

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.

January 24, 2023

AGENDA

III. NEW BUSINESS – *Continued from January 17, 2023*

- E.** The request of **Ashley and Robert T Blackington (Owners)**, for property located at **65 Mendum Avenue** whereas relief is needed to construct an addition to the existing primary structure which requires 1) Variance from Section 10.531 to allow a 7 foot setback where 10 feet is required. Said property is located on Assessor Map 148 Lot 11 and lies within the General Residence A (GRA) District. (LU-22-241)
- F.** The request of **Lucky Thirteen Properties LLC (Owner)**, for property located at **147 Congress Street** whereas relief is needed to expand the existing structure which requires 1) Variance from Section 10.5A41.10D to allow 2% open space where 5% is required. Said property is located on Assessor Map 126 Lot 4 and lies within the Character District 5 (CD5) Downtown Overlay and Historic District. (LU-22-192)
- G.** The request of **Timothy and Rebecca OBrien (Owners)**, for property located at **396 Miller Avenue** whereas relief is needed to create a second driveway which requires 1) Variance from Section 10.1114.31 to allow two driveways where only one per lot is permitted. Said property is located on Assessor Map 131 Lot 24 and lies within the General Residence A (GRA) District. (LU-22-211)
- H.** The request of **Karen Bouffard Revocable Trust and Karen Bouffard Trustee (Owner)**, for property located at **114 Maplewood Avenue** whereas relief is needed for the installation of a A/C Condenser Unit which requires the following 1) Variance from section 10.515.14 to allow a 2 foot setback where 10 feet is required. Said property is

located on Assessor Map 124 Lot 4 and lies within the Character District 4-L1 (CD4-L1) and Historic District. (LU-22-256)

- I. The request of **Thomas E, Marybeth B, James B, and Meegan C Reis (Owners)**, for property located at **305 Peverly Hill Road** whereas relief is needed to renovate the existing primary dwelling into a two unit dwelling and to construct a new single unit dwelling which requires the following 1) Variance from Section 10.440 Use #1.30 to allow a two unit dwelling in the SRB District. 2) Variance from Section 10.513 to allow more than one free standing dwelling on a lot in the SRB District. Said property is located on Assessor Map 255 Lot 5 and lies within the Single Residence A (SRA); Single Residence B (SRB) and Natural Resource Protection (NRP) District. (LU-22-251)

II. OTHER BUSINESS

III. 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_soYwlNLNR3eiKpz-pk5HTg

III. NEW BUSINESS

- E. The request of **Ashley and Robert T Blackington (Owners)**, for property located at **65 Mendum Avenue** whereas relief is needed to construct an addition to the existing primary structure which requires 1) Variance from Section 10.531 to allow a 7 foot setback where 10 feet is required. Said property is located on Assessor Map 148 Lot 11 and lies within the General Residence A (GRA) District. (LU-22-241)

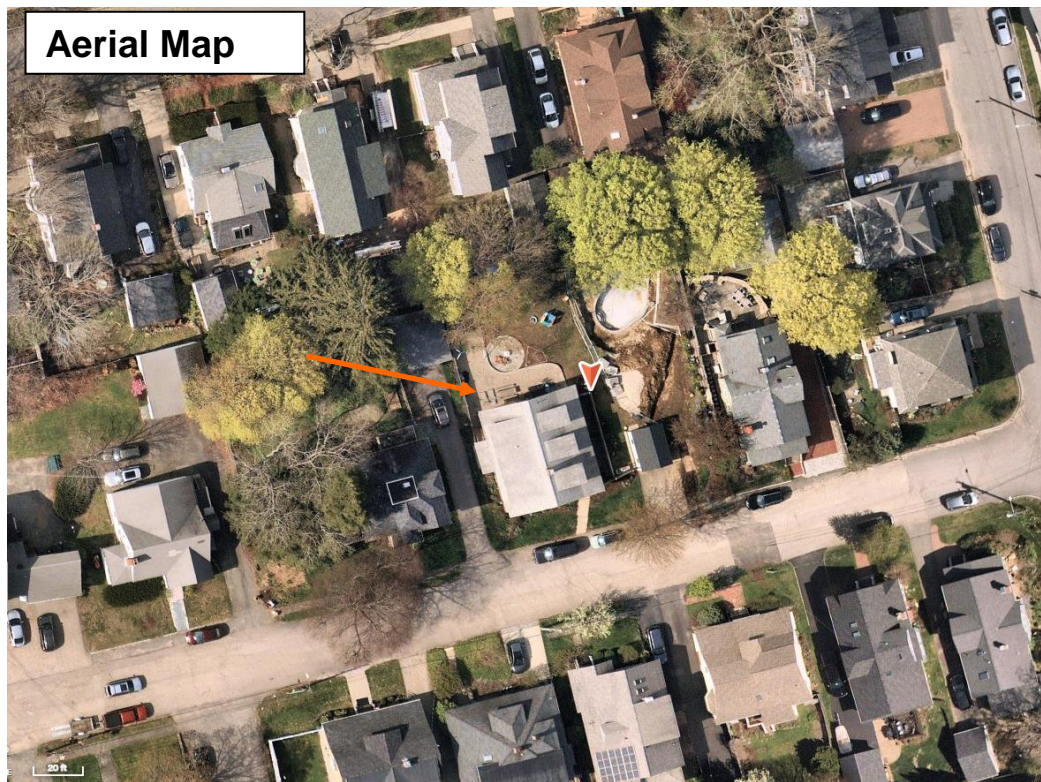
Existing and Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single Family	Addition to rear of primary structure	Primarily residential uses
<u>Lot area (sq. ft.):</u>	11,574	11,574	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	11,574	11,574	7,500 min.
<u>Street Frontage (ft.):</u>	99.47	99.47	100 min.
<u>Lot depth (ft.):</u>	102.97	102.97	70 min.
<u>Primary Front Yard (ft.):</u>	15	15	15 min.
<u>Left Side Yard (ft.):</u>	1	1 (7 for the addition)	10 min.
<u>Right Side Yard (ft.):</u>	>10	>10	10 min.
<u>Rear Yard (ft.):</u>	>20	>20	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%)</u>	15.5	16.5	25 max.
<u>Open Space Coverage (%)</u>	>30	>30	30 min.
<u>Parking</u>	Ok	Ok	2
<u>Estimated Age of Structure:</u>	1912	Variance request shown in red.	

Other Permits/Approvals Required

- Building Permit

Neighborhood Context



Previous Board of Adjustment Actions

April 21, 2015 – The Board acknowledged receipt of your request to **withdraw** the following petition to construct a second dwelling unit above a detached garage which would require the following:

- 1) A Variance from Section 10.513 to allow a second free-standing dwelling unit on a lot.
- 2) A Variance from Section 10.521 to allow a lot area per dwelling unit of 5,787± s.f. where 7,500 s.f. per dwelling unit is required.

November 17, 2015 – The Board of Adjustment completed its consideration of the **appeal** by the owners of an abutting property of the action taken by the Portsmouth City Council to restore involuntarily merged lots for this property under RSA 674:39.

The Board voted to **grant** the petition as presented and advertised which had the effect of reversing the City Council's action to restore the lots to their pre-merger status. The Board determined that the lots had been voluntarily merged by overt action or conduct of the owners in the chain of title indicating that the owners regarded the lots as merged; and that, as a result, there had been no involuntary merger under RSA 674:39

January 19, 2016 – The Board of Adjustment completed its consideration of your Motion for **Rehearing**. The Board voted to **deny** the Motion for Rehearing. The Board found it made no errors in procedure or application of the law in their action taken at the November 17, 2015 meeting.

Planning Department Comments

The applicant is proposing to construct an addition onto the rear of the existing structure which will put the exterior wall at 7 feet from the left side boundary line where 10 is required. The existing primary structure is existing non-conforming with an existing exterior wall located at about 1 foot from the left side boundary line.

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

OR

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

Section 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.

Todd & Ashley Blackington
65 Mendum Ave
Portsmouth NH, 03801

City of Portsmouth, NH
Planning Department
1 Junkins Ave, 3rd floor
Portsmouth, NH 03801

To Members of the Board of Adjustment,

We are requesting a variance to construct a 7'*16.5' addition on the back of our house for a bathroom/laundry space and to move the back door to improve access to our backyard. The variance meets all requirements with 10.233.20 as listed below:

10.233.21 The variance will not be contrary to the public interest- The addition of a bathroom/laundry space at the rear of our private home will have no contraindications for our neighbors or in public interest.

10.233.22 The spirit of the Ordinance will be observed- Relocating the rear door to access the yard to the addition will bring it into conformity with the existing requirements, whereas it currently is not.

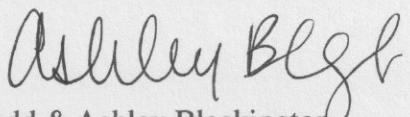
10.233.23 Substantial justice will be done- The addition will be designed to be congruent with our current home to match style and design as well as our neighborhood.

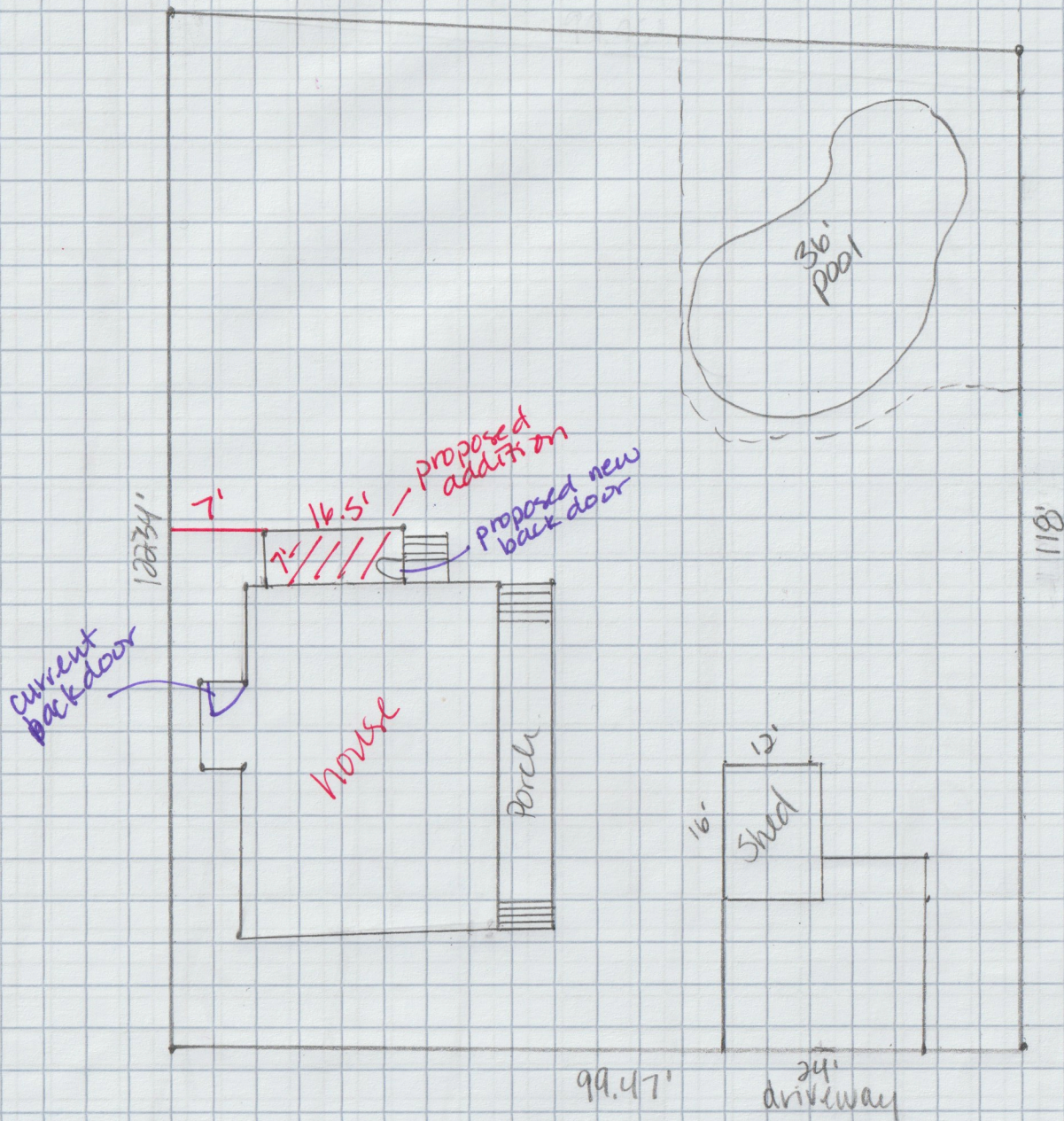
10.233.24 The values of surrounding properties will not be diminished- The addition is located at the rear of our home and will not diminish the value of surrounding homes.

10.233.25 Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship- The location of our current rear door will be removed during our kitchen renovation from it's current location along our property line. It will be moved to the rear of the house with the addition to be moved to 21' from the lot line.

The special exception we are requesting is the left side of the addition is 7' from the lot line where 10' is required. The current rear door is located along the lot line and will be moved to the addition and away from its current position to then be 21' from the lot line.

Thank you for your consideration,


Todd & Ashley Blackington



65 Mendum Ave
proposed 7x16.5 addition
1/17/2023 meeting.



PROPOSED ADDITION SKETCH

III. NEW BUSINESS

- F. The request of **Lucky Thirteen Properties LLC (Owner)**, for property located at **147 Congress Street** whereas relief is needed to expand the existing structure which requires 1) Variance from Section 10.5A41.10D to allow 2% open space where 5% is required. Said property is located on Assessor Map 126 Lot 4 and lies within the Character District 5 (CD5), Downtown Overlay and Historic District. (LU-22-192)

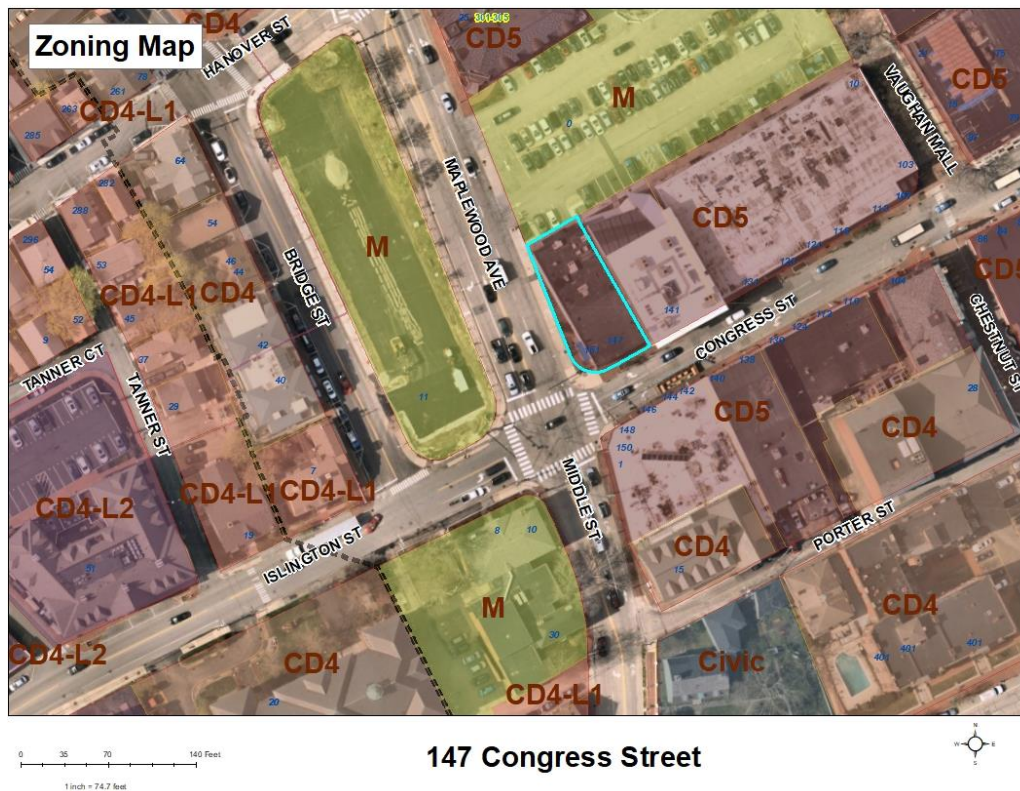
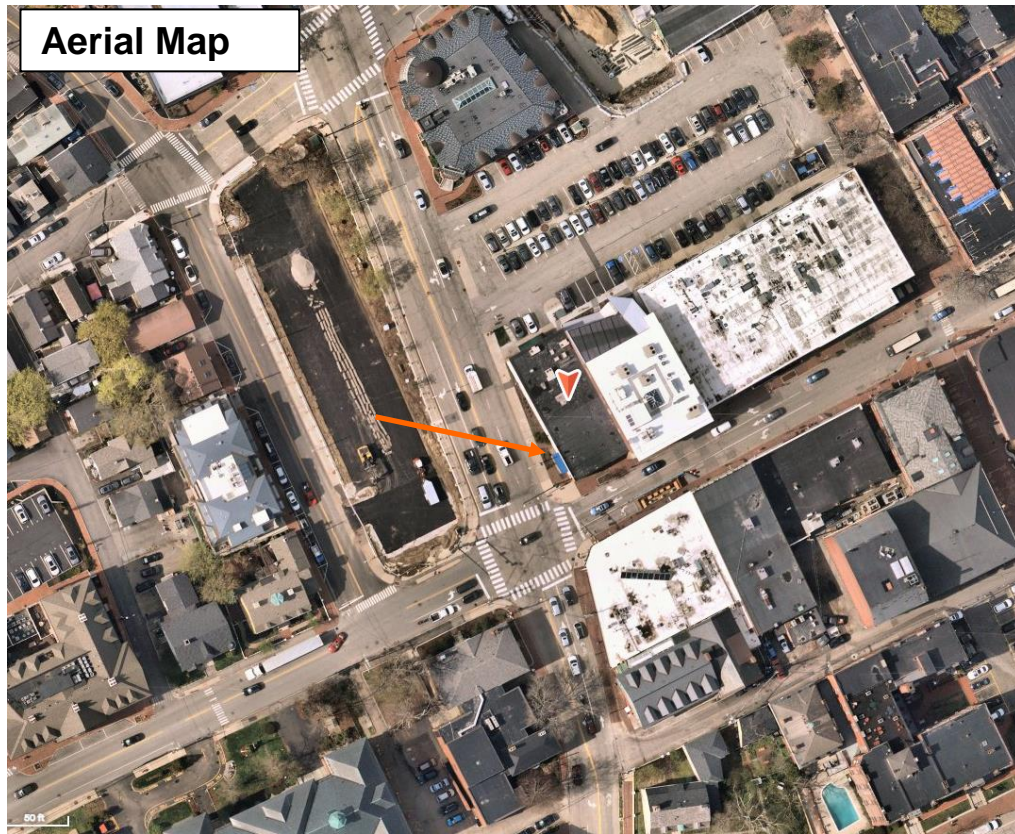
Existing and Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Commercial	Addition	Primarily Commercial Uses
<u>Lot area (sq. ft.):</u>	6,245	6,245	Not Required min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	Not Required	Not Required	Not Required min.
<u>Minimum Front Lot Line Buildout (ft.):</u>	>80	>80	80 min.
<u>Max Building Block Length (ft.):</u>	<225	<225	225 max.
<u>Front Yard (ft.):</u>	5	5	5 max.
<u>Left Side Yard (ft.):</u>	0	0	Not Required min.
<u>Right Side Yard (ft.):</u>	0	0	Not Required min.
<u>Rear Yard (ft.):</u>	<5	<5	5 max.
<u>Height (ft.):</u>	<40	<40	2-3 Stories, 40' max.
<u>Building Coverage (%)</u>	78	94.6	95 max.
<u>Open Space Coverage (%)</u>	18.5	2	5 min.
<u>Parking</u>	Ok	Ok	Not required in the Downtown Overlay
<u>Estimated Age of Structure:</u>	1950	Variance request shown in red.	

Other Permits/Approvals Required

- Historic District Commission Certificate of Approval
- Building Permit
- Site Review (TAC/Planning Board)

Neighborhood Context



Previous Board of Adjustment Actions

No prior BOA history found.

Planning Department Comments

Applicant is proposing an addition to the existing structure to accommodate for the proposed redevelopment on the inside of the structure. The addition will reduce the open space to 2% where 5% is required.

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 special conditions that distinguish it from other properties in the area.*

AND

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

OR

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

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

BY: VIEWPOINT & HAND DELIVERY

December 26, 2022

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

**RE: Variance Application of Lucky Thirteen Properties LLC
147 Congress Street, Tax Map 126, Lot 4**

Dear Peter,

Our Office represents Lucky Thirteen Properties LLC, owner of the property located at 147 Congress Street, Portsmouth. Enclosed for submission to the ZBA for its January meeting, please find the following materials relative to the proposed improvements for 147 Congress Street.

- 1) Landowner Letter of Authorization;
- 2) Narrative to Variance Application (photos included as Exhibit D);
- 3) Site Plan and Open Space Plan;
- 4) Floor Plans and Elevations;

A copy of the application submission is being delivered to the Planning Department. Should you have any questions or concerns regarding the enclosed application materials, do not hesitate to contact me at your convenience.

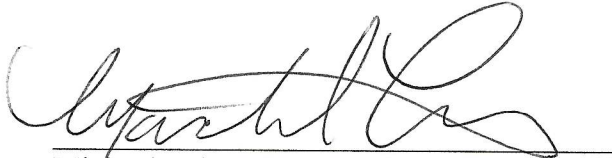
Sincerely,



Derek R. Durbin, Esq.

LANDOWNER LETTER OF AUTHORIZATION

Lucky Thirteen Properties LLC, record owner of property located at 147 Congress Street, Portsmouth, NH 03801, Tax Map 126, Lot 4 (the "Property"), hereby authorizes **Durbin Law Offices, PLLC** to file any zoning, planning or other municipal permit applications with the City of Portsmouth for said Property and to appear before its land use boards. This Letter of Authorization shall be valid until expressly revoked in writing.


Michael Labrie, Duly Authorized

December 19, 2022

**CITY OF PORTSMOUTH
ZONING APPLICATION NARRATIVE**

Lucky Thirteen Properties LLC
(Owner/Applicant)
Tax Map 126, Lot 4
147 Congress Street
Portsmouth, NH 03801

The Property

The Property at 147 Congress Street, Portsmouth (the “Property”) is located in the Character District 5 (CD5) Zoning District and Downtown Overlay District (“DOD”). **Exhibit A.** The Property has a land area of approximately 6,245 square feet. It contains a 2-story commercial building with a finished basement level. The building was originally constructed in the year 1950 per the City’s assessing records. The building consists of vacant space on the first floor. The bottom floor serves primarily as storage space but has some office space for the employees at Jimmy’s Jazz Club. Until recently, the Portsmouth Health Food Store occupied the first floor. The second floor consists of four (4) office spaces, one of which is presently occupied by a yoga studio.

As you will see by looking at the Tax Map attached as **Exhibit B**, the Property is a long, narrow, corner lot which puts it at a disadvantage for retail, restaurant, and similar uses. The purpose of the DOD is “to promote the economic vitality of the downtown by ensuring continuity of pedestrian-oriented business **uses** along **streets**.” When translated into the layperson’s vernacular, the DOD is intended to encourage retail, restaurant and like business uses on the ground floors of downtown buildings. The existing long, narrow building on the Property may be perfectly suitable for commercial office space, but the resulting floor plan is generally incompatible with retail and restaurant-related uses given the lack of window frontage (storefront) along the sidewalk and street. Given the high tax assessments attributed to the downtown properties, maximizing the amount of retail and restaurant related space on the ground floors of buildings is critically important since this type of space commands the highest rents.

