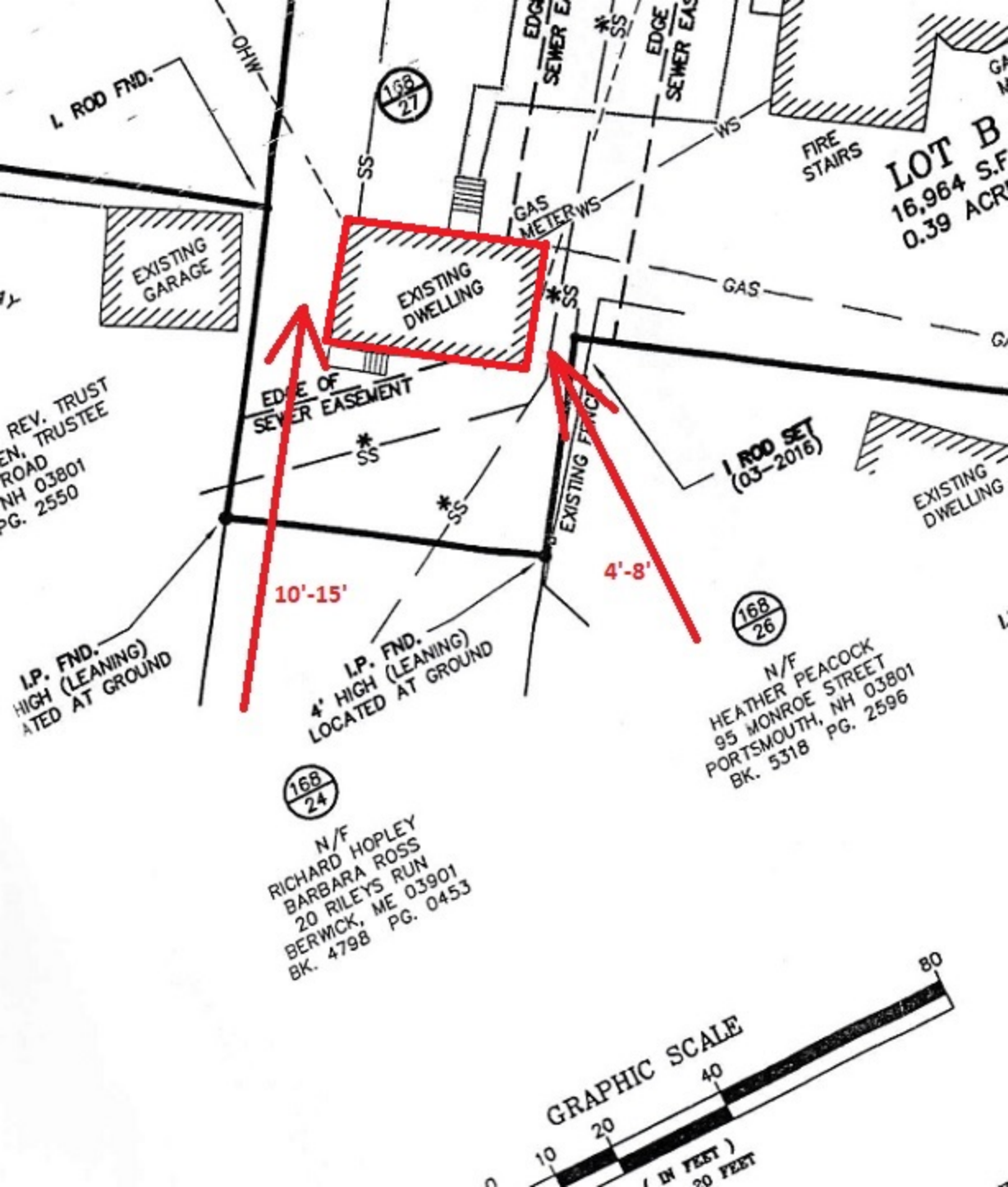


30'

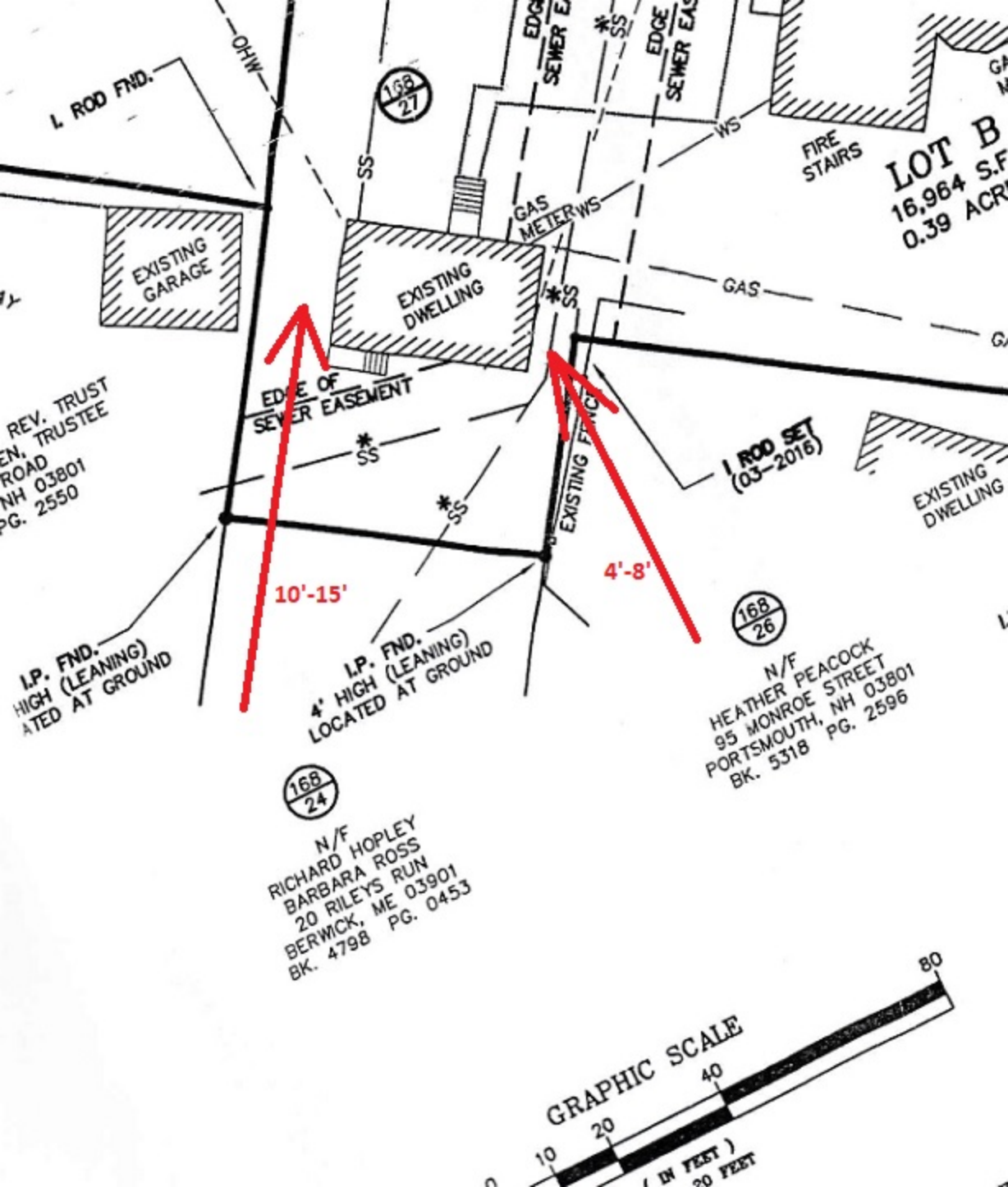
76"

20'

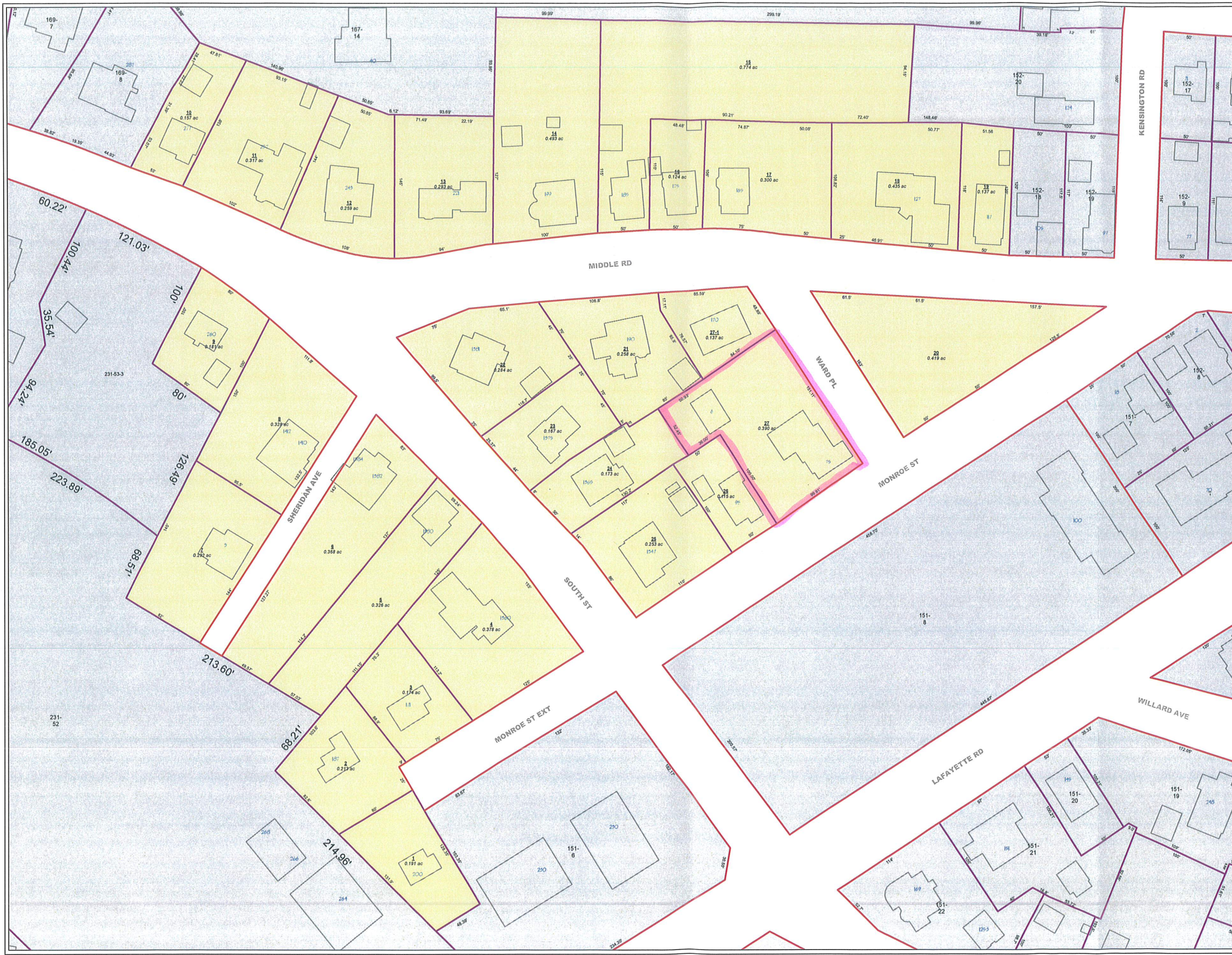
Extending Dormers



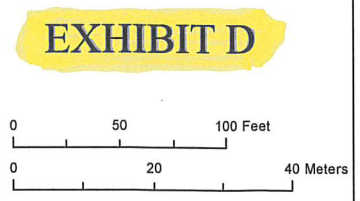




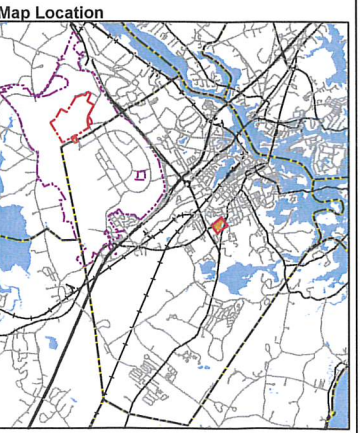
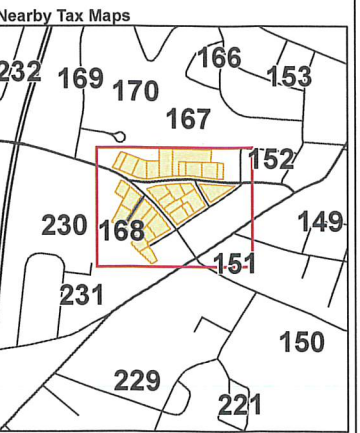




- Partial Legend**  
See the cover sheet for the complete legend.
- 7-5A Lot or lot-unit number
  - 2.56 ac Parcel area in acres (ac) or square feet (sf)
  - 25 Address number
  - 233-137 Parcel number from a neighboring map
  - 68 Parcel line dimension
  - SIMS AVE Street name
  - Parcel/Parcel boundary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



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



Portsmouth, New Hampshire  
2021  
**Tax Map 168**





BC CALC® Member Report

FB02 (Drop Beam)

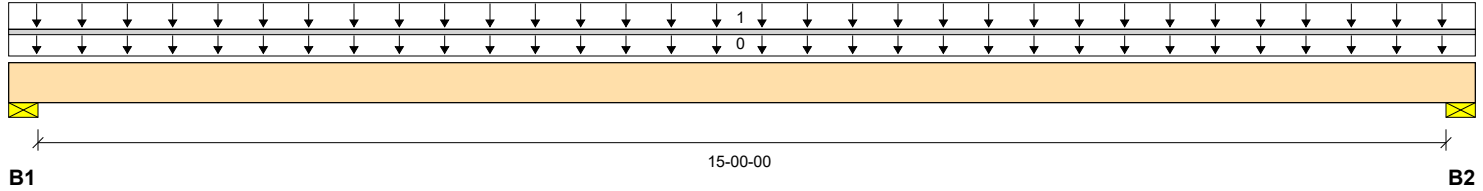
Dry | 1 span | No cant.

July 20, 2022 12:22:07

Build 8435

Job name: WARD  
 Address: 6 WARD PLACE  
 City, State, Zip: PORTSMOUTH, NH  
 Customer: DK ASSOCIATES  
 Code reports: ESR-1040

File name:  
 Description:  
 Specifier: MARK WEBB  
 Designer:  
 Company: RICCI LUMBER



Total Horizontal Product Length = 15-07-00

## Reaction Summary (Down / Uplift) (lbs)

Bearing	Live	Dead	Snow	Wind	Roof Live
B1, 3-1/2"	2338 / 0	892 / 0			
B2, 3-1/2"	2338 / 0	892 / 0			

## Load Summary

Tag	Description	Load Type	Ref.	Start	End	Loc.	100%	90%	115%	160%	Roof Live 125%	Tributary
0	Self-Weight	Unf. Lin. (lb/ft)	L	00-00-00	15-07-00	Top		14				00-00-00
1		Unf. Area (lb/ft²)	L	00-00-00	15-07-00	Back	30	10				10-00-00

## Controls Summary

	Value	% Allowable	Duration	Case	Location
Pos. Moment	11851 ft-lbs	56.6%	100%	1	07-09-08
End Shear	2780 lbs	29.3%	100%	1	01-01-00
Total Load Deflection	L/281 (0.646")	85.4%	n/a	1	07-09-08
Live Load Deflection	L/388 (0.467")	92.7%	n/a	2	07-09-08
Max Defl.	0.646"	64.6%	n/a	1	07-09-08
Span / Depth	19.1				

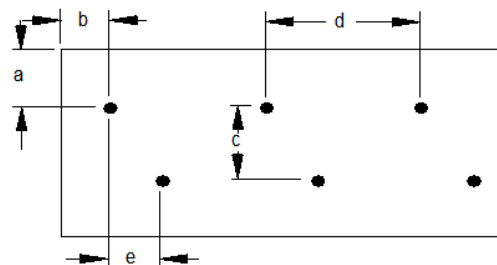
## Bearing Supports

	Dim. (LxW)	Value	% Allow Support	% Allow Member	Material
B1	Wall/Plate 3-1/2" x 5-1/4"	3229 lbs	n/a	23.4%	Unspecified
B2	Wall/Plate 3-1/2" x 5-1/4"	3229 lbs	n/a	23.4%	Unspecified

## Notes

Design meets Code minimum (L/240) Total load deflection criteria.  
 Design meets Code minimum (L/360) Live load deflection criteria.  
 Design meets arbitrary (1") Maximum Total load deflection criteria.  
 Design based on Dry Service Condition.  
 BC CALC® analysis is based on IBC 2009.  
 Calculations assume member is fully braced.

