

**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.

February 21, 2024

AGENDA

I. APPROVAL OF MINUTES

A. Approval of the January 23, 2024 minutes.

II. OLD BUSINESS

A. REQUEST TO WITHDRAW The request of **Giri Portsmouth 505 Inc. (Owner)**, for property located at **505 US Route 1 Bypass** whereas relief is needed to demolish the existing structure and construct a new hotel with a drive thru restaurant which requires the following: 1) Special Exception from 10.440 Use #10.40 hotel where it is permitted by Special Exception; 2) Variance from Section 10.1113.20 to allow parking spaces between the principal building and a street; 3) Variance from Section 10.1113.41 for parking located 1 foot from the lot line where 40 feet is required; 4) Variance from Section 10.575 to allow dumpsters to be located 1 foot from the lot line where 10 feet is required; 5) Variance from Section 10.835.32 to allow 1 foot between the lot line and drive-thru and bypass lanes where 30 feet is required for each; and 6) Variance from Section 10.835.31 to allow 37 feet between the menu and speaker board and the front lot line where 50 feet is required. Said property is located on Assessor Map 234 Lot 5 and lies within the General Business (GB) District. (LU-23-199) **REQUEST TO WITHDRAW**

*Please note the Variances for this application were denied at the January 23, 2024 Board of Adjustment meeting and the Special Exception was continued to the February meeting pending additional information to be provided by the applicant.

B. REQUEST TO POSTPONE The request of **Friends of Lafayette House in care of Melanie Merz (Owner)**, for property located at **413 Lafayette Road** whereas relief is needed to construct an attached caretakers unit to the existing residential care facility

which requires the following: 1) Variance from Section 10.331 to extend, enlarge, or change the lawful nonconforming use without conforming to the Ordinance; and 2) Variance from Section 10.334 to extend the nonconforming use to a remaining portion of the land. Said property is located on Assessor Map 230 Lot 23A and lies within the Single Residence B (SRB) District. (LU-23-208) **REQUEST TO POSTPONE**

III. NEW BUSINESS

- A.** The request of **DSM MB II LLC (Owner)**, and **Bruno Fonzo (Applicant)** for property located at **1500 Lafayette Road Unit 6** whereas relief is needed to establish a UPS store which requires the following: 1) Special Exception from use #7.30 consumer service where it is permitted by Special Exception. Said property is located on Assessor Map 252 Lot 2 Unit 6 and lies within the Gateway Center (G2) District. (LU-24-5)
- B.** The request of **Timothy S. Wheelock and Susan V. Denenberg (Owners)**, for property located at **414 State Street Unit 2** whereas relief is needed to convert a ground floor commercial unit to a residential unit which requires the following: 1) Variance from Section 10.642 to allow a residential unit on the ground floor where nonresidential is required in the Downtown Overlay District; and 2) Variance from Section 10.5A41.10A to allow 806 square feet per dwelling unit where 3,000 square feet is required. Said property is located on Assessor Map 116 Lot 13 Unit 2 and lies within the Character District 4-L1 (CD4-L1) and Downtown Overlay District (DOD). (LU-24-6)
- C.** The request of **Frances E. Mouflouze Revocable Trust of 2015 (Owner)**, for property located at **550 Sagamore Avenue** whereas relief is needed to demolish the existing structure and construct a three dwelling unit building which requires the following: 1) Variance from Section 10.440 Use #1.51 to allow a three dwelling unit structure where it is not permitted. Said property is located on Assessor Map 222 Lot 11 and lies within the Single Residence B (SRB) District. (LU-24-9)
- D.** The request of **Cynthia J. Walker and Michael Walker (Owners)**, for property located at **46 Willow Lane** whereas relief is needed to demolish the existing shed, construct an addition to the primary structure and construct a detached garage which requires the following: 1) Variance from Section 10.521 to allow: a) 6.5 foot right yard where 10 feet is required; b) a 2 foot front yard where 15 feet is required; and c) 28% building coverage where 25% is the maximum; 2) Variance from Section 10.571 to allow an accessory structure to be closer to the street than the primary structure; 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 133 Lot 18 and lies within the General Residence A (GRA) District. (LU-24-8)

- E.** The request of **Joel and Jessica Harris (Owners)**, for property located at **2 Monroe Street** whereas relief is needed to construct an enclosed breezeway, landing and staircase which requires the following: 1)A Variance from Section 10.521 to allow 27% building coverage where 25% is the maximum allowed; and 2)Variance from Section 10.516.10 to allow a 10-foot front yard where 12 feet is required by the front-yard exception for existing alignments. Said property is located on Assessor Map 152 Lot 8 and lies within the General Residence A (GRA) District. (LU-23-154)

IV. 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_s15fMqskR9WS_anvexeNtw

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

7:00 P.M.

January 23, 2024

MEMBERS PRESENT: Phyllis Eldridge, Chair; Beth Margeson, Vice Chair; David Rheume; Thomas Rossi; Jeffrey Mattson; ML Geffert, Alternate

MEMBERS EXCUSED: Paul Mannle; Jody Record, Alternate

ALSO PRESENT: Stefanie Casella, Planning Department

Chair Eldridge called the meeting to order at 7:05 p.m.

I. ELECTION OF OFFICERS

*Mr. Rossi moved to **re-elect** Ms. Eldridge as Chair, seconded by Ms. Geffert. The motion **passed** with all in favor.*

*Mr. Mattson moved to **re-elect** Ms. Margeson as Vice Chair, seconded by Mr. Rossi. The motion **passed** with all in favor.*

II. APPROVAL OF MINUTES

A. Approval of the December 19, 2023 minutes.

The Board made several amendments [timestamp 8:40]. Mr. Rheume said a sentence on page 3 needed further clarification. He asked that the following sentence: “Mr. Rheume said he made the original motion to deny it and moved to grant it the second time” be changed to “Mr. Rheume said he made the motion to deny the original application and then moved to grant the revised application.” In the sentence following that one, he asked that the term “present what was necessary relief the applicant needed to move forward” be changed to “the necessary relief the applicant needed to receive to move forward” so that the sentence now reads: “He said the project had pushed some limits and what came before the Board was interpreted by the Planning Department staff, who he had faith in to review the information and present the necessary relief the applicant needed to receive to move forward”. Mr. Rheume asked that the sentence (on page 9) that read: “Mr. Rheume said the present application was more in conformance and the nature of the variance requests was much less imposing” have the term ‘than the initial application’ added to the end of it so that the sentence now reads: “Mr. Rheume said the present application was more in

conformance and the nature of the variance requests was much less imposing than the initial application”. Ms. Geffert asked that the word ‘zoning’ be added after the word ‘area’ so that the sentence (on page 9) now reads: “She said literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because the property had special conditions by being MRB zoned, and given the zoning of the surrounding area, it made the property special and distinguished it from others in the area, and a fair and substantial relationship did not exist between the public purposes of the area zoning and its application to the property”. Ms. Geffert asked that a sentence (on page 14) have the word ‘bulky’ replaced by ‘bulking’ so that it now reads: “She said that once the Fisher v. Dover issue was resolved, the requested variances are not contrary to the public interest because the public interest does not manifest and the zoning ordinance doesn’t deal with the bulking issue, and the public interest allowed for small dimensional setback items”.

Vice-Chair Margeson asked that a sentence on page 2 have the term “and should have four ZBA actions” added to it so that it now reads: “Vice-Chair Margeson said she disagreed because there was a presumption of reasonableness and lawfulness and should have four ZBA actions”. Vice-Chair Margeson asked that the sentence (on page 5) be changed so that the term “would be more” would say “should be more”, to read as follows: “Vice-Chair Margeson said she would not support the motion because the zoning ordinance was clear that there should not be more than one dwelling unit per lot”. Mr. Rossi said a sentence on page 7 should have the word ‘practical’ replaced by ‘impractical’ so that the sentence reads: “Mr. Rossi asked what the special condition of the property was that made it impractical to have the full allotment of the square footage required per unit”.

*Mr. Rossi moved to **approve** the December 19 minutes as amended, seconded by Mr. Rheume. The motion **passed** unanimously, 6-0.*

III. OLD BUSINESS

A. Mastoran Restaurants Inc. - 2255 Lafayette Road request a 1 Year Extension to the Variances granted on February 15, 2022. (LU-22-13)

*Vice-Chair Margeson moved to **grant** the request for extension, seconded by Ms. Geffert.*

Vice-Chair Margeson said the zoning ordinance allowed for a one-time, one-year extension when good cause was demonstrated by the applicant. She noted that the applicant was working with City Staff to satisfy the conditions of the approval of the Wetlands Conditional Use Permit and the site plan. She said the building permit had an issue and that the applicant anticipated starting in the spring of 2024, so she thought that was sufficient reason for an extension. Mr. Rheume said he was normally a voice for restraint in granting requests for extension, but in this case he thought it was the exact kind of project that the Board should grant additional time for because it had a lot of complexity and needed various approvals.

*The motion **passed** unanimously, 6-0.*

B. 168 Lincoln Avenue – Request for Rehearing (LU-23-196)

*Vice-Chair Margeson moved to **deny** the request for rehearing, seconded by Ms. Geffert.*

Vice-Chair Margeson said she voted against the application both times when it came before the Board. She said the request for rehearing was based on the Fisher v. Dover issue, which the Board had addressed at the beginning of the previous hearing. She said the majority of the Board said they did not think Fisher v. Dover was implicated, so she would vote not to rehear the petition.

*The motion to deny **passed** unanimously, 6-0.*

At this point in the meeting, Chair Eldridge asked for a motion to take Item IV.D, 413 Lafayette Rd, out of order so that it could be postponed.

*Mr. Rheaume moved to take Application IV.D, 413 Lafayette Rd, out of order, seconded by Mr. Mattson. The motion **passed** unanimously, 6-0.*

*Mr. Mattson moved to **postpone** the application to the February 20 meeting, seconded by Mr. Rheaume.*

*The motion **passed** unanimously, 6-0.*

IV. NEW BUSINESS

- A.** The request of **Giri Portsmouth 505 Inc. (Owner)**, for property located at **505 US Route 1 Bypass** whereas relief is needed to demolish the existing structure and construct a new hotel with a drive-thru restaurant which requires the following: 1) Special Exception from 10.440 Use #10.40 hotel where it is permitted by Special Exception; 2) Variance from Section 10.1113.20 to allow parking spaces between the principal building and a street; 3) Variance from Section 10.1113.41 for parking located 1 foot from the lot line where 40 feet is required; 4) Variance from Section 10.575 to allow dumpsters to be located 1 foot from the lot line where 10 feet is required; 5) Variance from Section 10.835.32 to allow 1 foot between the lot line and drive-thru and bypass lanes where 30 feet is required for each; and 6) Variance from Section 10.835.31 to allow 37 feet between the menu and speaker board and the front lot line where 50 feet is required. Said property is located on Assessor Map 234 Lot 5 and lies within the General Business (GB) District. (LU-23-199)

SPEAKING TO THE PETITION

Attorney John Bosen was present on behalf of the applicant with the project team, which included representatives from Giri Hotels and site engineer Patrick Crimmins. He reviewed the petition, noting that they wanted to demolish the existing hotel and construct a 124-key hotel that would also

have a drive-thru Starbucks [timestamp 21:19]. Mr. Crimmins reviewed the site plan [timestamp 22:47]. Attorney Bosen reviewed the special exception and variance criteria [timestamp 35:27].

Vice-Chair Marge referred to the special exception and said the applicant's argument was that there were special conditions due to Hodgson Brook and the corner lot. She said the building was being reoriented toward Coakley Road and the Starbucks was being placed on the side of it, and that it seemed that the larger hotel and the Starbucks were driving the variance requests and not Hodgson Brook. Attorney Bosen said what made the site unique was the corner lot and the fact that they had limited room to work with, and making reasonable improvements in the brook dictated a certain program that they thought wouldn't impact the traffic in a negative way and would handle the parking that was on the site. He said there were many public benefits by improving the brook that helped maximize the best use of the site. Vice-Chair Margeson said No. 4 of the special exception criteria was that there would be no creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity. She said the parking wasn't within the purview of the Board but rather was the increase in the level of traffic congestion in the vicinity. She said the applicant was going from a 56-room hotel to a 124-room hotel with a Starbucks, and they were also reorienting it so that all the traffic would go down Coakley Road because there were no more curb cuts on Route 1. She said further down on Coakley Road was a hotel and plumbing supply company but then all residential. She asked if there were any trip generation reports when the applicant went before TAC and the Planning Board that stated how many cars would be drawn into the lot. Mr. Crimmins said the the project was expected to generate 81 new trips during the weekday morning peak hour, 70 new trips during the weekday afternoon peak hour, and 131 new trips during the Saturday mid-peak hours. He said the trip generation estimate included a credit for the existing hotel and credit for the Starbucks trips but no credit for internal trips. Vice-Chair Margeson said that was a substantial increase in the level of traffic, and Mr. Crimmins agreed but said the finding for the intersections and impacts themselves was that generally they were not decreasing the level of service despite those additional peaks, so the signals were intended to operate at the same level of service. Vice-Chair Margeson asked if most of the traffic would come off Route 1 or down Coakley Road the other way, and Mr. Crimmins said it would come from Route 1 Bypass.

Mr. Rheume said he didn't see any dimensions on the site plan for the one-foot setback and presumed it was where the road came up close to the property line along the Route 1 Bypass. Mr. Crimmins agreed. Mr. Rheume said the reasons for the placement of the dumpsters seemed related to the Starbucks, and he asked why that location was selected and not one that was in full compliance with the zoning ordinance. Mr. Crimmins that it was to provide a dumpster within proximity of the Starbucks. He said the location was selected due to the circulation of the site and the existing topography and screening from the road. He said it would also have an added length of distance that exceeds ten feet from the road. Mr. Rheume said the applicant was asking for one foot where a minimum of 44 feet was required, one foot where 10 feet was required, and one foot where 30 feet was required. He referred to the one foot up against the property line for parking and said the applicant mentioned that the current site had 405 parking spots in a tiny corner up against Coakley Road. He asked why the applicant didn't consider relocating the hotel up against Coakley Road and including the parking behind it to better adhere to the spirit of the ordinance. Mr. Crimmins said the layout for the program would not fit if the hotel were pushed up along the road and the setback was adhered to. Mr. Rheume said Starbucks seemed to be driving the request,

along with three of the other requests for variances, which was the dumpster, the drive-thru bypass, and the menu board. He asked if the applicant considered eliminating that aspect of the project to bring it more into compliance with the zoning ordinance as far as new structures on properties like that. Ankur Patel of Giri Hotels said there would be no project without the Starbucks because Starbucks was factored into offsetting some of the construction costs.

Referring to the special exception request, Mr. Rheaume said the applicant stated that he talked to the New Hampshire Department of Transportation (NHDOT) regarding the site and asked if the topic came up about a vision by NHDOT to eventually eliminate the traffic signal at the end of Coakley Road and how it factored into the applicant's proposal. Mr. Crimmins said it was part of their pre-application meeting and that they looked at it from a median standpoint and keeping the existing intersections. He said they would have to see how NHDOT wanted them to proceed. He said they did not submit a traffic analysis yet because they first needed relief granted for the project.

Mr. Rossi said Criterion No. 5 of the special exception criteria was that there would be no excessive demand on municipal services including sewer. He said sewer capacity was not unlimited and was not cheap, and he asked how the applicant ascertained that moving from 59 hotel rooms to 124 rooms plus adding a restaurant that would generate wastewater and sewage would not create an excessive demand on the finite sewage capacity in Portsmouth. Mr. Crimmins said he didn't have the flow data, but given the recent upgrades to the treatment plan, they anticipated that it could handle the capacity. He said if they were required to provide upgrades as part of the TAC process, it would have to be reviewed by City engineers and signed off and then go through an NHDES sewer connection process. Mr. Rossi surmised that there was no quantitative analysis of any kind. Mr. Crimmins said they wouldn't look that far ahead because too much would happen between the site and the pump stations, pipes, and so on. He said they would analyze it from leaving the site and getting into the sewer pipe and rely on the DPW staff to ensure that there was adequate capacity for the plant to handle it. Mr. Rossi referred to the applicant's statement that the project was designed to site the buildings and structures as far from Hodgkins Brook as possible, and he asked if that meant to say as far as possible for a building of that size. He noted that a smaller building could be placed closer to Coakley Road and away from the brook. Attorney Bosen said it was a first step in a very long set of approvals and the ordinance states that there had to be a substantial increase in the level of traffic congestion. He said they were only at the special exception stage and there would be many levels of review and approval before the project got built.

Mr. Mattson said he saw some numbers over 60 feet in the elevation plans and some under, and he knew that 60 feet was the height limit. He asked for clarification as to how the ordinance's height definition was applied and what the actual height was. Attorney Bosen said he thought it was the height of the parapet, which was the maximum height. Mr. Mattson asked what the actual height as defined by the ordinance was. Attorney Bosen said the intent was to meet what was required by the ordinance. Ms. Geffert said there was a retaining wall and the property sloped down to the brook, and she asked if the applicant was proposing that everything would be leveled in terms of the new property and the asphalt. Mr. Crimmins said the site would still slope as it presently did and the drive-thru queuing would be set down from where the height of Coakley Road was.

Chair Eldridge opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

No one spoke.

SPEAKING IN OPPOSITION TO THE PETITION

Jim Lee of 527 Sagamore Avenue said he was opposed to the special exception and the variance requests. He said some changes had already occurred in the already-crowded area in the past, like Liberty Mutual reactivating their facility on Borthwick Avenue that generated more traffic. He said a triple-sized motel and a Starbucks could only exacerbate the traffic problems.

Esther Kennedy of 41 Pickering Avenue said it sounded like a lot of things had to go through the State for approval and thought it should happen before coming before the City. She pointed out that the Master Plan stated that nothing could not be built within the buffer zone. She said there were a lot of logistics and wasn't sure what the applicant's hardship was.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DISCUSSION OF THE BOARD

Ms. Casella suggested a condition of approval noting that the design of the structure might change as a result of the site plan review with TAC and the Planning Board. Mr. Mattson referred to the special exception and said he had no problem allowing a hotel but wondered if it could be approved as presented. Mr. Rossi said he did not find that the applicant had provided adequate evidence that the criteria for the special exception would be satisfied, so he would not be in favor. Vice-Chair Margeson said she believed that the congestion in the vicinity and the traffic safety hazards had not been demonstrated by the applicant, most of which was driven by the Starbucks, but she had to approve that in combination with the hotel and she didn't think it met the criteria.

Mr. Rheaume referred to the special exception and said the Board would be approving a hotel use. He said the ordinance talked to sizes and that the Board didn't make a distinction in how the application was advertised. He said there was a separation from the variances because it came down to a 124-room hotel on the property. He thought the question of whether it met the special exception criteria was separate from some of the variances being asked for, and he said the Board had to be careful that they didn't throw non-hotel related concerns into their special exception for the hotel. He said traffic was a consideration because the number of vehicles going back and forth was being more than doubled, and there would be future traffic changes and patterns in the area. He said he didn't think the residential portion of Coakley Road would be negatively impacted other than people being able to get to and from their residences. He said the size of the hotel gave him some pause for the special exception, otherwise he thought special exceptions were low thresholds to meet in terms of stormwater and increase in sewer use. Regarding the variances, he said he had concerns because the applicant argued that it was a hardship for them to be on a small lot with a brook going through it, but he felt that at some point hardship turned into overdevelopment. He felt

that the applicant was sticking what they wanted in the most cookie-cutter way that they did on their other properties. He said the one-ft setback from almost the entire property line along Coakley Road was too much. He noted that the spirit of the ordinance was to try and do different things in these areas to change from the same look of parking in front and building in the back to something different, and that was also a goal of the Master Plan. He said the idea that the lot was too small was not a hardship, it was just telling the Board that the applicant was asking for too much to place on the lot. He said the special exception could be approved but the variances were not approvable.

[Timestamp 1:16:25] Chair Eldridge said the Board could postpone and ask the applicant to go before TAC before coming back before the Board again. Ms. Casella said that the applicant would have to go before TAC with specific questions about traffic flow or sewer system impacts. She said the Board could send those concerns and questions to TAC and ask for the PWD to make a recommendation about those concerns. Mr. Rossi said it would be appropriate if the Board had questions about the special exception, but the applicant was improving the variances pending the special exception. He said the Board would be sending the applicant on an errand that would find the applicant back the Board, which he didn't think was fair. Vice-Chair Margeson said she wasn't in favor of it because the applicant had already been in front of TAC. She said she thought there was no hardship and said the applicant made the decision to come before the Board. Mr. Rheume asked if denial of the special exception would be saying that the Board could not authorize any hotel in that space or would be demanding that it be a different size. Ms. Casella said the proposal would have to be substantially different. Mr. Mattson said he thought it was an improvement to remove the curb cuts along the Route 1 Bypass in terms of a traffic safety hazard. He said there would obviously be an increase in the level of traffic, and whether it was substantial was debatable. He said as far as the excessive demand including sewer, he said there would be an increase demand but whether that was excessive was also debatable. He agreed that the special exception was separate from the variance requests, so he wasn't sure if the Board could just vote on the special exception first. Mr. Rheume asked if the Board could table the special exception and just vote on the variances or if the Board could deny without prejudice. Ms. Casella said the proposal before the Board was a full project and parsing it out would make things more difficult because if part of it was denied, then the whole project wouldn't be approved together anymore. She said the Board could consider reopening the public hearing and asking more questions of the applicant, but it was a full proposal that requires a special exception.

DECISION OF THE BOARD

*Mr. Rossi moved to **deny** the special exception request, seconded by Vice-Chair Margeson.*

Mr. Rossi said that, considering the five criteria for approval of a special exception, the Board finds that the proposal falls short on two important aspects of satisfying those criteria. He said one was Criterion 10.233.24, no creation of a traffic safety hazard of substantial increase in the level of traffic congestion in the vicinity. He said the proposal as it stands will necessarily increase traffic congestion in an already congested area and therefore does not satisfy that requirement. He said the other criterion was 10.233.25, no excessive demand on municipal services. He said there had not been an adequate analysis presented to demonstrate that there would not be an excessive demand placed on the finite capacity of Portsmouth's water treatment facilities, based on the increased

number of hotel rooms and the addition of a restaurant to the site. Vice-Chair Margeson said she agreed with Criterion No. 4, that the numbers presented by the applicant indicate that there is a substantial increase in the level of traffic congestion in the vicinity, but she did not agree that the project violated No. 5. She said hotels were big users of water and sewer, but when she thought of no excessive demand on municipal services including but not limited to water, she thought of something like Lonza, who did a lot of manufacturing and used a huge amount of water. Mr. Rossi said he would modify his motion to eliminate Criterion No. 5.

Mr. Mattson said that, even though there would be an increase in the level of traffic, the project engineer stated that the level of service would still be adequate, so he thought there would not be a creation of a traffic safety hazard. Mr. Rheume said he would not support the motion because he thought there were concerns about the traffic but wasn't convinced that it could be addressed to the Board's satisfaction. He thought the Board needed more technical information to allow them to deny the special exception based off the traffic impacts. Ms. Geffen said it seemed that the bigger concern was the Starbucks and that traffic load and not necessarily the hotel. She said the combination of a hotel and restaurant didn't appear to be contemplated and noted that a restaurant was permitted in the GB District. Vice-Chair Margeson said she based her second on Mr. Rossi's motion on information presented by the applicant as to trip generation, which apparently the applicant had been doing before the Planning Board.

*The vote to deny the special exception **failed** by a vote of 4-2, with Ms. Geffert, Mr. Rheume, Mr. Mattson, and Chair Eldridge voting in opposition.*

*Mr. Rheume then moved to **continue** to the February meeting consideration of the special exception, with the request to the applicant to provide more detailed information to the Board on trip generation, impacts of future potential changes to highway entrances and exits, traffic signalization, and potential impacts to the neighborhood in the sense that it would be one of two outlets to that neighborhood and that it would be limited to the proposed hotel at the proposed size. Mr. Mattson seconded.*

[Timestamp 1:1:34] There was further discussion. Vice-Chair Margeson said the Board was supposed to act upon the application immediately following the public hearing. Mr. Rheume said the Board could take more time to get the information they needed to make the proper decision and that he would want more detailed information to make a determination about the special exception so that the applicant wouldn't be placed into a Fisher v. Dover position. Ms. Geffert asked if a special exception was needed for the restaurant. Mr. Rheume said his motion was related to the special exception, which was related to the hotel. He said it was up to the applicant to address the Board's concerns and to convince the Board regarding the special exception.

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

*Mr. Rheume moved to **deny** the five variances, seconded by Vice-Chair Margeson.*

Mr. Rheaume said he expressed his concerns with the project. He understood what the applicant wanted and that they made an economic argument, but he said economics was not one of the Board's factors. He said the project failed on two criteria, and he thought denying all five variances made sense because they were interrelated to the proposed layout of the property and trying to force a lot of stuff into a small parcel. He said granting the variances would not observe the spirit of the ordinance, which tied into the public interest and the characteristics of the neighborhood. He said at some point the Master Plan wanted to put new structures on old properties, and it was the kind of look it wanted for the next generation of buildings in that area. He said what was being asked for was not trying to respect what was coming out of the Master Plan in terms of positioning the building. He said there was an opportunity to move the building farther away from the brook, but it was being driven by the presence of the Starbucks. He said the spirit of the ordinance did not want the same cookie-cutter look, and it didn't want the parking between the building and the street or pressed up against the street. He said there wasn't a lot of distance between the edge of the property line and Coakley Road. He said the applicant said the hardship was the small lot with a brook running through it, which he agreed with, but it did not correlate to the degree of variances that the applicant was asking for, which were variances that were tied to the desire to have everything the applicant wanted on the lot. He said the Board looked at the unique characteristics of the property, not what the applicant's economics were. He said there were opportunities to rework the application and perhaps keep Starbucks and be a better project in terms of the Master Plan and the ordinance.

Vice-Chair Margeson concurred. She said her concern was the one foot between the parking and the front lot line and that there would be a substantial amount of ingress and egress traffic. Ms. Geffert said the plan was heading in the right direction but could be improved by shrinking the building's footprint so that the variances in terms of closeness to the Route 1 Bypass and a little bit of Coakley Road could be adjusted.

The motion to deny the variances passed unanimously, 6-0.

- B.** The request of **William C. Giles Revocable Trust (Owner)**, for property located at **375 Coolidge Drive** for after-the-fact construction and demolition of existing decks, which requires the following: 1) Variance from Section 10.521 to allow: a) a 17 foot rear yard where 30 feet is required, and b) building coverage of 22.5% where 20% 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 268 Lot 41 and lies within the Single Residence B (SRB) District. (LU-23-200)

SPEAKING TO THE PETITION

[Timestamp 1:44:24] Attorney Colby Gamester was present on behalf of the applicant, along with the owner William Giles and his contractor. Attorney Gamester said they were seeking after-the-fact relief for retention of the rear deck. He said the owner had the back deck constructed and began to have a side deck constructed when the City became aware of it and issued a cease-and-desist order. He reviewed the existing conditions and the proposed conditions plans and said most of the

front deck except for a small portion of the of the landing and stairway would be removed as well as the side deck, and the back deck would remain. He reviewed the criteria.

Mr. Rheaume noted that the applicant indicated that the 2-story addition and the 2-car garage were pursuant to zoning relief that was given to the previous owner from the BOA in 2002, but the Staff Memo said there was no previous history found. Attorney Gamester said it was in the Planning Department file. Ms. Casella said she would err on the side of what the applicant presented. Mr. Rossi asked who built the decks. Attorney Gamester said the contractor was an experienced one who expanded into decks during the past summer. Mr. Rossi said the size of the deck was perplexing and that it was beyond him how anyone could say they didn't need a permit or have someone inspect everything to make sure it was compliant. He asked how the Board would be assured that the remaining deck had been built in compliance with all the appropriate safety standards. Attorney Gamester said a building permit was still required and was a proposed condition of the Staff Memo. He said the Inspection Department saw the deck last spring and a building permit was filed with respect to it, as well as the side deck that was no longer needed. Mr. Rossi said he normally wouldn't have any problem with the variance if it had been brought to the Board proactively, and he wanted to be convinced that it was not an intentional violation of the requirements to get a building permit, but he would take the applicant's word at face value.

Mr. Mattson said there was a door going onto the side deck that was removed and asked if it would be closed off or have a landing. Attorney Gamester said the owner intended to have landscaping back there and that the contractor would reconstruct the area, but that it wasn't currently accessible but if it were, it would be done by raising the slope and grading everything out naturally. Mr. Mattson said it would not affect the building coverage at all then, and Attorney Gamester agreed. Vice-Chair Margeson said there was a significant raising of the grade by the door. Attorney Gamester said there used to be grade there before it was deconstructed, and the owner said there was a typical landing toward the bay window with supports that raised it. He said the owner would have to decide if he wanted the door to be operable, and if so, he would return before the Board. Vice-Chair Margeson said she shared Mr. Rossi's concern about a building permit not being pulled and that she didn't understand it, especially given the size of the deck. She said the submitted survey seemed like it was just a review. Attorney Gamester said there was a review on both the existing and proposed conditions plans when it was sent to him, and after several discussions with T. L. Moran, it carried over. He said he could have T. L. Moran send the Planning Department a stamped survey if necessary. Vice-Chair Margeson asked if the stamped version would be identical to the present one. Attorney Gamester said the existing conditions plan should be exact, and if they provided a proposed conditions plan, it would be different because the front deck was removed.

Chair Eldridge opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke.

Ms. Casella noted that she wanted to confirm that the advertised building coverage of 22.5 percent requested was now 21-1/2 percent and would be the final building coverage. Attorney Gamester

agreed. Ms. Casella said she recommended that the Board acknowledge that it was 21.2 percent and that it would be rounded up to 21-1/2 percent rather than the 22.5 percent that was advertised.

Chair Eldridge closed the public hearing.

DISCUSSION OF THE BOARD

Mr. Rossi said he didn't fully comprehend the applicant's answer as to whether or not there was an action by the Board previously to accommodate the 2-story garage. He said there was something odd going on, so he thought that any action the Board took that evening should be predicated on follow-up by the Planning Staff to confirm that there was indeed an action taken and that the 2-story garage complied with whatever was granted. Mr. Mattson said he had no problem with the application but thought it was unfortunate that it was an after-the-fact request. Chair Eldridge said she looked at it the way she would have the first time. Mr. Rheume said he was supportive of the application and thought the request for relief was reasonable because it was trying to match up to a non-existing encroachment into the back lot line distance. He said it was therefore the same because the applicant wasn't asking for more than what was currently there. He said his concern was that, if there were an issue to create another landing to be able to use the side entry door, that should have been presented that night instead of something for future consideration. He said the property's slope made it impossible to create a less than 18-inch patio in the back, so it would have to be a deck.

DECISION OF THE BOARD

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

Mr. Rossi said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He said back decks were common and there was no public interest that would be of concern. He said the deck would be hidden from the road and the relief being requested indicated that it was already an existing protrusion off the back of the house that went into the rear yard setback, so he felt that the applicant wasn't asking for anything more than that. He said it was more reasonable than trying to create a much larger deck that expanded further back. He said substantial justice would be done from the perspective of the neighbors because there was no general purpose of the public interest that would outweigh the applicant's ability to create the deck, which was their only option for outdoor recreation in the back of their property. He said granting the variances would not diminish the values of surrounding properties because the deck was a modest one. He said what was requested was small in terms of 1-2 percent of the coverage requirement. He said the hardship was that the current house was pushed all the way back to the 30-ft setback line and any attempt to use the backyard for recreational purposes would require relief. He said the property's sloping condition and the nature of the surrounding properties also made the request not excessive in terms of its impact. He said it met the hardship criteria and that adding an outdoor living space on the back side of the property was a reasonable use.

Mr. Rossi asked for a condition that the approval be predicated on the Planning Staff following up and confirming that the 2-story garage has the proper history to it with regard to BOA actions taken in 2002. Mr. Rheume agreed. Vice-Chair Margeson asked to stipulate it as 21.5 percent coverage. Mr. Rheume said he wasn't sure that the advertised 22 percent v. the actual 21-1/2 percent was a big deal and that he was fine with what was advertised as 22 percent. The Board agreed.

The amended motion was:

*Mr. Rheume moved to **grant** the variances as requested and advertised, with the following condition:*

- *The approval shall be predicated on the Planning Staff confirming that the 2-story garage has the proper history to it with regard to BOA actions taken in 2002.*

*Mr. Rossi seconded the motion. The motion **passed** unanimously, 6-0.*

- C.** The request of **Jewell Court Properties LLC (Owner)**, for property located at **33 Jewell Court Unit S1** whereas relief is needed to establish an event venue serving up to 250 people which requires a Special Exception from Section 10.440, Use # 9.42 where it is permitted by Special Exception. Said property is located on Assessor Map 155 Lot 5-S1 and lies within the Character District 4-W (CD4-W) and the Historic District. (LU-23-205)

SPEAKING TO THE PETITION

[Timestamp 2:31:25] Attorney John Bosen was present on behalf of the applicant, along with the applicant Jessica Kaiser. Attorney Bosen said they wanted to repurpose the vacated second floor office space to make it into an event center. He reviewed the petition and special exception criteria. Jessica Kaiser said that most of the events would not hit the maximum capacity. She said the existing parking would be adequate and the guests would stay at inns and dine and shop in Portsmouth, which would benefit the City and that local vendors and caterers would be hired.

Mr. Rossi asked what was on the first floor. Ms. Kaiser said it was a web development firm and an architectural firm. Mr. Rossi asked if the sound engineer looked at the sound going down to the first floor. Ms. Kaiser said he did but that the events would take place when the tenants were not in the building. Mr. Rossi asked how the Planning Department ascertained that the building structure and floor were adequate to support people dancing. Ms. Kaiser said the tenant fit-up was part of the building permit process and the Inspection Department would do a full evaluation. Mr. Rheume said the relief asked for was between 50-250 patrons and that the applicant said 160 was more realistic. He asked if an analysis was done to know what the fire code would allow in that space. Ms. Kaiser said she spoke to someone in the fire department about getting additional information but it was still in the works. In response to further questions from Mr. Rheume, Ms. Kaiser said her clients would be required to use the shuttle or valet service and that it would be enforced by a contract. As far as the valet option and finding any available parking spots, she said she was in

touch with the manager of the Partners Bank property, where there were 80 available spots, and that another property on Islington Street had several spots available. She said she also reached out to the Bank of America property owner who had an entire back parking lot available.

Vice-Chair Margeson said the applicant mentioned two other buildings that were part of the condo association. Ms. Kaiser said the condo president Eric Chinberg owned two other buildings. Vice-Chair Margeson said the 205 spaces seemed to belong to the people who lived in the other residences. Ms. Kaiser said it was a shared lot for all the buildings and the parking access was established in 2015 that granted the use of those spaces on a first-come first-served basis for all the tenants in the buildings. In response for further questions from Vice-Chair Margeson, Ms. Kaiser said she would not need 29 parking spaces because the only people using spaces during the events would be the caterers and vendors and a few clients who wanted to bring in additional items. She said she anticipated the need for 15 or so parking spaces and that there were enough spaces for all the residents in the buildings. Vice-Chair Margeson said some of the residents may find themselves without their parking spaces on the weekends. Mr. Kaiser said she wouldn't be using them because she'd have the shuttle and valet. She said there were 18 exclusive spots for the property and 24 spots behind another building accessed from a back street, and if she needed more than 20 spots, she would use those. Vice-Chair Margeson said that was a tough spot to maneuver in and asked how many cars could fit in that space. Ms. Kaiser said it would be a maximum of 250 spaces.

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. Rossi moved to **grant** the special exception, seconded by Mr. Mattson.*

Mr. Rossi said it was a use permitted by special exception in that zone. He said granting the special exception would pose no hazard to the public or adjacent properties on account of fire, explosion, or toxic material hazard. He said the type of use in the proposed building is consistent with what's going on in the neighborhood. He said it was a dense intermingling of entertainment, hospitality, and residential use. He said he did not believe that allowing the special exception would have a detrimental impact on surrounding properties, particularly since a sound study was performed that addressed the one potential concern with noise level, which addressed Criterion 3. He said there would be no creation of a traffic safety hazard or substantial increase in the level of traffic congestion in the vicinity, noting that the shuttle service would transport lots of people with a smaller number of vehicles. He said it was a congested traffic area but the applicant stated that they would require the use of either a valet or shuttle service parking, which he said addressed Criterion 4 adequately. He said granting the special exception would pose no additional demand on municipal services and no impact on stormwater runoff onto adjacent properties because no changes were being done to the building externally. Mr. Mattson concurred and said the application was a great idea, particularly with the use of shuttles for wedding guests. He said it addressed the traffic issue

and was a great addition to the community. Mr. Rheaume said he would support the motion because in terms of the Board's threshold for special exception and the criteria of no creation of traffic safety hazards and no substantial increase in the level of traffic congestion, he said the applicant presented a plan that could work. He noted that it had to go through the parking condition use permit process with TAC and the Planning Board. He said the other thing that swayed him was that the parking would be contained to the condo association, so there was really no impact on the general public. He said there wasn't a lot of available street parking in that area that would get taken up by cars for the venue, but if there were, the condo association could work it out.

The motion passed by a vote of 6-0.

- D. REQUEST TO POSTPONE** The request of **Friends of Lafayette House in care of Melanie Merz (Owner)**, for property located at **413 Lafayette Road** whereas relief is needed to construct an attached caretakers unit to the existing residential care facility which requires the following: 1) Variance from Section 10.331 to extend, enlarge, or change the lawful nonconforming use without conforming to the Ordinance; and 2) Variance from Section 10.334 to extend the nonconforming use to a remaining portion of the land. Said property is located on Assessor Map 230 Lot 23A and lies within the Single Residence B (SRB) District. **REQUEST TO POSTPONE (LU-23-208)**

DECISION OF THE BOARD

The petition was postponed to the February 20 meeting.

- E.** The request of **Tamrah Rouleau and Jermy Rouleau (Owners)**, for property located at **159 Madison Street** whereas relief is needed to construct a third floor addition to the existing structure which requires the following: 1) Variance from Section 10.521 to allow an 8 foot left side yard where 10 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 145 Lot 54 and lies within the General Residence C (GRC) District. (LU-23-201)

SPEAKING TO THE PETITION

[Timestamp 3:00:36] The owner Jermy Rouleau was present and reviewed the petition. He said they wanted to add a third floor for more space. He reviewed the criteria and said they would be met.

Mr. Rheaume asked if the only relief needed was for the blue-shaded section of the diagram, and Mr. Rouleau agreed. He noted that the neighbors approved the project.

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. Rossi moved to **grant** the variances as presented and advertised, seconded by Ms. Geffert.*

Mr. Rossi said the spirit of the ordinance and the nature of the setbacks was to preserve light and air in surrounding properties. He said the building was already a tall, narrow, and deep structure, and whatever shade was cast on surrounding properties would not be any greater based on the small variances being requested. He said granting the variances would do substantial justice because there would be no loss to the public that would outweigh the benefit to the applicant. He said it would not diminish the values of surrounding properties because the presented plan was consistent with what was in the neighborhood and would not have any detrimental impact on the surrounding properties and probably would enhance the values of the immediate neighboring properties. He said the hardship was due to the special condition of the property having the exact footprint of floor plan for the third floor, and only a small portion of it required zoning ordinance relief. He said it already existed in the historic structure on the site and was the special condition that made it reasonable to grant the variance. He said it would be unreasonable to require that the addition on the third floor not be permitted to run along the current out line of the structure.

Ms. Geffert concurred and had nothing to add. *The motion **passed** unanimously, 6-0.*

- F.** The request of **RIGZ Enterprises LLC (Owner)**, for property located at **822 Rt 1 Bypass** whereas relief is needed to demolish the existing structure and construct a new commercial building which requires the following: 1) Variance from Section 10.1113.20 to allow parking spaces between the principal building and a street; 2) Variance from Section 10.1113.41 for parking located 0 feet from the lot line where 20 feet is required; Said property is located on Assessor Map 160 Lot 29 and lies within the Business (B) District. (LU-23-209)

SPEAKING TO THE PETITION

[Timestamp 3:08:28] Attorney Monica Kaiser was present on behalf of the applicant, with project engineer Alex Ross and contractor Dave Grabowski. She reviewed the site plan and the criteria.

Mr. Rheume asked if there was a right-of-way or easement to allow vehicles to traverse or if the property owner would create that passage. Mr. Ross said there was no written right-of-way or easement and that the passage had been used throughout history, which the owner would like to continue. Attorney Kaiser said the neighborhood could access the store that way as well.

Chair Eldridge opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

John Allard of 24 Burkitt Street said he was surprised to find out that Burkett Street didn't go all the way to the bypass. He said most people using it came from the bypass and thought it was a street, and he suggested doing something about that because accidents could happen.

Chair Eldridge said TAC and the Planning Board would review those issues. Attorney Kaiser said the applicant already went before TAC, who directed them to the BOA, and they the applicant still have to go through a full site review.

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

DISCUSSION OF THE BOARD

Ms. Geffert said the Board was being asked to grant a variance because the parking spots closest to the bypass were too close, but the need for them related directly to the size of the building and hadn't gone through site review. Chair Eldridge said it was always an issue when parking was up against the street but the tradeoff was having the building moved further to benefit the homeowner. Mr. Rheume said multiple boards had to hear the application because there was always a potential for changes between the boards. Vice-Chair Margeson said the building was presented as advertised and the square footage drove the parking spaces in the front, and if the building changed and there was need for less parking spaces in the front, she thought it would be okay.

Ms. Casella said she wanted to add her standard condition that the design and the structure may change as a result of TAC and Planning Board reviews. The Board declined to add the stipulation.

Mr. Rheume referred to a previous similar project and said he didn't believe there were unique circumstances to the application before them because there was no way to move the building to the front and still have exits and entrances to support the easement. He said the close residential properties behind the applicant's property created another factor for why parking in the back wasn't desirable because it created a darkened area that could be a source for nefarious conduct. He said those things tipped him in the balance of what the applicant was asking for. Vice-Chair Margeson said the previous similar project had more cars and introduced something that wasn't there before. She said she went to the site and saw parking on the other part of the lot but thought concerns would be alleviated by improvements to the lot layout and going before TAC and the Planning Board.

DECISION OF THE BOARD

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

Mr. Rheume said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He said zero-ft setbacks were something that the Board looked at carefully. He said it was a significant change from what was being asked for but it made sense to allow the parking to go up against the property line due to the unique site conditions and what was being driven with the need to honor the access rights to the neighboring property. He said

substantial justice would be done because there was nothing in the public interest that would outweigh the applicant's desire. He said additional benefits to the public would be moving the building towards the back of the property. He said granting the variances would not diminish the values of surrounding properties, noting that it would be consistent with all the similar properties there and would create another small business on the property and would not overburden it by a one-story structure. He said the property's special conditions that drove the site plan were that the property was right up against a residential neighborhood and burdened by an easement for access as well as somewhat burdened by the perception that Burkitt Street ran up to the Route 1 Bypass. He said the applicant was trying to honor that. He said the applicant was required to provide 18 parking spots, and the only realistic way to put them on the property was in the location shown and to provide the necessary back-out space that forced the parking spots right up along the property line. He said it was a reasonable use for the property and recommended approval.

Ms. Geffert concurred and said the parking against the bypass continued to what was adjacent. Chair Eldridge said the project would not change the streetscape.

*The motion **passed** unanimously 6-0.*

V. ADJOURNMENT

The meeting adjourned at 10:35 p.m.

Respectfully submitted,

Joann Breault
BOA Recording Secretary

II. OLD BUSINESS

- A. REQUEST TO WITHDRAW** The request of **Giri Portsmouth 505 Inc. (Owner)**, for property located at **505 US Route 1 Bypass** whereas relief is needed to demolish the existing structure and construct a new hotel with a drive thru restaurant which requires the following: 1) Special Exception from 10.440 Use #10.40 hotel where it is permitted by Special Exception; 2) Variance from Section 10.1113.20 to allow parking spaces between the principal building and a street; 3) Variance from Section 10.1113.41 for parking located 1 foot from the lot line where 40 feet is required; 4) Variance from Section 10.575 to allow dumpsters to be located 1 foot from the lot line where 10 feet is required; 5) Variance from Section 10.835.32 to allow 1 foot between the lot line and drive-thru and bypass lanes where 30 feet is required for each; and 6) Variance from Section 10.835.31 to allow 37 feet between the menu and speaker board and the front lot line where 50 feet is required. Said property is located on Assessor Map 234 Lot 5 and lies within the General Business (GB) District. (LU-23-199) **REQUEST TO WITHDRAW**

**Please note the Variances for this application were denied at the January 23, 2024 Board of Adjustment meeting and the Special Exception was continued to the February meeting pending additional information to be provided by the applicant.*

Planning Department Comments

On Tuesday, January 23, 2024 the Board of Adjustment denied the following variances to construct a new hotel with a drive-thru restaurant:

1. Variance from Section 10.1113.20 to allow parking spaces between the principal building and a street;
2. Variance from Section 10.1113.41 for parking located 1 foot from the lot line where 40 feet is required;
3. Variance from Section 10.575 to allow dumpsters to be located 1 foot from the lot line where 10 feet is required;
4. Variance from Section 10.835.32 to allow 1 foot between the lot line and drive-thru and bypass lanes where 30 feet is required for each; and
5. Variance from Section 10.835.31 to allow 37 feet between the menu and speaker board and the front lot line where 50 feet is required.

Staff recommends that the Board suspend their rules and allow the applicant to withdraw the request for a special exception.



Bosen & Associates
ATTORNEYS AT LAW

John K. Bosen
Admitted in NH & MA

Christopher P. Mulligan
Admitted in NH & ME

Molly C. Ferrara
Admitted in NH & ME

Austin Mikolaities
Admitted in NH

Bernard W. Pelech
1949-2021

February 5, 2024

Phyllis Eldridge, Chair
City of Portsmouth Zoning Board of Adjustment
One Junkins Ave
Portsmouth, NH 03801

Re: 505 US Route 1 BYO (LU-23-199)

Dear Ms. Eldridge:

The Applicant is in receipt of your letter dated January 29, 2024. At this time, the Applicant would like to withdraw its Request for a Special Exception without prejudice. Thank you.

Very truly yours,

John K. Bosen

John K. Bosen, Esquire

cc: Giri Portsmouth 505 Inc.
Patrick Crimmins, Tighe & Bond

II. OLD BUSINESS

- A. **REQUEST TO POSTPONE** The request of **Friends of Lafayette House in care of Melanie Merz (Owner)**, for property located at **413 Lafayette Road** whereas relief is needed to construct an attached caretakers unit to the existing residential care facility which requires the following: 1) Variance from Section 10.331 to extend, enlarge, or change the lawful nonconforming use without conforming to the Ordinance; and 2) Variance from Section 10.334 to extend the nonconforming use to a remaining portion of the land. Said property is located on Assessor Map 230 Lot 23A and lies within the Single Residence B (SRB) District. (LU-23-208) **REQUEST TO POSTPONE**

Planning Department Comments

The applicant is requesting to postpone consideration of this application to allow for a site survey to be completed.

JONES & BEACH ENGINEERS INC.

85 Portsmouth Avenue, PO Box 219, Stratham, NH 03885
603.772.4746 - JonesandBeach.com

February 9, 2024

Portsmouth Zoning Board
Attn: Board Members
1 Junkins Avenue, Suite 3rd Floor
Portsmouth, NH 03801

**RE: ZBA Continuance Request
413 Lafayette Road, Portsmouth, NH
Tax Map 230, Lot 23A
JBE Project No. 23036**

Dear Board Members,

On behalf of our client & owner, Friends of Lafayette House, Jones & Beach Engineers, Inc. respectfully requests a continuance of the pending variance application for the above referenced parcel from the February 21st meeting to the March 19th meeting.

Please contact me if you have any questions. Thank you very much for your time.

Very truly yours,
JONES & BEACH ENGINEERS, INC.



Joseph Coronati
Vice President

cc: Melanie Merz, Friends of Lafayette House (via email)

III. NEW BUSINESS

- A. The request of **DSM MB II LLC (Owner), and Bruno Fonzo (Applicant)** for property located at **1500 Lafayette Road Unit 6** whereas relief is needed to establish a UPS store which requires the following: 1) Special Exception from use #7.30 consumer service where it is permitted by Special Exception. Said property is located on Assessor Map 252 Lot 2 Unit 6 and lies within the Gateway Center (G2) District. (LU-24-5)

Existing & Proposed Conditions

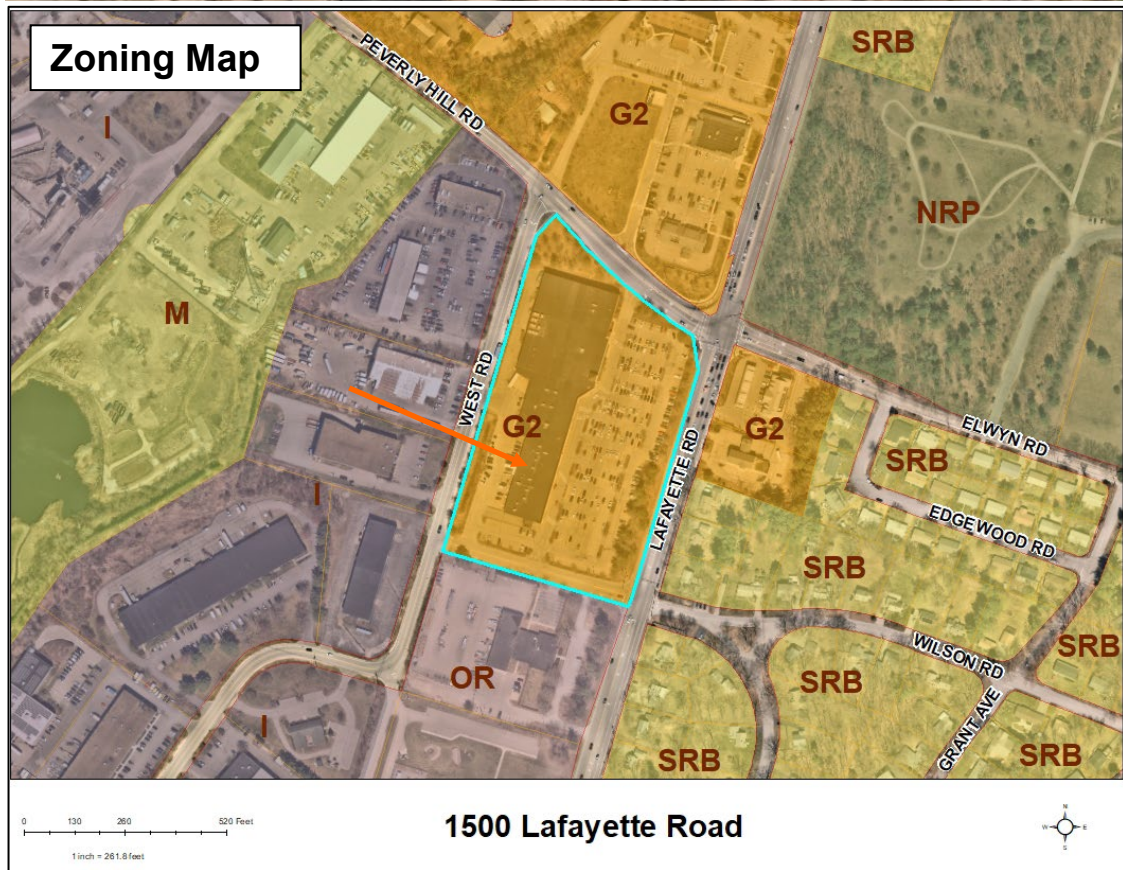
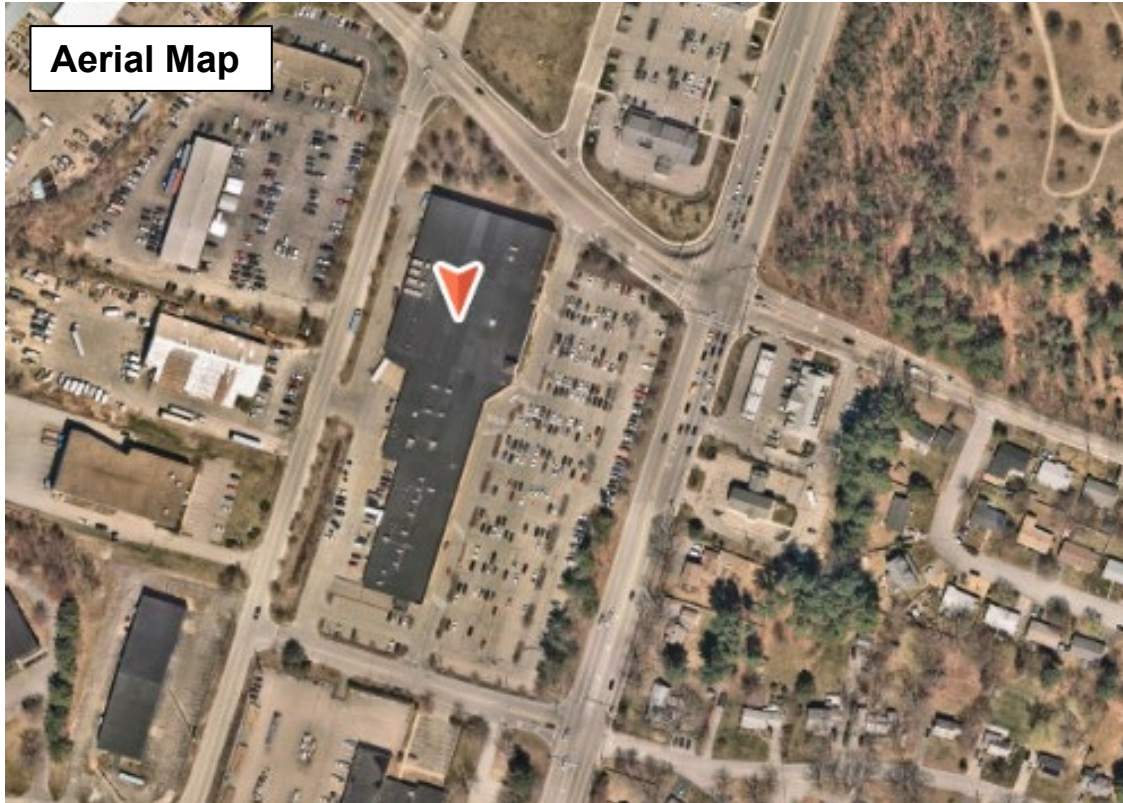
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Personal Service	*Consumer Service (Allowed by Special Exception)	Mixed residential and commercial uses
<u>Unit #6 Area (sq. ft.)</u>	1366	1366	1366
<u>Parking (Spaces)</u>	1 per 400 s.f. GFA	1 per 400 s.f.GFA	
<u>Estimated Age of Structure:</u>	1995	Special Exception request(s) shown in red.	

