

**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.

December 19, 2023

AGENDA

I. APPROVAL OF MINUTES

- A. Approval of the November 21, 2023 minutes.

II. OLD BUSINESS

- A. **9 Kent Street** - Request for rehearing (LU-23-176)
- B. **550 Sagamore Avenue** – Request for Rehearing (LU-23-164)
- C. The request of **Jeff and Rhonda Caron (Owners)**, for property located at **1 Garden Street** whereas relief is needed to construct an addition to the existing detached garage and create a second living unit on the property which requires the following: 1) Variance from Section 10.516.10 to allow a two (2) foot front yard where five and a half (5.5) feet is required; 2) Variance from Section 10.513 to allow two (2) free standing dwelling units where one (1) is allowed; and 3) Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 174 Lot 11 and lies within the General Residence A (GRA) District. (LU-23-139)

III. NEW BUSINESS

- A. The request of **Anne Sullivan and Kathleen Sullivan (Owners)**, for property located at **166 Martha Terrace** whereas relief is needed to replace the existing shed with a new shed which requires the following: 1) Variance from Section 10.521 to allow 21% building coverage where 10% is the maximum allowed. Said property is located on

Assessor Map 283 Lot 23 and lies within the Single Residence A (SRA) District. (LU-23-186)

- B.** The request of **Go-Lo Inc. and James A. Labrie Revocable Trust of 1991 (Owners)**, for property located at **2059 Lafayette Road** whereas relief is needed to demolish the existing structure and construct an eight (8) living unit building which requires the following: 1) Variance from Section 10.1113.20 to allow parking located closer to the street than the principal building in the secondary front yard; and 2) Variance from Section 10.521 to allow 3,430 square feet of lot area per dwelling unit where 7,500 square feet are required. Said property is located on Assessor Map 268 Lot 13 and lies within the Mixed Residential Business (MRB) District. (LU-23-191)
- C.** The request of **Jeffrey Suttie and Katherine Clarcq (Owners)**, for property located at **485 Lincoln Ave** whereas relief is needed to extend the livable space of the primary structure into area that is currently a porch which requires the following: 1) Variance from Section 10.521 to allow a four (4) foot side yard where 10 is required; and 2) Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 134 Lot 49 and lies within the General Residence A (GRA) District. (LU-23-195)
- D. REQUEST WITHDRAWN** The request of **Zachary Dombrowski and Meghan Black (Owners)**, for property located at **111 Gates Street** whereas relief is needed to demolish and reconstruct portions of the structure located at the rear and on the right side of the building which requires the following: 1) Variance from Section 10.521 to allow a) zero (0) foot front yard where five (5) feet are required, and b) zero (0) foot side yard where 10 feet are required; and 2) Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 103 Lot 96 and lies within the General Residence B (GRB) and Historic District. **REQUEST WITHDRAWN** (LU-23-193)
- E.** The request of **Mark N Franklin and Julie S Franklin (Owners)**, for property located at **168 Lincoln Avenue** whereas relief is needed to demolish the detached garage and construct an addition to the primary structure that includes an attached garage which requires the following: 1) Variance from Section 10.521 to allow a) eight and a half (8.5) foot front yard where 15 is required, b) seven (7) foot right yard where ten (10) feet is required, and c) 33% building coverage where 25% is the maximum allowed; and 2) Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 113 Lot 6 and lies within the General Residence A (GRA) District. (LU-23-196)

- F. The request of **Paula J. Reid 2003 Revocable Trust (Owner)**, for the property located at **410 Richards Avenue** whereas relief is needed to demolish and remove the existing detached garage and construct a new detached garage and associated drainage improvements, which requires the following: 1) Variance from Section 10.521 to permit a) 3.5 foot right side yard where 10 feet is required, and b) 30% building coverage where 25% is the maximum allowed; and 2) Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on the Assessor Map 112 Lot 10 and lies within the General Residence A (GRA) District. (LU-23-198)

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_1Q0oBLodQhCQE4sF2UznhA

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

7:00 P.M.

November 21, 2023

MEMBERS PRESENT: Phyllis Eldridge, Chair; Beth Margeson, Vice Chair; Members Paul Mannle, Jeffrey Mattson; Alternate Jody Record

MEMBERS EXCUSED: David Rheume, Thomas Rossi, and Alternate ML Geffert

ALSO PRESENT: Stefanie Casella, Planning Department; Trevor McCourt, Deputy City Attorney

Chair Eldridge called the meeting to order at 7:00 p.m.

I. PRESENTATION

A. Presentation by City Legal Department on Demolition Ordinance

[Timestamp 4:19] Deputy City Attorney Trevor McCourt was present to discuss the process of how demolitions are handled in Portsmouth. He said a property owner must first apply for a demolition permit that would allow the City Staff to give further direction depending on the property's location. He said the permit would be reviewed by the Inspection Department, and if the property was in the Historic District, the demolition request would have to go before the Historic District Commission (HDC), who had their criteria that determined whether a building merited demolition. He said if the property wasn't in the Historic District, the City had no authority to prevent a demolition, but the property owner would go before the Board of Adjustment or the Planning Board for a public hearing. If the project did not involve those approvals, then the Demolition Review Committee could delay the demolition and have a public hearing so that Portsmouth citizens could voice their opinions and try to convince the property owners to make a different decision. He said decisions made by the BOA or the Planning Board were appealable but their criteria were not appealable. He said the Demolition Review Committee's decision was not appealable because it resulted in a recommendation, not a decision.

Mr. Mannle said his comments at the Board's previous meeting were taken out of context by the Portsmouth Herald, which prompted the complaint, but he said the Legal Department had no problem with his comments. Attorney McCourt said what prompted the presentation was the broader context of what Mr. Mannle said and the demolition and appeal process. He said the purpose of his presentation was to bring some knowledge and broader context about the demolition

process to the Board to reflect upon. Mr. Mannle said he felt that it was the edited comment taken out of context by the newspaper that was the issue. Attorney McCourt said the BOA was tasked with working through their criteria, and the decision before the Board wasn't whether any buildings could be demolished outside the Historic District. Vice-Chair Margeson referred to the Cabot Street house petition in which the demolition of the building was the result of the variances and said there were times that if the Board didn't approve the variances, the building would not be demolished. She said the issue of demolition wasn't really before the Board at that time, but as a result of granting the variances, the building would be demolished. She said the Board's decision on the variance criteria could or could not result in the demolition of a building. Attorney McCourt said that came up all the time and that the BOA's decision may determine whether a property owner would choose to demolish their building, or whether they could make some other use of their property without the existing structure, or if it could be more economical to rehabilitate the existing building. He said it was the criteria that had to be worked through.

Mr. Mattson asked if the State dictated whether a property owner outside of the Historic District had the right to demolish a building. Attorney McCourt said the BOA was a creature of statute and their powers were conferred upon them by the State. He said the City had the ability to review demolition in limited circumstances, provided specifically by statute, and they had not availed themselves of options outside of the Historic District. He said the City was considering several ideas on how to modify that and that it would be discussed at a later date.

Mr. Mannle noted that the legal notice for the Cabot Street petition did not mention a demolition, so the public and abutters didn't know about it. Attorney McCourt said the City and the Planning Department said they would do a better job of providing public notice when a demolition is part of a BOA or Planning Board application. Ms. Record asked what authority the Demolition Review Committee had if the City had no authority to make residents preserve their buildings. Attorney McCourt said the Demolition Review Committee's purpose was to create a brief delay of up to 90 days for a building's demolition and to provide a public forum where citizens could discuss the demolition and make recommendations to the property owner on how to preserve it, and when the delay period ended, the demolition permit would be issued and the building would be demolished.

II. APPROVAL OF MINUTES

A. Approval of the October 17, 2023 minutes.

Vice-Chair Margeson asked that the first sentence in the first full paragraph on page 16 related to the motion for the 337 Richards Avenue petition be changed to reflect that she did not support the motion due to her concern about the addition in massing on the side of the house, and not because the structure was larger than the house itself as stated.

*Mr. Mannle moved to **approve** the October 17 minutes as amended, seconded by Mr. Mattson. The motion **passed** unanimously, 5-0.*

III. OLD BUSINESS

A. **9 Kent Street** - Request for Rehearing (LU-23-176)

*Vice-Chair Margeson moved to **suspend** the rules so that the Board could discuss postponing the application. Mr. Mattson seconded.*

Vice-Chair Margeson said the application was a contentious and difficult one when it went before the Board and required a lot of thought and care from several Board members, and she thought a request for rehearing required the same deliberation from a full Board. She said the Board should postpone the request for rehearing to the December 19 meeting.

*The motion to suspend the rules **passed** unanimously, 5-0.*

*Mr. Mannle then moved to **postpone** the Request for Rehearing to the December 19, 2023 meeting, seconded by Ms. Record. The motion **passed** unanimously, 5-0.*

IV. NEW BUSINESS

- A. REQUEST TO POSTPONE** The request of **Jeff and Rhonda Caron (Owners)**, for property located at **1 Garden Street** whereas relief is needed to construct an addition to the existing detached garage and create a second living unit on the property which requires the following: 1) Variance from Section 10.516.10 to allow a two (2) foot front yard where five and a half (5.5) feet is required; 2) Variance from Section 10.513 to allow two (2) free standing dwelling units where one (1) is allowed; and 3) Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 174 Lot 11 and lies within the General Residence A (GRA) District. **REQUEST TO POSTPONE** (LU-23-139)

DECISION OF THE BOARD

*Mr. Mannle moved to **postpone** the petition to the December 19 meeting, seconded by Mr. Mattson. The motion **passed** unanimously, 5-0.*

- B.** The request of **Ashley Stearns/Blush LLC (applicant)**, and **Joan T. Jones Revocable Trust (Owner)**, for property located at **51 Islington Street, Unit 103** whereas relief is needed to allow an esthetician business which requires a special exception from Section 10.440, Use # 7.20 where it is permitted by Special Exception. Said property is located on Assessor Map 126 Lot 33-103 and lies within the Character District 4-L2 (CD4-L2) and Historic District. (LU-23-184)

SPEAKING TO THE PETITION

The applicant Ashley Stearns of 408 The Hill was present to speak to the petition. She said she wanted to open a new location for her massage and aesthetics business that would have two or three treatment rooms and a reception area. She said she received approval from the condominium association. She reviewed the special exception criteria and said they would be met.

Mr. Mannle asked Ms. Stearns if she planned to get a parking pass to park in the Foundry Place Garage. Ms. Stearns said she would still be renting at 408 The Hill and would retain that parking, but her staff would get parking passes. Vice-Chair Margeson asked how many staff Ms. Stearns would have. Ms. Stearns said she would hire seven staff members, so there would be a total of eight including herself. Vice-Chair Margeson asked how many clients would be served at one time, and Ms. Stearns said there would be three clients served at the same time.

Chair Eldridge opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

No one spoke.

SPEAKING IN OPPOSITION TO THE PETITION

No one spoke.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Elizabeth Bratter of 159 McDonough Street said the Islington Creek neighborhood was already saturated with cars and residents had difficulty finding parking spaces for several reasons. She said the applicant's business would need 8-11 parking spaces due to the staffing. She said some of the grandfathered-in small businesses on Islington Street were finding it difficult for their customers to find parking. She asked that the Board not approve the special exception until on-site parking was demonstrated and that the Board also ensure that the applicant's employees would not park in the neighborhood. She suggested that the owner provide her clients with discounts for parking in the Foundry Place Garage. She referred to the options in her submitted letter to the Board and asked the Board to consider them as stipulations.

Joe Leddy of Duston Leddy Real Estate said he represented Ms. Stearns and was in favor of the petition. He said Ms. Stearns would do what she could to blend in with the community.

Robin Husslage of 27 Rock Street said she was concerned about traffic safety and congestion. She said the special exception for Unit 3 stated that there are three Islington Street parking spaces in front of the building assigned to the building, but she found that those spaces were not specifically assigned to Unit 3 and that there was only signage that indicated 2-hour parking. She said per code that 2-3 on-site parking spots were required. She noted that there was hardly any available parking on the two side streets and very few on Islington Street. She estimated that there would 10-12 staff

and clients who would need parking spots that were not available in the densely-populated neighborhood that currently didn't have enough parking for its residents.

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

DISCUSSION OF THE BOARD

Ms. Casella said the code had specific requirements about how many parking spaces were required per square foot of area within the unit being considered, and because of the way the condominium association chose to set up their parking, they had not designated any specific off-street parking for Unit 3. She said the code did not require that those spots be assigned but just provided on site, which had been done by the condo association. She said the City did not require any parking increase because what was there before was an increase in demand than what the applicant proposes, so it would be less intensive parking now.

Mr. Mattson confirmed that there were 32 total on-site parking spaces. Ms. Casella agreed. Vice-Chair Margeson asked if the applicant was being allocated one spot. Ms. Casella said the applicant didn't have any spaces assigned, according to the condo association, but the property had enough parking for the uses on site. Vice-Chair Margeson asked if anyone could use those spots. Ms. Casella said they were private spaces and that it was up to the condo association to choose how they would be allocated. She said the condo association only had to provide the adequate amount of spaces, which had been provided for the whole building.

DECISION OF THE BOARD

*Vice-Chair Margeson moved to **grant** the special exception as presented and advertised. Mr. Mannle seconded.*

Vice-Chair Margeson said a special exception was something the applicant could be granted if they demonstrated that they met all the criteria. She reviewed the special exception criteria and said the standards as provided by the ordinance for this particular use are permitted by special exception in the Character District 4L-2, and an aesthetician business is an allowed use per special exception. She said the applicant demonstrated that there will be no hazard to the public or adjacent properties on account of potential fire, explosions, or release of toxic materials. She said the applicant demonstrated that there would be no detriment to property values in the vicinity or change in the essential characteristics of any area including residential neighborhoods or business or industrial districts on account of the location or scale of buildings and other structures, parking areas, accessways, odor, smoke, gas, dust or other pollutants, noise, glare, heat, vibration, or unsightly outdoor storage of equipment, vehicles, or other materials. She said the applicant demonstrated that there would be no creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity, given the calculation of the services offered and the length of those services. She said the applicant demonstrated that her business would have no excessive demand on municipal services including but not limited to water, sewer, waste disposal, police and fire

protection, and schools. She said the business would not create any significant increase of stormwater runoff onto adjacent properties and streets. She said all the criteria were met and the petition should be approved.

Mr. Mannle said the Board could not control what the clients of the applicant's business did, but he suggested a stipulation that the applicant and her employees park in the Foundry Place Garage so that the three spaces could be used by the clients. Chair Eldridge said Ms. Casella didn't think it would be consistent with the code. Chair Eldridge said the Board could recommend Mr. Mannle's suggestion but could not stipulate it. Ms. Casella said what was being asked for was a special exception for use and that there was a specific section of the zoning ordinance that spoke to parking and accounted for this specific situation. She said the proposed business and its uses were consistent with the ordinance and that she would be hesitant to place a stipulation that further restricted parking when the code's requirement was already being met.

Vice-Chair Margeson said she was sympathetic to parking concerns but pointed out that parking was not within the Board's purview and the petition met the zoning code. She said she would not accept Mr. Mannle's stipulation.

Mr. Mannle withdrew his seconding of the original motion. Mr. Mattson said he would second the amended motion because the proposed use required less intense parking than the previous use, and the building permit would assess the parking also.

The **amended** motion was as follows:

*Vice-Chair Margeson moved to **grant** the special exception as presented and advertised, seconded by Mr. Mattson. The motion **passed** by a vote of 4-1, with Mr. Mannle voting in opposition to the motion.*

V. OTHER BUSINESS

No other business was discussed.

VI. ADJOURNMENT

The meeting adjourned at 7:50 p.m.

Respectfully submitted,

Joann Breault
BOA Recording Secretary

II. OLD BUSINESS

- A. Request for rehearing by **David and Sandra Mikolaities** of 19 Kent Street, **William and Catherine Arakelian** of 18 Kent Street and **Barbara K. Adams** of 75 Kent Street, for the property at 9 Kent Street whereas relief is needed to demolish the existing two (2) living unit structure and construct a one (1) living unit structure which requires a Variance from Section 10.521 to allow a) 5,000 square feet of lot area where 7,500 square feet are required and b) 5,000 square feet of lot area per dwelling unit where 7,500 square feet are required. Said property is located on Assessor Map 113 Lot 42 and lies within the General Residence A (GRA) District. Application by Cynthia Austin Smith and Peter Smith (Owners) was approved on September 19, 2023. (LU-23-119)

Planning Department Comments

On Tuesday, September 19, 2023 the Board of Adjustment considered the request of Cynthia Austin Smith and Peter Smith (Owners), for property located at 9 Kent Street whereas relief is needed to demolish the existing two (2) living unit structure and construct a one (1) living unit structure which requires a Variance from Section 10.521 to allow a) 5,000 square feet of lot area where 7,500 square feet are required and b) 5,000 square feet of lot area per dwelling unit where 7,500 square feet are required. The Board voted to approve the application. The letter of decision and findings of fact have been included in the meeting packet along with the motion for rehearing and an objection by the owners.

A request for rehearing has been filed within 30 days of the Board's decision and the Board must consider the request at the next scheduled meeting. The Board must vote to grant or deny the request or suspend the decision pending further consideration. If the Board votes to grant the request, a hearing will be scheduled for next month's Board meeting or at another time to be determined by the Board.

The decision to grant or deny a rehearing request must occur at a public meeting, but this is not a public hearing. The Board should evaluate the information provided in the request and make its decision based upon that document. The Board should grant the rehearing request if a majority of the Board is convinced that some error of procedure or law was committed during the original consideration of the case.

Consideration of this request was postponed from the November 21, 2023 meeting due to only 5 Board members being present to vote at that time.



CITY OF PORTSMOUTH

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

ZONING BOARD OF ADJUSTMENT

September 26, 2023

Cynthia Austin Smith and Peter Smith
206 Court Street
Portsmouth, New Hampshire 03801

RE: Board of Adjustment request for property located at 9 Kent Street (LU-23-119)

Dear Property Owners:

The Zoning Board of Adjustment, at its regularly scheduled meeting of **Tuesday, September 19, 2023**, considered your application for demolishing the existing two (2) living unit structures and constructing a one (1) living unit structure, which requires a Variance from Section 10.521 to allow a) 5,000 square feet of lot area where 7,500 square feet are required and b) 5,000 square feet of lot area per dwelling unit where 7,500 square feet are required.

Said property is shown on Assessor Map 113 Lot 42 and lies within the General Residence A (GRA) District. As a result of said consideration, the Board voted to 1) suspend the rules to reopen the public hearing, 2) to accept new information from the applicants, and 3) to **grant** the request as presented and advertised.

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 Findings of Fact associated with this decision are available: attached here or as an attachment in the Viewpoint project record associated with this application and on the Zoning Board of Adjustment Meeting website:

<https://www.cityofportsmouth.com/planportsmouth/zoning-board-adjustment/zoning-board-adjustment-archived-meetings-and-material>

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

Very truly yours,

A handwritten signature in cursive script that reads "Phyllis Eldridge". The signature is written in black ink and is positioned above the printed name.

Phyllis Eldridge, Chair of the Zoning Board of Adjustment

cc: Shanti Wolph, Chief Building Inspector

Rosann Maurice-Lentz, City Assessor

R. Timothy Phoenix, Hoefle, Phoenix, Gormley & Roberts, PLLC
John Chagnon, Ambit Engineering

Findings of Fact | Variance

City of Portsmouth Zoning Board of Adjustment

Date: 9-19-2023

Property Address: 9 Kent Street

Application #: LU-23-119

Decision: **Grant**

Findings of Fact:

Effective August 23, 2022, amended RSA 676:3, It now reads as follows: The local land use board shall issue a final written decision which either approves or disapproves an application for a local permit and make a copy of the decision available to the applicant. **The decision shall include specific written findings of fact that support the decision. Failure of the board to make specific written findings of fact supporting a disapproval shall be grounds for automatic reversal and remand by the superior court upon appeal, in accordance with the time periods set forth in RSA 677:5 or RSA 677:15, unless the court determines that there are other factors warranting the disapproval.** If the application is not approved, the board shall provide the applicant with written reasons for the disapproval. If the application is approved with conditions, the board shall include in the written decision a detailed description of all conditions necessary to obtain final approval.

The proposed application meets/does not meet the following purposes for granting a Variance:

Section 10.233 Variance Evaluation Criteria	Finding (Meets Criteria)	Relevant Facts
10.233.21 Granting the variance would not be contrary to the public interest.	YES	<ul style="list-style-type: none"> • The applicant is meeting the essential character of the neighborhood specific to the relief that is being asked for. • There are a lot of large structures on the substandard 5,000-sf lots in the neighborhood, some of them with high roof lines.
10.233.22 Granting the variance would observe the spirit of the Ordinance.	YES	<ul style="list-style-type: none"> • The applicant is meeting the essential character of the neighborhood specific to the relief that is being asked for. • There are a lot of large structures on the substandard 5,000-sf lots in the neighborhood, some of them with high roof lines.

<p>10.233.23 Granting the variance would do substantial justice.</p>	<p>YES</p>	<ul style="list-style-type: none"> • The applicant demonstrated what is currently there and what is available on similar lots throughout the neighborhood and what is asked for fell in the balance and is something granted to many others in the past. • There are not other substantial characteristics put forward relating to competing concerns that outweighed the fundamental right to develop a property in conformance with the ordinance.
<p>10.233.24 Granting the variance would not diminish the values of surrounding properties.</p>	<p>YES</p>	<ul style="list-style-type: none"> • The structure is replacing a 2-family home and would be a more conforming building that will not have a different use, and a single-family residence is allowed in the area.
<p>10.233.25 Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship.</p> <p>(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.</p>	<p>YES</p>	<ul style="list-style-type: none"> • There are numerous lots in the neighborhood of a similar standard size. • The proposed structure is fully conforming on a lot that is a characteristic size of the neighborhood. • There is no general public purpose of the ordinance that says this specific home should not be built. • The owner is maxing out the height, especially on the side approaching the neighbors, but there wasn't enough to say that it is out of the nature of other uses on the 5,000-sf lots in the area. • The land is the hardship and the applicant decided to build up to the required dimensions.



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1949 - 2021

October 19, 2023

VIA HAND DELIVERY

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

RE: 9 Kent Street (LU-23-119) – REQUEST FOR REHEARING

Dear Ms. Eldridge:

This office represents David and Sandra Mikolaities, Trustees of the Mikolaities Family Trust of 19 Kent Street, William and Catherine Arakelian of 18 Kent Street and Barbara K. Adams, Trustee of the Barbara K. Adams Revocable Trust of 1999 of 75 Kent Street. On their behalf, the foregoing is a formal request that the Board of Adjustment grant a rehearing with respect to its decision of September 19, 2023 to grant variances from Section 10.521 relative to the above referenced property.

I. Standard of Relief.

“Within 30 days after any order or decision of the zoning board of adjustment . . . any party . . . may apply for a rehearing . . . specifying in the motion for rehearing the ground therefor; and the board of adjustment . . . may grant such rehearing if in its opinion good reason therefor is stated in the motion.” RSA 677:2. “A motion for rehearing . . . shall set forth fully every ground upon which it is claimed that the decisional order complained of is unlawful or unreasonable . . . the board of adjustment . . . shall within 30 days either grant or deny the application [for rehearing].” RSA 677:3. The ZBA must grant a rehearing if good reason is shown. RSA 677:2. The purpose of rehearing is to allow the ZBA to correct any errors it may have made. McDonald v. Effingham, 152 NH 171 (2005).

The applicant respectfully submits that the Board's decision was unlawful or unreasonable, based upon a misapplication or misunderstanding of fact and law. Good cause for rehearing exists, as set forth herein.

II. Variances requested vs. variances required.

The application, this applicant's second before the Board this year, requested two variances from Section 10.521, for lot area and lot area per dwelling unit (5,000 square feet where 7,500 is required). The appellants have commissioned a peer review of the applicants' plans by a professional engineer who has confirmed that, as presented, the project requires at least four additional variances. See Memorandum of August Consulting, PLLC dated October 18, 2023 submitted herewith as Exhibit A, and incorporated herein.

Contained in every variance application is the threshold question of whether the applicant's proposed use of property requires a variance in the first place. Bartlett v. Manchester, 164 NH 634, (2013). In other words, regardless of what relief the variance applicant seeks, the Board of Adjustment must inquire in the first instance whether that relief is actually necessary. If the applicant does not require variance relief, for example because the use is an allowed accessory use or the nonconformity is grandfathered, the Board must so find. The obvious corollary is that when the application does not request the appropriate variances necessary for its project, the Board must similarly so find.

At a minimum, variances from Section 10.521 for building coverage are still required because the proposed spa and rear and side yard concrete retaining walls are "structures" as that term is defined in the ordinance, and thus count towards the building coverage calculation¹. The actual building coverage, properly calculated, is 32% where 25% is the maximum permitted.

Furthermore, the "Proposed 6' High Masonry Wall" and "Proposed 4' High Masonry Wall" shown on the plans submitted are accessory structures and are only four feet from the side property line. Because these proposed structures, including the spa, are connected and, taken together, far exceed 100 square feet, section 10.573.20 applies and they all should be set back by the applicable side and rear yard requirements, ten and twenty feet respectively. At the very least, these structures require a variance from the five foot accessory structure setback requirement of section 10.573.10.²

Finally, the project requires relief from Section 10.516.30, which provides that "[o]n a corner lot, no structure, accessory structure, landscaping, or screening which

¹ "Structure" is defined in Article 15 of the ordinance as "[a]ny production or piece of work, artificially built or composed of parts and joined together in some definite manner. Structures include, but are not limited to, buildings, fences over four feet in height, signs and swimming pools."

Section 10.574 provides that "[a]ll accessory buildings and structures shall be included in the computation of building coverage."

² The walls are not "buildings" as that term is defined in the ordinance, therefore, the alternate setback from the lot line of the "height of the building" is not applicable. There is inadequate detail on the spa to determine whether it meets the definition of a building.

obstructs visibility shall be erected or maintained between the heights of 2.5 feet and 10 feet above the edge of pavement grades within the area bounded by the sidelines of the intersecting street rights-of-way and a straight line joining points along said street sidelines 20 feet from the point of intersection of such sidelines or extensions thereof.” As noted in the August Consulting Memorandum, the proposed fence and plantings are not in compliance with this requirement.

The applicants did not request, and the Board did not grant, any of these necessary variances. The Staff Report transmitted to the Board did not identify them. See Exhibit B. The planning staff improperly delegated the interpretation of the ordinance, and the determination of what relief was required to the applicants. See attached Exhibit C. This denied the public a full and fair public hearing on this substantial project.

The number and scope of variances required in any given project are appropriately considered by the Board when making determinations regarding several criteria for granting a variance, including whether granting the variance is in the public interest and is consistent with the spirit of the ordinance, whether granting the variance will do substantial justice, and whether there is an unnecessary hardship. The applicants’ representative also made numerous representations that the proposed dwelling was fully compliant with zoning, other than lot area, which admittedly is impossible to meet. Such representations are conditions of approval upon the variances, under Section 10.235, rendering the variances void on that basis. The extent to which this misrepresentation affected the Board’s consideration and analysis of the application cannot be gauged on the record and rehearing is therefore necessary.

The failure of the Board to address the actual variances necessary, rather than just the variances the applicants specifically sought, was error and requires rehearing.

III. Substantive defects and omissions in applicants’ submission.

Pursuant to the Board’s Rules and Regulations, the minimum requirements for adequate plans and exhibits shall include, among other things, “building plans and elevations of any proposed structures”, and site plans showing proposed conditions including “Dimensions (size and height) of structures.” See Rules, Section IV.6. The applicants failed to submit adequate details regarding the spa and concrete walls. One may presume that had a complete, compliant submission been made, the necessary variances identified above may have been properly identified by staff and addressed by the Board.

Furthermore, planning staff has the discretion to “also require additional information and/or exhibits as needed to illustrate the scope of the project.” Id, at Section IV.8. As identified in the August Consulting Memorandum, significant engineering details are lacking. Specifically, there is no stormwater management plan provided, despite the substantial increase in impervious surface and building coverage and despite the applicant’s representations that stormwater will be discharged by connecting to City structures in the South Mill pond, a sensitive and already overburdened water body. The

applicants are adding over 1000 square feet of impervious surface to this undersized lot, increasing its impervious surface area from 36.5% to 57.8%. The applicant further provided no detail regarding tree removal, drainage, grading and ash removal in the City right of way.

Here, the applicants should have been required to provide sufficient engineering detail to facilitate a proper evaluation of this project's affect on the neighborhood and the public interest. It is noted in the Staff Report that no further review is required for this project beyond a building permit. The Board is reminded that, just this week, it approved a special exception for a 3200 square foot automobile dealership in a fully developed retail strip mall on Lafayette Road, attaching conditions requiring the applicant obtain full TAC review and Planning Board approval. See Case No. LU-23-160. It frankly beggars belief that a new home with over 3500 square feet of living space, resulting in a massive increase in building footprint and impervious surface in a dense residential neighborhood and abutting a public park, and which will have acknowledged stormwater impacts on the South Mill Pond, would be subject to *less* scrutiny.

The granting of variances based upon inadequate and insufficient plans, and without attaching any reasonable conditions providing for further review, was error and requires rehearing.

III. The legal standard for granting a variance.

The appellants respectfully maintain the Board erred in its application of the statutory variance criteria.

A. Granting the variance would be contrary to the public interest or the spirit of the ordinance.

The Board found that granting the variance would not be contrary to the public interest and contrary to the spirit of the ordinance. These criteria are considered together pursuant to Chester Rod & Gun Club v. Town of Chester, 152 NH 577 (2005) and Malachy Glen Associates, Inc. v. Town of Chichester, 155 NH 102, 105-106 (2007). In order for a variance to be contrary to the public interest or injurious of public rights, the variance "must unduly, and in a marked degree" conflict with the basic zoning objectives of the ordinance. Chester, at 581. "Mere conflict with the terms of the ordinance is insufficient." Harborside Associates, LP v. Parade Residence Hotel, LLC, 162 NH 508, 514 (2008). In making such a determination, the Board must consider whether the variance would (a) alter the essential character of the locality, or (b) threaten the health, safety or welfare of the public. Id.

As an initial matter, the Findings of Fact dated September 19, 2023 issued by the Board indicate that these two criteria are met because "[t]here are a lot of large structures on the substandard 5,000-sf lots in the neighborhood, some of them with high roof lines." This is inadequate as a basis for granting a variance as a matter of law under the

Ordinance. Section 10.232.60 specifically provides “the existence of conditions in the surrounding area that are similar to the proposed non-conformity shall not be a basis for the granting of a variance.” The Board should rehear this application on that basis alone.

Here the granting of the variances clearly threatens the health, safety and welfare of the public. As noted in the August Consulting Memorandum, the variances granted will facilitate the construction of a dwelling that will have significant stormwater, drainage and other environmental impacts. This is by definition a threat to public health, safety and welfare. The proposal requires significant impacts upon the public right of way, the public park, and the South Mill Pond, to say nothing of its direct visual and aesthetic impact on the abutters. The Board erred in finding that the granting of the variances would not be contrary to the public interest or contrary to the spirit of the ordinance.

B. Granting the variance would not result in substantial justice.

Here the Board must balance the harm to the applicant if the requested variance is denied against the gain to the general public if the ordinance is upheld. The analysis here really need go no further than the applicants’ failure to seek and obtain all necessary variances for the project as presented, as set forth in Section II above. The Board will recall in May it unanimously denied the applicant’s first proposal, which required seven variances. See attached Exhibits D & E. Although the Board refused to apply Fisher v. Dover to the present application, it nevertheless failed to meaningfully articulate how the present application was less “egregious” than the first.

C. Granting the variance would diminish values of surrounding properties.

The Board addressed this criterion in its finding of facts with the statement that “[t]he structure is replacing a 2-family home and would be a more conforming building that will not have a different use, and a single-family residence is allowed in the area.” Again, this does not take into consideration the additional variances the project requires. Nor does it address the impact such a massive new structure would have on abutting properties.

D. Literal enforcement of the provisions of the ordinance would not result in unnecessary hardship.

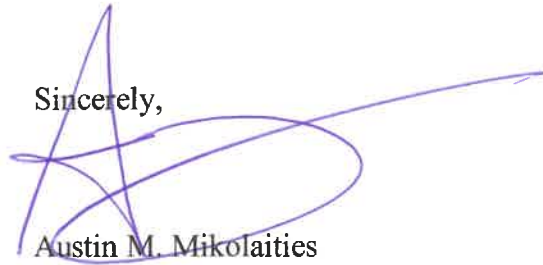
The applicant, in their own words, describes the property as a side by side duplex covering 1,075 square feet with no driveway or off street parking. In May, the Board voted unanimously against the applicants’ project for many reasons, one of which was their inability to establish hardship. Nothing has changed. The applicant moved the house over by 12 feet, but it is essentially the same four-story, full height house, patio/spa with masonry walls. Nothing has changed since May to create special conditions for this property. The proposed underground garage allows for the expansive patio/spa area (which itself requires additional dimensional relief). A house without an underground garage is not a hardship. The majority of the neighborhood has driveways next to their

houses on similar sized lots, and it is possible to develop the applicants' property in a similar way. Five of the six homes with under house garages that the applicants provided photographs of are modest one to two story high homes, not four story full height developments. Those garages are not subterranean, they are at street level.

The Board of Adjustment's conclusion that the applicants were entitled to variances suffered from procedural and substantive defects and was based upon a misapplication or misunderstanding of fact and law and a rehearing is appropriate.

Thank you for your consideration.

Sincerely,

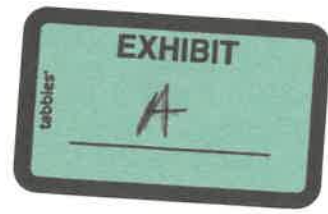
A handwritten signature in blue ink, appearing to read "Austin M. Mikolaities", is written over the typed name. The signature is stylized with a large loop and a long horizontal stroke extending to the right.

Austin M. Mikolaities

AMM/

Enclosures

cc: Client (w/ encls.)
R. Timothy Phoenix, Esquire (w/encls.)



Strategic Resource | Proven Results

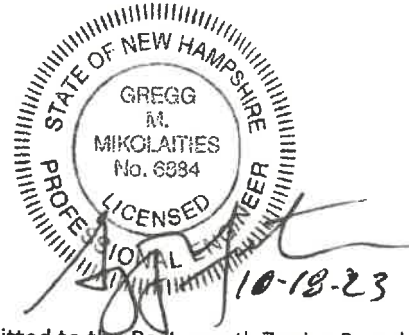
One Willow Lane, Rye NH 03870

MEMORANDUM

DATE: October 18, 2023

TO: Portsmouth Zoning Board of Adjustment

FROM: Gregg Mikolaities, PE



I have completed a review of the September 8, 2023, plans submitted to the Portsmouth Zoning Board titled, "Structure Replacement - Smith Residence" and the Supplemental Memo, dated September 11, 2023, on the redevelopment of 9-11 Kent Street in Portsmouth, NH.

My review has been completed based on my 40 years of civil engineering experience, including permitting dozens of projects in Portsmouth since 1985. My review identified three items of concern that include the following:

1. **Variations:** I have identified at least four additional variations that are required beyond the two that were requested for a total of six.
 - a. The backyard spa is a structure and should count towards building lot coverage thus exceeding the 25% building lot coverage calculations and requiring a variance.
 - b. The back and side yard "concrete retaining wall" is a structure requiring it to be counted towards building lot coverage thus exceeding the 25% building lot calculations and requiring a variance.
 - c. The back and side yard "concrete retaining wall" is a structure that requires a setback variance from the property line.
 - d. The front and side yard fence require a variance for corner lot vision obstruction because both the fence/wall and landscaping exceed the requirement.
2. **Impacts to City Property (Right of Way):** The applicant's submittal lacks information as to the proposed work that will occur within the City's right of way pertaining to grading, drainage, tree removal and the removal of ash material identified in their test pit data.
3. **Drainage:** The redevelopment will significantly change the property's stormwater runoff and offers no stormwater management plan. The runoff is proposed to connect into the City's stormwater system and discharge into South Mill Pond. No details are provided on stormwater treatment and the impact of increasing the undersized lot's impervious surface coverage by 21%.

Below is an expanded description of the above items.

1. **Variations:** This project requires four additional variations:

a. Spa is a Structure: In the Supplemental Memorandum to the ZBA, page 3, the applicant states that the "City Staff have determined that the spa (hot tub) is an accessory structure. Pursuant to Portsmouth Zoning Ordinance §10.573.10, an accessory structure less than 10 ft. tall and less than 100 sf in area must be set back 5 ft. from any lot line." The applicant continues by stating that "the spa will be set into the ground protruding approximately 3 ft. and is 96 sf in area. Accordingly, it must comply with a 5 ft. setback." The applicant concludes by stating on page 7 that, "Lastly, as discussed supra, the spa is treated as an accessory structure."

Pursuant to Section 10.574 of the Portsmouth Zoning Ordinance, "All accessory buildings and structures shall be included in the computation of building coverage." The spa is not. On sheet C-2, the plan labeled variance plan, the 96-sf spa area is not included in the proposed building coverage. The proposed building coverage now increases to 27%, thus requiring the applicant to seek a variance for exceeding building lot coverage.

b. Rear and Side Yard Concrete Retaining Wall is a Structure: On page 6 in the Supplemental Memorandum, dated September 11, 2023, the applicant states that the "City Staff have further confirmed that the landscape walls in the Kent and Rockland Street front yards under 18 inches in height are not structures. The rear patio is also less than 18 inches above existing grade and therefore not a structure."

The Supplemental memo is misleading because the applicant claims, "Similarly, the combination of low wall and short fence in the front yards do not exceed the permitted 4-foot height for fences in the principal front and secondary front yards. In the left side and rear yard setbacks, the combination masonry wall/fence do not exceed the permitted height of 6 feet applicable to fences in rear and side yards". The applicant concludes by stating that the front yard and Rockland Street side yard are walls less than 18" with a fence less than 4 feet – therefore not a structure. Then they continue the argument to the back and south side yard – however, they neglect to mention that there is no fence or combination fence on top of a wall in these areas – just a 4-foot and 6-foot high by 16-inch-wide concrete masonry wall that is a structure.

In Section 10.1530 of the Portsmouth ZBA titled Terms of General Applicability, page 15-38 under Definitions defines a structure as:

Structure: Any production or piece of work artificially built up or composed of parts and joined together in some definite manner. Structures include, but are not limited to, buildings, fences over 4 feet in height, signs, and swimming pools.

In accordance with Portsmouth ZBA 10.574, "All accessory buildings and structures shall be included in the computation of building coverage". The 236-square feet of concrete wall is a structure and as such should be applied to building lot coverage, now increasing their building lot coverage to 32% (5% additional increase beyond the spa).

c. Back and side yard “retaining wall” requires a setback variance from the property line: In accordance with PZA 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.”

The concrete walls in the rear and south boundary are permanent accessory structures that are 4-feet from the property line and 236 square feet in area (see sheet C-2 Variance Plan, Exhibit 4). It requires a variance for where it is currently located, or it needs to be moved away from the property line in order to be in compliance with section 10.573.20.

The wall should be treated similar to the spa, which the applicant states on page 3 of their Supplemental Memorandum, “is an accessory structure”. Because the spa will be set into the ground protruding approximately 3 ft. and is 96 sf in area, PZO §10.573.10 applies and not 10.573.20. That is why the applicant states that, “it must comply with a 5 ft. setback. As proposed, the spa is 5.2 ft. from the side lot line and 5.2 ft. from the rear lot line and therefore compliant (page 3 of the Supplemental Memorandum).” The wall is not compliant.

d. Front and Side Yard Fence Require a Variance for Corner Lot Vision Obstruction: Both the applicant’s landscape plan (Sheet L-IL) and variance plan (sheet C-2) describe their front/side yard fence/wall as: a “Masonry wall (<18” high: step with grade) with metal picket fence atop; 4’ high or less total, typical.”

Portsmouth ZBO Section 10.516.30 Corner Lot Vision Obstruction states that “on a corner lot, no structure, accessory structure, landscaping, or screening which obstructs visibility shall be erected or maintained between the heights of 2.5 feet and 10 feet above the edge of pavement grades within the area bounded by the sidelines of the intersecting street rights-of-way and a straight line joining points along said street sidelines 20 feet from the point of intersection of such sidelines or extensions thereof. “Both the applicant’s fence/wall and plantings are not in compliance, thus requiring a variance.

- 2. Impacts to City Property (Right of Way):** The submittal lacks information as to the proposed work that will occur within the City’s right of way pertaining to tree removal, grading, drainage and the removal of ash material identified in their test pit data.

The driveway is designed in a manner that will require the homeowner to back their vehicle all the way out on Rockland Street to Kent Street. The site is designed so that a car cannot park in the driveway and remain on the applicant’s property, it will be within the City’s right of way (ROW). In order to access the garage, the City’s right-of-way has to be regraded. Test pit #4 underneath the proposed driveway that was conducted in the City ROW identified as having ash, (Note: all four test pits identified ash, including test pits #1 and 3 within the proposed new building foundation and test pit #2 under the new back yard wall).

Has the applicant determined if it is a hazardous waste and if so, how will they protect the neighborhood during removal and abatement (see Standard Boundary and Topographic Survey Plan for test pit locations). The demolition plan does not show two trees to be removed, including one tree located in the City ROW.

Furthermore, the plans have no details on stormwater management and excavating within the City Right of Way to mitigate their drainage issues. See section 3 below.

- 3. Drainage** - A review of the plan set that includes the proposed drainage and grading plan (sheet C3) indicates that the project will significantly change the property's drainage characteristics, offers no stormwater management plan as to how they will treat stormwater connecting into City structures at South Mill Pond and increases the undersized lot's impervious surface coverage by 21%.

The proposed home's new roofline is changing from east-west to north-south shedding water on to their proposed side yard between their home and the abutter's home, the concrete foundation for the new home increases substantially in length from 34 to 56-feet and then an impervious barrier created by their 6-foot-high masonry wall and 4-foot-deep buried footer continues another 26-feet along the abutter's property line. There now exists an 82-foot-long impervious barrier along a 100-foot property line and stormwater flow that has no place to go.

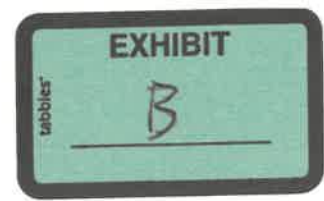
Runoff from off site, as well as on-site, now flows towards the proposed garage doors. The proposed curb cut along the Rockland Street Extension for their driveway is the lowest point where all stormwater will now flow down Rockland Street, down their driveway into the garage at elevation 23.0-feet which is the lowest point. The stormwater has no place to go and must be pumped somewhere.

There is no design information on how the runoff flowing towards the garage doors will be captured and discharged. However, during the September 19th hearing, the applicant's team commented that they will be connecting to the City structures in South Mill Pond (You Tube 1:34:45). There is no information provided on the proposed excavation within the City Right of Way for their stormwater management.

Furthermore, the undersized lot's impervious surface area is increasing from 36.5% to 57.8%. The project is adding over 1,000-square feet of additional impervious surface with no stormwater management devices proposed to mitigate the increase in runoff. The water has to go somewhere. This is a bad precedent for the ZBA and City to accept, an applicant increasing impervious coverage by 21%. The City and its residents will be impacted by flooding and undersized infrastructure that would require upgrades to the municipal collection system.

In summary, my review identified that the submission was incomplete, did not properly identify the required variances, and lacks sufficient engineering details.

Please let me know if you have any questions on the above.



II. OLD BUSINESS

B. The request of **Cynthia Austin Smith and Peter Smith (Owners)**, for property located at **9 Kent Street** whereas relief is needed to demolish the existing two (2) living unit structure and construct a one (1) living unit structure which requires a Variance from Section 10.521 to allow a) 5,000 square feet of lot area where 7,500 square feet are required and b) 5,000 square feet of lot area per dwelling unit where 7,500 square feet are required. Said property is located on Assessor Map 113 Lot 42 and lies within the General Residence A (GRA) District. (LU-23-119) *This item was continued from the August 22, 2023 meeting to request more information from the applicant.*

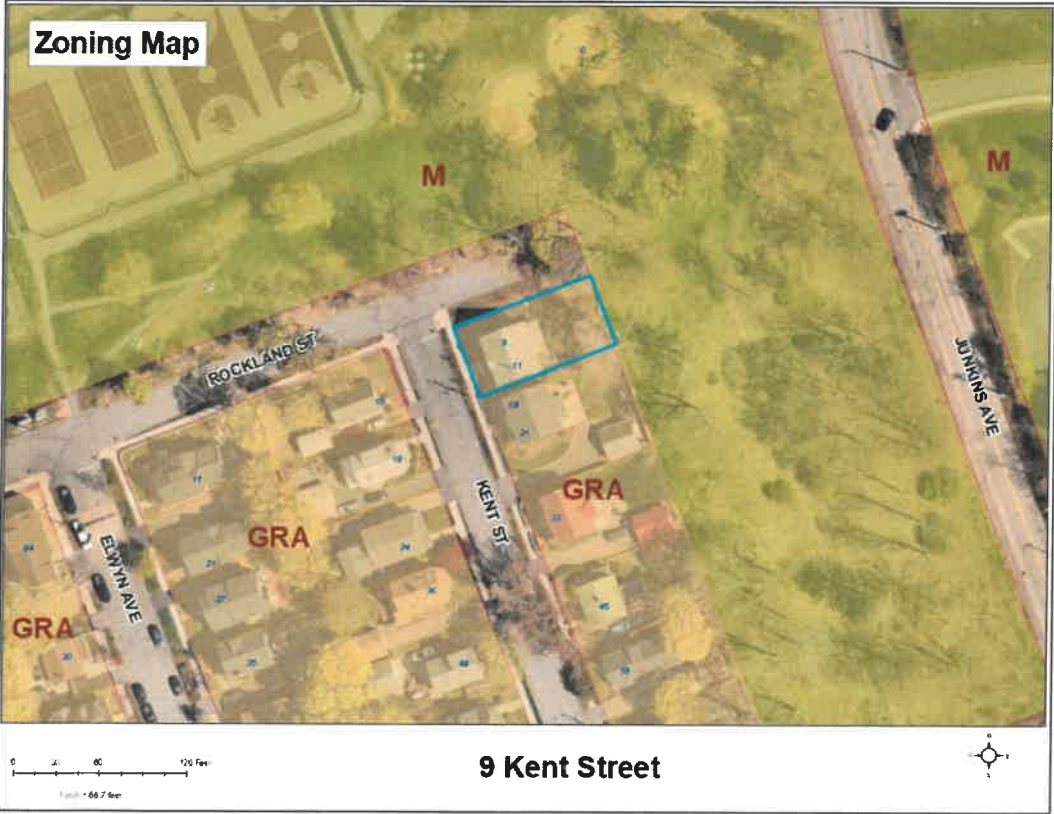
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Two-family	Demo structure and construct new single unit	Primarily residential
<u>Lot area (sq. ft.):</u>	5,000	5,000	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	5,000	5,000	7,500 min.
<u>Street Frontage (ft.):</u>	50'+	50' +	100 min.
<u>Lot depth (ft.)</u>	100	100	70 min.
<u>Primary Front Yard (ft.):</u>	7	11	10 (using front yard averaging) min.
<u>Secondary Front Yard (ft.):</u>	16	16	13 (using front yard averaging) min.
<u>Right Yard (ft.):</u>	0.5	12	10 min.
<u>Rear Yard (ft.):</u>	6	>20	20 min.
<u>Height (ft.):</u>	<35	34.5	35 max.
<u>Building Coverage (%):</u>	35	25	25 max.
<u>Open Space Coverage (%):</u>	63.5	42	30 min.
<u>Parking</u>	0	2 (2 car garage)	2
<u>Estimated Age of Structure:</u>	1900	Variance request(s) shown in red.	

Other Permits/Approvals Required

- Building Permit

Neighborhood Context



Previous Board of Adjustment Actions

July 19, 1988 – Relief from Zoning Ordinance including: Variance from Article III, Section 10-302 are requested: a) construction of 4' x 20' rear egress stairs from the second floor to rear yard with 33% building lot coverage in a district where the maximum building lot coverage allowed is 20% and b) construction of said stairs with a 2 ½' right yard where a 10' side yard is the minimum in this district. The Board voted to **grant** the request as advertised.

March 29, 2023 – The Board considered the application for demolishing the existing two-family and constructing 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. The Board voted to **postpone** to the April 18, 2023, meeting.

April 18, 2023 - The Board voted to **postpone** the March 29, 2023, petition to the May 16, 2023, meeting.

May 16, 2023 – The Board voted to **deny** the March 29, 2023, request.

Planning Department Comments

At the August 22, 2023 Board of Adjustment meeting, the Board made the following decisions:

- 1) The application was substantially different from the previous submission and Fisher vs. Dover was not invoked.
- 2) The public hearing was closed.
- 3) A voted to deny the application failed.
- 4) The Board voted to continue the application to the September 19, 2023 meeting with the request for the following information:
 - What is the height, as defined by the Zoning Ordinance, of the structure to be demolished relative to the calculated average grade (elevation 28.92)?
 - Dimensions for the existing and proposed house including square footage
 - A streetscape rendering
 - Will there be City property used to a higher degree than anyone else when they pull out of the garage?
 - A survey plan that just shows the building envelope (without landscaping)
 - Why is the spa exempt from yard requirements and does it qualify as a temporary structure?
 - How is the ground level parking going to be built and what will the change in elevation be?

The applicant has presented the requested information in their updated submission package. Staff have readvertised the application in anticipation of the Boards vote to re-open the public hearing.

For the Board to consider the presented information from the applicant and make a decision, staff recommend the following procedure:

- 1) The Board votes to suspend the rules and reopen the public hearing.
- 2) The applicant gives a brief summary of the new information.
- 3) The Board asks questions of the applicant and project team.
- 4) The Board receives public comment to, for, or against the application.
- 5) The Chair closes the public hearing.
- 6) The Board discusses the application.
- 7) A Board member makes a motion
- 8) The motion is discussed, supported by findings of fact, and voted on.

For this project, the complete demolition of the existing structure creates a vacant lot and will require relief for the non-conforming dimensions of the lot. See Section 10.311 copied below for reference.

10.311 *Any lot that has less than the minimum lot area or street frontage required by this Ordinance shall be considered to be nonconforming, and no use or structure shall be established on such lot unless the Board of Adjustment has granted a variance from the applicable requirements of this Ordinance.*

Variance Review Criteria

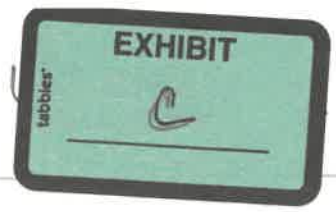
This application must meet all five of the statutory tests for a **variance** (see Section 10.233 of the Zoning Ordinance):

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.*

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.



RE: Is a masonry wall considered an accessory structure?



● **Stefanie L. Casella**
From: slcasella@cityofportsmouth.com
To: David Mikolaities,
Sandy Mikolaities

Tue, Sep 19 at 11:28 AM

Hello David and Sandy,

I have forwarded your questions to the applicants and requested that they provide an answer tonight.

Thanks!
Stef

Stefanie Casella
Planner
Portsmouth Planning Department
1 Junkins Avenue
Portsmouth, NH 03801
(603)610-7290

From: David Mikolaities <dmik64@yahoo.com>
Sent: Sunday, September 17, 2023 9:05 PM
To: Stefanie L. Casella <SLCasella@cityofportsmouth.com>; Sandy Mikolaities <charlieranger@hotmail.com>
Subject: Is a masonry wall considered an accessory structure?

Hi Stefanie,

We were wondering if a 6-foot high masonry wall with footers is considered an accessory structure? And assuming it is, shouldn't it be included in the proposed building coverage calculation of 25%?

Also, in accordance with: 10.573.10 An accessory building or structure not more than 10 feet in height and not more than 100 square feet in area shall be set back at least 5 feet from any lot line. Wouldn't a 4-foot and 6-foot high masonry wall require a 5-foot setback?

Thanks for your time,

Dave Mikolaities



II. OLD BUSINESS

- C. 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)

Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Two-family	Demo structure and construct new single unit	Primarily residential
<u>Lot area (sq. ft.):</u>	5,000	5,000	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	5,000	5,000	7,500 min.
<u>Street Frontage (ft.):</u>	50'+	50' +	100 min.
<u>Lot depth (ft.)</u>	100	100	70 min.
<u>Primary Front Yard (ft.):</u>	7	0	11 (using front yard averaging in 10.516.10) min.
<u>Secondary Front Yard (ft.):</u>	16	9.5	13 (using front yard averaging in 10.516.10) min.
<u>Right Yard (ft.):</u>	0.5	0.5	10 min.
<u>Rear Yard (ft.):</u>	6	4.5	20 min.
<u>Height (ft.):</u>	<35	35	35 max.
<u>Building Coverage (%):</u>	35	53	25 max.
<u>Open Space Coverage (%):</u>	63.5	33	30 min.
<u>Parking</u>	0	2 (2 car garage)	2
<u>Estimated Age of Structure:</u>	1900	Variance request(s) shown in red.	

Other Permits/Approvals Required

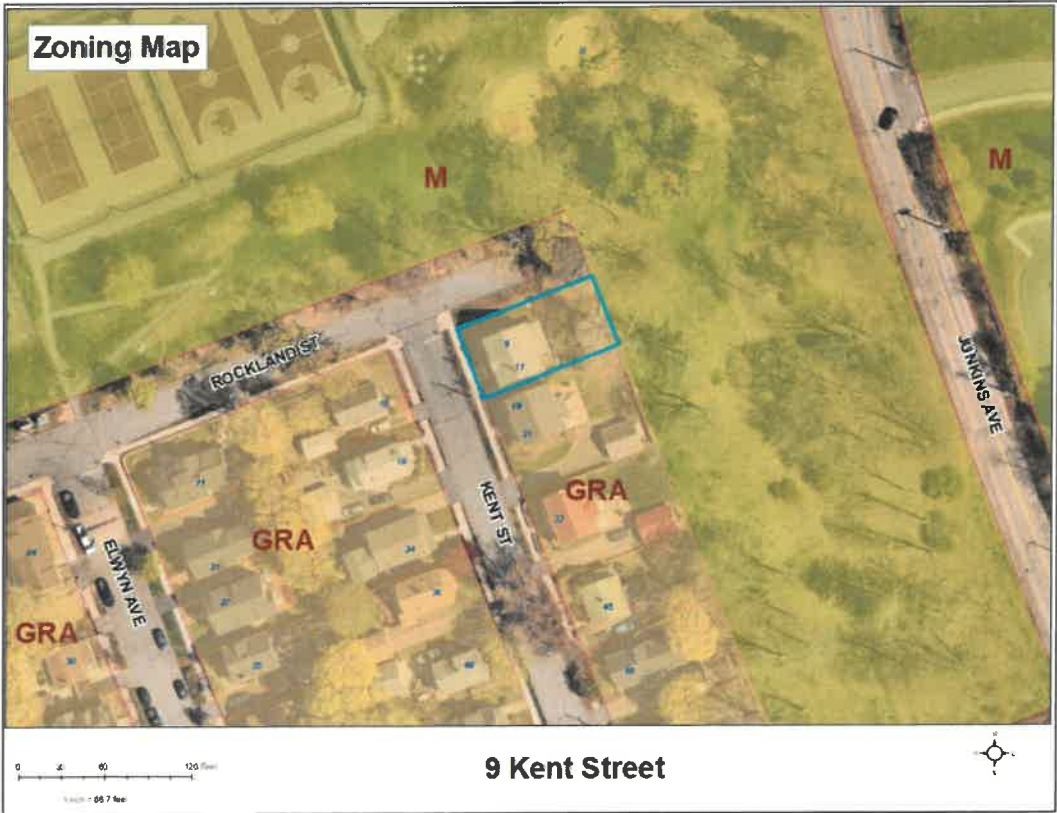
- Building Permit

Neighborhood Context

Aerial Map



Zoning Map



Previous Board of Adjustment Actions

July 19, 1988 – Relief from Zoning Ordinance including:

Variance from Article III, Section 10-302 are requested: a) construction of 4' x 20' rear egress stairs from the second floor to rear yard with 33% building lot coverage in a district where the maximum building lot coverage allowed is 20% and b) construction of said stairs with a 2 ½' right yard where a 10' side yard is the minimum in this district.

The Board voted to **grant** the request as advertised.

Planning Department Comments

The applicant is requesting relief from multiple dimensional standards to demolish the existing structure, construct a single living unit, and add new backyard features.

For this project, the complete demolition of the existing structure creates a vacant lot and will require relief for both the proposed structure dimensions that do not meet zoning and for the non-conforming dimensions of the lot. See Section 10.311 copied below for reference.

***10.311** Any lot that has less than the minimum lot area or street frontage required by this Ordinance shall be considered to be nonconforming, and no use or structure shall be established on such lot unless the Board of Adjustment has granted a variance from the applicable requirements of this Ordinance.*

At the request of staff, applicant presented the project to the Technical Advisory Committee at a Work session for the review of public infrastructure impacts as they relate to the project.

May 8 Update:

On May 8, 2023 the applicants submitted a revised foundation plan after receiving input from the abutter. The changes are summarized in the letter dated May 10, 2023 from Jennifer Ramsay and are as follows: the right side of the structure will be 3 feet narrower on the basement level, the new building will be the same in every other aspect and dimension.

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

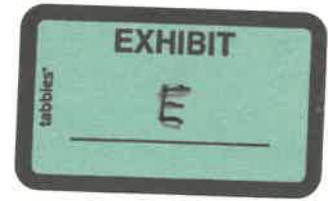
Owing to these special conditions, the property cannot be reasonably used in strict conformance with the Ordinance, and a variance is therefore necessary to enable a reasonable use of it.

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.

Findings of Fact | Variance

City of Portsmouth Zoning Board of Adjustment



Date: 5-16-2023

Property Address: 9 Kent Street

Application #: LU-23-28

Decision: **Deny**

Findings of Fact:

Effective August 23, 2022, amended RSA 676:3, I now reads as follows: The local land use board shall issue a final written decision which either approves or disapproves an application for a local permit and make a copy of the decision available to the applicant. **The decision shall include specific written findings of fact that support the decision. Failure of the board to make specific written findings of fact supporting a disapproval shall be grounds for automatic reversal and remand by the superior court upon appeal, in accordance with the time periods set forth in RSA 677:5 or RSA 677:15, unless the court determines that there are other factors warranting the disapproval.** If the application is not approved, the board shall provide the applicant with written reasons for the disapproval. If the application is approved with conditions, the board shall include in the written decision a detailed description of the all conditions necessary to obtain final approval.

The proposed application meets/does not meet the following purposes for granting a Variance:

Section 10.233 Variance Evaluation Criteria	Finding (Meets Criteria)	Relevant Facts
10.233.21 Granting the variance would not be contrary to the public interest.		
10.233.22 Granting the variance would observe the spirit of the Ordinance.		
10.233.23 Granting the variance would do substantial justice.		
10.233.24 Granting the variance would not diminish the values of surrounding properties.		
10.233.25 Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship. (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	NO	<ul style="list-style-type: none"> It is brand new construction and the applicant could build a new structure in full compliance or require less relief than requested. All the characteristics presented are negative hardships that make the request relief even more egregious.

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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PORTSMOUTH ZONING BOARD OF ADJUSTMENT
9 Kent Street Tax Map 113, Lot 42
LU-23-119

OBJECTION TO REQUEST FOR REHEARING

NOW COME, Peter Smith and Cynthia Austing Smith (“Smith”), by and through their attorneys, Hoefle, Phoenix, Gormley & Roberts, PLLC, and respectfully request that the Portsmouth Zoning Board of Adjustment (“ZBA”) deny the Motion for Rehearing filed by David and Sandra Mikolaites, William & Catherine Arakelian, and Barbara K. Adams (collectively “Petitioners”) with respect to the September 9, 2023 decision of the ZBA granting Smith variances from Portsmouth Zoning Ordinance (“PZO”) §10.521 for 9 Kent Street (the “Property”) allowing replacement of an existing nonconforming duplex with a single family home on a 5,000 s.f. lot where 7,500 s.f. lot and lot area per dwelling unit is required (the “Project”).

I. EXHIBITS

1. 9/19/2023 Notice of Decision and Findings of Fact.
2. 8/22/2023 Minutes of the Zoning Board of Adjustment.¹
3. 9/19/2023 Minutes of the Zoning Board of Adjustment.²

II. REHEARING LEGAL STANDARD

Within thirty days after any...decision of the Zoning Board of Adjustment...any party to the action or proceedings,...may apply for rehearing in respect to any matter determined in the action...specifying in the motion for rehearing the grounds therefore; and the Board of Adjustment...may grant such rehearing if in its opinion good reason therefore is stated in the motion.
RSA 677:2.

The New Hampshire Supreme Court has made clear that a “rehearing is not a matter of right” and “in the interest of finality of decisions by zoning boards, rehearings should not lightly be granted.” McDonald v. Town of Effingham Zoning Bd. of Adjustment, 152 N.H. 171 (2005). The ZBA is considered the expert on matters of zoning and local conditions and its decisions are

¹ 8/22/2023 Video begins at approximately the 3:00:10 mark and is available at <https://www.youtube.com/watch?v=ovPFQ2Q2Spg>

² 9/19/2023 Video begins at approximately the 0:7:04 mark and is available at <https://www.youtube.com/watch?v=j0tzrgvGEtw>

deemed prima facia lawful. See The Board of Adjustment in New Hampshire, a Handbook for Local Officials, 2022 p. IV-5; Daniels v. Londonderry, 157 N.H. 519 (2008). Rehearing is proper only where the affected party can show technical error or produce new evidence that was not available at the time of the first hearing. Loughlin, 15 New Hampshire Practice, Land Use Planning and Zoning, Section 21.18 (4th Ed. 2010)(noting that unavailable evidence is should not be evidence that was available and not produced due to lack of preparation).

It is assumed that every case will be decided, originally, only after careful consideration of all the evidence on hand and on the best possible judgment of the individual members. Therefore, no purpose is served by granting a rehearing unless the petitioner claims a technical error has been made to his detriment or he can produce new evidence that was not available to him at the time of the first hearing.

New Hampshire Office of Energy and Planning, The Board of Adjustment in New Hampshire: A Handbook for Local Officials, Chapter IV, P. IV-3 (2022).

III. INTRODUCTION

Petitioners' Request for Rehearing erroneously rehashes the same points previously considered by the ZBA including claims that additional relief is required, and includes a report authored by a relative of Petitioner Mikolaite. Petitioners' Request for Rehearing utterly fails to demonstrate the ZBA committed any error in its analysis and fails to provide new evidence which was unavailable to the Petitioners at the time of the initial hearing. Petitioners' repeated demands, without authority, for submission of further information and plan details are unrelated to the matter within the jurisdiction of the ZBA pursuant to RSA 674:33, (i.e. the application for lot area and lot area/dwelling unit variances). These repetitive claims do not demonstrate the ZBA erred in granting relief for lot size and lot size/dwelling unit. Additionally, such claims are misplaced because the Building Department will review a complete permit plan set before any building permit is issued. Lastly, Petitioners mistaken claim that the *Project* (not the variances for lot size and lot size/dwelling unit) fails to meet the criteria for granting a variance from PZO §10.521 is contrary to RSA 674:33. Petitioners' position also overlooks the fact that the dwelling complies with height, coverage, and yard setbacks; *any* building on the lot requires the same relief for lot size. Accordingly, claims regarding the specific features of this otherwise dimensionally compliant permitted dwelling does not establish that the ZBA erred in granting relief. In sum, Petitioners merely disagree with the collective judgement of the ZBA. Because

Petitioners fail to establish that the ZBA overlooked any evidence or erred in its analysis, the ZBA must deny the Request for Rehearing.

IV. **RESPONSE TO PETIONER'S CLAIMS OF ERROR**

1. **In the absence of an Administrative Appeal, rehearing is not required to determine whether additional zoning relief is required where the ZBA properly deferred Petitioners' claims in favor of review by the Building Department, which is empowered to identify additional zoning relief at any point prior to construction.**

Petitioners' Request for Rehearing fails to produce any evidence not available at the time of the initial hearing and largely repeats Petitioners' previous claims that the spa and masonry wall elements depicted on the Revised Plan Set (**Exhibit H to 9/11/2023 Submission**) do not comply with the Ordinance. This alone compels denial of Petitioners' Request for Rehearing. Contrary to Petitioners' assertion that that Staff impermissibly delegated the interpretation of the ordinance and determination of necessary relief to the Applicants during the process, Staff rendered an opinion on the proposal's overall compliance with the Ordinance and on the specific provisions related to the spa and masonry wall before Smith filed his July 26, 2023 application. (See Applicant's July 26, 2023 Memorandum, August 22, 2023 Minutes, p. 9; Video <https://www.youtube.com/watch?v=ovPFQ2Q2Spg> at 3:23:25). Petitioners never filed an Administrative Appeal of staff's determination or invoked Bartlett v. City of Manchester, 164 N.H. 634 (2013)(holding ZBA has the implicit authority to determine whether an unappealed administrative decision directing applicant to obtain a variance is correct) when it appeared before the ZBA and cannot do so now.

Additionally, Petitioners reliance on Bartlett v. City of Manchester, 164 N.H. 634 (2013) is misplaced. Bartlett involved an abutters appeal of a variance granted to a church permitting it to operate a work-based, self-help organization. The Bartlett Court determined that the Superior Court's subject matter jurisdiction included consideration of the permitted and accessory uses of the property when reviewing whether Manchester ZBA properly found the Church's proposal met the hardship criteria.³ Id. at 640. The Court further determined that the *Applicant's request*

³ See RSA 674:33 I (b)(1):

For purposes of subparagraph I(a)(2)(E), "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area:

(A) 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

(B) The proposed use is a reasonable one.

for a variance did not concede the central issue of whether relief was required. This holding has never been extended to require a ZBA, in the absence of an administrative appeal, to entertain an *opposing party's* claim that the underlying administrative decision failed to identify all necessary relief. Accordingly, the ZBA properly declined to make any decision on the need for additional relief stating simply that Smith's Building Permit Plan must comply with other aspects of the Ordinance.

Under these circumstances, the ZBA's approval of Smith's application simply means Smith's building permit application will not be denied because it proposes construction of a single family dwelling on a 5,000 s.f. lot where a 7,500 s.f. lot and 7,500 s.f. per dwelling unit is required. The approval does not relieve the Building Department of its responsibility to thoroughly review the Building Permit Package for compliance with other provisions of the Ordinance. Accordingly, Petitioners' claims regarding additional relief are premature. Assuming *arguendo* Petitioners' claims warrant substantive consideration at this time, a plain review of the Ordinance language affirms that no additional relief is required.

(a) Spa

Petitioners' correctly point out that the spa, as described in Undersigned Counsel's September 11, 2023 Memorandum is a structure, because the narrative described it as protruding 3 feet above the ground. Undersigned Counsel incorrectly described the spa. It was always intended to be less than 18 inches above the ground in accordance with the Ordinance definition of Building Coverage. In fact, on September 11, 2023, Woodburn & Company reviewed the draft Supplemental Memorandum and emailed Counsel requesting she change the 3 feet above ground description to less than 18 inches above ground, but Undersigned Counsel mistakenly failed correct the language before filing the Memorandum. I apologize for this oversight. In addition to this clarification, Woodburn & Company will revise the Building Permit Plan to clarify the height of the spa as less than 18" above existing grade. Given that height, the spa is properly excluded from Building Coverage, defined below:

Building coverage The aggregate horizontal area or percentage (depending on context) of a lot or development site covered by all buildings and structures on the lot, excluding
(a) gutters, cornices and eaves projecting not more than 30 inches from a vertical wall, and
(b) *structures less than 18 inches above ground level (such as decks and patios);*

- (c) balconies, bay windows or awnings projecting not more than 2 feet from a vertical wall, not exceeding 4 feet in width, and cumulatively not exceeding 50% of the width of the building face;
- (d) fences; and
- (e) mechanical system (i.e. HVAC, power generator, etc.) that is less than 36 inches above the ground level with a mounting pad not exceeding 10 square feet.

Staff has again confirmed the exemption. As previously presented, because the spa is less than 18 inches above ground and less than 100 s.f., it need only comply with the 5 ft. yard setback for accessory structures. PZO §10.573.10. Like any accessory structure, it must be considered as building coverage unless it meets one of the exemptions above. PZO §10.574. Accordingly, Petitioners' claim is moot.

(b) Retaining Wall vs. Fence.