## Connection Diagram: Full Length of Member





BC CALC® Member Report

FB02 (Drop Beam)

Dry | 1 span | No cant.

July 20, 2022 12:22:07

Build 8435

Job name: WARD

File name:

Address: 6 WARD PLACE

Description:

City, State, Zip: PORTSMOUTH, NH

Specifier: MARK WEBB

Customer: DK ASSOCIATES

Designer:

Code reports: ESR-1040

Company: RICCI LUMBER

### Connection Diagram: Full Length of Member

a minimum = 1-1/2"

c = 6-1/2"

b minimum = 4"

d = 24"

e minimum = 1"

Calculated Side Load = 200.0 lb/ft

Install screws from both sides, staggering screws by half of the spacing to avoid splitting.

Connectors are: SDS 1/4 x 3-1/2

### Disclosure

Use of the Boise Cascade Software is subject to the terms of the End User License Agreement (EULA). Completeness and accuracy of input must be reviewed and verified by a qualified engineer or other appropriate expert to assure its adequacy, prior to anyone relying on such output as evidence of suitability for a particular application. The output here is based on building code-accepted design properties and analysis methods. Installation of Boise Cascade engineered wood products must be in accordance with current Installation Guide and applicable building codes. To obtain Installation Guide or ask questions, please call (800)232-0788 before installation.

BC CALC®, BC FRAMER®, AJS™, ALLJOIST®, BC RIM BOARD™, BCI®, BOISE GLULAM™, BC FloorValue®, VERSA-LAM®, VERSA-RIM PLUS®,



# LUCIA INVESTMENTS LLC

254 No. Broadway Unit 104 Salem, NH 03079 | T. 603-893-1212 | E. Billing@MyCabinetOutlet.com

## COVER LETTER

PROPERTY OWNER:	Lucia Investments LLC	TENANT & NOMINEE:	Cabinet Outlet, LLC
ADDRESS:	3020 Lafayette Road	POINT OF CONTACT:	Robert Currao, Member
SUBJECT:	Use of Space. Improvements.		

### To Whom It May Concern:

Cabinet Outlet is a re-seller of goods and services with in-house installation teams and finish carpenters.

1. Lucia Investments is the real estate holding company that will own the property and is the same owner as Cabinet Outlet.
2. Portsmouth NH location at 3020 Lafayette is a stand alone building with unit on the 1<sup>st</sup> floor and 2<sup>nd</sup> floor unit that has been an apartment.
  - A. 1<sup>st</sup> Floor: Cabinet Outlet will occupy
  - B. 2<sup>nd</sup> Floor: Currently an apartment. To be determined who occupant will be
3. 1<sup>st</sup> Floor:
  - A. Cabinet Outlet will occupy the 1<sup>st</sup> floor unit and keep it mostly as open concept while adding 2 walls to separate displays and add 2 walls to create a bathroom
  - B. Non-Functioning Displays. No water
  - C. Display or samples only
  - D. No manufacturing, no storage, and no assembly
4. 2<sup>nd</sup> Floor
  - A. Floor plan to remain as is
  - B. Replace flooring, cabinetry, paint
  - C. Replace non-working Furnace (before weather change)
5. Exterior
  - A. Roof, repair or replace trim, paint
  - B. Replace the wood of the staircase & rid of lattice
  - C. Add Wood Element in view of the road to appear as the same exterior currently on building
  - D. Build Dormer and cover the staircase & add lighting required by code
6. Exterior Landscaping
  - A. Sprinkler system and landscaping renewed
  - B. Repair Ramp & Stamp Cement at Ramp (Add Railings and repair to meet code)
  - C. Add Stone Wall on Side of Ramp to front with stonework (Add Railings)
  - D. Remove trees along fence by parking lot, seal coat, and add markings



Rob Currao

Lucia Investments LLC

Cabinet Outlet LLC

Page 1 of 1

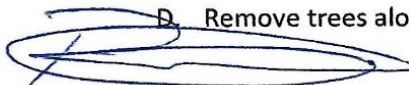
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  - A. Floor plan to remain as is
  - B. Replace flooring, cabinetry, paint
  - C. Replace non-working Furnace (before weather change)
5. Exterior
  - A. Roof, repair or replace trim, paint
  - B. Replace the wood of the staircase & rid of lattice
  - C. Add Wood Element in view of the road to appear as the same exterior currently on building
  - D. Build Dormer and cover the staircase & add lighting required by code
6. Exterior Landscaping
  - A. Sprinkler system and landscaping renewed
  - B. Repair Ramp & Stamp Cement at Ramp (Add Railings and repair to meet code)
  - C. Add Stone Wall on Side of Ramp to front with stonework (Add Railings)
  - D. Remove trees along fence by parking lot, seal coat, and add markings



Rob Currao  
Lucia Investments LLC  
Cabinet Outlet LLC



5.

The request of **Rob Currao (Applicant)**, and **Bursaws Pantry LLC (Owner)**, for property located at **3020 Lafayette Rd** whereas relief is needed for a proposed retail cabinetry outlet which requires the following: 1) A Special Exception from Section 10.440, Use #8.31 to allow retail sales conducted within a building which is permitted by special exception. Said property is located on Assessor Map 292 Lot 152 and lies within the Mixed Residential Business (MRB) district.

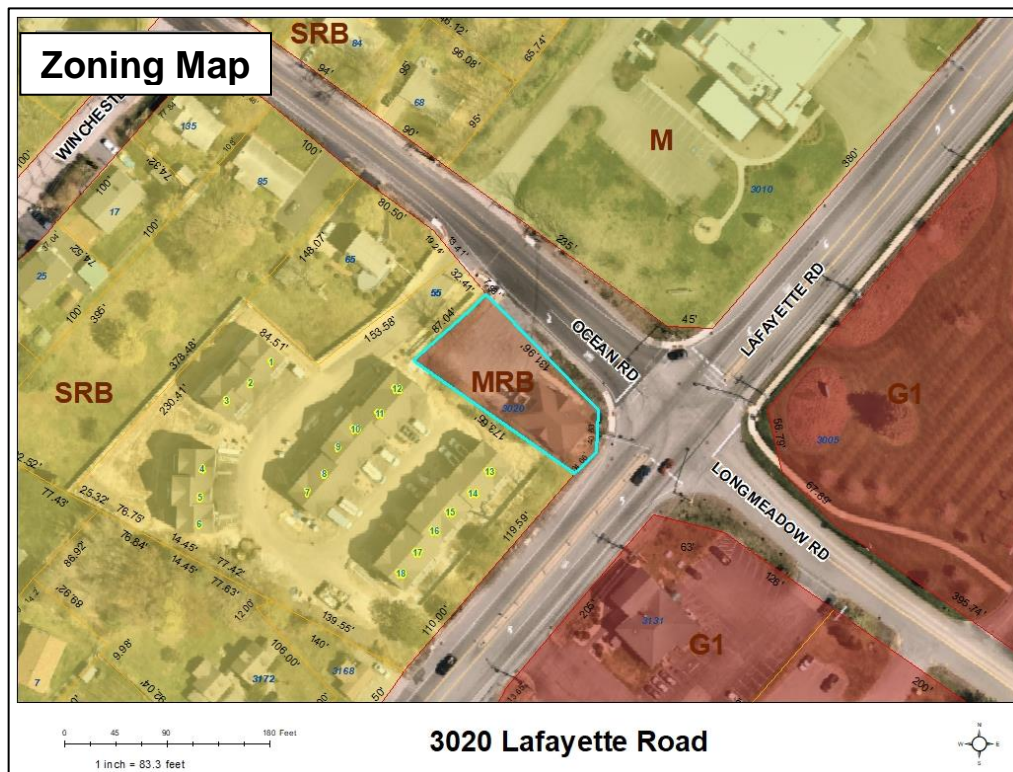
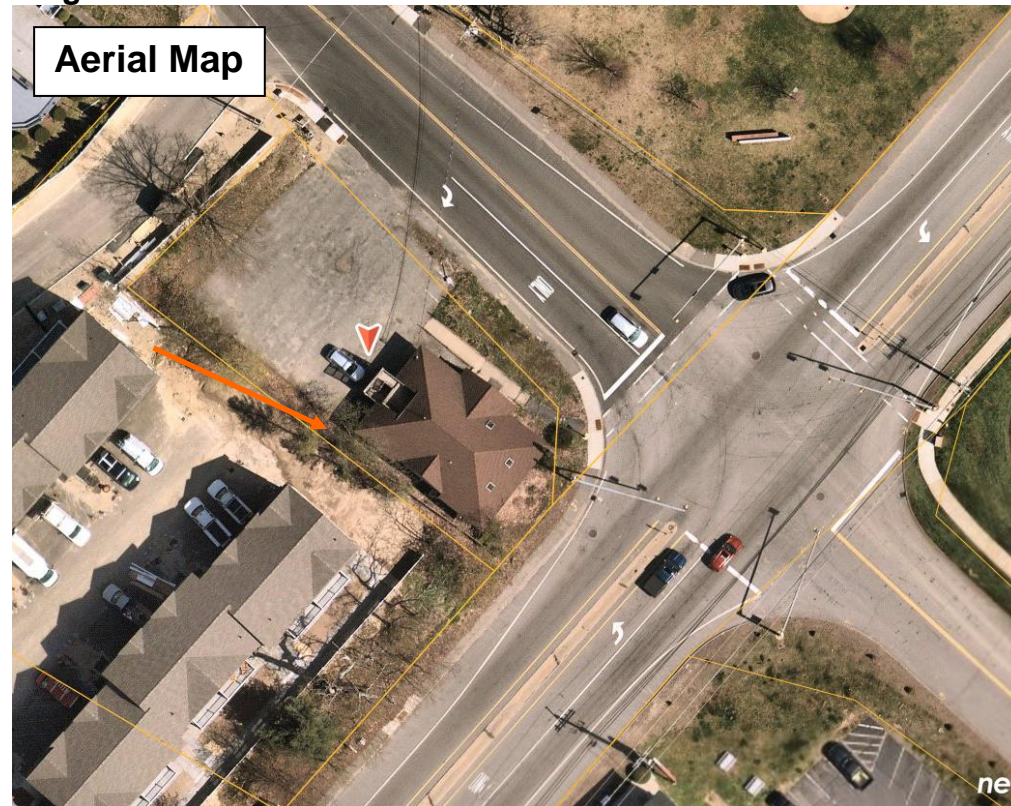
### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Vacant business with single-family above	<b>Retail sales/cabinet</b> outlet 1 <sup>st</sup> floor	Primarily Mixed Uses
<u>Lot area (sq. ft.):</u>	11,815	11,815	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	11,815	11,815	7,500 min.
<u>Street Frontage (ft.):</u>	>100	>100	100 min.
<u>Lot depth (ft.):</u>	>80	>80	80 min.
<u>Primary Front Yard (ft.):</u>	54	54	80 (center Rt. 1) min.
<u>Secondary Front Yard (ft.):</u>	>5	>5	5 min.
<u>Left Yard (ft.):</u>	5.5	5.5	10 min.
<u>Rear Yard (ft.):</u>	>15	>15	15 min.
<u>Height (ft.):</u>	<40	<40	40 max.
<u>Building Coverage (%):</u>	18.5	19.2	40 max.
<u>Open Space Coverage (%):</u>	32.5	38.5	25 min.
<u>Parking</u>	13	13	13
<u>Estimated Age of Structure:</u>	1985	<b>Special Exception request shown in red.</b>	

### Other Permits/Approvals Required

None

## Neighborhood Context





## **Previous Board of Adjustment Actions**

No December 18, 1984 – The Board **granted** variances to allow the following:

- 1) A 10' front yard where a 105' minimum yard was required for front yards abutting Lafayette Road;
- 2) A 10' left yard and a 19' right yard where 20' was required; and
- 3) The construction of a second floor apartment in a proposed two-story building where only conversions to existing structures for a residential use were allowed.

June 24, 1986 – The Board **granted** variances to allow the following:

- 1) A 10' front yard where a 105' minimum yard was required for front yards abutting Lafayette Road;
- 2) A 10' left yard and a 19' right yard where 20' was required; and
- 3) The construction of a second floor apartment in a proposed two-story building where only conversions to existing structures for a residential use were allowed. (Note: No indication in the file regarding action following the first approval in 1984.)

October 20, 1987 – The Board **granted** a variance to permit the establishment of a 5' left side yard (due to a surveyor's error) in conjunction with a new structure where a 10' yard had been permitted by a previous variance.

March 15, 1988 – The Board **granted** variances to allow two attached signs totaling 43 s.f. and one 28 s.f. free-standing sign where free-standing signs were not allowed for a total of 71 s.f. of aggregate signage where 30 sf. was the maximum allowed.

August 30, 1988 – The Board **denied** a request to allow the construction of an exterior staircase on the south side of the building (for access to a dwelling unit) with a 2' left side yard where 30' was required.

January 21, 2003 – The Board **granted** a variance to allow an existing 2,111 s.f. Convenience Goods I

store to be changed to a 2,111 s.f. Convenience Goods II store to allow the sale of prepared food for consumption off the premises where the maximum area for the latter was 2,000 s.f. The variance was granted with the stipulation that there would be no grilling or frying of prepared food on the premises.

January 20, 2004 – The Board **granted** a one-year extension of the above variance.

February 19, 2008 – The Board **granted** a variance to allow what had been requested and granted at the

January 21, 2003, extended for one-year and allowed to lapse. (As 3110 and 3020 Lafayette Road)

April 18, 2017 – The Board **postponed** a request to construct a retail facility of up to 15,000 s.f. with

drive-through window and lanes requiring the following: a) a special exception to allow a retail use; and variances to allow b) off-street parking to be located in a front yard or between a principal building and a street; c) a drive-through facility to be located within 100' of a residential district and within 50' of a lot line; d) drive-through lanes to be located within 50' of a residential district and within 30' of a lot line; and e) a building,

structure or parking area to be located 65' from the centerline of Lafayette Road where 80' is required.

May 16, 2017 – The Board **denied** the above petition

January 17, 2018 - The Board voted to **grant** the following petition as presented and advertised.

Relief from the Zoning Ordinance including:

1. A Variance from Section 10.521 to allow a) a 3,938± s.f. lot area per dwelling unit where 7,500 s.f. is required; and b) to allow a 5.5'± left side yard setback where 10' is required.
2. A Variance from Section 10.533 to allow a building or structure to be located 54'± from the centerline of Lafayette Road where a minimum of 80' is required.

### **Planning Department Comments**

The applicant is proposing a retail sales business for a cabinetry outlet at this location. There is an existing apartment on the second floor and the retail portion will be on the first floor. The applicant is proposing to make aesthetic and code updates to the building and property as part of the business.

