# 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. April 18, 2023

#### **AGENDA**

PLEASE NOTE: DUE TO THE LARGE VOLUME OF AGENDA ITEMS SCHEDULED FOR APRIL 18, 2023, THE BOARD WILL BE VOTING TO POSTPONE CONSIDERATION OF OLD BUSINESS ITEMS (II.) G. THROUGH NEW BUSINESS ITEM (III.) G. TO THE APRIL 25, 2023 BOARD OF ADJUSMENT MEETING.

#### I. APPROVAL OF MINUTES

- **A.** Approval of the March 21, 2023 minutes.
- **B.** Approval of the March 29, 2023 minutes.

#### II. OLD BUSINESS

- A. The request of 635 Sagamore Development LLC (Owner), for property located at 635 Sagamore Avenue whereas relief is needed to remove existing structures and construct 4 single family dwellings which requires the following: 1) A Variance from Section 10.513 to allow four free-standing dwellings where one is permitted. 2) A Variance from Section 10.521 to allow a lot area per dwelling unit of 21,198 square feet per dwelling where 43,560 square feet is required. Said property is located on Assessor Map 222 Lot 19 and lies within the Single Residence A (SRA) District. (LU-22-209)
- **B.** The rehearing of the request of **Jeffrey M. and Melissa Foy (Owners)**, for property located at **67 Ridges Court** whereas relief is needed for construction of a 518 square foot garage addition and expansion of front dormer which requires the following: 1) A variance from Section 10.521 to allow a 14 foot front yard where 19 feet is required per Section 10.516.10. 2) A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed, or enlarged without conforming to

- the requirements of the Ordinance. Said property is located on Assessor Map 207 Lot 59 and lies within the Single Residence B (SRB) District. (LU-22-199)
- C. The request of Michael Knight (Owner), for property located at 55 Mangrove Street whereas relief is needed to replace existing 6 foot chain link fence with 8 foot cedar fence which requires the following: 1) A Variance from Section 10.515.13 to allow an 8 foot fence on the rear and side lot lines where a 6 foot maximum is allowed. Said property is located on Assessor Map 219 Lot 7 and lies within the Single Residence B (SRB) District. (LU-23-15)
- **D.** The request of **John T McDonald III and Mary R McDonald (Owners)**, for property located at **74 Sunset Road** whereas relief is needed for an addition of a chimney bump out which requires the following: 1) Variances from Section 10.521 to allow a) a 6.5 foot left yard where 10 feet is required; and b) 26.6% 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)
- E. The request of Joshua Wyatt and Erin Hichman (Owners), for property located at 196 Aldrich Road whereas relief is needed to demolish existing garage and construct new garage and construct new addition over existing side porch which requires the following: 1) Variances from Section 10.521 to allow a) a secondary front yard of 3 feet where 30 feet is required; b) a 6 foot rear setback where 10 feet 7 inches is required; c) 23% building coverage where 20% is the maximum allowed. 2) A Variance from Section 10.571 to allow and accessory structure to be 10 feet from the front lot line and located in the front yard. 3) A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed, or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 153 Lot 25 and lies within the Single Residence B (SRB) District. (LU-23-24)
- **F.** The request of **Murdock Living Trust (Owner)**, for property located at **15 Lafayette Road** whereas relief is needed to subdivide one lot into two lots which requires the following: 1) A Variance from Section 10.521 to allow 73.8 feet of continuous street frontage where 100 feet is required for the remainder lot. Said property is located on Assessor Map 152 Lot 2 and lies within the General Residence A (GRA) and Historic District. (LU-23-26)

# THE BOARD WILL BE VOTING TO POSTPONE CONSIDERATION OF THE FOLLOWING ITEMS TO THE APRIL 25, 2023 BOARD OF ADJUSMENT MEETING.

- G. The request of Jared J Saulnier (Owner), for property located at 4 Sylvester Street whereas relief is needed to subdivide one lot into two lots which requires the following: Proposed Lot 1: 1) Variances from Section 10.521 to allow a) a lot area and lot area per dwelling of 9,645 square feet where 15,000 is required for each; b) 80 feet of lot depth where 100 feet is required; and c) a 9 foot right side yard where 10 feet is required. Proposed Lot 2: 1) Variances from Section 10.521 to allow a) a lot area and lot area per dwelling unit of 6,421 square feet where 15,000 is required for each; b) 40 feet of street frontage where 100 feet is required; and c) 80 feet of lot depth where 100 feet is required. Said property is located on Assessor Map 232 Lot 36 and lies within the Single Residence B (SRB) District. (LU-23-27)
- H. The request of Cynthia Austin Smith and Peter (Owners), for property located at 9 Kent Street whereas relief is needed to demolish the existing two-family and construct a single-family dwelling which requires the following: 1) Variances from Section 10.521 to allow a) a lot area and lot area per dwelling of 5,000 square feet where 7,500 square feet is required for each; b) 53% building coverage where 25% is the maximum allowed; c) a 4.5 foot rear yard where 20' is required; d) a 0.5 foot side yard where 10 feet is required; e) a 0 foot front yard where 11 feet is allowed under Section 10.516.10; and f) a 9.5 foot secondary front yard where 13 feet is allowed under Section 10.516.10.

  2) A Variance from Section 10.515.14 to allow a 1.5 foot setback for a mechanical unit where 10 feet is required. Said property is located on Assessor Map 113 Lot 42 and lies within the General Residence A (GRA) District. (LU-23-28)

#### III. NEW BUSINESS

- A. Petition of 729-733 Middle Street Condominium Association, Nicole M. Bodoh and Craig Crowell, for Appeal of an Administrative Decision not to present to the Board of Adjustment the Motion for Rehearing of Variance Application of David Sinclair and Nicole Giusto for property located at 765 Middle Street due to an untimely request. Said property is shown on Assessor Map 148 Lot 37 and lies within the General Residence A (GRA) and Historic Districts.
- **B.** The request of **Peter G Morin Trust, Peter G Morin Trustee (Owner),** for property located at **170 Mechanic Street** whereas relief is needed to install a generator which requires the following: 1) Variance from Section 10.515.14 to allow a) 4 foot rear yard where 10' is required and 5.5 foot rear yard where 10 feet is required; 2) Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance....

- Said property is located on Assessor Map 102 Lot 7 and lies within the General Residence B (GRB) and Historic District. (LU-23-35)
- C. The request of RTM Trust, Ryan T Mullen and Heidi E K Trustees (Owners), for property located at 253 Odiorne Point Road whereas relief is needed to construct a deck extension which requires a Variance from Section 10.521 to allow a 30 foot rear yard where 40 feet is required. Said property is located on Assessor Map 224 Lot 10-19 and lies within the Single Residence A (SRA) District. (LU-23-36)
- **D.** The request of **Cherie A Holmes** and **Yvonne P Goldsberry (Owners)**, for property located at **45 Richmond Street** whereas relief is needed to construct a greenhouse which requires the following: 1) Variance from Section 10.521 to allow a 5.5 foot rear yard where 15 feet is required; 2) Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance.... Said property is located on Assessor Map 108 Lot 18 and lies within the Mixed Residential Office (MRO) and Historic District. (LU-20-249)
- E. The request of 45 Rockingham St LLC (Owner), for property located at 45 Rockingham Street whereas relief is needed to construct a front porch and rear addition which requires the following: 1) Variance from Section 10.521 to allow a) .5 foot front yard where 5 feet is require, b) 1.5 foot side yard where 10 feet is required, c) 41% building coverage where 35% is allowed; 2) Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 144 Lot 6 and lies within the General Residence C (GRC) District. (LU-23-41)
- **F.** The request of **Bucephalus LLC (Owner)**, for property located at **650 Maplewood Avenue** whereas relief is needed to remove the outdoor fenced storage area and construct a 48 foot by 25.5 foot addition to the rear of the existing structure which requires a Variance from Section 10.592.20 to allow the expansion of space used for motorcycle sales located adjacent to a Residential district where 200 feet is required. ... Said property is located on Assessor Map 220 Lot 88 and lies within the Business (B) District. (LU-21-111)
- G. The request of Cate Street Development LLC (Owner), for property located at 360 US Route 1 BYP whereas relief is needed to install a sign on the northern façade of the building which requires a Variance from Section 10.1271 to allow a sign to be installed on a façade not facing the street or with a public entrance; 2) Variance from Section 10.1242 to allow more than one parapet sign above the ground floor per facade. Said property is located on Assessor Map 172 Lot 1 and lies within the Gateway Corridor (G1) District. (LU-23-44)

#### 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\_uvl08FNuRMayJ-A6xLKZew

## MINUTES OF THE BOARD OF ADJUSTMENT MEETING CONFERENCE ROOM A MUNICIPAL COMPLEX, 1 JUNKINS AVENUE PORTSMOUTH, NEW HAMPSHIRE

7:00 P.M. March 21, 2023

**MEMBERS PRESENT:** Phyllis Eldridge, Chair; Beth Margeson, Vice Chair; Paul Mannle;

David MacDonald; David Rheaume; Jeffrey Mattson, Alternate

**MEMBERS EXCUSED:** Thomas Rossi

ALSO PRESENT: Stefanie Casella, Planning Department

Alternate Jeffrey Mattson took a voting seat for the evening.

#### I. APPROVAL OF MINUTES

#### A. Approval of the February 22, 2023 minutes

On page 8, in the following sentence "He said anything that would have been done to the house would require a variance, and in this case, what's being asked for would make it less nonconforming", the phrase 'would make it less nonconforming' was changed to 'would be less nonconforming'.

On p. 9, the referral to the Planet Fitness Gym was deleted and replaced with the phrase 'neighboring property' so that the sentence now reads: "Mr. Bardong said there was no street and that the land went into the backyard of the neighboring property."

On p. 10, the following sentence: "He said the structures on Lots 140-2 and -4 were two-story ones, and Lot 8 was probably not a buildable lot" was changed to: "He said the structures on Lots 140-2 and -4 were two-story ones, and that portions near the subject property were probably not a buildable lot."

On p. 11, the referral to the 2025 variance application should be the 2015 variance.

Mr. Mannle moved to **approve** the minutes as amended, seconded by Mr. Mattson. The motion **passed** by unanimous vote, 6-0.

### B. Approval of the February 28, 2023 minutes

Vice-Chair Margeson abstained from the vote.

Mr. Mannle moved to **approve** the minutes as presented, seconded by Mr. Mattson. The motion **passed** by unanimous vote, 5-0.

Chair Eldridge announced that Old Business Item II.B, 635 Sagamore Avenue Development LLC, and New Business Item III.A, 67 Ridges Court were postponed by the applicants.

Mr. Mannle moved to **suspend** the rules, seconded by Vice-Chair Margeson. The motion **passed** by unanimous vote, 6-0.

Mr. Rheaume abstained from the vote. Mr. Mannle moved to **postpone** Item II.B, 635 Sagamore Avenue Development LLC, seconded by Mr. Mattson. The motion **passed** by unanimous vote, 5-0.

Mr. MacDonald abstained from the vote. Mr. Mannle moved to postpone Item III.A, 67 Ridges Court, seconded by Mr. Mattson. The motion passed by unanimous vote, 5-0.

#### II. OLD BUSINESS

The board discussed whether Mr. Rheaume had no conflict of interest by participating in the appeal, seeing that his wife, Planning Board Vice-Chair Beth Moreau, had approved the Wetlands Conditional Use Permit (CUP).

Mr. Rheaume moved to **not recuse** himself from the appeal, seconded by Mr. Mattson. The motion **passed** by a vote of 3-2, with Mr. Mannle and Vice-Chair Margeson voting in opposition.

A. 1 Raynes Avenue - Appeal - As ordered by the Superior Court on February 2, 2023, the Board will "determine, in the first instance, whether it has jurisdiction over the issues presented" by Duncan MacCallum (Attorney for the Appellants) in the January 14, 2022 appeal of the December 16, 2021 decision of the Planning Board for property located at 31 Raynes Avenue, 203 Maplewood Avenue, and 1 Raynes Avenue which granted the following: a) site plan approval b) wetlands conditional use permit; and c) certain other, miscellaneous approvals, including an approval related to valet parking. Said properties are shown on Assessor Map 123 Lot 14, Map 123 Lot 13, Map 123 Lot 12, Map 123 Lot 10 and lie within the Character District 4 (CD4) District, Downtown Overlay District (DOD), Historic District, and the North End Incentive Overlay District. (LU-21-54)

#### SPEAKING TO THE APPEAL

Attorney Duncan MacCallum representing the appellants was present to see if the board had jurisdiction before the Superior Court over the appeal of the Planning Board's decision on the following issues: a) site plan approval; b) wetlands CUP; and c) other miscellaneous approvals including valet parking. He reviewed each issue and gave the reasons why the board should or should not entertain an appeal on each issue (recording time stamp 17:27).

Vice-Chair Margeson asked for more information about Attorney MacCallum's count of the recommendation of the Conservation Commission to the Planning Board. Attorney MacCallum said the Conservation Commission's only role was to recommend yea or nay as to whether the Wetlands CUP should be granted, and he thought the ZBA didn't have any business reviewing it. Mr. Mannle said he reviewed the Dec 16, 2021 Conservation Commission meeting and that the vote was a 3-3 tie. Attorney MacCallum said he couldn't remember. Mr. Mannle asked if the HDC had approved it, and Attorney MacCallum agreed. Mr. Rheaume asked whether Attorney MacCallum felt that there was nothing in the zoning ordinance that talked to the composition of the Planning Board. Attorney MacCallum said there was the administrative code and the ZBA had the right to administrative appeals, so he thought the board should be entertaining that issue. He said the New Hampshire Legislature would prefer that as many issues as possible be resolved at the ZBA level before burdening the courts with additional issues, but he admitted that it was a borderline issue. Mr. Rheaume asked if the Planning Board placed a condition in writing for the valet parking provision that would tie it back to the site plan approval. Attorney MacCallum said the zoning ordinance itself had other provisions pertaining to parking besides parking CUPs and that the ZBA got involved when there are provisions that regulate how much or how little parking there should be. He said the board was in a far better position than the Superior Court in determining whether or not the parking plan opposed by the developers is adequate and thought it was a much stronger case for jurisdiction than whether a Planning Board member was ineligible for voting. Vice-Chair Margeson asked if the HDC approval changed the site plan on the project. Attorney MacCallum said he didn't remember and thought it was last December of early January since they granted the approval. Vice-Chair Margeson said if the site plan changed, it would have to go back to the Planning Board for an amended site plan approval. Planning Director Peter Britz was present and said the site plan approval was not changed by the HDC decision.

Attorney Courtney Herz was present on behalf of the project applicant and said the only issue before the board was whether it had jurisdiction over the appeal of the Planning Board decision. She said the board received a memo from City Attorney McCourt informing them about the laws governing the question, which she said were laid out in Statute RSA 6765. The said that only questions involving the construction, interpretation, or application of the zoning ordinance were properly within the board's jurisdiction, and any claims outside of those parameters should be dismissed. She said appeals of CUPs must go directly to Superior Court. She noted that Attorney MacCallum didn't state one single provision of the zoning ordinance that he claimed had been violated by the Planning Board decision. She reviewed each issue and the reasons why the board had no jurisdiction over them (recording time stamp 39:07).

Mr. Mannle asked if the project received approval from the Conservation Commission. Attorney Herz said it was a tie vote. Mr. Mannle asked Attorney Herz if she agreed that if a board is not constituted according to the State RSA, then the decisions of that board are at least questionable if not invalid. Attorney Herz said it was a broad question but what mattered was that it was before the board and that it was up to the board to decide whether issues appealed were within their jurisdiction. She said the statute was explicit in what the board could consider and that there were other forums for arguments to be heard.

Vice-Chair Margeson said it was the first time the board was hearing the appeal. She said she felt that the parking was undeveloped by Attorney MacCallum's letter and also thought the Planning Board rushed that issue at the end. She said it was difficult to figure out what the board was supposed to be reviewing on the valet parking issue. Attorney Herz said the board had to be governed by the appeal that was filed and all it said about parking was that there were some unanswered questions about valet parking and whether there was an adequate amount of parking, which clearly fell within the ordinance's parking CUP. Vice-Chair Margeson said it could be part of site plan approval, which was appealable to the board. Attorney Herz said it would be only if it touched on the zoning ordinance and not a CUP issue.

#### DISCUSSION OF THE BOARD

Mr. Mattson said he didn't think the board had jurisdiction. He said the key issue was the parking and finding out that the HDC didn't change the site plan. Vice-Chair Margeson suggested that the board decide on each of the grounds and make their findings to the court and that they go through the January 14 appeal letter.

Vice-Chair Margeson referenced page 32 of the packet and the January 14 letter from Attorney MacCallum. She said the grounds of appeal were paragraphs 1 through 8 that dealt with the ineligibility of Raymond Pezzullo as a member of the Planning Board. She said it was clearly a conflict between the RSA and the city ordinance whether or not that triggered Winslow v. Holderness and made that vote ineligible. She said she did not believe it was in the board's purview to decide. Mr. Mattson said he saw no conflict of interest on the Planning Board's vote but didn't see it as being under the ZBA's jurisdiction. Mr. Rheaume asked if there was something in the zoning ordinance that would affect the composition of the board and who should be on it. He said he didn't see anything in the applicant's or the appellant's discussion that indicated that they cited anything specific to the zoning ordinance. He said he couldn't find anything in the zoning ordinance that was tied to it and thought it wasn't something that the zoning ordinance should be reviewing. Mr. Mannle agreed and said the composition of the Planning Board had been in question for a number of years. He said he would look at the State RSAs vs. how the Planning Board is made up.

Vice-Chair Margeson moved that the ZBA has no jurisdiction over the complaints in paragraphs 1 through 7 regarding the composition of Board members as stated in the January 14 appeal letter by Attorney MacCallum. Mr. Mattson seconded.

Vice-Chair Margeson referred to her comments and said she thought there was a conflict, and that the issue of whether or not it triggered and fit into the Winslow vs. Holderness was a matter for the Superior Court to deal with.

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

Mr. Mattson moved that the Zoning Board of Adjustment has no jurisdiction over the complaints in paragraphs 8 through 10 regarding Wetland Conditional Use Permits as stated in the January 14 appeal letter by Attorney MacCallum. Mr. Rheaume seconded. The motion **passed** by a unanimous vote of 6-0.

Vice-Chair Margeson said she didn't know if the parking outside of the CUP actually tied into the site plan approval, which would be appealable to the board. She said she thought it was the appellants' responsibility to plead that out but also thought the Planning Board did not do a good job on it. Mr. Mannle said he thought the whole application was rushed, considering that the Planning Board was still waiting for HDC and Conservation Commission approvals. He said the parking was appealable to the ZBA and didn't think anything wrong was done as far as applying the ordinance in place, except for how Planning Board members rushed through the process or gave misinformation to sway other members. Mr. Mattson said he shared some of Mr. Mannle's concerns but he was concerned that the burden would be on the appellant and there were no provisions mentioned in the ordinance regarding the parking, independent from the CUP which the ZBA didn't have purview over. Mr. Rheaume cautioned that the board's responsibility was whether they had jurisdiction over it and not a decision on the merits or demerits of what the Planning Board actually did. He said nothing in the zoning ordinance talked to the necessity of one board waiting for another board's decision. He said the valet parking was the most questionable aspect of the discussion in terms of something that could be appealable to the ZBA. He asked if the Planning Board wandered into territory that was starting to affect other areas of the zoning ordinance and might have had to come back to the ZBA because it wasn't completely covered by the ordinance. He referred to the part in the ordinance that says the board may "accept, modify, or reject the applicant's findings of the parking demand analysis." Mr. Rheaume said the word 'modify' would open the door up for the Planning Board to say they were either in keeping with the concept of the CUP and therefore making it something the ZBA would not be reviewing or they were wandering outside of that. He said it was something the board needed to figure out. Chair Eldridge said she felt that the parking was the stickiest issue but the main feature was the valet parking and who would pay for it and whether there were enough parking spots. Mr. Mattson referred to Paragraph 11 and said the HDC did not make any changes to the site plan regarding parking.

Ms. Margeson moved that the Zoning Board of Adjustment has no jurisdiction over the complaints in paragraph 11 regarding the Historic District Commission as stated in the January 14 appeal letter by Attorney MacCallum. Mr. Mattson seconded. The motion passed by a vote of 5-1, with Mr. Mannle voting in opposition.

Mr. Mattson moved that the Zoning Board of Adjustment has no jurisdiction over the complaints in paragraph 11 regarding parking as stated in the January 14 appeal letter by Attorney MacCallum. Mr. Rheaume seconded for discussion.

Mr. Rheaume said he was torn and felt that the word 'modify' was the only word in the zoning ordinance that may give the Planning Board an out and put it under the cognizance of the CUP. He said the key was in saying it didn't apply and was something the ZBA didn't need to review because it was within the overall purview that the Planning Board would have in regard to a CUP. He said the board could accept, modify, or reject the findings of the applicants' parking demand analysis but thought the word 'modify' got the applicant off the hook and that the board would not have jurisdiction over it because it was covered by the umbrella of the CUP. Mr. Mattson said anything regarding CUPs automatically went to Superior Court, so the parking would be independent of the CUP for parking. It was further discussed.

The motion **passed** by a vote of 5-1, with Mr. Mannle voting in opposition.

The board reviewed Paragraph 12, Conservation Law Foundation, next. Vice-Chair Margeson said she thought the Conservation Law Foundation was misquoted and influenced other members of the Planning Board but didn't think it was in the ZBA's purview. Mr. Mattson agreed. Mr. Rheaume said the paragraph pointed toward the Wetlands Cup, so in that sense it would not be covered. He said nothing talked to a specific paragraph of the zoning ordinance.

Mr. Mattson moved that the Zoning Board of Adjustment has no jurisdiction over the complaints in paragraph 12 regarding the Conservation Law Foundation as stated in the January 14 appeal letter by Attorney MacCallum. Mr. MacDonald seconded.

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

The board reviewed the Conservation Commission Question, Paragraph 13. Mr. Rheaume said there was nothing in the zoning ordinance that binds the Planning Board to uphold a recommendation from another board, so it was nothing under the ZBA's purview. Mr. Mattson noted that it was a 3-3 tied vote. Chair Eldridge said it failed to pass. Mr. Mattson said it would relate to the CUP and the lack of a specific provision of the zoning ordinance not being stated.

Mr. Mattson moved that the Zoning Board of Adjustment has no jurisdiction over the complaints in paragraph 13 regarding the Conservation Commission as stated in the January 14 appeal letter by Attorney MacCallum. Mr. Rheaume seconded.

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

**B.** The request of **635 Sagamore Development LLC (Owner)**, for property located at **635 Sagamore Avenue** whereas relief is needed to remove existing structures and construct 4 single family dwellings which requires the following: 1) A Variance from Section 10.513 to allow four free-standing dwellings where one is permitted. 2) A Variance from Section 10.521 to allow a lot area per dwelling unit of 21,198 square feet per dwelling where 43,560 square feet is required. Said property is located on Assessor Map 222 Lot 19 and lies within the Single Residence A (SRA) District. (LU-22-209)

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

Mr. Rheaume abstained from the vote.

The Board moved to grant the request to **postpone** consideration to the April meeting by a vote of 5-0.

C. The request of Nissley LLC (Owner), for property located at 915 Sagamore
Avenue whereas relief is needed to demolish the existing building and construct new

mixed-use building which requires the following: 1) A Variance from Section 10.440 to allow a mixed-use building where residential and office uses are not permitted. 2) A Variance from Section 10.1113.20 to allow parking to be located in the front yard and in front of the principal building. 3) A Variance from Section 10.1114.31 to allow 2 driveways on a lot where only one is allowed. Said property is located on Assessor Map 223 Lot 31 and lies within the Waterfront Business (WB) District. (LU-22-229)

**Note**: this was not a public hearing. The public hearing was previously closed.

Mr. Rheaume said the application was a request to construct a mixed-use building, including residential and offices, in the Waterfront Business District (WBD) where those uses are not allowed. He said the applicant noted that a property directly across from Sagamore Creek was used for office space, but Mr. Rheaume said it was really in the Mixed-Residential Office District and was allowed. He said the applicant talked about the feasibility of using the waterfront and the fact that the waterfront was minimal, which negatively affected their ability to meet the expectations of the WBD. Mr. Rheaume said there were a few uses allowed in the WBD but the city was trying to preserve some aspect of Portsmouth's marine heritage, so there were some options that didn't require water space at all. He said the WBD did include several parcels of mostly residential uses, but one of the options was marine-related research and development that didn't require waterfront space. He said what was proposed was very generic and was better suited for the Gateway District and that there were a lot of other places the business could go. He said what was proposed failed on being in keeping with the spirit of the ordinance and the hardship argument.

Vice-Chair Margeson said she watched the presentation and deliberations and thought the project had some benefit but didn't meet the spirit of the ordinance. She said she didn't support it the first time and wouldn't support it now. In terms of hardship, she said the business allowed for the sale of marine goods, groceries, and so on, which was a use variance but would be like rezoning the property to mixed-residential business. She said the applicant proposed 12 work units, but the purpose of a mixed-residential business was to provide a transition from commercial to residential. She said she didn't really see any commercial properties there and didn't think it fit the spirit and intent of the Mixed Residential-Business District. She was also concerned about the density. She said the property was asking for 12 units, but the highest amount allowed was eight. Mr. Mattson agreed. He said the density was almost hidden by the fact that the WBD didn't have any criteria regarding density and the preciousness of the waterfront. He said he thought, however, that the property was underutilized and suggested stipulations requiring that one or two more offices be used for waterfront purposes and that the proposed density be reduced. Chair Eldridge said it was like a little desert in the middle of residences and said there were many uses for waterfront businesses that didn't require a lot of water, but she thought that because of the rezoning and the density suggested, she could not support the application. Mr. Mattson said something would happen to the property if it wasn't dealt with now, so the stipulations would help move it along. Mr. Rheaume said he thought there were some possibilities and didn't think the applicant, with its heavy emphasis on other uses, made a real attempt to honor the WBD. He said it didn't meet the board's criteria and that the applicant was also asking to negate the existing conforming use.

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

Mr. Rheaume moved to **deny** the request, as it failed to meet the criteria set forth in 10.233.22 because the proposal did not demonstrate that removing the use of a waterfront business would be in keeping with the spirit of the ordinance; and it failed to meet criteria set forth in 10.233.25 because the proposal did not demonstrate enough of a hardship to prove the property was unique to others in the Waterfront Business District. Mr. Mannle seconded the motion.

The motion to deny **passed** by a unanimous vote of 6-0.

**D.** The request of **The Griffin Family Corporation (Owners)**, and **LoveWell Veterinary Services**, **LLC (Applicant)**, for property located at **738 Islington Street**, **Unit 1B** (previously advertised as 800 Islington Unit 1B) whereas relief is needed to allow a veterinary clinic which requires the following: 1) Special Exception from Section 10.440, Use #7.50 to allow a veterinary clinic where the use is permitted by Special Exception. Said property is located on Assessor Map 155 Lot 13 (previously advertised as Assessor Map 154 Lot 1) and lies within the Character District 4-W (CD4-W) District. (LU-23-8)

#### SPEAKING TO THE PETITION

Attorney Tim Phoenix was present on behalf of the applicant. He said they previously got approved for a special exception but then the owner couldn't work out the lease arrangements, so they were back for an identical request but a different location. He said nothing in the proposal had changed except for the location. He reviewed the special exception criteria.

Mr. Rheaume said the zoning ordinance definition didn't limit the property to small animals and the special exception would run with the land in the future. He suggested a stipulation that the special exception be granted for the care of dogs, cats, and similar other animals, with the largest animal being a dog. Attorney Phoenix said that would be acceptable.

Chair Eldridge opened the public hearing.

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

No one was present to speak, and Chair Eldridge closed the public hearing.

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

Mr. Rheaume moved to grant the special exception with the following condition:

1. Clinic treatment is limited to dogs, cats, and other small animals.

Mr. Mannle seconded.

Mr. Rheaume said the approval ran with the land and the way it was all set up was all allowed by special exception, so it met the criteria of Section 10.232.21. He said granting the special exception would meet Section 10.232.22 and would pose no hazard to the public or adjacent properties on account of the potential of fire, explosion of release of toxic materials. He said a veterinary practice was very limited in those areas and any toxic materials would be extremely limited in nature. He said granting the special exception would meet Section 10.232.23 because it would pose no detriment to property values in the vicinity or change in the essential character of the area like odors, smoke, dust, other pollutants, gas, noise, glare, heat vibration, unsightly storage of equipment, and so on. Referring to Section 10.232.24, he said there would be no creation of a traffic safety hazard or potential increase in the level of traffic congestion in the vicinity, noting that there were a number of parking lots nearby but the small size of the unit was minimal compared to the other uses around it. He said there were some parking challenges but the applicant would not significantly add to them. Referring to Section 10.232.25, he said granting the special exception would pose no excessive demand on municipal services including but not limited to water, sewer, waste disposal, police and fire protection, schools, and so on. He said it was a veterinary clinic that would not create any significant impact on those services. He said there would be no increase of stormwater runoff onto adjacent properties or streets, noting that the existing property performed satisfactorily in those areas. Mr. Mannle concurred and had nothing to add.

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

E. The request of Aviation Avenue Group, LLC (Applicant), and Pease Development Authority (Owners), for property located at 80 Rochester Avenue whereas relief is needed for the construction of an advanced manufacturing facility which requires the following: 1) Variance from Article 304.03 (e) to allow a 28 foot rear yard where 50 feet is required. Said property is located on Assessor Map 308 Lot 1 and lies within the Pease Industrial District (PI). (LU-22-210)

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

Attorney John Bosen was present on behalf of the applicant and introduced the project team Eben Tormey, John Stebbins, and Neil Hansen. He said the parcel was currently vacant and they wanted to develop it for an advanced manufacturing facility. He noted that the project received a variance on November 15 to allow a 51-ft front yard setback but then the applicant became aware of a setback problem with the utilities, so they met with the Pease Development Authority (PDA) in January and got recommendation for a rear year setback of 28.4 feet. Attorney Bosen reviewed the PDA criteria and said they would be met.

Mr. Rheaume said Attorney Bosen said the wetlands would be compromised if the building were pushed back further to accommodate the setbacks. He asked exactly where the wetlands were and why they affected the positioning of the building. Mr. Hansen said the wetlands were on the opposite side of the street and that a previous concept of the building was longer and narrower, which pushed the parking closer to the right-of-way line on their side of the property and was getting near the wetland buffer and required some reconfiguration of the street. He said they would

avoid the wetland buffer by leaving the road where it was. He said the road was wider than the typical road, which was part of the hardship. Mr. Rheaume asked for examples of surrounding properties that were commercial in nature and had similar setbacks. Attorney Bosen said the property across the street, Seacoast Media Group, had a similar setback. Mr. Rheaume asked why the 2:1 ratio for the building was important. Attorney Bosen said the proposed building had to have a certain column width and depth that drove its proportions. Mr. Rheaume said the 2:1 ratio could still be met with a smaller structure, and it was further discussed. Attorney Bosen said the building had to be a certain size for it to function as an advanced manufacturing facility.

Chair Eldridge opened the public hearing.

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

No one spoke, and Chair Eldridge closed the public hearing.

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

Mr. Mattson moved to **recommend approval** to the PDA, seconded by Mr. Mannle.

Mr. Mattson said there would be no adverse effect or diminution of values of surrounding properties and that the project would be a benefit to the public interest. He noted that the lot was currently vacant and would be developed for an advanced manufacturing facility that would bring productive and good-paying jobs. He said denial of the variance would result in unnecessary hardship to the person seeking it. He noted that the petition went through the Technical Advisory Committee (TAC) and due to the wetlands, buffers, large right-of-way and utilities on the street, it resulted in pushing the building back and now met the required variance. He said granting the variance would do substantial justice. He said the hardship by denying the variance would not be outweighed by any benefit to the public. He said the proposed use would not be contrary to the spirit of the zoning rule because the parcel was in the industrial zone and manufacturing use was permitted.

Mr. Mannle concurred and had nothing to add. Mr. Rheaume said he would support the motion, although he found the applicant's argument wanting in several areas and thought some of the logic was not supported by the facts of the case, which he further explained.

The motion **passed** by a unanimous vote of 6-0

#### III. NEW BUSINESS

A. The rehearing of the request of **Jeffrey M.** and **Melissa Foy (Owners)**, for property located at **67 Ridges Court** whereas relief is needed for construction of a 518 square foot garage addition and expansion of front dormer which requires the following: 1) A variance from Section 10.521 to allow a 14 foot front yard where 19 feet is required per Section 10.516.10. 2) A Variance from Section 10.321 to allow a

nonconforming building or structure to be extended, reconstructed, or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 207 Lot 59 and lies within the Single Residence B (SRB) District. (LU-22-199)

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

Mr. MacDonald recused himself from the vote.

Mr. Mannle moved to **postpone** the rehearing to the April meeting, seconded by Mr. Mattson. The motion passed by a unanimous vote of 5-0.

**B.** The request of **William Camarda (Owner)**, for property located at **809 State Street** whereas relief is needed to Extend the existing deck which requires the following: 1) Variances from Section 10.521 to allow a) a 10 foot rear yard where 20 feet is required; and b) 46% building coverage where 35% is the maximum allowed. 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 145 Lot 11 and lies within the General Residence C (GRC) District. (LU-23-6)

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

The applicant William Camarda was present and said he wanted to extend the shallow deck toward the side of the house for more room. He reviewed the criteria and said they would be met.

Mr. Mannle asked was the deck's current width was. Mr. Camarda said it was 8'4" deep from the house and he wanted to make it 12 feet. Mr. Rheaume asked what the basis was for the 10-ft clearance. Mr. Camarda the fence was the property line and he wanted to extend the deck 10 feet away from that fence. Mr. Rheaume said the Staff Memo noted that the current setback from the back property line was two feet for all of the structures, and he asked if Mr. Camarda's house was really set back two feet and the current deck set back two feet from the fence line and whether Mr. Camarda was sure about the 10-ft dimension. Mr. Camarda said he measured it and was almost positive. In response to Mr. Mattson's questions, Mr. Camarda said the stairs would not be changed and would ask his contractor if covering the green pipe coming out of the ground would work.

Chair Eldridge opened the public hearing.

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

No one spoke, and she closed the public hearing.

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

Mr. Mannle moved to grant the variance as presented and advertised, seconded by Mr. Mattson.

Mr. Mannle said it was a minimal request for a deck and the 10 feet didn't bother him but the building coverage did bother him, but not for that area of town because he'd be surprised if anyone on State Street was at 35 percent or below. He said granting the variance would not be contrary to the public interest, noting that no one was present to speak against the petition. He said it would observe the spirit of the ordinance because outside space was important, especially for a young family. He said it would do substantial justice and that it wouldn't diminish the values of surrounding properties but would enhance them as well as the applicant's property. He said literal enforcement of the provisions of the ordinance would result in unnecessary hardship because not granting the variance would present a hardship to the applicant. He noted that the neighborhood was the more dense area of State Street. For those reasons, he said the petition should be approved. Mr. Mattson concurred. He said the deck portion will be less nonconforming than the existing house structure in that portion of the stairs, and the small increase of building coverage from 42 to 46 percent wasn't a big ask. He noted that normally a deck addition went closer to the rear but the applicant's was going towards the side and more to the inner portion of the parcel. Mr. Rheaume added that the key factor was that the deck was moving toward the center of the lot and would not impact the surrounding neighbors or be perceived by anyone passing by.

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

#### IV. OTHER BUSINESS

There was no other business.

#### V. ADJOURNMENT

The meeting adjourned at 9:42 p.m.

Respectfully submitted,

Joann Breault BOA Recording Secretary

# MINUTES OF THE BOARD OF ADJUSTMENT MEETING CONFERENCE ROOM A MUNICIPAL COMPLEX, 1 JUNKINS AVENUE PORTSMOUTH, NEW HAMPSHIRE

7:00 P.M. March 29, 2023

**MEMBERS PRESENT:** Phyllis Eldridge, Chair; Beth Margeson, Vice Chair; Paul Mannle;

David MacDonald; Jeffrey Mattson

**MEMBERS EXCUSED:** Thomas Rossi; David Rheaume

ALSO PRESENT: Stefanie Casella, Planning Department

Chair Eldridge called the meeting to order at 7:00 P.M. She noted that there were only five board members present. She asked that the rules be suspended to consider the postponements that evening.

Mr. Mannle moved to **suspend** the rules, seconded by Mr. Mattson. The motion passed unanimously, 5-0.

Mr. Mannle moved to **postpone** New Business Item C, 55 Mangrove Street, to the April meeting, noting that the applicant postponed it because there were only five members. Mr. Mattson seconded. The motion passed unanimously, 5-0.

Mr. Mannle moved to **postpone** New Business Item D, 74 Sunset Road, to the April meeting for the same reason. Mr. Mattson seconded. The motion passed unanimously, 5-0.

Mr. Mannle moved to **postpone** New Business Item F, 196 Aldrich Road, to the April meeting, noting that the applicant needed to do a new survey. Vice-Chair Margeson seconded. The motion passed unanimously, 5-0.

Mr. Mannle moved to **postpone** New Business Item I, 15 Lafayette Road, to the April meeting, noting that the applicant postponed it due to a team member not being able to be present. Vice-Chair Margeson seconded. The motion passed unanimously, 5-0.

Mr. Mannle moved to postpone New Business Item K, 4 Sylvester Street, to the April meeting because there were only five board members present. Vice-Chair Margeson seconded. The motion passed unanimously, 5-0.

Mr. Mannle moved to **postpone** New Business Item L, 9 Kent Street, to the April meeting for the same reason. Mr. Mattson seconded. The motion passed unanimously, 5-0.

#### I. NEW BUSINESS

C. REQUEST TO POSTPONE. The request of Michael Knight (Owner), for property located at 55 Mangrove Street whereas relief is needed to replace the existing 6-foot chain link fence with an 8-foot cedar fence which requires the,, following: 1) A Variance from Section 10.515.13 to allow an 8 foot fence on the rear and side lot lines where a 6 foot maximum is allowed. Said property is located on Assessor Map 219 Lot 7 and lies within the Single Residence B (SRB) District. REQUEST TO POSTPONE (LU-23-15)

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

The petition was **postponed** to the April meeting.

**D.** The request of **John T McDonald III and Mary R McDonald (Owners)**, for property located at **74 Sunset Road** whereas relief is needed for an addition of a chimney bump out which requires the following: 1) Variances from Section 10.521 to allow a) a 6.5 foot left yard where 10 feet is required; and b) 26.6% 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)

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

The petition was **postponed** to the April meeting.

E. The request of **Katherine L Cook (Owner)**, for property located at **199 Clinton Street** whereas relief is needed to demolish the existing dwelling and construct a new single-family dwelling which requires the following: 1) Variances from Section 10.521 to allow a) a lot area and lot area per dwelling unit of 4,917 where 7,500 is required for each; b) 54 feet of frontage where 100 feet is required; c) a 4 foot front yard where 15 feet is required; d) a 9 foot right side yard where 10 feet is required; and e) 28% building coverage where 25% is the maximum allowed. Said property is located on Assessor Map 159 Lot 26 and lies within the General Residence A (GRA) District. (LU-23-23)

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

Attorney Chris Mulligan was present on behalf of the applicant Katherine Cook, who was also present. He said they wanted to demolish the existing single-family residence and replace it with a new single-family residence in the same location. He reviewed the petition, noting that some of the unique aspects of the property were that the building was oriented in such a way that it did not have a front door facing Clinton Street, and a side door opened onto a raised deck close to a lot line and looked over the neighbor's porch. He explained why the setback reliefs were needed. He noted that a structural memo outlining the difficulties in rehabbing the property was previously submitted to

the board. The applicant Ms. Cook said she bought the house with the intention of restoring it but almost everything in it had to be renovated, after which she would still have a lot of problems. She said the architect had convinced her to rebuild the house.

Vice-Chair Margeson asked Ms. Cook when she bought the house and whether it passed the home inspection. Ms. Cook said she bought the house in January 22, 2023 and it passed the home inspection but there were issues with the electric and plumbing and there was some bowing in the front of the house that she didn't know the extent of until after more detailed inspections were done. She said the joists were floating and the house was separating. Mr. Mannle asked whether the foundation would be taken up with the demolishment. Ms. Cook said the foundation had to be completely replaced, and if she only renovated the house, it would have to be lifted to replace the foundation, but she would still have issues with the floor joists.

Chair Eldridge opened the public hearing.

# SPEAKING IN FAVOR OF THE PETITION OR IN OPPOSITION TO THE PETITION

No one spoke.

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

Rick Becksted of 1395 Islington Street said his house was built in 1894 and that he had substantial issues but that he renovated the house. He said he was troubled by someone demolishing a home because it was happening more and more in Portsmouth. He said if Ms. Cook put up a new structure, the property would be assessed for over a million dollars, which would have an adverse effect on the surrounding properties because it would raise their assessment values. He said that was the reason Portsmouth was losing so many residents and its character. He asked that the applicant come up with a way to renovate her home.

No one else spoke, and Chair Eldridge closed the public hearing.

#### DISCUSSION OF THE BOARD

Mr. Mannle said he lived in an old house and knew the challenges. He said the variance requests weren't that big but thought that tearing down a home put a new dimension on it. He said the foundation concerned him, more so than the frontage, setbacks, and building coverage. He said the applicant knew she was buying into something difficult when the bought the house. especially for the size of the lot. Mr. Mattson said the variance requests stemmed from the very small nonconforming lot, which was under 5,000 square feet and 2,500 square feet less than the minimum required for that zone. He noted that 7,500 square feet was one of the smaller minimal lots in the city, so that was a factor. He said something else he struggled with was the variance criteria of not diminishing the value of surrounding properties. Having been born and raised in Portsmouth, he said he shared concerns of gentrification but noted that the board wasn't there to address that, even though it could fall under the category of potentially harming the public. He said the actual structure

would be a reasonable use and, independent of the board's architectural and aesthetic tastes, would be a single-family dwelling that would not alter the essential character of the neighborhood. He said he'd prefer to see an old house restored, which he did on his own property, but wouldn't impose that on someone else. He said if the house was in the Historic District, it wouldn't be allowed to be demolished and thought that was something to consider.

Vice-Chair Margeson said it was modest in terms of zoning relief and brought the proposed home into more conformance with the zoning ordinance, but one of the purposes and intents of the ordinance was the preservation of historic districts, and buildings and structures of historic or architectural interest, which she took into consideration in terms of whether to raze an 1880s structure. She agreed that the issues with the house were well known when the applicant bought it, which sort of weighed against granting the variances, so she was still undecided.

Mr. MacDonald said the board thought of the status of the property today as the 'before' picture and what the applicant was proposing was the 'after' picture. He said he drove by the property and thought it would be improved from the point of view of the streetscape. He said the cost to get from the 'before' picture to the 'after' picture was an investment and thought there was nothing wrong with that. He said every time a house was demolished in Portsmouth, however, more of Portsmouth was lost, which went in opposition to renovating the property. He said the value of preserving a very tenuous and expensive old house just because it was old didn't make sense from anyone's point of view except the owner's. He said it was a question of what people wanted their city to look like, either an old Colonial look-alike city or a present-day one with present-day amenities and value structures. He said the board's role was to understand which one was the more favorable outcome for everyone and who would win or lose. He said the board had to find a balance. He said he himself lived in an old 1780s house and asked himself why he chose to live in that house instead of one where everything worked. He said it was a judgment for every individual.

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

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

Mr. MacDonald referred to his comments. He said granting the variances would not be contrary to the public interest, noting that there would be no losers, only winners. He said it would observe the spirit of the ordinance, which was to keep Portsmouth nice and make it a place where people are happy living and raising their families. He said granting the variances would do substantial justice because the applicant and the neighborhood residents would have what people came to Portsmouth for and it would help everyone and hurt no one. He said granting the variances would not diminish the values of surrounding properties because the values would go up. He said literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. He said he didn't know if that was a sustainable argument or not, and didn't think the owner, neighbors, or residents would have an unnecessary hardship. He said the owner might experience some difficulty but knew that when she chose to buy the property.

Mr. Mattson said the first two criteria included health, safety, and welfare of the public and that he didn't think granting them would be contrary to that. He said the spirit of the ordinance related to the essential character of the neighborhood, and the variances that were all related to the lot size, coverage, and setbacks were the same as the existing footprint. For substantial justice, he said the board had to weigh the benefit to the applicant, which would not be outweighed by any harm to the public because the only potential harm was not only the loss of the structure but how much that truly was harmful to the public vs. the issues associated with the structural issues of the existing building. He said the new home would be code compliant, so granting the variances would not diminish the values of surrounding properties. As for the hardship, he said it was a very small nonconforming lot and the proposal would actually improve the side yard setback and the very minimal changes to the front yard and lot coverage. He said there was no entryway on Clinton Street and that it would be difficult to have one on the front of the existing home. He said it would be a reasonable use because it would still be a single-family dwelling and the purpose of the setbacks would still be met.

Chair Eldridge said she would support the motion because the requests were so small and many of the things that didn't meet the new zoning ordinance were already in place. She said she was on the HDC for ten years and didn't take the demolition of old buildings lightly. She said the applicant's building was old but that she wasn't sure it was a historic structure. Vice-Chair Margeson said the dimensional variance relief was small but the board was seeing more and more petitions like the applicant's. She said the HDC had purview over the architecture of buildings but one of the zoning ordinance's intents was to protect historic structures. Chair Eldridge noted that if the applicant's building was refurbished instead of rebuilt, its value and those of neighboring properties would still be raised, so she didn't see a reason to vote against it.

The motion passed by a vote of 4-1, with Vice-Chair Margeson voting in opposition.

F. REQUEST TO POSTPONE The request of Joshua Wyatt and Erin Hichman (Owners), for property located at 196 Aldrich Road whereas relief is needed to demolish existing garage and construct new garage and construct new addition over existing side porch which requires the following: 1) Variances from Section 10.521 to allow a) a secondary front yard of 3 feet where 30 feet is required; b) a 6 foot rear setback where 10 feet 7 inches is required; c) 23% building coverage where 20% is the maximum allowed. 2) A Variance from Section 10.571 to allow and accessory structure to be 10 feet from the front lot line and located in the front yard. 3) A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed, or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 153 Lot 25 and lies within the Single Residence B (SRB) District. (LU-23-24) REQUEST TO POSTPONE

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

The petition was **postponed** to the April meeting.

G. The request of Colmax LLC (Owner), for property located at 411 The Hill #6-14 (411 Deer Street) whereas relief is needed to convert the building into a single-family dwelling which requires the following: 1) A Variance from Section 10.642 to allow residential use on the ground floor in the Downtown Overlay District where is not permitted. 2) a Variance from Section 10.5A41.10A to allow a house in the Downtown Overlay District where it is not permitted. Said property is located on Assessor Map 118 Lot 26-1 and lies within the Character District 4-L1 (CD4-L1) in the downtown Overlay District. (LU-23-21)

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

The applicant Paul Delisle was present via Zoom. He said the building was used as a mortgage office but that he wanted to allow for a residence on the first floor. He said that making the first floor a residence would make the home a single-family one. He reviewed the criteria, noting that all the buildings across the street were mostly residential and the residential use would help the city's housing shortage. He said residential usage had more value than office space in Portsmouth. He said the hardship was that the ordinance only allowed for an apartment upstairs, which would trigger the building codes for change in use, sprinkler systems, fire walls, a new water line and so on.

Mr. Mannle asked if there was no second floor apartment currently and had never been one, and the applicant agreed. Vice-Chair Margeson asked if the applicant would accept a stipulation that the reasons he was asking for the variance were that the interior features of the building would be preserved. Mr. Delisle agreed, noting that he would have to make some changes to walls added on the second floor that were not historically significant, but the majority would remain the same. Mr. Mattson said the period details were more important than some wall that was built in the 1990s.

Chair Eldridge opened the public hearing.

#### SPEAKING IN FAVOR OF THE PETITION

Paige Trace said she was the president of the New Hampshire Chapter of the National Society of the Colonial Dames of America (NSCDA), who owned the Moffatt-Ladd House and were abutters. She said she would take Mr. Delisle at his word that he would preserve the original fabric of the house that was integral to its period. She agreed that most of the other structures near the house were single-family ones or had residences on the first floor and said all the homes were moved to The Hill because of forward-thinking people during urban renewal.

No one else spoke, and Chair Eldridge closed the public hearing.

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

Vice-Chair Margeson said having a business on the first floor was very explicit in the ordinance because it was the Downtown Overlay District. She noted that the board denied a similar variance in the past and she tried to be consistent. She said she would however support the request because she

thought the property did have special conditions, including that it was across the street from another set of properties that were residential and zoned the same way. She said The Hill presented a special condition in terms of its zoning and that it was created in the 1970s so that buildings could be moved there and preserved. She said there could be conditions placed on the motion, however.

Vice-Chair Margeson moved to **grant** the variances with the following conditions:

- 1. The house shall be restored as a single-family home, and
- 2. The historic features described on pages 3 and 6 of the application and contained in Figures 1 through 5 shall be required from the applicant.

(**Note**: The seconding of the motion and the stipulations were made at the end of Vice-Chair Margeson's motion).

Vice-Chair Margeson referred to Sections 10.233.21 and .22 of the ordinance and said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. She said the board looked at whether the health, safety and welfare of the public was implicated when finding whether or not something violated the spirit or intent of the ordinance and whether it would change the essential characteristics of the neighborhood. She said the public's health, safety and welfare would not be affected and the essential character of the neighborhood would not change due to the existence of the buildings across the street that were residential and zoned in the same way. Referring to Section 10.233.23 of the ordinance, she said granting the variances would do substantial justice because there would be a benefit to both the applicant and the public, and the benefit to the public would be that a historic building in a historic area will be preserved. Referring to Section 10.233.24, she said granting the variances would not diminish the values of surrounding properties, noting that the board had not received evidence of how the proposal would affect them but thought it was safe to assume that the building's restoration as a single-family home would not diminish surrounding property values. Referring to Section 10.233.25, she said literal enforcement of the ordinance would result in an unnecessary hardship because the property had special conditions that distinguish it from others in the area, and owing to those special conditions a fair and substantial relationship does not exist between the general public purpose of the ordinance's provision and the specific application of that provision to the property, and the proposed use is a reasonable one. She said the property did have special conditions because it was part of a historic area. She said The Hill was created in the 1970s with the purpose of preserving those buildings, and that owing to that special condition, a fair and substantial relationship did exist between having residential or business use on the ground floor. She said the proposed use is a reasonable one because residential use is allowed in this area, at least on the second floor.

Mr. Mannle concurred. He said the variance requests were to allow residential use on the ground floor in the Downtown Overlay District where none were permitted. He said the houses on The Hill were moved there from other places before there even was a Downtown Overlay District, so the rule was created after the houses were in place and preserved to make them nonconforming, which was in itself a hardship. He said the fact that there was a stipulation with no residential on the first floor and residential above would prevent a historic residence from being cut down into a condo or apartment or mixed use, especially if an owner wanted to keep it a historic home and not destroy the

interior. Chair Eldridge said she would support the motion because the hardship was in how special the building was and how it was brought there to be preserved.