*A UPS store is considered a “consumer services” use that is allowed by Special Exception in the G2 District

Other Permits/Approvals Required

- Building Permit (Tenant Fit Up)

Neighborhood Context



Previous Board of Adjustment Actions

September 15, 1998 – the Board **granted** a variance to allow a 3,600 s.f. restaurant in an existing shopping center which is in a district that does not allow restaurants and a variance to allow 381 parking spaces where 444 parking spaces are required.

February 18, 2003 – the Board **denied** the request for a variance to Article IX, Section 10-907 to allow 14.4 sf of additional attached signage for an aggregate of 841.8 sf of attached signage where 745.3 sf is the maximum aggregate attached signage is allowed.

Planning Department Comments

The applicant is requesting to establish a UPS store which is considered a consumer service under the [Zoning Ordinance](#). The previous tenant of unit 6 was Super Cuts which was considered a personal service. The change in use requires a special exception from the Board. Personal service uses and consumer service uses require the same amount of parking under Section 10.1112.321 so no additional parking is needed.

Special Exception Review Criteria

The application must meet all of the standards for a **special exception** (see Section 10.232 of the Zoning Ordinance).

1. *Standards as provided by this Ordinance for the particular use permitted by special exception;*
2. *No hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials;*
3. *No detriment to property values in the vicinity or change in the essential characteristics of any area including residential neighborhoods or business and industrial districts on account of the location or scale of buildings and other structures, parking areas, accessways, odor, smoke, gas, dust, or other pollutant, noise, glare, heat, vibration, or unsightly outdoor storage of equipment, vehicles or other materials;*
4. *No creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity;*
5. *No excessive demand on municipal services, including, but not limited to, water, sewer, waste disposal, police and fire protection and schools; and*
6. *No significant increase of stormwater runoff onto adjacent property or streets.*

10.235 Certain Representations Deemed Conditions

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

1500 Lafayette Road, Portsmouth, NH

Market Basket Plaza

Proposed Tenant: The UPS Store

Narrative in support of Special Exception (Use) Application, Section 10.232

Market Basket Plaza, located at 1500 Lafayette Road, Portsmouth, NH is a multi-tenant retail shopping center anchored by a Market Basket supermarket. It was constructed in the mid-1990s.

In addition to Market Basket there are 11 retail spaces that house a variety of retail, restaurant, financial and consumer service uses.

The Portsmouth Planning Department has determined that a Special Exception from the Zoning Ordinance is required for "The UPS Store" a pack and shipping store. The previous tenant was "SuperCuts" hair salon that vacated in mid-2023.

There are approximately 387 parking spaces serving the 89,466 sq. ft. shopping center.

The subject Application is for a Special Exception under Section 10.440 of the Zoning Ordinance to permit a Consumer Service Use, according to the Planning Dept.

The proposed tenant, "The UPS Store" is an ideally suited use for this type of shopping center. "The UPS Store" will have one space for delivery trucks adjacent to its rear door. There will be no unusual noises, odors or impacts from the proposed use. It will offer convenience to the existing customers of the multi-use shopping center.

There have been many changes in tenancy in this shopping center since it was originally built. Notably, a pack and ship store "The Parcel Room" was an earlier tenant in the shopping center.

The Landlord respectfully requests that the Zoning Board of Adjustment grant the requested Special Exception to allow the tenancy of "The UPS Store."
The Special Exception Criteria.

The proposal easily meets the criteria for the necessary special exception. Those criteria are set forth in the ordinance at §10.232.20.

10.232.21 Zoning Compliance: The property complies with the standards outlined in the Ordinance for special exception uses. Zoned for commercial use, it's an ideal site for the UPS Store, aligning with zoning regulations. Full conformity with the existing zoning laws is assured.

10.232.22 Ensuring Public Safety: The proposed Use can be operated safely. The premises and the operations it will host are designed to be free from risks of fire, explosions, or the emission of hazardous substances.

10.232.23 Local Impact Considerations: The operation within Market Basket Plaza will not harm property values or alter the fundamental character of surrounding residential, commercial, or industrial areas. This includes no negative impact from building scale, parking logistics, access routes, or environmental nuisances like odor, smoke, emissions, noise, light pollution, heat, vibration, or the outdoor storage of materials, vehicles, or materials.

10.232.24 Traffic and Parking: The business will not increase traffic congestion as it is located within a complex with ample parking—387 spaces. Tenant advises that appointment scheduling may be used to manage customer flow and ensure smooth operations without affecting local traffic.

10.232.25 Conservation of Municipal Resources: The proposed pack and ship use will not place undue burdens on municipal utilities and services. There will be no adverse effects on the water supply, sewage system, waste management, emergency services, or educational institutions.

10.232.26 Effective Stormwater Handling: The operation will not result in any increase in stormwater runoff affecting neighboring properties or public thoroughfares. There will be no change to the building footprint or paved surfaces, no increase in impervious area.

Conclusion. For the foregoing reasons, the Applicant and Property Owner respectfully request that the Board grant the special exception as requested and advertised.

Thank you for your consideration.

John Matthews
Landlord's Representative

NOTES:

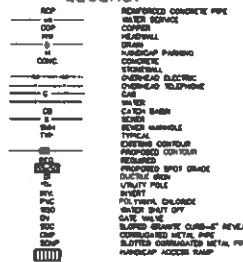
- 1) PARCEL IS LOCATED IN GENERAL BUSINESS ZONE AND IS SHOWN AS LOT 2 ON CITY OF PORTSMOUTH ADDRESSING MAP SHEET.
- 2) PARCEL IS NOT LOCATED IN A FLOOD HAZARD ZONE.
- 3) ZONE REQUIREMENTS:
 MINIMUM LOT AREA 100 FT
 MINIMUM FRONTAGE 200 FT
 MINIMUM FRONT SETBACK 100 FT
 MINIMUM SIDE SETBACK 30 FT
 MINIMUM REAR SETBACK 30 FT
 MINIMUM BUILDING COVERAGE 75%
 MINIMUM OPEN SPACE 100
- 4) OWNER OF SECOND ORDER DEVELOPMENT CORPORATION 470 CANT STREET PORTSMOUTH, NEW HAMPSHIRE 03801-3039
- 5) PARKING REQUIREMENTS:
 GARAGE 5,171 SF = 250 SF = 20 PARKING SPACES REQUIRED
 BANK 3,171 SF = 250 SF = 20 PARKING SPACES REQUIRED
 301 PARKING SPACES PROVIDED

- 6) THIS PARCEL IS SUBJECT TO RESTRICTIONS AS DESCRIBED IN RECORD 1820-0022.
- 7) REMOVE EXISTING TRAIL SIGNALS PER DAY.
- 8) SIGNAGE, UTILITIES AND PHYSICAL FEATURES ARE AS SHOWN ON PLAN ENTITLED "WELCOME OVERSEAS INC." DATED JAN. 6, 1994 BY THOMAS F. WOODRUFF INC.
- 9) ALL PVC PIPE TO BE 30"-36".
- 10) SEE "IMPROVED HIGHWAY PAVEMENT STRIPING PLAN" BY WILSON ROAD ASSOCIATES FOR TRAFFIC LIGHTS AND SIGNAGE.
- 11) CONTRACTOR TO CONFIRM LOCATION OF EXISTING UTILITIES 72 HOURS PRIOR TO ANY EXCAVATION. CALL 800-451-1000-336-4377 PORTSMOUTH O.P.S. 1-603-431-7000.
- 12) SEE "LAFFAYETTE ROAD (U.S. RT. 1) STREET IMPROVEMENT PLAN" BY WILSON ROAD ASSOCIATES, ONE CANT STREET, PORTSMOUTH, N.H. (603)431-3233.

CATCH BASIN DATA:

CB 10 REV. IN 48.30 REV. IN 48.30 REV. OUT 48.30	CB 11 REV. IN 48.30 REV. IN 48.30 REV. OUT 48.30	CB 12 REV. IN 48.30 REV. IN 48.30 REV. OUT 48.30	CB 13 REV. IN 48.30 REV. IN 48.30 REV. OUT 48.30	CB 14 REV. IN 48.30 REV. IN 48.30 REV. OUT 48.30	CB 15 REV. IN 48.30 REV. IN 48.30 REV. OUT 48.30	CB 16 REV. IN 48.30 REV. IN 48.30 REV. OUT 48.30	CB 17 REV. IN 48.30 REV. IN 48.30 REV. OUT 48.30	CB 18 REV. IN 48.30 REV. IN 48.30 REV. OUT 48.30	CB 19 REV. IN 48.30 REV. IN 48.30 REV. OUT 48.30	CB 20 REV. IN 48.30 REV. IN 48.30 REV. OUT 48.30	CB 21 REV. IN 48.30 REV. IN 48.30 REV. OUT 48.30	CB 22 REV. IN 48.30 REV. IN 48.30 REV. OUT 48.30	CB 23 REV. IN 48.30 REV. IN 48.30 REV. OUT 48.30	CB 24 REV. IN 48.30 REV. IN 48.30 REV. OUT 48.30	CB 25 REV. IN 48.30 REV. IN 48.30 REV. OUT 48.30	CB 26 REV. IN 48.30 REV. IN 48.30 REV. OUT 48.30	CB 27 REV. IN 48.30 REV. IN 48.30 REV. OUT 48.30	CB 28 REV. IN 48.30 REV. IN 48.30 REV. OUT 48.30	CB 29 REV. IN 48.30 REV. IN 48.30 REV. OUT 48.30	CB 30 REV. IN 48.30 REV. IN 48.30 REV. OUT 48.30
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LEGEND:



EXISTING SEWER DATA:

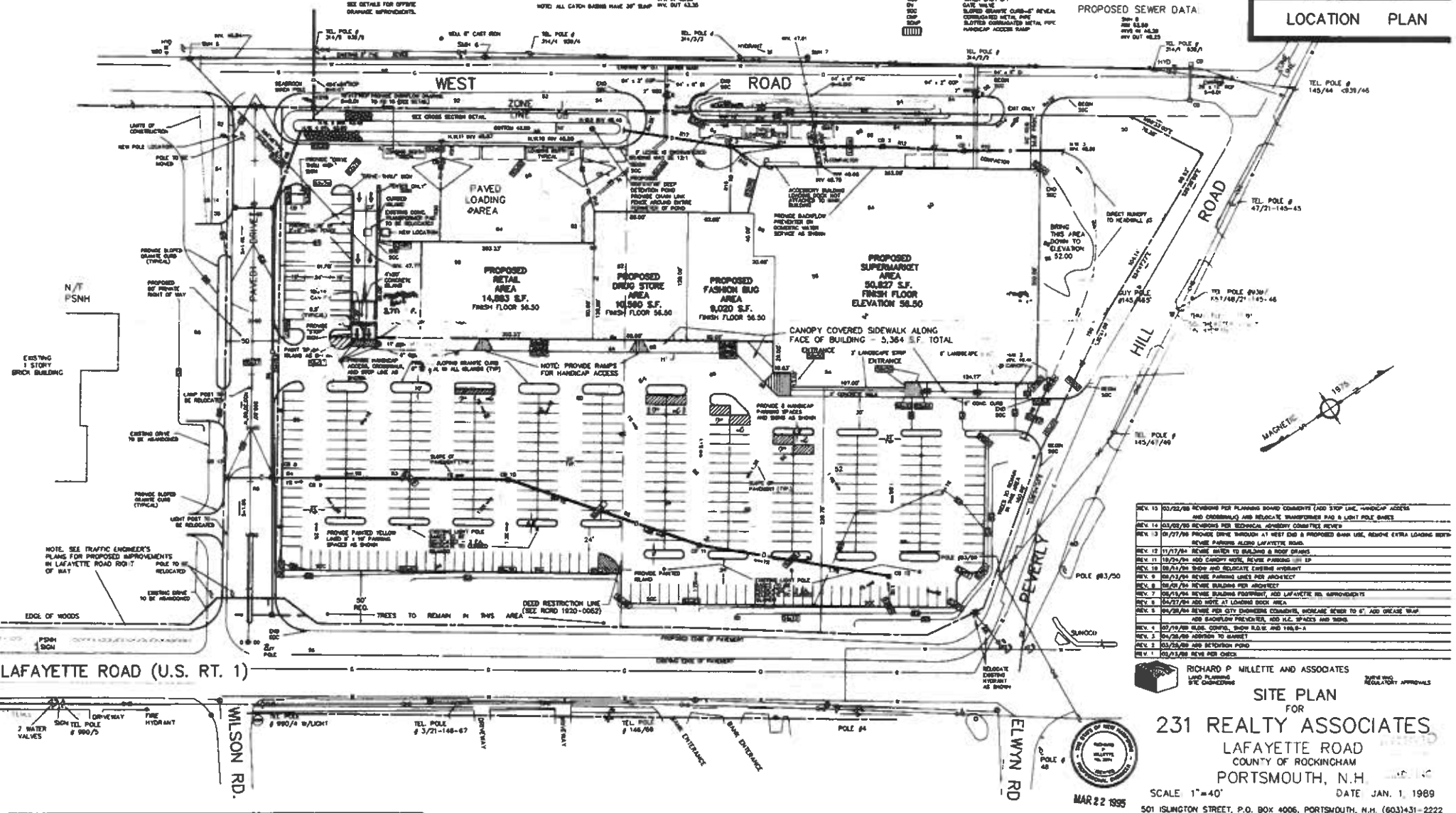
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GREASE TRAP DATA:

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PROPOSED SEWER DATA:

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- REV. 13 03/22/99 REVISION PER PLANNING BOARD COMMENTS (ADD STOP LINE, HANDICAP ACCESS AND CROSSWALK) AND RELOCATE TRANSFORMER PAD & LIGHT POLE BASES
- REV. 14 03/22/99 REVISION PER TECHNICAL ADVISORY COMMITTEE REVIEW
- REV. 15 04/27/99 PROVIDE DRIVE THROUGH AT WEST END & PROPOSED BANK LINE, REMOVE EXTRA LOADING SPACES, REMOVE PARKING ALONG LAFFAYETTE ROAD
- REV. 16 11/17/99 REMOVE DRIVE TO BUILDING & ROOF DRAINS
- REV. 17 12/29/99 ADD CANOPY WALK, REMOVE PARKING SPACES
- REV. 18 04/21/99 DRIVE AND RELOCATE EXISTING DRIVEWAY
- REV. 19 05/13/99 REMOVE PARKING LINES PER ARCHITECT
- REV. 20 06/24/99 REMOVE BUILDING PER ARCHITECT
- REV. 21 07/29/99 REMOVE BUILDING FOOTPRINT, ADD LAFFAYETTE RD. IMPROVEMENTS
- REV. 22 08/27/99 ADD DRIVE AT LOADING DOCK AREA
- REV. 23 04/28/99 REMOVE PER CITY ENGINEER COMMENTS, INCREASE DRIVE TO 6', ADD GREASE TRAP AND BACKFLOW PREVENTER, ADD H.C. SPACES AND SIGNS
- REV. 24 07/19/99 RELOC. DRIVEWAY, SHOW R.O.S. & 198.0-A
- REV. 25 08/24/99 ADDITION TO MARKET
- REV. 26 03/25/99 ADD DETENTION POND
- REV. 27 05/23/99 REVISE AND CHECK

RICHARD P. MILLETTE AND ASSOCIATES
 LAND PLANNING
 SITE ENGINEERING

SITE PLAN FOR
231 REALTY ASSOCIATES
 LAFAYETTE ROAD
 COUNTY OF ROCKINGHAM
 PORTSMOUTH, N.H.

SCALE: 1"=40' DATE: JAN. 1, 1999
 501 WILMINGTON STREET, P.O. BOX 4006, PORTSMOUTH, N.H. (603)431-2222

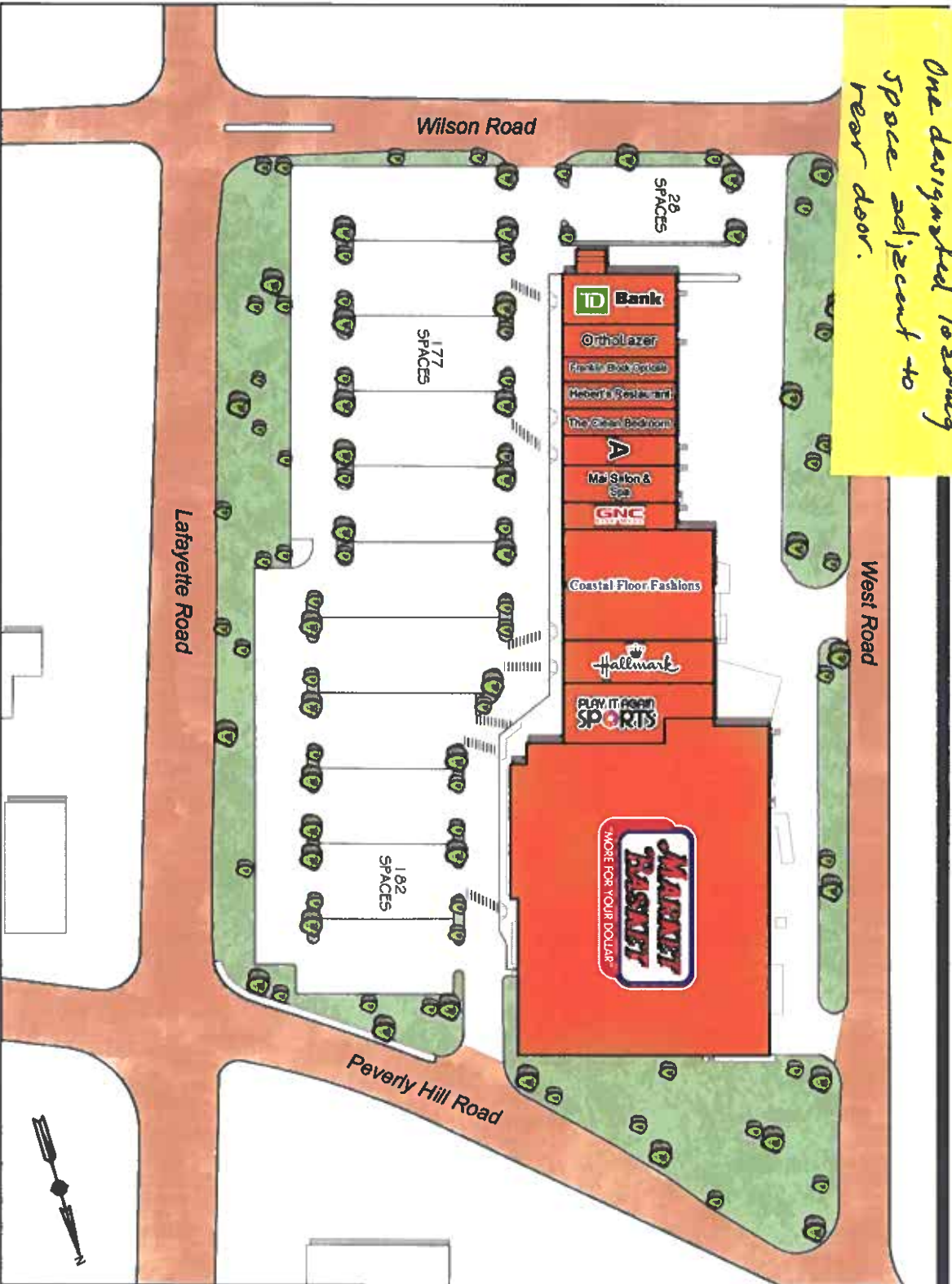
MAR 22 1999

881 East Street, Tewksbury, MA 01876 | 978 749-3900 | info@dscrealty.net

NOTE:
SPACE "A" -
Proposed "UPS STORE"
One designated loading
space adjacent to
rear door.

- Tenants**
- MARKET BASKET
 - PLAY IT AGAIN-SPORTS
 - HALLMARK
 - COSTAL FLOOR-FASHIONS
 - GNC
 - MAI SALON & SPA
 - THE CLEAN-BEDROOM
 - HEBERTS-RESTAURANT
 - FRANKLIN BLOCK-OPTICALS
 - ORTHOLAZER
 - TD BANK

Available Square Footage
A 1,440



Market Basket Plaza #56
1500 Lafayette Road, Portsmouth, NH 03801

Total Square Footage: 89,466
Parking Spaces: 387

Leasing Plan
Revised: March 22, 2023

FIXTURE SCHEDULE_NEW

FIXTURE TAG	COUNT	DESCRIPTION	VIRA	3C #
BH-B1L	1	SINGLE REAR LOAD MAIL CABINET	ASY53541	402
BH-B2	2	MODULAR MAIL BOX	ASY53538	136
BH-B3	2	MAIL UPPER CABINET	ASY53539	137
BH-B3L	1	SINGLE MAIL UPPER CABINET	ASY13526	417
BH-B5	1	KEY CABINET; INSTALL BOTTOM OF CABINET AT 34" AFF		6101044
BH-B7	2	MOBILE MAIL STORAGE RACK	ASY13482	222
BH-C8	2	TIME SAVING KIOSK 48" X 24"	ASY13486	410
BH-C9	3	4X4 SLAT WALL WITH FINISH TRIM; INSTALL TOP OF SLAT WALL 1" FROM TOP OF PT-02 PAINT LINE	TBD	TBD
BH-D2	1	PEG BOARD, PRINT CONSULTATION 40"H X 20"W - INSTALL VERTICALLY, TOP OF PEG BOARD AT 92" AFF	ASY13531	286
BH-D8L	1	MULTI-USE DESK 36"W X 34"H	TBD	483
BH-E2A	1	RETAIL WALL KIT 96"W X 84"H		104
BH-E22	1	RETAIL SOFFIT 104"W X 60"H WITH LIGHT AND (2) 4"W X 84" H RETAIL MODULAR WALL		371
BH-F1A	2	POS COUNTER W/ DISPLAY FRONT 36"W X 32"D X 36"H		005
BH-F2A	1	POS COUNTER W/ DISPLAY FRONT 48"W X 32"D X 36"H		006
BH-F3L	1	SCALE STAND 36"W X 32"D	ASY53562	466
BH-F4L	2	SCALE STAND 24"W X 32"D	ASY53560	406
BH-F6	1	ADA PULL OUT SHELF	ASY53533	009
BH-F8	1	PEG BOARD, POS WALL 24"H X 20"W - INSTALL VERTICALLY, TOP OF PEG BOARD AT 78" AFF	ASY53535	059
BH-F10L	1	POS 90 DEGREE CORNER WEDGE - WIDE FRONT		481
BH-F11	1	POS MODULAR WALL UNIVERSAL FASCIA KIT (24"H) - GC CUT TO FIT	ASY53848	334
BH-H5	1	HD MAIL CABINET (BOM)	ASY53549	020
BH-I2	1	MODULAR WALL, POS 36"W X 18"D X 96"H	ASY53542	038
BH-I7L	1	MODULAR WALL 24"W X 4"D X 96"H	ASY13563	471
BH-I20L	1	MODULAR WALL 54"W X 4"D X 96"H	ASY13561	468

FIXTURE SCHEDULE_NEW

FIXTURE TAG	COUNT	DESCRIPTION	VIRA	3C #
BH-J23L	1	MODULAR MAILDROP CABINET 24"W X 15"D X 96"H		TUPSS511A
BH-J3L	1	MOBILE PACK TABLE - CARPET TOP 96"W X 48"D X 31"H		
BH-J4L	1	WIRE CABINET W/ TWO ADJUSTABLE SHELVES		
BH-J5L	1	CUBBY CABINET		
BH-J6L	2	CORRUGATE WORKSHOP CABINET 42"W X 23"D	ASY53838	
BH-J7L	1	MOBILE PACK TABLE - CARPET TOP 72"W X 48"D X 31"H		
BH-J8L	2	CORRUGATE WORKSHOP CABINET 30"W X 23"D		
BH-J9L	1	WIRE CABINET W/ TWO ADJUSTABLE SHELVES		
BH-J10L	1	CUBBY CABINET		
BH-J17	1	METAL CARTON RACK 24"W X 24"D X 96"H - STARTER	ASY13528	206
BH-J18	5	METAL CARTON RACK 24"W X 24"D X 96"H - ADDER	ASY13542	210
BH-J20	1	METAL STORAGE RACK 48"W X 24"D X 96"H	ASY13483	251T
BH-J20T	1	METAL STORAGE RACK SHELF KIT 48"W X 24"D	80111330-SU B32773	251S
BH-J21	3	METAL STORAGE RACK 72"W X 24"D X 96"H	ASY13479	252T
BH-J21L	2	PRIVACY PANEL 72"W X 96"H		474
BH-J21T	2	METAL STORAGE RACK SHELF KIT 72"W X 24"D	80111311-SU B32770	252S
BH-J22	5	METAL STORAGE RACK 96"W X 24"D X 96"H	ASY13484	253T
BH-J22T	3	METAL STORAGE RACK SHELF KIT 96"W X 24"D	80111376-SU B32774	253S
BH-J26	2	RETRACTABLE EXTENSION CORD REEL - REFER TO SHEET A6.0 FOR INSTALL INFORMATION - INSTALL WITH NARROW SIDE FACING STOREFRONT		256
BH-J28	1	PRIVACY PANEL, PERFORATED 96"W X 24"H, IF INSTALLED ON 7' RACK THEN GC CUT TO FIT AND INSTALL CUT SIDE DOWN		031
BH-J29	1	PRIVACY PANEL 24"W X 96"H		057
BH-J43	1	WALL MOUNTED BUBBLE WRAP		151

0 FLOOR PLAN KEYED NOTES

- EXISTING DOOR TO REMAIN
- EXISTING STOREFRONT TO REMAIN
- METAL SECURITY GATE PROVIDED BY TUPSS APPROVED VENDOR. FOR ROLL DOWN GATES REFER TO DETAIL 6/A1.1 FOR ADDITIONAL INSTALLATION REQUIREMENTS.
-
- ELECTRICAL PANEL
- MAILBOX MODULES PROVIDED BY TUPSS VENDOR
-
- FIBERGLASS REINFORCED PLASTIC PANELS (TO BE PROVIDED BY FIXTURE VENDOR AND INSTALLED BY GC)
- COPIER
- BINDER
- COMPUTER
- LAMINATOR
- LIVE SCAN
- DIGITAL MONITOR WITH CEILING MOUNT. BOTTOM OF MONITOR TO BE INSTALLED AT 80" AFF, REFER TO DETAIL 2/A6.0. FOR CEILING HEIGHTS OVER 12'-0" OR OPEN CEILING APPLICATIONS REFER TO DETAIL 6/A6.0
- GATE POCKET DOOR PROVIDED BY FIXTURE VENDOR AND INSTALLED BY GC. REFER TO DETAIL 3/A1.1
- AUTOMATIC DOOR TO BE INSTALLED PER MANUF STANDARDS. IT IS THE RESPONSIBILITY OF FRANCHISEE TO WORK WITH THEIR GENERAL CONTRACTOR AND/OR ARCHITECT TO REVIEW LOCAL, CITY, OR OTHER RELEVANT CODES PERTAINING TO THE STOREFRONT MODIFICATIONS, INCLUDING GLASS DOOR SPECIFICATIONS. THE UPS STORE, INC. AND SUPPLIERS OF AUTOMATED ENTRY DOORS DO NOT PROVIDE REQUIRED GLASS ENERGY SPECIFICATIONS PER LOCAL OR CITY CODES (IE. UFACTOR AND SOLAR HEAT). NOTE, THE LOCAL OR CITY CODE MIGHT IMPACT THE ENTIRE STOREFRONT GLASS.
- INFLATABLE AIR CUSHIONING MACHINE
- WALL MOUNTED BUBBLE WRAP DISPENSER. IF BUBBLE WRAP IS PLACED ABOVE A STORAGE RACK, TOP SHELF TO BE INSTALLED AT 5'-0" AFF.
- GC TO CUT 24" X 96" OPENING FOR MAIL DROP. REFER TO DETAIL 4/A2.1.
- CONVENTIONAL FRONT LOAD MAIL AREA. REFER TO SHEET A1.6 FOR ADDITIONAL DETAILS. CONVENTIONAL MAIL ROOM DIMENSION NEEDS TO BE VERIFIED WITH MAIL BOX SPECIFICATIONS.
- CONVENTIONAL REAR LOAD MAIL AREA. REFER TO SHEET A1.5 FOR ADDITIONAL DETAILS. CONVENTIONAL MAIL ROOM DIMENSION NEEDS TO BE VERIFIED WITH MAIL BOX SPECIFICATIONS.
- PACK & SHIP HANGING SIGN
- ILLUMINATED OPEN SIGN

DESIGN AND CONSTRUCTION
6060 Cornerstone Court West
San Diego, CA 92121
858-455-8800 Tel.
www.theupsstore.com

THE UPS STORE, INC.
DESIGN INTENT DRAWINGS

AREA NUMBER: MA137
SQFT: 1600
SCALE: NOTED

DESIGNED BY: APS
CENTER ADDRESS: 1500 LAFAYETTE RD
PORTSMOUTH, NH 03801

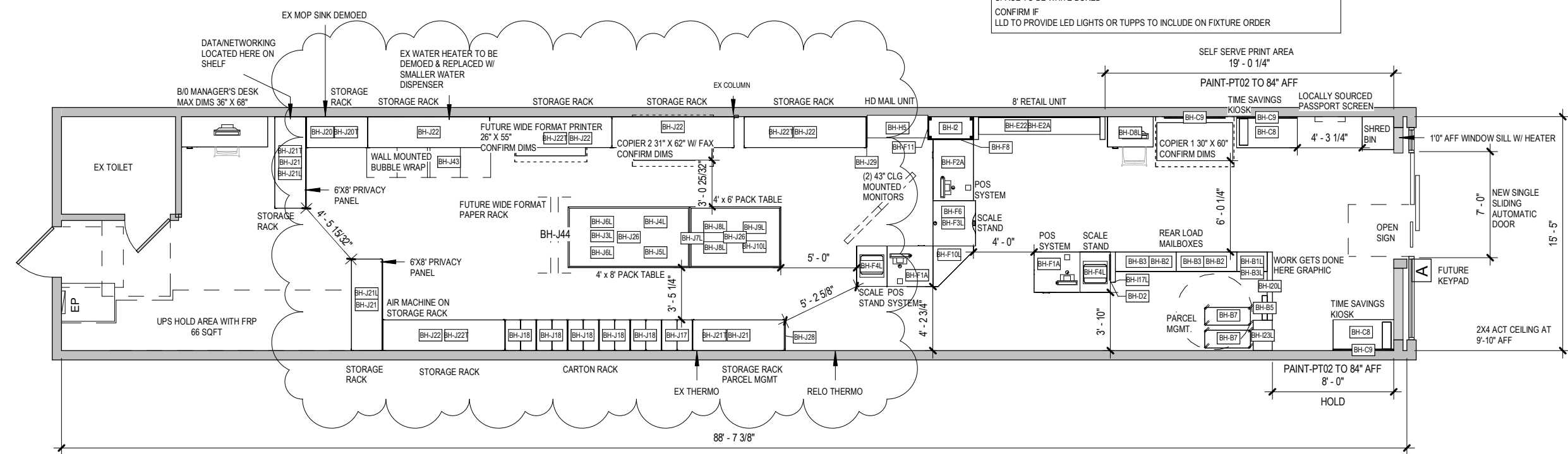
THE UPS STORE CENTER: 7784
PROJECT TYPE: NEW LOCATION/ NON-EVENT
FRANCHISEE: STEPHAN, DARLEY
DATE: 08/30/2023

DRAWING NO:
A1.0

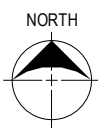
DIMENSIONS PROVIDED ON PLAN ARE FOR GENERAL REFERENCE ONLY. ACTUAL FINAL MEASUREMENTS OF FIXTURES BOTH NEW AND EXISTING MAY VARY SLIGHTLY. GC TO VERIFY ON SITE AND NOTIFY PROJECT MANAGER OF VARIANCES.

SPACE TO BE WHITE BOXED
CONFIRM IF
ILLD TO PROVIDE LED LIGHTS OR TUPPS TO INCLUDE ON FIXTURE ORDER

REAR LOAD MB ITEMS TO ORDER:
5 SMALL BANKS
5 MED. BANKS



2 FIXTURE PLAN
1/8" = 1'-0"



III. NEW BUSINESS

B. The request of **Timothy S. Wheelock and Susan V. Denenberg (Owners)**, for property located at **414 State Street Unit 2** whereas relief is needed to convert a ground floor commercial unit to a residential unit which requires the following: 1) Variance from Section 10.642 to allow a residential unit on the ground floor where nonresidential is required in the Downtown Overlay District; and 2) Variance from Section 10.5A41.10A to allow 806 square feet per dwelling unit where 3,000 square feet is required. Said property is located on Assessor Map 116 Lot 13 Unit 2 and lies within the Character District 4-L1 (CD4-L1) and Downtown Overlay District (DOD). (LU-24-6)

Existing & Proposed Conditions

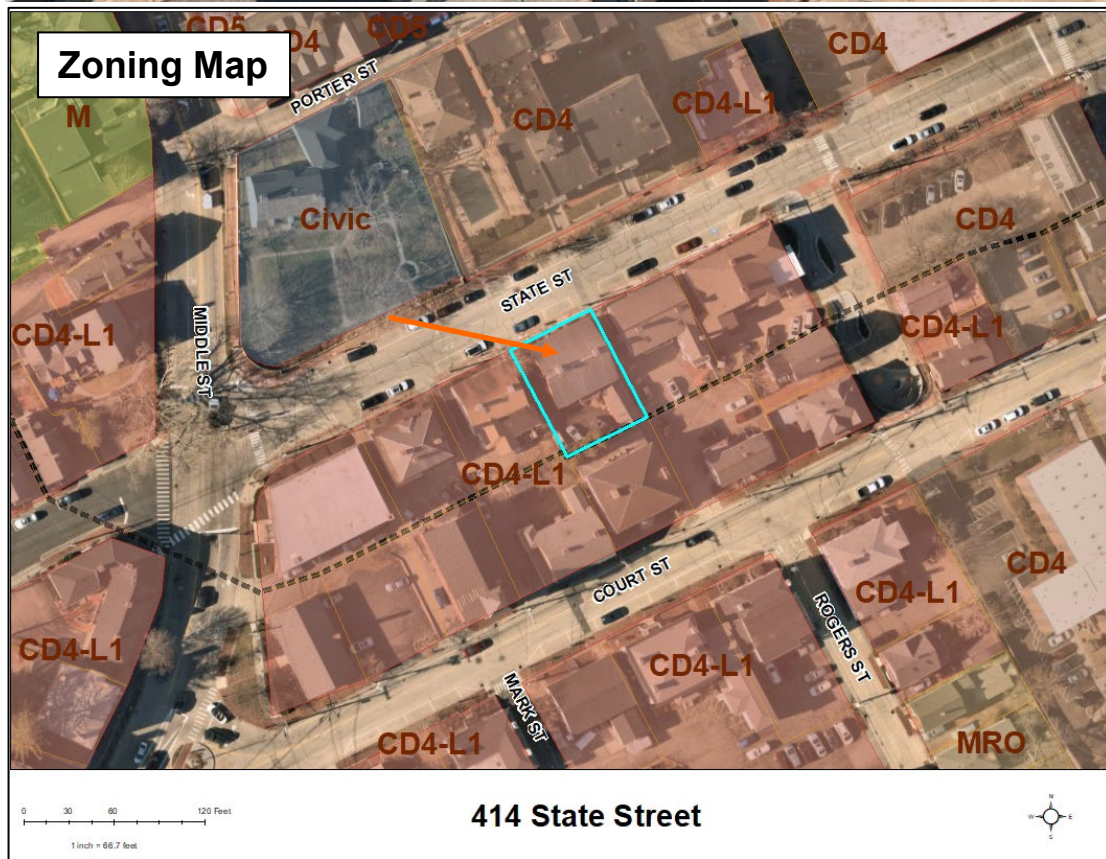
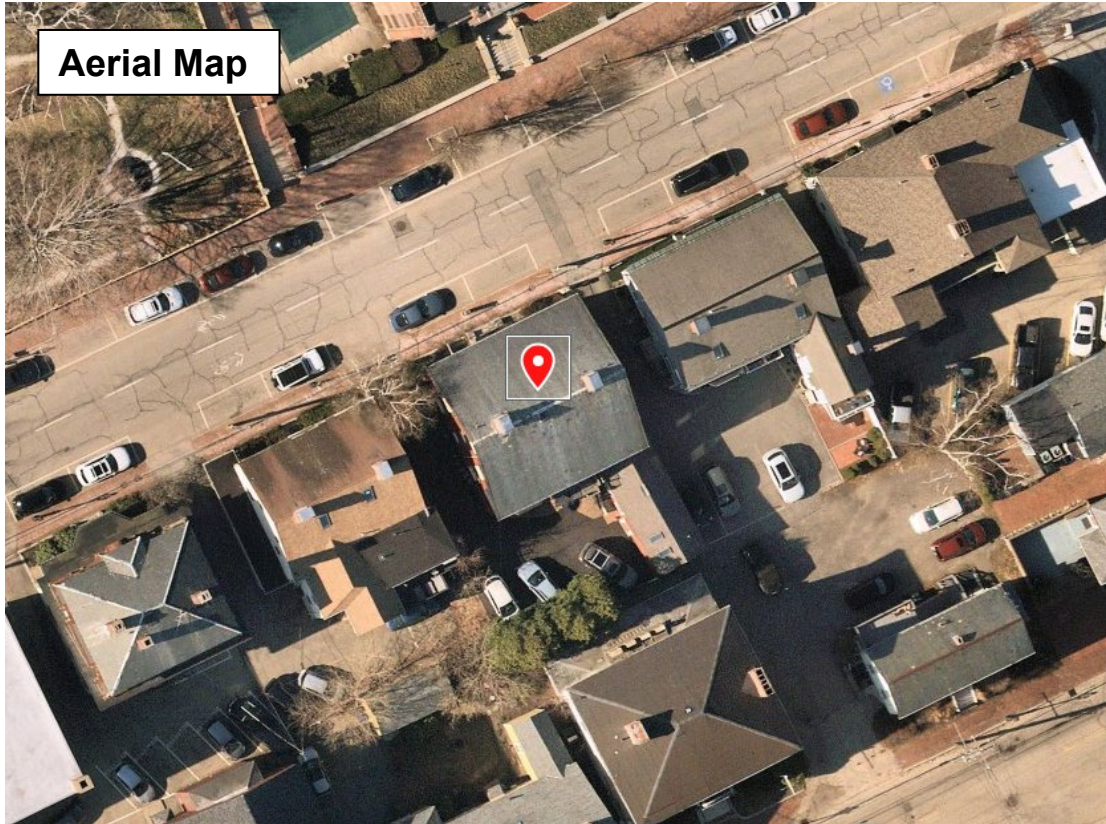
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Commercial Office	*Residential Unit	Mixed Uses
<u>Lot area (sq. ft.):</u>	4,840	4,840	3,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	968	806	3,000 min.
<u>Front Yard (ft.):</u>	3.75	3.75	15 max.
<u>Right Yard (ft.):</u>	10	10	5 minimum 20 maximum
<u>Left Yard (ft.):</u>	0.5	0.5	5 minimum 20 maximum
<u>Rear Yard (ft.):</u>	1	1	5 min.
<u>Parking</u>	4	4	6
<u>Estimated Age of Structure:</u>	1850	Variance request(s) shown in red.	

*Structures in the Downtown Overlay District (DOD) require nonresidential uses on the ground floor.

Other Permits/Approvals Required

- Building Permit
- Parking Conditional Use Permit (TAC and Planning Board)

Neighborhood Context



Previous Board of Adjustment Actions

No previous history found.

Planning Department Comments

The applicant is requesting variances to convert a ground floor commercial office to a residential unit. The property is in the Downtown Overlay District which requires ground floor uses to be nonresidential. This change will decrease the lot area per dwelling unit from 968 to 806 and will require a parking conditional use permit from the Planning Board. The applicant is not proposing any exterior changes.

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.

City of Portsmouth Board of Adjustment Application, Addendum

Re: 414 State Street, Unit 2 Tax Map 0116, Lot 0013/0002

I. Exhibits

1. Site Plans depicting the First Floor Plan (D-16508)
2. Site Plan depicting the existing 2 ½ story building, driveway and parking lot (D-18310)
3. Letters in support from abutting property owners
4. Letter of support from three other condominium owners at 414 State Street.
5. Letter concerning Approval of Application by 414 State Street Condominium Association
6. Photographs of Existing Conditions
7. Designs and plans for proposed modifications to add a kitchen and shower
8. Letter with respect to property valuation from real estate broker

II. Property/Project

Applicants Timothy S. Wheelock and Susan V. Denenberg own the condominium located at 414 Street, Unit 2. The condominium is within the Downtown Overlay District (DOD) and Historic District. They seek approval of their application for a change of land use variance that would permit them to convert their condominium from their present commercial, professional or office use to allow for residential use of Unit 2. The renovation plan does not affect the exterior of the building, and does not involve structural changes to the interior of the condominium beyond adding a small kitchen and shower.

414 State Street is a two and a half story wood frame building built circa 1800. It was formerly a single-family residence, originally the home of Abraham and Rachel Isaacs and their son. The building was converted to condominiums in 1987 and currently consists of 5 condominiums. All of the other condominium in the building are currently being used for residential purposes. There is a parking area with limited common area parking spaces for 4 vehicles. Parking space A is a limited common area assigned to Unit 2. That will not change.

On the first floor, Unit 1 is currently being used for residential purposes. The second ground floor condominium, Unit 2 is being used for commercial, office or professional purposes but does have a half bath and another small room with water supply to a dentist's sink. Unit 1 was also previously used for commercial, office or professional purposes (most recently housing, JSN Associates, LLC, a professional engineering firm) through approximately 2004. The previous owners of Unit 1 purchased the back wing of the building, Unit 5 (probably originally a stable), and connected it to Unit 1 in 1994/95 by opening the common wall between the two units. There are two units on the second floor and one on the third floor, all of which are being used for residential purposes.

414 State Street is on the edge of the DOD, and therefore the first-floor condominiums require a change of use variances to allow residential use. Portsmouth Zoning Ordinance (ZBO) Section 10.642. Upon information and belief, Unit 1 must have previously been granted such a variance, since it is now being used for residential purposes. This application is concerning Unit 2 alone.

Applicant Timothy Wheelock purchased a ½ interest in Unit 2 in 1997. Unit 2 housed his law office through 2007 when he relocated his law office. He purchased the remaining ½ interest in the property later in 2007 and transferred it in joint ownership with his wife, Susan Denenberg. Since then, the residential condominium owners have been increasingly at odds with the applicant's use of Unit 2 for commercial purposes, most recently when the condominium was rented to an engineering firm and thereafter and most recently a therapists' counseling office, with the most common complaint being the amount of foot traffic those uses generated.

The applicants are now both retired attorneys and therefore can't use the condominium for a law office. Further, with the advent of Covid and the explosion of remote workers, given the size of the condominium, interest in using the condominium for office purposes generally has dried up. Renting Unit 2 as a commercial property at a rate in excess of overhead has become more and more challenging, if not impossible over the last several years. Prospective commercial tenants either want larger square footage than the Unit allows, as was the case with the most recent tenants, Lifestance dba The Counselling Center of Nashua, or in the case of solo or small professional office partnerships want to work remotely from their residence and/or business centers for less overhead. While there has been no commercial interest, the applicants' could make family use of the condominium for residential proposes, or if that failed, easily rent if to potential residential tenants.

The purpose of the DOD is to promote the economic vitality of the central business district by ensuring continuity of pedestrian-oriented businesses along the streets. In other words, its purpose is to allow mostly retail business to thrive based upon foot traffic downtown. This area of State Street has virtually no retail activity other than the Library Restaurant across the street and none on the side of the street where Unit 2 is located. There is one building housing a number of therapists, next door - but again, residential condominium owners at 414 State Street have persistently complained about such use. The public does not generally "shop" in this area and the structure of 414 State Street does not lend itself to retail use of Unit 2.

A number of conversions from commercial to residential have been permitted in the area including 402 State Street converting from a law office to residential condominiums, 96 Chestnut Street converting from an office back to a single-family residence and within the same building, 414 State Street Unit 1 converting from an office to residential use.

Recognizing the demand for more residential property in downtown Portsmouth, we believe that by providing the flexibility for the 414 State Street to be used for residential purposes, also allows the integrity of the neighborhood to be maintained and improved.

III. Relief Required:

A variance from Article VI, section 10.642 to allow a residential use on the ground floor in the Downtown Overlay District.

IV. Variance Requirements:

Article VI, section 10.233.20 sets forth the variance requirements of NH RSA 674:33.

1. Granting a variance will not be contrary to the public interest which would be to maintain the overall character of the immediate mixed-use area.
2. The spirit and intent of the Ordinance will be met by granting the variance. The intent in the overlay district regarding first floor business uses would still be met with this use.

It is certainly within the public interest and spirit of the ordinance to allow a property owner the reasonable use of the property, by allowing the first-floor unit to be used for its original purpose, i.e. as a residence, in an area that lacks retail shops.

PZO Article I, section 10.1.21 provides that the purpose of the PZO is, among other things:

To promote the health and safety and general welfare of Portsmouth and its region... by regulating

- The use of land, building and structures... for residential purposes. The proposed use is permitted on the floors above the first floor throughout the DOD. Located at the very edge of the DOD, away from downtown shops, first floor residential use is warranted.
- The intensity of land use, including lot sizes, building coverage, building height and bulk yards and open space. The lot and building exterior will not change with a change to residential use.
- The design of facilities for vehicular access, circulation, parking and loading. There will be no change. Unit 2 has a designated parking space and will continue to have said space.
- The impact on properties of outdoor lighting, noise, vibration, storm water run-off and loading. There will be no change.
- Preservation and enhancement of visual environment. This will remain the same.
- Preservation of Historic Districts and Buildings of Historical Interest. No change.
- The protection of natural resources. No change.

Whether a variance would be contrary to the public interest “is related to the requirement that [it] ...be consistent with the spirit of the ordinance.” *Farrer v. City of Keene*, 158 N.H. 684, 691 (2009). By its very nature, a variance seeks to deviate from an ordinance which is necessarily believed to be in the “public interest” by those who drafted it. Therefore, to determine if the deviation is not contrary to the public interest and consistent with the spirit of the ordinance, the Board must determine whether the variance would “unduly, and in a marked degree conflict with the ordinance such that it violates the ordinance’s basic zoning objectives.” *Chester Rod & Gun Club v. Town of Chester*, 152 N.H. 577, 581 (2005).

The New Hampshire Supreme Court has provided two methods to determine whether a variance would violate basic zoning objectives. One method is to examine whether the variance would “alter the essential character of the neighborhood.” *Id.* The second method is “to examine whether granting the variance would threaten the public health, safety or welfare.” *Id.*

First floor residential use of 414 State Street Unit 2 would not change the essential character of the neighborhood. There will be no external changes to the building to allow residential use. There will be no structural changes to the interior of the condominium beyond adding a small kitchen and shower and the applicants are endeavoring to restore and preserve historic features previously water damaged including plaster walls and crown moldings and original woodwork. The building was a single-family residence originally and allowing the variance would allow the building to once again be used completely for residential purposes.

Other buildings on this State Street block are residential with the exception of one building that contains therapist’s offices, one building housing an architect and some other small offices at the intersection with Middle Street and the Library Restaurant across the street. All other buildings appear to be residential with no commercial uses. Essentially the area is mostly residential and granting the variance would not be a substantial change or alter the character of the neighborhood.

Moreover, 414 State Street is on the border between the DOD and the Mixed Residential Office (MRO) District. Abutting Court Street is in the MRO District with many properties that are entirely residential. There is no requirement for commercial use on the first floor in the MRO District. There is no draw for foot traffic in this area except for residences and appointments at the therapist office and the Library Restaurant. Accordingly, permitting residential use on the first floor will neither alter the essential character of the neighborhood nor threaten the public health, safety or welfare.