### **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.*

### **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.



# 3020 Lafayette Narrative

August 26, 2022

Submitted by: Robert Currao | Cabinet Outlet | Lucia Investments LLC

RE: Narrative 3020 Lafayette Road

Subject Address: 3020 Lafayette Road Portsmouth NH

## To Whom It May Concern:

Lucia Investments LLC purchased the property with address 3020 Lafayette located at corner of Lafayette & Ocean. Cabinet Outlet LLC will be the occupant of the property. Cabinet Outlet owns all showrooms real estate & warehouse.

The owner with 100% shares of each company is the same person and is Robert Currao. Robert Currao has attached a letter to provide permission to himself and his entities to submit this application and provided permission to alter, improve, and occupy the property.

Cabinet Outlet has warehousing in a separate location and multiple showrooms that does not and will not store, inventory, manufacturer at any showroom. The showrooms are higher end retail space to showcase non functioning displays so consumers can make choice of cabinetry door styles.

### 1. The Subject Property at 3020 Lafayette Road Portsmouth, NH

- A. Currently the Property has been a Grocery Store and used Hood, Fire Stove, over 30 feet of refrigeration, and had many risks associated to the property. Property does NOT have lined parking lot
- B. The Proposed Property Use is a retail with low count walk ins. At most 3 employees with up to 3 to 4 walk ins which mostly is never at the same time.

### 2. SPECIAL EXCEPTIONS ADDRESSED DIRECTLY

- A. 10.232.20 Special exceptions shall meet all of the following standards:

**Cabinet Outlet will meet Portsmouth NH's standards and will not create major impact or use additional resources. Cabinet Outlet will have LESS impact than the previous use of space. Cabinet Outlet will NOT have use of refrigeration, appliances, fire or stoves, hood & ventilation, higher traffic count with visits to buy small dollar items, etc.**

- B. 10.232.21 Standards as provided by this Ordinance for the particular use permitted by special exception;

**Cabinet Outlet meets the criteria set forth by Portsmouth Zoning to obtain special exception & change use and;**

# LUCIA INVESTMENTS LLC

254 No. Broadway Unit 104 Salem, NH 03079 | T. 603-893-1212 | E. Billing@MyCabinetOutlet.com

- C. 10.232.22 No hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials;

**Cabinet Outlet's use of space does not require fire, stoves, etc. The Grocery Store and Food Preparation use will not continue and will be discontinued with Cabinet Outlet as the new occupant as a retail showroom.**

**Seller, Grocery Store owner will remove the hood, gas stove, and refrigeration will be removed. Cabinet Outlet will remove all aforementioned items left behind, if any, and build out a beautiful showroom which will have non-functioning kitchen displays.**

**The showroom's displays will have no water, gas, electric, and displays are non-functioning as it relates to water & stoves not being functioning. The bathroom and small kitchenette will have plumbing for a sink for minor use.**

**Cabinet Outlet does NOT use any gases, will not have any stove on the 1<sup>st</sup> floor for cooking for customers, and is simply a retail showroom that displays non-functioning displays.**

**No inventory will be stored, no manufacturing, no assembly, and no toxic material will ever be stored or in use. Outdoor grill will not be in use or stored by Cabinet Outlet.**

- D. 10.232.23 No detriment to property values in the vicinity or change in the essential characteristics of any area including residential neighborhoods or business and industrial districts on account of the location or scale of buildings and other structures, parking areas, accessways, odor, smoke, gas, dust, or other pollutant, noise, glare, heat, vibration, or unsightly outdoor storage of equipment, vehicles or other materials;

**Cabinet Outlet will not build an addition. The Roof will change to Black to be consistent with the new buildings built behind the property. The siding is in need of repair and will be repaired with siding painted It will build a dormer over the 2<sup>nd</sup> Floor entrance and replace the roof. It will complete trim repair and paint the building. Cabinet Outlet and use of space will improve curb appeal, will not have the traffic or number of visitors that has been at the current use of space. Improvements will be made to the landscaping, exterior paint, parking lot will be repaired and seal coated, parking lot will have parking spots painted.**

**Cabinet Outlet will make use of the parking lot that is currently in place but will improve it and improve the landscaping around it. There will not be any storage of equipment, vehicles or other materials.**

**Cabinet Outlet does not deal with material, gases, smoke, etc. as it has non-functioning displays that are beautiful but are displays inside. There will not be any storage outdoor of equipment or vehicles and Cabinet Outlet will not have any unsightly outdoor storage of aforementioned items. Traffic count will be very low and business will not be conducted outside so noise will be low and;**



# LUCIA INVESTMENTS LLC

254 No. Broadway Unit 104 Salem, NH 03079 | T. 603-893-1212 | E. Billing@MyCabinetOutlet.com

- E. 10.232.24 No creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity;

**Cabinet Outlet's hours will be Monday thru Saturday, 9 am to 5 pm. Wednesdays to 7 pm with only 1 or 2 employees to 7 pm. Closed on Sundays, closed on holidays, and closed during snow storms. Cabinet Outlet is lower traffic count then previous use of space. Low impact on town and will not increase traffic and;**

**Cabinet Outlet will not create a traffic hazard, will not create traffic congestion, and Cabinet Outlet will require or need minimal parking. 3 to 5 employees assigned to the showroom with only 2 to 3 to work at one given time. There are 15 parking spots (unmarked currently) and Cabinet Outlet will use 30 to 40% of those parking spots.**

**Most of sales are remote with electronic orders made for cabinetry. From time to time, homeowners and contractors come into showroom to look at door styles in person. There will be less traffic, less cars, and no congestion created by Cabinet Outlet use of space and;**

- F. 10.232.25 No excessive demand on municipal services, including, but not limited to, water, sewer, waste disposal, police and fire protection and schools; and

**Cabinet Outlet will have minimal impact on municipal services and will have a lot less or small percentage (%) of the impact the Grocery, Food Preparer had as the previous use. Cabinet Outlet will not have impact on the town and will add to the value of neighboring roads and surrounding area after the building is beautified and;**

- G. 10.232.26 No significant increase of stormwater runoff onto adjacent property or streets.

**Cabinet Outlet will not have increase of stormwater runoff onto adjacent property or streets. Property will not have additions and the parking lot will remain as is.**

### 3. ADDITIONAL INFORMATION FOR THE BOARD

- A. The property is not being altered as it relates to space.
- B. Newer White Vinyl Fence already exists at the lot at backside of property, parking lot and;
- C. Landscaping is currently overgrown and pitch or landscaping will not be altered other than manicured, mulch added, and crushed rock and;
- D. No additions are being built and exterior will be beautified with trim repair, paint, new roof, and;
- E. Occupants will be a low number as it relates to employees and low traffic count and;

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## 4. STATEMENT FROM CABINET OUTLET TO PORTSMOUTH NH BOARD

My name is Robert Currao, founder and owner of Cabinet Outlet. Both showrooms in Salem NH & Amherst NH are owned by myself. Both showrooms real estate has been beautified and has brought greater value, curb appeal to the neighborhoods or areas surrounding the showrooms.

Warehousing, inventory, and deliveries are never completed from the showrooms. The showrooms are well designed with a space that is inviting, showcases the door displays, and will have a very nice curb appeal in Portsmouth NH as well.

I am asking that you approve my request to open up a showroom in Portsmouth NH at the location of 3020 Lafayette which is more desirable than the prior use of space. Prior use made use of fire, smoke was created from cooking, refrigerators took up 75% of the back space, and there was more municipal services used.

Cabinet Outlet is a retail space without the high traffic count. Customers stay usually for an hour, at most, and leave with material and business cards. Y

You are appreciated and thank you in advance.

### Current Property

5. Use has been a Grocery Store or Convenience Store | Food prior to its current state of being vacate.
6. Description is that it has not been maintained and curb appeal is not appealing
7. Building is in need of repair, trim repair, upkeep, treatment, etc
8. Mechanically property has systems in need of replacement
9. Exterior requires refacing or replacement of staircase to 2<sup>nd</sup> floor unit
10. Exterior requires refacing or replacement of staircase on side of building with handrail (No handrail)
11. Exterior requires lighting for emergency and to luminate walk way properly
12. Exterior requires other improvements to bring to code

### New Use of Space & New Use of Land

13. New Owner is listed as Lucia Investments LLC
14. Same Member or Owner, Owns Cabinet Outlet LLC
15. Cabinet Outlet LLC is a retailer with multiple successful showrooms, currently, in Salem, NH and Amherst NH



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16. Cabinet Outlet's showrooms are only retail stores with sales reps and designers without or with NO storage, manufacturing at the showrooms. The showrooms have non-functioning displays only for viewing.
17. Cabinet Outlet, LLC to open or establish the Portsmouth NH showroom in what has been a goal of the owners for over 5 years as the demographics are in line with its customer base currently
18. Cabinet Outlet LLC offers higher end constructed cabinetry and higher quality painted cabinets as a re-seller and not the manufacturer.
19. Cabinet Outlet LLC buys directly from manufacturers and re-sells cabinetry, counters, etc.
20. Cabinet Outlet has warehousing in New Hampshire and does NOT stock, store, or handling any of its warehousing in the showrooms
21. Cabinet Outlet is going to upfit the unit for its showroom with 19 displays, small displays with a few larger ones, and showcase with ample room to walk around and through the showroom
22. Cabinet Outlet business will have 3 Employees only working at any given times

## USE OF SPACE & ORDINANCE ADDRESSED

23. Cabinet Outlets Hours of Operations will be Monday thru Saturday 8 am to 5 pm. Wednesday to 7 pm. No Sunday hours.
24. Cabinet Outlet usually will only have 2 to 4 customers in the showroom if walk ins enter the showroom at any given time but has many pockets of time where its only Sales or Designers as they work electronically with many individuals.
25. Parking Spots are 15 currently and that is more than adequate for the Scope of Work or Industry as it relates to low traffic retail.

## CURRENT LAND & PROPERTY MAP

26. 3020 Lafayette Road Lengths & Frontage (See Plot Plan Attached)
27. 3020 Lafayette Road back side of building is 173.35' at length of the new white vinyl fence
28. 3020 Lafayette Road Lafayette side of building is 34.66' along before diagonal or to corner
29. 3020 Lafayette Road corner of Lafayette and Ocean Road is 40.63'
30. 3020 Lafayette Road Ocean Road frontage is 139.94 total with easement, 131.96
31. 3020 Lafayette Road Parking Lot is 87.04' depth

## LUCIA INVESTMENTS LLC

254 No. Broadway Unit 104 Salem, NH 03079 | T. 603-893-1212 | E. Billing@MyCabinetOutlet.com

PROPERTY OWNER: Lucia Investments LLC

TENANT & NOMINEE: Cabinet Outlet, LLC

ADDRESS: 3020 Lafayette Road

POINT OF CONTACT: Robert Currao, Member

SUBJECT: Use of Space. Improvements.

# NARRATIVE

## In Brief



## **LUCIA INVESTMENTS LLC**

254 No. Broadway Unit 104 Salem, NH 03079 | T. 603-893-1212 | E. Billing@MyCabinetOutlet.com

# **3020 Lafayette Narrative**

**August 26, 2022**

RE: Narrative 3020 Lafayette Road

Address: 3020 Lafayette Road Portsmouth NH

### **To Whom It May Concern:**

This is to address the special criteria for ZBA in Portsmouth NH so that we can establish Cabinet Outlet in Portsmouth NH at 3020 Lafayette Road Portsmouth NH.

### **Current Property**

1. Use has been a Grocery Store or Convenience Store | Food prior to its current state of being vacate.
2. Description is that it has not been maintained and curb appeal is not appealing
3. Building is in need of repair, trim repair, upkeep, treatment, etc
4. Mechanically property has systems in need of replacement
5. Exterior requires refacing or replacement of staircase to 2<sup>nd</sup> floor unit
6. Exterior requires refacing or replacement of staircase on side of building with handrail (No handrail)
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11. Cabinet Outlet LLC is a retailer with multiple successful showrooms, currently, in Salem, NH and Amherst NH
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## **LUCIA INVESTMENTS LLC**

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13. Cabinet Outlet, LLC is or purchased (closing 8/31/22) 3020 Lafayette Road to open or establish a third (3<sup>rd</sup>) showroom in what has been a goal of the owners for over 5 years as the demographics are in line with its customer base currently
14. Cabinet Outlet LLC offers higher end constructed cabinetry and higher quality painted cabinets as a re-seller and not the manufacturer.
15. Cabinet Outlet LLC buys directly from manufacturers and re-sells cabinetry, counters, etc.
16. Cabinet Outlet has warehousing in New Hampshire and does NOT stock, store, or handling any of its warehousing in the showrooms
17. Cabinet Outlet is going to upfit the unit for its showroom with 19 displays, small displays with a few larger ones, and showcase with ample room to walk around and through the showroom
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## BRIEF SUMMARY OF THE RENOVATIONS

### 3020 Lafayette Road Portsmouth NH 03801

QTY	ITEM	Needed	COMMENTS
3	Porta Potty	Porta Potty Needed	Needed for 90 days
3	30 Yard Dumpster	Dumpster Needed	Dump & Return as Needed
1	Safety Items Budget	Cones, Tape off Areas, Signs	Misc. Items needed for Jobsite
1	PREP AREA Exterior	Misc Prep of Areas for Work	Misc. Items needed for Jobsite
1	PREP AREA Interior	Misc Prep of Areas for Work	Misc. Items needed for Jobsite
1	Design Fees	Design & Budgets	Internal. Design Completed by Internal
1	Initial Fees	Towns Initial Fees	UNKNOWN
1	Misc. Fees	Miscellaneous Fees	UNKNOWN
<b>DEMO EXISTING 1st PHASE</b>			
1	DEMO Basement	Basement remains as is, unfinished.	
1	DEMO 1st Floor	Remove 26" Soffit that was above the built in cooling units	
1	DEMO 2nd Floor	Remove Kitchen&Bath Cabinets, Remove All Current Flooring	
1	DEMO 2nd Floor	Remove all interior trim around Doors, at Baseboards, at Window Trim	
1	DEMO 2nd Floor	Remove Current Walls at Bathtub to Install Subway Tile as Surround	
1	DEMO Exterior	Remove Metal Railing at front of Building	
<b>DEMO EXISTING 2ND PHASE</b>			
1	DEMO Exterior	Remove outside staircase to 2nd Floor (interior stair build out needed 1st)	
1	DEMO Exterior	Remove Metal Railing at front of Building	
1	DEMO Misc	Misc Demo that may come up	
<b>EXTERIOR BUILD OUT PRIOR TO SIDING   ROOF   PAINT   GUTTERS</b>			
1	1 New Dormer Build-Out	Install Dormer Above Current 2nd Floor Entry Way	
1	1 New 2nd Floor Door	Install New Door at 2nd Floor with Glass Side Lites	
1	Re-Build StairCase	Build New Staircase, Composite Material from Parking to 2nd Floor	
1	Weather Tight Dormer	Exterior Weather Tight All Dormer Installed Over Steps & for 2 <sup>nd</sup> Floor Entrance	
1	Shingles at New Dormer	Add New Shingles at Dormer	
<b>EXTERIOR REPAIR PRIOR TO SIDING   ROOF   PAINT   GUTTERS</b>			
1	Replace Trim & Repair	Replace all Wood where trim is rotted or needs to be repaired	
1	Add & Seal Wood Panels	Add Wood & Weather Tight at Openings & Replace any Rot	
<b>EXTERIOR DOORS PRIOR TO SIDING   ROOF   PAINT   GUTTERS</b>			
1	FRONT   Glass Door	Keep Existing Glass Door. Replace Mechanism & ADA Handle(s)	
1	SIDE   Glass Door	Keep Existing Glass Door. Replace Mechanism & ADA Handle(s)	
<b>EXTERIOR BUILD OUT SIDING   ROOF   PAINT   GUTTERS</b>			
1	Surround Stairwell	Add Wood or Siding as a Surround at Exterior Staircase with Window	
1	Surround Stairwell	Will include an opening with Sign over Opening as 2nd Floor Entry	
1	PAINT OR SIDING	Install New or Paint Siding to DARK	