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

H. The request of Mark N. Franklin and Julie S. Franklin (Owners), for property located at 168 Lincoln Avenue whereas relief is needed for demolition of the existing detached garage and porch and construction of a new attached garage and wrap-around porch which requires the following: 1) Variances from Section 10.521 to allow a) a 7.5 foot front yard where 15 feet is required; b) a 9 foot secondary front yard where 15 feet is required; c) 38% building coverage where 25% is the maximum allowed. 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 113 Lot 6 and lies within the General Residence A (GRA) District. (LU-23-25)

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

Applicant Mark Franklin was present to speak to the petition with his designer Hubert Krah. Mr. Franklin said he wanted the modernization of his 1900s home and the addition to make the home more livable for his family, to work at home, and to have more space for visiting family and medical residents. He reviewed the criteria and said they would be met. Mr. Krah reviewed the redesign aspects by comparing the existing and proposed floor plans.

Vice-Chair Margeson verified that the office was being moved from the ground floor to the second floor. Mr. Franklin said he needed more working space at home but that the office would be no bigger than it currently was. Mr. Krah said one of the bedrooms would also be an office. Mr. Mannle said the board was looking at probably 250 square feet or more for the footprint.

Ms. Eldridge opened the public hearing.

#### SPEAKING IN FAVOR OF THE PETITION

Owner Julie Franklin read a letter from her neighbor Laurie Harrigan of 116 Sherburne Avenue who was an abutter and couldn't attend the meeting. Ms. Harrigan said she was in support of the petition and thought it met all the criteria.

#### SPEAKING IN OPPOSITION TO THE PETITION

Maxene Feintuch of 180 Lincoln Avenue said she was the direct abutter and would be the most impacted. She said the issues were the proposed home's size, mass, and scale. She said it would be 67 feet long and 33 feet high, which wasn't typical of a house in that neighborhood, and would reduce her light, air, and privacy. She said she submitted a letter to the board from a land realty stating that the project would diminish her property value.

Carol Hollis of 557 Union Street said there must be a hardship, and wanting a larger house was not a hardship. She said the application exceeded the lot coverage required by the ordinance.

Jennifer Benjamin of 180 Sherburne Avenue said the proposed changes did not reflect the other homes in the neighborhood and would set a precedent. She said the neighborhood had a variety of architectural styles with varying rooflines that made the streetscape interesting. She reviewed the dimensions requested by the applicant and said it would be a net gain of over 800 square feet.

Duncan MacCallum of 536 State Street said it was the kind of thing happening in Portsmouth that he didn't like to see. He said the applicant's basis for requesting a variance was that he didn't want to comply with the provisions of the ordinance because he couldn't do what he wanted to do or make the money he could make. He said the hardship was on the land itself and not the owner's personal circumstances. He said the requested relief was substantial.

Dryden Robertson of 139 Sherburne avenue said the project would deprive Ms. Feintuch of her air, light and privacy. She said a similar long home that was built near her friends changed the storm drainage and had flooding problems. She said the city had to be aware of not just beautifying the neighborhoods but what it was doing by paving over more and more of the city.

Steve Scott of 377 Richards Avenue said a doctor, a music teacher, and two children previously lived in the house and he couldn't understand how the need was so great to expand the house. He said the house's proposed mass was completely out of character with the neighborhood.

Paige Trace of 27 Hancock Street compared the applicant's house with hers and said her house was big, whereas the applicant's proposed house would be enormous. She said there were reasons for setbacks and thought there would be health and safety issues.

Ellen Cone of 124 Broad Street said the house was renovated five years ago. She said the abutter would suffer the hardship, not the applicant. She said she was a college professor and had to teach remotely during the pandemic and was able to do it within the footprint of her house.

Esther Kennedy of 41 Pickering Avenue said the zoning was clear and she did not believe that the hardship was met.

Rick Becksted of 1395 Islington Street explained how the proposed addition would block the abutter's light and air.

Jim Lee of Sagamore Avenue said he was a realtor and thought the proposed structure would alter the essential characteristics of the neighborhood and the surrounding property values would be diminished because of the structure's proposed scale. He said he saw no hardship because the house had been a residence for the last 100 years.

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

Mr. Krah reminded everyone that he was removing a garage that was located too close to two adjoining properties and were increasing the footprint by a little over 300 square feet, of which 180 square feet was the wraparound porch. He said the mid-morning sun would take up some light, but if they removed the porch and barely modified the proposed addition, they would be entirely within the requirements of the ordinance. He said it was the 21<sup>st</sup> century and a lot has happened since the house was built, like the pandemic and how Portsmouth had changed. He said they would add significant value to the house that would increase surrounding property values.

Petra Huda of 280 South Street said it still came back to the size and the impingement on the neighborhood. She asked the board to look at the criteria but didn't think they would find that the proposal met it.

Jennifer Benjamin clarified that part of the footprint being taken away is a deck with no impact on anyone, which was really the garden space of the property and was infilled with a 3-story addition.

No one else spoke, and Chair Eldridge closed the public hearing.

#### **DISCUSSION OF THE BOARD**

Mr. Mannle said when he first saw the proposal, he was dismayed due to the size but was even more dismayed by the comments made. He said the house had a hardship because it was on a corner lot, but that he wouldn't presume if it fit the applicant's needs or not just because someone lived there before who happened to also be a doctor. He said the lot coverage percentage requested was great, but the square footage was 271 square feet total, which he further discussed. He said the existing house was a 2-story one with an attic and not a 3-story house. He said the applicant was asking for 9-ft setback on the Sherburne Road side and the permitted setback was 15 feet because it was a secondary front yard. He said if there were no other house there, it would be ten feet, so it was a 1-ft request. He said the proposal would also make the rear yard compliant. He said light, air, and so on were concerns, however. He said there were plenty of houses in Portsmouth that had attached two-car garages with something on top of them. He said he could see both sides of the argument.

Mr. Mattson said he acknowledged that the format of the board could be difficult but thought it was the fairest way to deal with quasi-judicial issues. He said he could see the potential of harm to the abutting neighbor on Lincoln Avenue. He said the board had to weigh the benefit to the applicant vs. the one to the public. He said the garage was very close to both property lines and the new addition would come within the setback of the actual structure. He said the variance criteria asked for was really related to the porch in terms of the structure. As far as the coverage, he said it was already nonconforming and would become more nonconforming, and he generally didn't like that. He said the applicant wasn't asking for a height variance. He said he could see that the mass was a factor and was something to weigh because it could have an effect on the public interest and whether it was in the spirit of the ordinance. He said the neighboring lot was almost identical, except that the applicant's lot was a corner one, which was part of the reason for needing a variance. He said the property values criteria was debatable. He said normally he'd think a small lot could be a hardship because the neighborhoods coveted in Portsmouth were all developed before zoning existed, and the newly-applied zoning often made the lots nonconforming, like the applicant's, but

because of the neighbors who would be most affected but had a similar lot made it a challenging decision. Vice-Chair Margeson said she would not support the application. She said the fact that it was a corner lot was already taken into account by giving a secondary front yard. She said it was now at 16.2 feet and the proposed would make it 9 feet. She said even though part of it was the porch, it would make a conforming setback nonconforming. She said the right yard setback, which is the back of the house, would come into compliance but she thought it would be offset by the significant increase in building coverage. She said 38 percent was a very big increase and well over the 25 percent maximum allowed by zoning. As to the impact on surrounding properties, she said there was evidence that the project would impact them, and the board was required to take that into account. She said the letter from the land realtor that was submitted by the nearby abutter was a significant piece of evidence for diminishment of properties. Mr. Mattson said the architect indicated that he could still build the same height structure attached to a new garage and that it could be smaller, so variances wouldn't be needed.

Chair Eldridge said she didn't get all the opposition. She said the addition could be built because it wouldn't be too close to the neighbor's yard or the back or sides. She said it would be tall but it was allowed to be that tall. She said the issue was really the wraparound porch that would go next to the street and affect no one. She said the applicant was asking for very small variances that wouldn't change the streetscape or the front of the house. Mr. Mattson said the front porch was the issue with the setback, and that was on the street side and away from the neighbors. He said the garage would be removed, but that wasn't what the board was granting the variances for. Vice-Chair Margeson said she had no problem with the height because it was under the 35-ft maximum, but the spirit and intent of the ordinance was to prevent overcrowding of lots. She said it would be a big increase in building coverage. It was further discussed.

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

Mr. Macdonald moved to **deny** the request for variances, seconded by Vice-Chair Margeson.

Mr. MacDonald said granting the variances would be contrary to the public interest. Vice-Chair Margeson concurred. She referred to Section 10.233.22 of the ordinance and said granting the variance would not observe the spirit of the ordinance because the spirit and intent of the ordinance was to avoid overcrowding and overbulking of the lot. She referred to Section 10.233.24 and said granting the variance would diminish the values of surrounding properties, noting that the board had evidence submitted in the form of a letter from a land realtor saying that the proposal would have a negative impact on the abutting property at 180 Lincoln Avenue. For those reasons, she moved to deny the variance as presented and advertised.

The motion to deny **passed** by a vote of 4-1, with Chair Eldridge voting in opposition.

I. REQUEST TO POSTPONE The request of Murdock Living Trust (Owner), for property located at 15 Lafayette Road whereas relief is needed to subdivide one lot into two lots which requires the following: 1) A Variance from Section 10.521 to allow 73.8 feet of continuous street frontage where 100 feet is required for the remainder lot. Said

property is located on Assessor Map 152 Lot 2 and lies within the General Residence A (GRA) and Historic District. **REQUEST TO POSTPONE** (LU-23-26)

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

The petition was **postponed** to the April meeting.

J. The request of Seacoast Management Consulting LLC (Owner), for property located at 3 Walton Alley whereas relief is needed to add an AC unit and relocate landing and steps which requires the following: 1) A Variance from Section 10.515.14 to allow a 1 foot side setback where 10 feet is required. 2) A Variance from Section 10.521 to allow a) an 8.5 foot setback where 25 feet is required; and b) 38.5% building coverage where 30% is the maximum allowed. Said property is located on Assessor Map 103 Lot 20 and lies within the General Residence B (GRB) and Historic District. (LU-23-22)

#### SPEAKING TO THE PETITION

The applicant Lisa Masena was present to review the petition. She said the hardship was the lot size and there was nowhere else to put the AC unit other than the corner because of the stairs and the bulkhead. She reviewed the criteria and noted that the HDC approved it with screening. She said the stairs would be moved to the front of the landing.

Vice-Chair Margeson asked what the current building coverage was. Ms. Casella said it was less than one percent. Mr. Mattson asked if there was currently an AC unit, and Ms. Masena said no. She said the steps and bulkhead were already there. Mr. Mattson noted that the variance was advertised as an 8.5 ft rear yard setback but was actually an 11.5 ft rear yard setback, so the applicant was asking for less relief than advertised.

Chair Eldridge opened the public hearing.

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

No one spoke, and Chair Eldridge closed the public hearing.

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

Mr. Mattson moved to **grant** the variances with an 11.5 foot rear yard setback, noting that the variance was advertised as an 8.5 ft. rear yard setback but was actually a more conforming 11.5 ft. rear yard setback. Mr. Mannle seconded the motion.

Referring to Sections 10.233.21 and .22 of the ordinance, Mr. Mattson said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He said the proposed use would not conflict with the purpose of the ordinance and would not alter the essential characteristics of the neighborhood nor threaten the public's health, safety, or welfare or

injure public rights. Referring to Section 10.233.23, Mr. Mattson said substantial justice would be done because the benefit to the applicant by adding an AC unit to improve her living conditions would not outweigh any potential harm to the general public. Referring to Section 10.233.24, Mr. Mattson said granting the variances would not diminish the values of surrounding properties because the addition of the AC unit would be a small change and if anything, would improve the value of the applicant's property and not affect surrounding ones. Referring to Section 10.233.25, Mr. Mattson said literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. He said the proposed use was a reasonable one and the hardship was due to the small lot size and the location of the existing home and structures that left no other location for the AC unit to be added.

Mr. Mannle concurred and had nothing to add. *The motion passed unanimously*, 5-0.

K. REQUEST TO POSTPONE The request of Jared J Saulnier (Owner), for property located at 4 Sylvester Street whereas relief is needed to subdivide one lot into two lots which requires the following: Proposed Lot 1: 1) Variances from Section 10.521 to allow a) a lot area and lot area per dwelling of 9,645 square feet where 15,000 is required for each; b) 80 feet of lot depth where 100 feet is required; and c) a 9 foot right side yard where 10 feet is required. Proposed Lot 2: 1) Variances from Section 10.521 to allow a) a lot area and lot area per dwelling unit of 6,421 square feet where 15,000 is required for each; b) 40 feet of street frontage where 100 feet is required; and c) 80 feet of lot depth where 100 feet is required. Said property is located on Assessor Map 232 Lot 36 and lies within the Single Residence B (SRB) District. REQUEST TO POSTPONE (LU-23-27)

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

The petition was **postponed** to the April meeting.

L. REQUEST TO POSTPONE The request of Cynthia Austin Smith and Peter (Owners), for property located at 9 Kent Street whereas relief is needed to demolish the existing two-family and construct a single-family dwelling which requires the following: 1) Variances from Section 10.521 to allow a) a lot area and lot area per dwelling of 5,000 square feet where 7,500 square feet is required for each; b) 53% building coverage where 25% is the maximum allowed; c) a 4.5 foot rear yard where 20' is required; d) a 0.5 foot side yard where 10 feet is required; e) a 0 foot front yard where 11 feet is allowed under Section 10.516.10; and f) a 9.5 foot secondary front yard where 13 feet is allowed under Section 10.516.10. 2) A Variance from Section 10.515.14 to allow a 1.5 foot setback for a mechanical unit where 10 feet is required. Said property is located on Assessor Map 113 Lot 42 and lies within the General Residence A (GRA) District. REQUEST TO POSTPONE (LU-23-28)

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

The petition was **postponed** to the April meeting.

# II. OTHER BUSINESS

There was no other business.

# III. ADJOURNMENT

The meeting adjourned at 10:00 PM

Respectfully submitted,

Joann Breault BOA Recording Secretary



City of Portsmouth Planning Department 1 Junkins Ave, 3<sup>rd</sup> Floor Portsmouth, NH (603)610-7216

#### **MEMORANDUM**

TO: Zoning Board of Adjustment FROM: Stefanie Casella, Planner

DATE: April 12, 2023

RE: Zoning Board of Adjustment April 18, 2023

The agenda items listed below can be found in the following analysis prepared by City Staff:

#### **II. Old Business**

- A. 635 Sagamore Avenue
- B. 67 Ridges Court
- C. 55 Mangrove Street
- D. 74 Sunset Road
- E. 196 Aldrich Road
- F. 15 Lafayette Road

#### **II. OLD BUSINESS**

B. The request of 635 Sagamore Development LLC (Owner), for property located at 635 Sagamore Avenue whereas relief is needed to remove existing structures and construct 4 single family dwellings which requires the following:

1) A Variance from Section 10.513 to allow four free-standing dwellings where one is permitted. 2) A Variance from Section 10.521 to allow a lot area per dwelling unit of 21,198 square feet per dwelling where 43,560 square feet is required. Said property is located on Assessor Map 222 Lot 19 and lies within the Single Residence A (SRA) District.

## **Existing & Proposed Conditions**

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

# Other Permits/Approvals Required

TAC/Planning Board – Site Plan Review

# **Neighborhood Context**





#### **Previous Board of Adjustment Actions**

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

<u>May 17, 2022</u> – The Board **granted** a request to postpone to the June meeting.

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

<u>November 15, 2022</u> - The Board **granted** a request to postpone to the June meeting.

<u>December 20, 2022</u> - The Board **granted** a request to postpone to the June meeting.

<u>January 17, 2023</u> - The Board **granted** a request to postpone to the March meeting.

#### **Planning Department Comments**

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

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

#### Review Criteria

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

- 1. Granting the variance would not be contrary to the public interest.
- 2. Granting the variance would observe the spirit of the Ordinance.
- 3. Granting the variance would do substantial justice.
- 4. Granting the variance would not diminish the values of surrounding properties.
- 5. The "unnecessary hardship" test:
  - (a) The property has <u>special conditions</u> that distinguish it from other properties in the area. **AND**
  - (b) Owing to these special conditions, a fair and substantial relationship does not exist between the general public purposes of the Ordinance provision and the specific application of that provision to the property; and the proposed use is a reasonable one. **OR**

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

## 10.235 Certain Representations Deemed Conditions

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

## Hoefle, Phoenix, Gormley & Roberts, Pllc

## - ATTORNEYS AT LAW

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

October 26, 2022

#### **HAND DELIVERED**

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

Re: 635 Sagamore Development, LLC, Owner/Applicant

Project Location: 635 Sagamore Avenue

Tax Map 222, Lot 19

General Residence A (GRA Zone)

Dear Mr. Stith and Zoning Board Members:

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

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

Very truly yours,

R. Timothy Phoenix

Monica F. Kieser

#### **Enclosures**

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

#### Letter of Authorization

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

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

635 Sagamore Development, LLC

Timothy J. Black, Duly Authorized

January 5, 2022

Date

#### **MEMORANDUM**

**To:** Portsmouth Zoning Board of Adjustment ("ZBA")

From: R. Timothy Phoenix, Esq.

Monica F. Kieser, Esq.

**Date:** October 26, 2022

Re: 635 Sagamore Development, LLC, Owner/Applicant

Project location: 635 Sagamore Avenue

Tax Map 222, Lot 19

Single Residence A (SRA) District

Dear Chairman Parrott and Zoning Board Members:

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

#### I. EXHIBITS

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

#### II. PROPERTY/BACKGROUND

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

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

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

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

### III. RELIEF REQUIRED

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

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

### IV. VARIANCE REQUIREMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### c. The proposed use is reasonable

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

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

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

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

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

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

#### V. CONCLUSION

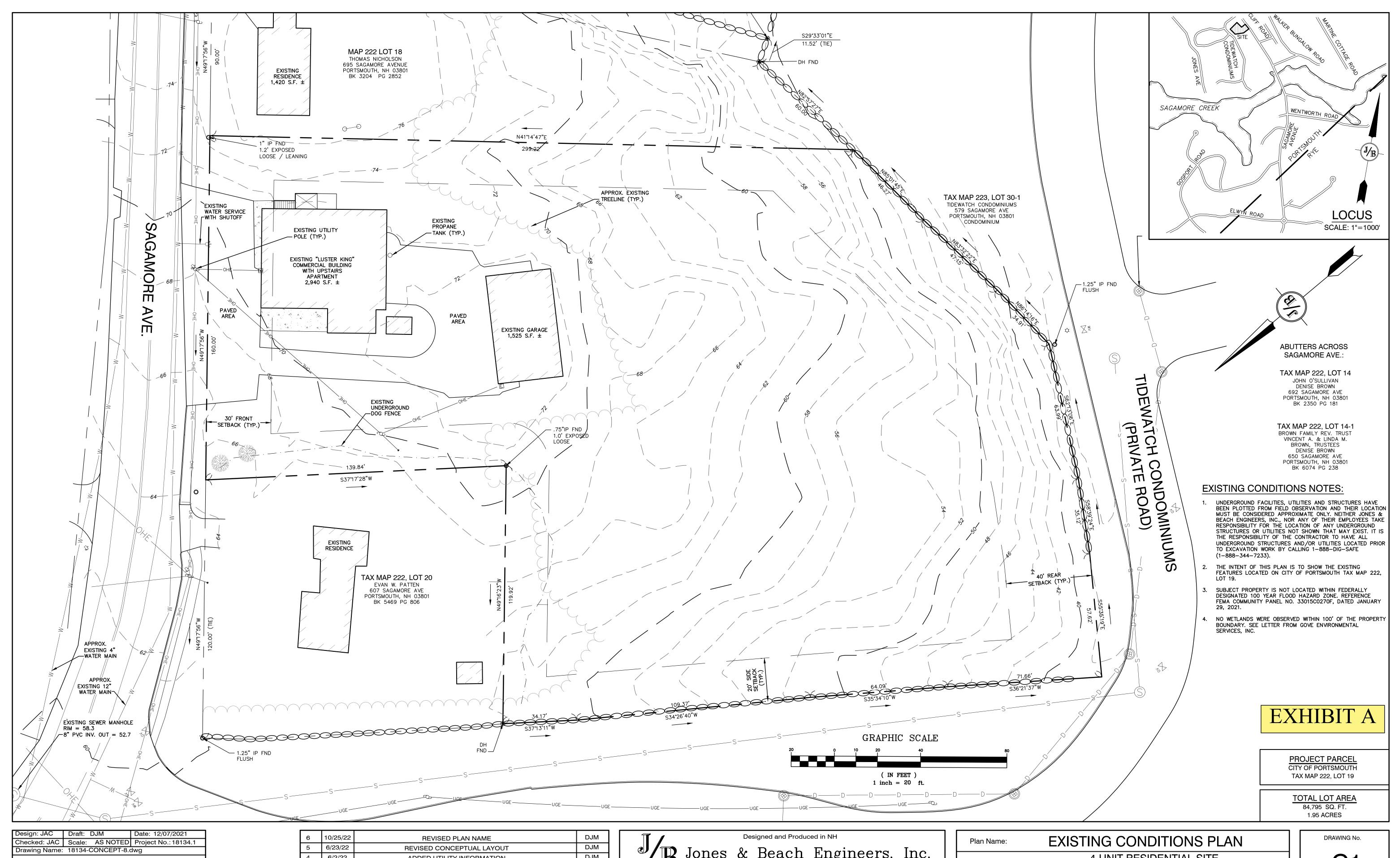
For all of the reasons herein stated, Sagamore respectfully requests that the Portsmouth Zoning of Adjustment grant the requested variances.

Respectfully submitted,

635 Sagamore Development, LLC

By:

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



THIS PLAN SHALL NOT BE MODIFIED WITHOUT WRITTEN PERMISSION FROM JONES & BEACH ENGINEERS, INC. (JBE). ANY ALTERATIONS, AUTHORIZED OR OTHERWISE, SHALL BE T THE USER'S SOLE RISK AND WITHOUT LIABILITY TO JBE.

DJM 6/2/22 ADDED UTILITY INFORMATION REVISED CONCEPTUAL LAYOUT DJM 3/21/22 DJM 2/10/22 REVISED CONCEPTUAL LAYOUT REVISION BY DATE REV.

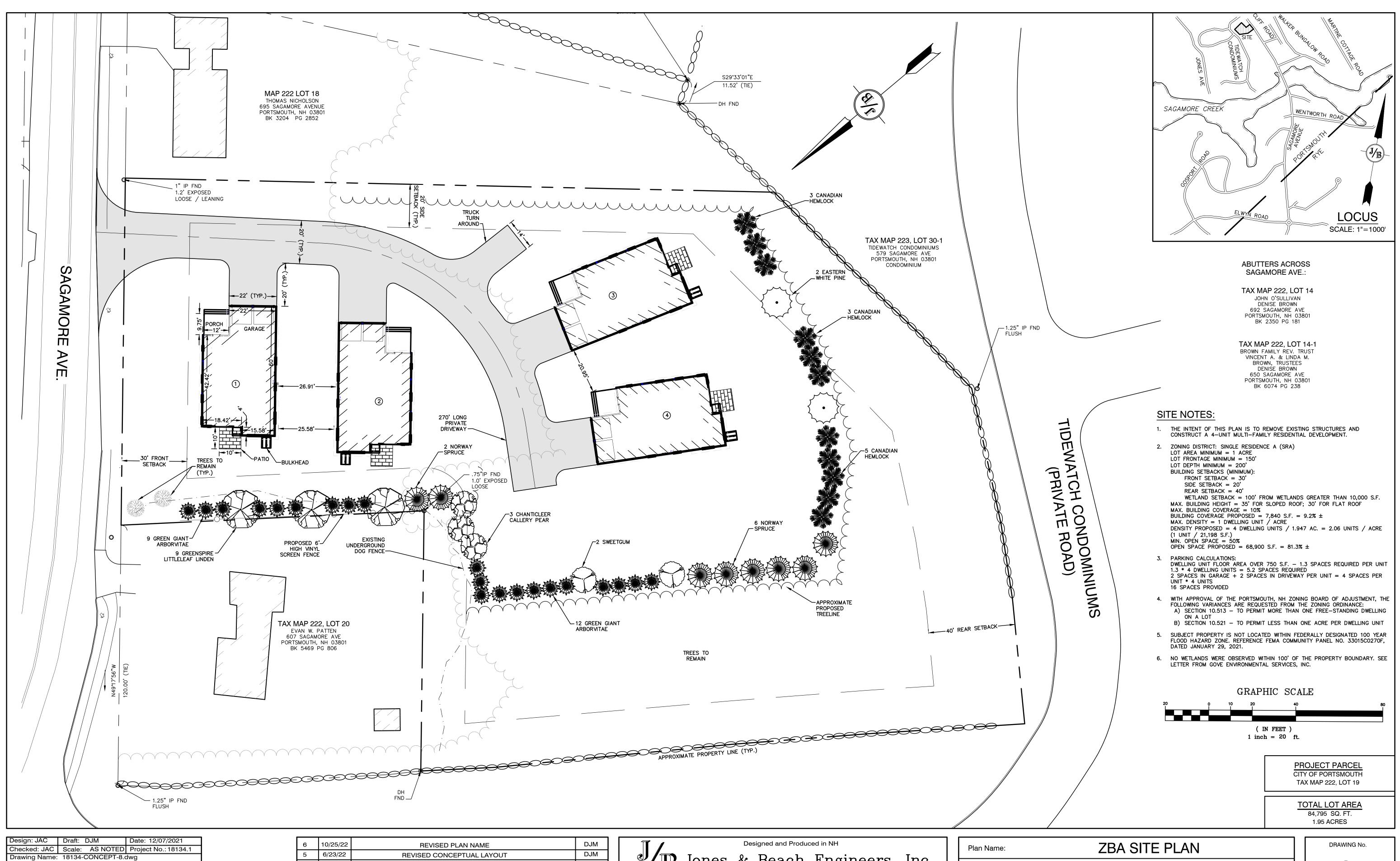
Jones & Beach Engineers, Inc.

85 Portsmouth Ave. Civil Engineering Services 603-772-4746 FAX: 603-772-0227 PO Box 219 E-MAIL: JBE@JONESANDBEACH.COM Stratham, NH 03885

4-UNIT RESIDENTIAL SITE 635 SAGAMORE AVE., PORTSMOUTH, NH Project:

635 SAGAMORE DEVELOPMENT, LLC Owner of Record;3612 LAFAYETTE RD., DEPT 4, PORTSMOUTH, NH 03801 BK 6332 PG 1158

SHEET 1 OF 3 JBE PROJECT NO. 18134.1



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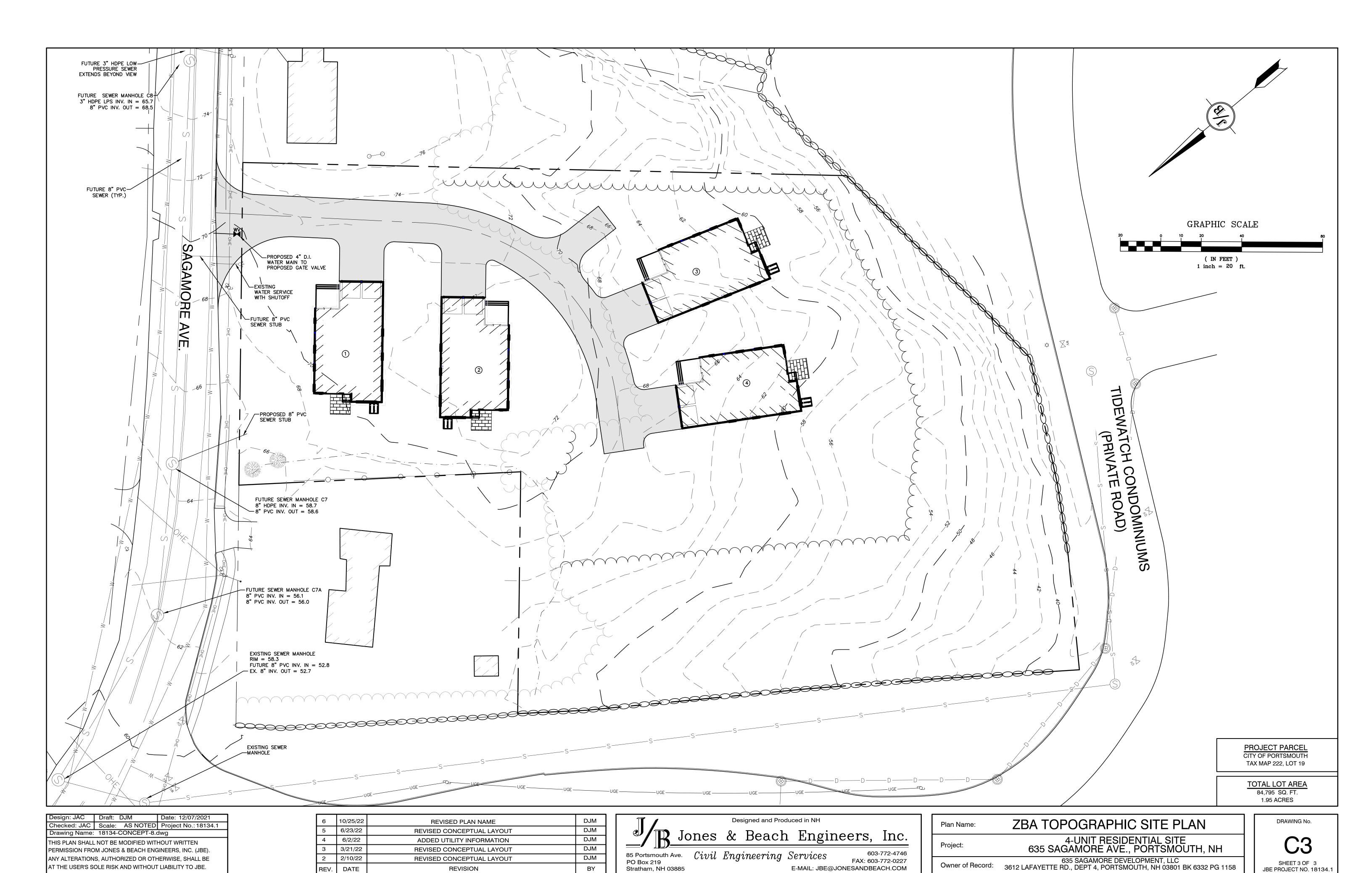
6	10/25/22	REVISED PLAN NAME	DJM
5	6/23/22	REVISED CONCEPTUAL LAYOUT	DJM
4	6/2/22	ADDED UTILITY INFORMATION	DJM
3	3/21/22	REVISED CONCEPTUAL LAYOUT	DJM
2	2/10/22	REVISED CONCEPTUAL LAYOUT	DJM
REV.	DATE	REVISION	BY

Jones & Beach Engineers, Inc.

		 •
 Civil	Engineering	603-772-4746 FAX: 603-772-0227 DNESANDBEACH.COM

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

SHEET 2 OF 3 JBE PROJECT NO. 18134.1



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603-431-9559



#### Dear Builders and Home Buyers,

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

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

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

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- Increasing ceiling heights usually requires adjustments to window sizes and other exterior elements.

Floor plan layout and/or Structural Changes:

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

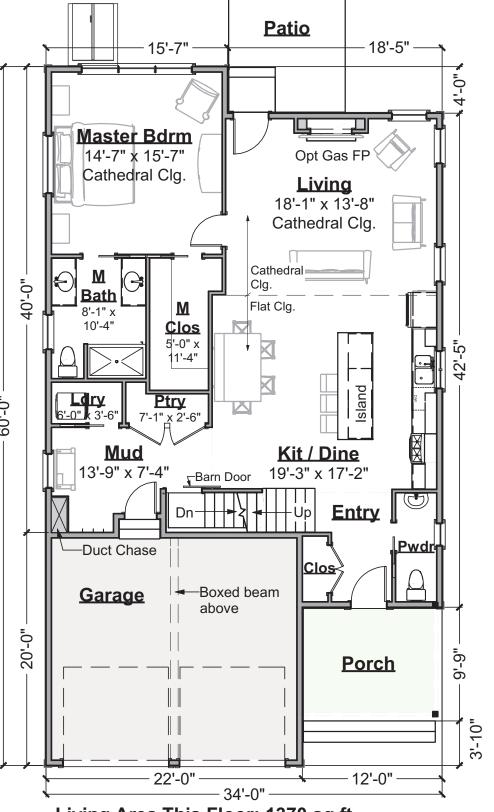


419.126.v14 GL (1/27/2022)

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

First Floor Plan Scale: 3/32" = 1'-0" 419.126.v14 GL (1/27/2022)

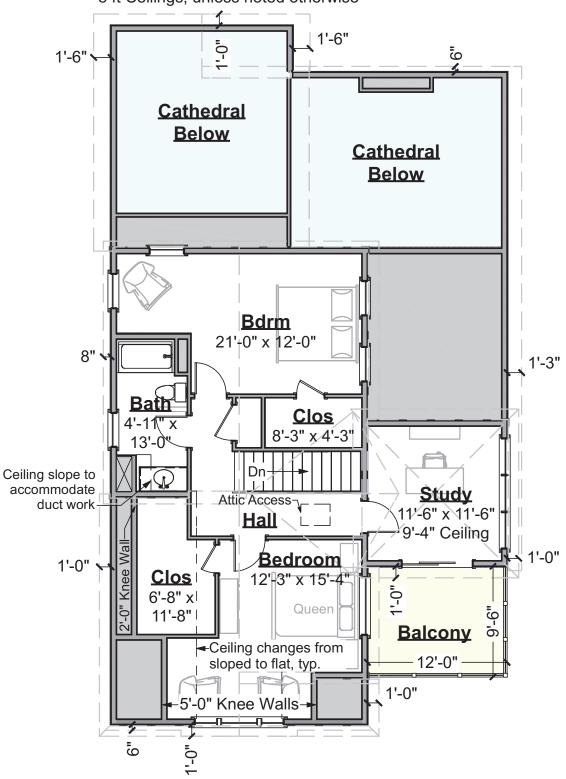
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## Living Area This Floor: 979 sq ft

8 ft Ceilings, unless noted otherwise



## **Second Floor Plan**

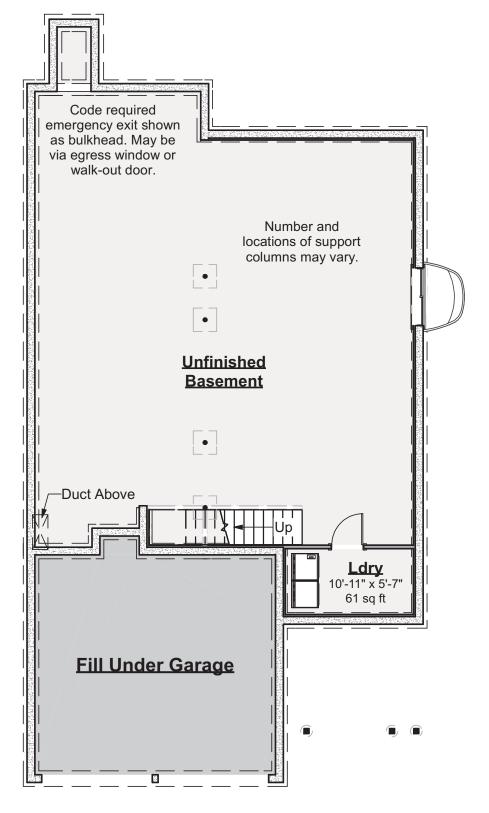
Scale: 3/32" = 1'-0"

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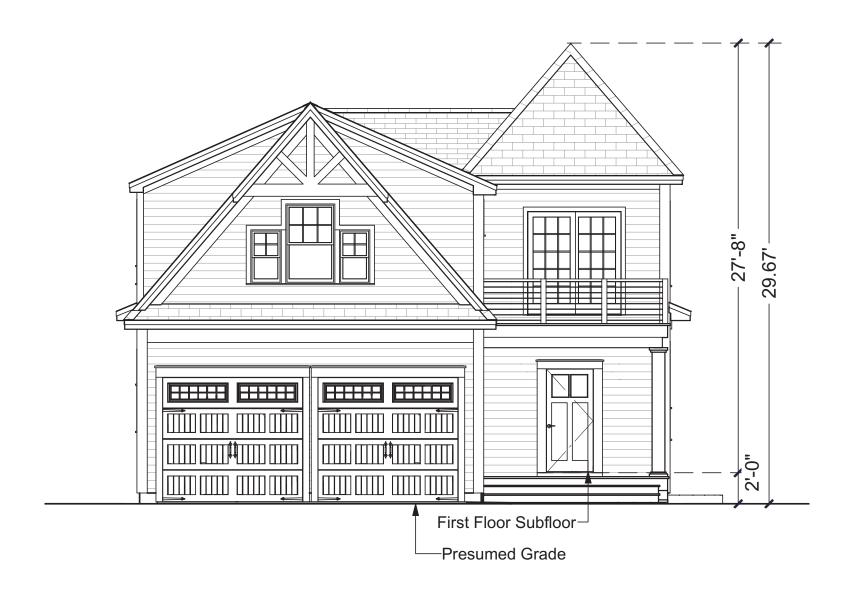
603-431-9559



**Foundation Plan** 

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





**Front Elevation** 

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





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





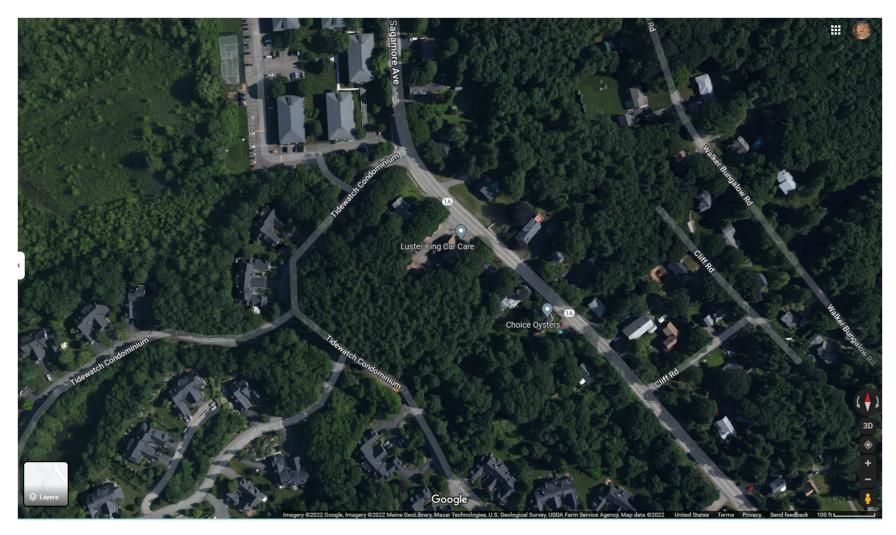
**Rear Elevation** 

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



Left Elevation

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



Aerial view of Property





Front View of Property (Sagamore Ave)



Front View of Property



Front View of Property



Side View of Property



View of Service Garage and Shed



Rear View of Property

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Artform Home Plans

603-431-9559









**Interior Views** 



#### **635 SAGAMORE AVE**

**Location** 635 SAGAMORE AVE **Mblu** 0222/ 0019/ 0000/ /

Acct# 35416 Owner 635 SAGAMORE

**DEVELOPMENT LLC** 

PBN Assessment \$682,800

**Appraisal** \$682,800 **PID** 35416

**Building Count** 2

#### **Current Value**

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

#### **Owner of Record**

Owner

635 SAGAMORE DEVELOPMENT LLC Sale Price \$387,133

Co-Owner Certificate

 Address
 3612 LAFAYETTE RD DEPT 4
 Book & Page
 6332/1158

 PORTSMOUTH, NH 03801
 Sale Date
 09/24/2021

#### **Ownership History**

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

#### **Building Information**

#### **Building 1: Section 1**

Year Built: 1950 Living Area: 4,477 **Replacement Cost:** \$513,721 **Building Percent Good:** 54

Replacement Cost

Less Depreciation: \$277,400

Description  Retail/Apartment  Commercial  C  2  3.00
Commercial C 2
C 2
2
3.00
Vinyl Siding
Pre-Fab Wood
Gable/Hip
Asph/F Gls/Cmp
Drywall/Sheet
Inlaid Sht Gds
Carpet
Oil
Hot Water
Unit/AC
PRI COMM
NONE
WOOD FRAME
AVERAGE
CEIL & WALLS
AVERAGE
10.00

#### **Building 2 : Section 1**

 Year Built:
 2000

 Living Area:
 1,650

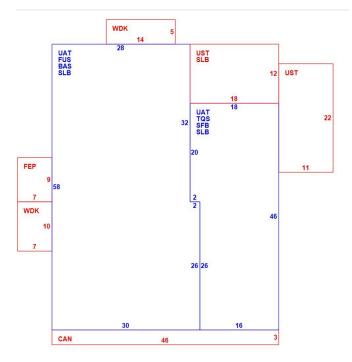
 Replacement Cost:
 \$153,450

## **Building Photo**

Building Photo

 $(http://images.vgsi.com/photos2/PortsmouthNHPhotos///0033/DSC01732\_\zeta) and the continuous continuo$ 

#### **Building Layout**



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

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

**Building Percent Good:** 84

**Replacement Cost** 

Less Depreciation: \$128,900

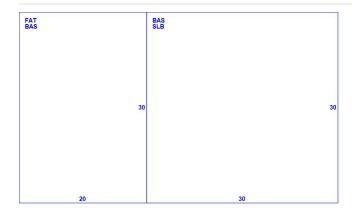
Less Depreciation: \$128,900  Building Attributes : Bldg 2 of 2				
Field	Description			
Style:	Service Shop			
Model	Commercial			
Grade	С			
Stories:	1			
Occupancy	1.00			
Residential Units				
Exterior Wall 1	Vinyl Siding			
Exterior Wall 2				
Roof Structure	Gable/Hip			
Roof Cover	Asph/F Gls/Cmp			
Interior Wall 1	Drywall/Sheet			
Interior Wall 2				
Interior Floor 1	Concr-Finished			
Interior Floor 2	Carpet			
Heating Fuel	Oil			
Heating Type	Hot Water			
AC Type	None			
Bldg Use	AUTO S S&S			
Total Rooms				
Total Bedrms				
Total Baths				
Kitchen Grd				
Heat/AC	NONE			
Frame Type	WOOD FRAME			
Baths/Plumbing	AVERAGE			
Ceiling/Wall	CEIL & WALLS			
Rooms/Prtns	AVERAGE			
Wall Height	12.00			
% Comn Wall				
1st Floor Use:				
Class				

## **Building Photo**

Building Photo

 $(http://images.vgsi.com/photos2/PortsmouthNHPhotos///0033/DSC01731\_\zeta) and the continuous continuo$ 

#### **Building Layout**



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

	<u>Legend</u>		
Code	Description	Gross Area	Living Area
BAS	First Floor	1,500	1,500
FAT	Attic	600	150
SLB	Slab	900	0
		3,000	1,650

**Extra Features** 

#### Land

Land Use Land Line Valuation

**Use Code** 0310 **Size (Acres)** 1.93

PRI COMM Frontage SRA Depth

Neighborhood306Assessed Value\$275,200Alt Land ApprNoAppraised Value\$275,200

Category

Description

Zone

## Outbuildings

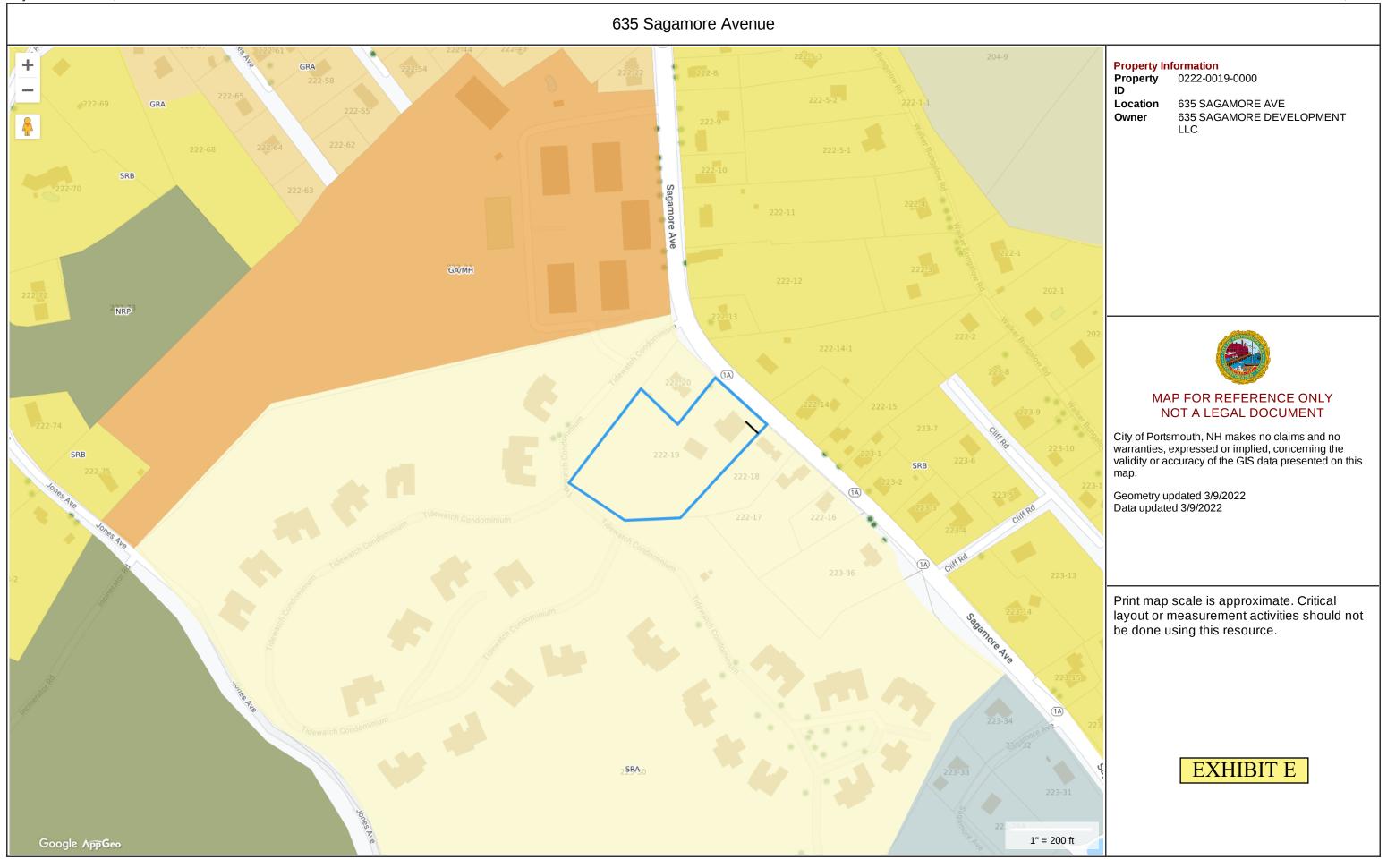
Outbuildings <u>Legend</u>						
Code	Description	Sub Code	Sub Description	Size	Value	Bldg#
PAV1	PAVING-ASPHALT			1344.00 S.F.	\$1,200	1
SHD1	SHED FRAME			96.00 S.F.	\$100	1

#### **Valuation History**

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

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

City of Portsmouth, NH March 28, 2022



## WHITE APPRAISAL



REAL ESTATE APPRAISING & CONSULTING

Brian W. White, MAI, SRA

October 28, 2022

EXHIBIT F

Timothy Phoenix, Esquire Hoefle, Phoenix, Gormley & Roberts, PLLC 127 Parrott Avenue P.O. Box 4480 Portsmouth, NH 03802-4480

RE: The Variance application for a four-unit freestanding single-family development to be located on 635 Sagamore Avenue in Portsmouth, New Hampshire.

#### Attorney Phoenix:

At your request, I have been asked to investigate the impact on the value of the abutting properties for the proposed four-unit freestanding single-family development to be located on 635 Sagamore Avenue (Map 222, Lot 19) and to prepare an analysis and opinion on the matter. I have reviewed the Portsmouth Zoning Ordinance that addresses the standards for the requested variance. To prepare this letter, I have completed research on the proposed subject property, the neighborhood and the Portsmouth marketplace. The following letter summarizes my analysis, findings and conclusions:

#### 1. The Existing Development:

The subject property is a 1,947-acre parcel of land located on the southern side of Sagamore Avenue in the Single Residence A (SRA) zone. The subject property is currently improved with an older 4,477 square-foot, mixed-use, building that contains a first-floor commercial garage unit and two upper-level apartments and an older 1,650 square-foot, one-story, two-bay, garage building. The improvements were constructed in 1950 and 2000 and they appear to be in below average overall condition for the Sagamore Avenue area. The front portion of the parcel has paved drive and parking areas. The existing development utilizes approximately the front third of the parcel with the central and rear areas of the parcel being treed with a large number of evergreens and some deciduous trees. The terrain for the parcel has a natural downward slope in a northeast to southwest direction. The parcel is serviced with municipal water, electricity, telephone, natural gas, cable and internet. The central and rear portions of the parcel have several rock outcroppings. There are no wetland areas located on the parcel.

#### 2. The Proposed Development:

The two older wood-frame buildings will be razed and a new paved drive will be installed off of Sagamore Avenue in the northeastern portion of the subject's parcel. This paved drive will extend into the central portion of the parcel providing access to four freestanding single-family residences. There will be a vehicle turn-around located at the end of the drive area.

Each of the single-family residences will have a front paved driveway that will provide access to a two-car garage. The residences will each contain two levels of finished living area with the three centrally located residences having a walk-out basement area given the natural sloping terrain. The units will have quality interior and exterior finishes that are commensurate with other similar new construction residences located in Portsmouth. Based on the proposed building plans, the proposed single-family residences will contain from 2,111 square feet to 2,349 square feet (2,230 SF average). The single-family homes will be surrounded by landscaped and grassed areas and there will be a rear patio area. There will be plantings located to the rear of the residences providing additional screening from abutting properties. According to Michael Garrepy, Consultant to the ownership of 635 Sagamore Development, LLC, the anticipated retail prices for the four proposed single-family residences will range from approximately \$1,000,000 to \$1,200,000.

#### 3. Neighborhood & Abutting Properties:

The subject property is located in a large Single Residence A (SRA) zone and the land located directly across from the subject property on Sagamore Avenue is zoned Single Residence B (SRB). Both of these zones allow for single-family dwellings with a few other uses allowed as a conditional use or a special exception. Directly abutting the subject property on Sagamore Avenue are two single-family residences (Circa 1940 & 1964) that are small two-bedroom residences with a one-car garage. There are three single-family residences (Circa 1890, 1940 & 1985) located across Sagamore Avenue from the subject property. These residences range in size from a 1,248 square foot one-bedroom residence to a 2,861 square foot three-bedroom residence. In general, these abutting and nearby singlefamily residences are in average to above average overall condition. None of these nearby single-family residences have sold within the past several years. The average assessment for these five nearby single-family residences is approximately \$460,000. The Tidewatch Condominium development is a 116-unit single-family condominium development located at 579 Sagamore Avenue. The entry road for this development abuts the rear portion of the subject property to the south of the subject property. These townhouse style units were constructed beginning in the late 1980s and they are generally in above average to good overall condition. Over the past two years, units in this development have sold from \$650,000 to \$1,240,000 with an average sale price of approximately \$815,000.