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

First floor residential use will be an almost unnoticeable change from what currently exists. The exterior will not change and no public shopping venue will be lost. Accordingly,

surrounding property values will not be diminished. See attached letter from Real Estate Broker that the property value of the condominium will be enhanced .

4. The requirements for Unnecessary Hardship are met.

PZO section 10.233.31 and RSA 674:33 I(b)(5)(A) provide that an unnecessary hardship exists if, owing to the unique conditions of the property that distinguish the property from other properties in the area:

- a) Special conditions exist that distinguish the property from others in the area. 414 State Street maintains many of the original characteristics that it had when built in 1800. Several of the original rooms in Unit 2 are essentially intact. Other than the Library Restaurant, the buildings nearest neighbors in the DOD zone are mostly residential with one office building where numerous therapists work. None of the retail establishments in the downtown core, which the DOD is intended to protect, are present in this area. The area is more similar to the abutting MRO district where there is a mix of office and residential use, including first floor residential use. Thus, the neighborhood dynamic renders the property distinguishable from the vast majority of the DOD district.
- b.) No fair and substantial relationship exists between the general public purposes of the ordinance and its specific application in this instance. The DOD's purpose is to promote economic vitality in the central business district by allowing pedestrian-oriented business uses on the first floor of buildings. For example, drawing foot traffic to retail establishments and restaurants. Most of this section of State Street is residential, except for the therapy office building and the Library Restaurant. There are no retail establishments that the DOD would protect. Therefore, there is no fair and substantial relationship existing between the purpose of the ordinance limiting first floor to commercial properties and the application in this instance.

5 Substantial Justice will be done.

With respect to the substantial justice requirement, the "only guiding rule on this factor is that any loss to the individual that is not outweighed by a gain to the general public is an injustice." *Malachy Glen Assocs. V. Town of Chichester, 155 N.H. 102, 109 (2007)*. In other words, if the loss to the individual seeking the variance is greater than any gain to the public, then denying the variance is unjust. The property is on the outskirts of the DOD is clearly not violating the DOD's purpose as there are no downtown retail shops in the vicinity. The gain to the general public by enforcing the commercial use restriction on the first floor of 414 State Street is absent while the hardship/harm to the applicants is significant, particularly given the need for housing downtown.

Substantial justice will be done by allowing the applicants, who have made unsuccessful efforts to utilize the property for business purposes, the option of pursuing a residential use on the ground floor. And, the proposed change to the use of the condominium so as to allow residential use is prudent and reasonable. It fits withing the area in which the condominium is located.

- 6 Allowing the property to be used for residential purposes, which could be more beneficial to the area than a commercial use, will not diminish the value of surrounding properties.
- 7 The special condition of the property is its residential appearance, within the overlay district, which is not ideally suited to first floor commercial use so that there is no fair and substantial relationship between the general public purposes of the Ordinance and their application to this property. The proposed use is a reasonable one in this structure and area.

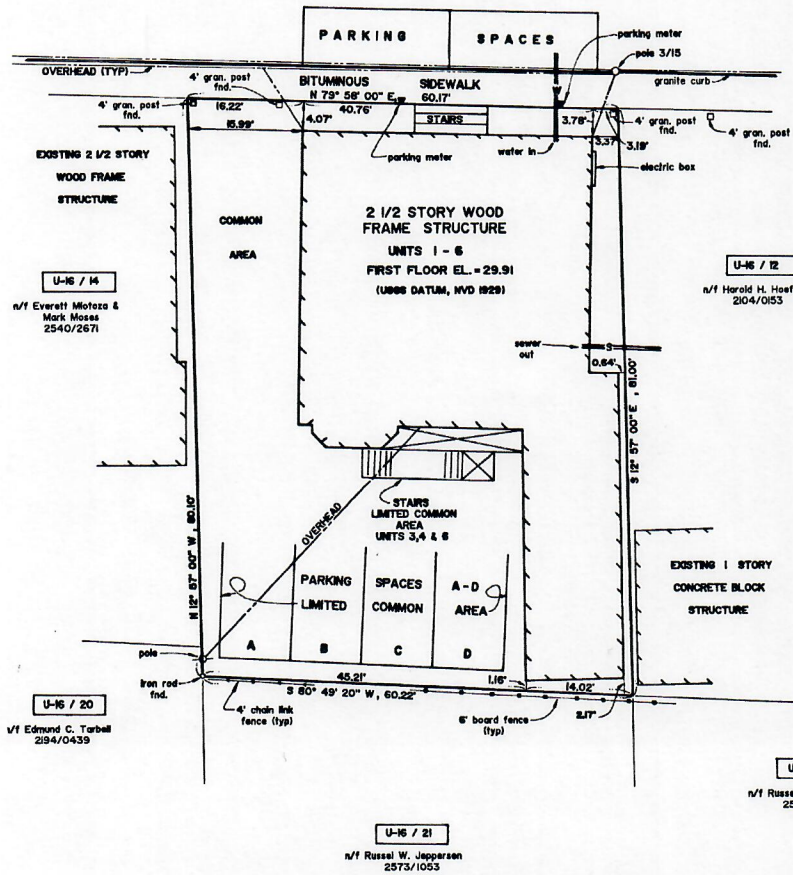
V. Conclusion:

For all of the reasons stated, the Petitioners respectfully request the Board grant the variance requested to allow a residential use of Unit 2 of the 414 State Street Condominiums.

PL 23 1 20 PM 00

36665

STATE (public) STREET



- REFERENCE PLANS:
- 1) "PLAN OF LOTS, 4 DATED: JUNE 1936, 1
 - 2) "SITE PLAN, 444 ST DATED: FEB. 24, 19

I HEREBY CERTIFY THAT I DIMENSIONS OF THE SUBMIT OF APPLICABLE), THE EXIST AND THE INTENDED LOCAT I FURTHER CERTIFY THAT I SUBSTANTIALLY BEEN COME R.S.A. 356-B:20, 1 & V.

I FURTHER CERTIFY THAT EXISTING OWNERSHIP AND OR PRIVATE STREETS OR OF EXISTING OWNERSHIP: 0

- NOTES:
- 1) THE SUBJECT PARCEL OF LAND CONTAINS 4,840 SQUARE FEET OF LAND, MORE OR LESS.
 - 2) THE SUBJECT PARCEL OF LAND IS LOCATED IN A CENTRAL BUSINESS (CB) ZONING DISTRICT.
 - 3) THE SUBJECT PARCEL OF LAND IS SHOWN ON THE CITY OF PORTSMOUTH TAX ASSESSOR'S MAP NO. U-16, AS LOT NO. 13.
 - 4) THE SUBJECT PARCEL IS NOT LOCATED WITHIN ANY FLOOD HAZARD ZONE.
 - 5) TITLE REFERENCE FOR THE SUBJECT PARCEL IS DEED BOOK 2496, PAGE 1189 AT THE ROCKINGHAM COUNTY REGISTRY OF DEEDS.
 - 6) LEGEND:
 - fm.d. = FOUND
 - grm. = GRAVEL
 - W = WATER SERVICE
 - S = SEWER SERVICE
 - typ. = TYPICAL
 - USGS = UNITED STATES GEOLOGICAL SURVEY
 - NVD = NATIONAL VERTICAL DATUM
 - n/f = NEW OR FORMERLY

COI

as prepared for:
414 STATE S
444 STATE S
PORTSMOUTH

0
SCALE 1

civ
engineer
Dover,

D-18310



Ydoate Family Trust
402 State Street 2B
Portsmouth, NH 03801

January 12, 2024

David Rheume, Chairman
Board of Adjustment
City of Portsmouth
1 Junkins Ave.
Portsmouth, NH 03801

Re: 414 State Street Variance Application

Dear Chairman Rheume,

As the Trustees of the Charles Ydoate Revocable Trust and the Nancy Ydoate Revocable Trust at 402 State Street 2B, I am writing the Board of Adjustment in support of the application by Timothy Wheelock and Susan Denenberg for a variance. Allowing the condominium (Unit 2) on the first floor of 414 State Street to be used for residential purposes will not negatively impact the character of the neighborhood. This area has very few commercial properties on the first floor and changing this condo to residential will not impact the neighborhood. This historic building with a small lot has parking spaces for 4 vehicles. The owners of Unit 2 have one parking space and so will have adequate parking for the change from commercial to residential. BOA Rules would require 1.3 parking spaces for this residential unit. Waiving the parking space requirements and allowing the existing space to be utilized, will not negatively impact the character of the neighborhood. Please feel free to contact me if you have any questions. Thank you.

Sincerely,

A handwritten signature in black ink that reads "Nancy Ydoate".

Nancy Ydoate

A handwritten signature in black ink that reads "Charles Ydoate".

Charles Ydoate



City Lights, LLC
75 Court Street
Portsmouth, NH 03801

January 10 2024

David Rheume, Chairman
Board of Adjustment
City of Portsmouth
1 Junkins Ave.
Portsmouth, NH 03801

Re: 414 State Street Variance Application

Dear Chairman Rheume,

As the principal of City Lights, LLC, which owns 75 Court Street, Portsmouth, NH, I am writing the Board of Adjustment in support of the application by Timothy Wheelock and Susan Denenberg for a variance. Allowing the condominium (Unit 2) on the first floor of 414 State Street to be used for residential purposes will not negatively impact the character of the neighborhood. This area has very few commercial properties on the first floor and changing this condo to residential will not impact the neighborhood. This historic building with a small lot has parking spaces for 4 vehicles. The owners of Unit 2 have one parking space and so will have adequate parking for the change from commercial to residential. BOA Rules would require 1.3 parking spaces for this residential unit. Waiving the parking space requirements and allowing the existing space to be utilized, will not negatively impact the character of the neighborhood. Please feel free to contact me if you have any questions. Thank you.

Sincerely,

A handwritten signature in blue ink that reads "Karen R. Bouffard".

Karen Bouffard



Michael Salmonsens & Katherine Angell
402 State Street 2A
Portsmouth, NH 03801

January 9 2024

David Rheaume, Chairman
Board of Adjustment
City of Portsmouth
1 Junkins Ave.
Portsmouth, NH 03801

Re: 414 State Street Variance Application

Dear Chairman Rheaume,

As the owners of 402 State Street 2A, Michael Salmonsens and Katherine Angell, I am writing the Board of Adjustment in support of the application by Timothy Wheelock and Susan Denenberg for a variance. Allowing the condominium (Unit 2) on the first floor of 414 State Street to be used for residential purposes will not negatively impact the character of the neighborhood. This area has very few commercial properties on the first floor and changing this condo to residential will not impact the neighborhood. This historic building with a small lot has parking spaces for 4 vehicles. The owners of Unit 2 have one parking space and so will have adequate parking for the change from commercial to residential. BOA Rules would require 1.3 parking spaces for this residential unit. Waiving the parking space requirements and allowing the existing space to be utilized, will not negatively impact the character of the neighborhood. Please feel free to contact me if you have any questions. Thank you.

Sincerely,

Michael Salmonsens
Katherine Angell

Arnoudse Kilcoyne Family Trust
402 State Street 1A
Portsmouth, NH 03801



January 6 2024

David Rheume, Chairman
Board of Adjustment
City of Portsmouth
1 Junkins Ave.
Portsmouth, NH 03801

Re: 414 State Street Variance Application

Dear Chairman Rheume,

As the co-Trustees of the Arndouse Kilcoyne Family Trust at 402 State Street 1A, I am writing the Board of Adjustment in support of the application by Timothy Wheelock and Susan Denenberg for a variance. Allowing the condominium (Unit 2) on the first floor of 414 State Street to be used for residential purposes will not negatively impact the character of the neighborhood. This area has very few commercial properties on the first floor and changing this condo to residential will not impact the neighborhood. This historic building with a small lot has parking spaces for 4 vehicles. The owners of Unit 2 have one parking space and so will have adequate parking for the change from commercial to residential. BOA Rules would require 1.3 parking spaces for this residential unit. Waiving the parking space requirements and allowing the existing space to be utilized, will not negatively impact the character of the neighborhood. Please feel free to contact me if you have any questions. Thank you.

Sincerely,

Donald M. Arnoudse
DONALD M. ARNOUDSE



Bosen and Associates, LLC
266 Middle Street
Portsmouth, NH 03801

January 5, 2024

David Rheume, Chairman
Board of Adjustment
City of Portsmouth
1 Junkins Ave.
Portsmouth, NH 03801

Re: 414 State Street Variance Application

Dear Chairman Rheume,

As the owner 96 Chestnut Street, Portsmouth, NH I am writing the Board of Adjustment in support of the application by Timothy Wheelock and Susan Denenberg for a variance. Allowing the condominium (Unit 2) on the first floor of 414 State Street to be used for residential purposes will not negatively impact the character of the neighborhood. This area has very few commercial properties on the first floor and changing this condo to residential will not impact the neighborhood. This historic building with a small lot has parking spaces for 4 vehicles. The owners of Unit 2 have one parking space and so will have adequate parking for the change from commercial to residential. BOA Rules would require 1.3 parking spaces for this residential unit. Waiving the parking space requirements and allowing the existing space to be utilized, will not negatively impact the character of the neighborhood. Please feel free to contact me if you have any questions. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to be 'John Bosen'.

John Bosen



Maher Family Revocable Trust of 2018
388 State Street
Portsmouth, NH 03801

January 5 2024

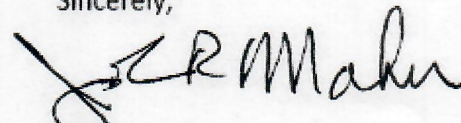
David Rheaume, Chairman
Board of Adjustment
City of Portsmouth
1 Junkins Ave.
Portsmouth, NH 03801

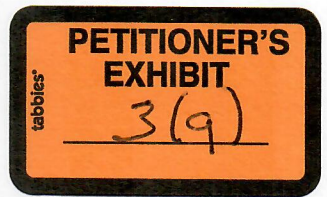
Re: 414 State Street Variance Application

Dear Chairman Rheaume,

As a co-Trustee of the Maher Family Revocable Trust of 2018 with property at 388 State Street, I am writing the Board of Adjustment in support of the application by Timothy Wheelock and Susan Denenberg for a variance. Allowing the condominium (Unit 2) on the first floor of 414 State Street to be used for residential purposes will not negatively impact the character of the neighborhood. This area has very few commercial properties on the first floor and changing this condo to residential will not impact the neighborhood. This historic building with a small lot has parking spaces for 4 vehicles. The owners of Unit 2 have one parking space and so will have adequate parking for the change from commercial to residential. BOA Rules would require 1.3 parking spaces for this residential unit. Waiving the parking space requirements and allowing the existing space to be utilized, will not negatively impact the character of the neighborhood. Please feel free to contact me if you have any questions. Thank you.

Sincerely,


John R. Maher
Trustee



Gunter Seelhof
379 State Street
Portsmouth, NH 03801

January 4, 2024

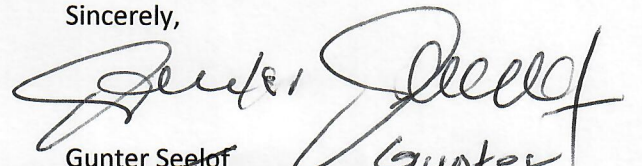
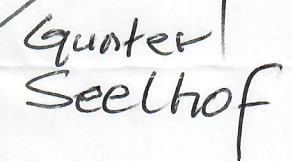
David Rheaume, Chairman
Board of Adjustment
City of Portsmouth
1 Junkins Ave.
Portsmouth, NH 03801

Re: 414 State Street Variance Application

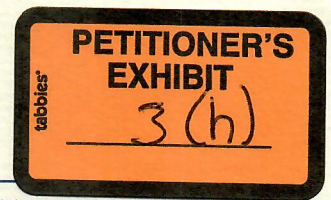
Dear Chairman Rheaume,

As the owner of 379 State Street, I am writing the Board of Adjustment in support of the application by Timothy Wheelock and Susan Denenberg for a variance. Allowing the condominium (Unit 2) on the first floor of 414 State Street to be used for residential purposes will not negatively impact the character of the neighborhood. This area has very few commercial properties on the first floor and changing this condo to residential will not impact the neighborhood. This historic building with a small lot has parking spaces for 4 vehicles. The owners of Unit 2 have one parking space and so will have adequate parking for the change from commercial to residential. BOA Rules would require 1.3 parking spaces for this residential unit. Waiving the parking space requirements and allowing the existing space to be utilized, will not negatively impact the character of the neighborhood. Please feel free to contact me if you have any questions. Thank you.

Sincerely,


Gunter Seelhof
379 State Street
Portsmouth, NH 03801


Mark D. Moses, Ph.D.
PSYCHOLOGIST



~~P.O. Box 175~~ • Portsmouth, New Hampshire 03801 • (603) 436-1111
426 State St.

01/03/2024

David Rheume, Chairman
Board of Adjustment
City of Portsmouth
1 Junkins Ave.
Portsmouth, NH 03801

Re: 414 State Street Variance Application

Dear Chairman Rheume,

As the owner of the Mark Moses Revocable Trust, owner of 426 State Street, I am Writing the Board of Adjustment in support of the application by Timothy Wheelock and Susan Denenberg for a variance. Allowing the condominium (Unit 2) on the first floor of 414 State Street to be used for residential purposes will not negatively impact the character of the neighborhood. This historic building with a small lot has parking spaces for 4 vehicles. The owners of Unit 2 have one parking space and so will have adequate parking for the change from commercial to residential. BOA Rules would require 1.3 parking spaces for this residential unit. Waiving the parking space requirements and allowing the existing space to be utilized, will not negatively impact the character of the neighborhood. Please feel free to contact me if you have any questions. Thank you.

Sincerely,

A handwritten signature in black ink that reads "Mark D. Moses, Ph.D." with a stylized flourish at the end.

Mark Moses
426 State Street
Portsmouth, NH 03801



Glenn Gardener
105 Court Street, LLC
95 Court Street
Portsmouth, NH 03801

January 29, 2024

David Rheume, Chairman
Board of Adjustment
City of Portsmouth
1 Junkins Ave.
Portsmouth, NH 03801

Re: 414 State Street Variance Application

Dear Chairman Rheume,

I am the principal of 105 Court Street, LLC, which owns 95 and 105 Court Street, Portsmouth, NH, I am writing the Board of Adjustment in support of the application by Timothy Wheelock and Susan Denenberg for a variance. The property at 95 Court street is residential. The property at 105 Court Street is both commercial and has apartments as well. Allowing the condominium (Unit 2) on the first floor of 414 State Street to be used for residential purposes will not negatively impact the character of the neighborhood. This area has very few commercial properties on the first floor and changing this condo to residential will not impact the neighborhood.

Please feel free to contact me if you have any questions. Thank you.

Sincerely,

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Glenn Gardener



ASSENT TO CHANGE OF USE FROM COMMERCIAL TO RESEDENTIAL

We understand that Timothy Wheelock, owner of Unit 1, 414 State Street, Portsmouth, NH will be requesting a variance so that the commercial use of the unit may be changed to a residential use. We agree that the residential use will be more compatible with the other four units in the building, which are all used as residences. We acknowledge that the change to a residential use will not change the exterior of the historic building. We agree that the change to residential use will have no impact on the character of the neighborhood and it may well enhance the value of the property to have simpatico residential uses in the building.

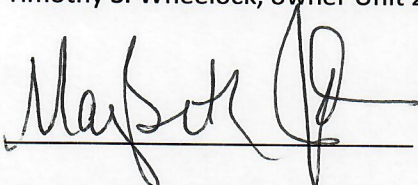
Marta Downing, owner Unit 1

Date: _____



Timothy S. Wheelock, owner Unit 2

Date: 12/11/23



Mary Beth Johnson, owner Unit 3

Date: 12/15/23

Colleen Kendall-Piel, owner Unit 4

Date: _____

John Rennie, owner Unit 6

Date: _____



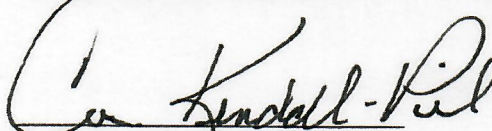
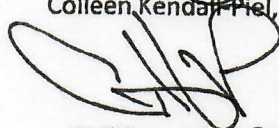
ASSENT TO CHANGE OF USE FROM COMMERCIAL TO RESEDENTIAL

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Marta Downing, owner Unit 1 Date: _____

Timothy S. Wheelock, owner Unit 2 Date: _____

Mary Beth Johnson, owner Unit 3 Date: _____


Colleen Kendall Piel, owner Unit 4 Date: 10-Dec-23
 10-Dec-23
CARL HENRY PIEL, OWNER UNIT #4

John Rennie, owner Unit 6 Date: _____



Timothy S Wheelock

44 Wibird Street
Portsmouth, NH 03801

January 28, 2024

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

Re: 414 State Street Variance Application

Dear Sir,

I am the President of the Condominium Association known as 414 State Street Condominiums. My wife and I own Unit 2, a ground floor unit at 414 State Street. In expectation of filing an application for a Change of Use Variance to convert our unit that has been commercial to allow for residential use, my wife spoke with other unit owners. The other four units in the building are all residential. Assents to the conversion were obtained from Unit 2, Unit 3 Mary Beth Johnson and from Unit 4 Colleen Kendall-Piel and Carl-Henry Piel.

The Condominium Association had an annual meeting on January 22, 2024 and during that meeting a Motion was made for the Association to approve the application to the Board of Adjustment for a change of use to convert Unit 2 from commercial use only to allow for residential use. After discussion, the motion was approved 3-1. One unit owner did not attend the meeting and his proxy abstained.

Sincerely,

A handwritten signature in black ink, appearing to read "T. Wheelock".

Timothy S. Wheelock

PETITIONER'S EXHIBIT
6(a)
tabbles

Street View



Counseling Center
101 W. HUNTSVILLE
471 0004

414

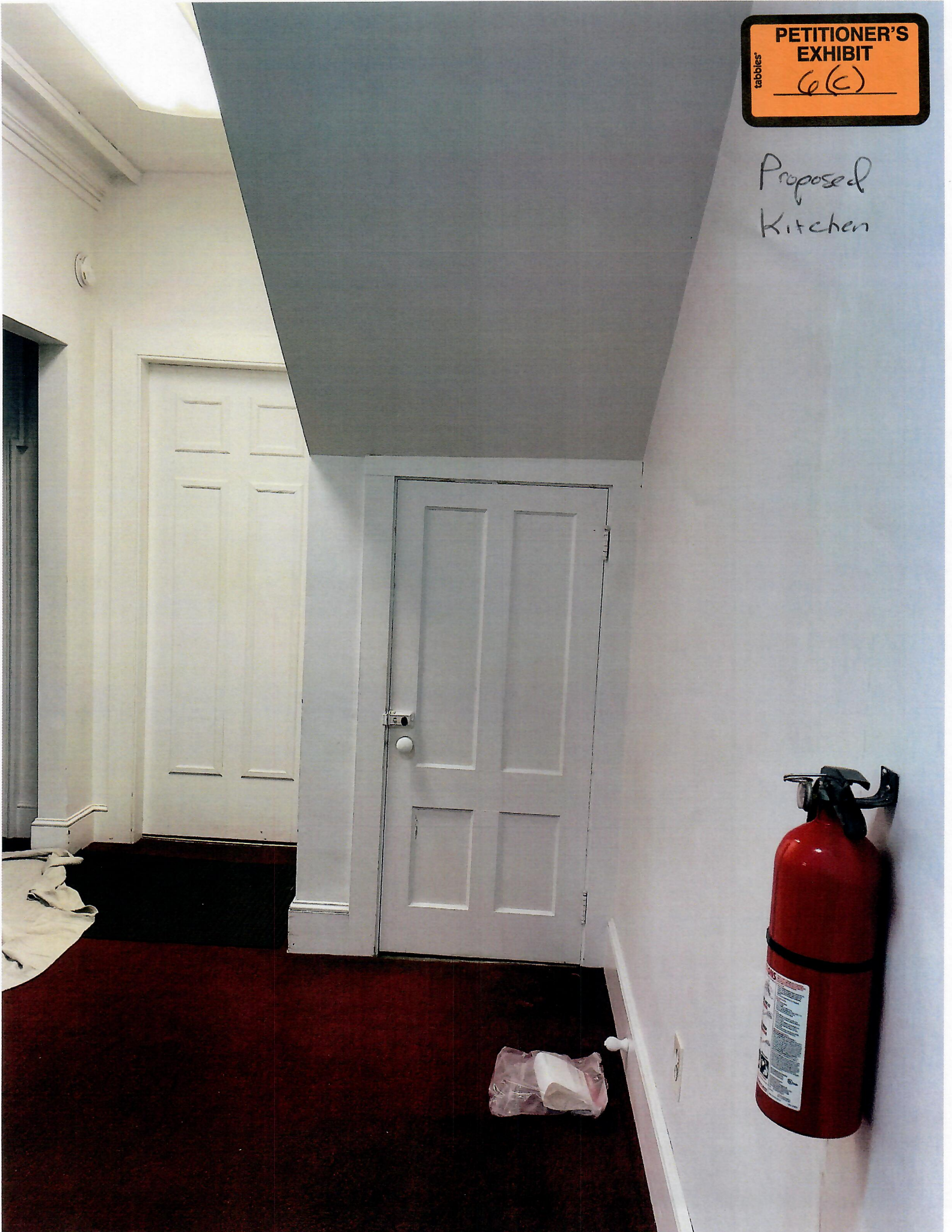
Front Hallway

tabbles®
PETITIONER'S
EXHIBIT
6(b)



tabbles®
**PETITIONER'S
EXHIBIT**
6(c)

Proposed
Kitchen



**PETITIONER'S
EXHIBIT**
6(d)

Proposed
Kitchen
Existing
Condition



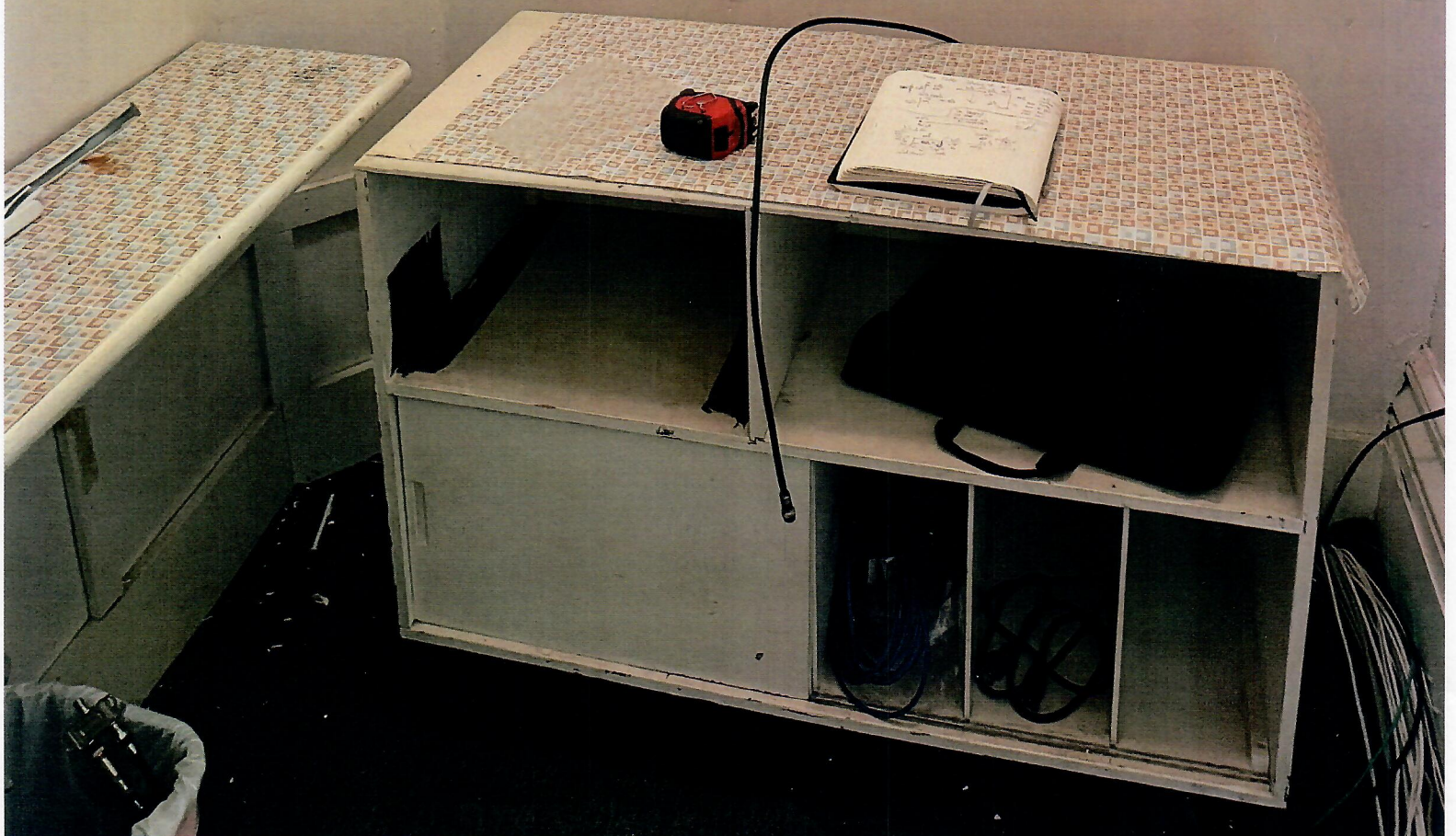
tabbles®
**PETITIONER'S
EXHIBIT**
(c)(e)

Proposed
Kitchen
Existing
Condition



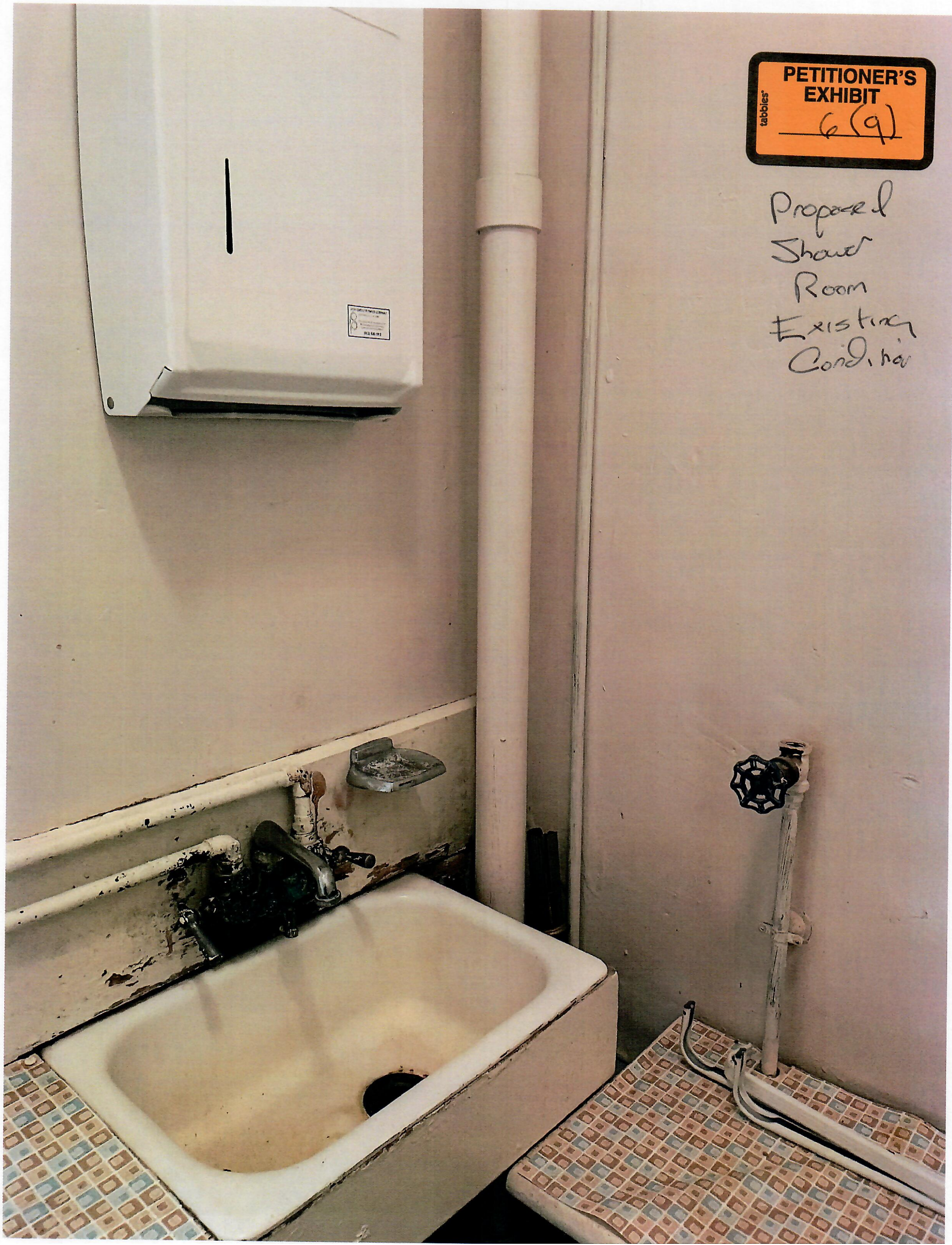
**PETITIONER'S
EXHIBIT**
6(f)

Proposed
Shower
Room
Existing
Condition



tabbles®
**PETITIONER'S
EXHIBIT**
6(9)

Proposed
Shower
Room
Existing
Condition



PETITIONER'S
EXHIBIT
P(h)
tabbles

Proposed
Living
Room

No Changes
Existing
Condition



PETITIONER'S
EXHIBIT
6(F)
tabbles

Proposed
Bedroom
Existing
Condition



Proposed Design

2020 Design - [hd 3409 wheelock 11 7 23:1]

Vertical Aligned Radius
 Add Note Delete Note
 Line Running Line
 Square Rectangle Circle
 Ellipse Triangle Elliptical Arc
 Radial Arc Spline Free Hand

Notes Draw

Tim Wheelock
414 state st
portsmouth nh

Mark Minasalli
markm@ktmhomeservices.com
603-234-9320

ceiling height 120
no appliances

General notes!
 1. use minimum 3" fillers on inside corners of cabinets
 2. maintain 18" height and 6" width of clearance on both sides of range
 3. minimum 4" of space when fridge is next to perpendicular wall
 4. always try to start with pantry
 5. At island add furniture base always due to floor may not be level
 6. Use 1x6 filler or large st8 to start crown and we will rip down
 7. always start run with filler when going wall to wall due to walls may not be plumb and baseboard or chairrail ect..
 8. flooring does not go under cabinets but under appliances
 9. fridge panels , use 30" deep we will rip onsite, add minimal 3" to height above top alignment, example if top alignment is 84 make panel 87" for scribing into floor if unlevel

Measurements provided by KTM Home Services are for design purposes only. If any measurements are to be performed by anyone other than KTM including the home owner verification of the measurements and fit is the responsibility of the installer and KTM Home Services will not be responsible for any material and labor costs if install is not done by KTM Home Services. KTM is not responsible for function, the Designer is responsible for the function of the cabinets

167 1/2"

fridge sink range

all cabinets on this wall

21 1/2"

95 1/2"

45 1/2"

36"

42"

8"

10 1/2"

33"

89 1/2"

209 1/2"

48 1/2"

28 1/2"

36"

67"

35 1/2"

60"

50"

46"

2"

1"

<-wants to add shower ->

sink ->

vent pipe-X

64"

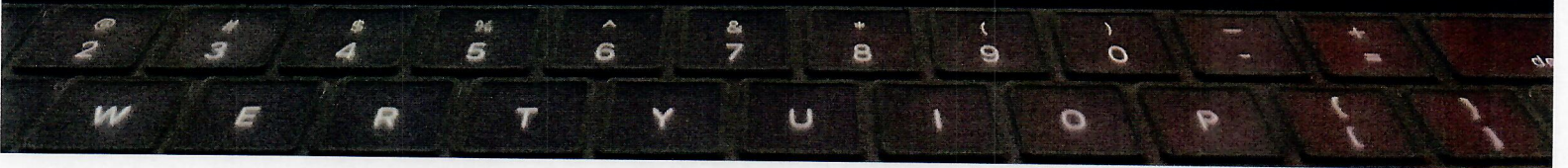
21 1/2"

52"

21 1/2"

All All (no dims) Cabinets Countertops Architecture NK6A Legend Print

50°F Cloudy 6:08 AM 11/8/2023



**PETITIONER'S
EXHIBIT**
7(b)

Proposed
Kitchen
Design



Note: This drawing is an artistic interpretation of the general appearance of the design. It is not meant to be an exact rendition.

2020

Designed: 1/22/2024
Printed: 1/22/2024

tabbies
**PETITIONER'S
EXHIBIT**
7(c)

Proposed
Kitchen
Design



Note: This drawing is an artistic interpretation of the general appearance of the design. It is not meant to be an exact rendition.

2020

Designed: 1/22/2024
Printed: 1/22/2024

Tate & Foss

Sotheby's

INTERNATIONAL REALTY

566 Washington Road
Rye, New Hampshire 03870
o 603.964.8028
tateandfoss.com



January 15, 2024

Mr. Tim Wheelock, Esq.
44 Wibird Street
Portsmouth, NH 03901

Dear Tim:

Thank you for asking me to provide a broker's price opinion for the value of your condominium unit at 414 State Street, Unit #2. I have inspected the unit and reviewed four recent comparable sales using \$100 per square foot for GLA differences, assuming comparable quality and .67% per month appreciation. I assume your unit would be marketed with a kitchen and finished three-quarter bath. The following comparable sales were used:

	Closed	Price	Age	RMS	BRs	BA's	GLA	Parking
414 State #2	-----	-----	1850	4	1	1(3/4)	753	1 Space
414 State #3	3/29/22	\$432,000	1850	5	1	1(FL)	631	1 Space
126 State	9/8/23	\$602,000	1850	3	1	1(FL)	782	1 (Heated garage)
663 State	8/7/23	\$450,000	1840	4	1	1(FL)	900	1 Space
290 Pleasant	5/31/23	\$449,000	1828	3	1	1(FL)	785	1 Space

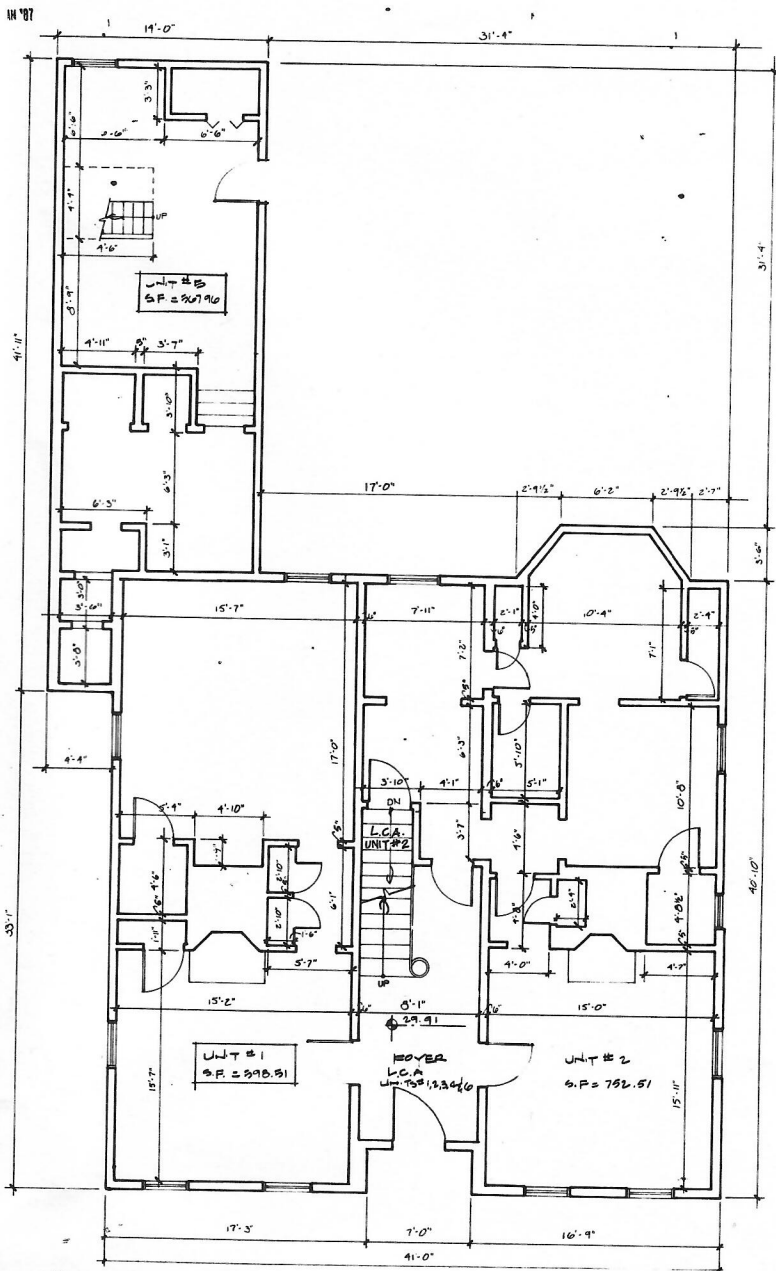
I estimate that your unit as of January 15, 2024, improved with an average quality bath and kitchen would be worth **\$504,000**. If sold as a single-family unit but without the improvements, I estimate the value to be **\$405,000**.

My credentials include 52 years as a licensed real estate broker in Maine and New Hampshire with experience as a former licensed residential real estate appraiser. I am also Chief Statistician for the Seacoast Board of Realtors and a former president of both NHAR and the Seacoast Board of REALTORS. I am currently a broker/agent with Tate and Foss Sotheby's International Realty in Rye.

Respectfully submitted,


John W. Rice
Broker/Agent

Tate and Foss Sotheby's International Realty



Sheet 2 of 3

FIRST FLOOR PLAN

I HEREBY CERTIFY THAT THESE FLOOR PLANS ARE ACCURATE AND IN COMPLIANCE WITH THE PROVISIONS OF N.H. RSA 356-B:23. ALL UNITS OR PORTIONS THEREOF DEPICTED ON THESE PLANS AS COMPLETED HAVE BEEN SUBSTANTIALLY COMPLETED AS OF THE DATE ON THE DRAWING.



414 STATE STREET
CONDOMINIUMS
PORTSMOUTH, NEW HAMPSHIRE

SCALE 1/4"=1'-0"

III. NEW BUSINESS

C. The request of **Frances E. Mouflouze Revocable Trust of 2015 (Owner)**, for property located at **550 Sagamore Avenue** whereas relief is needed to demolish the existing structure and construct a three dwelling unit building which requires the following: 1) Variance from Section 10.440 Use #1.51 to allow a three dwelling unit structure where it is not permitted. Said property is located on Assessor Map 222 Lot 11 and lies within the Single Residence B (SRB) District. (LU-24-9)

Existing & Proposed Conditions

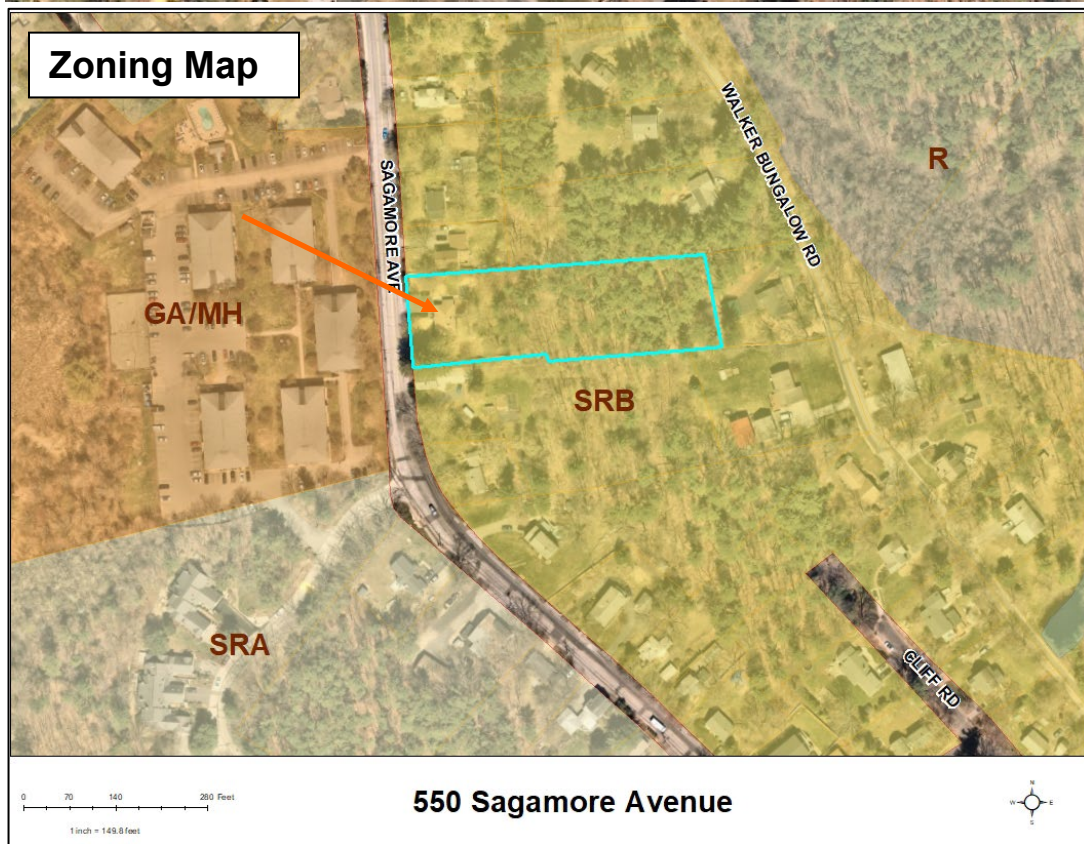
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family dwelling	*Three-unit dwelling	Primarily residential
<u>Lot area (sq. ft.):</u>	62,754	62,754	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	62,754	20,918	15,000 min.
<u>Street Frontage (ft.):</u>	139.8	139.8	100 min.
<u>Lot depth (ft.)</u>	434	434	100 min.
<u>Front Yard (ft.):</u>	33	31	30 min.
<u>Left Yard (ft.):</u>	45	65	10 min.
<u>Right Yard (ft.):</u>	40	11	10 min.
<u>Rear Yard (ft.):</u>	>300	283	30 min.
<u>Height (ft.):</u>	13.1	<35	35 max.
<u>Building Coverage (%):</u>	5.8	9	20 max.
<u>Open Space Coverage (%):</u>	98.2	94.2	40 min.
<u>Parking</u>	2	12	4
<u>Estimated Age of Structure:</u>	1960	Variance request(s) shown in red.	

*A three-unit dwelling is not permitted in the SRB.

Other Permits/Approvals Required

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

Neighborhood Context



Previous Board of Adjustment Actions

October 17, 2023 – The Board **denied** the request 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.

December 23, 2023 – The Board **denied** the request for a rehearing of the October 17, 2023 decision to deny the request 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.

Planning Department Comments

Fisher vs. Dover

The applicant was before the Board on October 17 of 2023 seeking relief from Section 10.513 to allow more than one free-standing dwelling unit on a lot; Section 10.440 Use #1.30 to allow the construction of duplexes where they are not permitted. The Board denied the request for relief at that time citing that it did not meet the spirit of the ordinance or hardship criteria as the lot is oversized and is presently conforming.. The new design is one building with three proposed dwelling unit. 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 applicant is proposing to demolish the existing structure and construct a 3 unit structure in its place. This application will be require site plan review approval before a building permit can be obtained. If the request is granted, staff recommends the following stipulation for consideration:

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

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.

HOEFLE, PHOENIX, GORMLEY & ROBERTS, PLLC

ATTORNEYS AT LAW

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

January 31, 2024

HAND DELIVERED

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

Re: The Frances E. Mouflouze Revocable Trust of 2015
Owner/Applicant
Project location: 550 Sagamore Avenue
Tax Map 222, Lot 11
Single Residence B (SRB) District

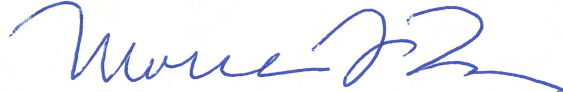
Dear Ms. Casella & Zoning Board Members:

On behalf of Frances E. Mouflouze, Ted W. Alex and Patricia Cameron, Trustees, The Frances E. Mouflouze Revocable Trust of 2015 (“Mouflouze” or “Applicant”), enclosed please find the following in support of a request for zoning relief:

- Digital Application submitted via Viewpoint today.
- Owner’s Authorization.
- 1/31/2024 – Memorandum and exhibits in support of Variance Application.

We look forward to presenting this application to the Zoning Board at its February 21, 2024 Meeting.

Very truly yours,



R. Timothy Phoenix
Monica F. Kieser

Enclosure

cc: Ted Alex
Altus Engineering (email)
McHenry Architecture (email)
White Appraisal (email)

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	

Tim Phoenix

From: Ted Alex <tedwalex@gmail.com>
Sent: Monday, August 28, 2023 12:48 PM
To: Tim Phoenix
Cc: patrikia@mac.com
Subject: Frances E. Mouflouze Trust

To whom it may concern,

Frances E. Mouflouze, Ted W Alex and Patricia Cameron, Trustees, of the Frances E. Mouflouze Revocable Trust of 2015, hereby authorize the law firm Hoefle Phoenix Gormley & Roberts, PLLC to represent our interests before any city of Portsmouth employee, representative, board, commission or council.

Sincerely,

Ted W.Alex
Patricia Cameron
Frances E. Mouflouze

Sent from my iPhone

MEMORANDUM

To: Portsmouth Zoning Board of Adjustment (“ZBA”)
From: R. Timothy Phoenix, Esq.
Monica F. Kieser, Esq.
Date: January 31, 2023 (revised February 2, 2024)
Re: The Frances E. Mouflouze Revocable Trust of 2015
Owner/Applicant
Project location: 550 Sagamore Avenue
Tax Map 222, Lot 11
Single Residence B (SRB) District

Dear Chair Eldridge and Zoning Board Members:

On behalf of Frances E. Mouflouze, Ted W. Alex and Patricia Cameron, Trustees, The Frances E. Mouflouze Revocable Trust of 2015 (“Mouflouze” or “Applicant”) we are pleased to submit this memorandum and attached exhibits in support of zoning relief to be considered by the ZBA at its February 21, 2024 meeting.

I. EXHIBITS

A. Plan Set

- 1/9/2023 Existing Conditions Plan – by Easterly Survey.
- 1/30/2024 Board of Adjustment Site Plan – by Altus Engineering.
- 1/30/2024 Preliminary Grading Plan – by Altus Engineering.

B. Architectural Elevations and Floor Plans – by McHenry Architecture, Inc.

- A1 – Floor Plans
- A2 – West Elevation
- A3 – North Elevation
- A4 – East Elevation
- A5 – South Elevation
- A6 – Renderings

C. Site Plan and Architectural Plans denied October 17, 2023.

D. ZBA Notice of Decision & Minutes, October 17, 2023

E. 9/18/23 Property Value Impact Report – by White Appraisal.

F. Site photographs.

G. Tax Assessors Card.

H. Tax Map 222.

I. City GIS Map – identifying nearby zoning districts and surrounding area.

J. Conceptual 3-Lot Subdivision Plan – by Altus Engineering.

II. PROPERTY/PROPOSAL

550 Sagamore Ave. is a 1.44 acre (62,754 sf), deep and relatively narrow lot with 139.8 feet of frontage containing a circa 1960 single-family home with front steps slightly encroaching

into the front setback (“the Property”) (**Exhibit A**). The Property is located in the Single Residence B (“SRB”) District.