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		GRAY
1	IF SIDING	IF SIDING: Budget is \$13,500 Max. If Quotes over, paint siding
1	ROOF	If NEW ROOF: Budget \$32,500 Max. If Quotes over, keep existing
1	ALL TRIM	PAINT ALL TRIM BLACK
1	Paint Window Trim	Paint Black All Window Trim
1	Paint Building Trim	Paint Black All Exterior Trim
1	Paint Door Trim	Paint Black All Door Trim
1	Paint Foundation Cement	Paint Cement with Cement Tone Paint to Renew & Make look New
1	Gutters	Gutters all around building with proper down spouts at 5 Points
<b>EXTERIOR LANDSCAPE</b>		<b>Landscaping</b>
1	Tree Removal	Remove 2 by Fence, Leaning & not healthy. 2 Small 5' Overgrowns
1	Mason Walkway at Front	Remove Railing & Add Stone Wall at Front with Railings to Code
1	Mason Steps at Side	Remove Ramp & Add Steps on Side with Railings to Code
1	Initial Landscape CleanUp	Landscape Clean Up, Prep Budget, Remove Plantings, etc
1	Landscape Outlining	Outline New Landscape, Edge for New Mulch & Plants
1	Irrigation	Run New Irrigation with Plant Sprayers (mist) at Beds and Grass
1	New Loam for Grass	New Loam (Super Loam) & Hydroseed the New Grass
1	Hydroseed	Include with New Loam and Grass
1	Landscape Design	Grading
1	Landscape Ongoing	Planting New Plants, New Mulch, Stone, Irrigation, etc
		<b>Do NOT include here</b>
		Budget Monthly Maintenance
<b>EXTERIOR PARKING LOT</b>		<b>Parking Lot</b>
1	Tree Removal	With Landscaping
1	Seal Coat Parking Lot	Seal Coat after Filling all Cracks with Crack Sealant
1	Parking Lines	Parking Lines (Line Company by Code) with 1 Handicap at End Space
<b>INTERIOR SIDE ENTRANCE   LOBBY</b>		<b>1st FLOOR IMPROVEMENTS &amp; CABINET OUTLET BUILD OUT</b>
1	Frame out for Bathroom	Frame out for Bathroom at Southwest Part of Building at Corner
1	1st Floor Bathroom	Plumbing part of Plumbing rough
1	Side Door Lobby Area	Create Small Lobby at Side. 1 Door to Cabinet Outlet. 1 to basement
1	Side Lobby to Unit 1	Small Approximate 10 x 11' Lobby with 2 Doors. Unit 1 & Basement
1	Unit 1 Lobby Entry	Entry to Unit 1 at Lobby. Glass Entry Door with Push & Pull Style
1	Basement Entry	Entry to Basement from Lobby will have a Door
1	Basement Door Build	Only at Stairwell. Paint & Add Railing to Code to Basement
1	ROUGH INSPECTION	DO NOT PROCEED WITHOUT ROUGH INSPECTION
1	ROUGH CONDITIONS	Any Conditions or List Completed prior to closing up with Sheetrock
1	Hardwood Floors	Hardwood in Lobby & Entire 1st Floor at Cabinet Outlet. Stain Light
1	Electrical Fixture	Large Fixture from Ceiling at Lobby.
1	Paint Entry Lobby	Paint Entry Neutral Color. Revere Pewter or Light Grey
1	Town Inspection	Call & Have Final Inspections Completed. Fees Unknown
<b>INTERIOR 1ST FLOOR</b>		<b>1st FLOOR IMPROVEMENTS &amp; CABINET OUTLET BUILD OUT</b>



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1	Cabinet Outlet BuildOut	Showroom. Add 3 Walls, not to ceiling, bathroom, & 21 displays
1	Bathroom Added	Bathroom Added on 1st Floor at Showroom, Corner. ADA Bathroom
1	Electrician Rough	Rough All Electrical & Fixtures
1	Plumber Rough	Rough All Plumbing & Fixtures. Adding a New Bathroom at 1st Unit
1	Plumber Rough	New Bathroom. Single Vanity Sink. Single Toilet. No urnal.
1	Hardwood Floors	Accounted for Above. Entire 1st Floor Hardwood Floor
1	ROUGH INSPECTION	DO NOT PROCEED WITHOUT ROUGH INSPECTION
1	ROUGH CONDITIONS	Any Conditions or List Completed prior to closing up with Sheetrock
1	Plasturer	Sheetrock & Ready or Prep for Paint
1	Sheetrock & Ready	Sheetrock & Ready or Prep for Paint
1	Cabinet Displays Install	Cabinet Displays Installed (Business Build Out. Cabinet Outlet to Pay)
1	Electrician Final	Electrician All Final Wiring
1	Countertop Installation	Countertops Installed throughout Entire Building. Cabinet Outlet to Pay
1	Plumbing	Final Plumbing Hook Ups
1	Paint by Design	Paint By Design and Paint Color chosen
1	Town Inspection	Call & Have Final Inspections Completed. Fees Unknown
<b>INTERIOR 2nd FLOOR</b>		
1	Demo Kitchen Cabinets	Create a Galley Kitchenette for Business with Storage
1	Demo Vanities	Both Bathroom will only get New Vents, Fixtures, Paint, & Flooring
1	Electrician Rough	Rough All Electrical & Fixtures
1	Plumber Rough	Rough All Plumbing & Fixtures
1	ROUGH INSPECTION	DO NOT PROCEED WITHOUT ROUGH INSPECTION
1	ROUGH CONDITIONS	Any Conditions or List Completed prior to closing up with Sheetrock
1	Plasturer	Sheetrock & Ready or Prep for Paint
1	Sheetrock & Ready	Sheetrock & Ready or Prep for Paint
1	Floor Install	Vinyl Floor installed throughout 2nd Floor. Same in Bathrooms as well
1	Kitchenette Cabinets	Kitchenette Cabinets & Counters Installed
1	Bathroom Cabinets	Bathroom Vanity Cabinets & Counters Installed
1	Electrician Final	Electrician All Final Wiring
1	Plumbing	Final Plumbing Hook Ups
1	Paint by Design	Paint By Design and Paint Color chosen
1	Town Inspection	Call & Have Final Inspections Completed. Fees Unknown
<b>INTERIOR BASEMENT</b>		
1	Doorway	Noted Above
1	Staircase to Basement	Paint Only & Railings will be industrial steel or metal
1	Staircase Railings	Install Railings on Both Sides of Stairwell due to width of Stairs
1	ROUGH INSPECTION	DO NOT PROCEED WITHOUT ROUGH INSPECTION
1	ROUGH CONDITIONS	Any Conditions or List Completed prior to closing up with Sheetrock
1	Paint by Design	Paint By Design and Paint Color chosen. Misc Cost from Painters

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1	Town Inspection	Call & Have Final Inspections Completed. Fees Unknown
<b>HVAC</b>		<b>HVAC FOR ENTIRE BUILDING</b>
1	HVAC NOTE	Done after Demo and Before Rough to Ensure Finish is Clean
1	2 New Furnaces	1 for Each Floor. Larger Unit for 1st Floor
1	2 New Condensors	1 for Each Floor. Larger Unit for 1st Floor
1	1st Floor Duct Work	Spiral with Venting
1	2nd Floor Duct Work	Duct is already In Walls, Flooring, Ceiling Vents. Budget for Additional
1	Lobby Vent   Duct	Separate Zone shared with 1st Floor Unit at Lobby
1	HVAC NOTE	Extra Budget in Case something comes up or needed to bring to code
<b>ELECTRICAL   OUTDOOR</b>		<b>ELECTRICAL (Includes Labor &amp; Fixtures Budget)</b>
1	Parking Lot	No Parking Lot Light Fixture Needed as Building Up Close to Lot Above Side Entrance. Sensored, barn light above door.
1	East Side of Building	At Staircase. Sensored, Industrial at bottom, middle, and top of stairs
1	East Side of Building	Against Building. Dusk to Dawn, Low Lummes by front.
1	North East Side	Above Front Entrance. Sensored, barn light above door
1	North Side of Building	Along the wall, inside and as required lighting for walkway
1	North Side of Building	No Light at Building on Lafayette Side of Building. Leave as is
1	Against Building   West	Rear of Building. Low Lummes under 48 " from ground
1	South or Rear of Building	Add Timer for All Signs... Signs will remain as is with covering only
1	Signs "As is"	Place Breaker at Panel if Needed due to Timer
1	Signs "As is"	
<b>ELECTRICAL   INSIDE FRONT</b>		<b>ELECTRICAL (Includes Labor &amp; Fixtures Budget)</b>
1	Lobby Front Entrance	Fixture. Short Chandelier. Turn on with Switch
1	Lobby Front Entrance	Fire Sign. Exit to Code
1	Lobby Front Entrance	1 Gang Plug. By top of Glass Entrance for Open Sign
<b>ELECTRICAL   INSIDE SIDE EAST</b>		<b>ELECTRICAL (Includes Labor &amp; Fixtures Budget)</b>
1	Side Entrance Inside	Fixture. Larger Chandelier. Turn on with Switch or with timer.
1	Side Entrance Inside	Fire Sign. Exit to Code. (Strobe?)
1	Side Entrance Inside	1 Gang Needed on Right Hand Wall.
<b>ELECTRICAL   STAIRS UP TO 2ND</b>		<b>ELECTRICAL (Includes Labor &amp; Fixtures Budget)</b>
2	Stairs to go upstairs	2 x Fixtures. Industrial Looking Sconce(s) against wall. Sensor turn on
1	Fire Exit	Fire Exit at Top of Stairs
<b>ELECTRICAL   BASEMENT</b>		<b>ELECTRICAL (Includes Labor &amp; Fixtures Budget)</b>
1	Basement Stairs	Light Fixture(s), Wall Sconces, Sensored, at Stairwell for Safety
1	GFI in Bathroom	Add GFI Plugs at Vanity to Add the Electric Water Heater. Individual
1	Fire Exit	Everywhere needed and required by code
<b>ELECTRICAL   1ST FLOOR</b>		<b>ELECTRICAL (Includes Labor &amp; Fixtures Budget)</b>
3	Fire Exits	As required but minimum 3 needed at Front Entrance, Interior, & Lobby
1	Fire Emergany Lights	New Bathroom. In the unit, as required by code



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1	Add Fixture in Bathroom	Vent   Light Fixture in Bathroom to be vented out to exterior Wall
1	Add Fixture in Kitchenette	Light Fixture on a Sensor in Kitchenette
<b>ELECTRICAL   MECHANICAL</b>		<b>ELECTRICAL</b>
2	New Condensers	2 New Condensers
2	New Furnace	New Furnace, If Needed
1	Misc.	Budget for any Miscellaneous Electrical that may arise during build out
2	Replace Bath Fixtures	2 x Vent   Light Fixture in Bathrooms to replace existing
<b>ELECTRICAL   PANEL</b>		<b>ELECTRICAL</b>
1	Panel to Code	Update or Bring Panel to Code with proper function. Separate 2 units
<b>PLUMBING   DISCONNECT</b>		<b>PLUMBING</b>
1	Prior to Demo	Disconnect all prior to demo
1	Disconnect	Disconnect at Basement
1	Disconnect	Disconnect all at 1st Floor
1	Disconnect	Disconnect all on 2nd Floor
1	Disconnect	Disconnect all for Outdoor
1	Disconnect	Disconnect, Shut Off, & Get Rid of all gas going to Stove(s). No Stoves
<b>SIGNAGE</b>		<b>SIGNAGE</b>
1	Sign Lighting	Signs to Remain as is. Will go over current sign lettering only
1	Sign Lighting	Upgrade at Panel, If Needed.
1	Sign Lighting	Signs to be on a Timer

## DETAILED DESCRIPTION BELOW

### LOCATION

- **County:** Rockingham

### UTILITIES

- **Sewer:** Public
- **Water:** Public

### STRUCTURAL INFORMATION

- **Exterior Const.:** Clapboard
- **Basement Entrance:** Interior
- **Basement Desc.:** Concrete, Full, Stairs - Interior, Storage Space, Unfinished, Interior Access
- **Roof:** Shingle - Asphalt
- **Square Feet:** 3,127

## LUCIA INVESTMENTS LLC

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Parcel Area      0.27  
(AC)

Zoning

Zoning

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MRB

---

SRB

Please let me know if you require any further information or narrative described further.

Roberto Currao Sr.

Office. 603-893-1212

Mobile. 978-886-2100

Email. RobC@MyCabinetOutlet.com



PROPERTY OWNER: Lucia Investments LLC  
TENANT & NOMINEE: Cabinet Outlet, LLC  
ADDRESS: 3020 Lafayette Road  
POINT OF CONTACT: Robert Currao, Member  
SUBJECT: Use of Space. Improvements.

# OWNER AUTHORIZATION Improvements



# LUCIA INVESTMENTS LLC

254 No. Broadway Unit 104 Salem, NH 03079 | T. 603-893-1212 | E. Billing@MyCabinetOutlet.com

## OWNER AUTHORIZATION

August 26, 2022

RE: Owner Authorization for 3020 Lafayette Road

Address: 3020 Lafayette Road Portsmouth NH

### To Whom It May Concern.

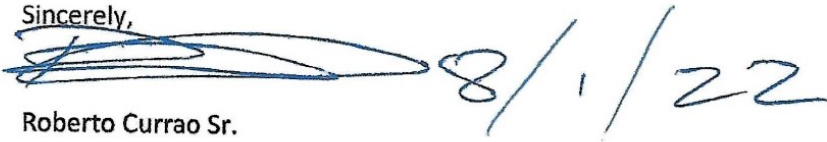
I own Lucia Investments LLC which is the owner of the property at 3020 Lafayette Road Portsmouth.

I own Cabinet Outlet who is the tenant and occupant of 3020 Lafayette Road. Cabinet Outlet will have displays and operate its business at aforementioned property.

I provide permission to Cabinet Outlet to occupy, do business, alter space, change signs, and do anything or everything required to do business and allowed by town and state law and or building code.

Thank you and you are appreciated.

Sincerely,



Roberto Currao Sr.

Office. 603-893-1212

Mobile. 978-886-2100

Email. RobC@MyCabinetOutlet.com



**PROPERTY OWNER:** Lucia Investments LLC  
**TENANT & NOMINEE:** Cabinet Outlet, LLC  
**ADDRESS:** 3020 Lafayette Road  
**POINT OF CONTACT:** Robert Currao, Member  
**SUBJECT:** Use of Space. Improvements.

# **OWNER AUTHORIZATION SIGNS & DESIGN**



# LUCIA INVESTMENTS LLC

254 No. Broadway Unit 104 Salem, NH 03079 | T. 603-893-1212 | E. Billing@MyCabinetOutlet.com

## OWNER AUTHORIZATION REGARDING SIGN

August 26, 2022

RE: Owner Authorization for 3020 Lafayette Road

Address: 3020 Lafayette Road Portsmouth NH

### To Whom It May Concern.

I own Lucia Investments LLC which is the owner of the property at 3020 Lafayette Road Portsmouth.

I own Cabinet Outlet who is the tenant and occupant of 3020 Lafayette Road. Cabinet Outlet will have displays and operate its business at aforementioned property.