#### 4. Factors that impact Value and the Application to the Subject Property:

For the subject property, there are three potential factors that could directly impact the market value of the abutting properties. These factors are noise, view and use.

#### Noise:

It was previously noted that the proposed subject property will contain a single-entry drive and four freestanding single-family residences. Two of the subject's proposed residences will be located in the front third of the parcel along Sagamore Avenue while three of the proposed residences will be located in the center portion of the parcel. The rear third of the parcel will remain undeveloped and treed. At the present time, the subject's improvements contain a mixture of apartment units and two commercial units each containing garage space along with supporting drive and parking areas for business related vehicles. At the present time, the noises emitted from the subject property are from residential tenants entering and

exiting their apartment units and from vehicular traffic entering and exiting from the parking area. There are also likely noises from the car doors opening and closing. In addition, there are noises from the commercial garage work being completed along with the garage doors opening and closing. The subject's proposed residential development will contain a single paved drive (ingress and egress) that will extend into the center portion of the parcel. It is noted that given the sloping terrain of the parcel, the developed areas of the parcel will be located approximately 20 to 30 feet higher than the Tidewatch Condominium access road which is located to the rear of the subject's parcel. The vehicle noise from the proposed development will likely be somewhat similar to that currently emitted by the existing development. One difference is that the subject's proposed development will have a road extending into the center portion of the parcel and another difference is that each residential unit will have a two-car garage. The longer entry drive will bring vehicles into the center portion of the parcel which will likely slightly increase vehicle noise. The fact that each residential unit has a two-car garage will likely decrease the noise from opening and closing of car doors as they will largely be contained in garage areas as opposed to the current situation of many vehicles being parked outside. These differences will likely be off-setting. There will obviously be additional noise from the use and maintenance of the four singlefamily residences. However, these noises are no different than what is currently heard from the abutting and surrounding residences. The typical buyer of a property located in close proximity to the subject property would be aware of this potential. Considering all of these factors, it is reasonable to conclude that the proposed four-unit single-family development of the subject property will be configured in such a manner that there would not be an increase in non-residential noises that would be over and above that of any other permitted uses in the "SRA" and "SRB" zones.

#### View:

At the present time, the subject's combined mixed-use (commercial garage, apartments and exterior parking areas) development is very visible from the road traffic and the abutting residences located along Sagamore Avenue. It is visible in the distance with a heavy wooded screen from the Tidewatch Condominium access road and from the front areas of several townhouse-style condominium units in the development. From the front and central portions of the subject property, the two abutting older single-family residences area visible along with the three residences located across Sagamore Avenue to the north, east and west. To the south, the access road for the Tidewatch Condominium development is visible in the distance with a heavy wooded screen.

The existing mixed-use development of the subject property is an average condition development that some would consider to be an eyesore for the mostly above average to good condition residential neighborhood of the subject property. There is no screening of these mixed-use buildings and the supporting drive and parking areas from Sagamore Avenue. The proposed four-unit residential development will have a single paved drive located in the eastern portion of the parcel. The front building will be setback further from Sagamore Avenue than the existing mixed-use building and it will be surrounded by grassed and landscaped areas. A second single-family residence will be located approximately 25' to the rear of the front residence. The proposed subject property will greatly enhance the views from the neighboring single-family residences located along Sagamore Avenue. The subject's two rear detached single-family residences will be located in the central portion of the parcel which is currently undeveloped woods. These two detached residences will be

visible from the rear yard areas of the two abutting single-family residences and they will be visible in the distance from the front parking and building areas of several townhouse-style condominium units located in the Tidewatch Condominium development. The front portion of the development that abuts 607 Sagamore Avenue will contain a new 6' vinyl fence and new screening that will include Giant Arborvitae and Greenspire Littleleaf Linden trees. The western and southern developed areas that face the Tidewatch condominium access road will have additional screening that will include Canadian Hemlock, Eastern White Pine, Norway Spruce, Chanticleer Callery Pear, Sweetgum and Cherry trees. This fencing along with the proposed enhanced screening has been designed to provide additional screening from neighboring properties. Additionally, the rear portion of the property will remain undeveloped leaving the natural wooded screen in place. The views of several nearby residential properties will change but not to the extent that any negative impact will result. It could be argued that the views of the neighboring properties will be enhanced by replacing the older average condition mixed-use development and asphalt drive and parking lot with new construction freestanding single-family residences that will be in very good condition with retail values that will exceed that of all the neighboring properties.

#### Use:

The subject property is proposed for use as a four-unit freestanding single-family development. In the surrounding neighborhood, the Sagamore Avenue area is developed with a variety of residential uses (single-family, residential condominiums and apartments) and several scattered commercial and mixed-use developments. The interior streets located off of Sagamore Avenue are largely developed with residential uses. The proposed singlefamily development of the subject property will be in-line with that of the surrounding uses. In the Variance application, it is pointed out that the abutting Tidewatch Condominium development to the south and west is also located in the SRA zone. This townhouse-style condominium development contains 116 units located on 53.59 acres of land. This translates into a density of 2.16-units per acre. Sagamore Court Condominiums to the north of the subject property on Sagamore Avenue is a 144-unit development on 15.01-acres (9.59units/acre). The subject's proposed 4 units will be located on a 1.947-acre parcel (2.05units/acre). Considering the density of these abutting and nearby residential condominium developments, the subject's proposed density is reasonably in-line with the existing density in the immediate area. It can reasonably be concluded that the proposed use of the subject property as a four-unit freestanding single-family development is a use that will be compatible with the surrounding neighborhood.

### 5. Specific Standards - Variances:

The owners are requesting a Variance from the following – Portsmouth Zoning Ordinance – 10.513 - Permitting one freestanding dwelling per lot, where four freestanding single-family units are proposed) and Portsmouth Zoning Ordinance – Table of Dimensional Standards – permitting one dwelling unit per acre, where four dwelling units on a 1.947-acre parcel is proposed (2.05 dwelling units per acre). As Rosann Maurice-Lentz was unavailable for comment, I spoke with Scott Scott, Tax Assessor II for the City of Portsmouth. I wanted to get his opinion on the subject's proposed freestanding single-family development and that of several other recently proposed or recently constructed multi-unit residential developments located in the Sagamore Avenue area. He stated that he is very familiar with the Sagamore Avenue area. He indicated that the fact that the subject's units are freestanding units, and not

multi-unit buildings, makes them more attractive overall. Additionally, he stated that he doesn't "think that this development would bring down the surrounding values and it would more likely bring them up". I have attempted to gather market sales data from the Portsmouth area that would speak to the change in permitted units where freestanding single-family homes were permitted and possible value changes. In the greater Portsmouth area, there is no exactly similar property from which to extract paired-sales. Therefore, only general observations can be made based on my experience in the marketplace. Over the past several years in the greater Sagamore Avenue area of Portsmouth, several new multi-unit residential developments have been constructed or are currently proposed. In general, the addition of these new residential developments has resulted in upgrading the overall condition of the neighborhood and therefore enhancing the overall desirability of the area.

It is my opinion that granting the requested variance for the subject property to be improved with a four-unit freestanding single-family development would not result in the diminution in value of the abutting property values in the immediate vicinity of the subject property and the proposed subject property would not change the characteristics of the neighborhood. In fact, the addition of the proposed subject property will add several attractive and modern single-family residences to the neighborhood that very well could enhance the value of the surrounding properties as it will add a new residential units to a location that is currently under improved for the area.

Respectively submitted,

Brian W. White, MAI, SRA NHCG-#52

# **ADDENDA**

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Street Scene - Front of the Subject Property Looking Southeast on Sagamore Avenue - (5/22)



Street Scene - Front of the Subject Property Looking Southeast on Sagamore Avenue - (5/22)



Street Scene - Rear of the Subject Property Looking Southeast on Tidewatch Condominium Access Road - (2/22)



Street Scene - Rear of the Subject Property Looking Northwest on Tidewatch Condominium Access Road - (5/22)



Subject Property – Front of the Property Looking Southwest from across Sagamore Avenue – (5/22)



Subject Property – Front of the Property and the Front Mixed-use Building Looking Southeast from High Street – (5/22)



Subject Property – Rear of the Front Mixed-use Building Looking East from Rear Paved Area – (5/22)



Subject Property – Front of the Rear Garage Building Looking Southwest from Paved Drive Area – (5/22)

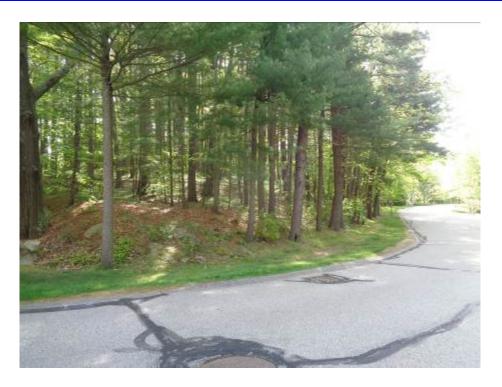


Subject Property – Rear of the Rear Garage Building Looking Northeast from Rear Wooded Area – (5/22)



View of the Rear of the Subject Property from Tidewatch Condominium Access Road Looking Northeast - (5/22)

### PHOTOGRAPHS OF THE SUBJECT/SURROUNDING PROPERTIES



View of the Rear of the Subject Property from Tidewatch Condominium Access Road Looking East - (5/22)



View of Typical Tidewatch Condominium Building Looking South from Access Road - (5/22)

### PHOTOGRAPHS OF THE SUBJECT/SURROUNDING PROPERTIES



View of Tidewatch Access Road from rear of Proposed Residences Looking South - (5/22)



View of Tidewatch Access Road from rear of Proposed Residences Looking Southwest - (5/22)

### PHOTOGRAPHS OF THE SURROUNDING PROPERTIES



View of Abutting Residence at 607 Sagamore Road Looking Southwest from Front of the Subject Property - (5/22)



View of Abutting Residence at 695 Sagamore Road Looking Southeast from Sagamore Road to the Front of the Subject Property - (5/22)

### PHOTOGRAPHS OF THE SURROUNDING PROPERTIES



View of Residence located across Sagamore Road - 594 Sagamore Road Looking North from Sagamore Road to the Front of the Subject Property - (5/22)



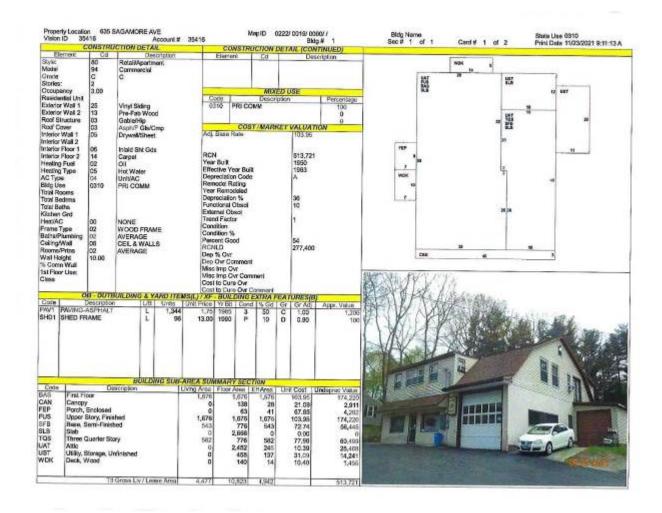
View of Residence located across Sagamore Road - 650 Sagamore Road Looking Northeast from Sagamore Road to the Front of the Subject Property - (5/22)

## PHOTOGRAPHS OF THE SURROUNDING PROPERTIES

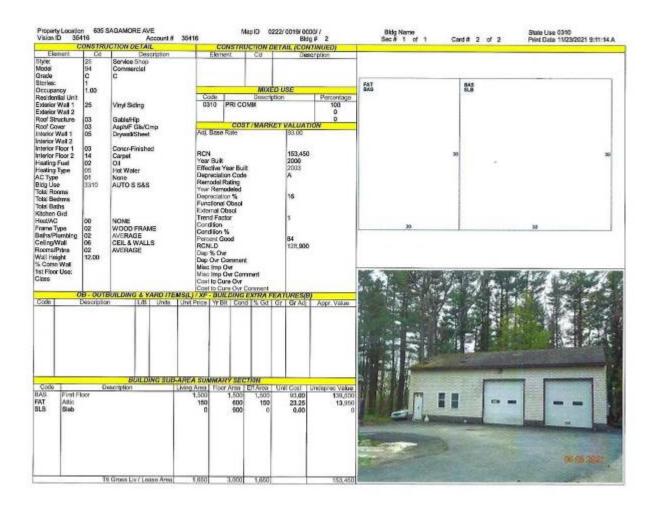


View of Residence located across Sagamore Road - 692 Sagamore Road Looking East from Sagamore Road to the Front of the Subject Property - (5/22)

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Book: 6332 Page: 1158

Return to:

E# 21060614 09/24/2021 09:32:59 AM Book 6332 Page 1158 Page 1 of 2 Register of Deeds, Rockingham County

2.00

LCHIP ROA585829 25.00 TRANSFER TAX RO109828 5,807.00 RECORDING 14.00 SURCHARGE

#### WARRANTY DEED

KNOW ALL BY THESE PRESENTS, that I, WILLIAM A. HINES, married person, TRUSTEE OF THE WILLIAM A. HINES FAMILY REVOCABLE TRUST a/k/a The Hines Family Revocable Trust of 2006, of 635 Sagamore Avenue, Portsmouth, New Hampshire 03801, for consideration paid, hereby grant to 635 SAGAMORE DEVELOPMENT, LLC, a New Hampshire limited liability company with a mailing address of 3612 Lafayette Road, Dept. 4, Portsmouth, New Hampshire 03801 with WARRANTY COVENANTS, the following described premises:

A certain tract of land with the buildings thereon, situate on Sagamore Avenue in said Portsmouth, more particularly described as follows:

Beginning at a point on Sagamore Avenue at land now or formerly of Arnold, thence running Westerly by said Arnold land three hundred (300) feet, more or less, to land now or formerly of W.W. and D.M. Johnston; thence turning and running Northwesterly by said Johnston land one hundred and twentyfour (124) feet; thence turning and running Northerly also by said Johnston land one hundred sixtytwo (162) feet to land now or formerly of C.W. Walker; thence turning and running Easterly by said Walker land four hundred nineteen (419) feet to Sagamore Avenue; thence turning and running Easterly one hundred forty (140) feet; thence turning and running along said Sagamore Avenue thirty (30) feet to land of one Smith; thence turning and running Westerly one hundred forty (140) feet; thence turning and running Southerly ninety (90) feet; thence turning and running Easterly one hundred forty (140) feet to Sagamore Avenue; the last three bounds being land of Smith; thence turning running Southerly by said Sagamore Avenue one hundred sixty (160) feet to the point of beginning.

EXCEPTING AND RESERVING to the said William A. Hines and his wife Bonnie Hines a life estate in the above-described property permitting them to reside in the existing residential apartment on the property for the remainder of William A. Hines natural life, plus one year unless Bonne Hines shall have predeceased.

Meaning and intending to convey the same premises conveyed to the Grantor by deed of William A. Hines dated February 11, 2008 and recorded in the Rockingham County Registry of Deeds at Book 4885, Page 1538.

BY SIGNING BELOW, William A. Hines and Bonnie Hines release all homestead rights to the Premises.

#### Book: 6332 Page: 1159

#### TRUSTEE CERTIFICATE

I, William A. Hines, Trustee of the William A. Hines Family Revocable Trust A/K/A The Hines Family Revocable Trust of 2006, hereby covenant that said Trust is duly organized under the laws of the State of New Hampshire; that I am the sole trustee pursuant to said Declaration of Trust; that said Trust is still in full force and effect; that I have the power thereunder to convey as aforesaid; and that, in making this conveyance, I have, in all respects, acted pursuant to the authority vested in and granted to me therein and no purchaser or third party shall be bound to inquire whether the Trustee has said power or are properly exercising said power or to see to the application of any trust assets paid to the Trustee for a conveyance thereof.

Signed this 3rd day of September, 2021.

William A. Hines, Trustee of the William A. Hines Family Revocable Trust A/K/A The Hines Family Revocable Trust of 2006

Bonnie Hines

#### STATE OF NEW HAMPSHIRE COUNTY OF ROCKINGHAM

On this, the 3rd day of September, 2021, before me, the undersigned Officer, personally appeared William A. Hines, Trustee of the William A. Hines Family Revocable Trust A/K/A The Hines Family Revocable Trust of 2006, known to me, or satisfactorily proven, to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same for the purposes set forth therein.

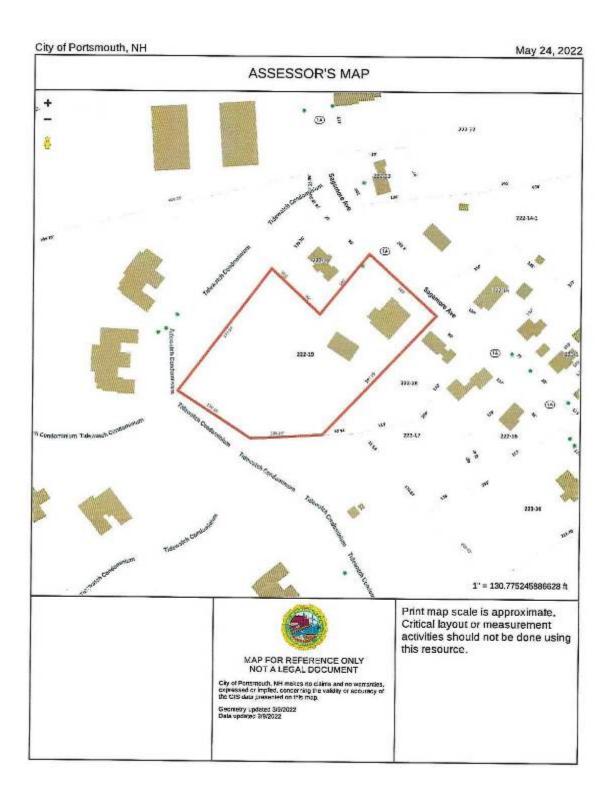
Justice of the Peace/Notary Public
My commission expires:

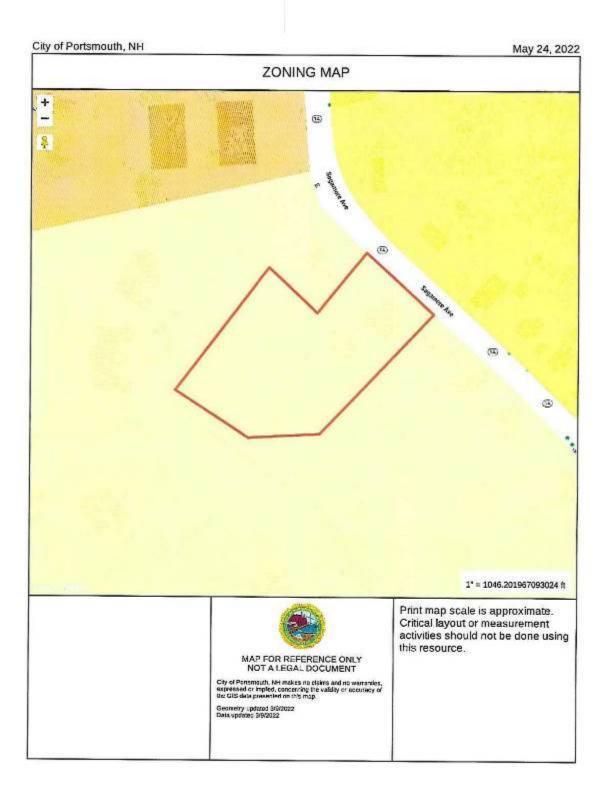
STATE OF NEW HAMPSHIRE COUNTY OF ROCKINGHAM

On this, the 3rd day of September, 2021, before me, the undersigned Officer, personally appeared Bonnie Hines, known to me, or satisfactorily proven, to be the person whose name is subscribed to the foregoing instrument, and acknowledged that she executed the same for the purposes set forth the million.

Justice of the Peace/Notary Public

My commission expires:

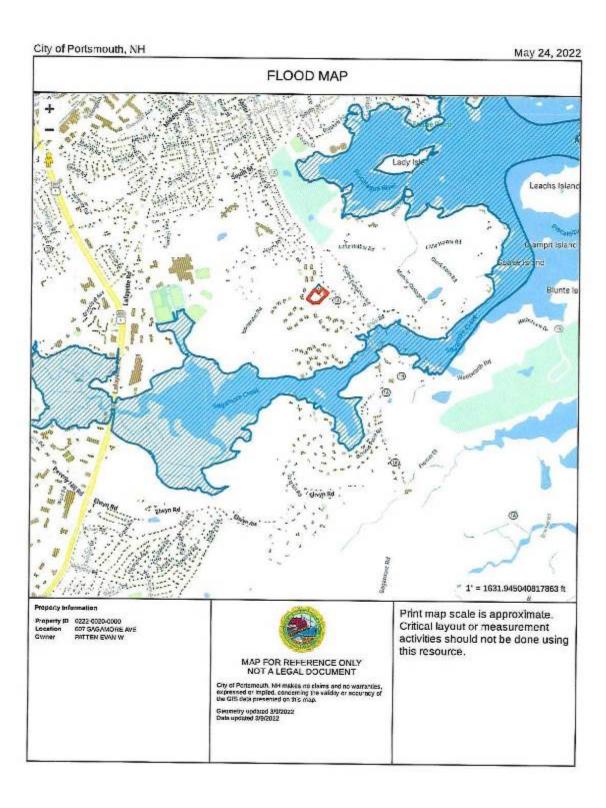




#### Map Theme Legends

#### Zoning





### Article 4 Zoning Districts and Use Regulations

Section 10,410	Establishment and Purpose of Districts
Section 10.420	District Location and Boundaries
Section 10,430	Use Regulations
Section 10.440	Table of Uses - Residential, Mixed Residential, Business and Industrial Districts
Section 10.450	Table of Uses - Peaso/Airport Districts
Section 10.460	Table of Uses - Municipal and Conservation Districts
Section 10.476	Visus Permitted in the Transportation Comisor District

### Section 10.410 Establishment and Purpose of Districts

The City of Portsmouth is hereby divided into the following zoning districts (the statements of purposes are for descriptive purposes and are not regulatory):

District		Purpose
Residential Districts		
Rend Residential	R	To provide areas for single-family dwellings and appropriate accessory uses at rural densities (up to one dwelling per five acces), and limited agricultural uses.
Single Residence A Single Residence B	SRA SRB	To provide areas for single-family dwellings in law to medium densities (approximately 1 to 3 dwellings per sere), and appropriate
	-	accessory uses.
General Residence A	GRA	To provide areas for single-family, two- family and multifamily dwellings, with appropriate occessory uses, at moderate to
General Residence B	GRB	high densities (ranging from approximately 5 to
General Residence C	GRC	12 dwelling units per acre), together with appropriate accurancy uses and limited services.
Garden Apartment/ Mobile Horne Park	GAMH	To provide areas for garden apartment development at moderate densities (up to 4 dwelling units per acre), and to accommodate existing developed mobile home parks.
Mixed Use Districts		
Mixed Residential Office	MRO	To provide areas where a limited range of business establishments, including liverwork
Mixed Residentes) Business	мав	units, can be located near or adjacent to residential development, providing a transition between residential religibles/books and correspond districts.

År Amended Through December 16, 2019

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Section 10.440 Table of Uses - Residential, Mixed Residential, Business and Industrial Districts

	Use	R		GRA GRB			MRO CD4- L1	CD4- L2	MRB	CD5 CD4	GB	Gi	G2	B CD4- W	WB	OR	1	WI	Supplemental Regulations
1. F	tesidential Uses	100	M)		6		(20)	JIN.			100	75	114			9	00	114	
1.10	Single family dwelling	P	P	P	P	N	P	P	P	P	N	P	P	N	N	N	N	N	
1.20	Accessory dwelling unit 1.21 Attnched 1.22 Detached	cu	CU	cu	CU N	N N	CU	CU N	CU	cu	N N	CU N	CU N	N N	N N	N N	N N	N N	10.814 (Accessory Dwelling Units)
1.25	Garden Cottage	CU	CU	CU	cu	N	CU	CU	CU	CU	N	N	N	N	N	N	N	N	10.815 (Garden Cuttages)
1.30	Two-family dwelling	N	N	P	P	P	P	P	P	P	N	P	p	N	N	N	N	N	10.640 (Downsown Overlay district
1.40	Townhouse	N	N	S	7	P	P	P	P	P	N	P	P	P	N	N	N	N	10.640 (Downtown Overlay district
1.50	1.51 3 or 4 dwelling units 1.52 5 to 8 dwelling units 1.53 More than 8 dwelling units	N N	N N	S N	s N	P P	P P N	P P N	P P N	P P	N N	P	P P	P P	N N	N N	N	N N	10.5A32 (Character district permitted uses) 10.640 (Downtown Overlay district 10.813 (Multifamily Dwellings in the Business District)
1.60	Conversion of a building existing on Jacoury 1, 1980, with less than the required minimum lot area per dwelling unit specified in Article 5 1.61 To 2 dwelling units	N	И	S	5	N	P	P	P	2	N	N	N	N	N	N	И	N	10.640 (Downtown Overlay District) 10.812 (Conversion of Existing Dwelling to Multifamily Dwelling

		P Per	mitted	\$ =	Speci	al Exce	ption	cu	= Com	Sitiona	l Use I	Permi	N=	Prohi	bitod			
Use	R		GRA GRB				CT34-	MRB	CD5 CD4	GВ	GI	G2	B CD4- W	WB	OR	ē	WI	Supplemental Regulations
1.62 To 3 or 4 dwelling units	N	N	s	5	N	P	P	P	s	N	N	N	N	N	N	N	N	1
1.63 To 5 to 8 dwelling units	N	N	N	8	N	S	s	S	s	N	N	N	N	N	N	N	N	
1.64 To more than 8 dwelling un	its N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	
1.70 Live/work unit	И	N	N	R	N	P	P	P	P	N	P	P	P	N	N	N	N	
1.80 Manufactured housing park	N	N	N	N	P	N	N	N	N	N	N	N	N	N	N	N	N	10.816 (Manufactured Housing Part Dimensional Standards)
1.90 Planned unit development (PUD 1.91 Open space PUD	CU	cu	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	10.720 (Planned Unit Developments)
1.92 Residential density incent PUD	ive N	N	CU	N	N	N	N	N	N	N	N	N	N	N	N	N	N	
2. Institutional Residence or Care Facilities	de II			K's		red.								1116	The state of			
2.10 Assisted living facility								-				2071	SISTE.	1200	\$ 1,00E	W. In	(*100	
2.11 Assisted living center	N	N	N	N	N	N	N	N	P	P	S	S	P	N	N	N	N	
2.12 Assisted living home	S	S	S	S	s	s	S	S	N	N	5	S	N	N	N	N	N	
2.20 Residential care facility																		
2.21 5 or fewer residents	S	S	S	8	s	S	S	s	N	N	S	8	S	N	N	N	N	
2.22 More than 5 residents	N	N	N	N	N	S	s	s	P	S	s	s	S	N	s	N	N	

		P = Per	mitted	5	Speci	al Exce	ption	cu	- Con	ditions	al Usc	Permi	N	- Prohi	bited			
Use	R		GRA GRB			MRO CD4- L1	1.134-	MRB	CD5 CD4	GB	GI	G2	B CD4- W	. WB	OR	ī	wı	Supplemental Regulations
3. Educational, Religious, Charitable, Cultural and Public Uses			131										E					
3.10 Place of assembly						T											-	The state of the s
3.11 Religious	S	S	S	N	N	S	S	S	S	S	S	S	S	N	N	N	N	
3.12 Other nonprofit	N	N	N	Ŋ	N	S	S	S	5	S	s	s	s	N	N	N	N	
3.20 School												_						
3.21 Primary or secondary	N	N	N	N	N	S	S	P	P	P	S	S	P	P	N	N	N	
3.30 Post-socondary	N	N	N	N	N	S	S	P	P	P	s	S	P	N	P	P	N	
3.30 Historic preservation building	S	S	S	5	S	P	P	P	P	P	P	P	P	N	P	N	N	10.821 (Historic Preservation Buildings and Museums)
3.40 Museum	N	N	N	N	N	P	P	N	P	P	S	S	P	N	P	N	N	10.821 (Historic Preservation Buildings and Museums)
3.50 Performance facility																		
3.51 Indoor performance facility	1					Seems												10.592 (location)
3.511 Occupancy up to 500 persons	N.	N	N	N	N	N	N	N	P	P	S	S	S	N	N	N	N	10.860 (hours of operation)
3.512 Occupancy more than 500	N	N	N	N	N	N	N	N	S	P	N	N	N	N	N	N	N	
3.52 Outdoor performance facility		27.752																10.592 (Incation)
3.521 Occupancy up to 500 persons	N	N	N	N	N	N	N	N	S	S	S	S	N	N	N	N	N	10.822 (yards)
3.522. Occupancy more than 500	N	N	N	N	N	N	N	N	s	8	N	N	N	N	N	N	N	10.860 (hours of operation)

P = Permitted	3 - Special Exception	CU = Conditional Use Permit	N = Prohibited

	Use	R		GRA GRB		GA/ MH	MRO CD4- L1	CE14-	MRB	CD5 CD4	GB	G1	G2	B CD4- W	WB	OR	1	wı	Supplemental Regulations
3.60	Cemetery	S	S	N	И	N	N	N	N	N	N	N	N	N	N	N	N	N	
3.70	Club, fraternal or service organization	N	N	N	Я	N	N	S	S	P	s	S	S	S	N	N	N	N	
3.80	Municipally operated pack and related activities	P	P	P	,	P	P	P	р	p	P	P	P	P	P	P	P	P	For other municipal uses see Section 10.460 (Municipal districts)
4. B	tecreational Uses	dno		Kall					33					197	136		Hali	ST.	TO THE STATE OF
4.10	Religious, sectarian or private non-profit recreational use	N	5	N	N	N	S	S	N	P	P	S	s	p	N	N	N	N	
4.20	Cinema or similar indoor amusement use with no live performance	N	N	N	N	N	N	N	N	P	P	S	S	P	N	N	N	N	10.825 (noise) 10.860 (hours of operation)
4.30	Indoor recreation use, such as bowling alley or areade	N	N	N	N	N	N	N	N	P	P	8	s	P	N	N	N	N	10.825 (noise) 10.860 (hours of operation)
4.40	Health club, yoga studio, martial aris school, or similar use																		
	4.41 Up to 2,000 sq. ft. GFA"	N	N	N	N	N	S	S	p	t.	P	P	10	P	N	N	S	N	
	4.42 More than 2,000 sq. ft. GFA	N	N	N	N	N	N	N	N	S	P	s	S	S	N	N	S	N	
4.50	Outdoor recreation use	N	N	N	N	N	N	N	N	N	s	þ	P	N	N	N	N	N	10.592 (location) 10.860 (hours of operation)
4.60	Amusement park, water park or theme park	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	

<sup>&#</sup>x27;GFA - gross floor area.

	Use	R		GRA GRB			MRO CD4- L1		MRB	CD5 CD4	GB	GI	G2	B CD4- W	WB	OR	1	wi	Supplemental Regulations
5. (	Office Uses, Non-Medical		K	EUR	9	II,							- 15		JA			bus	
5.10	Professional office	N	N	N	N	N	P	p	s	P	p	P	p	P	N	Р	P	N	10.833 (Mixed Residential districts
5.20	Business office (incl. real estate office)	N	N	N	N	N	P	P	P	P	P	þ	P	P	N	9	p	N	10.833 (Mixed Residential districts
5.30	Financial Institution																		
	5.31 Financial services office	N	N	N	N	N	P	P	P	p	P	p	p	p	N	P	p	N	
	5.32 Retall bank	N	N	N	N	N	N	S	P	p	lo.	P	P	P	N	s	N	N	
5.40	Social service campus									-									10.823
	5.41 Nonresidential	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	P	N	200000
	5.42 Residential	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	S	N	
5.50	Media studio						-						- 257	-	100		0.00		
	5.51 Excluding any transmitting antenna tower	N	N	N	N	N	S	S	8	P	P	S	S	p	N	N	P	N	
	5.52 Including accessory transmitting automa lower	N	N	N	Я	N	N	N	N	N	S	N	N	S	N	N	S	N	10.834
5.60	Publishing facility or similar electronic production operation	N	N	N	Ж	N	S	S	S	P	P	P	P	P	N	P	P	N	
5.70	Call Center	N	N	N	N	N	N	N	N	N	þ	N	N	N	N	N	S	N	

 $P = Permitted \quad S = Special Exception \quad CU = Conditional Use Permit \quad N = Prohibited$ 

As Assended Through December 16, 2019

6.10 Hospital

N N N N N N N N N N N N P N N

P = Permitted	8 - Special Exception	CU = Conditional Use Permit	N = Prohibited	

	Use	R		GRA GRB		GA/ MH	MRO CD4- L1	1334-	MRB	CD5 CD4	GB	GI	G2	B CD4- W	WB	OR	1	wi	Supplemental Regulations
6.20	Medical offices and clinics (outpatient only)	N	N	N	N	N	s	S	S	P	P	P	P	P	N	P	N	N	
6.30	Clinies with inpatient care	N	N	N	N	N	N	N	N	N	S	S	N	S	N	S	N	N	
6.40	Ambulatory surgical center	N	N	N	N	N	N	N	N	N	S	S	N	S	N	S	N	N	
6.50	Substance abuse treatment facility	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	
6,60	Psychiatric hospital for the criminally insane	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	
7. S	ervices, Other Than Health Care	THE R	418	No.	iii.	(30)			Œ	The state of	15	na:		1	U		UBS	in,	AND LOCAL PROPERTY.
7.10	Day Care					_													AND THE PERSON NAMED IN COLUMN
	7.11 Family day care facility	P	P	P	M	N	P	P	P	N	N	p	P	N	N	N	N	N	
	7.12 Group day care facility including private preschool and kindergarten	S	S	S	5	N	s	S	P	P	P	s	s	P	N	N	N	N	10.824 (group day care facilities) 10.860 (hours of operation)
7.20	Personal services	N	N	N	N	N	N	S	S	P	P	P	S	P	N	N	N	N	
7.30	Consumer services such as copy shop, bicycle repair, and pet grooming	N	N	N	N	N	N	S	5	P	P	P	S	P	N	N	N	N	
7.40	Trade, craft and general service establishments, such as shops for plumbers, electriciaes, pointers, paper hangers, upholsterors, sign painters and pointers	N	N	N	N	N	N	N	S	P	P.	P	S	P	N	P	P	P	All storage of materials and equipment shall be located within a building

P = Permitted	5 = Special Exception	CU - Conditional Use Permit	N = Prohibited	

	Use	R		GRA GRB		SIA	MRO CD4- L1	CD4- 1.2	MRB	CD5 CD4	GB	G1	G2	B CD4- W	WB	OR	t	wi	Supplemental Regulations
7.50	Veterinary Care	N	N	N	N	N	N.	N	S	N	s	S	S	S	N	S	s	N	10.832
7.60	Larandry and dry cleaning establishments																		
	7.61 Drop-off/pick-up only for items to be dry cleaned or laundered off site	N	N	N	N	N	P	р	P	P	P	P	P	P	N	S	N	N	
	7.62 Self-service hundry for use by the general public	N	N	N	K	N	S	S	P	S	P	P	s	P	N	N	N	N	
	7.63 Dry cleaning establishment with on-site cleaning facilities.	N	N	N	H	N	N	N	N	N	N	N	N	N	N	N	P	N	
7.70	Undertaking establishment, funcral parlor or mortuary chapel, excluding crematerium	N	N	N	N	N	N	N	P	N	P	S	S	P	N	N	N	N	
8. R	etail Trade		11/11/2	401	g,				15			19.0	7.0		40	13.4	77	ani	W AND WATER
8.10	Convenience goods														_				10.860 (hours of operation)
	8.11 Convenience goods 1																		DOWN ON THE PROPERTY.
	8.111 Hours of operation between 6:00 AM and 11:00 PM	N	N	N	N	N	N	þ	P	P	P	P	P	P	N	N	N	N	
	8.112 24 hours per day operation	N	N	N	N	N	N	N	N	P	P	S	N	S	N	N	N	N	
	8.12 Convenience goods 2																		
	8.121 Hours of operation between 6:00 AM and 11:00 PM	N	N	N	N	N	N	P	S	P	P	P	P	P	N	N	N	N	

		- )	P = Per	mitted	5-	Specia	al Exce	ption	CU	= Con	ditiona	l Use	Permit	N=	Prohi	bited			
	Use	R		GRA GRB		GA/ MH	MRO CD4- LI	CD4- L2	MRB	CD5 CD4	GB	GI	G2	B CD4- W	WB	OR	1	Mi	Supplemental Regulations
	8.122 24 hours per day operation	N	N	N	N	N	N	N	N	s	s	s	N	s	N	N	N	N	1
8.30	Retail sales conducted within a building														- 200				
	8.31 Not marine-related	N	N	N	N	N	N.	P	S	P	P	þ	P	P	N	N	N	N	
l š	8.32 Marine-related	N	N	N	N	N	N	N	N	P	P	P	P	P	P	N	N	N	
8.40	Shopping center	N	N	N	N	N	N	N	N	p	P	p	P	S	N	N	N	N	
8.50	Retail sales, large format	N	N	N	N	N	N.	N	N	N	S	N	N	N	N	N	N	N	
8.60	Fish market	N	N	N	N	N	N	N	N	p	P	P	P	P	P	N	N	N	10.860 (hours of operation)
8,70	Manufacture of goods sold at retail on the premises, such as crafts, coffee roesting and bakery goods	N	N	N	N	N	N	S	S	P	P	P	P	P	N	N	P	N	Maximum of 5 persons employed manufacture
8.80	Sexually oriented business	N	N	N	N	N	N	N	N	N	S	N	N	N	N	N	N	N	10.930 (Sexually Oriented Businesses)
9. E	ting and Drinking Places		A		4	MY		Bil.		The second	Fold :	BIL	U Bis	BUL.		VIII)	i i		
9.10	Nightelub or bar								-										10.590 (location)
	9.11 Occupant load less than 250	N	N	N	N	N	N	N	N	P	P	P	S	N	N	N	N	N	
	9.12 Occupant load from 250 to 500	N	N	N	N	N	N	N	N	S	S	S	8	N	N	N	N	N	
	9.13 Occupant load greater than 500	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	
9.20	Restaurant, take-out only	N	N	N	N	N	N	N	N	P	р	P	P	P	N	N	N	N	
9.30	Restaurant, fast food	N	N	N	N	N	N	N	N	P	P	P	P	P	N.	N	N	N	

	P = Permitted	8 - Special Exception	CU = Conditional Use Permit	N = Prohibited	
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Use	R		GRA GRB		GA/ MH	MRO CD4- L1	CD4-	мкв	CD5 CD4	GB	GI	G2	B CD4- W	wв	OR	1	WI	Supplemental Regulations
9.40 Rostaurant, place of public assembly or function room		ere-si	7.5	C-MC														10.590 (location) 10.860 (hours of operation)
9.41 Occupant load less than 50	N	N	N	K	N	N	P	N	P	P	P	P	P	N	N	N	N	Section September 19 The Section 19
9.42 Occupant load from 50 to 250	N	N	N	N	N	N	N	N	P	P	p	8	s	N	N	N	N	
9.43 Occupant load from 250 to 500	N	N	N	N	N	N	N	N	P	S	S	s	N	N	N	N	N	
9.44 Occupant load greater than 500	N	N	N	N	N	N	N	N	S	S	N	N	N	N	N	N	N	
9.50 Permanently moored vessel used as restaurant or bar, with occupant load less than 250	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	
10. Lodging Establishments						MI	N.	U.					tile.	Nilli	36	1945	T SHA	ELICAS LOTTO VIS
10.10 Boarding house	N	N	N	N	N	N	N	N	N	S	S	N	S	N	N	N	N	
10.20 Bed and breakfast 10.21 Bed and Breakfast 1	N	N	s	N	N	s	s	P	P	N	s	S	р	N	N	N	N	
10.22 Bed and Brenkfast 2	N	N	N	N	N	S	s	p	p	N	s	S	р	N	N	N	N	
10.30 Inn	N	N	N	N	N	N	S	S	P	p	S	S	P	N	N	N	N	
10.40 Hotel or motel								11572		712		-	1,500	-	**			10.836 (Office Research districts
10.41 Up to 125 rooms	N	N	N	N	N	N	N	N	P	S	S	S	N	N	P	N	N	Transport of the second control of the second
10.42 126 to 250 moms	N	N	N	N	N	N	N	N	P	S	S	S	N	N	8	N	N	
10.42 251 to 500 rooms	N	N	N	N	N	N	N	N	P	S	S	N	N	N	N	N	N	
10.43 More than 500 rooms	N	N	N	N	N	N	N	N	р	S	S	N	N	N	N	**	N	

	Use	R		GRA GRB		GA/ MH	MRO CD4- L1	CTM-	MRB	CDS CD4	GB	GI	G2	B CD4- W	WB	OR	1	wı	Supplemental Regulations
10.50	Conference hotel	N	N.	N	N	N	N	N	N	P	P	S	N	N	N	N	N	N	
10.60	Conference center	N	N.	N	N	N	N	N	N	P	P	S	N	N	N	N	N	N	
11.	Motor Vehicle-Related Uses	S.	2200			WA		1			W		Fig.	1411	1			No.	
11.10	Sales, renting or lensing of passenger cars and light trucks, motorcycles, tractors, snownobiles and snall power equipment (e.g., lawmnowers), including accessory repair services	N	N	N	N	N	N	N	N	N	P	S	N	S	N	N	N	N	10.592 (location) 10.843 (motor vehicle related uses
11.20	Motor vehicle service station, motor vehicle repair or washing facility for passenger cars and light trucks	N	N	N	N	N	N	N	N	N	S	S	N	S	N	N	s	N	10.581 (lot area) 10.592 (location) 10.843 (motor vehicle related uses
11.30	Sales, rental, leasing, distribution, and repair of trucks over 10,000 lb gross whicle weight (GVW), recreational vehicles, manne craft or manufac-	N	N	N	N	N	N	N	N	N	S	S	N	8	N	N	S	N	10.581 (lot area) 10.592 (location) 10.843 (motor vehicle related uses)

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As Amended Through December 16, 2019

tured housing, and related equipment

11.50 Truck fueling facility

			P = Per	mitted	5=	Specia	al Exce	ption	CU	= Conc	Ditions	Use:	Permit	N-	Prohi	bited			
	Use	R		GRA GRB		GA/ MH	MRO CD4- L1	C134-	MRB	CDS CD4	GB	GI	G2	B CD4- W	wв	OR	1	wi	Supplemental Regulations
11,60	Truck terminal	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	S	N	10.592 (location) 10.843 (motor vehicle related uses
12.	Marine Craft Related Uses								M		lay.	(89)					150	311	
12.10	Boat landings, boat docks, boathouses and associated marine uses				-01														
	12.11 Non-commercial	P	P	P	P	P	P	P	P	P	P	P	P	P	N	N	N	N	
	12.12 Fishing boat landing 1	N	s	s	N	N	N	N	N	P	P	N	N	N	P	N	N	P	10.837.10 (Residential districts)
	12.13 Fishing boat landing 2	N	N	N	N	N	N	N	N	N	S	N	N	N	S	N	N	P	
12.20	Marina																		
	12.21 With no repair, servicing or fueling facilities	N	N	N	N	N	N	N	N	N	N	N	N	N	P	N	N	N	
	12.22 With repair, servicing or feeling facilities	N	N	N	N	N	N	N	N	N	N	И	N	И	S	N	N	N	10.581 (lot area) 10.592 (location) 10.860 (hours of operation)
12.30	Repair of commercial marine craft and marine-related structures	N	N	N	W	N	N	N	N	N	N	N	N	N	S	N	S	P	10.581 (lot area) 10.592 (location) 10.860 (hours of operation)
12.40	Landside support facility for commercial passenger vessel	N	N	N	N	N	N	N	N	N	N	N	N	N	P	N	N	P	

As Annualed Through December 16, 2019

Use	R		GRA				L2	MRB	CD5 CD4	GB	GI	G2	CD4- W	WB	OR	1	wi	Supplemental Regulations
13. Wholesale Trade, Warehousing and Distribution	The same											100				H		
13.10 Wholesale use												-	-CLUBS				T	
13.11 Not marine-dependent	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	P	N	
13.12 Marine-dependent	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	P	P	
3.20 Wholesale sales devoted to, and in the same establishment as, a permitted retail use																		
13.21 Occupying up to 20% of great floor area of establishment	N	N	N	Ħ	N	N	N	N	p	P	S	N	P	N	N	N	N	
13.22 Occupying 21% to 40% of gross floor area of establishment	N	N	N	N	N	N	N	N	N	P	N	N	P	N	N	N	N	
3.30 Wholesale lumber yards, humber and contractor sales																		
13.31 Not marine-dependent	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	p	N	
13.32 Marine-dependent	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	p	S	
THE SECOND CITY OF THE SECOND CO.			_					_					111111	- 17	1000	1,11	100	

P = Permitted 5 = Special Exception CU = Conditional Use Pennst N = Prohibited

Az Anonded Through December 16, 2019

N N N N N N N N N N N N N P N

13.40 Warehousing or distribution of nonflammable, non-bazardous materials, not classified as a high hazard use

13.41 Not marine-dependent

P	- Permitted	8	Special Exception	CU = Conditional Use Permit	N = Prohibited	

	Use	R		GRA GRB		GA/ MH	MRO CD4- L1	CTM-	MRB	CD5 CD4	GB	GI	G2	B CD4- W	WB	OR	1	wi	Supplemental Regulations
	13.42 Marine-dependent	N	N	И	N	N	N	N	N	N	N	N	N	N	N	N	P	P	
14.	Industrial Uses	13			lie -		13							- 10			146	(Feb.	
14.10	Light industry					-												-	
	14.11 Not marine-dependent	N	N	N	N	N	N	N	N	N	S	S	S	N	N	N	p	N	
	14.12 Marine-dependent	N	N	N	N	N	N	N	N:	N	S	N	N	N	N	N	P	p	
14.20	Research and development																		
	14.21 Not marine-dependent	N	N	N	N	N	N	N	P	N	S	5	N	S	N	S	p	N	
	14.22 Marine-dependent	N	N	N	N	N.	N	N	N	N	S	N	N	S	P	s	p	P	
4.30	Food processing  14.31 Not including scafood processing	N	N	N	N	N	N	N	N	N	P	s	N	N	N	N	P	p	10.592 (location) 10.851 (use contained in boilding)
	14.32 Including seafood processing	N	N	N	N	N	N	N	N	N	S	N	N	N	N	N	s	S	
4.40	Electronics manufacturing	N	N	N	N	N	N	N	N	N	S	S	N	S	N	N	P	N	
4.50	General manufacturing																		
	14.51 Not marine-dependent	N	N	N	N	N	N	N	N	N	N	S	5	N	N	N	p	N	
	14.52 Marine-dependent	N	N	N	N	N	N	N	N	N	N	N	N	N	P	N	p	S	
14.60	Biological or chemical laboratory									-				11,00	-				

As Awarded Through December 16, 2019

	P = Permitted	5 - Special Exception	CU = Conditional Use Permit	N = Prohibited	
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	Use	R		GRA GRB			MRO CD4- Li	CD4.	MRB	CD5 CD4	GB	GI	G2	B CD4- W	wв	OR	ı	wi	Supplemental Regulations
	14.61 Not marine-dependent	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	s	N	T
	14.62 Marine-dependent	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	S	S	
14.70	Recycling facility or recycling plant	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	S	N	10.592 (Incation) 10.853
14.80	High hazard use, including other uses listed in this section but not including uses described in 14.90	N	N	N	Х	N	М	N	N	N	N	N	N	N	N	N	S	N	10.593 (location)
14,90	Storage (other than normal accessory uses), processing, disposal, or transfer of petroleum, petrochemicals, natural gas and liquid petroleum products, coal, alcohol, wood pulp, solid or liquid waste, junk or hazardous waste as classified by Federal or State law	и	N	N	N	N	N	N	N	И	N	N	N	N	N	N	N	N	
15.	Transportation and Utilities	R		W.F.	M						14		JUL					Na.	National Walls In
	Public or private transformer station, substation, pumping station or automatic telephone exchange, not including any business office, storage yard or storage building																		
	15.11 Essential to service the area in which it is located	S	S	S	8	S	S	s	S	s	S	S	s	S	S	s	P	s	

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	R	SRA	GRA	GRC (A)	GA/ MH	CD4-	CD4- L2	MRB	CD5 CD4	GB	GI	G2	CD4- W	WB	OR	t	WI	Supplemental Regulations
mmunity-wide or ice	N	N	N	N	N	N	N	N	N	S	N	N	N	N	N	s	s	
					_												-	

	15.12 Providing community-wide or regional service	N	N	N	N	N	N	N	N	N	S	N	N	N	N	N	S	S
15.20	Heliport or helipad			-		-	_				_	_		_	_			
	15,21 Helipad, as an accessory use to a permitted hospital use		N	N	У	N	N	N	N	N	N	N	N	N	N	8	S	S
	15.22 Hellport	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
16. Fa	Wireless Telecommunications cilities										1	p. y.				H		PALLE REPORTS
16,10	Satellite dish receiver 42 inches or less in diameter:																	
	16.11 Building-mounted, maximum height less than or equal to 4 feet from the roof surface	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
	16.12 Ground-mounted, complying with all yard requirements for the district	P	P	P	ř	Р	P	P	P	P	P	P	P	P	P	p	P	P
16.20	Satellite dish receiver more than 42 inches in diameter:																	
	16.21 Building-mounted, maximum height less than or equal to 4 feet from the roof surface	S	5	S	3	S	S	S	S	s	S	S	S	S	S	S	S	s

 $P-Permitted \quad S=Special Exception \quad CU=Conditional Use Permit \quad N=Prohibited$ 

Use

As Amended Through December 16, 2019 4-21

P = Permitte	d \$ = Special Exception	CU - Conditional Use Permit	N = Prohibited

	Use	R		GRA GRB		COL	MRO CD4- L1	CD4- 1.2	MRB	CD5 CD4	GR	GI	G2	B CD4- W	WB	OR	1	wı	Supplemental Regulations
	16.22 Ground-mounted, complying with all yard requirements for the district	S	s	s	Š	S	s	s	s	S	s	S	s	s	S	S	S	s	
16,30	Whip antenna not more than 30 feet in height	S	S	S	S	S	S	S	S	P	P	S	S	P	P	P	P	P	
16,40	Other wirelesss telecommunica- tions facility not included above	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	10.460 (Municipal districts) 10.920 (Wireless telecommunica- tions (keilities)
17.	Agricultural Uses		1						17.00			75	jigi.	90	VB	19			
17.10	Farm, not including the keeping of farm animals	P	P	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	
17.20	Keeping of farm animals	S	S	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	
18.	Temporary Uses	115										- 39				-		18	STILL SHOW IN THE ST
18.10	Construction trailer	p	P	P	1	p	p	P	P	p	P	P	P	p	P	р	p	P	
18.20	Temperary structure											-							
	18.21 Up to 30 days	P	P	P	7	P	P	P	Þ	P	P	2	P	P	P	p	P	P	
	18.22 31 to 90 days	S	5	S	8	S	S	S	S	S	S	S	S	s	S	P	P	P	
	18.23 91 to 180 days	N	N	N	N	N	N	N	N	N	N	N	N	N	N	S	s	S	
	18.24 More than 180 days	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	

Az Amended Through December 16, 2019

P = Permitted	5 = Special Exception	CU - Conditional Use Permit	N - Prohibited

	Use	R		GRA GRB		GA/ MH	MRO CD4- LI	CD4	MRH	CD5 CD4	GB	GI	G2	B CD4- W	WB	OR	1	WI	Supplemental Regulations
18.30	Manufactured housing not on a foundation, as temporary replacement housing for a dwelling on the same lot destroyed by natural enises, provided that there is an active building permit for rebuilding the destroyed dwelling																		
	18.31 Up to 180 days	P	P	P	P	P	P	P	P	P	P	p	P	P	P	P	P	P	
	18.32 More than 180 days	S	S	S	5	S	S	S	S	S	S	S	s	S	S	p	P	P	
18.40	Carts or traffers, including outdoor display area, used for the seasonal sale of dry goods, Christmas trees, flowers, fruits, vegetables, seasonal products and prepared food	N	N	N	N	N	N	N	N	P	P	S	N	P	N	P	P	P	
19.	Accessory Uses		lo. I							LUI.					11/4	8332	17.2	000	
19.10	Accessory use to a permitted principal use, but not including any outdoor storage	P	P	P	,	P	P	P	P	P	P	P	P	P	P	Р	P	P	10-811 (residential accessory uses)
19.20	Home occupation																		
	19.21 Home occupation 1	P	P	P	P	Ρ.	P	P	P	P	P	P	P	P	N	N	N	N	
	19.22 Home occupation 2	S	5	S	5	N	S	S	P	p	P	P	P	P	N	N	N	N	
19.30	Concessions and services located within the principal building	N	N	N	P	P	P	P	P	P	P	P	P	P	P	P	P	P	

As Amended Through December 16, 2019

4-25

P = Permitted	8 - Special Exception	CU = Conditional Use Permit	N-	- Prohibited	

	Use	R		GRA GRB		GA/ MH	MRO CD4- L1	CD4- L2	MRB	CD5 CD4	GB	G1	G2	B CD4- W	WB	OR	1	wı	Supplemental Regulations
19.40	Drive-through facility, as accessory use to a permitted principal use	N	N	N	Ж	N	N	N	N	N	CU	CU	N	CU	N	cu	N	N	10.835 (accessory drive-through uses)
19.50	Outdoor dining or drinking area, as accessory use to a permitted principal use	N	N	N	N	N	N	cu	N	P	P	P	P	cu	N	N	N	N	
20.	Accessory Storage		din.	18								No.					26.5	(48)	HER WILLIAM TO SEE
20,10	Indoor storage of motor vehicles or boots as an accessory use	P	P	Р	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
20 20	Outdoor storage of registered motor vehicles owned by residents of the premises or business. Such vehicles may include only one commercial vehicles, which shall be limited to no more than 2 axies and 6 wheels.	P	P	P	7	P	P	P	P	р	D <sub>r</sub>	P	P	P		P	P	P	
20.30	Outdoor storage for not more than 9 consecutive months of boats owned by residents of the property:																		
	20.31 Not more than one motorboat or sailboat longer than 12 feet	P	P	P	P	P	P	P	P	P	P	P	P	P	p	P	P	P	
	20.32 Any number of (n) motorboats or sailhouts up to 12 feet in length, or (b) hand-powered craft (cances and knyaks) without restriction as to length	P	P	P	P	P	P	P	P	P	P	P	p	P	P	P	P	P	

As Amended Through December 16, 2019

P = Permitted	5 - Special Exception	CU = Conditional Use Permit	N as Probabilist	
-	- special management	CO COMMISSION DE LESION	15 - Frombinda	

	Use	R		GRA GRB		GA/ MH	MRO CD4- L1	CD4- L2	MRB	CD5 CD4	GB	G1	G2	B CD4- W	WB	OR	1	wı	Supplemental Regulations
20.40	Outdoor storage of lobster traps, lobster buoys and associated rope	P	P	P	P	P	P	P	P	N	P	P	P	P	P	N	P	P	10.811.20
20.50	Outdoor storage of raw or portially finished assterial																		
	20.51 Not marine-dependent	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	S	N	
	20.52 Marine-dependent	N	N	N	N	N	N	N	N	N	N	N	N	N	s	N	5	S	
20.60	Outdoor storage of machinery, equipment and vehicles																		775
	20,61 Not marine-dependent	N	N	N	K	N	N	N	N	N	S	N	N	S	N	N	S	N	
	20.62 Marine-dependent (other than alliaved by 20.30 or 20.40 above)	N	N	N	N	N	N	N	N	N	S	N	N	S	S	N	S	S	

As Assembed Through December 16, 2019

## Hoefle, Phoenix, Gormley & Roberts, Pllc

- ATTORNEYS AT LAW

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

October 26, 2022

#### HAND DELIVERED

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

635 Sagamore Development, LLC, Owner/Applicant Project Location: 635 Sagamore Avenue Tax Map 222, Lot 19

General Residence A (GRA Zone)

Dear Mr. Stith and Zoning Board Members:

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

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

Very truly yours,

R. Timothy Phoenix

Monica F. Kieser

Enclosures

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

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

KEVIN M. BAUM GREGORY D. ROBBINS MONICA F. KIESER

R. PETER TAYLOR

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

OF COUNSEL: SAMUEL R. REID JOHN AHLGREN

#### Letter of Authorization

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

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

635 Sagamore Development, LLC

Timothy J. Black, Duly Authorized

January 5, 2022

Date

#### **MEMORANDUM**

Portsmouth Zoning Board of Adjustment ("ZBA")

From: R. Timothy Phoenix, Esq.