The current owner of the Property, Lucky Thirteen Properties LLC (Michael Labrie, Member), would like to repurpose, renovate and add onto the Maplewood Avenue side of the building following the departure of the Portsmouth Health Food Store. Given the lack of available land area, in order to accomplish this goal, Mr. Labrie needs to utilize the landscaped sliver of land that runs between the sidewalk and building along Maplewood Avenue. This will allow him to take advantage of the long, narrow configuration of the building and its frontage on both Maplewood Avenue and Congress Street. As it stands now, the westerly side of the building along Maplewood Avenue consists of a relatively monolithic white brick wall. The building itself is from the Urban Renewal period and has a Cold War Era appearance. The proposed renovations will result in a more attractive, code-compliant building that will activate the sidewall along Maplewood Avenue. Mr. Labrie will be repurposing an existing building to improve its function and appearance, which will benefit the public, as opposed to tearing it down and building something much larger in its place.

The landscaping that would be removed and infilled with the proposed addition consists of a mixture of vegetation, including some zebra grass, flowering plants and smaller shrubbery. The utility meters are also located on this side of the building within the landscaped area. Objectively speaking, the landscaping serves very little purpose and is not overly attractive in its current state. Moreover, its location immediately between the building and sidewalk means that it tends to collect debris and trash and is difficult to maintain.

Summary of Zoning Relief

In order to construct the proposed addition, Mr. Labrie needs a variance from Section Figure 10.5A41.10D of the Ordinance to allow for 2.3% open space where 5% is the minimum required.

Variance Criteria

Granting the variances will not be contrary to the spirit and intent of the Zoning Ordinance or the public interest.

In the case of *Chester Rod & Gun Club, Inc. v. Town of Chester*, the Court noted that since the provisions of all ordinances represent a declaration of public interest, any variance will, in some measure, be contrary to the ordinance, but to be contrary to the public interest or injurious to 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.'" *Id.* The Court observed that "[t]here are two methods of ascertaining whether granting a variance would violate an ordinance's basic zoning objectives: (1) examining whether granting the variance would alter the essential character of the neighborhood or, in the alternative; and (2) examining whether granting the variance would threaten the public health, safety, or welfare." 152 N.H. 577.

Per Figure 10.5A41.10D of the Ordinance, the CD5 District *consists of a high density center with a mix of **building** types and residential, retail and other commercial **uses**. There are no **front yards** or **side yards**, and limited **landscaping** and public parking facilities. **Streets** have **sidewalks** and trees or other pedestrian amenities, and define small to medium **blocks**.*

A significant portion of downtown, and the areas around the North Mill Pond commonly referred to as the "Northern Tier", are zoned CD5 and fall within the DOD. **Exhibit C.** These are the areas with the greatest density of existing and proposed retail and restaurant uses. Restaurant and retail related uses are the predominant ground floor uses throughout the CD5 Zoning District and DOD, consistent with the City's vision for the downtown and Northern Tier.

As evidenced by Figure 10.5A41.10D, the Ordinance intends for near maximum build out of properties zoned CD5. It specifically encourages build-out to the front and side yard property lines which is consistent with the goal of promoting ground floor retail, restaurant and related uses within the downtown. By the way it was written, it appears that the Ordinance contemplates open space being primarily situated to the rear of buildings within the CD5 Zoning District. Otherwise, the Ordinance would not have been written to encourage near maximum side and front lot line buildouts.

Aside from the properties, such as Vaughn Mall, that are owned by the City, a majority of the properties that surround 147 Congress Street have no green space and are otherwise consistent in appearance to what is proposed. **Exhibit D.** The Property is situated at the end of a city block where there is little or no separation between buildings or landscaping other than the trees that have been planted in and around the sidewalk areas of the City right-of-way. The landscaping along the Maplewood Avenue side of the Property is actually somewhat of an oddity when you consider the lack of landscaped areas around surrounding buildings in this block of Portsmouth.

In the case of *Belanger v. Nashua*, the NH Supreme Court opined: “[w]hile we recognize the desired interrelationship between the establishment of a plan for community development and zoning, we believe that municipalities must also have their zoning ordinances reflect the current character of neighborhoods.” 121 N.H. 389 (1981).

“Open space” is defined by Section 10.1530 of the Ordinance as follows:

Land area vertically open to the sky, free of all **structures**, parking area/lots, **driveways** and other **uses** which preclude attractive **landscaping** in such area. **Open space** shall be predominantly pervious, may be landscaped with lawn, trees, shrubs or other planting, and may include walks and terraces. For the purposes of this definition, water areas are considered to constitute **open space**.

Requiring that the Property meet the 5% open space threshold serves no legitimate purpose in the present case, as a majority of other properties surrounding it have been built out to the properties lines and have no green space at all. Because of how the term *open space* is defined by the Ordinance and has been interpreted by the City, many areas of the Property that would otherwise be considered in the calculation are discounted for one reason or another. For example, the City has interpreted the definition to preclude areas that are less than 5’ in width to be used in the calculation regardless of the fact that they are *open to the sky*. In the present case, the proposed design results in several areas that are less than 5’ in width that are not counted. If counted, 4.5% of the Property is *open to the sky* and otherwise meets the definition of *open space*. Moreover, areas that are landscaped with vegetation or would otherwise count towards the open space requirement but have a canopy over all or a portion of them are not *open to the sky* and cannot be used in the calculation. This results in an apparent contradiction with what the Ordinance intended, as sidewalks that are *open to the sky* can be counted as *open space* but areas that are nicely landscaped with vegetation but have a canopy over them cannot. If the proposed canopied areas of the building could be counted in the open space computation, the Property could meet the 5% *open space* requirement. The proposed canopies are strongly favored by the HDC and add very attractive design features to the building.

The term open space is nebulously defined and ultimately leaves interpretation to the City. It is a term that has not been consistently interpreted by the City since it was defined. Therefore, it is incumbent to look at the spirit and intent of the Ordinance and the character of the area in which a property is located.

What is proposed for an addition will actually make the Property more compliant with respect to the primary and secondary front yard setback provisions of the Ordinance. Therefore, while the goal behind one requirement of the Ordinance (open space) is not strictly achieved, as interpreted by the City, others (i.e. lot line buildout) are more closely met.

With the proposed renovation, there will be several life safety improvements that would have not been mandated otherwise, including a new sprinkler system on all three (3) floors and fire rated stairwells and hallways. In addition, Mr. Labrie intends to grant easements to the City over portions of the Congress Street and Worth Lot sidewalks which are privately held. The 100' long concrete sidewalk along Maplewood Avenue will be replaced with red brick at Mr. Labrie's cost.

For the foregoing reasons, granting the variances will not alter the essential character of the area or negatively impact public health, safety or welfare. The aesthetic and functional improvements made to the Property will be a benefit to the City and the public and be consistent with the spirit and intent of the Ordinance.

B. Substantial Justice will be done in granting the variance relief sought.

To determine whether substantial justice is done, the Board must balance the equities between the rights of a private landowner and the public interest in deciding whether to grant or deny a variance request. The "only guiding rule is that any loss to the individual that is not outweighed by a gain to the general public is an injustice." New Hampshire Office of State Planning, The Board of Adjustment in New Hampshire, A Handbook for Local Officials (1997); [*Malachy Glen Assocs., Inc. v. Town of Chichester*, 155 N.H. 102 \(2007\)](#).

Ultimately, the question is whether or not preserving the existing landscaping along the Maplewood Avenue side of the building is more important than improving and expanding upon the building and the City obtaining easements over portions of the sidewalk that are presently owned by Mr. Labrie. In the present case, there is no gain to the public by denying the variance to the open space requirement. To the contrary, denying the variance would be a detriment to the public, and would constitute a loss to the Applicant. Granting the variance will result in a much-improved building aesthetically and otherwise at no cost to the public.

C. Surrounding property values will not be diminished by granting the variance.

The Board is justified in relying upon its own knowledge and expertise to reach the conclusion that surrounding property values will only be improved with the proposed renovation and building addition. The landscaping that will be removed and replaced by the addition adds no value to the building. The improved appearance of the building will benefit surrounding properties and their values. The HDC approves of the current design, which is further evidence of the fact that granting the variance will not diminish surrounding property values.

D. Denying the variance would constitute an unnecessary hardship.

The Property has some obvious special conditions that distinguish it from surrounding properties. It is a relatively small, rectangular corner lot with a long, narrow building on. The lack of linear (window) frontage along Congress Street makes the ground floor of the building ill-suited for retail restaurant uses related which are the predominant (and encouraged) uses in this area of Portsmouth and throughout the CD5 District and DOD. In addition, the Property has frontage on two different public streets, Maplewood Avenue and Congress Street. However, the existing building has a long, brick wall with no access via Maplewood Avenue. Therefore, the Applicant is unable to take advantage of the secondary frontage on Maplewood Avenue due to the existing condition of the building.

Reducing the open space to less than what is required in the CD5 Zoning District will render the Property non-conforming in this respect. However, this is offset by the build-out of the Property along Maplewood Avenue, which will bring it into greater conformance with the *minimum* secondary front yard setback requirement set forth in Figure 10.5A41.10D.

The reduction in green space will actually make the Property more consistent in appearance to surrounding properties. Thus, owing to the special conditions of the Property there is no fair and substantial relationship between the general purposes of the Ordinance provisions and their application to the Property.

Finally, the proposed use of the Property will remain consistent with CD5 zoning. Therefore, it is reasonable per se.

Conclusion

In conclusion, the five (5) criteria for granting the variance are met. Accordingly, the Applicant respectfully requests your approval.

Respectfully Submitted,

Dated: December 26, 2022

Lucky Thirteen Properties LLC



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

Exhibit A



Property Information

Property ID 0126-0004-0000
 Location 147 CONGRESS ST
 Owner LUCKY THIRTEEN PROPERTIES LLC



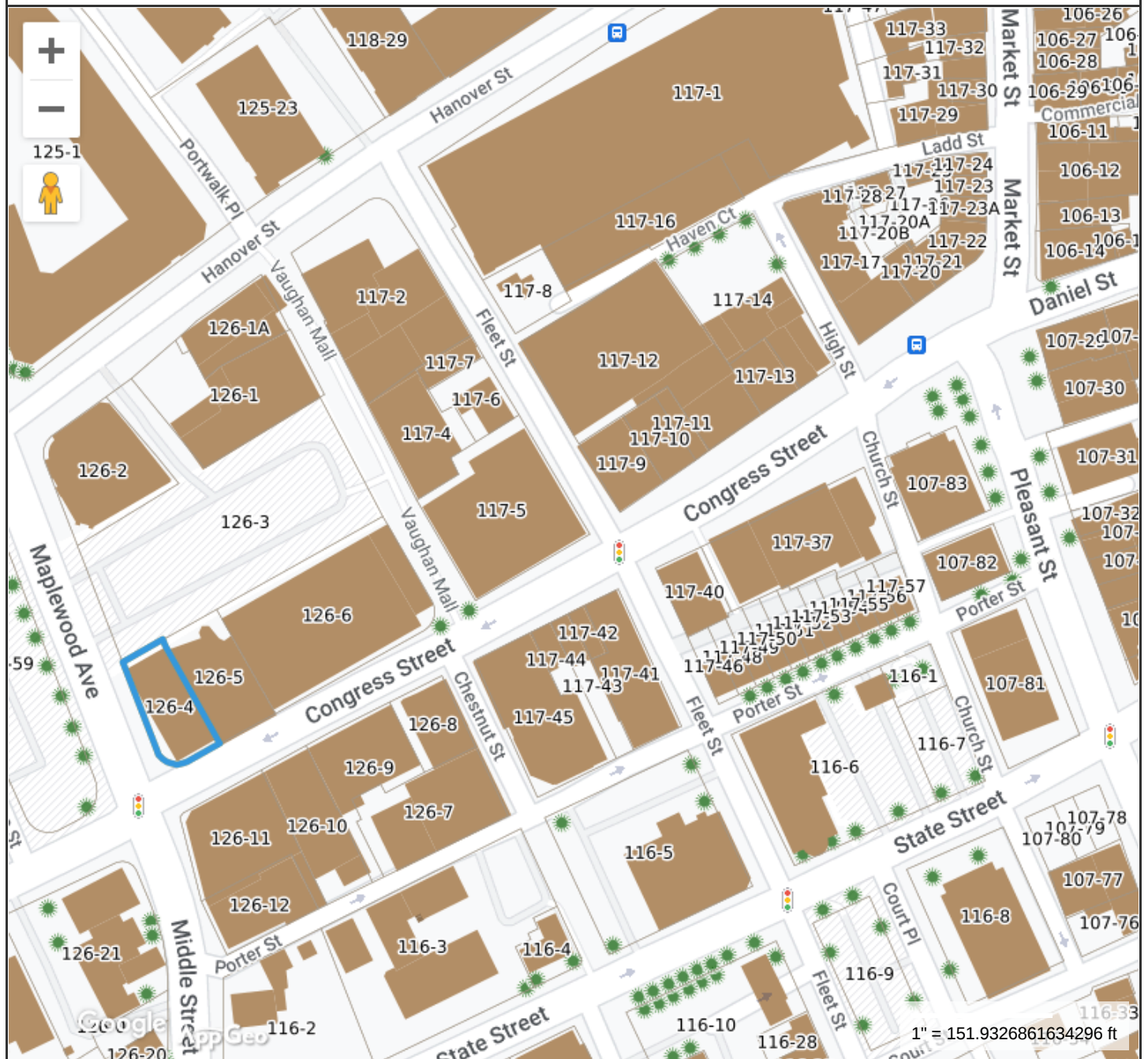
MAP FOR REFERENCE ONLY
 NOT A LEGAL DOCUMENT

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

Geometry updated 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.

Exhibit B



Property Information

Property ID 0126-0004-0000
 Location 147 CONGRESS ST
 Owner LUCKY THIRTEEN PROPERTIES LLC



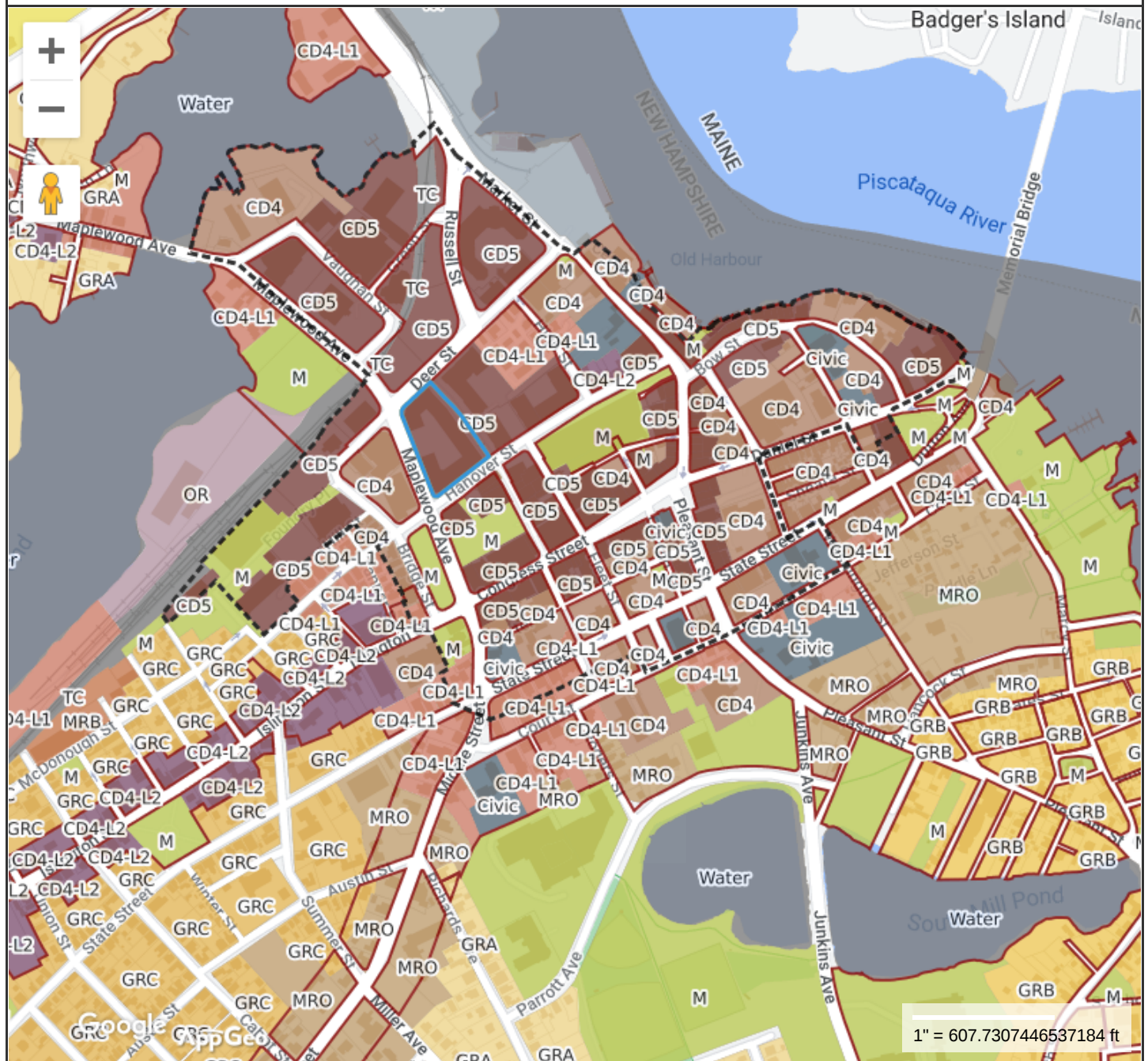
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Geometry updated 09/21/2022
 Data updated 3/9/2022

Print map scale is approximate.
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Exhibit C



Property Information

Property ID 0125-0001-0000
Location 195 HANOVER ST
Owner PARADE OFFICE LLC



MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT

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Geometry updated 09/21/2022
Data updated 3/9/2022

Print map scale is approximate.
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View of Block from Corner of Maplewood Ave. and Congress Street (North)



View of Block from Corner of Maplewood Ave. and Congress Street (South)



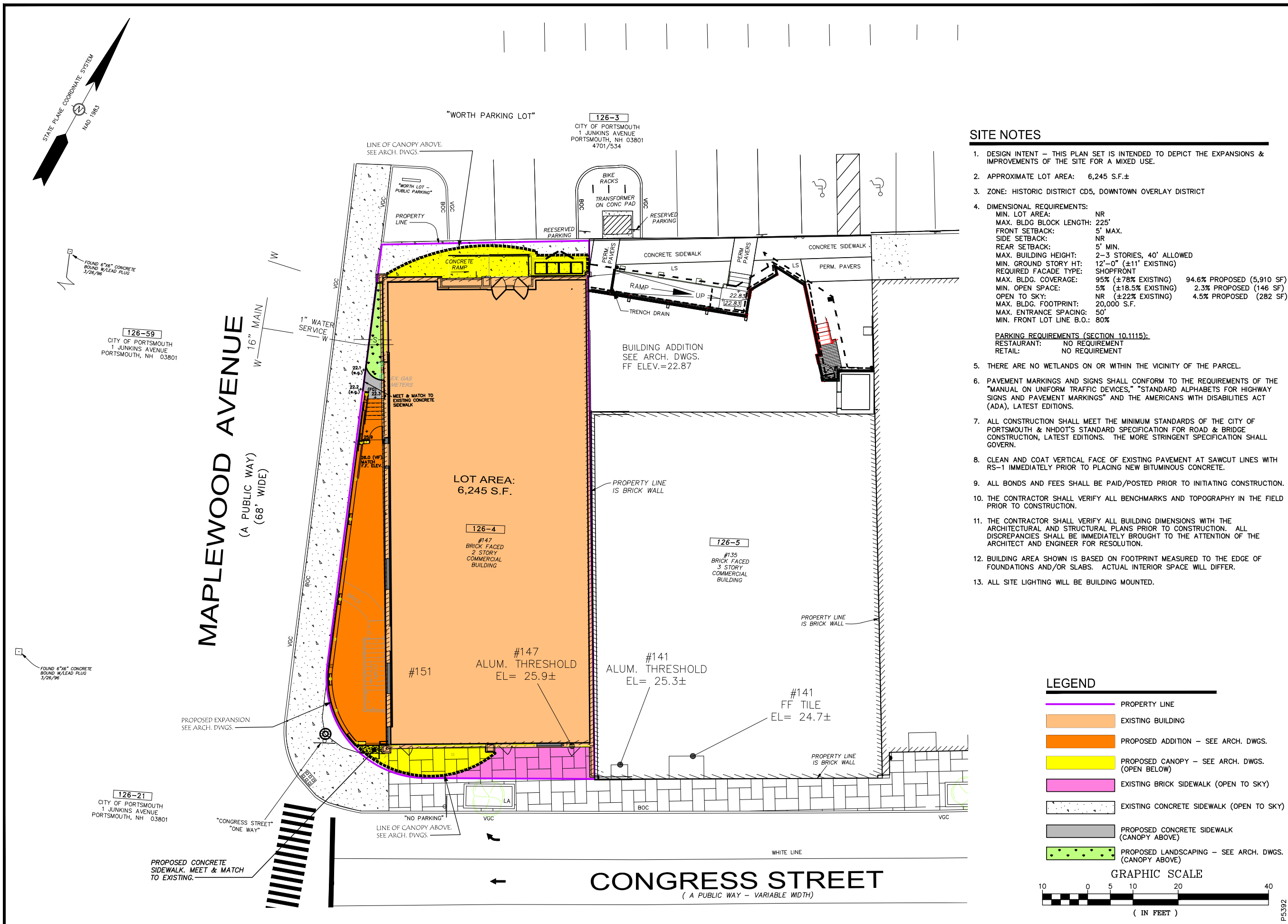
View of Block (Congress St) from Vaughn Mall



View of Landscaping on Maplewood Ave Side of Building at 147 Congress Street



View of Worth Parking Lot from Vaughn Mall

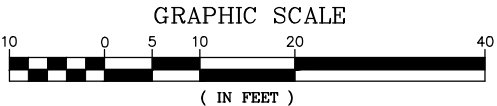


SITE NOTES

- 1. DESIGN INTENT – THIS PLAN SET IS INTENDED TO DEPICT THE EXPANSIONS & IMPROVEMENTS OF THE SITE FOR A MIXED USE.
- 2. APPROXIMATE LOT AREA: 6,245 S.F.±
- 3. ZONE: HISTORIC DISTRICT CD5, DOWNTOWN OVERLAY DISTRICT
- 4. DIMENSIONAL REQUIREMENTS:
 - MIN. LOT AREA: NR
 - MAX. BLDG BLOCK LENGTH: 225'
 - FRONT SETBACK: 5' MAX.
 - SIDE SETBACK: NR
 - REAR SETBACK: 5' MIN.
 - MAX. BUILDING HEIGHT: 2-3 STORIES, 40' ALLOWED
 - MIN. GROUND STORY HT: 12'-0" (±11' EXISTING)
 - REQUIRED FACADE TYPE: SHOPFRONT
 - MAX. BLDG. COVERAGE: 95% (±78% EXISTING) 94.6% PROPOSED (5,910 SF)
 - MIN. OPEN SPACE: 5% (±18.5% EXISTING) 2.3% PROPOSED (146 SF)
 - OPEN TO SKY: NR (±22% EXISTING) 4.5% PROPOSED (282 SF)
 - MAX. BLDG. FOOTPRINT: 20,000 S.F.
 - MAX. ENTRANCE SPACING: 50'
 - MIN. FRONT LOT LINE B.O.: 80%
- PARKING REQUIREMENTS (SECTION 10.1115):
 - RESTAURANT: NO REQUIREMENT
 - RETAIL: NO REQUIREMENT
- 5. THERE ARE NO WETLANDS ON OR WITHIN THE VICINITY OF THE PARCEL.
- 6. PAVEMENT MARKINGS AND SIGNS SHALL CONFORM TO THE REQUIREMENTS OF THE "MANUAL ON UNIFORM TRAFFIC DEVICES," "STANDARD ALPHABETS FOR HIGHWAY SIGNS AND PAVEMENT MARKINGS" AND THE AMERICANS WITH DISABILITIES ACT (ADA), LATEST EDITIONS.
- 7. ALL CONSTRUCTION SHALL MEET THE MINIMUM STANDARDS OF THE CITY OF PORTSMOUTH & NHDOT'S STANDARD SPECIFICATION FOR ROAD & BRIDGE CONSTRUCTION, LATEST EDITIONS. THE MORE STRINGENT SPECIFICATION SHALL GOVERN.
- 8. CLEAN AND COAT VERTICAL FACE OF EXISTING PAVEMENT AT SAWCUT LINES WITH RS-1 IMMEDIATELY PRIOR TO PLACING NEW BITUMINOUS CONCRETE.
- 9. ALL BONDS AND FEES SHALL BE PAID/POSTED PRIOR TO INITIATING CONSTRUCTION.
- 10. THE CONTRACTOR SHALL VERIFY ALL BENCHMARKS AND TOPOGRAPHY IN THE FIELD PRIOR TO CONSTRUCTION.
- 11. THE CONTRACTOR SHALL VERIFY ALL BUILDING DIMENSIONS WITH THE ARCHITECTURAL AND STRUCTURAL PLANS PRIOR TO CONSTRUCTION. ALL DISCREPANCIES SHALL BE IMMEDIATELY BROUGHT TO THE ATTENTION OF THE ARCHITECT AND ENGINEER FOR RESOLUTION.
- 12. BUILDING AREA SHOWN IS BASED ON FOOTPRINT MEASURED TO THE EDGE OF FOUNDATIONS AND/OR SLABS. ACTUAL INTERIOR SPACE WILL DIFFER.
- 13. ALL SITE LIGHTING WILL BE BUILDING MOUNTED.