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**PROPERTY OWNER:** Lucia Investments LLC  
**TENANT & NOMINEE:** Cabinet Outlet, LLC  
**ADDRESS:** 3020 Lafayette Road  
**POINT OF CONTACT:** Robert Currao, Member  
**SUBJECT:** Use of Space. Improvements.

# **CURRENT PHOTOS**

# **3020 Lafayette**



**SUBJECT PROPERTY PHOTOS**



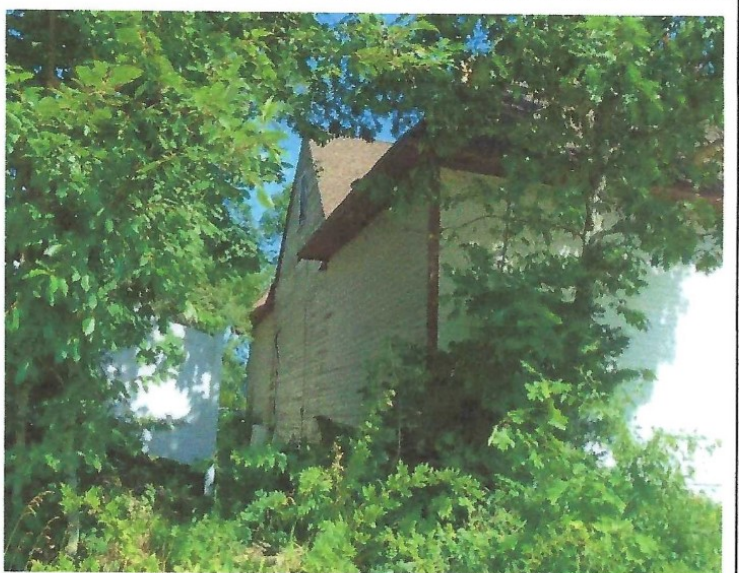
**NORTH SIDE OF BUILDING**



**WEST SIDE OF BUILDING**



**EAST SIDE OF BUILDING**

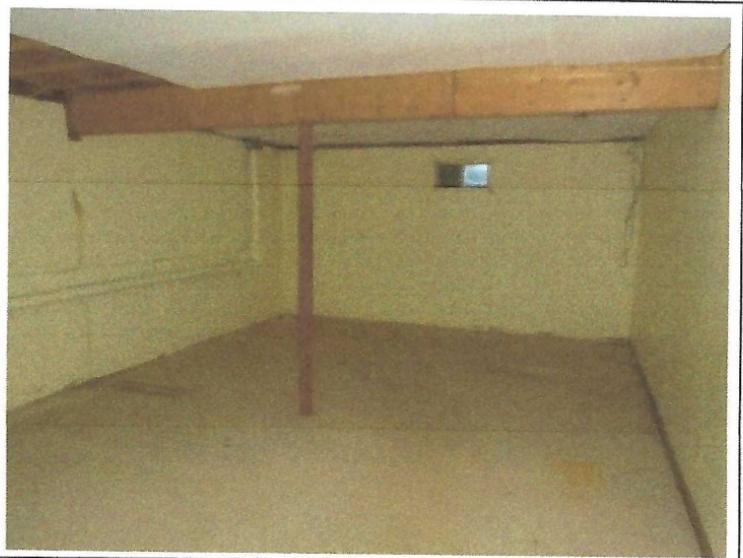


**SOUTH SIDE OF BUILDING**



**ROAD SIGN****INTERIOR – 1<sup>ST</sup> FLOOR****INTERIOR – 1<sup>ST</sup> FLOOR****INTERIOR – 1<sup>ST</sup> FLOOR**



**BASEMENT LEVEL****BASEMENT LEVEL****2<sup>ND</sup> FLOOR KITCHEN****2<sup>ND</sup> FLOOR DINING ROOM**



**2<sup>ND</sup> FLOOR LIVING ROOM****2<sup>ND</sup> FLOOR BEDROOM****2<sup>ND</sup> FLOOR BEDROOM****LAFAYETTE ROAD FACING SOUTH**





**LAFAYETTE ROAD FACING NORTH**



**LONGMEADOW ROAD FACING EAST**



**OCEAN ROAD FACING WEST**



PROPERTY OWNER: Lucia Investments LLC  
TENANT & NOMINEE: Cabinet Outlet, LLC  
ADDRESS: 3020 Lafayette Road  
POINT OF CONTACT: Robert Currao, Member  
SUBJECT: Use of Space. Improvements.

# SITE MAP

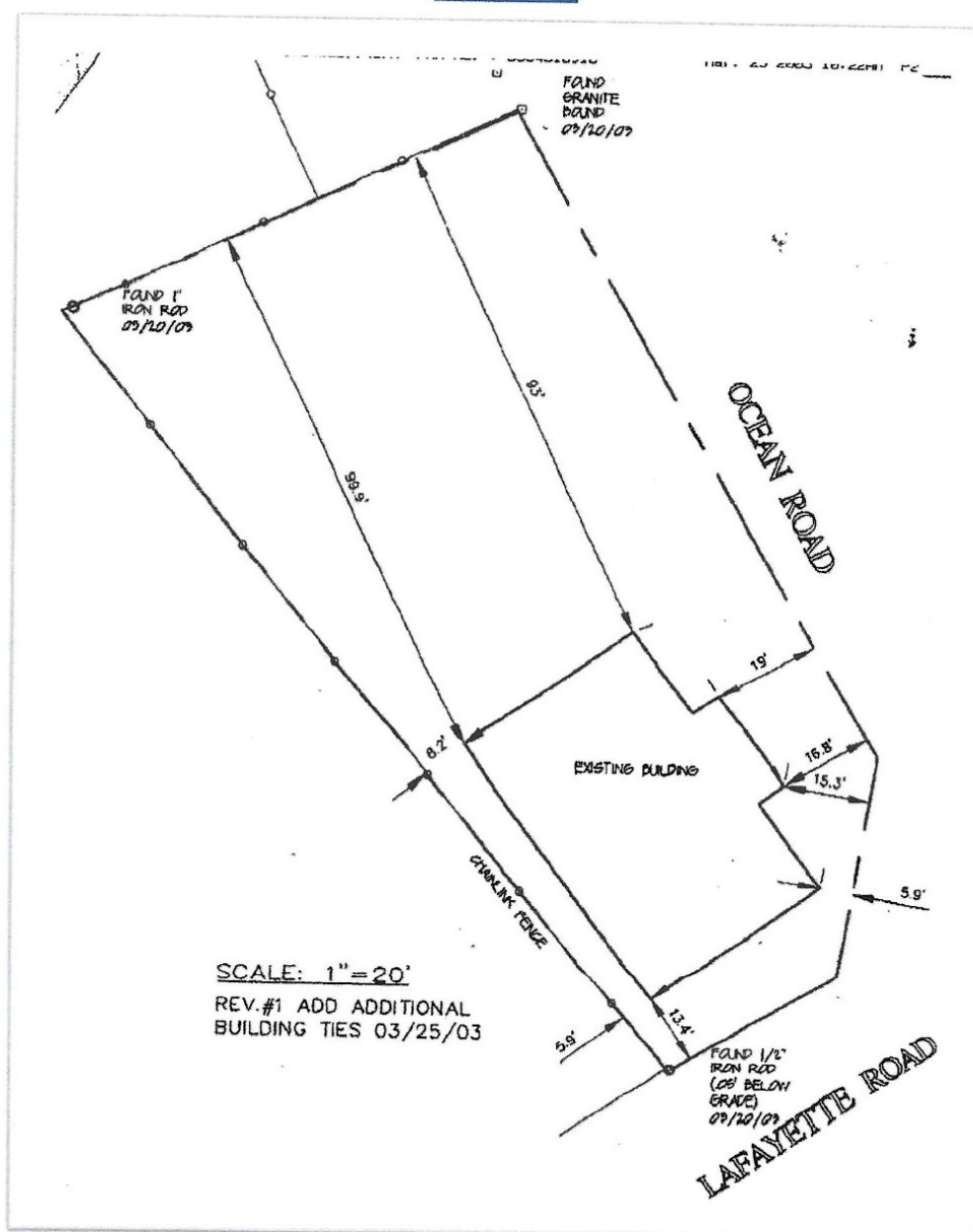
## 3020 Lafayette



**Easements:** I am not aware of any easements or adverse conditions that would negatively impact the subject property.

**Flood Zone:** According to the National Flood Insurance Program Map for Rockingham County, Community Panel No. 33015C0270F, effective 1/29/2021, the subject is in Zone X, an area of minimal flood hazard.

### SITE MAP





## LUCIA INVESTMENTS LLC

254 No. Broadway Unit 104 Salem, NH 03079 | T. 603-893-1212 | E. Billing@MyCabinetOutlet.com

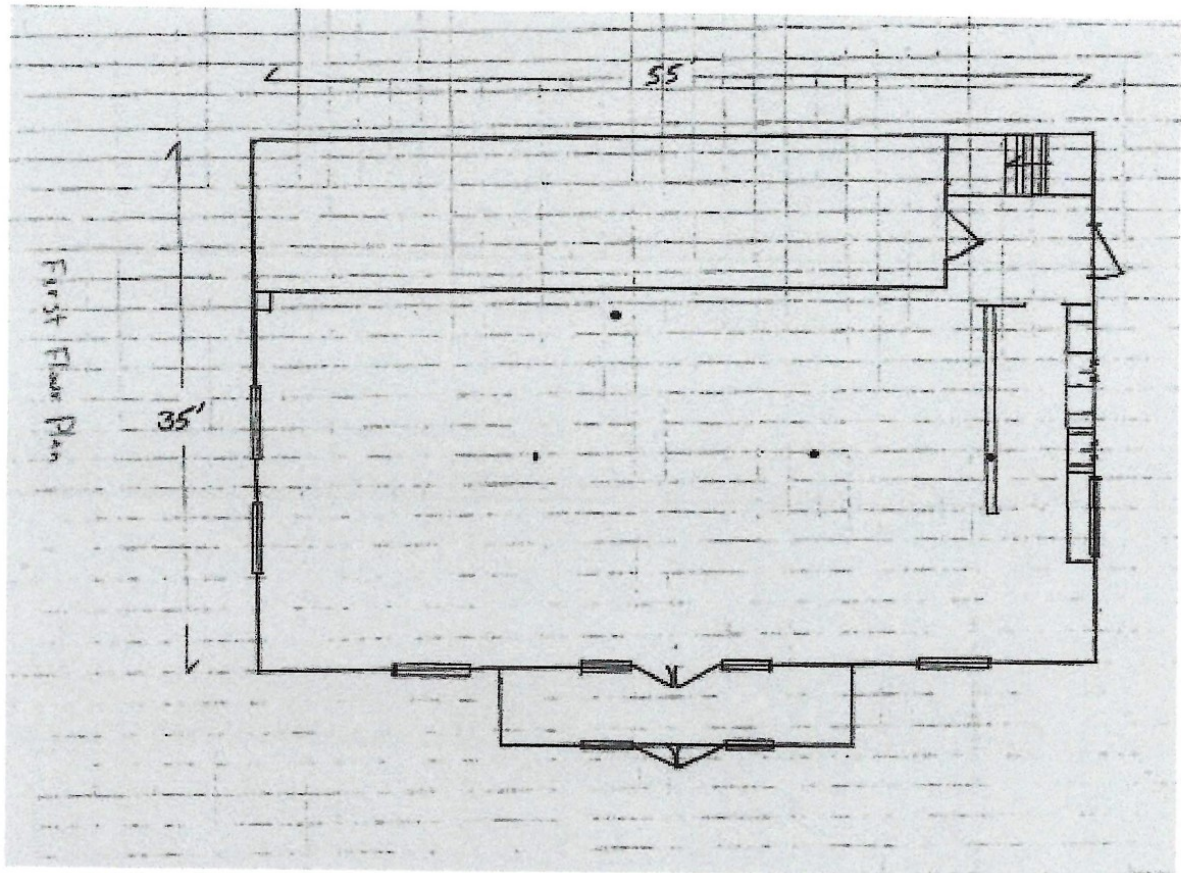
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# 1<sup>st</sup> FLOOR

## CURRENT LAYOUT

# 3020 Lafayette



First-Floor Plan



## LUCIA INVESTMENTS LLC

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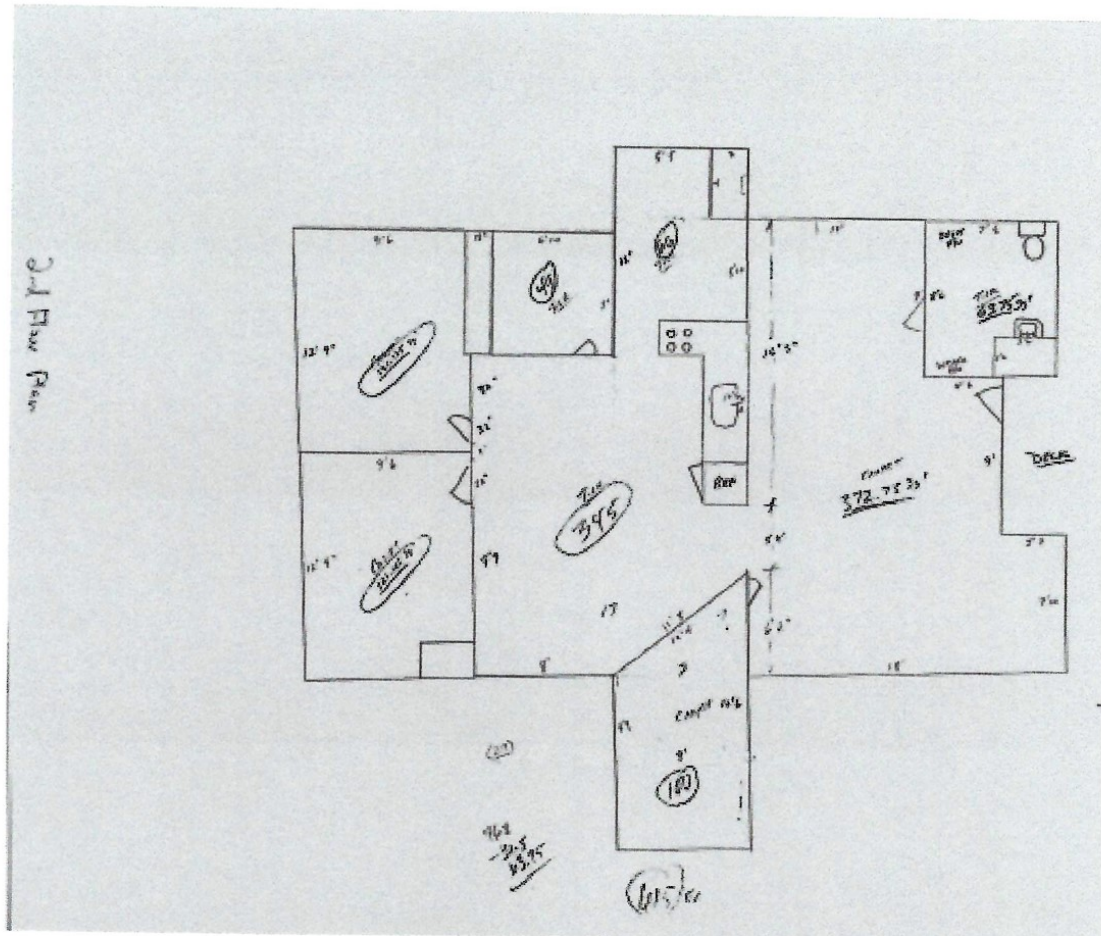
# 2<sup>nd</sup> FLOOR