Mouflouze previously sought to develop the lot with 2 duplex structures (4 units) (“the Initial Project”) (**Exhibit C**). The ZBA denied that proposal, which is on appeal with the Housing Appeals Board. (**Exhibit D**). In an effort to accommodate feedback from the abutters and ZBA, Mouflouze has reduced and redesigned the Initial Project. Mouflouze now proposes to raze the existing dated building and other improvements in favor of three units within a colonial home and barn (“the Revised Project”). (**Exhibits A, B**). The architectural design is inspired by a typical New England Farmstead, which develops over time, typically beginning with a single family farmhouse near the street with several additions towards the rear of the property followed by the Barn. Reflecting the growth of the Farmstead in an architectural form is significantly more attractive and compatible with the neighborhood than the previous duplex structures.

III. FISHER V. DOVER

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

Given the legal framework governing subsequent petitions to the ZBA, the previous concerns articulated by the ZBA and the changes presented in the current proposal, Mouflouze’s application meets the requirements of Fisher v. Dover and its progeny and therefore merits consideration. Compared to the original project, the Revised Project:

- Reduces the number of units from 4 to 3, a significant 25% reduction;
- Proposes an attractive single structure instead of two free-standing duplex structures, eliminating the need for one of the variances previously sought;

- Reduces the number of vehicle trips by 25%;
- Significantly increases the wooded buffer to Walker Bungalow, from 177 feet to 283 feet;
- Increases open space by +/- 2,363.42 s.f. to 80.6%, double the 40% required.
- Decreases building coverage by +/- 1,474 s.f. to 9.0%, less than one-half the permitted 20%
- Decreases density from 1 unit/15,688 square feet to 1 unit/20,918 square feet;
- Preserves the streetscape of a single family home “look” with farmers porch;

In addition to these improvements, the Revised Project is more representative of a New England Farmstead and therefore significantly more attractive than the previous duplex structures. Accordingly, there has been a material change in circumstances and the Revised Project is worthy of consideration. Fisher v. Dover, 121 N.H. 187 (1980).

At the October 17, 2023 hearing on the Initial Project, the ZBA heard evidence from members of the public and abutters who complained about disturbance of the wooded buffer to Walker Bungalow homes, increased traffic, and lack of privacy resulting from the orientation of four dwelling units. While abutters clearly advocated for the status quo and conformance, Member Mannle opined that Mouflouze could simply put in a road and a compliant three-lot subdivision behind the existing home. (October 17, 2023 Minutes p. 11). Member Margeson observed that the Initial Project “looked like a complex, with a lot of parking”. (October 17, 2023 Minutes p. 10). Member Rheume opined that an argument for multiple units could be made given the size and shape of the lot; however not necessarily four units. (Id). Member Rheume concluded that the Initial Project, with two structures at an angle to the street, was “out of character for the neighborhood” as evidenced by “plenty of screening in front of them”. (October 17, 2023 Minutes p. 10). Ultimately, a majority of the Board determined the Initial Project did not observe the spirit of the Ordinance, and the Property lacked sufficient hardship necessitating deviation from the Ordinance permitting two duplex structures.

In addressing whether there was an argument for multiple structures on the Property, Member Rheume noted that the size of the lot coupled with the fact that it was narrow and deep could support a hardship finding for multiple units. He continued by opining that such a proposal, perhaps more evocative of a single-family home, might better observe the spirit of the Ordinance. (<https://www.youtube.com/watch?v=d6pKNXlbc-k> at 1:08:00). As an example, he relayed the approval of a project on Broad Street (#482), where a similarly shaped oversized lot was approved for development of three units in a single structure mimicking a single-family

home with additional units tucked behind evoking a New England “Connected Form” (big house, little house, back house, barn).

The Revised Project addresses concerns raised by abutter and ZBA members while responding to the implicit or explicit invitation for a proposal that incorporates additional units in a more discreet fashion. As revised, a single structure is proposed rather than two. While the view from the street will appear as a single-family home, two additional units are behind the front facing unit in a structure looking like a barn. The current proposal is therefore responsive to the concerns raised by the ZBA and warrants full consideration. Hill-Grant Living Trust v. Kearsarge Lighting Precinct, 159 N.H. 529 (2009).

The ZBA has not hesitated to find material changes permitting consideration revised Projects on the merits, when revisions have reduced the size or density of a project and/or addressed concerns raised during the initial hearing. Examples of previous analyses of Fisher v. Dover include:

- #2015-9-11, Application of Paul Berton regarding 482 Broad Street. Initial request for four condominium units which complied with dimensional requirements and preserved significant open space was denied on September 22, 2015. Thereafter, the ZBA declined to invoke Fisher v. Dover to prohibit application of a reduced three unit proposal. In addition to a 25% reduction in units, the revised proposal reduced the driveway by 24% and pavement by 27%.
- #2019-16-13, Application of Tuck Realty for 23 townhouse units was denied. A subsequent application which preserved an existing home on the property, merged the lots, and reduced the number of townhomes to 18 (21% reduction) was not precluded by Fisher v. Dover.
- #2017-8-5, Application of Susan MacDougall to reconstruct/expand a one story addition at 39 Pray Street. The ZBA declined to invoke Fisher v. Dover to prohibit a first floor addition in the yard setback after a previous first floor addition had been denied several years earlier. Noting that the addition was more centered than before and would have lesser impact on abutting owner, the ZBA allowed consideration on the merits.
- LU-22-86, Application of Neila, LLC to redevelop an existing garage as a dwelling unit within yard setbacks. Despite previous denials of density and yard setback relief sought to convert the same garage to a dwelling, changes to the Ordinance coupled with elimination of upward expansion and neighborhood support resulted in the Board determining that Fisher v. Dover did not bar consideration of a revised project requiring nearly identical relief.

- LU-22-199, Application of Jeff & Melissa Foy to construct an addition within the front yard setback. Initial proposal requested an addition 15.8 ft. from the front lot line where 30 ft. was believed to be required. The Board determined that Fisher v. Dover did not bar subsequent consideration of a smaller addition the same distance from the lot line where the front yard was averaged to a required 19 ft. in accordance with PZO §10.516.10

These examples illustrate that a number of considerations can be relied upon in determining whether the procedural bar of Fisher v. Dover supports summary dismissal of an application. The Revised Project incorporates material changes in number of units and architectural designs. Accordingly, the ZBA must consider the application on its merits.

IV. RELIEF REQUIRED

The Revised Project proposes a single structure, and continues to meet the density (15,000 sf per unit), lot size, frontage, setback, building/lot coverage, open space and height requirements of PZO sec 10.521, Table of Density Standards. (**Exhibits A,B**). A single variance is required:

- 1) **PZO §10.440 Table of Uses** – to permit a multifamily dwelling unit where multifamily dwelling units are prohibited.

The intent of the SRB District is to provide dwellings at “low to medium densities (approximately 1-3 dwellings per acre)” (1 unit per .33 acre/14,520 s.f.). The minimum lot size and lot size per dwelling unit in the SRB District is 15,000 s.f. As compared to the SRB District, the Property is four times the size of the minimum lot and well exceeds the 100 ft. minimum frontage.

The Property is across the street from the Garden Apartment/Mobile Home (“GA/MH”) District with Sagamore Court Apartment Complex and just north of the Sagamore Court Apartments is the General Residence A (“GRA”) District. (**Exhibit H, I**). Also across the Street is the Single Residence A (“SRA”) District with the Tidewatch Condominium development and a recently approved development of 4 single family homes on the 1.95 acre Luster King parcel. Traveling south toward Sagamore Creek, one passes a three unit condominium at 792 Sagamore Avenue (a 0.279 acre lot) and then the Waterfront Business District, which contains a mix of residential and business uses. (**Exhibit H, I**).

While the SRB district envisions primarily single-family dwellings, the three unit proposal on 1.44 acres at (62,726 s.f.) equals one (1) unit per .46 acre/20,918 s.f. or 2.13 units/acre thus meets the underlying purpose of the SRB district to provide dwellings “at low to medium densities (approximately 1 to 3 dwellings per acre).” (1 unit per .33 acre/14,520 sf). The intersection of the various districts with differing lot size and density requirements also creates a transitional area, allowing a multi-unit structure to fit in. Specifically, the Sagamore Court Apartment Complex contains 144 units on 15.01 acres. The number of units is more than double the 60 units the GA/MH Zone normally permits in an area of that size. The result is a higher density of 1 unit per .10 acre/4,541 s.f. (9.6 units per acre) in a district intending garden apartments “at moderate densities (up to 4 dwelling units per acre)” or a maximum of 1 dwelling unit per .25 acre/10,890 s.f.. Similarly, Tidewatch Condominium Complex contains 117 units clustered on a 53 acre lot in the Single Residence A (“SRA”) District, which requires 1 dwelling unit per .43 acre/43,560 sf. Tidewatch’s density is also more than double the 53 units the SRA District permits in an area of that size. Again, the result is a higher density of 1 unit per .46 acre/19,952 s.f. or 2.18 units per acre in a district intending “low to medium densities (approximately 1-3 dwellings per acre)” or a maximum of 1 unit per .33 acre/14,520 s.f.). For these reasons a density-compliant three unit structure matches the surrounding area.

Additionally, while there are a couple relatively large lots immediately abutting the subject, there are also many homes on small lots heading south in the area of Cliff Road and north in the area of Verdun Avenue. (**Exhibit H, I**). Considering the overall densities within approximately 2/10 of a mile north or south of the subject, 3 units on a 62,754 s.f. lot (20,918 s.f./unit) compares favorably. Consider as well that the subject lot is large enough for a city street with a cul-de-sac that could permit up to three units, but which would significantly increase pavement and result in the loss of the significant proposed wooded area to the lot’s rear, contrary to the express wishes of abutting lot owners. (**EXHIBIT J**). The Revised Project significantly increases the buffer to the Walker Bungalow abutters, retains the appearance of a single-family home from the street, and reduces traffic and paving compared to the Initial Project.

V. VARIANCE REQUIREMENTS

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

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

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

1. The use of land, buildings and structures for business, industrial, residential and other purposes – The existing 60+ year old home, comparatively close to the lot line, with extensive pavement, will be removed in favor of a single structure evoking a New England farmstead. Use of this relatively large lot for three units, in an aesthetically pleasing non-complex-like single structure and compatible with the surrounding area is a reasonable use of the land.
2. The intensity of land use, including lot sizes, building coverage, building height and bulk, yards and open space – The Project complies with all dimensional requirements, (See Sec. III supra), needing only relief for a multifamily unit where multifamily homes are not permitted. The Revised Project is far less impactful than a standard three (3) lot subdivision which would significantly increase pavement and lose much rear wooded area.
3. The design of facilities for vehicular access, circulation, parking and loading – The existing shallow driveway and wide curb cut makes it difficult to turn around to exit the Property. This curb cut will be narrowed and the driveway lengthened, eliminating vehicles backing up into the public right of way. Each unit's two-car garage parking, guest spaces, and longer driveway provides adequate turnaround for homeowners and emergency vehicles. **(Exhibit A)**.
4. The impacts on properties of outdoor lighting, noise, vibration, stormwater runoff and flooding – The Revised Project increases the wooded buffer by over 100 ft. to 283 ft. behind the proposed multifamily structure. Vegetative buffers and/or fences are proposed along the north and south boundaries. The rear of the lot will be left heavily wooded. The proposed 80.6% open space and 9.5% building coverage where 40% and 20% are required respectively, further demonstrate the reasonableness of the reduced scope proposal, particularly when compared to a full-on subdivision.
5. The preservation and enhancement of the visual environment – The Revised Project significantly improves upon existing conditions and the Initial Project by reducing the wide paved driveway, and proposing a single structure representative of farmstead with

barn behind, proposed landscaping/fences in the side setbacks, and leaving far more of the wooded lot than previously proposed. As revised, these features clearly preserve and enhance the visual environment.

6. The preservation of historic districts buildings and structures of historic or architectural interest – The Property and the existing structure to be removed is not in the historic district and is of no known historic or architectural interest.
7. The protection of natural resources, including groundwater, surface water, wetlands, wildlife habitat and air quality – The property will be served by recently upgraded municipal water and sewer. The proposed landscaping and preserved wooded area to the rear (more than half the lot) will protect natural resources.

Whether a variance "in a marked degree conflicts with the ordinance such that it violates the ordinance's basic zoning objectives." Malachy Glen, supra, the New Hampshire Supreme Court also held:

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

The Property is located on busy Sagamore Avenue. While many homes nearby are single-family, a number nearby are on relatively small lots, including a three unit structure near Cliff Road on a significantly smaller lot. The Property's location directly across the street from condominium and apartment complexes demonstrates that a tastefully designed 3-unit multifamily structure on this relatively large lot will not alter the essential character of the locality. The pavement will be significantly reduced in width, with three fully building code-compliant units, thus protecting, not threatening the public health safety or welfare.

3. Substantial justice will be done by granting the variance.

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

"The right to use and enjoy one's property is a fundamental right protected by both the State and Federal Constitutions." N.H. CONST. pt. I, arts. 2, 12; U.S. CONST. amends. V, XIV; Town of Chesterfield v. Brooks, 126 N.H. 64 (1985) at 68. Part I, Article 12 of the New Hampshire Constitution provides in part that "no part of a man's property shall be taken from

him, or applied to public uses, without his own consent, or that of the representative body of the people.” Thus, our State Constitutional protections limit the police power of the State and its municipalities in their regulation of the use of property. L. Grossman & Sons, Inc. v. Town of Gilford, 118 N.H. 480, 482 (1978). “Property” in the constitutional sense has been interpreted to mean not the tangible property itself, *but rather the right to possess, use, enjoy and dispose of it*. Burrows v. City of Keene, 121 N.H. 590, 597 (1981) (emphasis added). Sagamore is constitutionally entitled to the use of the lot as it sees fit subject only to the effect of the lot size and density requirements.

The Revised Project removes a dated single-family home with a wide curb cut at Sagamore Avenue in favor of a much narrower curb cut and fewer units in a single structure inspired by the New England Farmstead. The Revised Project also preserves a significantly greater wooded buffer is benefitting Walker Bungalow abutters and the abutters on either side and still includes wooded fence and landscaping. To members of the public, the Revised Project appears simply as a larger single family home. As such, there will be no benefit to the general public from denial and no harm to the general public by granting the variances. Conversely, denial of the variance deprives Mouflouze the opportunity for reasonable and tasteful redevelopment of the property while simultaneously denying three purchasers, the opportunity to live near downtown Portsmouth at a price less than new single-family homes on this lot. Accordingly, substantial justice is done by granting the variances.

3. Granting the variances will not diminish surrounding property values

Existing values of Sagamore Avenue properties are a function of their location on a busier street and in this neighborhood, their proximity to the densely developed Sagamore Court Apartments and Tidewatch Condominiums as well as other single-family homes on lots ranging from small to large. The value of nearby Walker Bungalow Road properties reflects the quieter street and relative privacy afforded by the wooded buffers associated with the larger Sagamore Road lots to the west. From the street, the Revised Project will appear as a single family home with a standard driveway. Compared to the Initial Project (**Exhibit C**) and a fully conforming subdivision (**Exhibit I**), the single structure and additional preserved wooded area (**Exhibit A**) is the least impactful to the surrounding neighborhood.

The White Property Value Impact report (**Exhibit E**) opined that granting the variances to permit the Initial Project would not diminish the value of surrounding property values. It

follows that the more aesthetically pleasing single structure with fewer units and a substantially larger wooded buffer will also not diminish surrounding property values.

4. Denial of the variances results in an unnecessary hardship

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

The Property is four times the SRB lot size and its frontage well exceeds SRB frontage requirements. Also, the depth of the Property is about three times its width, so the oversized lot is long and narrow. These factors alone create special conditions. Additionally, while zoned SRB, the Property is located at the intersection of various zones with single family homes on disparate lots on one side of the street and a densely developed apartment complex and condominium development on the other side. See Walker v. City of Manchester, 107 N.H. 382, 386 (1966) (hardship may be found where similar nonconforming uses exist within the neighborhood and the proposed use will have no adverse effect on the neighborhood). In conjunction with the Property's size and shape, the eclectic surrounding area also supports a finding of special conditions.

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

Use requirements are implemented to keep similar uses together and to promote compatibility between uses as transition points. The Revised Project offers a multifamily use in a more compatible single structure akin to a single family home and barn, sited in a residential zone among other single family homes on varying lot sizes and across the street from a densely developed apartment complex and condominium development. The Revised Project maintains a significantly larger wooded buffer behind the structure while existing tree screening landscaping and wooden fence preserve privacy for neighbors. These factors taken together demonstrate the Revised Project's compatibility with abutting lots and zones. Accordingly, no fair and substantial relationship exists between the purposes of the Ordinance requirements and its specific application in this instance.

c. The proposed use is reasonable.

If the use is permitted, it is deemed reasonable. Vigeant v. Hudson, 151 NH 747 (2005). While multifamily structures are not permitted in the SRB District, the Revised Project proposes a dimensionally compliant single structure with density-compliant three units. The structure will

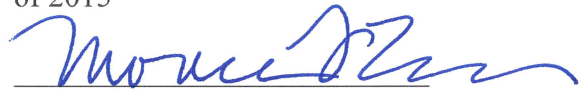
look like a single family home and barn, preserve significantly more wooded area than the Initial Project or a three lot subdivision. Accordingly, the proposed use is reasonable and denial creates an unnecessary hardship to Mouflouze.

VI. CONCLUSION

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

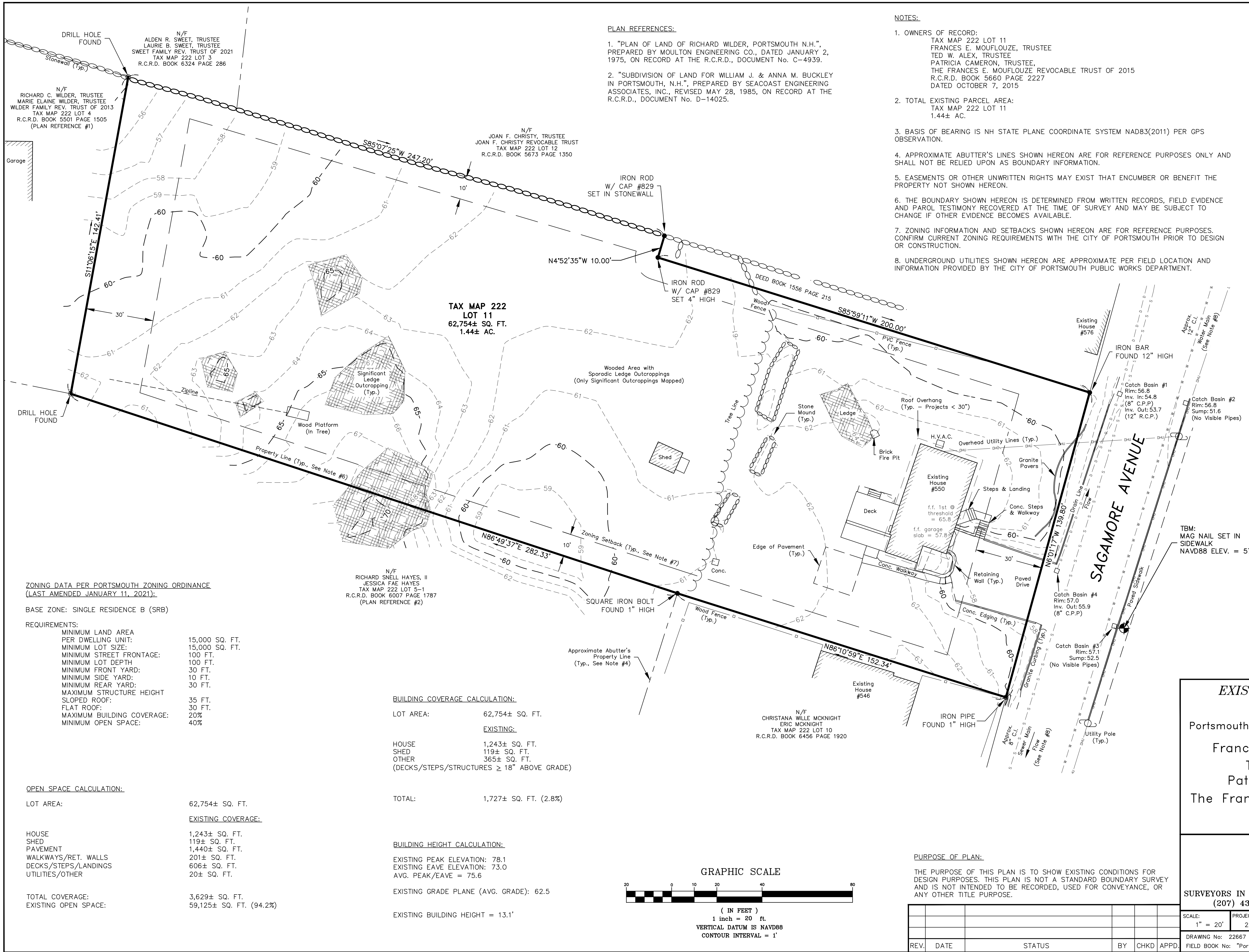
Respectfully submitted,
The Frances E. Mouflouze Revocable Trust
of 2015

By:



R. Timothy Phoenix, Esq.

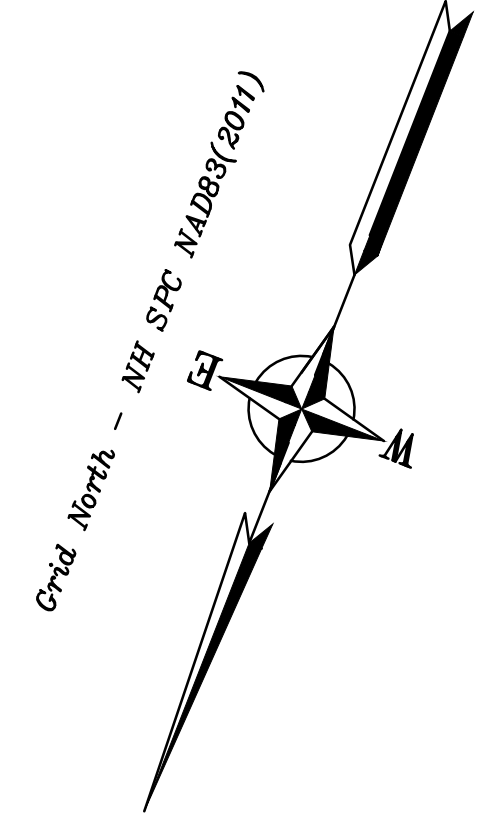
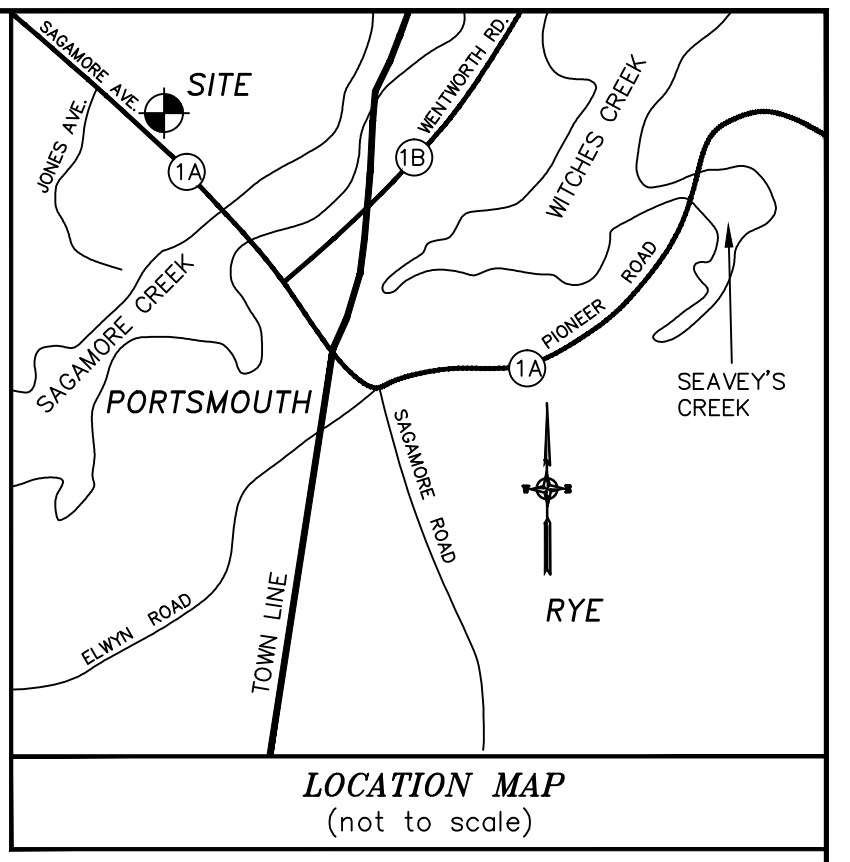
Monica F. Kieser, Esq.



PLAN REFERENCES:

- "PLAN OF LAND OF RICHARD WILDER, PORTSMOUTH N.H.", PREPARED BY MOULTON ENGINEERING CO., DATED JANUARY 2, 1975, ON RECORD AT THE R.C.R.D., DOCUMENT No. C-4939.
- "SUBDIVISION OF LAND FOR WILLIAM J. & ANNA M. BUCKLEY IN PORTSMOUTH, N.H.", PREPARED BY SEACOAST ENGINEERING ASSOCIATES, INC., REVISED MAY 28, 1985, ON RECORD AT THE R.C.R.D., DOCUMENT No. D-14025.

- NOTES:**
- OWNERS OF RECORD:
TAX MAP 222 LOT 11
FRANCES E. MOUFLOUZE, TRUSTEE
TED W. ALEX, TRUSTEE
PATRICIA CAMERON, TRUSTEE,
THE FRANCES E. MOUFLOUZE REVOCABLE TRUST OF 2015
R.C.R.D. BOOK 5660 PAGE 2227
DATED OCTOBER 7, 2015
 - TOTAL EXISTING PARCEL AREA:
TAX MAP 222 LOT 11
1.44± AC.
 - BASIS OF BEARING IS NH STATE PLANE COORDINATE SYSTEM NAD83(2011) PER GPS OBSERVATION.
 - APPROXIMATE ABUTTER'S LINES SHOWN HEREON ARE FOR REFERENCE PURPOSES ONLY AND SHALL NOT BE RELIED UPON AS BOUNDARY INFORMATION.
 - EASEMENTS OR OTHER UNWRITTEN RIGHTS MAY EXIST THAT ENCUMBER OR BENEFIT THE PROPERTY NOT SHOWN HEREON.
 - THE BOUNDARY SHOWN HEREON IS DETERMINED FROM WRITTEN RECORDS, FIELD EVIDENCE AND PAROL TESTIMONY RECOVERED AT THE TIME OF SURVEY AND MAY BE SUBJECT TO CHANGE IF OTHER EVIDENCE BECOMES AVAILABLE.
 - ZONING INFORMATION AND SETBACKS SHOWN HEREON ARE FOR REFERENCE PURPOSES. CONFIRM CURRENT ZONING REQUIREMENTS WITH THE CITY OF PORTSMOUTH PRIOR TO DESIGN OR CONSTRUCTION.
 - UNDERGROUND UTILITIES SHOWN HEREON ARE APPROXIMATE PER FIELD LOCATION AND INFORMATION PROVIDED BY THE CITY OF PORTSMOUTH PUBLIC WORKS DEPARTMENT.



ZONING DATA PER PORTSMOUTH ZONING ORDINANCE (LAST AMENDED JANUARY 11, 2021):

BASE ZONE: SINGLE RESIDENCE B (SRB)

REQUIREMENTS:

MINIMUM LAND AREA PER DWELLING UNIT:	15,000 SQ. FT.
MINIMUM LOT SIZE:	15,000 SQ. FT.
MINIMUM STREET FRONTAGE:	100 FT.
MINIMUM LOT DEPTH:	100 FT.
MINIMUM FRONT YARD:	30 FT.
MINIMUM SIDE YARD:	10 FT.
MINIMUM REAR YARD:	30 FT.
MAXIMUM STRUCTURE HEIGHT:	35 FT.
SLOPED ROOF:	30 FT.
FLAT ROOF:	30 FT.
MAXIMUM BUILDING COVERAGE:	20%
MINIMUM OPEN SPACE:	40%

OPEN SPACE CALCULATION:

LOT AREA:	62,754± SQ. FT.
EXISTING COVERAGE:	
HOUSE	1,243± SQ. FT.
SHED	119± SQ. FT.
PAVEMENT	1,440± SQ. FT.
WALKWAYS/RET. WALLS	201± SQ. FT.
DECKS/STEPS/LANDINGS	606± SQ. FT.
UTILITIES/OTHER	20± SQ. FT.
TOTAL COVERAGE:	3,629± SQ. FT.
EXISTING OPEN SPACE:	59,125± SQ. FT. (94.2%)

BUILDING COVERAGE CALCULATION:

LOT AREA:	62,754± SQ. FT.
EXISTING:	
HOUSE	1,243± SQ. FT.
SHED	119± SQ. FT.
OTHER	365± SQ. FT.
(DECKS/STEPS/STRUCTURES ≥ 18" ABOVE GRADE)	
TOTAL:	1,727± SQ. FT. (2.8%)

BUILDING HEIGHT CALCULATION:

EXISTING PEAK ELEVATION: 78.1
EXISTING EAVE ELEVATION: 73.0
AVG. PEAK/EAVE = 75.6

EXISTING GRADE PLANE (AVG. GRADE): 62.5

EXISTING BUILDING HEIGHT = 13.1'

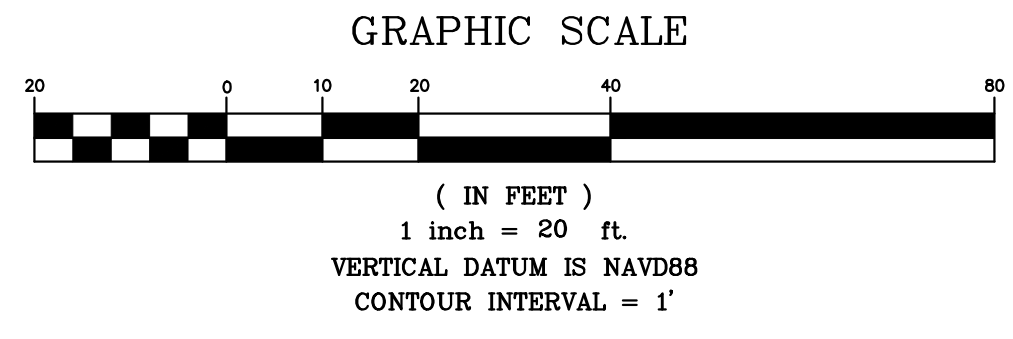


EXHIBIT A

EXISTING CONDITIONS PLAN
FOR PROPERTY AT
550 Sagamore Avenue
Portsmouth, Rockingham Co., New Hampshire

OWNED BY
Frances E. Mouflouze, Trustee
Ted W. Alex, Trustee
Patricia Cameron, Trustee
The Frances E. Mouflouze Revocable Trust of 2015
c/o Ted W. Alex
104 Locke Road, Rye, NH 03870

North
W EASTERLY
SURVEYING, Inc.
SURVEYORS IN N.H. & MAINE 191 STATE ROAD, SUITE #1
(207) 439-6333 KITTERY, MAINE 03904

PURPOSE OF PLAN:

THE PURPOSE OF THIS PLAN IS TO SHOW EXISTING CONDITIONS FOR DESIGN PURPOSES. THIS PLAN IS NOT A STANDARD BOUNDARY SURVEY AND IS NOT INTENDED TO BE RECORDED, USED FOR CONVEYANCE, OR ANY OTHER TITLE PURPOSE.

REV.	DATE	STATUS	BY	CHKD	APPD.

SCALE:	PROJECT NO.	DATE:	SHEET:	DRAWN BY:	CHECKED BY:
1" = 20'	22667	1/9/2023	1 OF 1	A.P.M./J.D.S.	P.L.A.
DRAWING No: 22667 PROP SURVEY NHSPC					
FIELD BOOK No: "Portsmouth #18"					
Tax Map 222 Lot 11					

SITE NOTES

- DESIGN INTENT – THIS PLAN IS INTENDED TO DEPICT A SET OF APPROVAL DRAWINGS FOR ONE (1) MULTI-FAMILY RESIDENTIAL UNIT.
- APPROXIMATE LOT AREA: 1.44 AC.± (TAX MAP 222, LOT 11)
- ZONE: SINGLE RESIDENCE B (SRB)
- DIMENSIONAL REQUIREMENTS:

	EXISTING	PROPOSED
MIN. LOT AREA:	15,000 S.F.	±62,754 S.F.
MIN. LAND AREA PER DWELLING UNIT:	15,000 S.F.	±62,754 S.F.
MIN. STREET FRONTAGE:	100' ±139.8'	±20,918 S.F.
MIN. LOT DEPTH:	100' ±434'	±139.8'
FRONT SETBACK:	30' (19' *) ±33'	±434'
		±31'
SIDE SETBACK:	10' (RIGHT) ±40'	±11'
	10' (LEFT) ±45'	±65'
REAR SETBACK:	30' ±300'+	±283'
MAX. BUILDING HEIGHT:	35' <35'	<35'
MAX. BLDG. COVERAGE:	20% ± 5.8%	± 9.0%
MIN. OPEN SPACE:	40% ±94.2%	±80.6%

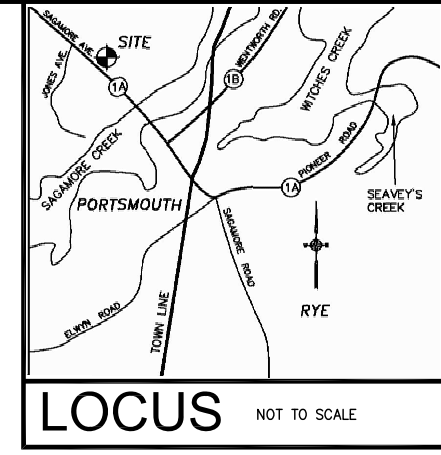
* AVERAGE OF ADJACENT BUILDINGS = 38' + 1' = 39'/2 = 19.5', USE 19'

PLAN REFERENCES:

- "EXISTING CONDITIONS PLAN FOR PROPERTY AT 550 SAGAMORE AVENUE, PORTSMOUTH, NH", BY EASTERLY SURVEYING DATED 1/9/23.
- "STANDARD PROPERTY SURVEY FOR PROPERTY LOCATED AT 550 SAGAMORE AVENUE", BY EASTERLY SURVEYING, DATED 1/9/23.
- PORTSMOUTH G.I.S. DATA (MAP GEO), AUGUST 16, 2023.

- PARKING REQUIREMENTS:**
RESIDENCES: 1.3 SPACES/UNIT – OFF-STREET PARKING
1.3 SPACES/UNIT x 3 UNITS = 3.9 SPACES
TOTAL PARKING REQUIRED = 4 SPACES
TOTAL PARKING PROVIDED = 12 SPACES (6 STACKED VISITOR SPACES PROVIDED)
- THERE ARE NO WETLANDS ON THE PARCEL.
- OVERALL AREA OF DISTURBANCE UNDER 100,000 S.F., NHDES ALTERATION OF TERRAIN PERMIT NOT REQUIRED.
- AREA OF DISTURBANCE IS APPROXIMATELY 26,000 S.F. THEREFORE UNDER 43,560 SF. COVERAGE UNDER EPA NPDES PHASE II CONSTRUCTION GENERAL PERMIT NOT REQUIRED.
- BUILDING AREA SHOWN IS BASED ON FOOTPRINT MEASURED TO THE EDGE OF FOUNDATIONS AND/OR SLABS. ACTUAL INTERIOR SPACE WILL DIFFER.
- THE FOLLOWING VARIANCES FROM THE PORTSMOUTH ZONING ORDINANCE ARE REQUIRED:
SECTION 10.440 (1.50) – TO ALLOW A MULTI-FAMILY DWELLING WHERE IT IS NOT PERMITTED.
- RESERVED
- SNOW SHALL BE STORED AT THE EDGE OF PAVEMENT, IN AREAS SHOWN HEREON, AND/OR TRUCKED OFF SITE AS APPROPRIATE.
- PAVEMENT MARKINGS SHALL BE CONSTRUCTED USING WHITE, YELLOW OR BLUE TRAFFIC PAINT (WHERE SPECIFIED) MEETING THE REQUIREMENTS OF AASHTO M248, TYPE F OR EQUAL. PAINTED ISLANDS AND LOADING ZONES SHALL BE 4"-WIDE DIAGONAL WHITE LINES 3'-0" O.C. BORDERED BY 4"-WIDE WHITE LINES. PARKING STALLS SHALL BE SEPARATED BY 4"-WIDE WHITE LINES. SEE DETAILS FOR HANDICAP SYMBOLS, SIGNS AND SIGN DETAILS.

- PAVEMENT MARKINGS AND SIGNS SHALL CONFORM TO THE REQUIREMENTS OF THE "MANUAL ON UNIFORM TRAFFIC DEVICES," "STANDARD ALPHABETS FOR HIGHWAY SIGNS AND PAVEMENT MARKINGS" AND THE AMERICANS WITH DISABILITIES ACT (ADA), LATEST EDITIONS.
- ALL CONSTRUCTION SHALL MEET THE MINIMUM STANDARDS OF THE CITY OF PORTSMOUTH & NHDOT'S STANDARD SPECIFICATION FOR ROAD & BRIDGE CONSTRUCTION, LATEST EDITIONS. THE MORE STRINGENT SPECIFICATION SHALL GOVERN.
- CLEAN AND COAT VERTICAL FACE OF EXISTING PAVEMENT AT SAWCUT LINES WITH RS-1 IMMEDIATELY PRIOR TO PLACING NEW BITUMINOUS CONCRETE.
- ALL BONDS AND FEES SHALL BE PAID/POSTED PRIOR TO INITIATING CONSTRUCTION.
- THE CONTRACTOR SHALL VERIFY ALL BENCHMARKS AND TOPOGRAPHY IN THE FIELD PRIOR TO CONSTRUCTION.
- UNLESS OTHERWISE NOTED, ALL NEW CURBING SHALL BE VERTICAL GRANITE WITH A MINIMUM RADIUS OF 4'.
- THE CONTRACTOR SHALL VERIFY ALL BUILDING DIMENSIONS WITH THE ARCHITECTURAL AND STRUCTURAL PLANS PRIOR TO CONSTRUCTION. ALL DISCREPANCIES SHALL BE IMMEDIATELY BROUGHT TO THE ATTENTION OF THE ARCHITECT AND ENGINEER FOR RESOLUTION.
- DWELLING UNITS TO BE SERVED WITH MUNICIPAL WATER & SEWER.



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

NOT FOR CONSTRUCTION
 ISSUED FOR:
BOARD OF ADJUSTMENT REVIEW
 ISSUE DATE:
JANUARY 30, 2024

REVISIONS	NO.	DESCRIPTION	BY	DATE
0	INITIAL SUBMISSION		EDW	01/30/24

DRAWN BY: _____ RLH
 APPROVED BY: _____ EDW
 DRAWING FILE: 5385_3_UNITS.DWG

SCALE:
 22" x 34" - 1" = 20'
 11" x 17" - 1" = 40'

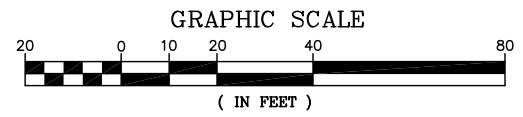
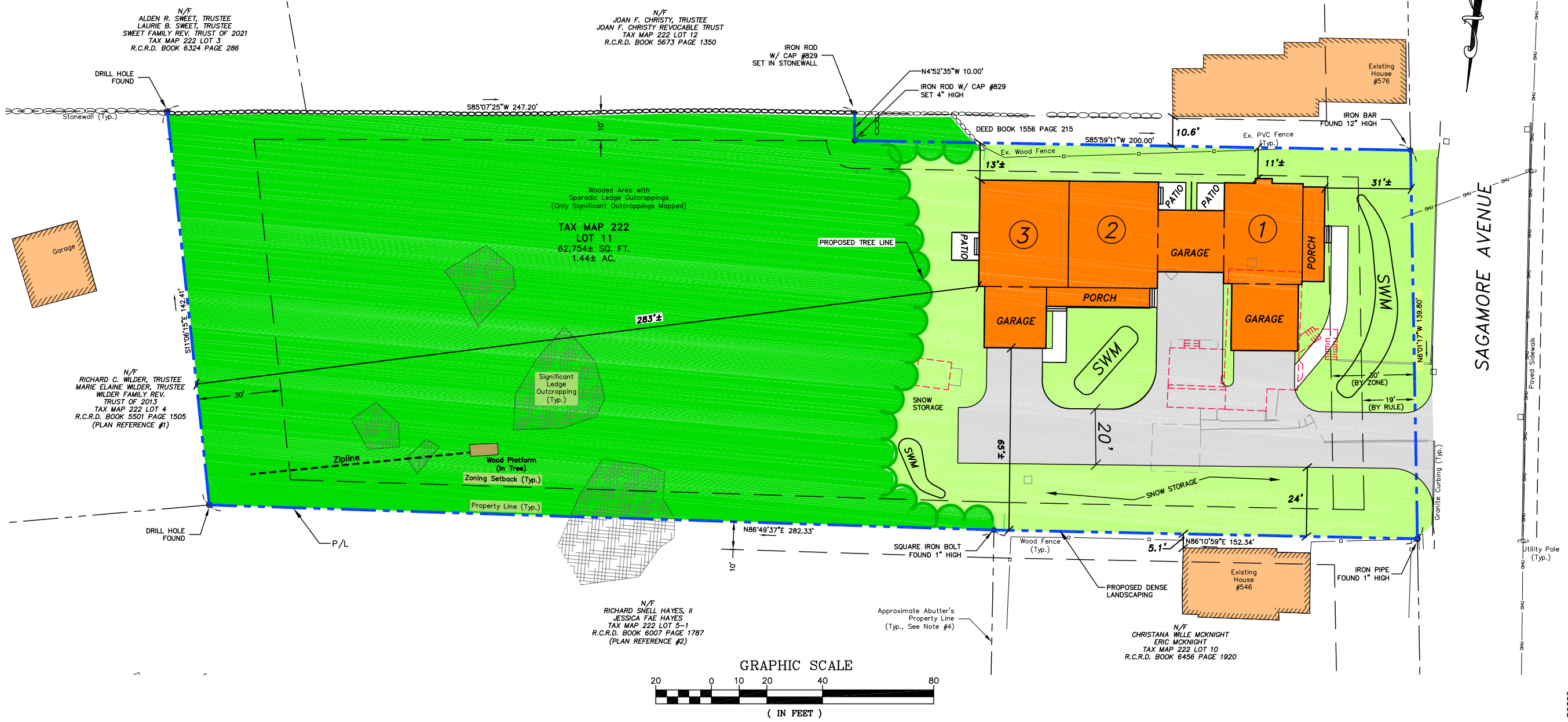
OWNER:
 FRANCES E. MOUFLOUZE,
 TED W. ALEX &
 PATRICIA CAMERON, TRUSTEES
 THE FRANCES E. MOUFLOUZE
 REVOCABLE TRUST OF 2015
 936 SOUTH STREET #1
 PORTSMOUTH, NH 03801

APPLICANT:
 FRANCES E. MOUFLOUZE,
 TED W. ALEX &
 PATRICIA CAMERON, TRUSTEES
 THE FRANCES E. MOUFLOUZE
 REVOCABLE TRUST OF 2015
 936 SOUTH STREET #1
 PORTSMOUTH, NH 03801

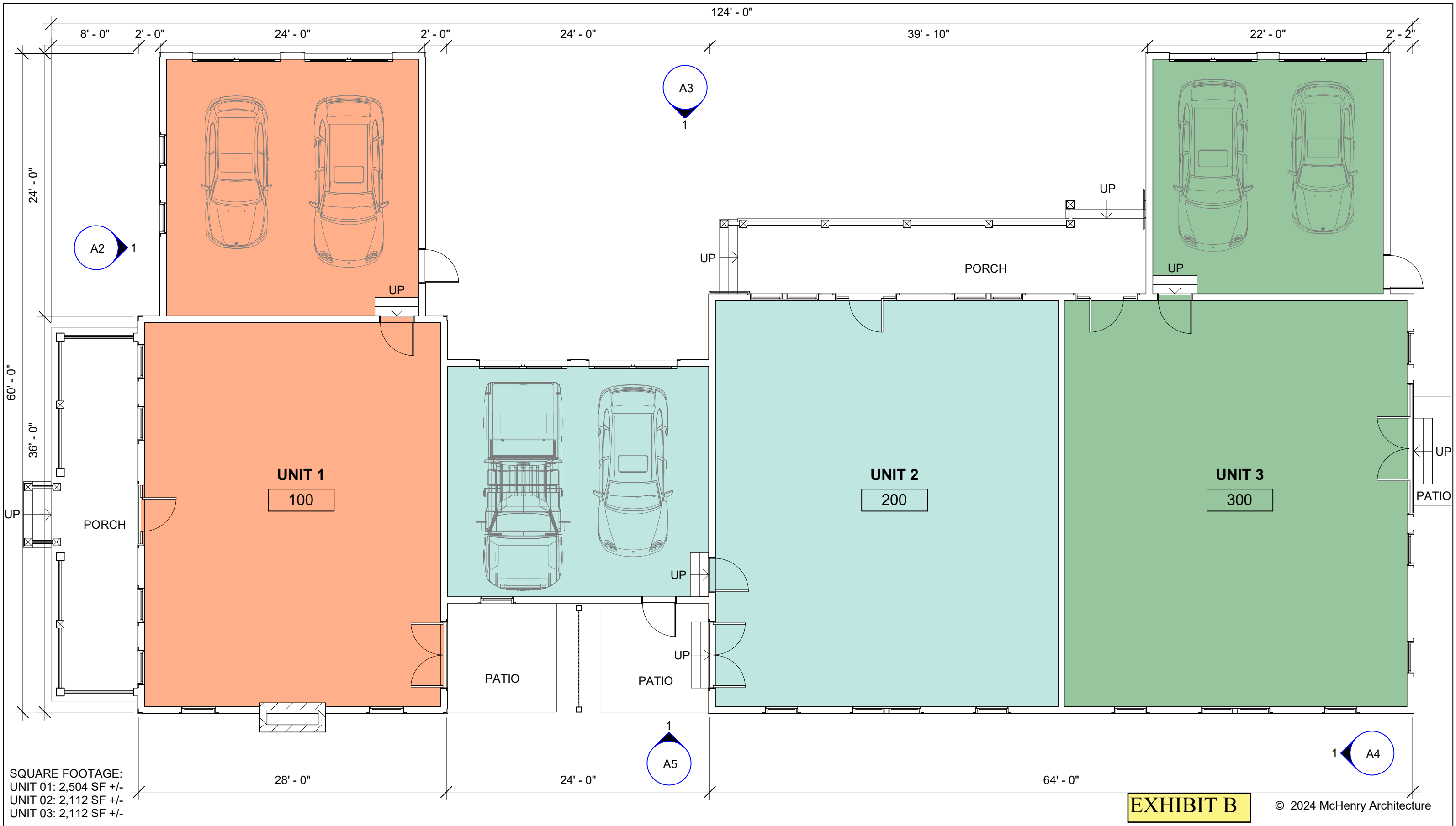
PROJECT:
RESIDENTIAL DEVELOPMENT
 550 SAGAMORE AVENUE
 PORTSMOUTH, NH

TITLE:
BOARD OF ADJUSTMENT SITE PLAN (RESIDENTIAL DWELLING UNITS)

SHEET NUMBER:
1 of 2



P5385



550 SAGAMORE AVE.
 PORTSMOUTH, NH 03801

FIRST FLOOR PLAN
 ZONING BOARD OF ADJUSTMENT - FEBRUARY 2024

McHENRY ARCHITECTURE
 4 Market Street
 Portsmouth, New Hampshire

A1

01/24/2024
 McHA: RD/MG
 Scale: 1/8" = 1'-0"



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550 SAGAMORE AVE.

PORTSMOUTH, NH 03801

WEST ELEVATION (FRONT)

ZONING BOARD OF ADJUSTMENT - FEBRUARY 2024

McHENRY ARCHITECTURE

4 Market Street

Portsmouth, New Hampshire

A2

01/24/2024

McHA: RD/MG

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



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550 SAGAMORE AVE.

PORTSMOUTH, NH 03801

NORTH ELEVATION

ZONING BOARD OF ADJUSTMENT - FEBRUARY 2024

McHENRY ARCHITECTURE

4 Market Street

Portsmouth, New Hampshire

A3

01/24/2024

McHA: RD/MG

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



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550 SAGAMORE AVE.

PORTSMOUTH, NH 03801

EAST ELEVATION

ZONING BOARD OF ADJUSTMENT - FEBRUARY 2024

McHENRY ARCHITECTURE

4 Market Street

Portsmouth, New Hampshire

A4

01/24/2024

McHA: RD/MG

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



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550 SAGAMORE AVE.

PORTSMOUTH, NH 03801

SOUTH ELEVATION

ZONING BOARD OF ADJUSTMENT - FEBRUARY 2024

McHENRY ARCHITECTURE

4 Market Street

Portsmouth, New Hampshire

A5

01/24/2024

McHA: RD/MG

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



© 2024 McHenry Architecture

550 SAGAMORE AVE.

PORTSMOUTH, NH 03801

RENDERING FROM SAGAMORE AVE.

ZONING BOARD OF ADJUSTMENT - FEBRUARY 2024

McHENRY ARCHITECTURE

4 Market Street
Portsmouth, New Hampshire

A6

01/24/2024

McHA: EW / RD

NOT TO SCALE



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550 SAGAMORE AVE.

PORTSMOUTH, NH 03801

RENDERING FROM SAGAMORE AVE.

ZONING BOARD OF ADJUSTMENT - FEBRUARY 2024

McHENRY ARCHITECTURE

4 Market Street

Portsmouth, New Hampshire

A7

01/24/2024

McHA: EW / RD

NOT TO SCALE

SITE NOTES

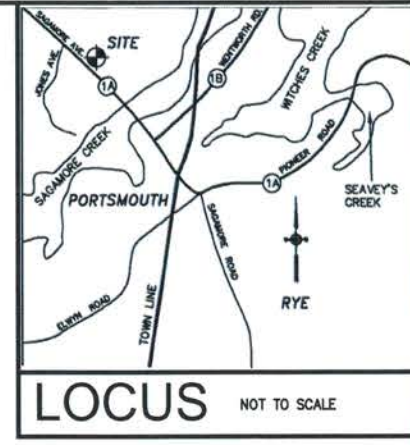
- DESIGN INTENT - THIS PLAN IS INTENDED TO DEPICT A SET OF APPROVAL DRAWINGS FOR TWO (2) RESIDENTIAL DUPLEX UNITS.
- APPROXIMATE LOT AREA: 1.44 AC.± (TAX MAP 222, LOT 11)
- ZONE: SINGLE RESIDENCE B (SRB)
- DIMENSIONAL REQUIREMENTS:

	EXISTING	PROPOSED
MIN. LOT AREA:	15,000 S.F.	±62,754 S.F.
MIN. LAND AREA PER DWELLING UNIT:	15,000 S.F.	±62,754 S.F.
MIN. STREET FRONTAGE:	100'	±139.8'
MIN. LOT DEPTH:	100'	±434'
FRONT SETBACK:	30'	±33'
		±48'
SIDE SETBACK:	10' (RIGHT)	±40'
	10' (LEFT)	±45'
REAR SETBACK:	30'	±300'+
MAX. BUILDING HEIGHT:	35'	±13.1'
MAX. BLDG. COVERAGE:	20%	±5.6%
MIN. OPEN SPACE:	40%	±94.2%
		±77.0%

PLAN REFERENCES:

- EXISTING CONDITIONS PLAN FOR PROPERTY AT 550 SAGAMORE AVENUE, PORTSMOUTH, NH, BY EASTERLY SURVEYING DATED 1/9/23.
- "STANDARD PROPERTY SURVEY FOR PROPERTY LOCATED AT 550 SAGAMORE AVENUE", BY EASTERLY SURVEYING, DATED 1/9/23.
- PORTSMOUTH G.I.S. DATA (MAP GEO), AUGUST 16, 2023.