Monica F. Kieser, Esq.

Date: October 26, 2022

Re: 635 Sagamore Development, LLC, Owner/Applicant

Project location: 635 Sagamore Avenue

Tax Map 222, Lot 19

Single Residence A (SRA) District

Dear Chairman Parrott and Zoning Board Members:

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

#### I. **EXHIBITS**

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

#### II. PROPERTY/BACKGROUND

635 Sagamore Avenue is an 84,795 s.f lot with 150 ft. of frontage containing two buildings in poor condition; the front building contains Luster King, an automobile detailing shop and upstairs apartment, and behind a large service garage (the "Property"). The Luster King building is located partially within the front yard setback, access to it is over the entire frontage, and the use of the Property does not conform to the requirements of the Single Residence A District. 635 Sagamore proposes to remove the existing commercial building and garage and redevelop the Property with four new single-family homes with access via a private roadway from Sagamore Avenue (the "Project"). (Exhibit A). The Project is more compatible with the neighborhood which includes the westerly abutter, Tidewatch Condominiums with 122 Units, and the Sagamore Court Condominium with 144 Units. (Exhibit D). Other nearby abutters are largely developed with single family residences with similar density as the proposed project. The Luster King building is still served by septic, but municipal sewer service has been extended to the Property which will serve the proposed dwellings.

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

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

#### III. RELIEF REQUIRED

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

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

### IV. VARIANCE REQUIREMENTS

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

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

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

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

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

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

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

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

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

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

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

### Denial of the variances results in an unnecessary hardship

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

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

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

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

#### c. The proposed use is reasonable

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

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

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

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

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

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

#### V. CONCLUSION

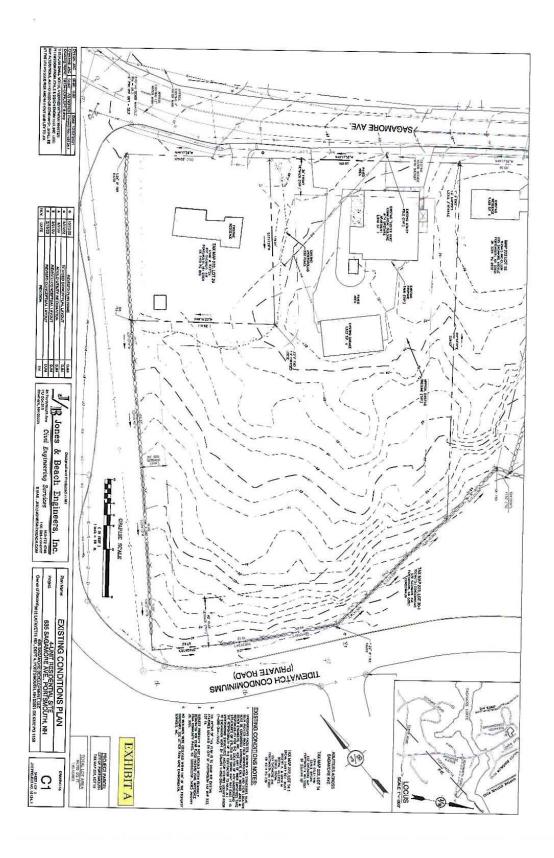
For all of the reasons herein stated, Sagamore respectfully requests that the Portsmouth Zoning of Adjustment grant the requested variances.

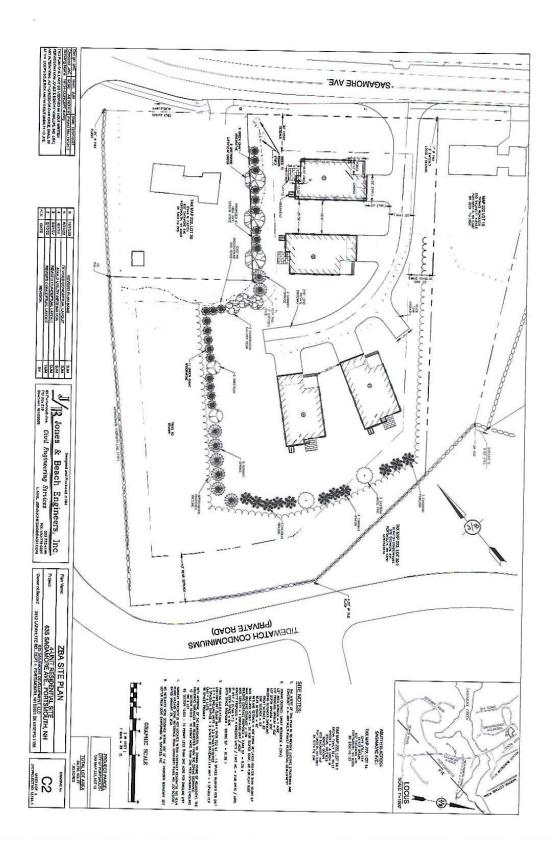
Respectfully submitted,

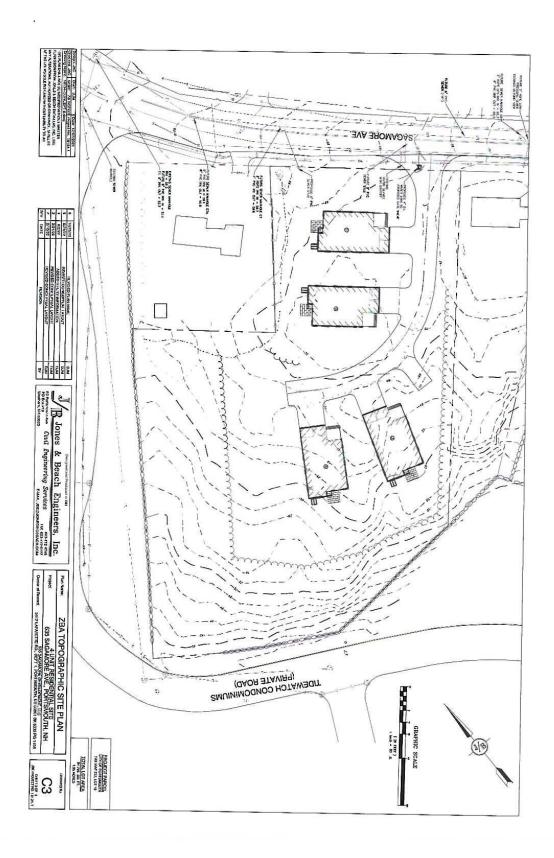
635 Sagamore Development, LLC

By:

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







419.126.v14 GL (1/27/2022)



603-431-9559



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

This design may not yet have Construction Drawings (as defined in the Tems), and is, therefore, only available as a Design Drawing (as defined in the Terms and together with Construction Drawings, Torawings, 11 is possible that during the conversion of a Design Drawing to a final Construction Drawing, changes may be necessary including, but not limited to, differencional changes Please see Plan Data Epitalined on www.ArtformHomePlans.com to understand room sizes, dimensions and other data provided. We are not responsible for typographical errors.

sices, amensions and other data provided. We are not responsible for typographical errors.

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

\*\*To maintain design integrity, we pay particular attention to features on the finit facede, including but not limited to door surrounds, window assings, finished porch column sizes, and roof friezes. While we may allow builders to add their own flare to assthetic elements, we don't allow our designs to be stripped of critical details. Any such alterations require the express written consent of Antform a increasing ceiling heights usually requires adjustments to window sizes and other exterior elements.

Floor plan layout and/for Structural Changes:

\*\*Structural changes always require the express written consent of Antform.

If you wish to move or romove walls or structural elements (such as removal of posts, increases in house size, ceiling height changes, addition of dromers, etc.), pleased on the assume it can be done without other additional changes (even if the builder or lumber yard says you can).

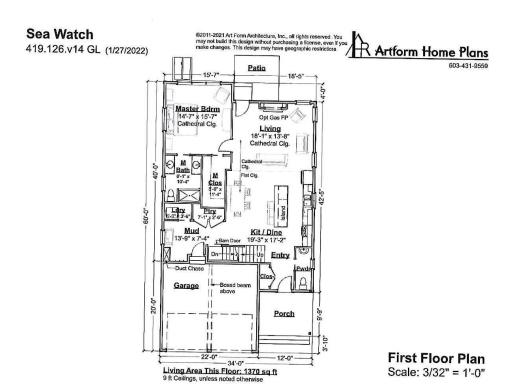
EXHIBIT B

# **Sea Watch** 419.126.v14 GL (1/27/2022)

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Artform Home Plans
603-431-9559



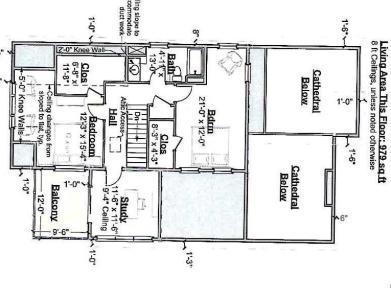




419.126.v14 GL (1/27/2022)

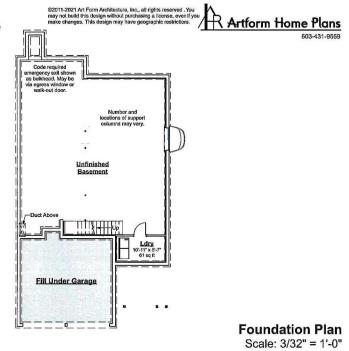
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Artiform Home Plans
603-431-9559



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

419.126.v14 GL (1/27/2022)



419.126.v14 GL (1/27/2022)





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

419.126.v14 GL (1/27/2022)





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

419.126.v14 GL (1/27/2022)





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

## **Sea Watch** 419.126.v14 GL (1/27/2022)

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

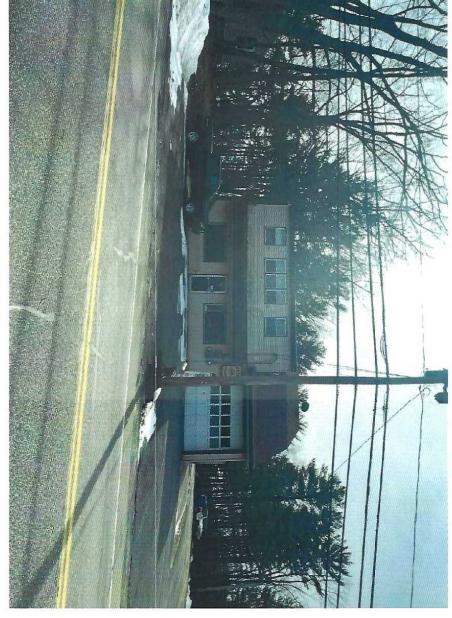
## **EXHIBIL C**







Front View of Property (Sagamore Ave)



Front View of Property



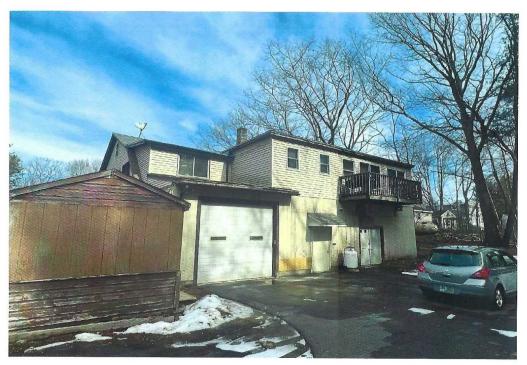
Front View of Property



Side View of Property



View of Service Garage and Shed



Rear View of Property

# **Sea Watch** 419.126.v14 GL (1/27/2022)











**Interior Views** 



### **635 SAGAMORE AVE**

Location 635 SAGAMORE AVE

Mblu 0222/ 0019/ 0000/ /

Acct# 35416

Owner 635 SAGAMORE

**DEVELOPMENT LLC** 

PBN

Assessment \$682,800

Appraisal \$682,800

PID 35416

**Building Count** 2

### **Current Value**

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

#### Owner of Record

Owner 635 SAGAMORE DEVELOPMENT LLC

Sale Price

\$387,133

Co-Owner Address

3612 LAFAYETTE RD DEPT 4

Certificate

Book & Page 6332/1158

PORTSMOUTH, NH 03801

Sale Date

09/24/2021

### **Ownership History**

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

### **Building Information**

### Building 1 : Section 1

Year Built:

1950

Living Area:

4,477

Replacement Cost: \$513,721 Building Percent Good: 54

Replacement Cost

Less Depreciation: \$277,400

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

### Building 2 : Section 1

 Year Built:
 2000

 Living Area:
 1,650

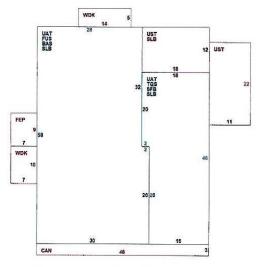
 Replacement Cost:
 \$153,450

### **Building Photo**

Building Photo

(http://lmages.vgsi.com/photos2/PortsmouthNHPhotos///0033/DSC01732\_:

### **Building Layout**



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

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

**Building Percent Good:** 

84

Replacement Cost Less Depreciation:

\$128,900

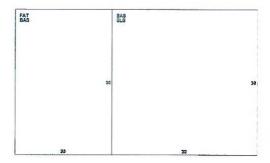
<b>Bullding</b> Field	Description		
Style:	Service Shop		
Model	Commercial		
Grade	c		
Stories:	1		
Occupancy	1.00		
Residential Units			
Exterior Wall 1	Vinyl Siding		
Exterior Wall 2	·····		
Roof Structure	Gable/Hip		
Roof Cover	Asph/F Gls/Cmp		
Interior Wall 1	Drywall/Sheet		
Interior Wall 2			
Interior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

### **Building Photo**

**Building Photo** 

(http://images.vgsi.com/photos2/PortsmouthNHPhotos///0033/DSC01731\_:

### **Building Layout**



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

Code	Description	Gross Area	Living Area
BAS	First Floor	1,500	1,500
FAT	Attic	600	150
SLB	Slab	900	0
		3,000	1,650

### Extra Features

Extra Features Labora

### No Data for Extra Features

### Land

Land Use

**Land Line Valuation** 

**Use Code** 

0310

Size (Acres)

1.93

Description Zone

PRI COMM SRA

Frontage

Depth

Neighborhood 306

Assessed Value \$275,200

Alt Land Appr No

Appraised Value \$275,200

Category

### Outbuildings

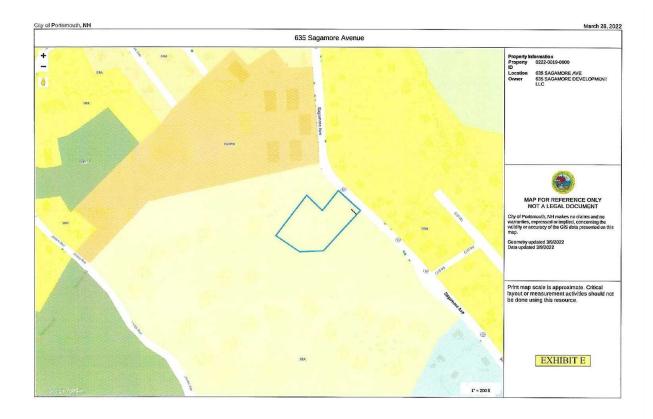
Outbulldings Lagen						
Code	Description	Sub Code	Sub Description	Size	Value	Bldg#
PAV1	PAVING-ASPHALT			1344.00 S.F.	\$1,200	
SHD1	SHED FRAME			96.00 S.F.	\$100	

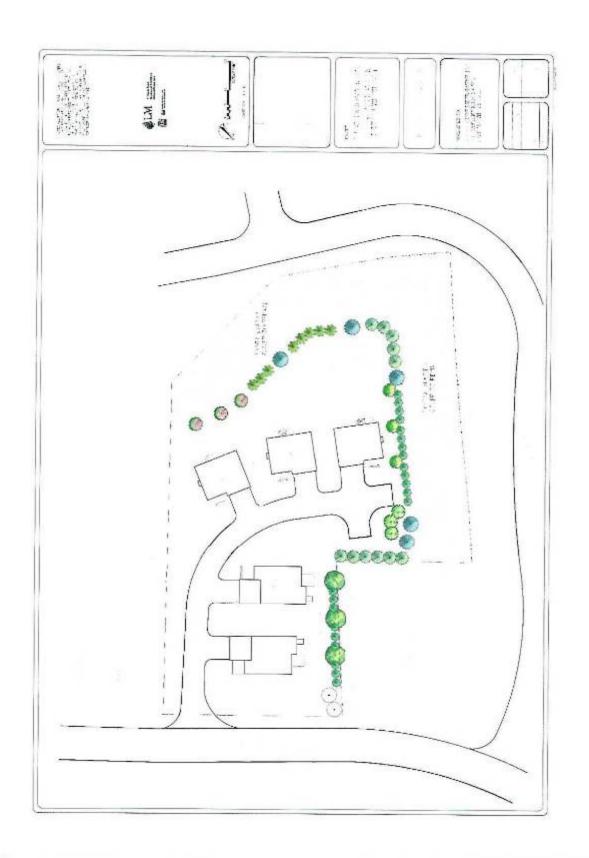
### **Valuation History**

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

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

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## WHITE APPRAISAL



REAL ESTATE APPRAISING & CONSULTING

Brian W. White, MAI, SRA

### **CERTIFICATE**

I do hereby certify that, except as otherwise noted in this report:

- 1. the statements of fact contained in this report are true and correct;
- 2. the reported analyses, opinions and conclusions are limited only by the reported assumptions and limiting conditions and are my personal, unbiased professional analyses, opinions and conclusions;
- 3. I have no present or prospective interest in the property which is the subject of this report and I have no personal interest or bias with respect to the parties involved;
- 4. I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment;
- 5. my engagement in this assignment was not contingent upon developing or reporting predetermined results;
- 6. my compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal;
- 7. my analysis, opinions, and conclusions, were developed, and this report has been prepared in conformity with the Uniform Standards of Professional Appraisal Practice;
- 8. Brian W. White, MAI, SRA a made a personal inspection of the property that is the subject of this report;
- 9. no one has provided significant real property appraisal assistance to the persons signing this certification:
- 10. I have prepared no services, as an appraiser or in any other capacity, regarding the property that is the subject of this report within the three-year period immediately preceding acceptance of this assignment;
- 11. the reported analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Code of Professional Ethics & Standards of Professional Appraisal Practice of the Appraisal Institute;
- 12. the use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives;
- 13. as of the date of this report, Brian W. White, MAI, SRA, has completed the continuing education program for Designated Members of the Appraisal Institute.

Respectively submitted,

Brian W. White, MAI, SRA NHCG-#52

130 VARNEY ROAD • DOVER, NEW HAMPSHIRE 03820 • BRIANWMAI@AOL.COM • (603) 742-5925

### **Professional Designations:**

Member, Appraisal Institute (*MAI*) – Awarded by the Appraisal Institute. MAI #9104 Senior Residential Appraiser (*SRA*)

### Employment:

1989 to Present White Appraisal – Dover, NH

President – Senior Appraiser

Owner of White Appraisal, a commercial and residential real estate appraisal firm. Complete appraisals on all types of commercial and residential properties.

Consulting.

1988 Finlay Appraisal Services – Portsmouth, NH

Senior Vice President/Chief Operations Officer

Oversaw the operation of four appraisal offices. Completed commercial

and residential appraisals on all types of properties.

1985 Finlay Appraisal Services – Portsmouth, NH

and Appraisal Services Manager - South Portland, ME.

Completed commercial and residential appraisals on all types of

properties.

### **Education:**

Mitchell College

Associate of Arts, Liberal Studies, 1979

### University of Southern Maine

Bachelors of Science, Business Admin., 1984

Bus 022 Real Estate Law
Bus 023 Real Estate Practice
Bus 025 Real Estate Valuation

### American Institute of Real Estate Appraisers

1A-1 Real Estate Appraisal Principles, 1985

1A-2 Basic Valuation Procedures, 1985

1B-A Cap. Theory and Technique (A), 1985

1B-B Cap. Theory and Technique (B), 1985

2-3 Standards of Pro. Practice, 1985

Exam #7 Industrial Valuation, 1986

### Society of Real Estate Appraisers

101 Intro. To Appraising Real Property, 1986

102 Applied Residential Property Val., 1987

201 Prin. Of Income Property Appraising, 1985

202 Applied Income Property Valuation, 1985

### **Education** (Continued):

USPAP Update- 2017 USPAP Update- 2019

Business Practices & Ethics- 2021 USPAP 2022/2023 Update- 2021

#### Recent Seminars:

Current Use - 2018

Real Estate Damages Overview - 2018

Understanding and Using Public Data - 2018

Appraising Energy Efficient Residential Properties – 2018

Commercial Real Estate Roundtable – 2019

Appraiser Essentials with CRS and Green Fields – 2019

Land Development & Residential Building Costs – 2019

Myths in Appraiser Liability – 2019 Appraising in Uncertain Times – 2019

Market Trends in NH Real Estate – 2020

Appraising Commercial Properties during a Pandemic – 2020

Defining the Appraisal Problem: Sleuthing for the Approaches to Value- 2021

Forest Valuation- 2021

Appraiser Essentials Paragon MLS- 2021

Residential Building Systems- 2021

2021-2022 NH Market Insights- 2021

Implications for Appraisers of Conservation Easement Appraisals- 2022

NH's Housing Market & Covid: What a Long, Strange Road It's Been! - 2022

### Appointments:

Board of Directors - New Hampshire Chapter of the Appraisal

Institute - 1991 to 1993; 2000 to 2010 and 2015-2018

Vice President - New Hampshire Chapter of the Appraisal Institute - 2011-2012 & 2019

President – New Hampshire Chapter of the Appraisal Institute – 2013 & 2014

### Experience:

Review Chairperson – New Hampshire Chapter of the Appraisal

Institute – 1994 to 2010

### Licenses:

N.H. Certified General Appraiser #NHCG -52, Expires 4/30/2023

### Partial List of Clients:

Attorneys:	Others:
John Colliander	City of Dover
Karyn Forbes	Town of Durham
Michael Donahue	University of New Hampshire
Richard Krans	Wentworth-Douglass
Simone Massy	The Homemakers
Samuel Reid	Strafford Health Alliance
Daniel Schwartz	Goss International
Robert Shaines	Chad Kageleiry
William Shaheen	Gary Levy
Steve Soloman	Stan Robbins
Gerald Giles	Daniel Philbrick
Ralph Woodman	Keith Frizzell
Gayle Braley	Chuck Cressy
Fred Forman	John Proulx
	John Colliander Karyn Forbes Michael Donahue Richard Krans Simone Massy Samuel Reid Daniel Schwartz Robert Shaines William Shaheen Steve Soloman Gerald Giles Ralph Woodman Gayle Braley

# State of New Hampshire



Real Estate Appraisers Board

<u>Authorized as</u> Certified General Appraiser

Issued To

BRIAN W WHITE

License Number: NHCG-52

<u>Issue Date</u>: 01/01/1992 <u>Expiration Date</u>: 04/30/2023

### **II. OLD BUSINESS**

B. The rehearing of the request of Jeffrey M. and Melissa Foy (Owners), for property located at 67 Ridges Court whereas relief is needed for construction of a 518 square foot garage addition and expansion of front dormer which requires the following: 1) A variance from Section 10.521 to allow a 14 foot front yard where 19 feet is required per Section 10.516.10. 2) A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed, or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 207 Lot 59 and lies within the Single Residence B (SRB) District. (LU-22-199)

### **Existing & Proposed Conditions**

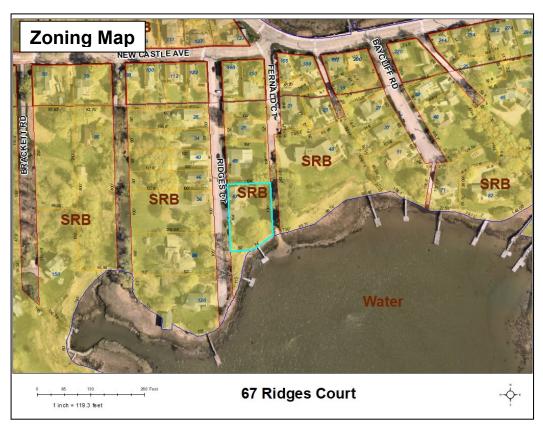
	Existing	Proposed	Permitted / Required	
Land Use:	Single family	Garage addition	Primarily single residence	
Lot area (sq. ft.):	16,500	16,500	15,000	min.
Lot area per dwelling	16,500	16,500	15,000	min.
(sq. ft.):				
Lot depth (ft):	109	109	100	min.
Street Frontage (ft.):	164	164	100	min.
Primary Front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

### Other Permits/Approvals Required

- Wetland CUP Conservation Commission & Planning Board
- Building Permit

### **Neighborhood Context**





### **Previous Board of Adjustment Actions**

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

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

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

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

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

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

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

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

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

October 18, 2022 – The Board voted to postpone to the November meeting.

<u>November 15, 2022</u> - The Board voted to determine if Fisher v. Dover applied to this application. A motion to determine that the petition does not fall under Fisher v. Dover failed, therefore the request was not heard.

January 17, 2023 – The Board voted to deny the request for rehearing.

<u>February 22, 2023</u> – The Board voted to reconsider the request for rehearing based on the arguments raised in Attorney Phoenix's memo and to grant the rehearing.

### **Planning Department Comments**

The application currently before the Board is the same as was submitted for the November 15, 2022 public hearing.

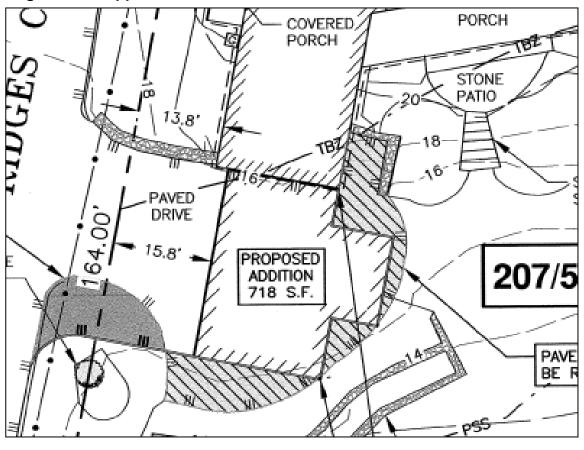
Staff feels this is a significant enough change that would not evoke Fisher v. Dover, but the Board may want to consider whether Fisher vs. Dover is applicable before this application is considered.

"When a material change of circumstances affecting the merits of the applications has not occurred or the application is not for a use that materially differs in nature and degree from its predecessor, the board of adjustment may not lawfully reach the merits of the petition. If it were otherwise, there would be no finality to proceedings before the board of adjustment, the integrity of the zoning plan would be threatened, and an undue burden would be placed on property owners seeking to uphold the zoning plan." Fisher v. Dover, 120 N.H. 187, (1980).

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

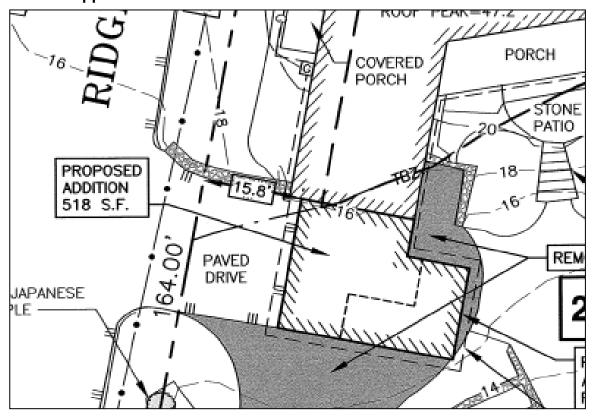
After the current application was submitted, a survey of the front yards of adjacent properties was completed to determine the average front yard under Section 10.516.10. The results show an average front yard of 19 feet. The applicant is proposing to enlarge the existing from dormer, which requires a variance. This was not part of the original application in October.

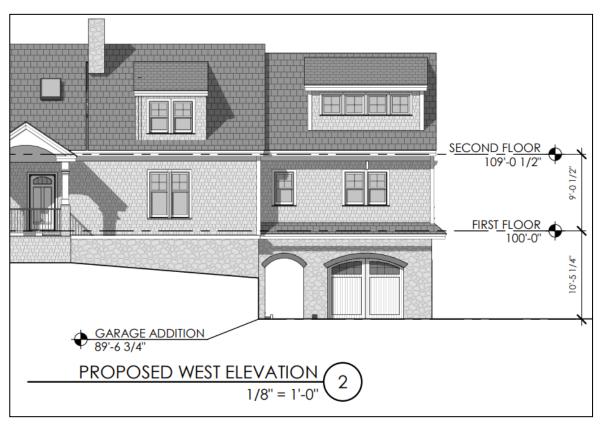
### **August 2022 Application:**





### **Current Application:**





### **Review Criteria**

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

- 1. Granting the variance would not be contrary to the public interest.
- 2. Granting the variance would observe the spirit of the Ordinance.
- 3. Granting the variance would do substantial justice.
- 4. Granting the variance would not diminish the values of surrounding properties.
- The "unnecessary hardship" test:
   (a) The property has <u>special conditions</u> 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.

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

### 10.235 Certain Representations Deemed Conditions

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

### Hoefle, Phoenix, Gormley & Roberts, Pllc ATTORNEYS AT LAW

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

October 11, 2022

### HAND DELIVERED

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

Re:

Jeffrey and Melissa Foy, Owner/Applicant

67 Ridges Court Tax Map 207/Lot 59

Single Residence B District

Dear Mr. Stith & Zoning Board Members:

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

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

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

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

Very truly yours,

R. Timothy Phoenix

Encl.

cc:

Jeffrey and Melissa Foy

Ambit Engineering, Inc. Destefano Maugel

### **OWNER'S AUTHORIZATION**

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

Date:

Respectfully submitted,

Jeffrey Foy

Melissa Foy

### **MEMORANDUM**

TO:

Portsmouth Zoning Board of Adjustment ("ZBA")

FROM:

R. Timothy Phoenix, Esquire

DATE:

October 11, 2022

Re:

Jeffrey and Melissa Foy, Owner/Applicant

Property Location: 67 Ridges Court

Tax Map 207, Lot 59

Single Residence B ("SRB")

Dear Chairman Parrott and Zoning Board Members:

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

### I. EXHIBITS

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

### II. PROPERTY/PROJECT

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

Jeffrey and Melissa Foy

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

October 11, 2022

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

### III. RELIEF REQUIRED

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

### IV. FISHER V. DOVER ANALYSIS

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

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

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

<sup>2</sup> PZO §10.516.

October 11, 2022

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

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

### V. VARIANCE REQUIREMENTS

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

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

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

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

back further from the front lot line than the existing home, preserving pedestrian and sight lines on the dead-end street. Building coverage requirements and open space requirements are also met by the Project, which reduces impervious coverage compared to existing conditions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### c. The proposed use is reasonable.

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

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

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

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

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

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

### VI. <u>CONCLUSION</u>

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

Respectfully submitted, Jeffrey and Melissa Foy

By: R. Timothy Phoenix

# I FGFND.

LEGEND:				
	NOW OR FORMERLY RECORD OF PROBATE ROCKINGHAM COUNTY REGISTRY OF DEEDS			
	MAP 11 / LOT 21			
	NHDES HIGHEST OBSERVABLE TIDE LINE NHDES 50' PRIMARY STRUCTURE SETBACK NHDES 100' TIDAL BUFFER ZONE NHDES 150' NATURAL WOODLAND BUFFER NHDES 250' PROTECTED SHORELAND			
	UTILITY POLE (w/ GUY)			
	WELL			
	METER (GAS, WATER, ELECTRIC) EDGE OF WETLAND FLAGGING SWAMP / MARSH ELEVATION EDGE OF PAVEMENT FINISHED FLOOR INVERT TEMPORARY BENCHMARK TYPICAL			
	——————————————————————————————————————			

LANDSCAPED AREA

"I CERTIFY THAT THIS PLAN WAS PREPARED UNDER MY DIRECT SUPERVISION, THAT IT IS THE RESULT OF A FIELD SURVEY BY THIS OFFICE AND HAS AN ACCURACY OF THE

6.21.22

DATE

CLOSED TRAVERSE THAT EXCEEDS THE PRECISION OF

LSA

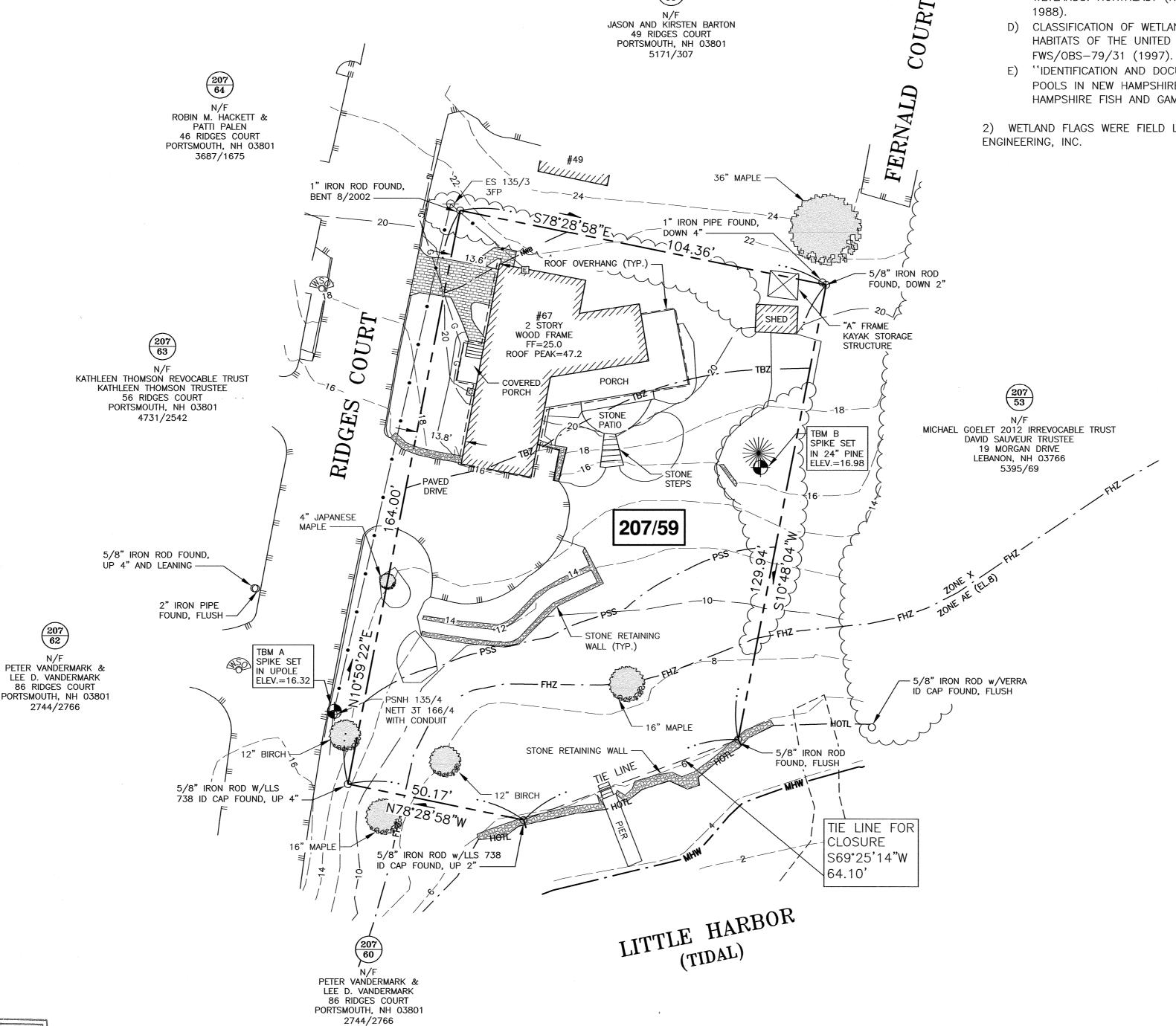
1:15,000."

JOHN R. CHAGNON, LLS

### PLAN REFERENCES:

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

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



GRAPHIC SCALE



- 1) HIGHEST OBSERVABLE TIDE LINE DELINEATED BY STEVEN D. RIKER, CWS ON 7/1/20 IN ACCORDANCE WITH THE FOLLOWING STANDARDS:
  - A) U.S. ARMY CORPS OF ENGINEERS WETLANDS DELINEATION MANUAL. TECHNICAL REPORT Y-87-1 (JAN. 1987). AND REGIONAL SUPPLEMENT TO THE CORPS OF ENGINEERS WETLAND DELINEATION MANUAL: NORTHCENTRAL AND NORTHEAST REGION, VERSION 2.0, JANUARY 2012.
  - B) FIELD INDICATORS OF HYDRIC SOILS IN THE UNITED STATES, VERSION 8.2, USDA-NRCS, 2018 AND (FOR DISTURBED SITES) FIELD INDICATORS FOR IDENTIFYING HYDRIC SOILS IN NEW ENGLAND, VERSION 4. NEIWPCC WETLANDS WORK GROUP (2019).
  - C) NATIONAL LIST OF PLANT SPECIES THAT OCCUR IN WETLANDS: NORTHEAST (REGION 1). USFWS (MAY
  - D) CLASSIFICATION OF WETLANDS AND DEEPWATER HABITATS OF THE UNITED STATES. USFW MANUAL
  - E) "IDENTIFICATION AND DOCUMENTATION OF VERNAL POOLS IN NEW HAMPSHIRE" (1997). NEW HAMPSHIRE FISH AND GAME DEPARTMENT.

2) WETLAND FLAGS WERE FIELD LOCATED BY AMBIT



## AMBIT ENGINEERING, INC.

Civil Engineers & Land Surveyors

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

### **NOTES:**

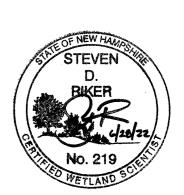
1) PARCEL IS SHOWN ON THE PORTSMOUTH ASSESSOR'S MAP 207 AS LOT 59.

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

# EXHIBIT A

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

1	ADD FEMA FHZ	6/27/22	
0	ISSUED FOR COMMENT	5/18/22	
NO.	DESCRIPTION	DATE	
	REVISIONS		



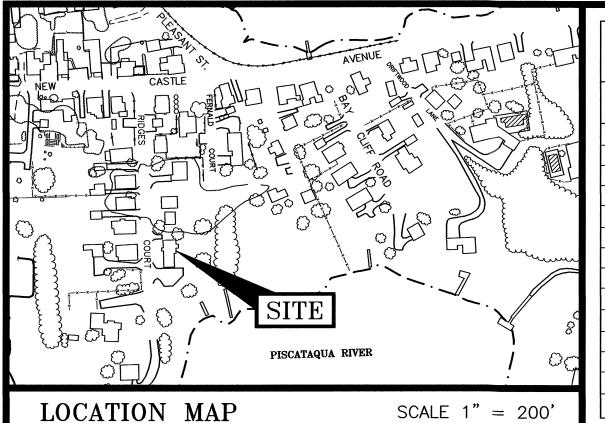
SCALE 1"=20'

MAY 2022

**EXISTING CONDITIONS** PLAN

FB 222 PG 66

**-**1153.02



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

ROBIN M. HACKETT &

PATTI PALEN

46 RIDGES COURT

3687/1675

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

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

#46



## AMBIT ENGINEERING, INC.

Civil Engineers & Land Surveyors

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

### NOTES:

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

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

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

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

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

6) DIMENSIONAL REQUIREMENTS: MIN. LOT AREA:

15,000 S.F. FRONTAGE: 100 FEET FRONT 30 FEET SETBACKS: SIDE 10 FEET REAR 30 FEET MAXIMUM STRUCTURE HEIGHT: 35 FEET

MAXIMUM STRUCTURE COVERAGE: 20% MINIMUM OPEN SPACE:

ADDITION ON ASSESSOR'S MAP 207 LOT 59 IN THE CITY OF PORTSMOUTH.

8) VERTICAL DATUM IS NAVD88. BASIS OF VERTICAL DATUM

7) THE PURPOSE OF THIS PLAN IS TO SHOW A PROPOSED

9) PROPOSED GARAGE FROM PLAN BY DESTEFANO MAGUEL ARCHITECTS DATED SEPTEMBER 28, 2022.

10) OFF SITE STRUCTURE LOCATIONS BASED ON CITY DATABASE LOCATIONS.

IS REDUNDANT RTN GNSS OBSERVATIONS  $(\pm 0.2)$ .

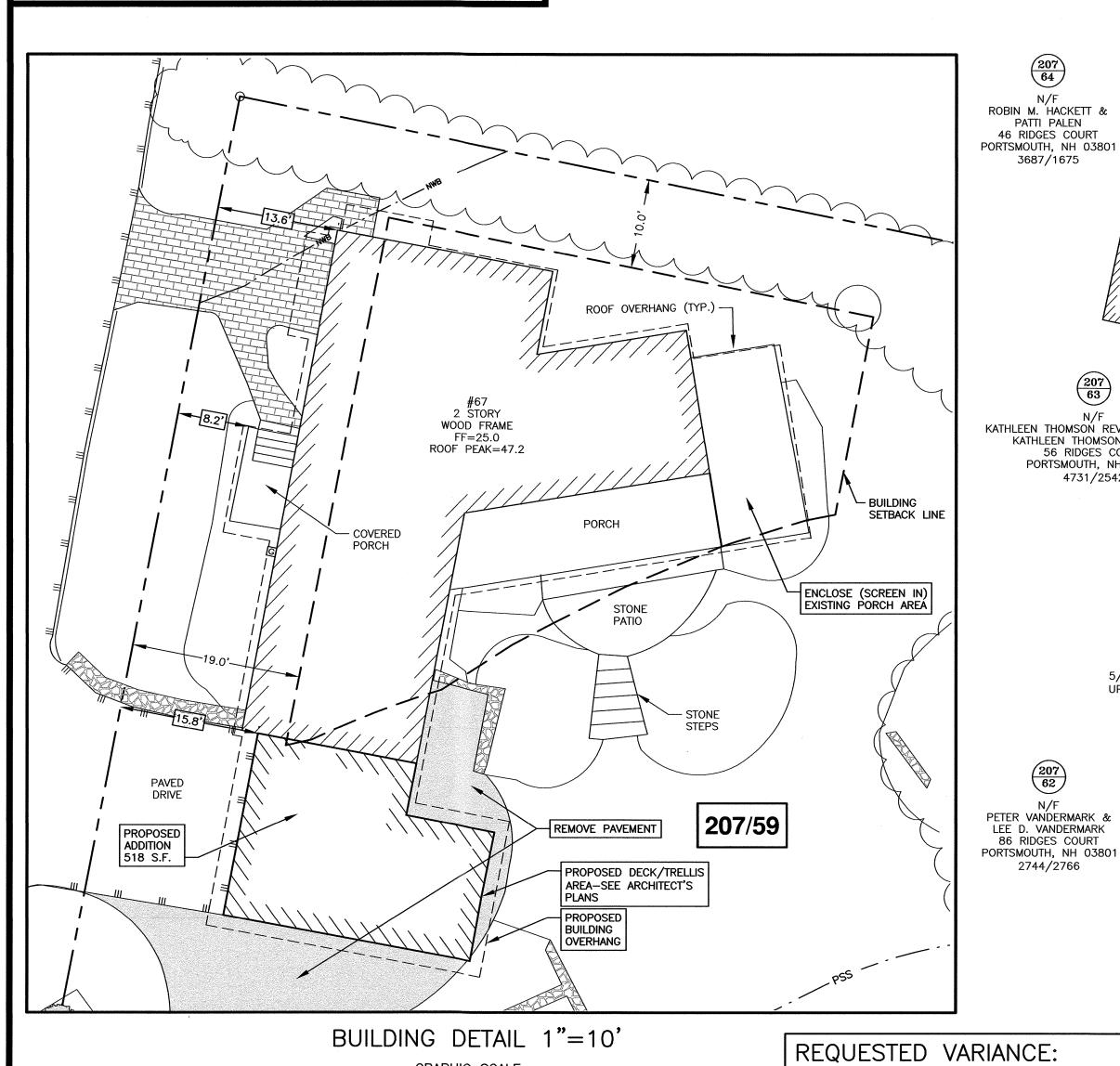
# PROPOSED ADDITIONS FOY RESIDENCE 67 RIDGES COURT PORTSMOUTH, N.H.