LEGEND

- PROPERTY LINE
- EXISTING BUILDING
- PROPOSED ADDITION – SEE ARCH. DWGS.
- PROPOSED CANOPY – SEE ARCH. DWGS. (OPEN BELOW)
- EXISTING BRICK SIDEWALK (OPEN TO SKY)
- EXISTING CONCRETE SIDEWALK (OPEN TO SKY)
- PROPOSED CONCRETE SIDEWALK (CANOPY ABOVE)
- PROPOSED LANDSCAPING – SEE ARCH. DWGS. (CANOPY ABOVE)



NOT FOR CONSTRUCTION

ISSUED FOR: BOARD OF ADJUSTMENT

ISSUE DATE: DECEMBER 21, 2022

REVISIONS	
NO.	DESCRIPTION
0	INITIAL SUBMISSION
1	INITIAL BOA SUBMISSION

DRAWN BY: _____ RLH
APPROVED BY: _____ EDW
DRAWING FILE: 5392.dwg

SCALE:
22" x 34" – 1" = 10'
11" x 17" – 1" = 20'

OWNER/APPLICANT:

LUCKY THIRTEEN
PROPERTIES, LLC

P.O.BOX 300
RYE, NH 03870-0300

PROJECT:
**PROPOSED
REDEVELOPMENT**

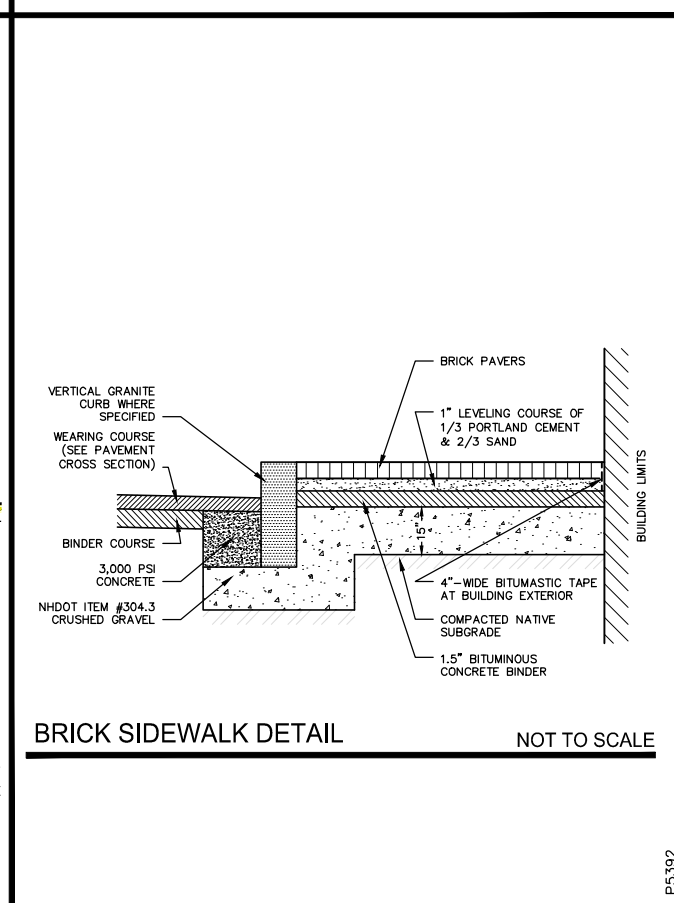
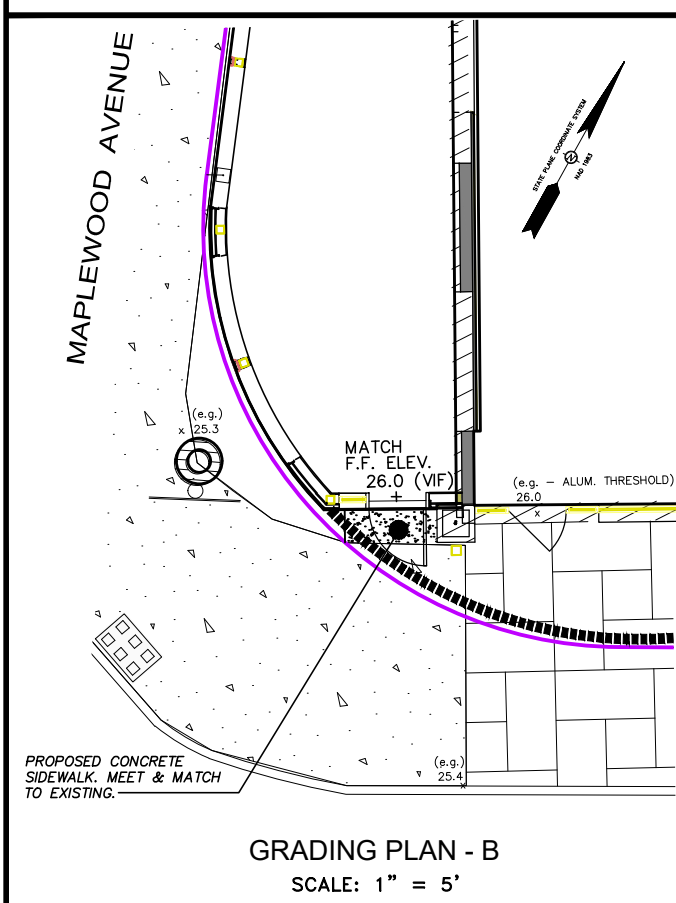
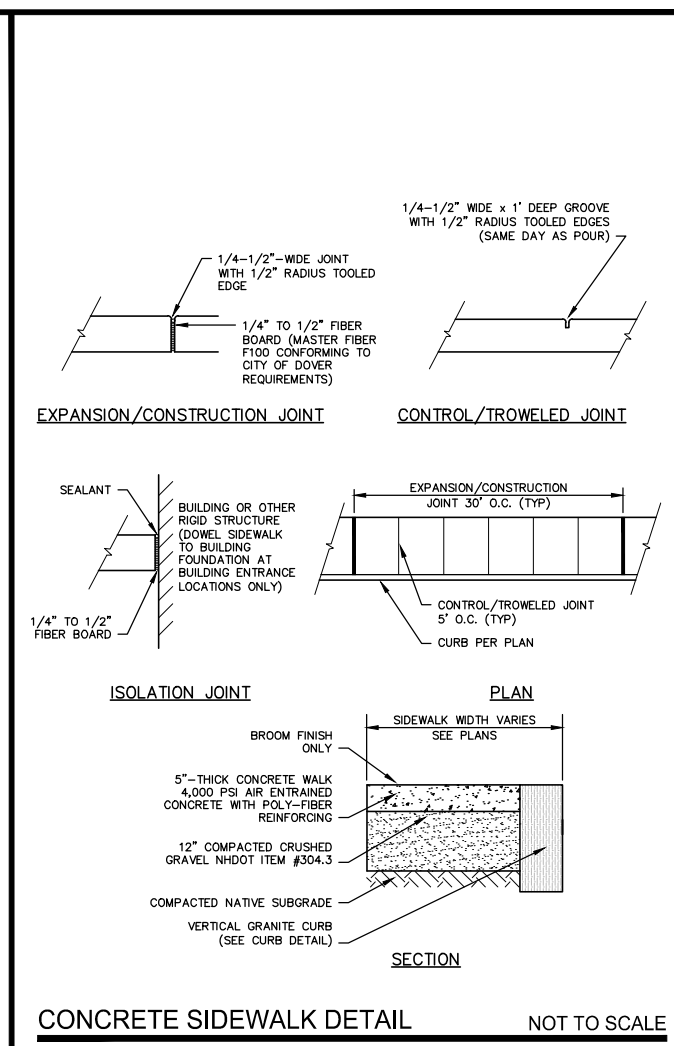
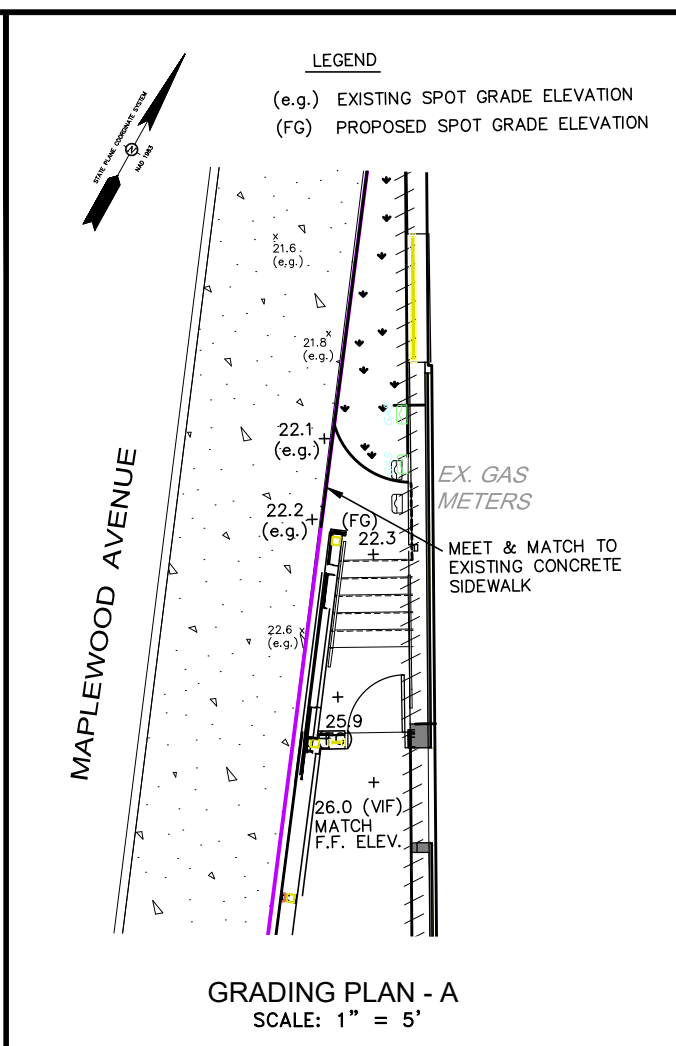
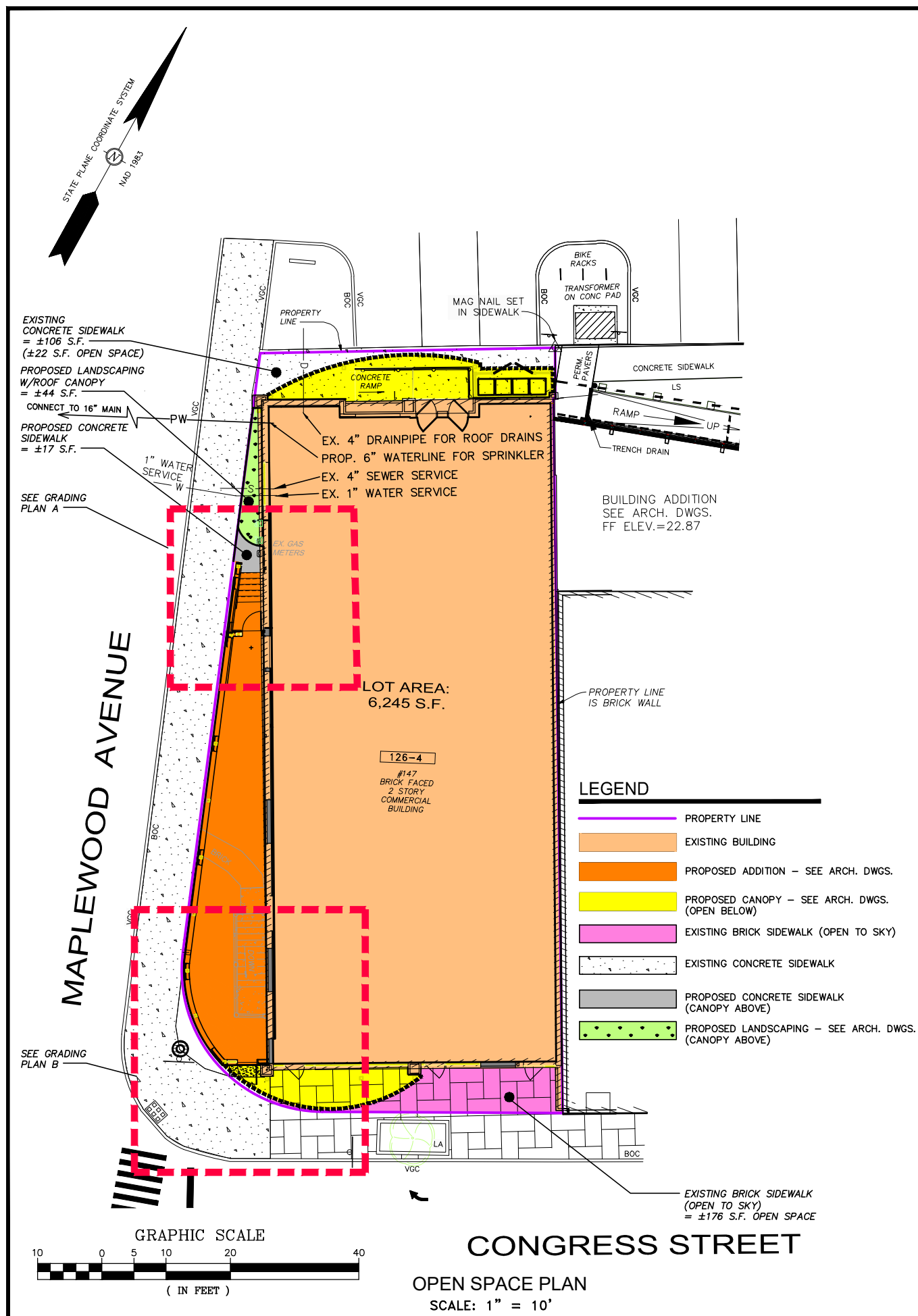
TAX MAP 126, LOT 4
147 CONGRESS STREET
PORTSMOUTH, NH

TITLE:

SITE PLAN

SHEET NUMBER:

C-1



ALTUS
ENGINEERING

133 Court Street
(603) 433-2335

Portsmouth, NH 03801
www.altus-eng.com

NOT FOR CONSTRUCTION

ISSUED FOR:
BOARD OF ADJUSTMENT

ISSUE DATE:
DECEMBER 21, 2022

REVISIONS

NO.	DESCRIPTION	BY	DATE
0	INITIAL SUBMISSION	EDW	11/01/22
1	BOA SUBMISSION	EDW	12/21/22

DRAWN BY: _____ RLH

APPROVED BY: _____ EDW

DRAWING FILE: _____ 5392.dwg

SCALE:
22" x 34" - AS SHOWN
11" x 17" - AS SHOWN

OWNER/APPLICANT:

**LUCKY THIRTEEN
PROPERTIES, LLC**

P.O. BOX 300
RYE, NH 03870-0300

PROJECT:
**PROPOSED
REDEVELOPMENT**

TAX MAP 126, LOT 4

147 CONGRESS STREET
PORTSMOUTH, NH

TITLE:
**OPEN SPACE PLAN &
GRADING PLANS**

SHEET NUMBER:
C-2

P5392



PREVIOUSLY APPROVED

MARKET SQUARE ARCHITECTS
104 Congress St., STE 203
Portsmouth, NH 03801
PH: 603.501.0202

HISTORIC DISTRICT COMMISSION
ADMINISTRATIVE APPROVAL
DECEMBER 2022

147 CONGRESS
147 Congress St
Portsmouth, NH 03801

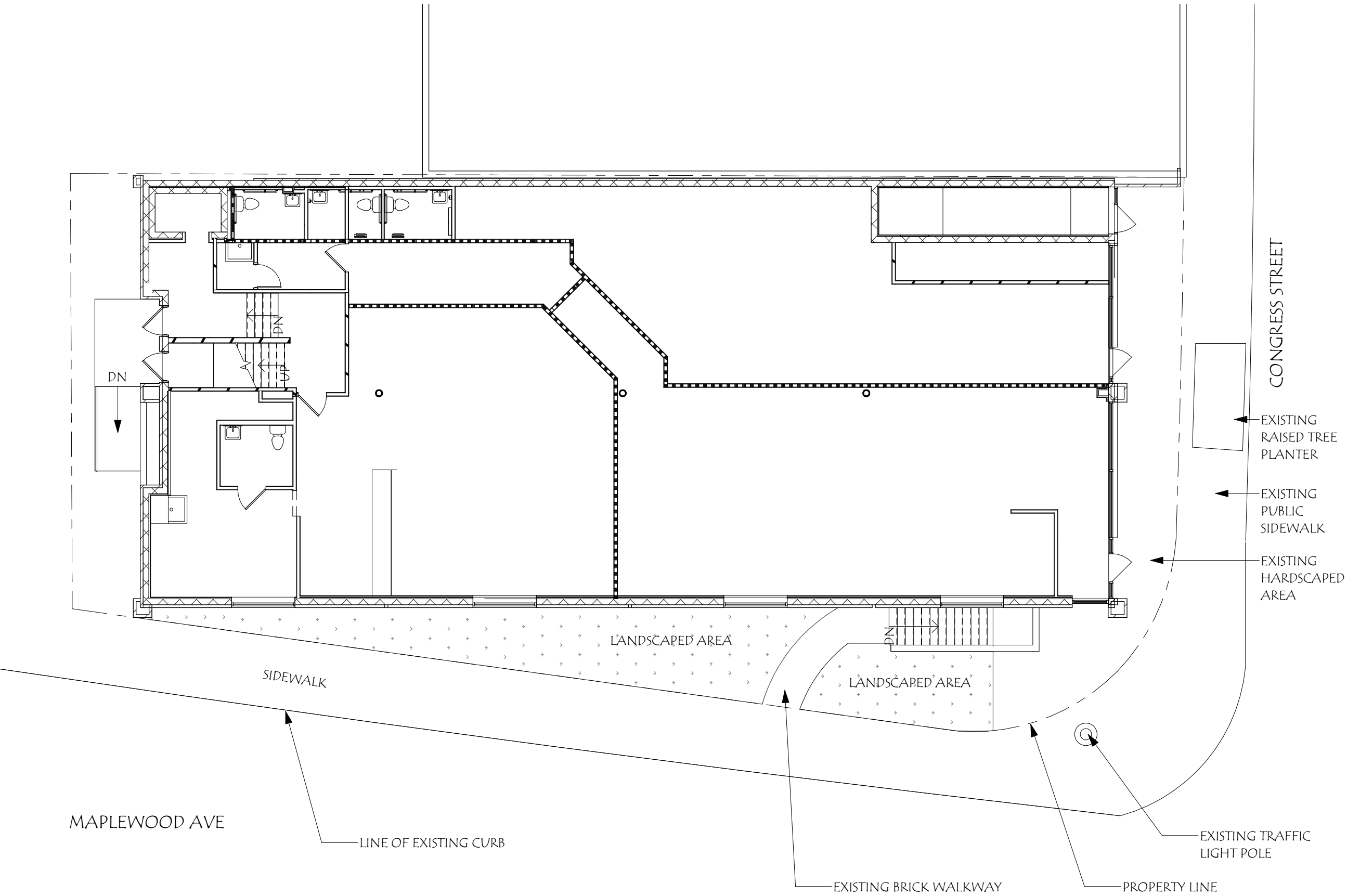
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1	SNH	
2	RJH	
3	202209	
4	11/18/22	

SCALE:
DRAWN BY:
CHECKED BY:
PROJECT NO.:
DATE:

TITLE:
EXISTING
CONTEXT

2

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PREVIOUSLY APPROVED

MARKET
SQUARE

ARCHITECTS
104 Congress St., STE 203
Portsmouth, NH 03801
PH: 603.501.0202

HISTORIC
DISTRICT
COMMISSION
ADMINISTRATIVE
APPROVAL
DECEMBER 2022

147 CONGRESS
147 Congress St
Portsmouth, NH 03801

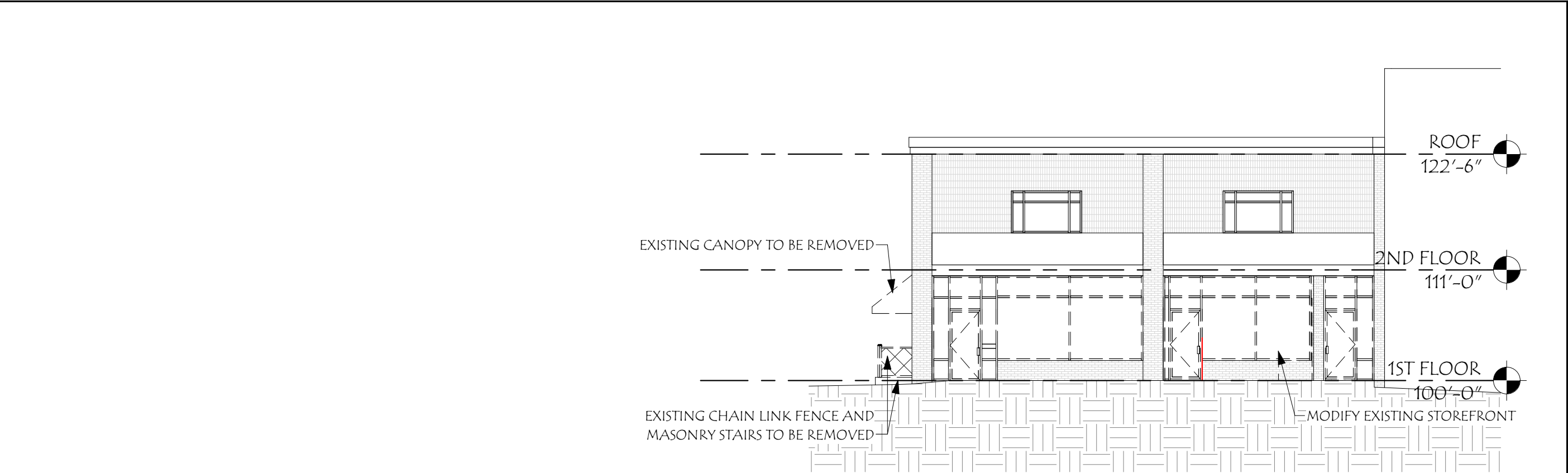
Revisions:	Description	Date
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DRAWN BY:	SNH
CHECKED BY:	RJH
PROJECT NO.:	202209
DATE:	11/18/22