## CURRENT LAYOUT

# 3020 Lafayette



## Second-Floor Plan





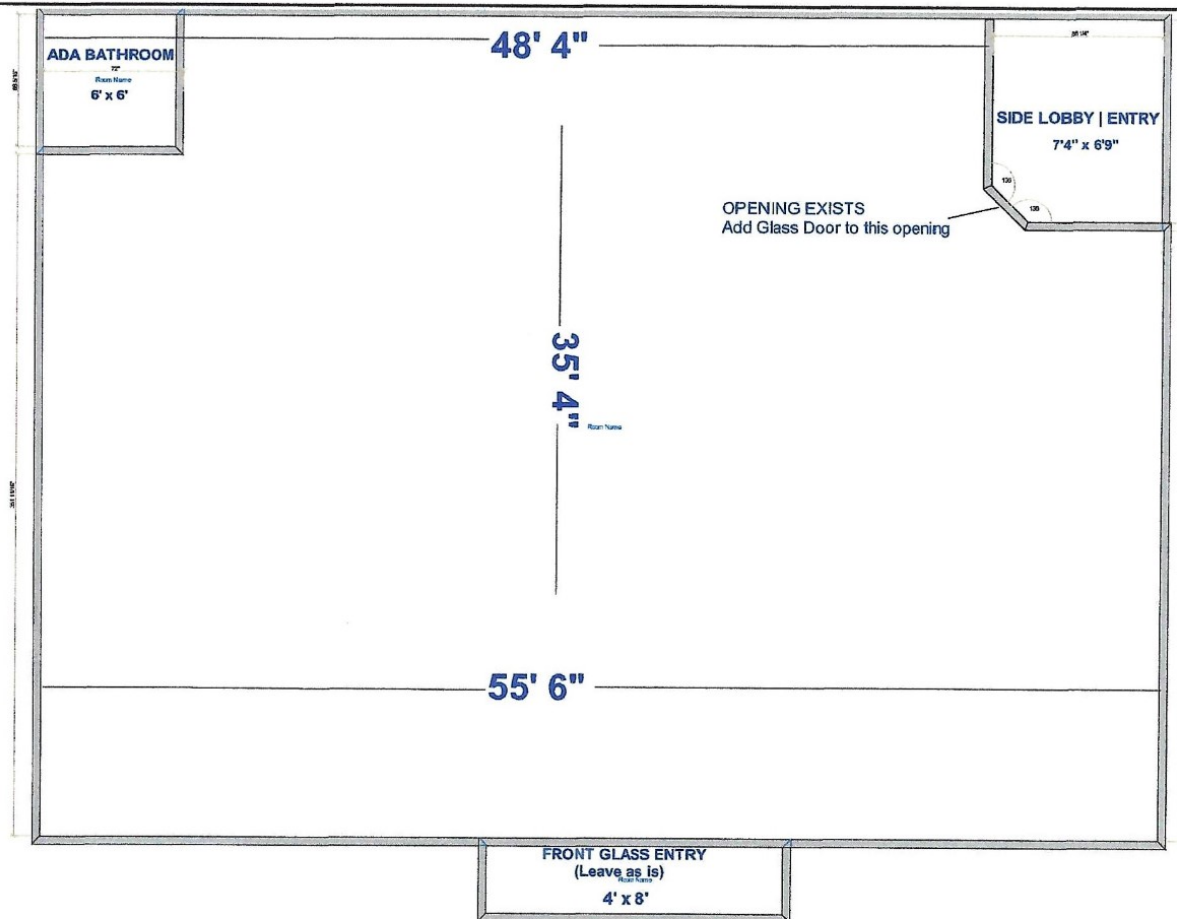
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**TENANT & NOMINEE:** Cabinet Outlet, LLC  
**ADDRESS:** 3020 Lafayette Road  
**POINT OF CONTACT:** Robert Currao, Member  
**SUBJECT:** Use of Space. Improvements.

## **PROPOSED LAYOUT**

### **1st Floor WITHOUT Walls**

1. Add 1 Bathroom on 1<sup>st</sup> Floor
  - A. No bathroom exists on 1<sup>st</sup> floor. Its in the basement
  - B. New Bathroom will be above basement bathroom
2. Add 2 New Walls to build out bathroom
  - A. 36" x 80" Door. (Farm House Style Trim)
  - B. Emergency Light & Meet Fire Code
  - C. ADA as only bathroom & 1<sup>st</sup> Floor
3. Add 2 New Walls
  - A. To Separate displays & will come off back wall
  - B. Will Not Reach Ceiling. 102" H x 124" W
4. All Cosmetic Improvements
  - A. Hardwood Floors, High End Trim, & Commercial Grade Material





All dimensions and size designations must be verified on the site to fit job conditions Client accepts these drawings as is and can use them on its own risk.



Design drawings are provided for the fair use by the client or his agent in completing the project as listed within this contract

Designed: 07.30.22  
Printed: 07.30.22



PROPERTY OWNER: Lucia Investments LLC  
TENANT & NOMINEE: Cabinet Outlet, LLC  
ADDRESS: 3020 Lafayette Road  
POINT OF CONTACT: Robert Currao, Member  
SUBJECT: Use of Space. Improvements.

## PROPOSED LAYOUT

### 1st Floor WITH Walls

1. Add 1 Bathroom on 1<sup>st</sup> Floor
  - A. No bathroom exists on 1<sup>st</sup> floor. Its in the basement
  - B. New Bathroom will be above basement bathroom
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  - A. 36" x 80" Door. (Farm House Style Trim)
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  - A. To Separate displays & will come off back wall
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4. All Cosmetic Improvements
  - A. Hardwood Floors, High End Trim, & Commercial Grade Material



## **LUCIA INVESTMENTS LLC**

254 No. Broadway Unit 104 Salem, NH 03079 | T. 603-893-1212 | E. Billing@MyCabinetOutlet.com

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ADDRESS: 3020 Lafayette Road  
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SUBJECT: Use of Space. Improvements.

# PROPOSED

# 1<sup>st</sup> & 2<sup>nd</sup> FLOOR

# SCOPE OF WORK



# SCOPE OF WORK

OWNER **Fast Break Investments LLC**

OCCUPANT **Cabinet Outlet LLC**

OCCUPANT **2ND FLOOR TBD | OFFICE**

Type: Retailer. Non-Functioning, Floating Displays

Type: OFFICE

**3020 Lafayette Road Portsmouth NH 03801**

QTY	ITEM	Needed	COMMENTS
3	Porta Potty	Porta Potty Needed	Needed for 90 days
3	30 Yard Dumpster	Dumpster Needed	Dump & Return as Needed
1	Safety Items Budget	Cones, Tape off Areas, Signs	Misc. Items needed for Jobsite
1	PREP AREA Exterior	Misc Prep of Areas for Work	Misc. Items needed for Jobsite
1	PREP AREA Interior	Misc Prep of Areas for Work	Misc. Items needed for Jobsite
1	Design Fees	Design & Budgets	Internal. Design Completed by Internal
1	Initial Fees	Towns Initial Fees	UNKNOWN
1	Misc. Fees	Miscellaneous Fees	UNKNOWN
<b>DEMO EXISTING 1st PHASE</b>			
1	DEMO Basement	Basement remains as is, unfinished.	
1	DEMO 1st Floor	above the built in cooling units	
1	DEMO 2nd Floor	Remove Kitchen&Bath Cabinets, Remove All Current Flooring	
1	DEMO 2nd Floor	Remove all interior trim around Doors, at Baseboards, at Window Trim	
1	DEMO 2nd Floor	Remove Current Walls at Bathtub to Install Subway Tile as Surround	
1	DEMO Exterior	Remove Metal Railing at front of Building	
<b>DEMO EXISTING 2ND PHASE</b>			
1	DEMO Exterior	Remove outside staircase to 2nd Floor (interior stair build out needed 1st)	
1	DEMO Exterior	Remove Metal Railing at front of Building	
1	DEMO Misc	Misc Demo that may come up	
<b>EXTERIOR BUILD OUT PRIOR TO SIDING   ROOF   PAINT   GUTTERS</b>			
1	1 New Dormer Build-Out	Install Dormer Above Current 2nd Floor Entry Way	
1	1 New 2nd Floor Door	Install New Door at 2nd Floor with Glass Side Lites	
1	Re-Build StairCase	Build New Staircase, Composite Material from Parking to 2nd Floor	
1	Weather Tight Dormers	Exterior Weather Tight All Dormers Installed	
1	Shilgles at New Dormer	Add New Shingles at Dormer	
<b>EXTERIOR REPAIR PRIOR TO SIDING   ROOF   PAINT   GUTTERS</b>			
1	Replace Trim & Repair	Replace all Wood where trim is rotted or needs to be repaired	
1	Add & Seal Wood Panels	Add Wood & Weather Tight at Openings & Replace any Rot	
<b>EXTERIOR DOORS PRIOR TO SIDING   ROOF   PAINT   GUTTERS</b>			
1	FRONT   Glass Door	Keep Existing Glass Door. Replace Mechanism & ADA Handle(s)	
1	SIDE   Glass Door	Keep Existing Glass Door. Replace Mechanism & ADA Handle(s)	
<b>EXTERIOR BUILD OUT SIDING   ROOF   PAINT   GUTTERS</b>			
1	Surround Stairwell	Add Wood or Siding as a Surround at Exterior Staircase with Window	
1	Surround Stairwell	Will include an opening with Sign over Opening as 2nd Floor Entry	
1	PAINT OR SIDING	Install New or Paint Siding to DARK GRAY	
1	IF SIDING	IF SIDING: Budget is \$13,500 Max. If Quotes over, paint siding	
1	ROOF	If NEW ROOF: Budget \$32,500 Max. If Quotes over, keep existing	
1	ALL TRIM	PAINT ALL TRIM BLACK	
1	Paint Window Trim	Paint Black All Window Trim	
1	Paint Building Trim	Paint Black All Exterior Trim	



1	Paint Door Trim	Paint Black All Door Trim
1	Paint Foundation Cement	Paint Cement with Cement Tone Paint to Renew & Make look New
1	Gutters	Gutters all around building with proper down spouts at 5 Points
<b>EXTERIOR LANDSCAPE</b>		<b>Landscaping</b>
1	Tree Removal	Remove 2 by Fence, Leaning & not healthy. 2 Small 5' Overgrowns
1	Mason Walkway at Front	Remove Railing & Add Stone Wall at Front with Railings to Code
1	Mason Steps at Side	Remove Ramp & Add Steps on Side with Railings to Code
1	Initial Landscape CleanUp	Landscape Clean Up, Prep Budget, Remove Plantings, etc
1	Landscape Outlining	Outline New Landscape, Edge for New Mulch & Plants
1	Irrigation	Run New Irrigation with Plant Sprayers (mist) at Beds and Grass
1	New Loam for Grass	New Loam (Super Loam) & Hydroseed the New Grass
1	Hydroseed	Include with New Loam and Grass Grading
1	Landscape Design	Planting New Plants, New Mulch, Stone, Irrigation, etc
1	Landscape Ongoing	Budget Monthly Maintenance <b>Do NOT include here</b>
<b>EXTERIOR PARKING LOT</b>		<b>Parking Lot</b>
1	Tree Removal	With Landscaping
1	Seal Coat Parking Lot	Seal Coat after Filling all Cracks with Crack Sealant
1	Parking Lines	Parking Lines (Line Company by Code) with 1 Handicap at End Space
<b>INTERIOR SIDE ENTRANCE   LOBBY</b>		<b>1st FLOOR IMPROVEMENTS &amp; CABINET OUTLET BUILD OUT</b>
1	Frame out for Bathroom	Frame out for Bathroom at Southwest Part of Building at Corner
1	1st Floor Bathroom	Plumbing part of Plumbing rough
1	Side Door Lobby Area	Create Small Lobby at Side. 1 Door to Cabinet Outlet. 1 to basement
1	Side Lobby to Unit 1	Small Approximate 10 x 11' Lobby with 2 Doors. Unit 1 & Basement
1	Unit 1 Lobby Entry	Entry to Unit 1 at Lobby. Glass Entry Door with Push & Pull Style
1	Basement Entry	Entry to Basement from Lobby will have a Door
1	Basement Door Build	Only at Stairwell. Paint & Add Railing to Code to Basement
1	ROUGH INSPECTION	<b>DO NOT PROCEED WITHOUT ROUGH INSPECTION</b>
1	ROUGH CONDITIONS	Any Conditions or List Completed prior to closing up with Sheetrock
1	Hardwood Floors	Hardwood in Lobby & Entire 1st Floor at Cabinet Outlet. Stain Light
1	Electrical Fixture	Large Fixture from Ceiling at Lobby.
1	Paint Entry Lobby	Paint Entry Neutral Color. Revere Pewter or Light Grey
1	Town Inspection	Call & Have Final Inspections Completed. Fees Unknown
<b>INTERIOR 1ST FLOOR</b>		<b>1st FLOOR IMPROVEMENTS &amp; CABINET OUTLET BUILD OUT</b>
1	Cabinet Outlet BuildOut	Showroom. Add 3 Walls, not to ceiling, bathroom, & 21 displays
1	Bathroom Added	Bathroom Added on 1st Floor at Showroom, Corner. ADA Bathroom
1	Electrician Rough	Rough All Electrical & Fixtures
1	Plumber Rough	Rough All Plumbing & Fixtures. Adding a New Bathroom at 1st Unit
1	Plumber Rough	New Bathroom. Single Vanity Sink. Single Toilet. No urnal.
1	Hardwood Floors	Accounted for Above. Entire 1st Floor Hardwood Floor
1	ROUGH INSPECTION	<b>DO NOT PROCEED WITHOUT ROUGH INSPECTION</b>
1	ROUGH CONDITIONS	Any Conditions or List Completed prior to closing up with Sheetrock
1	Plasturer	Sheetrock & Ready or Prep for Paint
1	Sheetrock & Ready	Sheetrock & Ready or Prep for Paint
1	Cabinet Displays Install	Cabinet Displays Installed (Business Build Out. Cabinet Outlet to Pay)
1	Electrician Final	Electrician All Final Wiring
1	Countertop Installation	Countertops Installed throughout Entire Building. Cabinet Outlet to Pay
1	Plumbing	Final Plumbing Hook Ups