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

SCALE 1"=20'

SEPTEMBER 2022

**VARIANCE PLAN** 



36" MAPLE ── \_\_ ES 135/3 1" IRON ROD FOUND, BENT 8/2002 -1" IRON PIPE FOUND, ROOF OVERHANG (TYP.) -2 STORY WOOD FRAME FF=25.0 KATHLEEN THOMSON REVOCABLE TRUST ROOF PEAK=47.2 KATHLEEN THOMSON TRUSTEE 56 RIDGES COURT PORTSMOUTH, NH 03801 ENCLOSE (SCREEN IN) → COVERED : 4731/2542 EXISTING PORCH AREA PROPOSED ADDITION 518 S.F. PROPOSED PAVED REMOVE PAVEMENT. PARKING SPACE 207/59 4" JAPANESE 5/8" IRON ROD FOUND, PROPOSED DECK/TRELLIS UP 4" AND LEANING -AREA-SEE ARCHITECT'S PROPOSED 2" IRON PIPE BUILDING FOUND, FLUSH -PETER VANDERMARK & LEE D. VANDERMARK 86 RIDGES COURT PORTSMOUTH, NH 03801 2744/2766 PSNH 135/4 NETT 3T 166/4/ WITH CONDUIT STONE RETAINING WALL 12" MAPLE \ 5/8" IRON ROD W/LLS 738 ID CAP FOUND, UP 4

5/8" IRON ROD w/LLS 738

ID CAP FOUND, UP 2"

PETER VANDERMARK & LEE D. VANDERMARK 86 RIDGES COURT PORTSMOUTH, NH 03801

2744/2766

GRAPHIC SCALE

GRAPHIC SCALE

**REQUESTED VARIANCE:** 

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

"I CERTIFY THAT THIS PLAN WAS PREPARED UNDER MY DIRECT SUPERVISION, THAT IT IS THE RESULT OF A FIELD SURVEY BY THIS OFFICE AND HAS AN ACCURACY OF THE CLOSED TRAVERSE THAT EXCEEDS THE PRECISION OF 10.5.22

DATE

JOHN R. CHAGNON, LLS

LITTLE HARBOR

N/F JASON AND KIRSTEN BARTON

49 RIDGES COURT

PORTSMOUTH, NH 03801

5171/307

-5/8" IRON ROD FOUND, DOWN 2"

N/F MICHAEL GOELET 2012 IRREVOCABLE TRUST

DAVID SAUVEUR TRUSTEE

19 MORGAN DRIVE

LEBANON, NH 03766 5395/69

- 5/8" IRON ROD w/VERRA
ID CAP FOUND, FLUSH

- "A" FRAME

STRUCTURE

TIE LINE FOR

S69°25'14"W

CLOSURE

64.10

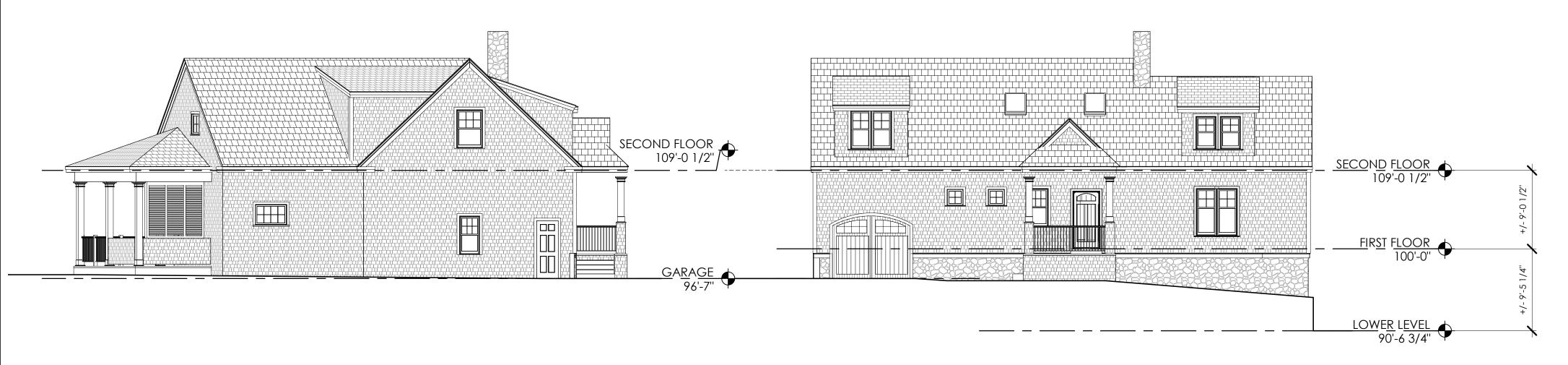
KAYAK STORAGE

/////// /SHED

SETBACK LINE

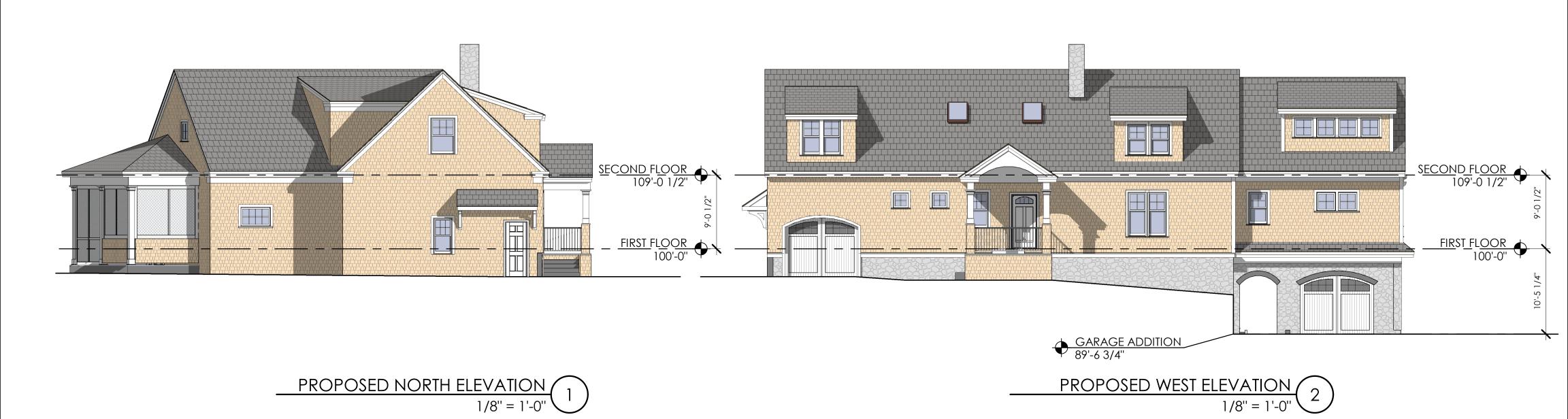
- BUILDING

FB 222 PG 66



EXISTING NORTH ELEVATION

EXISTING WEST ELEVATION



SCHEMATIC DESIGN FOR

FOY RESIDENCE

67 RIDGES CT PORTSMOUTH, NH **ELEVATIONS** 

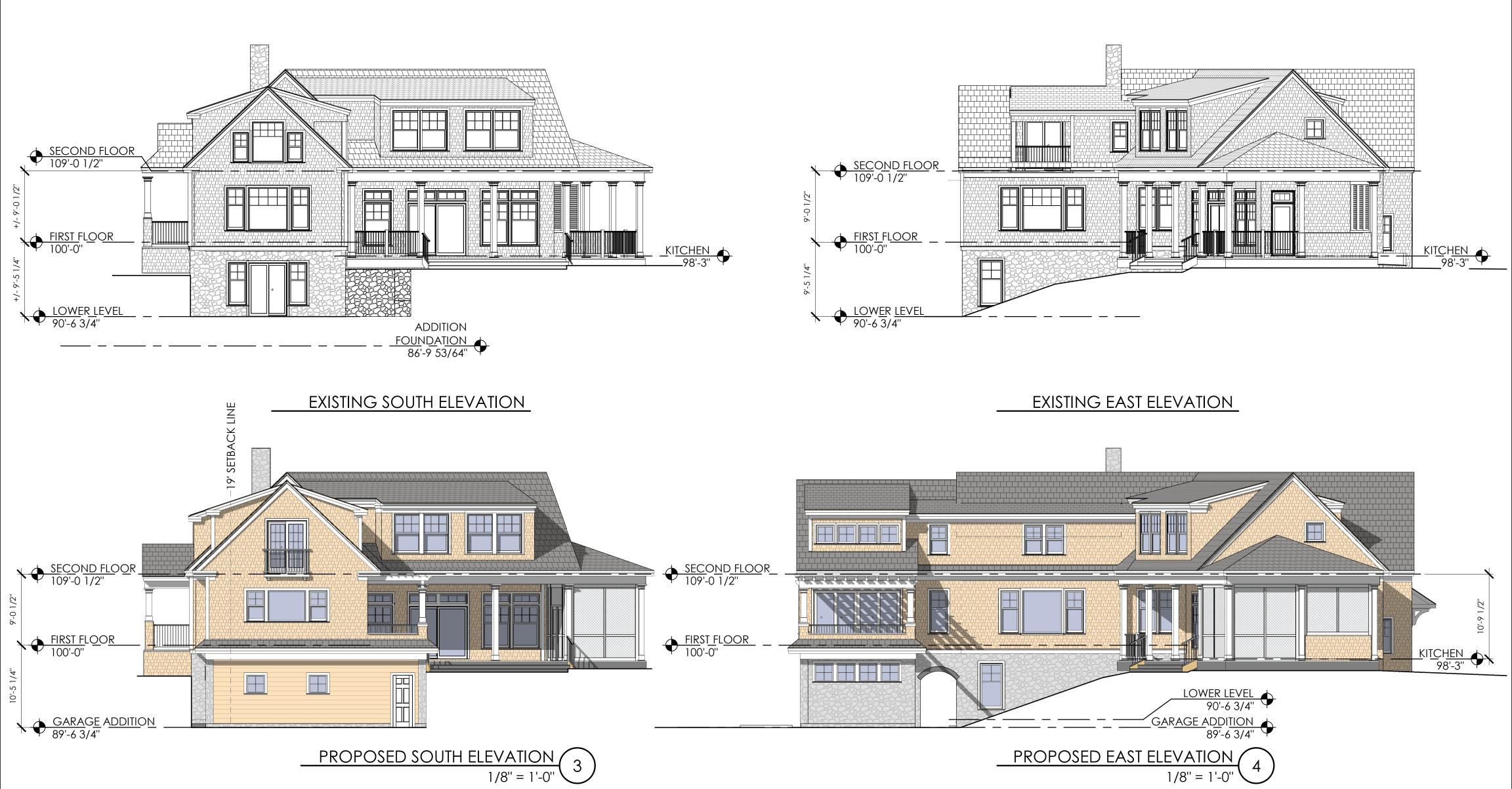
1/8" = 1'-0"

DMA

DESTEFANO
MAUGEL
ARCHITECTS

EXHIBIT B - REV. 2

OCTOBER 11, 2022



SCHEMATIC DESIGN FOR

FOY RESIDENCE

67 RIDGES CT PORTSMOUTH, NH **ELEVATIONS** 

1/8" = 1'-0"







PROPOSED FRONT VIEW

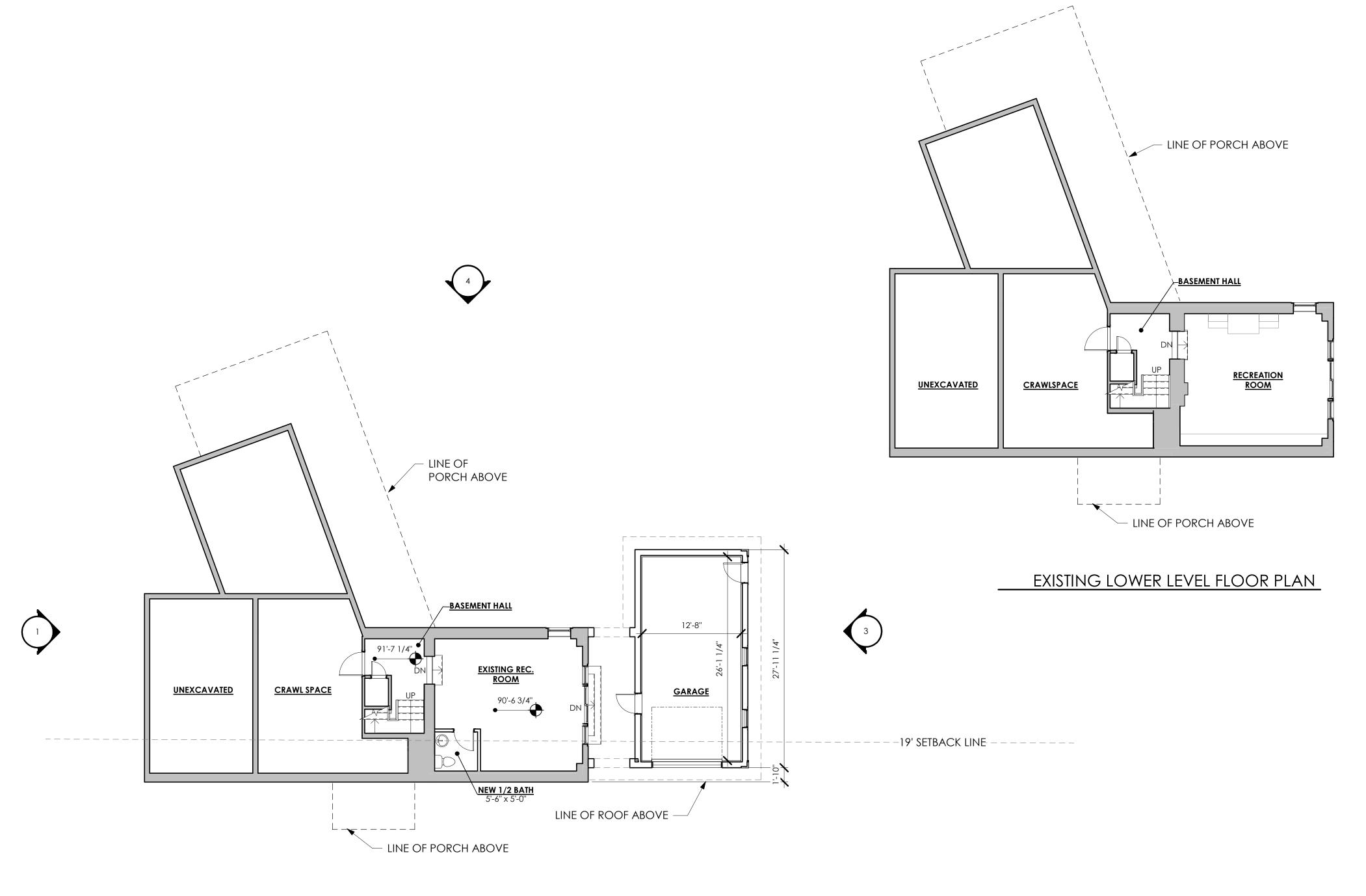
PROPOSED REAR PERSPECTIVE

SCHEMATIC DESIGN FOR

FOY RESIDENCE

67 RIDGES CT PORTSMOUTH, NH PERSPECTIVES





PROPOSED LOWER LEVEL FLOOR PLAN



SCHEMATIC DESIGN FOR

FOY RESIDENCE

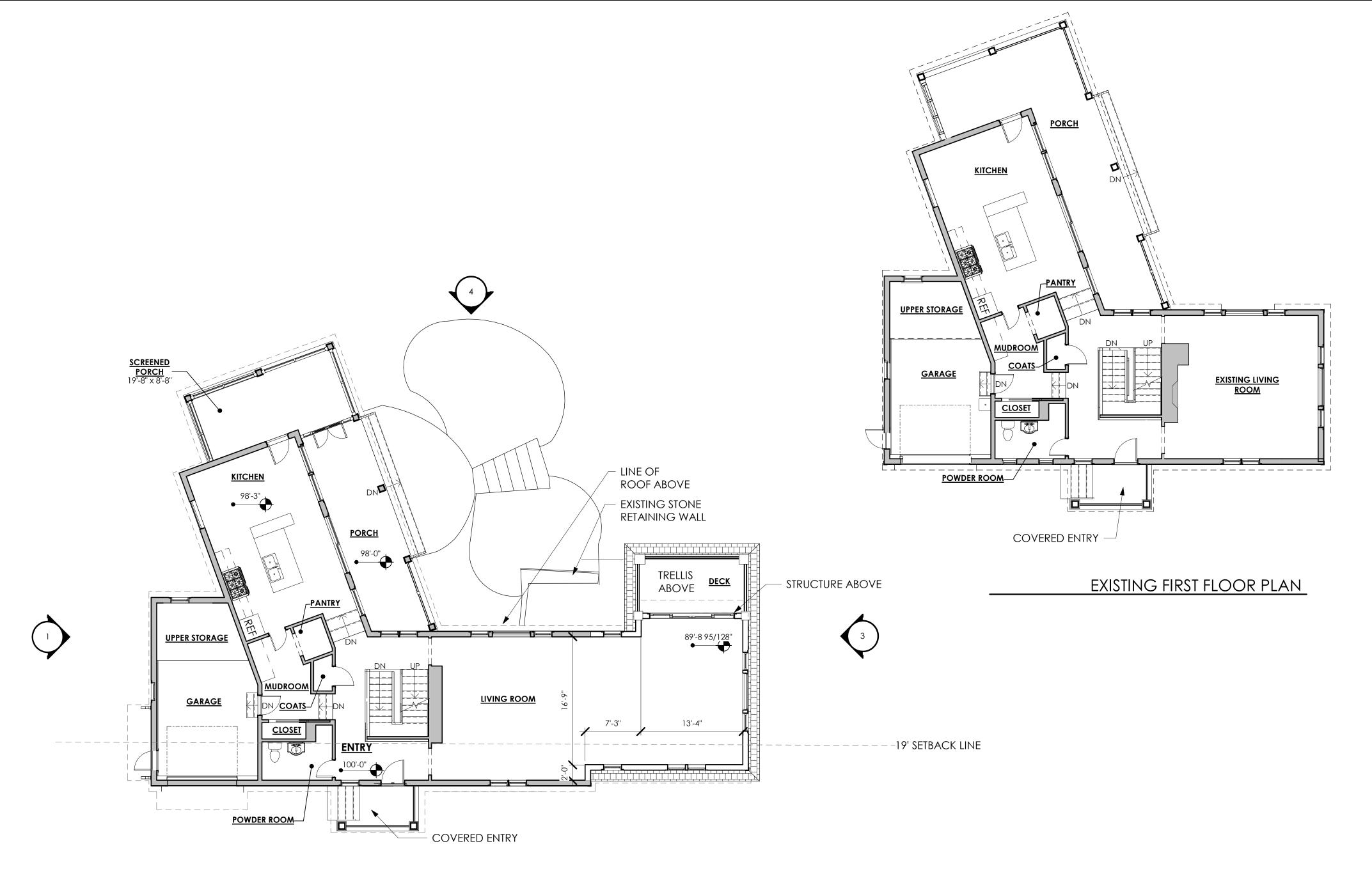
67 RIDGES CT PORTSMOUTH, NH FLOOR PLAN

1/8" = 1'-0"



DMA

DESTEFANO
MAUGEL
ARCHITECTS



PROPOSED FIRST FLOOR PLAN

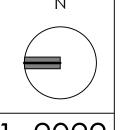


SCHEMATIC DESIGN FOR

FOY RESIDENCE

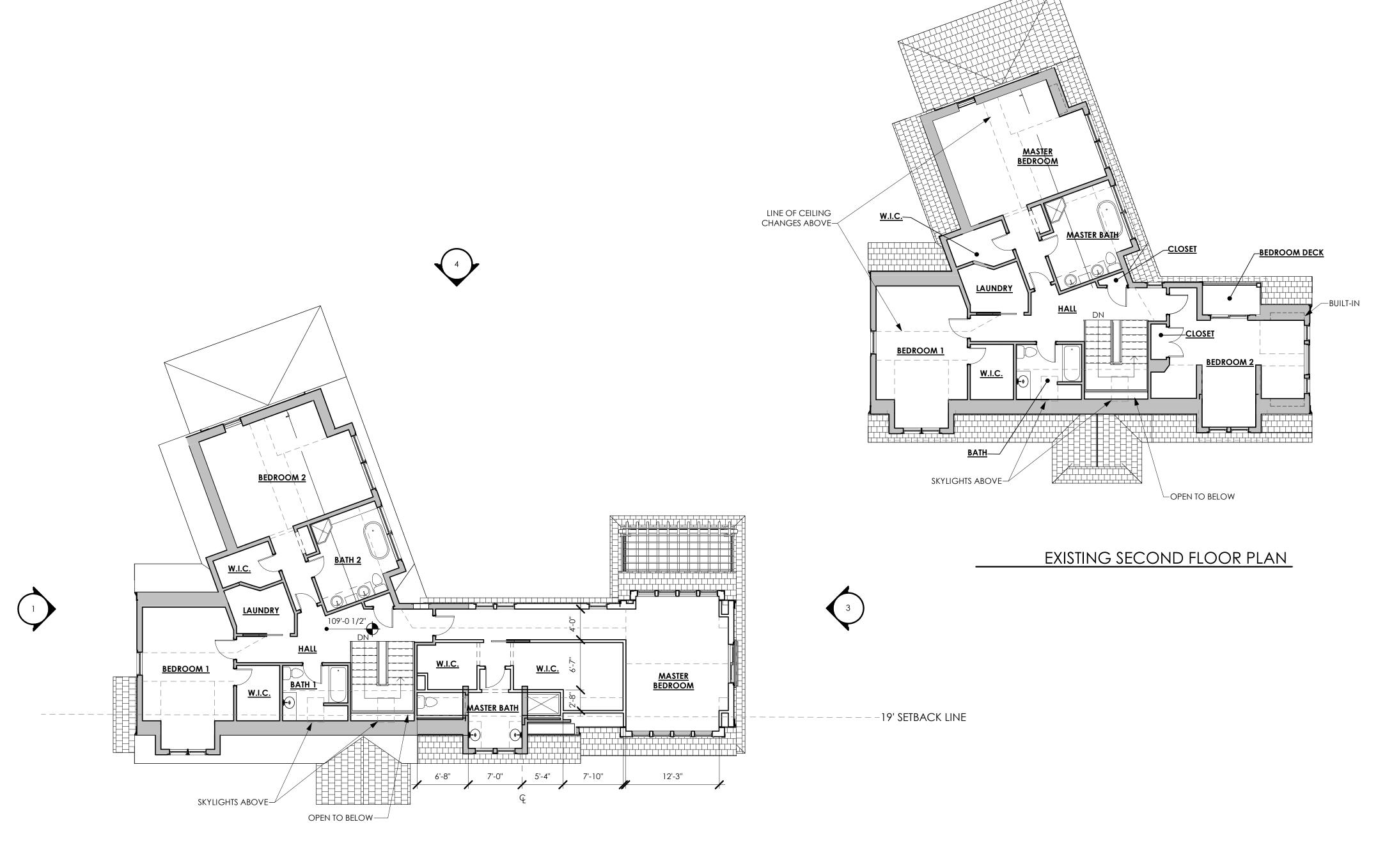
67 RIDGES CT PORTSMOUTH, NH FLOOR PLAN

1/8" = 1'-0"



OCTOBER 11, 2022





PROPOSED SECOND FLOOR PLAN

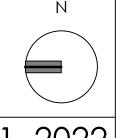


SCHEMATIC DESIGN FOR

FOY RESIDENCE

67 RIDGES CT PORTSMOUTH, NH FLOOR PLAN

1/8" = 1'-0"



OCTOBER 11, 2022





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

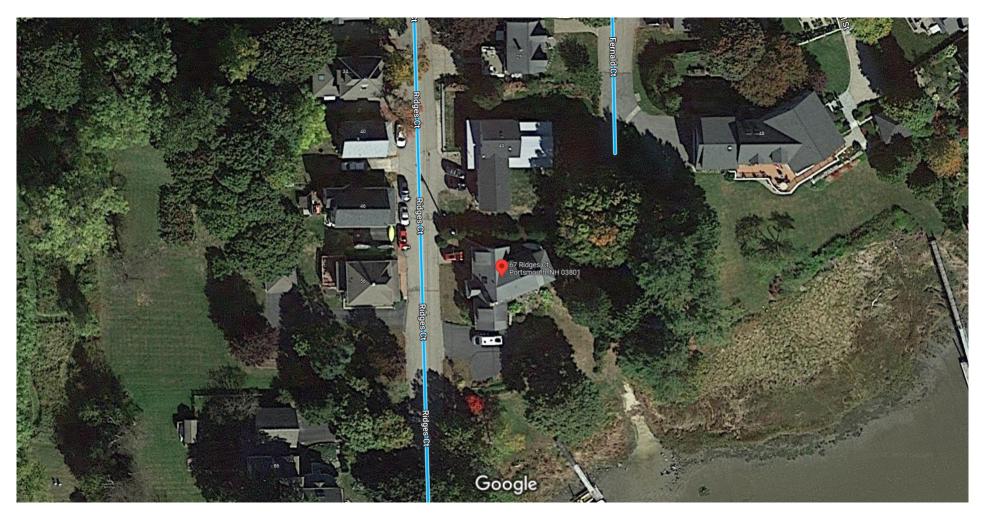




Image capture: Sep 2011 © 2022 Google

Portsmouth, New Hampshire

Google

Street View - Sep 2011



Image capture: Sep 2011 © 2022 Google

Portsmouth, New Hampshire

Google

Street View - Sep 2011



Image capture: Sep 2011 © 2022 Google

Portsmouth, New Hampshire

Google

Street View - Sep 2011



# Hoefle, Phoenix, Gormley & Roberts, Pllc

## ATTORNEYS AT LAW

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

November 4, 2022

#### HAND DELIVERED

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

Re:

Jeffrey and Melissa Foy, Owner/Applicant

67 Ridges Court Tax Map 207/Lot 59 Single Residence B District LU-22-199

Dear Mr. Stith & Zoning Board Members:

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

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

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

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

Very truly yours,

R. Timothy Phoenix

Encl.

cc:

Jeffrey and Melissa Foy (via email)

Ambit Engineering, Inc. (via email) Destefano | Maugel (via email)

Durbin Law (via email)

DANIEL C. HOEFLE

R. TIMOTHY PHOENIX

LAWRENCE B. GORMLEY

STEPHEN H. ROBERTS

KEVIN M. BAUM

GREGORY D. ROBBINS

MONICA F. KIESER

R. PETER TAYLOR

JACOB J.B. MARVELLEY

DUNCAN A. EDGAR

STEPHANIE J. JOHNSON

OF COUNSEL: SAMUEL R. REID JOHN AHLGREN

#### SUPPLEMENTAL MEMORANDUM

TO:

Portsmouth Zoning Board of Adjustment ("ZBA")

FROM:

R. Timothy Phoenix, Esquire

DATE:

November 4, 2022

Re:

Jeffrey and Melissa Foy, Owner/Applicant

Property Location: 67 Ridges Court

Tax Map 207, Lot 59

Single Residence B ("SRB")

Dear Chairman Parrott and Zoning Board Members:

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

#### I. EXHIBITS

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

#### II. FISHER V. DOVER

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

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

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

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

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

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

### III. OPINION REGARDING PROPERTY VALUES

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

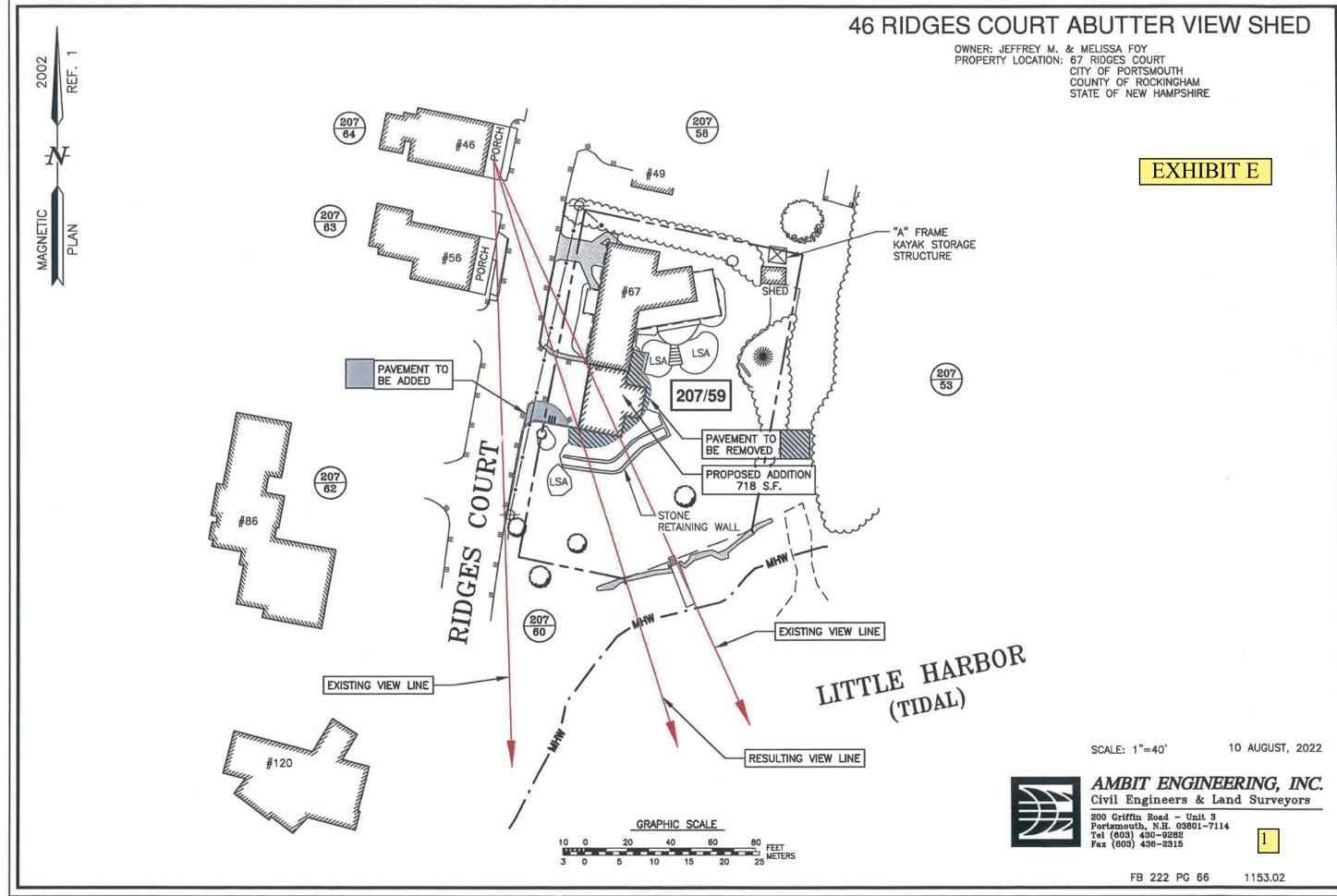
## IV. <u>CONCLUSION</u>

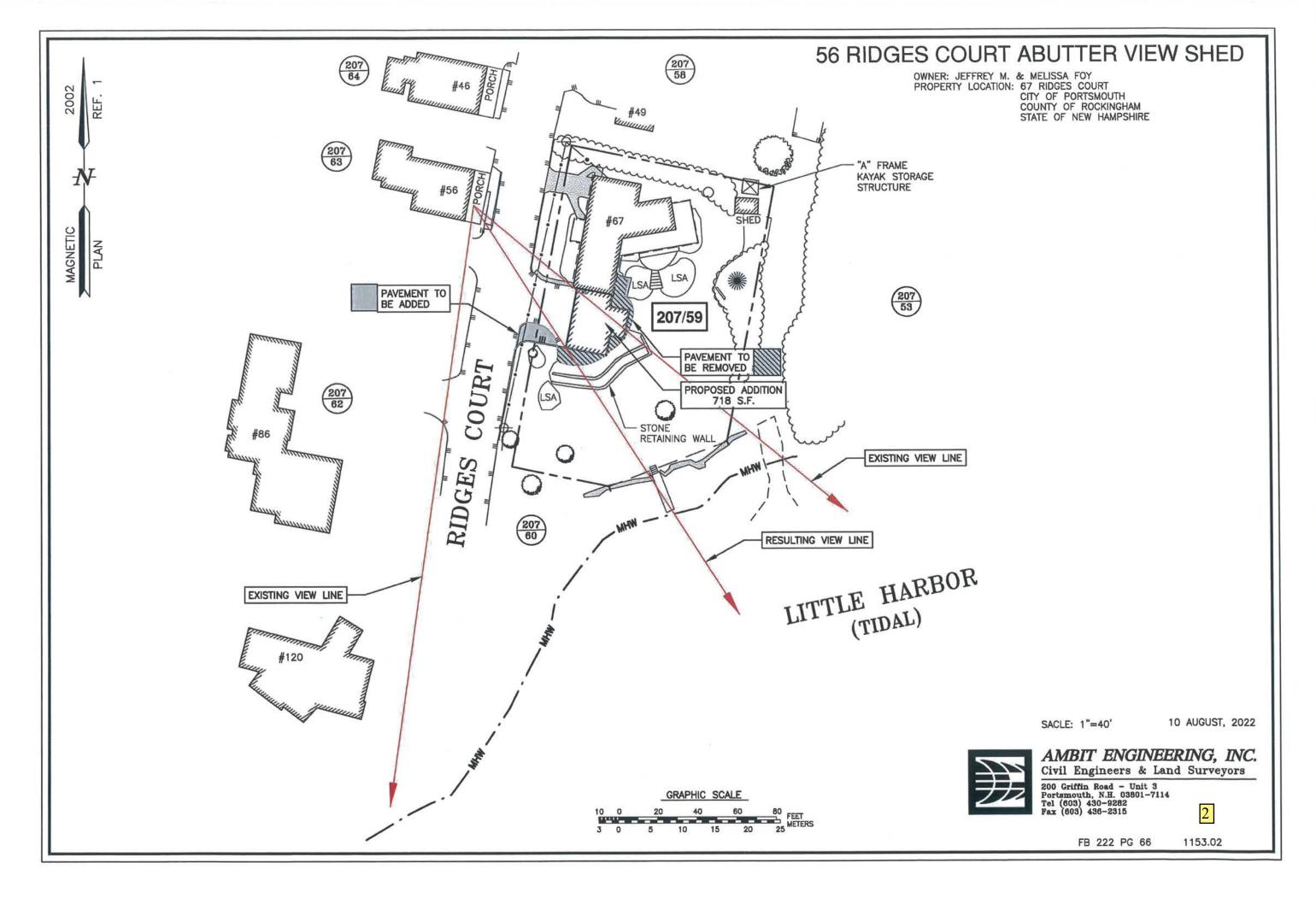
For all the reasons stated here and in our September 28, 2022 submission, we urge the ZBA to consider Foy's variance application on the merits and grant the requested front yard setback relief. We look forward to presenting the Project on November 15, 2022.

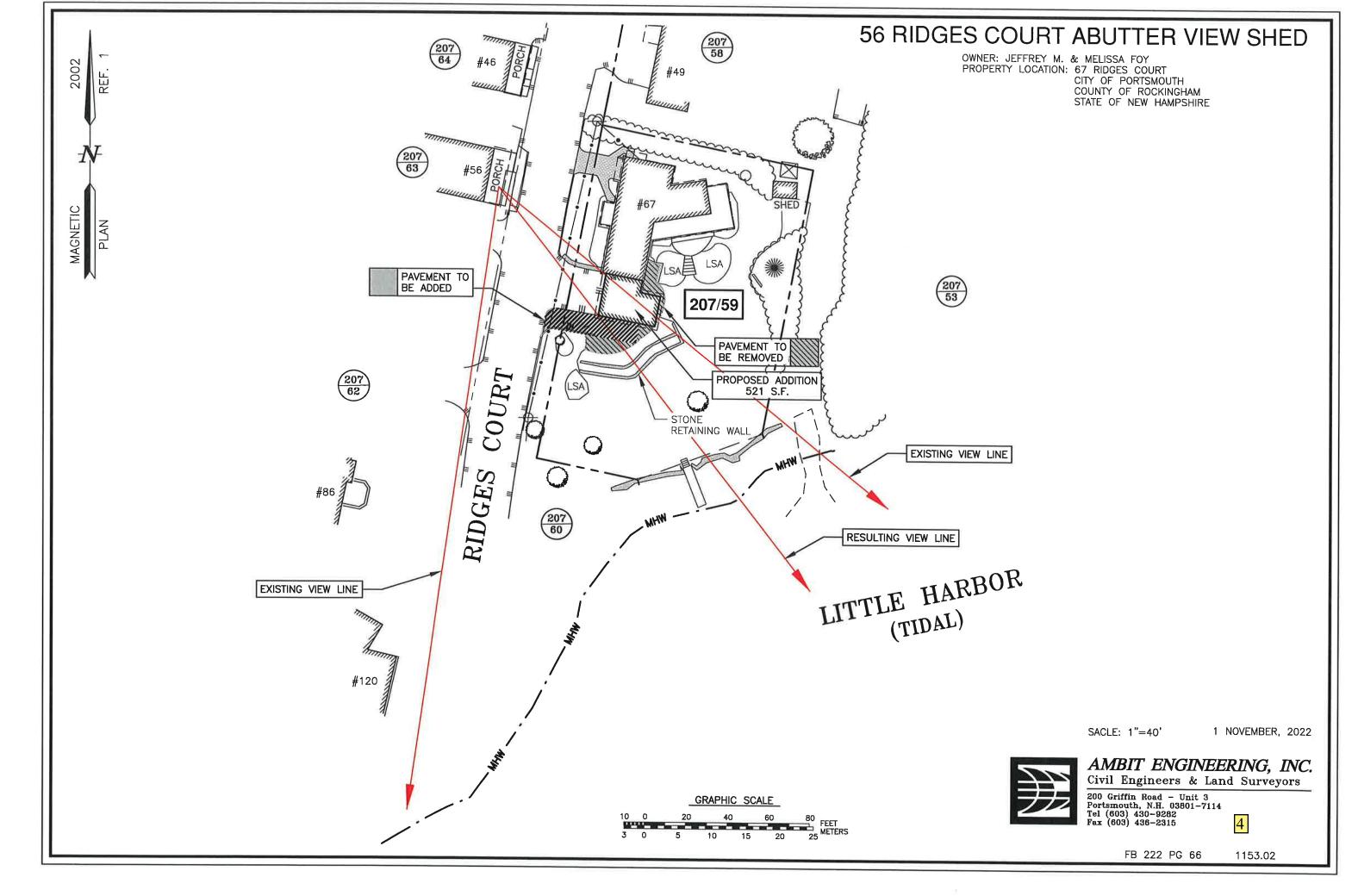
Respectfully submitted, Jeffrey and Melissa Foy

By: R. Timothy Phoenix

J:\UOBS1\UN1100s\Un1150s\UN1153\2022 Building Addition-Variance\Plans & Specs\Site\1153.02 VIEW SHED.dwg, 8/10/2022 10:02:14 AM, SHARP MX-3071 (0300380X00)











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

August 14, 2022

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

Dear Zoning Board of Adjustment Members,

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

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

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

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



Main Office: (603) 610-8500

Each Office is Independently Owned and Operated

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



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

Desirable properties in Portsmouth in the current real estate market are generally selling for higher than full assessed market value even after applying the equalization ratio. For example, the Foy's home at 67 Ridges Court has a tax assessment of just under \$1.8M. After applying the equalization ratio, their full assessed market value would be just over \$2.25M. The Foy's bought their home for \$2.65M or roughly 17-18% higher than the full assessed value. If I were to apply the same percentage to Mrs. Thomson's property, her property would be worth in today's market just under \$1.2M or perhaps as high as \$1.3M, although I have never been inside the home to know the current condition of the property or the systems. I know the Foy's home was fully updated in 2002. Therefore, I feel the market value of Ms. Thomson's home is between \$1.2M - \$1.3M and that value of \$1.2M or \$1.3M would not diminish with a partial loss of water view.

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

Sincerely,

Robin Valeri

Broker

Keller Williams Coastal and Lakes & Mountain Realty

# TECHNICAL ANALYSIS REPORT

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

### Prepared for

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

Prepared by

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

R. Timothy Phoenix, Esquire for Jeffrey & Melissa Foy

INTENDED USERS:

Client, Jeffrey & Melissa Foy, Portsmouth Zoning Board of Adjustment

**PROBLEM TO** 

BE SOLVED:

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

207/59.

INTENDED USE:

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

DATE OF INSPECTION:

August 8th, 2022

DATE OF REPORT:

August 15th, 2022

**USPAP COMPLIANCE:** 

As there is no individual parcel of real estate appraised, this analysis is not a

USPAP Standard 1 or Standard 2 Appraisal Report.

#### **DEFINITION OF MARKET VALUE**

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

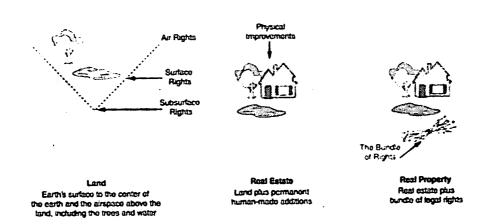
The most probable price which a property should bring in a competitive and open market under all condition's requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation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

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

#### LAND, REAL ESTATE AND REAL PROPERTY

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

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



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

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

SCOPE OF WORK:

I have visited the subject neighborhood and am familiar with its character

having previously resided on the adjoining street.

I have interviewed Realtors, assessors and appraisers to form my

concluded opinion.

# BASIS OF CONCLUSIONS:

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

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

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

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

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

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

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

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

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

# REALTOR ESTIMATED LOSS IN VALUE:

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

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

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

#### EXTRAORDINARY ASSUMPTIONS

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

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

#### **DECRIPTION OF ABUTTER 56 RIDGES COURT**

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

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



### ABUTTER'S DATA

LOCATION: 56 Ridges Court, Portsmouth, NH 03801

ACCESS: East on New Castle Ave, turn right onto Ridges Court

HIGHEST & BEST USE: Residential Use

SALE DATE: None
LIST PRICE: None
SALE PRICE: None
SALE PRICE/SF: None
DEED TYPE Quitclaim

VIEW EASEMENTS: None noted on legal description

SALE CONDITIONS:

No recent sales STATUS AT SALE: No recent sales

SOURCES:

Public records

**CONFIRMED BY:** 

Monica Rose Marcheterre (08/10/2022)

MAP/LOT:

Tax Map 207/Lot 63

LOT SIZE:

.48 acres (+/-)

**WATER FRONTAGE:** 

No direct water access

SHAPE:

Mostly rectangular

TOPOGRAPHY:

Moderately flat

CHARACTER:

Partial water view

**IMPROVEMENTS:** 

Original construction

VISIBILITY:

Partial views of Little Harbor

**COMMENTS:** 

No identified recent sales of abutter 56 Ridges Court, Portsmouth, NH 03801 per public records. Exterior inspection from street notes partial

views of Little Harbor from front of dwelling.

#### SALES COMPARISON APPROACH & MARKET DATA

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



### **SALE #1:**

LOCATION: 39 Holmes Court, Portsmouth, NH 03801

ACCESS: North on Marcy Street, turn right onto Holmes Court

HIGHEST & BEST USE: Residential Use

 SALE DATE:
 03/22

 LIST PRICE:
 \$800,000

 SALE PRICE:
 \$800,000

 SALE PRICE/SF:
 \$663.90/SF

 SALE CONDITIONS:
 Cash/none

STATUS AT SALE: Improved residential

SOURCES: Public records

CONFIRMED BY: Monica Marcheterre (08/11/2022)

MAP/LOT: Map 0207- Lot 0062

LOT SIZE: 0.48 acre

WATER FRONTAGE: No direct water frontage

SHAPE: Mostly rectangular

TOPOGRAPHY: Moderately flat

CHARACTER:
IMPROVEMENTS:

VISIBILITY: SCHOOL DISTRICT:

**COMMENTS:** 

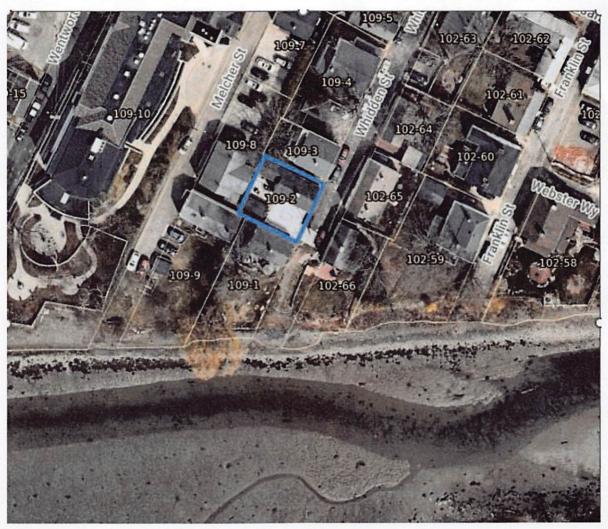
Partial water views
Original construction

Partial views of Piscataqua River

Little Harbor

Recent sale of 39 Holmes Court, Portsmouth, NH 03801 on 03/22/2022 for \$800,000 (NEREN MLS#4902025). Sold as a package deal with 43 Holmes Court, Portsmouth, NH 03801 for a total of \$2,000,000. 43 Holmes Court has direct water access. Realtor confirmation of direct water views from third floor of 38 Holmes Court. This is kept in

the appraiser's work file.



**SALE #2:** 

LOCATION: 43 Whidden Street, Portsmouth, NH 03801

ACCESS: SE on Pleasant Street, take right onto Whidden Street

HIGHEST & BEST USE: Improved residential

 SALE DATE:
 05/13/2022

 LIST PRICE:
 \$1,430,000

 SALE PRICE:
 \$1,430,000

 SALE PRICE/SF:
 \$816.21/sf

SALE CONDITIONS: Conventional/none STATUS AT SALE: Improved residential

SOURCES: Public records

CONFIRMED BY: Monica Rose Marcheterre (08/11/2022)

MAP/LOT: Map 0109/0002 LOT SIZE: 2,613 SF (+/-) WATER FRONTAGE:

No direct water frontage

SHAPE:

Mostly square

TOPOGRAPHY:

Mostly flat

CHARACTER:

Partial water views South Mill Pond

IMPROVEMENTS:

Original construction

VISIBILITY:

Partial water views

SCHOOL DISTRICT:

Little Harbor

COMMENTS:

Recent sale of 43 Whidden Street, Portsmouth, NH 03801, in local NEREN MLS #4909895 sold on 05/13/2022 for \$1,430,000. Partial water views disclosed on listing and noted by appraiser from exterior

site inspection.



### LISTING #3:

LOCATION: 260 Marcy Street, Portsmouth, NH 03801

ACCESS: SE on Pleasant Point Drive, turn left onto Marcy Street

HIGHTEST & BEST USE: Improved residential

SALE DATE: Active
LIST PRICE: \$1,750,000
SALE PRICE: Active listing

SALE PRICE/SF: N/A
SALE CONDITIONS: N/A
STATUS AT SALE: N/A

SOURCES: Public records

CONFIRMED BY: Monica Rose Marcheterre (08/11/2022)

MAP/LOT: Map 0103/Lot 0049 LOT SIZE: 3,049 SF (+/-)

WATER FRONTAGE: No direct water frontage SHAPE: Mostly square moderately

TOPOGRAPHY: Flat

CHARACTER: Partial water views

**IMPROVEMENTS:** 

Original construction Partial water views VISIBILITY:

SCHOOL DISTRICT:

Little Harbor

COMMENTS:

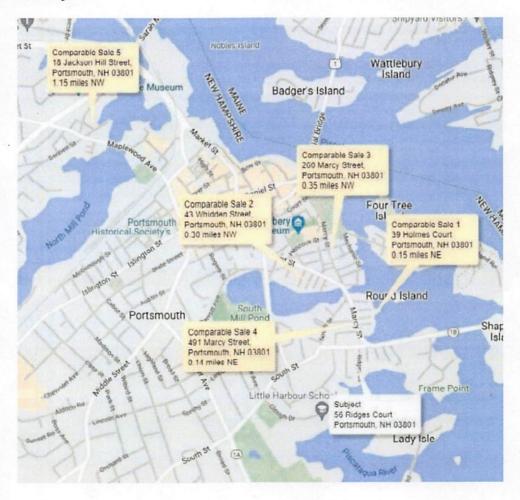
An active listing within the submarket of Portsmouth, NH with accessibility to Little Harbor School district. 260 Marcy Street is listed on local NERENMLS# 4901665 for \$1,750,000 with 142 days on market. This listing is confirmed to have partial water views from the second and

third floor of the dwelling by the listing broker. This is kept

in the appraisers work file.

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

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



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

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

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

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

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

### RECONCILLIATION

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

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

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

### **FINAL CONCLUSIONS**

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

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

Respectfully,

Peter E. Stanhope, NHCG-31

Enclosures: Addenda

Curriculum Vitae NH Certification

# REPORT ADDENDA

MAP/LOT

Tax Map- 207/Lot 59,

LOT SIZE:

0.37 Acres (+/-)

WATER FRONTAGE:

64 Feet (+/-) owned with private dock

SHAPE:

Irregular

TOPOGRAPHY: CHARACTER:

Slightly Sloping Waterfront/Owned

IMPROVEMENTS:

Remodeled Cape

VISIBILITY:

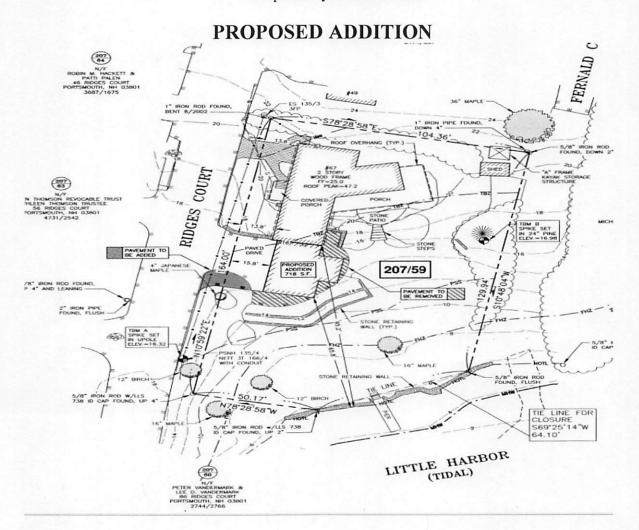
Ridge's Court, 180 degree-water view

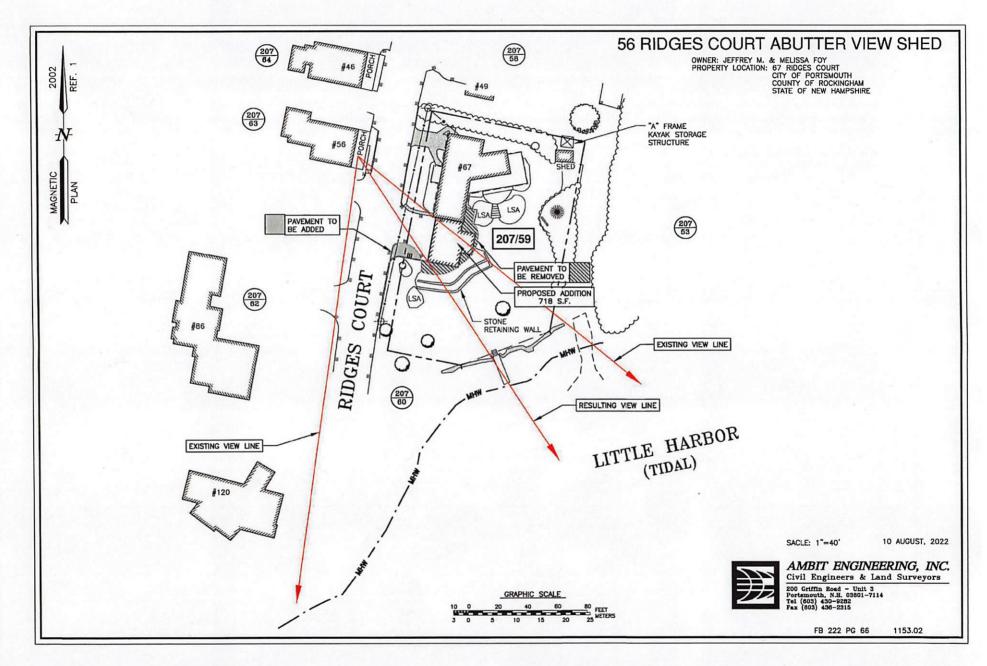
COMMENTS:

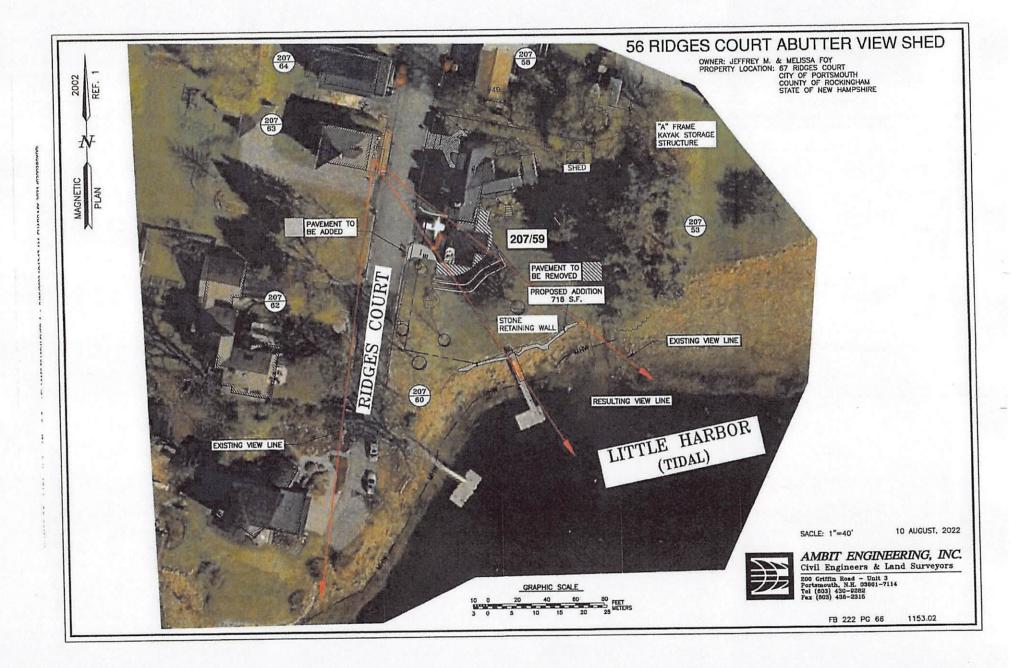
67 Ridge's Court was originally listed for \$2,950,000 on 05/27/2021, with 94 days on market, and closed on

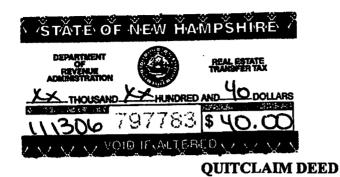
09/03/2021 for \$2,650,000 through cash transaction. Market conditions during listing months were increasing at 1% a month, 12 % annually rounded. The subjects market value was identified by recent sale, and estimated at \$2,650,000

retrospectively at time of sale.