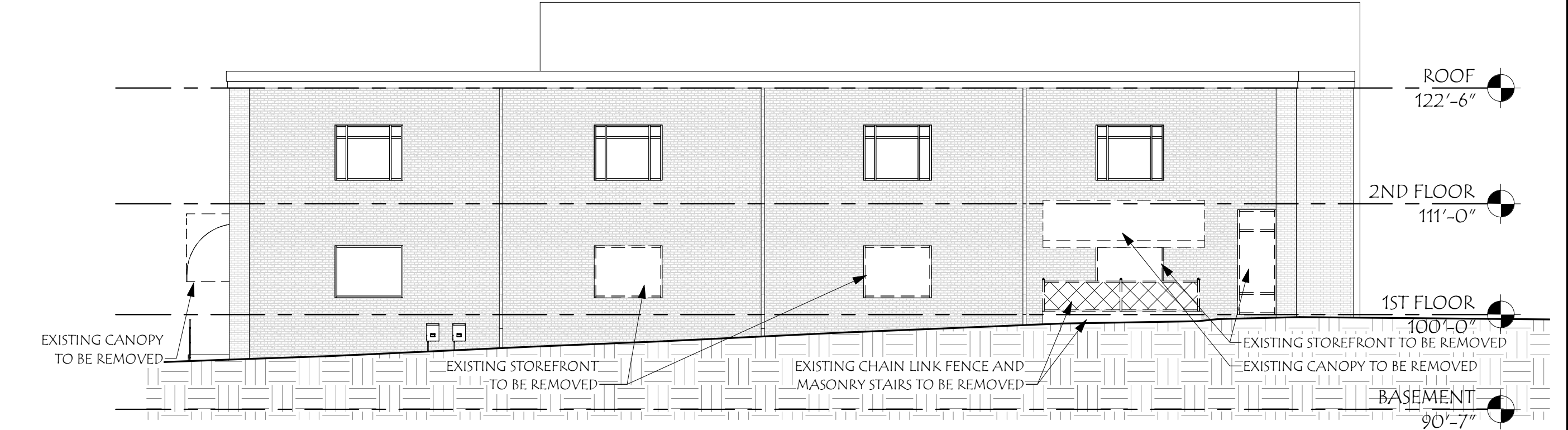
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SOUTH ELEVATION



WEST ELEVATION

PREVIOUSLY APPROVED

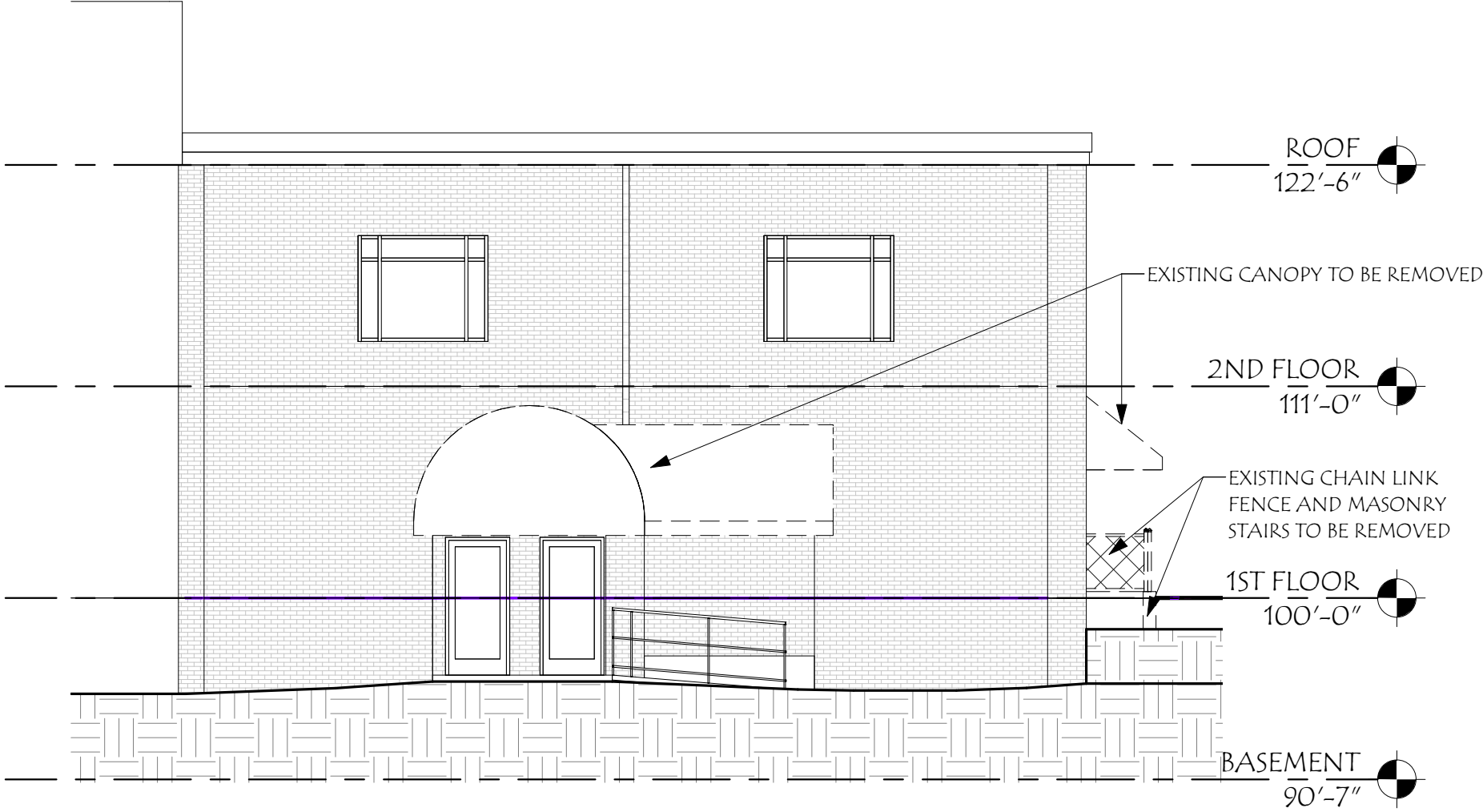
147 CONGRESS

147 Congress St
Portsmouth, NH 03801

Revisions: #	Description	Date

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DRAWN BY: SNH	RJH
CHECKED BY:	202209
PROJECT NO.:	11/18/22
DATE:	12/23/2022 8:28:04 PM

TITLE: DEMO ELEVATIONS	4
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NORTH ELEVATION
PREVIOUSLY APPROVED

MARKET SQUARE ARCHITECTS 104 Congress St., STE 203 Portsmouth, NH 03801 PH: 603.501.0202		HISTORIC DISTRICT COMMISSION ADMINISTRATIVE APPROVAL DECEMBER 2022		147 CONGRESS 147 Congress St Portsmouth, NH 03801	
TITLE: DEMO ELEVATIONS	SCALE: 1/8" = 1'-0"	Revisions:	Description	Date	
	DRAWN BY: SNH	#			
	CHECKED BY: RJH				
	PROJECT NO.: 202209				
	DATE: 11/18/22				
5		* 2022 Market Square Architects 12/23/2022 8:28:05 PM			



PROPOSED

Revisions:	Description	Date
#		

SCALE:	Author
DRAWN BY:	Checker
CHECKED BY:	202209
PROJECT NO.:	11/18/22
DATE:	

TITLE: PROPOSED CONTEXT	7
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147 CONGRESS ST

SIGNAGE

PROPOSED

MARKET
SQUARE
ARCHITECTS
104 Congress St., STE 203
PORTSMOUTH, NH 03801
PH: 603.501.0202

HISTORIC
DISTRICT
COMMISSION
ADMINISTRATIVE
APPROVAL
DECEMBER 2022

147 CONGRESS
147 Congress St
Portsmouth, NH 03801

Revisions:

#	Description	Date

SCALE:

DRAWN BY:

CHECKED BY:

PROJECT NO.:

DATE:

TITLE:
PROPOSED
CONTEXT

9

Author

Checker

202209

11/18/22

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HISTORIC
DISTRICT
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APPROVAL
DECEMBER 2022

147 CONGRESS

147 Congress St
Portsmouth, NH 03801

Revisions:	Description	Date
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SCALE:	Author
DRAWN BY:	Checker
CHECKED BY:	202209
PROJECT NO.:	11/18/22
DATE:	12/23/2022 8:28:05 PM

TITLE: PROPOSED CONTEXT	10
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MARKET
SQUARE
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104 Congress St., STE 203
Portsmouth, NH 03801
PH: 603.501.0202

HISTORIC
DISTRICT
COMMISSION
ADMINISTRATIVE
APPROVAL
DECEMBER 2022

147 CONGRESS
147 Congress St
Portsmouth, NH 03801

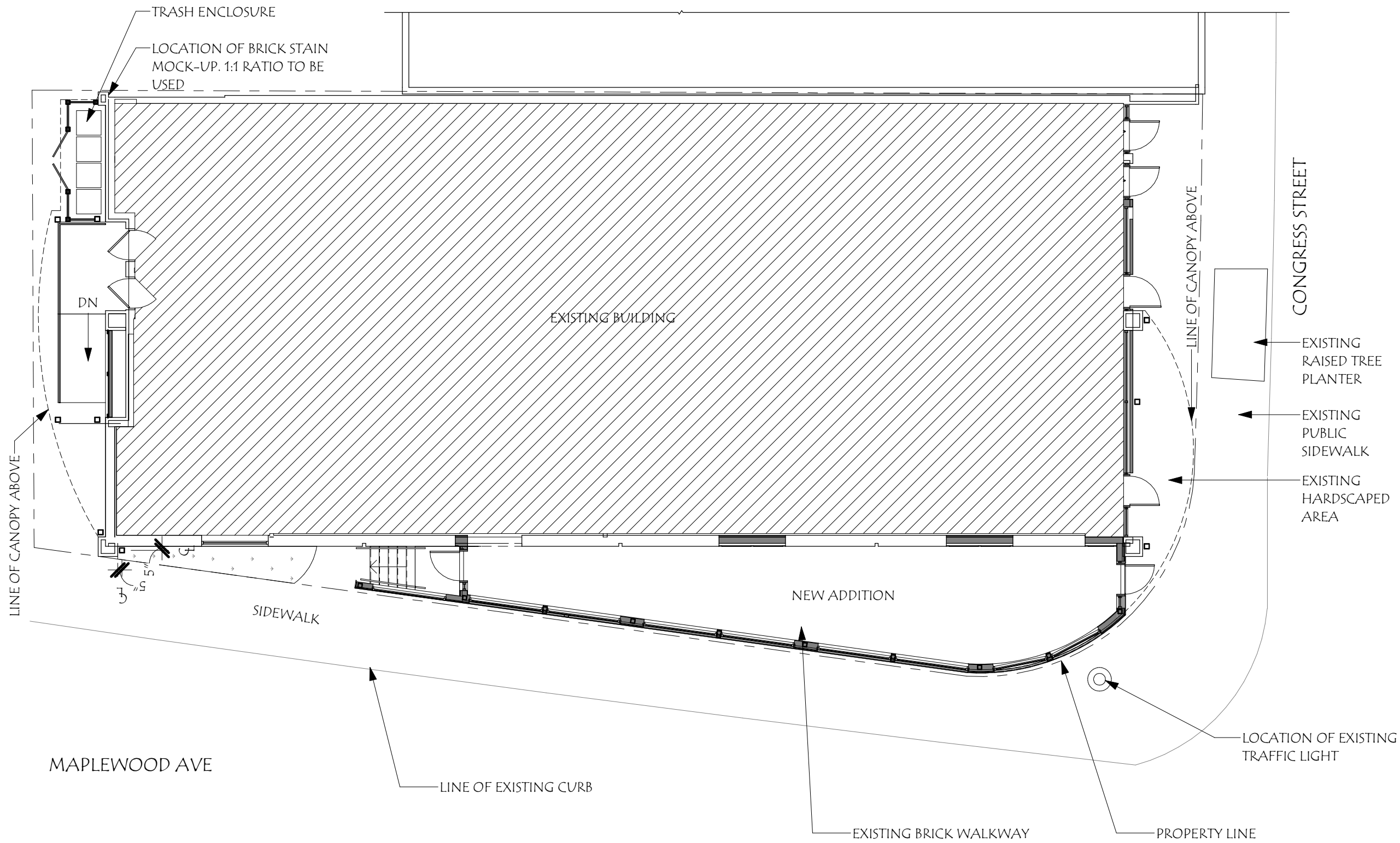
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SCALE:	Author
DRAWN BY:	Checker
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PROJECT NO.:	11/18/22
DATE:	

TITLE: PROPOSED CONTEXT	11
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FLOOR PLAN

PROPOSED

MARKET SQUARE ARCHITECTS
104 Congress St., STE 203
Portsmouth, NH 03801
PH: 603.501.0202

HISTORIC DISTRICT COMMISSION ADMINISTRATIVE APPROVAL
DECEMBER 2022

147 CONGRESS

147 Congress St
Portsmouth, NH 03801

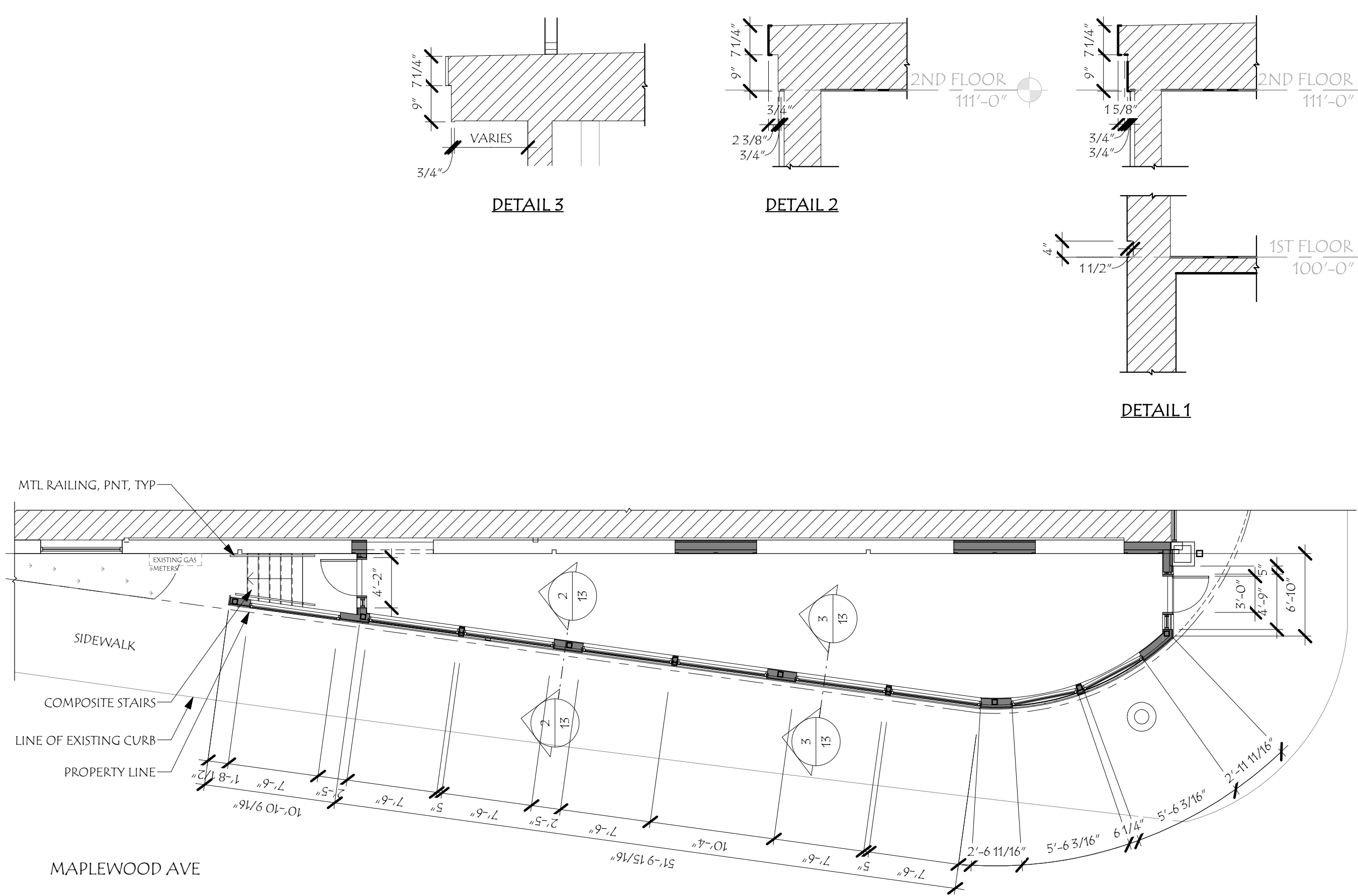
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CHECKED BY:	RJH
PROJECT NO.:	202209
DATE:	11/18/22

TITLE: PROPOSED PLAN

12

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ENLARGED WEST ADDITION **PROPOSED**

CONGRESS STREET



HISTORIC DISTRICT COMMISSION ADMINISTRATIVE APPROVAL
DECEMBER 2022

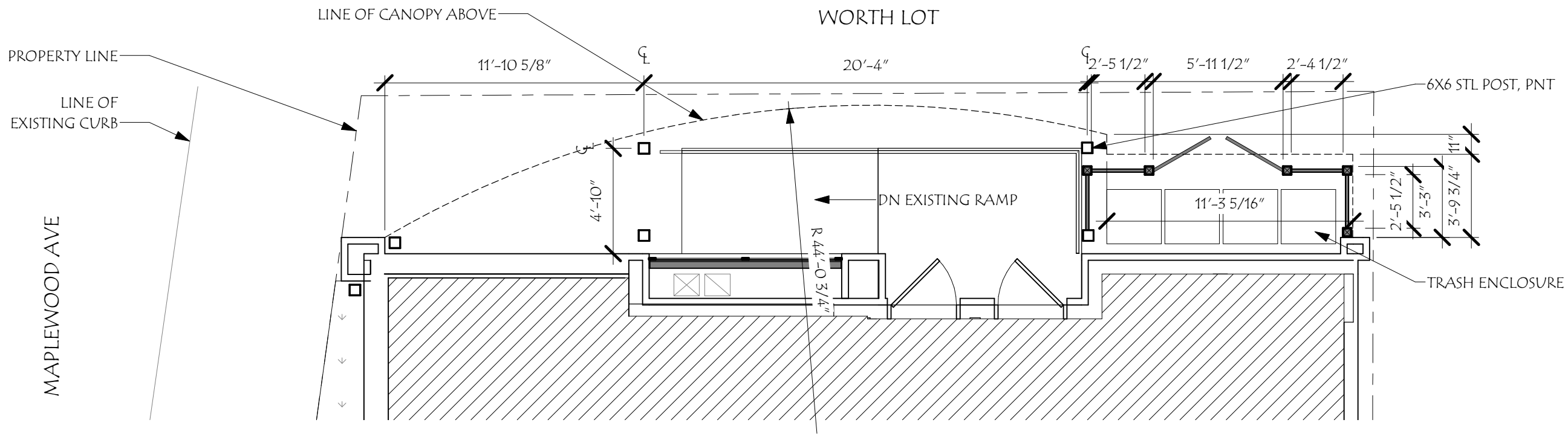
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147 Congress St
Portsmouth, NH 03801

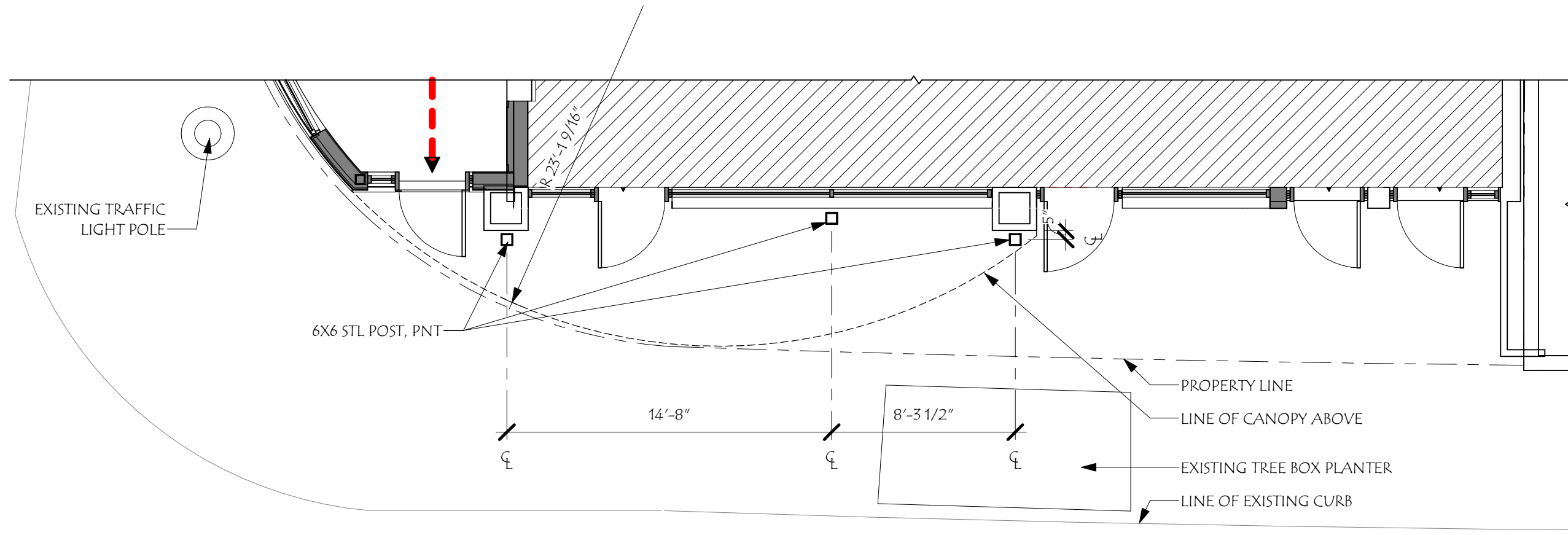
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PROJECT NO.:	202209
DATE:	11/18/22

TITLE:	ENLARGED PLAN
	13



ENLARGED NORTH CANOPY PLAN



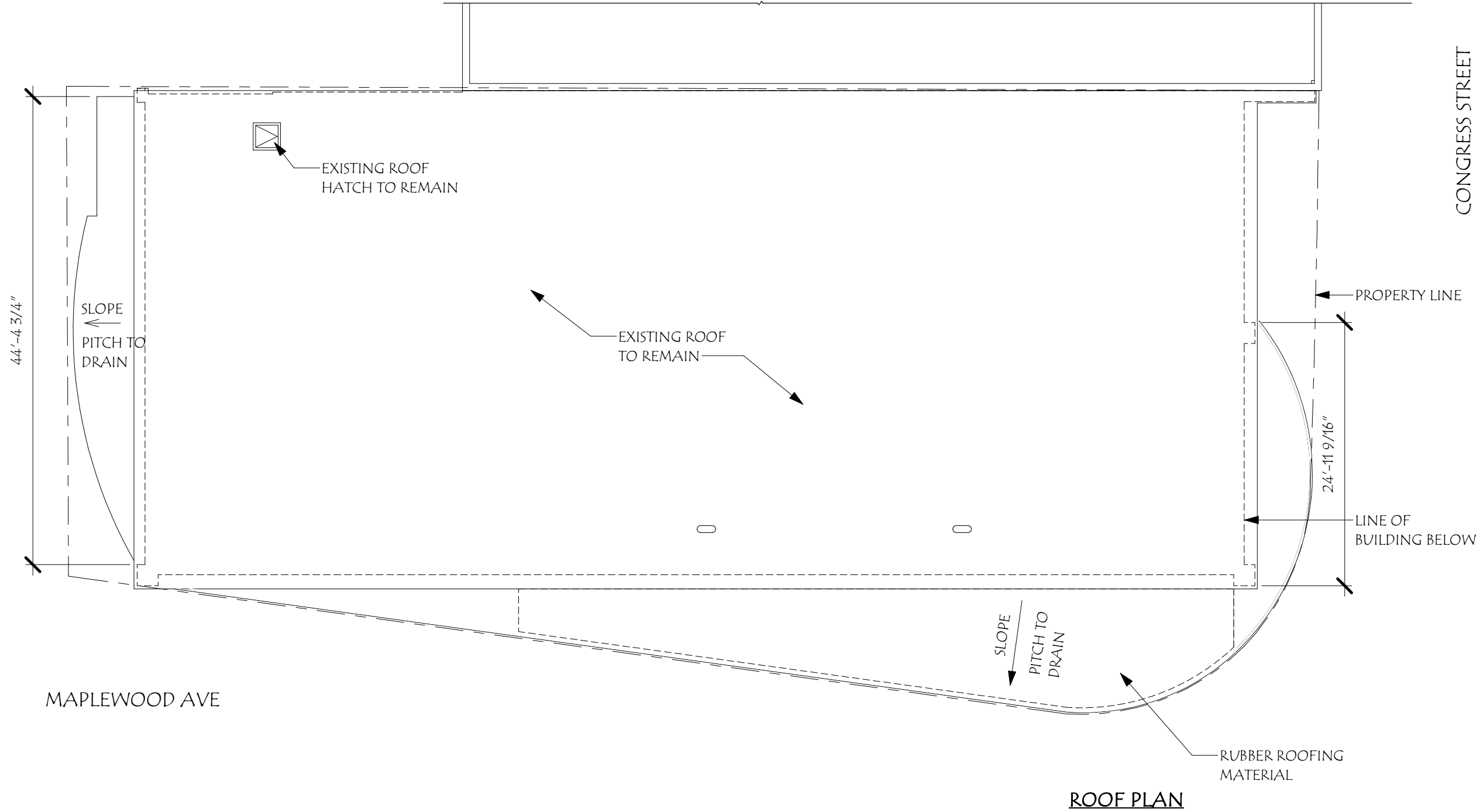
ENLARGED SOUTH CANOPY PLAN

CONGRESS STREET **PROPOSED**

Revisions: #	Description	Date

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CHECKED BY:	RJH
PROJECT NO.:	202209
DATE:	11/18/22