- PARKING REQUIREMENTS:**
 DUPLEX RESIDENCES: 1.3 SPACES/UNIT - OFF-STREET PARKING
 1.3 SPACES/UNIT x 4 UNITS = 5.2 SPACES
 TOTAL PARKING REQUIRED = 6 SPACES
 TOTAL PARKING PROVIDED = 16 SPACES (8 STACKED VISITOR SPACES PROVIDED)
- THERE ARE NO WETLANDS ON THE PARCEL.
- OVERALL AREA OF DISTURBANCE UNDER 100,000 S.F., NHDES ALTERATION OF TERRAIN PERMIT NOT REQUIRED.
- AREA OF DISTURBANCE IS APPROXIMATELY 36,000 S.F. THEREFORE UNDER 43,560 SF. COVERAGE UNDER EPA NPDES PHASE II CONSTRUCTION GENERAL PERMIT NOT REQUIRED.
- BUILDING AREA SHOWN IS BASED ON FOOTPRINT MEASURED TO THE EDGE OF FOUNDATIONS AND/OR SLABS. ACTUAL INTERIOR SPACE WILL DIFFER.
- THE FOLLOWING VARIANCES FROM THE PORTSMOUTH ZONING ORDINANCE ARE REQUIRED:
 SECTION 10.440 - TO ALLOW TWO (2) 2-FAMILY DWELLINGS WHERE THEY ARE NOT PERMITTED.
- RESERVED
- SNOW SHALL BE STORED AT THE EDGE OF PAVEMENT, IN AREAS SHOWN HEREON, AND/OR TRUCKED OFF SITE AS APPROPRIATE.
- PAVEMENT MARKINGS SHALL BE CONSTRUCTED USING WHITE, YELLOW OR BLUE TRAFFIC PAINT (WHERE SPECIFIED) MEETING THE REQUIREMENTS OF AASHTO M248, TYPE F OR EQUAL. PAINTED ISLANDS AND LOADING ZONES SHALL BE 4"-WIDE DIAGONAL WHITE LINES 3'-0" O.C. BORDERED BY 4"-WIDE WHITE LINES. PARKING STALLS SHALL BE SEPARATED BY 4"-WIDE WHITE LINES. SEE DETAILS FOR HANDICAP SYMBOLS, SIGNS AND SIGN DETAILS.
- PAVEMENT MARKINGS AND SIGNS SHALL CONFORM TO THE REQUIREMENTS OF THE "MANUAL ON UNIFORM TRAFFIC DEVICES," "STANDARD ALPHABETS FOR HIGHWAY SIGNS AND PAVEMENT MARKINGS" AND THE AMERICANS WITH DISABILITIES ACT (ADA), LATEST EDITIONS.
- ALL CONSTRUCTION SHALL MEET THE MINIMUM STANDARDS OF THE CITY OF PORTSMOUTH & NHDOT'S STANDARD SPECIFICATION FOR ROAD & BRIDGE CONSTRUCTION, LATEST EDITIONS. THE MORE STRINGENT SPECIFICATION SHALL GOVERN.
- CLEAN AND COAT VERTICAL FACE OF EXISTING PAVEMENT AT SAWCUT LINES WITH RS-1 IMMEDIATELY PRIOR TO PLACING NEW BITUMINOUS CONCRETE.
- ALL BONDS AND FEES SHALL BE PAID/POSTED PRIOR TO INITIATING CONSTRUCTION.
- THE CONTRACTOR SHALL VERIFY ALL BENCHMARKS AND TOPOGRAPHY IN THE FIELD PRIOR TO CONSTRUCTION.
- UNLESS OTHERWISE NOTED, ALL NEW CURBING SHALL BE VERTICAL GRANITE WITH A MINIMUM RADIUS OF 4'.
- THE CONTRACTOR SHALL VERIFY ALL BUILDING DIMENSIONS WITH THE ARCHITECTURAL AND STRUCTURAL PLANS PRIOR TO CONSTRUCTION. ALL DISCREPANCIES SHALL BE IMMEDIATELY BROUGHT TO THE ATTENTION OF THE ARCHITECT AND ENGINEER FOR RESOLUTION.
- DWELLING UNITS TO BE SERVED WITH MUNICIPAL WATER & SEWER.



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: AUGUST 28, 2023

REVISIONS	NO.	DESCRIPTION	BY	DATE
0	INITIAL SUBMISSION		EDW	08/28/23

EXHIBIT C

DRAWN BY: RLH
 APPROVED BY: EDW
 DRAWING FILE: 5385SUBD.DWG

SCALE:
 22" x 34" - 1" = 20'
 11" x 17" - 1" = 40'

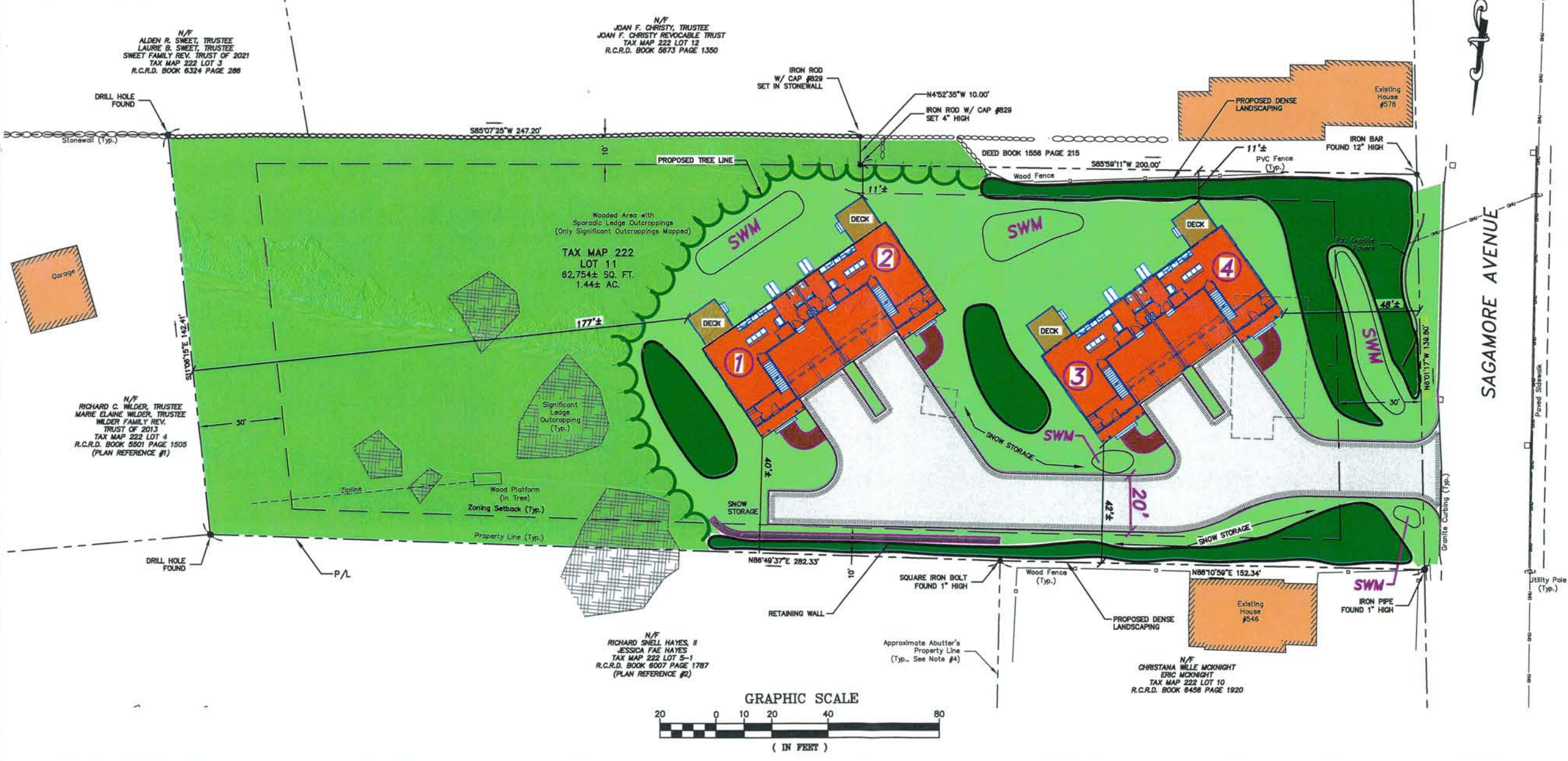
OWNER:
 FRANCES E. MOUFLOUZE,
 TED W. ALEX &
 PATRICIA CAMERON, TRUSTEES
 THE FRANCES E. MOUFLOUZE
 REVOCABLE TRUST OF 2015
 936 SOUTH STREET #1
 PORTSMOUTH, NH 03801

APPLICANT:
 FRANCES E. MOUFLOUZE,
 TED W. ALEX &
 PATRICIA CAMERON, TRUSTEES
 THE FRANCES E. MOUFLOUZE
 REVOCABLE TRUST OF 2015
 936 SOUTH STREET #1
 PORTSMOUTH, NH 03801

PROJECT:
 RESIDENTIAL
 DEVELOPMENT
 550 SAGAMORE AVENUE
 PORTSMOUTH, NH

TITLE:
 BOARD OF
 ADJUSTMENT
 SITE PLAN
 (RESIDENTIAL
 DWELLING UNITS)

SHEET NUMBER:
C - 1



Sweet Peekaboo Duplex

418.224 (8/8/2023)

NOTE: To scale as noted only if printed on 11x17 paper with "no scaling" (do not "Fit").

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603-431-9559



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

Sweet Peekaboo Duplex

418.224 (8/8/2023)

NOTE: To scale as noted only if printed on 11x17 paper with "no scaling" (do not "Fit").

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Art Form Architecture, LLC

603-431-9559



Rear



Left

Elevations

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

Sweet Peekaboo Duplex
418.224 (8/8/2023)

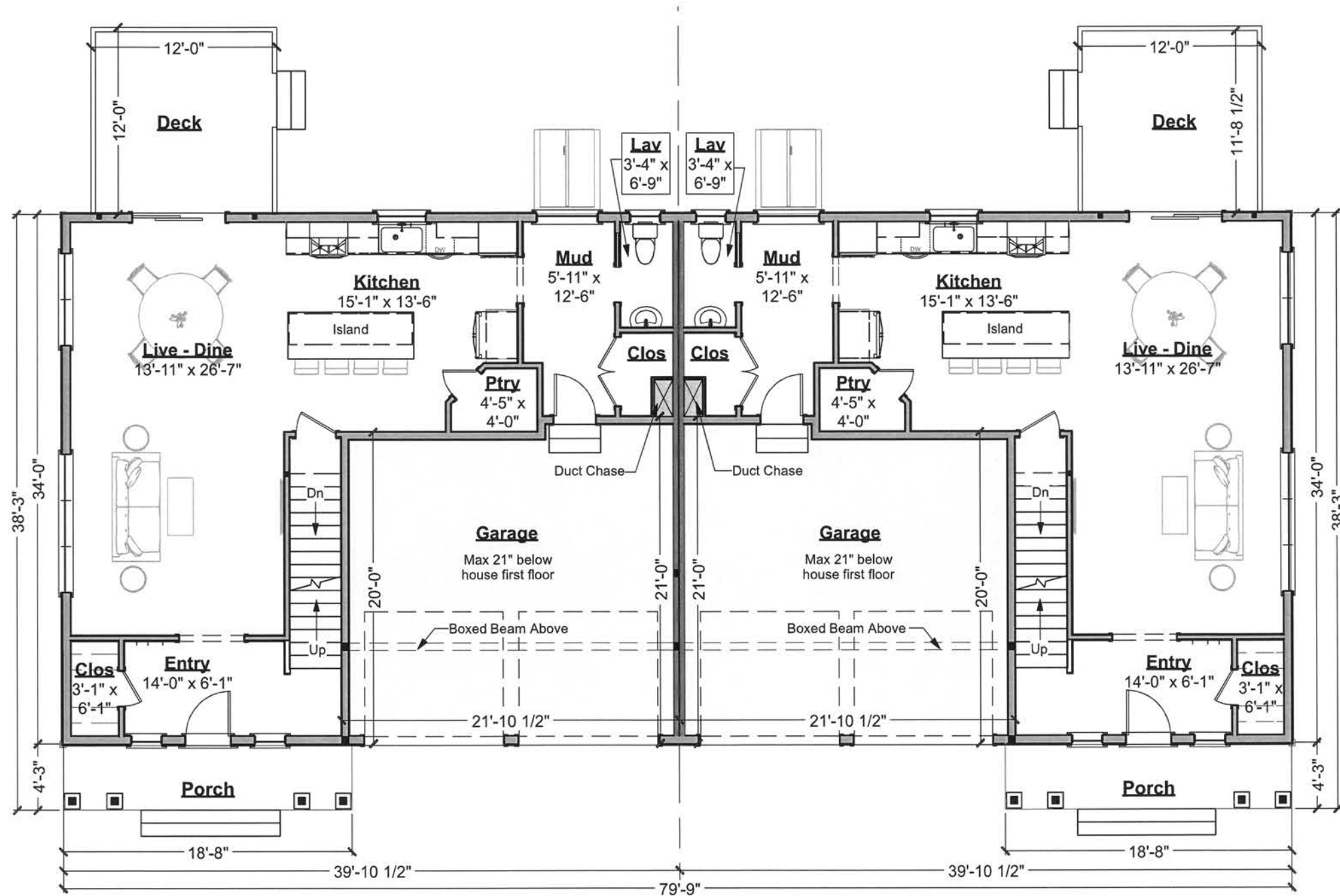
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Living Area this Floor:

Typical - 929 sq ft per unit (to the outside face of framing, for comparison to similar single family)

Condo - 863 sq ft per unit (to the inside face of framing, usual Condo ownership)

9 ft Ceilings

First Floor Plan

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

Sweet Peekaboo Duplex

418.224 (8/8/2023)

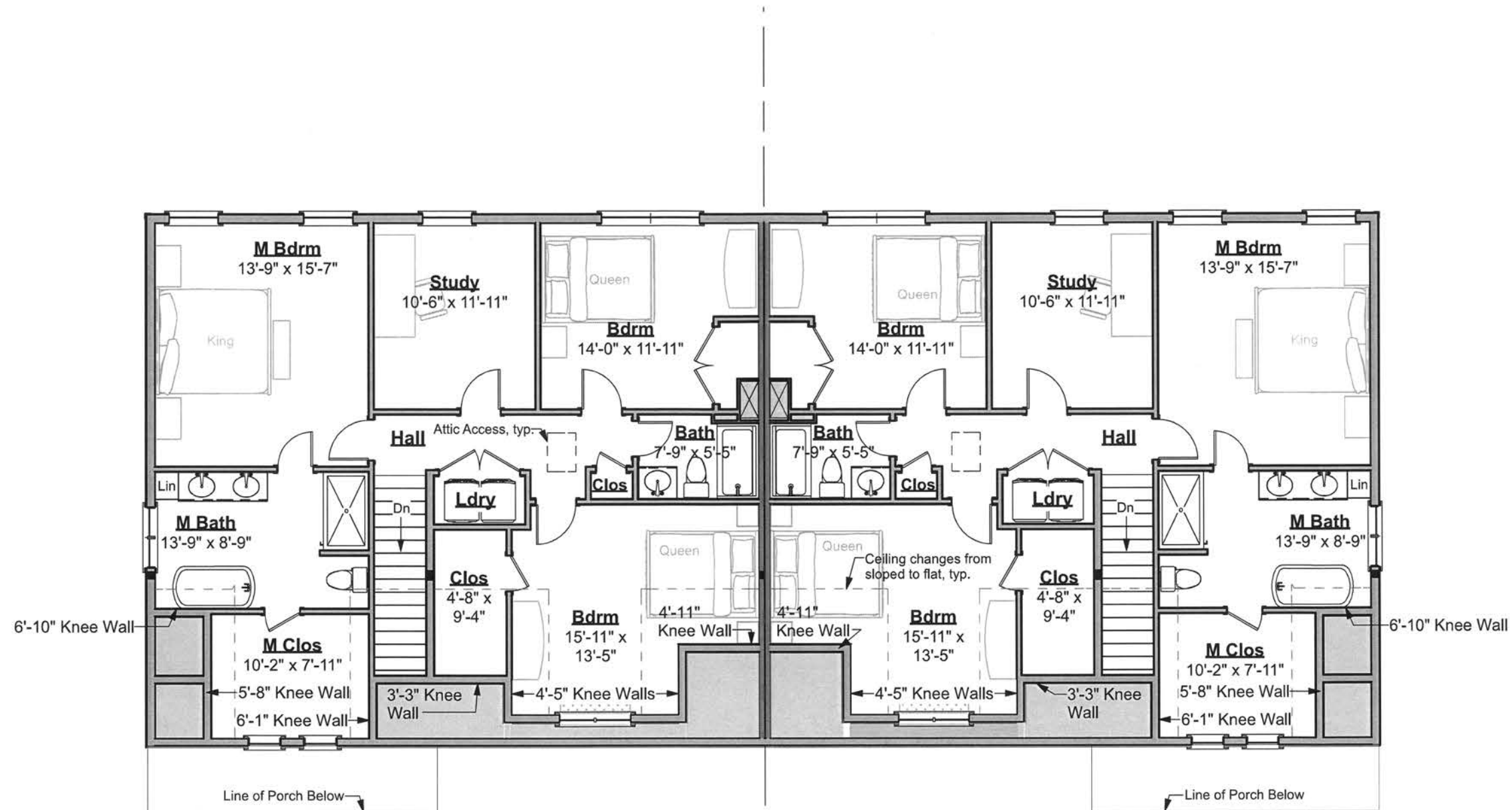
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Living Area this Floor:

Typical - 1244 sq ft per unit (to the outside face of framing, for comparison to similar single family)

Condo - 1178 sq ft per unit (to the inside face of framing, usual Condo ownership)

8 ft Ceilings

Second Floor Plan

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

Sweet Peekaboo Duplex

418.224 (8/8/2023)

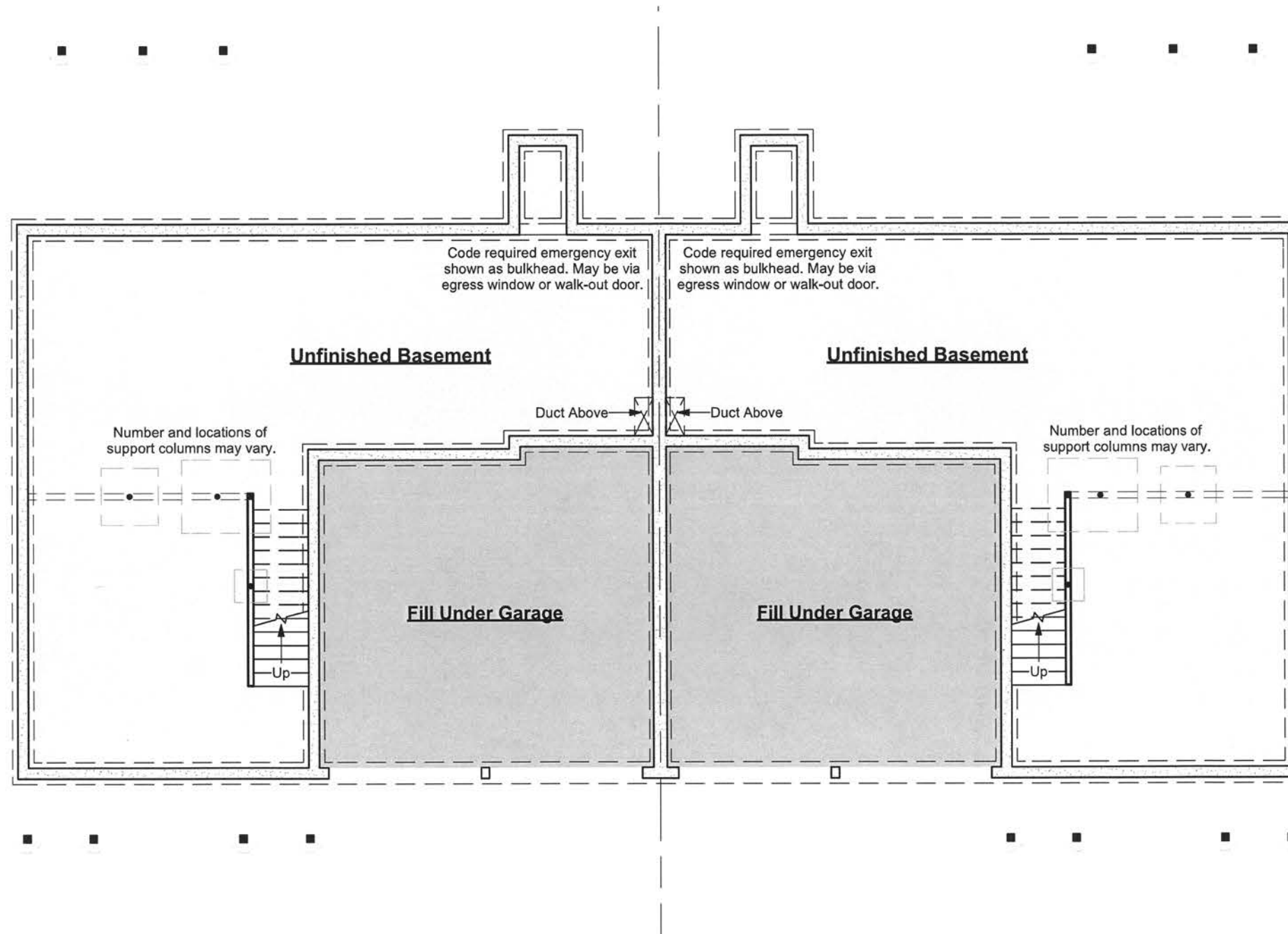
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603-431-9559



Foundation Plan

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



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. 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>reasonably used in the way it is zoned and there is currently a single-family home on it now.</p>
---	--	--

**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 Rheame;
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. Rheame 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 where 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.~~

WHITE APPRAISAL

REAL ESTATE APPRAISING & CONSULTING

Brian W. White, MAI, SRA



September 18, 2023

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

RE: The Variance application for two residential duplex buildings to be located on 550 Sagamore Avenue in Portsmouth, New Hampshire.

Attorney Phoenix:

At your request, I have been asked to investigate the impact on the value of the abutting properties for the proposed two residential duplex buildings to be located on 550 Sagamore Avenue (Map 222, Lot 11) and to prepare an analysis and opinion on the matter. I have reviewed the Portsmouth Zoning Ordinance that addresses the standards for the requested variance. I have also reviewed your Memorandum to the Portsmouth ZBA regarding the variance request. To prepare this letter, I have completed research on the proposed subject property, the neighborhood and the greater Portsmouth marketplace. The following letter summarizes my analysis, findings and conclusions:

1. The Existing Development:

The subject property is a 1.44-acre parcel of land located on the eastern side of Sagamore Avenue in the Single Residence B (SRB) zone. The subject property is currently improved with an older 1,092 square-foot single-family residence with an at-grade lower-level that contains a one-car garage and unfinished storage space. The improvements were constructed in 1960 with renovations made over the years. The residence appears to be in above average overall condition for a residence of its age in the Sagamore Avenue area. The front portion of the parcel has paved drive and parking area that accesses the one-car garage. There are interior and exterior stairways that provide access up to the first-floor area of the residence. There is a 448 square foot rear deck. Approximately one-third of the mostly level to gently sloping parcel is improved or landscaped. The rear two-thirds of the parcel is undeveloped natural wooded area. This rear wooded area has a combination of larger evergreens and deciduous trees. The terrain for the parcel is mostly level to gently sloping. The rear portion of the parcel has a high-point area that has a few exposed ledge areas. The terrain gently slopes downward from this high-point to both the front and the rear of the parcel. The parcel is serviced with municipal water and sewer, electricity, telephone, cable and internet. There are no wetland areas located on the parcel.

2. The Proposed Development:

The older wood-frame single-family building will be razed and a new paved drive will be installed off of Sagamore Avenue in the northwestern portion of the subject's parcel. This paved drive will extend into the western and central portions of the parcel providing access to two new duplex residences. There will be a vehicle turn-around and snow storage area located at the end of the paved drive area. Each of the duplex buildings will have a front paved driveway that will provide access to the two-car garage areas of the two residential units. The residences will each contain two levels of finished living area. The units will have quality interior and exterior finishes that are commensurate with other similar new construction residences located in Portsmouth. Based on the proposed site and building plans, the proposed townhouse style single-family residences will contain approximately 2,173 square feet of above ground space, a two-car garage and a basement storage area. The two duplex residential buildings will be surrounded by landscaped and grassed areas and each unit will have a rear deck area. There will be dense landscaped area located to the front, sides and rear of the development along with an elongated area located in between the two duplex buildings. The improved and developed areas of the parcel will utilize approximately 60% of the 1.44-acres of the parcel with the rear approximate 40% of the parcel will remain in a natural wooded state.

3. The Concept Plan for Three Residential Lots:

A conceptual site plan on the subject property has been completed by Altus Engineering, as of March 6, 2023. This plan identifies a three-lot residential subdivision which the subject property could accommodate based on the dimensional requirements in the SRB zone. The concept plan locates a short entry road off of Sagamore Avenue in the northeastern portion of the subject property. This road extends approximately 225' into the central portion of the parcel terminating in a cul-de-sac. Each of the three lots would have over 15,000 square feet of space, a minimum of 100' of road frontage and a buildable envelope suitable for accommodating a single-family residence. This concept plan demonstrates that the subject property has a sufficient amount of site area to accommodate a traditional three-lot residential subdivision. It also shows that in order to accomplish this the entire property is required to accommodate this three-lot plan.

4. Neighborhood & Abutting Properties:

The subject property is located in a Single Residence B (SRB) zone with the parcel being located directly across from the subject property being zoned Garden Apartments/Mobile Home Park (GA/MH). Sagamore Court is a large 144-unit multi-unit garden-style condominium and apartment development. The subject property looks directly at the front building in the center of the development. This development dominates the subject's immediate area on Sagamore Avenue. The SRB zone is largely a single-family zone while the GA/MH zone is largely a multi-dwelling unit zone. There are large Single Residence A (SRA) zoned areas located to the north and to the south of the subject's area on Sagamore Avenue. The SRA zone allows for the same uses as the subject's SRB zone with the difference being that the subject's SRB zone allows for a much higher density as the SRA zones requires 43,560 SF/dwelling unit and 150' of road frontage while the subject's SRB zone only requires 15,000 SF/dwelling unit and only 100' of road frontage. The parcels located in the SRA and the SRB zones in the surrounding area are largely developed with

single-family homes on parcels of varying sizes. There are a few multi-unit properties in the subject's immediate area along Sagamore Avenue. In addition to the forementioned Sagamore Court, the Tidewatch Condominium is a 116-unit condominium development that is located just south of the subject's area. There is a recently approved four-unit residential development located near the access road for the Tidewatch Condominium that is located at 635 Sagamore Avenue. Slightly further south on Sagamore Avenue, there is a 3-unit condominium development located at 792 Sagamore Avenue. The remainder of the residential properties located in the subject's immediate area along Sagamore Avenue are single-family residences. It is noted that further north and further south of the subject's area Sagamore Avenue is developed with a mixture of single-family homes, multi-unit developments and several scattered commercial properties.

The rear portion of the subject property abuts three single-family homes that are located on Walker Bungalow Road (40, 58 & 72 Walker Bungalow Road). This road is an interior road located off of Little Harbor Road that terminates in a cul-de-sac near Sagamore Creek. The rear portions of these homes can be seen through the natural wooded growth in the rear portion of the subject property. Any development located in the rear portion of the subject property would have an obstructed view of the improved portion of these neighboring properties while any development located in the central portion of the subject property would have a distant and very obstructed view of the improved portion of these neighboring properties. It is assumed that the same would be the case when viewing these portions of the subject property from these neighboring properties.

The subject property is currently an above average condition single-family residence. The other single-family homes in the surrounding area on Sagamore Avenue are generally in average to very good overall condition. The abutting properties on Sagamore Avenue are both older wood-frame single family homes constructed in the 1800's that appear to be in above average overall condition. To the rear of the subject property, the subject property abuts three single family homes that are located on Walker Bungalow Road. These homes, which were constructed in the 1960's and 1980's, appear to be in good overall condition. Over the past five years, the single-family homes located in the subject's immediate area have sold from approximately \$600,000 to \$1,100,000 while the residential condominium units in the area have sold from approximately \$600,000 to \$1,500,000. It is noted that there are two fairly recent sales of smaller garden-style condominiums located in the Sagamore Court development that sold for \$225,000 and \$245,000, respectively. Based on MLS data, the anticipated market values of the subject's proposed townhouse duplex condominium units would be in the range of \$1,000,000 or more.

5. *Factors that impact Value and the Application to the Subject Property:*

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

Noise:

It was previously noted that the proposed subject property will contain a single-entry drive and two duplex residential buildings. One of the proposed duplex buildings will be located in the rear of the existing single-family residence and the back yard of this residence while the other duplex buildings will be located in the center portion of the parcel in the area of the

existing shed structure and the start of the wooded area. The rear 40% of the parcel will remain undeveloped and treed. At the present time, the subject's single-family home likely emits noises that are typical for a residence in the area. There would be sounds of cars entering and exiting the property, property maintenance sounds and the sounds of people enjoying the exterior deck and yard areas. The sounds for the proposed duplex residential buildings would likely be similar to what is in place with the difference being that there will be four residences and more vehicles entering and exiting the property. In comparison, the sounds for subject property under the concept development plan would likely be greater than for the proposed two building duplex development. While the subject's proposed development will contain one more unit than the three-lot conceptual plan contains, the developed area for the subject property only extends approximately 60% into the parcel while the developed area for the concept plan calls for developing almost all of the parcel. The fact that the concept plan extends to the rear of the parcel and the two-building duplex plan does not, makes it likely that the two-building duplex plan would be emitting much less overall noise to the three rear abutting residences. The fact that the duplex plan calls for the garage areas to be located in the middle of the duplex building structure would also be a noise mitigating factor as typical single-family residences have their garage on one end of the residence or they are located in a detached building. The single-family garage areas would also likely be located closer to the side or rear lot lines as compared to the central garage location of the proposed two building duplex plan. It would be reasonable to conclude that the proposed two building duplex plan would emit a higher level of residential noises that is currently in place but it would emit a lower level of residential noises that would come from the three-lot concept plan.

View:

At the present time, the subject's single-family residence can be viewed from Sagamore Avenue, from the Sagamore Court development across from the subject property and from the two abutting single-family residence. The three single-family residences located along Walker Bungalow Road are completely obstructed by the existing central and wooded areas of the subject property. The existing view is of a fairly well maintained older raised ranch residence that was constructed in 1960. From the street, the residence, drive area and front landscaped areas can be seen. The view from the improved residential area of the two abutting residences located along Sagamore Avenue is of these same areas along with that of the rear yard areas. These abutter views are all slightly obstructed by the location of existing fence areas that run along the front area of the subject property and the abutting properties. The three single family residences located along Walker Bungalow Road all have views of the subject's rear and central wooded areas.

The proposed two building duplex development plan will locate the duplex buildings in the front and central portions of the parcel. The drive area will extend from Sagamore Avenue and it will extend straight to the front duplex building, then with a slight bend, it will extend to the centrally located duplex building. The two duplex building will be oriented at a slight angle with the fronts of the buildings facing northwest. There will be a combination of wood and PVC fences located along the southern side of the subject property. The northern side of the subject property has an existing wood fence located on the neighboring property. In addition to these existing and proposed fences, there will be several areas that will have dense landscaped areas. These areas will be located to the front of the property along Sagamore Avenue (all but the location of the drive area), along the sides of the front and

central areas of the parcel and to the rear of both of the duplex buildings. All of the existing and proposed screening features will result in the subject's building being largely screened from both Sagamore Avenue and from the three residential properties located on Walker Bungalow Road. The two abutting single-family residences located on Sagamore Avenue will have as much new screening as possible for the proposed two duplex building plan. The views of the subject property from these two abutting residences will change but not to the extent that any negative impact will result. It could be argued that the views of the neighboring properties will be enhanced by replacing the older above average condition single-family residence with two new construction duplex townhouse residences that will be in very good condition with retail values that will exceed that of most of the neighboring single-family homes in the immediate area.

Use:

The subject property is proposed for development with two new residential duplex buildings. In the surrounding neighborhood, the Sagamore Avenue area is developed with a variety of residential uses (single-family, residential condominiums and apartments) and several scattered commercial and mixed-use developments. The interior streets located off of Sagamore Avenue are largely developed with residential uses. The proposed residential duplex development of the subject property will be in-line with that of the surrounding uses. It is noted that the subject's immediate area along Sagamore Avenue is unique where within 300' of the subject property there are properties that are located in four different zones (SRA, SRB, GA/MH & GRA). The unique location of the subject property has created an area along Sagamore Avenue where there are a variety of different residential properties (single-family, townhouse, apartment & condominium) in the immediate area. The fact that the subject property, and a few other older single-family residences are directly across from a 144-unit garden-style residential development (Sagamore Court) demonstrates the variety of residence types in the immediate neighborhood.

The proposed use for the subject's 1.44-acre parcel is for development with four townhouses-style residential units. This translates into a property density of 2.78-units/acre. It is noted that the Sagamore Court Condominiums, directly across Sagamore Court from the subject property and located in the GA/MH zone, is a 144-unit development on 15.01-acres (9.59-units/acre). The Tidewatch Condominium development, to the south and west of the subject property on Sagamore Avenue, is located in the SRA zone. This townhouse-style condominium development contains 116 units located on 53.59 acres of land. This translates into a density of 2.16-units per acre. On 635 Sagamore Avenue, to the south and west of the subject property, a 1.947-acre parcel was recently granted relief by the Portsmouth ZBA allowing for the property to be developed with 4 residential units (2.05-units/acre). On 792-796 Sagamore Avenue, to the south of the subject property by Cliff Road, a small 0.28-acre parcel was improved with an older duplex building. Several years ago, this building was renovated and expanded into 3 condominium units (10.71-units/acre). This property is located in the SRB zone similar to the subject property. Considering the density of these nearby residential developments, the subject's proposed density (2.78-units/acre) is reasonably in-line with the existing density in the immediate area. It can reasonably be concluded that the proposed use of the subject property with four townhouse-style residential units is a use that will be compatible with the surrounding neighborhood.

6. *Specific Standards – Variances:*

The owners are requesting a Variance from the following – Portsmouth Zoning Ordinance – 10.513 – One Freestanding Dwelling/Lot – to permit two dwelling buildings (four units) on a 1.44-acre lot where one dwelling is permitted and 10.440 Table of Uses – to permit two duplexes where duplexes are prohibited.

I spoke with Scott Scott, Tax Assessor II for the City of Portsmouth. I wanted to get his opinion on the subject's proposed two residential duplex building development and that of several other similar developments in the area. He stated that he is very familiar with the Sagamore Avenue area. He indicated that the best nearby comparable for the subject property is the three-unit condominium development that is located to the south of the subject property at 792-796 Sagamore Avenue. This development is a three-unit residential condominium located in the same SRB zone as the subject property. Rosanne Maurice-Lentz, City Assessor, was on vacation for the week so I asked Mr. Scott for his opinion on any diminishing property values due to the three-unit residential condominium being located nearby. He indicated that the existence of this multi-unit residential development in the SRB zone on Sagamore Avenue has not led to diminishing the values of the surrounding properties. This is good evidence that multiple units located on the subject property would also not have a negative impact on surrounding properties but it does not speak to the exact relief that is being requested by the applicant. In order to address these specific variance requests, the appraiser has expanded his search to other municipalities located in the greater Seacoast area of New Hampshire.

In the nearby City of Dover, a variance was granted in 2021 to a residential parcel located on 400 Gulf Road which allowed for two residential buildings to be constructed on a 5.0-acre parcel where only one dwelling is permitted. These residences are currently under construction. The property is located in a very desirable rural area of Dover near many waterfront homes. According to Donna Langley, the Dover Assessor, while this property is new construction, she has not had anyone approach her asking for assessment relief because of their nearby location to this multiple dwelling development. In the nearby Town of Durham, there are a couple of multiple dwelling developments that are fairly comparable to the subject's proposed multiple dwelling development. On 9 Bayview Road, there is a two-residence development that was developed in 1983. This property is located on Bayview Road which, other than this property, is developed entirely with single-family homes. On 20 Strafford Avenue, there is a two-residence development that has an older residence that was constructed in 1935. In 2009, they were permitted to construct a second residence in the location of an older building creating an upgraded two-residence development. This property is located on Strafford Avenue which is developed with a mixture of single-family homes, multi-unit residential developments and university properties. Jim Rice, the Durham Assessor, indicated that there has not been any negative impact on the values of the surrounding properties that are in close proximity to these two multiple dwelling developments.

Two slightly older student housing buildings located at 26 & 28 Young Drive and 34 & 36 Young Drive in Durham that were constructed in 1968 were recently renovated into duplex residences. A new duplex residence was constructed at 7 Young Drive in 2022. All of these duplex residences are located in a residential zone in Durham that does not allow for duplex

residences. Young Drive also contains a couple of free-standing single-family homes. The surrounding area consists of a mixture of single-family homes, multi-tenant apartment buildings and scattered commercial developments. Jim Rice, the Durham Assessor, indicated that there has not been any negative impact on the values of the surrounding properties that are in close proximity to these duplex residential developments.

In the greater Portsmouth area, there is no exactly similar property from which to extract paired-sales. Therefore, only general observations can be made based on my experience in the marketplace. Over the past several years in the greater Sagamore Avenue area of Portsmouth, several new multi-unit residential developments have been constructed or are currently proposed. In general, the addition of these new residential developments has resulted in upgrading the overall condition of the neighborhood and therefore enhancing the overall desirability of the area.

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

Respectively submitted,



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

ADDENDA

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PHOTOGRAPHS OF THE SUBJECT PROPERTY



Front of the Subject Property
Looking Northeast from Sagamore Avenue - (9/2023)



Front of the Subject Property
Looking East from Sagamore Avenue - (9/2023)

PHOTOGRAPHS OF THE SUBJECT PROPERTY



Street Scene - Front of the Subject Property
Looking South on Sagamore Avenue - (9/2023)



Street Scene - Front of the Subject Property
Looking North on Sagamore Avenue - (9/2023)

PHOTOGRAPHS OF THE SUBJECT PROPERTY



Front of the Subject Property
Looking Northeast from Sagamore Avenue - (9/2023)



Front of the Subject Property
Looking Southeast from Sagamore Avenue - (9/2023)

PHOTOGRAPHS OF THE SUBJECT PROPERTY



Subject Property – Rear of the Residence
Looking Northwest from Rear Yard Area – (9/2023)



Subject Property – Rear of the Residence
Looking Northwest from Rear Yard Area – (9/2023)

PHOTOGRAPHS OF THE SUBJECT PROPERTY



Subject Property – Rear Deck & Yard & Proposed Location of Front Duplex
Looking South from Rear Yard Area – (9/2023)



Subject Property – Rear Shed & Proposed Location of Rear Duplex
Looking South from Rear Yard Area – (9/2023)

PHOTOGRAPHS OF THE SUBJECT PROPERTY



Subject Property – Front of the Subject Property
Looking South – (9/2023)



Subject Property – Proposed Access Drive Location – Duplex Development
Looking West – (9/2023)

PHOTOGRAPHS OF THE SUBJECT PROPERTY



Subject Property – Proposed Access Drive Location – Conceptual Development
Looking East – (9/2023)



Subject Property – Southern Side of Residence
Looking East – (9/2023)

PHOTOGRAPHS OF THE NEIGHBORING PROPERTIES



View of Abutting Residence to the South of the Subject Property
Looking East - (9/2023)



View of Abutting Residence to the North of the Subject Property
Looking Northeast - (9/2023)

PHOTOGRAPHS OF THE REAR NEIGHBORING PROPERTIES



View of Rear Abutting residence from Rear of Subject Property
Looking Southeast - (9/2023)



View of Rear Abutting residence from Rear of Subject Property
Looking East - (9/2023)

PHOTOGRAPHS OF THE REAR NEIGHBORING PROPERTIES



View of Rear Abutting Residence from Rear of Subject Property
Looking Northeast - (9/2023)



View of Rear Abutting Garage & Residence from Rear of Subject Property
Looking Northeast - (9/2023)

PHOTOGRAPHS OF NEIGHBORING/COMPARABLE PROPERTIES



View of Sagamore Court Building – Directly Across from the Subject Property
Looking West - (9/2023)



View of Tidewatch Condominium development – Typical Townhouse Building
Looking East - (9/2023)

PHOTOGRAPHS OF NEIGHBORING/COMPARABLE PROPERTIES



View of Sagamore Court Development – Neighborhood Development
Looking Northwest from Tidewatch Access Road - (9/2023)



View of 635 Sagamore Avenue – Neighborhood Development
Looking Southwest from Sagamore Avenue - (9/2023)

PHOTOGRAPHS OF NEIGHBORING/COMPARABLE PROPERTIES



View of 792-796 Sagamore Avenue – Neighborhood Development
Looking Northeast from Sagamore Avenue - (9/2023)



View of 400 Guld Road, Dover, NH – Multiple Residence Development
Looking Northwest from Entry Drive - (9/2023)

PHOTOGRAPHS OF NEIGHBORING/COMPARABLE PROPERTIES



View of 9 Bayview Road, Durham, NH - Multiple Residence Development
Looking Southwest from Bayview Road - (9/2023)



View of 20 Strafford Avenue, Durham, NH - Multiple Residence Development
Looking North from Entry Drive - (9/2023)

PHOTOGRAPHS OF NEIGHBORING/COMPARABLE PROPERTIES



View of 26-36 Young Road, Durham, NH – Duplex Development
Looking North on Young Road - (9/2023)



View of 7 Young Road, Durham, NH - Duplex Development
Looking West from Young Road - (9/2023)

Property Location: 550 SAGAMORE AVE		Map D: 0222/0011/0005/		Bldg Name: 2228									
Valued ID: 29608		Account #: 29608		Print Date: 10/31/2022 1:08:43 P									
CURRENT OWNER		UTILITIES		CURRENT ASSESSMENT									
TOPO	STRT/ROAD	LOCATION	Code	Appraised	Assessed								
1 Local	0 All Public	1 Paved	1010	175,000	175,000								
8 Landscapes			1010	270,100	270,100								
SUPPLEMENTAL DATA				300	300								
All Pfd ID: 1022-0011-0005-0000													
CORRIDOR													
INLAW W/													
LOT SPLIT													
2019 Rev. JM													
Ex/Ch Appt													
WARD													
PREC													
1/2 HSE													
GIS ID: 29608													
RECORD OF OWNERSHIP													
BK	VOL	PAGE	SALE DATE	DU	WT	SALE PRICE	VC						
6690	2227		10-07-2019	U	1	0	44						
3485	0942		04-04-1984	I	1	0	0						
EXEMPTIONS													
Year	Code	Description	Amount	Code	Description	Number	Amount						
2028	1	VETERAN-1	500.00										
OTHER ASSESSMENTS													
Year	Code	Description	Number	Amount	Code	Description	Number	Amount					
		ASSESSING NEIGHBORHOOD	1	500.00									
NOTES													
0713- REPL WINDS; CHNG SHD; COND TO 30													
APPT LETTER 67/13													
BUILDING PERMIT RECORD													
Permit ID	Issue Date	Type	Description	Issue Date	% Comp	Date Comp	Comments						
34035	12-03-2018	PL	Plumbing	02-20-2019	100		REPLACING HOT WATER HE						
35111	11-30-2018	EL	Electric	02-20-2019	100		REPLACE WIRING FROM CL						
LAND LINE VALUATION SECTION													
B	Use Code	Description	Zone	Frontage	Depth	Land Units	Unit Price	Size Ad	Site	Cons	S1	S1	S:1
1	9010	SINGLE FAM M	SRB	43.9901 SF	4.96	1.0000	1	0.80	112	1.500	1.500	1.500	-5% traffic
1	9010	SINGLE FAM M	SRB	0.480 AC	16.500	1.0000	0	1.00	112	1.500	1.500	1.500	
Total Curd Land Units		1 AC		Parcel Total Land Area		1		Total Land Value		270,100			



Element	Code	Description	Element	Cd	Description
01	01	Resid			
01	01	Residential			
01	C+	C+			
1		1			
25		25			
03		03			
03		03			
05		05			
14		14			
06		06			
02		02			
02		02			
03		03			
03		03			
1		1			
1		1			
0		0			
5		5			
1		1			
0		0			
0		0			
0		0			
1		1			

Code	Description	LB	Units	Unit Price	Yr Bl	Cond	Cd	%	Old	Grade	Grade Adj	Appt. Value
REC ROOM	B	240	25.00	1997	A	78	C	1.00				4,700
SHD1 SHED FRAME	L	96	13.00	1970	F	30	D	0.90				300

OB - OUT/BUILDING & YARD ITEMS (L/X/F - BUILDING EXTRA FEATURES)(B)												
Code	Description	LB	Units	Unit Price	Yr Bl	Cond	Cd	%	Old	Grade	Grade Adj	Appt. Value
REC ROOM	B	240	25.00	1997	A	78	C	1.00				4,700
SHD1 SHED FRAME	L	96	13.00	1970	F	30	D	0.90				300

BUILDING SUB-AREA SUMMARY SECTION												
Code	Description	Living Area	Floor Area	Efr Area	Unit Cost	Underprc Value						
BAS	First Floor	1,092	1,092	1,092	151.74	165,702						
FEP	Porch, Enclosed	0	64	64	166.22	12,746						
UBM	Basement, Unfinished	0	1,052	213	30.25	33,080						
WDK	Deck, Wood	0	448	45	15.24	6,828						
Tl Gross Liv / Usable Area		1,092	2,752	1,439		218,356						

044882



ROCKINGHAM COUNTY
REGISTRY OF DEEDS
2015 OCT -7 AM 10: 17

WARRANTY DEED

KNOW ALL PERSONS BY THESE PRESENTS: That **FRANCES E. MOUFLOUZE**, a single person, of 550 Sagamore Avenue, Portsmouth, County of Rockingham, New Hampshire, for consideration paid, grants to **FRANCES E. MOUFLOUZE, AS CO-TRUSTEE OF THE FRANCES E. MOUFLOUZE REVOCABLE TRUST OF 2015 u/d/t dated September 24, 2015**, having a mailing address of 550 Sagamore Avenue, Portsmouth, County of Rockingham, New Hampshire, **TED W. ALEX, AS CO-TRUSTEE OF THE FRANCES E. MOUFLOUZE REVOCABLE TRUST OF 2015 u/d/t dated September 24, 2015**, having a mailing address of 104 Locke Road, Rye, New Hampshire and **PATRICIA CAMERON, AS CO-TRUSTEE OF THE FRANCES E. MOUFLOUZE REVOCABLE TRUST OF 2015 u/d/t dated September 24, 2015**, having a mailing address of 59 Old Mountain Road, Cape Neddick, Maine, with

WARRANTY COVENANTS,

the following described premises:

A certain lot or parcel of land with the buildings thereon, situate in Portsmouth, County of Rockingham and State of New Hampshire, bounded and described as follows:

Beginning at a point in the easterly sideline of Sagamore Avenue, so-called, at the northwesterly corner of the land herein conveyed, and at the southwesterly corner of land of one Michaud, formerly of Mary T. Trefethen, and thence running easterly by said land of said Michaud and land now or formerly of John Brownell, 450 feet, more or less, to a point at land of Richard C. and Marie E. Wilder; thence turning and running southerly by land of said Wilder, 143.82 feet to a set drill hole at land of Mildred Hewitt and Grace Bowden; thence turning and running westerly by said Hewitt and Bowden land and land now or formerly of one Fenwick, 271 feet, more or less, to a point; thence turning and running northerly 10 feet, thence turning and running westerly 200 feet, all by said Fenwick land, to Sagamore Avenue; thence turning and

running northerly by and along Sagamore Avenue, 140 feet, more or less, to the point of beginning.

Being the same premises conveyed to **FRANCES E. MOUFLOUZE** and **GEORGE S. MOUFLOUZE** by deed of Frances E. Moufrouze dated April 4, 1984, recorded in Rockingham County Registry of Deeds, Book 2485, Page 0342 and identified as 55 Sagamore Avenue, Portsmouth, New Hampshire.

GEORGE S. MOUFLOUZE is deceased as of August 25, 2015. Please see Death Certificate to be recorded prior hereto.

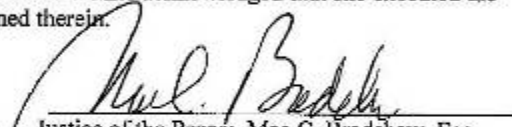
This conveyance is a non-contractual transfer pursuant to NH R.S.A. 78-B:2(IX) and only minimum state transfer tax applies.

Executed this 24th day of September, 2015.


FRANCES E. MOUFLOUZE

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM

On this 24th day of September, 2015, before me, the undersigned officer, personally appeared **FRANCES E. MOUFLOUZE**, known to me (or satisfactorily proven) to be the person whose name is subscribed to the foregoing instrument and further acknowledged that she executed the foregoing instrument for the purposes contained therein.