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

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

With Quitclaim Covenants,

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

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

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

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

Signed this 7<sup>th</sup> day of November, 2006.

Cathleen Y. Thomson

STATE OF NEW HAMPSHIRE ROCKINHAM, SS

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

Before me,

Charles A. Griffin, Notary Pr

My commission expires: 02/11/09

#### **56 RIDGES CT**

Location 56 RIDGES CT

Mblu 0207/ 0063/ 0000/ /

Acct# 28716

Owner THOMSON KATHLEEN Y

**REVOC TRUST 2006** 

**PBN** 

Assessment \$757,200

**Appraisal** \$757,200

PID 28716

**Building Count** 1

#### **Current Value**

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

#### **Owner of Record**

Owner

THOMSON KATHLEEN Y REVOC TRUST 2006

Sale Price \$0

Co-Owner

THOMSON KATHLEEN Y TRUSTEE

Certificate

Address

56 RIDGES CT

Book & Page 4731/2542

PORTSMOUTH, NH 03801

Sale Date

11/13/2006

#### **Ownership History**

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

#### **Building Information**

**Building 1: Section 1** 

Year Built:

1927

Living Area:

1,596

Replacement Cost:

\$333,824

**Building Percent Good:** 

65

# Replacement Cost

Less Depreciation:

\$217,000

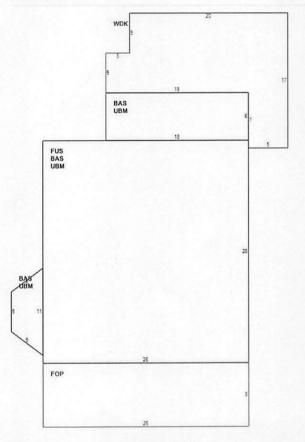
Building Attributes			
Field	Description		
Style	Conventional		
Model	Residential		
Grade:	В		
Stories:	2		
Occupancy	1		
Exterior Wall 1	Asbest Shingle		
Exterior Wall 2			
Roof Structure:	Gable/Hip		
Roof Cover	Asph/F Gls/Cmp		
Interior Wall 1	Plastered		
Interior Wall 2			
Interior FIr 1	Carpet		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

# **Building Photo**



(https://images.vgsi.com/photos2/PortsmouthNHPhotos/\00\00\02\59.JPG)

# **Building Layout**



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

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

#### **Extra Features**

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

#### Land

Use Code 1012 Land Line Valuation

Use Code 1012 Size (Acres) 0.48

Use Code1012Size (Acres)0.DescriptionSFR WATERINFLFrontage

 Zone
 SRB
 Depth

 Neighborhood
 101
 Assessed Value
 \$529,900

 Alt Land Appr
 No
 Appraised Value
 \$529,900

Category

# Outbuildings

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

#### **Valuation History**

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

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



July 13, 2022

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

Dear Zoning Board of Adjustment Members,

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

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

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

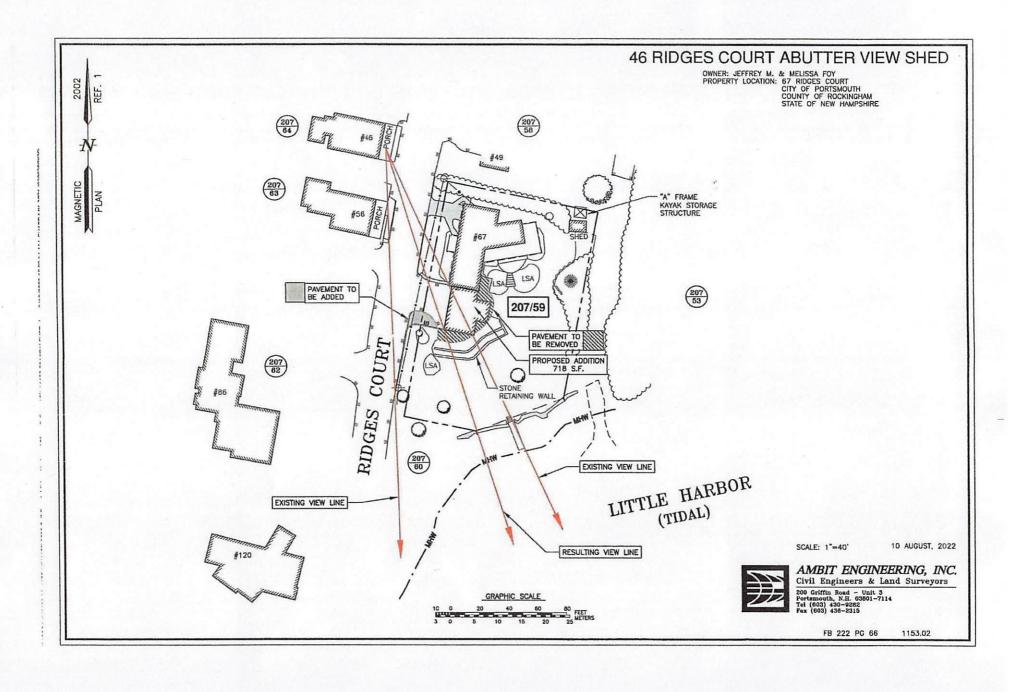
In sum, the Foy's proposed expansion at 67 Ridges Court will be highly detrimental to the neighborhood, result in loss of property value for 56 Ridges Court, and dimmish the enjoyment that Mrs. Thomson and her family have treasured from Little Harbor views for nearly a century.

Sincerely,

Ali Goodwin, Realtor® • Luxury Division

Haven Homes + Lifestyle at Keller Williams Coastal and Lakes & Mountains Realty

Cell: 603-957-8466 • Email: ali@aligoodwin.com





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

**EDUCATION:** 

American Institute of Real Estate Appraisers

University of New Hampshire

1980 - 1984

1960 - 1964

**EXPERIENCE:** 

The Stanhope Group - Chief Appraiser

1967 - Present

Appraisal of complex residential, industrial and commercial real estate throughout northern New England

for corporations, government agencies, financial institutions, law firms, and private individuals.

RELATED EXPERIENCE:

Adjunct Faculty, University of New Hampshire

1981 - 1999

Adjunct Faculty, Real Estate Center, University of Maine

1983 - 1990

ADDITIONAL EXPERIENCE:

National Business Institute

Foreclosure: Appraisal Review, Webinar Speaker

Appraisals in Estate Planning and Administration, Webinar Speaker

Maine Public Television

Format development and moderator of a six hour television special on residential and income property valuation

New Hampshire Commercial Investment Board of Realtors

Program presenter for "A Look at the Rate Value Relationship"

New Hampshire Bar Association

Program presenter for "The Appraisal In Tax Abatement", "Introduction and Overview of Divorce Litigation", and

"Use of Experts in Divorce Litigation"

New Hampshire Trial Lawyers Association

Program presenter for the Annual Family Law Forum

Expert Witness (Testimony Before):

State of New Hampshire

Circuit Courts and Superior Courts

Board of Taxation and Land Appeal

State of Maine - York and Cumberland Superior Courts

U.S. Bankruptcy Court - Manchester, NH; Rutland, VT and Portland, ME

U.S. District Court - Concord, NH; Boston, MA, Worcester, MA

#### **DESIGNATIONS, CERTIFICATIONS & AFFILIATIONS:**

Appraisal Institute

Practicing Affiliate Member

National Association of Realtors, Appraisal Section

General Accredited Member

State of New Hampshire

Certified General Real Estate Appraiser

Licensed Real Estate Broker

State of Maine

Certified General Real Estate Appraiser

#### OFFICERSHIPS, COMMITTEES & ACTIVITIES:

New Hampshire Mortgage Banker's Association

Former Board of Directors Member

New Hampshire Commercial and Industrial Realtors

Former Board of Directors Member New Hampshire Housing Finance Authority

Reverse Elderly Equity Loan Study Committee, Single Family Committee

National Association of Realtors

National Appraisal Committee Appraisal Section, Former NH Delegate

City of Portsmouth Economic Development Loan Program

Former Loan Review Board Member

Strafford County Regional Planning Commission Former Member

Town of Durham

Historic District Commission (Chairman 2012 - 2017)

2011 - 2018

Oyster River Advisory Committee

NH Rivers Management and Protection Program

2011 - 2012

# HOEFLE, PHOENIX, GORMLEY & ROBERTS, PLLC

127 Parrott Avenue | Portsmouth, NH, 03801 Telephone: 603.436.0666 | Facsimile: 603.431.0879 | www.hpgrlaw.com

March 7, 2023

#### HAND DELIVERED

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

Re:

Jeffrey and Melissa Foy, Owner/Applicant

67 Ridges Court Tax Map 207/Lot 59

Single Residence B District

LU-22-199

Dear Mr. Stith & Zoning Board Members:

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

Exhibit B-Rev.3- 3/21/23 Architectural Plans-by DeStefano Maugel Architects

This plan set brings the architectural design up to date. The primary changes from the previously submitted architectural plans are a rear deck, which requires no zoning relief, and an expanded front dormer in the roofline to the right of the main entryway. See page 1 of the exhibit for the Site Plan view, and page 2, Proposed West Elevation for the building elevation view. The dormer is expanded to create space for a master bath.

Relief is required because slightly over 50% of the expanded 16 foot wide dormer is within the 19 foot front setback, although no closer than other areas such as the front entryway which has previously been granted relief. The dormer is approximately 14 feet from the front lot line, with the front of the home approximately 13.5 feet.

DUNCAN A. EDGAR

The arguments supporting compliance with the 5 variance requirements are essentially the same as addressed in our previous memoranda, which we will address at the hearing scheduled for March 21, 2023.

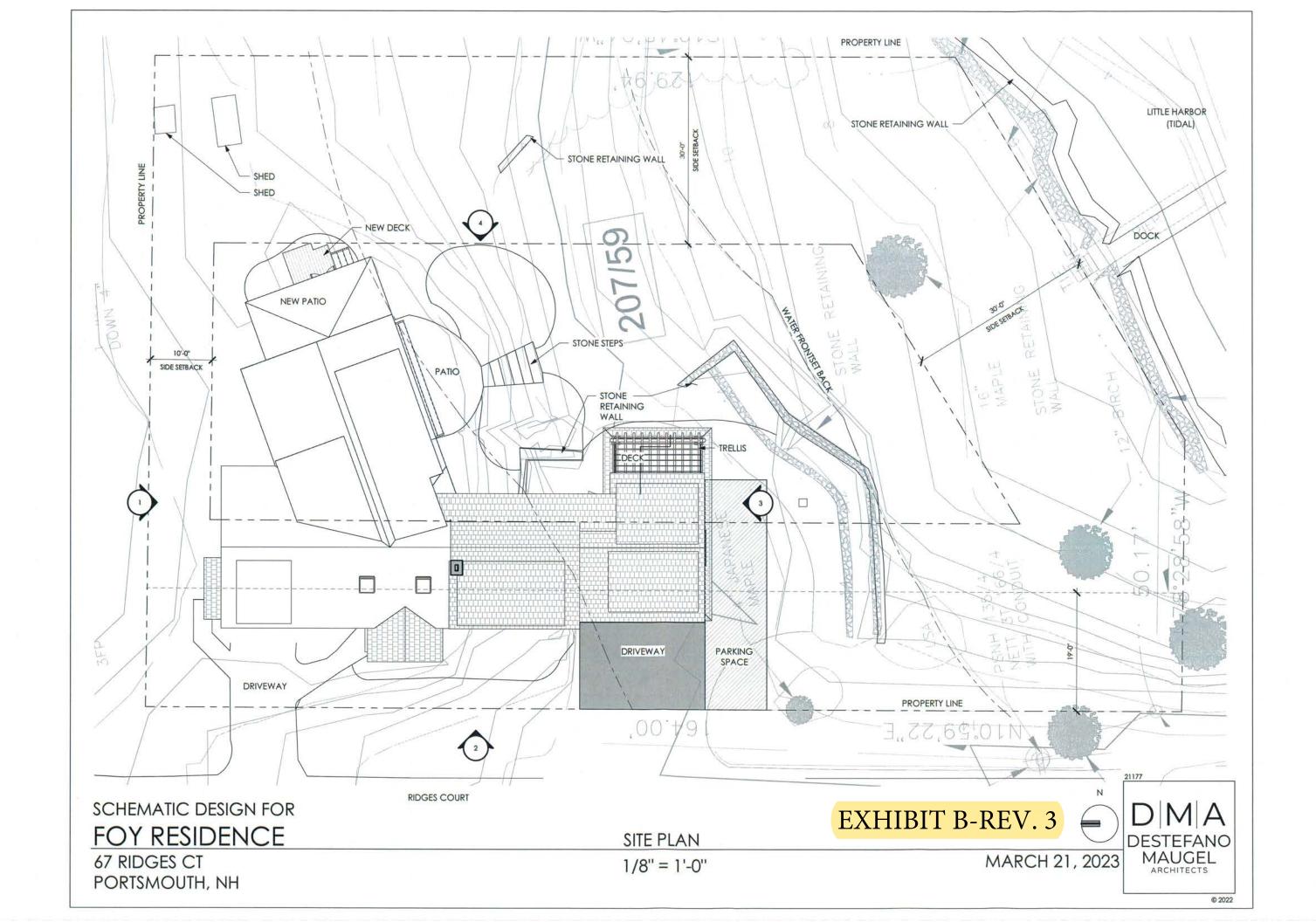
Very truly yours,

R. Timothy Phoenix

Encl.

cc: Client (via email)

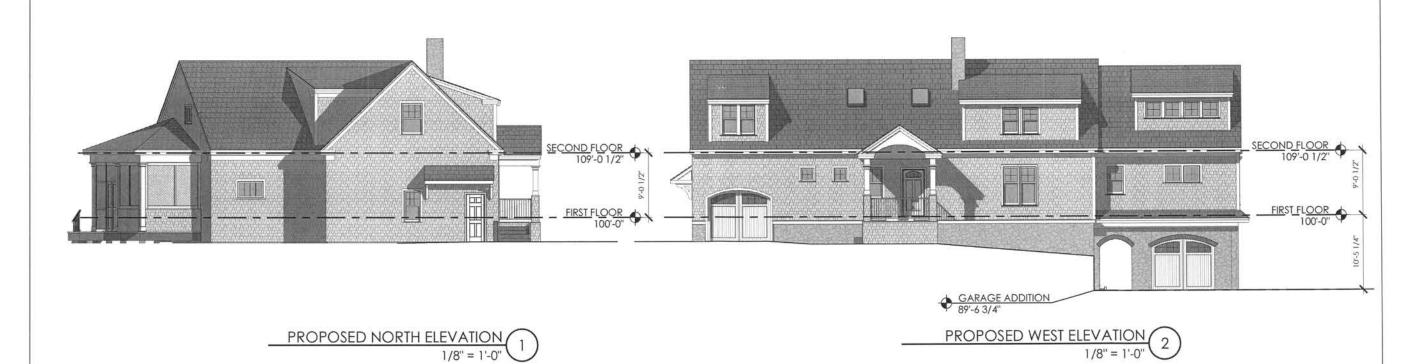
Ambit Engineering, Inc. (via email) DeStefano | Maugel (via email)





EXISTING NORTH ELEVATION

EXISTING WEST ELEVATION



SCHEMATIC DESIGN FOR

FOY RESIDENCE

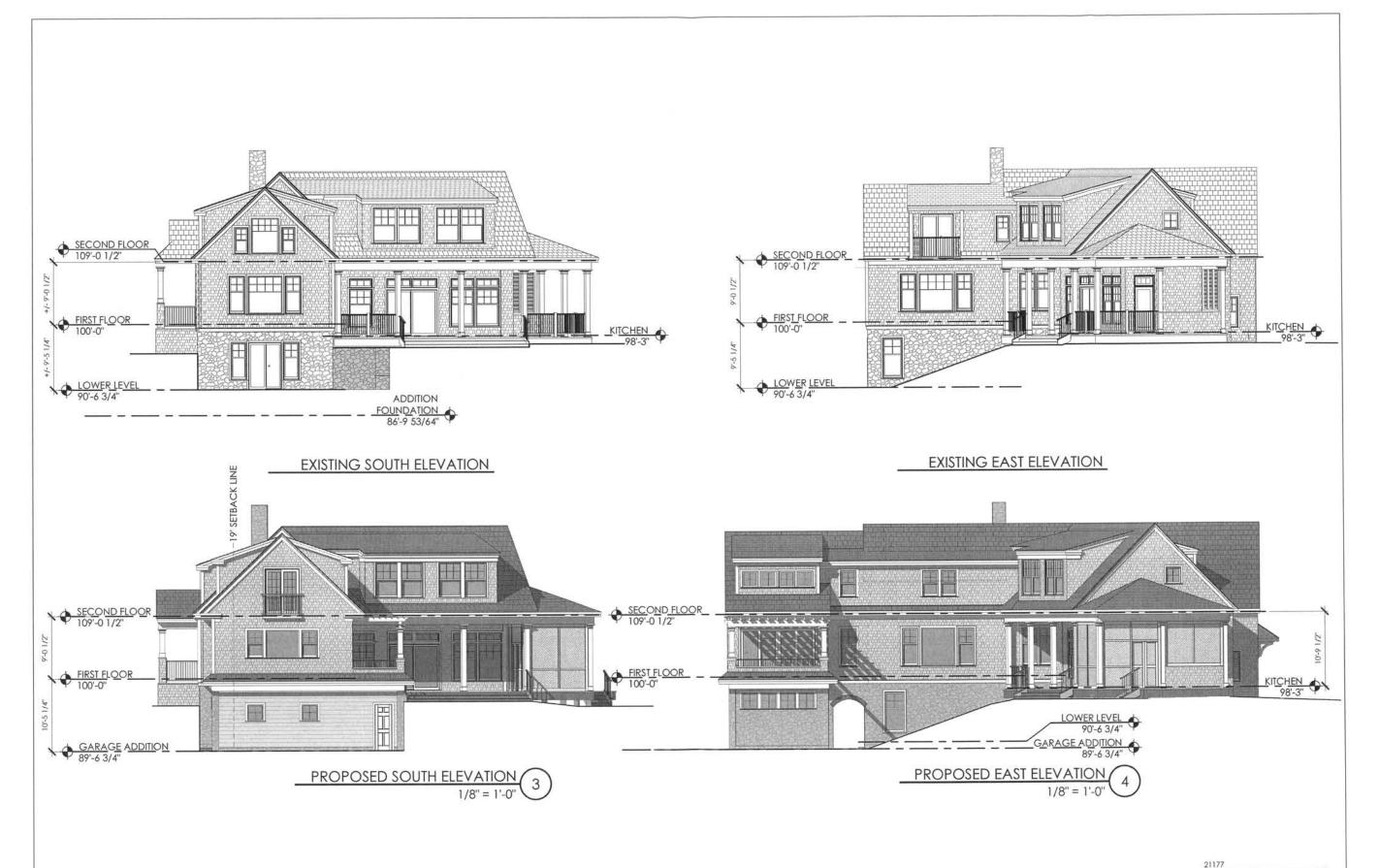
67 RIDGES CT PORTSMOUTH, NH **ELEVATIONS** 

1/8" = 1'-0"

MARCH 21, 2023



© 2022



SCHEMATIC DESIGN FOR

FOY RESIDENCE

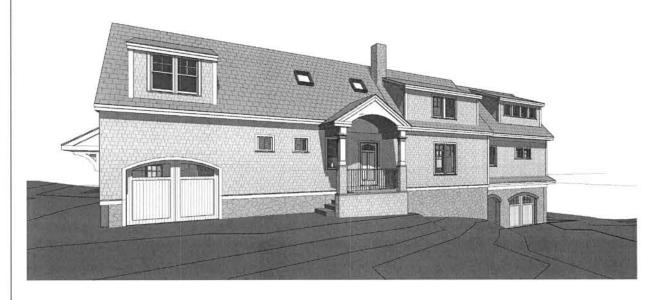
67 RIDGES CT PORTSMOUTH, NH **ELEVATIONS** 

1/8" = 1'-0"

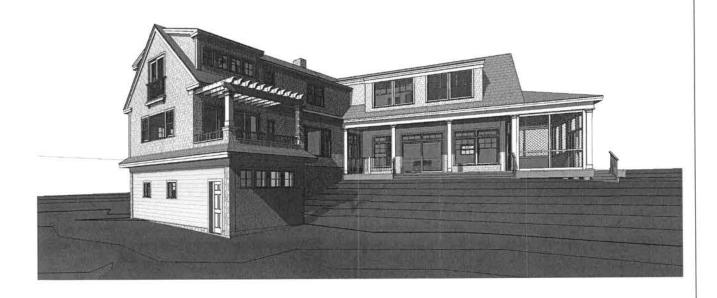
MARCH 21, 2023



© 2022



PROPOSED FRONT VIEW



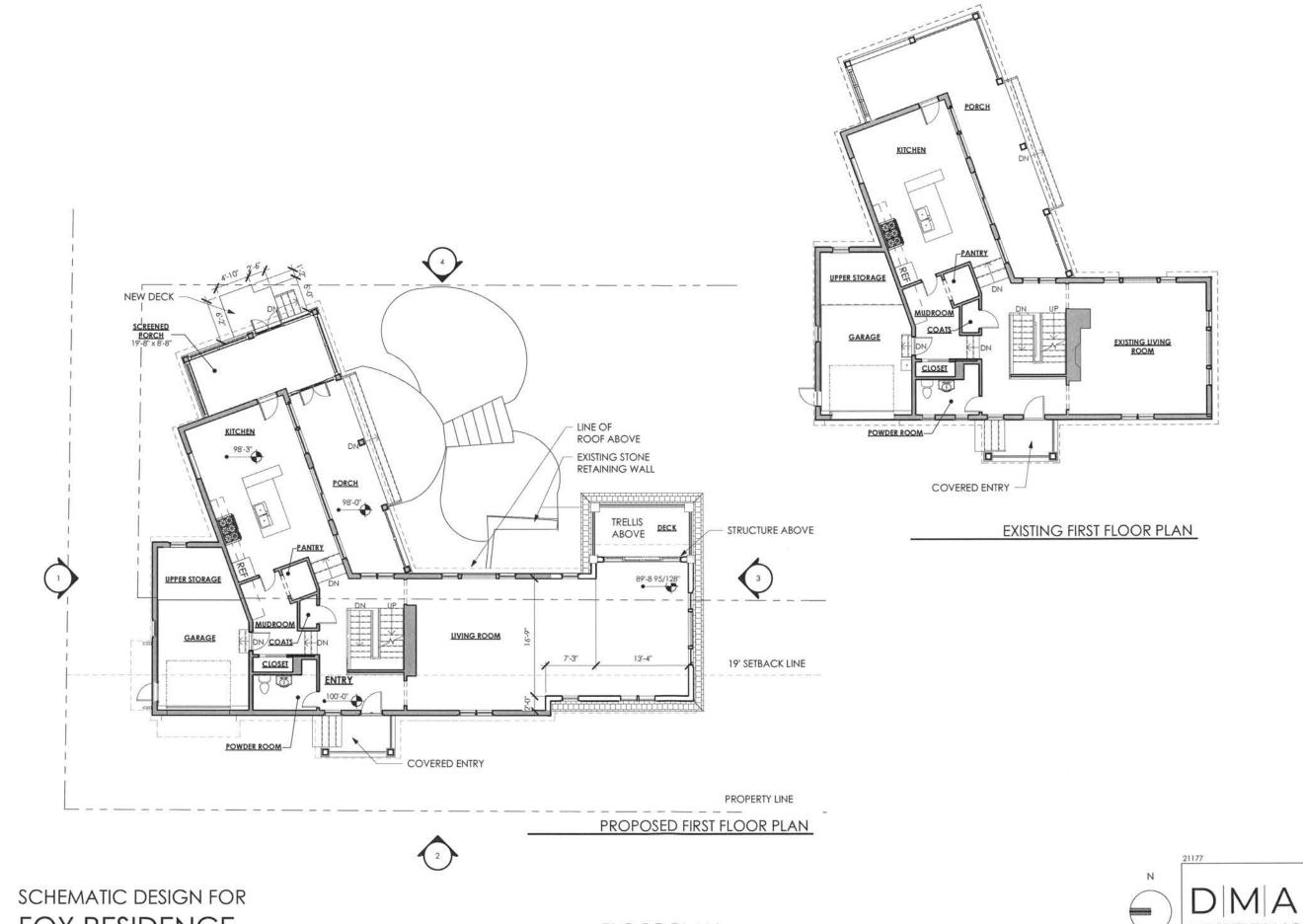
PROPOSED REAR PERSPECTIVE

SCHEMATIC DESIGN FOR

FOY RESIDENCE

67 RIDGES CT PORTSMOUTH, NH **PERSPECTIVES** 





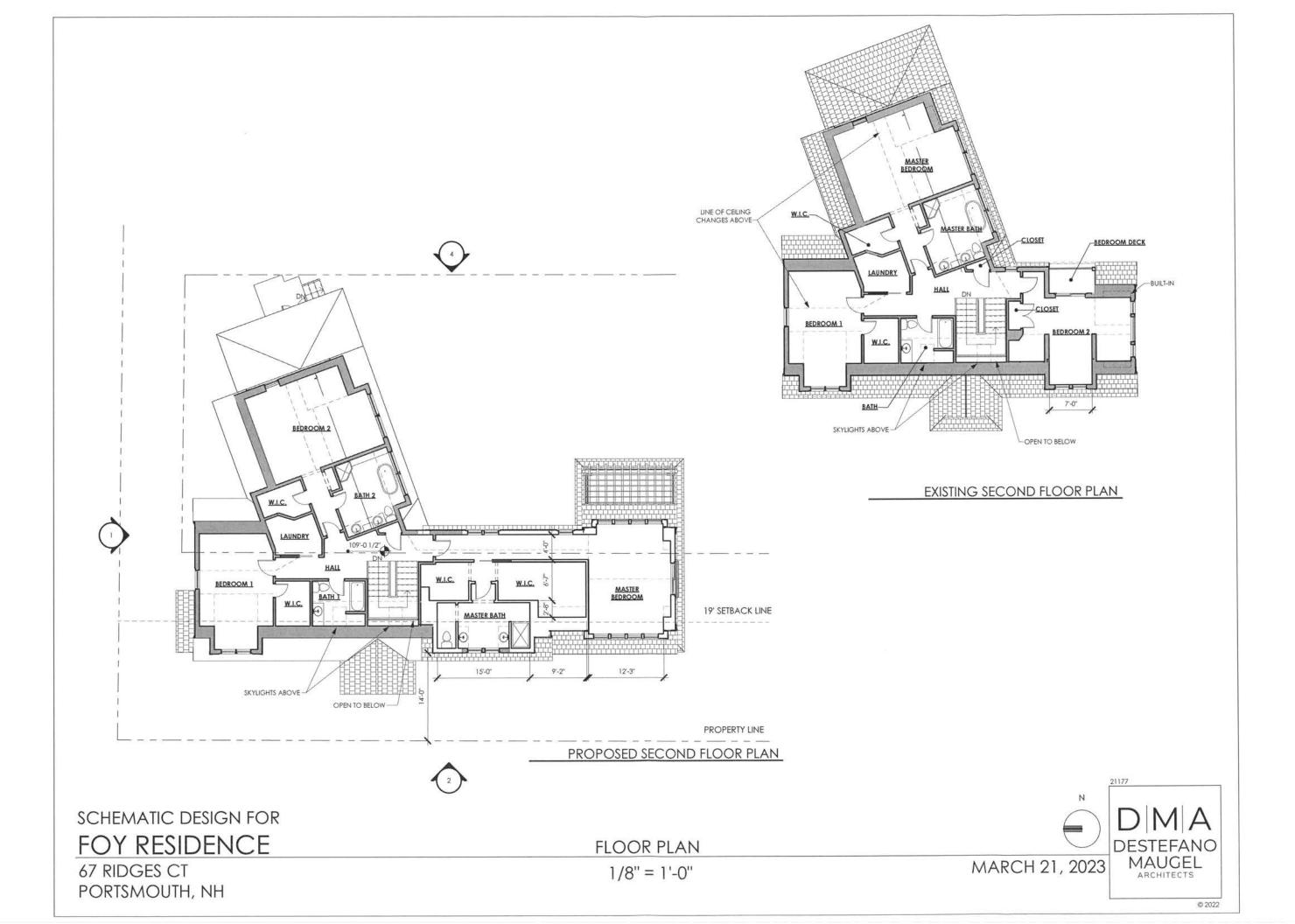
FOY RESIDENCE

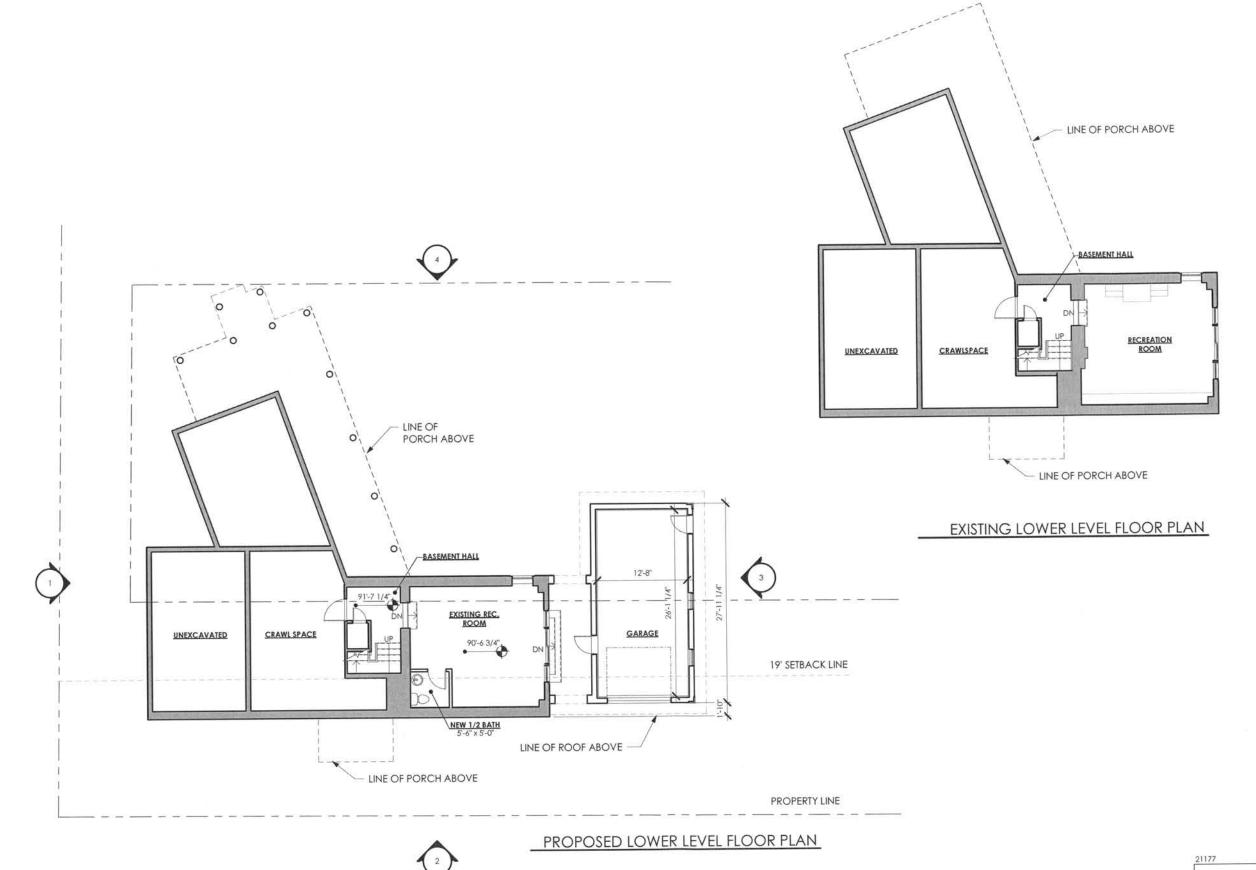
67 RIDGES CT PORTSMOUTH, NH FLOOR PLAN

1/8" = 1'-0"



MARCH 21, 2023







SCHEMATIC DESIGN FOR

FOY RESIDENCE

67 RIDGES CT PORTSMOUTH, NH FLOOR PLAN

1/8" = 1'-0"



DESTEFANO MAUGEL

MARCH 21, 2023

#### **II. OLD BUSINESS**

C. The request of Michael Knight (Owner), for property located at 55 Mangrove Street whereas relief is needed to replace existing 6 foot chain link fence with 8 foot cedar fence which requires the following: 1) A Variance from Section 10.515.13 to allow an 8 foot fence on the rear and side lot lines where a 6 foot maximum is allowed. Said property is located on Assessor Map 219 Lot 7 and lies within the Single Residence B (SRB) District. (LU-23-15)

# **Existing & Proposed Conditions**

	Existing	Proposed	Permitted / Required	
Land Use:	Single-family	8-foot fence	Primarily residential	
Lot area (sq. ft.):	9,583	9,583	15,000	min.
Lot Area per Dwelling	9,583	9,583	15,000	min.
Unit (sq. ft.):				
Lot depth (ft):	162	162	100	min.
Street Frontage (ft.):	60	60	100	min.
Primary Front Yard	37	37	30	min.
<u>(ft.):</u>				
Right Yard (ft.):	8	8/0 (fence)	10	min.
Left Yard (ft.):	20	20/0 (fence)	10	
Rear Yard (ft.):	82	82/0 (fence)	30	min.
Height (ft.):	<35	<35	35	max.
		8' (fence)	6' (fence)	
Building Coverage	14.5	14.5	20	max.
<u>(%):</u>				
Open Space	>40	>40	40	min.
Coverage (%):				
Parking:	2	2	2	
Estimated Age of	1958	Variance request(s) shown in red.		
Structure:				

# Other Permits/Approvals Required

Building Permit

# **Neighborhood Context**





# **Previous Board of Adjustment Actions**

**April 26, 1988** – Relief from Zoning Ordinance including:

Variance from Article III, Section 10-302 requested to permit construction of a 10'x 21' deck and 7'x 8' landing with stairs with a 6' right yard in a district where a 10' yard is required.

Applicant **withdrew the request** in writing the night of the meeting.

## **Planning Department Comments**

The applicant is requesting a variance to allow an 8 foot fence along the side and rear lot lines as shown in the highlighted plan in the application. Per Section 10.515.13, a 6-foot fence is the maximum allowed along the rear and side yard of any property.

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

#### **Review Criteria**

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

- 1. Granting the variance would not be contrary to the public interest.
- 2. Granting the variance would observe the spirit of the Ordinance.
- 3. Granting the variance would do substantial justice.
- 4. Granting the variance would not diminish the values of surrounding properties.
- 5. The "unnecessary hardship" test:
  - (a) The property has <u>special conditions</u> 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.

Michael Knight 55 Mangrove St. Portsmouth, NH 03801

2/28/2023

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

Dear Board Members,

Thank you for your consideration of approving the variance for an 8' tall cedar board fence to replace an existing, dilapidated chain link fence. Due to the steep grade dip in the back of my and my neighbors' properties, I'd like to improve not only the type of fence from chain link to cedar, but the height as well. This will create a uniform height with the existing 6' cedar fence currently in place next to the house where the grade is higher, improving the aesthetic view of the property from the street by compensating for the dip in grade in the back of the property.

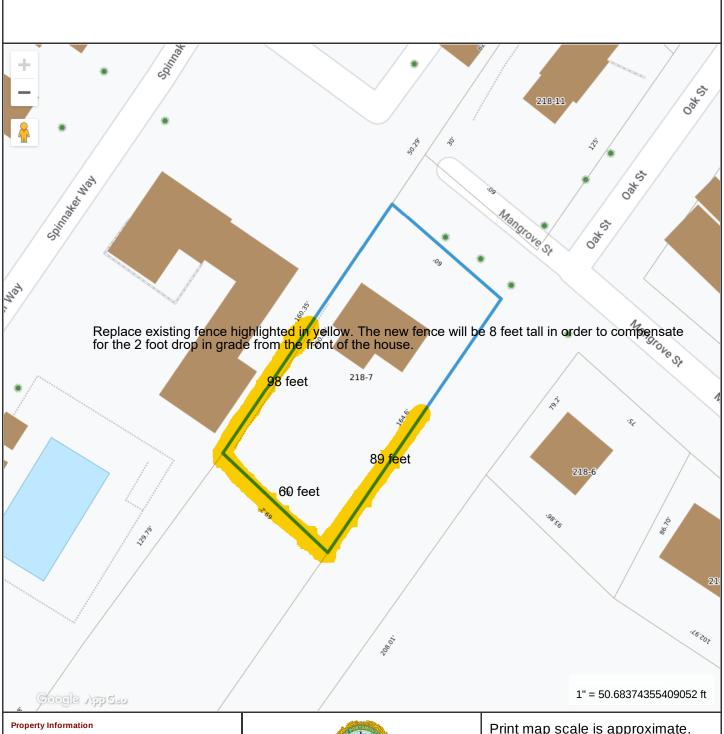
- 10.233.21 Variance will not be contrary to the public interest.
  - If approved, please note that the variance will not be contrary to public interest due to the location of my property which is situated on a dead-end street and is the last house.
     There are no houses immediately beside any section of the fence.
- 10.233.22 The spirit of the Ordinance will be observed.
  - I certainly understand the need for this type of variance for front yard/street side fencing, or in the downtown or historic district where properties and neighbors are much closer together.
  - In my situation, the grade of my property as well as my neighbors' is far steeper in the back yard than the front. Installing a taller fence will compensate for that grade and create a uniform height when viewing the property from the street or from the sides of the house.
- 10.233.23 Substantial justice will be done.
  - This improvement will greatly improve the visual appeal of both me and my neighbors, as well as provide more privacy for all of us.
- 10.233.24 The values of surrounding properties will not be diminished.
  - Replacing the current dilapidated chain link fence with a professionally installed cedar fence will most certainly improve the property value for all of us. The current fence, in my opinion is a bit of an eye sore.
- 10.233.25 Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship.
  - My neighbor to the left is the only one within view of the back yard. She greatly supports the fence replacement as it will improve her backyard privacy and curb appeal as well.











Property ID 0218-0007-0000
Location 55 MANGROVE ST
Owner KNIGHT MICHAEL G



# MAP FOR REFERENCE ONLY NOT A LEGAL DOCUMENT

City of Portsmouth, NH makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.

Geometry updated 09/21/2022 Data updated 3/9/2022 Print map scale is approximate. Critical layout or measurement activities should not be done using this resource.

#### **II. OLD BUSINESS**

D. The request of **John T McDonald III** and **Mary R McDonald (Owners)**, for property located at **74 Sunset Road** whereas relief is needed for an addition of a chimney bump out which requires the following: 1) Variances from Section 10.521 to allow a) a 6.5 foot left yard where 10 feet is required; and b) 26.6% 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)

## **Existing & Proposed Conditions**

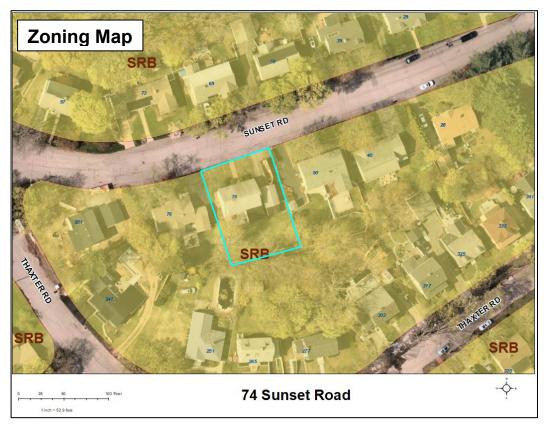
	Existing	Proposed	Permitted / Required	
Land Use	Single family	New front porch And connector to garage	Primarily residential	
Lot area (sq. ft.):	8,936	8,936	15,000	min.
Lot Area per Dwelling Unit (sq. ft.):	8,936	8,936	15,000	min.
Lot depth (ft):	110	110	100	min.
Street Frontage (ft.):	80	80	100	min.
Primary Front Yard	24	16* prior	30	min.
(ft.):		variance granted		
Right Yard (ft.):	9	6.5	10	min.
Left Yard (ft.):	8	8	10	
Rear Yard (ft.):	41	41	30	min.
Height (ft.):	<35	<35	35	max.
Building Coverage (%):	23	26.6 (26.5 previously approved)	20	max.
Open Space Coverage (%):	66	64	40	min.
Parking:	2	2	2	
Estimated Age of Structure:	1959	Variance request(s) shown in red.		

# Other Permits/Approvals Required

Building Permit

# **Neighborhood Context**





# **Previous Board of Adjustment Actions**

**September 27, 2022** – Relief from Zoning Ordinance including:

- 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.

Board voted to **grant** the request as presented.

# **Planning Department Comments**

As shown in the history above, the applicant was before the Board this past summer with a proposal to improve the and expand the existing structure. During the construction and inspection process it was discovered that a portion of the addition was not in compliance with plans approved by the BOA at the September 27, 2022 meeting. The applicants latest request will rectify this error.

#### **Review Criteria**

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

- 1. Granting the variance would not be contrary to the public interest.
- 2. Granting the variance would observe the spirit of the Ordinance.
- 3. Granting the variance would do substantial justice.
- 4. Granting the variance would not diminish the values of surrounding properties.
- 5. The "unnecessary hardship" test:
  - (a) The property has <u>special conditions</u> that distinguish it from other properties in the area. **AND**
  - (b) Owing to these special conditions, a fair and substantial relationship does not exist between the general public purposes of the Ordinance provision and the specific application of that provision to the property; and the proposed use is a reasonable one. **OR**

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

## 10.235 Certain Representations Deemed Conditions

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

# HOEFLE, PHOENIX, GORMLEY & ROBERTS, PLLC

127 Parrott Avenue | Portsmouth, NH, 03801 Telephone: 603.436.0666 | Facsimile: 603.431.0879 | www.hpgrlaw.com

February 28, 2023

#### HAND DELIVERED

Stephanie Casella, Planner Portsmouth City Hall 1 Junkins Avenue Portsmouth, NH 03801

Re: Mary McDonald and John McDonald III, Owner/Applicant Property Location:74 Sunset Road Tax Map153, Lot14 Single Residence B ("SRB"), LU-22-182

Dear Ms. Casella & Zoning Board Members:

On behalf of Mary McDonald and John McDonald III, enclosed please find the following in support of a request for zoning relief:

- Digital Application submitted via Viewpoint earlier today.
- Owner's Authorization.
- 2/28/2023

   Memorandum and exhibits in support of Variance Application

We look forward to presenting this application to the Zoning Board at its March 21, 2023 meeting.

Very truly yours

R. Timothy Phoenix

#### Enclosure

ce: Mary McDonald & John McDonald III
Eric Weinrieb, Altus Engineering (email)
Butch Ricci, Ricci Construction (email)

DUNCAN A. EDGAR

#### **MEMORANDUM**

TO:

Portsmouth Zoning Board of Adjustment ("ZBA")

FROM:

R. Timothy Phoenix, Esquire

**DATE:** 

February 28, 2023

Re:

Mary McDonald and John McDonald III, Owner/Applicant

Property Location:74 Sunset Road

Tax Map153, Lot 14

Single Residence B ("SRB")/LU-22-182

Dear Chairman Parrott and Zoning Board Members:

On behalf of Mary McDonald and John McDonald III ("McDonald") Owner/Applicant ("McDonald"), we are pleased to submit this memorandum and attached exhibits in support of zoning relief to slightly expand their existing home.

## I. <u>EXHIBITS</u>

- A. <u>8/30/22 Board of Adjustment Site Plan</u>-by Altus Engineering, Inc.
- B. 8/18/22 Amended ZBA Site Plan depicting chimney.
- C. Site Photographs.
- D. Tax Map 153.
- E. 9/27/22 ZBA Minutes.
- F. 9/27/22 ZBA Notice of Decision.
- G. Abutter/Neighbor Support Letters
  - Mark and Julie Geller-73 Sunset Road
  - Jennifer and Rich Matthes, 69 Sunset Road
  - Scott Chaudoin, 76 Sunset Road

#### II. PROPERTY/PROJECT

74 Sunset Rd. is an 8936 sq. ft. lot upon which was located a +/-1300 sf (footprint) 4-bedroom cape style home, detached one car garage with a shed attached to it. The home (right) and garage (left)each slightly violate the side setbacks. At 23.4% (2093 sq. ft.), the original building coverage slightly exceeded the SRB limit of 20%. The front of the house meets but is very close to the 24 foot front setback.

On September 27, 2022 the ZBA approved a reasonably modest project for a 240 sq. ft. entry porch with stairway access, front dormers to expand the 2<sup>nd</sup> floor (remaining 4-bedrooms), breezeway to attach the home to the detached garage, and the addition of a "doghouse" frame over the existing rear bulkhead. The right setback encroaching set of steps were removed. (Exhibits A, E, F). The dormer, breezeway and doghouse all met building setback requirements.

The McDonalds and their builder have since added a  $2.25 \times 5.5 = 12.375$  s.f. chimney (**Exhibits B, C**) to the right side of the house. Relief is required because the existing house, thus the chimney are within the right side setback. The chimney also very slightly increases the building coverage by 12.375 s.f. from 26.5% to 26.6%.

#### III. RELIEF REQUIRED

Variance Section	<u>Required</u>	<b>Existing</b>	<b>Proposed</b>
PZO§10.521 Right Setback	10'	9'+/-	6.5'+/-
Building Coverage	20%	2368 s.f. (26.5%) (Variance approval)	2650.42 s.f. (26.6 %)

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

In considering whether a variance "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)

The small 12.375 s.f. chimney in the side setback is more distant than the previous existing side steps (**Exhibit B**). The coverage increase is *de minimus*. The three closest neighbors

support the relief. Accordingly, granting the variance for the chimney neither alters the essential character of the locality, nor threatens the public health, safety or welfare.

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

The chimney is very small. Sightlines will be maintained, with sufficient air and light considering that the chimney is no closer to the right side neighbor to than the former steps, and the neighbors support the relief. Thus, surrounding property values will in no way be diminished.

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

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

The subject lot is approximately 40% smaller than the 15,000 ft.<sup>2</sup> SRB requirement. The existing home is 9 feet to the right side. ZBA approved Building coverage is 26.5% increasing to 26.6%. These factors combine to create special conditions.

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

The purpose of side setback and lot coverage requirements is to avoid overbulking and overcrowding, allow for adequate air and light, provide sightlines and area for stormwater treatment. It is reasonable for the McDonald family to add a chimney, which cannot be located in a way that would avoid a variance. The setback relief and additional *de minimus* impervious increase is supported by the abutters. No one is affected in any negative way. Accordingly, there is no fair and substantial relationship between the purposes of the setback and building coverage requirements and its application in this instance.

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

If the use is permitted, it is deemed reasonable. <u>Vigeant v. Hudson</u>, 151 N.H. 747 (2005). This is a permitted residential use proposing modest expansion.

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

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

The McDonald family is generally constitutionally entitled to the use of the lot as they see fit. "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).

Because: the chimney is very small; more distant from the right side line than the former steps; increases coverage almost immeasurably; is supported by the abutters; cannot be located so as to avoid the need for the variance; and do not violate the purposes of setback and lot coverage requirements, there is no harm to the public from granting the variance. Conversely, the McDonald family will be greatly harmed if the variance is denied because they in turn will be unable to add the amenity of a fireplace. There is thus no benefit to the public from granting the variance that outweighs the harm to the McDonald family if the variance is denied.