TITLE:	ENLARGED PLAN
	14



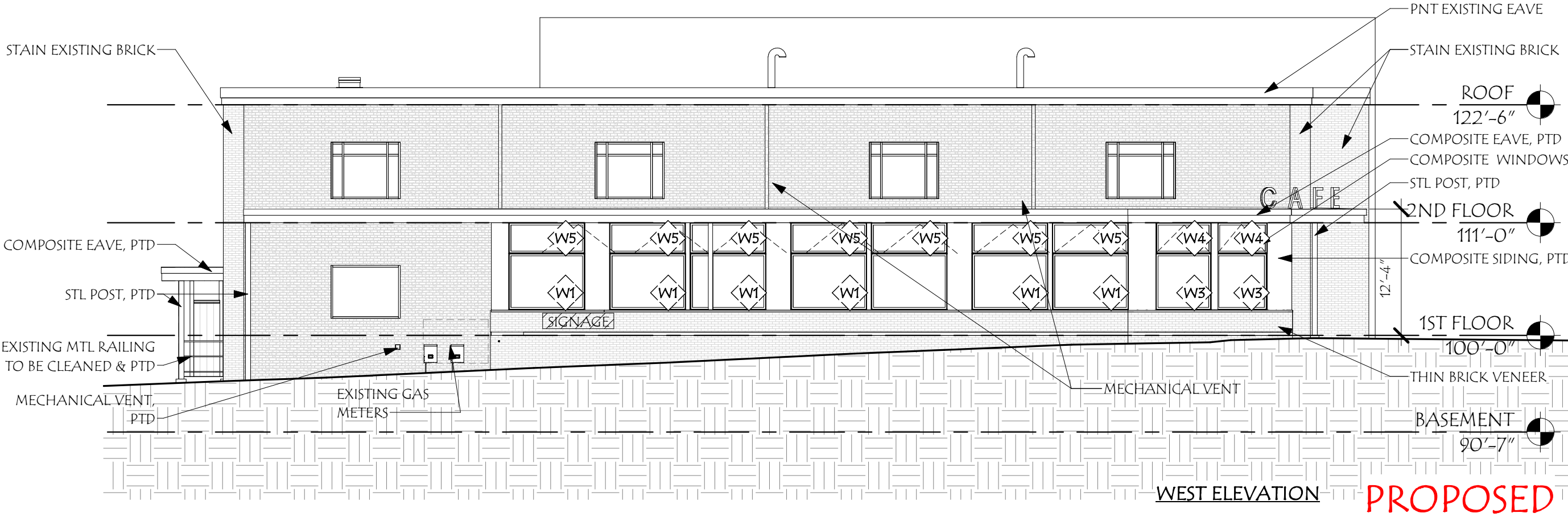
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PROJECT NO.:	202209
DATE:	11/18/22

TITLE: ROOF PLAN	15



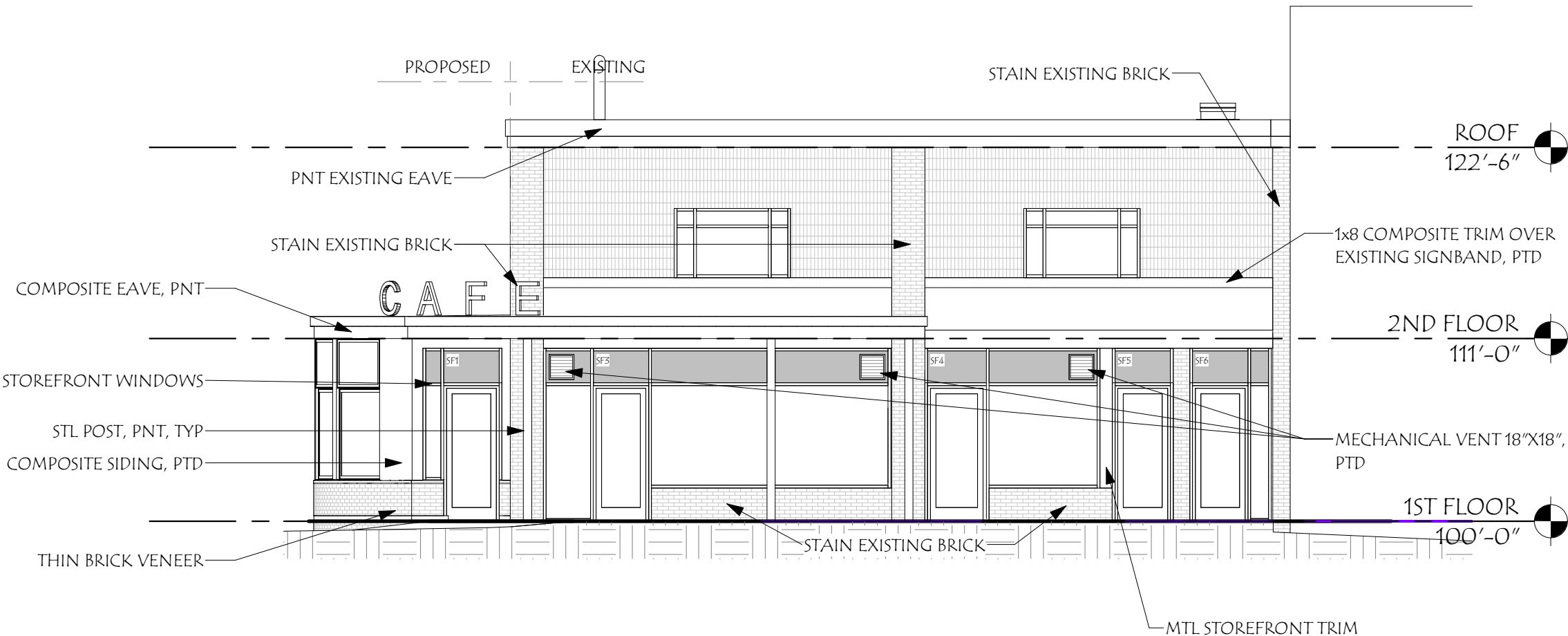
INSPIRATION IMAGES AND MATERIALS



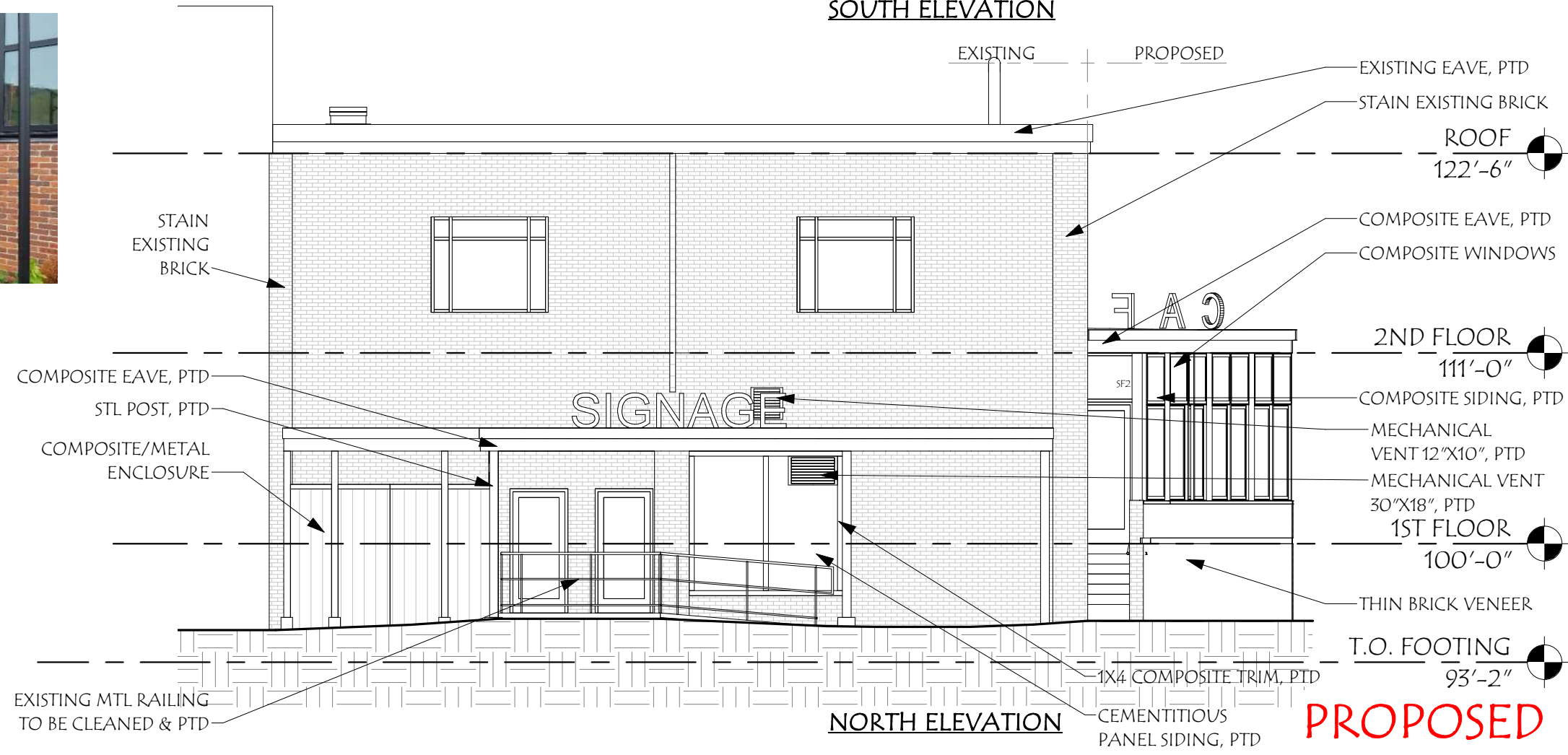
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CHECKED BY:	RJH
PROJECT NO.:	202209
DATE:	11/18/22

TITLE: PROPOSED ELEVATIONS	16
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SOUTH ELEVATION



NORTH ELEVATION

PROPOSED



ENCLOSURE INSPIRATION

Revisions:	Date
#	Description

SCALE:	1/8" = 1'-0"
DRAWN BY:	SNH
CHECKED BY:	RJH
PROJECT NO.:	202209
DATE:	11/18/22

III. NEW BUSINESS

- G.** The request of **Timothy and Rebecca OBrien (Owners)**, for property located at **396 Miller Avenue** whereas relief is needed to create a second driveway which requires 1) Variance from Section 10.1114.31 to allow two driveways where only one per lot is permitted. Said property is located on Assessor Map 131 Lot 24 and lies within the General Residence A (GRA) District. (LU-22-211)

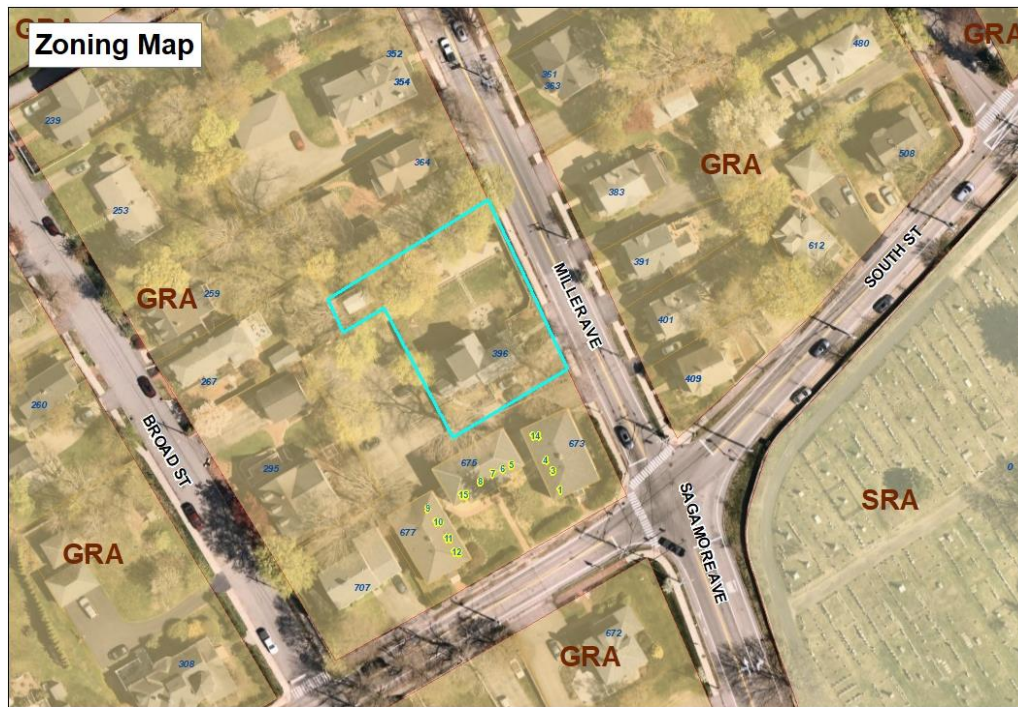
Existing and Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single Family	Addition of a second driveway	Primarily residential uses
<u>Lot area (sq. ft.):</u>	13,640	13,640	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	13,640	13,640	7,500 min.
<u>Street Frontage (ft.):</u>	134.53	134.53	100 min.
<u>Lot depth (ft.):</u>	96	96	70 min.
<u>Front Yard (ft.):</u>	22.6	22.6	15 min.
<u>Left Side Yard (ft.):</u>	11.4	11.4	10 min.
<u>Right Side Yard (ft.):</u>	24.1	24.1	10 min.
<u>Rear Yard (ft.):</u>	8.1	8.1	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%)</u>	13	13	25 max.
<u>Open Space Coverage (%)</u>	86	86	30 min.
<u>Parking</u>	Ok	Ok	1.3
<u>Estimated Age of Structure:</u>	1870	Variance request shown in red.	

Other Permits/Approvals Required

- DPW Driveway Permit

Neighborhood Context



396 Miller Avenue

January 17, 2023 Meeting

Previous Board of Adjustment Actions

No prior BOA history found.

Planning Department Comments

The applicant is proposing to create a second driveway to access the property in order to address growing safety concerns. The City Transportation Engineer in the Department of Public Works has done a preliminary review and has no issues with proposed design.

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 special conditions that distinguish it from other properties in the area.*

AND

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

OR

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

Section 10.235 Certain Representations Deemed Conditions

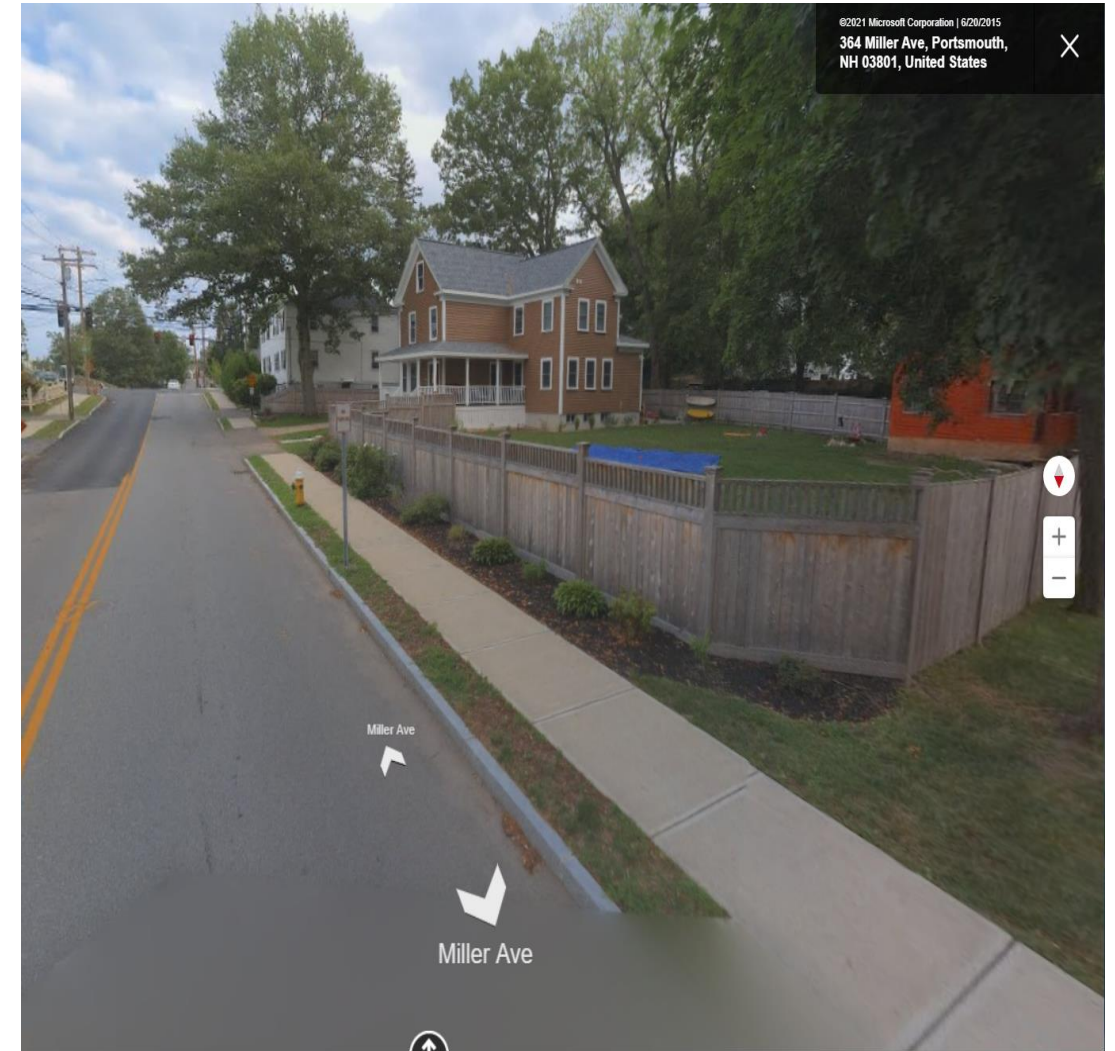
Representations made at public hearings or materials submitted to the Board by an applicant for a special exception or variance concerning features of proposed buildings, structures, parking or uses which are subject to regulations pursuant to Subsection 10.232 or 10.233 shall be deemed conditions upon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

2nd Driveway Cut Variance Request

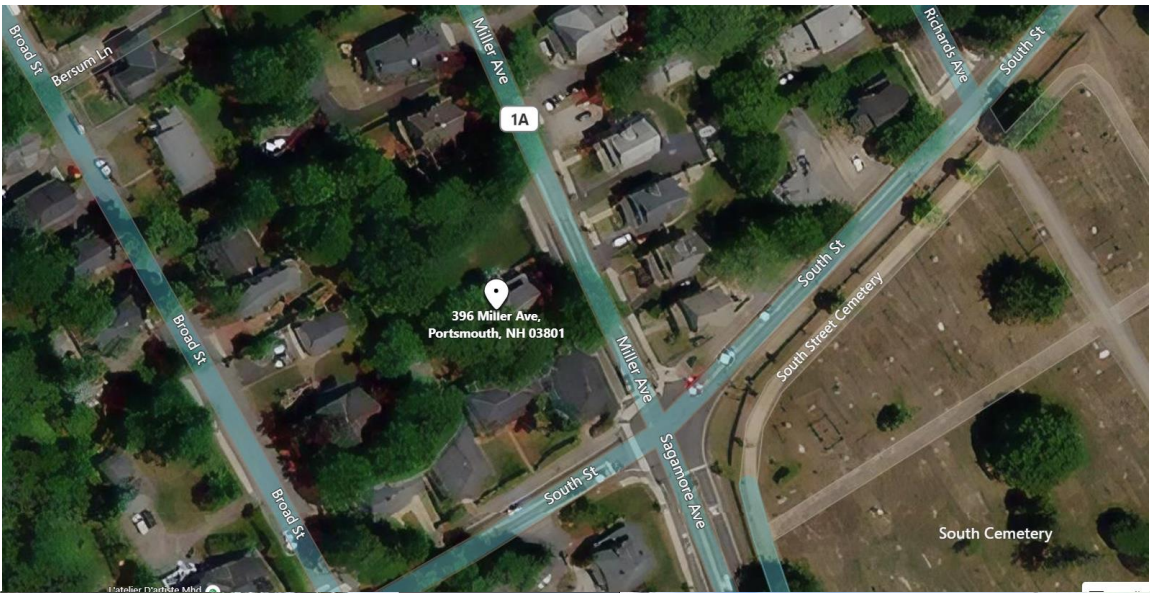
396 Miller Ave

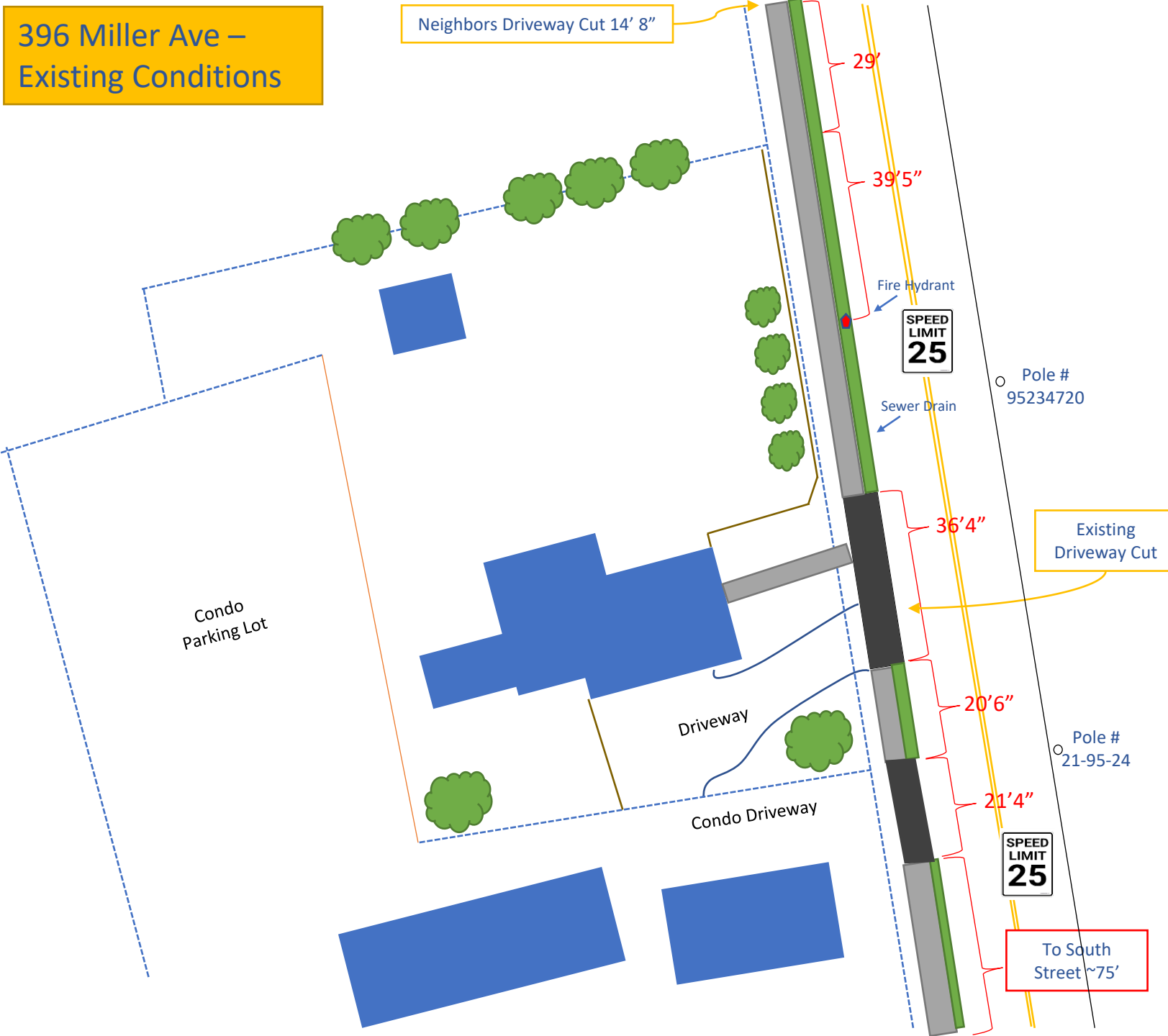
Summary

- Request to add a second driveway cut where a single cut exists
 - Reduce existing cut from 36' to 13'
 - Add second 13' cut on opposite end of 134' road frontage.
- Address need for additional driveway capacity while:
 - Reducing reversing into busy intersection
 - Eliminate need for on-street parking
 - Alleviate risk of/past damage and disruption from on-street parking.