Justice of the Peace: Mae C. Bradshaw, Esq.
My Commission Expires: 02/08/2017

AERIAL VIEW



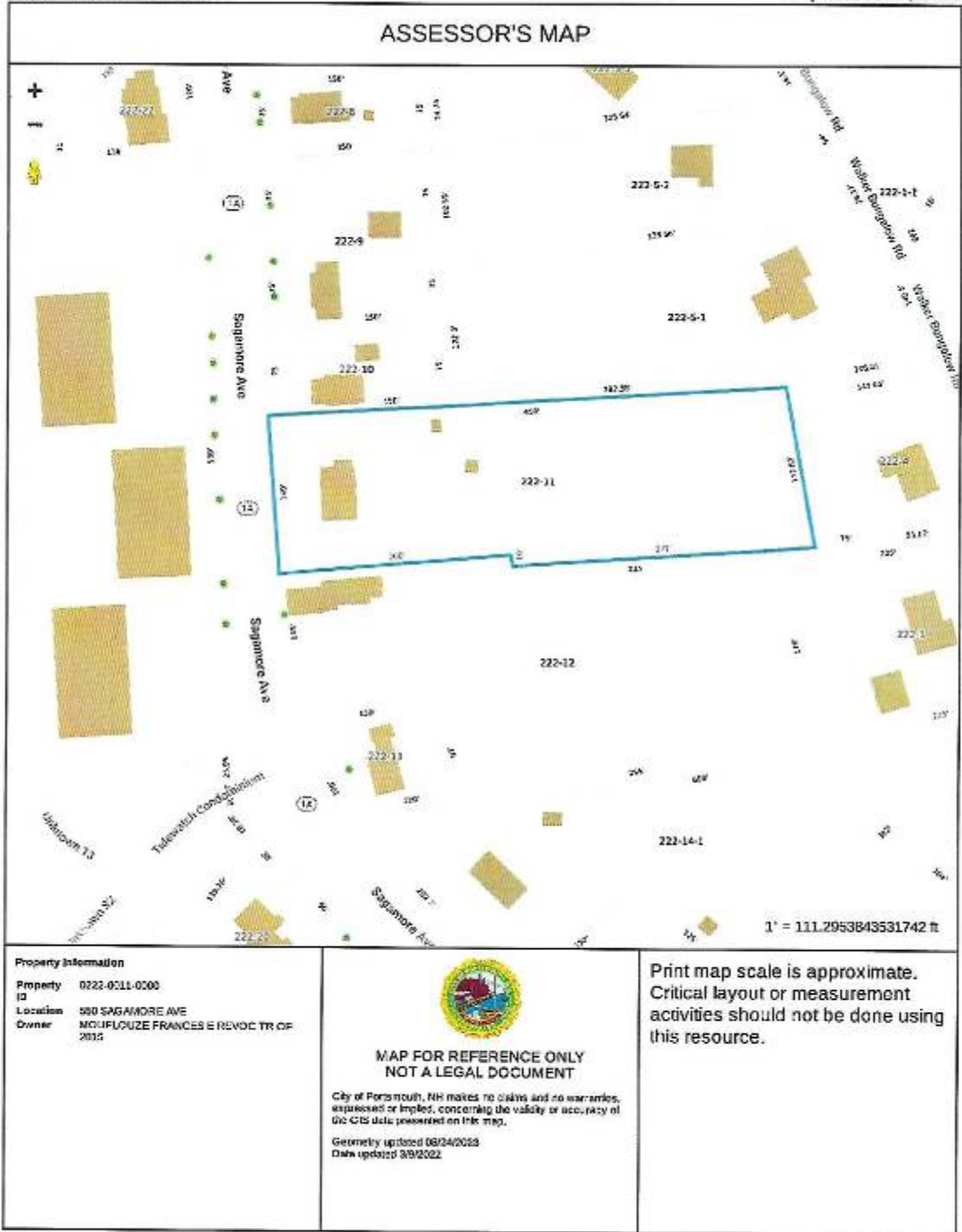
Property Information
 Property ID: 0322-0011-0000
 Location: 550 SAGAMORE AVE
 Owner: MOUFOUZE FRANCES E REVOC TR OF 2015

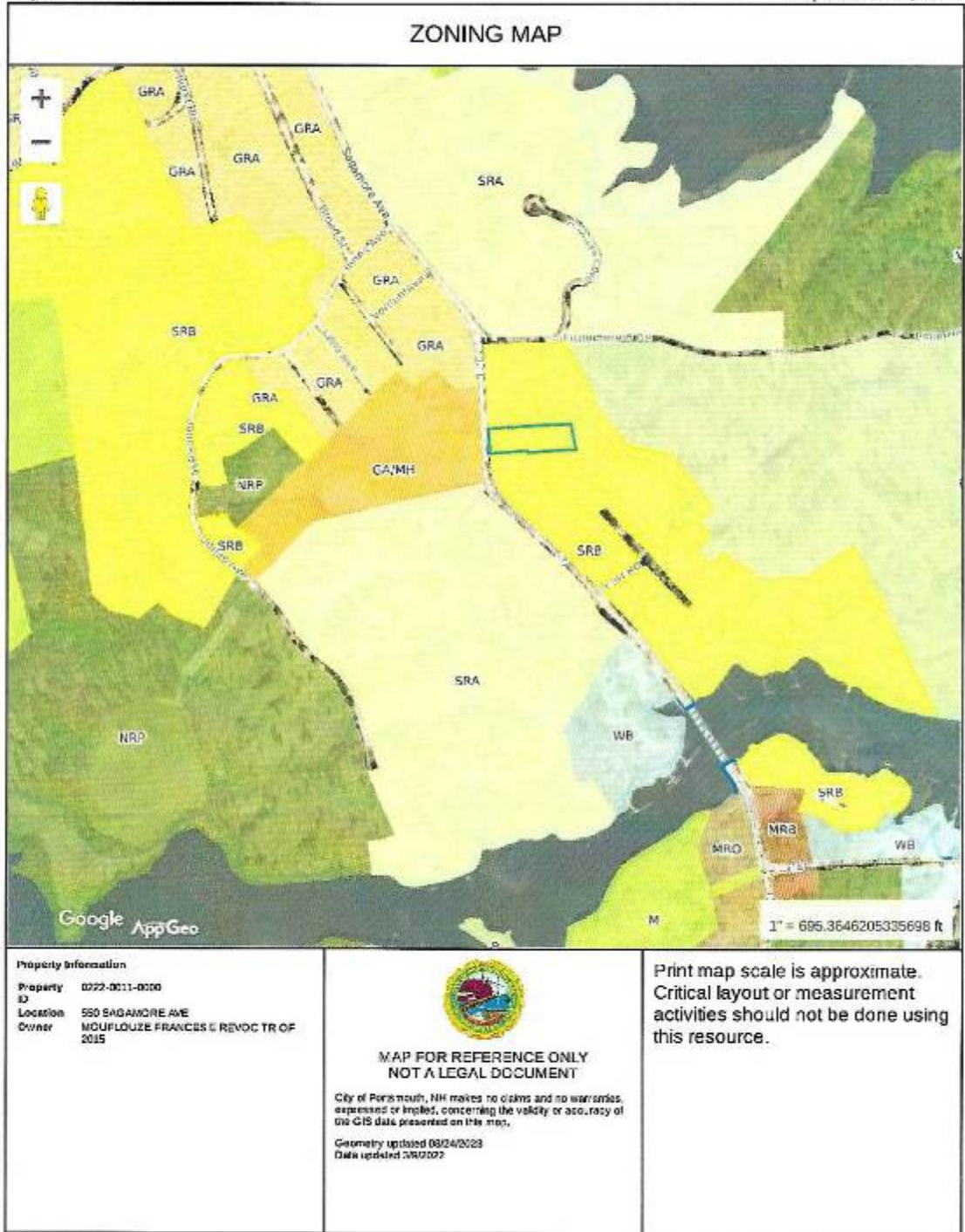


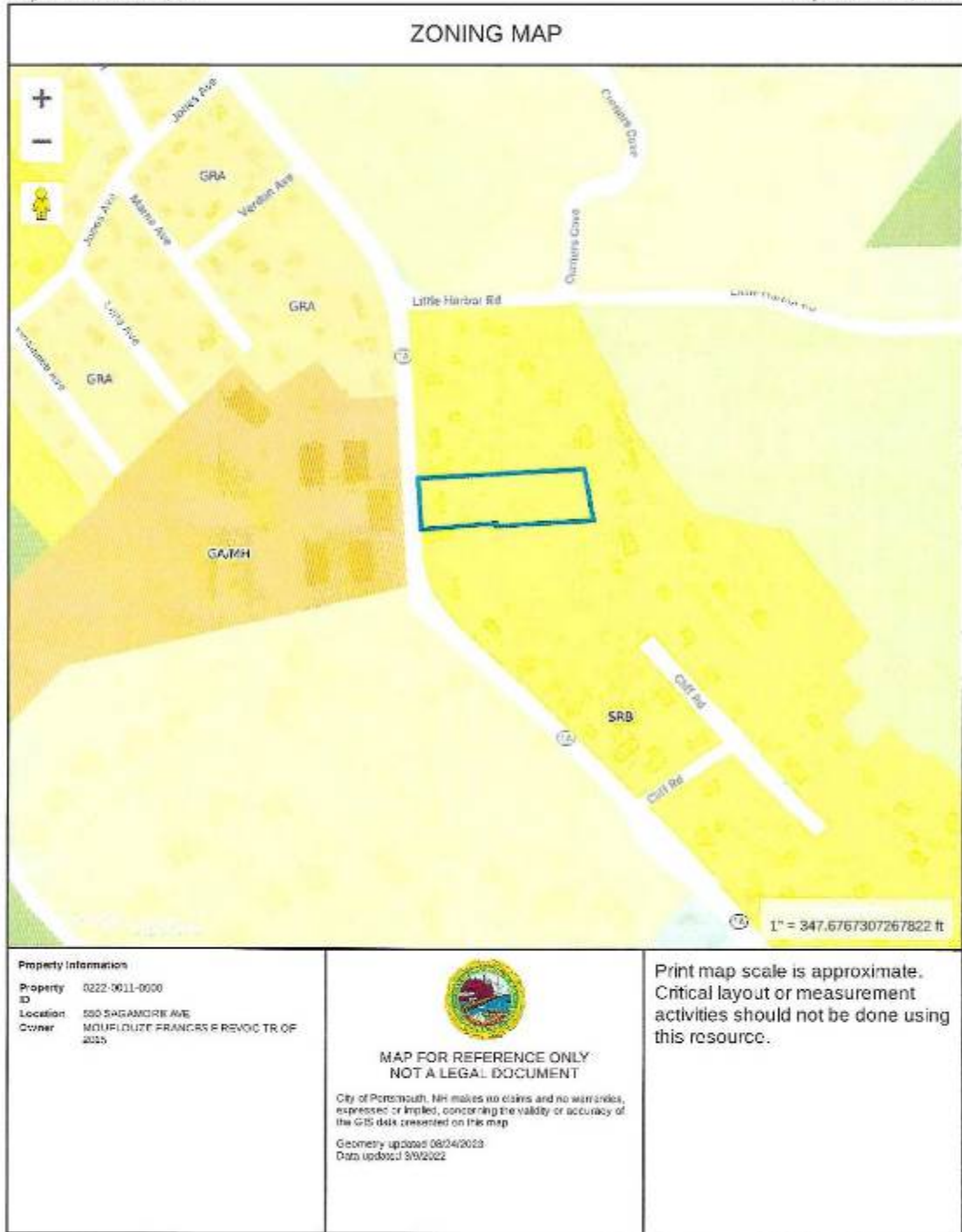
**VAP FOR REFERENCE ONLY
 NOT A LEGAL DOCUMENT**

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 05/24/2023
 Data updated 05/02/23

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
- GAM Garden Apartments/Mobile Home Park

Mixed Residential Districts

- MRO Mixed Residential Office
- MRB Mixed Residential Business
- G1 Golfway Center
- G2 Golfway Center

Business Districts

- GB General Business
- B Business
- NB Neighborhood Business

Industrial Districts

- OR Office Research
- I Industrial
- WI Waterfront Industrial

Airport Districts

- AIR Airport
- AI Airport Industrial
- PI Peak Industrial
- ABC Airport Business Commercial

Conservation Districts

- M Municipal
- NRP National 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

- CIV Civic District

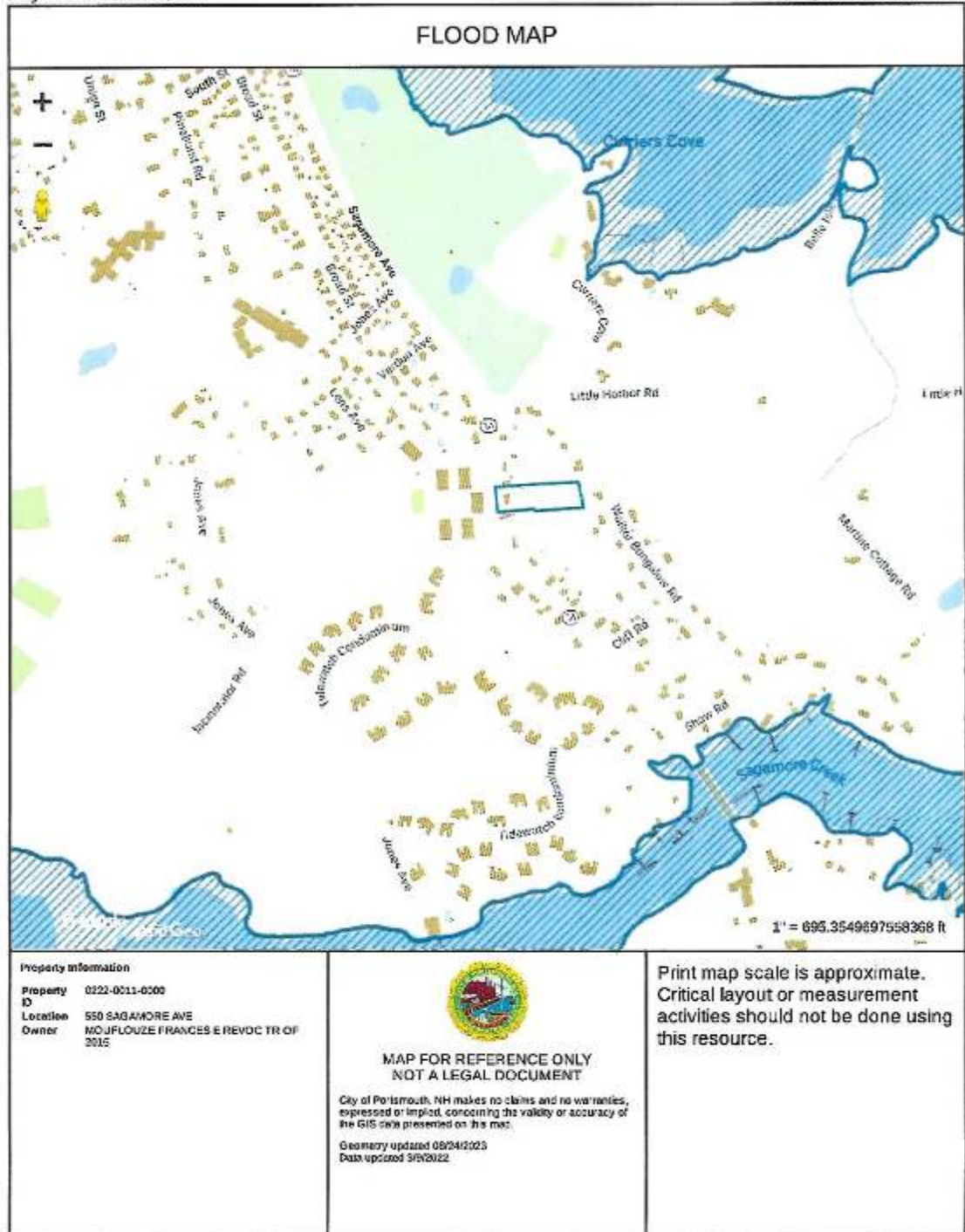
Municipal District

- MUN Municipal District

Overlay Districts

- CLOD Cooper Landing Overlay District
- DOW Downtown Overlay District
- HIS Historic District

City of Portsmouth



P = Permitted AP = Administrative Approval S = Special Exception CU = Conditional Use Permit N = Prohibited

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

Use	R	SRA	GRA	GRC	GA/	MRD	CD4-	MRB	CD5	GB	G1	G2	CD4-	WB	OR	I	WI	Supplemental Regulations
		SRB	GRB	(A)	ME	L1		L2	CDM									
I. Residential Uses																		
1.10 Single family dwelling	P	P	P	P	N	P	P	P	N	N	P	P	N	N	N	N	N	
1.20 Accessory dwelling unit																		10.814 (Accessory Dwelling Units)
1.21 Attached accessory dwelling unit (AADU)	AP	AP	AP	AP	N	AP	AP	AP	CU	N	CU	CU	N	N	N	N	N	
1.211 Up to 750 sq. ft. GLA and entirely within an existing single-family dwelling																		
1.212 Up to 750 sq. ft. GLA and in an expansion of an existing single-family dwelling	CU	CU	CU	CU	N	CU	CU	CU	N	N	CU	CU	N	N	N	N	N	

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Use	R		SRA		GRA		GRC		GA/		MRO		CD4-		MRB		CD5		GB		G1		G2		CD4-		WB		OR		1		WT		Supplemental Regulations							
	SRB	GRB	ARB	GRB	ARB	GRB	ARB	GRB	ARB	GRB	ARB	GRB	ARB	GRB	ARB	GRB	ARB	GRB	ARB	GRB	ARB	GRB	ARB	GRB	ARB	GRB	ARB	GRB	ARB	GRB	ARB	GRB	ARB	GRB	ARB							
1.22 Detached accessory dwelling unit (DADU)	CU	CU	AP	AP	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N					
1.221 Up to 600 sq. ft. GLA and entirely within an existing accessory building that conforms with the dimensional requirements of this Ordinance	CU	CU	CU	CU	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N			
1.222 Up to 750 sq. ft. GLA and entirely within an existing accessory building that conforms with the dimensional requirements of this Ordinance.	CU	CU	CU	CU	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N		
1.223 Up to 600 sq. ft. GLA in an existing accessory building that does not conform with the dimensional requirements of this Ordinance or includes the expansion of the existing accessory building.	CU	CU	CU	CU	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	
1.224 Up to 750 sq. ft. GLA on a lot and in a new building that complies with all lot and building dimensional standards of this Ordinance for a single-family dwelling.	CU	CU	CU	CU	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N

P = Permitted AP = Administrative Approval S = Special Exception CU = Conditional Use Permit N = Prohibited

Use	R		SRA	GRA	GRC	GA/	MRO	CD5	G1B	G1	G2	CD4- ^R	WB	OR	1	W1	Supplemental Regulations
	SRB	GRB	(A)	MH	CD4- ^{L1}	MRB	CD4	W									
1.30 Two-family dwelling	N	N	P	P	P	P	P	P	N	P	P	P	N	N	N	N	10.640 (Downtown Overlay district)
1.40 Townhouse	N	N	S	P	P	P	P	P	N	P	P	P	P	N	N	N	10.640 (Downtown Overlay district)
1.50 Multifamily dwelling	N	N	S	P	P	P	P	P	P	P	P	P	P	N	N	N	10.5A32 (Charter district permitted uses)
1.51 3 or 4 dwelling units	N	N	S	P	P	P	P	P	P	P	P	P	P	N	N	N	10.640 (Downtown Overlay district)
1.52 5 to 8 dwelling units	N	N	S	P	P	P	P	P	P	P	P	P	P	N	N	N	10.813 (Multifamily Dwellings in the Business District)
1.53 More than 8 dwelling units	N	N	S	P	P	P	P	P	P	P	P	P	P	N	N	N	
1.60 Conversion of a building existing on January 1, 1980, with less than the required minimum lot area per dwelling unit specified in Article 5																	10.640 (Downtown Overlay District)
1.61 To 2 dwelling units	N	N	S	S	N	P	P	P	S	N	N	N	N	N	N	N	10.812 (Conversion of Existing Dwelling to Multifamily Dwelling)
1.62 To 3 or 4 dwelling units	N	N	S	S	N	P	P	P	S	N	N	N	N	N	N	N	
1.63 To 5 to 8 dwelling units	N	N	S	S	N	S	S	S	S	N	N	N	N	N	N	N	
1.64 To more than 8 dwelling units	N	N	S	S	N	N	N	N	N	N	N	N	N	N	N	N	
1.70 Live/work unit	N	N	N	N	N	P	P	P	P	P	P	P	P	N	N	N	
1.80 Manufactured housing park	N	N	N	N	P	N	N	N	N	N	N	N	N	N	N	N	10.816 (Manufactured Housing Park Dimensional Standards)
1.90 Planned unit development (PUD)																	10.720 (Planned Unit Developments)
1.91 Open space PUD	CU	CU	N	N	N	N	N	N	N	N	N	N	N	N	N	N	

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Use	R	SRA SRB	GRA GRB	GRC (A)	MH	MRO CD4- L1	CD4- L2	MRB	CD5 CD4	GB	G1	G2	CD4- WB W	OR	I	WI	Supplemental Regulations
1.92 Residential density incentive PUD	N	N	CU	N	N	N	N	N	N	N	N	N	N	N	N	N	
2. Institutional Residence or Care Facilities																	
2.10 Assisted living facility	N	N	N	N	N	N	N	N	N	P	S	S	S	P	N	N	
2.11 Assisted living center	S	S	S	S	S	S	S	S	N	N	S	S	S	N	N	N	
2.12 Assisted living home	S	S	S	S	S	S	S	S	N	N	S	S	S	N	N	N	
2.20 Residential care facility	S	S	S	S	S	S	S	S	N	N	S	S	S	N	N	N	
2.21 5 or fewer residents	N	N	N	N	N	S	S	S	P	S	S	S	S	N	S	N	
2.22 More than 5 residents	N	N	N	N	N	S	S	S	P	S	S	S	S	N	S	N	
3. Educational, Religious, Charitable, Cultural and Public Uses																	
3.10 Place of assembly	S	S	S	N	N	S	S	S	S	S	S	S	S	S	N	N	
3.11 Religious	N	N	N	N	N	S	S	S	S	S	S	S	S	S	N	N	
3.12 Other nonprofit	N	N	N	N	N	S	S	S	S	S	S	S	S	S	N	N	
3.20 School	N	N	N	N	N	S	S	S	P	P	S	S	S	P	N	N	
3.21 Primary or secondary	N	N	N	N	N	S	S	S	P	P	S	S	S	P	N	N	
3.30 Post-secondary	N	N	N	N	N	S	S	S	P	P	S	S	S	P	N	N	

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Use	R		SRA		GRC		GA/		MH		MRO		CD4-		MRB		CD5		G1		G2		CD4-		WB		OR		I		WJ		Supplemental Regulations		
	S	N	S	S	S	S	S	S	S	S	P	CD4-	LI	CD4-	L2	CD4-	LI	CD4	CD4	GB	GB	GB	G1	G2	CD4-	W/B	OR	I	WJ						
3.30 Historic preservation building	S	N	S	S	S	S	S	S	S	S	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	N	N	10.821 (Historic Preservation Buildings and Museums)			
3.40 Museum	N	N	N	N	N	N	N	N	N	N	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	N	N	10.821 (Historic Preservation Buildings and Museums)			
3.50 Performance facility																																			
3.51 Indoor performance facility																																			
3.511 Occupancy up to 500 persons	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	10.592 (location)		
3.512 Occupancy more than 500	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	10.860 (hours of operation)		
3.52 Outdoor performance facility																																			
3.521 Occupancy up to 500 persons	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	10.822 (yards)	
3.522 Occupancy more than 500	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	10.860 (hours of operation)	
3.60 Cemetery	S	S	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N		
3.70 Club, fraternal or service organization	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N		
3.80 Municipally operated park and related activities	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	For other municipal uses see Section 10.460 (Municipal districts)	
4. Recreational Uses																																			
4.10 Religious, sectarian or private non-profit recreational use	N	S	N	N	N	N	N	N	N	N	S	S	N	S	S	N	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	N	N	
4.20 Casino or similar indoor amusement use with no live performance	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	10.825 (misc) 10.860 (hours of operation)	

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Use	R	SRA SRB	GRA GRB	CRC (A)	GA/ MIT	MRD CD4- L1	CD4- L2	M3B	CD5 CD4	GB	G1	G2	B CD4- W	WB OR W	I	WI	Supplemental Regulations
4.30 Indoor recreation use, such as bowling alley or arcade	N	N	N	N	N	N	N	N	P	P	S	S	P	N	N	N	10.825 (noise) 10.860 (hours of operation)
4.40 Health club, yoga studio, martial arts school, or similar use	N	N	N	N	N	S	S	P	P	P	P	P	P	N	S	N	
4.41 Up to 2,000 sq. ft. GFA*	N	N	N	N	N	N	N	N	S	P	S	S	S	N	S	N	
4.42 More than 2,000 sq. ft. GFA	N	N	N	N	N	N	N	N	N	S	P	P	N	N	N	N	10.592 (location) 10.860 (hours of operation)
4.50 Outdoor recreation use	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	
4.60 Amusement park, water park or theme park	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	
S. Office Uses, Non-Medical																	
5.10 Professional office	N	N	N	N	N	P	P	S	P	P	P	P	P	P	P	N	10.833 (Mixed Residential districts)
5.20 Business office (incl. real estate office)	N	N	N	N	N	P	P	P	P	P	P	P	P	P	P	N	10.833 (Mixed Residential districts)
5.30 Financial Institution																	
5.31 Financial services office	N	N	N	N	N	P	P	P	P	P	P	P	P	P	P	N	
5.32 Retail bank	N	N	N	N	N	N	S	P	P	P	P	P	P	P	N	N	
5.40 Social service campus																	
5.41 Nonresidential	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	10.823

*GFA = gross floor area.

As Amended Through August 7, 2023

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Use	R	SEA	GRA	CIRC	GAJ	MRO	CD4-	MRB	CD4	GB	G1	G2	CD4-	WB	OR	I	W1	Supplemental Regulations	
		SRB	CRB	(A)	MH	L1	L2						W						
5.42 Residential	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	S	N		
5.50 Media studio	N	N	N	N	N	S	S	S	P	P	S	S	P	N	N	P	N		
5.51 Excluding any transmitting antennas tower	N	N	N	N	N	N	N	N	N	S	N	N	S	N	N	S	N	10.834	
5.52 Including accessory transmitting antennas tower	N	N	N	N	N	S	S	S	P	P	P	P	P	N	P	P	N		
5.60 Publishing facility or similar electronic production operation	N	N	N	N	N	N	N	N	N	P	N	N	N	N	N	S	N		
5.70 Call Center	N	N	N	N	N	N	N	N	N	P	N	N	N	N	N	S	N		
6. Medical Services and Health Care																			
6.10 Hospital	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	P	N		
6.20 Medical offices and clinics (outpatient only)	N	N	N	N	N	S	S	S	P	P	P	P	P	P	P	N	N		
6.30 Clinics with inpatient care	N	N	N	N	N	N	N	N	N	S	S	N	S	N	S	N	N		
6.40 Ambulatory surgical center	N	N	N	N	N	N	N	N	N	S	S	N	S	N	S	N	N		
6.50 Substance abuse treatment facility	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N		
6.60 Psychiatric hospital for the criminally insane	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N		
7. Services, Other Than Health Care																			
7.10 Day Care																			

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Use	R		SRA		GRA		CIRC		GA/		MRO		CD4-		CD4-		CD5		GB		GI		G2		CD4-		WB		OR		I	WI	Supplemental Regulations
	SRA	SRB	GRA	GRB	GA/	MA/	CIRC	CA/	CD4-	CD4-	CD4-	CD4-	CD4-	CD4-	CD4-	CD4-	CD4-	CD4-	CD4-	CD4-	CD4-	CD4-	CD4-	CD4-	CD4-	CD4-	CD4-	CD4-	CD4-	CD4-			
7.11 Family day care facility	P	P	P	P	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N		
7.12 Group day care facility including private preschool and kindergarten	S	S	S	S	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	10.824 (group day care facilities) 10.860 (hours of operation)	
7.20 Personal services	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N		
7.30 Consumer services such as copy shop, bicycle repair, and pet grooming	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N		
7.40 Trade, craft and general service establishments, such as shops for plumbers, electricians, painters, paper hangers, upholsterers, sign painters and printers	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N			
7.50 Veterinary Care	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N			
7.60 Laundry and dry cleaning establishments	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	10.832		
7.61 Drop-off/pick-up only for items to be dry cleaned or laundered off site	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N			
7.62 Self-service laundry for use by the general public	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N			
7.63 Dry cleaning establishment with on-site cleaning facilities.	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N			

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Use	SRA		GRA		GRC		GA/		MRO		CD4- MIB		CD5		GB		GI		G2		CD4- WB		OR		1		WT		Supplemental Regulations	
	R	SRB	GRB	A	MH	LI	CD4- L2	CD4- MIB	CD4- L1	LI	LI	LI	LI	LI	LI	LI	LI	LI	LI	LI	LI	LI	LI	LI	LI	LI	LI	LI		LI
7.70 Underlaking establishment, funeral parlor or mortuary chapel, excluding crematorium	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N		
8. Retail Trade																														
8.10 Convenience goods																														
8.11 Convenience goods 1																														
8.111 Hours of operation between 6:00 AM and 11:00 PM	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	10,860 (hours of operation)
8.112 24 hours per day operation	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	
8.12 Convenience goods 2																														
8.121 Hours of operation between 6:00 AM and 11:00 PM	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	
8.122 24 hours per day operation	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	
8.30 Retail sales conducted within a building																														
8.31 Not marine-related																														
8.311 Not marine-related	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	
8.32 Marine-related																														
8.321 Marine-related	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	
8.40 Shopping center																														
8.401 Shopping center	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	
8.50 Retail sales, large format																														
8.501 Retail sales, large format	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	
8.60 Fish market																														
8.601 Fish market	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	10,860 (hours of operation)

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Use	R	SRA SRB	GRA GRB	G/A (A) MH	MRO CD4- L1	CD4- L2	MRB	CD5 CD4	GB	GI	G2	B CD4- W	WB OR W	I	WI	Supplemental Regulations
8.70 Manufacture of goods sold at retail on the premises, such as crafts, coffee roasting and bakery goods	N	N	N	N	N	S	S	P	P	P	P	P	N	N	N	Maximum of 5 persons employed in manufacture
8.80 Sexually oriented business	N	N	N	N	N	N	N	N	S	N	N	N	N	N	N	10.930 (Sexually Oriented Businesses)
9. Eating and Drinking Places																
9.10 Nightclub or bar																
9.11 Occupant load less than 250	N	N	N	N	N	N	N	P	P	P	S	N	N	N	N	10.590 (location)
9.12 Occupant load from 250 to 500	N	N	N	N	N	N	N	S	S	S	S	N	N	N	N	
9.13 Occupant load greater than 500	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	
9.20 Restaurant, take-out only																
9.30 Restaurant, fast food																
9.40 Restaurant, place of public assembly or function room	N	N	N	N	N	N	N	P	P	P	P	P	N	N	N	10.590 (location) 10.860 (hours of operation)
9.41 Occupant load less than 50	N	N	N	N	N	P	N	P	P	P	P	P	N	N	N	
9.42 Occupant load from 50 to 250	N	N	N	N	N	N	N	P	P	P	S	S	N	N	N	
9.43 Occupant load from 250 to 500	N	N	N	N	N	N	N	P	S	S	S	S	N	N	N	
9.44 Occupant load greater than 500	N	N	N	N	N	N	N	S	S	N	N	N	N	N	N	
9.50 Permanently moored vessel used as restaurant or bar, with occupant load less than 250	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	

As Amended Through August 7, 2023

P = Permitted AP = Administrative Approval S = Special Exception CU = Conditional Use Permit N = Prohibited

Use	R	SRA	GRA	GRC	GA/	MRO	CD4-	MRB	CD5	GB	G1	G2	B	CD4-	WB	OR	I	WI	Supplemental Regulations
		SRB	GRB	(A)	MH	L1	L2		CD4				W						
10. Lodging Establishments																			
10.10 Boarding house	N	N	N	N	N	N	N	N	N	S	S	N	S	N	N	N	N	N	
10.20 Bed and breakfast	N	N	S	N	N	S	S	P	P	N	S	S	P	N	N	N	N	N	
10.21 Bed and Breakfast 1	N	N	N	N	N	S	S	P	P	N	S	S	P	N	N	N	N	N	
10.22 Bed and Breakfast 2	N	N	N	N	N	S	S	P	P	N	S	S	P	N	N	N	N	N	
10.30 Inn	N	N	N	N	N	N	S	S	P	P	S	S	P	N	N	N	N	N	
10.40 Hotel or motel	N	N	N	N	N	N	N	N	P	S	S	S	N	N	N	N	N	N	10.836 (Office Research districts)
10.41 Up to 125 rooms	N	N	N	N	N	N	N	N	P	S	S	S	N	N	N	N	N	N	
10.42 126 to 250 rooms	N	N	N	N	N	N	N	N	P	S	S	S	N	N	N	N	N	N	
10.42 251 to 500 rooms	N	N	N	N	N	N	N	N	P	S	S	S	N	N	N	N	N	N	
10.43 More than 500 rooms	N	N	N	N	N	N	N	N	P	S	S	S	N	N	N	N	N	N	
10.50 Conference hotel	N	N	N	N	N	N	N	N	P	P	S	N	N	N	N	N	N	N	
10.60 Conference center	N	N	N	N	N	N	N	N	P	P	S	N	N	N	N	N	N	N	
11. Motor Vehicle-Related Uses																			
11.10 Sales, renting or leasing of passenger cars and light trucks, motorcycles, tractors, snowmobiles and small power equipment (e.g., lawnmowers), including necessary repair services	N	N	N	N	N	N	N	N	N	P	S	N	S	N	N	N	N	N	10.592 (location) 10.843 (motor vehicle related uses)

P = Permitted AP = Administrative Approval S = Special Exception CU = Conditional Use Permit N = Prohibited

Use	R	SR	RA	GRC	GA	MIRG	CD4-	MRB	CD5	GB	G1	G2	CD4-	WB	OR	J	WI	Supplemental Regulations
	SRB	CIRB	(A)	MH	LI	CD4-	L2	CD4-	W									
11.20 Motor vehicle service station, motor vehicle repair or washing facility for passenger cars and light trucks	N	N	N	N	N	N	N	N	N	S	S	N	S	N	N	S	N	10.581 (for area) 10.592 (location) 10.843 (motor vehicle related uses)
11.30 Sales, rental, leasing, distribution, and repair of trucks over 10,000 lb gross vehicle weight (GVW), recreational vehicles, marine craft or manufactured housing, and related equipment	N	N	N	N	N	N	N	N	N	S	S	N	S	N	N	S	N	10.581 (for area) 10.592 (location) 10.843 (motor vehicle related uses)
11.40 Impound lot (principal or accessory use)	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	S	N	
11.50 Truck fueling facility	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	S	N	10.581 (for area) 10.592 (location) 10.843 (motor vehicle related uses)
11.60 Truck terminal	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	S	N	10.581 (for area) 10.592 (location) 10.843 (motor vehicle related uses)
12. Marine Craft Related Uses																		
12.10 Boat landings, boat docks, boatbuses and associated marine uses																		
12.11 Non-commercial	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	N	N	
12.12 Fishing boat landing 1	N	S	S	N	N	N	N	N	P	P	N	N	N	N	P	N	P	0.837.10 (Residential districts)
12.13 Fishing boat landing 2	N	N	N	N	N	N	N	N	N	S	N	N	N	N	S	N	P	
12.20 Marinas																		

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Use	R	SRA SRB	GRA GRB	GRC (A)	GA/ MEH	MRD CD4- L1	CD4- L2	MRB	CD5 CD4	GB	GI	G2	B CD4- W	WB	OR	I	WI	Supplemental Regulations	
12.21 With no repair, servicing or fueling facilities.	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N		
12.22 With repair, servicing or fueling facilities.	N	N	N	N	N	N	N	N	N	N	N	N	N	S	N	N	N	10.581 (lot area) 10.592 (location) 10.860 (hours of operation)	
12.30 Repair of commercial marine craft and marine-related structures.	N	N	N	N	N	N	N	N	N	N	N	N	N	S	N	S	P	10.581 (lot area) 10.592 (location) 10.860 (hours of operation)	
12.40 Landside support facility for commercial passenger vessel	N	N	N	N	N	N	N	N	N	N	N	N	N	P	N	N	P		
13. Wholesale Trade, Warehousing and Distribution																			
13.10 Wholesale use																			
13.11 Not marine-dependent	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	P	N
13.12 Marine-dependent	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	P	P
13.20 Wholesale sales devoted to, and in the same establishment as, a permitted retail use																			
13.21 Occupying up to 20% of gross floor area of establishment	N	N	N	N	N	N	N	N	N	P	P	S	N	P	N	N	N	N	N

P = Permitted AP = Administrative Approval S = Special Exception CU = Conditional Use Permit N = Prohibited

Use	R	SRA	GRA	GRC	GA/	MRO	CD4-	CD4-	CD4-	CD5	GB	G1	G2	CD4-	WB	OR	I	WI	Supplemental Regulations	
		SRB	GRB	(A)	MH	L1	L2	L3	MIK	CTM				W						
13.22 Occupying 21% to 40% of gross floor area of establishment	N	N	N	N	N	N	N	N	N	N	P	N	N	P	N	N	N	N		
13.30 Wholesale lumber yards, lumber and contractor sales																				
13.31 Not marine-dependent	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	P	N	
13.32 Marine-dependent	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	P	S	
13.40 Warehousing or distribution of non-flammable, non-hazardous materials, not classified as a high hazard use																				
13.41 Not marine-dependent	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	P	N	
13.42 Marine-dependent	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	P	P	
14. Industrial Uses																				
14.10 Light Industry																				
14.11 Not marine-dependent	N	N	N	N	N	N	N	N	N	N	S	S	S	N	N	N	N	P	N	
14.12 Marine-dependent	N	N	N	N	N	N	N	N	N	N	S	S	N	N	N	N	N	P	P	
14.20 Research and development																				
14.21 Not marine-dependent	N	N	N	N	N	N	N	N	N	N	S	S	S	N	S	N	S	P	N	
14.22 Marine-dependent	N	N	N	N	N	N	N	N	N	N	S	S	N	S	P	S	P	P	P	

As Amended Through August 7, 2023

P = Permitted A/P = Administrative Approval S = Special Exception CU = Conditional Use Permit N = Prohibited

Use	R	SRA	GRA	GRC	GA/	MRO	CDM-	MIRB	CD5	GB	G1	G2	CD4-	WB	OR	I	W1	Supplemental Regulations
		SRB	GRB	(A)	MH	L1	L2	CD4-	CD4				W					
14.30 Food processing																		
14.31 Not including seafood processing	N	N	N	N	N	N	N	N	N	P	S	N	N	N	N	P	P	10.592 (location) 10.851 (use contained in building)
14.32 Including seafood processing	N	N	N	N	N	N	N	N	N	S	N	N	N	N	N	S	S	
14.40 Electronics manufacturing																		
14.40 Electronics manufacturing	N	N	N	N	N	N	N	N	N	S	S	N	S	N	N	P	N	
14.50 General manufacturing																		
14.51 Not marine-dependent	N	N	N	N	N	N	N	N	N	N	S	S	N	N	N	P	N	
14.52 Marine-dependent	N	N	N	N	N	N	N	N	N	N	N	N	N	N	P	P	S	
14.60 Biological or chemical laboratory																		
14.61 Not marine-dependent	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	S	N	
14.62 Marine-dependent	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	S	S	
14.70 Recycling facility or recycling plant																		
14.70 Recycling facility or recycling plant	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	S	N	10.592 (location) 10.853
14.80 High hazard use, including other uses listed in this section but not including uses described in 14.90																		
14.80 High hazard use, including other uses listed in this section but not including uses described in 14.90	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	S	N	10.593 (location)

P = Permitted A.P = Administrative Approval S = Special Exception CU = Conditional Use Permit N = Prohibited

Use	R		SRA		GRA		GRC		GA/		MRO		CD4-		CD4-		CD4-		WB		OR		I		WI		Supplemental Regulations	
	SRB	GRB	GRB	(A)	MH	LI	CD4- L2	MRB	CD4	GB	G1	G2	CD4- W	CD4- W	OR	OR	OR	OR	OR	OR	OR	OR	OR	OR	OR	OR		
14.00 Storage (other than normal accessory use), processing, disposal, or transfer of petroleum, petrochemicals, natural gas and liquid petroleum products, coal, alcohol, wood pulp, solid or liquid waste, junk or hazardous waste as classified by Federal or State law	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N		
15. Transportation and Utilities																												
15.10 Public or private transformer station, substation, pumping station or automatic telephone exchange, not including any business office, storage yard or storage building																												
15.11 Essential to service the area in which it is located	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	
15.12 Providing community-wide or regional service	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	
15.20 Heliport or helped																												
15.21 Helped, as an accessory use to a permitted hospital use	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	
15.22 Heliport	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	

As Amended Through August 7, 2023

4-22

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Use	R	SRB	GRA	GRC	GA	MRO	CD4-	MRE	CD4	CB	G1	G2	CD4-	WB	OR	I	WI	Supplemental Regulations
	SRB	GRA	GRC	GA	MRO	CD4-	MRE	CD4	CB	G1	G2	CD4-	WB	OR	I	WI		
	SRB	GRA	GRC	GA	MRO	CD4-	MRE	CD4	CB	G1	G2	CD4-	WB	OR	I	WI		
16. Wireless Telecommunications Facilities																		
16.10 Satellite dish receiver 42 inches or less in diameter:																		
16.11 Building-mounted, maximum height less than or equal to 4 feet from the roof surface:	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
16.12 Ground-mounted, complying with all yard requirements for the district:	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
16.20 Satellite dish receiver more than 42 inches in diameter:																		
16.21 Building-mounted, maximum height less than or equal to 4 feet from the roof surface:	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S
16.22 Ground-mounted, complying with all yard requirements for the district:	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S
16.30 Whip antenna not more than 30 feet in height:	S	S	S	S	S	S	S	S	P	P	S	S	P	P	P	P	P	P
16.40 Other wireless telecommunications facility not included above:	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
																		10.460 (Municipal districts) 10.930 (Wireless telecommunications facilities)

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Use	SRA		GRA		GRC		GA/		MRO		CD5		B		CD4-		WB	OR	I	WI	Supplemental Regulations
	R	SRB	GRB	ARB	GRB	ARB	GA	MA	CD4-	L2	CD4-	L1	CD4-	CD4-	G1	G2					
18.40 Carts or trailers, including outdoor display area, used for the seasonal sale of dry goods, Christmas trees, flowers, fruits, vegetables, seasonal products and prepared food	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	P
19. Accessory Uses																					
19.10 Accessory use to a permitted principal use, but not including any outdoor storage	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	10.811 (residential accessory uses)
19.20 Home occupation																					
19.21 Home occupation 1	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	N	N	
19.22 Home occupation 2	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	N	N	
19.30 Concessions and services located within the principal building	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	
19.40 Drive-through facility, as accessory use to a permitted principal use	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	10.835 (necessary drive-through uses)
19.50 Outdoor dining or drinking area, as accessory use to a permitted principal use	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	
20. Accessory Storage																					
20.10 Indoor storage of motor vehicles or boats as an accessory use	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	

As Amended Through August 7, 2023

Section 10.520 Residential and Mixed Residential Districts

10.521 Table of Dimensional Standards – Residential and Mixed Residential Districts¹

	R	SRA	SRB	GRA	GRB	GRC	GA/MH	MRO	MRB
Minimum Lot Dimensions									
Lot area	5 acres	1 acre	15,000 sf	7,500 sf	5,000 sf	3,500 sf	5 acres	7,500 sf	7,500 sf
Lot area per dwelling unit	5 acres	1 acre	15,000 sf	7,500 sf	5,000 sf	3,500 sf	10,000 sf	7,500 sf	7,500 sf
Continuous street frontage	NA	150'	100'	100'	80'	70'	N/A	100'	100'
Depth	NA	200'	100'	70'	60'	50'	N/A	80'	80'
Minimum Yard Dimensions									
Front	50'	30'	30' ²	15'	5'	5'	30' ^{2,4}	5'	5' ²
Side	20'	20'	10'	10'	10'	10'	25'	10'	10'
Rear	40'	40'	30'	20'	25'	20'	25'	15'	15'
Maximum Structure Dimensions									
Structure height									
Sloped roof	35'	35'	35'	35'	35'	35' ³	35' ^{3,4}	40'	40'
Flat roof	35'	30'	30'	30'	30'	30'	35' ^{3,4}	30'	30'
Roof appurtenance height	8'	8'	8'	8'	8'	8'	8'	10'	10'
Building coverage	5%	10%	20%	25%	30%	35%	20% ⁴	40%	40%
Minimum open space	75%	50%	40%	30%	25%	20%	50%	25%	25%

Notes:
 1. See Article 5A and Article 5B for dimensional standards in Character and Gateway Neighborhood Mixed Use Districts.
 2. See Section 10.533 for special front yard requirements on Lafayette Road.
 3. Within the General Residence C and Garden Apartment/Mobile Home Park districts an additional 8' of height may be added to the maximum structure height in order to provide for multifamily dwellings that include vehicular parking spaces located within the residential building itself, if the additional height results in increased open space when compared to a site plan showing what open spaces would remain if required parking spaces were located in the open and in accessory structures.
 4. See Section 10.816 for requirements within a manufactured housing park.

NA = Not Applicable NR = No Requirement

10.522 Multifamily Dwellings

The maximum **building length** of a **multifamily dwelling** shall not exceed 160 feet.

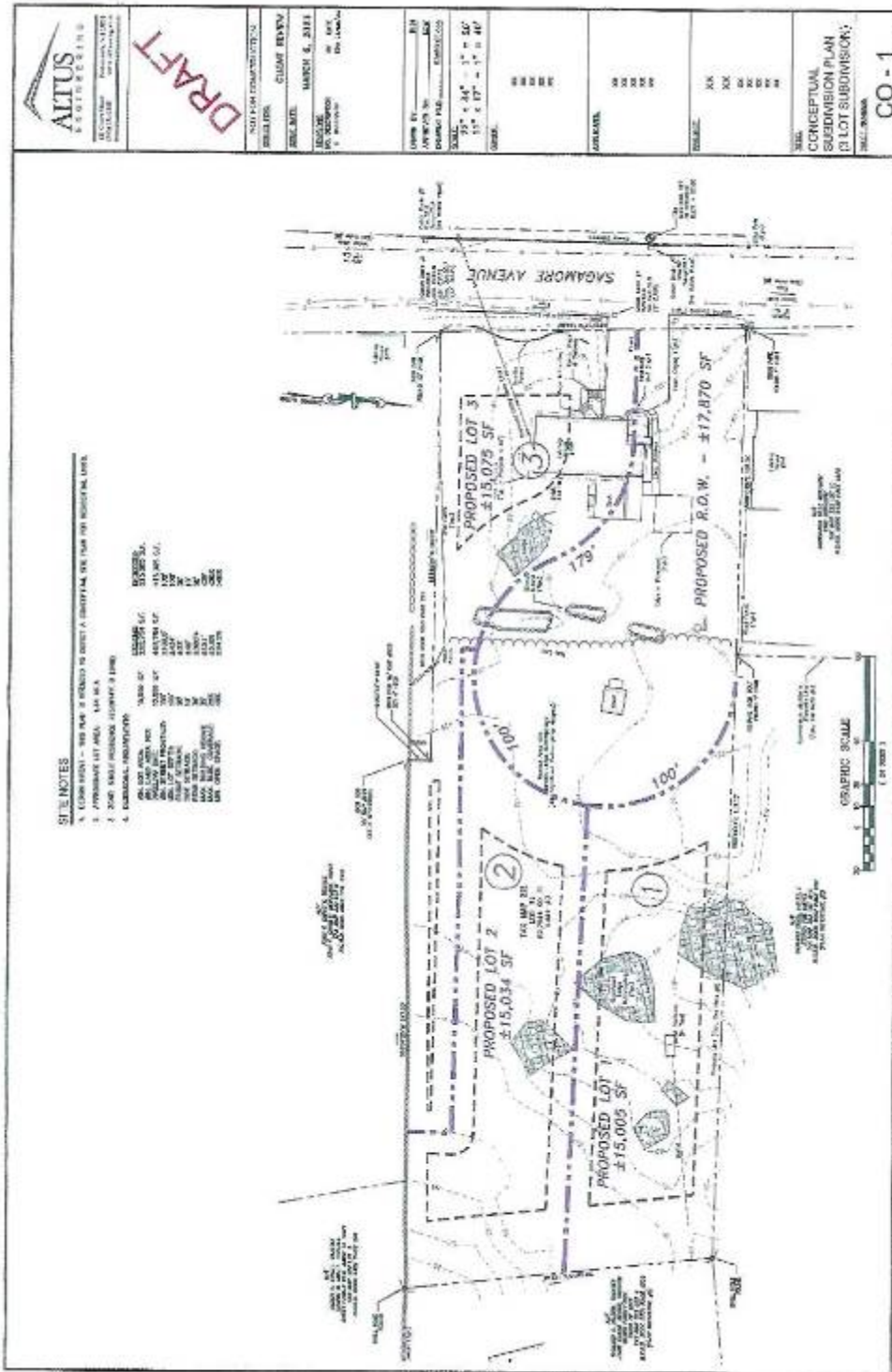
Section 10.530 Business and Industrial Districts

10.531 Table of Dimensional Standards – Business and Industrial Districts¹

	B	GB	WB	I	WI	OR
Minimum Lot Dimensions						
Lot Area	20,000 sf	43,560 sf	20,000 sf	2 acres	2 acres	3 acres ²
Lot Area per dwelling unit	2,500 sf	NR	NR	N/A	N/A	N/A
Continuous street frontage	100'	200'	100'	200'	200'	300' ²
Depth	80'	100'	100'	200'	200'	300' ²
Minimum Yard Dimensions						
Front	20'	30'	30'	70'	70'	50' ²
Side	15'	30'	30'	50'	50'	75' ²
Rear	15'	50'	20'	50'	50'	50'
Maximum Structure Dimensions						
Structure height	50'	60'	35'	70' ³	70' ³	60' ³
Roof appurtenance height	10'	10'	10'	10'	10'	10'
Building coverage	35%	30%	30%	50%	50%	30%
Floor Area Ratio	NR	NR	NR	NR	NR	NR
Minimum open space	15%	20%	20%	20%	20%	30%

Notes:
 1. See Article 5A and Article 5B for dimensional standards in Character and Gateway Neighborhood Mixed Use Districts.
 2. See Section 10.532.10 for requirements for lots adjacent to North Mill Pond.
 3. See Section 10.532.20 for reduced structure height within 200' of North Mill Pond or Piscataqua River.
 N/A – Not Applicable NR = No Requirement

CONCEPT PLAN



BUILDING PLANS

Sweet Peekaboo Duplex
41B.224 (08/2023)

NOTE: To easily be used only if printed on 11x17 paper with "no scaling" (do not "fit").

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EXHIBIT B
Art Form Architecture, LLC

603-471-9569



Dear Builders and Home Buyers,

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

This design may not yet have Construction Drawings (as defined in the Terms) and is, therefore, only suitable as a Design Drawing (as defined in the Terms) and is not intended to be used for construction. Please see the Data Explained on our website to understand more about drawings and other data provided. We are not responsible for typographical errors.

Art Form Architecture ("Art Form") requests that our Terms design be built substantially as designed. Art Form will not be obligated to make changes to this design or to accommodate any changes that are not specifically noted in this agreement. While we attempt to accommodate where possible and reasonable, and while the changes do not detract from the design, any and all changes to Drawings must be approved in writing by Art Form. It is recommended that you have your Drawing updated by Art Form prior to attaching any Drawing to any building agreement. Art Form shall not be responsible for the review of or construction alternatives to any of its Drawings.

Finalize Changes:

- To ensure design integrity, we only permit alterations to portions of the final design, including but not limited to door knockouts, window casings, window casings, and roof pitches. While we may allow features to add that may be to aesthetic elements, we do not allow our designs to be altered in any way that would affect the structural integrity of the building. Any such alterations require the express written consent of Art Form.
- Finalize changes to the design, including but not limited to:
 - Structural changes always require the express written consent of Art Form.
 - If you wish to make or remove walls or structural elements (such as removal of posts, supports or house ties, ceiling height changes, addition of dormers, etc.), please do not assume it can be done without other additional changes (even if the builder or lumber yard says you can).