#### V. <u>CONCLUSION</u>

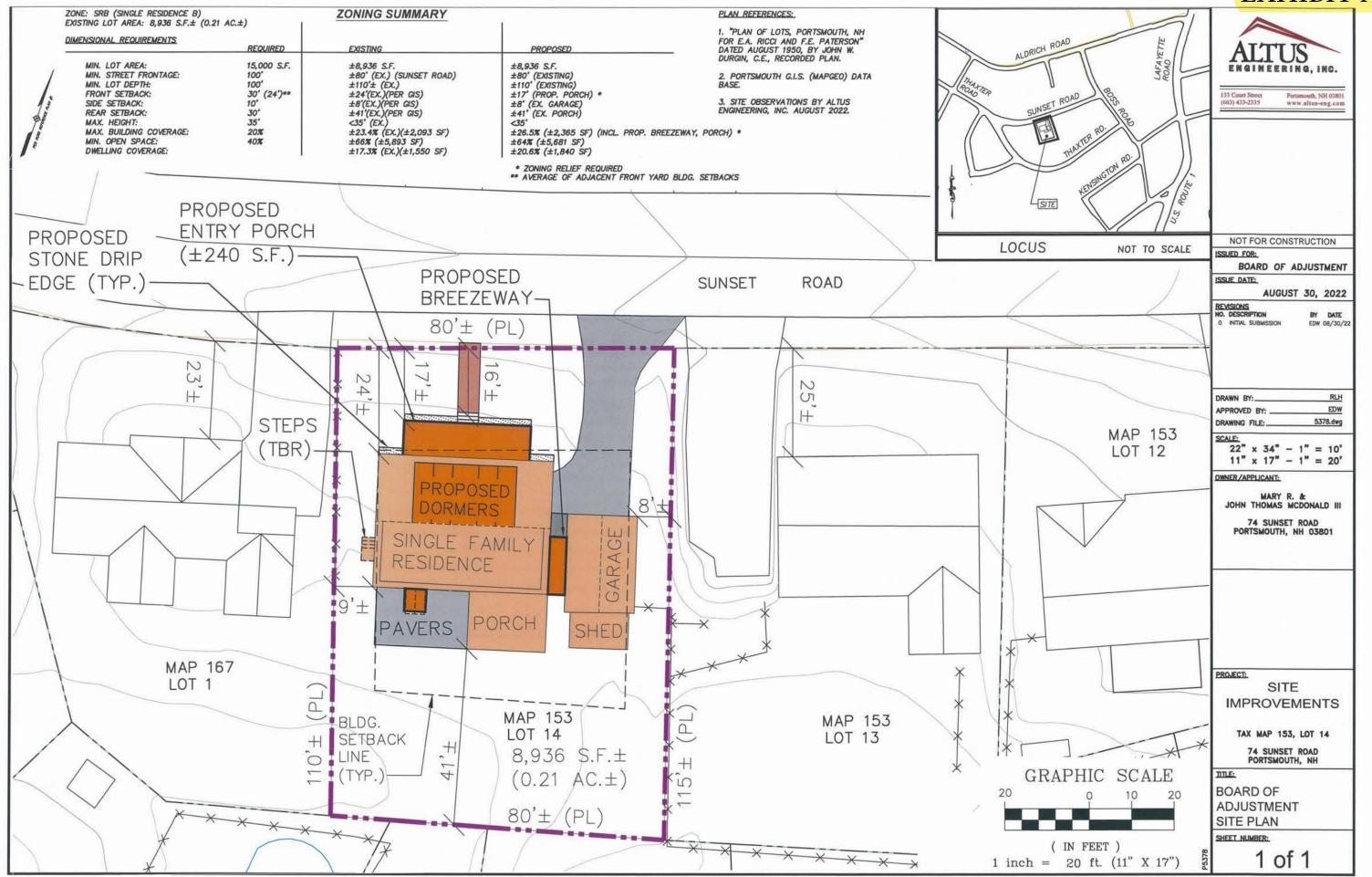
For all of the reasons stated, the McDonald family and entire team respectfully request that the Portsmouth Zoning Board of Adjustment grant the requested variance.

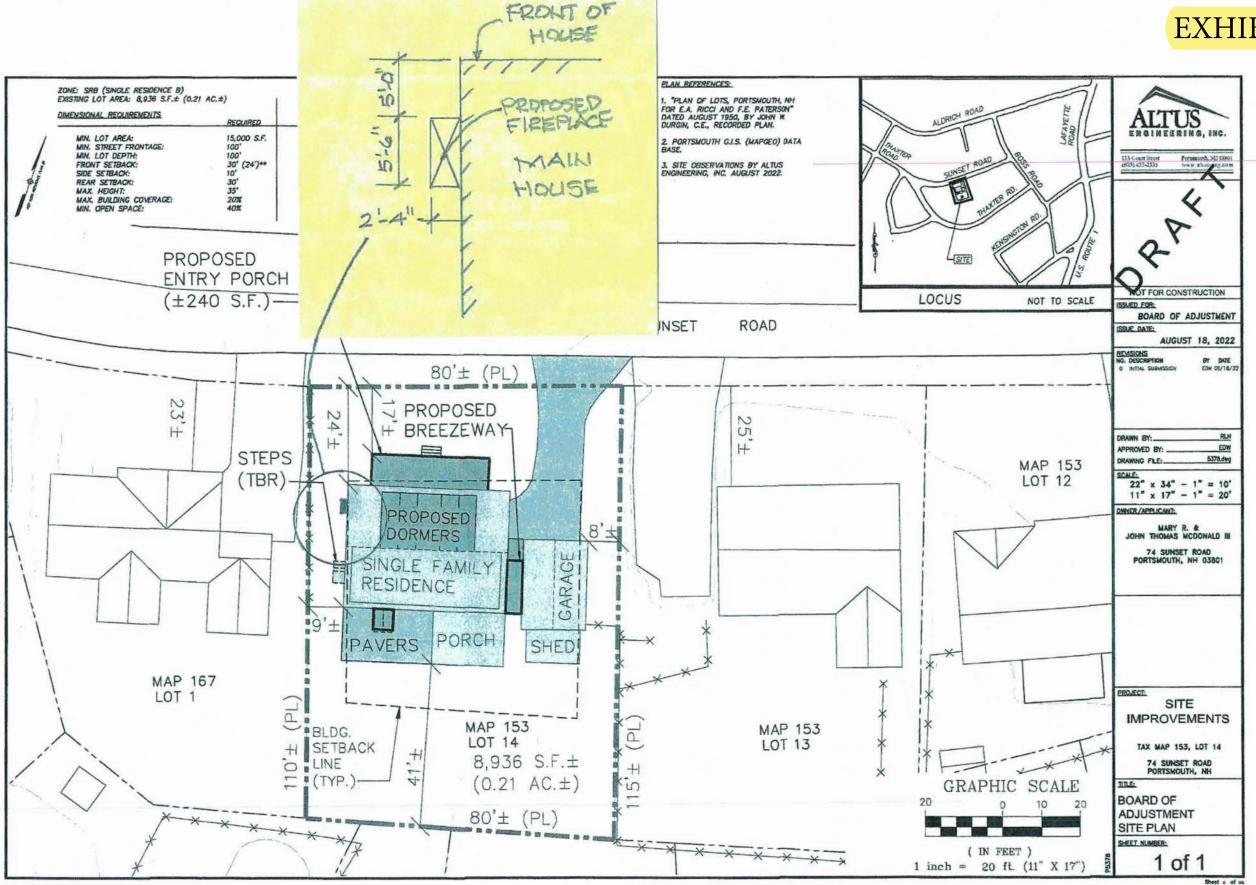
Respectfully submitted,

Mary McDonald and John McDonald III

By: R. Timothy Phoenix

EXHIBIT A





## EXHIBIT C

Google Maps 69 Sunset Rd

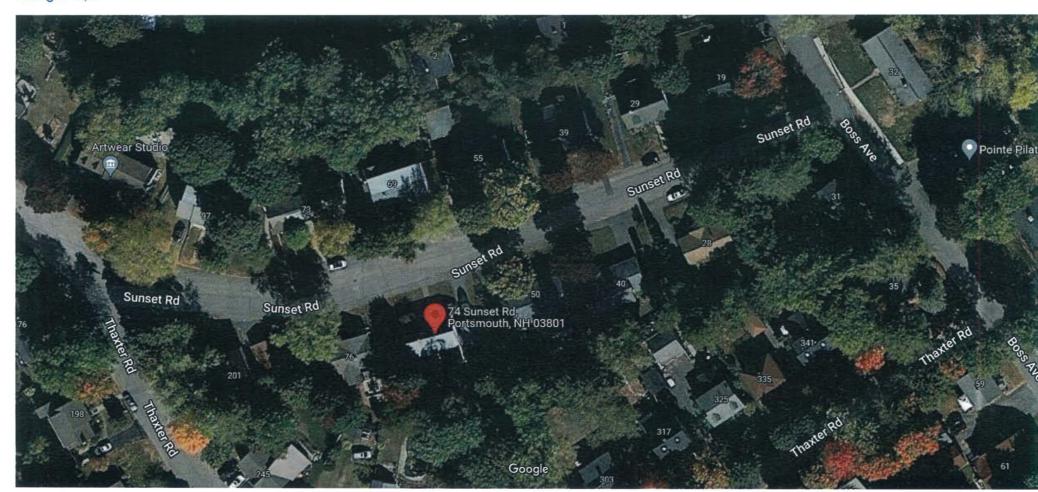


Portsmouth, New Hampshire

Google

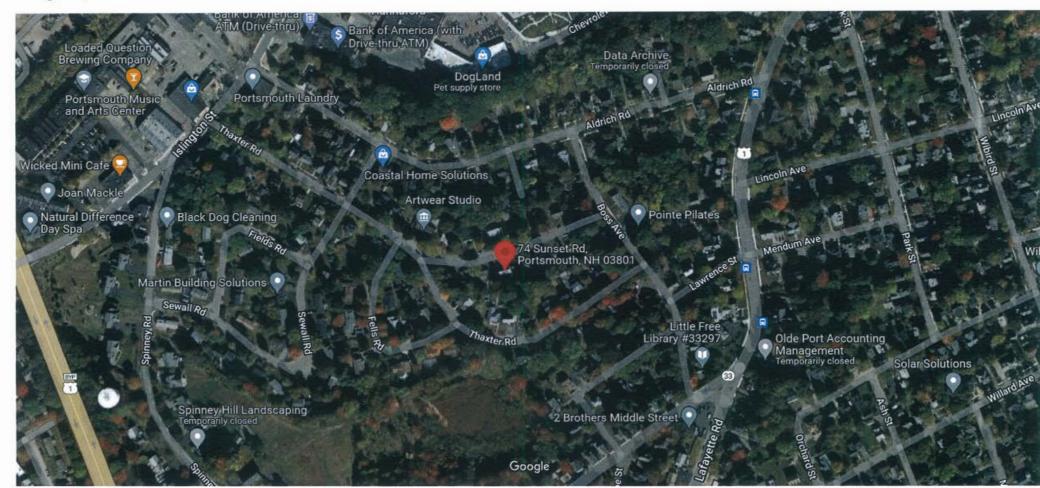
Street View - Sep 2011

Google Maps 74 Sunset Rd

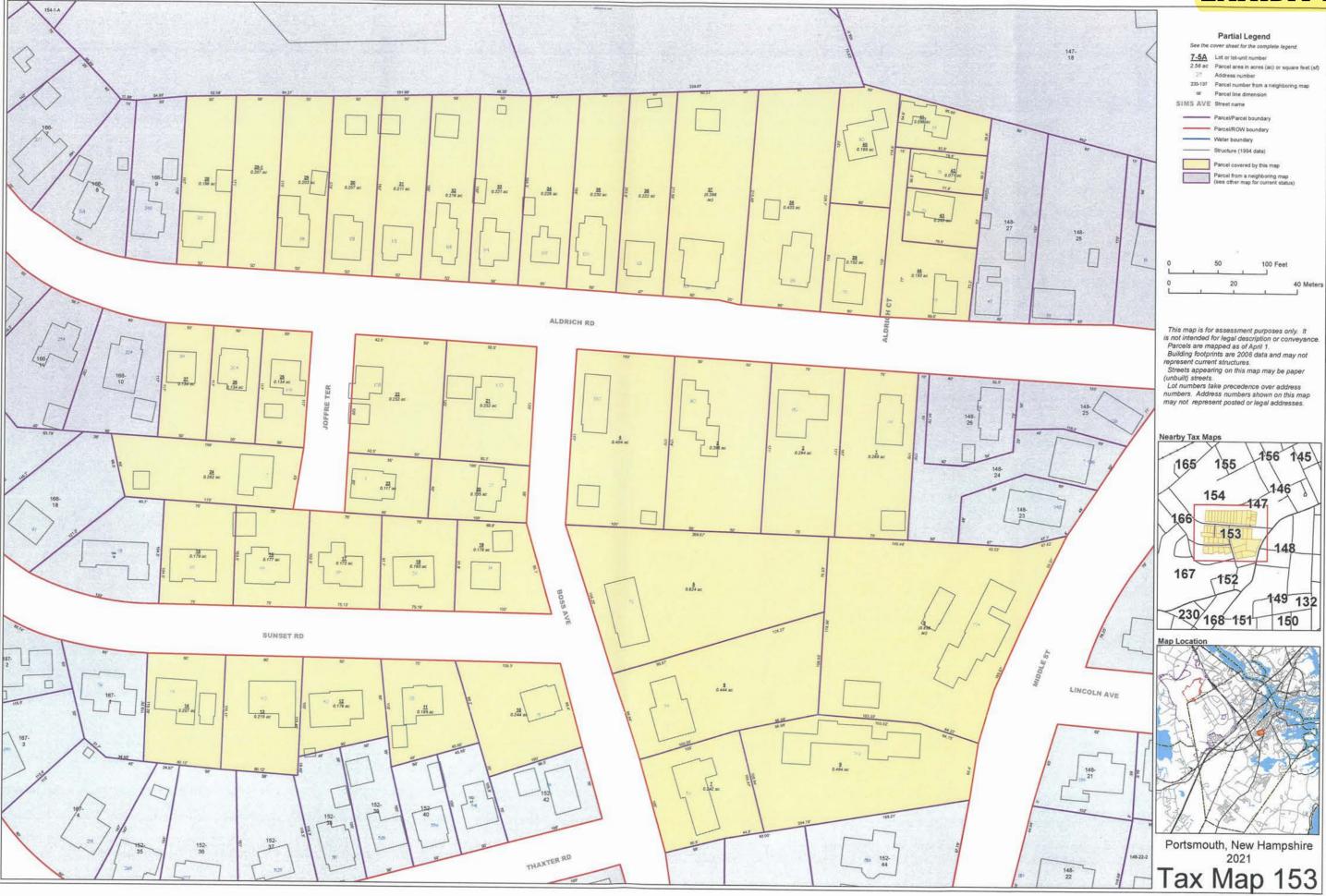


Imagery ©2022 Maine GeoLibrary, Maxar Technologies, U.S. Geological Survey, Map data ©2022 50 ft

Google Maps 74 Sunset Rd



## EXHIBIT D



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

7:00 P.M.

September 27, 2022

MEMBERS PRESENT:

Arthur Parrott, Chair; Jim Lee, Vice Chair; David MacDonald; Beth

Margeson; Paul Mannle; Phyllis Eldridge; Thomas Rossi

**MEMBERS EXCUSED:** 

None.

ALSO PRESENT:

Peter Stith, Planning Department

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

#### I. NEW BUSINESS

A. 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)

#### SPEAKING TO THE PETITION

The applicant Emily Dow was present to review the petition and criteria. There were no questions from the Board. Chairman Parrott opened the public hearing.

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

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

#### DECISION OF THE BOARD

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

Referring to Sections 10.233.21 and .22 of the ordinance, Mr. Mannle said granting the variances would not be contrary to the public interest because it was a small request. He said it would observe

Vice-Chair Lee concurred. He said he met with the construction superintendent, who showed him the barn. He said the barn had been there a long time and that it was exciting to see someone go to the expense and time to preserve the historic property.

Mr. Stith said there was a section in the ordinance stating that the Board will notify the applicant that the required elevation might result in increased premium rates for flood insurance up to amounts of \$25 per \$100 of coverage, and that such construction below the required elevation increases risk to life and property. He said those two items would be added to the Letter of Decision.

The motion passed by unanimous vote, 7-0.

G. 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)

#### SPEAKING TO THE PETITION

Attorney Tim Phoenix was present on behalf of the applicant and reviewed the petition and criteria

Mr. Rossi said the applicant must establish that the property is burdened by the zoning restriction in a manner that is distinct from other similarly situated properties. He said the surrounding properties seemed almost identical in terms of size and setback. Attorney Phoenix said not all of the houses were identical, even though the ones across the street seemed to have similar setbacks. He said there were other lots in the area that were larger and had larger homes on them that appeared to meet the setbacks and probably met coverage. He cited a Manchester, NH case that stated that if an applicant was doing something that's already been done in that area, it was a form of hardship that allowed the applicant to proceed with getting their variances granted.

Chairman Parrott opened the public hearing.

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

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

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

Vice-Chair Lee said he went through the house when it was for sale and that it was a nice house in a nice neighborhood but was burdened by an awkward floor plan. He said the proposed improvements made sense and would make the house more livable and enhance the values of the neighborhood.

Vice-Chair Lee moved to **grant** the variances as presented and advertised, seconded by Ms. Margeson.

Vice-Chair Lee referred to Sections 10.233.21 and .22 of the ordinance and said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance because the proposed use would not be in conflict with the explicit or implicit purposes of the ordinance and would not alter the essential character of the neighborhood nor threaten the public's health, safety, or welfare or injure any public rights. He said substantial justice would be done because the benefit to the applicant would not be outweighed by the general public or other individuals, which satisfied Section 10.233.23. He said the addition and renovation of the property will add to the value of the surrounding properties, satisfying Section10.233.24. Referring to Section 10.233.25, literal enforcement of the ordinance would result in an unnecessary hardship, he said the property is somewhat burdened by a zoning restriction that makes it distinct from other similarly situated properties, and because of those special conditions, a restriction is applied to the property that doesn't serve that purpose in a fair and substantial way. He said the proposed use is reasonable and doesn't alter the essential character of the neighborhood, so it satisfies the hardship criteria. For those reasons, he moved to grant the variances.

Ms. Margeson concurred. She said she had had the same question that Mr. Rossi had, and she did find that Walker vs. the City of Manchester applied because there were existing nonconformities in the area which constituted a special condition.

The motion passed by unanimous vote, 7-0.

H. 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)

#### SPEAKING TO THE PETITION

Attorney Monica Kaiser was present on behalf of the applicant, along with LLC Principle Nicole Abshier. She said Ms. Abshier lived next to the property and that the applicant had support from several abutters. Attorney Kaiser said the garage petition was before the Board twice in 2009 and both times Ms. Abshier opposed any upward expansion. She reviewed the tax map and the petition and said they were not proposing any physical changes to the site and that the garage would stay the same but the interior parking space was a half foot shorter than required. She asked if there were questions pertaining to Fisher v. Dover. Ms. Margeson said she didn't think it applied but said it seemed that the building was going up one story. Attorney Kaiser said that photo was from the proposal that was denied and that they were just making the garage nicer and renovating the inside.

She said the zoning had changed and the variance request was a lot less. She reviewed the criteria.

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## CITY OF PORTSMOUTH

**EXHIBIT F** 

Planning Department 1 Junkins Avenue Portsmouth, New Hampshire 03801

(603) 610-7216

#### **ZONING BOARD OF ADJUSTMENT**

September 29, 2022

John T. McDonald III & Mary R. McDonald 74 Sunset Road Portsmouth, New Hampshire 03801

RE: Board of Adjustment request for property located at 74 Sunset Road (LU-22-182)

**Dear Property Owners:** 

The Zoning Board of Adjustment, at its regularly scheduled meeting of **Tuesday, September 27, 2022**, considered your application for the addition of 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 shown on Assessor Map 166 Lot 36 and lies within the Single Residence B (SRB) district. As a result of said consideration, the Board voted to **grant** the request as presented with the enclosed Findings of Fact.

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

Approvals may also be required from other City Commissions or Boards. Once all required approvals have been received, applicant is responsible for applying for and securing a building permit from the Inspection Department prior to starting any project work.

This approval shall expire unless a building permit is issued within a period of two (2) years from the date granted unless an extension is granted in accordance with Section 10.236 of the Zoning Ordinance.

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

Very truly yours,

Arthur Parrott, Chairman of the Zoning Board of Adjustment

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cc: Shanti Wolph, Chief Building Inspector

Rosann Maurice-Lentz, City Assessor

R. Timothy Phoenix, Hoefle, Phoenix, Gormley & Roberts, PLLC Eric Weinrieb, Altus Engineering, Inc.

about:blank 2/2



#### **Tim Phoenix**

From:

Julie Geller < Jules 71462@outlook.com>

Sent:

Wednesday, February 22, 2023 8:10 AM

To:

McDonald, Mary Labbe

Subject:

Variance

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

We, Mark and Julie Geller of 73 Sunset Road approve of the variance. We are out of town, but you can reach us if need be.

Sent from my iPhone

February 22, 2023	7	Los worth MH
I/we,	to the fireplace c	, undersigned antilever on the right side of John and
I/we do not oppose the variance required by	the City of Ports	mouth.
Thank you,		
= srett Chaudor		2/22/23
Print name	12.	
Signature		

1/we, Jennifer +	Rich Malthes				um da mata !
Mary McDonald's home	o issue or opposition to the at 74 Sunset Rd.	fireplace ca	intilever on the	e right side	undersigned of John and
I/we do not oppose the	variance required by the Ci	ty of Portsn	nouth.		
Thank you,					
Jennifer	Matthes				
Print name	1. 1641				,
Signature					
Print name					
Signature					

#### II. OLD BUSINESS

E. The request of Joshua Wyatt and Erin Hichman (Owners), for property located at 196 Aldrich Road whereas relief is needed to demolish existing garage and construct new garage and construct new addition over existing side porch which requires the following: 1) Variances from Section 10.521 to allow a) a secondary front yard of 3 feet where 30 feet is required; b) a 6 foot rear setback where 10 feet 7 inches is required; c) 23% building coverage where 20% is the maximum allowed. 2) A Variance from Section 10.571 to allow and accessory structure to be 10 feet from the front lot line and located in the front yard. 3) A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed, or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 153 Lot 25 and lies within the Single Residence B (SRB) District. (LU-23-24)

#### **Existing & Proposed Conditions**

	Existing	Proposed	Permitted / Required	
Land Use:	Single Unit Residential	Addition to primary structure and reconstruction of garage	Single Residential Uses	
Lot area (sq. ft.):	5,850	5,850	15,000	min.
Lot Area per Dwelling Unit (sq. ft.):	5,850	5,850	15,000	min.
Frontage (ft.);	167	167	100	min.
Lot depth (ft.):	117	117	100	min.
Primary Front Yard (ft.):	23.5	23.5	30	max.
Secondary Front Yard (ft.):	3.8	3 (primary structure) 9.75 (garage)	30	min.
Right Yard (ft.):	4.6 (garage)	11.8	10	min.
Rear Yard (ft.):	29	6	10' 7" (accessory structure setback)	
Height (ft.):	25.2	32.5	35	max.
Building Coverage (%):	21	23	20	max.
Open Space Coverage (%):	>40	>40	40	min.
Parking	2	2	2	
Estimated Age of Structure:	1920	Variance request(s)	shown in red.	

#### Other Permits/Approvals Required

Building Permit

**Neighborhood Context** 





#### **Previous Board of Adjustment Actions**

<u>February 19, 2008</u> – The Board **granted** a Variance from Section 10-208(54)(b) to allow a 12' x 20' exterior produce cooler to be temporarily located during internal renovations of the

#### **Planning Department Comments**

The applicant is proposing to demolish the existing detached garage and construct a new detached garage in a different location. The new proposed location is within the rear yar and secondary front yard which requires relief from sections 10.571 and 10.573.20, found below.

**10.571** No accessory building, structure or use shall be located in any required front yard, or closer to a street than the principal building.

10.573 In a Residential or Mixed Residential district, an accessory building or structure may be located in a required side yard or rear yard subject to the following:

...

**10.573.20** An accessory building or structure more than 10 feet in height or more than 100 square feet in area shall be set back from any lot line at least the height of the building or the applicable yard requirement, whichever is less.

Applicant is also proposing to renovate and add to the primary structure which will require dimensional relief from Section 10.521 (Table of Dimensional Standards, **Zoning** Ordinance).

#### **Review Criteria**

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

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

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.

#### MEMORANDUM SUBMITTED IN SUPPORT OF REQUESTED VARIANCES FOR **JOSH WYATT AND ERIN HICHMAN (196 ALDRICH ROAD)**

- 1) A variance from Section 10.321 (Nonconforming Buildings and Structures) to

  - Allow a lawful nonconforming building (residence) to be extended and enlarged.

    Allow a lawful nonconforming building (garage) to be reconstructed without all the regulations in which it is located.
- Variances from Section 10.521 (Table of Dimensional Relief Standards) to allow construction with the following parameters:
  - A secondary front yard setback of approximately 3'-11" where 30' is required and 3'-10" is existing.
  - A rear yard setback of approximately 6' where 10'-7" is required and 28' is existing. Building coverage of 22.7% where 20% is allowed.
- 3) A variance from Section 10.571 (No accessory building, structure or use shall be located in any required front yard, or closer to a street than the principal building) to allow construction of a new garage with the following parameters:
  - a. A secondary front yard setback of 9'-9" where 30' is required.

#### Subject Property as of 3.22.23 (corner of Aldrich Road and Joffre Terrace):



#### Introduction

Preliminarily, with respect to each element of the variance test, the applicants would like to acknowledge that variances are essentially exceptions to the general rules of zoning, and the variances sought here aim to respect that proposition. If helpful, the applicants would like to first provide the board with some background information about their family and use of the subject

property. According to City assessing records, the subject house was built in 1920. The applicants have lived in Portsmouth since 2008 and in the subject property since 2011. The subject property is in a West End residential neighborhood (just behind Hannaford), on Aldrich Road—one of the few (or perhaps only) public roads connecting Islington Street and Middle Road without a stop sign, resulting in a fair amount of "cut through" vehicular traffic, rendering use of the front yard limited. Both of the applicants' children (daughters age 5 and 7) were born in Portsmouth. The oldest daughter attends Dondero elementary. The youngest daughter attends Seacoast Community School. The applicants have given significant thought to the project necessitating the current variance requests. Stated generally, the project is intended to essentially reconfigure a 1920 property that was built to suit the needs of a 1920s family, and long before the City enacted zoning. The lot is small and situated in a residential neighborhood. As our family has grown, and as we have probably all realized with the recent pandemic, there is an acute need to improve and reconfigure the property, such that the applicants can stay in the house (and keep the neighbors) we have grown to love, while planning for the future, which may involve accommodating aging live-in parents. The applicants have worked with a local, professional designer to create and refine a plan that is professional and in keeping with the neighborhood and the City generally. The applicants have discussed the proposed project with the direct abutters at 1 Joffre Terrace, 2 Joffre Terrace, and 178 Aldrich Road, with no opposition.

#### **Public Interest:**

Granting the requested variances will not be contrary to the public interest because the resulting structures (and reconfiguration of the subject property) will, if anything, add value to the City's tax base with no adverse consequences. See RSA 674:33, I(a)(2)(A). There is an existing garage on the property (preexisting, nonconforming) and the proposal is essentially to demolish that and rebuild a new substitute structure (single-car garage) on the other side of the property. Enclosing the existing porch is consistent with many other homes in the area (creating a "mud room" on the ground floor). The proposed additional lot coverage is negligible (an increase of 1.7% from the current lot coverage of 21%) and this renovation is expected to result in significant "green" environmental benefits by tightening up the building envelope. The resulting construction will not have any meaningful impact on the intensity of use (it will remain a single-family home with only slightly more interior square footage), nor will it increase the noise, traffic, or harm the neighborhood's aesthetics. See Vannah v. Bedford, 111 N.H. 105 (1971). In sum, nothing in the proposed variances "unduly, and in a marked degree" conflicts with Portsmouth's zoning. See Chester Rod & Gun Club, Inc. v. Town of Chester, 152 N.H. 577, 581 (2005) ("any variance would in some measure be contrary [to the provisions of the zoning ordinance]. . . . Thus, to be contrary to the public interest or injurious to the public rights of others, the variance must unduly, and in a marked degree conflict with the ordinance such that it violates the ordinance's basic zoning objectives." (quotations omitted)).

#### **Spirit of Ordinance:**

Granting the requested variances will observe and respect the spirit of Portsmouth's zoning ordinance. See RSA 674:33, I(a)(2)(B); see also 15 New Hampshire Practice, Land Use Planning and Zoning § 24.12. In general terms, zoning is intended to promote the "health,"

safety, or the general welfare of the community." RSA 674:16, I. Portsmouth's zoning ordinance embodies several varied objectives, including meeting "the hierarchy of present and future human needs fairly and efficiently." Portsmouth Zoning Ordinance § 10.122(4). In addition, the City's zoning ordinance aims to promote the City's Master Plan, *see* Portsmouth Zoning Ordinance § 10.121. This proposed project will contribute to the vibrancy called out in the 2025 Master Plan, as well as "complement[] and enhance[] its surroundings," *see* 2025 Master Plan Goal 2.1. Goals 3.1 and 3.3 of the 2025 Master Plan also recognize the need to update and adapt the City's housing stock to accommodate changing demographics and changing needs of the economy, which would include increased instances of professionals working from home (and with children). The requested variances respect the zoning objectives of the City of Portsmouth and do not propose a use or resulting structures out of step with the residential area or the City generally. The requested variances are minor in scope and consistent with the vision and objectives for the West End stated in the City's 2025 Master Plan.

#### Substantial Justice:

Granting the requested variances will do substantial justice based on the circumstances of this matter. See RSA 674:33, I(a)(2)(C). Some authority frames the analysis as "any loss to the individual that is not outweighed by a gain to the general public is an injustice." 15 New Hampshire Practice, Land Use Planning and Zoning § 24.11 (quotation omitted). This tips well in favor of the applicants' requested variances. The requested variances envision a project that is consistent with the characteristics of the neighborhood, see Labreque v. Salem, 128 N.H. 455 (1986). The variances, if granted, would shift the focus of the property's small backyard away from the public streets (and salt/stormwater runoff) and enhance privacy and safety. Denying the variances would not result in a gain to the general public.

#### Values of Surrounding Properties:

Granting the requested variances will not diminish the value of surrounding properties because the resulting structures will not increase noise, traffic, or the aesthetics, nor meaningfully change the intensity of use (property will remain a single-family home with only slightly more interior square footage). See RSA 674:33, I(a)(2)(D); Farrar v. City of Keene, 158 N.H. 684 (2009). Based on our experience living in this neighborhood since 2011, projects that have updated and improved the appearance, functionality, or both have had an aggregate positive impact on property values. The applicants have pride of ownership and respect the effects of using their property on our neighbors. There is a lawful existing garage on the property (preexisting, nonconforming) and the proposal is essentially to relocate (and rebuild it) more toward the other side of the property. The direct abutter behind our property has an existing fence in place and both houses on Joffre Terrace are at a higher elevation, meaning the proposed new garage will not be imposing. Enclosing the existing porch and building up will have no negative effect on surrounding properties and, if anything, would increase property values by adding value to the subject property.

#### <u>Unnecessary Hardship</u>:

Failure to grant the requested variances would result in unnecessary hardship because the subject property has several features that create the need for relief from the zoning ordinances in order for a family to make the best residential use of the property. *See* RSA 674:33, I(a)(2)(E). This is especially true given unique features of this property. *See Boccia v. City of Portsmouth*, 151 N.H. 85, 92 (2004) (observing as a factor consideration of "whether an area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property"), *superseded by statute by* Laws 2009, ch. 307.

This property is uniquely situated on the corner of two public streets, creating a primary and secondary road setback on two sides. As mentioned above, the subject property is in a residential neighborhood on Aldrich Road (running behind Hannaford)—one of the few (or perhaps only) public roads connecting Islington Street and Middle Road without a stop sign, resulting in a fair amount of "cut through" vehicular traffic, rendering use of the front yard limited. The lots in this neighborhood are generally small, preexisting, and nonconforming, which long predated the City's zoning ordinance. While the 20% lot coverage requirement is arguably generous for a property that has the current minimum lot size of 15,000 square feet, the subject property's lot is significantly smaller (about 1/3<sup>rd</sup>) than the current minimum lot size, magnifying the 20% coverage limitation and its constraint on use. As a result, the features of the property create a need to (i) rearrange the garage in relation to the streets to create a more protected and private backyard for their growing kids and family use, which also results in a backyard that is away from the utility/power lines that run up Joffre Terrace<sup>1</sup>; and (ii) enables reconfiguration of interior space to modernize the residential home.

The property also lacks certain features (such as a first-floor bathroom) that make it difficult to house aging parents, and the owners have parents in their 80s who may need to reside in the house in the near future. The applicants have taken care to plan an addition within the existing footprint of the current house (including its side porch, which would become enclosed with a foundation), and are limited in options because the property has (1) an interior staircase that cuts through one "bedroom" and makes that "bedroom" functionally limited, and (2) an existing chimney in the middle of the house that limits the use of interior finished space.

The proposed renovation/construction for this project is generally aimed at creating a residential home suited to needs of a modern family (including housing children, increasingly working from home, and possibly housing aging parents). *See Boccia*, 151 N.H. at 93 ("In other words, assuming that the landowner's plans are for a permitted use, but special conditions of the property make it difficult or impossible to comply with applicable setbacks or other restrictions, then the area variances might be necessary from a practical perspective to implement the proposed plan."); *Rancourt v. City of Manchester*, 149 N.H. 51 (2003) (special conditions of property made variance to allow a barn reasonable); *Husnander v. Town of Barnstead*, 139 N.H.

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<sup>&</sup>lt;sup>1</sup> Approximately two years ago, a fallen branch from a tree on the other side of Joffre Terrace pulled those power lines down into the applicants' driveway during a snowstorm and snapped a utility pole at the corner of the applicants' property.

476 (1995) (unusual building envelope and present of ledge on lot created unnecessary hardship with respect to proposed renovation).

Respectfully submitted,

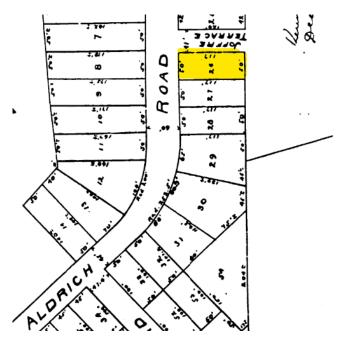
/s/ Joshua M. Wyatt

/s/ Erin N. Hichman

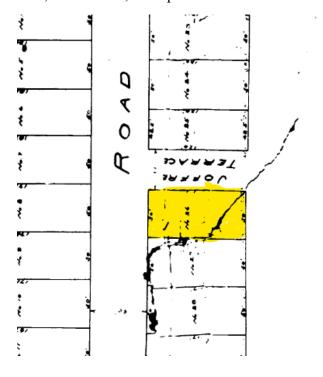
March 22, 2023

Enclosures (below and plans attached)

For further historical reference, see excerpt of Plan #0643 (Rockingham County Registry of Deeds), 1929 Plan of Westfield Park:



See also earlier 1917 Plan, Plan #0233, excerpted below:



## **Application for a Variance to permit the following:**

Residence: The removal of the existing side porch, and in it's location the construction of a three story addition. The removal of the existing third story roof and it's reconstruction on raised perimeter walls.

New Garage: Demolish current garage and build new garage in different location.

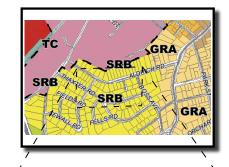
Variances requested:

- 1) A variance from Section 10.321 (Nonconforming Buildings and Structures) to
  - a. Allow a lawful nonconforming building (residence) to be extended and enlarged.
  - b. Allow a lawful nonconforming building (garage) to be reconstructed without all the regulations in which it is located.
- 2) Variances from Section 10.521 (Table of Dimensional Relief Standards) to allow construction with the following parameters:
  - A secondary front yard setback of approximately 3'-11" where 30' is required and 3'-10" is existing.
  - b. A rear yard setback of approximately 6' where 10'-7" is required and 28' is existing.
  - c. Building coverage of 22.7% where 20% is allowed.
- 3) A variance from Section 10.571 (No accessory building, structure or use shall be located in any required front yard, or closer to a street than the principal building) to allow construction of a new garage with the following parameters:
  - a. A secondary front yard setback of 9'-9" where 30' is required.

## **List of Drawings**

- AD-01 COVER SHEET & LOCATION MAP
- AD-02 EXISTING PLOT PLAN
- AD-03 PROPOSED PLOT PLAN
- AD-04 EXISTING & PROPOSED FLOOR PLANS @ BASEMENT
- AD-05 EXISTING & PROPOSED FLOOR PLANS @ FIRST FLOOR
- AD-06 EXISTING & PROPOSED FLOOR PLANS @ SECOND FLOOR
- AD-07 EXISTING & PROPOSED FLOOR PLANS @ THIRD
- AD-08 PROPOSED ELEVATIONS EAST & NORTH
- AD-09 PROPOSED ELEVATIONS WEST & SOUTH
- AD-10 PROPOSED ELEVATIONS NEW GARAGE
- AD-11 SUMMARY FIVE CRITERIA

## **Location Map**







Location of property 196 Aldrich Road, Portsmouth NH 03801, Tax Map 153, Lot 25.



Variance Submittal for Additions to

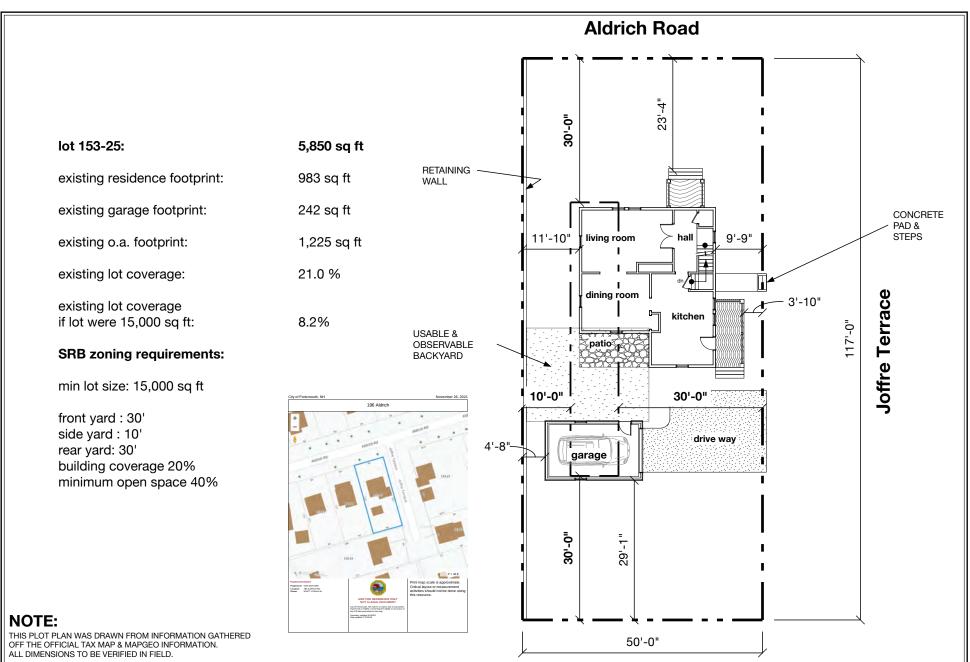
The Hichman - Wyatt Residence Issue date:

196 Aldrich Road, Portsmouth NH 03801

**Cover Sheet** 

Issue date: March 22, 2023 Scale: n/a

Revision dates: 02/27/23; 02/28/23; 03/03/23; 03/08/23; 03/19/23;





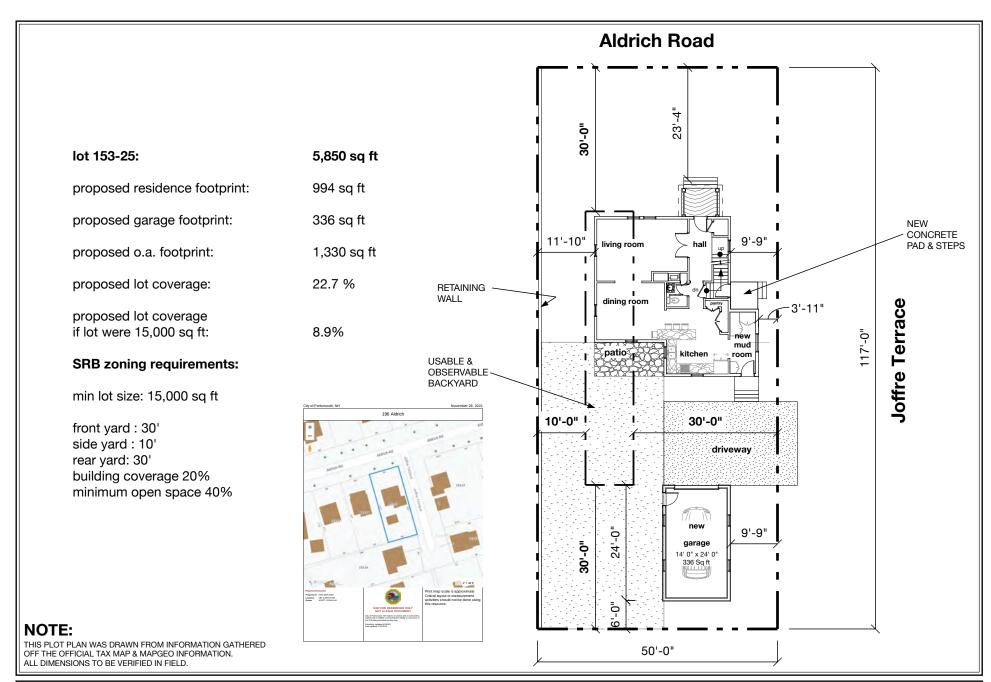
## The Hichman - Wyatt Residence | Issue date:

196 Aldrich Road, Portsmouth NH 03801

## **Existing Plot Plan**

Issue date: March 22, 2023 | Scale: 1" = 20'-0"

Revision dates: 02/27/23; 02/28/23; 03/03/23; 03/08/23; 03/19/23;





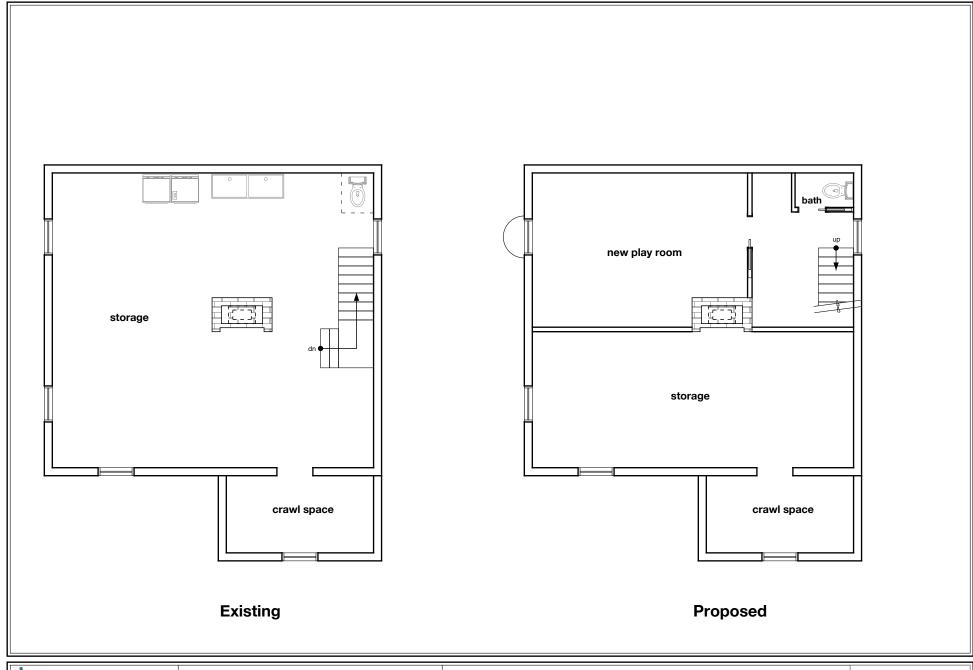
### The Hichman - Wyatt Residence | Issue date:

196 Aldrich Road, Portsmouth NH 03801

## **Proposed Plot Plan**

Issue date: March 22, 2023 | Scale: 1" = 20'-0"

Revision dates: 02/27/23; 02/28/23; 03/03/23; 03/08/23; 03/19/23;



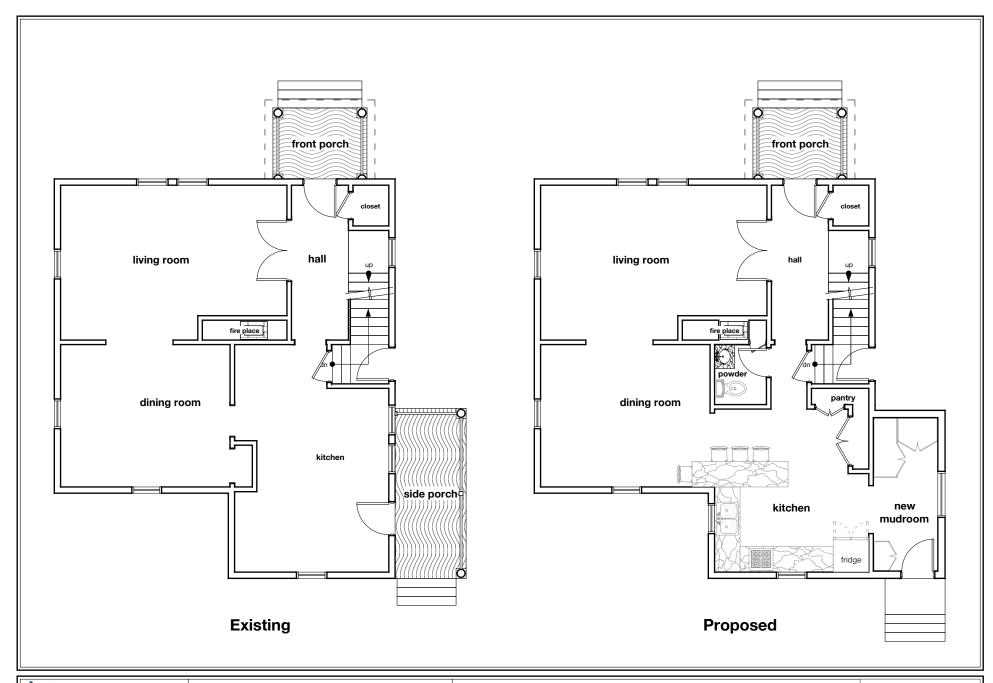


The Hichman - Wyatt Residence Issue date:

196 Aldrich Road, Portsmouth NH 03801 Revision da

## **Basement Floor Plans**

Issue date: February 27, 2023 Scale: 1/8" = 1'-0" Revision dates:





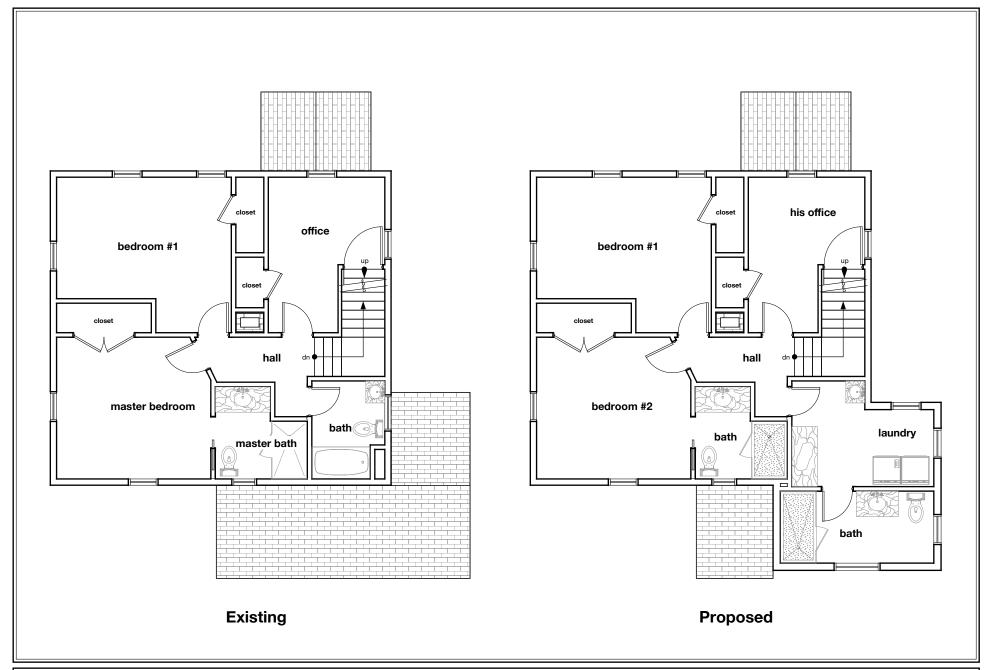
The Hichman - Wyatt Residence | Issue date:

196 Aldrich Road, Portsmouth NH 03801

## **First Floor Plans**

Scale: 1/8" = 1'-0" February 27, 2023

Revision dates:





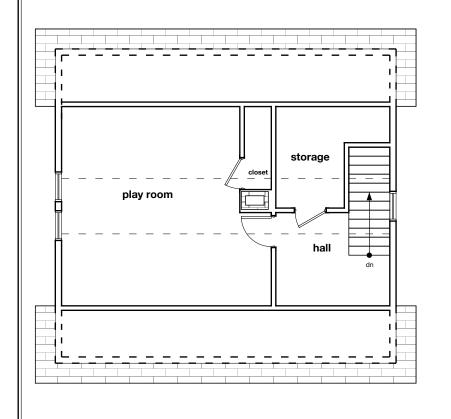
The Hichman - Wyatt Residence Issue date:

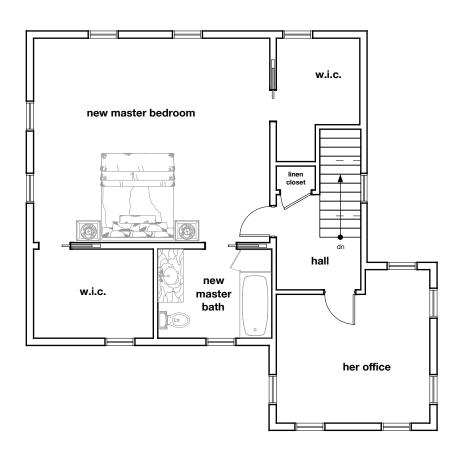
196 Aldrich Road, Portsmouth NH 03801

## **Second Floor Plans**

Issue date: February 27, 2023 | Scale: 1/8" = 1'-0"

Revision dates:





**Existing** 

**Proposed** 



Variance Submittal for Additions to

The Hichman - Wyatt Residence Issue date:

196 Aldrich Road, Portsmouth NH 03801

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February 27, 2023 Scale: 1/8" = 1'-0"

Revision dates:





EXISTING HT: 25'-2"





Variance Submittal for Additions to

The Hichman - Wyatt Residence | Issue date: 196 Aldrich Road, Portsmouth NH 03801

Revision dates:

## **Exterior Elevation East & North**

February 27, 2023

Scale: 3/16" = 1'-0"





The Hichman - Wyatt Residence | Issue date:

196 Aldrich Road, Portsmouth NH 03801

## **Exterior Elevation West & South**

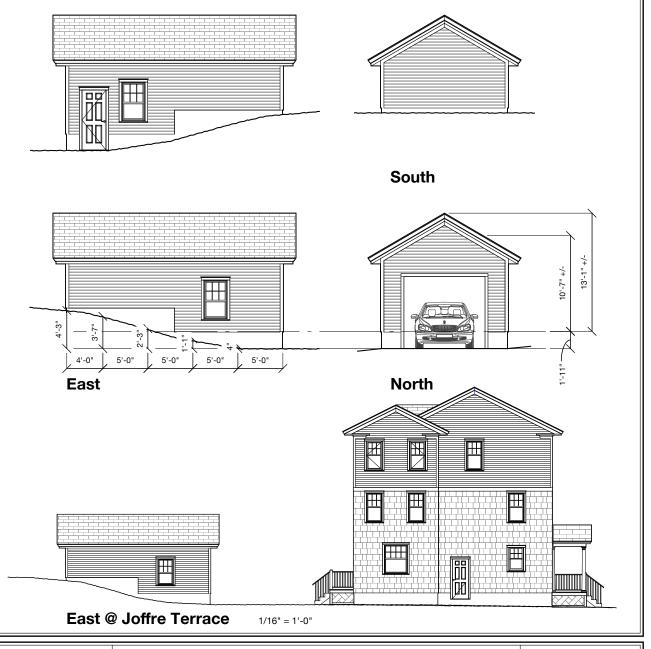
Issue date: February 27, 2023 Scale: 3/16" = 1'-0" Revision dates:

3/16" = 1'-0" AD-09











The Hichman - Wyatt Residence Issue date:

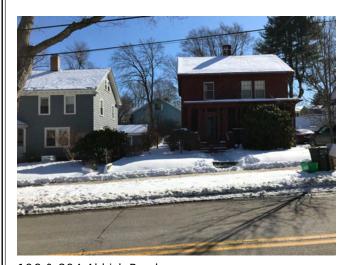
196 Aldrich Road, Portsmouth NH 03801 Revision da

**Garage Elevations** 

Scale: 3/16" = 1'-0" February 27, 2023

Revision dates: March 3, 2023

178 Aldrich Road



196 & 204 Aldrich Road

## **Five Criteria Summary**

• The variance will not be contrary to the public interest.