Staff is empowered to interpret and administer the Ordinance in accordance with the Ordinance's Rules of Construction. PZO §10.211, §10.1510-14. See also definition of Code Enforcement Officer. Fence is not a defined term in the Ordinance. Accordingly, Staff correctly determined Smith proposed a fence by applying the common meaning of "fence" which is "a barrier to prevent escape or intrusion or to mark a boundary." Websters Third International Dictionary Unabridged, 1993. Fences are specifically excluded from the Ordinance definition of building coverage. We were directed to count our "wall" against open space, have done so and comply with open space requirements. Similarly, fences are excluded from yard setback requirements. PZO §20.515.13. Staff has confirmed the interpretations above. Accordingly, contrary to Petitioners' claims, the ZBA did not err in declining to require additional relief.

(c) Corner Clearance

Rehearing is not required to resolve this issue, which was never raised before or considered by the ZBA. We note that there are several examples of fences and retaining walls on corner lots in town and in this particular neighborhood, most clearly illustrated by 11 Elwyn Avenue. **(Exhibit N to September 11, 2023 Memorandum)**. We also question whether corner clearance is required given that, east of Kent Street, Rockland is not utilized as a thru way and currently only accommodates parking. We await the Building Department's interpretation and will seek subsequent relief or revise the plan if necessary.

Ultimately, the issues above relate solely to:

- i. a 96 s.f. spa

- ii. 236 s.f of retaining wall, and
- iii. a fence in the corner clearance.

Petitioners' assertion that these issues, which relate to landscaping and patio construction, undermine the ZBA's action on a variance allowing replacement of a nonconforming duplex with a conforming single-family home on a nonconforming 5,000 s.f. lot is entirely without merit. The single family home was represented to be, and is, *fully compliant with height and yard setbacks*. The overall project meets the Ordinance's open space requirement. The application of the Ordinance to the spa and fence/retaining wall and Petitioners' claims that additional variances were required to permit these site improvements, were fully briefed before the ZBA over two meetings. (See September 11, 2023 Memorandum; September 19, 2023 Minutes, p.3).

Petitioners position, raised for the first time in the Request for Rehearing without any support, is that the entire patio, because it is bordered by a "wall", should be counted as a structure for setback and/or building coverage. This contravenes the plain language of the Ordinance, which exempts patios and decks less than 18 inches high (Definition of Building Coverage) and fences less than 6 feet in height. It is contrary to common sense and imposes a false distinction between "walls" and "wood fences" surrounding a patio when their functions are identical. Such an interpretation also produces an absurd result that patios all over town that are screened by a fence or held in place by a retaining wall would now require setback relief. This is contrary to basic rules of statutory interpretation, which avoid construction of a statute or ordinance in a manner that results in an absurd result that the legislative body could not have intended. See Dietz v. Town of Tuftonboro, 171 N.H. 614, 618 (2019); Hogan v. Pat's Peak Skiing, LLC, 168 N.H. 71, 75 (2015).

More importantly, it is clear that none of the issues related to the spa, retaining wall/fence, or corner clearance prevent construction of the dwelling on a substandard lot, which was the *only* issue before the ZBA. As with every Applicant, the ZBA's decision does not preclude additional review by the Building Department. Should the Building Department later determine relief is required for these site improvements, Smith will return to the ZBA or modify the Site Plan to address the Building Department's concerns. On this record, however, Petitioner cannot establish that Applicant misled the ZBA, that the ZBA, erred in granting the requested

variance, or that it erred by declining to find additional relief was required. Accordingly, Petitioners Request for Rehearing must be denied.

2. **Rehearing must be denied where Smith's submission met all application requirements; the ZBA solicited additional information about the dwelling and site improvements; and considered the application over two meetings.**

Petitioners' claims that Smith's application is deficient assume unlimited ZBA jurisdiction, contrary to the Ordinance and state law. Such claims are also easily dispelled by the record in this case, which included an initial forty page application package which satisfied the City's requirements, a supplemental fifty-two page application package responsive to ZBA's questions, and two full public hearings.

RSA 674:16 enables municipalities to enact zoning ordinances that regulate *uses* of property; the height, number of stories, size and location of buildings and structures on a lot; and yard size, lot coverage, and density. Portsmouth subsequently enacted those regulations and delegated interpretation of the Ordinance to the Code Official. PZO §10.211, §10.1510-14. The City also delegated various technical advisory duties to the Planning Department and a host of highway, sewer, and other technical duties to the Department of Public Works. Portsmouth City Ordinance §1.106 M & N. RSA 674:33 also dictates the powers of the ZBA to entertain administrative appeals and grant special exceptions, equitable waivers, or variances if the statutory criteria are satisfied.

While Petitioner would have the ZBA review all technical and design aspects of the Project, the plain language of RSA 674:16 and 674:33 do not confer authority upon the ZBA to adjudicate all aspects of a residential site redevelopment. Dimensional or design aspects of the proposed home or site improvements which require no variance (height, building and lot coverage, yards) are not subject to review by the ZBA merely because a variance for lot size or lot size/dwelling unit is required. Unlike the large commercial proposal cited by Petitioners, subject to the City's Site Plan Regulations and Planning Board jurisdiction, Smith proposes residential site redevelopment outside the Historic District. As applied to Smith's proposal, State law and City Ordinances distribute responsibility between the ZBA acting within its statutory jurisdiction, and City staff including Public Works (curb cut, driveway configuration, drainage) and the Building Inspector (zoning compliance, building code compliance). Accordingly, Petitioners' Request for Rehearing to lacks merit and must be denied.

3. **Rehearing must be denied where Petitioners fail to demonstrate the ZBA erred in its analysis of the variance criteria.**

In focusing on the size and design of the home, which fully complies with the Ordinance's dimensional requirements, and on other site improvements that did not require relief, Petitioners overlook the plain language of RSA 674:33 I(a) that empowers the ZBA to:

(2) Authorize, upon appeal in specific cases, a variance from the terms of the zoning ordinance if:

(A) The variance will not be contrary to the public interest;

(B) The spirit of the ordinance is observed;

(C) Substantial justice is done;

(D) The values of surrounding properties are not diminished; and

(E) Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

(b)(1) For purposes of subparagraph I(a)(2)(E), "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area:

(A) 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

(B) The proposed use is a reasonable one.

RSA 674:33, I(a)(2); The Board of Adjustment in NH; PP 11-9, 10 (2022) (emphasis added). See also Harborside Associates, L. P. v. The Parade Residence Hotel, LLC. 162 NH 508 (2011).

The variances requested by Smith (lot size and lot size/dwelling unit) are the sole matters before the ZBA. Simply put, it is the variances, not the Project, which must meet the criteria of RSA 674:33, I(a)(2). The plain language of RSA 674:16 and 674:33 do not confer authority upon the ZBA review dimensional and design aspects of the proposed home which require no variance (height, building and lot coverage, yards) merely because a variance for lot size or lot size/dwelling unit is required.

(a) Granting the *variance* is not contrary to the public interest and the spirit of the ordinance is observed.

Petitioners correctly state that these first two prongs of the variance criteria are considered together pursuant to Malachy Glen Associates, Inc. v. Town of Chichester, 155 N.H. 102 (2007) and its progeny. Given that an Ordinance is itself a declaration of public interest, *any* variance can be construed to be in conflict with the public interest. Accordingly, Malachy Glen and its progeny have held ZBA findings that a variance is contrary to the public interest and

inconsistent with the spirit of the Ordinance requires more than mere conflict. Chester Rod & Gun Club, Inc. v. Town of Chester, 152 N.H. 577, 581 (2005). The purpose of a variance is to authorize the landowner to use his property in a manner not otherwise permitted. Loughlin, 15 New Hampshire Practice, Land Use Planning and Zoning, §24.02. (See also Malachy Glen Associates, Inc. v. Town of Chichester, 152 N.H. 102, 107 (2007) “The mere fact that the project encroaches on the buffer, which is the reason for the variance request, *cannot* be used by the ZBA to deny the variance.”).

Rather, the test is whether granting a variance “would unduly and to a marked degree conflict with the ordinance *such that it violates the ordinance’s basic zoning objectives*”. Id. (Emphasis added). Another way to evaluate a variance(s) request is to consider whether granting the variance(s) will “alter the essential character of the locality” or threaten the public health, safety, and welfare. Id. See also Harborside L.P. v. Parade Residence Hotel, LLC 162 N.H.. 508 (2011); Chester Rod & Gun Club v. Town of Chester, 152 N.H. 577 (2005).

Petitioners’ reliance upon PZO §10.233.60 to compel the ZBA to grant rehearing is unavailing. Clearly, the New Hampshire Supreme Court has long-articulated the proper analytical framework for determining whether a variance is contrary to the public interest or fails to observe the spirit of the ordinance. This framework includes consideration of whether granting the variance would “alter the essential character of the locality”, an analysis that – contrary to PZO §10.233.60, necessarily examines the requested variance in the context of the neighborhood. See Walker v. City of Manchester, 107 N.H. 382, 386 (1966) (Noting a 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 Rancourt v. City of Manchester, 149 N.H. 51 (2003). (noting special conditions include the “property’s unique setting in its environment”).

The ZBA correctly applied the law by considering whether granting variances (to allow construction of a new, permitted by right, dimensionally-compliant, single family dwelling on a 5,000 s.f. lot, in place of a nonconforming duplex 0.7 feet from the property line in a neighborhood of similarly developed undersized lots) would alter the essential character of the locality and on the record before it, correctly concluded that it would not. Because Petitioner has failed to demonstrate any error in the ZBA’s application of law to this application, the ZBA must deny the rehearing request.

Petitioners claims that the construction of the permitted home will result in negative stormwater, drainage, and environmental effects are not relevant to the lot area and lot area/dwelling unit variances before the ZBA, which would be required for the construction of *any* new home *regardless* of the details of other site improvements, drainage, and the like. Additionally, the expert evidence Petitioners now submit cannot support their Request for Rehearing because such evidence was available at the time of the initial hearings.

As a matter of law and as discussed in ¶2 *supra*, ZBA jurisdiction is limited by RSA 674:16, RSA 674:33 and the Ordinance. Smith does not propose a commercial development subject to Site Plan Review or work within the wetland buffer both of which would require review by the Planning Board. This does not mean that technical details of the redevelopment are not subject to *any* City review, only that the review is completed by others. Contrary to Petitioners' assertions, at the request of the Planning Department, Smith's team appeared before the Technical Advisory Committee to discuss public infrastructure impacts of the redevelopment. (See May 11, 2023 Staff Report, p. 11). Smith's team has also met with the Trees and Greenery Committee and consulted with DPW regarding the driveway configuration. Compliance with the Building Code and other City Ordinances regarding stormwater discharge and the like are the province of the Code Enforcement Officials and the Department of Public Works. Petitioners' claims that rehearing is required to examine technical details are factually and legally incorrect. Accordingly, the ZBA must deny Petitioners' Request for Rehearing.

(b) Substantial Justice is 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. Granting the requested variances allows for construction of a single family dwelling on a 5,000 s.f. lot where a 7,500 s.f. lot is required. A requirement that the Petitioners agree is "impossible to meet" (Petitioners' Request for Rehearing, p. 3). The approved variances do not relate to any landscaping or site improvements, but only to the home, which undeniably is more conforming than the existing complies with yard requirements and building coverage.

The record includes numerous plans and renderings which illustrate the tastefully designed home and demonstrate its compatibility with the neighborhood. Clearly, the proposal is

more conforming than the existing duplex 0.7 ft. from the side lot line and garage 1.7 ft. from the side lot line. There is absolutely no harm to any neighbor or the general public from granting the lot size and lot size/dwelling variances. It follows that there is no benefit to the public from denial. Conversely, Smith will be greatly harmed by denial as he will lose the opportunity to reasonably redevelop the Property. On the record before it, the ZBA properly applied the substantial justice test in determining that denial of the relief confers no benefit to the public that outweighs the harm to Smith. Accordingly, Petitioners' Request for Rehearing must be denied.

We note that Petitioners' claims of error regarding the ZBA's finding of substantial justice attempt to bootstrap an appeal of the ZBA's August 22, 2023 decision that the current proposal is substantially different than the application denied on May 16, 2023. Beyond the procedural bar to Petitioners' untimely claims of error, Petitioners' assertions lack factual and legal merit. As a result of design changes undertaken between the ZBA's denial of the March 2023 proposal and the current application, several variances were eliminated:

- i) Front yard setback relief from Kent Street
- ii) Front yard setback relief from Rockland Street
- iii) Right side setback relief for the house, pergola, AC unit
- iv) Rear yard setback relief for the plunge pool, pool equipment pad
- v) Building coverage relief.

Petitioners are wholly unable to establish the ZBA erred in its application of *Fisher v. Dover* and their claims merely express disagreement with the collective judgment of the ZBA.

Accordingly, Petitioners Request for Rehearing must be denied.

(c) Granting the *variance* will not diminish the value of surrounding properties.

Petitioners again erroneously focus on the size and height of the home which undeniably comply with the Ordinance and therefore are not before the ZBA. See ¶2 and ¶3 *supra*. The record contains plenty of evidence supporting the ZBA's finding that this proposal will not diminish the value of surrounding properties. Smith presented the impact of various redevelopment efforts in the neighborhood, including significant expansions to existing homes and construction of homes on previously undeveloped lots. **(Exhibit O to Smith's September 11, 2023 Memorandum)**. Realtor Erin Proulx spoke on behalf of the project and opined that the removal of the aging duplex which violates the side yard setback with a new tastefully designed home would increase the value of surrounding properties. During deliberations, Member Geffert

noted that there was “ample evidence that granting the evidence would not diminish the value of surrounding properties.” (September 19, 2023 Minutes, p. 7). The proposal replaces an aging duplex and garage significantly violating right side and rear setbacks and no on-site parking with a tastefully designed code-compliant and dimensional-compliant single-family home and related improvements requiring only the lot size/lot size per dwelling unit variance, a situation that cannot be remedied. Off-street parking will be improved by the inclusion of the two-car garage beneath. The proposed project reduces existing nonconformities including dimensional compliance and density improvement from 2500 s.f. (duplex) to 5000 s.f. (single family home). Given the facts of the proposal and the uncontroverted expert evidence, the ZBA correctly found that that granting variances from the lot size/lot size per dwelling unit of 5000 s.f. where 7500 s.f. is required, will not diminish surrounding property values.

(d) Denial of the variances results in an unnecessary hardship.

Petitioner misstates the circumstances of the previous ZBA denial and claims nothing has changed. The ZBA reasoning in denying the previous proposal focused on the absence of a hardship to justify the number of variances requested and those for a new home 0.6 ft. from the side lot line. Noting that the applicant was starting with a clean slate, the ZBA urged construction of a more compliant home. To address the ZBA’s concerns, Smith entirely redesigned the proposed home in favor of an entirely compliant home, dramatically improving over existing conditions. However, Smith cannot cure the size of the lot, which long predated the Ordinance and does not conform to current regulations.

RSA 674:33, I(b) articulates a three part test to establish unnecessary hardship. The first requirement is that the property have “special conditions distinguishing it from other properties in the area”. Contrary to Petitioners’ assertions, in order to find special conditions, it is not necessary for the Property to be the only burdened property, but only that it be burdened distinctly. Harrington v. Town of Warner, 152 N.H. 74,81 (2005). The Property is small, narrow, sloping corner lot subject to two front yard setbacks abutting public space on two sides. The paved portion of Rockland Street abutting the lot is used for public parking and the rest of the Rockland Street right of way is not paved and used for snow storage limiting ingress and egress. The lot is 5000 s.f. where 7500 s.f. is required, there is no way to make the lot comply with the GRA lot size and lot size/ dwelling requirement. As Chair Eldredge said on September 19, “the family couldn’t build a doghouse on this land without a variance.” (Minutes p. 7).

Given that the lot size, configuration, and access issues, together support a finding of special conditions which uniquely burden the Property, Petitioner's request for rehearing is without merit and must be denied.

The second prong of the variance criteria examines whether there is a fair and substantial relationship between the purposes of the Ordinance and its application in this instance. Lot size and density regulations exist to prevent overcrowding and overburdening of the land and, like other dimensional requirements, to allow air, light, separation between neighbors and space for stormwater treatment. In making his motion to approve, Vice-Chair Rheaume noted that the lot was similar in size to others in the neighborhood and had previously developed with a two family home for decades so was a buildable lot. He also opined that the new dimensionally compliant proposal was more conforming. (Id.) A majority of ZBA members agreed. Petitioner may disagree with the ZBA's determination that no fair and substantial relationship exists between the general purposes of the Ordinance and its specific application, but having failed to demonstrate that the ZBA erred, their Request for Rehearing must be denied.

The final element of the hardship criteria considers whether the proposed use is reasonable. If the proposed use is permitted, it is deemed reasonable. Vigeant v. Hudson, 151 N.H. 747 (2005). Residential uses are permitted in the GRA Zone. The Project decreases density while dimensionally improving existing conditions. As Chair Eldredge opined, Smith's proposal to build up to the limits of the Ordinance is "Entirely legitimate". Chair Rheaume noted that construction of a dimensionally compliant home of this size was "not out of the nature of the surrounding uses" on substandard lots. A majority of ZBA members agreed. Had the ZBA denied the variances for a single-family dwelling that *complies with all dimensional requirements*, the effect would be confiscatory requiring just compensation. Because Petitioner has not presented any technical or legal error in the ZBA's analysis, their Request for Rehearing must be denied.

V. CONCLUSION

In summary, each variance request was supported with detailed plans, other exhibits and expert testimony at the hearing where Petitioner's input was presented and considered by the ZBA. The ZBA acted reasonably and the reasoning of the board members in finding the criteria for each variance satisfied is contained in the minutes. Petitioner provides neither any factual

nor technical error by the ZBA requiring rehearing nor presents any new evidence that was not available at the time of the first hearing.

For all of the reasons stated herein together with the original submission and presentation by Smith's team, and the August 22 and September 19, 2023 Meeting Minutes and video, Smiths respectfully requests that the ZBA deny the Request for Rehearing.

Respectfully submitted,
Peter Smith & Cynthia Austin Smith



By: R. Timothy Phoenix
Monica F. Kieser



CITY OF PORTSMOUTH

EXHIBIT 1

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

ZONING BOARD OF ADJUSTMENT

September 26, 2023

Cynthia Austin Smith and Peter Smith
206 Court Street
Portsmouth, New Hampshire 03801

RE: Board of Adjustment request for property located at 9 Kent Street (LU-23-119)

Dear Property Owners:

The Zoning Board of Adjustment, at its regularly scheduled meeting of **Tuesday, September 19, 2023**, considered your application for demolishing the existing two (2) living unit structures and constructing a one (1) living unit structure, which requires a Variance from Section 10.521 to allow a) 5,000 square feet of lot area where 7,500 square feet are required and b) 5,000 square feet of lot area per dwelling unit where 7,500 square feet are required.

Said property is shown on Assessor Map 113 Lot 42 and lies within the General Residence A (GRA) District. As a result of said consideration, the Board voted to 1) suspend the rules to reopen the public hearing, 2) to accept new information from the applicants, and 3) to **grant** the request as presented and advertised.

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 Findings of Fact associated with this decision are available: attached here or as an attachment in the Viewpoint project record associated with this application and on the Zoning Board of Adjustment Meeting website:

<https://www.cityofportsmouth.com/planportsmouth/zoning-board-adjustment/zoning-board-adjustment-archived-meetings-and-material>

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

Very truly yours,

A handwritten signature in cursive script that reads "Phyllis Eldridge". The signature is written in black ink and is positioned above the typed name.

Phyllis Eldridge, Chair of the Zoning Board of Adjustment

cc: Shanti Wolph, Chief Building Inspector

Rosann Maurice-Lentz, City Assessor

R. Timothy Phoenix, Hoefle, Phoenix, Gormley & Roberts, PLLC
John Chagnon, Ambit Engineering

Findings of Fact | Variance

City of Portsmouth Zoning Board of Adjustment

Date: 9-19-2023

Property Address: 9 Kent Street

Application #: LU-23-119

Decision: **Grant**

Findings of Fact:

Effective August 23, 2022, amended RSA 676:3, It now reads as follows: The local land use board shall issue a final written decision which either approves or disapproves an application for a local permit and make a copy of the decision available to the applicant. **The decision shall include specific written findings of fact that support the decision. Failure of the board to make specific written findings of fact supporting a disapproval shall be grounds for automatic reversal and remand by the superior court upon appeal, in accordance with the time periods set forth in RSA 677:5 or RSA 677:15, unless the court determines that there are other factors warranting the disapproval.** If the application is not approved, the board shall provide the applicant with written reasons for the disapproval. If the application is approved with conditions, the board shall include in the written decision a detailed description of all conditions necessary to obtain final approval.

The proposed application meets/does not meet the following purposes for granting a Variance:

Section 10.233 Variance Evaluation Criteria	Finding (Meets Criteria)	Relevant Facts
10.233.21 Granting the variance would not be contrary to the public interest.	YES	<ul style="list-style-type: none"> • The applicant is meeting the essential character of the neighborhood specific to the relief that is being asked for. • There are a lot of large structures on the substandard 5,000-sf lots in the neighborhood, some of them with high roof lines.
10.233.22 Granting the variance would observe the spirit of the Ordinance.	YES	<ul style="list-style-type: none"> • The applicant is meeting the essential character of the neighborhood specific to the relief that is being asked for. • There are a lot of large structures on the substandard 5,000-sf lots in the neighborhood, some of them with high roof lines.

<p>10.233.23 Granting the variance would do substantial justice.</p>	<p>YES</p>	<ul style="list-style-type: none"> • The applicant demonstrated what is currently there and what is available on similar lots throughout the neighborhood and what is asked for fell in the balance and is something granted to many others in the past. • There are not other substantial characteristics put forward relating to competing concerns that outweighed the fundamental right to develop a property in conformance with the ordinance.
<p>10.233.24 Granting the variance would not diminish the values of surrounding properties.</p>	<p>YES</p>	<ul style="list-style-type: none"> • The structure is replacing a 2-family home and would be a more conforming building that will not have a different use, and a single-family residence is allowed in the area.
<p>10.233.25 Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship.</p> <p>(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.</p>	<p>YES</p>	<ul style="list-style-type: none"> • There are numerous lots in the neighborhood of a similar standard size. • The proposed structure is fully conforming on a lot that is a characteristic size of the neighborhood. • There is no general public purpose of the ordinance that says this specific home should not be built. • The owner is maxing out the height, especially on the side approaching the neighbors, but there wasn't enough to say that it is out of the nature of other uses on the 5,000-sf lots in the area. • The land is the hardship and the applicant decided to build up to the required dimensions.

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

7:00 P.M.

August 22, 2023

MEMBERS PRESENT: Phyllis Eldridge, Chair; Beth Margeson, Vice Chair; David Rheame; Paul Mannle; Thomas Rossi; Jeffrey Mattson; Jody Record, Alternate

MEMBERS EXCUSED: ML Geffert, Alternate

ALSO PRESENT: Jillian Harris, Planning Department

Notes: Alternate Ms. Record took a voting seat for all petitions. The timestamps denote the time of the discussion in the meeting video.

Chair Eldridge stated that the applicant for Item E, 303 Bartlett Street, requested a postponement.

*Mr. Rheame moved to **suspend** the rules by pulling Item E, 303 Bartlett Street, out of order. Mr. Mannle seconded. The motion **passed** unanimously, 7-0.*

*Mr. Mannle moved to **postpone** the petition to the September 19 meeting, seconded by Mr. Rossi. The motion **passed** unanimously, 7-0.*

I. NEW BUSINESS – PUBLIC HEARING

Mr. Mattson recused himself from the following petition. The Board discussed whether Fisher v. Dover applied and decided that it did not need to be invoked. [Timestamp 3:20]

- A.** The request of **Islamic Society of the Seacoast Area ISSA (Owners)**, for property located at **686 Maplewood Avenue** whereas relief is needed to construct 6 single living unit structures which requires the following: 1) Variance from Section 10.520 to permit 10,462 square feet of lot area per dwelling unit where 15,000 if required; and 2) Variance from Section 10.513 to permit six (6) free standing buildings where only one (1) is permitted. Said property is located on Assessor Map 220 Lot 90 and lies within the Single Residence B (SRB) District (LU-23-57)

SPEAKING TO THE PETITION

Attorney Justin Pasay was present on behalf of the applicant, along with project engineer John Chagnon and project architect Carla Goodnight. He reviewed the petition. [Timestamp 8:34]

Mr. Rossi asked if the applicant looked at the spacing between the buildings themselves and how far apart they were compared to the SRB zone further up Maplewood Avenue. Attorney Pasay said the project complied with the side setback requirements and that he didn't anticipate any relief for that piece of it. Mr. Rossi said he was looking at the number of structures and how that compared to the density in the sense of having the open space around structures when there is one structure per lot elsewhere in the neighborhood. Attorney Pasay said the goal was to have a reasonable amount of spacing between the individual units but also be able to facilitate continuing the proposal for 6500 square feet of recreational space. He said there was the issue of the form of ownership as a condominium instead of a single-family lot. He said it went to the uniqueness of the property, and they hoped to strike that balance between the form of ownership as a condominium and the density.

Mr. Chagnon reviewed the site plan [Timestamp 15:22]. He noted that the setbacks between the buildings was approximately 20 feet, so if the zoning setback of 10 feet to the property line were applied, it aligned with the light and air between buildings in the zone. Ms. Goodnight reviewed the petition and Attorney Pasay summarized the variance criteria. [Timestamp 18:40]

Mr. Rheume clarified that the amenity was for the use of the six condominium units and their guests and was not a public one. Mr. Rossi said the previous proposal of subdividing the lots and building a unit on each lot wasn't feasible, and he asked if it was due to the need for an access road. Attorney Pasay said building a city road that met the design standards to accommodate a formal subdivision had been the issue.

Chair Eldridge opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

Jim Lee of 520 Sagamore Avenue said he was a real estate broker and that one of most important things was location. He said it was a terrible location, which made it a good project. He said several previous applications to build things there didn't work out, and the big benefit to the public was that the units would be so far back that they would not be seen from the road.

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

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

DISCUSSION AND DECISION OF THE BOARD

Vice-Chair Margeson said the property did have special conditions and was three times the size that the SRB zone required. She said it had an odd configuration with a small frontage on Maplewood Avenue, but she didn't believe that it met the hardship for six units. She noted that the zoning ordinance said there was only supposed to be one freestanding building per lot and that she would have no problem with four dwellings per lot on the property because it would still retain the lot area requirements of the SRB, but she did not think the applicant met the hardship criteria for the additional two dwellings on the lot. Mr. Rossi agreed that four might be an easier request.

*Mr. Rheume moved to **grant** the variances for the application as presented and advertised, seconded by Mr. Rossi.*

Mr. Rheume said the applicant met the criteria [Timestamp 33:01]. He said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He said the unique shape of the property, long and narrow on the street and long in depth, created a set of circumstances that allowed the applicant to take advantage of that by putting multiple buildings that were not generally allowed in the SRB zone, but the positioning of them wouldn't be visible from the road. He said the applicant made a good argument that he approximated the overall density of the other SRB properties to the west. He noted that the Business and GRA districts were also closer to the property and had higher densities, so he felt that the nature of the density aspect was reasonable and within the spirit of the ordinance. He said the condos would be hidden and were respectful of the overall architecture of the neighborhood and Portsmouth in general. He said granting the variances would do substantial justice because of the other unique characteristics, like the short frontage, lot depth, and topography, and there was really nothing the public would perceive from the homes that would outweigh the applicant's ability to make full use of his property. He said it would not diminish the values of surrounding properties because the property butted up against the Business District and had the interstate highway on the opposite side. He said what was built would not be perceived by anyone as something that would be awkward and reduce property values. He said it was also burdened by a power line easement on the rear of the property. Relating to hardship, he said there were the unique characteristics of the property sandwiched between the Business district and very close to the GRA district and up against the interstate. He said the property's long and narrow depth did not look like any of the other SRB parcels nearby and the ones that were closely imitated were ones that had multiple buildings on them. He said those unique characteristics allowed more development than would normally be allowed and that it was a permitted use in a permitted zone.

Mr. Rossi concurred. Regarding the hardship, particularly as it pertained to six structures on that lot, he said there was a special condition of the lot, the shape and size of it and felt that the building of six structures on it did not defeat the public purpose of the SRB district because of the way the property was designed. He said it would maintain a density that was as good if not superior to the surrounding SRB properties and it would maintain adequate space between the structures so that the intended purpose of the ordinance to provide light and air between buildings would be achieved, even though it would be a bit more dense than what the SRB would typically allow.

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

Mr. Mattson returned to his voting seat. The Board discussed whether Fisher v. Dover applied and, except for Vice-Chair Margeson, had no issues with Fisher v. Dover. [Timestamp 42:03]

- B. The request of Karyn S. DeNicola Rev Trust, Karen DeNicola Trustee (Owner), for property located at 281 Cabot Street whereas relief is needed for a variance from Section**

10.521 to allow a) three (3) foot front yard where 5 feet is required, b) three and a half (3.5) foot left side yard where ten (10) feet is required, and c) 36% building coverage where 35% is allowed; and 2) Variance from Section 10.515.14 to allow two (2) mechanical units to be located 7 feet from the property line where 10 feet is required. Said property is located on Assessor Map 144 Lot 20 and lies within the General Residence C (GRC) District. (LU-23-84)

SPEAKING TO THE PETITION

Attorney Justin Pasay was present on behalf of the applicant, with project architect Carla Goodnight and project engineer John Chagnon. He reviewed the petition [Timestamp 50:16]. Ms. Goodnight said two letters of support were received, and she reviewed the site plan [Timestamp 55:02]. Attorney Pasay reviewed the criteria and said they would be met. [Timestamp 58:48]

Mr. Mattson asked if the applicant averaged the front yard setbacks for the neighboring properties. Attorney Pasay said they had not but noted that there was encroaching by the stairs that went over the line into the City's right-of-way but was consistent with the properties on the east side.

Chair Eldridge opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

Elizabeth Bratter of 159 McDonough Street and 431 Cabot Street explained why she thought it was appropriate for the variances to be granted. [Timestamp 1:07:02]

SPEAKING IN OPPOSITION TO THE PETITION

No one spoke.

SPEAKING TO, FOR, OR AGAINST THE PETITION

James Beale of 227 Cabot Street said 28 Rockingham had a lot that was nine square feet larger and the owner was able to put a 1,358-sf house on it without any variances. He said the proposed view of Cabot Street was misleading because it looked like the new building would be the same height as the other four buildings on the street. He said there was no information in the packet about what the finished height of the building would be. He said the applicant indicated that their lot was smaller than the rest of the lots on Cabot Street, but he said there were five smaller lots. He said allowing the variances would be a detriment to the public due to the loss of light and air to the direct abutter.

Ms. Goodnight said they would replicate the existing building's width, height, pitch, etc. and that the new building at the rear would be narrower, so the roof would be lower. She said two of the requested variances were needed to keep the proposed building in the same position as the existing one, so the side variance and the other front yard variance were dictated by that position.

Mr. Mannle asked what the height of the roof on the final building would be. Ms. Goodnight said she didn't recall but that it would be the height of the building next door.

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

DISCUSSION OF THE BOARD

Mr. Mattson said the building height as defined in the ordinance was being halfway between the eave and the ridge, and he further explained it. He said the building was shown as 25 feet tall on the application, and if the applicant went beyond what was allowed, a variance would be needed. Mr. Rossi said the applicant wanted to demolish a building, so he would start with a clean slate. He asked why minor improvements and setbacks compared to the existing structure were relevant. He said the hardship criteria would have to be satisfied and he didn't see how they would be. Mr. Mannle said he was unaware that the house would be demolished because it wasn't in the Legal Notice, but he agreed that it would be a clean slate and that a 30-ft wide structure could easily fit on the parcel. Mr. Rheume explained why he thought there was a hardship and said what was being asked for in terms of setbacks made sense. He said the applicant was consistent with the allowable lot coverage because they were meeting the current 36 percent. Mr. Mattson agreed that a 30-ft wide house could be built but there could be a hardship because the lot was narrower than allowed by the district. He said the building's design was being driven by the existing historic building, and the new building would be closer to conforming.

Vice-Chair Margeson said the lot depth was about 27.5 feet longer than what was required by the zoning ordinance, so the applicant had a lot of space to go back just the two feet for the front yard. She said the applicant was trying to take advantage of the open space on the other lots. She said she agreed with the Board's comments about the front and left yard setbacks but said there would be a much bigger structure on the lot line close to the abutter. She said the applicant could conform to the zoning ordinance on the side yard setbacks if they cut off some of the house. She said the purpose of the zoning ordinance was to protect structures of historical and architectural interest in the City, even outside of the Historic District. She said the potential to change the character of the neighborhood was great and she would not support the application.

DECISION OF THE BOARD

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

Mr. Rheume said the total building coverage relief what essentially what was there now and only one percent above what was allowed. He said it came down to the applicant being compliant on the side yard setback with the new addition that would recreate the feel of the old home and continue the look and feel of the neighborhood. He said the Board had to be careful about taking on the preservation of historic structures, which he further explained [Timestamp 1:28:40]. He said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance because the proposal was in keeping with the overall character of the neighborhood. He said the requested relief was not excessive and the applicant had tried to respect all the setback

requirements. He said the positioning of the home would be in keeping with the current positioning of the row of houses. He said substantial justice would be done because there was no public perceived need that would say that having a slightly additional setback of the driveway from the next house over would provide a substantial benefit. He said the benefit of keeping the overall rhythm of the street would outweigh any perceived need to more fully enforce the zoning ordinance. He said granting the variances would not diminish the values of surrounding properties, noting that the property was probably a victim of demolition by neglect and the replacement would increase the values of surrounding properties due to its modern amenities and by being a more structurally sound building. Relating to the hardship, he said some of the unique conditions of the structure being demolished had a historic presence of being shoved to one side of the lot and having the driveway on the other side. He said the additional structures were compliant with the setbacks and that the use was a legitimate one for replacing a single-family home with another single-family home. Mr. Mattson concurred. He said the existing home could be demolished without a variance and a contemporary one could be built within the setbacks, so he appreciated the effort gone into not altering the essential character of the neighborhood.

Mr. Mannle said he would not support the application because the applicant had structural issues with the existing house but they still bought it, knowing that they would come before the Board for relief. Mr. Rossi said he still had a problem with the hardship standard and thought that when knocking a structure down and starting with a green field, the burden of approving the hardship on all of those things was not comparative to the structure that currently existed because its foundation no longer had any relevance. He said he did not see anything in the stated hardship and unique characteristics of the lot, and he did not agree that it was a unique lot because it wasn't smaller than the other lots on that side of Cabot Street and was not the only lot adjacent to the CD-4 District. With regard to whether the Board had a basis for considering the preservation of structures of historic or architectural interest, he said that was a broadly interpretable statement within the zoning ordinance. He said one could argue that the Board could make that determination because they had local knowledge of the City but he didn't think it was a good idea for the Board to speculate on whether they had a solid legal foundation for indulging in such determinations. He said there was a big difference in a historic structure and something that was rebuilt to look like one.

*The motion **passed** by a vote of 4-3, with Mr. Mannle, Vice-Chair Margeson, and Mr. Rossi voting in opposition.*

The issue of whether Fisher v. Dover applied to the next petition was discussed by the Board and it was agreed that Fisher v. Dover did not apply. [Timestamp 1:44:08]

- C. The request of **Novocure Inc. (Owner)**, for property located at **64 Vaughan Street** whereas relief is needed to construct a penthouse which requires Variances from Sections 10.5A43.30 and 10.5A21.B (Map) to allow a maximum height of 47 feet where 42 is allowed. Said property is located on Assessor Map 126 Lot 1 and lies within the Character District 5 (CD5) and North End Incentive Overlay District. (LU-20-214)

SPEAKING TO THE PETITION

Attorney John Bosen was present on behalf of the applicant, with Dean Smith from Novocure and project architect Mark Mueller. Attorney Bosen said they appeared before the Board in 2022 and were a denied a height variance but several things occurred, which he reviewed [Timestamp 1:44:42]. Mr. Mueller then reviewed the plan and Attorney Bosen reviewed the criteria.

Vice-Chair Margeson said the applicant stated that the hardship was that there was no outdoor space for employees to congregate, but she thought they could do so without the penthouse. Attorney Bosen said the lot was an irregularly-shaped one that had frontage on two rights-of-way and potentially one on the Worth parking lot. He said filling in that area of the penthouse would allow the employees and guests of Novocure to use it on a regular basis despite the weather.

Chair Eldridge opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

Barry Heckler of 25 Maplewood Avenue Provident Condominiums said he was the president of the Board of Directors and that all the condo owners were in support of the enclosure of the rooftop deck. He said it would add to the value of the Novocure building and would also be available to Portsmouth residents if they needed a place to congregate. He said it would not be noticeable by any vantage point in and around the 25 Maplewood Avenue property or down Vaughan Mall.

John Ducey said he owned 172 Hanover Street and shared a common wall with the applicant. He said the top of the building wouldn't be seen at all.

Allison Griffin of 25 Maplewood said she spoke against the project previously but now it had the appurtenance and the second part of the building would match it. She said it made the building look better and she was no longer worried about the height.

SPEAKING IN OPPOSITION TO THE PETITION

No one spoke.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Katherine Hillman said she was a city resident and thought an interesting solution would be a rooftop garden instead of an all-glass space.

Elizabeth Bratter of 159 McDonough Street read a synopsis of the letter she sent to the Board. She said the structure had a flat roof and not a mansard roof like the applicant claimed. She said the penthouse was being shown as a 14-ft tall one and would have a height increase of 54 feet instead of the allowed 40 feet. She said the variance should not be approved and she explained why the project did not meet the criteria [Timestamp 2:11:30].

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

DISCUSSION AND DECISION OF THE BOARD

Mr. Rossi said the buildings to the north were lower than 47 feet and asked what differentiated the applicant's structure from those in terms of hardship. It was further discussed. Vice-Chair Margeson said the building height requirement was currently 40 feet with the penthouse at 42 feet and the other five feet was not allowed by the ordinance. Mr. Rossi said he weighed a 5-ft variance more heavily than he would have in the old ordinance because it was more impactful. [Timestamp 2:31:20]

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

Mr. Rossi said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance. He said there was no vested interest in the public to deny the variance because it did not impact the safety, health, and welfare of the general public. He said substantial justice would be done because there would be no loss to the public with regard to the appearance of the area because the structure is mostly not visible in the surrounding streetscape. He said granting the variances would not diminish the values of surrounding properties because several of them were already taller and having a penthouse on a nearby property would have no impact in a negative way on the values of the properties. He said the penthouse had a nice aesthetic to it and would look a lot better than an open flat roof and would enhance the values of surrounding properties where it could be seen. Relating to the hardship, he said the appurtenances of the elevator on the ends shielded the sight line from the properties on Maplewood Avenue. He said the ridge line did match up with the top level of the appurtenances, which was a special circumstance that distinguished it from the nearby properties in a way that was relevant to the variance being applied for. He said denying the variance due to those special conditions would not do anything to improve the way the building fit in with the surrounding neighborhood and would not alter the character of the area. Mr. Mattson agreed that it would not alter the area's character, noting Jimmy's Jazz Club with its glass structure. He said that the amount of rights-of-way surrounding the property on all sides and the only other building that could be affected (La Caretta) were unique conditions of the property where it was zoned a small lot and had less concerns of light, air and privacy being affected by neighboring buildings. He said several other surrounding buildings were taller. He said the proposal would add functional space to existing parts of the structure that were already at this height and would not dominate or be out of scale with the neighboring properties. He said there would be no fair and substantial relationship between the purpose of the height requirements and its application to the property, and he noted that the penthouse would be less visible due to the setbacks.

Mr. Rheume said the penthouse would not change the fundamental use of that portion of the property. Chair Eldridge said she would support it for many of the stated reasons and because she considered the 5-ft request minor in the whole mass of the building.

*The motion **passed** by a vote of 5-2, with Mr. Mannle and Vice-Chair Margeson voting in opposition.*

The Board decided that Fisher v. Dover was not invoked in the following petition. [Timestamp 2:59:02]

- D.** The request of **Cynthia Austin Smith and Peter Smith (Owners)**, for property located at **9 Kent Street** whereas relief is needed to demolish the existing two (2) living unit structure and construct a one (1) living unit structure which requires a Variance from Section 10.521 to allow a) 5,000 square feet of lot area where 7,500 square feet are required and b) 5,000 square feet of lot area per dwelling unit where 7,500 square feet are required. Said property is located on Assessor Map 113 Lot 42 and lies within the General Residence A (GRA) District. (LU-23-119)

SPEAKING TO THE PETITION

Attorney Monica Kaiser was present on behalf of the applicant, with project engineer John Chagnon and landscape architect Victoria Martel. She reviewed the petition and site plan. [Timestamp 3:00:58]

Mr. Rossi said it seemed that the crux of the issue was whether the nonconforming use was being expanded, which would help determine whether a variance was required. Attorney Kaiser said the use would be reduced by the fact that there was an existing duplex that supported two families and a single-family was proposed. Mr. Rossi said the use was residential and it was a nonconforming type of use in the past. He asked if the volume of the new building would be the same or larger than the existing structure. Attorney Kaiser explained why there was a ten percent reduction in building coverage. She said the new building's height would comply and required no relief, but she said she didn't know the height of the existing building. Vice-Chair Margeson said the patio would be less than 18 inches so it wouldn't count as a structure, but there were several things on that patio, like a grill and a spa, and she asked if those things were built in. Attorney Kaiser said the spa was treated by City Staff as an accessory structure and met the 5-ft setback requirement. She said it was the type of thing that could also be removed, but in this case it was set into the ground and required no exterior mechanicals. She said the applicant had been advised that it required no relief. Vice-Chair Margeson asked what the structure adjoining the grill was. Attorney Kaiser said it was on the landscape plan and within the building envelope for the side and the rear and didn't require relief. Mr. Mannle said that any structure 18 inches aboveground was part of the building. He noted the 6-ft high masonry wall on the proposed pavers on the abutter side and a 4-ft wall on the back of the property. Attorney Kaiser said those were treated as a fence. Vice-Chair Margeson said the plans were complicated and it wasn't apparent as to where the building envelopes were.

Chair Eldridge opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

No one spoke.

SPEAKING IN OPPOSITION TO THE PETITION

Dave Mikolaities of 19 Kent Street said the plan set was incomplete compared to the original one because it missed the patio and driveway sections, drainage and grading plans, utility and landscaping plans, and architectural renderings. He said the proposal was contrary to the public interest because the new home would increase from 30 feet to 56 feet in length and the mass of the home will be 56'x40' high and alter the light and air of the public. He said the conforming use would be expanded. He said the proposal failed the criteria.

Cliff Hodgdon of 10 Kent Street said the proposal appeared to comply with the lot size setbacks but the house was an imposing structure and looked out of place with the character of the neighborhood and adjoining city parks. He said the owners thought they had the right to build part of their driveway on the city property at the end of the Rockland Street Extension, and he asked what would happen with snow removal and access to the playground and Langdon Park. He said it wasn't a good idea to transplant a fruit tree on an unpaved city sidewalk. He asked where the stormwater would go. He said the proposal had a lot of vagueness and lacked detailed information.

Duncan MacCallum of 536 State Street said the applicant was entitled to a variance because the lot was only 5,000 square feet, but the lot was a third smaller than normally required for a residential dwelling and the building would be 40 feet high. He said a condition should be included stating that the building height must be smaller or only two stories. He said he was told that the applicant planned to raise the ground level by 17 inches, which would make the size of the building even higher. He said those changes would change the character of the neighborhood.

Barbara Adams of 75 Kent Street said the percentage of lot coverage was still being increased the same way as it was in the first application. She said the underground garage showed a need for a section of asphalt driveway to encroach on part of Langdon Park's grassed area to provide adequate entry in and out of the proposed driveway and garage. She said the cars that were parked on both sides of the end of Rockland Street could be prevented from parking. She said she saw no evidence of hardship because the owners bought the property knowing what it was. She said the proposed design did not meet the character of the neighboring houses nor the City's Master Plan.

Bill Arakelian of 18 Kent Street said the new building would be a vastly oversized one on an undersized lot that would double the size of what was already one of the largest homes in the neighborhood. He said it would be in a very prominent location and would have a negative impact on the abutter and the park. He said the masonry walls on top of an 18" grade would result in a 5'5" cement wall for Langdon Park and the trees would block a sidewalk area on Rockland Street.

Esther Kennedy of 41 Pickering Avenue said the building's size would change the neighborhood and the look of Portsmouth and thought there was no hardship.

Petra Huda of 280 South Street said she agreed that there was too much missing data for the Board to make a decision. She said it was an excessive proposal that would alter the character of the neighborhood and thought the Board should either request more information and drawings or deny the application until they had all the information.

Jim Lee of 520 Sagamore Avenue said there was a disturbing trend in town where newcomers find a house and decide it doesn't work for them and that they need to demolish it and build something bigger. He said any benefit to the applicant would be outweighed by great harm to the public.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Rick Beckstead of 1395 Islington Street said the essential character of the neighborhood would be changed because the proposed home would stand out. He said it was happening all over the city and jeopardizing the character of the neighborhoods. He said there was no hardship.

Mr. Chagnon said the applicant was applying the zoning regulations to dimensional use for the property. He said the Board had enough information to make a decision. He said the plans complied with all the other requirements regarding development of the lot. He said the runoff would not be increased to any neighboring property and the Traffic and Safety Committee would properly site the driveway. He said every public driveway used public property to get from the street to the garage. He said what was seen from the park was a secondary issue. He said the proposal complied with the setback, building height, and coverage requirements as well as lot coverage. He said the proposed structure was a 3-story one and the height wasn't relative to lot size because nothing in the ordinance said one should vary the height of the structure based on the size of the lot. He said the new trees were approved by the Trees and Greenery Committee for planting in a public place.

The Board had questions. Mr. Rheume noted that Mr. Chagnon referenced the height of the proposed structure as 34'6" above an average grade. Mr. Chagnon said the definition was from existing grade, as it was 6 feet from the proposed structure. He said the structure's height was measured from there to the midpoint. Mr. Rheume asked what similar dimensions would be to the existing building from the average grade. Mr. Chagnon said it would be wider but didn't know the exact numbers. Vice-Chair Margeson asked how the underground parking would be done. Mr. Chagnon said the property currently rose from the street, and the parking would go down to the basement level from the street. Vice-Chair Margeson asked if the grade would be raised. Mr. Chagnon said possibly. He said a set of steps went up to the yard and the yard was proud of the street about 3.5 feet and that it was at least 3.5 feet to get to a plateau at the base of the current structure. He said the existing floor level grade was about 32 feet and that they didn't have the grading plan but he didn't think the floor would be raised a lot. Mr. Mattson asked if the grade would be changed anywhere where the building height was calculated from. Mr. Chagnon said the ordinance was revised so that the average plan grade is calculated from existing ground, and if the applicant changed the grade, it wouldn't change the calculation of building height. He said there would be grade changes along the Rockland Street side and some changes were proposed with some landscape walls that would align the grade to the grade at the entrance to make it all one grade.

Mr. Rheume said the public and the Board were concerned that the applicant was somehow building a mound and then building on top and saying it was only 35 feet high. Mr. Chagnon said everything was related to the height of all the structures and that it was related back to the average grade so that they were not exceeding the requirements from the calculated average existing grade. He said the patio in the back was a different measurement and less than 18 inches above the ground, and once it was 18 inches higher it would become a structure, which was the reason it was included

previously, but it had been lowered. Attorney Kaiser further explained the measurement rules that required measuring the grade at various points around the existing building and then averaging it into a calculation called the average existing grade. She said the building wasn't a 5,000 sf building and that the existing home was a 2-1/2 story, not a one story. She said the main structure was 1,075 square feet but didn't know what the figure would be post construction. Chair Eldridge said if the applicant knew the building footprint, they should be able to figure it out. The owner Peter Smith explained that it wasn't just the footprint times 3 because there was an inset on the first floor, and the third floor had a large deck that cut into the square footage.

Vice-Chair Margeson asked Ms. Harris if building the driveway off Rockland Street would go before the Technical Advisory Committee. Ms. Harris said the applicant had to get permission from the Department of Public Works for a driveway permit, but that the right-of-way existed for them to connect. Vice-Chair Margeson asked the applicant if they were raising the grade of the building. Mr. Chagnon agreed and said there were some grade changes associated with the construction along Rockland Street to make it flat around the front of the house. He said the patio would be raised to make it flat because it was a slope, but it would be no more than 18 inches. Attorney Kaiser said the measurement wasn't from that changed grade. Mr. Rossi asked about the patio. Ms. Kaiser said it was the same. Mr. Rossi concluded that the change in grade was not what took the patio out from the lot coverage. Mr. Chagnon said the patio was now no more than 18 inches above the existing grade and it wasn't a structure, and that the patio was lowered but it wasn't because of a change in grade. Attorney Kaiser said they decreased the amount of open space but were still twelve percent above the minimum open space requirement and the building coverage was fully compliant.

Dave Mikolaities of 19 Kent Street said insufficient plans were provided to the Board. He said the new building footprint totaled 1,232 square feet.

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

DISCUSSION OF THE BOARD

Mr. Mattson said he previously voted to deny the application and that a lot of it was due to the abutting neighbor who was the most affected. He said he believed that a lot of those changes and the criteria had been addressed. He said he preferred more information but felt that the application was sufficient and everything that the Planning Department required was submitted. He said the complex architectural drawings required some interpretation but the information was in the packet. He said the Board addressing the criterion of altering the essential characteristics should be regarding the use and not the look of the building. Mr. Rossi said the Board was considering what they deemed to be a new application, and whether it was superior or inferior to the old one wasn't part of their consideration. He asked if a variance was needed at all because it was a preexisting nonconforming use. He said there was an expansion of the nonconforming use over the last six months, which was something the Board could approve or not. He said he was frustrated by not being able to get a direct answer from the applicant to the simple question of what the square footage of the living space in the current structure was and what it would be in the new one. He said all he knew now was that the new structure is substantially a more nonconforming use than whatever it was before to 3,300-4,000 square feet. He said several of the public's comments

resonated with him because of his experience of living at the Jersey Shore and watching the character of those beach neighborhoods change because everyone who bought the quaint cabins to be by the shore tore them down and maxed out everything they could do on those lots. He said there was a similar concern in Portsmouth and prices were skyrocketing. He said the proposed project not only expanded the nonconforming use but did so in a manner inconsistent with the essential character of the neighborhood, and he would not support it. Mr. Rheume said the Board could continue the application if they felt that they needed more information and time to think about it. Vice-Chair Margeson agreed and said she also wanted to see renderings.

DECISION OF THE BOARD

*Mr. Mannle moved to **deny** the petition, seconded by Mr. Rossi.*

Mr. Mannle said the applicant had to fail only one criterion and that it failed Section 10.233.21 of the ordinance because it was contrary to the public interest, considering the size of the proposed structure which would be four stories or 3.5 or three, depending on where the median variance height was measured. He said more information from the applicant would have been better but it wasn't presented, and if the Board granted the variances as presented, it would be contrary to the public interest. Mr. Rossi concurred and said the application also failed the criterion of not affecting surrounding property values. He said the structure was massive, no matter how it was measured, and the expansion of the nonconforming use and the massive structure associated with it would have a deleterious impact on the values of surrounding properties. Chair Eldridge said she would not support the motion because she preferred to continue it and have some of her questions answered and see the building in context. Mr. Rheume said he would also not support the motion. Mr. Mannle said the applicant could have submitted the necessary information, especially considering that the previous application had architectural renderings.

*The motion to deny **failed** by a vote of 5-2, with Mr. Mannle and Mr. Rossi voting in favor of the motion.*

*Vice-Chair Margeson moved to **continue** the application to the September 19 meeting, seconded by Mr. Mattson.*

Vice-Chair Margeson said the Board needed more answers and a fuller application packet. Mr. Mattson concurred and had nothing to add. *The motion **passed** unanimously, 7-0.*

- E. REQUEST TO POSTPONE** The request of **Caleb E. Ginsberg and Samantha L. Ginsberg (Owners)**, for property located at **303 Bartlett Street** whereas relief is needed to demolish the existing detached garage and construct an addition with attached garage which requires a Variance from Section 10.521 to allow a) seven (7) foot left yard where ten (10) feet is required, and b) two (2) foot right yard where ten (10) feet are required. Said property is located on Assessor Map 162 Lot 13 and lies within the General Residence A (GRA) District. **REQUEST TO POSTPONE (LU-23-120)**

DECISION OF THE BOARD

The application was postponed to the September 19 meeting.

II. OTHER BUSINESS

There was no other business.

III. ADJOURNMENT

The meeting adjourned at 11:40 p.m.

Respectfully submitted,

Joann Breault
BOA Recording Secretary

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

7:00 P.M.

September 19, 2023

MEMBERS PRESENT: Phyllis Eldridge, Chair; Beth Margeson, Vice Chair; David Rheame; Paul Mannle; Thomas Rossi; Jeffrey Mattson; ML Geffert, Alternate; Jody Record, Alternate

MEMBERS EXCUSED: None.

ALSO PRESENT: Stefanie Casella, Planning Department

Chair Eldridge asked for motions to take Items D through F of Section III, New Business, out of order and to postpone them.

*Mr. Rossi moved to take Section III, Items D through F out of order, seconded by Mr. Mannle. The motion **passed** unanimously, 7-0.*

*Mr. Rossi moved to **postpone** Items D through F of Section III, New Business, to the September 26 meeting. Mr. Mannle seconded. The motion **passed** unanimously, 7-0.*

I. APPROVAL OF MINUTES

A. Approval of the August 15, 2023 minutes.

Mr. Mattson asked that the phrase on Page 12, first paragraph, 5th sentence from the bottom be changed from “he said it was spot zoning” to “he said it was similar to spot zoning”.

*Mr. Mannle moved to **approve** the August 15 minutes as amended, seconded by Mr. Rossi. The motion **passed** unanimously, 7-0, with Alternate Geffert abstaining from the vote.*

B. Approval of the August 22, 2023 minutes

Mr. Mattson requested that the last sentence of the second-to-last paragraph on page 8 be changed from “he noted that the penthouse would not be visible to the other setbacks” to “he noted that the penthouse would be less visible due to the setbacks”.

*Mr. Mannle moved to **approve** the August 22 minutes as amended, seconded by Mr. Rossi. The motion **passed** unanimously, 7-0, with Alternate Geffert abstaining from the vote.*

II. OLD BUSINESS

- A. REQUEST TO POSTPONE** The request of **Kathryn Waldwick and Bryn Waldwick (Owners)**, for property located at **30 Parker Street** whereas relief is needed to demolish and remove the existing shed and covered porch and construct a new attached shed with a covered porch which requires the following: 1) Variance from section 10.521 to permit a) 45% building coverage where 35% is allowed, b) one and a half (1.5) foot right side yard where 10 feet is required, and c) two (2) foot rear yard where 20 feet is required; and 2) Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 126 Lot 27 and lies within the General Residence C (GRC) District. **REQUEST TO POSTPONE (LU-23-117)**

Alternate Geffert was seated for voting.

DECISION OF THE BOARD

*Mr. Rheaume moved to **grant** the request to postpone for one month until the October 17, 2023 meeting, seconded by Mr. Mannle.*

Mr. Rheaume noted that the Board already postponed it once, but there were concerns from the nearby property owner and the applicant was working hard to address those concerns.

Vice Chair Margeson confirmed with City Staff that the application would be re-noticed before the application could be heard.

*The motion **passed** unanimously, 7-0.*

- B.** The request of **Cynthia Austin Smith and Peter Smith (Owners)** for property located at **9 Kent Street** whereas relief is needed to demolish the existing two (2) living unit structure and construct a one (1) living unit structure which requires a Variance from Section 10.521 to allow a) 5,000 square feet of lot area where 7,500 square feet are required and b) 5,000 square feet of lot area per dwelling unit where 7,500 square feet are required. Said property is located on Assessor Map 113 Lot 42 and lies within the General Residence A (GRA) District. (LU-23-119) This item was continued from the August 22, 2023 meeting to request more information from the applicant.

Chair Eldridge said the rules needed to be suspended to open the public hearing.

*Mr. Rheaume moved to **reopen** the public hearing, seconded by Mr. Mannle.*

Mr. Rheume said the Board had prior deliberation on the petition but it was a complicated case and there was some lack of clarity, so the postponement was made to give the application the opportunity to get more information and the Board also wanted to hear more from the public.

*The motion **passed** unanimously, 7-0.*

*Mr. Rossi moved to accept the new information and hear the presentation from the applicant, seconded by Mr. Mannle. The motion **passed** unanimously, 7-0.*

SPEAKING TO THE PETITION

Attorney Tim Phoenix was present on behalf of the applicant, with the owners Peter and Cynthia Smith, Attorney Monica Kaiser, project designer Jennifer Ramsey, landscape architect Robbie Woodburn, and project engineer John Chagnon via Zoom. Attorney Phoenix asked for an additional five minutes for his presentation.

*Mr. Mannle moved to **grant** the additional five minutes, seconded by Mr. Rossi. The motion **passed** unanimously, 7-0.*

Attorney Phoenix said the petition was continued from the August 22 meeting and there were several new exhibits relating to requests from the Board for answers to certain questions. He addressed those questions, which related to the height as defined by the zoning ordinance of the structure to be demolished; the height defined by the zoning ordinance of the proposed building; the exemption of the spa from the setback requirements; how the garage would be built; whether the application proposed to use City property to a greater degree than other residents; what the interior square footage of the proposed residence was; a survey plan showing the building envelope, a two-scale streetscape; and the overall design scale and compatibility. [Recording timestamp 9:52]

Chair Eldridge opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

Adam George of 134 Lincoln Avenue said the neighborhood had seen a surge of renovations, extensions, and modern projects and the owners went back to the drawing board to address the neighbors' concerns. He asked that the revised proposal be approved.

Kevin O'Connell of 140 Elwyn Avenue said the owners complied with the request for a conforming home, yet a motion was made to deny the request. He said homeowners should not have to wonder if their complying plans will be denied by the Board. He said the petition should be approved.

Jessica Kaiser of 30 Spring Street said the owners developed a structure that was in full compliance with the zoning ordinance and the only remaining challenge was the lot. She said almost every lot in the neighborhood faced the same challenge. She reviewed the criteria and said they would be met.

SPEAKING IN OPPOSITION TO THE PETITION

The abutter David Mikolaities of 19 Kent Street explained all the reasons he thought that nothing changed from the earlier submittal. He reviewed the criteria in detail and said there was no hardship. [Timestamp 43:54]

Jim Lee of 520 Sagamore Avenue said the petition had to fail only one criterion and that it failed the hardship one. He said tearing down the building and replacing it with another one would be an unreasonable use and was the type of thing that drove up the prices of houses in Portsmouth.

Bill Arakelian of 18 Kent Street said the proposed house's mass went beyond any of the examples of nearby homes shown by the applicant. He said one of the largest existing homes on Kent Street would be replaced with one that was 64 percent bigger. He said the cement wall, spa and patio should be included in the building coverage computation.

Cliff Hodgdon of 10 Kent Street said the proposed structure was still long, large, and tall and clashed with the surrounding character and the modern design was in sharp conflict with all the other homes and that there was no hardship. He said the photos of other homes were misleading.

Barbara Adams of 75 Kent Street said most of the houses shown in photos were not on Kent Street. She said the issues were the same as before and there was no hardship. She said the project would alter the essential character of the Kent Street neighborhood and approval would set a precedent for other people to buy small lots and develop them to the maximum.

Esther Kennedy of 41 Pickering Avenue told the Board to do the right thing, noting that people gave them a good rationale of why the petition should be denied.

Rick Becksted of 1395 Islington Street said demolitions made land values rise, which contributed to the City's unaffordable real estate. He said the essential character of the neighborhood was also in the Board's guidelines and should be used to deny the application.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Jeff Hodges of 112 Lincoln Avenue (via Zoom) said the new design conformed with all the technical guidelines in the ordinance other than the lot size. He said allowing a property owner to build a fully conforming house was not contrary to the public interest. He said similar projects had been approved and that the proposal met all the criteria.

Erin Proulx of 99 Daniel Street (via Zoom) said she was in support of the application because it met all the guidelines and the only variance requested was for the nonconforming lot. She said the house wasn't in the Historic District and would enhance the values of surrounding properties.

Jessica Kaiser said the new plans were in compliance and design wasn't an issue. She said the variance request had nothing to do with the structure itself.

Attorney Phoenix said the spa was included in the 25 percent and the City Staff found that the applicant didn't need a variance for the spa or the patio. He said the stone enclosures did not apply

because the front was less than 18 inches and the rear was seen as a fence. He said it was not an expansion of a nonconforming use but for a nonconforming lot. He said the hardship was that the lot cannot be fixed and has special conditions of being located on a corner with an open area behind it and next to it. He said it would not violate the public interest or diminish property values and that the only applicable requirement was the need for a variance due to the size of the lot.

Cliff Hodgdon of 10 Kent Street said all accessory structures should be included in the building coverage, including the spa. He said it wasn't shown in the proposal. He said the front walls were referenced in the proposal as landscaped walls and the side and back walls as fence walls and that they should all be considered structures.

Project landscape architect Robbie Woodburn said at the bottom of the steps of the rear yard patio, the spot grade was 28.8 inches and the patio pitched to the east toward the fence, so it was lower in that corner. She said it wasn't higher than 18 inches. She cited more grades and said the 6-ft wall would be measured from existing grade and would qualify as a fence. She said the wall/fence along the front and sides would not be higher than four feet and the spa was included in the calculations.

Cliff Hodgdon of 10 Kent Street asked who would pay for digging the drainage trench through the park and to the tennis courts, noting that it wasn't on the proposal previously.

Attorney Phoenix said the drainage calculations were provided previously but the applicant was decreasing the impervious coverage, which would create more lot for drainage. He said the drainage would have areas for treatment but wasn't really the Board's purview.

Chair Eldridge closed the public comment session but kept the public hearing open in case there were questions from the Board.

Mr. Rossi said it wasn't a complicated application because the Board was there to consider the lot size, but there was the issue of the essential character of the neighborhood and whether the structure would be consistent with it. Attorney Phoenix said the essential character of the neighborhood, along with each of the other variance requirements, related to the variance needed and not the project that was being done, so the issue was whether the lot and the variance for it would change the essential character of the neighborhood, not the building.

Chair Eldridge closed the public hearing.

DISCUSSION OF THE BOARD

Mr. Rossi said when he read the minutes from the previous meeting, he realized that his logic about the expansion of a nonconforming use was incorrect, so now his position changed because he agreed with Attorney Phoenix's logic and felt that it was more compelling than what he was thinking at the previous meeting. Mr. Mattson said there were more variances requested before and he had not seen an unnecessary hardship within the side yard setback, but since it was no longer asked for, the only thing left was whether the lot size was an unnecessary hardship, and he said the applicant could not change the lot size. Vice-Chair Margeson said she did not find Attorney

Phoenix's view of the essential character of the locale so narrowly and wasn't sure that by granting the variances, the Board was not violating the spirit and intent of the ordinance in terms of the central character of the locality. However, she said in almost all respects, the application improved the conformity with the zoning ordinance in terms of the right and rear yard setbacks, and the building coverage was decreased to meet the zoning ordinance. She said it was tough but thought there might be a problem with the spirit and intent, not with air and light.

Mr. Rheume said it came back to what was relevant to the Board. He said traditionally a request of this sort was, "Is this a buildable lot?". He said other lots in the neighborhood had buildings placed on them, but other aspects of the petition poked at other issues, like demolition. He said he was disheartened by the trend of demolition across the City. He said the value of the land was of greater intrinsic value to someone who wants to buy the land than the structure on it, which would change the characteristics of the City, but it wasn't something the Board had purview over. He said there was the Demolition Committee but that it was very limited in its powers. He said a homebuyer could do what he wanted to with a house outside the Historic District. He said the issue of property values needed to be legislatively looked at and might require State action but it wasn't applicable to what the Board was reviewing. He said the essential character of the neighborhood was tied to the actual relief asked for, and the question was whether the lot was buildable. He said the Board could say there were much smaller homes on the smaller lots and that the applicant's home had to be in conformance with a lower standard than the ordinance would require, but there were other buildings in the neighborhood that were very close to the applicant's building. He said the dormering on the park side was appropriate but the one on the other side but a bit much, but the applicant was building within the allowed envelope. Regarding the fence and the spa, he said the Board would approve the allowable 25 percent and that it was up to the applicant to figure out if that as missed for the fence and spa. He said he didn't think there was enough to say that the application didn't meet the essential character of the neighborhood in terms of the zoning relief being asked for.

Mr. Rossi said he had seen that phenomena of the land in New Jersey, especially along the shore where property became more valuable than the homes built there decades ago. He said the nature of the housing stock in Portsmouth will change unless there are changes made to the zoning ordinance itself to prevent that, but it was outside of the Board's purview.

DECISION OF THE BOARD

*Mr. Rheume moved to **grant** the variance for the petition as presented and advertised, seconded by Ms. Geffert.*

Mr. Rheume referred to his previous comments. He said he had a lot of empathy for the neighbors but there was always a tradeoff between the needs of the property owner and the neighborhood. He said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance. He said he explained the essential character of the neighborhood specific to what was asked for relief and that the applicant was meeting that aspect. He said there were a lot of large structures on the substandard 5,000-sf lots in the neighborhood, some of them with high roof lines and with dormers, particular placement of windows and so on, and he said the Board couldn't go that far. He said substantial justice would be done, which was a balancing test specific to what's

being asked for in terms of whether the lot is a buildable one. He said the applicant demonstrated what was currently there and what was available on similar lots throughout the neighborhood and what was asked for fell in the balance and was something granted to many others in the past. He said he didn't think there were other substantial characteristics put forward relating to competing concerns that outweighed the fundamental right to develop a property in conformance with the ordinance. He said granting the variance would not diminish the values of surrounding properties, noting that the structure was replacing a 2-family home and losing some dwelling units but would be a more conforming building that would not have a different use, and a single-family residence was allowed in the area. He said it was doubtful that it would diminish the values. He said literal enforcement of the ordinance would result in unnecessary hardship. He said the question being asked was regarding if the lot was buildable. Numerous lots in the neighborhood were of a similar substandard size because the original subdivision was set up that way. He said the property has a structure on it for many years and what was proposed was fully conforming on a lot that was a characteristic size of the neighborhood, even though it was somewhat below the requirements of the zoning applied in general to the neighborhood. He said there was no general public purpose of the ordinance that said this specific home should not be built. He agreed that the owner was maxing out the height, especially on the side approaching the neighbors, but there wasn't enough to say that it was out of the nature of other uses on the 5,000-sf lots on other properties in the area and throughout the City. He said it was reasonable and recommended approval.

Ms. Geffert said there was ample evidence that granting the variance would not diminish the values of surrounding properties. Chair Eldridge said she would support the motion because the land was the hardship and the applicant decided to build up to the required dimensions.

*The motion **passed** by a vote of 5-2, with Mr. Mannle and Vice-Chair Margeson voting in opposition to the motion.*

- C. The request of **Caleb E. Ginsberg and Samantha L. Ginsberg (Owners)**, for property located at **303 Bartlett Street** whereas relief is needed to demolish the existing detached garage and construct an addition with attached garage which requires a Variance from Section 10.521 to allow a) seven (7) foot left yard where ten (10) feet is required; b) a two (2) foot right yard where ten (10) feet is required; c) building coverage of 27.5% where 25% is allowed; and 2) Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 162 Lot 13 and lies within the General Residence A (GRA) District. (LU-23-120)

SPEAKING TO THE PETITION

Attorney Monica Kaiser was present on behalf of the applicant, along with the owner Samantha Ginsberg, the direct abutters Peter and Donna Splaine, and project engineer Alex Ross. She noted that seven letters of support were received from the neighbors. She handed a written statement to the Board members and asked for an addition five minutes for her presentation.

*Vice Chair Margeson moved to grant the additional five minutes, seconded by Mr. Mattson. The motion **passed** unanimously, 7-0.*

[Timestamp 2:13:35] Attorney Kaiser reviewed the petition. She noted that the tax map showed the deeded property to be more than it really was and explained that the deed error was not noticed before. She said the plan was to adjust the property line to make the T-shape of the property go away and apportion parts of it to the two abutters.