1	Paint by Design	Paint By Design and Paint Color chosen
1	Town Inspection	Call & Have Final Inspections Completed. Fees Unknown
<b>INTERIOR 2nd FLOOR</b>		
1	Demo Kitchen Cabinets	Create a Galley Kitchenette for Business with Storage
1	Demo Vanities	Both Bathroom will only get New Vents, Fixtures, Paint, & Flooring
1	Electrician Rough	Rough All Electrical & Fixtures
1	Plumber Rough	Rough All Plumbing & Fixtures
1	ROUGH INSPECTION	DO NOT PROCEED WITHOUT ROUGH INSPECTION
1	ROUGH CONDITIONS	Any Conditions or List Completed prior to closing up with Sheetrock
1	Plasterer	Sheetrock & Ready or Prep for Paint
1	Sheetrock & Ready	Sheetrock & Ready or Prep for Paint
1	Floor Install	Vinyl Floor installed throughout 2nd Floor. Same in Bathrooms as well
1	Kitchenette Cabinets	Kitchenette Cabinets & Counters Installed
1	Bathroom Cabinets	Bathroom Vanity Cabinets & Counters Installed
1	Electrician Final	Electrician All Final Wiring
1	Plumbing	Final Plumbing Hook Ups
1	Paint by Design	Paint By Design and Paint Color chosen
1	Town Inspection	Call & Have Final Inspections Completed. Fees Unknown
<b>INTERIOR BASEMENT</b>		
		Entry to Basement (Better Lighting & Safety Measures
1	Doorway	Noted Above
1	Staircase to Basement	Paint Only & Railings will be industrial steel or metal
1	Staircase Railings	Install Railings on Both Sides of Stairwell due to width of Stairs
1	ROUGH INSPECTION	DO NOT PROCEED WITHOUT ROUGH INSPECTION
1	ROUGH CONDITIONS	Any Conditions or List Completed prior to closing up with Sheetrock
1	Paint by Design	Paint By Design and Paint Color chosen. Misc Cost from Painters
1	Town Inspection	Call & Have Final Inspections Completed. Fees Unknown
<b>HVAC</b>		
		HVAC FOR ENTIRE BUILDING
1	HVAC NOTE	Done after Demo and Before Rough to Ensure Finish is Clean
1	2 New Furnaces	1 for Each Floor. Larger Unit for 1st Floor
1	2 New Condensors	1 for Each Floor. Larger Unit for 1st Floor
1	1st Floor Duct Work	Spiral with Venting
1	2nd Floor Duct Work	Duct is already In Walls, Flooring, Ceiling Vents. Budget for Additional
1	Lobby Vent   Duct	Separate Zone shared with 1st Floor Unit at Lobby
1	HVAC NOTE	Extra Budget in Case something comes up or needed to bring to code
<b>ELECTRICAL   OUTDOOR</b>		
		ELECTRICAL (Includes Labor & Fixtures Budget)
1	Parking Lot	No Parking Lot Light Fixture Needed as Building Up Close to Lot
1	East Side of Building	Above Side Entrance. Sensored, barn light above door.
1	East Side of Building	At Staircase. Sensored, Industrial at bottom, middle, and top of stairs
1	North East Side	Against Building. Dusk to Dawn, Low Lummes by front.
1	North Side of Building	Above Front Entrance. Sensored, barn light above door
1	North Side of Building	Along the wall, inside and as required lighting for walkway
1	Against Building   West	No Light at Building on Lafayette Side of Building. Leave as is
1	South or Rear of Building	Rear of Building. Low Lummes under 48 " from ground
1	Signs "As is"	Add Timer for All Signs... Signs will remain as is with covering only
1	Signs "As is"	Place Breaker at Panel if Needed due to Timer
<b>ELECTRICAL   INSIDE FRONT</b>		
		ELECTRICAL (Includes Labor & Fixtures Budget)
1	Lobby Front Entrance	Fixture. Short Chandelier. Turn on with Switch



1	Lobby Front Entrance	Fire Sign. Exit to Code
1	Lobby Front Entrance	1 Gang Plug. By top of Glass Entrance for Open Sign
<b>ELECTRICAL   INSIDE SIDE EAST</b>		<b>ELECTRICAL (Includes Labor &amp; Fixtures Budget)</b>
1	Side Entrance Inside	Fixture. Larger Chandelier. Turn on with Switch or with timer.
1	Side Entrance Inside	Fire Sign. Exit to Code. (Strobe?)
1	Side Entrance Inside	1 Gang Needed on Right Hand Wall.
<b>ELECTRICAL   STAIRS UP TO 2ND</b>		<b>ELECTRICAL (Includes Labor &amp; Fixtures Budget)</b>
2	Stairs to go upstairs	2 x Fixtures. Industrial Looking Sconce(s) against wall. Sensor turn on
1	Fire Exit	Fire Exit at Top of Stairs
<b>ELECTRICAL   BASEMENT</b>		<b>ELECTRICAL (Includes Labor &amp; Fixtures Budget)</b>
1	Basement Stairs	Light Fixture(s), Wall Sconces, Sensored, at Stairwell for Safety
1	GFI in Bathroom	Add GFI Plugs at Vanity to Add the Electric Water Heater. Individual
1	Fire Exit	Everywhere needed and required by code
<b>ELECTRICAL   1ST FLOOR</b>		<b>ELECTRICAL (Includes Labor &amp; Fixtures Budget)</b>
3	Fire Exits	As required but minimum 3 needed at Front Entrance, Interior, & Lobby
1	Fire Emergency Lights	New Bathroom. In the unit, as required by code
1	Add Fixture in Bathroom	Vent   Light Fixture in Bathroom to be vented out to exterior Wall
1	Add Fixture in Kitchenette	Light Fixture on a Sensor in Kitchenette
<b>ELECTRICAL   MECHANICAL</b>		<b>ELECTRICAL</b>
2	New Condensers	2 New Condensers
2	New Furnace	New Furnace, If Needed
1	Misc.	Budget for any Miscellaneous Electrical that may arise during build out
2	Replace Bath Fixtures	2 x Vent   Light Fixture in Bathrooms to replace existing
<b>ELECTRICAL   PANEL</b>		<b>ELECTRICAL</b>
1	Panel to Code	Update or Bring Panel to Code with proper function. Separate 2 units
<b>PLUMBING   DISCONNECT</b>		<b>PLUMBING</b>
1	Prior to Demo	Disconnect all prior to demo
1	Disconnect	Disconnect at Basement
1	Disconnect	Disconnect all at 1st Floor
1	Disconnect	Disconnect all on 2nd Floor
1	Disconnect	Disconnect all for Outdoor
1	Disconnect	Disconnect, Shut Off, & Get Rid of all gas going to Stove(s). No Stoves
<b>SIGNAGE</b>		<b>SIGNAGE</b>
1	Sign Lighting	Signs to Remain as is. Will go over current sign lettering only
1	Sign Lighting	Upgrade at Panel, If Needed.
1	Sign Lighting	Signs to be on a Timer



## LUCIA INVESTMENTS LLC

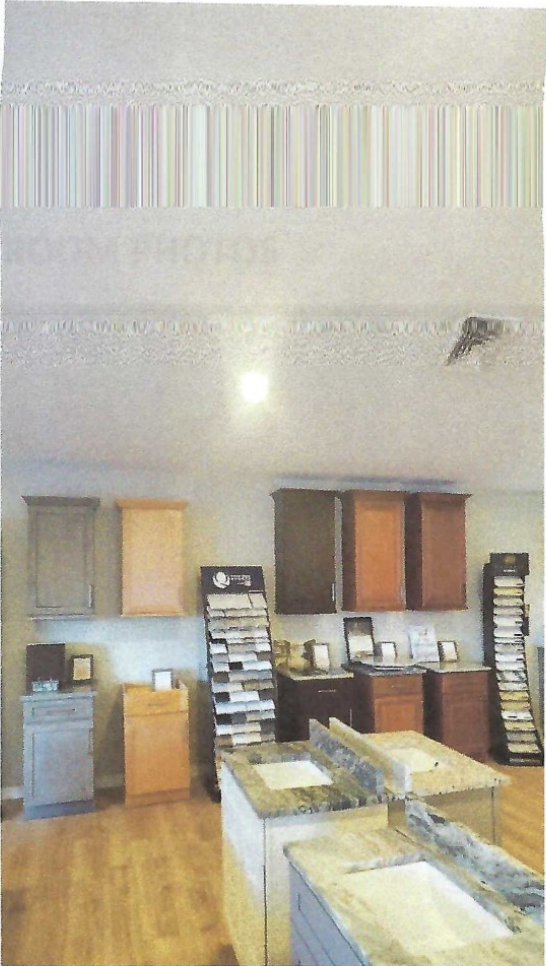
254 No. Broadway Unit 104 Salem, NH 03079 | T. 603-893-1212 | E. Billing@MyCabinetOutlet.com

PROPERTY OWNER: Lucia Investments LLC  
TENANT & NOMINEE: Cabinet Outlet, LLC  
ADDRESS: 3020 Lafayette Road  
POINT OF CONTACT: Robert Currao, Member  
SUBJECT: Use of Space. Improvements.

# CABINET OUTLET SHOWROOM PHOTOS



CABINET OUTLET CURRENT SHOWROOM PHOTOS





## **11 Walden Street**

Portsmouth NH

Judie & Steve Mraz/Dion

Residential plumbing/Mechanical/Gas permit: PMGR-22-163

Historic District Commission Work Session or Administrative Approval Application:  
LUHD-502

Land Use Application: LU-22-177

**Dwelling Units:** One

**Lot Area:** .012 Ac.

### **Description of proposed project:**

Installation of a Mitsubishi heat pump system with one outdoor unit and three indoor units. The outdoor unit to be mounted on the Northern most point of the West side of the structure. One wall ductless split mounted on the West side of the First Floor to condition that space. Two floor units, one in each of the two Bedrooms on the Second Floor. Line hide to enclose all refrigerant lines etc. on the exterior of the home. All 3.5" and 4.5" line hide will be painted to match the building color.

All line hide to be located on the West and North side of the home only.

Distance from outdoor unit to property lines:

**18" from the unit to the side property line**

**12" from the unit to the rear property line**

### **Description of existing land use:**

Single Family Residence

### **Project Representatives:**

HVAC contractor

Jay T. Aucella

Aucella Heating & Cooling

6 Province Road

Strafford, NH 03884

(866) 926-6888

[jay@aucella.biz](mailto:jay@aucella.biz)

### **The variance will not be contrary to the public interest.**

The Mitsubishi outdoor unit is quiet: Sound pressure level: Heating = 56 dB(A) Cooling = 52 dB(A)

The Mitsubishi outdoor unit will be hung from the building by a bracket. The outdoor unit protrudes only 18" from the West wall and is partially / mostly hidden by two trees depending on the viewing angle.



**The spirit of the Ordinance will be observed**

The installation does not affect any parking areas or accessways to other buildings. The outdoor unit does not produce any odor, smoke or dust to the environment. The proposed location is on the side and back of the structure, Not on the most visible street side.

**Substantial justice will be done.**

There is very little gain if any, to the public / surrounding neighbors by denying this variance. Mitsubishi ductless systems are quieter, look better, and use less energy than "window units".

With increasingly warmer summers the need for air conditioning to mitigate indoor temperatures is also increasing.

**The values of surrounding properties will not be diminished.**

Air conditioning outdoor units are common and not known to diminish surrounding property values.

The Mitsubishi outdoor unit is quiet: Sound pressure level: Heating = 56 dB(A) Cooling = 52 dB(A)

The outdoor unit protrudes only 18" from the West wall and is partially / mostly hidden by two trees depending on the viewing angle.

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

This property does not have a 10' setback from the property line on any side of the structure unlike the surrounding properties. Due to the lack of a 10' setback the reasonable addition of air conditioning cannot be added in strict conformance with the Ordinance.



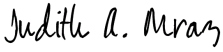
# Owner's Authorization

8/29/22

To whom it concerns:

Jay Aucella/Aucella Heating & Cooling is my authorized agent for the proposed air conditioning project at 11 Walden Street, Portsmouth, NH.

Thank you,

DocuSigned by:  
  
06D3D1F2C7B6489...

Judith A. Mraz



6.

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

### Existing & Proposed Conditions

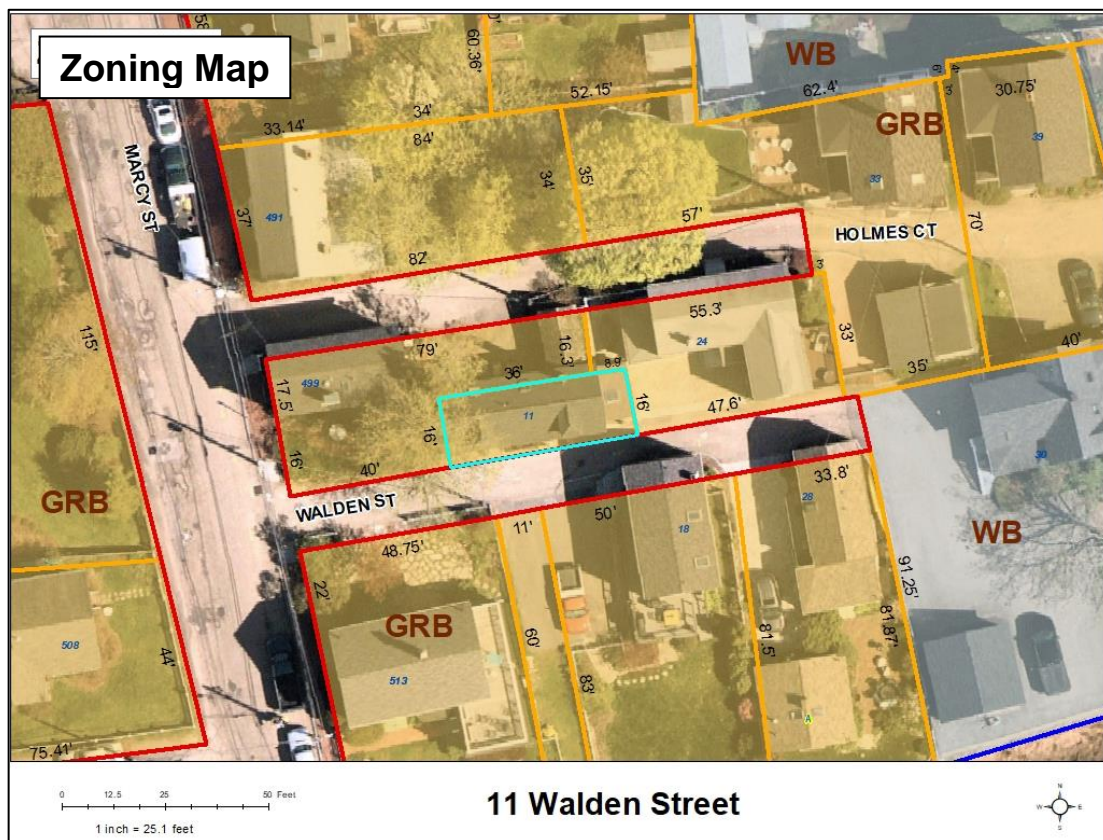
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family	HVAC unit	Primarily residential uses
<u>Lot area (sq. ft.):</u>	752	752	5,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	752	752	5,000 min.
<u>Lot depth (ft.):</u>	16	16	60 min.
<u>Street Frontage (ft.):</u>	46	46	80 min.
<u>Primary Front Yard (ft.):</u>	0	0	5 min.
<u>Right Yard (ft.):</u>	0	0	5 min.
<u>Left Yard (ft.):</u>	1	1.5	10 min.
<u>Rear Yard (ft.):</u>	1	1	10 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	87	87	30 max.
<u>Open Space Coverage (%):</u>	13	13	25 min.
<u>Estimated Age of Structure:</u>	1780	Variance request(s) shown in red.	

### Other Permits/Approvals Required

Historic District Commission



## Neighborhood Context





## Previous Board of Adjustment Actions

No prior BOA history found.

## Planning Department Comments

The applicant is seeking to add an attached HVAC unit to the left side of the house where relief is needed for side and rear yard setbacks. The house nearly covers the entire lot, with a small area of open space on the left side. Any other location on the house would likely create a situation where the unit would be on the property line, if not over it.