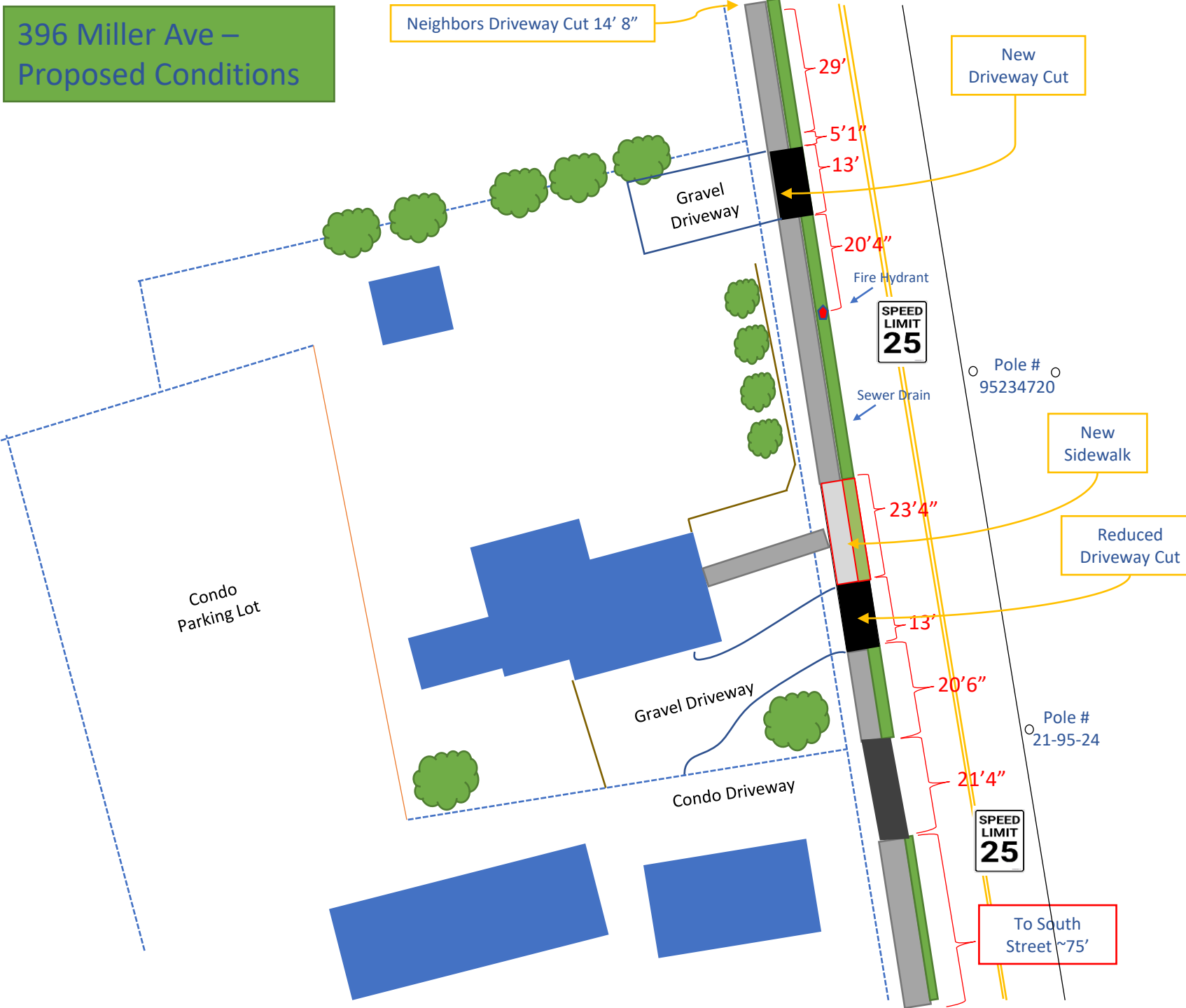


396 Miller Ave –
Existing Conditions





- Single 36'4" Driveway cut with an effective 13' usable driveway
- Shape and size take into consideration the preservation of (2) 150+ yr old Oak trees.
- Movement of vehicles requires either
 - parking on driveway cut blocking pedestrian traffic or;
 - multiple reverses into oncoming traffic for dangerous South/Middle intersection
- On-street parking is legal but a safety, traffic and neighbor concern.



- Reduce existing driveway cut from 36'4" to 13'
- Add new 13' driveway cut at north end of Miller frontage
- Reduce overall driveway cut by 10'4"

396 Miller Ave –
Proposed Conditions



- Reduce existing driveway cut from 36'4" to 13'
- Add new 13' driveway cut at north end of Miller frontage
- Reduce overall driveway cut by 10'4"

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

- Moves majority of “reversing” traffic further away from busy and dangerous intersection.
- Reduces parked cars on south end of Miller. Has resulted in traffic congestion and neighbor complaints
- Improves sightlines for traffic coming from Sagamore or turning from South.



10.233.22 - The spirit of the Ordinance will be observed

- Reduces sum of driveway cut from 36'4" to 26'
- Large road frontage (134') and smaller cuts maintain sidewalk to driveway ratio similar or greater than surrounding neighborhoods.
- Fits within structure of existing lots within the larger neighborhood.



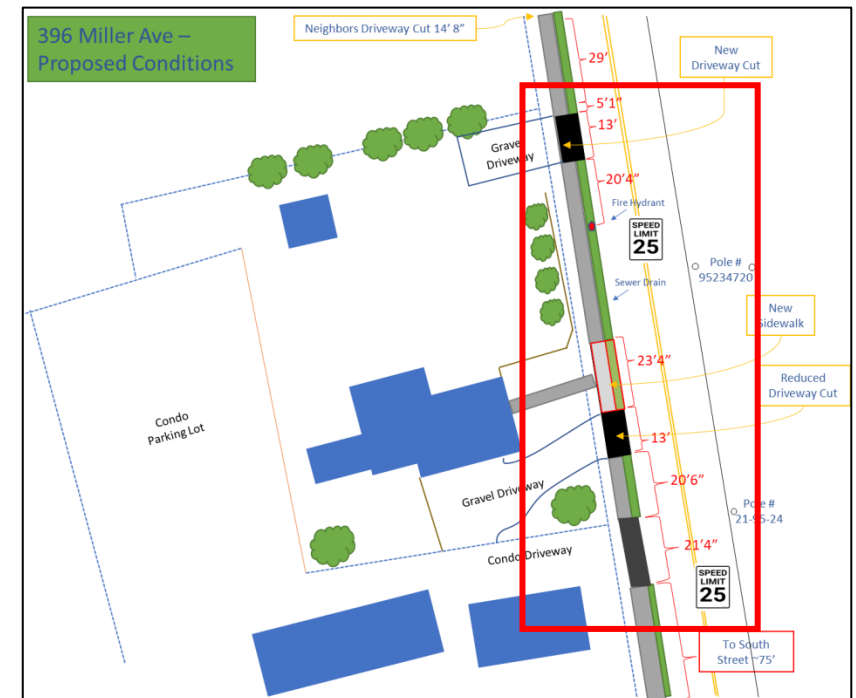
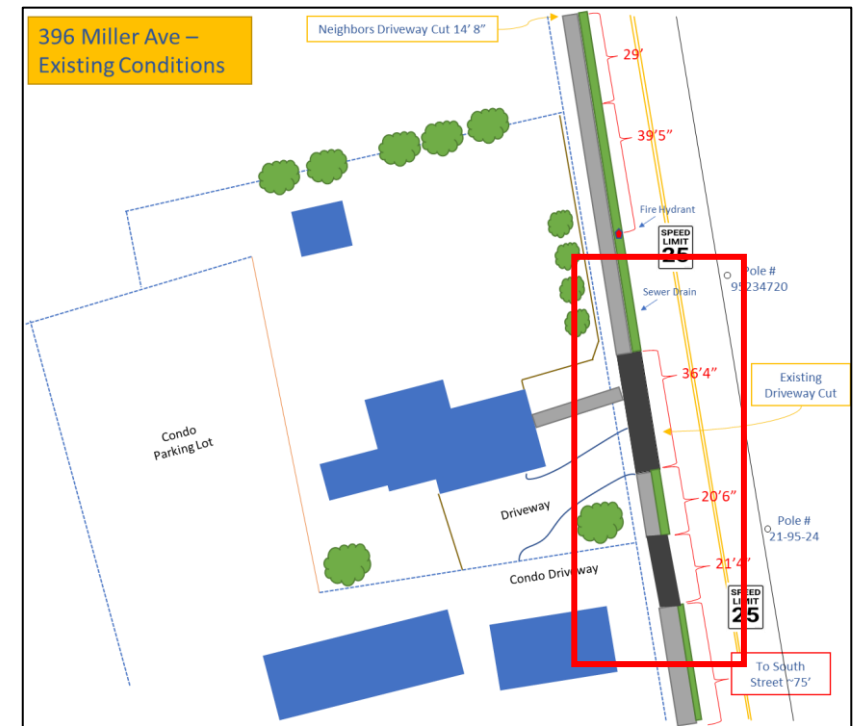
10.233.23 Substantial justice will be done

- On-street parking is legal/allowed but doing so creates traffic challenges and agitates neighbors due to the road width and traffic volumes.
- Reversing cars into oncoming traffic and traffic with hindered visibility creates the potential for traffic incidents. The amount of reversing will increase as licensed drivers in the family increases.
- Parking on-street has resulted in:
 - 2 Cars Toted
 - 1 Smashed rear windshield
 - 2 Broken Rear windows
- Current Driveway does not provide for additional off-street parking for a family of 6. Expansion threatens viability of 2 heritage Oak trees which are > 170 years old.
- Despite large lot, placement of house on lot and location of the driveway prevents addition of an otherwise acceptable garage.



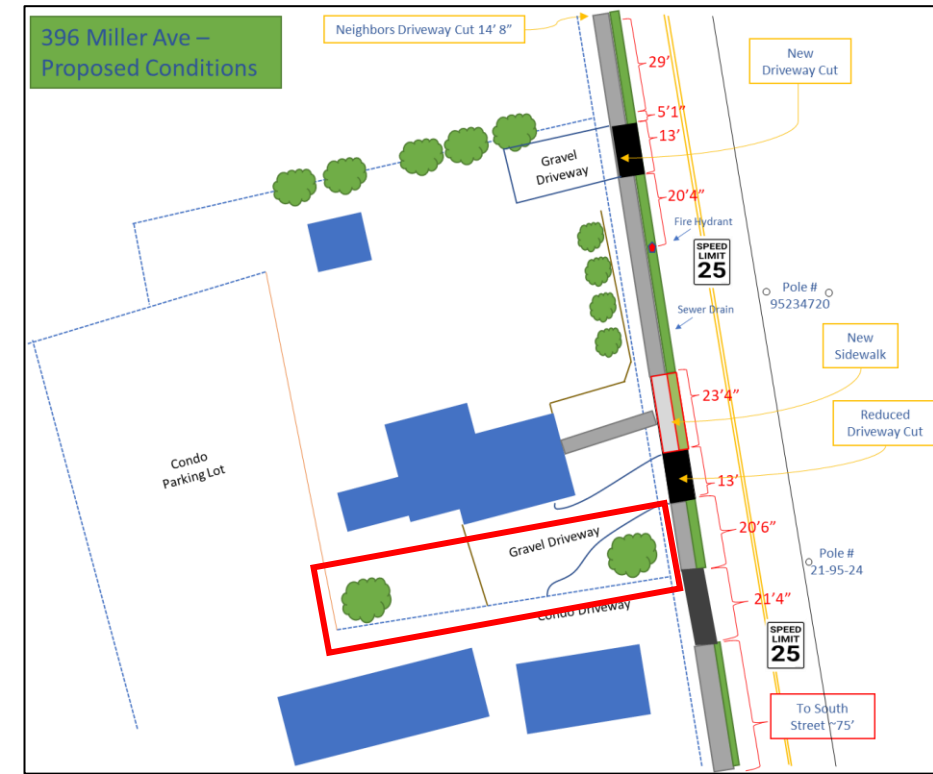
10.233.24 The values of surrounding properties will not be diminished;

- Reduces overall driveway cuts creating two small driveways similar in size and spacing to other properties
- Removes “landing” pad in front of house and allows for more presentable landscaping while preventing use as a loading zone for deliveries.
- Increases handicap accessibility by creating more contiguous sidewalk and reducing frequency of blocked sidewalk due to large driveway cut being utilized for parking/deliveries.



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

- Lot size and current building coverage is adequate, but a garage addition is prevented by:
 - house position on the lot
 - driveway cut in relation to house position and
 - the necessity to preserve (2) 170+ yr old legacy Oak Trees
- Removal or Expansion of existing drive reduces property value and usability:
 - Either change threatens vitality of (2) 170+ yr old legacy Oak Trees each providing significant value to 396 Miller and the entire neighborhood.
 - Removal moves all access for deliveries, guests and other needs a significant distance from home (100 ft for driveway, 150+ ft for on-street parking).



396 Miller Ave –
Building Dimensions

City of Portsmouth, NH

Property / 396 MILLER AVE

Zoom To Share Property Quick Search



Back To Property

Google Maps Link

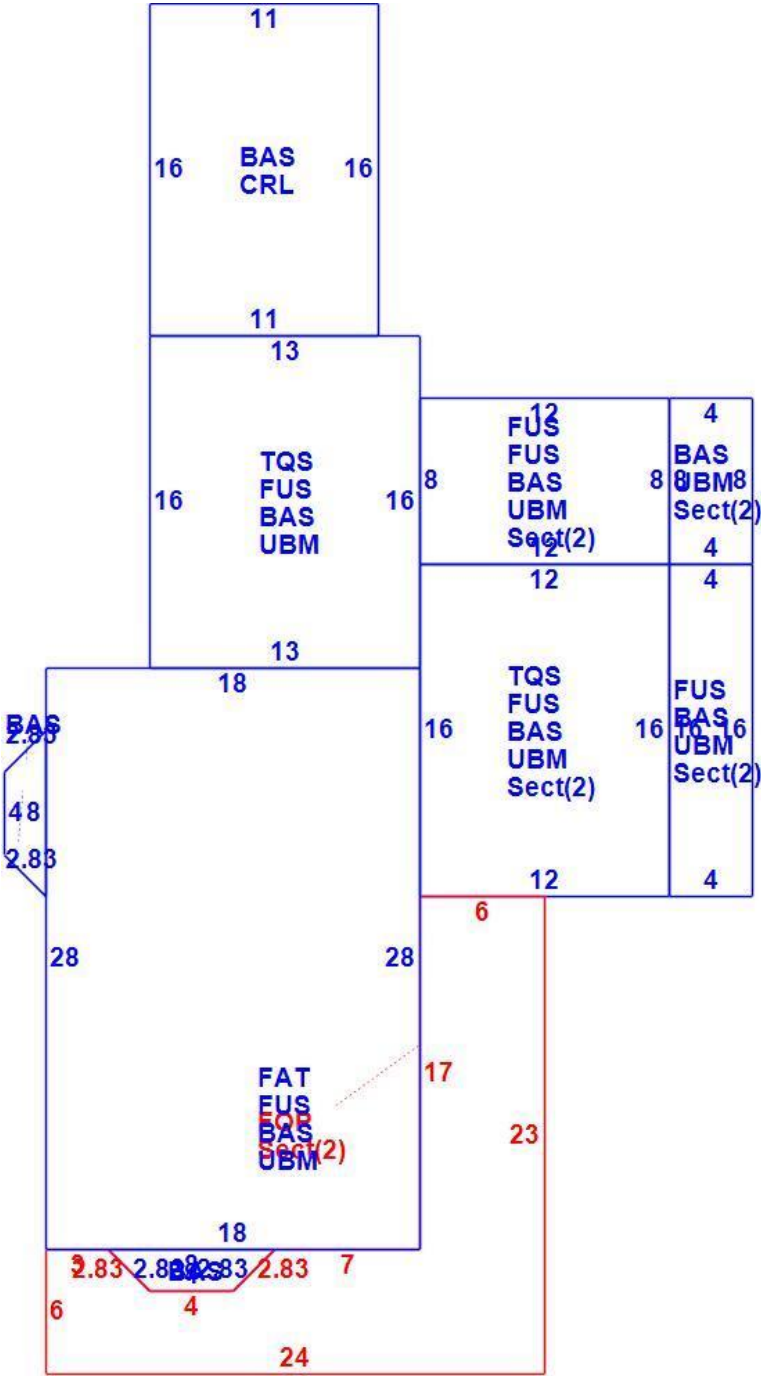
City of Portsmouth

Property Data

Market Delineation



Property		Ownership		Valuation	
Location	396 MILLER AVE	Owner	OBRIEN TIMOTHY W OBRIEN REBECCA R	Total	\$937,300
Map-Lot	0131-0024-0000			Last Sale	\$415,000 on 2013-04-16
Vision Account Number	33828	Address	396 MILLER AVE, PORTSMOUTH, NH 03801	Deed Date	2013-04-16
				Book/Page	5429/1353
Land		Zoning			
Parcel Area (AC)	0.31	Zoning			
		GRA			



- 1) "SOUTH COMMON CONDOMINIUM SITE PLAN FOR HIGH STREET ASSOCIATES 673, 675, 677, SOUTH STREET, PORTSMOUTH, N. H." BY RICARD P. MILLETTE AND ASSOCIATES, DATED 6-22-84 SHEET 1 OF 4, RCRD PLAN #--14148.
- 2) "LOT LINE RELOCATION & LOT LINE RATIFICATION PLAN FOR WILLIAM H. BROOKE, JR., RUTH A. FERNALD & SOUTH COMMON CONDOMINIUM ASSOCIATION, SOUTH STREET & BROAD STREET, PORTSMOUTH, N. H." BY AMBIT SURVEY, DATED AUG. 10, 1989, RCRD PLAN #--19952.
- 3) "SITE PLAN FOR DOUNC BANE 364 MILLER AVENUE, TAX MAP 131 LOT 25, PORTSMOUTH, N. H." BY ROSS ENGINEERING, PROJECT #13-043, REVISED 6-13-2013, NOT FOUND RECORDED.
- 4) "THE CONDOMINIUMS AT LINCOLN HILL, MAJOR SITE PLAN 352 & 354 MILLER AVENUE, TAX MAP 131 LOT 26, PORTSMOUTH, N. H." BY ROSS ENGINEERING, CERTIFIED 3-26-2018, RCRD PLAN #--40723.

NOW OR FORMERLY
JOSHUA & HOLLY COLLINS
364 MILLER AVENUE
PORTSMOUTH, N. H. 03801
R.C.R.D. VOL. 5910 PG. 2391
TAX MAP 131 LOT 25

3/8" IRON PIN FOUND
0.1'± UNDERGROUND
(INSIDE IRON PIPE PER
PLAN REFERENCE #3)

NOW OR FORMERLY
KENDALL P. & SARAH N. FAULSTITCH
267 BROAD STREET
PORTSMOUTH, N. H. 03801
R.C.R.D. VOL. 3507 PG. 622
TAX MAP 131 LOT 18

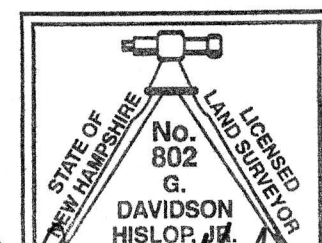
IRON PIN W/CAP
SET 4-23-19
0.6'± HIGH

24.05
N09°31'37"W

IRON PIN W/CAP
SET 4-23-19
0.9'± HIGH

PAVED
PARKING
AREA

I CERTIFY THAT THE DETAILS DEPICTED ON THIS PLAN ARE SHOWN ACCURATELY RELATIVE TO THE LOT LINES AND THAT THIS PLAN SHOWS EXISTING CONDITIONS AS OF TIME OF AN INSTRUMENT FIELD SURVEY CONDUCTED UNDER MY SUPERVISION ON APRIL 16, 2019.



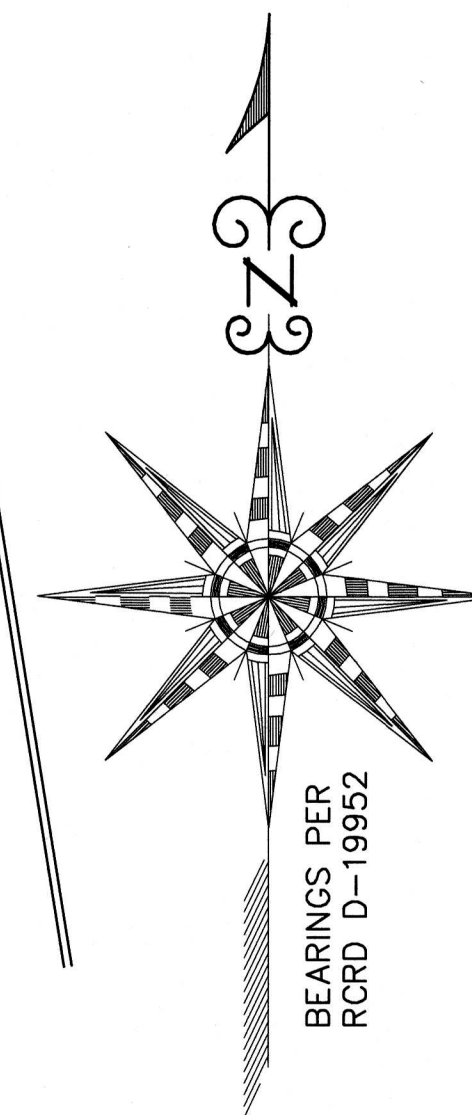
G. DAVIDSON HISLOP, JR. LLS #802 DATE APRIL 26, 2019

MAG NAIL
SET 4-23-19
IN PAVEMENT

NOW OR FORMERLY
SOUTH COMMON CONDOMINIUM ASSOCIATION
675 SOUTH STREET
PORTSMOUTH, N. H. 03801
R.C.R.D. PLAN D-19952
TAX MAP 131 LOT 22

NOW OR FORMERLY
SOUTH COMMON CONDOMINIUM ASSOCIATION
673 SOUTH STREET
PORTSMOUTH, N. H. 03801
R.C.R.D. PLAN D-19952
TAX MAP 131 LOT 23

MILLER AVENUE



PROPERTY LINE
CITY SETBACK LINE
IRON PIPE OR PIN
UTILITY POLE
WATER SHUTOFF
EDGE OF PAVEMENT
WOOD STOCKADE FENCE
GRANITE CURB
ROCKINGHAM CNTY. REGS.
OVERHEAD ELECTRIC
GAS METER
ELECTRIC METER
SURVEY TIE LINE

22.6'±

	REQUIRED	EXISTING
LOT AREA	7,500 SQ. FT.	13,640 SQ. FT.
CONTINUOUS STREET FRONTAGE	100 FEET	134.53'
LOT DEPTH	70 FEET	96'
FRONT SETBACK	15 FEET	22.6'±
SIDE SETBACK	10 FEET	24.1'± (11.4'± SHOP ON POSTS)
REAR SETBACK	20 FEET	8.1'±
OPEN SPACE	30%	86%
BUILDING COVERAGE	25%	13%

2.) THIS PLAN REFLECTS EXISTING SITE CONDITION DETAILS WHICH ARE THE RESULTS OF AN ON THE GROUND INSTRUMENT FIELD SURVEY PERFORMED BY KNIGHT HILL LAND SURVEYING SERVICES, INC. ON APRIL 16, 2019. UNADJUSTED TRAVERSE 1/96.300.