Mr. Rossi asked if the addition was moving over to the right or would be in line of where the current garage was. Attorney Kaiser said the addition would move a bit, explaining that there was a little jog in the lot line before and the garage would slide up by adjusting the lot line. Mr. Rossi said the new lot line seemed strange with the little zigzag but knew that the lot line was changing to bring the building closer in conformance rather than the building changing to become more conforming. Attorney Kaiser said the parties involved explored different ways of doing it and were comfortable with the proposed plan and that the Planning Board would evaluate the lot line. Vice-Chair Margeson said the left yard was seven feet the entire way but not in the beginning, and she asked how that seven feet was right at the front of Bartlett Street. Attorney Kaiser said the house was on an angle compared to the lot line, and the setback to the house was 3.6 feet, seven feet at the corner, and then 9.3 feet at the deck. She said the reason they were asking for the seven feet was because that's where they would fill in and attach to the existing house. Vice-Chair Margeson said the existing conditions stated that it was seven feet but it seemed like three feet. Attorney Kaiser said the three feet would not be expanded and the addition would be put in at the seven feet. Ms. Casella referred to the Staff Memo and clarified that the front portion of the house would not change. Mr. Mattson asked if the applicant considered turning the garage to have a bigger setback. Project engineer Mr. Ross said the turning radius would be too tight and there wouldn't be enough width. Mr. Rheume said it was more of a house addition with a small garage than a garage addition because the size of the addition was about the size of the original house. He said the applicant could have avoided coming before the Board if the lot line was drawn closer to the 295-299 Bartlett Street house and an easement for driving and parking on the property was processed, which would get the 10-ft setback. Attorney Kaiser said the Splaines could claim most of the T-shape because of the way they used and maintained it and it was a tough sell for them to give it up legally. Mr. Rheume asked if the applicant included any maintenance easement on the new addition on the Splaine side of the property as a legal basis for the applicant to do maintenance. Attorney Kaiser said all the parties were willing to do that. Mr. Rheume asked if the planter boxes behind the proposed addition were the basis for choosing the property line to go to that area. Attorney Kaiser agreed.

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. Rheume moved to **grant** the variances for the petition as presented and advertised, with the following **conditions**:*

- 1. A suitable maintenance easement shall be provided on the new lot being created, Lot 162-14, with its increase in size; and*

The subdivision review and approval by the Planning Board shall be required for the proposed lot line adjustment Vice-Chair Margeson seconded the motion.

Mr. Rheume said he was concerned at first as to why the Board didn't try to avoid the situation of creating a new property line and including a 2-ft setback on an addition that didn't exist yet. He said it was an important data point for the Board to say that they could live with it as long as some provision was put into the new agreement between the two new properties that there's a substantial structure that will be very close to the property line that will need maintenance and the owner of the 303 Bartlett Street side will properly maintain that. He said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance because there were tight property lines in that neighborhood. He said it might have seemed like an opportunity to create something more conforming, but there was a historic use of the two properties and the applicant was trying to recognize that *de facto* use of each of the properties. He said the two neighbors amicably worked out the result and understand the impacts, so he thought that reduced some of the concerns about the right setback, which he explained further [Timestamp 2:52:24]. He said there was nothing in the public interest that would outweigh the applicant's and neighbor's decision to run the property line where they did. He said substantial justice would be done because there was no public concern, just the one between the two neighboring properties. He said granting the variances would not diminish the values of surrounding properties because it defined something that was already in existence and the addition would be tasteful and add significantly to the size of the existing home, so it should increase its value and the value of other properties. He said the hardship was the undefined property line that was owned by someone else who didn't realize it and the historical usage, so two property owners were coming up with a solution to meet everyone's needs. He said the addition was a reasonable one, considering the very small size of the existing house. He said there was already a garage and the new one would be moved under the addition. He said there was nothing in the petition that was unreasonable, and he recommended approval. Vice-Chair Margeson concurred and commended the applicant for the thorough application and said it was a good example of negotiating differences with the abutters and coming to an agreement.

Mr. Mattson said what convinced him to approve the petition was the 37'x42' wide lot, which was narrow and drove a lot of the issues. He said that, even with the increased land that would result from the proposed lot line revision, it would still be smaller than what was allowed. He said he would normally be hesitant about approving something so close to the side yard setback, but given the nature of the property and the agreement reached between the neighbors, he was convinced. Mr. Rheume added that the lot coverage was just 2-1/2 percent over and less than what existed in terms of all the other structures being removed to allow the addition, which was not egregious.

*The motion **passed** unanimously, 7-0.*

III. NEW BUSINESS – PUBLIC HEARING

Alternate Geffert took a voting seat for the following petition.

- A.** The request of **J & J's Drop and Drive LLC (Owner)** for property located at **459 Islington Street** whereas relief is needed to install a 54 square foot mural which requires the following: 1) Variance from Section 10.1251.10 to allow 54 square feet of aggregate sign area where 48.5 is allowed; and 2) Variance from Section 10.1251.20 to allow 54 square feet of individual sign area where 16 square feet is allowed. Said property is located on Assessor Map 157 Lot 7 and lies within the Character District 4-L2 (CD4-L2) and Historic District. (LU-23-129)

SPEAKING TO THE PETITION

Landscape architect and site artist Terrence Parker was present on behalf of Liar's Bench Brewery and J & J's Drop and Drive LLC, the brewery's landlord. He said the mural was part of the History Through Art project in the City. He said the variances from the sign ordinance were needed due to the special exceptions of the brewery, the dimensional requirements that were exceeded, and the fact that the west side of the brewery had no street frontage so the mural had to be on that side, which faced the parking lot and bank drive-thru. He reviewed the criteria.

Mr. Rossi asked why the applicant was asking for 54 square feet of aggregate sign area instead of the allowed 48.5 square feet. Mr. Parker said the mural was designed to meet the open space of the portion between the side entrance and one of the garage doors. He said it was aesthetic decision to create a boundary of blue around the mural and that the mural had to be large enough to be read due to its historic graphics and text. Mr. Rossi asked about the durability of the vinyl print fixed to an aluminum sheet. Mr. Parker said it would be solar-sealed onto the aluminum backing and would have a 12-year life span.

Chair Eldridge opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DISCUSSION OF THE BOARD

Mr. Rheume said he wished the ordinance would better reflect the idea of public art of that large of a magnitude being displayed and put it in the sign ordinance even though it wasn't a sign. He said in this case, it was completely divorced from anything taking place inside the business, and if the Board had to apply the sign ordinance to it, that would be the hardship. He said the mural was a reasonably-sized piece of art work and in a parking lot that would not distract drivers. Vice-Chair Margeson said she would not support the petition. She said the concept was great but thought putting the request within the sign ordinance was tricky. She asked what would happen if the Board

got a request from a business that wanted to go larger. She said one standard was applied for a public art mural and another for businesses and hoped that the City Council would consider passing a public art mural ordinance to allow these things, but she didn't feel the variance requests fit into the sign ordinance. Mr. Mattson said that, for similar reasons, he supported it because the hardship was that there was no fair and substantial relationship between the purpose of the sign ordinance and the mural that would protect from a situation of an actual sign advertising something for a business. He said he preferred that the issue be dealt with by the City Council and the ordinance itself but didn't think it set the Board up for a precedent. Mr. Rossi said the last time the Board approved a mural, they thought about it as possibly a public mural fitting into the definition of a museum, which is a permitted use in the CD4L1 District because it is art and for public access. He said because no one was charging for it and someone didn't have to walk inside a building, it was a hybrid use that a commercial signage would not benefit from.

DECISION OF THE BOARD

*Ms. Geffert moved to **grant** the variances, seconded by Mr. Mattson.*

Ms. Geffert said granting the variances would not be contrary to the public interest because the variances requested were for a particular expansion, a tasteful mural, as part of the history project. She said it would observe the spirit of the ordinance because the ordinance did not want obnoxious signs and that the sign would not do a disservice to the area and would be better than advertising Liar's Bench. She said the applicant made a good case of why a larger sign was required. She said granting the variances would do substantial justice, given the location and the abutting uses and the absence of anyone protesting, and that it would advance the information presented on the sign. She said it would not diminish the values of surrounding properties because there was no evidence that it would and she thought it would enhance the values of surrounding properties. She said literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because the property had special conditions of not fronting on Islington Street that distinguished it from other properties, and owing to those special conditions, a fair and substantial relationship does not exist between the public purposes of the sign ordinance and the application of that provision. She said the sign would be on the side of the building and would not create any traffic hazard or visual problems for anyone because it would face a bank drive-thru. She said all the criteria were satisfied. Mr. Mattson concurred and said the proposed use was a reasonable one that would not threaten public health, safety, or welfare.

*The motion **passed** by a vote of 6-1, with Vice-Chair Margeson voting in opposition to the motion.*

Mr. Rheume recused himself from the following petition, and both alternates Ms. Geffert and Ms. Record took voting seats.

- B.** The request of **Wayne G. Clough (Owner) and Sophary Sar (Applicant)**, for property located at **100 Islington Street Unit 6** whereas relief is needed to allow an esthetician business which requires a special exception from Section 10.440, Use # 7.20 where it is

permitted by Special Exception. Said property is located on Assessor Map 137 Lot 25-6 and lies within the Character District 4-L2 (CD4-L2) and Historic District. (LU-23-122)

SPEAKING TO THE PETITION

The applicant Sophary Sar was present and said she was a licensed aesthetician. She said she would structure her appointments so that they would not overlap between clients. She reviewed the special exception criteria and said they would be met.

There were no questions from the Board. Chair Eldridge opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

Dick Gamester of 176 Dexter Road said he supported the application because it would not impinge on any of the special exception criteria and would be the least intensive use on the property.

SPEAKING IN OPPOSITION OR 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 special exception for the petition, seconded by Mr. Mannle.*

Mr. Mattson referred to Section 10.233.21 and said the standards as provided by the ordinance for the particular use were permitted by special exception. He referred to Section 10.233.22 and said there would be no hazard to the public or adjacent properties on account of potential fire, explosion, or release of toxic materials because those were not an issue. Referring to Section 10.233.23, he said granting the special exception would pose no detriment to property values in the vicinity or change in the essential characteristics of any area including residential neighborhoods, business or industrial districts on account of the location and scale of buildings and other structures, parking areas, accessways, odors, smoke, gas, dust or other pollutants, noise, glare, heat, vibration, or unsightly outdoor storage of equipment, vehicles, or other materials. He said it was a minimally impactful use with no exterior changes to the building. Referring to Section 10.233.24, he said granting the special exception would pose no creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity because there was adequate and reasonable parking and the applicant would base her appointment scheduling to handle the flow of visitors. Referring to Section 10.233.25, he said there would be no increase in or excessive demand on municipal services including but not limited to water, sewer, waste disposal, police and fire protection, and schools, given the nature of the business. Referring to Section 10.233.26, he said granting the special exception would pose no significant increase of stormwater runoff onto adjacent properties or streets because exterior changes in this case were not an issue. Mr. Mannle concurred and had nothing to add.

The motion passed unanimously, 7-0.

Mr. Rheume resumed his voting seat and Ms. Record resumed her alternate status.

- C. The request of **Davenport Inn LLC (Owner)**, for property located at **70 Court Street** whereas relief is needed for the following: 1) An after-the-fact Variance from Section 10.515.14 for six (6) existing permitted mechanical units with a setback of 0.5 feet from the property line; 2) Variance from Section 10.515.14 to install a seventh mechanical unit with a setback of 0.5 feet from the property line whereas 10 feet is required; and, in the alternative; 3) Equitable Waiver from Section 10.515.14 for the installation of six mechanical units with a 0.5 side yard setback. Said property is located on Assessor Map 116 Lot 49 and lies within the Character District 4-L1 (CD4-L1) and Historic District. (LU-22-10)

SPEAKING TO THE PETITION

Attorney Chris Mulligan was present on behalf of the applicant, along with Andrew Samonas, one of the principals of Davenport Inn LLC. Attorney Mulligan said the petition was before the Board the previous year to allow the use as an inn and for dimensional variances. He said the applicant had to upgrade the various mechanical systems including the HVAC system as part of the property's renovation and restoration and obtained an administrative approval to site and install a bank of HVAC units to support mini-splits on the left side yard. He said his client had the units installed but was informed by the installer that a seventh unit was necessary, which was installed, so when the client went before the HDC for another administrative approval, he learned that a variance was required for all seven units because they were in the side yard setback. Attorney Mulligan said the requested variances were needed to permit the currently installed units to stay where they were, and if it wasn't granted, he would ask for an equitable waiver from the dimensional requirements. He said the setback was impossible to meet unless all the units were sited behind the building, which would be expensive and inappropriate. He said the area they needed approval for siting the units was the space between the two buildings. He said that space was not usable for any other purpose and the light and air between the buildings would not be affected. He reviewed the criteria.

Mr. Rossi asked if all seven units were installed. Attorney Mulligan agreed, noting that the first six units were installed before anyone realized that a variance was needed and the seventh unit was installed before the applicant applied for an administrative approval. Mr. Rheume said there were two prior condensers along the side of the building. Attorney Mulligan agreed and said the photos showing them were part of the submission to the HDC. He said those two units were gone. Mr. Rheume asked if the applicant and the City Staff discovered that there was a variance granted for those two units. Attorney Mulligan said they did not but it was possible that there should have been. Mr. Rheume asked if the installer indicated a technical reason that moving the HVAC equipment behind the building would be an issue, like pipe runs. Attorney Mulligan agreed.

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

The Board discussed the issue of dealing with the petition as a variance request instead of an equitable waiver one and decided to grant the variances.

*Vice-Chair Margeson moved to **grant** the variances for the six condensers after the fact and for the seventh to be installed. seconded by Mr. Mattson.*

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 because it would not alter the essential character of the neighborhood and would not affect the public's health, safety, and welfare. She said the issue was the setback requirements for the left yard and the movement of air and light around the building, and that the Board found that the location of the HVAC units did not implicate those concerns. She referred to Section 10.233.23 and said granting the variances would do substantial justice because there would be no benefit to the public in denying the variance request and it would be a tremendous injustice to the applicant. Referring to Section 10.233.24, she said granting the variances would not diminish the values of surrounding properties because the seven HVAC units were in-between buildings. Referring to Section 10.233.24, she said literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. She said the property had special conditions that distinguished it from others in the area, and owing to those special conditions, a fair and substantial relationship did not exist between the general public purposes of the ordinance's provision and the specific application of that provision to the property. She said the proposed use was a reasonable one because HVAC systems would be provided to an approved inn within the Historic District and the special conditions of the property were that it was a very historic one. She said the applicant's representative stated that there would be problems installing HVAC units in the back of the inn, so she found that the property did have special conditions that do not relate to the public purpose of the ordinance as applied to the property. Mr. Mattson concurred and said the units could not be placed on the other side or the front, so there was no other location.

*The motion **passed** unanimously, 7-0.*

THE FOLLOWING ITEMS WILL BE HEARD ON TUESDAY, SEPTEMBER 26, 2023

- D.** The request of **Marcella F. Hoekstra (Owner)**, for property located at **35 Whipple Court** whereas relief is needed in the form of an equitable waiver for 1) an accessory structure with an 8.5-foot right yard where 10 feet was permitted and an 8-foot rear yard where 17 feet was permitted; or in the alternative 2.a) Variance from Section 10.521 to allow an 8,324 SF lot area/dwelling unit where 15,000 SF is required; b) to allow a frontage of 45.83 feet where 100 feet is required; c) to allow an accessory structure with an 8.5 foot right yard where 10 feet is required; d) to allow an accessory structure with an 8 foot rear yard where 9 feet is required; and e) to allow a building coverage of 26%

where 20% is allowed. Said property is located on Assessor Map 260 Lot 98 and lies within the Single Residence B (SRB) District. (LU-23-147)

- E. The request of **Lawrence Brewer (Owner)**, for property located at **253 Broad Street** whereas relief is needed to construct an attached garage and add a second driveway, which requires the following: 1) Variance from Section 10.521 to allow a 7 foot side setback where 10 feet is required; and 2) Variance from Section 10.1114.31 to allow more than one driveway per lot. Said property is located on Assessor Map 131 Lot 16 and lies within the General Residence A (GRA) District (LU-23-148)

- F. The request of **Prospect North (Owner)**, for property located at **815 Lafayette Road** whereas relief is needed for the demolition of the existing building and tower and the construction of three 4-story, 24-unit multi-family buildings (72 total units) with first floor parking and associated site improvements, which requires the following: 1) Variance from Section 10.5B33.20 (Front Build-out) to permit a front build out of less than 50% of the total front yard width; and 2) Variance from Section 10.5B33.30 (Façade Orientation) to permit a façade orientation that is not parallel with the front property line. Said property is located on Assessor Map 245 Lot 3 and lies within the Gateway Corridor (G1) District and the FEMA 100yr flood and extended flood hazard area. (LU-23-149)

*It was moved, seconded, and approved to **postpone** the above three items to the September 26 meeting.*

IV. OTHER BUSINESS

There was no other business.

V. ADJOURNMENT

The meeting adjourned at 10:48 p.m.

Respectfully submitted,

Joann Breault
BOA Recording Secretary

II. OLD BUSINESS

- B. The request of **Frances E. Mouflouze Revoc Trust of 2015 (Owner)**, for property located at **550 Sagamore Avenue** whereas relief is needed to demolish the existing structure and construct two duplexes (creating a total of 4 living units) which requires the following: 1) Variance from Section 10.513 to allow more than one free-standing dwelling unit on a lot; and 2) Variance from Section 10.440 Use #1.30 to allow the construction of duplexes where they are not permitted. Said property is located on Assessor Map 222 Lot 11 and lies within the Single Residence B (SRB) District. (LU-23-164)

Planning Department Comments

On Tuesday, October 17, 2023 the Board of Adjustment considered the request of Frances E. Mouflouze Revoc Trust of 2015 (Owner), for property located at 550 Sagamore Avenue whereas relief is needed to demolish the existing structure and construct two duplexes (creating a total of 4 living units) which requires the following: 1) Variance from Section 10.513 to allow more than one free-standing dwelling unit on a lot; and 2) Variance from Section 10.440 Use #1.30 to allow the construction of duplexes where they are not permitted. The Board voted to deny the application. The letter of decision and findings of fact have been included in the meeting packet along with the motion for rehearing and an objection by the owners.

A request for rehearing has been filed within 30 days of the Board's decision and the Board must consider the request at the next scheduled meeting. The Board must vote to grant or deny the request or suspend the decision pending further consideration. If the Board votes to grant the request, a hearing will be scheduled for next month's Board meeting or at another time to be determined by the Board.

The decision to grant or deny a rehearing request must occur at a public meeting, but this is not a public hearing. The Board should evaluate the information provided in the request and make its decision based upon that document. The Board should grant the rehearing request if a majority of the Board is convinced that some error of procedure or law was committed during the original consideration of the case.

Consideration of this request was postponed from the November 21, 2023 meeting due to only 5 Board members being present to vote at that time.

HOEFLE, PHOENIX, GORMLEY & ROBERTS, PLLC

ATTORNEYS AT LAW

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REQUEST FOR REHEARING

TO: Portsmouth Zoning Board of Adjustment (“ZBA”)
FROM: R. Timothy Phoenix, Esquire
DATE: November 16, 2023
RE: Request for Rehearing
The Francis E. Mouflouze Revocable
Trust of 2015, Owner/Applicant
Property Location: 550 Sagamore Avenue
Tax Map 222, Lot 11, Single Residence (SRB) District

Dear Chair Eldridge and Zoning Board Members:

Now come Francis E. Mouflouze, Ted W. Alex and Patricia Cameron, Trustees of The Francis E. Mouflouze Revocable Trust of 2015 (“Mouflouze” or “Applicant”) and request that the Zoning Board of Adjustment (“ZBA”) rehear and reverse its October 17, 2023 decision denying two (2) requests for variance relief. Applicants’ submission dated September 26, 2023 and oral presentation on October 17, 2023 are incorporated herein by reference.

I. EXHIBITS

1. 10/24/23 Notice of Decision/Findings of Fact- 10/17/23 Hearing.
2. Draft Minutes of 10/17/23 ZBA Meeting.
3. Tax Maps 222 and 223.
4. Zoning Map of 550 Sagamore Ave and vicinity.

II. RELIEF REQUESTED

1. **PZO§10.513-** To permit two (2) dwelling buildings (4 units) on a 1.44 acre lot where one dwelling is permitted; and
2. **PZO§10.440 Table of Uses-** To permit two (2) duplexes where duplexes are prohibited.

III. STANDARD OF REVIEW

Within 30 days after any... decision of the Zoning Board of Adjustment... any party to the action or proceedings... may apply for rehearing in respect to any matter determined in the action specifying in the motion for rehearing the grounds therefor; and the Board of Adjustment may grant such rehearing if in its opinion good reason therefor is stated in the motion. RSA 677:2.

DANIEL C. HOEFLE

R. PETER TAYLOR

GREGORY D. ROBBINS

OF COUNSEL:

R. TIMOTHY PHOENIX

ALEC L. MCEACHERN

PETER V. DOYLE

SAMUEL R. REID

LAWRENCE B. GORMLEY

KEVIN M. BAUM

MONICA F. KIESER

JOHN AHLGREN

STEPHEN H. ROBERTS

JACOB J.B. MARVELLEY

STEPHANIE J. JOHNSON

A motion for rehearing. Shall set forth fully every ground upon which it is claimed that the decision or order complained of is unlawful or unreasonable. RSA 677:3, I.

The purpose of the statutory scheme is to allow the ZBA to have the first opportunity to pass upon any alleged errors in its decision so that the court may have the benefit of the board's judgment in hearing the appeal. Town of Bartlett Board of Selectmen v. Town of Bartlett Zoning Board of Adjustment, 164 NH 757 (2013). Rehearing is designed to afford local zoning boards of adjustment an opportunity to correct their own mistakes before appeals are filed with the courts. Fisher v. Boscawen, 121 NH 438 (1981).

IV. RELEVANT PROJECT FACTS

550 Sagamore Ave. is a 1.44 acre (62,754 s.f.) lot in the SRB zoning district (“zone” or “district”) with 139.8 feet of frontage, upon which is a circa 1960 single-family home with the front steps slightly encroaching into the front setback. Mouflouze proposes to raze the existing dated building and other improvements in favor of two (2) duplex buildings with four (4) total units.

Two duplex units on 1.44 acres or 62,726 s.f. equals 2.78 units per acre, thus meeting the underlying purpose of the SRB zone to provide dwellings “at low to medium densities (approximately 1 to 3 dwellings per acre),” PZO§10.410, as well as the SRB lot size requirement of 15,000 sf per dwelling unit.” PZO§10.521. The subject lot is in an area of Sagamore Avenue where several different zoning districts meet or are in very close proximity. Directly across the street are the Sagamore Court Apartments in the GA/MH District with 144 units on 15.01 acres. Density is 9.6 units per acre, far exceeding GA/MH purpose to provide for garden apartments at moderate densities of up to 4 dwellings per acre PZO §10.410, as only 65 units would be permitted pursuant to the PZO §10.521 requirement of 10,000 sf per dwelling unit (15.01 acres x 43560sf/acre= 653,836sf/10000sf= 65.38). Also, across the street, one lot south of Sagamore Court, is the Tidewatch condominium complex in the SRA District, the purpose of which is to provide areas for single family dwellings at low to medium densities, approximately 1 to 3 dwellings per acre. With 117 units on 53.59 acres, density is compliant at 2.18 units per acre, PZO sec. 10.10410, but meets neither the current zoning ordinance SRA purpose of single-

family dwelling units, Id, nor the maximum of 53 units which could be placed on the lot given the 1 acre minimum lot size per dwelling unit. PZO sec, 10.521.¹

Examination of the lots closest to the subject lot on the same side of Sagamore Avenue reveals a number of homes meeting the 15,000 square-foot per dwelling requirement; however, lot 10 immediately to the left is and lot 8 three to the left, are pursuant to the Tax Map, on 11,250 s.f. lots, while lot 13 is, an 11,805 s.f. lot two lots to the right of the subject lot. **Exhibit 3**. Six of the 14 lots on the same side of Sagamore as the subject lot, from Little Harbor Road to Cliff Road appear to not meet the PZO 100 foot frontage requirement. Id

Approximately 2/10 of a mile north of 550 Sagamore in the area of Verdun Avenue between Marne Ave. and Sagamore Ave. are approximately 16 house lots in the GRA District, **Exhibit 4**, the purpose of which is to provide for “single-family two-family and multifamily dwellings at moderate to high densities, ranging from approximately 5 to 12 dwelling units per acre.” PZO§10.410. The GRA district requires 7500 s.f. per lot. While a number of the homes in that area meet the general purpose of 5 (8712 s.f.) to 12 (3630 s.f.) dwelling units per acre, half of those lots including two on Sagamore Avenue do not meet the 7500 s.f. minimum lot size requirement. Five of those lots do not meet minimum frontage requirements.

Approximately 2/10 of a mile to the south near the Sagamore Avenue/ Cliff Road intersection are four (4) homes in the SRB zone, two of which meet neither the 15,000 s.f. minimum lot size requirement; nor the 150’ frontage requirement. One of those lots, at the northerly corner of the Sagamore Avenue/Cliff Road intersection is a three unit building in the SRB zone on a 14,723 square-foot lot, **Exhibit 2, Map 223**. Across Sagamore Avenue and three lots south of the subject are five lots depicted on Tax Map 222 in the SRA zone, four of which meet neither the SRA one acre minimum lot area per dwelling unit, nor 150 foot minimum frontage.

The importance of the above is that although it is in the SRB zone, 550 Sagamore is located in a transition/mixed zoning district and home style area, including:

¹ It was suggested at the October 17, 2023 Hearing that Tidewatch was approved as an open space Planned Unit Development, the density of which today is determined by the number of lots that could be developed in a conventional subdivision, which here appears to somewhere south of 53 Units. PZO §10.723.1, §10.725.2.

- i) Four different zoning districts in close proximity (GRA, GA/MH,SRA,SRB). (**Exhibit 4**)
- ii) Several Lots in the immediate vicinity of the subject in the SRB zone that do not meet the 15,000 s.f. per lot and/or frontage requirements. (**Exhibit 3**)
- ii) Various housing styles ranging from single-family on zoning compliant lots, single-family on small non-zoning compliant lots, garden style apartments, and townhouse style condominium units.

Given that several different zoning districts and several different styles of residential living exist abutting or in close proximity to the subject lot, with a number nonconforming with respect to lot size/density and/or frontage the requested relief must be viewed through the lens of the visible lots along Sagamore from Jones Avenue/Verdun Avenue to Cliff Road area, rather than limited to the SRB zone nearest the subject, the majority of which are not immediately visible among the varied residential uses and housing size along Sagamore Avenue.

V. THE ZBA ERRED, REQUIRING REHEARING, IN FINDING THAT THE APPLICANTS TWO VARIANCE REQUESTS DID NOT OBSERVE THE SPIRIT OF THE ORDINANCE OR HARDSHIP REQUIREMENTS².

A. The 10/24/23 notice of decision/findings of fact and erroneously applied the “spirit of the ordinance” and “hardship” requirements.

1. PZO sec. 10.233.22-granting the variance would observe the spirit of the ordinance.

The reasoning offered by the ZBA in the findings of fact is that “the property is presently in conformity with the zoning ordinance and granting the variance would make it out of conformity.” Respectfully such a finding is an improper, thus unlawful, basis for finding that the spirit of the ordinance is not met. The law is clear that a variance cannot be denied simply because the request does not comply with the requirements of the zoning ordinance. ZBA findings that a variance is contrary to the public interest and inconsistent with the spirit of the Ordinance require more than mere conflict. Chester Rod & Gun Club, Inc. v. Town of Chester, 152 N.H. 577, 581 (2005); (See also Malachy Glen Associates, Inc. v. Town of Chichester, 152

² The notice of decision and findings of fact each provide that the applicant did not meet the requirements for spirit of the ordinance and hardship. There is no comment in either document with respect to public interest, the value of surrounding properties, and substantial justice. It is thus concluded that the application met the requirements for public interest, value of surrounding properties and substantial justice, or in the alternative, the ZBA’s failure to address these requirements is itself a basis for rehearing.

N.H. 102, 107 (2007) (“The mere fact that the project encroaches on the buffer, which is the reason for the variance request, *cannot* be used by the ZBA to deny the variance.”). Indeed, the very reason that zoning ordinances, thus zoning boards of adjustment, exist is to provide a relief valve from the strict requirements of an ordinance. Loughlin, 15 New Hampshire Practice, Land Use Planning and Zoning, §24.02.

The New Hampshire Supreme Court has found that the spirit of the ordinance test is closely related to the public interest test, the overarching consideration of which is, pursuant to Malachy Glen, supra and its progeny, whether granting a variance “would unduly and to a marked degree conflict with the ordinance such that it violates the ordinance’s basic zoning objectives.” The purpose of establishing different zoning districts with respect to uses, lot sizes, and other dimensional requirements is to keep similar uses together, and provide consistency with respect to uses and dimensional requirements in different districts. Here, however, there are four different zoning districts touching or in close proximity to each other, each permitting different uses, lot sizes, overall intended density, and type/style of housing. As discussed in Section 4 *supra*, these differences include: garden style apartments permitted in the GA/MH zone though violating present density requirements; townhouse style condominium units that meet density requirements but do not meet the current requirements for single-family homes in the SRA District; single-family homes in the GRA zone near Verdun Avenue, only about half of which meet lot size and/or frontage requirements; and homes in the subject’s SRB zone, a number of which do not meet current lot size and/or frontage requirements, including at least three in very close proximity to the subject, and a number of others in the SRB district on Sagamore Avenue in the vicinity of Cliff Road.. Because of the eclectic mix of differing zones with differing dimensional requirements, and relatively consistent nonconformance of properties in each zone with the requirements for density, lot size and/or frontage, it follows that permitting four units in two duplexes in such varied area “fits”, thus does not violate the ordinance’s basic zoning objectives.

The Malachy Glen court found that the spirit of the ordinance is similar to and is therefore considered with the public interest test, concluding that whether the variance violates basic zoning objectives requires a determination that it would “alter the essential character of the locality” or “threaten the public health safety or welfare.” *Id.* Because the locality is defined by four different zones within a relatively small and discrete area, each permitting different uses, lot

sizes and other dimensional requirements, where there are numerous lots in the various districts that do not meet, dimensional requirements, the locality's "essential character" is varied, consisting of several transition areas and housing types from one zone to another. Permitting two duplexes/four units on a lot meeting density and frontage requirements in an area where there are garden style apartment complexes, townhouse style condominiums, four permitted single-family homes on a single lot across the street, and numerous homes in the residential zones that do not meet density/lot size and/or frontage requirements, the proposed density compliant two duplexes/four units does not alter the varied essential character of the locality. Moreover, two duplexes/four units will be much less impactful than would a standard subdivision with three stand-alone single-family homes that would require vastly more pavement, and would eliminate the wooded area to the rear of a lot, preserved in the current plan. As such, and since the new homes would be completely code compliant, granting the variances does not threaten the public health, safety or welfare.

2. PZO sec. 10.233.25- literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

In its findings of fact, the ZBA found that the hardship test was not met because:

- The applicant's lot is bigger than some lots and smaller than others and the 140 foot width is plenty of room for the applicant to put a 3 house subdivision and not even move the original house.
- The applicants lot can be reasonably used in the way it is zoned and there is currently a single-family home on it now. **(Exhibit 1)**

Respectfully, the ZBA has misapplied the hardship requirements. The first prong of the hardship test is whether special conditions distinguish this property from others in the area. The answer to that question is yes. The subject lot is four times the required minimum lot size. The immediate northerly lot, another three lots doors away, and a southerly lot two lots doors away do not meet the minimum lot size and frontage requirements. In both directions near Cliff Road and Verdun Avenue are homes that are on much smaller lots than the subject lot. Almost directly across the street are two very large lots with a multi-apartment complex containing multiple large buildings and a large multi-building townhouse style condominium complex. Only a small handful of lots in the SRB zone are within the immediate proximity to the large apartment complex and condominium complex.

A municipality's ordinance must also reflect the current character of the neighborhood, See Belanger v. City of Nashua, 121 N.H. 389, 393 (1981) upholding reversal of use variance denial where current character of neighborhood had evolved since its original classification as single-family residential). Here, the vast majority of conforming lots and uses are unseen by the general public as they are located behind lots fronting on Sagamore, i.e. Walker Bungalow Road. The New Hampshire Supreme Court case Walker v. City of Manchester, 107 NH 382 (1966) held that a hardship may be found where similar nonconforming uses exist within the neighborhood and the proposed use will have no adverse effect upon the neighborhood.

In Walker, an applicant sought to convert the use of a large building to a dwelling and funeral home in a residential zone. Denied by the Manchester Zoning Board of Adjustment, the Trial Court and Supreme Court found that a hardship existed, thus the variances should have been granted, where numerous other large dwellings in the area had been converted to office or other business use, and numerous funeral homes existed in an otherwise residential district via the issuance of variances. Here, the density, frontage, and lot configuration resulting from the requested variances fit in with the eclectic conditions in the surrounding area. The variances also permit this lot to be developed with far less pavement while preserving a wooded buffer to the lots behind it. Accordingly, granting the variances has no adverse effect on the neighborhood. Walker, supra.

Consider also Rancourt v. City of Manchester, 149 N.H. 51 (2003) (Hardship also exists if special conditions of the land render the use for which the variance is sought is reasonable and special conditions include the property's unique setting in its environment). Given: the several different zoning districts in close proximity; various sized lots and lot size requirements in the area; large residential buildings across the street; many nearby lots noncompliant with the density, lot size and/or frontage requirements of the zone in which they are located, and where the proposed project is less impactful than a standard subdivision, the subject location is unique, Id. thus has special conditions. See Walker, supra. Likewise, the nature of the area, and the negative effects of a standard subdivision demonstrate that there is no rational basis for applying the strict requirements of the zoning ordinance by prohibiting duplexes and two dwelling structures on one lot.

B. A review of the October 17, 2023 ZBA hearing video reveals error, requiring rehearing based upon the deliberations of the ZBA.

A review of the video of the 10/17/23 ZBA meeting, which can be found at <https://www.youtube.com/watch?v=d6pKNXlbC-k> reveals the following time stamped paraphrased comments of ZBA members:

1:02:35 Ms. Margeson- notes that the subject lot it is larger than some and smaller than some. **Response:** The comparative size of lots, lot area per dwelling unit, frontage and the general area regardless of zone is the proper consideration.

1:04:20 Notes that all of the SRB homes are single-family. **Response:** there is at least one lot along Sagamore Avenue, at Cliff Road in the SRB zone that is a three unit. As referenced above, numerous parcels in all four nearby zones do not meet current lot size and/or frontage requirements of their respective zones. The overall area should be considered, not the SRB zone alone, given the transitional area.

1:05:35 Mr. Rheume notes that relief for multiple units is possible if the lot is large enough. **Response:** Agreed.

1:05:55 Notes that there is a basis for hardship. **Response:** Agreed.

1:06:20 Notes the relationship of public interest and spirit of the ordinance tests. Identifies the structures as significant. **Response:** The structures are larger than some residential structures in the area and smaller than others including the Sagamore Court apartments and the Tidewatch townhouse condominiums.

1:08:02 Notes the possibility of three units one behind the other

1:10:01 Mr. Mandle-moved to deny, finds no special conditions thus no hardship. **Response:** As set forth above, there are clearly special conditions given the subject lot's transitional location.

1:10:39 Notes that new single-family homes could be built behind the existing home without moving it. **Response:** A subdivision would be more impactful upon the neighborhood as it would require significantly more pavement and clearing the entire lot where the proposal saves a large wooded area to the rear

1:12:08 Ms. Margeson-Comments that there is no hardship. Lot can be built upon in conformity with the ordinance. **Response:** As outlined above, the fact that a variance is required is not a reason for denial. Similarly, the fact that the lot is four times the minimum lot size located in an area of varied zoning districts, lot sizes and housing type is a special condition.

1:13:22 Chair Eldridge- Notes that denial is a benefit to the public. **Response:** The ZBA did not find enter a finding with respect to substantial justice. Further, the general public is in no way harmed by two duplexes and four units in an area of four nearby or adjoining zoning districts with differing lots ranging from single-family homes on compliant lots, single-family homes on noncompliant lots, large apartment buildings and townhouse condominiums.

In summary, the “spirit of the ordinance” comments of the zoning board members during deliberations, as embodied in the Notice of Decision and Findings of Fact, essentially that the property is in conformance with the ordinance and a variance would take it out of conformity is not a valid basis for denial, as it results in a denial simply because the variance is requested. Similarly, the ZBA incorrectly applied the requirements for hardship. The test is not only whether the lot is larger or smaller than others, nor whether a three-lot subdivision could be approved. It is whether the property has special conditions that distinguish it from other properties in the area. The “area” is not just the SRB area but the larger area from Jones Avenue to Cliff Road. Compared to that larger area which includes four different zones and multiple different housing sizes and styles, with a number of lots not meeting dimensional requirements, the subject lot has special conditions. That the lot can be used the way it is today with a single-family home again results in the denial simply because relief was sought. The test is whether due to the special conditions there is a fair and substantial relationship between the general purposes of the ordinance and its application in this instance. Given the multiple zones, multiple sizes of lots, differing sizes and styles of homes, and numerous nonconformities within the area, the project fits in with the varied nature of the area, so there is no fair and substantial relationship between the purposes of the ordinance and its application to this property.

Finally, while the Notice of Decision and Findings of Fact provide only that the “spirit of the ordinance” and “hardship” requirements were not met, the minutes reveal commentary that “other” requirements were not met (**Exhibit 3, p.10, 11** comments of member, Rheume). Absent findings of fact *thereupon* as required by RSA§676:3, rehearing is justified.

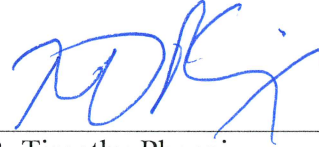
VI. CONCLUSION

For all of the foregoing reasons, the subject property owners Francis E. Mouflouze, Ted W. Alex and Patricia Cameron, Trustees respectfully request that the Zoning Board of Adjustment grant a rehearing followed by approval for both variance requests.

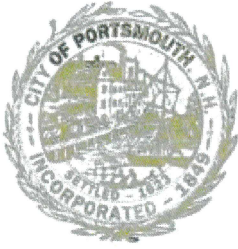
Respectfully submitted,

The Francis E. Mouflouze Revocable
Trust of 2015, Francis E. Mouflouze, Ted W. Alex
and Patricia Cameron, Trustees

By: _____



R. Timothy Phoenix



CITY OF PORTSMOUTH

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

ZONING BOARD OF ADJUSTMENT

October 24, 2023

Frances E. Mouflouze Revoc Trust of 2015
936 South Street #1
Portsmouth, New Hampshire 03801

RE: Board of Adjustment request for property located at 550 Sagamore Avenue (LU-23-164)

Dear Property Owner:

The Zoning Board of Adjustment, at its regularly scheduled meeting of **Tuesday, October 17, 2023**, considered your application for demolishing the existing structure and constructing two duplexes (creating a total of 4 living units) which requires the following: 1) Variance from Section 10.513 to allow more than one free-standing dwelling unit on a lot; and 2) Variance from Section 10.440 Use #1.30 to allow the construction of duplexes where they are not permitted. Said property is shown on Assessor Map 222 Lot 11 and lies within the Single Residence B (SRB) District. As a result of said consideration, the Board voted to to **deny** the request because it did not meet the spirit of the ordinance or hardship criteria as the lot is oversized and is presently conforming.

The Board's decision may be appealed up to thirty (30) days after the vote. Please contact the Planning Department for more details about the appeals process.

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

Very truly yours,

Phyllis Eldridge, Chair of the Zoning Board of Adjustment

cc:

R. Timothy Phoenix, Esq; Hoefle, Phoenix, Gormley & Roberts, PLLC
Eric D. Weinrieb, PE; Altus Engineering, Inc.

Findings of Fact | Variance

City of Portsmouth Zoning Board of Adjustment

Date: 10-17-2023

Property Address: 550 Sagamore Avenue

Application #: LU-23-164

Decision: **Deny**

Findings of Fact:

Effective August 23, 2022, amended RSA 676:3, It now reads as follows: The local land use board shall issue a final written decision which either approves or disapproves an application for a local permit and make a copy of the decision available to the applicant. **The decision shall include specific written findings of fact that support the decision. Failure of the board to make specific written findings of fact supporting a disapproval shall be grounds for automatic reversal and remand by the superior court upon appeal, in accordance with the time periods set forth in RSA 677:5 or RSA 677:15, unless the court determines that there are other factors warranting the disapproval.** If the application is not approved, the board shall provide the applicant with written reasons for the disapproval. If the application is approved with conditions, the board shall include in the written decision a detailed description of all conditions necessary to obtain final approval.

The proposed application meets/does not meet the following purposes for granting a Variance:

Section 10.233 Variance Evaluation Criteria	Finding (Meets Criteria)	Relevant Facts
10.233.21 Granting the variance would not be contrary to the public interest.		
10.233.22 Granting the variance would observe the spirit of the Ordinance.	NO	<ul style="list-style-type: none"> The property is presently in conformity with the zoning ordinance and granting the variance would make it out of conformity.
10.233.23 Granting the variance would do substantial justice.		
10.233.24 Granting the variance would not diminish the values of surrounding properties.		
10.233.25 Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship. (a)The property has special Conditions that distinguish it from other properties in the area. AND	NO	<ul style="list-style-type: none"> The applicants lot is bigger than some lots and smaller than others and the 140-ft width is plenty of room for the applicant to put a 3-house subdivision and not even move the original house. The applicants lot can be

<p>(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.</p> <p>OR</p> <p>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.</p>		<p>reasonably used in the way it is zoned and there is currently a single-family home on it now.</p>
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**MINUTES OF THE
BOARD OF ADJUSTMENT MEETING
EILEEN DONDERO FOLEY COUNCIL CHAMBERS
MUNICIPAL COMPLEX, 1 JUNKINS AVENUE
PORTSMOUTH, NEW HAMPSHIRE**

7:00 P.M.

October 17, 2023

MEMBERS PRESENT: Phyllis Eldridge, Chair; Beth Margeson, Vice Chair; David Rheaume; Paul Mannle; Thomas Rossi; Jeffrey Mattson; Jody Record, Alternate

MEMBERS EXCUSED: ML Geffert, Alternate

ALSO PRESENT: Stefanie Casella, Planning Department

Note: The timestamp denotes the time of the recording. Chair Eldridge called the meeting to order at 7:00 p.m. Ms. Record was seated for voting on all items in the excused absence of Ms. Geffert.

~~I. APPROVAL OF MINUTES~~

A. Approval of the September 19, 2023 minutes.

*Mr. Mannle moved to **approve** the September 19 minutes as **amended**, seconded by Mr. Mattson. The motion **passed** by unanimous vote, 7-0.*

The following amendments were made:

On page 3, top of the page, the word “clarify” was changed to “clarity” and the word “postponed” was changed to “postponement”, so the sentence reads as follows: Mr. Rheaume said ... it was a complicated case and there was some lack of **clarity**, so the **postponement** was made to give the application the opportunity to get more information. On page 5, second to last line, unnecessary “change” was changed to “hardship”, so the sentence reads as follows: Mr. Mattson said there were more variances requested before and he had not seen an unnecessary hardship within the side yard setback, but since it was no longer asked for, the only thing left was whether the lot size was an unnecessary **hardship**. On page 10, last line, the word “district” was changed to “distract”, so the sentence reads as follows: He said the mural was a reasonably-sized piece of art work and in a parking lot that would not **distract** drivers.

B. Approval of the September 26, 2023 minutes.

*Mr. Mannle moved to **approve** the September 26 minutes as submitted, seconded by Vice-Chair Margeson. The motion **passed** by a unanimous vote of 7-0.*

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

Mr. Mannle referred to Sections 10.233.21 and .22 of the ordinance and said the project would not be contrary to the public interest and would observe the spirit of the ordinance. Referring to Section 10.233.23, he said granting the variances would do substantial justice because it was a mural and there was no ordinance for murals. He said the mural was clearly not a sign and was approved by the HDC, and the applicant just needed the setbacks for where the transformers would be covered up. Referring to Section 10.233.24, he said granting the variances would not diminish the values of surrounding properties. Referring to Section 233.25, he said literal enforcement of the provision of the ordinance would result in unnecessary hardship because the property has 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 purposes of the ordinance's provision and the specific application of that provision to the property, and the proposed use is a reasonable one. He said the mural will cover up the transformer boxes and it was only before the Board because it was slightly closer to the sidewalk and was a mural, not a sign, which was a hardship. Mr. Rossi concurred and said there was published documentation of the historical significance of the woman presented on the mural, which was important because as the Board approved those types of murals, it would be important to be sure of the historical accuracy and relevance of the murals and the fact that the murals did not migrate into other territories of various things that could be on them.

Vice-Chair Margeson said she would not support the motion and wondered why the mural wouldn't face the pocket park so that people could actually read it. She said it would be distracting to drivers. She said if something was not in the zoning ordinance, which a mural wasn't, the Board was not supposed to be approving variances for it. She noted that the Board had a similar situation with an applicant who wanted to open an art studio in her home but there was no art studio in the ordinance, so the Board did not approve it. She said she would not support the motion for those reasons.

~~The motion **passed** by a vote of 6-1, with Vice-Chair Margeson voting in opposition to the motion.~~

- C. The request of **Frances E. Mouflouze Revocable Trust of 2015 (Owner)**, for property located at **550 Sagamore Road** whereas relief is needed to demolish the existing structure and construct two duplexes (creating a total of 4 living units) which requires the following: 1) Variance from Section 10.513 to allow more than one free-standing dwelling unit on a lot; and 2) Variance from Section 10.440 Use #1.30 to allow the construction of duplexes where they are not permitted. Said property is located on Assessor Map 222 Lot 11 and lies within the Single Residence B (SRB) District. (LU-23-164)

Mr. Rossi recused himself from the following petition.

SPEAKING TO THE PETITION

Attorney Tim Phoenix was present on behalf of the applicant, along with project engineer Eric Weinrieb and Brian White, who prepared the Analysis Property Value Impact Report. Attorney Phoenix reviewed the petition and criteria in detail. [Timestamp 5:06]

Vice-Chair Margeson asked what the hardship was in not being able to building another single-family dwelling on the lot. Attorney Phoenix said it was due to the lot's special conditions of being the largest property in the area, four times the size of the minimum required lot size for a single family home. He said most of the lots in the vicinity were that large and noted that the Board granted multi-family units at the Luster King site. He said, given the lot's location compared to other lots and densities in the area and considering the area where the zoning areas met, the lot had special conditions. Mr. Mannle asked how the current house was nonconforming, noting that the Staff Report said everything about the existing house was conforming. Attorney Phoenix said the front porch and steps went over the front setback line slightly. Ms. Casella said the City went by the survey information. Mr. Rheaume said it was apparent from the existing home photos that the current home was elevated relative to the street level, and he asked if the intent was to have the new structures also elevated or if there would be excavation. Mr. Weinrieb said the grade went up substantially behind the house and the new structures would be up a bit higher than the street, with stormwater draining back toward the front. He said they would not overly excavate the site but would work with its natural contours, which he further explained.

Chair Eldridge opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

No one spoke.

SPEAKING IN OPPOSITION TO THE PETITION

Sue Harding of 594 Sagamore Avenue said she was an abutter and thought the zoning would not change when she bought her home in 1997. She said her property had a buffer where there was a lot of wildlife that had to be protected and that she couldn't see why the Board would want to change the privacy, land, and nature behind the abutters' homes that had been that way for decades. She said allowing four dwellings in a unit where only one was allowed was spot rezoning and that the project did not meet any of the criteria and might set a precedent if approved.

Rick Hayes of 40 Walker Bungalow said he was an abutter to 550 Sagamore Road. He said the area was zoned SRB for a reason and that the proposal violated the zoning. He said the applicant wanted to maximize profits and that it would accelerate the exit of longtime residents.

Linda Brown of 650 Sagamore Avenue said adding more dwellings than zoned for would be detrimental and would add more traffic to an already busy road as well as pose safety concerns. She said changing zoning for financial gain did not pose a hardship.

Richard Wilder of 58 Walker Bungalow Road said he had lived there for 54 years and was an abutter. He said the requested variances went against the character and nature of the community and

that the applicant's attempt to relate the zoning of areas across the street as justification for the project was irrelevant. He said the project did not meet any of the criteria and that the ordinance for single-residence zones was a covenant to protect the homeowners and their land.

Alden Sweet of 72 Walker Bungalow Road said he abutted the property in the back corner. He said the variance requests should be rejected because the SRB District zoning did not allow duplexes. He said the anticipated market values of the duplex units would be in the range of one million dollars or more each, which wasn't a hardship. He said Portsmouth had a shortage of workforce housing and the applicant's proposal was not affordable housing. He said it would not improve the surrounding area and noted that what went on in Dover and Durham had no bearing on Portsmouth.

Eric McKnight of 546 Sagamore Avenue said if the project was approved, the duplexes would look into his side of the house where the kitchen, bedrooms and living room were. He said he thought he and his family were moving into a single-family dwelling zone when he bought the house a few months ago, and the project would change his home and his investment. He said he would not have bought his home if there were four dwellings looking into a side of it.

Joan Christy of 576 Sagamore Avenue said she had lived in her home since the 1980s and that the development would affect her because instead of looking out at the land that had stayed the same for about 150 years, she would now look out at a wall. She said the proposal would pave the way for the condoization of the neighborhood. She said the Board's decision had important implications.

Jim Lee of 520 Sagamore Avenue said he was a real estate broker of 43 years and thought cramming four housing units on one lot would alter the character of the neighborhood and injure public rights. He said there was no hardship to allow the project to take place in a neighborhood of single-family homes. He said the project did not meet any of the criteria.

Tim McNamara of 575 Sagamore Avenue, Unit 19, said three of the criteria – the public interest, spirit of the ordinance, and hardship – were not met. He said the reference to other zones as well as a recent approval for 635 Sagamore Avenue wasn't relevant. He said the applicant wanted a permit for four dwellings where one was allowed and for two duplexes were none were allowed.

Paige Trace of 27 Hancock Street said there was no hardship with the land but there was a question with the zoning, otherwise the applicant wouldn't be there. She said the entire neighborhood was opposed to the project and that the only hardship was for the neighborhood and not the amount of money the applicant stood to make or not make.

Petra Huda of 280 South Street said the proposal did not meet the criteria and that the zoning across and down the street and what had been previously approved were irrelevant.

Esther Kennedy of 41 Pickering Avenue said the community members were all abutters and it was up to the Board to decide whether they agreed with the zoning set by their predecessors and whether the five criteria were met. She asked the Board to reflect upon what had happened to some of Portsmouth's neighborhoods and to think about what's right for Portsmouth's future.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Christana McKnight of 546 Sagamore Avenue (via Zoom) said she and her husband chose her home because it was in a Single Residence Home District and said she was against the proposal.

Attorney Phoenix said they would agree to a condition that the rear area would be left in its current condition. He said the Board, when looking at the consideration for variances, looks at the overall neighborhood and can't just look at the five or six house lots in that particular strip, one of which didn't meet the density requirements. He said the applicant tried to do something consistent with the area and the prices of the condos would be more affordable than three houses. He said they never said it was affordable housing and that there were no other examples in Portsmouth to draw from except in Dover and Durham. He said the duplexes made sense in that area.

Jim Lee said the proposal was contrary to the public interest, did not observe the spirit of the ordinance, and did not provide substantial justice. He said it would also diminish the values of surrounding properties and that the hardship had to be with the land and not anything else, so there was no hardship with that lot because it was the same as every lot on the street.

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

DECISION OF THE BOARD

[Timestamp 1:02:38] Vice-Chair Margeson said she would not support the application, noting that it was an eclectic mix of zoning but the Sagamore Court was garden apartment manufactured housing, the Tide Watch Condos was a planned unit development allowed by zoning because it was over ten acres, and the recent application for the Luster King site had more units on the lot than allowed but was a commercial use that brought the lot into compliance with surrounding areas. She said an argument for the hardship was that the lot was bigger than most of the surrounding lots but that it wasn't by much. She said in a sea of single-residence homes, it would be the only duplex and that it looked like a complex with a lot of parking. Mr. Rheume said there were arguments to be made that relief could be had for having multiple units on a single-family lot if it was large enough and that there was a potential for hardship because the lot was four times larger than required in the zoning ordinance, but he wasn't sure if that meant there could be four units on it. He said he saw the petition failing on two other criteria and perhaps a third. He said the applicant admitted that the proposed structures were out of character with the neighborhood so they wanted to put plenty of screening in front of them so that they would not be seen, which was the Board's first indication that the project was not in keeping with the spirit of the overall neighborhood. He said the property's shape drove a lot of that but wasn't sure that the Planning Board would accept the two structures at an angle to the street. He said it wasn't in keeping with the spirit of the ordinance because the structures were significantly big. He said there were significant hurdles when the applicant went before TAC and the Planning Board.

*Mr. Mannle moved to **deny** the petition, seconded by Vice-Chair Margeson.*

Mr. Mannle said he did not see the hardship or any special conditions to the lot relative to the other lots. He said it was bigger than some lots and smaller than others and thought that the 140-ft width was plenty of room for the applicant to put a 3-house subdivision and not even move the first house. He said there was a quirk in the zoning relating to the fact that any land use board approving an application request that requires demolition nixes any abutter's right to appeal that demolition, and that he would not support any application that involved demolishing a single-family home because of that. Vice-Chair Margeson said she didn't think the property had any hardship because it could be reasonably used in the way it was zoned and there was currently a single-family home on it now. She said it was presently in conformity with the zoning ordinance and granting the variance would make it out of conformity. She said it had a spirit and intent problem also.

Mr. Rheume said he would support the motion, although he disagreed with some of the arguments made. He said there was an argument for hardship and thought the proposal failed on other criteria. He pointed out that the Demolition Committee requirement was its own separate ordinance and not a part of the Board's ordinances, and he didn't know if the Board could tie their approval or disapproval to a completely separate ordinance. However, he thought the petition failed and did not meet other criteria. Chair Eldridge said she would also vote in favor of the motion because she thought a denial would provide a benefit to the general public. She said the way the proposed two-family homes sat on the lot would change the way the neighborhood feels.

The motion passed by a unanimous vote of 6-0, with Mr. Rossi recused.

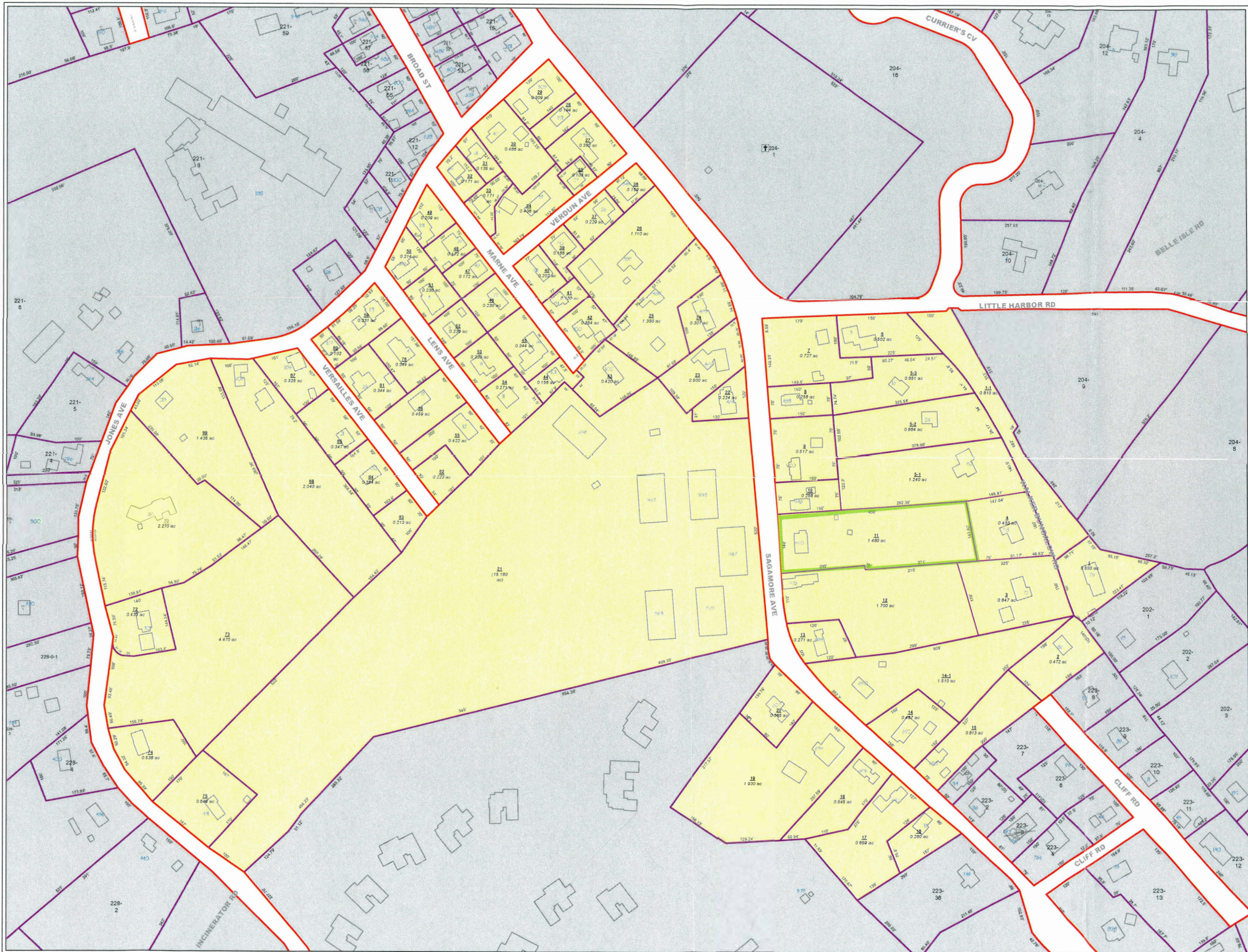
- ~~D. The request of **Portsmouth Submarine Memorial Association (Owner)**, for property located at **569 Submarine Way** whereas relief is needed to construct an addition to the existing building to substantially increase the use which requires the following: 1) Variance from Section 10.440 Use #3.40 to allow a museum where the use is not permitted. Said property is located on Assessor Map 209 Lot 87 and lies within the Single Residence B (SRB) District. (LU-23-165)~~

SPEAKING TO THE PETITION

Attorney Kevin Baum was present on behalf of the applicant, along with project engineer John Chagnon. He noted that Albacore Park was originally approved by special exception and the Visitors Center was built in 1986. He said they proposed to place a 1,584-sf addition onto the Visitors Center to add more exhibit and meeting spaces, and because it was a significant addition it required a variance because it was a museum use in a residential zone. He said a Parking Demand Analysis was also provided. He reviewed the petition and criteria in detail.

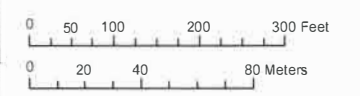
Mr. Rheume said the museum use was originally granted by special exception and asked if the zoning changed. Attorney Baum the ordinance no longer prohibited it. Ms. Casella said she thought it was probably a zoning change and it was further discussed.

~~Chair Eldridge opened the public hearing.~~

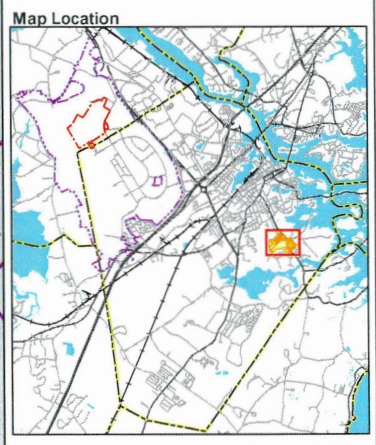
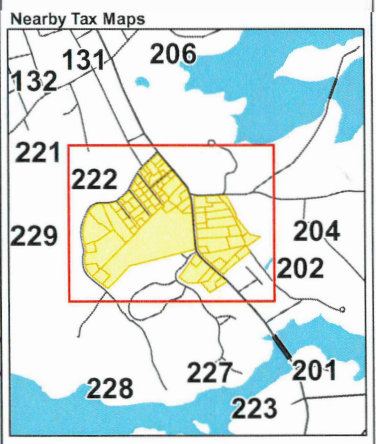


- Partial Legend**
See the cover sheet for the complete legend.
- 7-5A** Lot or lot-unit number
 - 2.56 ac Parcel area in acres (ac) or square feet (sf)
 - Address number
 - Parcel number from a neighboring map
 - Parcel line dimension
- SIMS AVE** Street name
- Parcel/Parcel boundary
 - Parcel/ROW boundary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

EXHIBIT 3

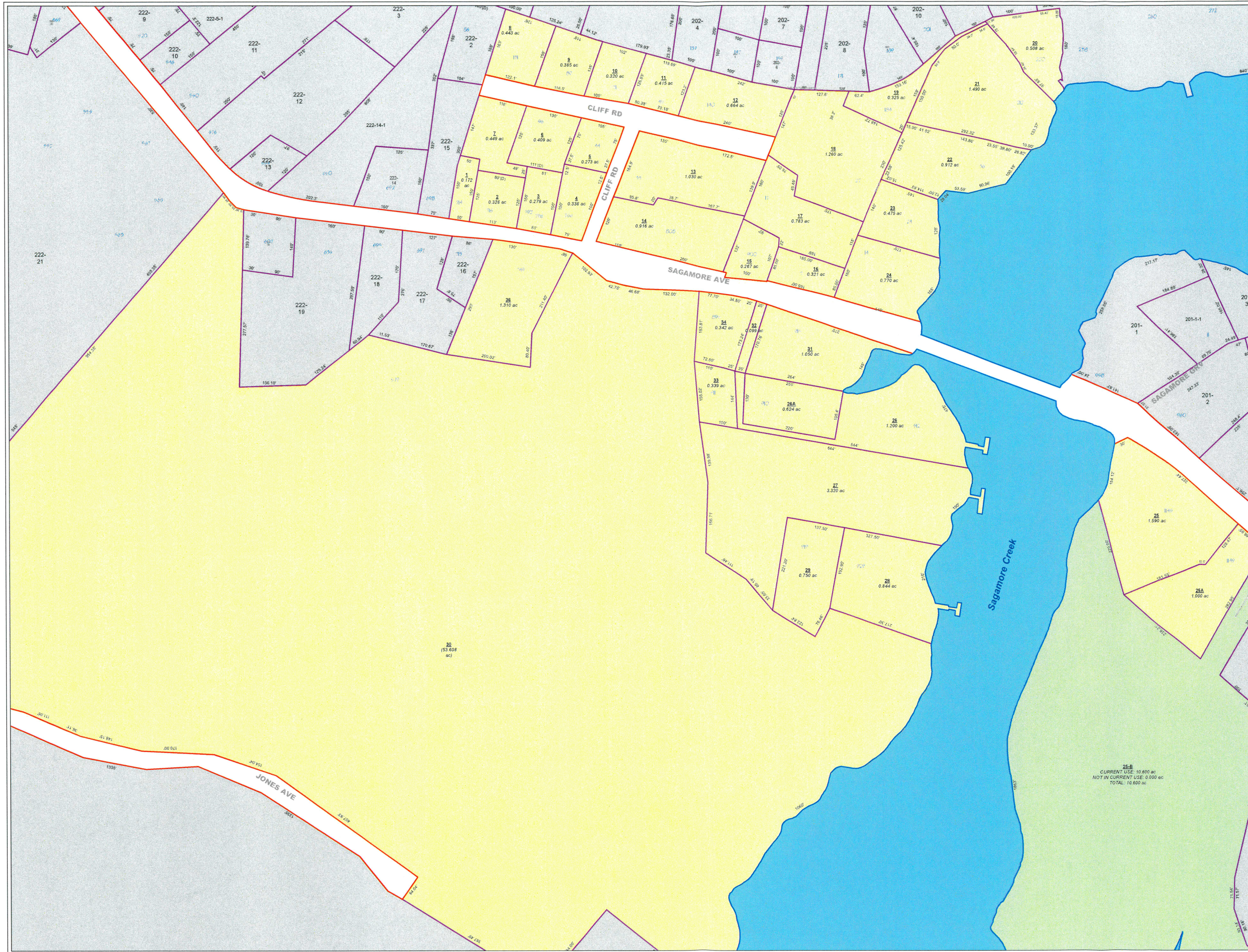


This map is for assessment purposes only. It is not intended for legal description or conveyance. Parcels are mapped as of April 1. Building footprints are 2006 data and may not represent current structures. Streets appearing on this map may be paper (unbuilt) streets. Lot numbers take precedence over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

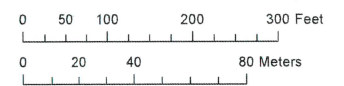


Portsmouth, New Hampshire
2022
Tax Map 222

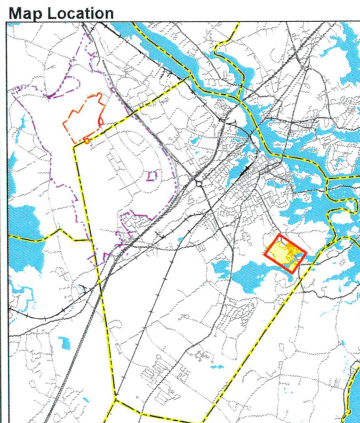
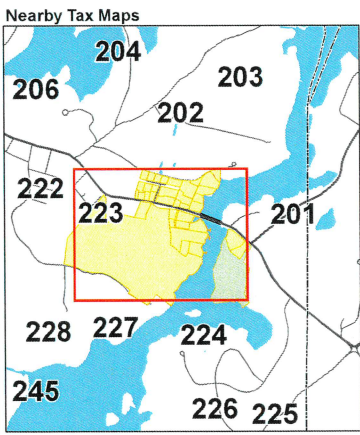
158



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



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25B
CURRENT USE: 10.600 ac
NOT IN CURRENT USE: 0.000 ac
TOTAL: 10.600 ac

550 Sagamore in Context



**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 08/24/2023
Data updated 3/9/2022

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

EXHIBIT 4

Map Theme Legends

Zoning

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

City of Portsmouth

II. OLD BUSINESS

C. The request of **Jeff and Rhonda Caron (Owners)**, for property located at **1 Garden Street** whereas relief is needed to construct an addition to the existing detached garage and create a second living unit on the property which requires the following: 1) Variance from Section 10.516.10 to allow a two (2) foot front yard where five and a half (5.5) feet is required; 2) Variance from Section 10.513 to allow two (2) free standing dwelling units where one (1) is allowed; and 3) Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 174 Lot 11 and lies within the General Residence A (GRA) District. (LU-23-139)

Existing & Proposed Conditions

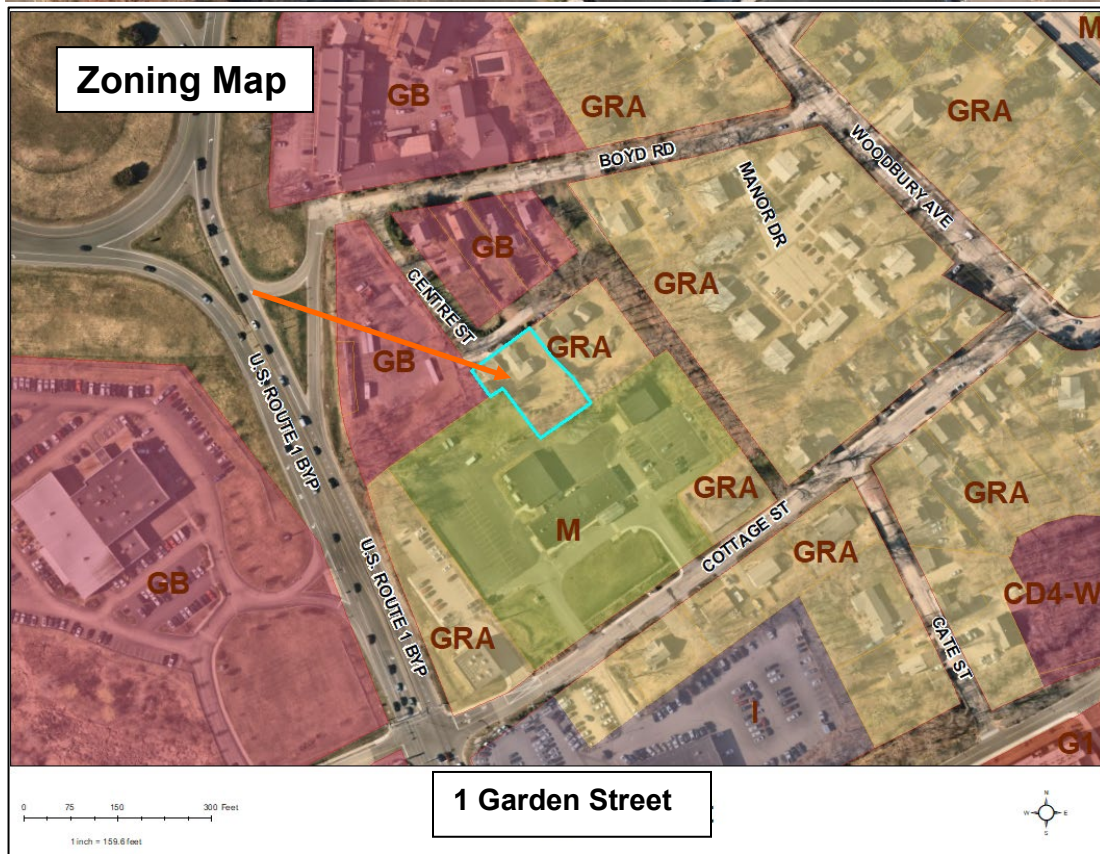
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family dwelling	*Two freestanding dwellings	Primarily residential
<u>Lot area (sq. ft.):</u>	15,681	15,681	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	15,681	7,840	7,500 min.
<u>Street Frontage (ft.):</u>	117	117	100 min.
<u>Lot depth (ft.)</u>	>100	>100	70 min.
<u>Front Yard (ft.):</u>	2	2	5.5 (w/ averaging calculation, Section 10.516.10) min.
<u>Left Yard (ft.):</u>	27	27	10 min.
<u>Right Yard (ft.):</u>	14 (Garage)	14 (Garage)	10 min.
<u>Rear Yard (ft.):</u>	27	23	20 min.
<u>Height (ft.):</u>	19	19	35 max.
<u>Building Coverage (%):</u>	12.7	13	25 max.
<u>Open Space Coverage (%):</u>	84	83	30 min.
<u>Parking</u>	3	3	3
<u>Estimated Age of Structure:</u>	1900	Variance request(s) shown in red.	