The proposed addition and new garage will not alter the essential character of the neighborhood. The proposed exterior improvements will actually enhance the character of the neighborhood.

The spirit of the ordinance will be observed.

The proposed addition and new garage will improve the performance and look of the property.

Substantial Justice will be done.

The house in it's current configuration is simply inadequate for a family raising two young children. The proposed addition and renovation creates separate bedrooms for the children, a new master suite, laundry, two offices and a mudroom, which will allow the owners to raise their family in a home adapted for 21st century living.

The proposed garage relocation and reconstruction creates a back yard that is more usable and observable.

• The values of surrounding properties will not be diminished.

The proposed addition and new garage will add value to the property and thereby increase the value of the surrounding homes.

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

Literal enforcement would prevent the owners from raising their family in fully functional 21st century home.



Variance Submittal for Additions to

The Hichman - Wyatt Residence Issue date:

196 Aldrich Road, Portsmouth NH 03801

Summary

Scale: n/a

Issue date: February 27, 2023

Revision dates:

#### **II. OLD BUSINESS**

F. The request of Murdock Living Trust (Owner), for property located at 15 Lafayette Road whereas relief is needed to subdivide one lot into two lots which requires the following: 1) A Variance from Section 10.521 to allow 73.8 feet of continuous street frontage where 100 feet is required for the remainder lot. Said property is located on Assessor Map 152 Lot 2 and lies within the General Residence A (GRA) and Historic District. (LU-23-26)

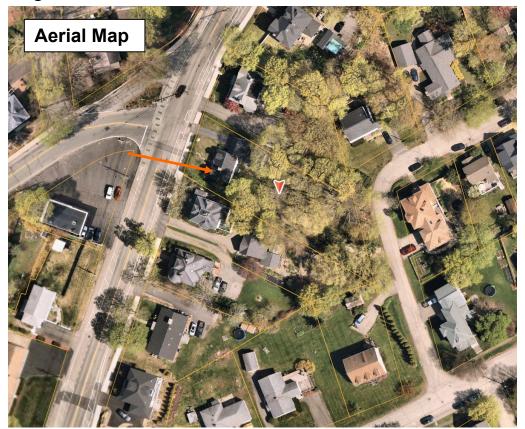
#### **Existing & Proposed Conditions**

	Existing	Proposed		Permitted / Required	
Land Use:	Single-family	Subdivide into 2 lots		Primarily residential	
		Lot 1 (152-4)	Lot 2 (152-4-1)		
Lot area (sq. ft.):	17,301	9,126	8,172	7,500	min.
Lot Area per Dwelling Unit (sq. ft.):	17,301	9,126	8,172	7,500	min.
Street Frontage (ft.):	73.8	73.8	102.3	100	min.
Lot depth (ft.)	257	124.7	108.06	70	min.
Front Yard (ft.):	>15	>15	15	15	min.
Left Yard (ft.):	3.7	3.7	10	10	min.
Right Yard (ft.):	9	9	10	10	min.
Rear Yard (ft.):	>20	20	20	20	min.
Height (ft.):	<35	<35	N/A	35	max.
Building Coverage (%):	9.6	18.5	0	25	max.
Open Space Coverage (%):	>30	>30.7	100	30	min.
<u>Parking</u>	2	2	N/A	2	
Estimated Age of Structure:	1942	Variance request(s) shown in red.			

#### Other Permits/Approvals Required

Subdivision Approval – TAC/Planning Board

## **Neighborhood Context**





#### **Previous Board of Adjustment Actions**

No previous BOA history found.

#### **Planning Department Comments**

The applicant is requesting relief to subdivide the existing lot into two lots. The applicant has not yet proposed any construction on proposed lot 152-4-1 so the open space calculation is 100%, building coverage is 0%, and the building height and parking are not applicable. The proposed vacant lot shows a building envelope where a new dwelling could be built and conform to the zoning requirements without the need for relief.

#### Variance Review Criteria

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

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



LIZABETH M. MACDONALD JOHN J. RATIGAN DENISE A. POULOS ROBERT M. DEROSIER CHRISTOPHER L. BOLDT SHARON CUDDY SOMERS DOUGLAS M. MANSFIELD KATHERINE B. MILLER CHRISTOPHER T. HILSON HEIDI J. BARRETT-KITCHEN JUSTIN L. PASAY ERIC A. MAHER CHRISTOPHER D. HAWKINS ELAINA L. HOEPPNER WILLIAM K. WARREN BRIANA L. MATUSZKO

MICHAEL J. DONAHUE CHARLES F. TUCKER

ROBERT D. CIANDELLA NICHOLAS R. AESCHLIMAN

RETIRED

#### HAND DELIVERED

March 1, 2023

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

RE:

15 Lafayette Road, Map 152, Lot 2

Murdock Living Trust

Dear Chair Eldridge and Board Members:

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

We respectfully request that this matter be placed on the Board's March 21, 2023 agenda. In the meantime, if you have any questions or require additional information do not hesitate to contact me.

Very truly yours, DONAHUE, TUCKER & CIANDELLA, PLLC

Justin L. Pasay JLP/sac Enclosures

cc:

Jeff Murdock, Trustee

Ryan Fowler, Verra & Associates

Bruce Scamman, P.E.

S:\MP-MZ\Murdock, Jeff\2023 03 01 ZBA Submission\2023 03 01 zba letter.docx

DONAHUE, TUCKER & CIANDELLA, PLLC
16 Acadia Lane, P.O. Box 630, Exeter, NH 03833
111 Maplewood Avenue, Suite D, Portsmouth, NH 03801
Towle House, Unit 2, 164 NH Route 25, Meredith, NH 03253
83 Clinton Street, Concord, NH 03301

#### VARIANCE APPLICATION FOR

Jeff Murdock, Trustee of the Murdock Living Trust (the "Applicant"), owner of property located at 15 Lafayette Road, Portsmouth, NH 03801, which is further identified as City Assessor Map 152, Lot 2 in Portsmouth, NH 03810 ("Property"). The Property is located within the City's General Residence A Zoning District (the "GRA District").

#### A. Introduction and Property Description

As depicted on the Proposed Subdivision Plan enclosed herewith as **Enclosure 1**, which was provided by James Verra and Associates, Inc. (the "Plan"), the Property is 17,301 sf (.4 acres) in size and is improved by an approximate 2,000 sf single family residence which is situated on the western portion of the Property where it derives access from Lafayette Road. See Plan; see also **Enclosure 2** (City Assessing Card). The Property enjoys 73.8 ft of frontage along Lafayette Road. The rear of the Property is unimproved open space. Uniquely, the Property enjoys 102.3 ft of additional frontage along Orchard Street. See Plan; see also **Enclosure 3** (GIS Map depiction of surrounding properties). In fact, no other properties in the area have dual (front lot and rear lot) frontage on public roadways.

The Property is situated within the GRA District which has the following foundational dimensional standards:

- Minimum Lot Area: 7,500 sf

- Minimum Lot Area per Dwelling Unit: 7,500 sf

- Continuous Street Frontage: 100 ft

- Depth: 70 ft

- Minimum Front / Side / Rear Setbacks: 15 ft / 10 ft / 20 ft

- Structure Height: 35 ft

- Maximum Building Coverage: 25%

- Minimum Open Space: 30%

See Zoning Ordinance, Article 5, Section 10.521 of the Zoning Ordinance, the Table of Dimensional Standards – Residential and Mixed Residential Districts (the "Table of Dimensional Standards"). The Property complies with the Table of Dimensional Standards save for minor encroachments into the side yard setbacks caused by the existing dwelling which are legally nonconforming.

The Property is located in a densely settled neighborhood comprised primarily of single family, two-family and multi-family residential uses. However, the Property is significantly larger than the vast majority of properties in the area. More specifically, and pursuant to available City Assessing data, the Property is nearly twice the average lot size of the 53 lots which it is most approximate to, which is .22 acres. This conclusion is based on lot-size data for the residential lots along Lafayette Road south of the Property until Lafayette Road's intersection with South Street (City Assessor Map 152, Lots 3, 4, and 5 and City Assessor Map 151, Lots 9, 10, 10-1, 11, 19, and 20), the lots along Lafayette Road north of the Property until Lafayette Road/Middle Street's intersection with Lincoln Ave (City Assessor Map 152, Lots 44, 48 and 49; City Assessor Map 149, Lots 61 and 63; and City Assessor Map 148, Lots 21 and 22), the lots along Middle Road running west from the Property (City Assessor Map 152, Lots 7, 8, 9, 11, 12, 18, 19 and 47; City Assessor Map 151, Lot 7; and City Assessor Map 168, Lots 17, 19, and 27-

1), the lots along Willard Avenue running east to its intersection with Orchard Street (City Assessor Map 151, Lots 12, 13, 13-1, 14, 15, 17, and 18 and City Assessor Map 150, Lot 46), and the lots along Orchard Street running north from Willard Avenue and then west until Orchard Street's intersection with Park Street (City Assessor Map 149, Lots 31, 32, 33, 34, 35, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, and 49).

In summary, the Property is unique in its size, and in its dual front/rear – lot frontage on public roadways.

#### B. Project Proposal and Requested Variance

This application seeks zoning relief from the Table of Dimensional Standards to facilitate the minor subdivision of the Property into two lots, one of which lots, the remanent parcel (the "Remanent Lot") will continue to derive access from its driveway along the 73.8 ft of frontage the Property currently enjoys along Lafayette Road (the "Project"). While this frontage is less than the 100 ft required in the GRA District, the Property also enjoys, as pointed out above, 102.3 ft of frontage along Orchard Street, which is why the Property is not *currently* nonconforming as to frontage. Post-subdivision, the Remanent Parcel will continue to comply with the Table of Dimensional Standards as to minimum lot area (9,129 sf of lot area where 7,500 sf is required), minimum lot area per dwelling unit (9,129 sf where 7,500 sf per dwelling unit is required), lot depth (124.7 ft where 70 ft is required), structure height (less than 35 ft), building coverage (19% where 25% is maximum), front and rear setbacks, and minimum open space (2,803 sf proposed where 2,739 sf is required), and will remain legally nonconforming as to the Zoning Ordinance's side setback requirements. The See Plan.

However, though the Remanent Lot will continue to derive access from its frontage along Lafayette Road, post-subdivision, the Property will no longer benefit from its 102.3 ft of frontage along Orchard Street which, incidentally, is used to satisfy the 100 ft frontage requirement but is never used for access. <u>Id</u>. As a result, variance relief from the Table of Dimensional Standards is required to create a lot (the Remanent Lot) with less than the required frontage even though the proposed frontage for the Remanent Lot, is the same frontage the Property has derived access from forever.

On the contrary, with a proposed 8,172 sf of lot area, the proposed new lot will comply in all respects with the Table of Dimensional Uses and will derive access from its conforming 102.3 ft of frontage along Orchard Street where there is already an existing gravel driveway (the "New Lot"). See Plan.

Once subdivided, the Remanent Lot will contain 9,129 sf of lot area (.209 acres) and the New Lot will contain 8,172 sf of lot area (.188 acres). As a result, the two lots will be substantially similar in size, and totally consistent with, the average lot sizes of the 53 lots in closest proximity to same, which average .22 acres in size. See Enclosure 3.

If the Applicant is successful with this Application, he will proceed to the City's Planning Board for minor subdivision review and approval.

#### C. Statutory Variance Criteria

Pursuant to RSA 674:33, to obtain a variance in New Hampshire, an applicant must show that: (1) the variance will not be contrary to the public interest; (2) the spirit of the ordinance is

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

#### D. Analysis

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

The New Hampshire Supreme Court has indicated that the requirement that a variance not be "contrary to the public interest" is coextensive and related to the requirement that a variance be consistent with the spirit of the ordinance. See Chester Rod & Gun Club v. Town of Chester, 152 N.H. 577, 580 (2005); Malachy Glen Associates, Inc. v. Town of Chichester, 155 N.H. 102, 105-06 (2007); and Farrar v. City of Keene, 158 N.H. 684, 691 (2009). A variance is contrary to the public interest only if it "unduly, and in a marked degree conflicts with the ordinance such that it violates the ordinance's basic zoning objectives." Chester Rod & Gun Club, 152 N.H. at 581; Farrar, 158 N.H. at 691. See also Harborside Associates, L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508, 514 (2011) ("[m]ere conflict with the terms of the ordinance is insufficient.") Moreover, these cases instruct boards of adjustment to make the determination as to whether a variance application "unduly" conflicts with the zoning objectives of the ordinance "to a marked degree" by analyzing whether granting the variance would "alter the essential character of the neighborhood" or "threaten the public health, safety or welfare" and to make that determination by examining, where possible, the language of the Zoning Ordinance.

In this case, and as described below, not only does the requested variance not conflict with the basic zoning objectives of City's Zoning Ordinance, but the Project advances the same, and advances the implied purposes of the Table of Dimensional Standards. Put another way, this case represents the reason why variance relief exists in the first place, because strictly interpreting the Zoning Ordinance to apply to this Property, under these circumstances, does not advance at all the purposes of said Ordinance.

The Table of Dimensional Standards does not have an express purpose provision. However, its implied purposes vis-à-vis the frontage requirement are consistent with the Zoning Ordinance's general purposes which are "to promote health, safety and the general welfare of Portsmouth" and implement the goals and objectives of the City's Master Plan. See Zoning Ordinance, Article 1, Section 10.120. Frontage requirements are also oriented towards safety and maintaining aesthetic consistency of lots in zoning districts.

Here, not only does the Project not conflict with the public health, safety, and general welfare, but it promotes the same and promotes the City's Master Plan. Specifically, granting the variance will facilitate the creation of a new lot for residential development at a time when such development and new housing stock is direly needed. See Portsmouth 2025 Master Plan (the "Master Plan"), pgs. 15 – 16, and Goals 1.2, 3.1, and 3.2. Further, the New Lot will be fully compliant with the Table of Dimensional Standards and there will be no discernible difference to

the appearance or operation of the Remanent Lot which will continue to function, as it has for decades, as a single-family dwelling with access via 73.8 ft of frontage along Lafayette Road. Because the Project will provide additional housing opportunities while not altering, in any way, the existing condition along Lafayette Road via the technically nonconforming frontage the Remanent Parcel will continue to enjoy, the public health and safety, and core objectives of the Zoning Ordinance and Master Plan are being advanced.

Additionally, there will be no impact at all to the safety of the ingress/egress from the Remanent Lot, which will remain the same in this regard, as it has always existed. The New Lot will derive access via its 102.3 ft of conforming frontage along Orchard Street.

Accordingly, in this case, the proposed variance is neither contrary to the public interest or violative of the spirit of the ordinance because the proposed variance and the net result of the Project will advance the general purposes of the Zoning Ordinance, specific provisions of the Master Plan, and will not at all conflict with the safety purposes of the frontage requirement in the GRA District.

The Application also satisfies the case law tests applicable to the public interest prong of the statutory variance criteria because for the very same reasons, the requested variance will not alter the essential character of the neighborhood, and will not threaten the public health and safety. On the contrary, once subdivided and as pointed out above, the Remanent Lot will be .209 acres in size and the New Lot will be .188 acres in size, such that they will be substantially similar to all the lots around them. See Enclosure 3. In this sense, the character of the neighborhood is advanced beyond the existing conditions which include an anomalously large Property settled amongst significantly smaller properties.

As the Applicant's Project will advance the general and implied purposes of the Zoning Ordinance and Table of Dimensional Standards, support the Master Plan, enhance the character of the neighborhood and have no negative impact on the public health or safety, it would be reasonable and appropriate for the ZBA to conclude that granting the Applicant's variance request will satisfy the public interest prong of the variance criteria.

#### 2. The spirit of the Ordinance is observed.

As referenced in Section E(1), above, the requested variances observe the spirit of the Zoning Ordinance and New Hampshire jurisprudence regarding the "public interest" prong of the variance criteria because the Applicant's Project will advance the general and implied purposes of the Zoning Ordinance and the Table of Dimensional Standards, and support the Master Plan. Further, the Project will not compromise the character of the neighborhood or threaten the public health, safety, or welfare. The two lots will be consistent with the neighborhood. As the New Hampshire Supreme Court has indicated in both Chester Rod & Gun Club and in Malachy Glen, the requirement that the variance not be "contrary to the public interest" is coextensive and is related to the requirement that the variance be consistent with the spirit of the ordinance. See Chester Rod & Gun Club, 152 N.H. at 580. A variance is contrary to the spirit of the ordinance only if it "unduly, and in a marked degree conflicts with the ordinance such that it violates the ordinance's basic zoning objectives." Chester Rod & Gun Club, 152 N.H. at 581; Farrar, 158 N.H. at 691.

As a result, for the reasons stated above, the Applicant respectfully asserts that it would be reasonable and appropriate for the ZBA to conclude that the variance will observe the spirit of the Zoning Ordinance.

#### 3. Substantial justice is done.

As noted in Malachy Glen, supra, "perhaps the only guiding rule [on this factor] is that any loss to the individual that is not outweighed by a gain to the general public is an injustice." Malachy Glen, supra, citing 15 P. Loughlin, New Hampshire Practice, Land Use Planning and Zoning § 24.11, at 308 (2000) (quoting New Hampshire Office of State Planning, The Board of Adjustment in New Hampshire, A Handbook for Local Officials (1997)). In short, there must be some gain to the general public from denying the variance that outweighs the loss to the applicant from its denial.

In this case, there is no gain to the public by denying the requested variance because to do so, will not advance any of the general or implied purposes of the Zoning Ordinance, the Table of Dimensional Standards, will not support the Master Plan, and will not enhance the character of the neighborhood or protect public health and safety. In fact, the opposite is true. Granting the requested variance supports the health and welfare of the public and supports the Master Plan by creating additional housing opportunities and facilitating the reasonable use of land in a way that is consistent with the neighborhood. Further, there will be no discernible difference in the operation of the Remanent Lot which will continue to derive access via Lafayette Road. For these reasons, the public gains by granting the variance.

Of course, if the variance is granted, and assuming the Applicant is able to get the Planning Board relief it will need to subdivide the Property, the Applicant will benefit from the same because it will be able to reasonably use its property in a way that is consistent with the Zoning Ordinance and in a way that advances the public welfare and supports the Master Plan.

As the requested variance benefits the public and the Applicant alike, there is no gain to the general public from denying the Applicant's application that outweighs the loss to the Applicant from its denial and this prong of the variance criteria is satisfied.

#### 4. The proposal will not diminish surrounding property values.

The Project will not diminish the value of surrounding properties. To be clear, the variance requested pertains to the creation of a lot which will either comply or otherwise maintain its legal nonconformities in all respects and only needs a variance at all, because it will no longer enjoy legally compliant frontage along Orchard Street, even though the Property never derived access from Orchard Street. In other words, the Remanent Lot will continue to function as it always has and there will be no discernible difference in the operation of the Property from Lafayette Road. Because this variance is so narrow in scope, there is no legitimate argument that it will diminish surrounding property values because that status quo is being maintained vis-à-vis frontage and access for the Remanent Lot via Lafayette Road.

The variance will support the ultimate subdivision of the Property into two lots, however, which lots will be vastly similar in size to all of the lots around them and will be utilized in conformity with the Zoning Ordinance unless additional relief is sought and approved by the ZBA. See Plan, Enclosure 3. Accordingly, there is no evidence in the record that could reasonably support the conclusion that the requested variance will diminish surrounding property

values and common sense requires that the ZBA find this prong of the variance criteria is satisfied.

### 5. <u>Literal enforcement of the provisions of the ordinance would result in an</u> unnecessary hardship.

#### a. Legal Standard

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

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

(the "First Hardship Test")

or,

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

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

#### b. Summary of Applicable Legal Standard

The first prong of the First Hardship Test requires the Board to determine whether there are special conditions on the underlying property which is the subject of a variance request. This requirement finds its origins in the Standard State Zoning Enabling Act of the 1920s "since it is the existence of those 'special conditions' which causes the application of the zoning ordinance to apply unfairly to a particular property, requiring that variance relief be available to prevent a taking." Importantly, the Supreme Court has determined that the physical improvements on a property can constitute the "special conditions" which are the subject of the first prong of the First Hardship Test. Harborside, 162 N.H. at 518 (the size and scale of the buildings on the lot could be considered special conditions); Cf Farrar, 158, N.H. 689 (where variance sought to convert large, historical single use residence to mixed use of two residence and office space, size of residence was relevant to determining whether property was unique in its environment).

<sup>&</sup>lt;sup>1</sup> 15 Loughlin, New Hampshire Practice, Land Use Planning and Zoning, §24.20 (4th Ed.) <u>citing</u> The Standard State Zoning Enabling Act.

The second prong of the First Hardship Test analysis, pertaining to the relationship between the public purpose of the ordinance provision in question, and its application to the specific property in question, is the codified vestige of a New Hampshire Supreme Court case called Simplex Technologies, Inc. v. Town of Newington ("Simplex").<sup>2</sup> To summarize, the ZBA's obligation in this portion of its hardship analysis is to determine the purpose of the regulation from which relief is being sought and if there is no specific purpose identified in the regulation, then to consider the general-purpose statements of the ordinance as a whole, so that the ZBA can determine whether the purpose of said ordinance is advanced by applying it to the property in question.

The third and final prong of the First Hardship Test analysis is whether the proposed use is "reasonable."

The Applicant respectfully reminds the ZBA of the New Hampshire Supreme Court's substantive pivot in Simplex. The Simplex case constituted a "sharp change in the New Hampshire Supreme Court's treatment of the unnecessary hardship requirement." The Simplex Court noted that under the unnecessary hardship standard, as it had been developed by the Court up until that time, variances were very difficult to obtain unless the evidence established that the property owner could not use his or her property in any reasonable manner." This standard is no longer the required standard in New Hampshire. The Applicant does not have an obligation to affirmatively prove that the underlying Property cannot be reasonably used without the requested variances. Rather, the critical question under the First Hardship Test is whether the purpose of the Zoning Ordinance is fairly and substantially advanced by applying it to the Applicant's Property considering the Property's unique setting and environment. This approach is consistent with the Supreme Court's pivot away from the overly restrictive pre-Simplex hardship analysis "to be more considerate of the constitutional right to enjoy property".

The Second Hardship Test, which we will not focus on in this narrative, is satisfied by establishing that owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

#### c. Analysis

The first prong of the First Hardship Test requires the Board to determine whether there are special conditions on the underlying Property which distinguish it from others in the area and the Board may consider the Property's existing physical improvements in this context. See Harborside. Here, the Property does have special conditions that distinguish it from others in the area to include the fact that it is nearly twice the size (.4 acres) of the average lot size of the 53 lots in its immediate vicinity (.22 acres) and is the only lot in the area with dual front/rear frontage on public streets. See Enclosure 3. These characteristics make the Property totally unique from others in its area and translate into the Property being perfectly situated to accommodate the Project proposal.

<sup>&</sup>lt;sup>2</sup> 145 N.H. 727 (2001).

<sup>&</sup>lt;sup>3</sup> 15 Loughlin, 24.16.

<sup>&</sup>lt;sup>4</sup> Id. citing Simplex, 145 N.H. at 731.

As there are special conditions of the Property by virtue of its size and its dual frontage on public roadways, the first prong of the First Hardship Test is satisfied.

The second prong of the First Hardship Test, pertains to the relationship between the public purpose of the ordinance provision in question, and its application to the specific property in question. To summarize, the ZBA must determine whether the purpose of the underlying ordinance is advanced by applying it to the property in question. In this case, it is not.

Here, as discussed in great detail above, which analysis and discussion is incorporated herein by reference, not only would denying the requested variance not advance the general and implied purposes of the Zoning Ordinance and Table of Dimensional Standards, support the Master Plan, or advance the safety or aesthetic consistency of lots in the GRA District and surrounding neighborhood, the opposite is true: granting the variance will facilitate a Project which will create housing stock which advances the public interest and supports the Master Plan, and will do so in a way which will have zero impact on the function and operation of the Remanent Lot and on the current traffic operations on Lafayette Road. See Enclosures 1, 3.

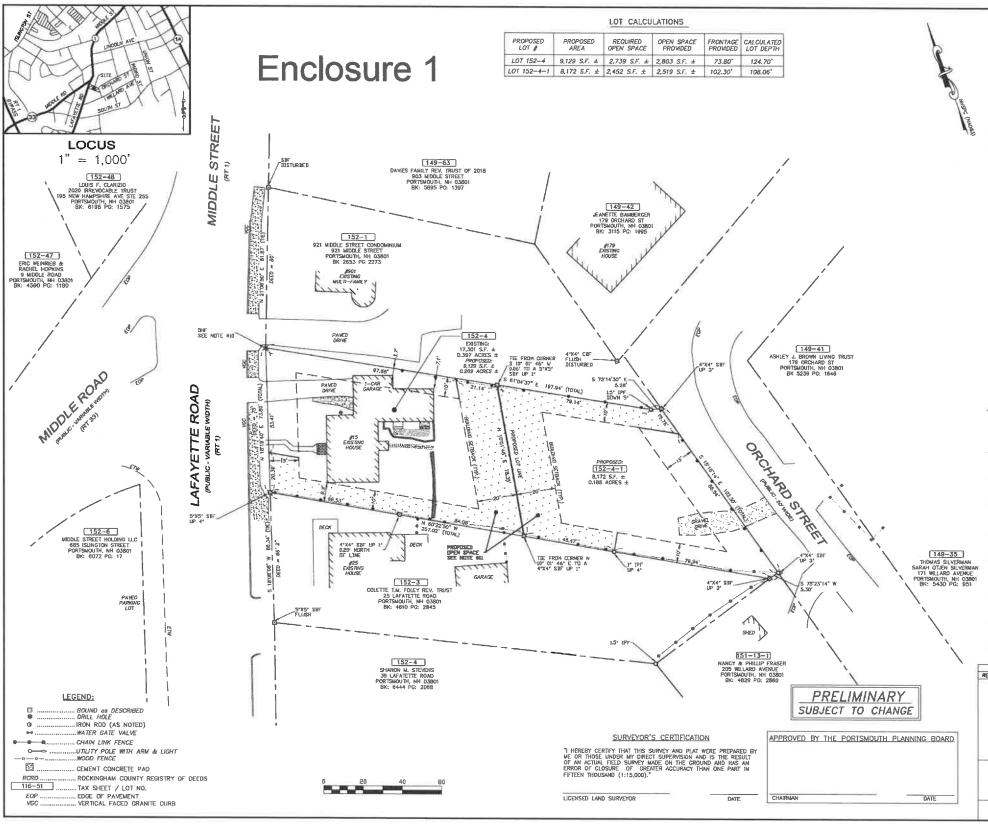
Because denying the variance won't advance the general or implied purposes of the Zoning Ordinance and Table of Dimensional Standards, or support the Master Plan, and because granting the variance request will, the second prong of the First Hardship Test is satisfied.

The third and final analysis under the First Hardship Test is to determine whether the proposed use is reasonable. Here, the Remanent Lot will continue to operate as it has for decades with 73.8 ft of frontage it utilizes for access off of Lafayette Road. The Project is otherwise totally reasonable and consistent with the neighborhood.

On these facts and analyses, the Applicant respectfully submits that its variance request satisfies the final prong of the statutory variance criteria.

#### E. Conclusion

The Applicant respectfully submits that it has satisfied the statutory variance criteria in this matter and its Application should be approved.



- 1. OWNER OF RECORD .... ADDRESS...
- 2. ZONED:

- 3. THE INTENT OF THIS PLAN IS TO SUBDINDE THE EXISTING PARCEL INTO TWO PARCELS.
- 4. THIS IS A TWO PAGE SHEET SET, SHEET I IS TO BE RECORDED AT THE ROCKINGHAM COUNTY REGISTRY OF DEEDS, ALL OTHER SHEETS TO BE ON FILE WITH THE CITY OF PORTSMOUTH.
- 5. THE LOCATION OF ALL UNDERGROUND UTILITIES SHOWN HEREON ARE APPROXIMATE AND ARE BASED UPON THE PIELD LOCATION OF ALL WISIELE STRUCTURES (IE CATCH BASINS, MANHOLES, WATER CATES ETC.) AND INFORMATION COMPILED FROM PLANS PROVIDED BY UTILITY COMPANIES AND GOVERNMENTAL AGENCIES. ALL CONTRACTORS SHOULD NOTIFY, IN WRITING, SAID AGENCIES PRIOR TO ANY EXCAVATION WORK AND CALL DIG-SAFE @ 1-880-DIG-SAFE.
- 6. NADB3, VERTICAL DATUM: NAVDB8. ESTABLISHED BY SURVEY HORIZONTAL DATUM: GRADE GPS OBSERVATIONS AND REFERENCE PLAN #6.
- THE PLAN IS BASED UPON A FIELD SURVEY COMPLETED IN NOVEMBER OF 2022 WITH TRIMBLE 55 ROBOTIC TOTAL STATION, CARLSON BRX7 RTK GPS UNITS, PANASONIC FZ-M-/TRIMBLE TSCT DATA COLLECTORS.
- B. THE PARCEL SHOWN HEREON LIES WITHIN ZONE X (AREA OF MINIMAL FLOOD HAZARD) AS IDENTIFIED ON PLOOD INSURANCE RATE MAP, ROCKINGHAM COUNTY, NEW HAMPSHIRE, MAP NUMBER 33015C0259F, EFFECTIVE DATE 1/29/2021 BY THE FEDERAL EMERGENCY MARAGEMENT AGENCY.
- CONTRACTOR TO VERIFY SITE BENCHMARKS BY LEVELING BETWEEN 2 BENCHMARKS PRIOR TO THE ESTABLISHMENT OF ANY GRADES OR ELEVATIONS, DISCREPANCIES ARE TO BE REPORTED TO JAMES VERRA AND ASSOCIATES, INC.
- 10. DRILL HOLE FOUND AND SHOWN ON REFERENCE PLANS (F) & (F)3. PLANS (F)7 & (F)8
  SHOW THE DISTANCES OFF OF THE HOUSES TO THE LOT CORNER THAT DO NO AGREE
  WITH THE LOCATION OF THE DRILL HOLE AND APPEAR TO SHORTEN THE FRONTAGE
  OF THE SUBJECT PARCEL (TAX MAP 152 LOT 4) ON LAFAYETTE ROAD, AND
  LENGTHEN THE DEEDED FRONTAGE OF TAX MAP 152 LOT 1. HOWEVER THE DURGIN PLANS DO NOT SHOW ANY MONUMENTS FOUND ALONG LAFAYETTE ROAD/MIDDLE STREET.
- 11. THE INTENT OF THE OPEN SPACE AREA IS TO MEET THE REQUIREMENTS SET FORTH IN THE CITY'S ZONING ORDINANCE TO MAINTAIN A 30% OPEN SACE FREE FROM STRUCTURES, PARKING AREAS, DRIVEWAYS AND OTHER USES WHICH PRECLUDE LANDSCAPING IN SUCH AREAS, THE MITENT OF THE AREA IS COMPUTED BY USING THE AREA OF THE SETBACK LINES, EITHER PERPENDICULAR OR PARALLEL TO THE PROPERTY LINES.

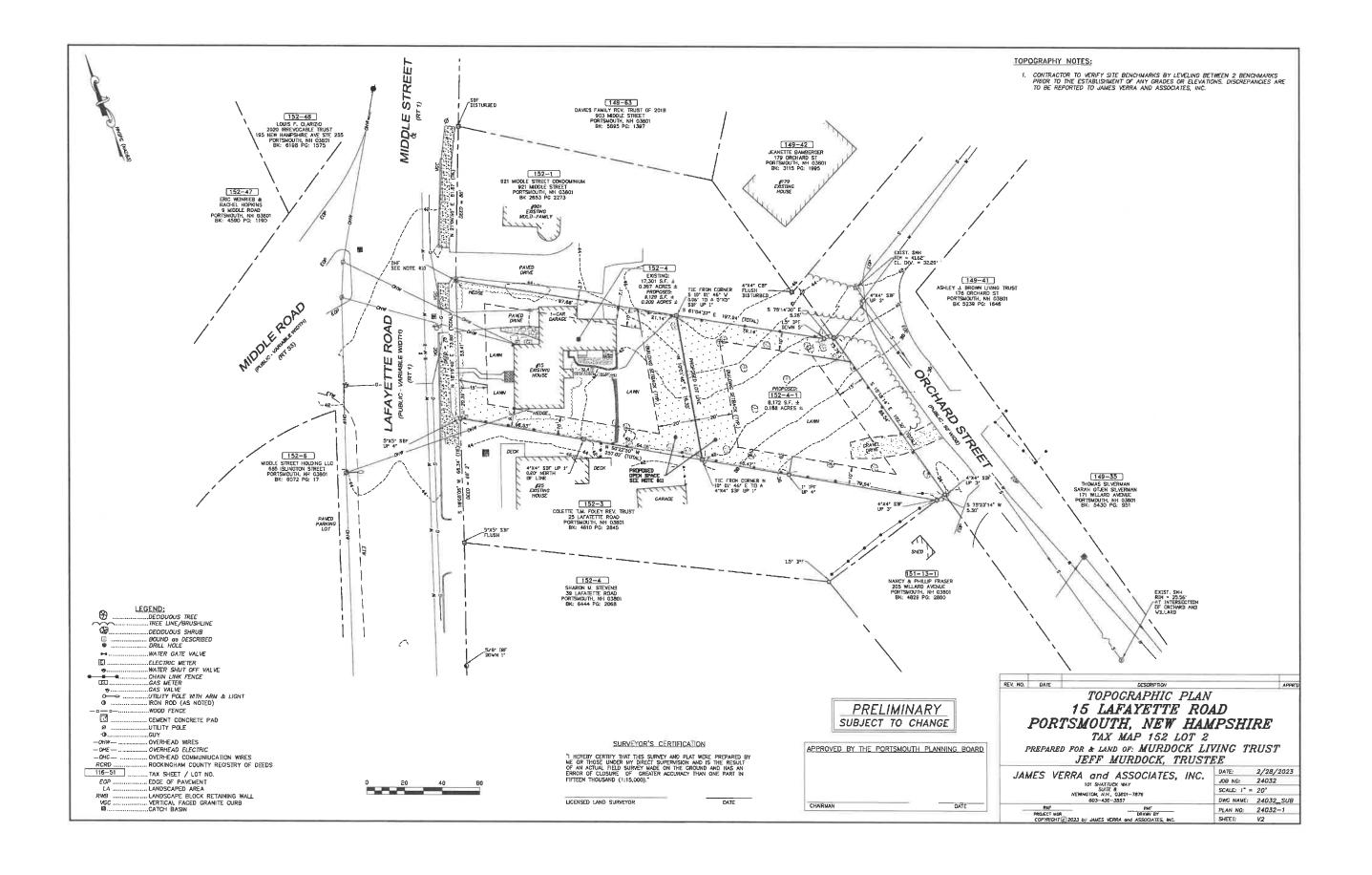
#### REFERENCE PLANS:

- "PLAN OF LAND OF BURTON K. MURDOCK & FRANCES E. MURDOCK IN PORTSMOUTH NEW HAMPSHIRE." DATED JANUARY 8, 1974 AND PREPARED BY MOULTON ENGINEERING CO. R.C.R.D. PLAN 100-4256.
- "FLAN OF LAND AT 25 LAFAYETTE ROAD PORTSMOUTH, N.H. AS PREPARED FOR/OWNER OF RECORD, DONALD F, AND BONNEY STEARNS 25 LAFAYETTE ROAD, PORTSMOUTH, N.H. 03801. R.C.R.D. PLAN #0-15412.
- 3. "CONDOMINIUM SITE PLAN OF 921 MIDDLE STREET CONDOMINIUMS FOR WALTER HOFFMAN, 921 MIDDLE ST. COUNTY OF ROCKINGHAM, PORTSMOUTH, N.H." DATED MARCH 1986 AND PREPARED BY RICHARD P. MILLETTE AND ASSOCIATES. R.C.R.D. PLAN #D-15490.
- "PLAN OF LAND AT NO. 903 MIDDLE ST., PORTSMOUTH, N.H. PROPERTY OF RAYMOND C.L. GREER AND BERTHA D. GREER." DATED SEPTEMBER 1950 AND PREPARED BY ALBERT MOULTON, CE. BK: 1274 PG: 325.
- "SUBDIVISION PLAN OF LAND, 227 WILLARD AVENUE, PORTSMOUTH, NEW HAMPSHIRE FOR JANICE W. YOCOM." DATED JUNE 29, 1999 AND PREPARED BY THIS OFFICE. R.C.R.D. PLAN #D-2751
- "EXISTING CONDITIONS PLAN, WILLARD AVENUE IMPROVEMENT PROJECT, WILLARD AVENUE, ORCHARD & SAY STREETS & ORCHARD COURT, PORTSMOUTH, NEW HAMPSHIRE, CMA ENGINEERS, NO." LAST REVISED DECEMBER 2, 2021. PREPARED BY AND ON FILE WITH THIS OFFICE. NOT RECORDED. JVA JOB \$23944.
- "PLAN OF LOT, NO. 921 MIDDLE STREET, PORTSMOUTH, N.H." DATED AUGUST 1942. PREPARED BY JOHN W. DURGIN, CTAL ENGINEER. NOT RECORDED AND ON FILE WITH THIS OFFICE. AND FIN:1094 PIN: 1-231.
- "PLAN OF LOT, NO. 15 LAFAYETTE ROAD ROAD, PORTSMOUTH N.H." DATED AUGUST 4942
  AND PREPARED BY JOHN W. DURGIN, CIM. ENGINEER. NOT RECORD. AND ON FIMI. MITH
  THIS OFFICE. JMD FIN. 1094 PN; 6219.
- 9. RECORDS OF JOHN W. DURGIN FN: 1094 ON FILE WITH THIS OFFICE.

APPR PROPOSED SUBDIVISION PLAN 15 LAFAYETTE ROAD PORTSMOUTH, NEW HAMPSHIRE TAX MAP 152 LOT 2 PREPARED FOR & LAND OF: MURDOCK LIVING TRUST

JAMES	VERRA and ASSOCIATES.	INC	DATE:	2/28/2023		
101 SHATTUCK WAY		mvo.	JOB NO:	24032		
NEWWATCH, N.H., 0801-7876 603-436-3357			SCALE: f" =	20'		
			DWG NAME:	24032_SUB		
PROJEC			RMF DRAWN BY		PLAN NO:	24032-1
		JAMES VE	PARA and ASSOCIATES, INC.		SHEET:	V1

JEFF MURDOCK, TRUSTEE



### **Enclosure 2**

#### 15 LAFAYETTE RD

Location 15 LAFAYETTE RD

Mblu 0152/ 0002/ 0000/ /

Acct# 34748

Owner FRANCES MURDOCK

**PBN** 

Assessment \$604,600

**Appraisal** \$604,600 PID 34748

**Building Count** 1

#### **Current Value**

		Appraisal		
	Valuation Year	Improvements	Land	Total
2022		\$227,600	\$377,000	\$604,600
		Assessment		NO middleman or the whole aggregation and
	Valuation Year	Improvements	Land	Total
2022		\$227,600	\$377.000	\$604,600

#### **Owner of Record**

Owner

FRANCES MURDOCK

Co-Owner C/O JEFF MURDOCK

Address

36 GARLAND RD

NOTTINGHAM, NH 03290

Sale Price

Certificate

Book & Page

2966/0959 01/28/1993

\$0

Sale Date

Instrument

#### **Ownership History**

Ownership History					
Owner	Sale Price	Certificate	Book & Page	Instrument	Sale Date
FRANCES MURDOCK	\$0	offer and the affect of the second series are used as a second series of the second series of	2966/0969	7	01/28/1993

#### **Building Information**

**Building 1: Section 1** 

Year Built:

1942

Living Area:

2,076

**Replacement Cost:** 

\$325,096

**Building Percent Good:** 

70

#### Replacement Cost

Less Depreciation:

\$227,600

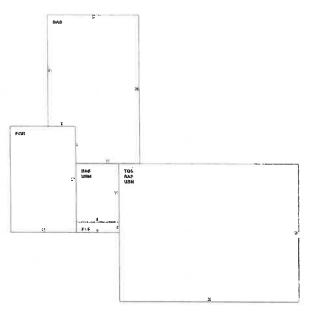
Building Attributes				
Field Description				
Style:	Cape Cod			
Model	Residential			
Grade:	C+			
Stories:	1.75			
Occupancy	1			
Exterior Wall 1	Clapboard			
Exterior Wall 2				
Roof Structure:	Gable/Hip			
Roof Cover	Asph/F Gls/Cmp			
Interior Wall 1	Drywall/Sheet			
Interior Wall 2	то в обото и (обото и поделения на 1964 и точно в до 1974 год до 1964 год на			
Interior Flr 1	Carpet			
Interior Flr 2	Hardwood			
Heat Fuel	<sup>1</sup> Gas			
Heat Type:	Warm Air			
АС Туре:	None			
Total Bedrooms:	3 Bedrooms			
Total Bthrms:	1			
Total Half Baths:	, 1			
Total Xtra Fixtrs:	0			
Total Rooms:	Reserved to the second			
Bath Style:	· Avg Quality			
Kitchen Style:	Avg Quality			
Kitchen Gr	The state of the s			
WB Fireplaces	, 1			
Extra Openings	0			
Metal Fireplaces	10			
Extra Openings 2	0			

#### **Building Photo**



(https://images.vgsi.com/photos2/PortsmouthNHPhotos/\00\00\97\01.JPG

#### **Building Layout**



(ParcelSketch.ashx?pid=34748&bid=34748)

Building Sub-Areas (sq ft)			<u>Legend</u>	
Code	Description	Gross Area	Living Area	
BAS	First Floor	1,413	1,413	
TQS	Three Quarter Story	884	663	
FEP	Porch, Enclosed	16 '	0	
FGR	Garage, Attached	240	0	
UBM	Basement, Unfinished	972	0	
		3,525	2,076	

#### **Extra Features**

#### No Data for Extra Features

#### Land

#### Land Use

Use Code 1010

Description

SINGLE FAM MDL-01

Zone GRA Neighborhood 103B

103B No

Alt Land Appr

Category

#### **Land Line Valuation**

Size (Acres)

0.40

Frontage

Depth

Assessed Value \$377,000 Appraised Value \$377,000

#### Outbuildings

#### Outbuildings

<u>Legend</u>

#### No Data for Outbuildings

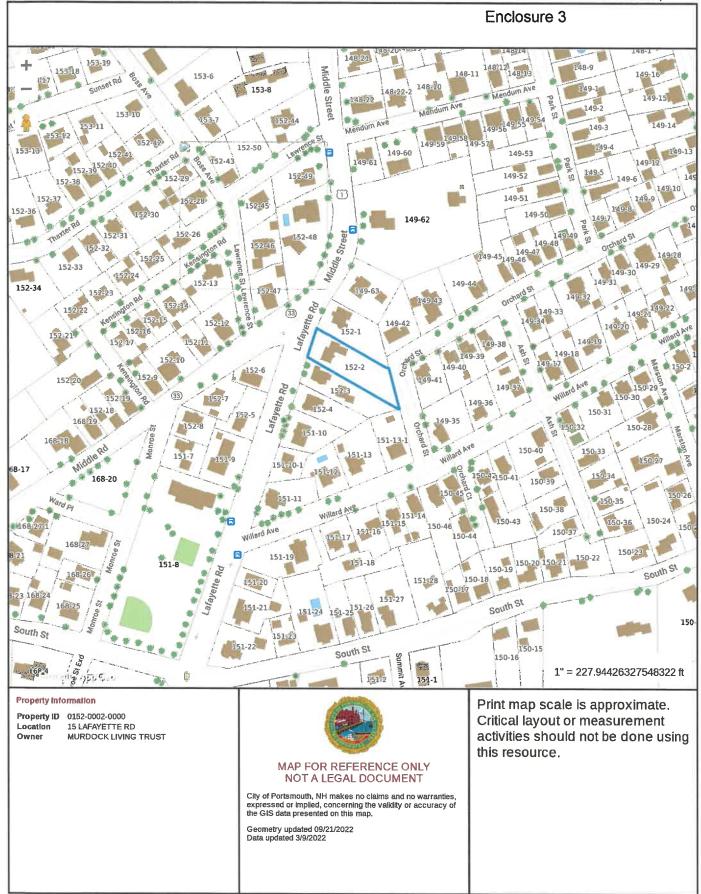
#### **Valuation History**

Appraisal					
Valuation Year	Improvements	Land	Total		
2021	\$227,600	\$377,000	\$604,600		
2020	\$227,600	\$377,000	\$604,600		
2019	\$227,600	\$377,000	\$604,600		

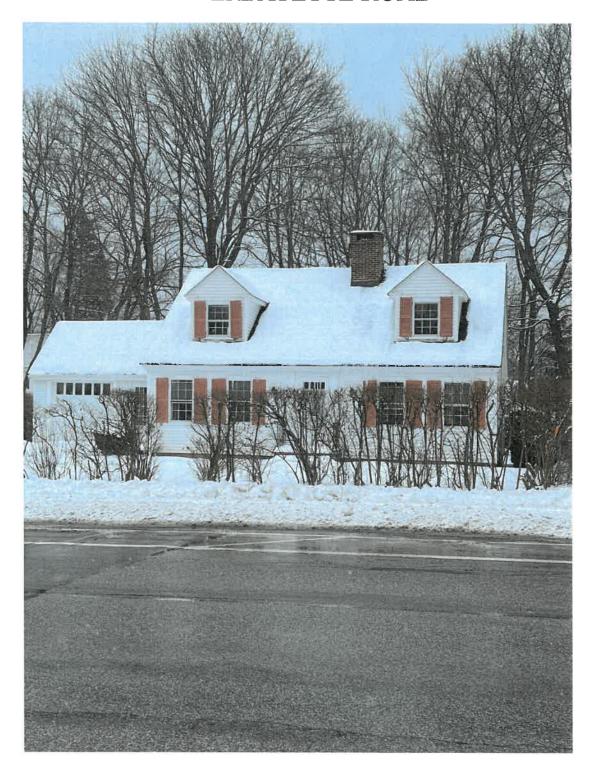
#### Assessment

Valuation Year	Improvements	Land	Total
2021	\$227,600	\$377,000	\$604,600 <sup>‡</sup>
2020	\$227,600	\$377,000	\$604,600
2019	\$227,600	\$377,000	\$604,600

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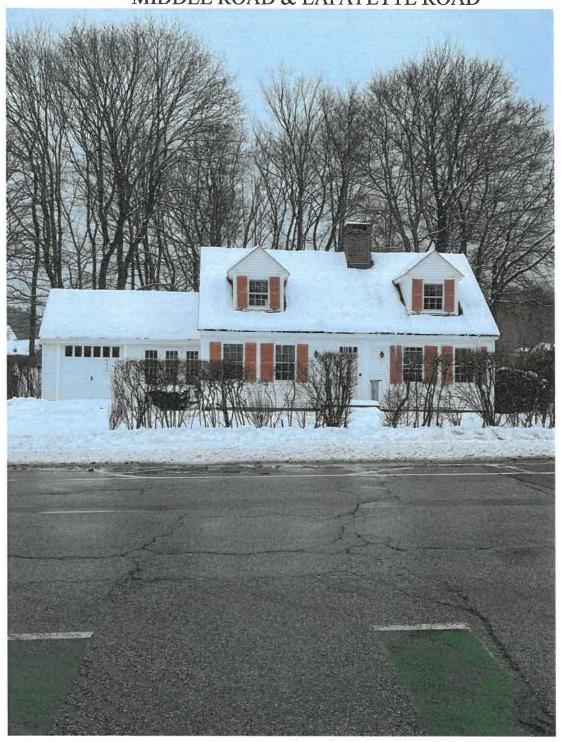
# VIEW FROM INTERSECTION OF MIDDLE ROAD & LAFAYETTE ROAD



## VIEW FROM INTERSECTION OF MIDDLE ROAD & LAFAYETTE ROAD



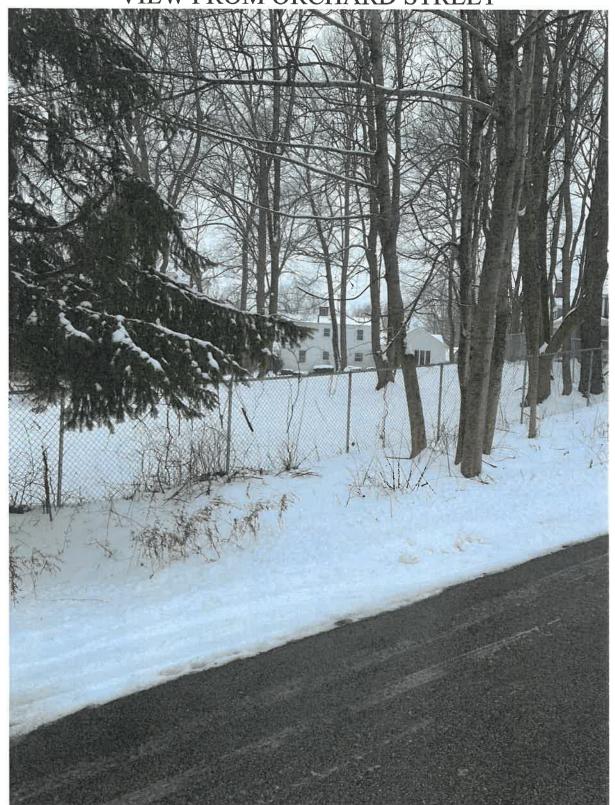
## VIEW FROM INTERSECTION OF MIDDLE ROAD & LAFAYETTE ROAD



### VIEW FROM ORCHARD STREET



VIEW FROM ORCHARD STREET



VIEW FROM ORCHARD STREET



#### LETTER OF AUTHORIZATION

I, Jeff Murdock, Trustee of the Murdock Living Trust, owner of property depicted on Tax Map 152, Lot 2, do hereby authorize Donahue, Tucker and Ciandella, PLLC, to execute any land use applications to the City of Portsmouth and to take any action necessary for the application and permitting process, including but not limited to, attendance and presentation at public hearings, of the said property.

Dated:

2/28/2023

MURDOCK LIVING TRUST

Jeff Murdock, Trustee

S:\MP-MZ\MURDOCK, JEFF\2023 03 01 ZBA SUBMISSION\LETTER OF AUTHORIZATION.DOCX