3.) THIS PROPERTY DOES NOT LIE IN A FLOOD ZONE AS INDICATED ON THE FLOOD INSURANCE RATE MAP (FIRM) FOR ROCKINGHAM COUNTY, PORTSMOUTH, N. H. FIRM #33015C00259E. WITH AN EFFECTIVE DATE OF MAY 17, 2005.

4.) SUBJECT LOT IS SERVED BY MUNICIPAL SEWER AND WATER.

5.) BEARINGS SHOWN ARE 1984 MAGNETIC PER PLAN REFERENCE 2.

TAX MAP 131 LOT 24

RECORD OWNER: TIMOTHY W. O'BRIEN
REBECCA R. O'BRIEN
396 MILLER AVENUE
PORTSMOUTH, N. H. 03801

RECORD DEED: R.C.R.D. BK. 5429 PG. 1353

AREA: EXISTING AREA = 13,640± SQ.FT./0.31 AC.

for land OWNED by

TIMOTHY W. & REBECCA R. O'BRIEN

known as

TAX MAP 131 LOT 24

located along

396 MILLER AVENUE

PORTSMOUTH, N.H.

COUNTY OF ROCKINGHAM

APRIL 26, 2019 SCALE 1" = 10' PROJECT # 2185PNTS

PREPARED FOR:
TIM O'BRIEN
396 MILLER AVE.
PORTSMOUTH, N.H., 03801
603-502-7031
timo439@yahoo.com

PREPARED BY:
KNIGHT HILL LAND
SURVEYING SERVICES, INC.
c/o DAVE HISLOP
34 OLD POST ROAD
NEWINGTON, N. H. 03801
(603) 436-1330
dave@khlandsurveying.com

(IN FEET)

1 inch = 10 ft.

III. NEW BUSINESS

- H. The request of **Karen Bouffard Revocable Trust and Karen Bouffard Trustee (Owner)**, for property located at **114 Maplewood Avenue** whereas relief is needed for the installation of a A/C Condenser Unit which requires the following 1) Variance from section 10.515.14 to allow a 2 foot setback where 10 feet is required. Said property is located on Assessor Map 124 Lot 4 and lies within the Character District 4-L1 (CD4-L1) and Historic District. (LU-22-256)

Existing and Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Mixed Use	AC Condenser	Mixed Use
<u>Lot area (sq. ft.):</u>	5,057	5,057	3000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	1,685	1,685	3000 min.
<u>Front Yard (ft.):</u>	2	2	15 max.
<u>Left Side Yard (ft.):</u>	1.8	1.8	5 min.
<u>Right Side Yard (ft.):</u>	2.5	2.5	5 min.
<u>Rear Yard (ft.):</u>	1	2	5 min. 10 feet (for HVAC unit)
<u>Height (ft.):</u>	<35	<35	2 Stories, 35' max.
<u>Building Coverage (%)</u>	35	35	60 max.
<u>Open Space Coverage (%)</u>	>25	>25	25 min.
<u>Parking</u>	4	4	5
<u>Estimated Age of Structure:</u>	2022	Variance request shown in red.	

Other Permits/Approvals Required

- Building Permit
- Historic District Commission

Neighborhood Context



Previous Board of Adjustment Actions

July 23, 2019 – The Board voted to **grant** the petition as presented and advertised as follows:

- 1) Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including variances from Section 10.5A41.10A to allow the following:
 - a) an 1.8' left side yard where 1.5' exists and 5' is the minimum required;
 - b) a 2.5' rear yard where 0' exists and 5' is the minimum required; and
 - c) a lot area per dwelling unit of 1.685 s.f. where 3,000 s.f. is required. and
 - d) from Section 10.321 to allow a lawful nonconforming structure to be extended, reconstructed or enlarged without conforming to the requirements of the ordinance.

Planning Department Comments

The applicant is proposing the installation of a mechanical unit to the rear of the structure where it will be located 2 feet from the rear boundary line where 10 feet is required.

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 special conditions that distinguish it from other properties in the area.*

AND

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

OR

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

Section 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.

**114 Maplewood Ave.
Map 124 Lot 4**

To permit the following:

1. AC Condenser with a Rear Setback of +/- 2.25 feet where 10' is required.

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

1. This new building replaces the existing that was built on the rear property line. The new building is still non-conforming but, set back from that rear line. The abutting property that shares the rear yard, has several AC Units in this area & seemed the best location for the proposed unit, that will be screened with fencing.

Criteria for the Variance:

1. The Variances are not contrary to the public interest in that this location will have no the public view & will be fenced from the Abutter's rear yard.
2. The Variances are consistent with the spirit of the ordinance as noted in Item 1.
3. Substantial justice will be done, as this location has several unscreened AC Units at the rear of the Abutters Building.
4. This Variances will not diminish the value of surrounding properties.
5. The special condition of this property is the existing non-conforming Rear & Left Side Setback & the small Right Side Yard.,

N/F
 IOSES CONDOMINIUM -
 3 ELLEN MACAULEY
 DOD AVENUE - UNIT A
 IOUTH, NH 03801
 .#2808 PG.#1533

ADDITIONAL PERVIOUS PAVERS
 PERMANENT IMPACT=59 S.F.

PROPOSED LIMITS
 OF DISTURBANCE
 TEMPORARY
 IMPACT=
 154 S.F.

PROPOSED INTERLOCKING
 CONCRETE BLOCK
 RETAINING WALL 54 L.F.
 (DESIGNED BY OTHERS)
 PERMANENT IMPACT=
 54 S.F.

PROPOSED
 SILT FENCE

100' TIDAL
 BUFFER

MILL POND)

EXIST.
 UN-SCREENED
 AC & H-pump

N51°04'27"W
 50.00'

120.9'

118.7'

N51°04'27"W
 50.00'

120.9'

118.7'

EXISTING
 FENCE TO BE
 REMOVED

EXISTING CONCRETE
 RETAINING WALL WITH
 FENCE TO BE
 REMOVED

EXISTING YARD
 TO REMAIN

NEW HOUSE BEYOND
 EXISTING FOUNDATION
 PERMANENT
 IMPACT=224 S.F.

EXISTING
 FOUNDATION

PROPOSED 2 1/2
 STORY HOUSE
 (FOOTPRINT=900 S.F.)

AREA TO BE
 LOAM & SEEDED

25' MIN FENCE
 SCREENING

AREA TO BE
 LOAM & SEEDED

150' NATURAL
 BUFFER

EXISTING PAVEMENT
 TO REMAIN
 (1,429 S.F.)

25' CEMETERY BUFFER

EXISTING PAVEMENT
 TO BE REMOVED
 TEMPORARY
 IMPACT=6 S.F.

PROPOSED
 OVERHANG

EXISTING STEPS
 TO BE REMOVED
 AFTER-THE-FACT
 IMPACT=2 S.F.

PROPOSED
 OVERHANG

PREVIOUS BUILDING
 DEMOLITION
 AFTER-THE-FACT
 IMPACT=768 S.F.

TAX MAP 124 LOT 4
 5,057 S.F.
 (0.1161 ACRES)

101.90'
 S45°52'06"W

"NORTH (

MAP 12

N
 CITY OF PC
 P.O. B
 PORTSMOUT
 RCRD BK.#

AC CONDENSOR
 LOCATION

1"=10' 1/3/23

1 OF 3



REAR ELEVATION AT AC UNIT



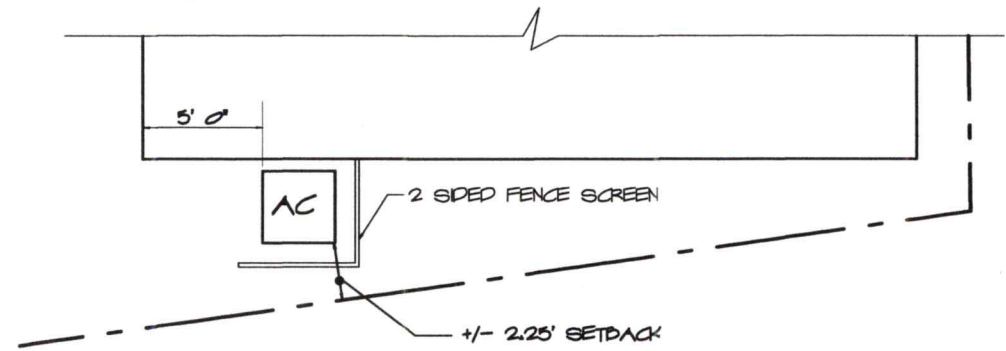
ADJACENT ADUTTER AC & HEAT PUMP UNITS

AC CONDENSOR
LOCATION WITH
WOOD FENCE
SURROUND



REAR ELEVATION & PLAN

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



801 Islington St, Suite 32
Portsmouth, NH 03801
603-562-4387
archwhit@aol.com

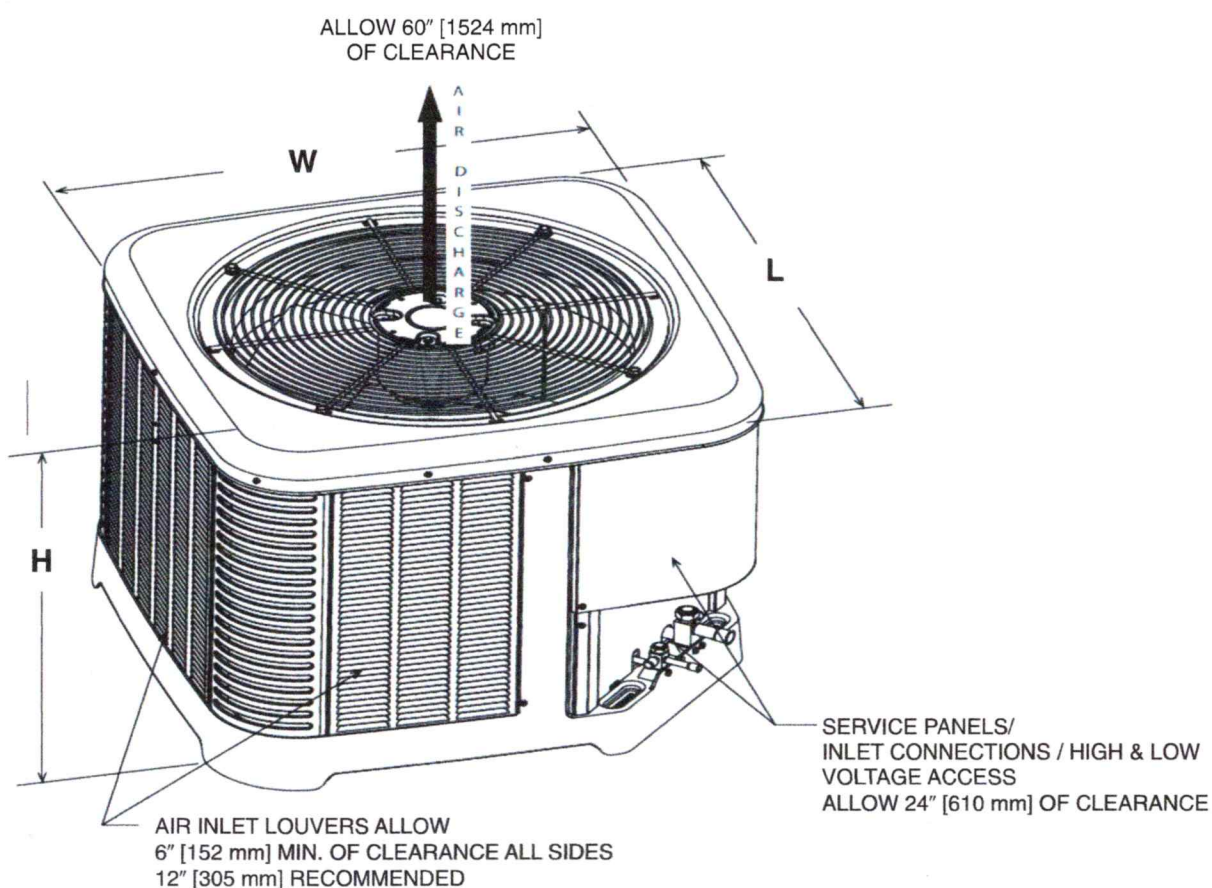


ANNE WHITNEY ARCHITECT

Project:	Date:	
• 1904	1/3/23	20F3

Unit Dimensions

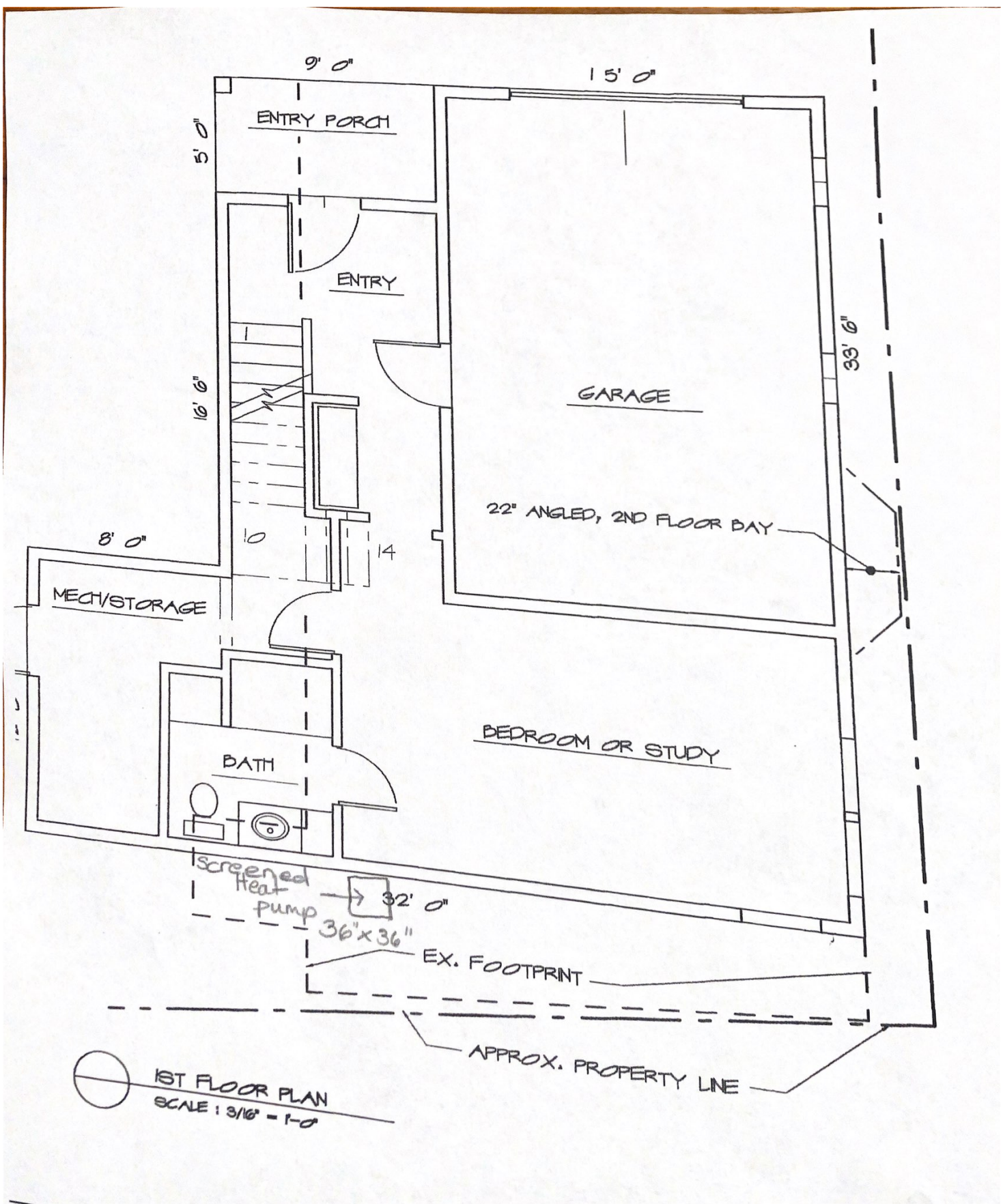
MODEL NO.	OPERATING						SHIPPING					
	H (Height)		L (Length)		W (Width)		H (Height)		L (Length)		W (Width)	
	INCHES	mm	INCHES	mm	INCHES	mm	INCHES	mm	INCHES	mm	INCHES	mm
RA1318	27	685	29.75	755	29.75	755	28.75	730	32.38	822	32.38	822
RA1324	25	635	29.75	755	29.75	755	26.75	679	32.38	822	32.38	822
RA1330	25	635	29.75	755	29.75	755	26.75	679	32.38	822	32.38	822
RA1336	27	685	29.75	755	29.75	755	28.75	730	32.38	822	32.38	822
RA1342	31	787	29.75	755	29.75	755	32.75	831	32.38	822	32.38	822
RA1348	27	685	33.75	857	33.75	857	28.75	730	36.38	924	36.38	924
RA1360	31	787	35.75	908	35.75	908	32.75	831	38.38	974	38.38	974



[] Designates Metric Conversions

ST-A1226-02-00

3 of 3







III. NEW BUSINESS

- I. The request of **Thomas E, Marybeth B, James B, and Meegan C Reis (Owners)**, for property located at **305 Peverly Hill Road** whereas relief is needed to renovate the existing primary dwelling into a two unit dwelling and to construct a new single unit dwelling which requires the following 1) Variance from Section 10.440 Use #1.30 to allow a two unit dwelling in the SRB District. 2) Variance from Section 10.513 to allow more than one free standing dwelling on a lot in the SRB District. Said property is located on Assessor Map 255 Lot 5 and lies within the Single Residence A (SRA); Single Residence B (SRB) and Natural Resource Protection (NRP) District. (LU-22-251)

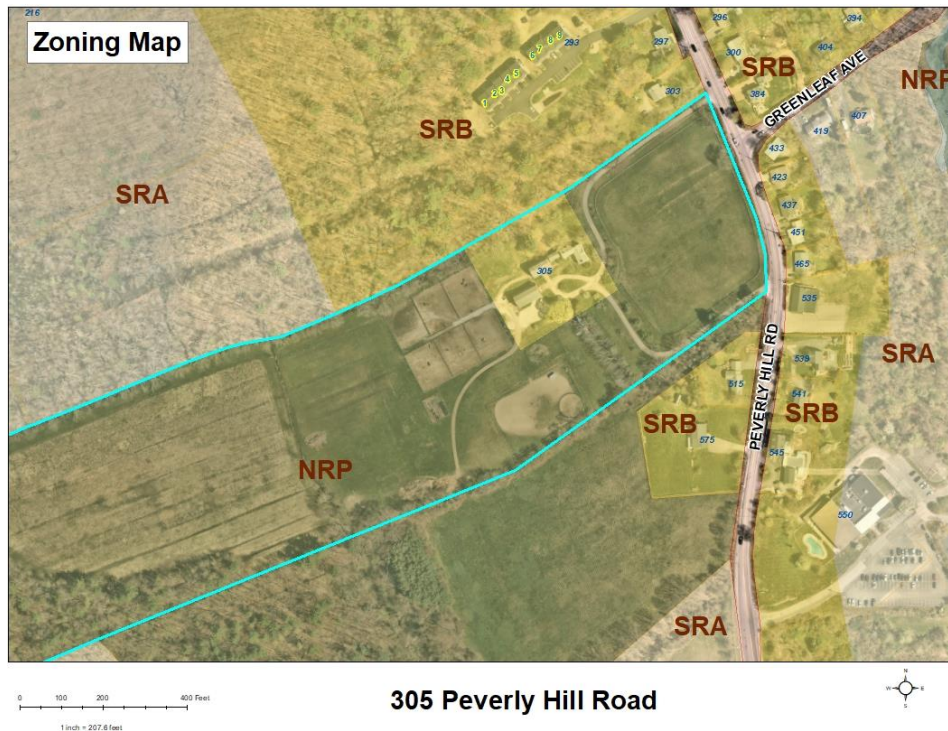
Existing and Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single Family	Addition of an second unit to the existing structure and the new construction of a free standing single-living unit	Primarily residential uses
<u>Lot area (sq. ft.):</u>	1,732,905 (39.7 ac)	1,732,905 (39.7 ac)	43,650 (1 ac) min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	1,732,905 (39.7 ac)	577,635 (13.23 ac)	43,650 (1 ac) min.
<u>Street Frontage (ft.):</u>	500	500	150 min.
<u>Lot depth (ft.):</u>	>200	>200	200 min.
<u>Primary Front Yard (ft.):</u>	>30	>30	30 min.
<u>Left Side Yard (ft.):</u>	>20	>20	20 min.
<u>Right Side Yard (ft.):</u>	>20	>20	20 min.
<u>Rear Yard (ft.):</u>	>40	>40	40 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%)</u>	<20	<20	20 max.
<u>Open Space Coverage (%)</u>	>40	>40	40 min.
<u>Parking</u>	4	4	4
<u>Estimated Age of Structure:</u>	1810	Variance request shown in red.	

Other Permits/Approvals Required

- Site Plan Review
- Building Permit

Neighborhood Context



Previous Board of Adjustment Actions

August 18, 2015 – The Board voted to **grant** the petition as presented and advertised noting that the variance was from Section 10.440, Use #1.20 to allow a second dwelling unit on a lot. As follows:

- 1) A Variance from Section 10.513 to allow a second free-standing dwelling on a lot where a second free-standing dwelling is not allowed in this district.

August 15, 2017 – The Board voted to **grant** a one year extension of the variance granted August 18, 2015.

Planning Department Comments

Applicant is proposing to create two living units in the existing single family structure and construct one free standing single family unit to create 3 units in 2 structures. The property exceeds all dimensional requirements and is the only working farm in the City.

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 special conditions that distinguish it from other properties in the area.*

AND

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

OR

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

Section 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.



CELEBRATING OVER 35 YEARS OF SERVICE TO OUR CLIENTS

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
VASILIOS "VAS" MANTHOS
ELAINE L. HOEPPNER
WILLIAM K. WARREN

HAND DELIVERED

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

December 22, 2022

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

RE: 305 Peverly Hill Road, Map 255, Lot 5
Thomas & Marybeth Reis and James & Meegan Reis

Dear Chair Lee 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. Please note that certain elements in the electronic filing, specifically the footprint of the structures, are based upon information contained on the tax card. We reserve the right to supplement this application if more detailed information becomes available to us.

We respectfully request that this matter be placed on the Board's January 17, 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

Sharon Cuddy Somers
SCS/sac
Enclosures

cc: Thomas & Marybeth Reis
James & Meegan Reis

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

THOMAS & MARYBETH REIS AND JAMES & MEEGAN REIS
305 PEVERLY HILL ROAD
VARIANCE APPLICATION

The Applicant requests variances from Article 4, Section 10.440, 1.30 to permit a two family dwelling in the SRB zone and Article 5, Section 10.513 to permit more than one free standing dwelling on a lot in the SRB zone.

Introduction

Jim and Meegan Reis, together with Jim's brother Tom and Jim's sister-in-law Marybeth Reis, collectively own what is known as the "Hett Farm" located at 305 Peverly Hill Road and which lies in the Single Family B zone. The property contains what is believed to be the last working farm in the City of Portsmouth, and the entire family, including the children of Jim and Meegan Reis, actively assist in the running of the farm. The property was purchased in 2014 and it was the intention to construct a separate home on the portion of the property reserved for the farmhouse, hereafter referred to as the "Farmhouse Lot" for Jim and Meegan Reis and their family and to allow Tom and Marybeth Reis to reside in the existing farmhouse. In 2015, the owners obtained a variance from Article 5, Section 10.513 which indicates that "...no more than one free standing dwelling shall be built on any lot in a Rural, Single Family A or B or General Residence District A or B..." Unfortunately, that variance expired before the separate home could be constructed and so a variance is being sought again from this provision of the zoning ordinance.