***Relief from Section 10.513 is required to convert the garage into a primary structure, creating 2 free-standing structures on one lot; and from Section 10.321 to add dormers in a required yard area.**

Other Permits/Approvals Required

- Building Permit

Neighborhood Context



Previous Board of Adjustment Actions

May 16, 1995 – The Board **Granted** a Special Exception to Article II, Section 10-205(11) to allow a home occupation which includes a separate domestic kitchen as required by the Health Officer for preparation of jams and mustards to be sold off site with the following conditions:

- 1) There be no signage.
- 2) That the separate kitchen area for the home occupation cannot be incorporated into a second dwelling unit.

February 16, 1999 – The Board **Granted** a Variance from Article III, Section 10-302(A) to allow construction of a 24' x 26' one and a half story 2 car garage as an accessory use to a single-family dwelling with a 2' front yard with 15' is the minimum required.

Planning Department Comments

Consideration of this request was postponed from the November 21, 2023 meeting due to only 5 Board members being present to vote at that time.

The applicant is requesting variances to convert the existing accessory garage structure as a single living unit. This conversion includes the construction of dormers on the front of the existing garage structure. The construction of the dormers and the conversion of the accessory structure to a primary triggered the need for a front yard variance.

Upon review of the application, Staff recognized an existing shed that is not contained within the lot boundaries. If a motion for approval is made, staff recommends the following or similar condition be included:

- 1) The existing shed located over the western boundary line is relocated to sit entirely on the property and conform to Zoning requirements; OR be removed entirely.

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.

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.

Project Introduction:

1 Garden Street

BOA Variance request for meeting November 21, 2023

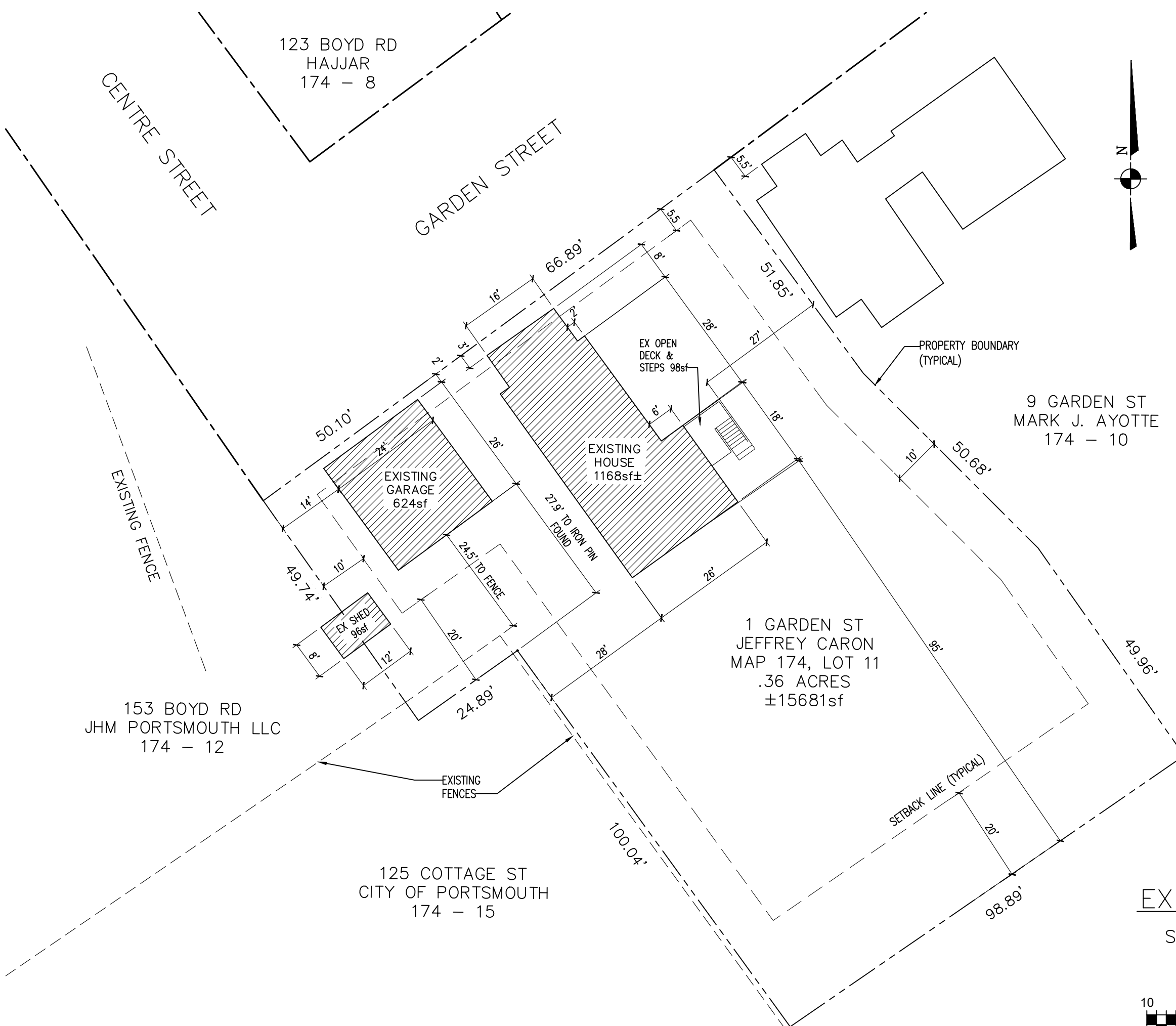
The existing property at 1 Garden Street in Zone GRA currently has a modest single family structure and a separate 2 car Garage with room above. The owners, Jeff and Ronda Caron, house Jeff's mother in the dwelling and would like to create an apartment above the Garage to house his Uncle as well. Because Jeff & Ronda do not live at 1 Garden themselves they are not able to make the apartment an ADU. 2 Family properties are allowed in zone GRA and the existing lot, at 15681sf is large enough, so the Caron's would like to add dormers and upgrade the appearance of the Garage in general, creating an apartment upstairs and changing the property designation to a 2-Family. But according to the Zoning Ordinance in GRA both dwelling units need to be in the same structure. Also the existing Garage is non-conforming as it is 2' from the Front property line where 5.5' is required.

In order to achieve the Caron's goal, our Variance requests, as outlined by Jillian Harris are as follows:

10.321 - EXPANSION OF NON-CONFORMING STRUCTURE. REQUEST TO CONVERT EXISTING GARAGE TO A PRIMARY DWELLING UNIT & ADD DORMERS.

10.513 - ONE FREE STANDING DWELLING UNIT PER LOT / ZONE GRA. REQUEST TO HAVE 2 FREE STANDING DWELLING UNITS PER LOT.

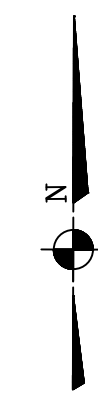
10.516.10 - FRONT SETBACK; FRONT YARD EXCEPTION. VARIANCE FOR 2' SETBACK (OF EXISTING GARAGE WITH PRIMARY DWELLING UNIT ADDED AT 2ND FLOOR) WHERE 5.5' IS REQUIRED.



123 BOYD RD
HAJJAR
174 - 8

CENTRE STREET

GARDEN STREET



- LIST OF DRAWINGS**
- S1 EXISTING SITE PLAN
 - S2 EXISTING SITE PLAN DETAIL
 - S3 PROPOSED SITE PLAN DETAIL
 - S4 NEIGHBORHOOD MAP WITH AREA MULTI-FAMILY PROPERTIES
 - A1 PHOTOS OF EXIST HOUSE & GARAGE
 - A2 PHOTOS OF EXIST NEIGHBORHOOD
 - A3 UNIT 2 ENTRY AT GARAGE LEVEL
 - A4 UNIT 2 AT 2ND FLOOR GARAGE
 - A5 FRONT & RIGHT SIDE ELEVATIONS
 - A6 REAR & LEFT SIDE ELEVATIONS
 - A7 VARIANCE CRITERIA
 - A8 OWNER'S AUTHORIZATION

9 GARDEN ST
MARK J. AYOTTE
174 - 10

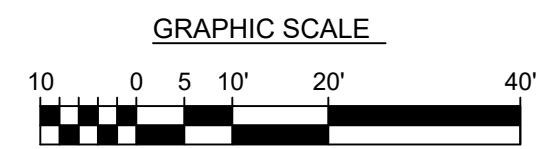
1 GARDEN ST
JEFFREY CARON
MAP 174, LOT 11
.36 ACRES
±15681sf

153 BOYD RD
JHM PORTSMOUTH LLC
174 - 12

125 COTTAGE ST
CITY OF PORTSMOUTH
174 - 15

EXISTING SITE PLAN

SCALE: 1" = 20'



BOA Application for Nov 21, 2023

RONDA & JEFF CARON
1 GARDEN STREET
PORTSMOUTH, NH 03801

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

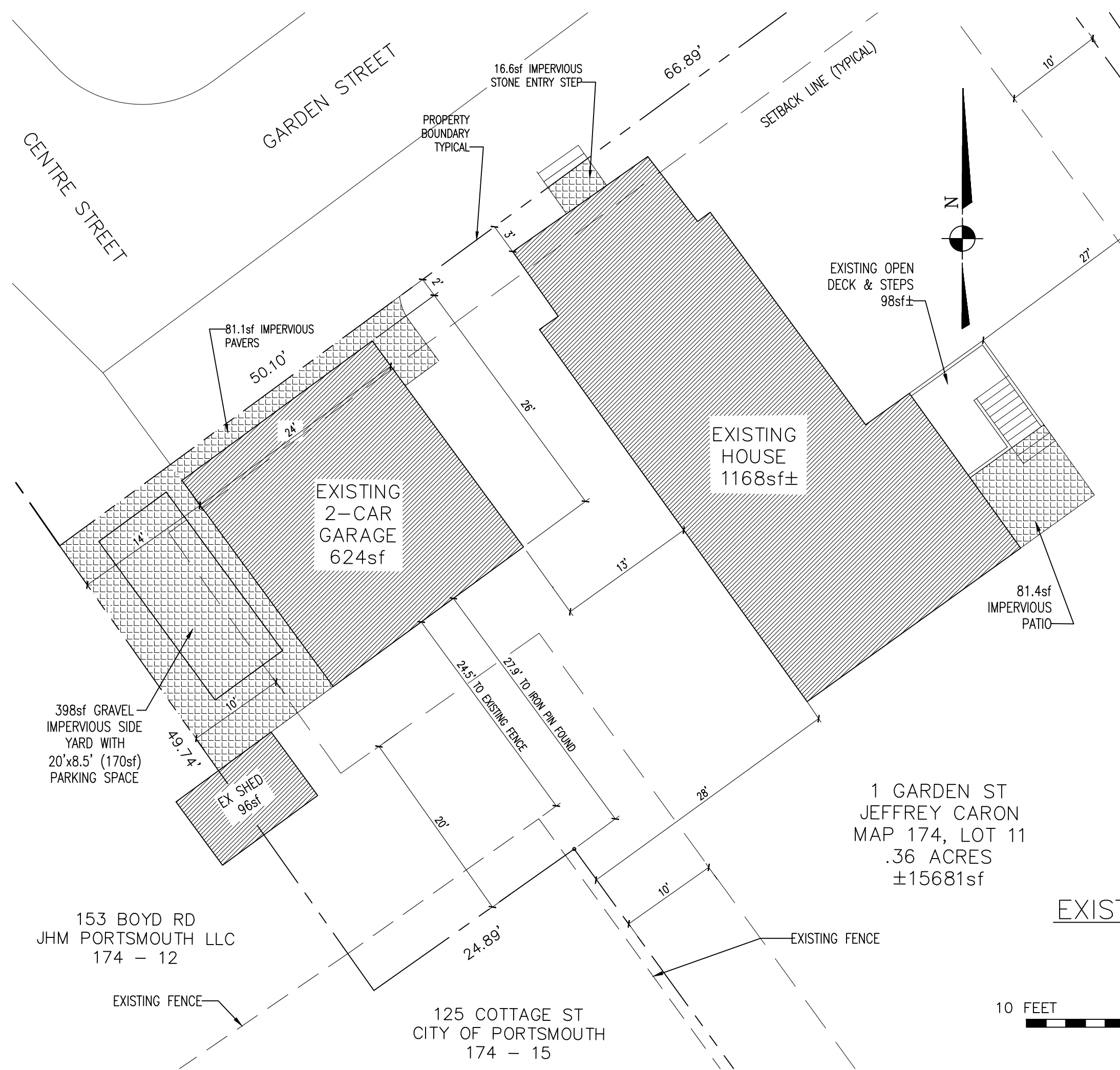
Revisions:

Existing Site Plan

date: Oct 23, 2023

scale: 1" = 20'

S1



PLAN REFERENCE:

ALL SITE INFORMATION INCLUDING LOCATION OF EXISTING STRUCTURES REFERENCED FROM:

1. BUILDING PERMIT APPLICATION SITE PLAN FOR GARAGE DATED FEBRUARY 19, 1999
2. CITY OF PORTSMOUTH GIS MAPPING SYSTEM
3. 9 GARDEN STREET EXISTING FRONT SETBACK (SHOWN ON PLAN S1) MEASURED BY ARCHITECT IN FIELD

DIMENSIONAL REGULATIONS

ZONE: GENERAL RESIDENCE A (GRA)

LOT DESCRIPTION	REQUIRED	EXISTING
MIN. LOT SIZE	7500 SF	15,681± SF
MIN. LOT AREA PER DWELLING UNIT	7500 SF	15,681± SF
MIN. YARD SIZES		
FRONT (GARAGE)	5.5'	2'±
FRONT (HOUSE)	5.5'	3'±
SIDE (GARAGE)	10'	14'±
SIDE (HOUSE)	10'	28'±, 27'±
REAR (GARAGE TO PIN FOUND)	20'	27.9'±
REAR (HOUSE)	20'	95'
MAX. HEIGHT (HOUSE)	35'	14'±
MAX. HEIGHT (GARAGE)	35'	19.1'±
MAX. STRUCTURE COVER (HOUSE/DECK + GARAGE + SHED)	25%	12.7%±
MIN. OPEN SPACE	30%	83.7%±

STRUCTURE BUILDING COVERAGE

HOUSE	1168 SF
HOUSE DECK & STEPS	98 SF
GARAGE	624 SF
SHED	96 SF
TOTAL	1986 SF

(NOTE: 2 REQUIRED PARKING SPACES ARE IN GARAGE)

IMPERVIOUS SURFACE COVERAGE

PATIO AT REAR OF HOUSE	81.4 SF
STONE ENTRY STEP AT HOUSE	16.6 SF
WALKWAY AREA AT GARAGE	81.1 SF
GRAVEL AREA AT SIDE OF GARAGE	398 SF
TOTAL OTHER IMPERVIOUS SURFACE:	577.1 SF

TOTAL IMPERVIOUS: 2563.1 SF

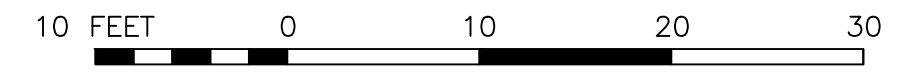
VARIANCE GRANTED: FEBRUARY 16, 1999 ZONING BOA HEARING:

10.521 - TABLE OF DIMENSIONAL STANDARDS - FOR PROPOSED GARAGE: FRONT YARD SETBACK OF 2' WHERE 15' IS REQUIRED (5.5' REQUIRED WITH 10.516.10 FRONT YARD EXCEPTION FOR EXISTING ALIGNMENTS)

EXISTING SITE PLAN - DETAIL

SCALE: 1" = 10'

GRAPHIC SCALE



BOA Application for Nov 21, 2023

RONDA & JEFF CARON
1 GARDEN STREET
PORTSMOUTH, NH 03801

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

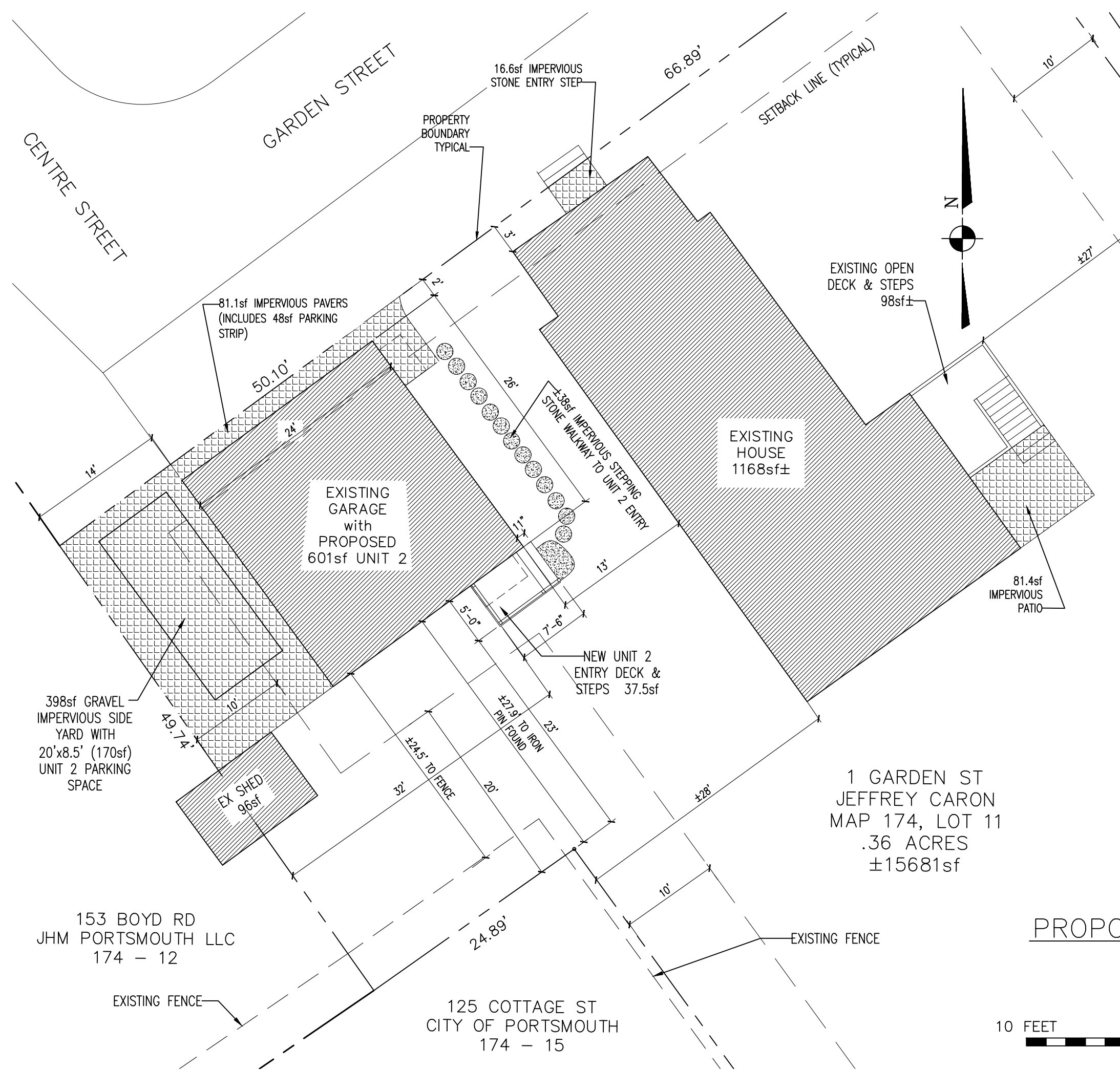
Revisions:

**Existing Site Plan (Detail)
& Dimensional Regulations**

date: Oct 23, 2023

scale: 1" = 10'

S2



1 GARDEN ST
 JEFFREY CARON
 MAP 174, LOT 11
 .36 ACRES
 ±15681sf

PLAN REFERENCE:

ALL SITE INFORMATION INCLUDING LOCATION OF EXISTING STRUCTURES REFERENCED FROM:

1. BUILDING PERMIT APPLICATION SITE PLAN FOR GARAGE DATED FEBRUARY 19, 1999
2. CITY OF PORTSMOUTH GIS MAPPING SYSTEM
3. 9 GARDEN STREET EXISTING FRONT SETBACK (SHOWN ON PLAN S1) MEASURED BY ARCHITECT IN FIELD

DIMENSIONAL REGULATIONS

ZONE: GENERAL RESIDENCE A (GRA)

LOT DESCRIPTION	REQUIRED	EXISTING	PROPOSED
MIN. LOT SIZE	7500 SF	15,681± SF	15,681± SF
MIN. LOT AREA PER DWELLING UNIT	7500 SF	15,681± SF	7840± SF
MIN. YARD SIZES			
FRONT (GARAGE)	5.5'	2'±	2'±
FRONT (HOUSE)	5.5'	3'±	3'±
SIDE (GARAGE)	10'	14'±	14'±
SIDE (HOUSE)	10'	28'±, 27'±	28'±, 27'±
REAR (GARAGE / UNIT 2 ENTRY DECK TO PIN FOUND)	20'	27.9'±	23'±
MAX. HEIGHT (HOUSE)	35'	14'±	14'±
MAX. HEIGHT (GARAGE)	35'	19.1'±	19.1'±
MAX. STRUCTURE COVER (HOUSE/DECK+GARAGE/STEPS+SHED)			
	25%	12.7%±	13.0%±
MIN. OPEN SPACE			
	30%	83.7%±	83.2%±

STRUCTURE BUILDING COVERAGE

EXISTING HOUSE	1168 SF
EXISTING HOUSE DECK & STEPS	98 SF
EXISTING GARAGE	624 SF
EXISTING SHED	96 SF
NEW UNIT 2 ENTRY DECK & STEPS	37.5 SF
TOTAL PROPOSED	2023.5 SF

(NOTE: 2 OF 3 REQUIRED PARKING SPACES ARE IN GARAGE)

IMPERVIOUS SURFACE COVERAGE

PATIO AT REAR OF HOUSE	81.4 SF
STONE ENTRY STEP AT HOUSE	16.6 SF
WALKWAY AREA AT GARAGE	81.1 SF
GRAVEL AREA AT SIDE OF GARAGE	398 SF
NEW STEPPING STONE WALKWAY TO UNIT 2 ENTRY	38 SF
TOTAL PROPOSED OTHER IMPERVIOUS SURFACE:	615.1 SF

TOTAL PROPOSED IMPERVIOUS: 2638.6 SF

VARIANCE GRANTED: FEBRUARY 16, 1999 ZONING BOA HEARING:

10.521 - TABLE OF DIMENSIONAL STANDARDS - FOR PROPOSED GARAGE: FRONT YARD SETBACK OF 2' WHERE 15' IS REQUIRED (5.5' REQUIRED WITH 10.516.10 FRONT YARD EXCEPTION FOR EXISTING ALIGNMENTS)

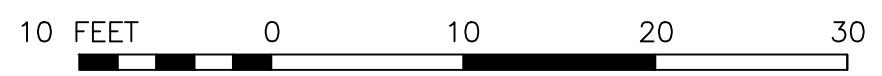
VARIANCE REQUESTED: NOVEMBER 21, 2023 ZONING BOA HEARING:

10.321 - EXPANSION OF NON-CONFORMING STRUCTURE. REQUEST TO CONVERT EXISTING GARAGE TO A PRIMARY DWELLING UNIT & ADD DORMERS.
 10.513 - ONE FREE STANDING DWELLING UNIT PER LOT / ZONE GRA. REQUEST TO HAVE 2 FREE STANDING DWELLING UNITS PER LOT.
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PROPOSED SITE PLAN - DETAIL

SCALE: 1" = 10'

GRAPHIC SCALE



BOA Application for Nov 21, 2023

RONDA & JEFF CARON
 1 GARDEN STREET
 PORTSMOUTH, NH 03801

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

Revisions:

Proposed Site Plan (Detail)
& Dimensional Regulations

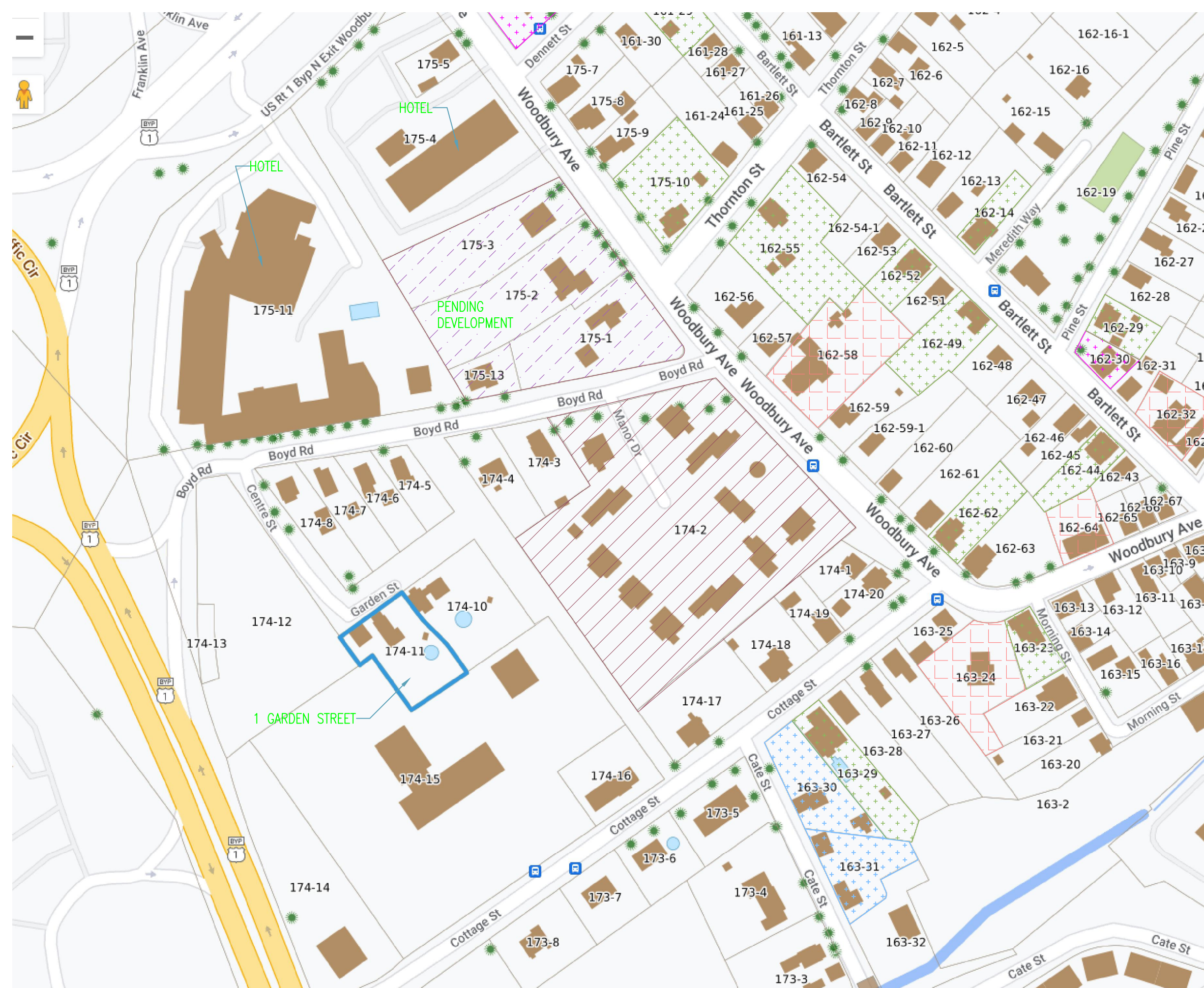
date: Oct 23, 2023






scale: 1" = 10'

S3

153 BOYD RD
 JHM PORTSMOUTH LLC
 174 - 12

125 COTTAGE ST
 CITY OF PORTSMOUTH
 174 - 15



-  40+ UNIT DEVELOPMENT
-  2 OR 3 CONDOMINIUMS
-  2 FAMILY
-  3 FAMILY
-  2 HOUSES - 2 OR 3 FAMILY

2-FAMILY & MULTI-FAMILY PROPERTIES IN AREA OF GARDEN ST ZONE: ALL GRA

ADDRESS	LOT/MAP	TYPE	# UNITS
299 BARTLETT ST	162-14	2 FAMILY	2
130 PINE ST	162-29	2 FAMILY	2
241 BARTLETT ST	162-30	3 FAMILY	3
217 BARTLETT ST	162-32	CONDOS	4
224 BARTLETT ST	162-44	2 FAMILY	2
278 BARTLETT ST	162-49	2 FAMILY	2
302 BARTLETT ST	162-52	2 FAMILY	2
377 THORNTON ST	162-55	2 FAMILY	2
159 WOODBURY AVE	162-58	CONDOS	3
95 WOODBURY AVE	162-62	2 FAMILY	2
33-37 WOODBURY AVE	162-64	CONDOS	3
62 WOODBURY AVE	163-23	2 FAMILY	2
72 WOODBURY AVE	163-24	CONDOS	2
50 COTTAGE ST	163-29	2 FAMILY	2
267 CATE ST	163-30	MULTI HSES	2
235 CATE ST	163-31	MULTI HSES	3
MANOR DRIVE	174-2	HSING AUTH	40+
221 WOODBURY AVE	175-10	2 FAMILY	2

RONDA & JEFF CARON
 1 GARDEN STREET
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 207-604-6848

Revisions:

BOA Application for Nov 21, 2023

Neighborhood Map With
 Area Multi-Family Properties

date: Oct 23, 2023
 scale: 1" = 10'

S4

NEIGHBORHOOD MAP



FRONT HOUSE & LEFT SIDE GARAGE



FRONT GARAGE



RIGHT SIDE GARAGE



RIGHT SIDE HOUSE



LEFT SIDE HOUSE



REAR GARAGE & REAR HOUSE

RONDA & JEFF CARON
1 GARDEN STREET
PORTSMOUTH, NH 03801

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9 Adams Lane, Unit 2
Kittery, Maine 03904
207-604-6848

BOA Application for Nov 21, 2023
Photos of Existing
House & Garage

date: Oct 23, 2023

scale: 1" = 10'

A1



GARDEN STREET – LOOKING NORTHEAST



FRONT OF HOUSE + 9 GARDEN BEYOND



9 GARDEN STREET



CENTRE STREET & 123 BOYD ROAD



GARDEN STREET – LOOKING SOUTHWEST



153 BOYD RD
TREES, FENCE (& PARKING LOT BEYOND)

RONDA & JEFF CARON
1 GARDEN STREET
PORTSMOUTH, NH 03801

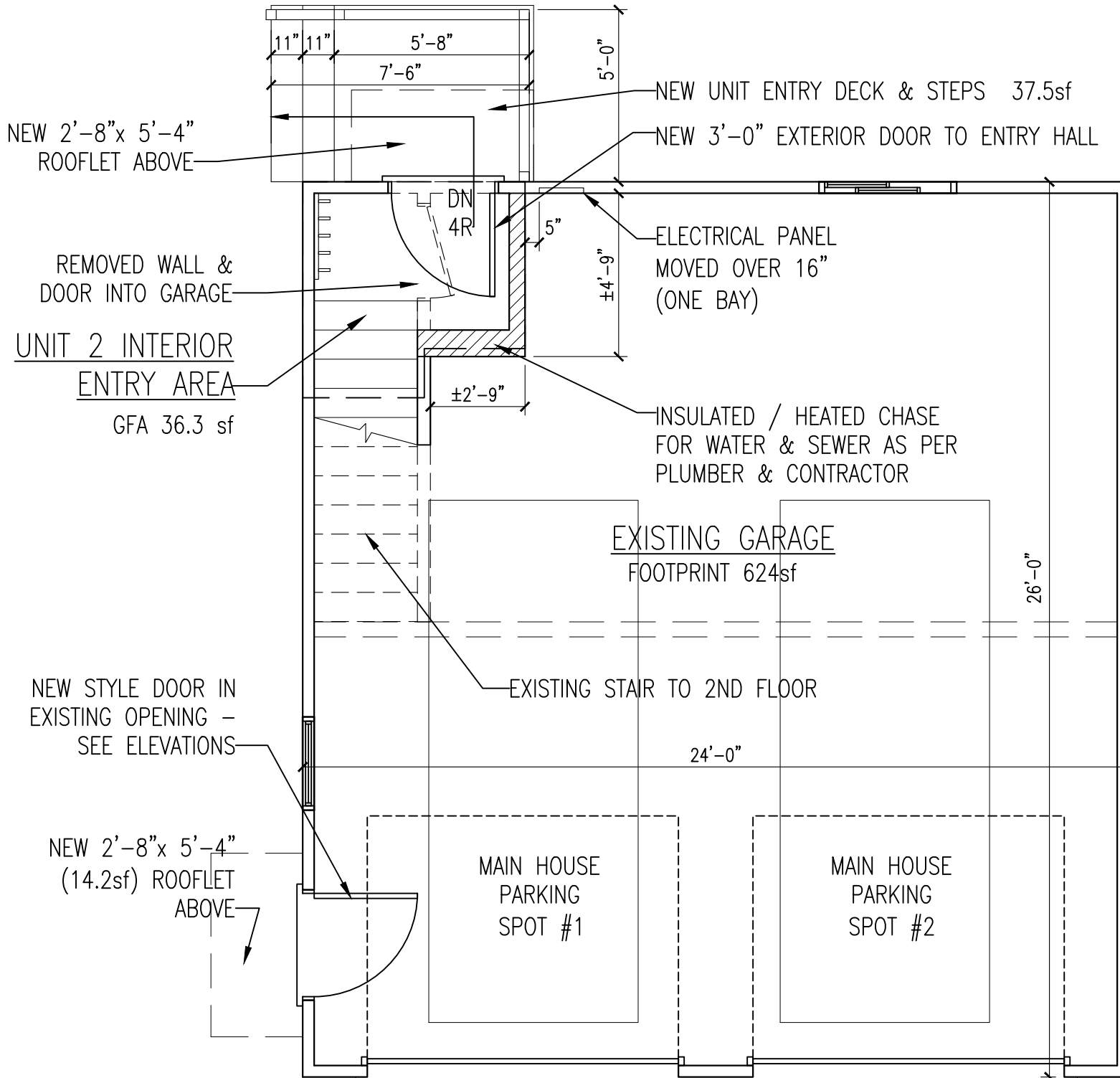
ARILDA DESIGN
dentsch@comcast.net / www.arilda.com
9 Adams Lane, Unit 2
Kittery, Maine 03904
207-604-6848

BOA Application for Nov 21, 2023
Photos of Existing Neighborhood

date: Oct 23, 2023

scale: 1" = 10'

A2



BOA Application for Nov 21, 2023

RONDA & JEFF CARON
1 GARDEN STREET
PORTSMOUTH, NH 03801

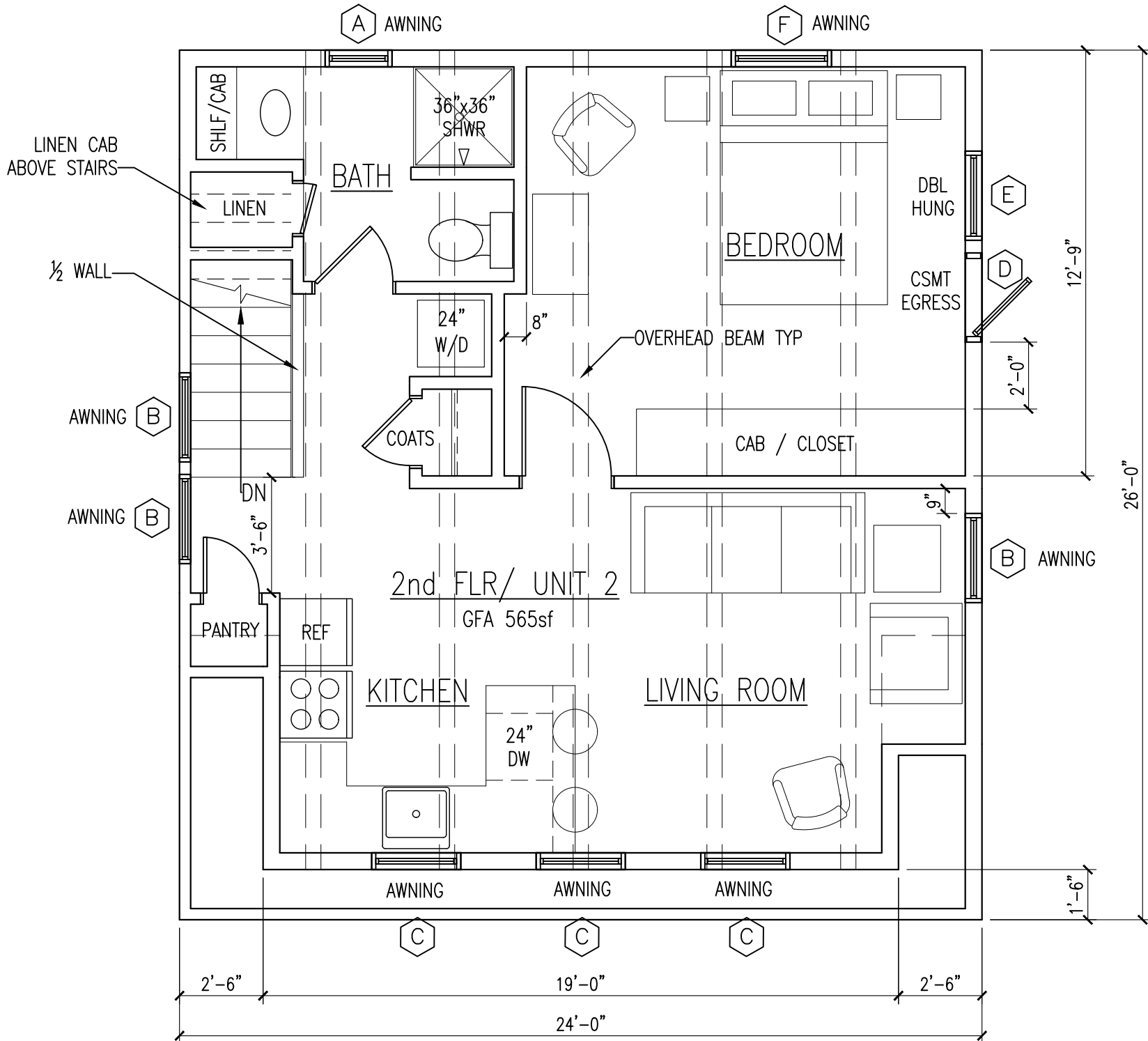
ARILDA DESIGN
denschi@comcast.net / www.arilda.com
9 Adams Lane, Unit 2
Kittery, Maine 03904
207-604-6848

Proposed
Unit 2 Entry

date: Oct 23, 2023

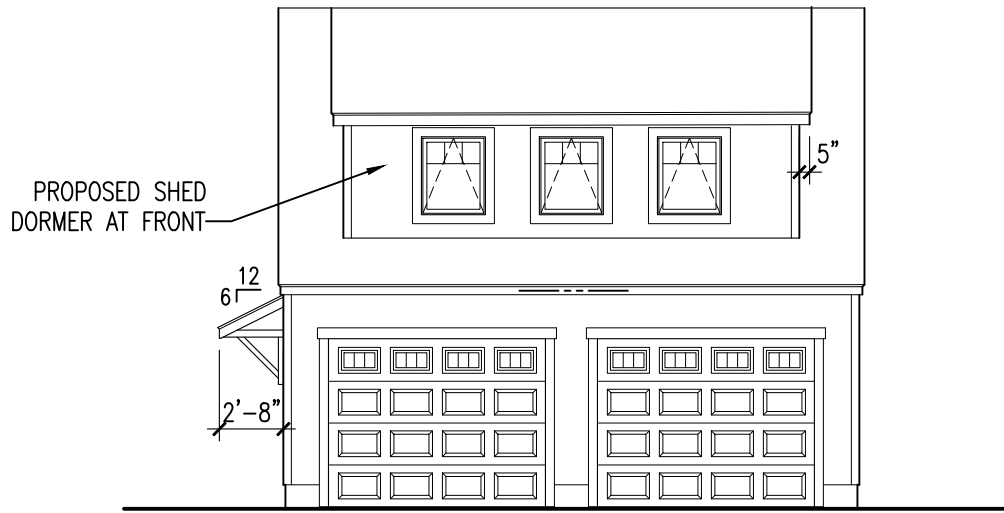
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A3

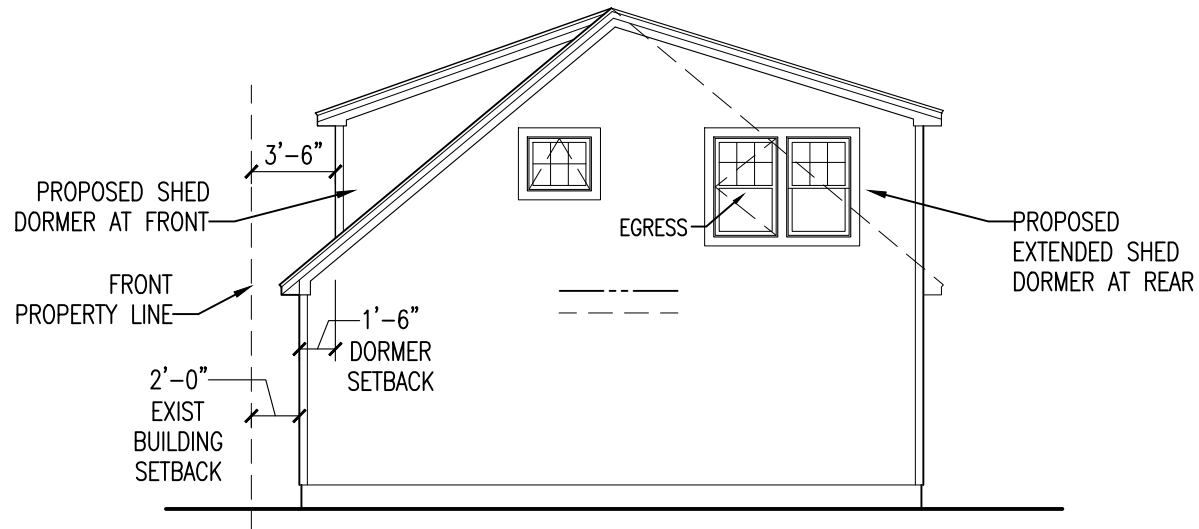


BOA Application for Nov 21, 2023

<p>RONDA & JEFF CARON 1 GARDEN STREET PORTSMOUTH, NH 03801</p>	<p>ARILDA DESIGN denisch@comcast.net / www.arilda.com 9 Adams Lane, Unit 2 Kittery, Maine 03904 207-604-6848</p>	<p>Proposed Unit 2 Floor Plan</p>	<p>date: Oct 23, 2023 scale: 1/4" = 1'-0" A4</p>
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FRONT ELEVATION



RIGHT SIDE

BOA Application for Nov 21, 2023

RONDA & JEFF CARON
 1 GARDEN STREET
 PORTSMOUTH, NH 03801

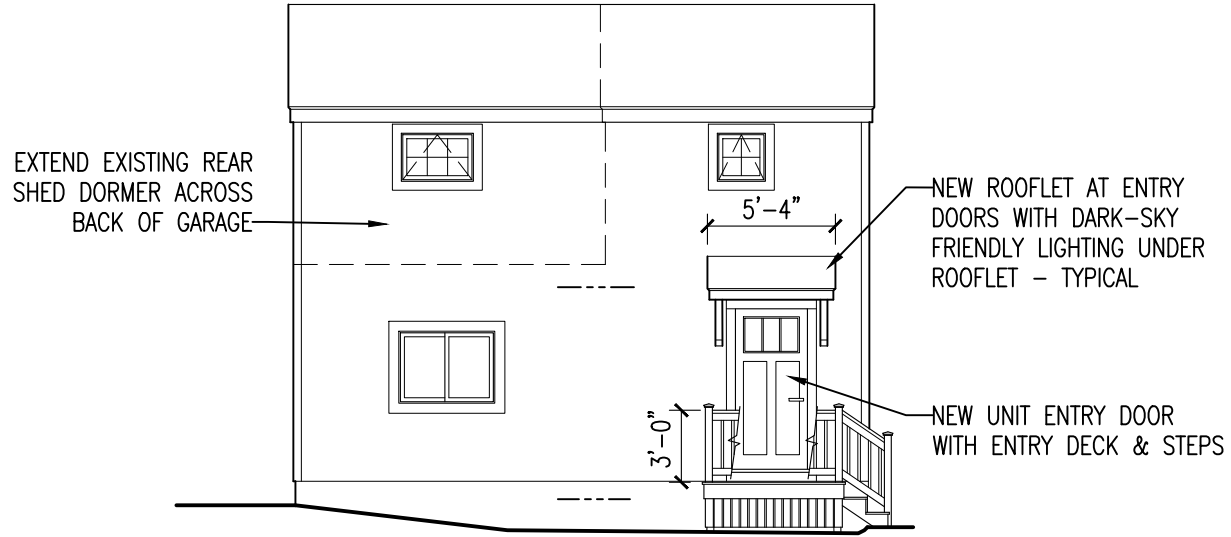
ARILDA DESIGN
 densch@comcast.net / www.arilda.com
 9 Adams Lane, Unit 2
 Kittery, Maine 03904
 207-604-6848

Proposed
Front & Right Side

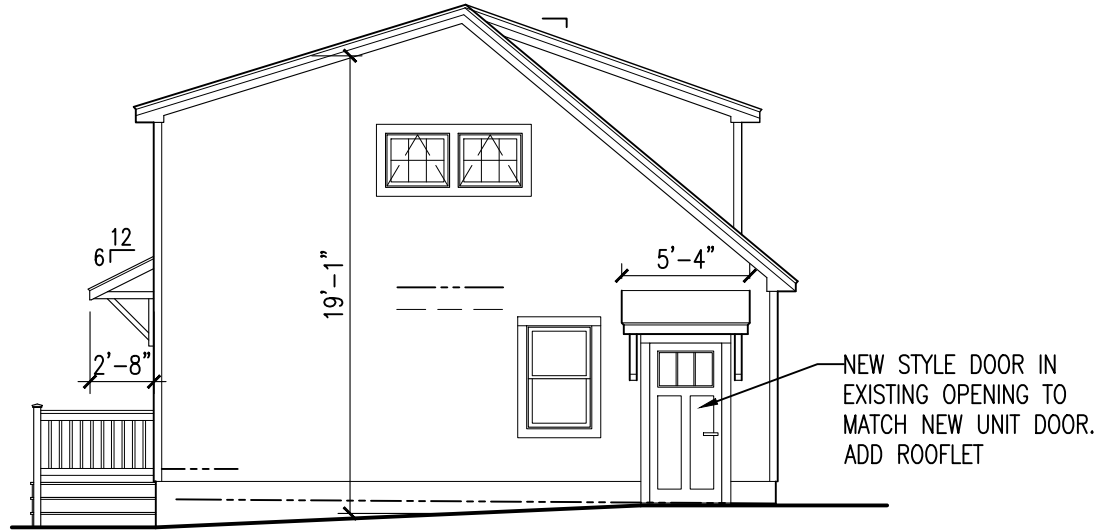
date: Oct 23, 2023

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A5



REAR



LEFT SIDE

BOA Application for Nov 21, 2023

RONDA & JEFF CARON
 1 GARDEN STREET
 PORTSMOUTH, NH 03801

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

Proposed
Rear & Left Side

date: Oct 23, 2023

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

A6

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

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

The property at 1 Garden Street, Tax Map 174, Lot 11 is in General Residence A (GRA). A Variance request was granted in 1999 to allow the existing Garage, an accessory structure, to be built with 2' front setback where a 15' (5.5' with Front Yard Exception) front setback was required. Now, allowing the Existing Garage to house a 601sf one-bedroom apt. upstairs, making it a Primary Dwelling structure will have very little impact. The 2nd Unit requires only modest additions, the Garage will be made more attractive in the process and the required parking is already in place. Jeff Caron was able to speak in person with his 2 closest residential neighbors, Mark Ayotte at 9 Garden St and the Hajjars at 123 Boyd Rd. They are supportive of this application.

10.233.22 The spirit of the ordinance will be observed.

A modest 2nd Unit, designed to integrate comfortably into the Garage and with its entrance hidden on the rear will have a very low impact on the neighborhood. In allowing this variance request the spirit of the ordinance will be observed.

10.233.23 Substantial justice will be done.

2 Family Properties are allowed in this zone and a fair number exist. Two of these have more than one free standing dwelling. At 1 Garden a Garage exists with enough space upstairs to create a 2nd Unit with the addition of 2 small dormers. Allowing an already approved non-conforming structure to have a 2nd Primary Dwelling Unit upstairs making for more than one free standing dwelling on this lot would allow substantial justice to be done.

10.233.24 The values of surrounding properties will not be diminished.

Because care is being taken to keep the 2nd unit modest in size, to have the entry door around back essentially hiding the unit, and to add attractive elements to the existing Garage further enhancing this attractive property, the values of surrounding properties will not be diminished.

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

10.233.31 a) Given the nature of the 1 Garden St. property it is most desirable visually and with privacy for neighbors in mind to have the 2nd unit located above the Garage. The property to the right of the Garage is a parking lot for a hotel and to the rear at a distance behind a fence is the Portsmouth Senior Activity Center. There will be no impact on these properties. A good usable space already exists at the 2nd floor level of the Garage requiring relatively little alteration to make a 2nd unit, so it would have little to no impact on other neighbors. 10.233.31 b) The proposed 2nd Dwelling Unit over the Garage constitutes a reasonable expansion of the property. Since the Variance for a 2' front setback was already granted in 1999, the current Variance requests to allow an expansion of the existing non-conforming Garage with a Primary Dwelling Unit and to allow more than one free standing dwelling on the property with a 2' setback where 5.5' is required, are reasonable requests and so literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

BOA Application for Nov 21, 2023

RONDA & JEFF CARON
1 GARDEN STREET
PORTSMOUTH, NH 03801

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

Proposed 2 Family
10.233.20 Criteria

date: Oct 23, 2023

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

A7

Owner's Letter of Authorization:

To whom it may concern,

Jeff and Ronda Caron of 325 Thaxter Rd and property owners of 1 Garden St, Portsmouth, NH hereby give permission for Arilda Densch of Arilda Design to be the primary point of contact for the application for the project at 1 Garden St.

Sincerely,
Jeff & Ronda Caron
325 Thaxter Rd
Portsmouth, NH 03801

BOA Application for Nov 21, 2023

<p>RONDA & JEFF CARON 1 GARDEN STREET PORTSMOUTH, NH 03801</p>	<p>ARILDA DESIGN densch@comcast.net / www.arilda.com 9 Adams Lane, Unit 2 Kittery, Maine 03904 207-604-6848</p>	<p>Proposed 2 Family Authorization</p>	<p>date: Oct 23, 2023</p>	<p>scale: 1/8" = 1'-0"</p>	<p>A8</p>
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III. NEW BUSINESS

- A. The request of **Anne Sullivan and Kathleen Sullivan (Owners)**, for property located at **166 Martha Terrace** whereas relief is needed to replace the existing shed with a new shed which requires the following: 1) Variance from Section 10.521 to allow 21% building coverage where 10% is the maximum allowed. Said property is located on Assessor Map 283 Lot 23 and lies within the Single Residence A (SRA) District. (LU-23-186)

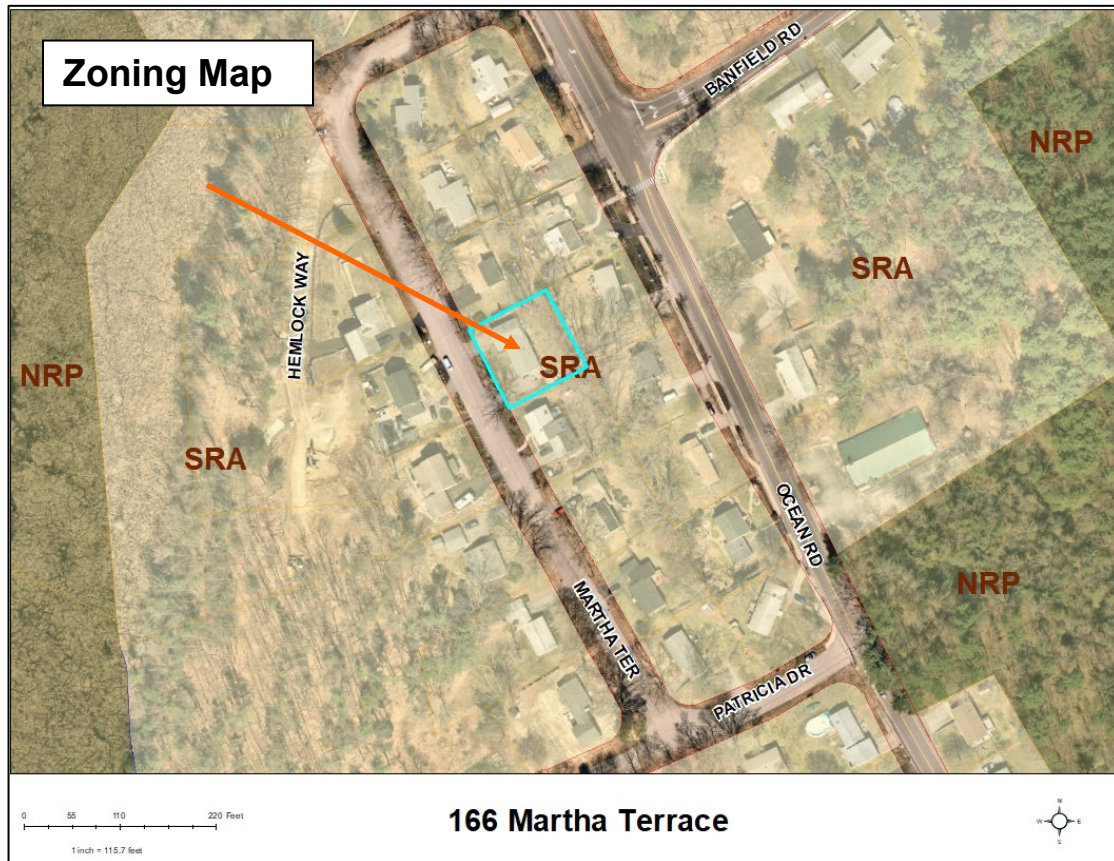
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family dwelling	Remove and replace shed	Primarily residential
<u>Lot area (sq. ft.):</u>	10,018	10,018	43,560 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	10,018	10,018	43,560 min.
<u>Street Frontage (ft.):</u>	100	100	150 min.
<u>Lot depth (ft.)</u>	100	100	200 min.
<u>Front Yard (ft.):</u>	23	23	30 min.
<u>Left Yard (ft.):</u>	>5 (Shed)	>5 (Shed)	5 (shed per 10.573.10) min.
<u>Right Yard (ft.):</u>	1 (Shed)	5 (Shed)	5 (shed per 10.573.10) min.
<u>Rear Yard (ft.):</u>	43 (Shed)	34 (Shed)	5 (shed per 10.573.10) min.
<u>Height (ft.):</u>	<10	7	10 (shed per 10.573.10) max.
<u>Building Coverage (%):</u>	20.5	21 (20.6, rounded to 21)	10 max.
<u>Open Space Coverage (%):</u>	51	51	50 min.
<u>Parking</u>	3	3	3
<u>Estimated Age of Structure:</u>	1965	Variance request(s) shown in red.	

Other Permits/Approvals Required

- Building Permit

Neighborhood Context



Previous Board of Adjustment Actions

May 18, 1999 – the Board **granted** the following Variances: a) a 36' front yard where 40' is the minimum required; b) a 16' side yard where 20' is the minimum required; and c) a building coverage of 17.2% where the maximum allowed is 10% to construct a 24' x 34' one story addition to an existing single family dwelling which will remain a single family dwelling for two bedrooms, a bath and a family room with the following condition:

- 1) Only one (1) kitchen is allowed and the structure is to remain a single family home.

November 16, 1999 – The Board **granted** the following Variances: 1) A Variance from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) including a) a 12' left side yard where 20' is the minimum required, and b) a building coverage of 17.5% where 10% is the maximum allowed to allow a 4' x 4' landing plus stairs for an exterior entrance to the new addition to the single-family dwelling; and 2.) A Variance from Article II, Section 10-206 to allow a wet bar sink in a previously approved addition to a single-family dwelling with the following conditions:

- 1) One (1) kitchen be allowed in the structure; and,
- 2) The structure remains a single-family dwelling

Planning Department Comments

The applicant is requesting to remove the existing shed and replace it with a new shed. The new shed conforms to side and rear accessory setback requirements where the existing shed encroaches on the right-side yard, and requires relief to exceed the allowable building coverage.

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

 - (c) *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.

NARRATIVE:

I. THE PROPERTY:

The applicant, Kathleen A Sullivan, owns and resides at the property located at 166 Martha Terrace, which consists of a single-family dwelling. This has been the primary residence of the applicant since 1999 but in the family since 1965. The property is notable in that it is located at the top of Martha Terrace with the proposed shed going in the same location that the original shed was located for over 50 years which is located to the left of the house near the back door.

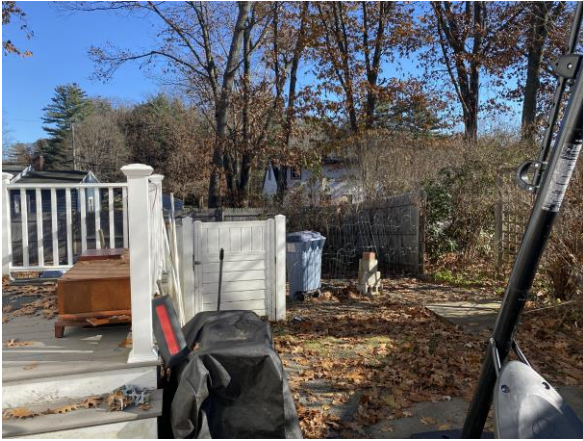
The applicants propose to replace a wood structure of 96 square feet of total gross floor area. The right side is 5 feet from the property line and approximately 50 feet from the street.

Proposal

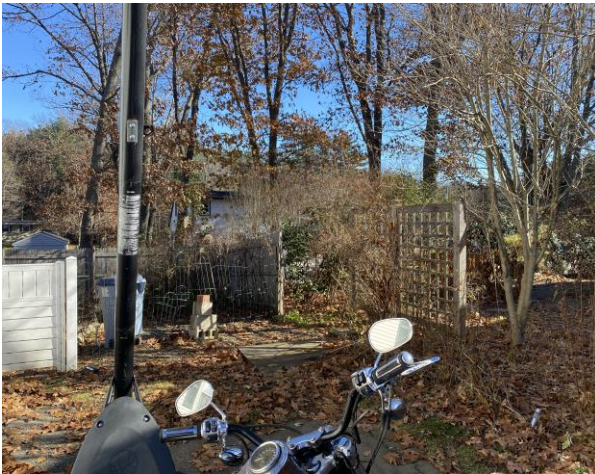
Rendering:



The first photo shows the location where the shed will be, which is where the original shed stood for over 50 years.



The second photo shows the distance of the trellis, which is on the property of Ray and Linda Bilodeau. Our fence is located to the left of their trellis well within the property line and the shed in front of that.

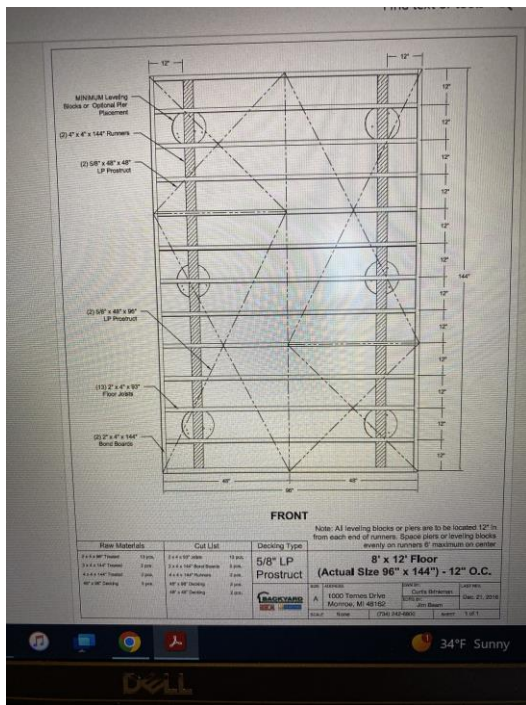


The third and last picture shows Bilodeau's house and the distance between their home and where the shed will be located.



Here is the layout of the shed

Here is a copy of the shed itself with sizes and dimensions



II. CRITERIA:

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

Granting the requested variances will not be contrary to the spirit and intent of the ordinance nor will it be contrary to the public interest. The test for whether or not granting the variance would be contrary to the public interest or contrary to the spirit and intent of the ordinance is whether or not the variance being granted would substantially alter the characteristics of the neighborhood or threaten the health, safety and welfare of the public. The essentially residential characteristics of the neighborhood would not be altered by this project. The modest increase in building footprint resulting from this project will in no way compromise the neighborhood. Were the variance to be granted, there would be no change in the essential characteristics of the neighborhood, nor would public health, safety or welfare be threatened in any way.

Substantial justice would be done by granting the variance. Whether or not substantial justice will be done by granting the variance required the Board to conduct a balancing test. If the hardship upon the owner/applicant outweighs any benefit to the general public in denying the variance, then substantial justice would be done by granting the variance. It is substantially just to allow a property owner the reasonable use of his or her property. In this case, there is no benefit to the public in denying the variances that are not outweighed by the hardship upon the owner. The increase in building coverage, approximately 96 square feet, is entirely reasonable given the size of the lot. The applicant has reviewed the proposal with the neighbor to the right of the property line and has received total support for this to be done. Accordingly, the loss to the applicant clearly outweighs any gain to the public if the applicant were required to conform the ordinance.

The values of surrounding properties will not be diminished by granting the variances. The proposal will improve the functionality of

the applicants' property and will increase the value of the applicant's property and those around it. The values of surrounding properties will not be negatively affected in any way.

Literal enforcement of the ordinance would result in an unnecessary hardship. The proposed structure of the shed will offer an aesthetic value and function as it will have equipment for yard and lawn in a protected structure instead of being in the open elements sitting in a driveway, causing unnecessary costs for repair to the homeowner and would only improve the residence look.

The use is a reasonable use. The proposal is for residential use in a residential zone.

There is no fair and substantial relationship between the purpose of the ordinance as it is applied to this particular property. The purpose of the building coverage requirement is to prevent overcrowding of lots and unsightly and inconsistent massing of structures. The amount of additional building coverage proposed, is 96 square feet and not out of character for this neighborhood. Accordingly, the relief requested here would not in any way frustrate the purpose of the ordinance and there is no fair and substantial relationship between the purpose of the setback requirements and their application to this property.

III. CONCLUSION

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

Thank you for your consideration

Kathleen A Sullivan

III. NEW BUSINESS

- B.** The request of **Go-Lo Inc. and James A Labrie Revocable Trust of 1991 (Owners)**, for property located at **2059 Lafayette Road** whereas relief is needed to demolish the existing structure and construct an eight (8) living unit building which requires the following: 1) Variance from Section 10.1113.20 to allow parking located closer to the street that the principal building in the secondary front yard; and 2) Variance from Section 10.521 to allow 3,430 square feet of lot area per dwelling unit where 7,500 square feet are required. Said property is located on Assessor Map 268 Lot 13 and lies within the Mixed Residential Business (MRB) District. (LU-23-191)

Existing & Proposed Conditions

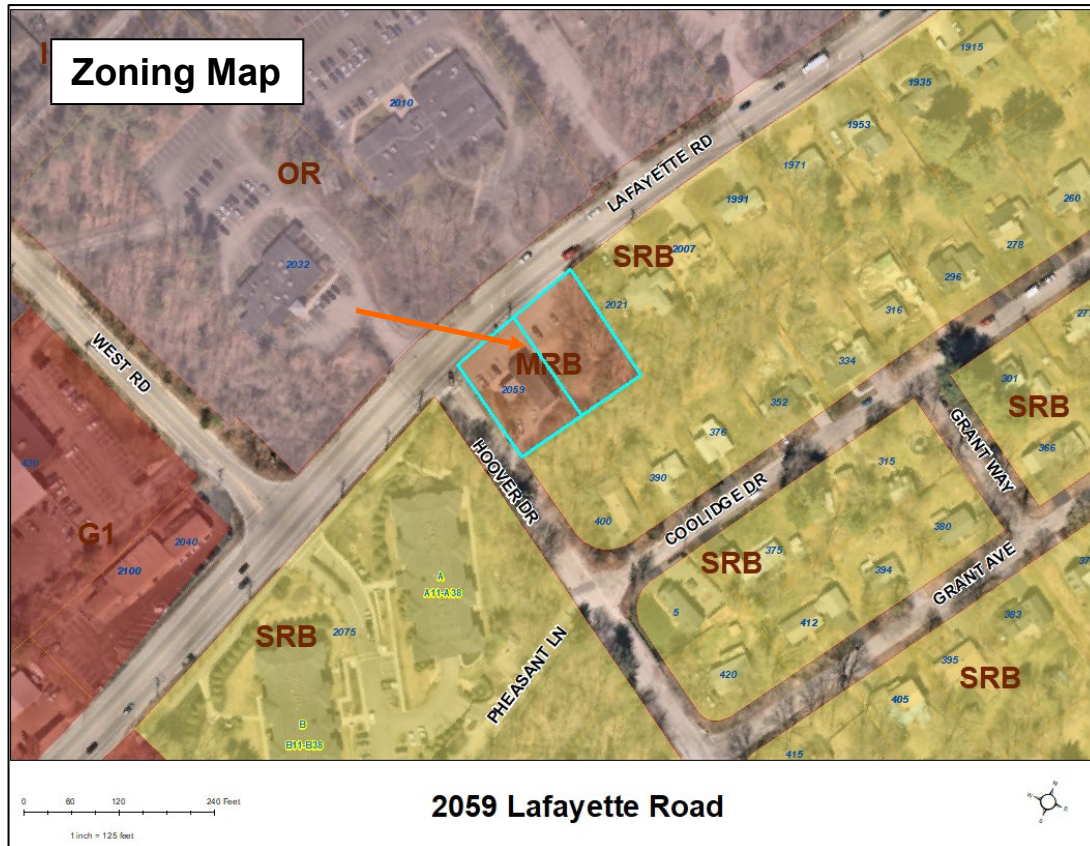
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Lot 12 - Parking Lot 13 – Mixed-Use	Merge lots and construct a 8-unit residential building	Mixed residential and commercial uses
<u>Lot area (sq. ft.):</u>	Lot 12 - 14,192 Lot 13 - 13,252	27,444	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	Lot 12 - n/a Lot 13 - 4,417	3,430	7,500 min.
<u>Street Frontage (ft.)</u>	Lot 12 - 90 Lot 13 - 229	319	100 min.
<u>Lot depth (ft.):</u>	139	139	80 min.
<u>Primary Front Yard (Lafayette Rd) (ft.):</u>	Lot 12 - n/a Lot 13 - 42	80.8	80 (Section 10.533) min.
<u>Secondary Front Yard (Hoover Dr) (ft.):</u>	25	>5	5 min.
<u>Left Yard (ft.):</u>	5	24	10 min.
<u>Rear Yard (ft.):</u>	30	29	15 min.
<u>Height (ft.):</u>	<40	<40	40 max.
<u>Building Coverage (%):</u>	Lot 12 - 0 Lot 13 - 18.6	26.2	40 max.
<u>Open Space Coverage (%):</u>	55	66.8	25 min.
<u>Parking</u>	Lot 12 - 9 Lot 13 - 14	*21	12
<u>Estimated Age of Structure:</u>	1980	Variance request(s) shown in red.	