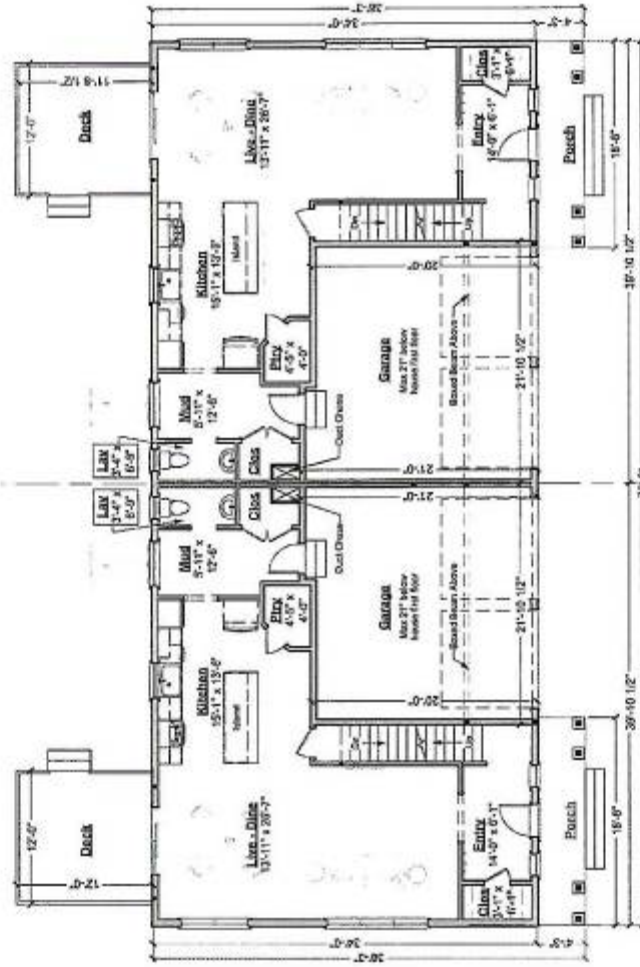
Sweet Peekaboo Duplex
418.224 (08/2023)

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Art Form Architecture, LLC
603-431-8550



Living Area: 13'-11" x 20'-7"
 Typical - 529 sq ft per unit (to the outside face of framing, for comparison to similar single family)
 Condo - 863 sq ft per unit (to the inside face of framing, usual Condo measurement)
 8 ft Ceilings

First Floor Plan
Scale: 1/8" = 1'-0"

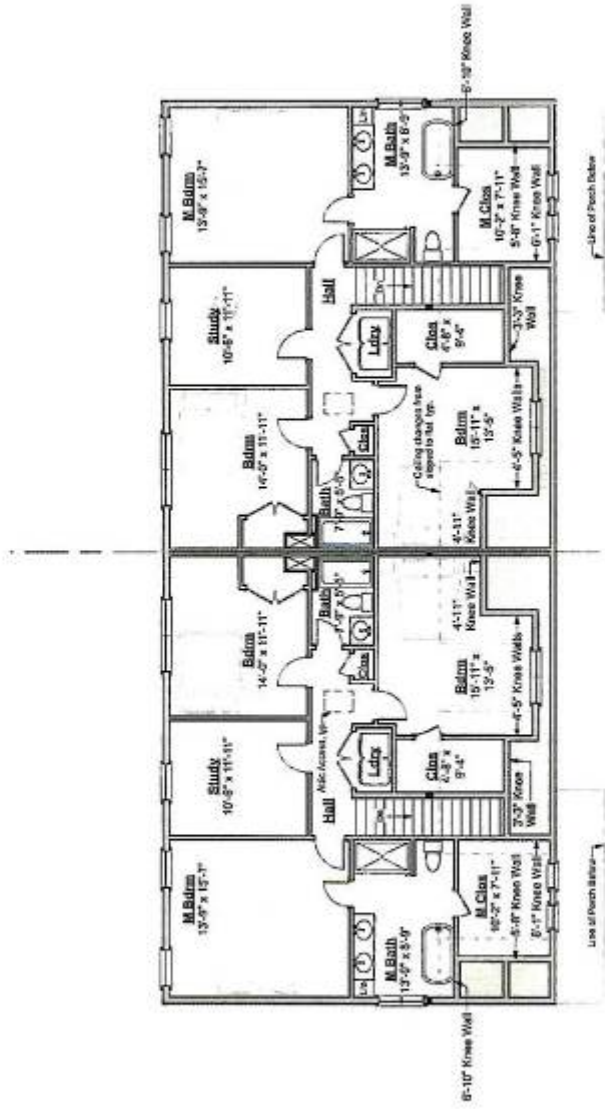
Sweet Peekaboo Duplex
418.224 (8/8/2023)

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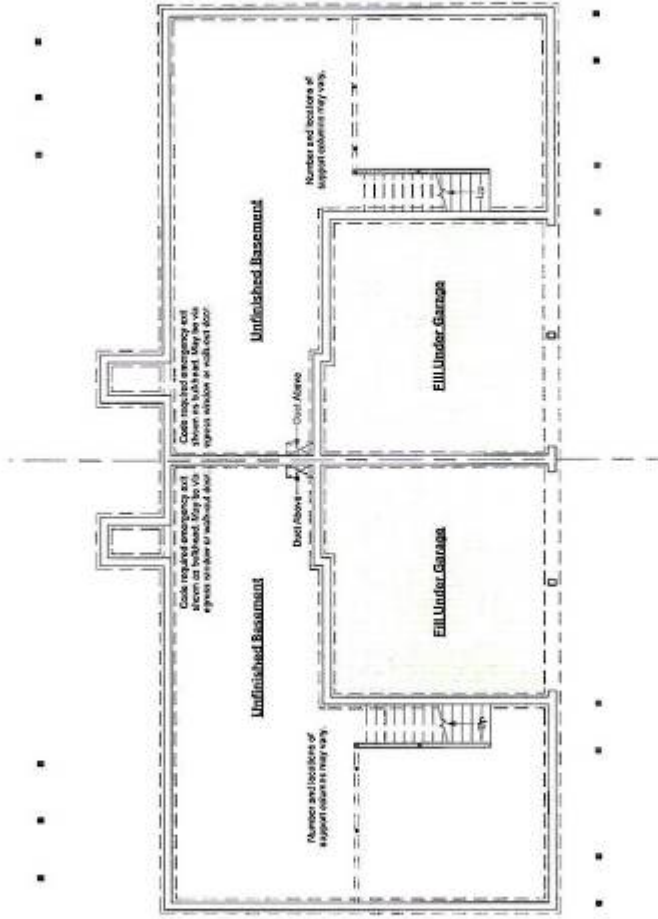


603-631-6039



Living Area this floor:
Typical - 1244 sq ft per unit (to this outside face of framing, for comparison to similar single family)
Condo - 1178 sq ft per unit (to the inside face of framing, usual Condo convention)
8 ft Ceilings

Second Floor Plan
Scale: 1/8" = 1'-0"



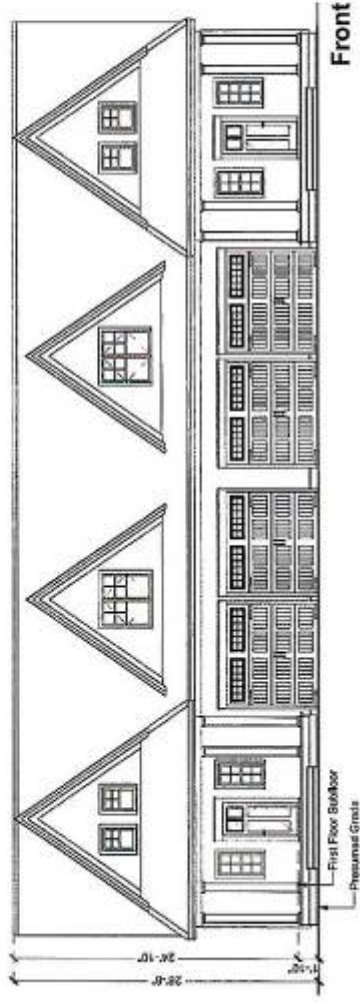
Foundation Plan
Scale: 1/8" = 1'-0"

Sweet Peekaboo Duplex
 418.224 (08/2023)

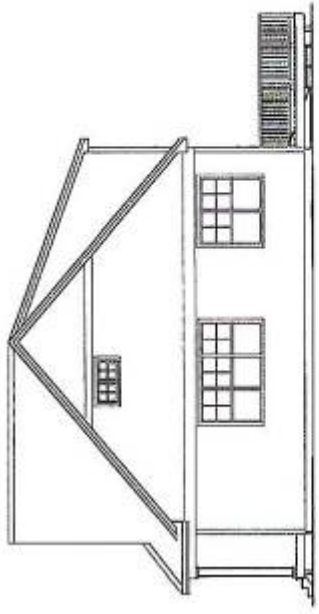
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A Art Form Architecture, LLC
 603-431-9696



Front



Right

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

Sweet Peekaboo Duplex
4.18.224 (8/9/2023)

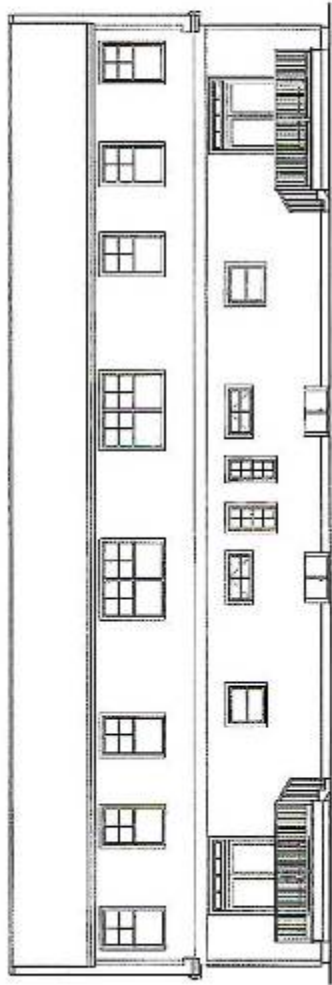
NOTE: To scale as noted only if printed on
11x17 paper with no scaling (format: PLT).

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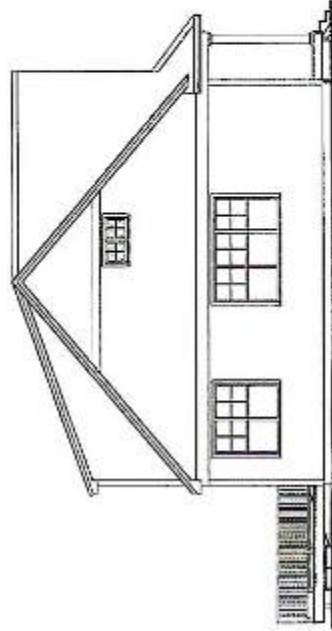


Art Farm Architecture, LLC

603-437-8559



Rear



Left

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

Sweet Peekaboo Duplex
41B.224 (6/8/2023)

NOTE: To scale as noted only if printed on
11x17 paper with no scaling. (for use 11x17)

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written approval. This design may have geographic restrictions.



Art Farm Architecture, LLC
603-431-6689



Interior Views - First Floor
Left Side Unit (Right Side Unit is Mirror Image)

Sweet Peekaboo Duplex
418.224 (6/8/2023)

NOTE: To scale as noted only, printed on
11x17 paper with "no scaling" (do not "fit").

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make changes. This design may have geographic restrictions.

A Art Farm Architecture, LLC
603-431-9569



Interior Views - Second Floor
Left Side Unit (Right Side Unit is Mirror Image)



CERTIFICATION

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

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

Respectively submitted,


Brian W. White, MAI, SRA NHC#52

Qualifications of the Appraiser

Brian W. White, MAI, SRA

Professional Designations:

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

Employment:

1989 to Present White Appraisal – Dover, NH
President – Senior Appraiser
Owner of White Appraisal, a commercial and residential
real estate appraisal firm. Complete appraisals on all
types of commercial and residential properties.
Consulting.

1988 Finlay Appraisal Services – Portsmouth, NH
Senior Vice President/Chief Operations Officer
Oversaw the operation of four appraisal offices. Completed commercial
and residential appraisals on all types of properties.

1985 Finlay Appraisal Services – Portsmouth, NH
and Appraisal Services Manager – South Portland, ME. Completed
commercial and residential appraisals on all types of properties.

Education:

Mitchell College
Associate of Arts, Liberal Studies

University of Southern Maine
Bachelors of Science, Business Administration
Bus 022 Real Estate Law
Bus 023 Real Estate Practice
Bus 025 Real Estate Valuation

American Institute of Real Estate Appraisers
1A-1 Real Estate Appraisal Principles
1A-2 Basic Valuation Procedures
1B-A Cap. Theory and Technique (A)
1B-B Cap. Theory and Technique (B)
2-3 Standards of Pro. Practice
2-4 Exam #7 Industrial Valuation

Society of Real Estate Appraisers
101 Intro. To Appraising Real Property
102 Applied Residential Property Valuation
201 Prin. Of Income Property Appraising
202 Applied Income Property Valuation

Recent Appraisal Institute Classes:
Introduction to Appraising Green Buildings – 2011
USPAP Update - 2013
USPAP Update - 2015
Introduction to Land Valuation - 2016
USPAP Update- 2017

Education (Continued):

USPAP Update- 2019
Business Practices & Ethics- 2021
USPAP 2022/2023 Update- 2021

Recent Seminars:

Appraising Energy Efficient Residential Properties – 2018
Commercial Real Estate Roundtable – 2019
Appraiser Essentials with CRS and Green Fields – 2019
Land Development & Residential Building Costs – 2019
Myths in Appraiser Liability – 2019
Appraising in Uncertain Times – 2019
Market Trends in NH Real Estate – 2020
Appraising Commercial Properties during a Pandemic – 2020
Defining the Appraisal Problem: Sleuthing for the Approaches to Value- 2021
Forest Valuation- 2021
Appraiser Essentials Paragon MLS- 2021
Residential Building Systems- 2021
2021-2022 NH Market Insights- 2021
Implications for Appraisers of Conservation Easement Appraisals- 2022
NH's Housing Market & Covid: What a Long, Strange Road It's Been!- 2022
Current Residential & Commercial Valuation Concerns- 2022
Commercial Real Estate Markets in Turbulent Times- 2023
NH in a Time of Virus: Are We in Recovery? An Economist's View- 2023
Dealing with Atypical Properties or Assignment Conditions- 2023

Appointments:

Board of Directors – New Hampshire Chapter of the Appraisal
Institute - 1991 to 1993; 2000 to 2010 and 2015-2018
Vice President - New Hampshire Chapter of the Appraisal Institute – 2011-2012 & 2019
President – New Hampshire Chapter of the Appraisal Institute – 2013 & 2014

Experience:

Review Chairperson – New Hampshire Chapter of the Appraisal
Institute – 1994 to 2010

Licenses:

N.H. Certified General Appraiser #NHCG -52, Expires 4/30/2025

Partial List of Clients:

Banks:

Androscoggin Bank
Granite Bank
Federal Savings Bank
Sovereign Bank
Eastern Bank
Century Bank
TD Bank
Kennebunk Savings Bank
Northeast Federal Credit Union
Profile Bank
Peoples United Bank
Key Bank
Optima Bank and Trust
Provident Bank

Attorneys:

John Colliander
Karyn Forbes
Michael Donahue
Richard Krans
Simone Massy
Samuel Reid
Daniel Schwartz
Robert Shaines
William Shaheen
Steve Soloman
Gerald Giles
Ralph Woodman
Gayle Braley
Fred Forman

Others:

City of Dover
Town of Durham
University of New Hampshire
Wentworth-Douglass
The Homemakers
Strafford Health Alliance
Goss International
Chad Kageleiry
Gary Levy
Stan Robbins
Daniel Philbrick
Keith Frizzell
Chuck Cressy
John Proulx

State of New Hampshire



Real Estate Appraisers Board

Authorized as
Certified General Appraiser

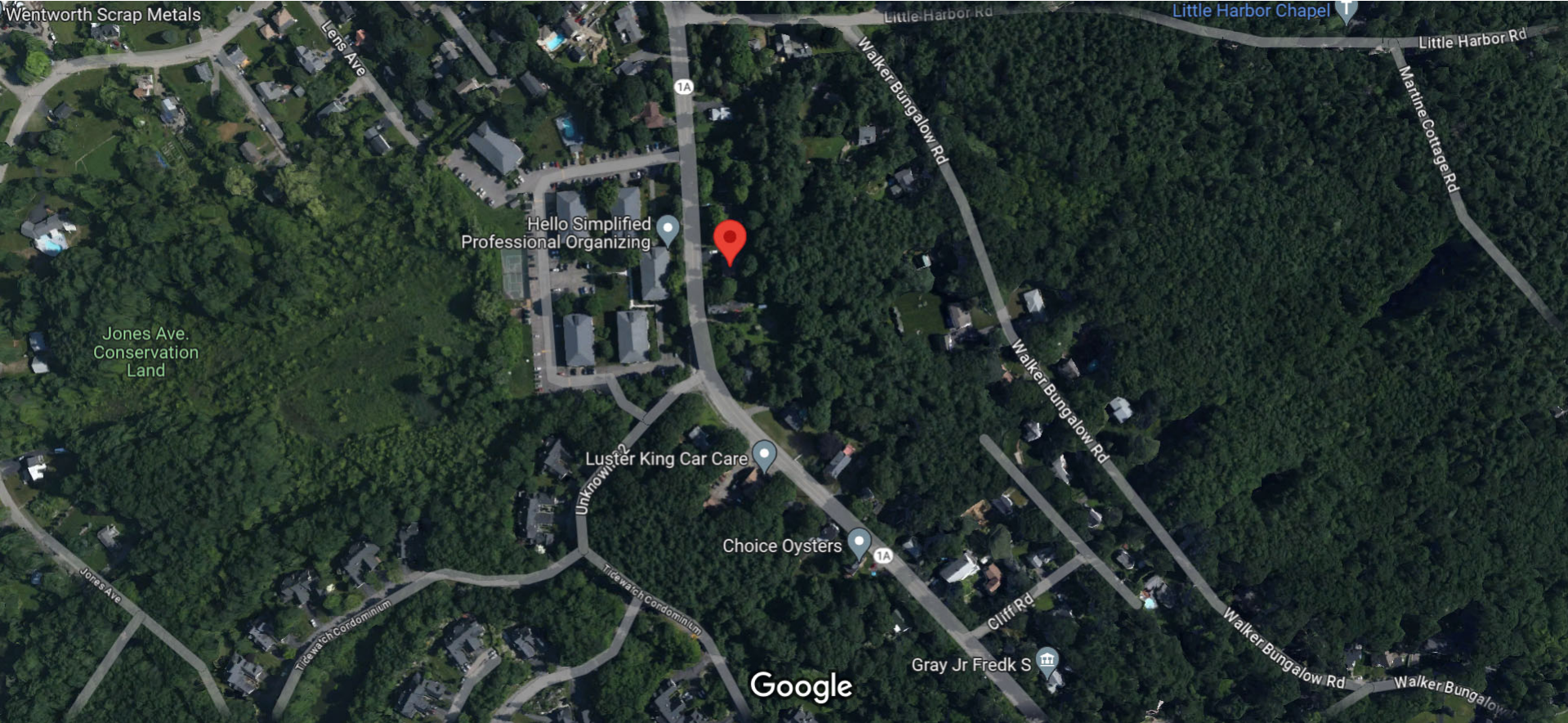
Issued To
BRIAN W WHITE

License Number: NHCG-52

Active

Issue Date: 01/01/1992

Expiration Date: 04/30/2025



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Portsmouth, New Hampshire

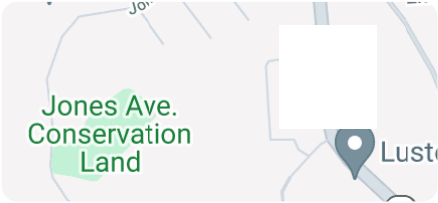
Google Street View

Sep 2019

See more dates



Image capture: Sep 2019 © 2024 Google









CURRENT OWNER		TOPO	UTILITIES	STRY/ROAD	LOCATION	CURRENT ASSESSMENT			
MOUFLOUZE FRANCES E REVOC T MOUFLOUZE F ALEX T CAMERON P 550 SAGAMORE AVE PORTSMOUTH NH 03801		1 Level	0 All Public	1 Paved		Description	Code	Appraised	Assessed
		8 Landscaped				RESIDNTL	1010	175,000	175,000
						RES LAND	1010	270,100	270,100
SUPPLEMENTAL DATA						RESIDNTL	1010	300	300
		Alt Prcl ID 0222-0011-0000-0000 OLDACTN 8920		CONDO C INLAW Y/ LOT SPLIT 2015 Reva JM Ex/Cr Appli		Total		445,400	445,400

2229
 PORTSMOUTH, NH
VISION

RECORD OF OWNERSHIP		BK-VOL/PAGE	SALE DATE	Q/U	V/I	SALE PRICE	VC	PREVIOUS ASSESSMENTS (HISTORY)								
MOUFLOUZE FRANCES E REVOC TR OF 20 MOUFLOUZE FRANCES		5660 2227	10-07-2015	U	I	0	44	Year	Code	Assessed	Year	Code	Assessed V	Year	Code	Assessed
		2485 0342	04-04-1984		I	0		2021	1010	175,000	2020	1010	175,000	2019	1010	174,500
									1010	270,100		1010	270,100		1010	270,100
									1010	300		1010	300		1010	300
								Total		445,400	Total		445,400	Total		444,900

EXEMPTIONS			OTHER ASSESSMENTS					
Year	Code	Description	Amount	Code	Description	Number	Amount	Comm Int
2008	1	VETERAN-1	500.00					
Total			500.00					

This signature acknowledges a visit by a Data Collector or Assessor

APPRAISED VALUE SUMMARY	
Appraised Bldg. Value (Card)	170,300
Appraised Xf (B) Value (Bldg)	4,700
Appraised Ob (B) Value (Bldg)	300
Appraised Land Value (Bldg)	270,100
Special Land Value	0
Total Appraised Parcel Value	445,400
Valuation Method	C
Total Appraised Parcel Value	445,400

ASSESSING NEIGHBORHOOD			
Nbhd	Nbhd Name	B	Tracing
112			

NOTES	
07/13- REPL WINDS; CHNG SHD1 COND TO 30	
APPT LETTER 6/7/13	

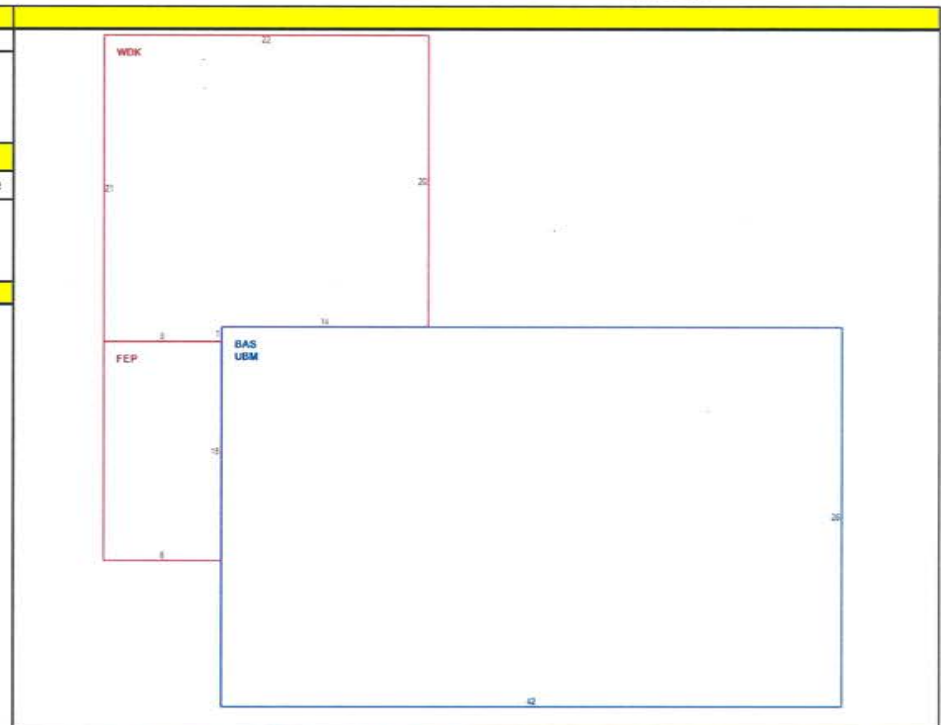
BUILDING PERMIT RECORD								
Permit Id	Issue Date	Type	Description	Amount	Insp Date	% Comp	Date Comp	Comments
34005	12-03-2018	PL	Plumbing	1,400	02-20-2019	100		REPLACING HOT WATER HE
35111	11-30-2018	EL	Electric	500	02-20-2019	100		REPLACE WIRING FROM OL

VISIT / CHANGE HISTORY					
Date	Id	Type	Is	Cd	Purpost/Result
02-20-2019	BH	02		50	Building Permit
07-04-2017	PM			FR	Field Review Stat Update
04-17-2015	RT			FR	Field Review Stat Update
07-01-2013	JM			10	Measu/LtrSnt No Respons
10-13-2000	SS		1	1	Entry + Sign INACTIVE

LAND LINE VALUATION SECTION																	
B	Use Code	Description	Zone	Frontage	Depth	Land Units	Unit Price	Size Ad	Site	Cond.	ST Idx	S.I. Adj.	Notes- Adj	Special Pricing	Adj Unit P	Land Value	
1	1010	SINGLE FAM M	SRB			43,560 SF	4.16	1.0000	1	0.95	112	1.500	-5% traffic	1.0000	5.93	258,200	
1	1010	SINGLE FAM M	SRB			0.480 AC	16,500	1.0000	0	1.00	112	1.500		1.0000	24,750	11,900	
Total Card Land Units						1 AC	Parcel Total Land Area						1	Total Land Value			270,100

EXHIBIT G

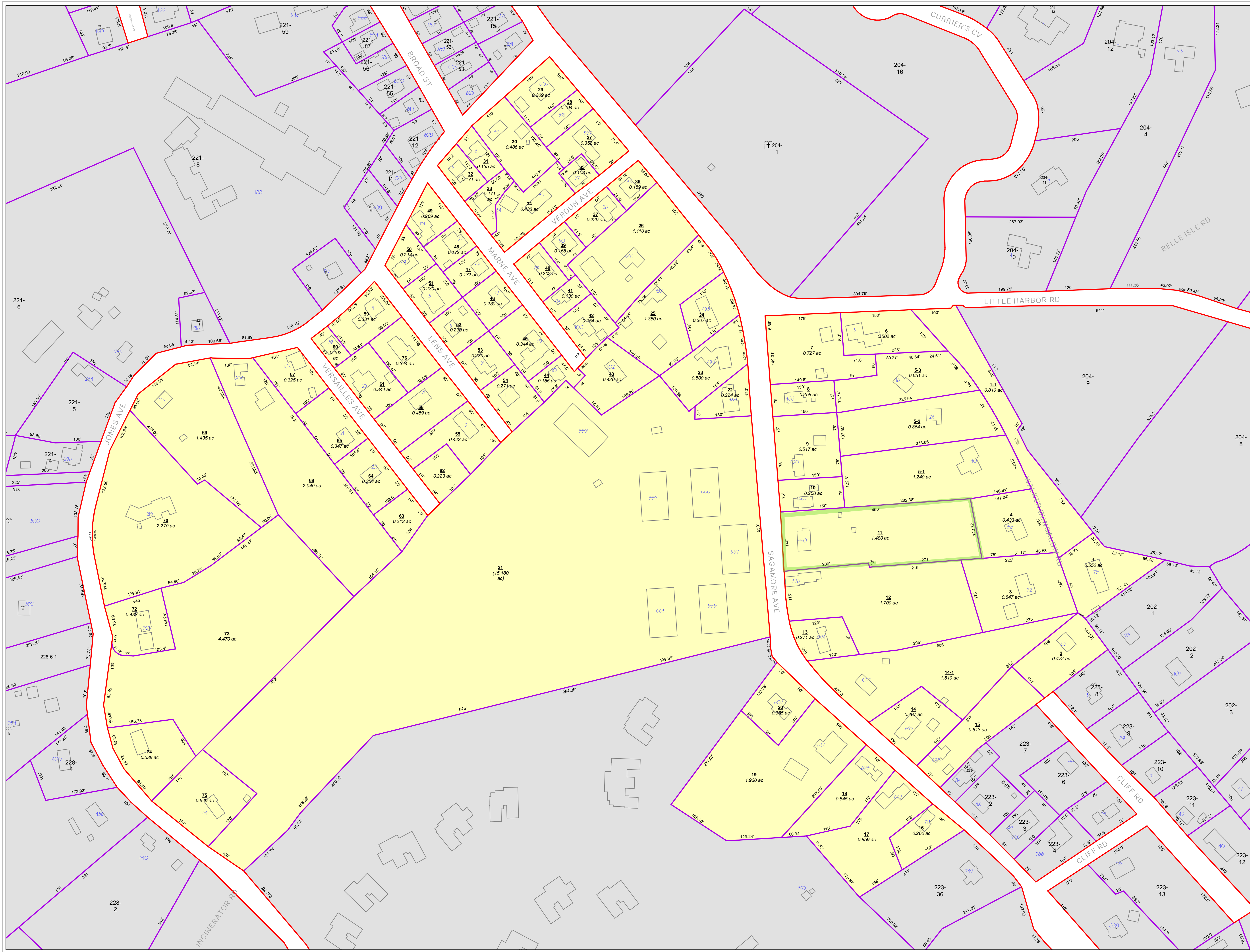
CONSTRUCTION DETAIL			CONSTRUCTION DETAIL (CONTINUED)		
Element	Cd	Description	Element	Cd	Description
Style:	01	Ranch			
Model:	01	Residential			
Grade:	C+	C+			
Stories:	1				
Occupancy	1				
Exterior Wall 1	25	Vinyl Siding			
Exterior Wall 2					
Roof Structure:	03	Gable/Hip			
Roof Cover	03	Asph/F Gls/Cmp			
Interior Wall 1	05	Drywall/Sheet			
Interior Wall 2					
Interior Flr 1	14	Carpet			
Interior Flr 2	06	Inlaid Sht Gds			
Heat Fuel	02	Oil			
Heat Type:	02	Warm Air			
AC Type:	03	Central			
Total Bedrooms	03	3 Bedrooms			
Total Bthrms:	1				
Total Half Baths	1				
Total Xtra Fixtrs	0				
Total Rooms:	5				
Bath Style:	1	Avg Quality			
Kitchen Style:	1	Avg Quality			
Kitchen Gr					
WB Fireplaces	0				
Extra Openings	0				
Metal Fireplace	0				
Extra Openings	0				
Bsmt Garage	1				
			MIXED USE		
			Code	Description	Percentage
			1010	SINGLE FAM MDL-01	100
					0
					0
			COST / MARKET VALUATION		
			Adj. Base Rate		151.74
			Building Value New		218,356
			Year Built		1960
			Effective Year Built		1997
			Depreciation Code		GD
			Remodel Rating		
			Year Remodeled		
			Depreciation %		22
			Functional Obsol		
			External Obsol		
			Trend Factor		1
			Condition		
			Condition %		
			Percent Good		78
			RCNLD		170,300
			Dep % Ovr		
			Dep Ovr Comment		
			Misc Imp Ovr		
			Misc Imp Ovr Comment		
			Cost to Cure Ovr		
			Cost to Cure Ovr Comment		



OB - OUTBUILDING & YARD ITEMS(L) / XF - BUILDING EXTRA FEATURES(B)										
Code	Description	L/B	Units	Unit Price	Yr Blt	Cond. Cd	% Gd	Grade	Grade Adj.	Appr. Value
REC	REC ROOM	B	240	25.00	1997	A	78	C	1.00	4,700
SHD1	SHED FRAME	L	96	13.00	1970	F	30	D	0.90	300

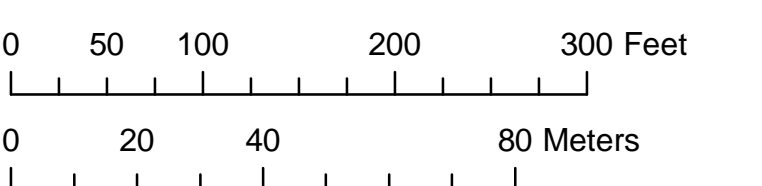
BUILDING SUB-AREA SUMMARY SECTION						
Code	Description	Living Area	Floor Area	Eff Area	Unit Cost	Undeprec Value
BAS	First Floor	1,092	1,092	1,092	151.74	165,702
FEP	Porch, Enclosed	0	120	84	106.22	12,746
UBM	Basement, Unfinished	0	1,092	218	30.29	33,080
WDK	Deck, Wood	0	448	45	15.24	6,828
Ttl Gross Liv / Lease Area		1,092	2,752	1,439		218,356



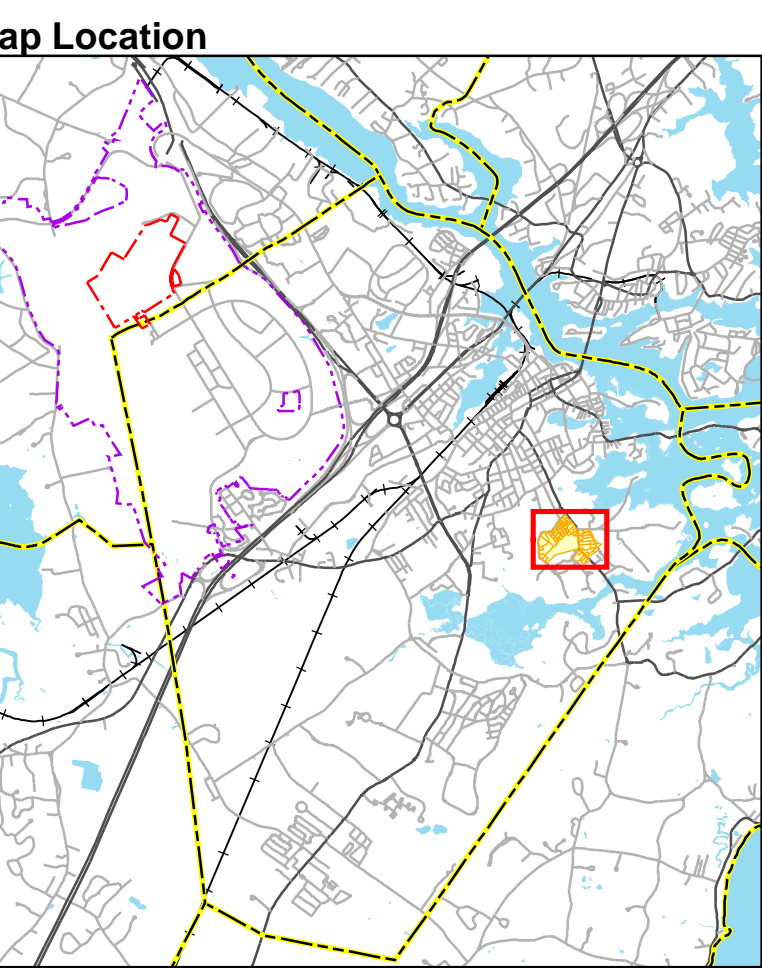
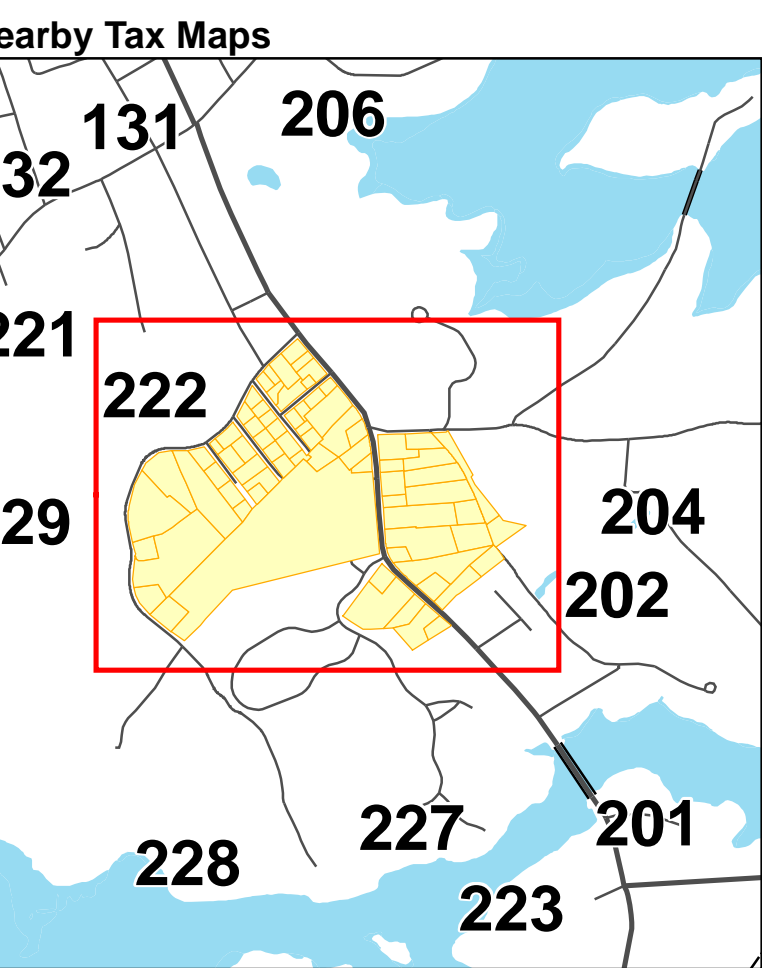


- Partial Legend**
 See the cover sheet for the complete legend.
- 7-5A** Lot or lot-unit number
 - 2.56 ac Parcel area in acres (ac) or square feet (sf)
 - 25 Address number
 - 233-137 Parcel number from a neighboring map
 - 68 Parcel line dimension
 - Street name
- SIMS AVE
- Parcel/Parcel boundary
 - 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 H

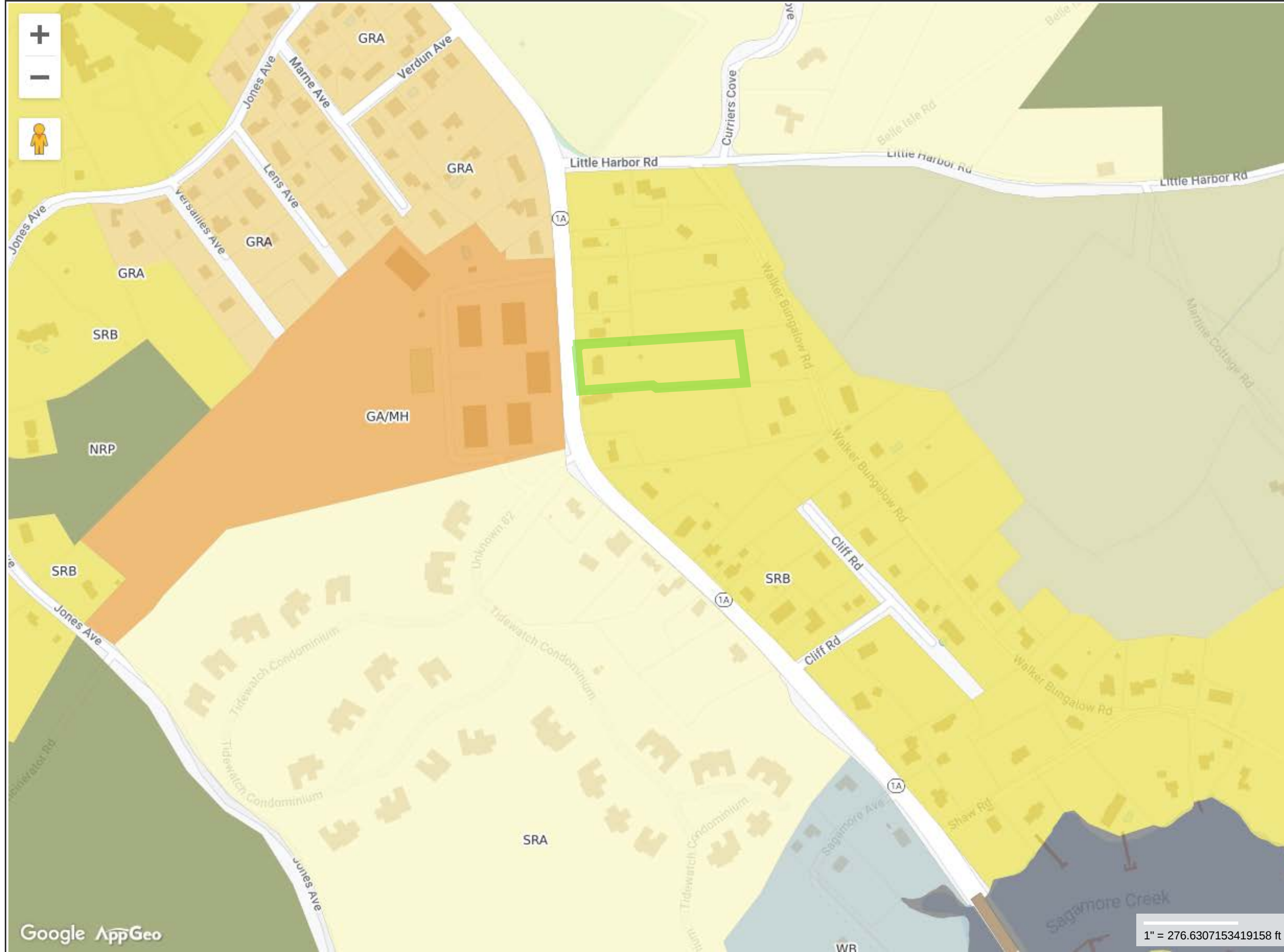


This map is for assessment purposes only. It is not intended for legal description or conveyance. Parcels are mapped as of April 1. Building footprints are 2006 data and may not represent current structures. Streets appearing on this map may be paper (unbuilt) streets. Lot numbers take precedence over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



Portsmouth, New Hampshire
 2022
Tax Map 222

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 I

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

DRAFT

NOT FOR CONSTRUCTION

ISSUED FOR: CLIENT REVIEW

ISSUE DATE: MARCH 6, 2023

REVISIONS
NO. DESCRIPTION BY DATE
0 DISCUSSION EDW 03/06/23

DRAWN BY: RLH
APPROVED BY: EDW
DRAWING FILE: 5385SUBD.dwg

SCALE:
22" x 34" - 1" = 20'
11" x 17" - 1" = 40'

OWNER:
XX
XX
XX
XX
XX

APPLICANT:
XX
XX
XX
XX
XX

PROJECT:
XX
XX
XX
XX
XX
XX

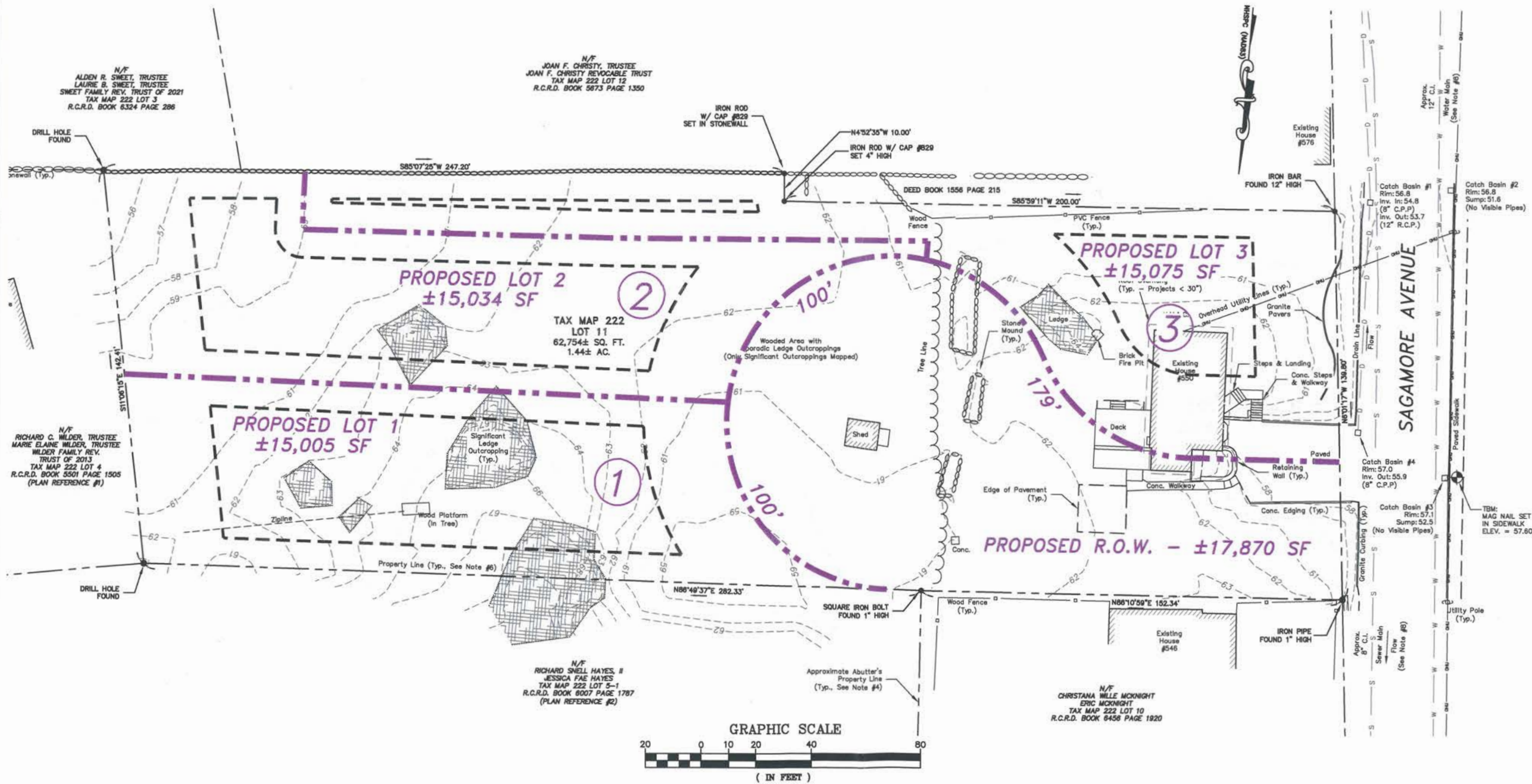
TITLE:
CONCEPTUAL
SUBDIVISION PLAN
(3 LOT SUBDIVISION)

SHEET NUMBER:
CO - 1

SITE NOTES

- DESIGN INTENT - THIS PLAN IS INTENDED TO DEPICT A CONCEPTUAL SITE PLAN FOR RESIDENTIAL UNITS.
- APPROXIMATE LOT AREA: 1.44 AC.±
- ZONE: SINGLE RESIDENCE RESIDENCE B (SRB)
- DIMENSIONAL REQUIREMENTS:

	EXISTING	PROPOSED
MIN. LOT AREA:	15,000 S.F.	±15,005 S.F.
MIN. LAND AREA PER DWELLING UNIT:	15,000 S.F.	±15,005 S.F.
MIN. STREET FRONTAGE:	100'	100'
MIN. LOT DEPTH:	100'	100'
FRONT SETBACK:	30'	30'
SIDE SETBACK:	10'	10'
REAR SETBACK:	30'	30'
MAX. BUILDING HEIGHT:	35'	<35'
MAX. BLDG. COVERAGE:	20%	<20%
MIN. OPEN SPACE:	40%	>40%



III. NEW BUSINESS

D. The request of **Cynthia J. Walker (Owner)**, for property located at **46 Willow Lane** whereas relief is needed to demolish the existing shed, construct an addition to the primary structure and construct a detached garage which requires the following: 1) Variance from Section 10.521 to allow: a) 6.5 foot right yard where 10 feet is required; b) a 2 foot front yard where 15 feet is required; and c) 28% building coverage where 25% is the maximum; 2) Variance from Section 10.571 to allow an accessory structure to be closer to the street than the primary structure; 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 133 Lot 18 and lies within the General Residence A (GRA) District. (LU-24-8)

Existing & Proposed Conditions

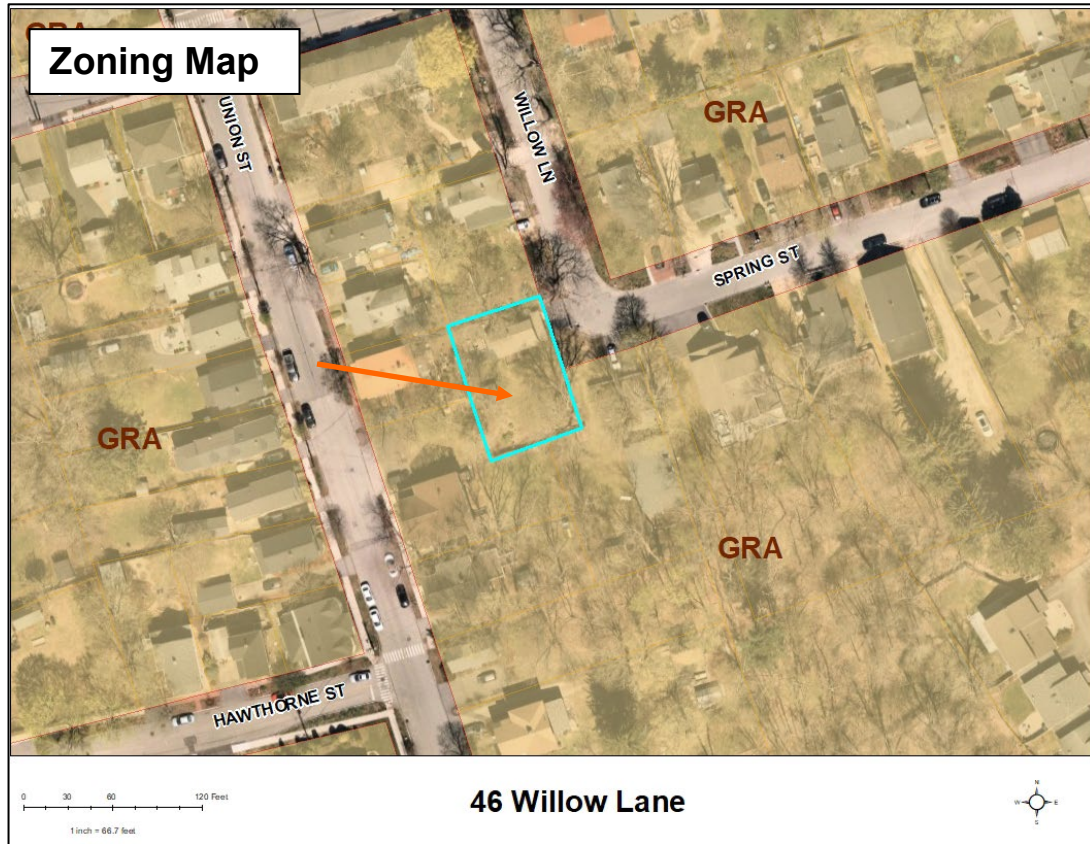
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-living unit	*Construct an addition to the primary structure and a detached garage	Primarily residential
<u>Lot area (sq. ft.):</u>	6098.4	6098.4	7,500 min.
<u>Street Frontage (ft)</u>	49	49	100
<u>Lot depth (ft.)</u>	66	66	70 min.
<u>Front Yard (ft.):</u>	Main House: 6.4	Main House: 12.2 Garage: 2	15 min.
<u>Left Yard (ft.):</u>	>30	Main House: >20 Garage: 17.1	10 min.
<u>Right Yard (ft.):</u>	6.5	6.5	10 min.
<u>Rear Yard (ft.):</u>	>20	20.27	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	15.6	28	25 max.
<u>Open Space Coverage (%):</u>	>30	>30	30 min.
<u>Parking</u>	2	2	2
<u>Estimated Age of Structure:</u>	1925	Variance request(s) shown in red.	