## Review Criteria

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

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

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

**AND**

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

**OR**

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

## 10.235 Certain Representations Deemed Conditions

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



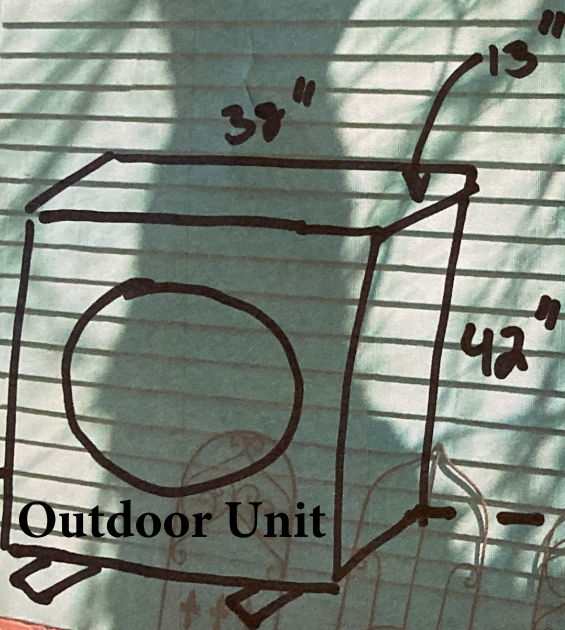
# Proposed Site #1

West  
wall

18" from the unit to the side property line

12" from the unit to the rear property line

Line hide  
painted to  
match Siding



line hide is 3.5' wide



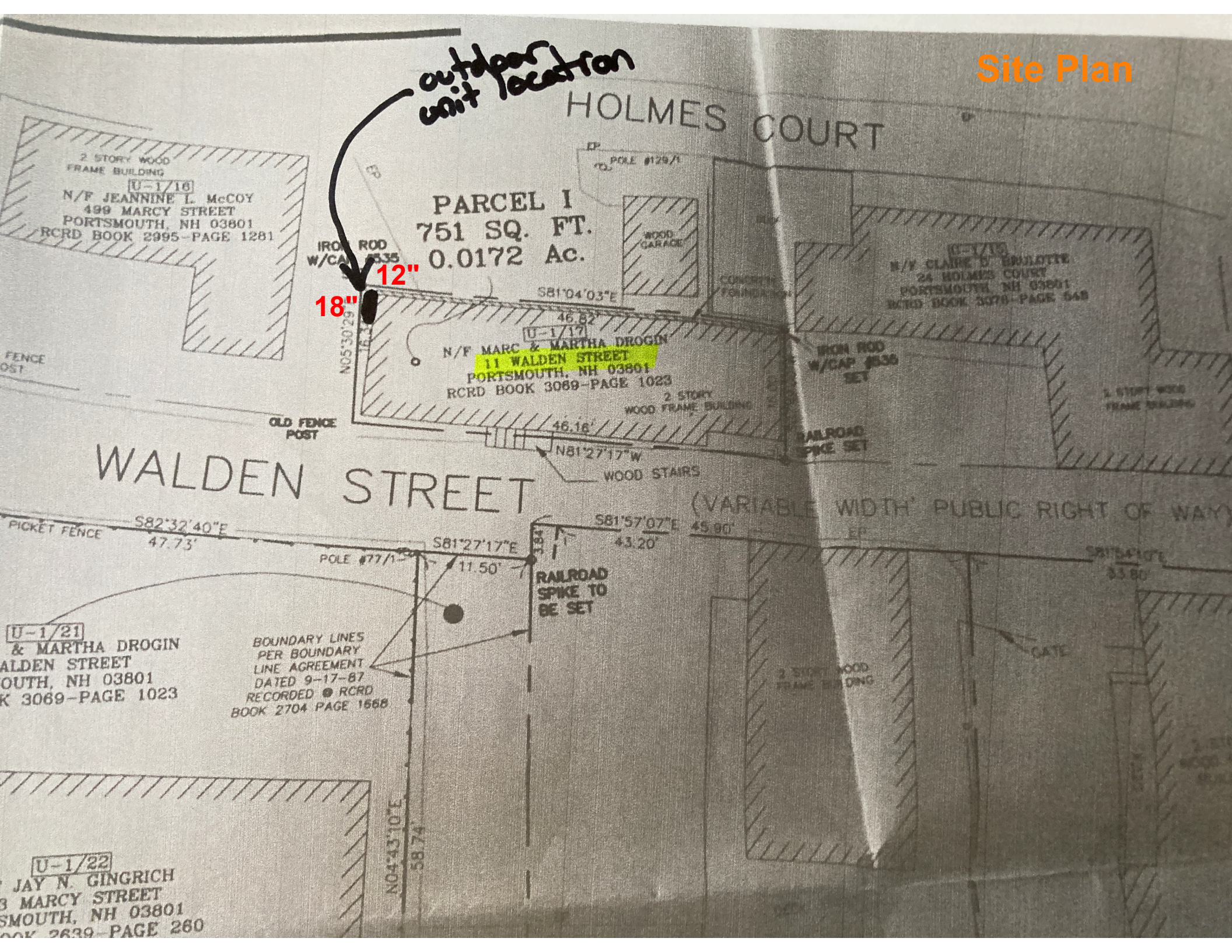


## Proposed Site #2





# Site Plan





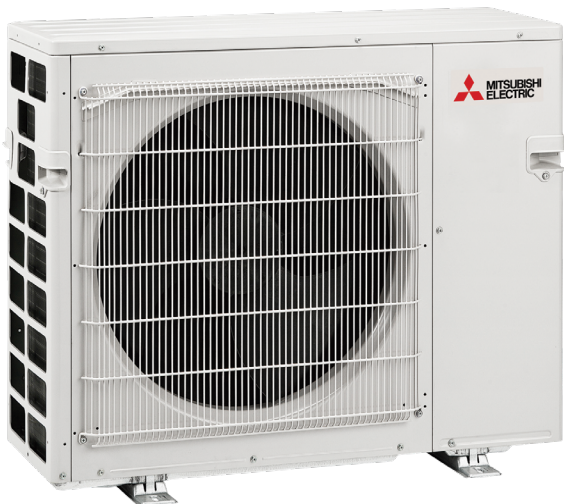
# MXZ-3C30NA2 MULTI-ZONE INVERTER HEAT-PUMP SYSTEM



Job Name:

System Reference:

Date:



## FEATURES

- Variable speed INVERTER-driven compressor
- Optional base pan heater
- Quiet outdoor unit operation as low as 56 dB(A)
- High pressure protection
- Compressor thermal protection
- Compressor overcurrent detection
- Fan motor overheating/voltage protection



# SPECIFICATIONS: MXZ-3C30NA2

(For data on specific indoor units, see the MXZ-C Technical and Service Manual.)

Cooling* (Non-ducted / Ducted)	Rated Capacity	Btu/h	28,400 / 27,400
	Capacity Range	Btu/h	9,500 - 28,400 / 9,500 - 27,400
	Rated Total Input	W	2,680 / 2,860
Heating at 47°F* (Non-ducted / Ducted)	Rated Capacity	Btu/h	28,600 / 27,600
	Capacity Range	Btu/h	15,500 - 36,000 / 15,500 - 35,000
	Rated Total Input	W	2,150 / 2,220
Heating at 17°F* (Non-ducted/Ducted)	Rated Capacity	Btu/h	16,000 / 15,100
	Rated Total Input	W	2,120 / 2,140
Connectable Capacity		Btu/h	12,000 - 36,000
Electrical Requirements	Power Supply	Voltage, Phase, Hertz	208 / 230V, 1-Phase, 60 Hz
	Recommended Fuse/Breaker Size	A	25
	MCA	A	22.1
Voltage	Indoor - Outdoor S1-S2	V	AC 208 / 230
	Indoor - Outdoor S2-S3	V	DC ±24
Compressor		INVERTER-driven Scroll Hermetic	
Fan Motor (ECM)		F.L.A.	2.43
Sound Pressure Level	Cooling	dB(A)	52
	Heating	dB(A)	56
External Dimensions (H x W x D)		In mm	31-11/32 x 37-13/32 x 13 (796 x 950 x 330)
Net Weight		Lbs / kg	137 (62)
External Finish		Munsell No. 3Y 7.8/11	
Refrigerant Pipe Size O.D.	Liquid (High Pressure)	In / mm	1/4 (12.7)
	Gas (Low Pressure)	In / mm	A: 1/2 (6.35) ; B,C: 3/8 (9.52)
Max. Refrigerant Line Length		Ft / m	230 (70)
Max. Piping Length for Each Indoor Unit		Ft / m	82 (25)
Max. Refrigerant Pipe Height Difference	If IDU is Above ODU	Ft / m	49 (15)
	If IDU is Below ODU	Ft / m	49 (15)
Connection Method		Flared/Flared	
Refrigerant		R410A	

\* Rating Conditions per AHRI Standard:

Cooling | Indoor: 80° F (27° C) DB / 67° F (19° C) WB  
Cooling | Outdoor: 95° F (35° C) DB / 75° F (24° C) WB

Heating at 47°F | Indoor: 70° F (21° C) DB  
Heating at 47°F | Outdoor: 47° F (8° C) DB / 43° F (6° C) WB

Heating at 17° F | Indoor: 70° F (21° C) DB  
Heating at 17° F | Outdoor: 17° F (-8° C) DB / 15° F (-9° C) WB

## OPERATING RANGE:

	Outdoor
Cooling	14 to 115° F (-10 to 46° C) DB
Heating	5 to 65° F (-15 to 18° C) WB

## ENERGY EFFICIENCIES:

Indoor Unit Type	SEER	EER	HSPF	COP @ 47°F	COP @ 17°F
Non-ducted (09+09+12)	19.0	10.6	10.6	3.90	2.77
Ducted and Non-ducted	17.6	10.1	10.1	3.77	2.78
Ducted (09+09+12)	16.2	9.6	9.6	3.64	2.78

## NOTES:

For actual capacity performance based on indoor unit type and number of indoor units connected, please refer to MXZ Operational Performance.

Although the maximum connectable capacity can exceed rated, the outdoor unit cannot provide more than 100% of the rated capacity. Please utilize this over capacity capability for load shedding or applications where it is known that all connected units will NOT be operating at the same time.



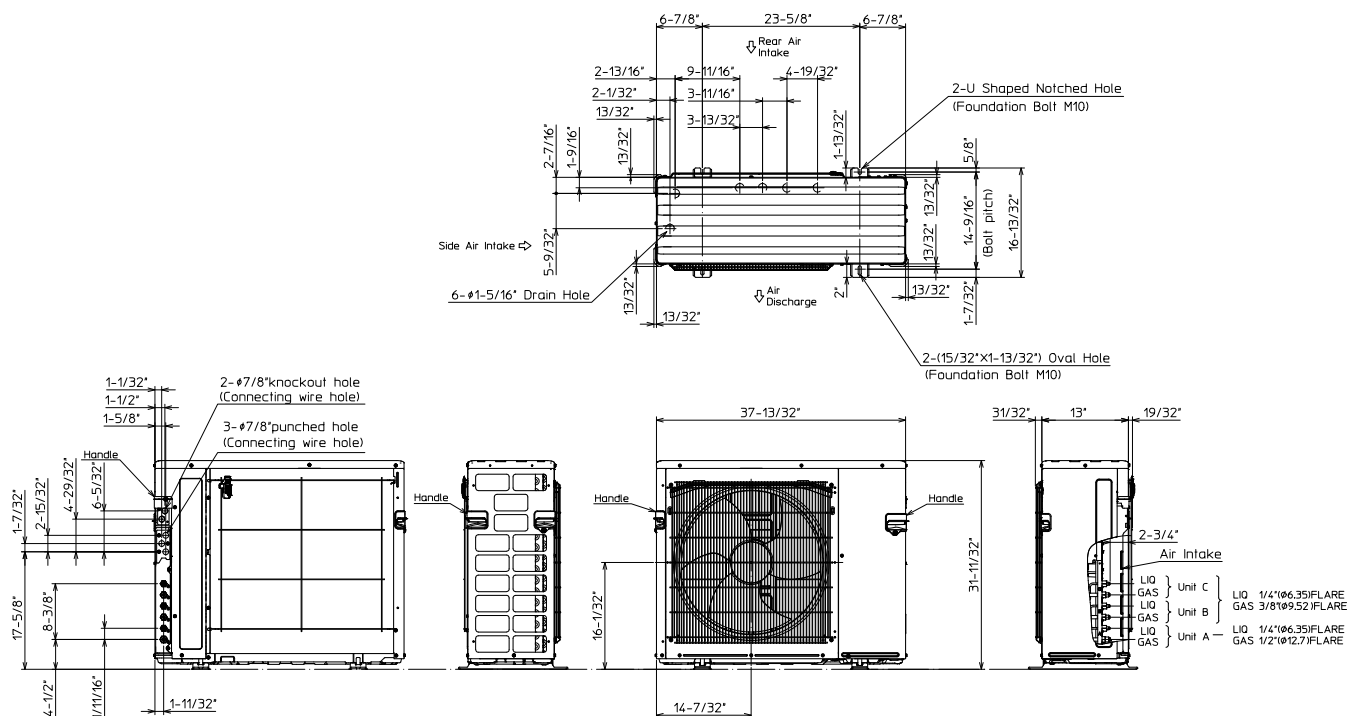
## OUTDOOR UNIT ACCESSORIES: MXZ-3C30NA2

Air Outlet Guide	Air Outlet Guide (1 Piece)	PAC-SH96SG-E
Ball Valve	Refrigeration Ball Valve - 1/2"	BV12FFSI2
	Refrigeration Ball Valve - 1/4"	BV14FFSI2
	Refrigeration Ball Valve - 3/8"	BV38FFSI2
	Refrigeration Ball Valve - 5/8"	BV58FFSI2
Distribution pipe for Branch Box	M-NET Converter	PAC-IF01MNT-E
Drain Socket	Drain Socket	PAC-SG60DS-E
Hail Guards	Hail Guard	HG-A9
Mounting Pad	Condensing Unit Mounting Pad: 16" x 36" x 3"	ULTRILITE1
	Outdoor Unit 3-1/4 inch Mounting Base (Pair) - Plastic	DSD-400P
Optional Defrost Heater	Base Heater	PAC-645BH-E
Port Adapter	Adaptor: 1/2" x 3/8"	MAC-A455JP-E
	Adaptor: 1/2" x 5/8"	MAC-A456JP-E
	Adaptor: 3/8" x 1/2"	MAC-A454JP-E
	Adaptor: 3/8" x 5/8"	PAC-SG76RJ-E
Power Supplies and Auxiliary Components	M-Net Control Wire, 1,000' Roll (16-AWG, Standard, Twisted Pair, Shielded, Jacketed- Plenum rated)	CW162S-1000
Power Supplies And Auxiliary Components	M-Net Control Wire, 250' Roll (16-AWG, Standard, Twisted Pair, Shielded, Jacketed- Plenum rated)	CW162S-250
Stand	18" Single Fan Stand	QSMS1801M
	24" Single Fan Stand	QSMS2401M
	Condenser Wall Bracket	QSWB2000M-1
	Condenser Wall Bracket -Stainless Steel Finish	QSWBSS
	Outdoor Unit Stand — 12" High	QSMS1201M

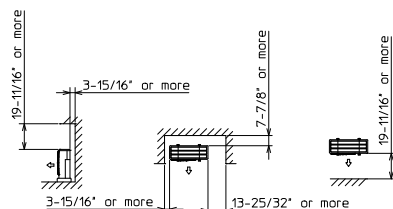


### OUTDOOR UNIT DIMENSIONS: MXZ-3C30NA2

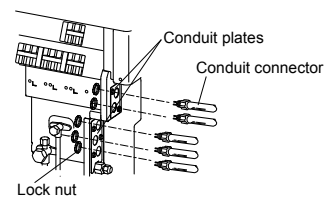
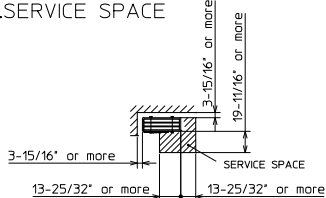
Unit: inch



1.FREE SPACE



## 2.SERVICE SPACE



1340 Satellite Boulevard Suwanee, GA 30024  
Toll Free: 800-433-4822 [www.mehvac.com](http://www.mehvac.com)

FORM# M\_SUBMITTAL\_MXZ-3C30NA2\_en - 202108





## Existing Conditions #1

North  
Wall

West Wall







**Existing Conditions #2**

**West Wall**



Existing Conditions #3

North Wall