* 5 parking spaces located between the primary structure and Hoover Drive.

Other Permits/Approvals Required

- Site Review (TAC and Planning Board)
- Building Permit

Neighborhood Context



Previous Board of Adjustment Actions

April 8, 1976 – The following relief from the Zoning Ordinance was **granted**: 1) A variance to erect a free-standing sign 4' from the front property line of store at 2059 Lafayette Road where such signs are prohibited in Neighborhood Business Districts, note that total signage area is also currently in violation; with the following stipulation.

1) The post shall be not less than 7' from the front property line.

December 7, 1976 – The following relief from the Zoning Ordinance was **denied**: 1) variance for 26' x 26' building addition to existing mixed-use structure to house real estate offices space, and 2) setback variance where said addition does not conform to 105' front setback requirement on Lafayette Rd.

January 4, 1977 – The **request for a rehearing was granted** by the Portsmouth Board of Adjustment for the application that was **denied on December 7, 1975** where request for Use Variance and Set Back Variance was requested.

January 18, 1977 – The following relief from Zoning Ordinance was **granted**: 1) variance for 26' x 26' building addition to existing mixed-use structure to house real estate offices space, and 2) setback variance where said addition does not conform to 105' front setback requirement on Lafayette Rd; with the following stipulations:

1) Provided a privacy fence is erect by June 1, 1977, along the Steedman and Rollo property lines in the rear; and

2) The five parking spaces in the rear be used for tenant parking only.

March 16, 1993 – The following relief from Zoning Ordinance was **granted**: A Variance from Article II Section 10-206(3) to allow a professional office to occupy a 1250 S.F. business office in a district where professional offices are not allowed; with the amendment the use be limited to one professional person.

April 19, 1994 – The following relief from the Zoning Ordinance was **granted**: A Variance from Article II Section 10-206 (15) to allow an Animal Hospital and Veterinary practice with no crematorium, no outdoor kennels or exercising yards and no boarding of animals except for short stay hospitalization in 3,360± s.f. of an existing building where such used are not allowed; with the following stipulations:

1) The hours of operation will be from 8:00 a.m. to 8:00 p.m Monday through Friday, 9:00 a.m. to 1:00 p.m. on Saturdays, and closed on Sundays and holidays;

2) There are to be no exercising yards;

3) No boarding or animals except for short stay hospitalization;

4) No crematorium;

5) No outdoor kennels.

August 15, 2023 – The Board **denied** the request to demolish the existing structure and construct a two-story residential building containing 16 living units which requires the following:

1) Variance from Section 10.1113.20 to allow parking to be located in front of the principal building;

2) Variance from Section 10.533 to allow a structure to be located 58 feet from the centerline of Lafayette Roads where 80 feet is required.

- 3) Variance from Section 10.521 to allow 1,715 square feet of lot area per dwelling unit where 7,500 square feet is required; and
- 4) Variance from Section 10.440 Use #1.53 to allow 16 units where eight (8) are permitted.

Planning Department Comments

Fisher vs. Dover

The applicant was before the Board on August 15 of 2023 seeking relief from Section 10.1113.20 to allow parking to be located in front of the principal building; Section 10.533 to allow a structure to be located 58 feet from the centerline of Lafayette Roads where 80 feet is required; Section 10.521 to allow 1,715 square feet of lot area per dwelling unit where 7,500 square feet is required; and Section 10.440 Use #1.53 to allow 16 units where eight (8) are permitted. The Board denied the request for relief at that time citing that it did not observe the spirit of the ordinance and did not present a hardship. The new design is 1,600 square feet less building coverage and proposes half the amount of living units. Staff feels this is a significant enough change that would not evoke Fisher v. Dover, but the Board may want to consider whether it is applicable before the 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 project as proposed in the presented materials reflected the lots in their post-merger layout. The existing and proposed conditions table, as found in this staff memo, identifies lot 268-12 as “lot 12” and lot 268-13 as “lot-13.” The proposal includes the elimination of property access from Lafayette Road and the creation of access on Hoover Drive 50 feet or more from the intersection.

If technical questions arise during discussions, the Board could refer the application to TAC for a recommendation.

This project will require site plan review and approval to be constructed. If the variances are granted, staff recommends the following stipulation for consideration:

- 1. The design of the structure may change as a result of Site Plan review and approval by TAC and Planning Board.**

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.

10.235 Certain Representations Deemed Conditions

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

BY: VIEWPOINT & HAND DELIVERY

November 22, 2023

City of Portsmouth
Attn: Stefanie Casella, Planner
Zoning Board of Adjustment
1 Junkins Avenue
Portsmouth, NH 03801

**RE: Variance Application of Go Lo, Inc. and James A. Labrie Revocable Trust of 1991
2059 Lafayette Road, Tax Map 268, Lots 12-13**

Dear Stefanie,

Please find a copy of the following materials relative to the above referenced zoning application filed through Viewpoint for property located at 2059 Lafayette Road, Portsmouth:

- 1) Landowner Letter of Authorization;
- 2) Narrative to Variance Application;
- 3) Existing and Proposed Conditions Plans;
- 4) Architectural Plan Set (Floor Plans, Elevations and Photographs);

A copy of the above application materials 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.

Go-Lo, Inc. and James A. Labrie Revocable Trust of 1991, record owners of the properties located at 2059 Lafayette Road, Tax Map 268, Lot 12 and 13, Portsmouth, NH (the "Property"), hereby authorize **Durbin Law Offices, PLLC, Altus Engineering, Inc. and McHenry Architecture, 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.

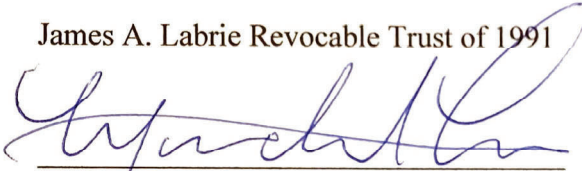
Go-Lo, Inc.



Michael G. Labrie,
Duly Authorized Officer

July 19, 2023

James A. Labrie Revocable Trust of 1991



Michael G. Labrie, Trustee
Duly Authorized

July 19, 2023

**CITY OF PORTSMOUTH
ZONING APPLICATION NARRATIVE**

Go-Lo, Inc
James A. Labrie Revocable Trust of 1991
(Owner/Applicant)
Tax Map 268, Lots 12, 13
2059 Lafayette Road
Portsmouth, NH 03801

Existing Conditions of the Property

2059 Lafayette Road consists of two (2) separate parcels of land identified on Tax Map 268 as Lots 12 and 13 (the “Property”). The two parcels of land are currently developed and utilized together as one property. The Property has a total land area of 27,444 square feet. The Property is situated at the intersection of Lafayette Road and Hoover Drive and is zoned MRB. The Labrie family first acquired an interest in the Property in 1967.

The Property contains a 2-story mixed use building with a finished lower level. The existing building was constructed in the early 1970s and has undergone several expansions and renovations over the years. There is a large parking area consisting of 17 spaces in front of the building along Lafayette Road and additional parking area consisting of 6 spaces in the rear.¹ The front of the Property along Lafayette Road has over 150’ of uncontrolled access. A portion of the paved parking area actually encroaches into the ROW. There are two additional access points on Hoover Drive. The first access point is less than 20’ from the intersection with Lafayette Road. The second access point is just over 120’ from the Lafayette Road intersection.

The Property is an island in terms of how it is zoned. It is the only MRB-zoned property in this area of Portsmouth. **Exhibit A**. The neighborhood immediately surrounding the Property is zoned SRB and consists primarily of single-family homes and some apartments. The large Elwyn Park neighborhood is situated immediately to the rear of the Property. The Westerly apartment complex is located on the property directly across Hoover Drive to the south. It is zoned SRB but consists of two separate multi-family buildings each containing 24 units. The zoning relief necessary to construct this building was granted in 2017, including a variance under Section 10.521 to allow 3,769 square feet of lot area per dwelling unit.

Historical Use

From approximately 1974 to 1994, the lower two levels of the left side of the building were occupied by Chug-a-Lug, a busy convenience store. Chug-a-Lug was replaced by the Lafayette Animal Hospital until it moved in 2021. The top floor contains 3 two-bedroom apartments.

¹ These spaces are not shown on the Existing Conditions Survey.

After the right-side addition to the building was constructed in the early 1980s, it was occupied by a large real estate agency for many years. After the real estate agency's departure, the space was leased to an insurance company. It now serves as office space for Dockham Builders.

Since the Lafayette Animal Hospital vacated the building in 2021, the Labries have had difficulty renting the approximately 3,400 square foot space the animal hospital occupied. A change of use would require a full-scale renovation to bring the building into compliance with current code and make the space functional for a new tenant. The space has been listed for rent since the Animal Hospital vacated and has generated very little interest from prospective tenants.

Existing Non-Conformities

Parking in Front Yards

In its existing condition, the Property is non-conforming in multiple respects, as more specifically outlined below.

Section 10.1113.20: Parking spaces for the building are located within both the primary and secondary front yards in front of the building.

Section 10.533: The building and existing parking areas are located within 80' of the centerline of Lafayette Road and/or 30' from the sideline of the ROW. The building has a setback of 42'. The parking area along Lafayette Road has a 0' setback from the ROW.

Proposed Improvements and Use

The Labries are proposing a 7,200 square foot, two-level, multi-family building with 8 residential units on the Property. The new building would have 21 parking spaces, 16 of which would be located on the ground floor of the building. An additional 5 uncovered parking spaces would be located near the entrance to the Property off of Hoover Drive. Interior and exterior bike and moped parking would also be provided.

As part of the redevelopment plan, the curb cut and access from Lafayette Road will be eliminated. The sea of pavement and associated parking in front of the building will be removed and replaced with landscaping. Access to the Property will be achieved through a relocated curb cut along Hoover Drive, which will be situated over 50' from the intersection with Lafayette Road. The redeveloped site has been designed to accommodate the City's proposed 6' wide multi-use path, which will create a more walkable, pedestrian-bicycle friendly environment along Lafayette Road. The plans also account for the DOT's improvement plan for the Lafayette Road corridor.

Open space will increase by 11.8% (3,240 sf.). Building coverage will be limited to just 26.2% where 40% is permitted by the Ordinance. A new fence and enhanced vegetated buffer are proposed along the easterly and northerly borders of the Property. Landscaping will be added throughout the Property. Impervious surface will be reduced by 3.9% and a new stormwater management system will be added to the Property. The Property was developed prior to any

stormwater management permitting requirements, thus untreated runoff leaves the site discharging onto abutting properties.

Prior Application (August 2023)

On August 15, 2023, the Applicant sought four (4) variances relative to its plans to construct an 8,800 square foot building on the Property with 16 residential units. The Board voted to *deny* the request on the grounds that the application “did not observe the spirit of the ordinance and did not present hardship.” **Exhibit B.**

Under the standards set forth by the New Hampshire Supreme Court in the case of Fisher v. City of Dover, unless a “material change of circumstances affecting the merits of the application has [] occurred” or the application is “materially differs in nature and degree from its predecessor,” the Board may not reach the merits of a subsequent application. 120 N.H. 187, 190 (1980).

The current variance request satisfies the Fisher v. City of Dover standard. The prior application involved a building that was 1,600 square feet larger and would have contained 16 dwelling units as opposed to the 8 currently proposed. The change in density results in a proposed lot area per dwelling unit of 3,430 sq. ft. versus 1,715 sf. as previously proposed. In addition, the building that is currently proposed will be situated farther back on the Property thus eliminating the need for setback relief under Section 10.533 of the Ordinance.

Zoning Relief Summary

To redevelop the Property as proposed, the following variances are required:

1. Section 10.1113.20 to allow parking to be located in the secondary front yard and in front of the Hoover Drive side of the proposed building.
2. Section 10.521 to allow lot area per dwelling unit of 3,430 sf. where 7,500 sf. is required.

Additional Approvals

In addition to needing zoning relief to redevelop the Property, the Labries will also need lot merger and site plan approval from the Planning Board. It can be reasonably anticipated through the Technical Review and Planning Board processes that some elements of the plans may change.

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." Id.

The existing building on the Property is "tired". It suffers from physical and functional obsolescence. It no longer complies with current building codes. The space previously utilized by the Lafayette Animal Hospital was built-out for a very specific purpose (veterinarian clinic). This has made it difficult to re-rent the commercial space or make adaptive reuse of it. Moreover, rehabilitating the building would do little to improve the conditions of the Property or bring into greater compliance with the Ordinance.

With the redevelopment of the Property, parking in the primary front yard and in front of the Lafayette side of the building will be eliminated as will the 150'+ of uncontrolled access to the Property along Lafayette Road where vehicles had to back into the ROW to leave the Property. Landscaping and a future multi-use pathway will replace the area that presently serves as access and parking along Lafayette Road. This will confer a benefit upon the public by making the area safer for vehicles, pedestrians and cyclists entering and exiting the Property or simply passing by it by eliminating the accident potential associated with the existing conditions of the Property.

The two existing access points on Hoover Drive will be eliminated and replaced with a single curb cut that will be more than 50' from the intersection with Lafayette Road. This will alleviate a significant traffic-safety issue with respect to the existing access point that is approximately 20' from the intersection with Lafayette Road. The existing access on Hoover Drive impedes site lines for traffic entering Lafayette Road from Hoover Drive. The relocated access will allow for adequate site lines and improved traffic flow on Hoover Drive.

Landscaping enhancements will be made throughout the Property to give it a much greener appearance and create better vegetated buffers for surrounding properties. Open space will be increased by 11.8% and building coverage will remain well under the 40% allowed (26.2%). The applicable building setbacks will be observed. The Property will be brought into greater compliance with the Ordinance with respect to the Lafayette Road setback and the elimination of parking in the primary front yard setback. Substantial improvements will also be made to better manage stormwater runoff, including a nearly 4% reduction in impervious surface coverage.

The proposed use will be more conforming and consistent to the character of the surrounding neighborhood than many, if not all, permitted alternative uses of the Property under MRB zoning. It will result in a *significant* decrease in the weekday vehicular traffic that the Property has historically generated with the veterinarian clinic use and the prior convenience store use, as set forth in the Traffic Impact Statement prepared by Altus Engineering on November 22, 2023. **Exhibit C.**

A larger building used for a higher-intensity commercial purpose and/or combined with a 3-unit residential use would also be out of character with the surrounding neighborhood which is

characterized by residential uses. The proposed use is less intense but scaled similarly to the Westerly in terms of its density (3,430 sf. of lot area per dwelling unit versus 3,769 sf.). MRB zoning allows for a much higher intensity use than what is proposed. What is proposed will create a natural progression from the Westerly apartments and Gateway District uses to the north to the surrounding single-family uses to the west and south.

For the foregoing reasons, granting the variances will not negatively alter the essential character of the neighborhood. To the contrary, it will have a positive effect on the surrounding neighborhood and add 8 housing units to a scarce housing market. In the end, the site improvements, particularly the additional open space, landscaping enhancements, and changes in how the Property is accessed, will greatly benefit public health, safety and welfare.

Substantial Justice will be done in granting the variances.

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 \(2007\)](#).

There would be no public benefit served by denying the variances. The only rationale for denying the variances would be to enforce strict compliance with the Ordinance, which defeats the entire purpose for why the variance process exists.

MRB zoning allows for a large-scale mixed-use or commercial building of a higher intensity use to be constructed on the Property by right (i.e. convenience store (6am-11pm, gym, bank, laundromat, day care, school, etc.)). Anyone that develops the Property will inevitably seek the maximum yield the land can produce by right under the Ordinance and will not have to consider the context or character of the surrounding area. However, granting the variances would result in a more benign use that honors and respects the residential character of the area and directly benefits the public and the city, consistent with other projects the Labrie family has developed locally. In the present case, the loss to the landowner of denying the variances outweighs any potential gain to the public.

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

During its deliberations in August 2023, the Board did *not* find that a larger, 16-unit residential building would diminish surrounding property values. Therefore, it would be illogical now for the Board to conclude that a smaller, 8-unit building that more nearly conforms to the Ordinance would diminish surrounding property values.

The Westerly property is located directly across the street and has a similar density, albeit on a much larger scale (48 units versus 8). The Westerly development has not negatively altered surrounding property values and was deemed to be consistent with the spirit and intent of the

Ordinance when the Board granted the variances necessary for it to be constructed in 2017. The area has not changed significantly since the Westerly was constructed.

Using the Westerly as a comparison, it is fair to conclude that the redevelopment of 2059 Lafayette Road will not diminish surrounding property values. To the contrary, it should add to surrounding property values when you consider the appealing nature of the design and numerous site improvements associated with it, including the removal of pavement and impervious surface, enhanced landscaping and vegetated buffers, increased open space, and reconfigured access.

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

The Property has a myriad of special conditions that distinguish it from surrounding properties. The most prominent special condition of the Property is its MRB zoning designation. There are no other properties zoned MRB in this area of Portsmouth. See Exhibit A. From a zoning perspective, it is a unicorn. The Property's MRB zoning designation is clearly a product of the property's historical use and has nothing to do with the City's objectives for the Property or the surrounding area. The entire surrounding neighborhood is zoned SRB. The closest properties that are zoned MRB are located downtown and along a small section of Sagamore Road. The MRB zoning designation for the Property is inconsistent with the residential character of the surrounding neighborhood. 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). In the present case, the zoning associated with 2059 Lafayette Road does not reflect the character of the neighborhood.

The Property is much larger than most of the properties that surround it. It is capable of supporting a relatively large commercial use in addition to the 3 residential units which are permitted by right on the Property. MRB zoning allows for up to 8 dwelling units on a lot subject to the 7,500 square foot lot area per dwelling unit restriction. The dwelling unit density restriction in the MRB zone assumes that any residential use will be combined with a commercial use, hence the building coverage allowance (40%) is much higher in the MRB zone than it is in the residential zoning districts. In this instance, the lot area per dwelling unit requirement cannot be met; however, the Applicant is not proposing any commercial use of the Property. In the end, the Applicant is essentially seeking a trade-off of commercial density for residential density given how uniquely situated the Property is. This trade off will ultimately result in less building density and intensity of use than what is contemplated by MRB zoning and a use of the Property that is more conforming and consistent to the surrounding residential neighborhood.

The Property will be brought into greater conformance with the Ordinance by placing the new building further from the Lafayette Road ROW and eliminating the 17 paved parking spaces in the primary front yard. The paved parking spaces being provided in the secondary front yard are in excess of what the Ordinances requires but the Applicant is voluntarily providing them as a benefit to the surrounding neighborhood to ensure that visitors of the Property do not park on the

street. Granting the variances will improve public safety and create a more pedestrian/bicycle friendly environment along Lafayette Road, consistent with the City's objectives for this area.

The only relief needed to redevelop the Property as proposed is the 'use'/density variance related to the number of residential dwelling units. Granting this relief will bring the Property into greater overall conformance with the City's building, planning, and zoning regulations and objectives and result in significant improvements to the conditions of the Property. It will also result in a tastefully designed code-compliant building and attractive property, an increase in open space, less impervious surface, safer ingress and egress, an updated stormwater management system, and better vegetated buffers to neighboring properties. As such, there is no fair and substantial relationship between the Ordinance provisions and their strict application to the Property.

The proposed use is reasonable given the unique location and size of the Property, which sets it apart from other neighboring lots. Granting the 'use' variance will bring the Property into greater conformity with the surrounding neighborhood and its residential character. The redevelopment will result in less building density and intensity of use than is otherwise allowed by MRB zoning. The proposed use is consistent with the spirit and intent of the Ordinance, which contemplates up to 8 residential units on a lot in the MRB zoning district.

Conclusion

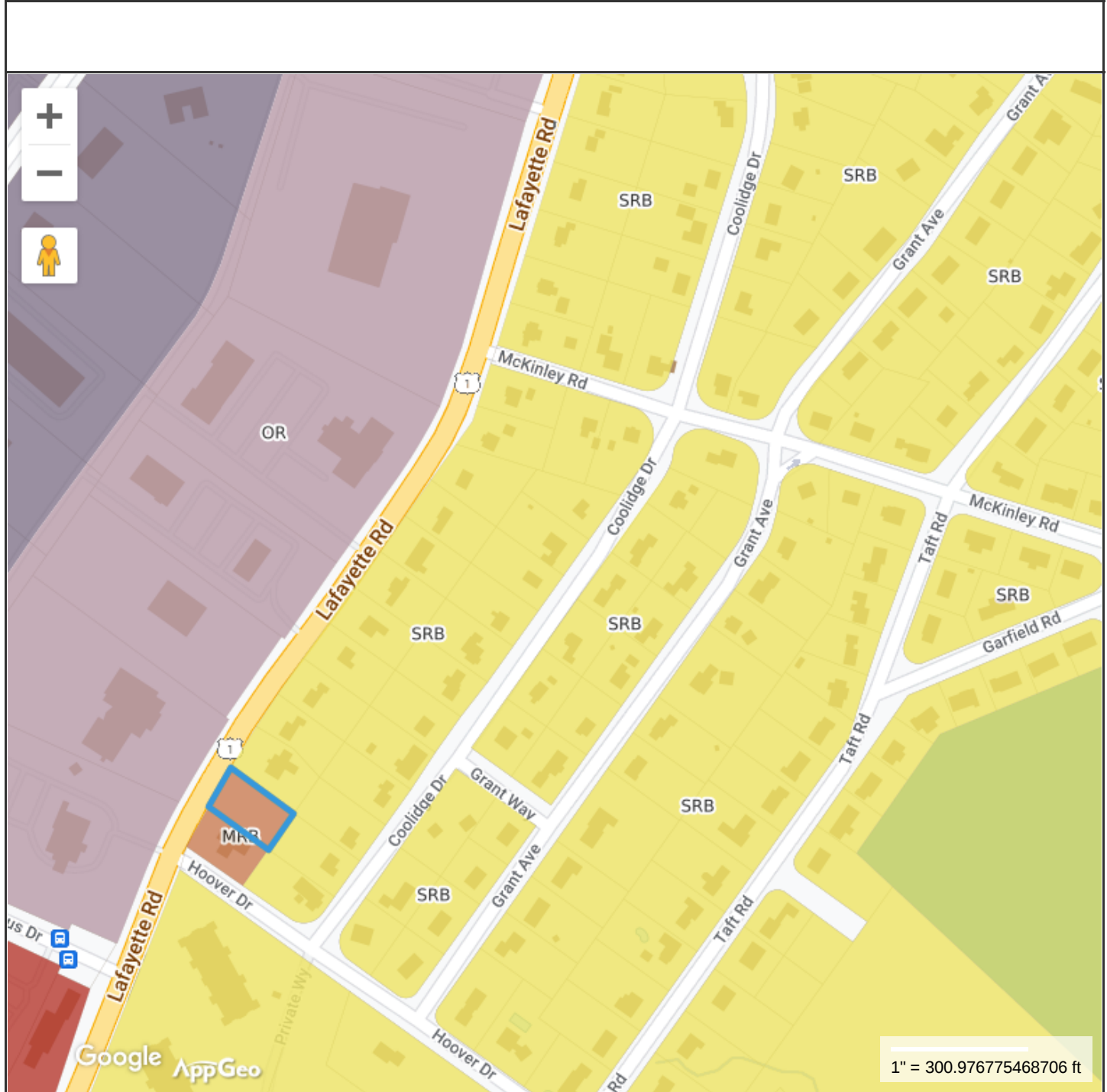
The Labries thank you for your time and consideration of their application and respectfully request your approval of the variances being requested.

November 22, 2023

Respectfully Submitted,
Go-Lo, Inc.
James A. Labrie Revocable Trust of 1991



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



Property Information

Property ID 0268-0012-0000
Location LAFAYETTE RD
Owner LABRIE JAMES A REVO TRUST OF 1991



**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 06/21/2023
Data updated 3/9/2022

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

Map Theme Legends

Zoning

Residential Districts

	R	Rural
	SRA	Single Residence A
	SRB	Single Residence B
	GRA	General Residence A
	GRB	General Residence B
	GRC	General Residence C
	GA/MH	Garden Apartment/Mobile Home Park




Mixed Residential Districts

	MRO	Mixed Residential Office
	MRB	Mixed Residential Business
	G1	Gateway Corridor
	G2	Gateway Center





Business Districts

	GB	General Business
	B	Business
	WB	Waterfront Business



Industrial Districts

	OR	Office Research
	I	Industrial
	WI	Waterfront Industrial






Airport Districts

	AIR	Airport
	AI	Airport Industrial
	PI	Pease Industrial
	ABC	Airport Business Commercial


Conservation Districts

	M	Municipal
	NRP	Natural Resource Protection


Character Districts

	CD5	Character District 5
	CD4	Character District 4
	CD4W	Character District 4-W
	CD4-L1	Character District 4-L1
	CD4-L2	Character District 4-L2




Civic District

	Civic District
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Municipal District

	Municipal District
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Overlay Districts

	OLOD	Osprey Landing Overlay District
	Downtown Overlay District	
	Historic District	

City of Portsmouth



Exhibit B
CITY OF PORTSMOUTH

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

ZONING BOARD OF ADJUSTMENT

August 21, 2023

Go-Lo Inc. c/o Labrie
PO BOX 300
Rye, New Hampshire 03870-0300

RE: Board of Adjustment request for property located at 2059 Lafayette Road (LU-23-116)

Dear Property Owner:

The Zoning Board of Adjustment, at its regularly scheduled meeting of **Tuesday, August 15, 2023**, considered your application for demolishing the existing structure and constructing a two-story residential building containing 16 living units which requires the following: 1) Variance from Section 10.1113.20 to allow parking to be located in front of the principal building; 2) Variance from Section 10.533 to allow a structure to be located 58 feet from the centerline of Lafayette Roads where 80 feet is required; 3) Variance from Section 10.521 to allow 1,715 square feet of lot area per dwelling unit where 7,500 square feet is required; and 4) Variance from Section 10.440 Use #1.53 to allow 16 units where eight (8) are permitted.

Said property is shown on Assessor Map 268 Lot 13 and lies within the Mixed Residential (MRB) District. As a result of said consideration, the Board voted to **deny** the request because the proposal did not observe the spirit of the ordinance and did not present a hardship.

The Board's decision may be appealed up to thirty (30) days after the vote. Please contact the Planning Department for more details about the appeals process.

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

Very truly yours,

Phyllis Eldridge, Chair of the Zoning Board of Adjustment

cc:

Derek Durbin, Durbin Law Offices PLLC
Eric Weinrieb, Altus Engineering, Inc.

Findings of Fact | Variance

City of Portsmouth Zoning Board of Adjustment

Date: 8/15/2023

Property Address: 2059 Lafayette Rd

Application #: LU-23-116

Decision: **Deny**

Findings of Fact:

Effective August 23, 2022, amended RSA 676:3, It now reads as follows: The local land use board shall issue a final written decision which either approves or disapproves an application for a local permit and make a copy of the decision available to the applicant. **The decision shall include specific written findings of fact that support the decision. Failure of the board to make specific written findings of fact supporting a disapproval shall be grounds for automatic reversal and remand by the superior court upon appeal, in accordance with the time periods set forth in RSA 677:5 or RSA 677:15, unless the court determines that there are other factors warranting the disapproval.** If the application is not approved, the board shall provide the applicant with written reasons for the disapproval. If the application is approved with conditions, the board shall include in the written decision a detailed description of all conditions necessary to obtain final approval.

The proposed application meets/does not meet the following purposes for granting a Variance:

Section 10.233 Variance Evaluation Criteria	Finding (Meets Criteria)	Relevant Facts
10.233.21 Granting the variance would not be contrary to the public interest.		
10.233.22 Granting the variance would observe the spirit of the Ordinance.	NO	<ul style="list-style-type: none"> The proposal will alter the essential characteristics of the neighborhood. The property is surrounded by SRB neighborhoods and is in an MRB one and doesn't comport with the spirit of MRB because it does not have a business component and does not comport with the spirit of the ordinance.
10.233.23 Granting the variance would do substantial justice.		
10.233.24 Granting the variance would not diminish the values of surrounding properties.		

<p>10.233.25 Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship.</p> <p>(a)The property has special Conditions that distinguish it from other properties in the area. AND</p> <p>(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</p> <p>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.</p>	<p>NO</p>	<ul style="list-style-type: none"> • No hardship presented for the need of 16 units
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**Civil
Site Planning
Environmental
Engineering**

133 Court Street
Portsmouth, NH
03801-4413

TRAFFIC IMPACT STATEMENT

Date: November 22, 2023

Subject: 2059 Lafayette Road
Tax Map 268, Lots 12 and 13

Altus Engineering, LLC (Altus) respectfully submits a Traffic Impact Statement in order to determine the potential impacts on the transportation infrastructure associated with the redevelopment of 2059 Lafayette Road in Portsmouth, New Hampshire.

The existing mixed-use commercial-residential building is located at the intersection of Lafayette Road/US Route 1 and Hoover Drive. The existing building was originally constructed in the early 1970's and has undergone several expansions and renovations over the years. Historically, it had a retail convenience store on the first floor that generated a significant amount of traffic. Over time the convenience store model changed. Small standalone convenience stores are generally no longer viable without a gas service station component.

The existing developed area is comprised of two separate lots that are integrated and currently used as a single parcel. The total lot area is approximately 27,444 SF.

The site has over 150-feet of uncontrolled access from Route 1 with a small, raised island as a separator. With less than 40-feet between the head of the parking stalls and the State right-of-way, access and parking maneuverability extends into the right-of-way.

There are two additional points of access from Hoover Drive. One access point is less than 20-feet from the intersection with Route 1 which can impede the sight lines for traffic entering Route 1 from Hoover Drive.

The second point access point on Hoover Drive is over 120-feet from the Lafayette Road intersection and provides service to a couple of parking spaces and loading for the retail component of the property. This access point is generally safe and currently sees a very small volume of traffic.

The building uses have changed over the years. Up until the early 90's a portion of the building was a moderately high-volume convenience store. More recently it has been:

3 apartment dwelling units
1,500 SF of office space
3,400 SF of veterinary clinic

The owner proposes to raze the building and construct 8-apartment units with garage/covered parking.

The site will be reconfigured to eliminate all access onto Lafayette Road and create a single point of access on the lesser travelled Hoover Drive. The driveway is over 50-feet from the stop bar, providing ample separation to the intersection.

Altus reviewed available information on the NHDOT website regarding any improvements to the Route 1 corridor. NHDOT project 29640 which includes improvements to US Route 1 from Constitution Avenue north to Wilson Road is noted on the July 22, 2022, ten-year plan as being in the design phase. They also note that construction is expected to occur in the years 2025 and 2026. The improvements on the east side of Lafayette Road include a 5-foot-wide bike lane and a 5.5-foot-wide sidewalk. Per the City of Portsmouth Planning requirements, the design meets the DOT requirements by providing the 6-foot wide multiple-use path.

The following assessment is based on Trip Generation, 11th edition, prepared by the Institute of Transportation Engineers (ITE) and published September 2021. We examined the existing and proposed traffic projections for multiple scenarios, the average daily traffic for both a weekday and Saturday and the peak hour generator AM and PM for a weekday. We have defaulted to the AM and PM peak hour of generator versus the peak hour of adjacent street traffic as this resulted in a slightly higher number of trip ends.

EXISTING USES

We have characterized the existing uses from the ITE Land Use Code:

Affordable Housing – Income limits (223)
Unspecified office space (712)
Veterinary Clinic (640)

Existing uses
3 apartments
1,500 SF unspecified small office space
3,400 veterinary clinic

Weekday vehicle trip ends

Apartments	11.49
Unspecified office space	21.59
Veterinary clinic	<u>73.10</u>
TOTAL	106.18

Saturday average daily vehicle trip ends

Apartments	13.11
Unspecified office space	0.00
Veterinary clinic	<u>0.00</u>
	13.11

Traffic Impact Statement
2059 Lafayette Road
Portsmouth, NH
November 22, 2023

Weekday AM peak hour of generator

Apartments	1.56
Unspecified office space	3.92
Veterinary clinic	<u>12.68</u>
	18.16

Weekday PM peak hour of generator

Apartments	1.17
Unspecified office space	4.73
Veterinary clinic	<u>13.02</u>
	18.92

Historically the offices and veterinary clinic were open on Saturday's. ITE assumes that both uses only conduct business Monday through Friday. As such, the existing Saturday trips noted above underestimate recent conditions.

PROPOSED USE

We have characterized the proposed project in the ITE Land Use Code (LUC) 220, Multifamily housing (low rise) to develop the project traffic generation.

Proposed use
8 low rise apartment units

Weekday vehicle trip ends

Apartments	53.92
------------	-------

Saturday average daily vehicle trip ends

Apartments	36.40
------------	-------

Weekday AM peak hour of generator

Apartments	3.76
------------	------

Weekday PM peak hour of generator

Apartments	4.56
------------	------

COMPARISON

Weekday vehicle trip ends

Existing	106.18
Proposed	<u>53.92</u>
	-52.26

Saturday average daily vehicle trip ends

Existing	13.11
Proposed	<u>36.40</u>
	23.29

Weekday AM peak hour of generator

Existing	18.16
Proposed	<u>3.76</u>
	-14.40

Weekday PM peak hour of generator

Existing	18.92
Proposed	<u>4.56</u>
	-14.36

The study demonstrates that during all weekday conditions there is a significant decrease in the weekday traffic associated with converting the site from an office/retail/apartment complex to a residential use.

Because ITE identifies that veterinary clinics and offices are generally closed on Saturday's, it is assumed that no traffic will be generated. Thus, it is easy to conclude for a weekend that there will be a modest increase in the traffic generated when going from 3 apartments to 8 dwelling units. However, the veterinary clinic did operate on Saturdays to accommodate working pet owners. Thus, it is presumed that even if they had half the weekday average daily trip ends, then the proposed use will be a reduction on an average Saturday under current/recent conditions.

Historically, the veterinary clinic, 3,400 SF was a convenience store, ITE LUC 851. It is expected that if the clinic were converted back to the Chug-a-Lug market that we would expect to see up to 3,686 vehicle trip ends on a typical Saturday.

The NHDOT Transportation Data Management System maintains traffic counts on roads under their jurisdiction. They have data at the intersection of Ocean Road and Route 1 (6,200 feet south) as well as Route 1 and Greenleaf Avenue (5,100 feet north).

In 2021, the annual average daily traffic (AADT) counts on Route 1 at the Greenleaf intersection was 16,077 vehicles per day. In 2022, the counts dropped to 9,859 which in Altus' opinion appears to be an anomaly. The proposed weekday vehicle trip ends from the development is expected to be 54 vehicle trip ends per day, which is 0.5-percent of the annual average daily traffic on Route 1.

Traffic Impact Statement
2059 Lafayette Road
Portsmouth, NH
November 22, 2023

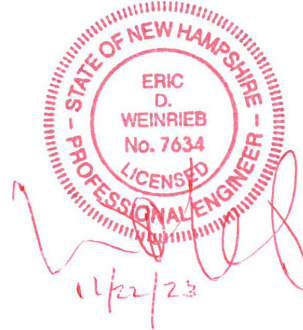
In conclusion, it is Altus' opinion that constructing 8-residential units on the property will reduce the traffic generated on weekdays, Saturday's and will have modest increase on Sundays. It will not have a detrimental impact on the adjacent traffic patterns or cause congestion on the roadway system.

Respectfully submitted,

ALTUS ENGINEERING



Eric D. Weinrieb, PE
President



Enclosure

wde/5361 traffic memo.DOCX

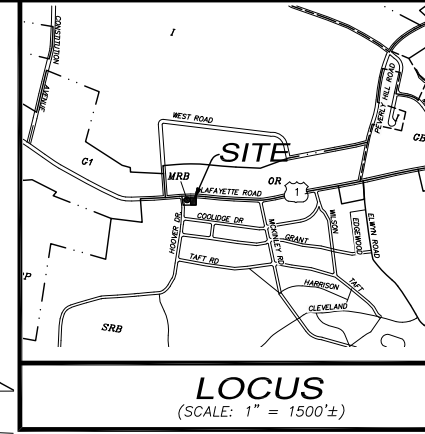
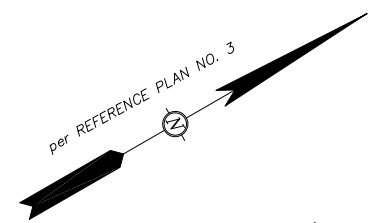
SITE NOTES

- DESIGN INTENT - THIS PLAN IS INTENDED TO DEPICT A 8-UNIT RESIDENTIAL DEVELOPMENT SITE TOGETHER WITH ASSOCIATED PARKING ON GROUND LEVEL, 2 FLOORS ABOVE, ACCESS AND SITE IMPROVEMENTS.
- THE BASE PLAN USED HERE WAS DEVELOPED FROM PRELIMINARY "EXISTING CONDITIONS PLAN, LAFAYETTE ROAD, PORTSMOUTH, NH" BY JAMES VERRA AND ASSOCIATES, INC., DATED 1/29/2002.
- ZONE: MRB (MIXED RESIDENTIAL BUSINESS)
- DIMENSIONAL REQUIREMENTS:**

	REQUIRED	EXISTING	PROPOSED
MIN. LOT AREA:	7,500 S.F. (0.17 ACRE)	±27,444 S.F. (±0.63 AC.)	±27,444 S.F. (±0.63 AC.)
MIN. STREET FRONTAGE:	100' (ON LAFAYETTE ROAD)	181.36' (EXISTING)	181.36' (EXISTING)
MIN. LOT DEPTH:	80'	139.72' (EXISTING)	139.72' (EXISTING)
FRONT SETBACK:	* >80' TO LAFAYETTE RD. CL OR 30' TO R.O.W.	0' TO R.O.W.	80.8' TO CENTERLINE OF R.O.W.
SIDE SETBACK:	** 10'	±95'	±24'
REAR SETBACK:	** 15'	±39'	±29'
MAX. BUILDING HEIGHT:	40' (SLOPED), 30' (FLAT)	<40' SLOPED	<40' SLOPED
MAX. BUILDING FOOTPRINT:	N/A (MULTI-FAMILY)	±70'	±109'
MAX. BUILDING COVERAGE:	N/A	9.3% (±2,560 S.F.)	26.2% (±7,200 S.F.)
LOT AREA/DWELLING UNIT:	7,500 SF	N/A	±3,430 SF/UNIT
MIN. OPEN SPACE:	25%	55.0% (±15,089 S.F.)	±66.8% (±18,329 S.F.)

* FRONT SETBACK IS FROM BOTH STREET ADDRESS STREET AND ACCESS STREET
 ** SIDE & REAR SETBACKS IN RELATION TO FRONT STREET ADDRESS STREET
 *** OPEN SPACE INCLUDES WALKS
- ZONING SECTION 10.521 - VARIANCE FROM ZONING BOARD OF ADJUSTMENT REQUIRED TO ALLOW 8 UNITS WHERE 3.7 UNITS ARE ALLOWED.
 ZONING SECTION 10.1113.20 - TO ALLOW PARKING IN THE FRONT YARD AND IN FRONT OF THE PRINCIPAL BUILDING.
- DENSITY CALCULATIONS:**
 0.63 ACRES (27,444 S.F.)
 27,444 S.F. / 7,500 S.F. = 3.7 UNITS ALLOWED
 8 UNITS PROPOSED (±3,430 S.F./UNIT)
- LANDSCAPING BUFFER & PRIVACY FENCE SHALL BE INSTALLED AS APPROVED BY THE PLANNING BOARD.

- PARKING REQUIREMENTS:**
 DWELLING UNITS: 1.3 SPACES PER DWELLING UNIT >750 S.F.
 8 UNITS x 1.3 = 10.4 SPACES REQUIRED PLUS
 VISITOR PARKING: 1 SPACE PER 5 D.U. OR PORTION = 1.6 SPACES REQUIRED = 12 SPACES REQUIRED, 21 SPACES PROVIDED
- THERE SHALL BE NO VISION OBSTRUCTIONS LOCATED IN THE AREA CREATED BY MEASURING 20' IN EACH DIRECTION FROM A CORNER LOT STREET PROPERTY LINE CORNER.
- IMPERVIOUS AREA COVERAGE NOTE:**
 EXISTING BUILDING & DECK (±2,560 SF) + EXISTING PVMNT/CONCRETE (±9,700 SF) + EXISTING WALK (±95 SF) = ±12,355 SF (45.0%)
 PROP. BUILDING (±7,200 SF) + PR. PAVEMENT (±1,915 SF) + PR. WALKS (±2,175 SF) = ±11,290 SF (41.1%)



ALTUS ENGINEERING
 133 Court Street Portsmouth, NH 03801
 (603) 433-2335 www.altus-eng.com

NOT FOR CONSTRUCTION
 ISSUED FOR:
BOARD OF ADJUSTMENT
 ISSUE DATE:
NOVEMBER 21, 2023

REVISIONS

NO.	DESCRIPTION	BY	DATE
0	INITIAL SUBMISSION	EDW	11/21/23

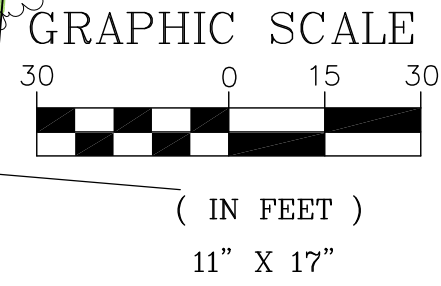
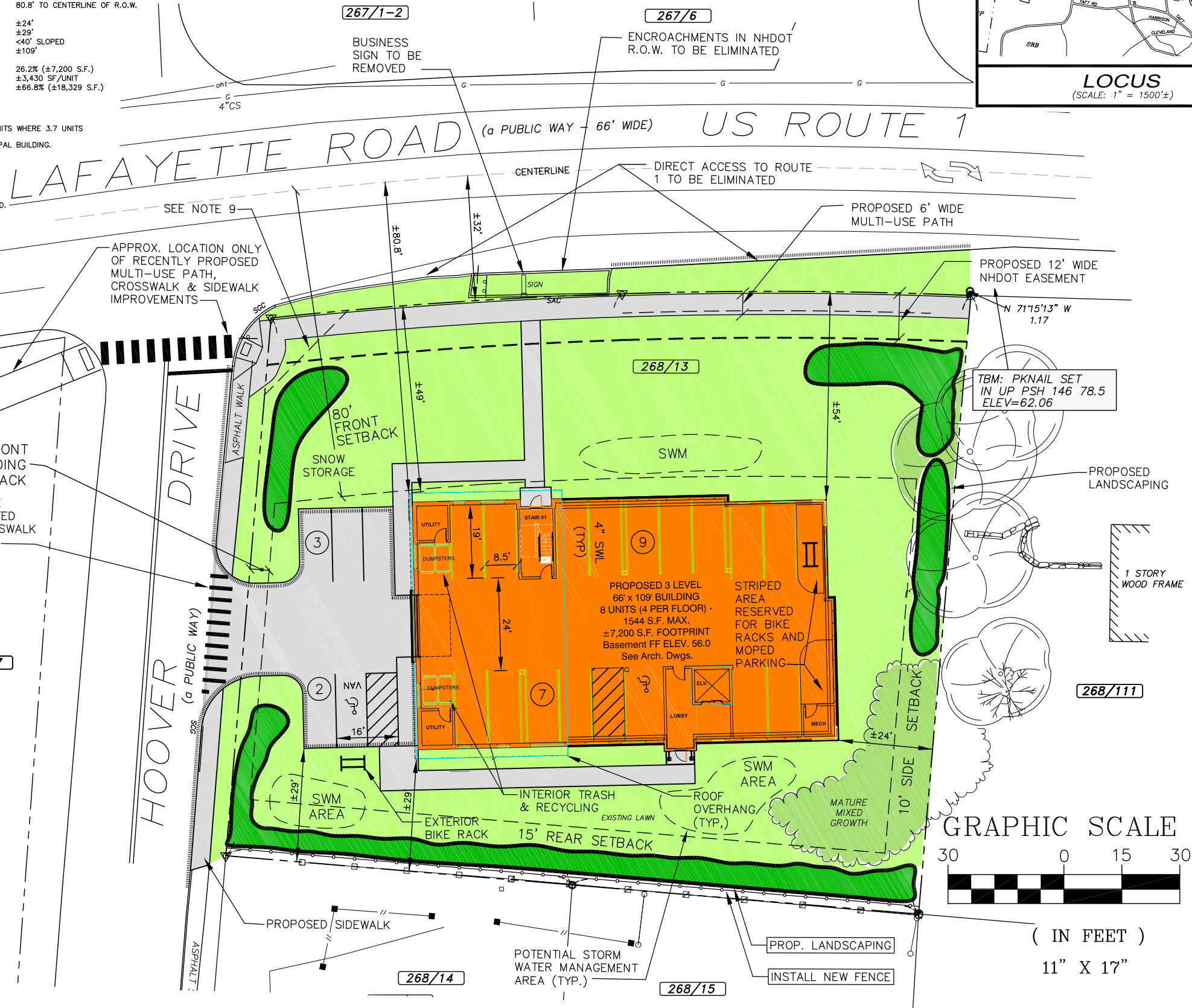
DRAWN BY: _____ RLH
 APPROVED BY: _____ EDW
 DRAWING FILE: 5361-10-25-2023.DWG

SCALE:
 22" x 34" - 1" = 15'
 11" x 17" - 1" = 30'

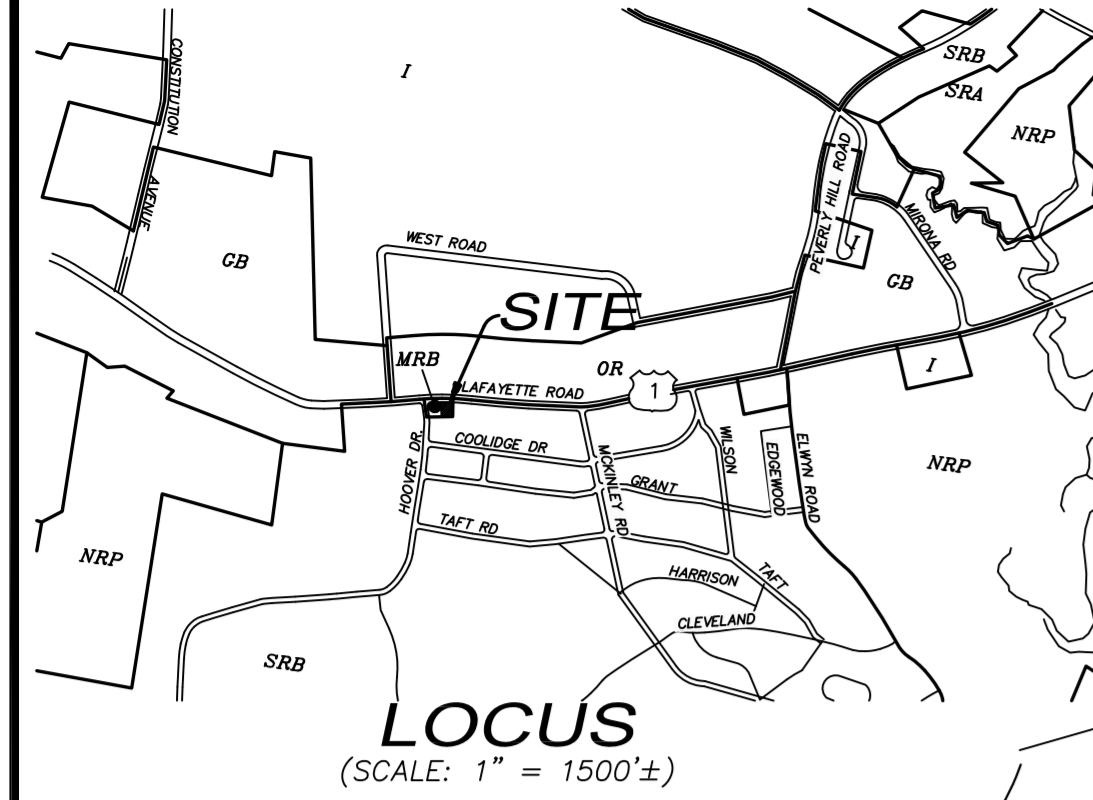
OWNER/APPLICANT:
 TAX MAP 268, LOT 12
JAMES A. LABRIE REV. TRUST OF 1991
 PO BOX 300
 RYE, NH 03870
 RCRD BOOK 5378/PAGE 2236
 TAX MAP 268, LOT 13
 GO-LO, INC. c/o LABRIE
 P.O. BOX 300
 RYE, NH 03870
 RCRD BOOK 1486/PAGE 0393

PROJECT:
SITE REDEVELOPMENT
 TAX MAP 268, LOT 12 & 13
 2059 LAFAYETTE ROAD
 PORTSMOUTH, NH 03801

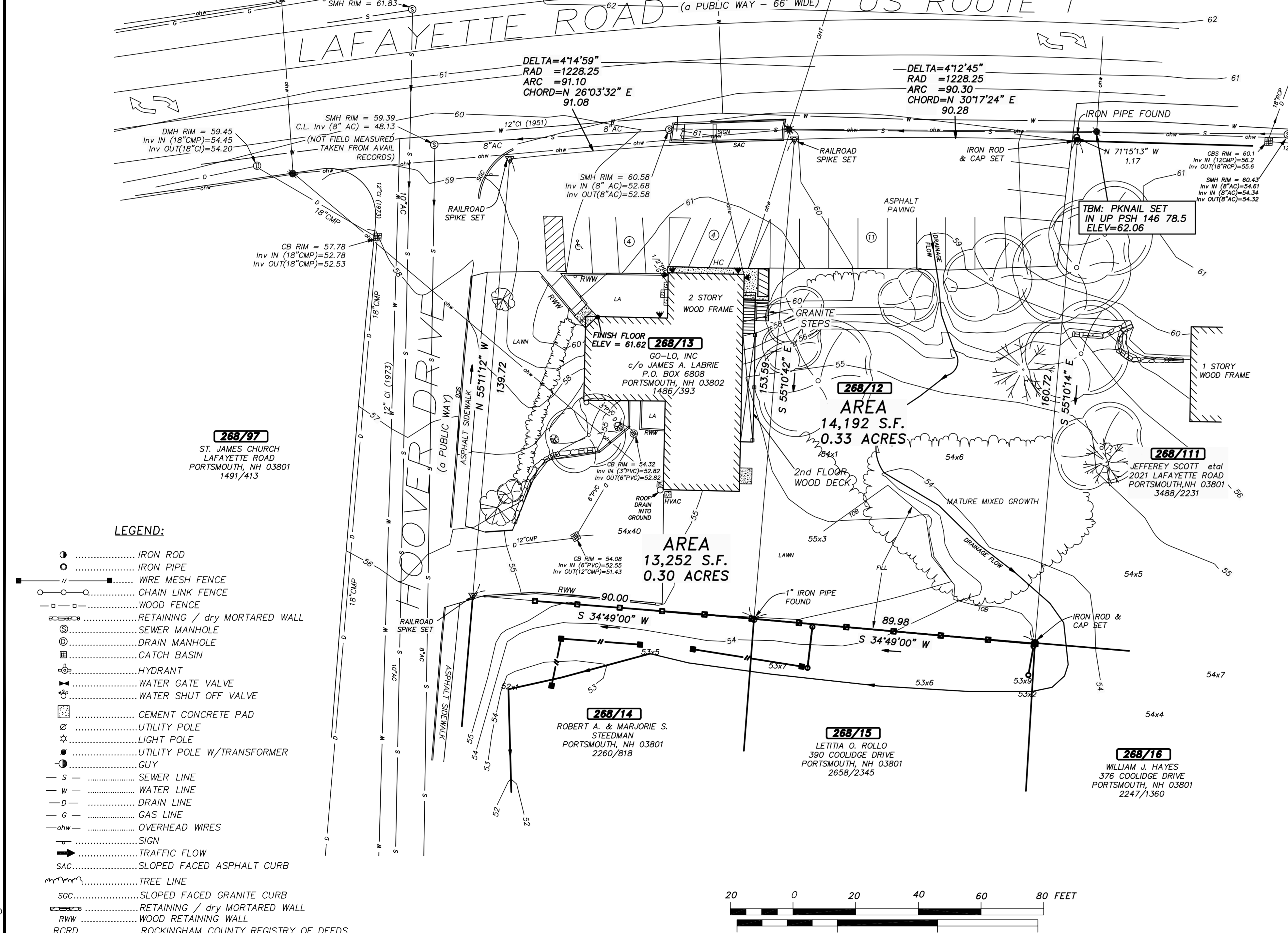
TITLE:
BOARD OF ADJUSTMENT SITE PLAN
SHEET NUMBER:
1 of 1



P5361



LOCUS
(SCALE: 1" = 1500'±)



- LEGEND:**
- IRON ROD
 - IRON PIPE
 - WIRE MESH FENCE
 - CHAIN LINK FENCE
 - WOOD FENCE
 - RETAINING / dry MORTARED WALL
 - ⊙ SEWER MANHOLE
 - ⊕ DRAIN MANHOLE
 - ⊞ CATCH BASIN
 - ⊖ HYDRANT
 - ⊗ WATER GATE VALVE
 - ⊘ WATER SHUT OFF VALVE
 - ⊙ CEMENT CONCRETE PAD
 - ⊕ UTILITY POLE
 - ⊖ LIGHT POLE
 - ⊗ UTILITY POLE W/TRANSFORMER
 - ⊘ GUY
 - S— SEWER LINE
 - W— WATER LINE
 - D— DRAIN LINE
 - G— GAS LINE
 - ohw— OVERHEAD WIRES
 - S— SIGN
 - TRAFFIC FLOW
 - SAC— SLOPED FACED ASPHALT CURB
 - T— TREE LINE
 - SGC— SLOPED FACED GRANITE CURB
 - R— RETAINING / dry MORTARED WALL
 - RWW— WOOD RETAINING WALL
 - RCRD— ROCKINGHAM COUNTY REGISTRY OF DEEDS

3544.dwg 02/06/02 11:44:01 AM EST

267/1-2
SERVICE FEDERAL CREDIT UNION
P.O. BOX 1268
PORTSMOUTH, NH 03802
1599/7

267/6
STATE OF NEW HAMPSHIRE
c/o NH DEPT. EMPLOYMENT SECURITY
32 SOUTH MAIN STREET
CONCORD, NH 03301
3330/52

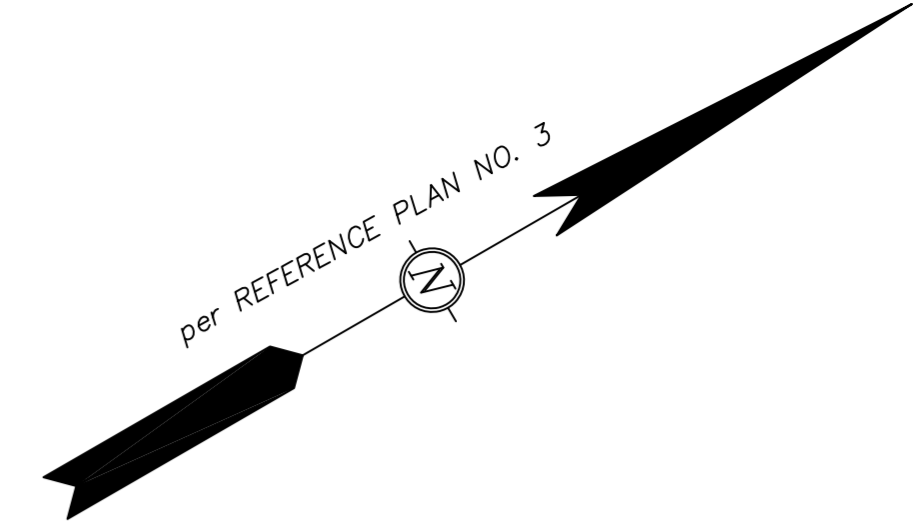
268/97
ST. JAMES CHURCH
LAFAYETTE ROAD
PORTSMOUTH, NH 03801
1491/413

268/13
CO-LO, INC
c/o JAMES A. LABRIE
P.O. BOX 6808
PORTSMOUTH, NH 03802
1486/393

268/14
ROBERT A. & MARJORIE S. STEEDMAN
PORTSMOUTH, NH 03801
2260/818

268/15
LETITIA O. ROLLO
390 COOLIDGE DRIVE
PORTSMOUTH, NH 03801
2658/2345

268/16
WILLIAM J. HAYES
376 COOLIDGE DRIVE
PORTSMOUTH, NH 03801
2247/1360

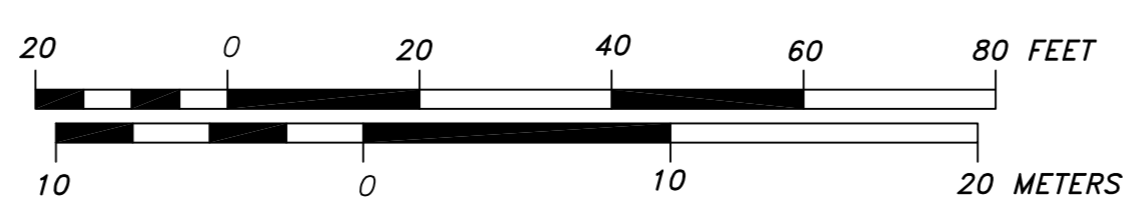


NOTES:

1. OWNER OF RECORD..... JAMES A. LABRIE
ADDRESS..... P.O. BOX 6808, PORTSMOUTH, NH 03802
DEED REFERENCE..... 2628/248
TAX SHEET / LOT..... 268/12
2. ZONED:..... MRB FRONT YARD SETBACK..... 5'
MINIMUM LOT AREA 7,500 S.F. SIDE YARD SETBACK..... 10'
FRONTAGE..... 100' REAR YARD SETBACK..... 15'
MAX. STRUCTURE COVERAGE...40% MIN. OPEN SPACE.....25%
3. THE RELATIVE ERROR OF CLOSURE WAS LESS THAN 1 FOOT IN 15,000 FEET.
4. THE LOCATION OF ALL UNDERGROUND UTILITIES SHOWN HEREON ARE APPROXIMATE AND ARE BASED UPON THE FIELD LOCATION OF ALL VISIBLE STRUCTURES (IE CATCH BASINS, MANHOLES, WATER GATES 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 @ 1-888-DIG-SAFE.
5. THE PARCEL SHOWN HEREON DOES NOT LIE WITHIN THE 100-YEAR FLOOD HAZARD ZONE AS DEPICTED ON FLOOD INSURANCE RATE MAP CITY OF PORTSMOUTH, NEW HAMPSHIRE, ROCKINGHAM COUNTY, COMMUNITY-PANEL NO. 330139 0025B, EFFECTIVE DATE MAY 17,1982, BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY.
6. ELEVATION DATUM: NGVD 1929: PRIMARY BENCH MARK: NHDOT # 379-0630.

REFERENCE PLANS:

1. PLAN OF LOTS, ELWYN PARK, PORTSMOUTH, NH, DATED MAY 1947, RCRD PLAN BK. 45 PG 8 (#01321).
2. PLAN AND PROFILE OF PROPOSED FEDERAL AID PROJECT NO. 37, LAFAYETTE, ROAD, PORTSMOUTH, NH BY THE NH DEPARTMENT OF PUBLIC WORKS.
3. PLAN OF LOT NO. 69, "ELWYN PARK", PORTSMOUTH, N.H., DATED JUNE 1963, PLAN NO. L-373, FILE NO. 2320, BY JOHN W. DURGIN, CE.
4. PLAN OF LOT NO. 65, "ELWYN PARK", PORTSMOUTH, N.H., DATED JUNE 1963, PLAN NO. L-370, FILE NO. 2320, BY JOHN W. DURGIN, CE.
5. PLAN OF LOT NO'S 71-73, ELWYN PARK, PORTSMOUTH, N.H., DATED AUG. 1961, PLAN NO. 1-593, FILE NO. 2320, BY JOHN W. DURGIN, CE.



ALTUS
ENGINEERING, INC.