Additionally, subsequent to obtaining the 2015 variance, Betsy Zehnder, the sister of Jim and Tom Reis, has also decided to reside on the property and assist with farming activities. In order to provide a private dwelling for Betsy Zehnder, the owners propose that the breezeway attached to the existing farmhouse be renovated to create a dwelling. The result would be to transform the existing farmhouse and breezeway into a two family structure. In turn, because the Single Family Residence (SRB) zone does not allow for a two family dwelling on the lot, then a variance from Article 4, Section 10.440, 1.30 is also required.

Set forth below is a discussion of the property, the conservation easement applicable to the property and the arguments which support why each of the variance criteria are met for both of the ordinance provisions, along with reference to relevant enclosures. Following your review of the submitted materials, we respectfully request that both variances be granted as presented.

The Property

The Reis property is located at 305 Peverly Hill Road. It consists of 39.7 acres and all but 2.1 of those acres are subject to a conservation easement deed which is held by the City of Portsmouth. The area reserved from the conservation easement, hereinafter referred to as the "Farmhouse Lot" is situated at the crest of a hill on the property and is zoned SRB, while the remainder of property subject to the conservation easement is zoned Natural Resource Protection District. The property currently contains an existing farmhouse constructed in 1810 as well as several

outbuildings, some of which are visible from the street. The last owner of the property, John Hett also constructed a barn in the early 1990's after the conservation easement was created and at a time when he was in his late 90's; he did so in an effort to ensure that farming operations would continue on site.

The property has approximately 500 feet of frontage and contains fields, pasture, and forest. The Farmhouse Lot, with 91,476 sq. ft., contains enough space to allow for three dwellings where density of 15,000 sq. ft. is required. No setback or other dimensional relief is required for the creation of the proposed two family dwelling or the freestanding dwelling.

The Conservation Easement

It would be difficult to truly appreciate the unique nature of this property without having a complete understanding of the conservation easement which burdens all of the property except the Farmhouse Lot. The variance application of 2015 prepared by Attorney Peter Loughlin contains extensive information concerning the property. Reference to the history of the property can be found in Attorney Loughlin's application, but the highlights of the history include the fact that the Hett Farm is the last working farm in Portsmouth and was first farmed starting in the 1630's by Thomas Walford. In 1940, the late John and Maud Hett acquired the property and John Hett farmed the property until close to the time of his death.

In 1989, John and Maud Hett were able to consummate their efforts to preserve the farm from future development efforts by others and submitted all but the Farmhouse Lot to the conservation easement conveyed to the City in 1989¹. The use of the portion of the property subject to the conservation easement is limited to agriculture and forestry.

SECTION I **TWO FAMILY DWELLING VARIANCE** **FROM ARTICLE 4, SECTION 10.440, 1.30**

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

Granting the variance will not be contrary to the public interest. To be contrary to the public interest, the variance must unduly, and to a marked degree, violate the relevant ordinance's basic zoning objectives. Determining whether the basic objective of the ordinance is violated can be measured by whether the variance will alter the essential character of the locality, or by whether it would threaten public health, safety or welfare.

The purpose of the SRB district described in Article 4, Section 10.410 is "...to provide areas for single family dwellings at low to medium densities (approximately 1 to 3 dwellings per acre).

¹ The total acreage of the conservation easement is 55.4 acres. Of that, 37.7 acres of the Reis property is subject to the conservation easement. The remaining 17.7 acres subject to the conservation easement are located on the abutting Map 255, Lot 3 currently owned by the Walter Hett Trust.

The objective of the ordinance is arguably to keep the category of housing limited to single family homes but also to regulate the density of housing. The character of the locality, as shown on Exhibit 2, is comprised of single family homes along with a residential condominium and several small businesses situated on the easterly side of Peverly Hill Road. The Reis family proposes to have one building which will contain two dwellings, the existing dwelling in the existing farmhouse together with a renovated breezeway which will become the second dwelling. The configuration of the existing farmhouse and the proposed second dwelling is such that it will replicate what is present on site currently, and therefore will not alter the essential character of the locality.

Renovating the existing breezeway to create a second dwelling, while retaining the existing farmhouse such that both dwellings will be in one dwelling will not threaten the public health, safety or welfare.

2. The spirit of the Ordinance will be observed

Under New Hampshire law, this variance criteria is essentially merged with the “public interest” criteria. As stated above, the spirit of the ordinance is to regulate density. For the reasons stated above, the spirit of the ordinance will be observed if the variance is granted.

3. The values of surrounding properties are not diminished

Granting the variance to allow a two family dwelling will not diminish property values. The existing farmhouse has been on the property for many years and the breezeway portion of the existing farmhouse will be replaced with the attached second dwelling which should have little to no visual impacts to abutting property. As a result, no property values will be diminished.

The applicant is not aware of any information or evidence that would suggest that the presence of a second dwelling will decrease the value of surrounding property.

4. Substantial justice will be done

The relevant analysis under this element of the variance criteria is whether the benefit to the applicant of granting this variance will be outweighed by a detriment or loss to the individual or to the public at large. Here the benefit to the applicant in granting the variance is that allowing a two family dwelling within the Farmhouse Lot will provide adequate space and privacy for all those who currently, or in the future, are residing on site and who may assist with agricultural activities.

Conversely, there is no known detriment to any individuals. There is adequate parking on site to accommodate the needs for the two family dwelling and no significant traffic will be added to Peverly Hill Road by virtue of the second dwelling to be added. Individuals on neighboring properties will be unable to discern any real difference in having a second dwelling because it will simply replace the existing “breezeway” structure which is currently attached to the existing farmhouse and the height of the second dwelling will be consistent with that of the existing

farmhouse. Further, as shown on Exhibit 2, the distance between the proposed second dwelling and the abutting properties is over 350 feet, so it is unlikely that the second dwelling will even be visible to any individuals.

There is also no known detriment to members of the public by allowing the variance.

5. Unnecessary Hardship:

A. Owing to special conditions of the property that distinguish it from other properties:

The lot on which the Farmhouse Lot sits is extraordinarily large in comparison to neighboring properties and consists of 37.9 acres. In addition to the physical aspects of the property which make it unique, there are also special conditions related to the use of the property which make it unique. The uses of the land burdened by the conservation easement are limited to agriculture and forestry as further described in Use Limitations, Section (A) (i) of the conservation easement and the overarching goal of the conservation easement is to preserve open space.

The nature of the conservation easement restrictions means that, as a practical matter, the fee owners of the conservation easement and Farmhouse Lot, and the City, as easement holder, can reasonably expect that those residing on the Farmhouse Lot would likely participate in the management of whatever agricultural or forestry activities may be occurring with the conservation easement. Additionally, given the sheer size of the land area to be managed, it is reasonable to expect that there is a need for a healthy number of people to perform the management and that those people can most effectively manage if they reside on site. Collectively, these factors constitute special conditions regarding the use of the property and such special conditions distinguish it from other properties.

B. 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

The general public purpose of the ordinance is to provide for single family dwellings with low to moderate density of 1-3 dwellings per acre. As applied to the 2.1 acre portion of the property known as the “Farmhouse Lot”, a two family dwelling will still be adhering to the rule of low to moderate density of 1-3 dwellings and therefore there is no fair and substantial relationship which exists between the public purpose of the ordinance and the specific application of the ordinance to this property.

C. The proposed use is reasonable

The property is subject to a conservation easement which benefits the City of Portsmouth by keeping intact the promise of open space and by providing in the twenty first century the opportunity to pursue agriculture and forestry at the last working farm in Portsmouth. The Reis family is committed to providing the labor necessary to keep agriculture and forestry alive, but they need appropriate accommodations to do so. Therefore, the addition a two family dwelling is reasonable. Further, even if a future owner of the property chose not to engage in agriculture or

forestry, the size of the property, the distance to abutting properties and the compliance with density objectives all means that the request for a second dwelling is reasonable.

SECTION II
MORE THAN ONE FREE STANDING DWELLING PER LOT VARIANCE
FROM ARTICLE 5, SECTION 10.513

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

Granting the variance will not be contrary to the public interest. To be contrary to the public interest, the variance must unduly, and to a marked degree, violate the relevant ordinance's basic zoning objectives. Determining whether the basic objective of the ordinance is violated can be measured by whether the variance will alter the essential character of the locality, or by whether it would threaten public health, safety or welfare.

The ordinance is silent as to the purpose behind restricting the number of free standing dwellings within the SRB district. However, looking at the purpose of the SRB district itself as described in Article 4, Section 10.410 is helpful. Here, the purpose of the district is "...to provide areas for single family dwellings at low to medium densities (approximately 1 to 3 dwellings per acre). The objective of the ordinance is arguably to keep the category of housing limited to single family homes but also to regulate the density. The minimum lot area in the SRB district is 15,000 sq. ft. Here, there will be 576,444 sq. ft. per dwelling unit on the entire lot and 29,040 sq. ft. per dwelling unit if you exclude the area subject to the conservation easement; nearly twice the required lot area per dwelling unit.

The presence of an additional free standing dwelling unit on the property will not threaten the public health, safety or welfare.

2. The spirit of the Ordinance will be observed

Under New Hampshire law, this variance criteria is essentially merged with the "public interest" criteria. As stated above, the spirit of the ordinance is to regulate density. For the reasons stated above, the spirit of the ordinance will be observed if the variance is granted.

3. The values of surrounding properties are not diminished

Granting the variance to allow more than one free standing dwelling on the property will not diminish property values. The proposed free standing dwelling unit on the property as shown on Exhibit 1 will be a residential use consistent with the existing use on site as well as existing uses on surrounding properties. Further, the location of the free standing dwelling will be over 350 feet from surrounding residential properties and therefore will have little visibility. The footprint and height of the proposed free standing dwelling will be consistent with existing structures, thus not standing out in any way, and will likely appear to be one of the structures associated with the farmhouse and barns.

The applicant is not aware of any information or evidence that would suggest that having more than one free standing dwelling situated on the “Farmhouse Lot” portion of the property will diminish surrounding property values.

4. Substantial justice will be done

The arguments presented for substantial justice for the two family dwelling variance apply with equal force to the variance for a free standing dwelling. Therefore, the arguments presented on this topic for the two family variance are restated and incorporated into the presentation for the free standing dwelling.

5. Unnecessary Hardship:

The arguments presented for unnecessary hardship for the two family dwelling variance apply with equal force to the variance for unnecessary hardship. Therefore, the arguments presented on this topic for the two family dwelling variance are restated and incorporated into the presentation for the free standing dwelling.



↓ Approximate boundary of 2 acre buildable lot (shown in red).

↓ Proposed 32x24 home (for Betsy Zehnder)

↓ Existing home (for Tom/Marybeth Reis)


↓ Proposed 38x28 home (for James/Meegan Reis)

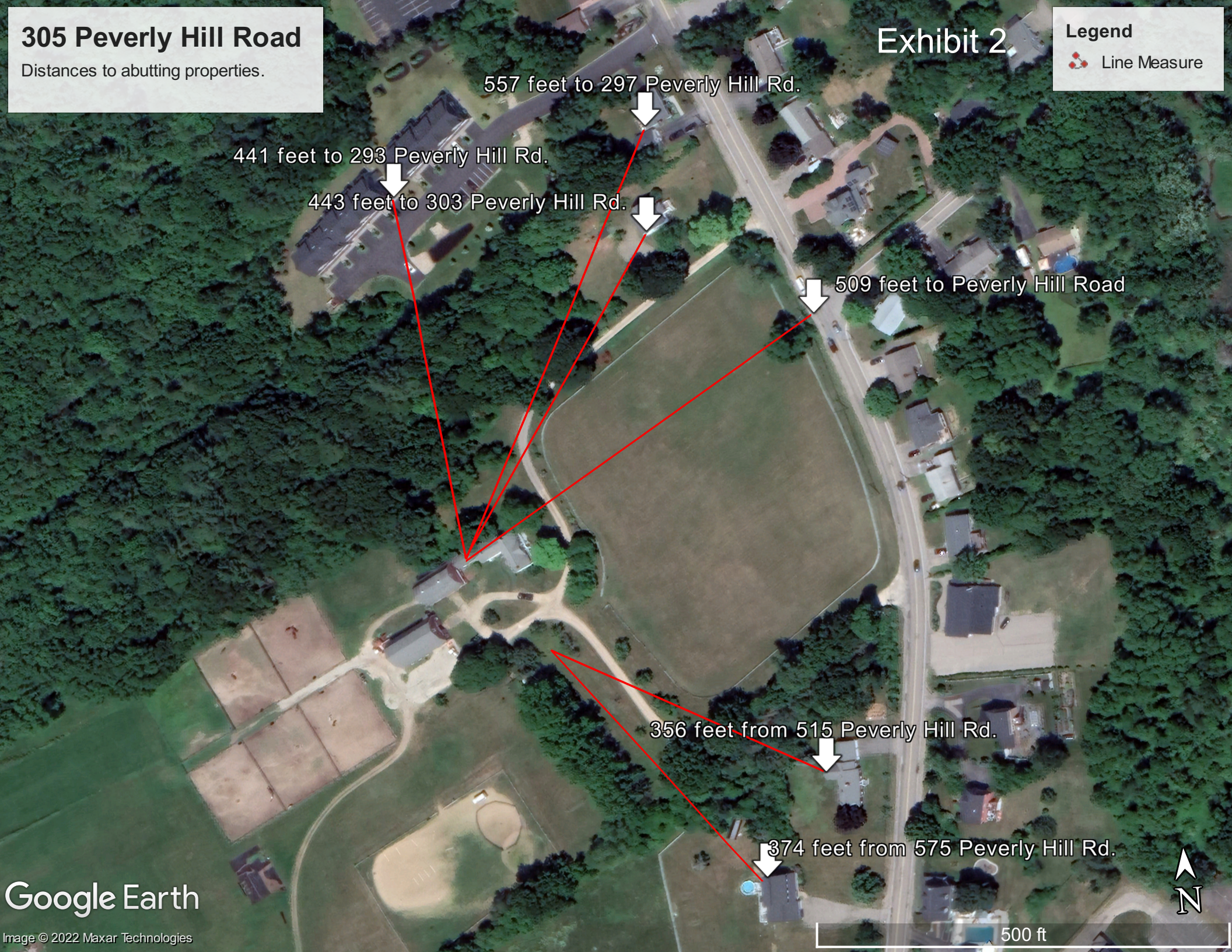
305 Peverly Hill Road

Distances to abutting properties.

Exhibit 2

Legend

 Line Measure





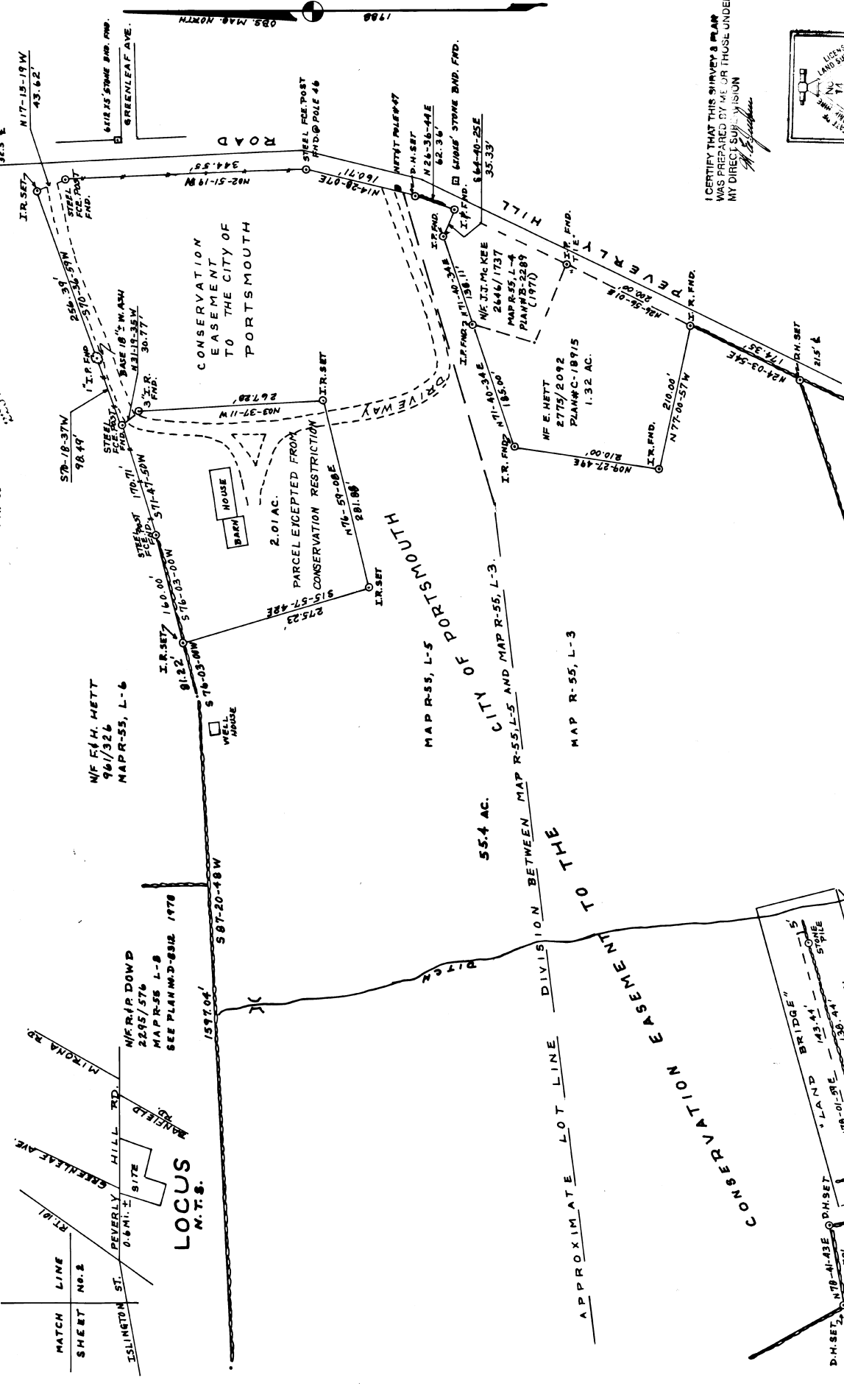
**MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT**

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.

May 26 1 27 PM '89



C-19399 Sheet 1 of 2

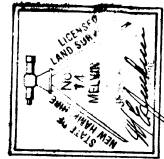
PLAN OF LAND FOR
JOHN & MAUD HETT
PORTSMOUTH, NH
DEC. 1988. SCALE 1in=100ft.
SURVEY BY ME JENKINS, LEE, N.H.

SHEET 1 OF 2

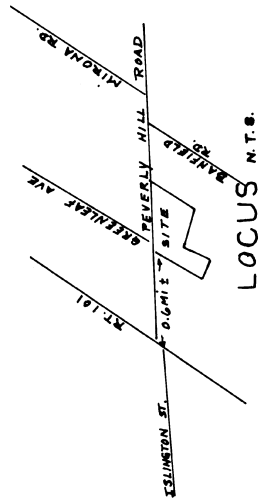
APPROVED-PORTSMOUTH PLANNING BOARD
5-11-89

0 100' 200' 300' 400'
AREA COMPS. H.P. 3815-A
THEODOLITE / EDM
I.R. #4 REBAR W/D CAP

I CERTIFY THAT THIS SURVEY & MAP
WAS PREPARED BY ME OR THOSE UNDER
MY DIRECT SUPERVISION



May 26 1 27 PM '89



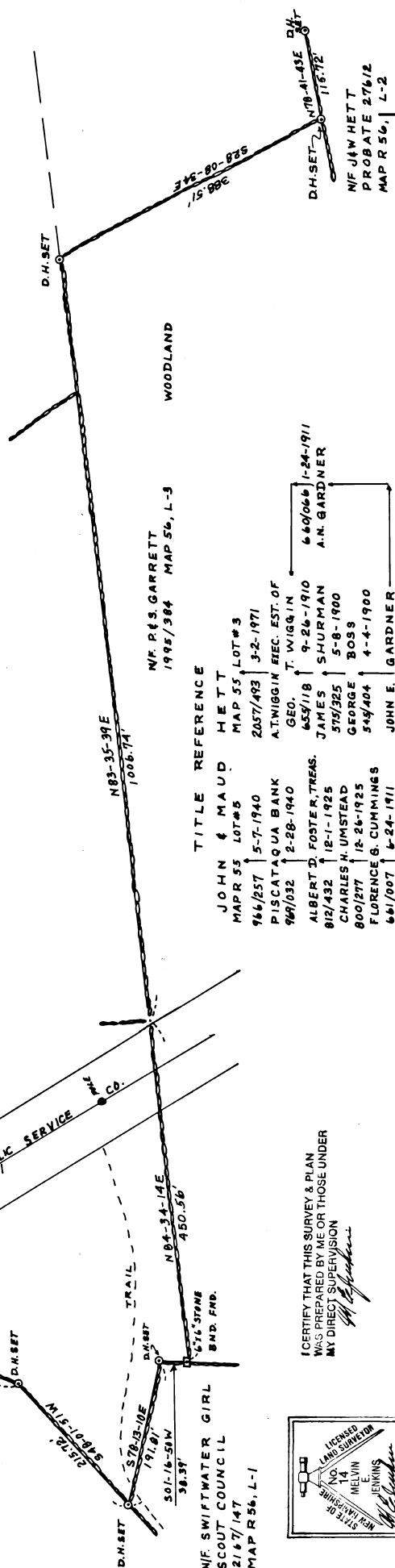
N.F. S. STOKEL
679/034
MAP R-42, L-4
PLAN#0171 (1896)

LOCUS N.T.S.



WOODLAND
CONSERVATION EASEMENT TO CITY OF PORTSMOUTH
WET HAY FIELD

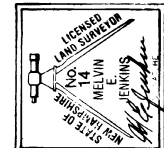
N.F. S. STOKEL
679/034
MAP 42, L-4



TITLE REFERENCE

JOHN & MAUD HETT	MAP 55 LOT#8	MAP 55 LOT#3	966/257	5-7-1940	2057/493	3-2-1971	ATWIGGIN REC. EST. OF	GEO. T. WIGGIN	654/118	9-26-1910	640/066	1-24-1911
PISCATAQUA BANK	2-28-1940	ALBERT D. FOSTER, TREAS.	969/032	12-1-1925	575/325	5-8-1900	JAMES SHURMAN	A.M. GARDNER	575/325	5-8-1900	GEORGE BOSS	4-4-1900
CHARLES H. UMSTEAD	800/277	12-26-1925	FLORENCE B. CUMMINGS	661/007	6-24-1911	JOHN E. GARDNER	BENJ. F. GARDNER	648/454	9-22-1909	FRANCES E. GARDNER		

I CERTIFY THAT THIS SURVEY & PLAN
WAS PREPARED BY ME OR THOSE UNDER
MY DIRECT SUPERVISION
M. E. Jenkins



PLAN OF LAND FOR
JOHN & MAUD HETT
PORTSMOUTH, N.H.
DEC. 1988 SCALE 1 in. = 100 ft.
SURVEY BY M.E. JENKINS, LEE, N.H.

C-19399

SHEET 2 OF 2

Sheet 2 of 2

APPROVED - PORTSMOUTH PLANNING BOARD
E. D. Clark
5-11-89

MATCH
SHEET
LINE
NO. 1

MATCH
SHEET
LINE
NO. 1

View from proposed
house site



View from Peverly Hill Road



View from Peverly Hill Road



View from Peverly Hill Road



View from 515 Peverly Hill Road



View from 575 Peverly Hill Road



LETTER OF AUTHORIZATION

We, Thomas Reis, Marybeth Reis, James Reis and Meegan Reis, owners of property depicted on Tax Map 255, Lot 5, 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: December 14, 2022

/s/ Thomas E. Reis

Thomas Reis

/s/ Marybeth Reis

Marybeth Reis

/s/ James B. Reis

James Reis

/s/ Meegan C. Reis

Meegan Reis