133 COURT STREET PORTSMOUTH, NH 03801
VOICE: (603) 433-2335

James Verra and Associates, Inc.
LAND SURVEYING REGULATORY APPROVALS
445 U.S. ROUTE 1 BYPASS, SUITE 2
PORTSMOUTH, N.H. 03801
603-436-3557 VOICE
JOB NO: 21468

ISSUED FOR: APPROVAL
ISSUE DATE: JANUARY 29, 2002

REVISIONS	NO.	DESC.	BY	DATE
0	INITIAL SUBMISSION		EDW	

DRAWN BY: HRM
APPROVED BY: JV
DRAWING FILE: 21468.DWG

SCALE: 1"=20'

OWNER: JAMES A. LABRIE
PROJECT: TAX MAP 268 LOT 12
LAFAYETTE RD
PORTSMOUTH, NH

TITLE: EXISTING CONDITIONS PLAN

SHEET NUMBER: C-1

P:3534

2059 LAFAYETTE MULTI-FAMILY

ZONING BOARD OF ADJUSTMENT - NOVEMBER 2023, PORTSMOUTH, NEW HAMPSHIRE

GENERAL PROJECT DESCRIPTION:

- REMOVAL OF THE EXISTING BUILDING IN ITS ENTIRETY
- VARIOUS SITE IMPROVEMENTS, REFER TO CIVIL DRAWINGS FOR MORE INFORMATION
- PROPOSED STRUCTURE:
 1. 3 STORY STRUCTURE: 1 LEVEL OF PARKING, 2 LEVELS OF RESIDENTIAL UNITS
 2. 8 RESIDENTIAL UNITS
 3. 21 PARKING SPOTS: 16 INSIDE, 5 OUTSIDE

SHEET LIST	
Sheet Number	Sheet Name

C1	COVER
C2	EXISTING BUILDING
C3	CONTEXT IMAGES
C4	RTE 1 MULTI-FAMILY PRECEDENTS

A1	FIRST FLOOR PLAN
A2	SECOND & THIRD FLOOR PLAN
A3	ROOF PLAN
A4	NORTH ELEVATION (LAFAYETTE)
A5	WEST ELEVATION (HOOVER)
A6	SOUTH ELEVATION (REAR)
A7	EAST ELEVATION
A8	RENDERING FROM LAFAYETTE ROAD
A9	AERIAL RENDERING



2059 LAFAYETTE ROAD
PORTSMOUTH, NH 03801



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LAFAYETTE MULTI-FAMILY
2059 LAFAYETTE ROAD
PORTSMOUTH, NH 03801

COVER
ZONING BOARD OF ADJUSTMENT - DECEMBER 2023

McHENRY ARCHITECTURE
4 Market Street
Portsmouth, New Hampshire

C1
11/13/2023
McHA: RD / MG
NOT TO SCALE



2059 LAFAYETTE ROAD LOOKING SOUTH



2059 LAFAYETTE ROAD LOOKING EAST



2059 LAFAYETTE ROAD LOOKING NORTH



BUILDING APPROACH FROM SOUTH



BUILDING APPROACH FROM NORTH

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LAFAYETTE MULTI-FAMILY

2059 LAFAYETTE ROAD
PORTSMOUTH, NH 03801

EXISTING BUILDING

ZONING BOARD OF ADJUSTMENT - DECEMBER 2023

McHENRY ARCHITECTURE

4 Market Street
Portsmouth, New Hampshire

C2

11/13/2023
McHA: RD / MG
NOT TO SCALE

Locus



2021 LAFAYETTE ROAD: LEFT YARD ABUTTER



REAR YARD ABUTTERS FROM REAR YARD



COOLIDGE DRIVE: REAR YARD ABUTTERS



COOLIDGE DRIVE: REAR YARD ABUTTERS



COOLIDGE DRIVE: REAR YARD ABUTTERS



2010 LAFAYETTE ROAD



2032 LAFAYETTE ROAD



2100 LAFAYETTE ROAD

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LAFAYETTE MULTI-FAMILY

2059 LAFAYETTE ROAD
PORTSMOUTH, NH 03801

CONTEXT IMAGES

ZONING BOARD OF ADJUSTMENT - DECEMBER 2023

McHENRY ARCHITECTURE

4 Market Street
Portsmouth, New Hampshire

C3

11/13/2023
McHA: RD / MG
NOT TO SCALE



2075 LAFAYETTE ROAD (ABUTTER): 0.1 MILES AWAY



70 CONSTITUTION AVENUE: 0.7 MILES AWAY



55 OCEAN ROAD: 1.3 MILES AWAY



3400 LAFAYETTE ROAD: 1.5 MILES AWAY



150 US ROUTE 1 BYPASS: 1.7 MILES AWAY



35 HODGDON WAY: 2.4 MILES AWAY



30-50 CATE STREET: 2.5 MILES AWAY

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LAFAYETTE MULTI-FAMILY

2059 LAFAYETTE ROAD
PORTSMOUTH, NH 03801

RTE 1 MULTI-FAMILY PRECEDENTS

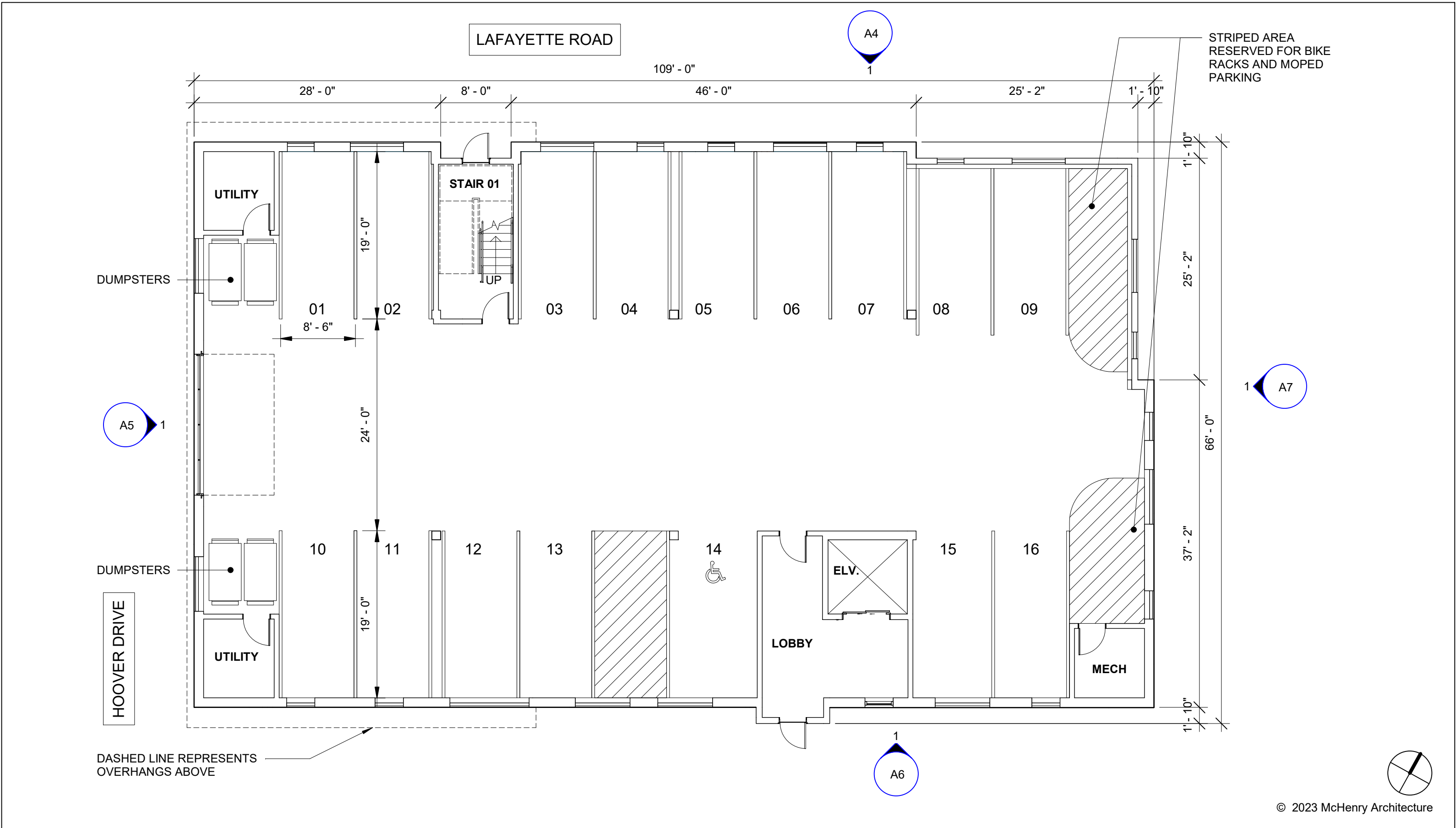
ZONING BOARD OF ADJUSTMENT - DECEMBER 2023

McHENRY ARCHITECTURE

4 Market Street
Portsmouth, New Hampshire

C4

11/13/2023
McHA: RD / MG
NOT TO SCALE



LAFAYETTE MULTI-FAMILY
 2059 LAFAYETTE ROAD
 PORTSMOUTH, NH 03801

FIRST FLOOR PLAN
 ZONING BOARD OF ADJUSTMENT - DECEMBER 2023

McHENRY ARCHITECTURE
 4 Market Street
 Portsmouth, New Hampshire

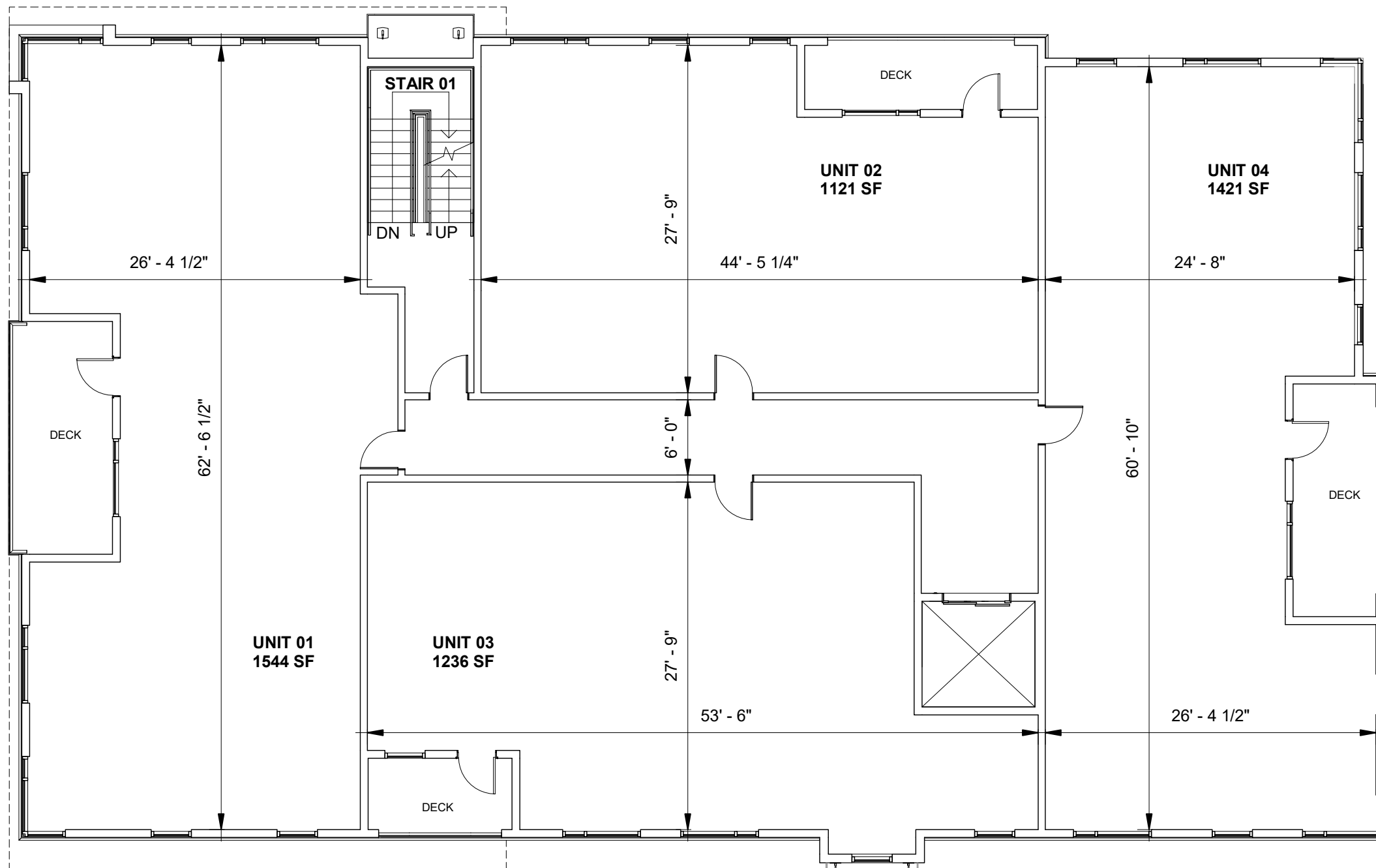
A1

11/13/2023
 McHA: RD / MG
 Scale: 1" = 10'-0"

LAFAYETTE ROAD

A4

1



A7

1

A5

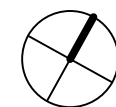
1

HOOVER DRIVE

DASHED LINE REPRESENTS OVERHANGS ABOVE

A6

1



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LAFAYETTE MULTI-FAMILY

2059 LAFAYETTE ROAD
PORTSMOUTH, NH 03801

SECOND & THIRD FLOOR PLAN

ZONING BOARD OF ADJUSTMENT - DECEMBER 2023

McHENRY ARCHITECTURE

4 Market Street
Portsmouth, New Hampshire

A2

11/13/2023

McHA: RD / MG

Scale: 1" = 10'-0"

LAFAYETTE ROAD

A4

1

A7

1

FLAT ROOF FOR MECHANICAL EQUIPMENT

1 1/2" / 1'-0"

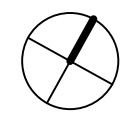
A5

1

HOOVER DRIVE

A6

1



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LAFAYETTE MULTI-FAMILY

2059 LAFAYETTE ROAD
PORTSMOUTH, NH 03801

ROOF PLAN

ZONING BOARD OF ADJUSTMENT - DECEMBER 2023

McHENRY ARCHITECTURE

4 Market Street
Portsmouth, New Hampshire

A3

11/13/2023

McHA: RD / MG

Scale: 1" = 10'-0"



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LAFAYETTE MULTI-FAMILY
 2059 LAFAYETTE ROAD
 PORTSMOUTH, NH 03801

NORTH ELEVATION (LAFAYETTE)
 ZONING BOARD OF ADJUSTMENT - DECEMBER 2023

McHENRY ARCHITECTURE
 4 Market Street
 Portsmouth, New Hampshire

A4

11/13/2023
 McHA: RD / MG
 Scale: 1" = 10'-0"



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LAFAYETTE MULTI-FAMILY
 2059 LAFAYETTE ROAD
 PORTSMOUTH, NH 03801

WEST ELEVATION (HOOVER)
 ZONING BOARD OF ADJUSTMENT - DECEMBER 2023

McHENRY ARCHITECTURE
 4 Market Street
 Portsmouth, New Hampshire

A5

11/13/2023
 McHA: RD / MG
 Scale: 1" = 10'-0"



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LAFAYETTE MULTI-FAMILY
 2059 LAFAYETTE ROAD
 PORTSMOUTH, NH 03801

SOUTH ELEVATION (REAR)
 ZONING BOARD OF ADJUSTMENT - DECEMBER 2023

McHENRY ARCHITECTURE
 4 Market Street
 Portsmouth, New Hampshire

A6

11/13/2023
 McHA: RD / MG
 Scale: 1" = 10'-0"



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LAFAYETTE MULTI-FAMILY
 2059 LAFAYETTE ROAD
 PORTSMOUTH, NH 03801

EAST ELEVATION

ZONING BOARD OF ADJUSTMENT - DECEMBER 2023

McHENRY ARCHITECTURE
 4 Market Street
 Portsmouth, New Hampshire

A7

11/13/2023
 McHA: RD / MG
 Scale: 1" = 10'-0"



© McHENRY ARCHITECTURE
4 Market Street, Portsmouth, NH 03801

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LAFAYETTE MULTI-FAMILY RENDERING FROM LAFAYETTE ROAD

2059 LAFAYETTE ROAD
PORTSMOUTH, NH 03801

ZONING BOARD OF ADJUSTMENT - DECEMBER 2023

McHENRY ARCHITECTURE

4 Market Street
Portsmouth, New Hampshire

A8

11/13/2023
McHA: EW / RD
NOT TO SCALE



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4 Market Street, Portsmouth, NH 03801

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LAFAYETTE MULTI-FAMILY

2059 LAFAYETTE ROAD
PORTSMOUTH, NH 03801

AERIAL RENDERING

ZONING BOARD OF ADJUSTMENT - DECEMBER 2023

McHENRY ARCHITECTURE

4 Market Street
Portsmouth, New Hampshire

A9

11/13/2023
McHA: EW / RD
NOT TO SCALE

III. NEW BUSINESS

- C. The request of **Jeffrey Suttie and Katherine Clarcq (Owners)**, for property located at **485 Lincoln Ave** whereas relief is needed to extend the livable space of the primary structure into area that is currently a porch which requires the following: 1) Variance from Section 10.521 to allow a four (4) foot side yard where 10 is required; and 2) Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 134 Lot 49 and lies within the General Residence A (GRA) District. (LU-23-195)

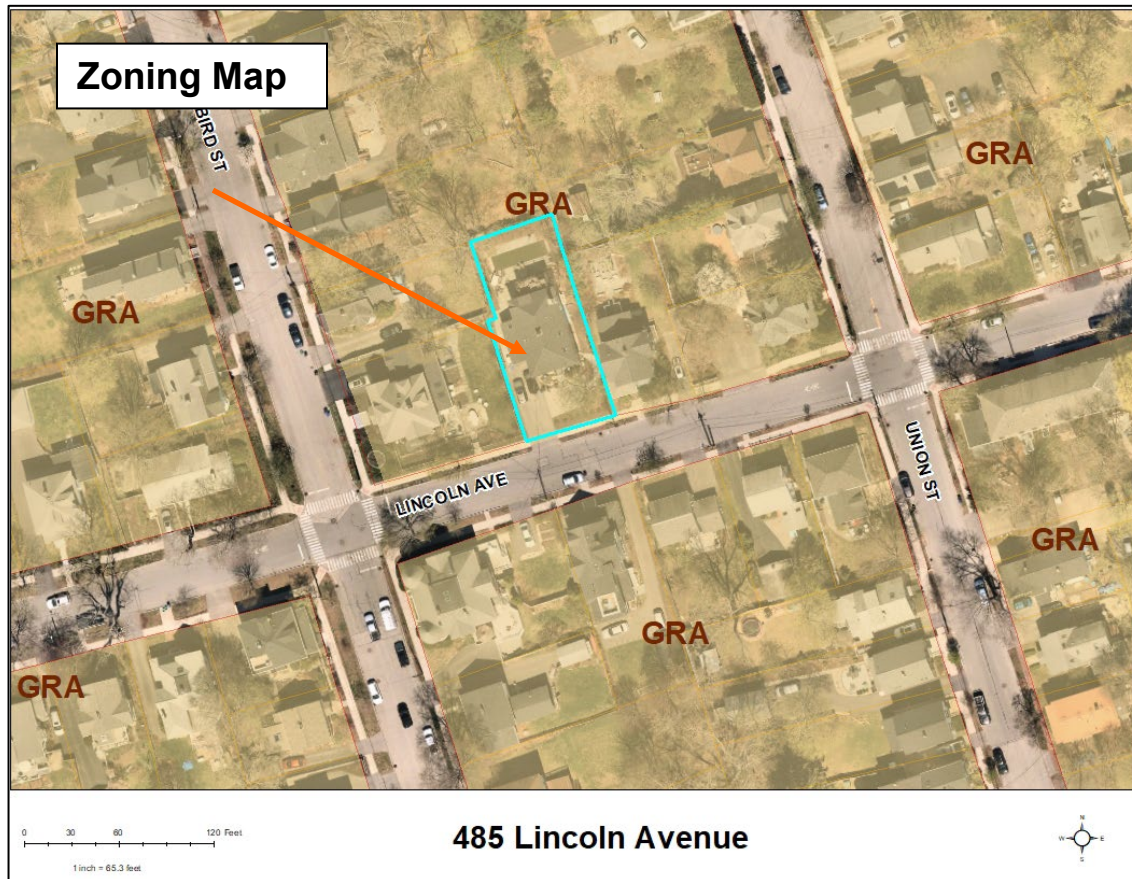
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family dwelling	Enclose portion of the porch	Primarily residential
<u>Lot area (sq. ft.):</u>	1,339	1,339	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	1,339	1,339	7,500 min.
<u>Street Frontage (ft.):</u>	50	50	100 min.
<u>Lot depth (ft.)</u>	110	110	70 min.
<u>Front Yard (ft.):</u>	12	12	15 min.
<u>Left Yard (ft.):</u>	4	4	10 min.
<u>Right Yard (ft.):</u>	13	13	10 min.
<u>Rear Yard (ft.):</u>	110	110	20 min.
<u>Height (ft.):</u>	35	35	35 max.
<u>Building Coverage (%):</u>	24	24	25 max.
<u>Open Space Coverage (%):</u>	>30	>30	30 min.
<u>Parking</u>	3	3	3
<u>Estimated Age of Structure:</u>	1900	Variance request(s) shown in red.	

Other Permits/Approvals Required

- Building Permit

Neighborhood Context



Previous Board of Adjustment Actions

June 21, 1994 – The Board granted the following relief: A Variance from Article III, Section 10-302 is requested to allow the construction of a 16' x 24' (336 s.f) family/dining room addition including a deck resulting in building/lot coverage of 24.8% in a district where 20% is the maximum allowed.

August 21, 2001 reconvened August 28, 2001 – The Board granted the following relief: A Variance from Article III, Section 10-302(A) to allow a 5' x15' expansion of an existing deck and stairs creating a building coverage of 33.2% where 25% is the maximum allowed with the following conditions:

- 1) The size of deck be amended to not exceed 4' x 18' and
- 2) The lot coverage not exceed 33.2%

Planning Department Comments

The applicant is requesting to extend the interior livable space by 74 square feet by enclosing a portion of the covered porch. The proposal does not include a change in footprint to the existing structure. The expansion proposed is considered an extension of the nonconforming structure and therefore requires a variance.

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

 - (c) *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.

CITY OF PORTSMOUTH REQUEST FOR VARIANCE

November 22, 2023

Property

485 Lincoln Ave

Map 134 Lot 49

Zoning: GRA

Applicants

Jeffrey Suttie and Katherine Clarcq (Property Owners)

Dear Members of the Board,

Jeffrey Suttie and Katherine Clarcq are requesting a variance from the Zoning Ordinance for their property at 485 Lincoln Ave for the enclosure of 74 square feet of an existing covered porch, changing the use of this area from accessory to primary.

Section 10.321

Requesting relief for increasing or expanding the nonconforming structure. The house is presently nonconforming as it extends into the west 10' side setback. The proposed enclosure of the porch would occur on this side of the house in that already nonconforming area.

Section 10.521

Requesting dimensional relief for the setback. While the proposed enclosure would not change the footprint of the house or worsen the nonconformance, the enclosure would be located in an area of the house that is presently nonconforming as it extends into the 10' side setback on the west side.

This small amount of proposed additional interior space will allow Jeff and Katherine to create a traditional mudroom at the entrance of their home that will also serve as a laundry room. They presently don't have a mudroom, and the existing laundry room is in the basement accessed by steep, narrow stairs that are unsafe and inconvenient.

The home is presently non-conforming at the west side setback (where the new enclosed space would be) and front setback. The proposed change of this 74 square feet of porch from

accessory use to primary use will not expand the existing footprint of the structure, or change the roof of the porch.

The porch enclosure project will contribute to maintaining the 100+ year old house with fresh paint and other upgrades. From an aesthetic perspective, the proposed change will blend in naturally with the character of the neighborhood. The new enclosed area will add appropriate mass to the lower level of the house, giving it more visually pleasing proportions. The majority of the porch will remain unchanged, and will continue to provide the traditional street-facing facade commonly found in the neighborhood.

Variance Evaluation Criteria Summary

- *10.233.21 Granting the variance would not be contrary to public interest.*

The proposed enclosure of a portion of the existing porch will not alter the essential character of the neighborhood. The adjacent property owners have indicated their support with written statements.

- *10.233.22 Granting the variance would observe the spirit of the Ordinance.*

The spirit of the Ordinance will be observed as the proposed change will improve the performance of the property and enhance the appearance of the home. There is no request to modify a setback, but rather to change the use of a very small area of the existing footprint where it is already nonconforming.

- *10.233.23 Granting the variance would do substantial justice.*

The proposed enclosure of a small portion of the existing porch will improve the house by creating useful space for functions that are commonly found in comparable homes (mud room, accessible laundry room), and will in no way be harmful to the public.

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

The proposed change is likely to increase the value of the home and have a positive effect on values of surrounding properties.

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

Literal enforcement of the provisions of the Ordinance would prevent the owners from using space that is already part of their home's footprint to create a logical mudroom and safe and accessible laundry room, as these functions presently do not exist.

Documents and Exhibits

Digital Land Use Application Form submitted through Viewpoint portal.

Attachments

- Owners Authorization
- Site Plan
- Photos of existing conditions
- Building plans and elevations for proposed structures
- Interior floor plans for any renovations or expansion to existing structures
- Letters of support from adjacent property owners

To: Whom This May Concern

Re: 485 Lincoln Avenue, BLDG-23-1064

Date: November 17, 2023

From: Katherine Clarcq
Jeffrey Suttie

Handwritten signatures of Katherine Clarcq and Jeffrey Suttie. The signature for Katherine Clarcq is written in cursive and is positioned above the signature for Jeffrey Suttie, which is also in cursive.

This memo authorizes Chris L. Kiper to submit and be the primary point of contact for the Land Use Application for 485 Lincoln Avenue. Thank you.

VARIANCE REQUEST SUBMITTAL

JEFFREY SUTTIE AND KATHERINE CLARCQ
485 LINCOLN AVE

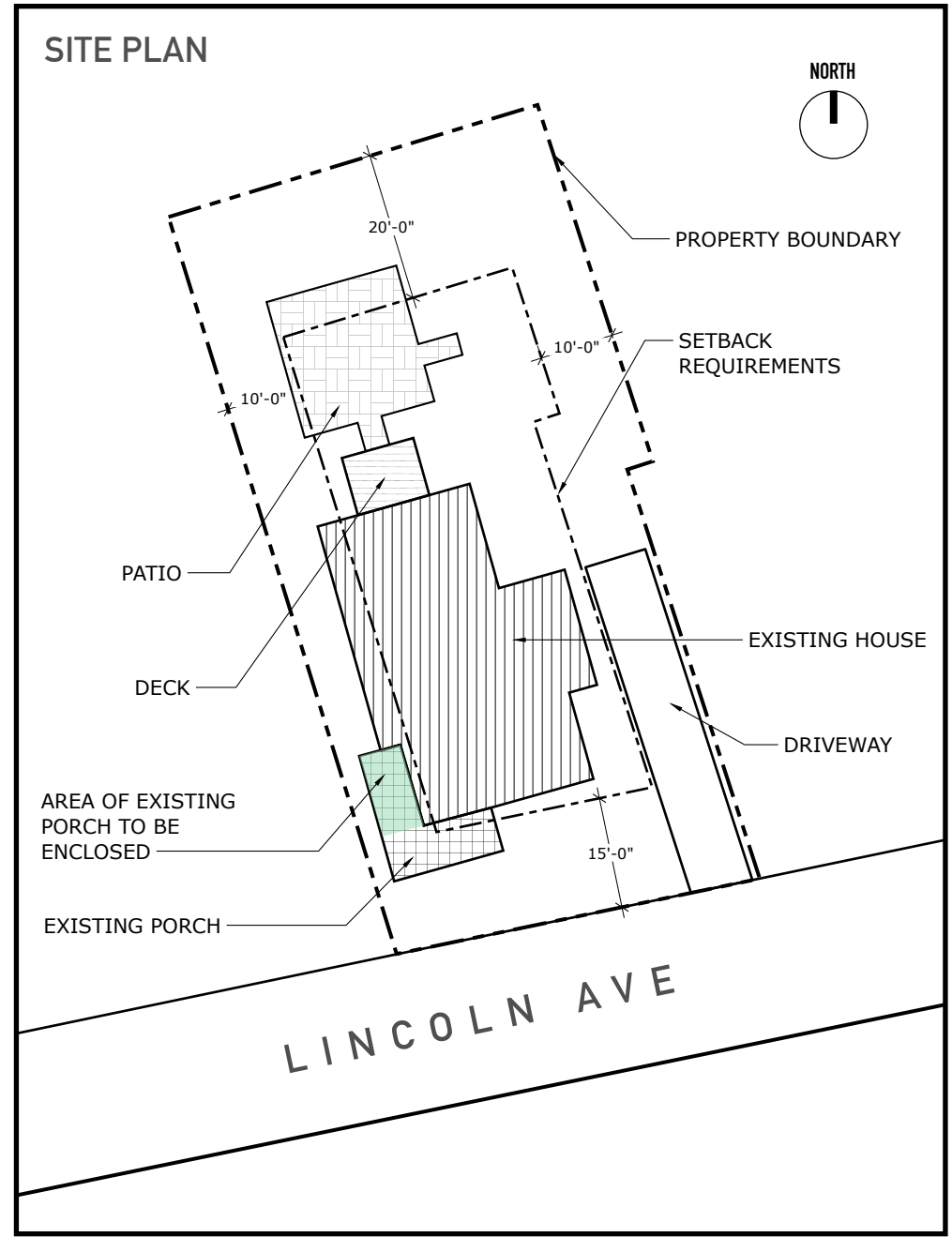
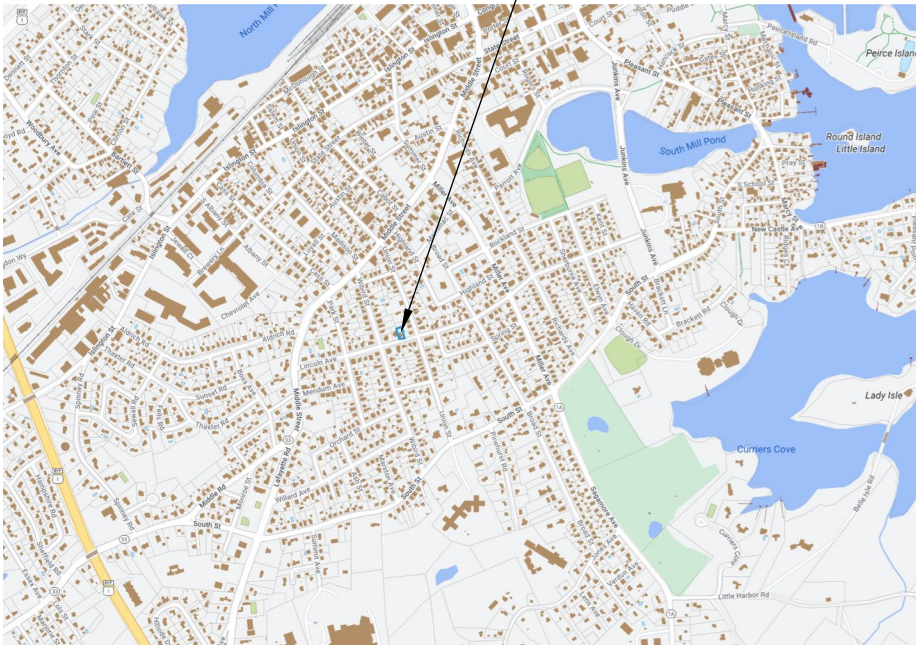
MAP 134 LOT 49

ZONING: GRA

DESCRIPTION OF PROJECT:

Enclose 72 square feet of existing covered porch to create a mudroom and laundry room.

PROJECT LOCATION



SITE PLAN



PROPERTY BOUNDARY

SETBACK REQUIREMENTS

EXISTING HOUSE

DRIVEWAY

PATIO

DECK

AREA OF EXISTING PORCH TO BE ENCLOSED

EXISTING PORCH

LINCOLN AVE

FRONT OF HOUSE

No change to general aesthetics. The new enclosed area will fill in the lack of mass below the existing bumped-out second floor space above the east facing side of the porch.

The result will provide a more balanced architectural composition while adhering to the nature and style of the neighborhood.



SIDE OF HOUSE

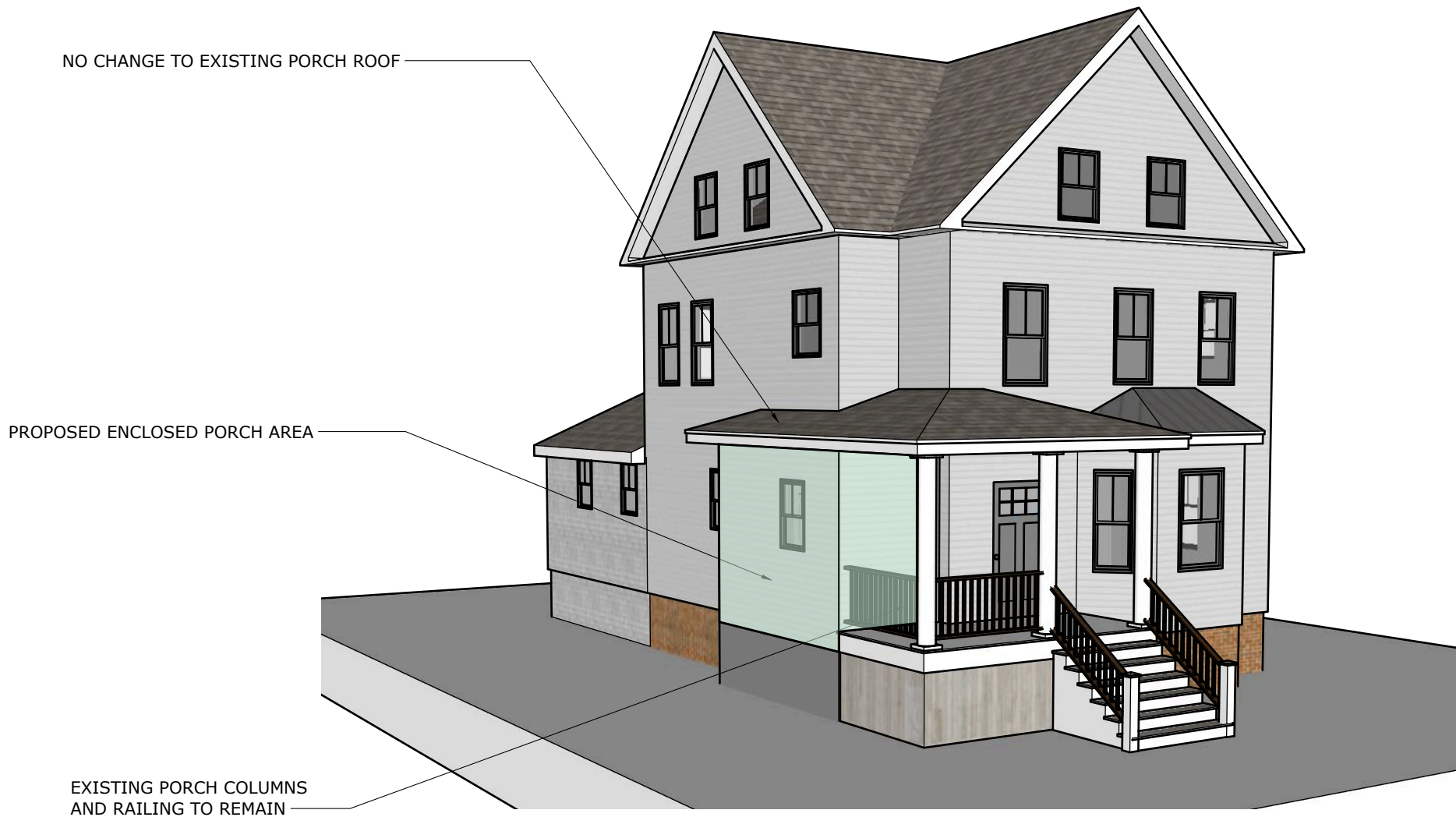
This is the proposed area to become enclosed. By aligning new exterior walls below the load-bearing members of the porch roof, the precise geometry of the existing porch roof will remain unchanged.



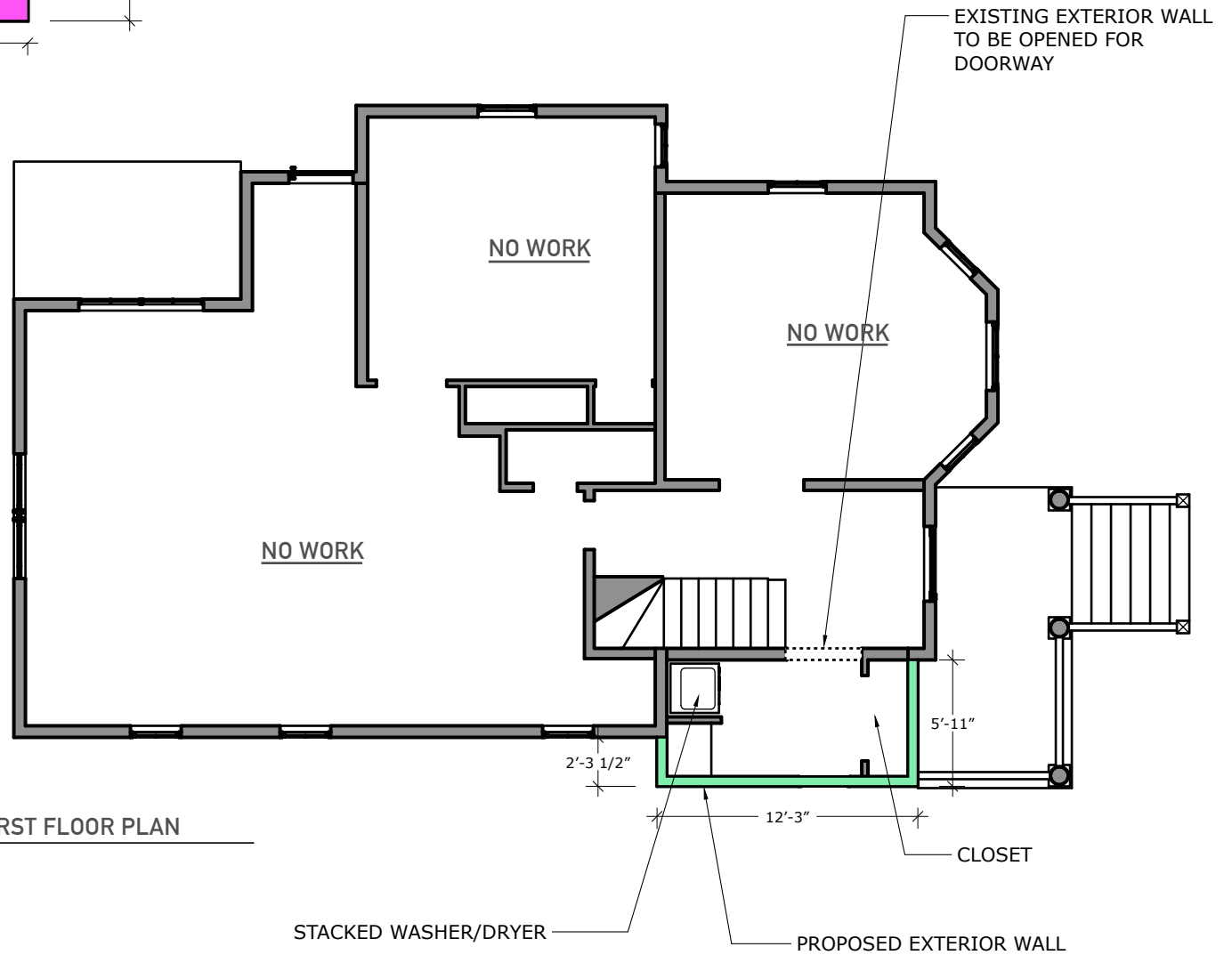
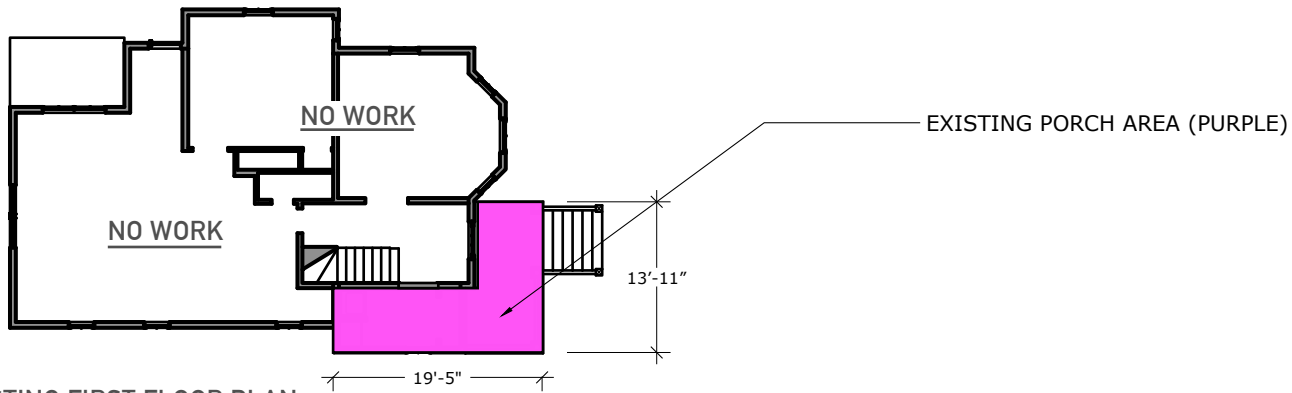
CORNER OF HOUSE

From this most commonly viewed angle of the house, the proposed enclosure will have little impact on the traditional style of the front facade. The structure will continue to maintain the pattern of traditional New England architecture found throughout the neighborhood.





PROPOSED ENCLOSED PORCH AREA - PERSPECTIVE

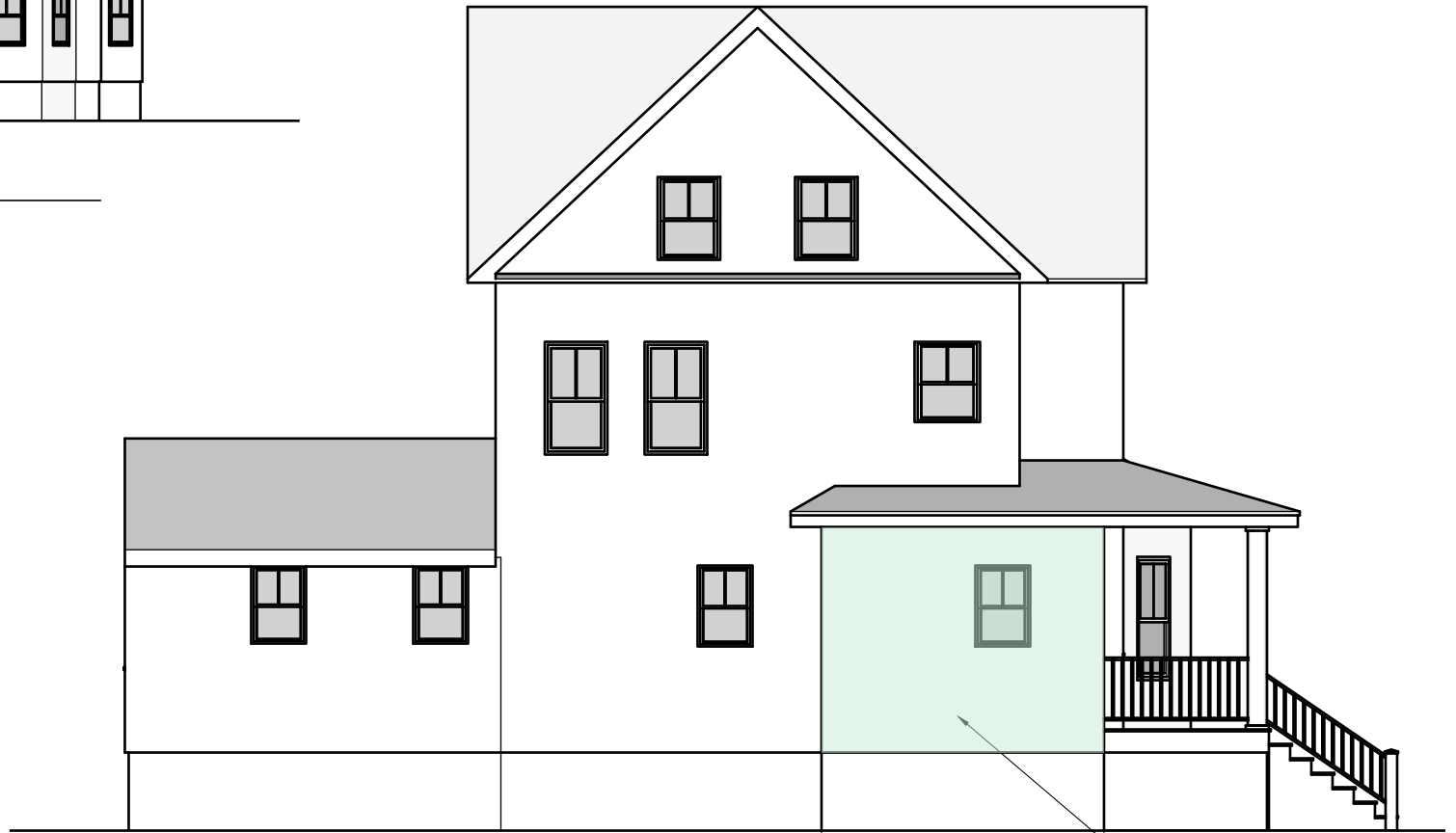


PROPOSED
PORCH
ENCLOSURE



SOUTHEAST ELEVATION

SCALE 1/16" = 1'-0"



SOUTHWEST ELEVATION

SCALE 1/8" = 1'-0"

PROPOSED PORCH
ENCLOSURE

12'-2 1/2"

Portsmouth Zoning Board of Adjustment/City Hall
1 Junkins Avenue
Portsmouth NH 03801

November 16, 2023

Re: Support for Variance Request - Property at 485 Lincoln Avenue
Building Application #23-1064

Dear Zoning Board Members,

We are writing to express our support for the variance request submitted by Katherine Clarcq and Jeff Suttie for property located at 485 Lincoln Avenue. Jeff and Katherine have been residents of this neighborhood for 15 years and we have always been happy with their efforts to maintain their home.

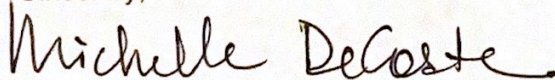
We have reviewed Katherine Clarcq and Jeff Suttie's variance request in detail and believe that the proposed project is well-conceived and will be a positive addition to our neighborhood. We believe the project will blend in well with the current structure, improve aesthetics and enhance the property's value.

We are also particularly impressed with Katherine Clarcq and Jeff Suttie's commitment to minimizing the impact of the construction process. We are confident that they will take all necessary steps to ensure that the project is completed in a timely and efficient manner, with minimal disruption to the neighborhood.

We urge you to grant Jeff Suttie and Katherine Clarcq's variance request.

Thank you for your time and consideration.

Sincerely,



Matthew and Michelle DeCoste
484 Lincoln Avenue
Portsmouth, NH 03801

Portsmouth Zoning Board of Adjustment/City Hall
1 Junkins Avenue
Portsmouth NH 03801

November 16, 2023

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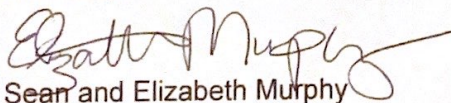
We have reviewed Katherine Clarcq and Jeff Suttie's variance request in detail and believe that the proposed project is well-conceived and will be a positive addition to our neighborhood. We believe the project will blend in well with the current structure, improve aesthetics and enhance the property's value.

We are also particularly impressed with Katherine Clarcq and Jeff Suttie's commitment to minimizing the impact of the construction process. We are confident that they will take all necessary steps to ensure that the project is completed in a timely and efficient manner, with minimal disruption to the neighborhood.

We urge you to grant Jeff Suttie and Katherine Clarcq's variance request.

Thank you for your time and consideration.

Sincerely,



Sean and Elizabeth Murphy
470 Lincoln Avenue
Portsmouth, NH 03801

Portsmouth Zoning Board of Adjustment/City Hall
1 Junkins Avenue
Portsmouth NH 03801

November 16, 2023

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We are writing to express our support for the variance request submitted by Katherine Clarcq and Jeff Suttie for property located at 485 Lincoln Avenue. Jeff and Katherine have been residents of this neighborhood for 15 years and we have always been happy with their efforts to maintain their home.

We have reviewed Katherine Clarcq and Jeff Suttie's variance request in detail and believe that the proposed project is well-conceived and will be a positive addition to our neighborhood. We believe the project will blend in well with the current structure, improve aesthetics and enhance the property's value.

We are also particularly impressed with Katherine Clarcq and Jeff Suttie's commitment to minimizing the impact of the construction process. We are confident that they will take all necessary steps to ensure that the project is completed in a timely and efficient manner, with minimal disruption to the neighborhood.

We urge you to grant Jeff Suttie and Katherine Clarcq's variance request.

Thank you for your time and consideration.

Sincerely,



Jeff and Heather Franas
496 Lincoln Avenue
Portsmouth, NH 03801

Portsmouth Zoning Board of Adjustment/City Hall
1 Junkins Avenue
Portsmouth NH 03801

November 16, 2023

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Building Application #23-1064

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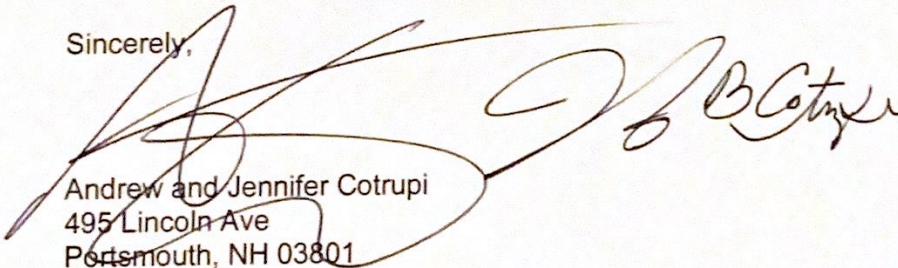
We have reviewed Katherine Clarcq and Jeff Suttie's variance request in detail and believe that the proposed project is well-conceived and will be a positive addition to our neighborhood. As the direct neighbor and property owner of the abutting side of the project, we believe the project will blend in well with the current structure, improve aesthetics and enhance the property's value.

We are also particularly impressed with Katherine Clarcq and Jeff Suttie's commitment to minimizing the impact of the construction process. We are confident that they will take all necessary steps to ensure that the project is completed in a timely and efficient manner, with minimal disruption to the neighborhood.

We urge you to grant Jeff Suttie and Katherine Clarcq's variance request.

Thank you for your time and consideration.

Sincerely,



Andrew and Jennifer Cotrupi
495 Lincoln Ave
Portsmouth, NH 03801

Portsmouth Zoning Board of Adjustment/City Hall
1 Junkins Avenue
Portsmouth NH 03801

November 16, 2023

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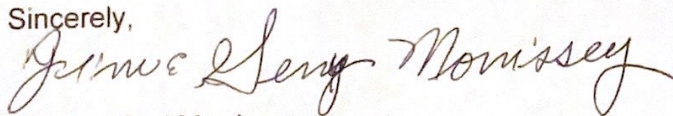
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We urge you to grant Jeff Suttie and Katherine Clarcq's variance request.

Thank you for your time and consideration.

Sincerely,



Jim and Geri Morrissey
478 Lincoln Avenue
Portsmouth, NH 03801

III. NEW BUSINESS

- D. The request of **Zachary Dombrowski and Meghan Black (Owners)**, for property located at **111 Gates Street** whereas relief is needed to demolish and reconstruct portions of the structure located at the rear and on the right side of the building which requires the following: 1) Variance from Section 10.521 to allow a) zero (0) foot front yard where five (5) feet are required, and b) zero (0) foot side yard where 10 feet are required; and 2) Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 103 Lot 96 and lies within the General Residence B (GRB) and Historic District. (LU-23-193)

Planning Department Comments

Applicant has withdrawn the application for zoning relief.

111 GATES ST. _ NO RELIEF REQUEST FROM BOA
Zach Dombrowski & Meghan Black Residence

DATE: 12.12.23

ATTENTION: CITY OF PORTSMOUTH, PLANNING DEPT.

FROM: Amy Dutton, Amy Dutton Home

Due to the request from the Historic District Commission, the homeowners of 111 Gates Street have agreed to NOT remove and rebuild the existing addition to the right of the structure. This section will stay intact from the exterior perspective in footprint and roofline. We will do all repairs and renovations from the interior only.

We comply to setbacks and lot coverage with the proposed addition in the back of the structure. Therefore, we are requesting to pull our application for the December Board of Adjustment meeting.

Thank you in advance for your consideration.

Respectfully submitted.

Amy Dutton
Amy Dutton Home

III. NEW BUSINESS

E. The request of **Mark N Franklin and Julie S Franklin (Owners)**, for property located at **168 Lincoln Avenue** whereas relief is needed to demolish the detached garage and construct an addition to the primary structure that includes an attached garage which requires the following: 1) Variance from Section 10.521 to allow a) eight and a half (8.5) foot front yard where 15 is required, b) seven (7) foot right yard where ten (10) feet is required, and c) 33% building coverage where 25% is the maximum allowed; and 2) Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 113 Lot 6 and lies within the General Residence A (GRA) District. (LU-23-196)

Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family dwelling	*Demolish detached garage and construct an attached garage and new porch	Primarily residential
<u>Lot area (sq. ft.):</u>	5,925	5,925	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	5,925	5,925	7,500 min.
<u>Street Frontage (ft.):</u>	163	163	100 min.
<u>Lot depth (ft.)</u>	105	105	70 min.
<u>Front Yard (ft.):</u>	7.5	8.5	15 min.
<u>Secondary Front Yard (Sherburne Ave) (ft.):</u>	16.2	15	15 min.
<u>Right Yard (ft.):</u>	1.5 (Garage) 8.8 (primary structure)	7	10 min.
<u>Rear Yard (ft.):</u>	1.7	>20	20 min.
<u>Height (ft.):</u>	31.6	32.6	35 max.
<u>Building Coverage (%):</u>	33.4	33	25 max.
<u>Open Space Coverage (%):</u>	64.4	66.9	30 min.
<u>Parking</u>	3	3	3
<u>Estimated Age of Structure:</u>	1900	Variance request(s) shown in red.	

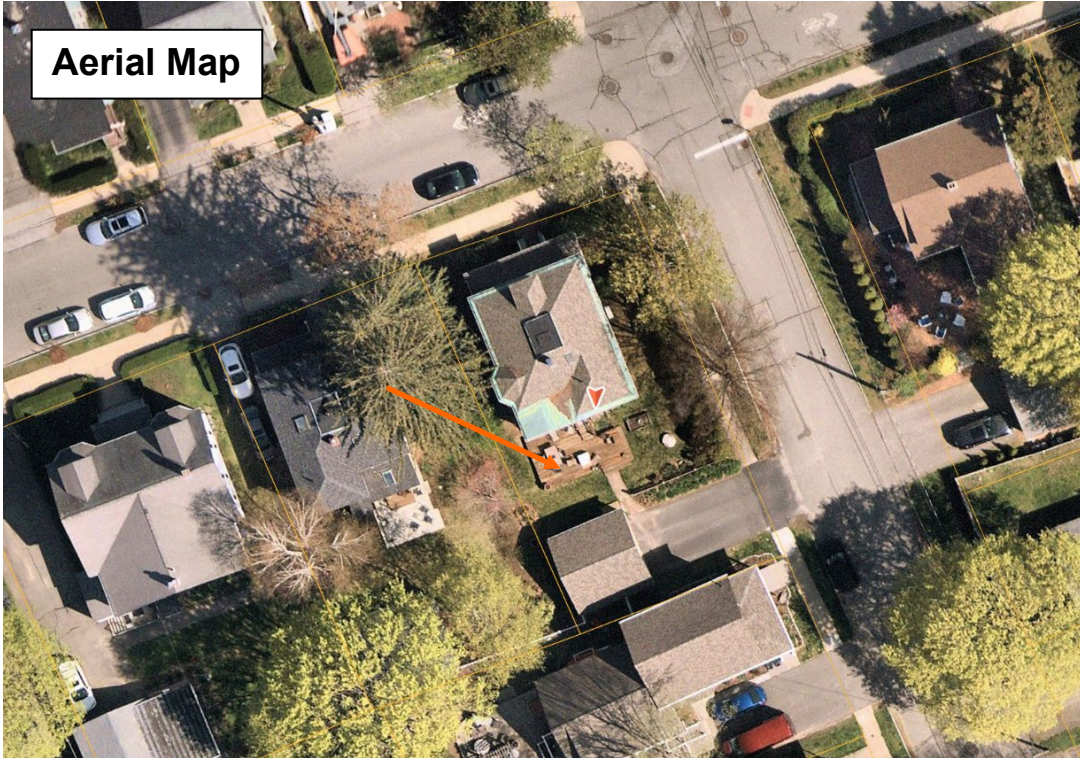
***Relief from Section 10.321 is required to allow an existing non-conforming structure to expand**

Other Permits/Approvals Required

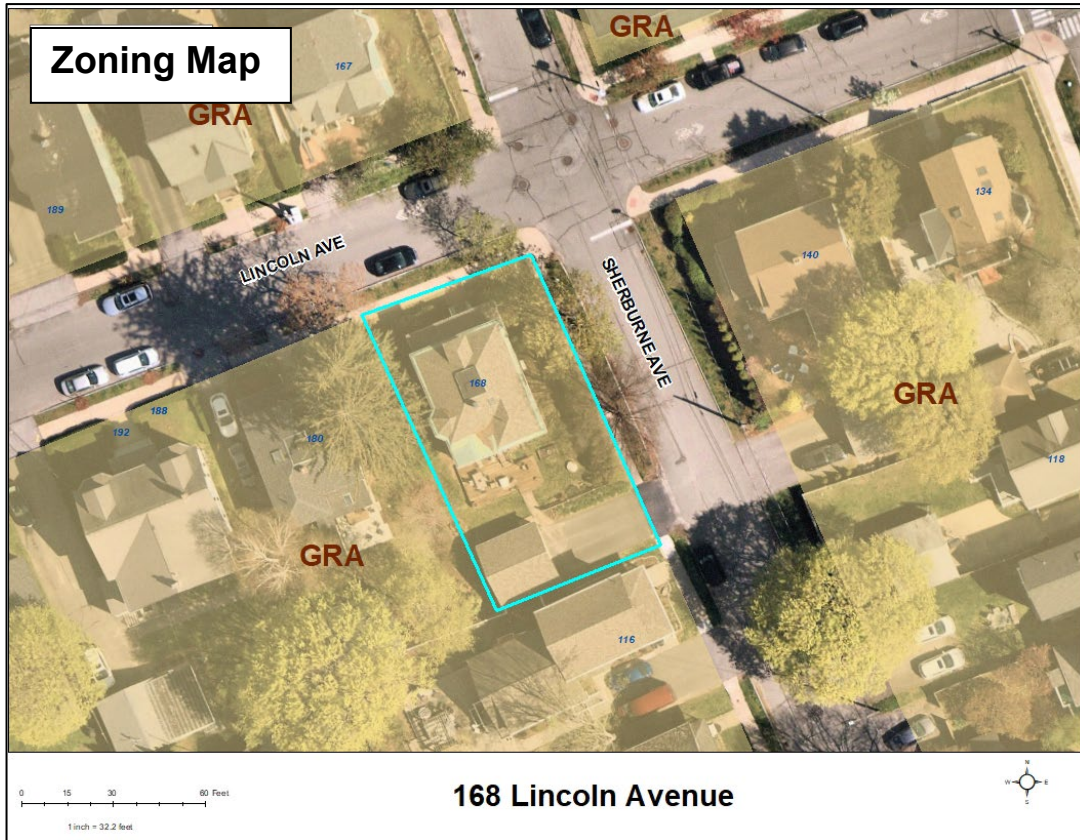
- Building Permit

Neighborhood Context

Aerial Map



Zoning Map



Previous Board of Adjustment Actions

March 29, 2023 – The Board **denied** the following request: demolition of existing detached garage and porch and construction of a new attached garage with wrap-around porch which requires 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; and 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.

Planning Department Comments

Fisher vs. Dover

The applicant was before the Board on March 29 of 2023 seeking relief from Section 10.521 to allow a 7.5 foot front yard, a 9 foot secondary front yard, and 38% building coverage; and from section 10.321 to extend or enlarge a nonconforming structure without conforming to the requirements of the ordinance. The Board denied the request for relief at that time citing that it did not observe the spirit of the ordinance which was to prevent overcrowding and overbulking of the land; and would diminish the value of surrounding properties. The new design is smaller and requires less granted relief to construct. Staff feels this is a significant enough change that would not evoke Fisher v. Dover, but the Board may want to consider whether it is applicable before the 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).

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.

10.235 Certain Representations Deemed Conditions

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

BY: VIEWPOINT & HAND DELIVERY

November 28, 2023

City of Portsmouth
Attn: Stefanie Casella, Planner
Zoning Board of Adjustment
1 Junkins Avenue
Portsmouth, NH 03801

**RE: Variance Application of Mark and Julie Franklin
168 Lincoln Avenue, Tax Map 113, Lot 6**

Dear Stefanie,

Please find a copy of the following materials relative to the above referenced variance application filed through Viewpoint for property located at 168 Lincoln Avenue, Portsmouth:

- 1) Landowner Letter of Authorization;
- 2) Narrative to Variance Application;
- 3) Plan Set (Existing Conditions Plan, Proposed Conditions Plan, Floor Plans, Elevations and Photographs of Property);
- 4) Additional Photographs of Property.

A copy of the above application materials 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



Julie Franklin (NH) (Nov 28, 2023 10:32 EST)

Mark and Julie Franklin, record owners of the property located at 168 Lincoln Avenue, Tax Map 113, Lot 6, Portsmouth, NH (the “Property”), hereby authorize **Durbin Law Offices, PLLC and its attorneys and Hubert Krah**, 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.


Mark Franklin (Nov 28, 2023 18:32 EST)

Mark Franklin

November 28, 2023


Julie Franklin (Nov 28, 2023 20:33 EST)

Julie Franklin

November 28, 2023

Mark Franklin

**NARRATIVE
VARIANCE APPLICATION**

**168 Lincoln Avenue
Tax Map 113, Lot 6**

Mark and Julie Franklin

Introduction / Property

The Property at 168 Lincoln Avenue is a 5,925 square foot developed lot situated at the intersection of Lincoln and Sherburne Avenues. It is located in the GRA Zoning District. The Property contains a single-family home built in 1900 that the Applicants, Mark and Julie Franklin and their two teenage children, reside in. The primary frontage for the home is on Lincoln Avenue, as evidenced by its postal address; however, the home is accessed from Sherburne Avenue where the existing driveway is located. There is a detached two car garage at the end of the driveway in the southwest corner of the Property which is situated right along the shared boundaries with the property at 180 Lincoln Avenue (Tax Map 113, Lot 7) and 116 Sherburne Avenue (Tax Map 112, Lot 37). **Exhibit A.**

The existing home and structures on the Property are non-conforming in the following respects:

- Garage: <1' right yard setback where 10' is required.
 <1' rear yard setback where 20' is required.

- House: 8'-10" right yard setback where 10' is required.
(dining room)

- House: 7'-6" primary front yard setback where 15' is required.
(front porch)

- Deck: 9'-0" right yard setback where 10' is required.

- Building Coverage:
 33.4% where 25% is allowed.

Mark and Julie have two teenage children and work part-time from home. In order to make the home more functional and flexible for their family, the Franklins are seeking the zoning relief necessary to construct a 684 sf. two-car garage addition with living space above. In addition, they are seeking the relief necessary to construct a new 127 sf. covered front entryway to their home that would replace the existing porch, which is 200 sf., not code-compliant and in poor structural condition. The garage addition will meet the rear and side yard setback requirements. However, a 7'-4" right yard setback variance is needed for a bulkhead entry into the basement that does not presently exist. There is a bump out in the house associated with the dining room that already

encroaches into the right yard setback by 1'-2" (8'-10" setback). The proposed front entryway needs setback relief due to the location of the existing home but would be contained entirely within the footprint of the existing front porch. To make way for the proposed improvements, the Franklins would demolish the non-conforming two-car garage, rear deck and front porch, and relocate the driveway.

Zoning Relief Summary

The Applicant seeks the following variance approvals from the Board:

1. Section 10.51

a) To allow 8'-7" primary front yard setback for the construction of a new front entryway where 15'-0" is required and 7'-6" exists.

b) To allow a 7'-4" right yard setback for the construction of a bulkhead where 10'-0" is required and 8'-10" exists.

c) To allow 32.9% building coverage where 25% is allowed and 33.4% exists.

2. Section 10.321

To allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance.

Prior Application (March 2023)

On March 29, 2023, the Board voted to deny a variance application submitted by the Franklins seeking to demolish the existing detached two-car garage and front porch and construct a new attached two-car garage with living space above and wraparound front porch on the Property. **Exhibit B.** The Board voted to deny the variance requests as a group on the basis that approving them would result in a diminution of surrounding property values and a violation of the spirit and intent of the Ordinance, which was to prevent the "overcrowding" and "overbulking" of land. The variances denied were as follows:

1. Section 10.521

a) To allow a 7'-6" front yard where 15'-0" is required and 7'-6" exists.

b) To allow a 9'-0" secondary front yard where 15'-0" is required and 16'-2" exists.

c) To allow 38% (37.6%) building coverage where 25% is allowed and 33% exists.

2. Section 10.321

To allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance.

The plans submitted to the Board with the application denied in March included a larger two car garage addition with living space above (775 sf. v. 684 sf.) and wraparound front porch (382 sf. v. 127' sf.) than is currently proposed. The lot coverage proposed in March was 37.6% versus the 32.9% currently proposed. In addition, the front porch proposed in March would have encroached into both front yard setbacks whereas the front entryway that is currently proposed would only encroach into the primary yard setback and would be more conforming than the existing front porch.

In the case of Fisher v. City of Dover, the New Hampshire Supreme Court found that unless a “material change of circumstances affecting the merits of the application has [] occurred” or the application is “materially differs in nature and degree from its predecessor,” the Board may not reach the merits of a subsequent application. 120 N.H. 187, 190 (1980).

The Franklins’ current plans meet the standard(s) set forth by the Court in Fisher v. City of Dover. The Franklins have significantly scaled back their addition and front entryway plans from what was previously proposed and denied in March, such that the plans are *materially different in nature and degree*. To that end, the Board must consider the merits of the Franklins’ current application.

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.” Id.

The primary purpose of minimum setback standards is to ensure that there is adequate light, air and space between abutting properties and the structures thereon. The primary purpose of a maximum building coverage standard is to protect against the overcrowding of structures on land.

The Franklins plans for the Property will result in a 0.5% reduction in total building coverage from what exists. The total building coverage is consistent with surrounding properties, almost all of which exceed the 25% limitation. Exhibit C. The properties that do not exceed the

limitation are outliers. 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). In the present case, the GRA building coverage limitation does not reflect the character of the surrounding neighborhood.

The new garage addition will be contained entirely within the applicable building setbacks and the height (27'-1") is almost 8' below what is permitted in the GRA Zoning District. The proposed renovations and addition to the home will result in a code-compliant building and significant energy efficiency improvements related to the new windows, doors, solar panels and heating system that will be installed.

The replacement of the front porch and improvement in the primary front yard setback will only help to increase the light, air and space of the nearest abutting properties. The new setback encroachment related to the proposed bulkhead is a benign request that will have no impact upon the light, air, space or privacy of the nearest abutting property at 180 Lincoln Avenue. The new bulkhead will allow for better basement access to the home. The proposed improvements to the Property will bring it into greater compliance with the Ordinance and are more in keeping with the spirit and intent of the Ordinance than what exists. Therefore, they will not alter the essential character of the neighborhood or negatively affect public health, safety or welfare.

Substantial Justice will be done in granting the variances.

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).

It represents a loss to the Franklins to deny them the opportunity to improve their home to make it more functional for their family, particularly when you consider the fact that they will be bringing the Property into greater compliance with the Ordinance and keeping the proposed addition entirely within the applicable building setbacks and well below the height restriction. The proposed bulkhead, which represents the only new setback encroachment, will have no negative impact on any abutting property. It will only be utilized for access to the basement of the home when it is needed and is approximately 36" above grade at its highest elevation. The proposed bulkhead will replace an existing set of sunken stairs that were used for coal deliveries in the days of old. There is no public interest served by denying the requested variances. Therefore, it would constitute an injustice to deny the application in whole or in part.

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

It would be illogical to conclude that surrounding property values would be negatively affected in any sense by improvements to the Property that will only bring it into greater compliance with the Ordinance. The architecture associated with the proposed addition and front

porch will be in keeping with the existing design of the residence and many surrounding homes and structures. The removal of the existing non-conforming garage, which sits along the southerly and westerly boundaries, will create a greater sense of open space for the abutters at 180 Lincoln and 116 Sherburne Avenues. The proposed improvements will only improve the appearance of the Property and in turn, enhance the values of surrounding properties.

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

The Property has a number of special conditions that distinguish it from surrounding properties. It is a corner lot and subject to two 15' front yard setbacks rather than one front yard setback and two 10' side yard setbacks. It is also an undersized lot for the GRA Zoning District, having a total lot area of 5,925 sf. where 7,500 sf. is the minimum lot size. Therefore, the Property has a smaller building envelope and is more constrained than many other properties surrounding it such that strict application of the Ordinance's setback and building coverage provisions creates an unreasonable burden upon the Property. As outlined above, the existing home, including the front porch, dining room bump-out and deck, already encroaches into the primary front and right yard setbacks. The two-car garage significantly encroaches into the rear and right yard setbacks. Existing building coverage is approximately 33%. The proposed improvements will result in more compliant primary front, rear and right yard setbacks and less total building coverage than what exists. As a result of the foregoing special conditions, there is no fair and substantial relationship between the general purposes of the Ordinance provisions pertaining to setbacks and building coverage, and their application to the Property. The use of the Property is also reasonable. The Property will continue to be used for single-family residential purposes, a use which is permitted and encouraged within the GRA Zoning District.

Conclusion

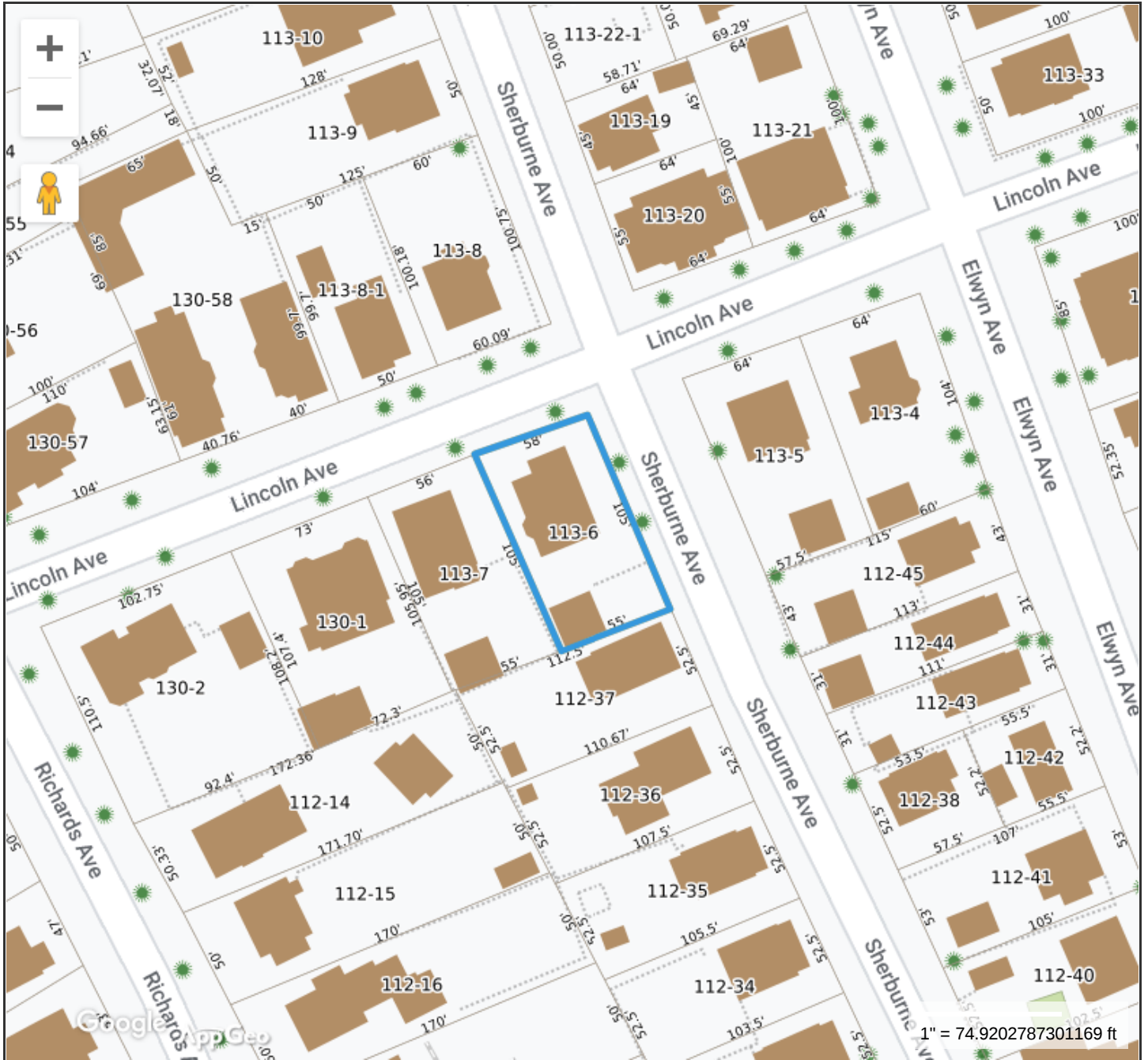
The Franklins thank you for your time and consideration of their application and respectfully request your approval of the variances being requested.

November 28, 2023

Respectfully Submitted,
Mark and Julie Franklin



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

Property ID 0113-0006-0000
 Location 168 LINCOLN AVE
 Owner FRANKLIN MARK N & JULIE S



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

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

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

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CITY OF PORTSMOUTH

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

ZONING BOARD OF ADJUSTMENT

April 4, 2023

Mark N. and Julie S. Franklin
168 Lincoln Avenue
Portsmouth, New Hampshire 03801

RE: Board of Adjustment request for property located at 168 Lincoln Avenue (LU-23-25)

Dear Property Owners:

The Zoning Board of Adjustment, at its regularly scheduled meeting of **Wednesday, March 29, 2023**, considered your application for demolishing the existing detached garage and porch and constructing 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 shown on Assessor Map 113 Lot 6 and lies within the General Residence A (GRA) District. As a result of said consideration, the Board voted to deny the request because it failed to meet the criteria set forth in 10.233.22 as the spirit and intent of the ordinance was to avoid overcrowding and overbulking of lots; and failed to meet criteria set forth in 10.233.24 as there was evidence submitted from A Land Realty saying the proposal would have a negative impact on the value of the abutting property.

The Board's decision may be appealed up to thirty (30) days after the vote. Please contact the Planning Department for more details about the appeals process.

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

Very truly yours,

Phyllis Eldridge, Chair of the Zoning Board of Adjustment

cc:

Findings of Fact | Variance

City of Portsmouth Zoning Board of Adjustment

Date: March 29, 2023

Property Address: 168 Lincoln Avenue

Application #: LU-23-25

Decision: **Deny**

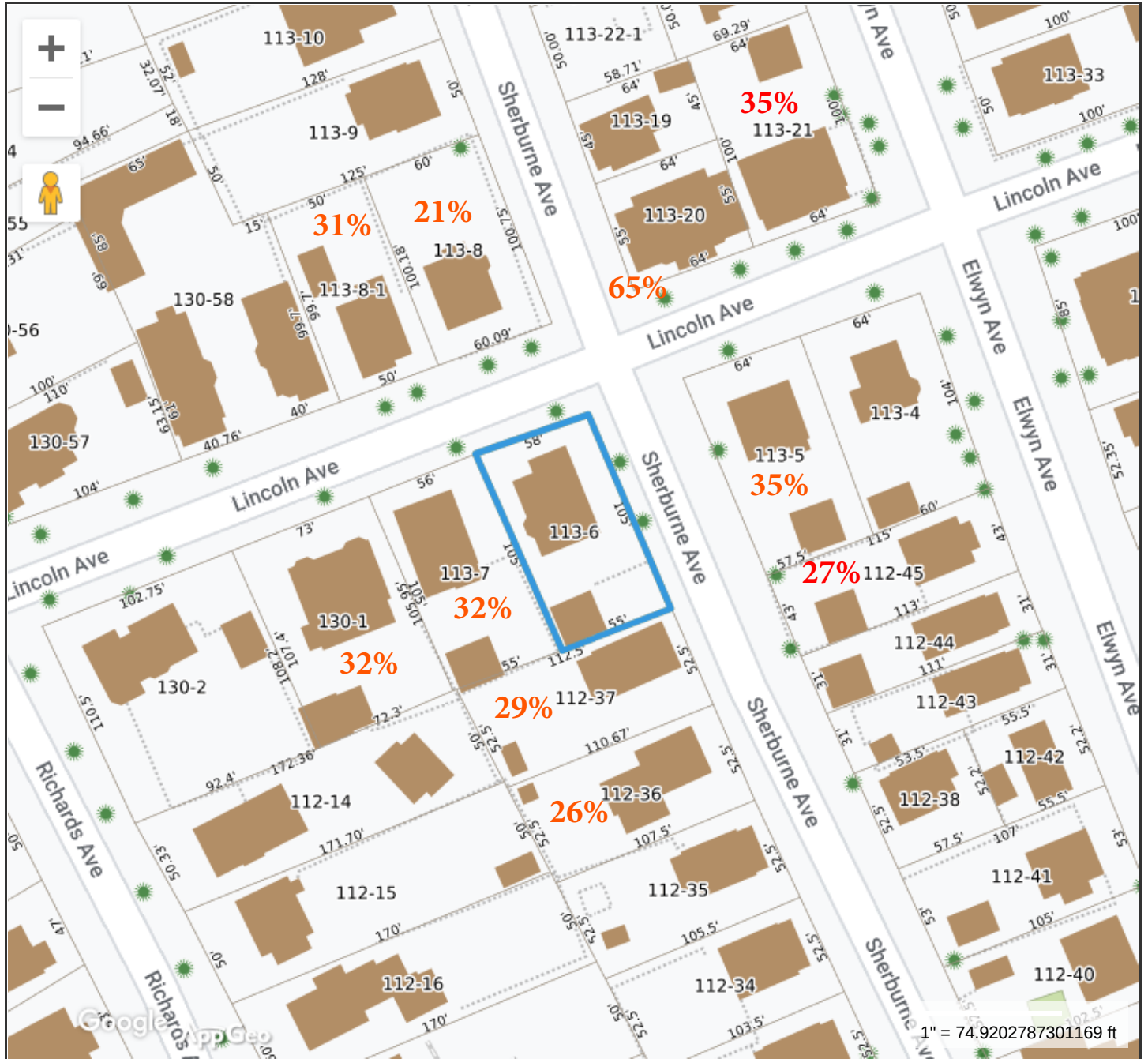
Findings of Fact:

Effective August 23, 2022, amended RSA 676:3, I now reads as follows: The local land use board shall issue a final written decision which either approves or disapproves an application for a local permit and make a copy of the decision available to the applicant. **The decision shall include specific written findings of fact that support the decision. Failure of the board to make specific written findings of fact supporting a disapproval shall be grounds for automatic reversal and remand by the superior court upon appeal, in accordance with the time periods set forth in RSA 677:5 or RSA 677:15, unless the court determines that there are other factors warranting the disapproval.** If the application is not approved, the board shall provide the applicant with written reasons for the disapproval. If the application is approved with conditions, the board shall include in the written decision a detailed description of the all conditions necessary to obtain final approval.

The proposed application meets/does not meet the following purposes for granting a Variance:

Section 10.233 Variance Evaluation Criteria	Finding (Meets Criteria)	Relevant Facts
10.233.21 Granting the variance would not be contrary to the public interest.		
10.233.22 Granting the variance would observe the spirit of the Ordinance.	NO	<ul style="list-style-type: none"> Granting the variance will not observe the spirit of the ordinance because the spirit and intent of the ordinance is to avoid overcrowding and overbulking of the lot.
10.233.23 Granting the variance would do substantial justice.		
10.233.24 Granting the variance would not diminish the values of surrounding properties.	NO	<ul style="list-style-type: none"> Granting the variance will 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 will have a negative impact on the abutting property at 180 Lincoln Avenue.

<p>10.233.25 Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship.</p> <p>(a)The property has special Conditions that distinguish it from other properties in the area. AND</p> <p>(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</p> <p>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.</p>		
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Property ID 0113-0006-0000
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Geometry updated 09/21/2022
 Data updated 3/9/2022

Application for a Variance to permit the following:

- The removal of an existing detached 2-car garage (412 sq ft), located within both side yard setbacks, and the removal of an existing deck (274 sq ft, 24" above grade), partially located within the side yard setback
- The construction of a new attached 2-car garage (684 sq ft) with two stories of living space above.
- The removal of an existing covered front porch (200 sq ft) partially located in the front yard setback, and the construction of a new covered porch (127 sq ft) partially located in the front yard setback in it's place;
- The construction of a 13'-4" wide and 2'-2" deep 2-story extension at the first floor kitchen and second floor laundry and bath;
- The construction of one new dormer on the third floor;
- The construction of a new roof on the south-west corner to allow for a connection to the third story of the new garage addition.
- The construction of a new bulkhead to access the basement

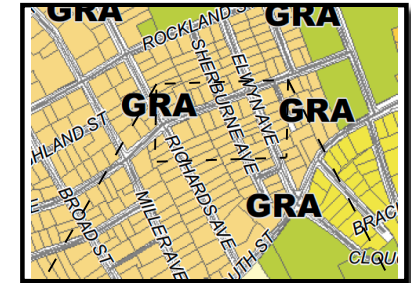
Variences requested:

- 1) Section 10.321 (Nonconforming Buildings and Structures) to
 - a. Allow a lawful nonconforming building (residence) to be extended and enlarged.
- 2) A variance from Section 10.521 (Table of Dimensional Relief Standards) to allow construction with the following parameters:
 - a. A front yard setback of approximately 8'-7" where 15' is required and 7'-6" is existing.
 - b. A side yard setback of approximately 7'-4" where 10' is required and 8'-10" is existing.
 - c. Building coverage of 32.9% where 25% is allowed and 33% is existing

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 @ FIRST FLOOR
- AD-05 EXISTING & PROPOSED FLOOR PLANS @ SECOND FLOOR
- AD-06 EXISTING & PROPOSED FLOOR PLANS @ THIRD FLOOR
- AD-07 EXISTING & PROPOSED ROOF PLANS
- AD-08 PROPOSED ELEVATION NORTH
- AD-09 PROPOSED ELEVATION EAST
- AD-10 PROPOSED ELEVATION SOUTH
- AD-11 PROPOSED ELEVATION WEST

Location Map



Location of property
168 Lincoln Ave,
Portsmouth NH 03801,
Tax Map 113, Lot 6.



Variance Submittal for an Addition to
The Franklin Residence
168 Lincoln Ave, Portsmouth NH 03801

Cover Sheet

Issue date: November 18, 2023 | Scale: n/a
Revision dates:

AD-01

lot 113-6: 5,925 sq ft

existing residence footprint: 1,068 sq ft

existing front porch footprint: 200 sq ft

existing garage footprint: 412 sq ft

existing deck footprint: 296 sq ft

existing o.a. footprint: 1,976 sq ft

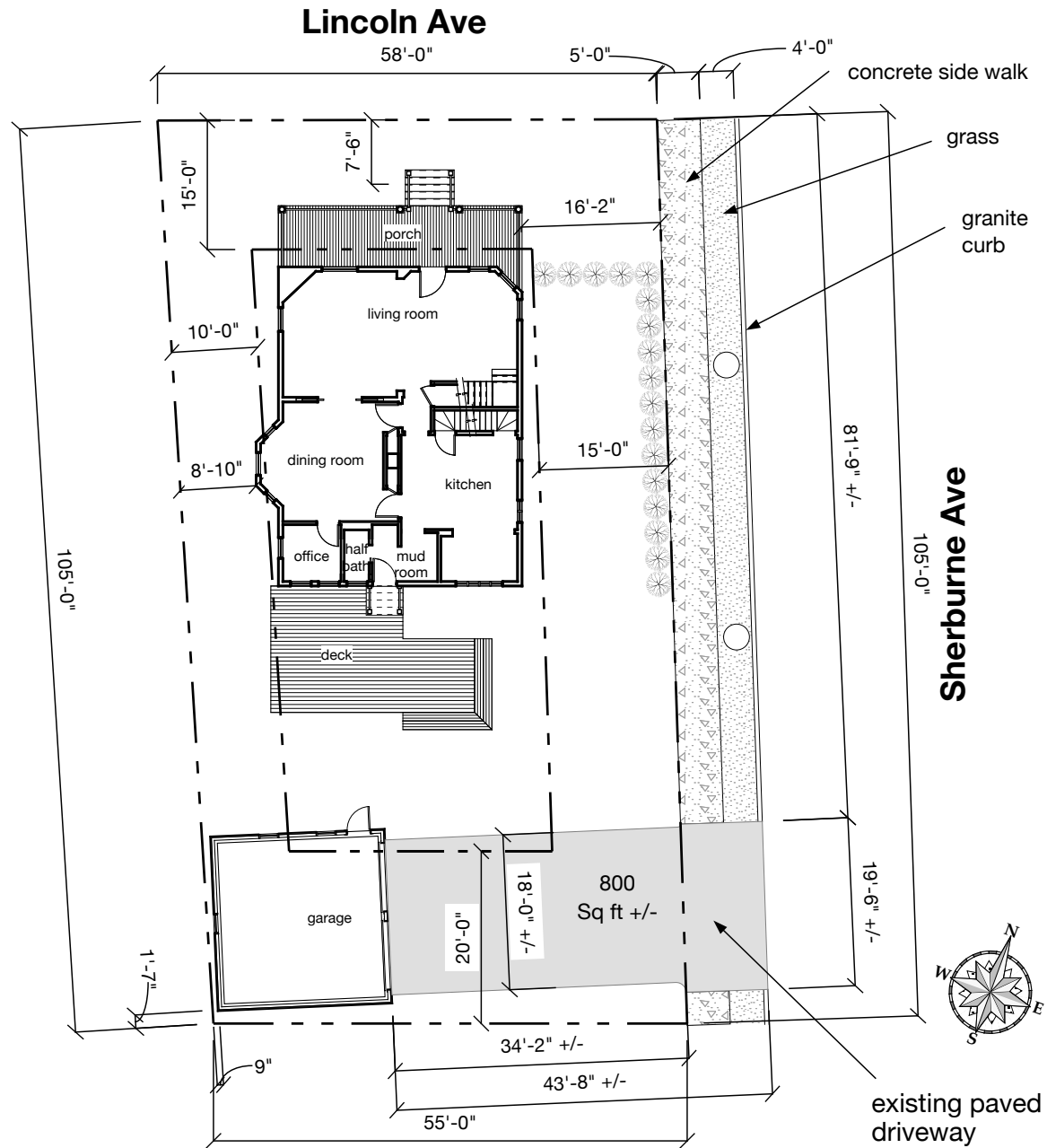
existing lot coverage: 33.4 %

existing lot coverage
if lot were 7,500 sq ft: 26.3%

GRA zoning requirements:

min lot size: 7,500 sq ft

front yard : 15'
side yard : 10'
rear yard: 20'
building coverage 25%
minimum open space 30%



NOTE:

THIS PLOT PLAN WAS DRAWN FROM INFORMATION GATHERED OFF THE OFFICIAL TAX MAP & MAPGEO INFORMATION. ALL DIMENSIONS TO BE VERIFIED IN FIELD.



Variance Submittal for an Addition to
The Franklin Residence
168 Lincoln Ave, Portsmouth NH 03801

Existing Plot Plan

Issue date: November 18, 2023 | Scale: 1" = 20'-0"
Revision dates:

AD-02

lot 113-6: 5,925 sq ft

existing residence footprint: 1,068 sq ft

proposed front porch footprint: 127 sq ft

proposed front bay footprint: 17 sq ft

proposed kitchen bay footprint: 30 sq ft

proposed bulkhead footprint: 22 sq ft

addition footprint: 684 sq ft

proposed o.a. footprint: 1,948 sq ft

proposed lot coverage: 32.9 %

proposed lot coverage if lot were 7,500 sq ft: 26.0 %

GRA zoning requirements:

min lot size: 7,500 sq ft

front yard : 15'

side yard : 10'

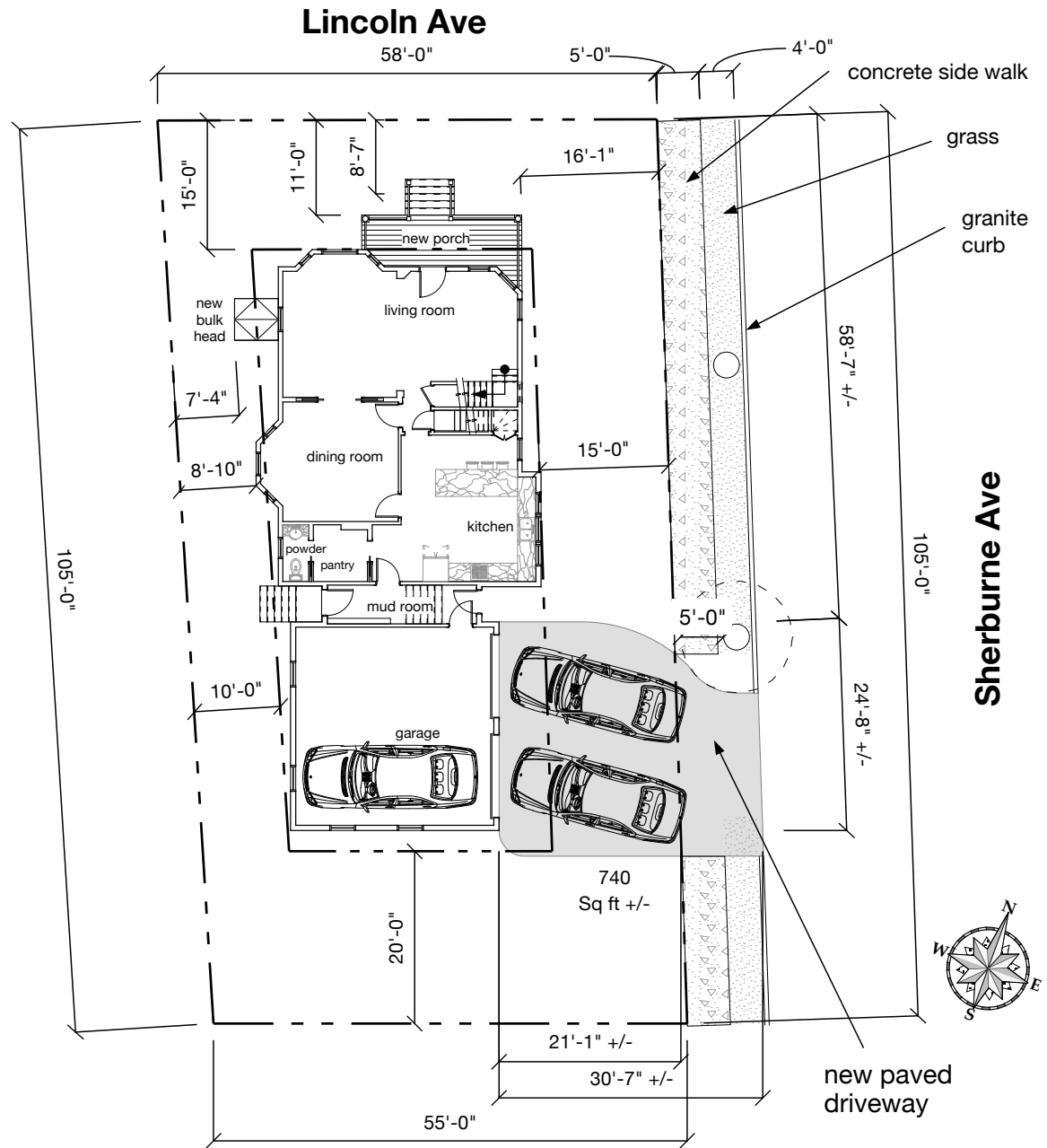
rear yard: 20'

building coverage 25%

minimum open space 30%

NOTE:

THIS PLOT PLAN WAS DRAWN FROM INFORMATION GATHERED OFF THE OFFICIAL TAX MAP & MAPGEO INFORMATION. ALL DIMENSIONS TO BE VERIFIED IN FIELD.

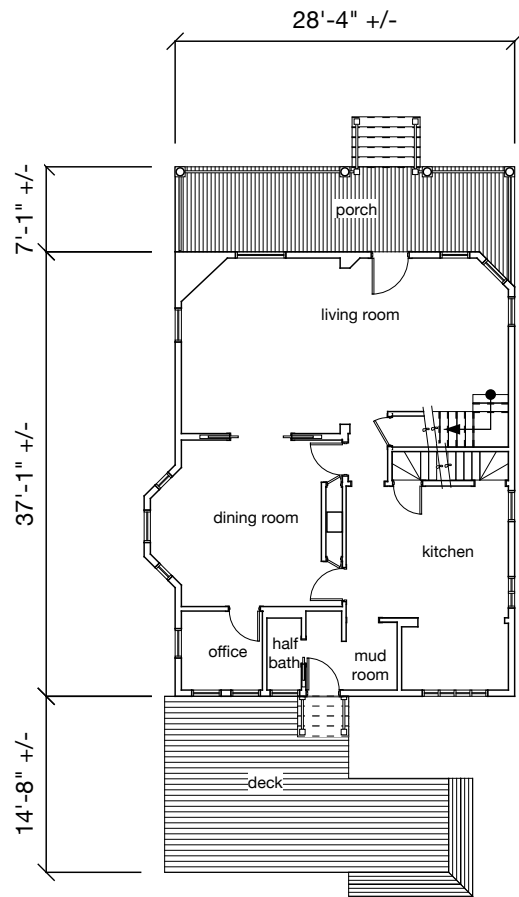


Variance Submittal for an Addition to
The Franklin Residence
 168 Lincoln Ave, Portsmouth NH 03801

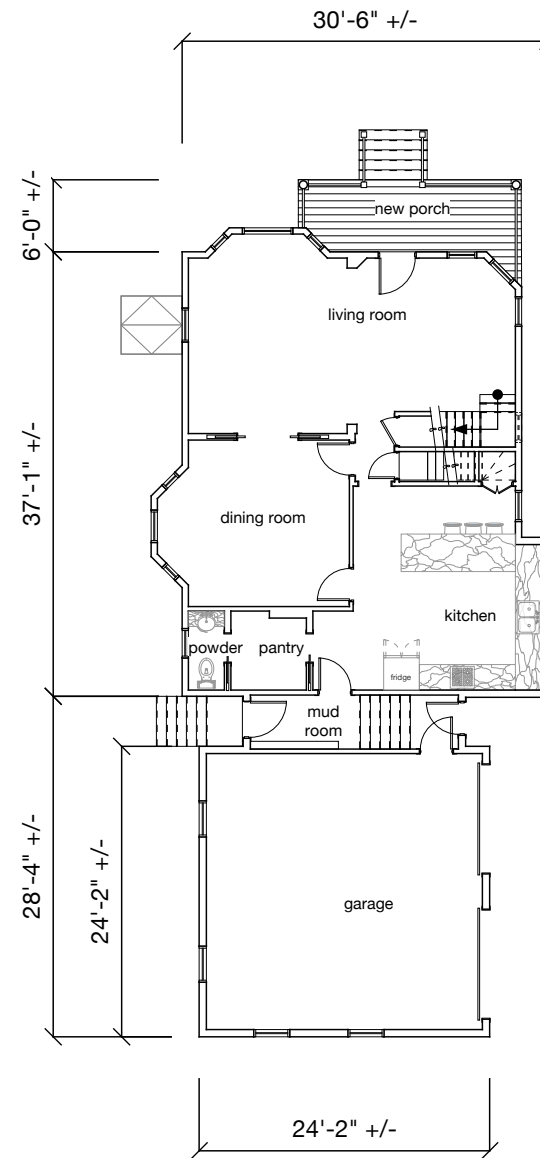
Proposed Plot Plan

Issue date: November 18, 2023 | Scale: 1" = 20'-0"
 Revision dates:

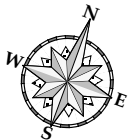
AD-03



existing



proposed

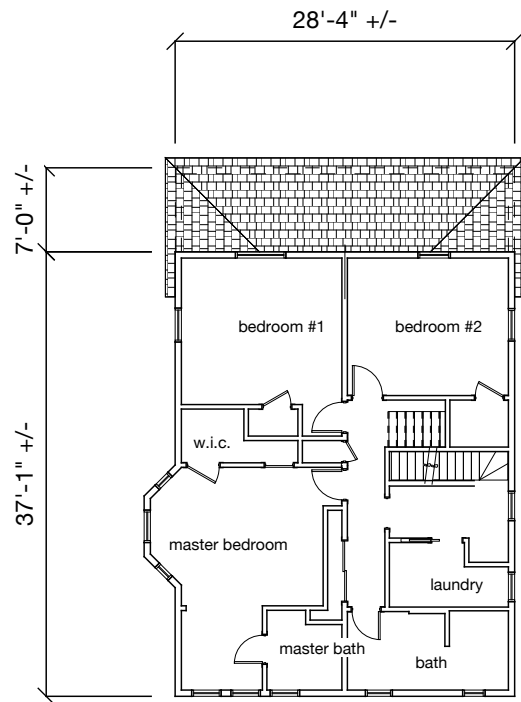


Variance Submittal for an Addition to
The Franklin Residence
 168 Lincoln Ave, Portsmouth NH 03801

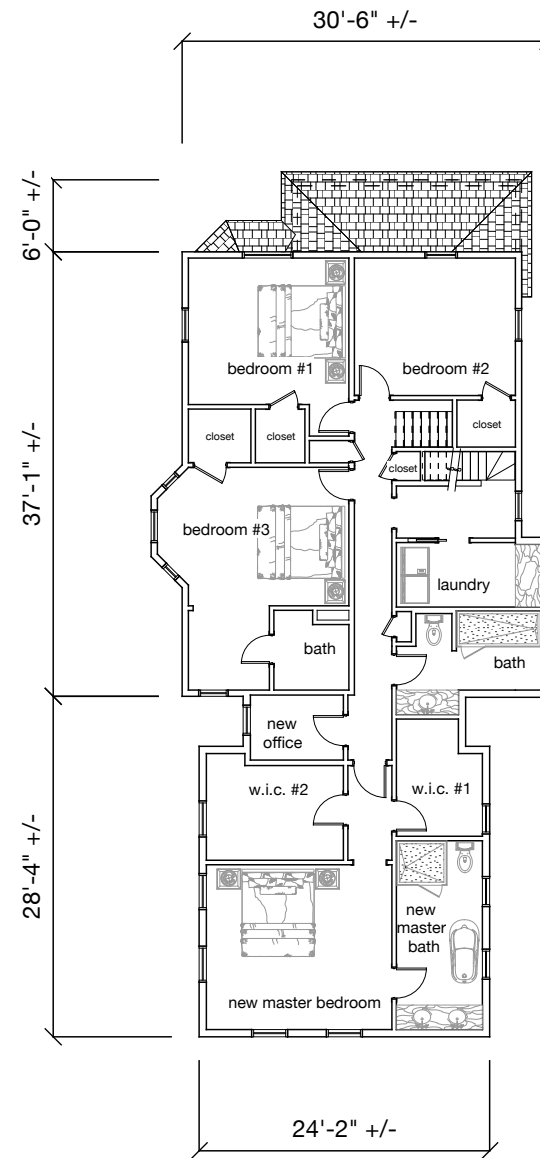
First Floor Plans

Issue date: November 18, 2023 | Scale: 1/16" = 1'-0"
 Revision dates:

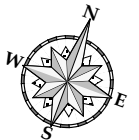
AD-04



existing



proposed



Variance Submittal for an Addition to
The Franklin Residence
 168 Lincoln Ave, Portsmouth NH 03801

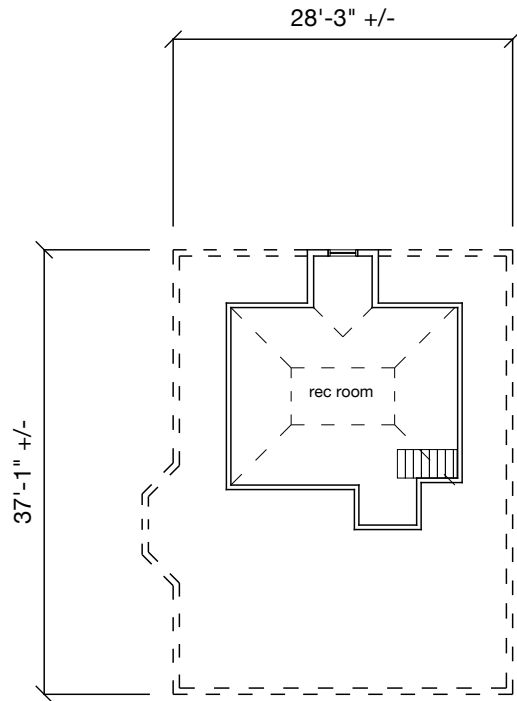
Second Floor Plans

Issue date: November 18, 2023

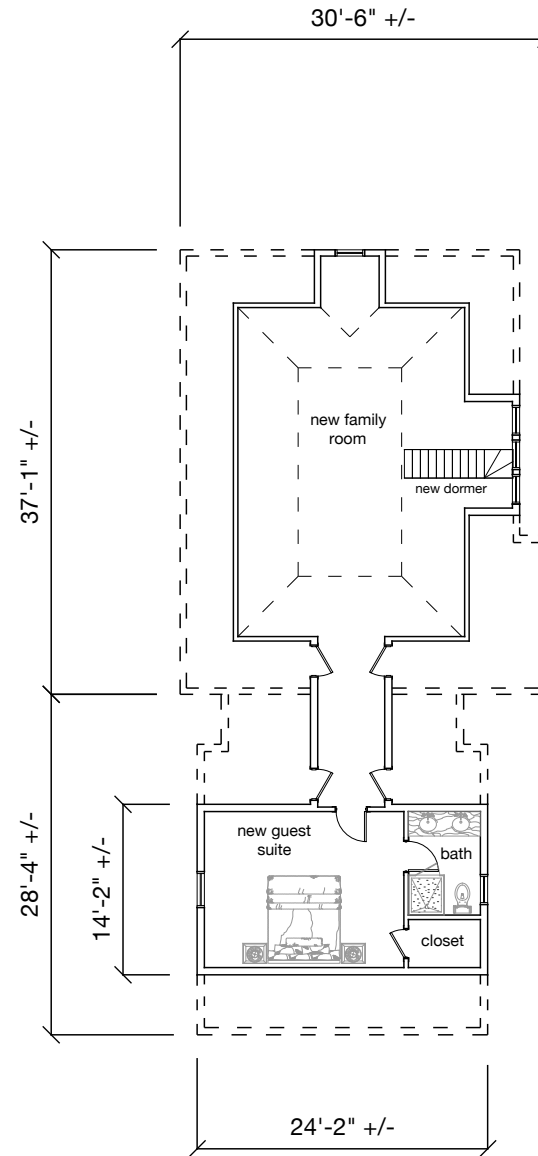
Scale: 1/16" = 1'-0"

Revision dates:

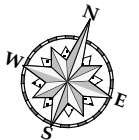
AD-05



existing



proposed



Variance Submittal for an Addition to
The Franklin Residence
 168 Lincoln Ave, Portsmouth NH 03801

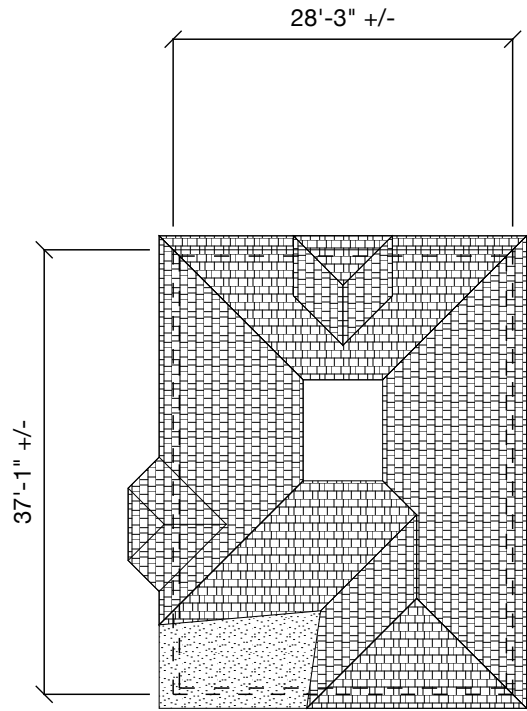
Third Floor Plans

Issue date: November 18, 2023

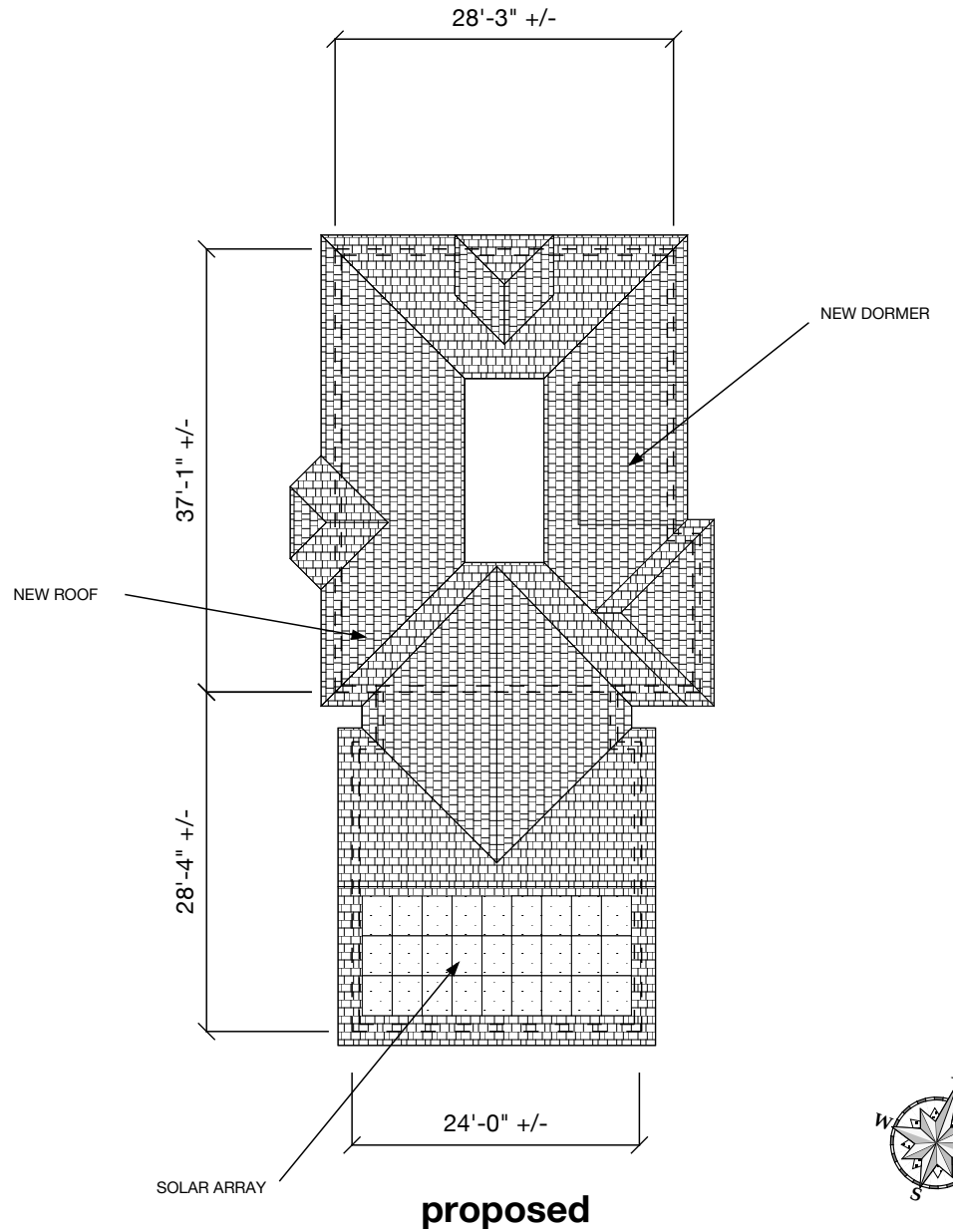
Scale: 1/16" = 1'-0"

Revision dates:

AD-06



existing



proposed



Variance Submittal for an Addition to
The Franklin Residence
 168 Lincoln Ave, Portsmouth NH 03801

Roof Plans

Issue date: November 18, 2023 | Scale: 1/16" = 1'-0"
 Revision dates:

AD-07



Variance Submittal for an Addition to
The Franklin Residence
 168 Lincoln Ave, Portsmouth NH 03801

Exterior Elevation North

Issue date: November 18, 2023 | Scale: 1/8" = 1'-0"
 Revision dates:

AD-08



NEW PORCH



Variance Submittal for an Addition to
The Franklin Residence
 168 Lincoln Ave, Portsmouth NH 03801

Exterior Elevation East

Issue date: November 18, 2023

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

Revision dates:

AD-09

27'-1" +/- HEIGHT PER ZONING ORDINANCE



SOLAR ARRAY

NEW KITCHEN EXTENSION

31'-8" +/- EXISTING RESIDENCE

32'-8" +/- ADDITION



Variance Submittal for an Addition to
The Franklin Residence
168 Lincoln Ave, Portsmouth NH 03801

Exterior Elevation North

Issue date: November 18, 2023

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

Revision dates:

AD-10



NEW PORCH
 NEW FRONT BAY
 NEW BULK HEAD



Variance Submittal for an Addition to
The Franklin Residence
 168 Lincoln Ave, Portsmouth NH 03801

Exterior Elevation East

Issue date: November 18, 2023 | Scale: 1/8" = 1'-0"
 Revision dates:

AD-11

Additional Images of Property



Front View of Sherburne Ave Side of Home



Front Right Side View of Property



Non-Conforming Garage / Rear View of Property



Rear View of Home and Attached Deck

III. NEW BUSINESS

F. The request of **Paula J. Reid 2003 Revocable Trust (Owner)**, for the property located at **410 Richards Avenue** whereas relief is needed to demolish and remove the existing detached garage and construct a new detached garage and associated drainage improvements, which requires the following: 1) Variance from Section 10.521 to permit a) 3.5 foot right side yard where 10 feet is required, and b) 30% building coverage where 25% is the maximum allowed; and 2) Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on the Assessor Map 112 Lot 10 and lies within the General Residence A (GRA) District. (LU-23-198)

Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family dwelling	*Demolish and reconstruct garage	Primarily residential
<u>Lot area (sq. ft.):</u>	6,149	6,149	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	6,149	6,149	7,500 min.
<u>Street Frontage (ft.):</u>	50	50	100 min.
<u>Lot depth (ft.)</u>	123	123	70 min.
<u>Front Yard (ft.):</u>	15	15	15 min.
<u>Left Yard (ft.):</u>	3.5	3.5	10 min.
<u>Right Yard (ft.):</u>	6.5	6.5	10 min.
<u>Rear Yard (ft.):</u>	31	26	20 min.
<u>Height (ft.):</u>	8.6 (Garage)	11.1 (Garage)	35 max.
<u>Building Coverage (%):</u>	28.3	30	25 max.
<u>Open Space Coverage (%):</u>	59.7	58.3	30 min.
<u>Parking</u>	3	3	3
<u>Estimated Age of Structure:</u>	1917	Variance request(s) shown in red.	

***Relief from Section 10.321 is required to allow an existing non-conforming structure to expand**

Other Permits/Approvals Required

- Building Permit

Neighborhood Context



Previous Board of Adjustment Actions

February 16, 1999 – The Board granted the following request: A Variance from Article III Section 10-302(A) to allow a 22' x 23' two story addition a 4'7" right side yard where 10' is the minimum required and a building coverage of 27.2% where 25% is the maximum allowed.

Planning Department Comments

The applicant is proposing to demolish the existing garage and construct a new garage roughly in the same location. The new garage will be 87 square feet larger than the original garage.

Relief from Section 10.321 of the Zoning Ordinance was advertised for the project. Upon further review, Staff have determined that relief from Section 10.321 is not needed.

Should the Board make a motion to grant the request, Staff recommends the Board acknowledge that Section 10.321 was advertised however it is not needed and would not be included in the approval of the variance request.

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

 - (c) *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.



Wyskiel,
Boc,
Tillinghast
& Bolduc, P.A.
Attorneys at Law

*Michael J. Bolduc

**Thomas G. Ferrini

*William R. Phipps

***D. Lance Tillinghast

*Christopher A. Wyskiel

William E. Boc - Retired

* also admitted in Maine

**also admitted in MA & VT

***also admitted in MA, ME & VT

November 29, 2023

City of Portsmouth
Zoning Board of Adjustment
c/o Planning Department
1 Junkins Avenue, 3rd Floor
Portsmouth, NH 03801

RE: Variance Application for Paula J. Reid, Trustee of the Paula J. Reid 2003 Revocable Trust
410 Richards Avenue
Tax Map 112, Lot 10
General Residence A ("GRA") zone

Dear Members of the Zoning Board of Adjustment (and Planning Dept. staff):

This office represents Paula J. Reid, Trustee of the Paula J. Reid Revocable Trust. This letter supplements the online Land Use Application form submitted by the undersigned on Paula's behalf. It first identifies submitted exhibits, then the specific zoning ordinance sections for which variances are requested, then explains (with reference to exhibits) Paula's garage and site redevelopment proposal and facts relevant to variance criteria to be met.

The variances are requested to facilitate Paula's demolition of her existing dilapidated garage to accommodate additional excavation and site work to address the serious stormwater drainage problems on her downward sloping lot, and then building a modestly enlarged replacement garage of similar scale. Paula's proposed work is reasonable. No fair and substantial relationship exists between the purposes of the dimensional requirements from which relief is sought, and their application to Paula's property with respect to her reasonable proposed work. The facts demonstrated by this application meet all the variance criteria set out in Portsmouth's Zoning Ordinance and N.H. statutory and common law.

Submitted Exhibits

Submitted exhibits are numbered/lettered and summarily identified below. The numbering/lettering facilitates reference to the exhibits in the explanatory text that follows.

1. Landowner Letter of Authorization

2. Existing Conditions Plan (boundary survey by McEneaney Survey Associates dated 10/25/2022)
3. New garage proposal plan (prepared by ASB Architecture with overlay to Existing Conditions Plan)
 - 3A. Enlargement of Exhibit 3's overlay on Existing Conditions Plan
 - 3B. Enlargement of Exhibit 3's Notes with existing/proposed dimensional calculations
4. October 1898 Rockingham County Registry recorded plan (original layout of lots)
- 5A. City Tax Map print of subject lot
- 5B. City Tax Map print/aerial view (arrow points to subject lot)
6. Two pictures of lot's street view and driveway showing lot's sloping topography to back yard
7. Three pictures of house showing anticipated gutter locations (recommended gutters to be confirmed by an installer not yet consulted)
8. Three pictures showing areas that flood with stormwater drainage
9. Three pictures of existing garage showing existing/abutting lot topography differences and screening/privacy fences
10. Ten pictures of neighborhood garages on Richards Avenue and Miller Avenue (in the vicinity of the subject lot)

Specific Variance Requests

The existing garage located per Exhibit 2 and pictured in Exhibits 6, 8 and 9 is a conforming use on a non-conforming lot. Explained in more detail below, Paula proposes to remove this substandard structure to accommodate site drainage work to collect and naturally absorb/treat (by rain garden) substantial on-site stormwater drainage, then reconstruct the replacement garage depicted on Exhibit 3. Because of the proposed garage new construction and proposed lengthening by five (5) feet, variances from the following Zoning Ordinance sections are requested:

1. Section 10.321 to accommodate the modest enlargement of a lawful non-conforming structure by demolition/new construction replacement not conforming to the below dimensional requirements of the GRA zone.

2. Section 10.521 Table of Dimensional Standards:
 - (a) Side yard setback relief to accommodate a five (5) foot lengthening of the existing garage's footprint by new construction located 3.5 feet from the property sideline where a 10 foot side yard setback is required in the GRA zone (existing garage is 3.5 feet from side yard property line)
 - (b) Building coverage relief to allow the above which increases existing 28.3% building coverage to 29.7% where maximum building coverage of 25% is required for the GRA zone.

Development Proposal Explained/Facts Relevant to Requested Variances

Paula's existing garage is in a state of disrepair. Renovation consistent with current building best practices is impractical. The overhead door is difficult to open. The existing garage's height and width do not accommodate replacement with new overhead garage doors, certainly not without overhead opening equipment. Its low slanted roof allows little headroom and does not best accommodate snow loading. Replacement by new construction is warranted and reasonable.

Paula's architect, Aimee Bentley, did not conduct any boring testing to verify existing foundation or footings, but slab construction is suspected. New construction could accommodate appropriate frost walls and flooring and also accommodate below described site drainage work.

The requested lengthening by five (5) feet will accommodate longer cars of present day popularity, as well as modest indoor storage (eliminating the need for an additional exterior accessory storage shed or structure).

The topography of the lot slopes from Richards Avenue downwards to the back yard. The main roof of the house pitches from the midline forward towards Richards Avenue (where drainage can be absorbed by the front yard and landscaped plantings), and toward the back yard. Dormered roofing on the driveway side and back of the house pitches much of the rear roof's rain runoff, together with runoff from the driveway and (back yard side of) garage, all into the back driveway side door entry and walkway along the existing driveway. See pictures at Exhibits 7 and 8. In rainstorms, this driveway area in front of the garage and the walkway to the house's side entry and along the side of the garage pools with water and pours into the rear yard with no good drainage absorption.

New construction will allow machinery excavation both for the new garage's foundation and underground drainage to accommodate driveway runoff and water collected from the roof by gutters on the house (see Exhibit 7 pictures) and new garage (see Exhibit 3). That collected water will funnel into underground drainage pipe(s) to a rain garden properly designed, developed and planted in the back yard corner behind the garage. This improvement cannot be

made by keeping the existing structure. Excavation for drainage and the rain garden cannot be practically done by hand. Larger machinery can't be otherwise brought into the back yard without existing garage demolition.

Continued use of the existing structure can't reasonably facilitate storm water drainage problem solutions. Continued use of the present garage isn't reasonable for present day conditions. The proposed modest lengthening is reasonable. Cars have gotten larger. Standard garages are not designed less than 24 feet (the existing is 22 feet). The slight widening (by less than one foot into back yard side) and heightening (by less than 3½ feet per zoning defined height) accommodates current building and roof trussing to meet code and typical New England snow load requirements.

Paula anticipates her new construction demolition, site improvements (foundation, drainage and rain garden), and garage construction to be in the vicinity of \$100,000.00.

Variance Criteria Addressed

Portsmouth Zoning (Section 10.233.20 and its subparts) and 10.233.31 restate the N.H. RSA 674:33, I variance criteria. N.H. case law provides further interpretive guidance. It is reasonable to grant the requested variances.

1. Granting the variance is not contrary to the public interest.

Under N.H. law, Applicants do not have an affirmative duty to show that granting the requested variance furthers the public interest. Rather, the burden is simply to show that granting it will not be contrary to the public interest. That this distinction suggests a relatively low standard was acknowledged by the N.H. Supreme Court's decision in Chester Rod and Gun Club, Inc. v Town of Chester, 152 N. H. 577 (2005). In considering this criteria, the Court recommends the ZBA consider whether the requested variance(s) would "unduly and to a marked degree" conflict with the basic premises of the Zoning Ordinance, or alter the essential character of the locality, or threaten the public health, safety or welfare. Id. at 508.

The proposed garage replacement will not alter the essential character of the locality. Tax Map prints (Exhibits 5A & B) and the pictures at Exhibit 10 show lots in the immediate vicinity of 410 Richards Avenue that have older as well as new replacement (some larger) garages in close proximity to lot lines and neighboring homes. The less than 1 foot widening (towards the middle of the lot) and modest 5 foot lengthening (for which variance relief is sought) will hardly be noticed as to size, placement and lot coverage. If anything will be noticed at all, it will be an attractive, new, functional garage, having replaced (for anyone who remembers) an old, in need of repair garage not used by the property's owner for parking a car.

The modest proposed redevelopment shown by Exhibit 3, does not threaten the public's health, safety or welfare. Demolition of the existing structure to excavate for drainage work and

an appropriate rain garden in the corner of the yard to accommodate collected stormwater drainage, improves the public health, safety and welfare. It certainly improves the subject lot. Appropriate accommodation of stormwater drainage on site helps prevent runoff to abutting properties.

2. The spirit of the ordinance is observed by granting the requested setback variances.

In considering this criteria, Courts have suggested it to be interdependent with and should be construed together with the “not contrary to the public interest” criteria. Chester Rod and Gun Club at 580. The points made above are equally relevant to this variance test.

Many lots in the GRA zone near Paula’s were originally laid out having only 50 feet of frontage and are thus non-conforming as to frontage (many as to lot size also). See Exhibit 4 (2 pages). Over time, some of these narrow lots have been combined in whole or in part to form wider lots. See Exhibits 5A & 5B. Many narrow lots non-conforming as to size and frontage still exist, and have been developed with garages, new and old. See Exhibit 10 pictures.

Portsmouth’s Zoning Ordinance 10.233.50 states that abutting properties’ dimensional requirement violations cannot be considered as factors in determining whether the spirit of the ordinance would be observed by granting an applicant’s requested variances. The spirit of the ordinance does, however, contemplate reasonable development on non-conforming lots.

For one example, Section 10.312, specifically 10.312.10, considers lots with insufficient frontage as conforming if the lot is shown on a Registry of Deeds recorded plan prior to March 21, 1966, and contains minimum zone required square footage. Paula’s lot was first shown/ created by the 1898 plan recorded as Rockingham Registry of Deeds Plan #00125. Exhibit 4. It has less than GRA zone required frontage. It does not meet the zone’s required minimum lot size. However, as to size, Exhibit 3, see specifically 3B, shows how the proposed construction modestly increases the lot’s building coverage by only 1.4%.

The spirit of the GRA zone dimensional requirement ordinance provisions also contemplate a reasonable width for lot development. This zone requires lots to be 100 feet wide. Subtracting both side yard 10 foot setbacks leaves at least an intended 80 feet of developable land area conforming to the ordinance. Exhibit 4 shows lots long ago created in the GRA zone not sized by this present day standard. Paula’s 50 foot lot less both 10 foot side yard setbacks leaves only 30 feet to work with for reasonable development. The spirit of the ordinance contemplates development on non-conforming lots, but again the specific dimensioning of Paula’s lot doesn’t allow her reasonable proposal to conform to stated dimensional requirements. It is reasonable to grant the requested variances to facilitate Paula’s reasonable site improvements.

The overall spirit of the ordinance encourages development appropriate for the public's health, safety and welfare. Demolition of the existing garage doesn't just promote new code appropriate construction facilitating reasonable use, but facilitates onsite machinery excavation to develop storm water drainage solutions consistent with present best practices. To insist that the existing structure stay put and used as best it can, essentially a storage shed, is inconsistent with the ordinance's spirit promoting safe and appropriate and usable development appropriate not just for present but future owners.

3. Granting the requested setback variance would do substantial justice.

This criteria requires consideration of all the facts relevant to the application, and a balancing of the public's and the Applicant's interests. One way to consider whether "substantial justice" would be done is to determine whether there is any gain to the public that is greater than the loss suffered by the Applicant if the variance is not granted. See, Farrar v City of Keene, 158 N. H. 684, 692 (2009). To apply this legal standard, the ZBA should imagine a scale, and on it weigh the loss suffered to Paula Reid as landowner/applicant on one side, against (on the other side of the scale) the public benefit to be gained by strict adherence to the Zoning Ordinance's dimensional requirements by denying the requested relief

Denying the variances simply because the proposed new construction modestly exceeds dimensional requirements makes no sense. Paula Reid would lose the opportunity to address the stormwater drainage problems that plague the side and back yards. Denial would preclude the opportunity to replace a worn out structure with one of up to date construction and more reasonably sized for use given today's automobile sizes and modest garage storage needs. The value of the improvement will enhance the property's assessment and thus the City's property tax revenue without increasing City service needs, school population, etc. It is hard to articulate any gain to the public, including immediate abutters, in denying the variance.

The proposed development is reasonable. It's in keeping with the neighborhood. As such, the scale tips in favor of Paula Reid.

4. Values of surrounding properties are not diminished by granting these requested setback relief.

ZBA Board members are legally permitted to rely upon their general knowledge and awareness of our area's rapidly appreciating real estate values and competitive real estate market. It is hard to imagine a good faith claim that Paula's reasonable proposal will have an adverse effect on surrounding property values. Property values in Portsmouth's desirable and high demand market continue to escalate. Property values in this general neighborhood will continue to rise after 410 Richards Avenue is improved as proposed.

5. Literal enforcement of the setback requirement from which relief is requested would result in unnecessary hardship because special conditions of the property distinguish it from others in the area, and no fair and substantial relationship exists between the general public purposes of the express setback, lot coverage, and new construction limitations and their specific application to this property.

Special conditions of the subject property do distinguish it from others in the GRA zone. The property's significant drainage problems are addressed above. Literal enforcement of the dimensional requirements and new construction prohibition creates the hardship of being unable to reasonably cure this property's drainage problem special conditions. The purpose of the ordinance sections from which relief is requested is to promote safe and orderly development in the zone. Everything addressed above evidences that literal enforcement (variance application denial) fails that general purpose. Granting the variances instead will allow these special conditions to be addressed to eliminate the drainage hardship the property now endures, and will allow a replacement structure of similar scale, but very modest enlargement, reasonable and appropriate for today's standards of garage use.

Additional special conditions on the site relevant to the application are these. The neighboring lot immediately abutting the existing and proposed garage is at a higher elevation. Both properties have privacy fences screening each site's structures and back yards from the other. See Exhibit 9 pictures. The modest lengthening of a new garage by 5 feet will hardly be seen on account of both fences and their differing heights, especially given the neighbor's fence being taller and at a higher elevation.

Conclusion

All of the above evidence's Paula meeting all of the criteria required to grant the requested variances. Her proposed development will not threaten the public health, safety and welfare which is the general purpose of Portsmouth's Zoning Ordinance. The request variances are reasonable and should be granted.

Sincerely



Christopher A. Wyskiel

CAW/lew
Enclosures
cc: Paula J. Reid

City of Portsmouth
Zoning Board of Adjustment
1 Junkins Avenue, 3rd Floor
Portsmouth, NH 03801

LETTER OF AUTHORIZATION

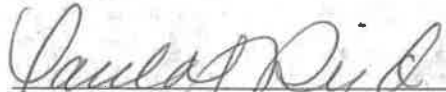
Re: Variance – 410 Richards Avenue, Portsmouth, NH
Owners: Paula J. Reid, Trustee of the Paula J. Reid 2003 Revocable Trust

Dear Sir/Madam:

Paula J. Reid, individually and as Trustee of the Paula J. Reid 2003 Revocable Trust, authorize my attorney, Christopher A. Wyskiel of Wyskiel, Boc, Tillinghast & Bolduc, P.A. to represent me, individually and in my landowning trustee capacity, before the Zoning Board of Adjustment regarding variance requests for the above referenced property.

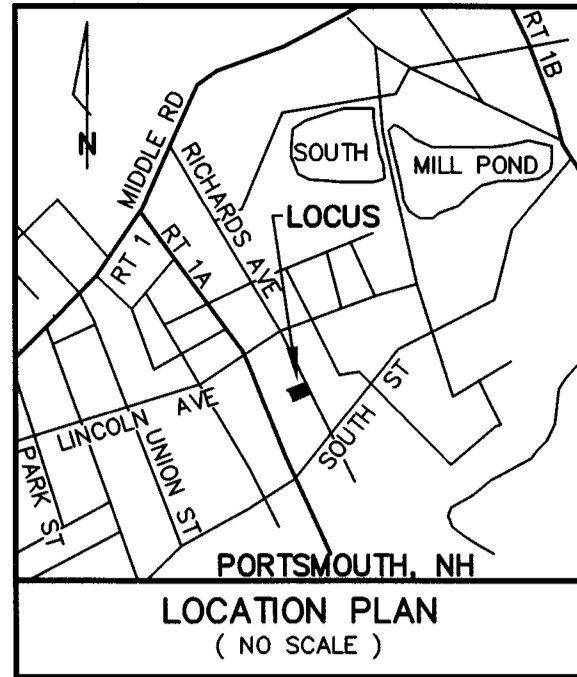
Sincerely,

Dated: November 27, 2023


Paula J. Reid, Individually and as Trustee
of the Paula J. Reid 2003 Revocable Trust

H:RE & BUSREID - PAULA - Portsmouth Variance\Authorization.docx

Exh. 1



REFERENCE PLANS:

- 1.) PLAN SHOWING PROPERTY OF EMERY, BOYNTON AND GRIFFIN, PORTSMOUTH, N.H. SECTIONS 1 AND 2, SCALE: 1" = 20'; DATED: OCTOBER 1898; BY: L.E. SCRUTON. RECORDED R.C.R.D. PLAN 00123 1 & 2 OF 2.
- 2.) STANDARD PROPERTY SURVEY FOR PROPERTY AT 420 RICHARDS AVENUE, PORTSMOUTH, ROCKINGHAM COUNTY, NEW HAMPSHIRE, OWNED BY AMY DUTTON AND BROOKS MURPHY, 41 ELDRIDGE ROAD, YORK, MAINE. SCALE: 1" = 10'; DATED: AUGUST 18, 2010, REVISED THROUGH 8/30/10; BY: EASTERLY SURVEYING, INC. RECORDED R.C.R.D. PLAN D-36530.
- 3.) BOUNDARY SURVEY FOR JAMES A. MULLEN & KRISTEN B. MULLEN, 295 MILLER AVE., TAX MAP 130, LOT 9, PORTSMOUTH, NH. SCALE: 1" = 10'; DATED: AUGUST 19, 2013; BY: ROSS ENGINEERING. RECORDED R.C.R.D. PLAN D-37887.
- 4.) STANDARD PROPERTY SURVEY - TAX MAP 112, LOT 6, PROPERTY OF THE MCAULIFFE FAMILY REVOCABLE TRUST OF 2011, 452 & 460 RICHARDS AVENUE, PORTSMOUTH, NEW HAMPSHIRE, COUNTY OF ROCKINGHAM. SCALE: 1" = 20'; DATED: SEPTEMBER 14, 2012, REVISED THROUGH 1/16/13; BY: MSC CIVIL ENGINEERS & LAND SURVEYORS, INC. RECORDED R.C.R.D. PLAN D-37568.

NOTES:

- 1.) OWNER OF RECORD:
PAULA J. REID 2003 REVOCABLE TRUST
PAULA J. REID, TRUSTEE
410 RICHARDS AVENUE
PORTSMOUTH, NEW HAMPSHIRE 03801
R.C.R.D. VOLUME 5998, PAGE 2091.
- 2.) 112 / 10 - DENOTES TAX MAP AND PARCEL NUMBER.
- 3.) PARCEL AREA = 6,149 S.F. / 0.14 Ac.
- 4.) THE INTENT OF THIS PLAN IS TO DEPICT THE PARCELS BOUNDARIES AND EXISTING SITE CONDITIONS AS OF OCTOBER 18, 2022.
- 5.) ZONING DISTRICT IS GENERAL RESIDENCE A (GRA).

MINIMUM LOT DIMENSIONS:
LOT AREA = 7,500 S.F.
CONTINUOUS STREET FRONTAGE = 100 FEET
DEPTH = 70 FEET

MINIMUM YARD DIMENSIONS:
FRONT = 15 FEET
SIDE = 10 FEET
REAR = 20 FEET

MAXIMUM STRUCTURE DIMENSIONS:
SLOPED ROOF = 35 FEET
ROOF APPURTENANCE HEIGHT = 8 FEET
BUILDING COVERAGE = 25 PERCENT

MINIMUM OPEN SPACE = 30 PERCENT
- 6.) THE SUBJECT PARCEL IS OUTSIDE OF THE 0.2 PERCENT ANNUAL CHANGE FLOODPLAIN AS SHOWN ON FLOOD INSURANCE RATE MAP COMMUNITY NUMBER 330139; PANEL 0259; SUFFIX F; MAP NUMBER 33015C0259F; EFFECTIVE DATE JANUARY 29, 2021.
- 7.) BASIS OF BEARING IS NH STATE PLANE (NAD83) BASED ON GPS OBSERVATION DATED OCTOBER 12, 2022.
VERTICAL DATUM IS NAVD88 BASED ON GPS OBSERVATION DATED OCTOBER 12, 2022.
- 8.) THIS PLAN SHOWS ONLY THOSE FEATURES THAT WERE VISUALLY APPARENT ON THE DATE OF THE SURVEY. THE ABSENCE OF SUBSURFACE STRUCTURES, UTILITIES, ETC. FROM THIS PLAN, BUT IN EXISTENCE, IS NOT INTENDED OR IMPLIED.

130 / 9
KRISTEN B. MULLEN
REVOCABLE LIVING TRUST
295 MILLER AVE
PORTSMOUTH, NH 03801
5699 / 1271
REFERENCE PLAN #2

112 / 11
TWOMBLY TRUST
303 MILLER AVE
PORTSMOUTH, NH 03801
2762 / 2766

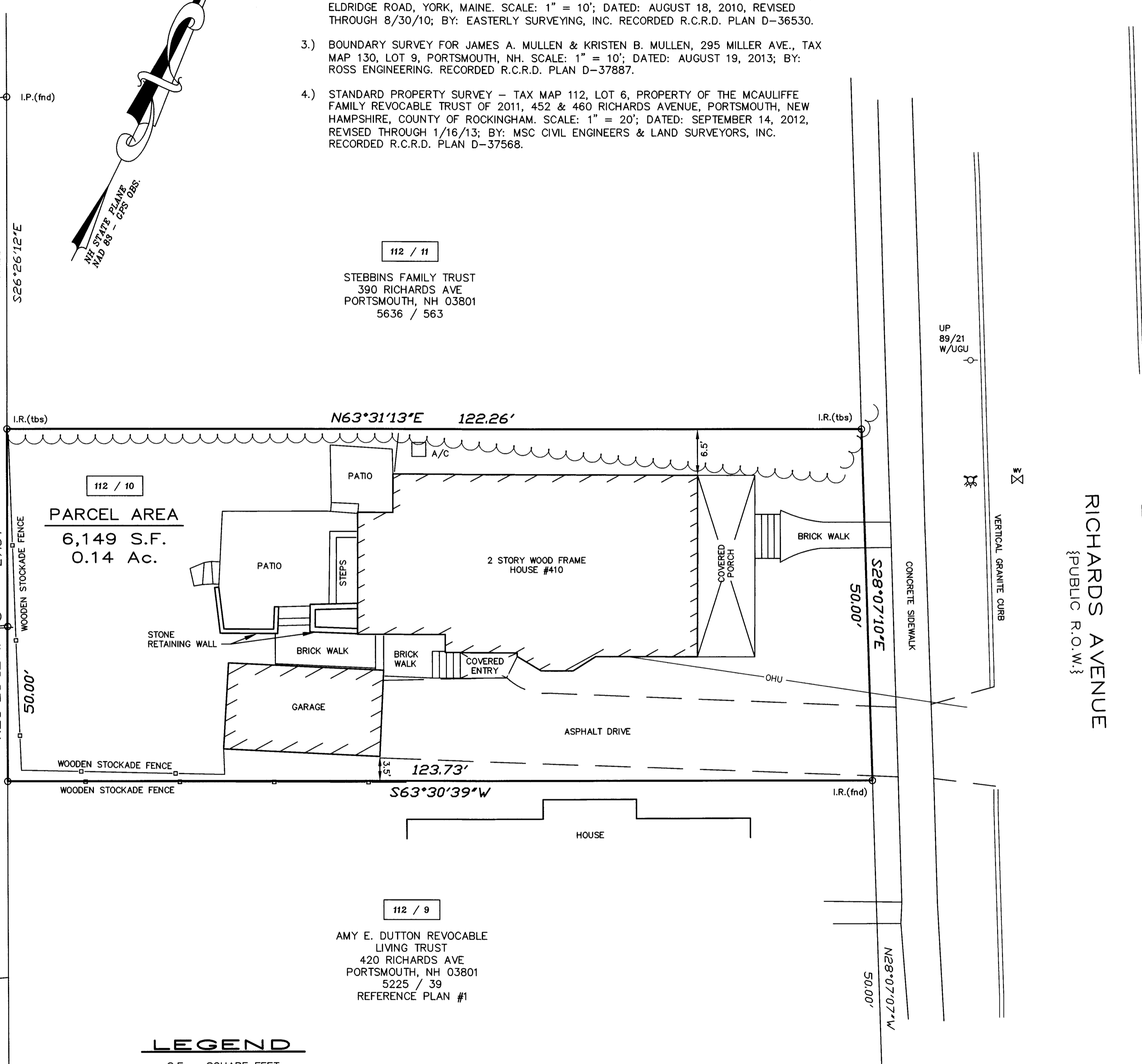
112 / 11
STEBBINS FAMILY TRUST
390 RICHARDS AVE
PORTSMOUTH, NH 03801
5636 / 563

112 / 18
BARBARA A. COLLIER
REVOCABLE TRUST
399 RICHARDS AVE
PORTSMOUTH, NH 03801
6315 / 246

112 / 19
STEPHEN C. BUZZELL
REVOCABLE TRUST
409 RICHARDS AVE
PORTSMOUTH, NH 03801
6035 / 840

112 / 20
THOMAS A. NIES
REVOCABLE TRUST OF 2010
419 RICHARDS AVE
PORTSMOUTH, NH 03801
5192 / 1225

112 / 9
AMY E. DUTTON REVOCABLE
LIVING TRUST
420 RICHARDS AVE
PORTSMOUTH, NH 03801
5225 / 39
REFERENCE PLAN #1



LEGEND

- S.F. - SQUARE FEET
- Ac. - ACRE
- (TYP.) - TYPICAL
- ± - MORE OR LESS
- φ - DIAMETER
- R.C.R.D. - ROCKINGHAM COUNTY REGISTRY OF DEEDS
- WS - WATER SHUT-OFF (CURB STOP)
- WV - WATER GATE VALVE
- ⊕ - FIRE HYDRANT
- I.P.(fnd) - IRON PIPE (FOUND)
- I.R.(fnd) - IRON ROD (FOUND)
- I.R.(tbs) - IRON ROD (TO BE SET)
- U - UP - UTILITY POLE
- A/C - AIR CONDITIONING UNIT
- OHU - OVERHEAD UTILITY LINES

NO.	DATE	DESCRIPTION	BY	CHK
REVISIONS				
22-2467		BOUNDARY	22-10	62
PROJECT NO		TYPE	FIELDBOOK & PAGES	

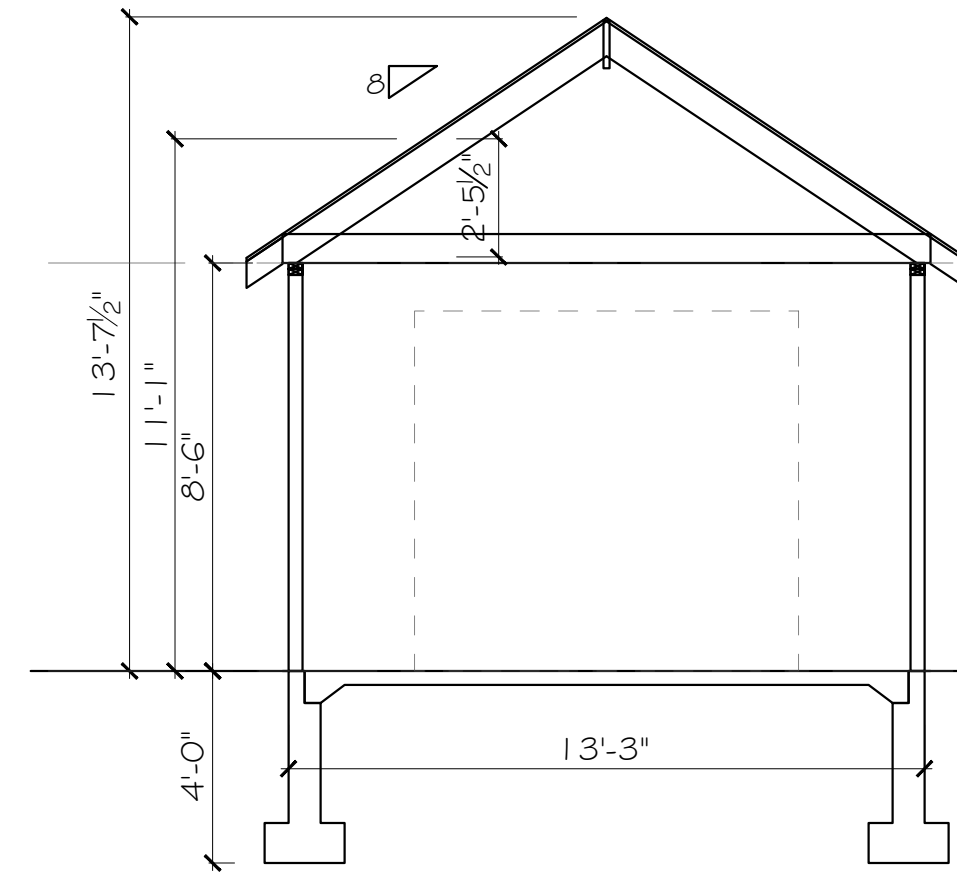
"I HEREBY CERTIFY THAT THIS PLAN IS BASED ON AN ACTUAL GROUND SURVEY PERFORMED WITH A TOTAL STATION, BY ME OR THOSE UNDER MY DIRECT SUPERVISION AND THAT, TO THE BEST OF MY KNOWLEDGE AND BELIEF, SAID SURVEY MEETS OR EXCEEDS THE MINIMUM PRECISION REQUIREMENTS FOR SURVEY CLASSIFICATION "U" AS SET FORTH IN TABLE 500.1 OF THE NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES OF THE BOARD OF LICENSURE FOR LAND SURVEYORS."

"I CERTIFY THAT THIS SURVEY PLAT IS NOT A SUBDIVISION PURSUANT TO THIS TITLE AND THAT THE LINES OF STREETS AND WAYS SHOWN ARE THOSE OF PUBLIC OR PRIVATE STREETS OR WAYS ALREADY ESTABLISHED AND THAT NO NEW WAYS ARE SHOWN." (RSA 676:18)
10/25/22
DATE: / KEVIN M. McENEANEY LLS # 661

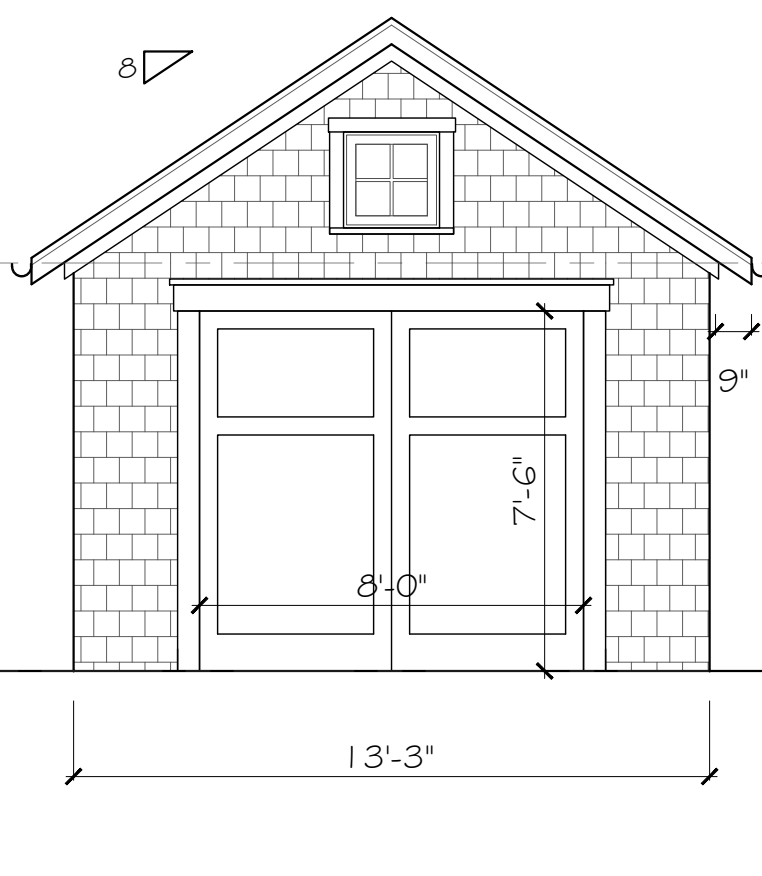
BOUNDARY SURVEY PLAN
PREPARED FOR
PAULA J. REID 2003 REVOCABLE TRUST
TAX MAP 112, LOT No. 10
410 RICHARDS AVE
CITY of PORTSMOUTH
COUNTY of ROCKINGHAM
STATE of NEW HAMPSHIRE

DRAWN BY: KJP FILE: 2467\DWGS\22-2467
SCALE: 1" = 10' DATE: OCTOBER 25, 2022

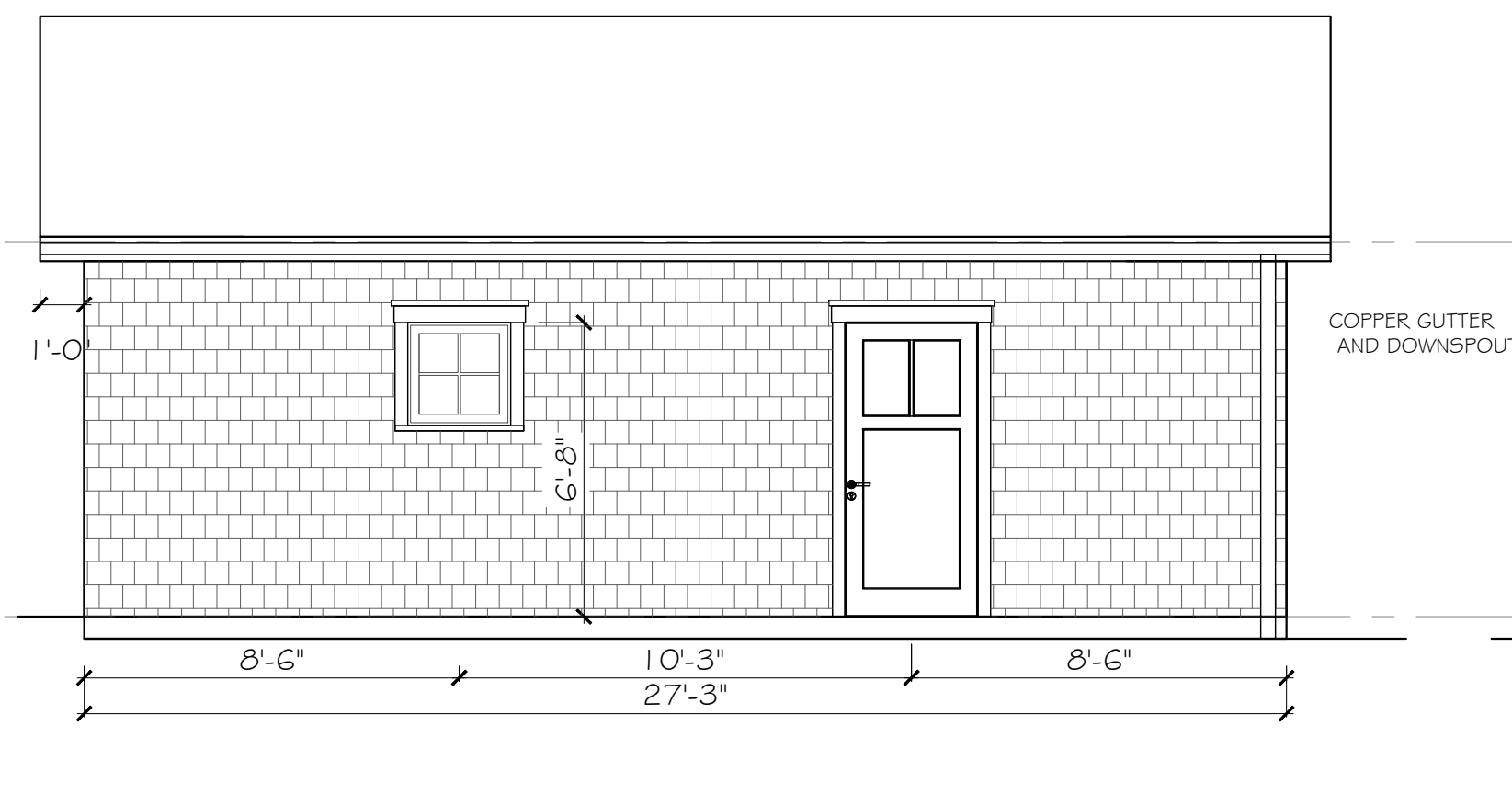
McEneaney Survey Associates
of NEW ENGLAND
P.O. Box 681 - 24 CHESTNUT STREET
DOVER, NH 03820 (603) 742-0911
SURVEYING - PLANNING - CONSULTING



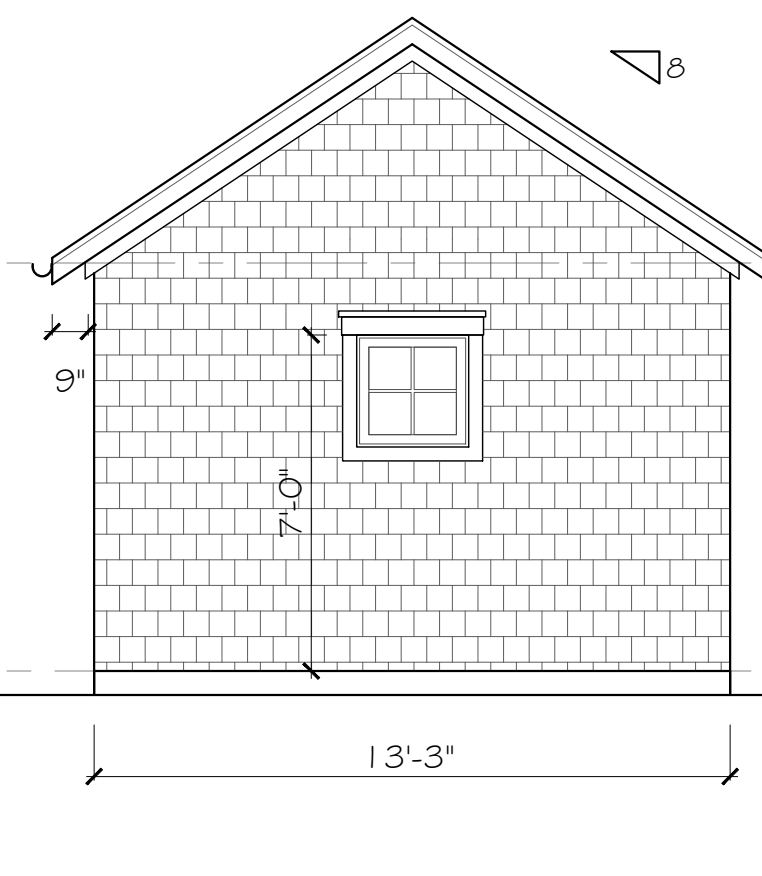
A SECTION A
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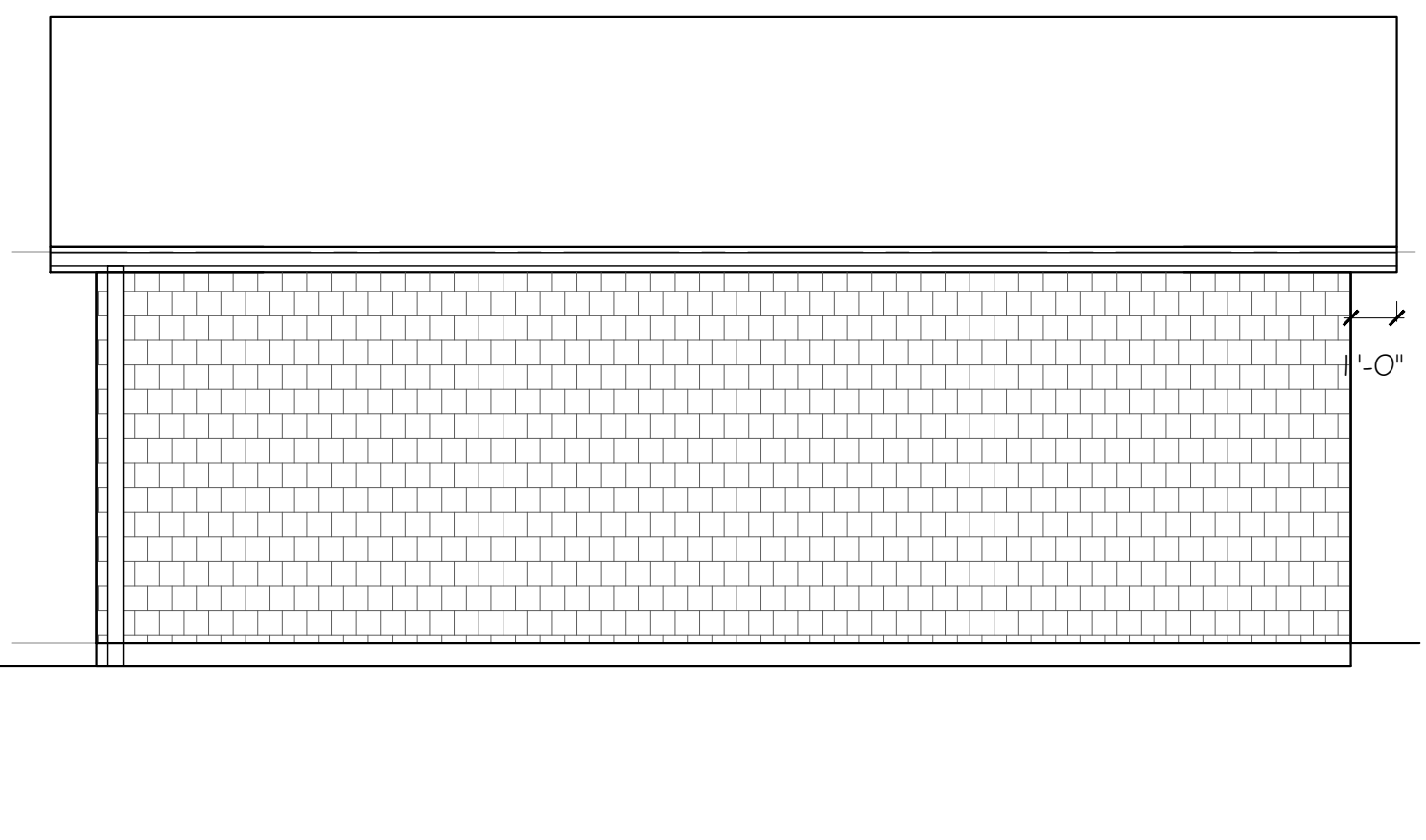
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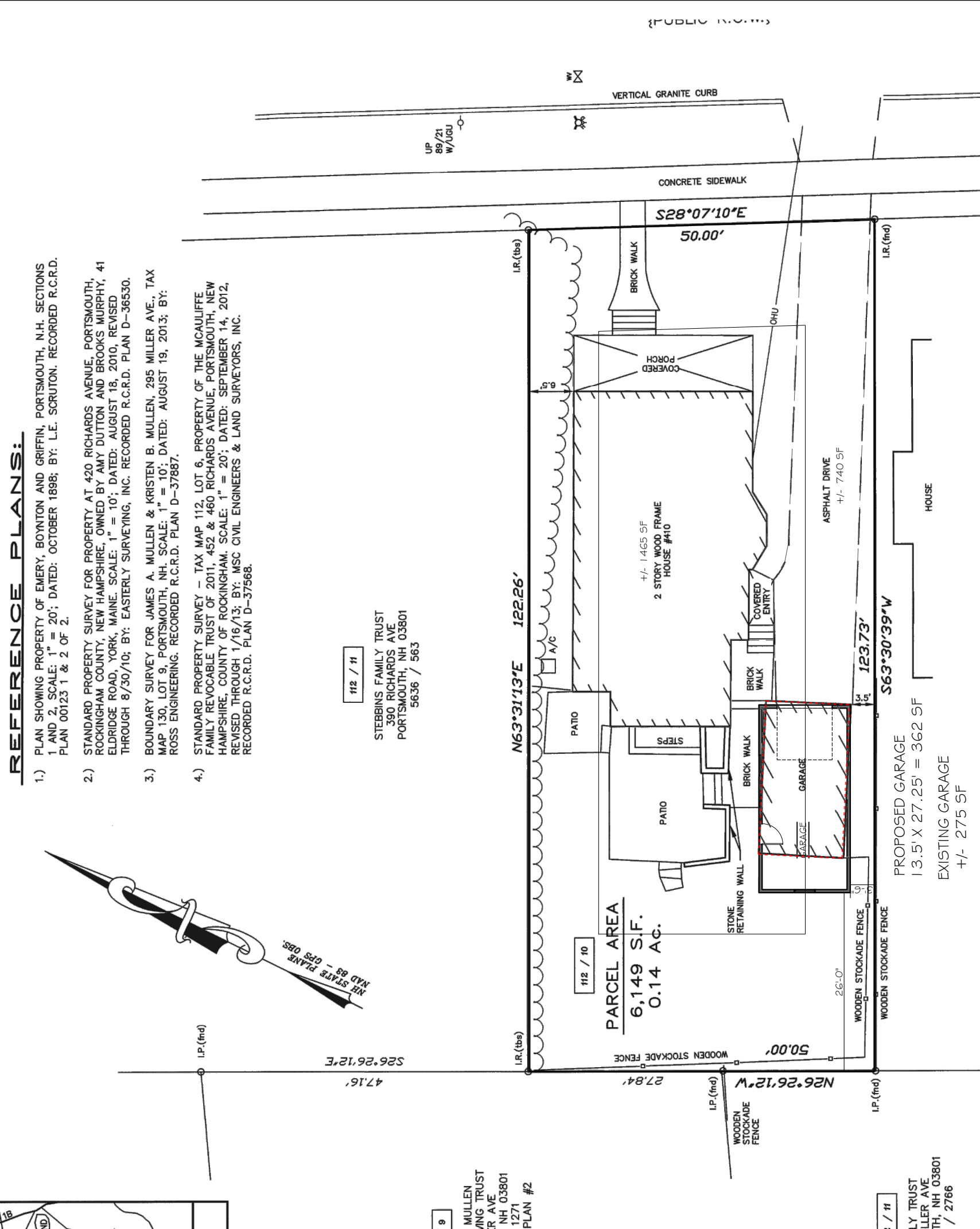
2 RIGHT ELEVATION
 Scale: 1/4" = 1'-0"



3 REAR ELEVATION
 Scale: 1/4" = 1'-0"



4 LEFT ELEVATION
 Scale: 1/4" = 1'-0"



NOTES:

- OWNER OF RECORD: PAULA J. REID 2003 REVOCABLE TRUST, PAULA J. REID, TRUSTEE, 410 RICHARDS AVENUE, PORTSMOUTH, NEW HAMPSHIRE 03801, R.C.R.D. VOLUME 599B, PAGE 2091.
- FILE / NO - DENOTES TAX MAP AND PARCEL NUMBER.
- PARCEL AREA = 6,149 S.F. / 0.14 AC.
- THE INTENT OF THIS PLAN IS TO DEPICT THE PARCELS BOUNDARIES AND EXISTING SITE CONDITIONS AS OF OCTOBER 18, 2022.
- ZONING DISTRICT IS GENERAL RESIDENCE A (GRA).

	EXISTING	PROPOSED
MINIMUM LOT DIMENSIONS:		
LOT AREA	= 7,500 S.F.	6,149 S.F.
CONTINUOUS STREET FRONTAGE	= 100 FEET	50 FT.
DEPTH	= 70 FEET	123 FT.
MINIMUM YARD DIMENSIONS:		
FRONT	= 15 FEET	15 FT.
REAR	= 20 FEET	20 FT.
MAXIMUM STRUCTURE DIMENSIONS:		
SLOPED ROOF	= 25 FEET	25 FT.
ROOF APPURTENANCE HEIGHT	= 8 FEET	8 FT.
BUILDING COVERAGE	1465 + 275 = 1740 SF	1465 + 362 = 1827 SF
1740 / 6149 = 28.3%		1827 / 6149 = 29.7%
MINIMUM OPEN SPACE	= 30 PERCENT	59.7%
		59.3%

6. THE SUBJECT PARCEL IS OUTSIDE OF THE 0.2 PERCENT ANNUAL CHANCE FLOOD PLAN AS SHOWN ON FLOOD INSURANCE RATE MAP COMMUNITY NUMBER 330139; PANEL 0259; SUPER F. MAP NUMBER 3301500259F; EFFECTIVE DATE, JANUARY 29, 2021.

7. BASIS OF BEARING IS NH STATE PLANE (NAD83) BASED ON GPS OBSERVATION DATED OCTOBER 12, 2022. VERTICAL DATUM IS NAVD83 BASED ON GPS OBSERVATION DATED OCTOBER 12, 2022.

8. THIS PLAN SHOWS ONLY THOSE FEATURES THAT WERE VISUALLY APPARENT ON THE DATE OF THE SURVEY. THE ABSENCE OF SUBSURFACE STRUCTURES, UTILITIES, ETC. FROM THIS PLAN, BUT IN EXISTENCE, IS NOT INTENDED OR IMPLIED.

BUILDING COVERAGE
 EXISTING: 1465 + 275 = 1740 SF
 1740 / 6149 = 28.3%
 PROPOSED: 1465 + 362 = 1827 SF
 1827 / 6149 = 29.7%

OPEN SPACE
 EXISTING: 1740 (BUILDINGS) + 740 (DRIVEWAY) = 2480 SF
 6149 - 2480 = 3669 (OPEN) -> 3669 / 6149 = 59.7%
 PROPOSED: 1827 + 740 = 2567 SF
 6149 - 2567 = 3582 (OPEN) -> 3582 / 6149 = 58.3%

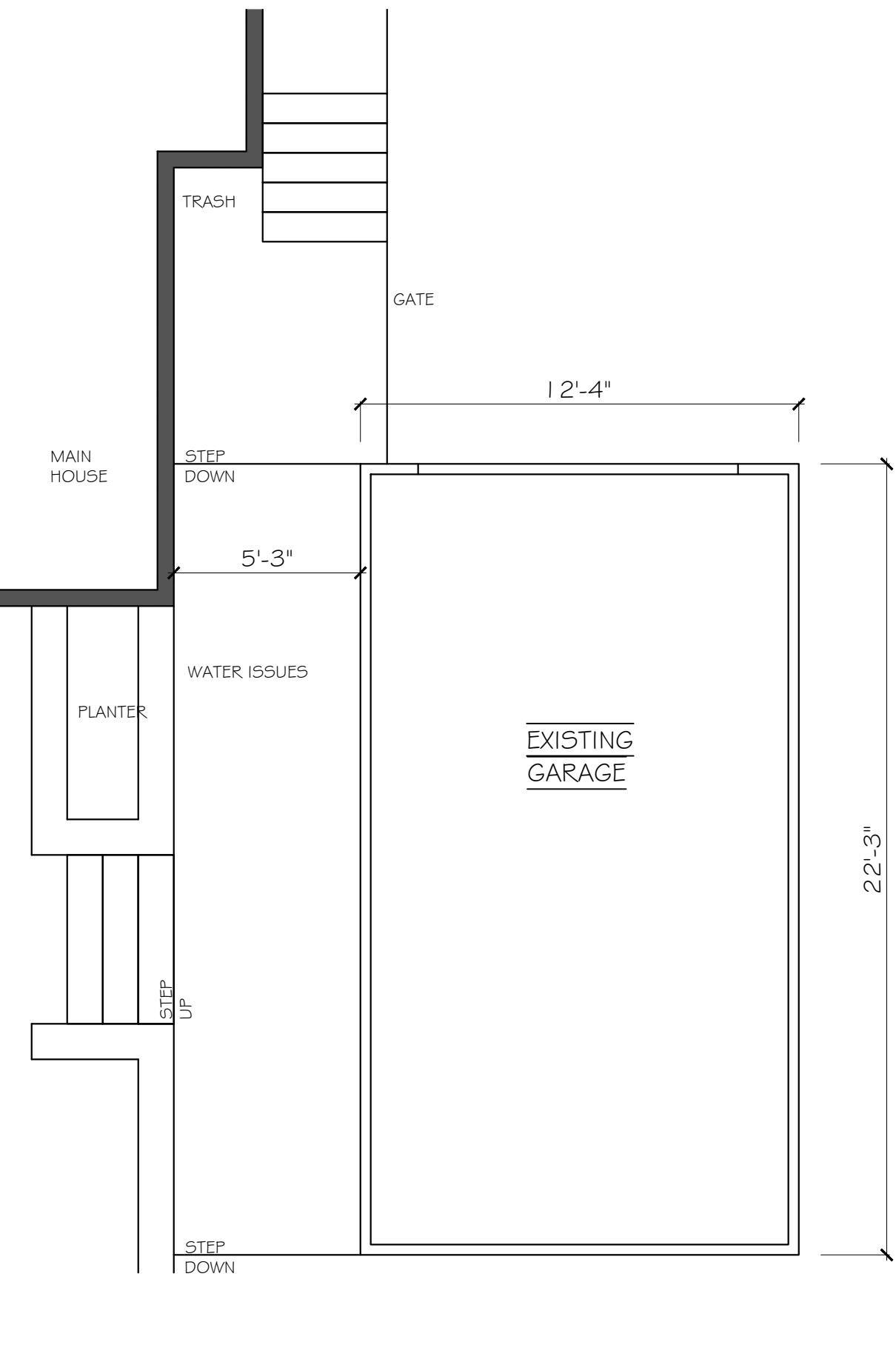
CALCULATIONS BASED ON EXISTING CONDITION SURVEY PROVIDED BY:

BOUNDARY SURVEY PLAN
 PREPARED FOR
 PAULA J. REID 2003 REVOCABLE TRUST
 TAX MAP 112, LOT No. 10
 410 RICHARDS AVE.
 CITY OF PORTSMOUTH
 COUNTY OF ROCKINGHAM
 STATE OF NEW HAMPSHIRE

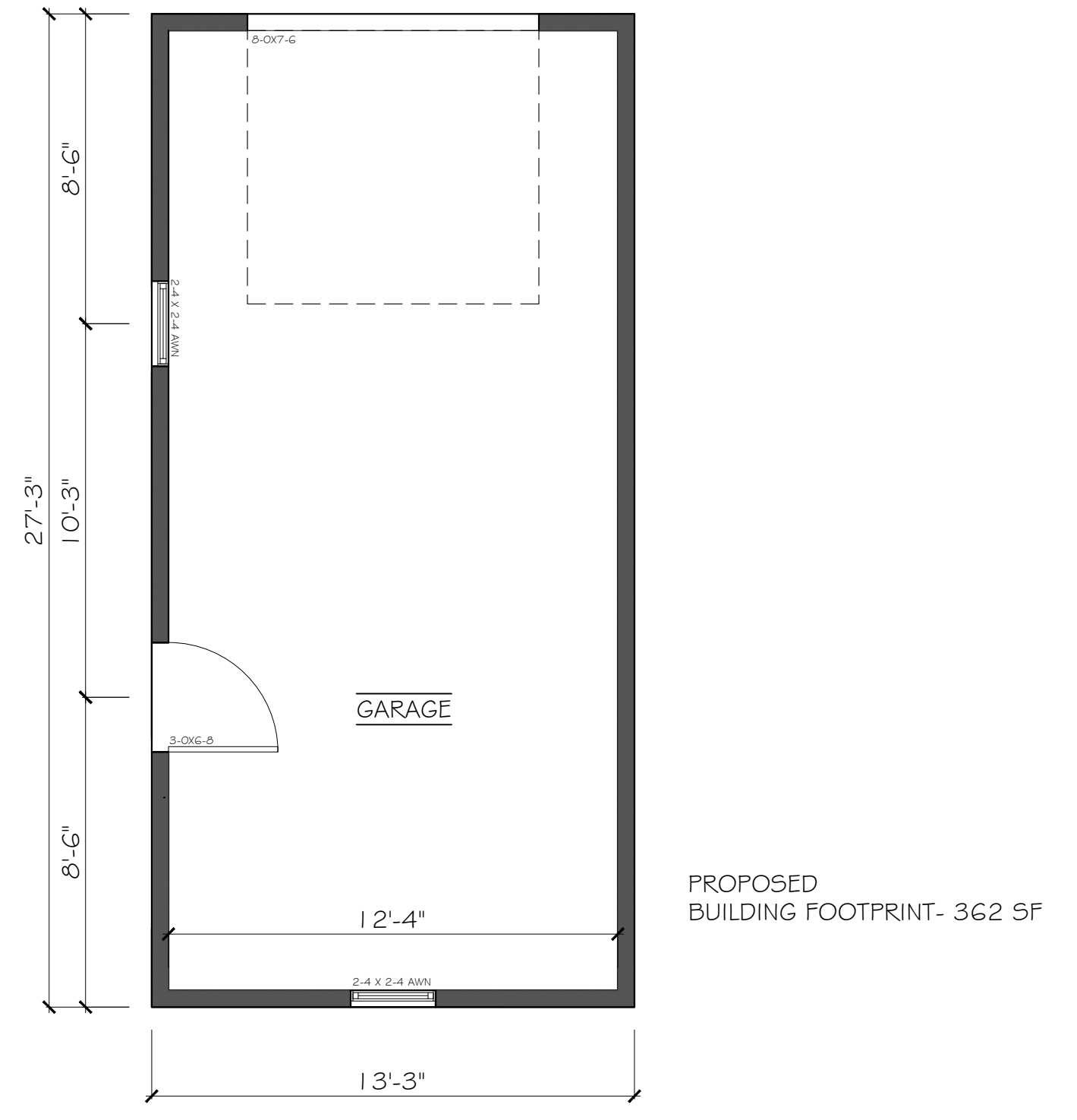
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M'cneaney Survey Associates
 of NEW ENGLAND
 P.O. Box 681 - 24 CHESTNUT STREET
 DOVER, NH 03820 (603) 742-0911

SURVEYING - PLANNING - CONSULTING



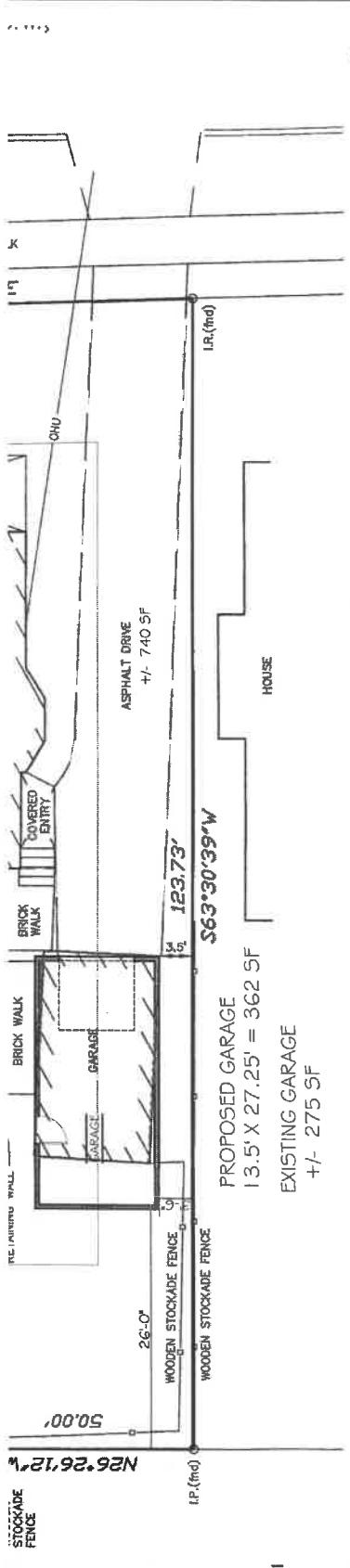
EXISTING BUILDING FOOTPRINT- 275 SF
 Scale: 1/4" = 1'-0"



1 FIRST FLOOR PROPOSED PLAN
 Scale: 1/4" = 1'-0"

FLOOR PLANS
 SCALE: 1/4" = 1'-0"
 DATE: 28 NOVEMBER 2023
 REVISIONS:

PROPOSED GARAGE FOR:
THE REID RESIDENCE
 410 RICHARDS AVENUE
 PORTSMOUTH - NH 03801



NOTES:

- 1.) OWNER OF RECORD:
PAULA J. REID 2003 REVOCABLE TRUST
PAULA J. REID, TRUSTEE
410 RICHARDS AVENUE
PORTSMOUTH, NEW HAMPSHIRE 03801
R.C.R.D. VOLUME 5998, PAGE 2091.
- 2.) 112 / 10 - DENOTES TAX MAP AND PARCEL NUMBER.
- 3.) PARCEL AREA = 6,149 S.F. / 0.14 Ac.
- 4.) THE INTENT OF THIS PLAN IS TO DEPICT THE PARCELS BOUNDARIES AND EXISTING SITE CONDITIONS AS OF OCTOBER 18, 2022.
- 5.) ZONING DISTRICT IS GENERAL RESIDENCE A (GRA).

	APPROX. CALCULATIONS	
	EXISTING	PROPOSED
MINIMUM LOT DIMENSIONS:		
LOT AREA	= 7,500 S.F.	6149 SF
CONTINUOUS STREET FRONTAGE	= 100 FEET	50 FT
DEPTH	= 70 FEET	123 FT
MINIMUM YARD DIMENSIONS:		
FRONT	= 15 FEET	15 FT
SIDE	= 10 FEET	3.5 FT
REAR	= 20 FEET	31 FT
MAXIMUM STRUCTURE DIMENSIONS:		
SLOPED ROOF	= 35 FEET	8'-7.5"
ROOF APPURTENANCE HEIGHT	= 8 FEET	11'-1"
BUILDING COVERAGE	= 25 PERCENT	28.3%
MINIMUM OPEN SPACE	= 30 PERCENT	59.7%

- 6.) THE SUBJECT PARCEL IS OUTSIDE OF THE 0.2 PERCENT ANNUAL CHANGE FLOODPLAIN AS SHOWN ON FLOOD INSURANCE RATE MAP COMMUNITY NUMBER 330139; PANEL 0259; SUFFIX F; MAP NUMBER 33015C0259F; EFFECTIVE DATE JANUARY 29, 2021.
- 7.) BASIS OF BEARING IS NH STATE PLANE (NAD83) BASED ON GPS OBSERVATION DATED OCTOBER 12, 2022. VERTICAL DATUM IS NAVD88 BASED ON GPS OBSERVATION DATED OCTOBER 12, 2022.
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PROPOSED 1827 + 740 = 2567 SF
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CALCULATIONS BASED ON EXISTING CONDITION SURVEY PROVIDED BY:

BOUNDARY SURVEY PLAN
 PREPARED FOR
PAULA J. REID 2003 REVOCABLE TRUST
 TAX MAP 112, LOT No. 10
 410 RICHARDS AVE
 CITY of PORTSMOUTH
 COUNTY of ROCKINGHAM
 STATE of NEW HAMPSHIRE

DRAWN BY: KJF	FILE: 2467\DWGS\22-2467
SCALE: 1" = 10'	DATE: OCTOBER 25, 2022

M. McEneaney
 Survey
 Associates

Exh 3B

Microfilm Plan # 125

(Sheet 2 of 2)

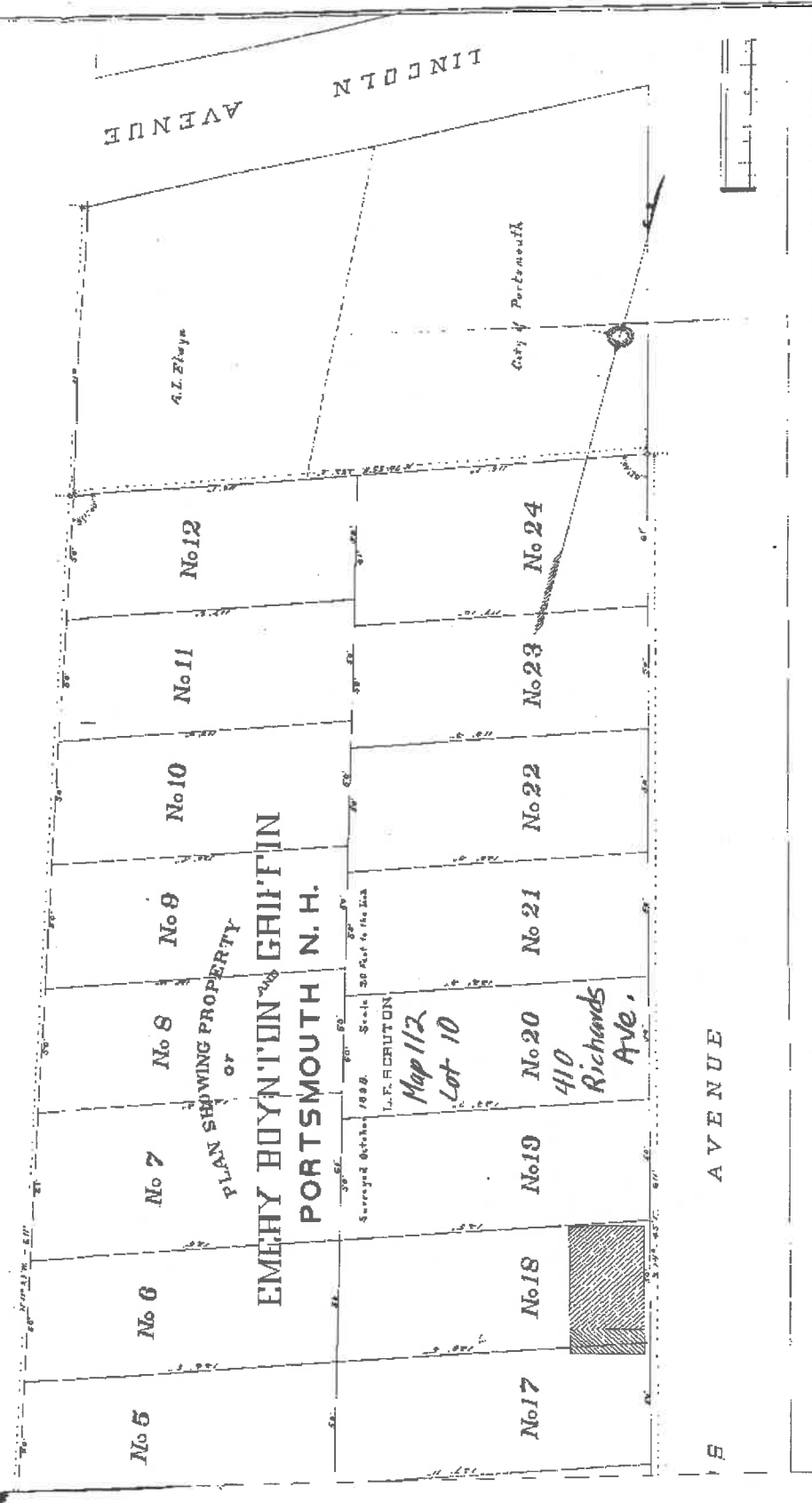
dated October 1898

(previously 539/481)

00125

2 of 2

AVENUE



Section 2

Exh. 4 (p. 1 of 2)

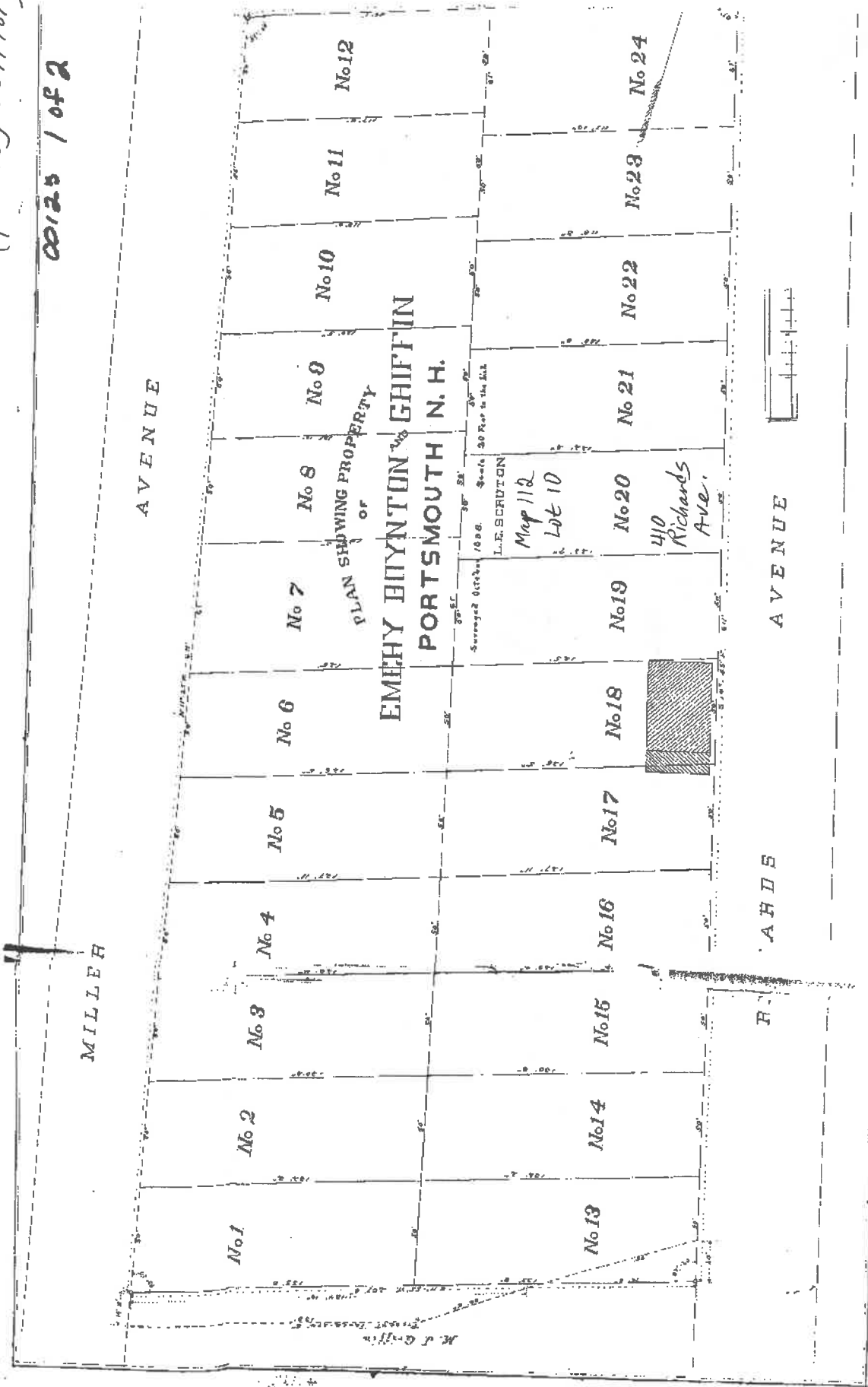
Microfilm Plan # 125

(Sheet 1 of 2)

Dated October 1898

(Previously 539/481)

00125 1 of 2



Section 1

Exh. 4 (p. 2 of 2)

410 Richards Avenue



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 06/24/2023
Data updated 3/9/2022

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

Exh. 5A

2023 Aerial View



**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 06/21/2023
Data updated 3/9/2022

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

Exh. 5B



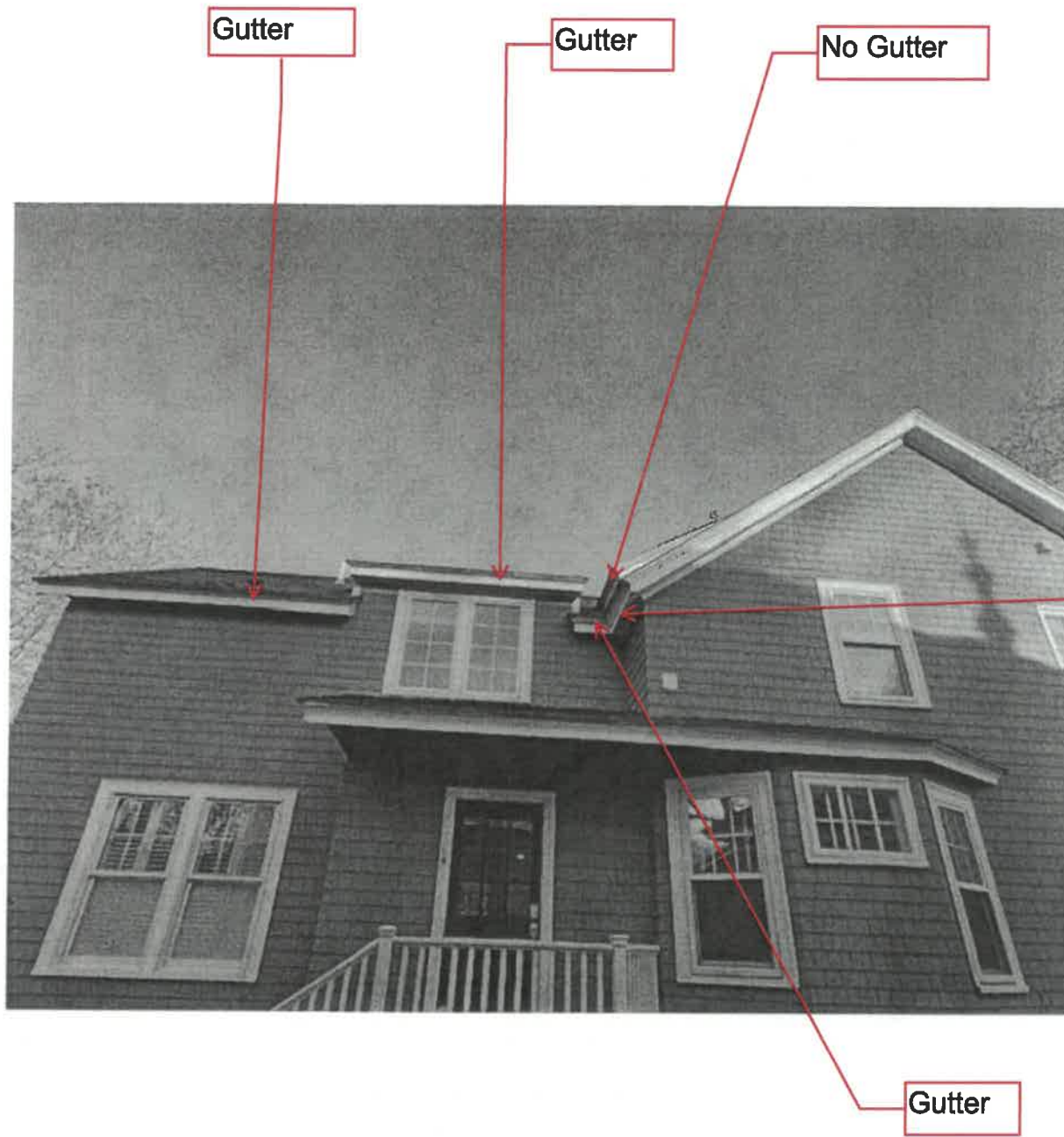
410 Richards Ave

Exh. 6

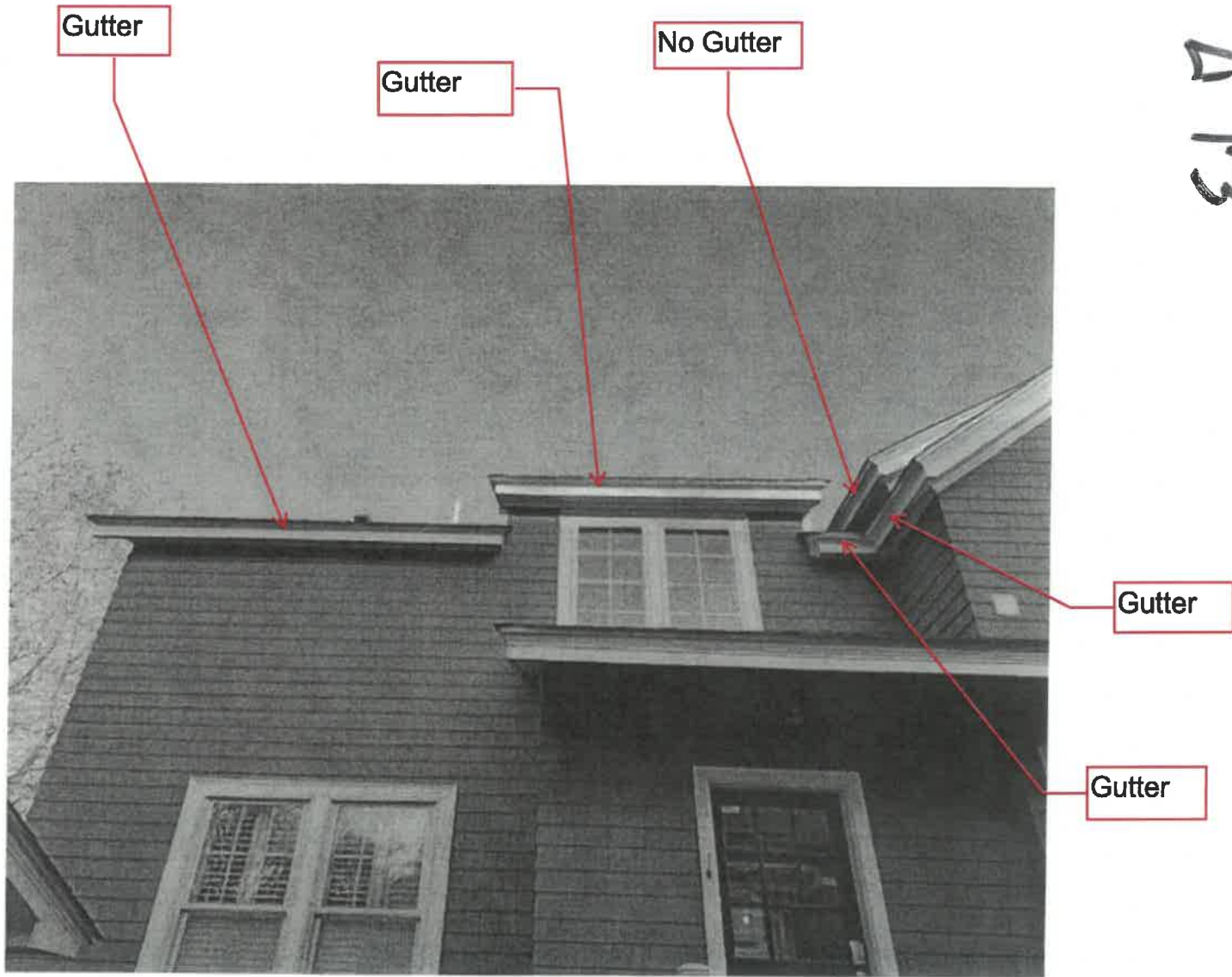
Exh. 6



Exh. 6



Ex. 7
L. 4x3



Gutter

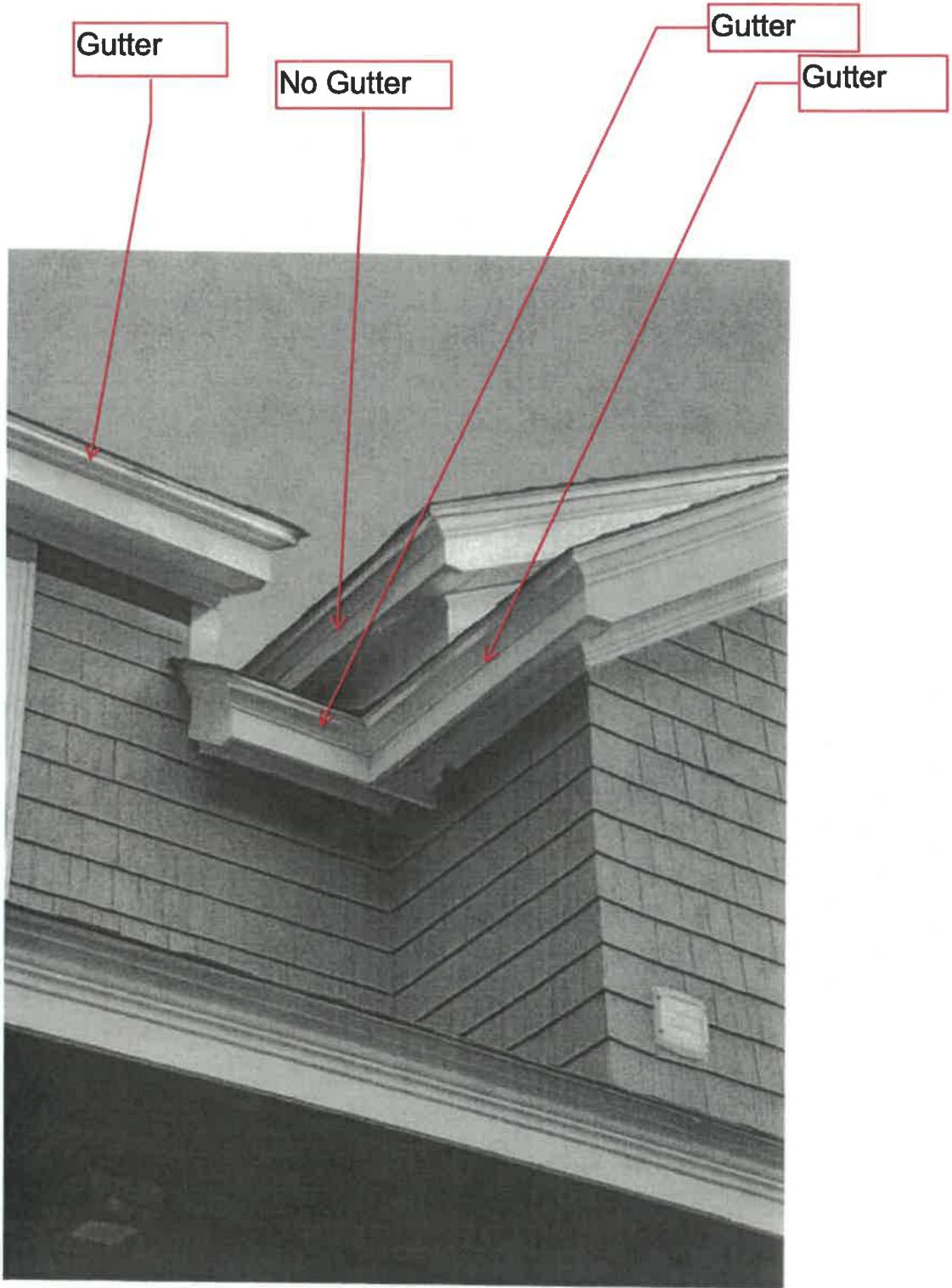
Gutter

No Gutter

Gutter

Gutter

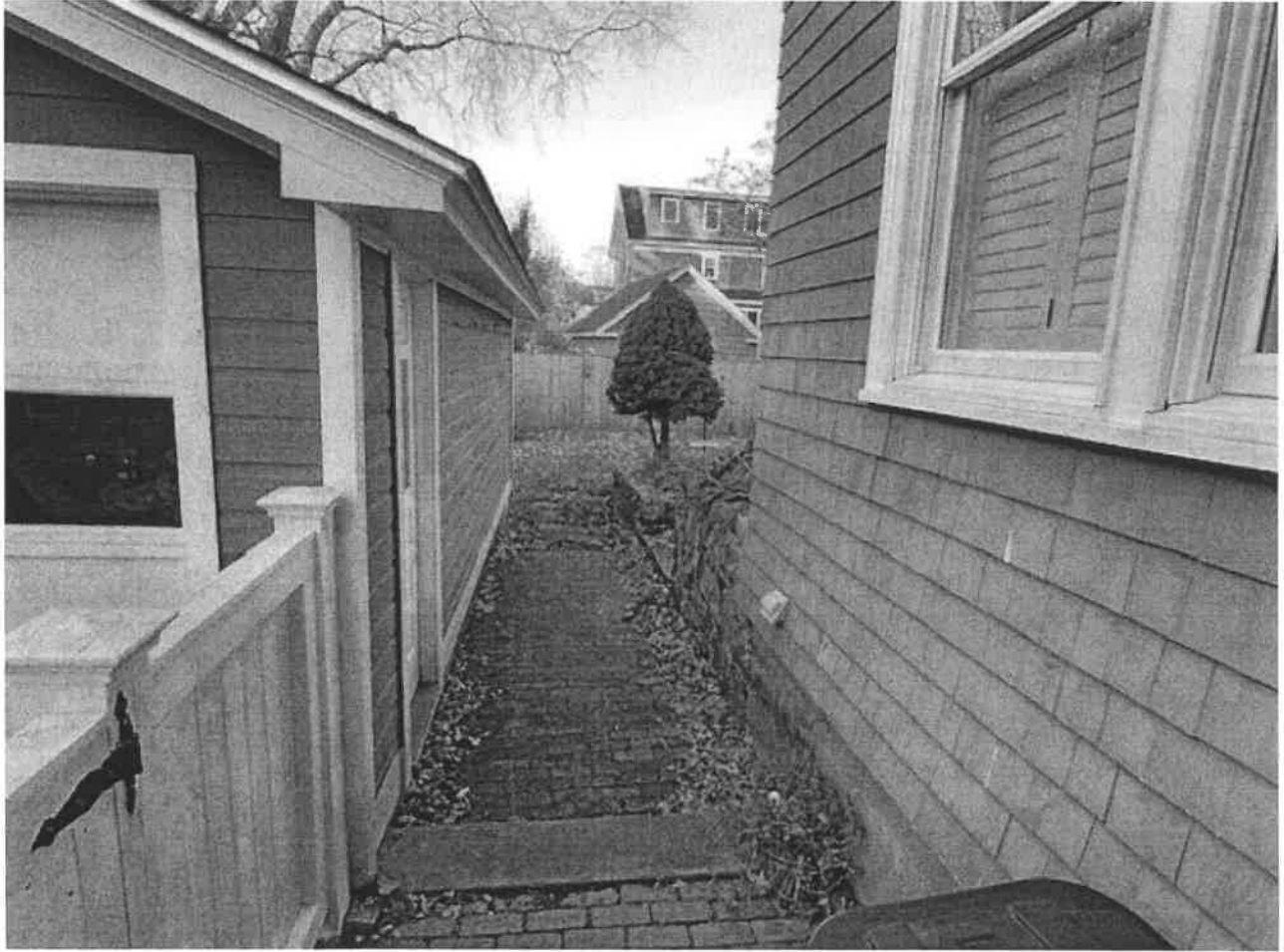
Ex. 7



Exh. 7



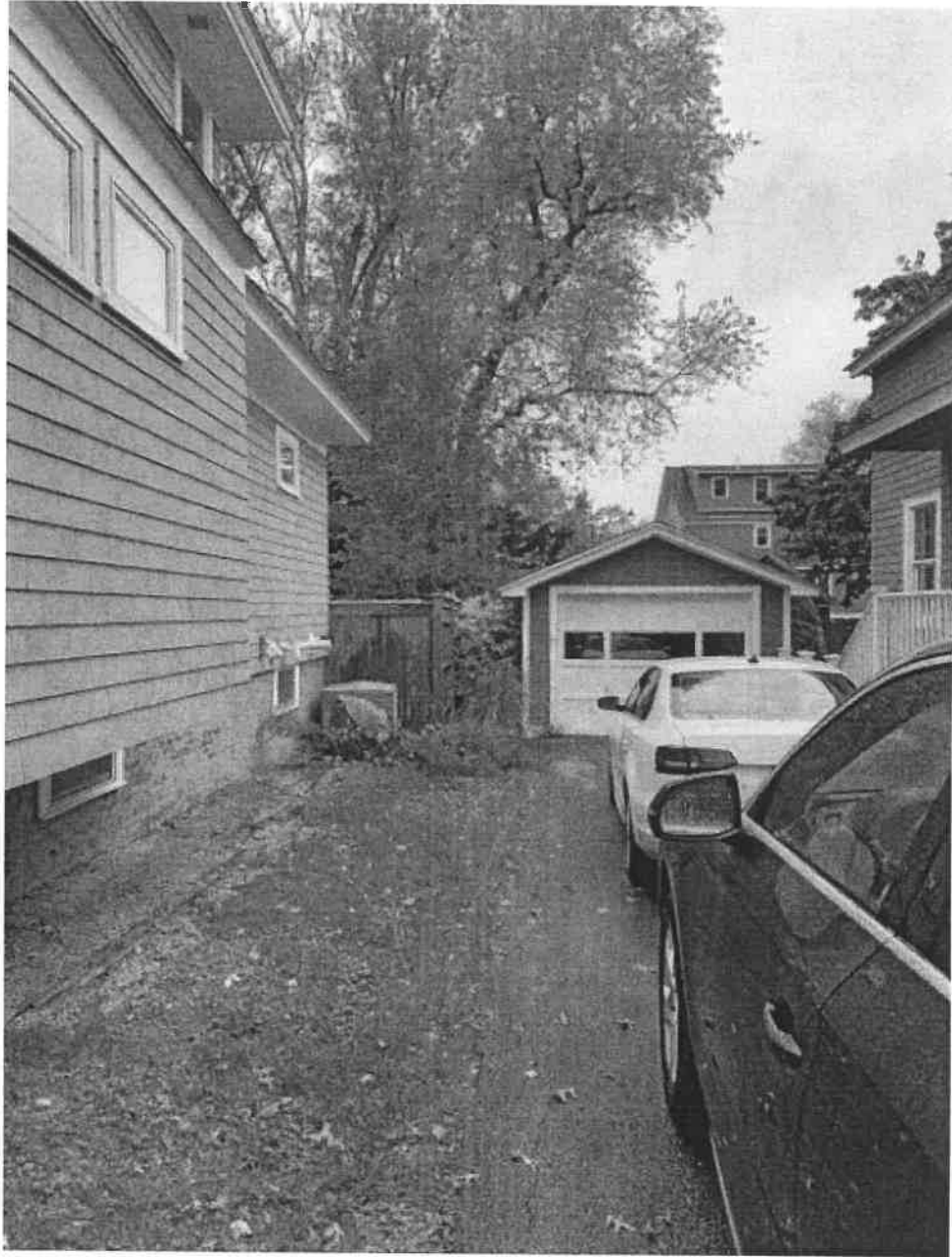
Exh. 8



Exh. 8



Exh. 8



Exh. 9



Exh. 9

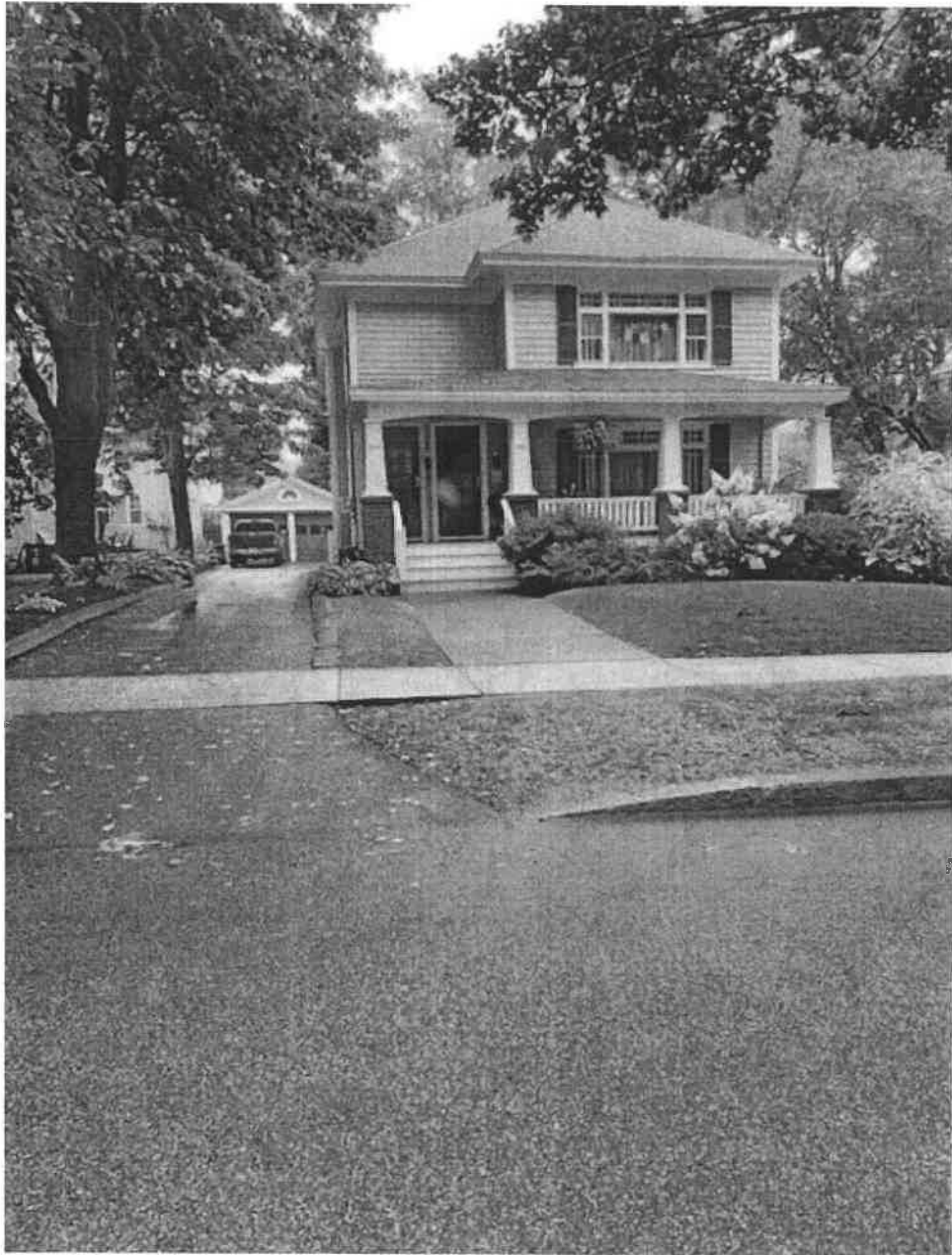


Exh. 9
6.4x3



Richards Ave.

Exh. 10



Richards Ave.

Exh. 10



Richards Ave.

Exh. 10



Richards Ave.

Exh. 10



Richards Ave.

Exh. 10



Richards Ave.

Exh. 10



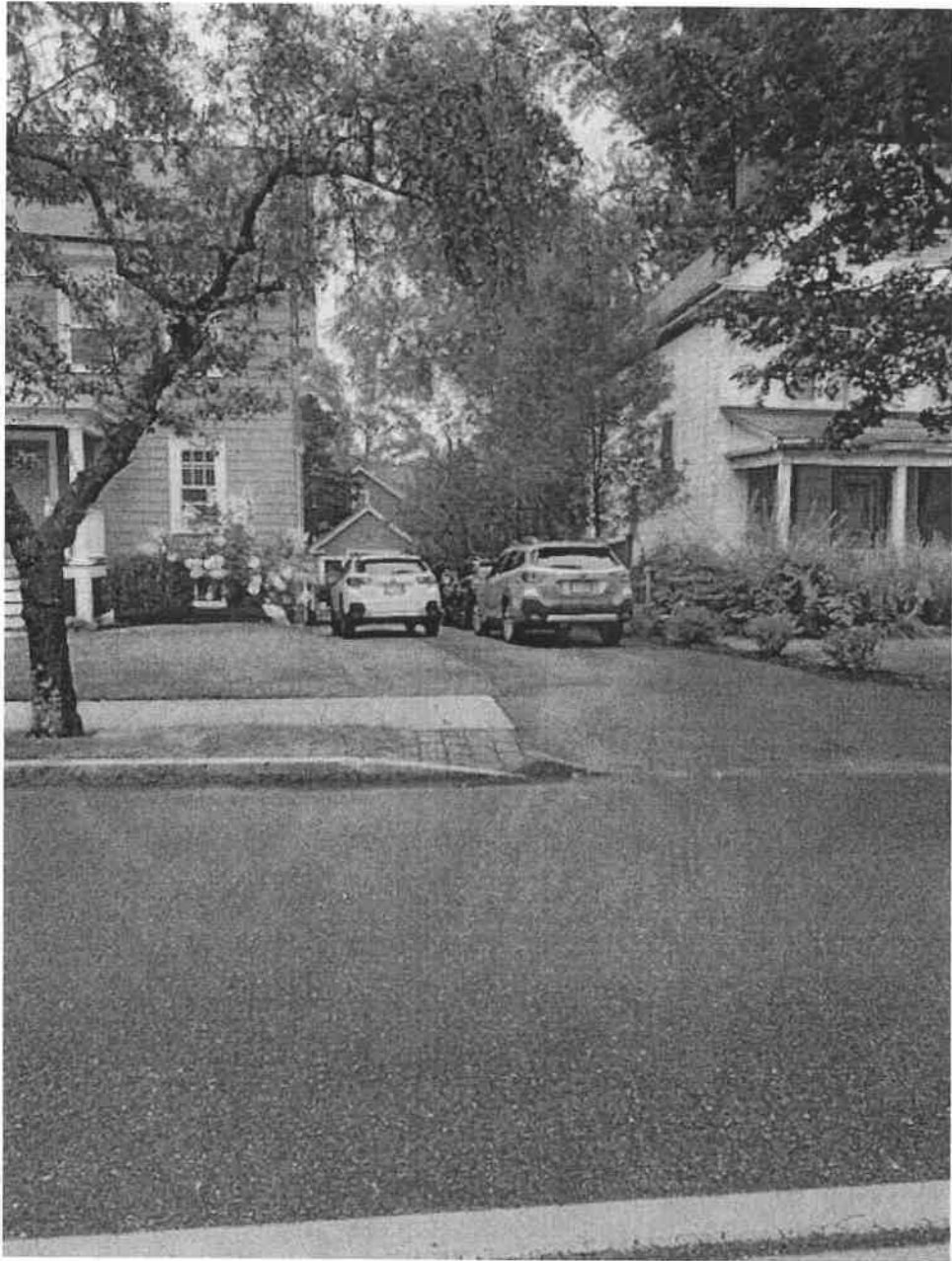
Richards Ave.

Exh. 10



Richards Ave.

Exh. 10



Miller Ave.

Exh. 10



Miller Ave.

Exh. 10

LIST OF ABUTTERS

Applicant: Paula J. Reid, Trustee of the Paula J. Reid 2003 Revocable Trust
 410 Richards Avenue, Portsmouth, NH
 Tax Map 112, Lot 10

<u>Property Address</u>	<u>Tax Map/Lot No.</u>	<u>Owner(s)</u>	<u>RCRD Deed Ref.</u>
420 Richards Avenue	Map 112, Lot 9	Amy E. Dutton Rev. Trust of 2003, Amy E. Dutton Murphy, Trustee	5225/39
390 Richards Avenue	Map 112, Lot 11	Stebbins Family Trust, John R. & Bridget M. Stebbins, Trustees	5636/563
399 Richards Avenue	Map 112, Lot 18	Barbara E. Collier Rev. Trust, Barbara E. Collier, Trustee	6315/246
409 Richards Avenue	Map 112, Lot 19	Stephen C. Buzzell Rev. Trust, Stephen C. Buzzell, Trustee, and and Jody E. Buzzell Rev. Trust, Jody E. Buzzell, Trustee	6035/840
419 Richards Avenue	Map 112, Lot 20	Thomas A. Nies Rev. Trust of 2010 and Denise M. Nies Rev. Trust of 2010, Thomas A. & Denise M. Nies, Trustees	5192/1225
295 Miller Avenue	Map 130, Lot 9	Kristen B. Mullen Rev. Living Trust, Kristen B. Mullen, Trustee	5699/1271
303 Miller Avenue	Map 130, Lot 10	The Twombly Trust, Dorothy C. Twombly, Trustee	2762/2766

Engineer/Surveyor:
 Kevin M. McEneaney
 McEneaney Survey Associates of New England
 P. O. Box 681
 Dover, NH 03821

Architect:
 Aimee Bentley
 ASB Architecture
 260 Main Street
 West Newbury, MA 01985

Attorney:
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