***Relief needed to build the garage closer to the street than the primary structure and to construct an addition to the already non-conforming primary structure that would further impact the non-conformity.**

Other Permits/Approvals Required

- Building Permit

Neighborhood Context



Previous Board of Adjustment Actions

No previous history found.

Planning Department Comments

The applicant is proposing to remove the existing shed and front porch of the existing structure and is requesting variances to construct an addition to the primary structure and a detached garage.

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.

*Application of Cindy and Michael Walker
46 Willow Lane, Portsmouth, NH Map/Lot
0133-0018-0000*

APPLICANT'S NARRATIVE

I. The Property

The applicants, Cindy and Michael Walker, (collectively “the Applicant”) own and reside at the property located at 46 Willow Lane, which consists of a single-family dwelling with a detached shed¹. The Walkers bought the property in 2017. While formerly splitting their time in Massachusetts, this house and neighborhood is where they came to love Portsmouth and its people, ultimately deciding to make the city and 46 Willow Lane their full-time residence. With a growing extended family, they desire to build an addition to their home so they can host family for years to come.

II. Specific Variance Requests

The Applicant proposes to construct an addition to the house (the “Project”), which will include a family room extending from the existing kitchen, a primary bedroom on the second floor, and two additional bathrooms. The existing structure was built in 1924, with only two bedrooms and a single bathroom. Please see Exhibit A and C below for the existing and proposed site plan. To complete this Project, the Applicant requests variances from the following ordinances:

1. Section 10.321 to accommodate the modest enlargement of a lawful non-conforming structure by new construction not conforming to the below (2.c.) dimensional requirements of the GRA zone.
2. Section 10.521 Table of Dimensional Standards:
 - a. Building coverage relief to allow the Project which would increase the existing 14.7% building coverage to 27.5% where maximum building coverage of 25% is required for the GRA Zone.
 - b. Front yard setback relief to accommodate a garage by new construction to be located 2 feet from the property border with 50 Willow Lane where a 15-foot front yard setback is required in the GRA zone.
 - c. Side yard setback relief to extend the back right corner of the house 6 feet to continue the non-conforming right side of the house. The side yard setback would continue to be 6 foot 6 inches where a 10-foot side yard setback is required in the GRA zone.
3. Section 10.571 to allow the garage to be in the front yard and closer to the street than the primary structure.

¹ Please note, the shed would be removed before any construction and is not included in the calculation of building coverage.

III. Criteria to Grant Variance

In seeking the aforementioned relief, the applicant will demonstrate that: (a) the variances will not be contrary to the public interest, but consistent with the spirit and intent of the ordinances; (b) special conditions exist such that a literal enforcement of the provisions of the ordinance will result in unnecessary hardship; (c) substantial justice will be done; and (d) granting the variances will not diminish the value of surrounding properties (*see Malachy Glen Associates, Inc. v. Town of Chichester, 152 N.H. 102, 105 (2007)*). The applicant believes the within Application meets the criteria necessary for the Board to grant the requested variances.

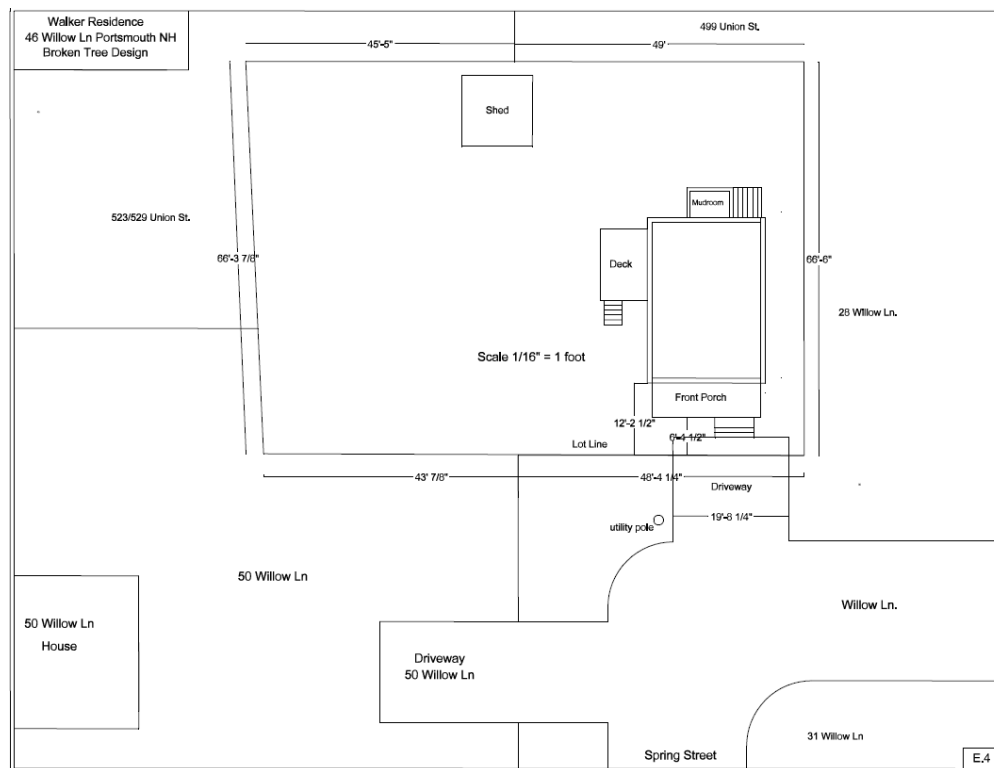
A. Granting the requested variances will not be contrary to the spirit and intent of the ordinance nor will it be contrary to the public interest.

The “public interest” and “spirit and intent” requirements are considered together here pursuant to *Malachy Glen Associates*. The test for whether or not granting a variance would be contrary to the public interest or contrary to the spirit and intent of the ordinance is whether or not the variance being granted would substantially alter the characteristics of the neighborhood or threaten the health, safety and welfare of the public.

The essential residential characteristics of the neighborhood would not be altered by this project and the modest increase in building footprint resulting from this project will in no way compromise the neighborhood.

The lot at 46 Willow Lane is unusual because it sits at the corner of two side streets – Willow Lane and Spring Street. As you can see in Exhibit A, which shows the existing site plan, part of the front yard borders the side of the neighbor’s lot at 50 Willow Lane.

Exhibit A. Existing Site Plan



This is relevant to the Applicant's proposal and request for relief because the area where the Applicant desires to build the garage, while closer to the edge of the property than the ordinance allows, will not abut a street or the neighbor's house. Instead, it will abut the front-most region of the neighbor's side yard, leaving plenty of space between their house and the new garage construction. Please see Exhibit B, which are photographs of the Applicant's and neighbor's yards, that indicate where the Applicant desires to build the garage foundation. The intent of the setback is to ensure that a new structure will not encroach upon a neighbor's home, nor be too close to the street. The proposal to build the driveway and garage as shown on Exhibit C (the "Proposed Site Plan") is an attempt to minimize the length of the driveway, while also preserving as much open and pervious space as possible. It also does not encroach on the neighbor's home, as one can see in Exhibit B. The Applicant has had oral conversations with the homeowner of 50 Willow Lane to discuss the Project and there have no objections to the plans.

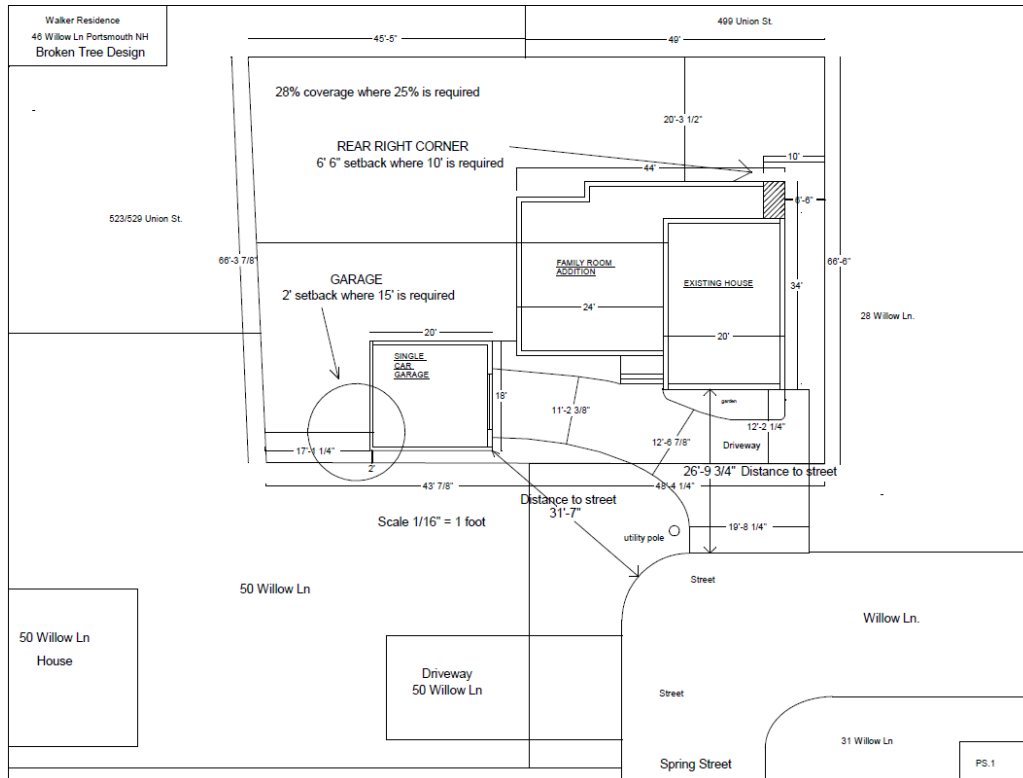
In addition, the number of off-street parking spots will increase by three. This will minimize the use of the corner of Willow and Spring Streets for parking. These streets have no sidewalks, but they have become a wonderfully quiet and safe walking and biking spot for the area. Cars on the street only get in the way.

Exhibit B. Proposal for Garage Placement





Exhibit C. Proposed Site Plan



Were the variances 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.

1. The Project will not encroach on other surrounding properties, with the increased size of the house being consistent with other properties in the area.
2. The Project will enhance the existing structure and improve the esthetic of the area.
3. The Project will improve the safety and welfare of the neighbor by reducing vehicles in the roadway.
4. The 6 feet addition is an extension of the existing non-conforming right side of the house. The abutting house (28 Willow Ln) is approximately 50 feet.

B. Special conditions exist such that a literal enforcement of the ordinance would result in an unnecessary hardship.

There would be many benefits of adding a garage and longer driveway to this property, but the current site plan and configuration of the property requires a creative approach to making that a reality. Why does the Applicant desire these additions to their property? First, the lack of a garage in coastal New Hampshire can be challenging, especially during the winter. See Exhibit D below.

Exhibit D. Winter Hardship



Second, when family and friends visit, the Applicant would much prefer for them to park in a driveway. Neither Spring Street nor Willow Lane have sidewalks and parking on the street can make it difficult for both pedestrians and other drivers to navigate the turn. The

driveway and garage as proposed could increase off-street parking by a total of three vehicles, which would benefit the Applicant, neighbors, and the general public who use the street.

Regarding the request for setback relief in the back right corner of the house, there are also special conditions existing that a literal enforcement of the ordinance would result in an unnecessary hardship. One can see from the Existing Site Plan (Exhibit A) and the Proposed Site Plan (Exhibit C) that the existing right side of the house is non-conforming to the 10-foot side yard setback, as required in the GRA zone. As part of the Project, the Applicant would like to uniformly extend the back of the house by six feet, which would require extending the legal non-conforming side of the house by six feet. As one can see in Exhibit E below, the existing property already has an attached un-winterized shed with stairs leading down in the back right corner. These features were constructed well before the Applicant moved in. In asking for relief, the Applicant desires to clean up this back corner by extending the side and back of the house as proposed in Exhibit E and make the space useful again. Since this attached shed and set of stairs are already in place, extending the home to cover this space would not affect the actual footprint of the home, and would therefore have no negative impact on the neighbors and general public. The only impact would be improved use and livability of the existing space by the homeowner and increased property value.

Exhibit E. Proposed Back Corner Extension



C. Substantial justice would be done by granting the variance.

Whether or not substantial justice will be done by granting a variance requires the Board to conduct a balancing test. If the hardship upon the owner/applicant outweighs any benefit to the general public in denying the variance, then substantial justice would be done by granting the variance. It is substantially just to allow a property owner the reasonable use of his or her property.

To begin, the use is a reasonable use. The proposal is a residential use in a residential zone. In fact, the Applicant hopes to improve the residential use of the property, by using the space more effectively. In regard to the request to allow the Applicant to increase the building footprint to 2.5% above the maximum coverage allowed under the ordinance, 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 minimal and not out of character for this neighborhood.

In this case, there is no benefit to the public in denying the variances that is not outweighed by the hardship upon the owner. This plan, particularly the proposal to build the garage and expand the driveway as shown on Exhibit C, will preserve as much of the backyard as possible for outdoor activities. A garage parking space is considered to be essential, if possible, in New Hampshire (see Exhibit D). The back right corner of the house is, arguably, a waste of space in its current design (see Exhibit E). The Applicant would like to improve the home by converting the space taken up by the attached unwinterized shed and stairs into a more useful, aesthetically pleasing, and logical extension of the house. Finally, the increase in building coverage is entirely reasonable given the size of the lot and the additional open space of all of the surrounding lots.

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

The proposal will improve the functionality and livability of the Applicant's property and increase the value of the Applicant's Property and neighboring homes. The values of surrounding properties will not be negatively affected in any way. 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.

IV. Conclusion.

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

Respectfully submitted,

Dated: 1/31/24

By: _____

Michael and Cindy Walker

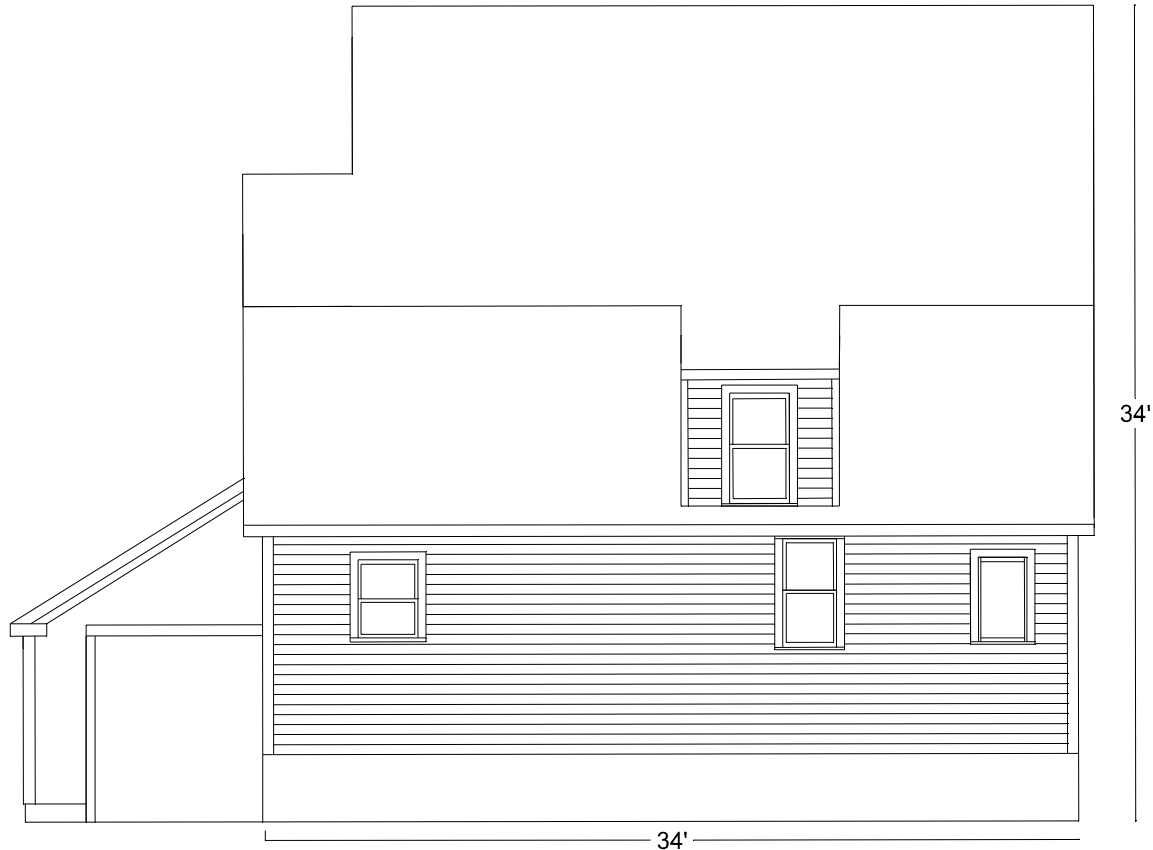
46 WILLOW LN.
FRONT ELEVATION



Scale 1/8" = 1ft.

Walker Residence
46 Willow Ln Portsmouth NH
Broken Tree Design

46 Willow Ln
Proposed Right Elevation



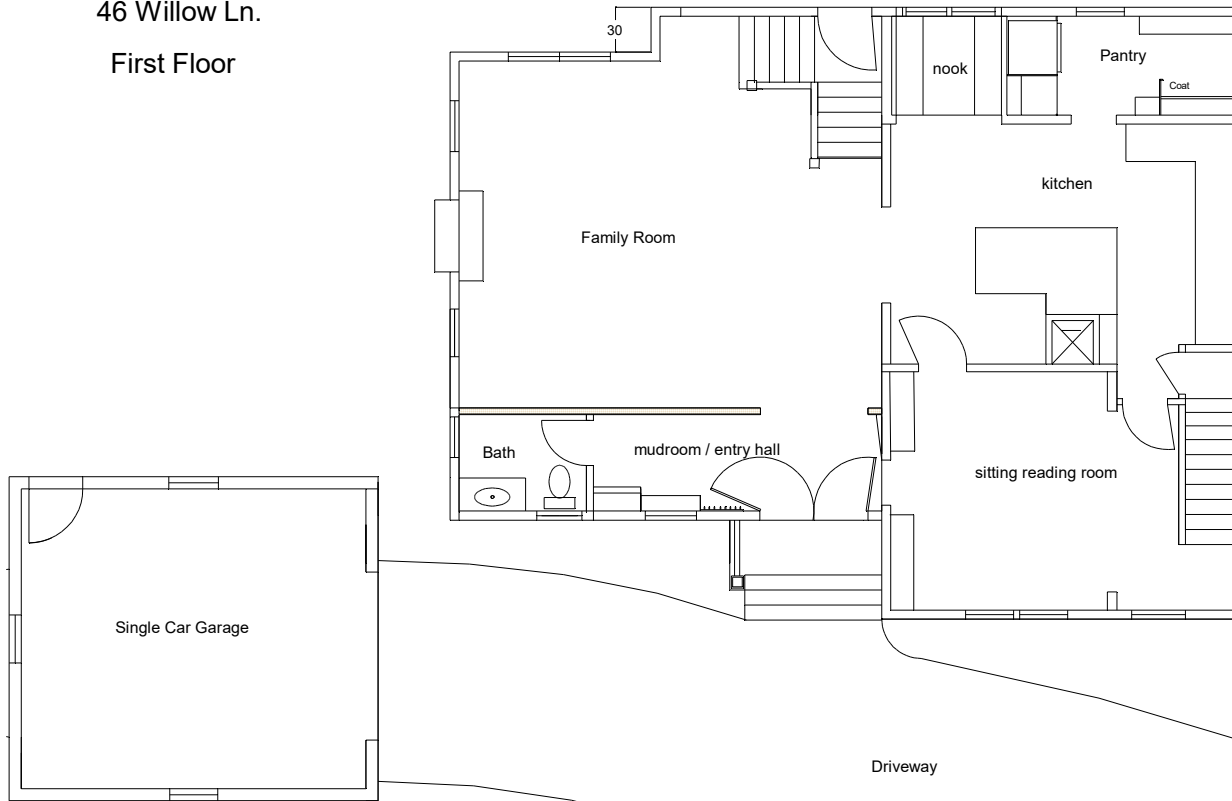
Scale 1/8" = 1 Foot

Walker Residence
46 Willow Ln Portsmouth NH
Broken Tree Design

46 Willow Ln.
First Floor

66'-3 1/4"

66'-6"



42'-5 1/8"

49'

Broken Tree Design
Scale 3/32=1ft.
46 Willow Ln.

utility pole

Willow Ln.

III. NEW BUSINESS

- E. The request of **Joel and Jessica Harris (Owners)**, for property located at **2 Monroe Street** whereas relief is needed to construct an enclosed breezeway, landing and staircase which requires the following: 1)A Variance from Section 10.521 to allow 27% building coverage where 25% is the maximum allowed; and 2)Variance from Section 10.516.10 to allow a 10-foot front yard where 12 feet is required by the front-yard exception for existing alignments. Said property is located on Assessor Map 152 Lot 8 and lies within the General Residence A (GRA) District. (LU-23-154)

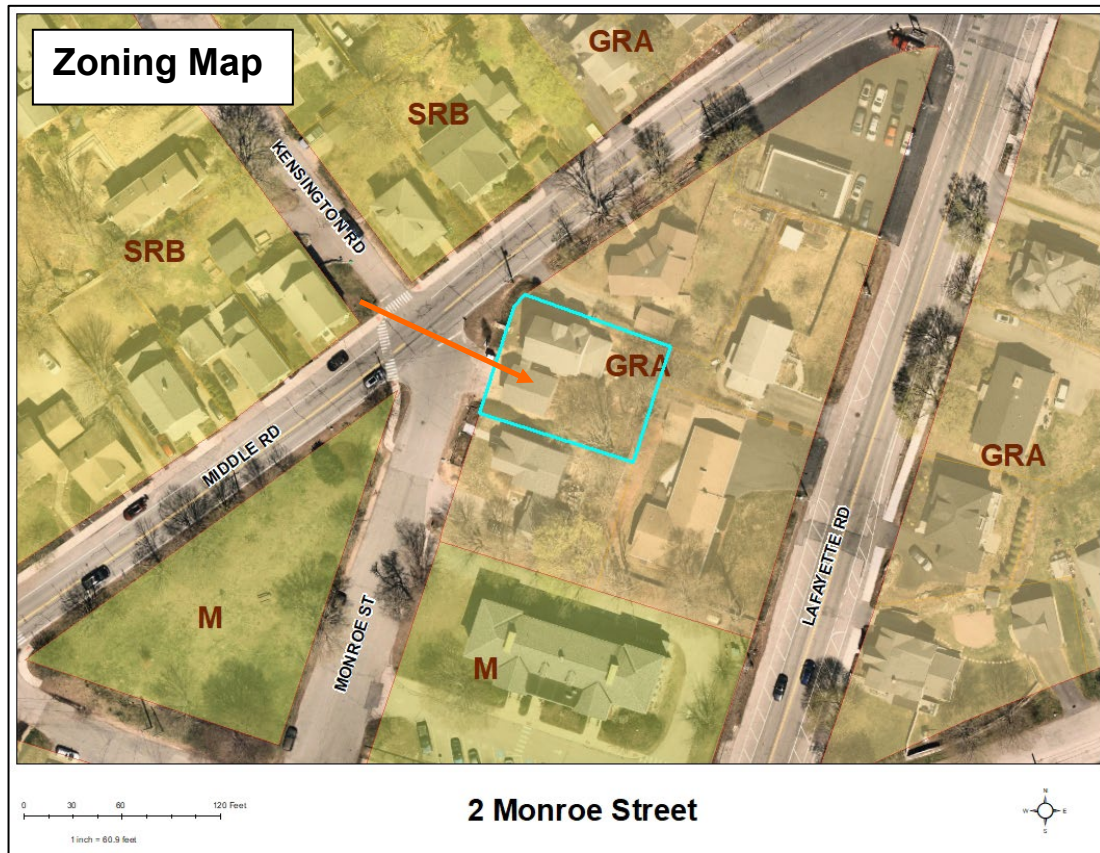
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	Permitted / Required
<u>Land Use:</u>	Single family dwelling	*Construct a breezeway and landing	Primarily Single-family Uses
<u>Lot area (sq. ft.):</u>	7,492	7,492	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	7,492	7,492	7,500 min.
<u>Street Frontage (ft.):</u>	70	70	100 min.
<u>Lot depth (ft.)</u>	98	98	70 min.
<u>Front Yard (ft.):</u>	19	10	12 min.
<u>Left Yard (ft.):</u>	5 (house)	5 (house)	10 min.
<u>Right Yard (ft.):</u>	10.25	10.25	10 min.
<u>Rear Yard (ft.):</u>	60 (garage)	60 (garage)	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	26.5	27	25 max.
<u>Open Space Coverage (%):</u>	>30	>30	30 min.
<u>Parking</u>	2	2	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

March 16, 2021 – The Board **granted** the relief needed to demolish the existing garage and construct a new 1 1/2 story garage which requires the following: 1) A Variance from Section 10.521 to allow 26.5% building coverage where 25% is the maximum allowed.

Planning Department Comments

The applicant is requesting additional relief as part of the project previously approved in March of 2021. During construction the project evolved to include a landing area and enclosed breezeway between the garage and house. The relief before the Board, presently, will allow the applicants to complete this change to the project that is currently under construction.

Please note that the project description, on page one of the applicants submission materials, describes the project in its entirety. The previous variances received included the demolition and reconstruction of the garage and therefore were not noticed as part of this request. The only request that is before the Board is the breezeway portion of the project.

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.

Item 7:

Valuation of New Construction (for non-residential projects): not required as project is residential

Total Number of dwelling Units (for residential projects): One (1)

Lot Area: 7,492 square feet

Description of proposed project: Raze/rebuild existing two-car garage. Include enclosed space above garage, including attic space. Rebuild two existing site walls, repave driveway in kind. Construct enclosed breezeway connecting existing residence to garage, construct exterior stairs from breezeway to driveway.

Description of existing land use: Single Family MDL-01, Zoned GRA / General Residence A

Lot currently has single family house and detached two-car garage with paved driveway.

Project representatives – names and contact information:

Joel Harris, Owner, 603.475.3601

Jessica Harris, Owner, 603.969.1132

Tracy Shriver, Family Member / Registered Architect, 617.852.3499

Description and dimensions of existing and proposed buildings (including building footprint, total gross floor area, and height): Refer to attached plans

Existing and proposed front, side and rear setback / yard dimensions (this is the distance from a structure to the lot line): Refer to attached plans

Site Plan(s) showing existing and proposed conditions including:

- **Abutting street(s) and street names:** Refer to attached plans
- **Driveways / accessways:** Refer to attached plans
- **Dimensions (size and height) of structures:** Refer to attached plans
- **Dimensions and location of parking spaces:** Refer to attached plans – residential driveway

Scale of all drawings and plans (the scale is the ratio of the drawing's size relative to the actual size):
Refer to attached plans

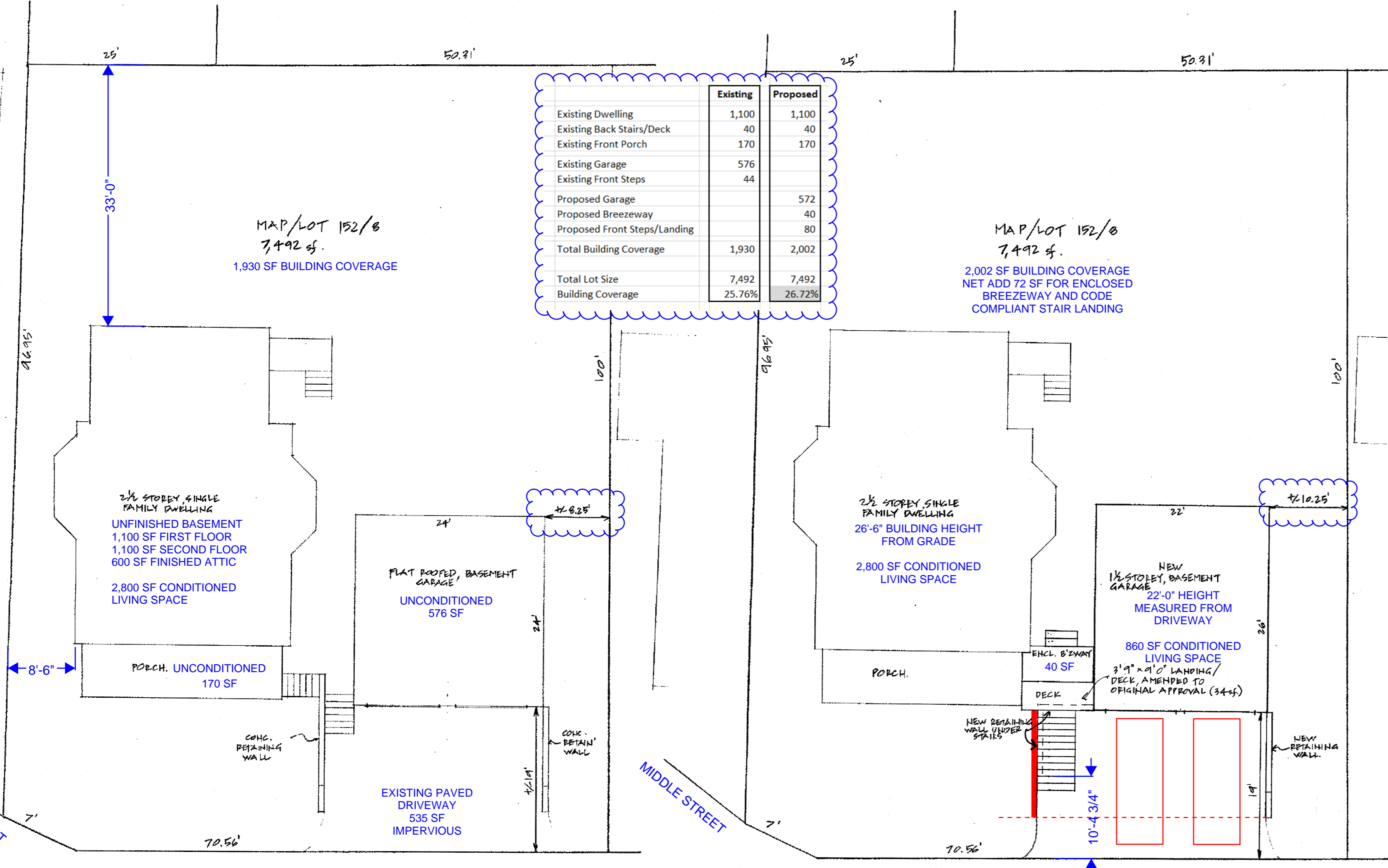
Labeled photo(s) of existing conditions: Refer to attached plans

Building plans and elevations of any proposed structures or additions: Refer to attached plans

Interior floor plans for any renovations or expansion to existing structures: Refer to attached plans

Written statement explaining how the request complies with the requirements of the Zoning Ordinance as provided in article 2 (see Section 10.233.20 for Variances, Section 10.232.20 for Special Exceptions): Refer to attached narrative

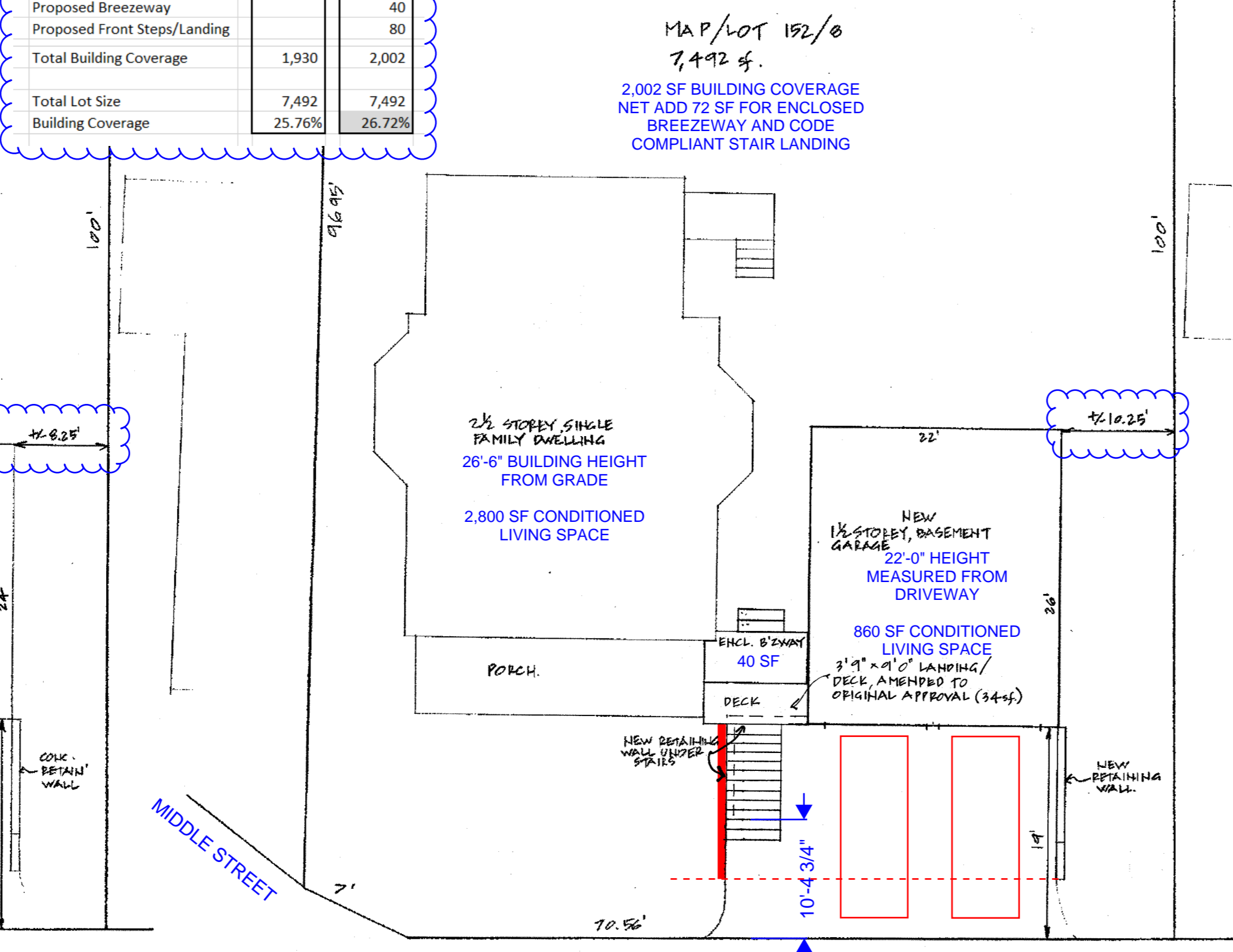
	Existing	Proposed
Existing Dwelling	1,100	1,100
Existing Back Stairs/Deck	40	40
Existing Front Porch	170	170
Existing Garage	576	572
Existing Front Steps	44	40
Proposed Garage		572
Proposed Breezeway		40
Proposed Front Steps/Landing		80
Total Building Coverage	1,930	2,002
Total Lot Size	7,492	7,492
Building Coverage	25.76%	26.72%



EXISTING CONDITIONS SITE PLAN 1"=10'
(FROM TAX MAP)



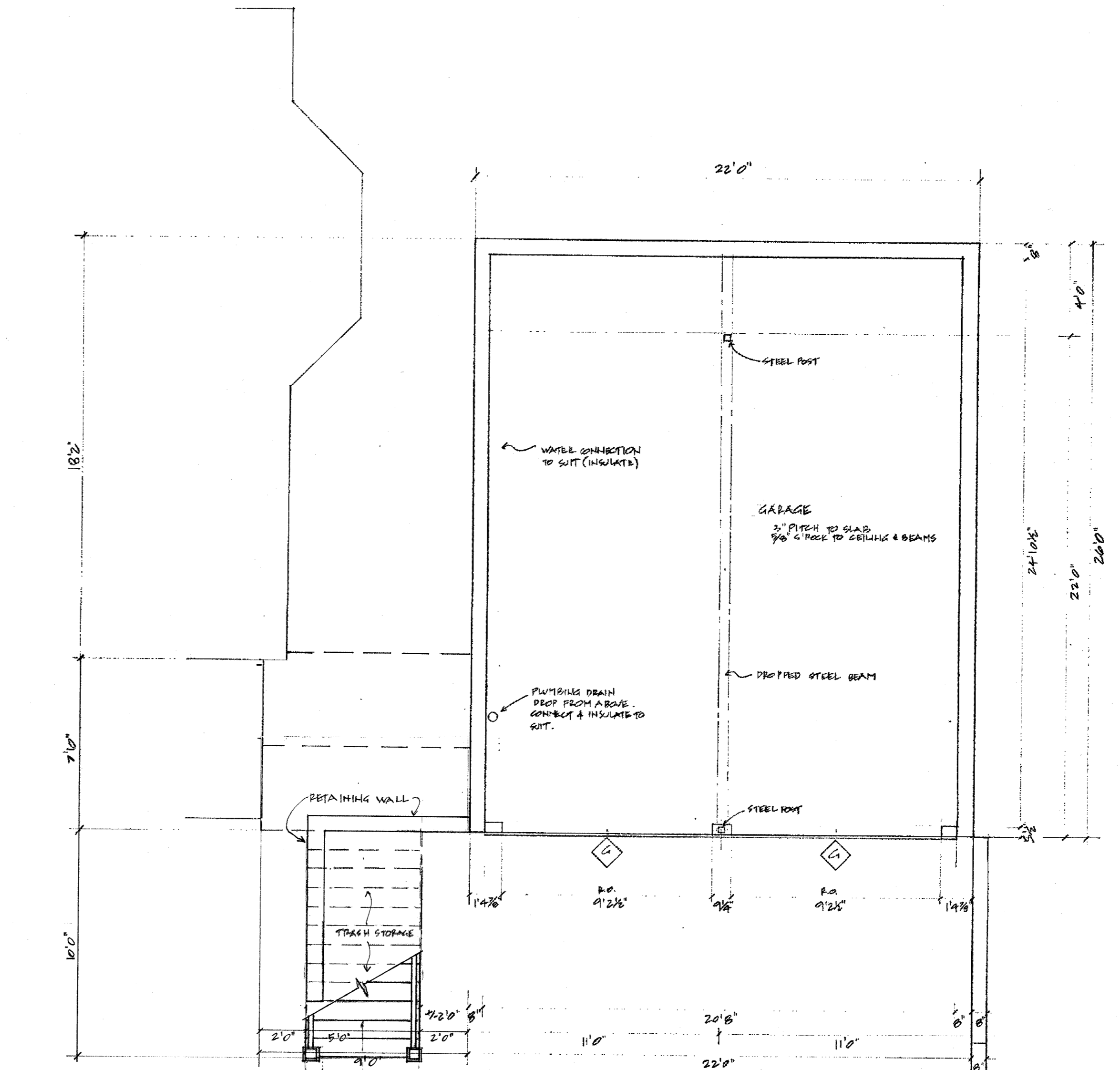
EXISTING CONDITIONS
(VIEW FROM RIGHT)



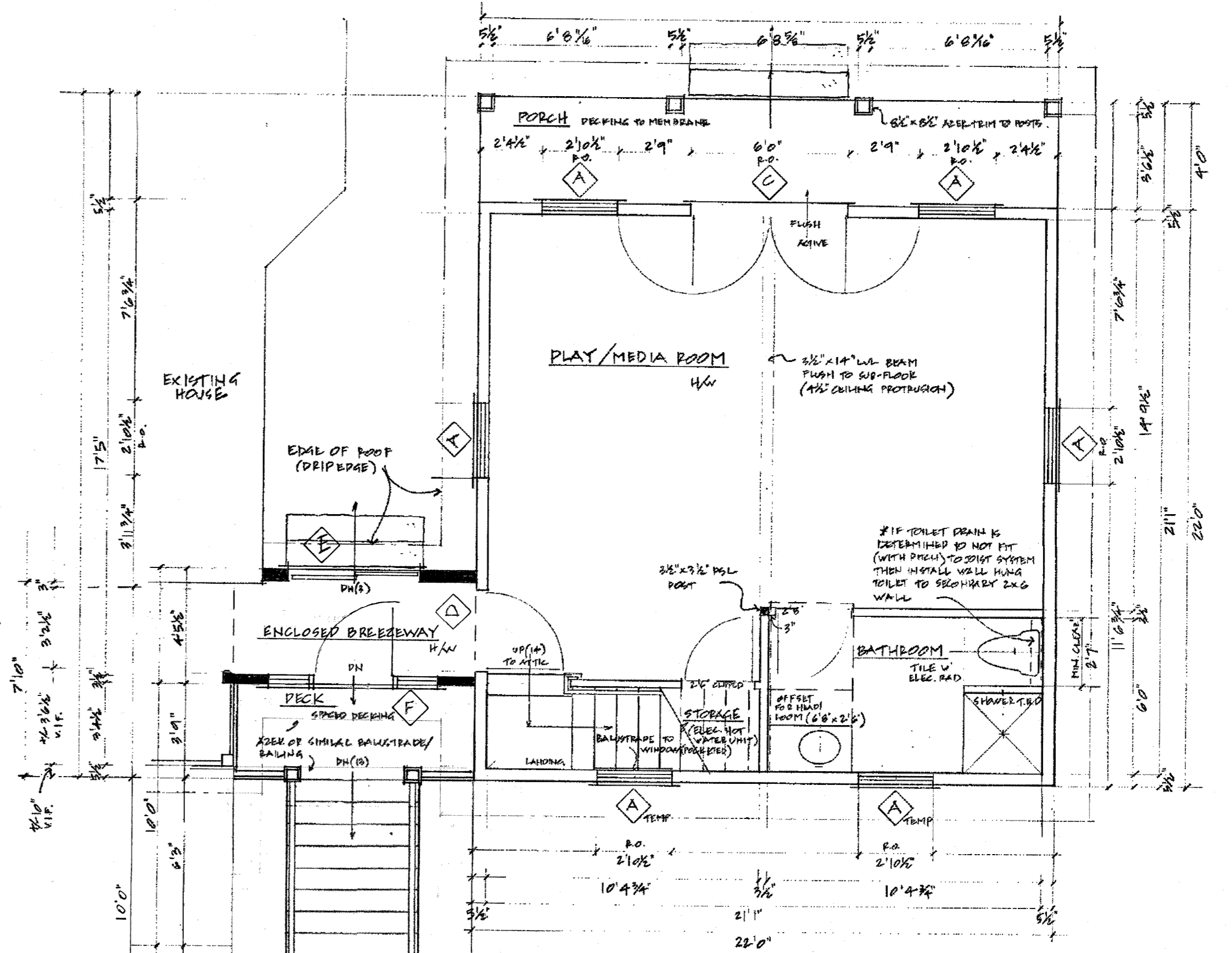
AMENDED PROPOSED CONDITIONS SITE PLAN 1"=10'



EXISTING CONDITIONS
(STREET VIEW)



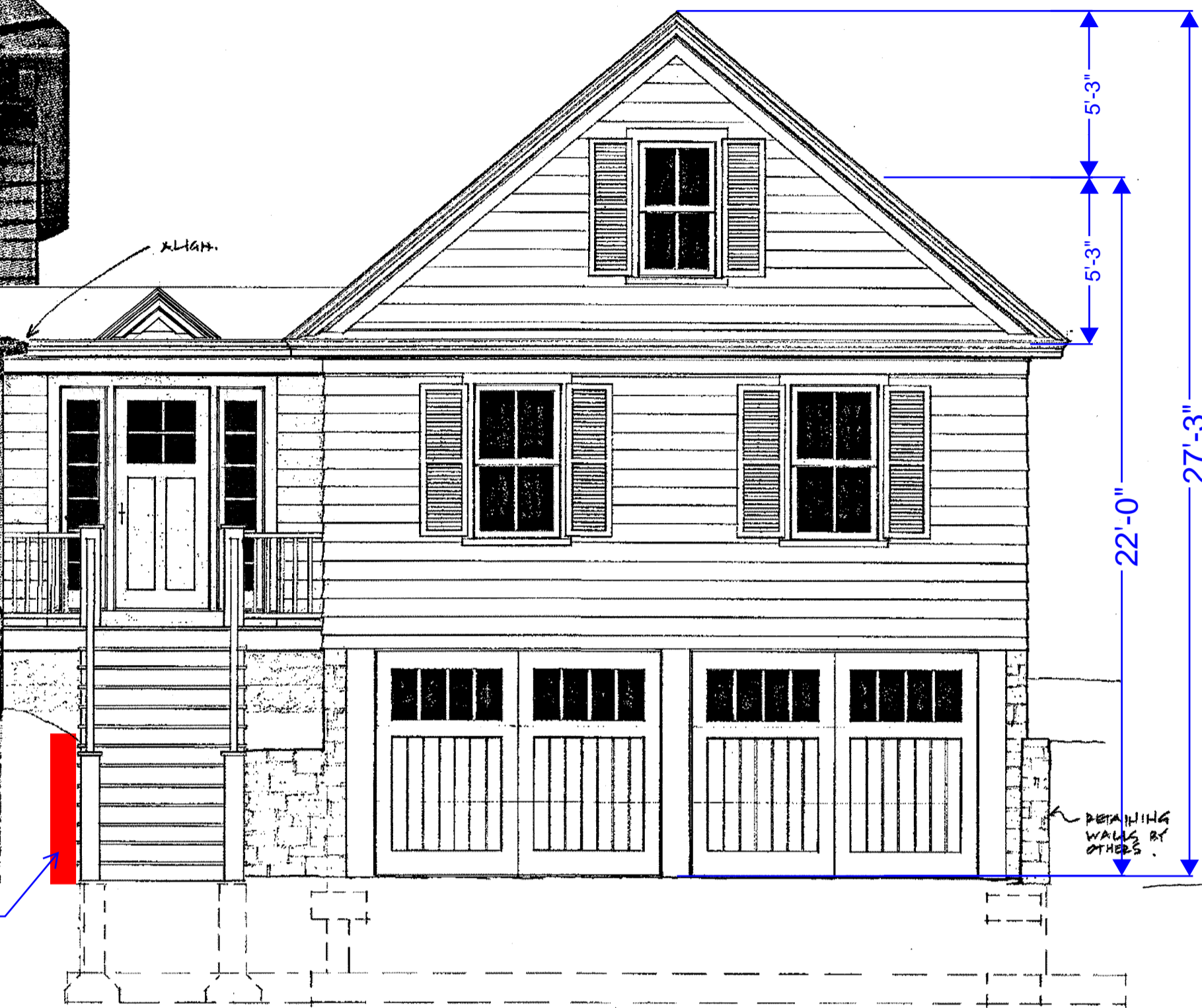
AMENDED PROPOSED BASEMENT/GARAGE FLOOR PLAN
1/4"=1'0"



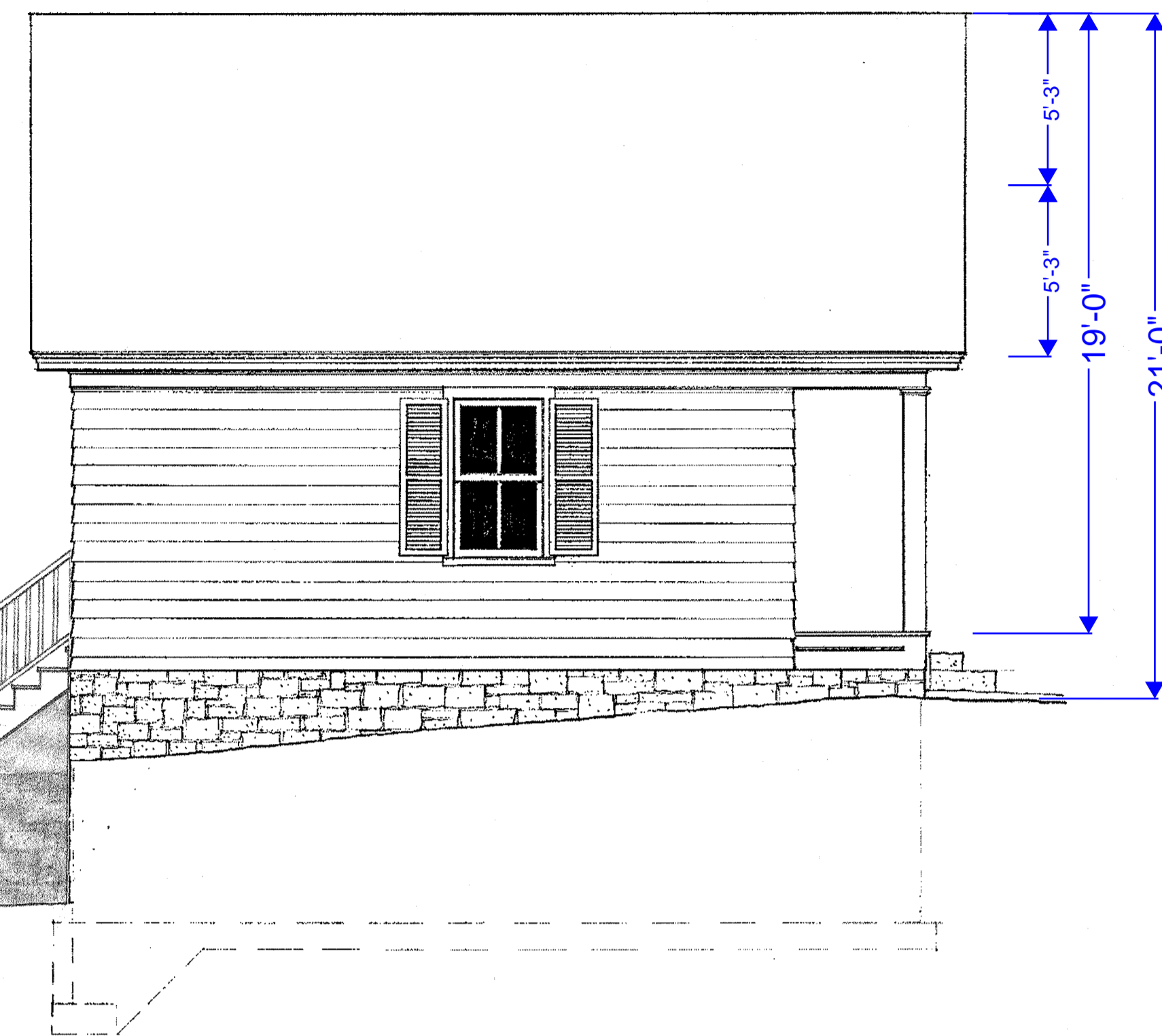
AMENDED PROPOSED GARAGE, FIRST FLOOR PLAN
1/4"=1'0"

AMENDED
REMODEL & ADDITION AT
THE HARRIS RESIDENCE
2 MONROE STREET
PORTSMOUTH, NH.

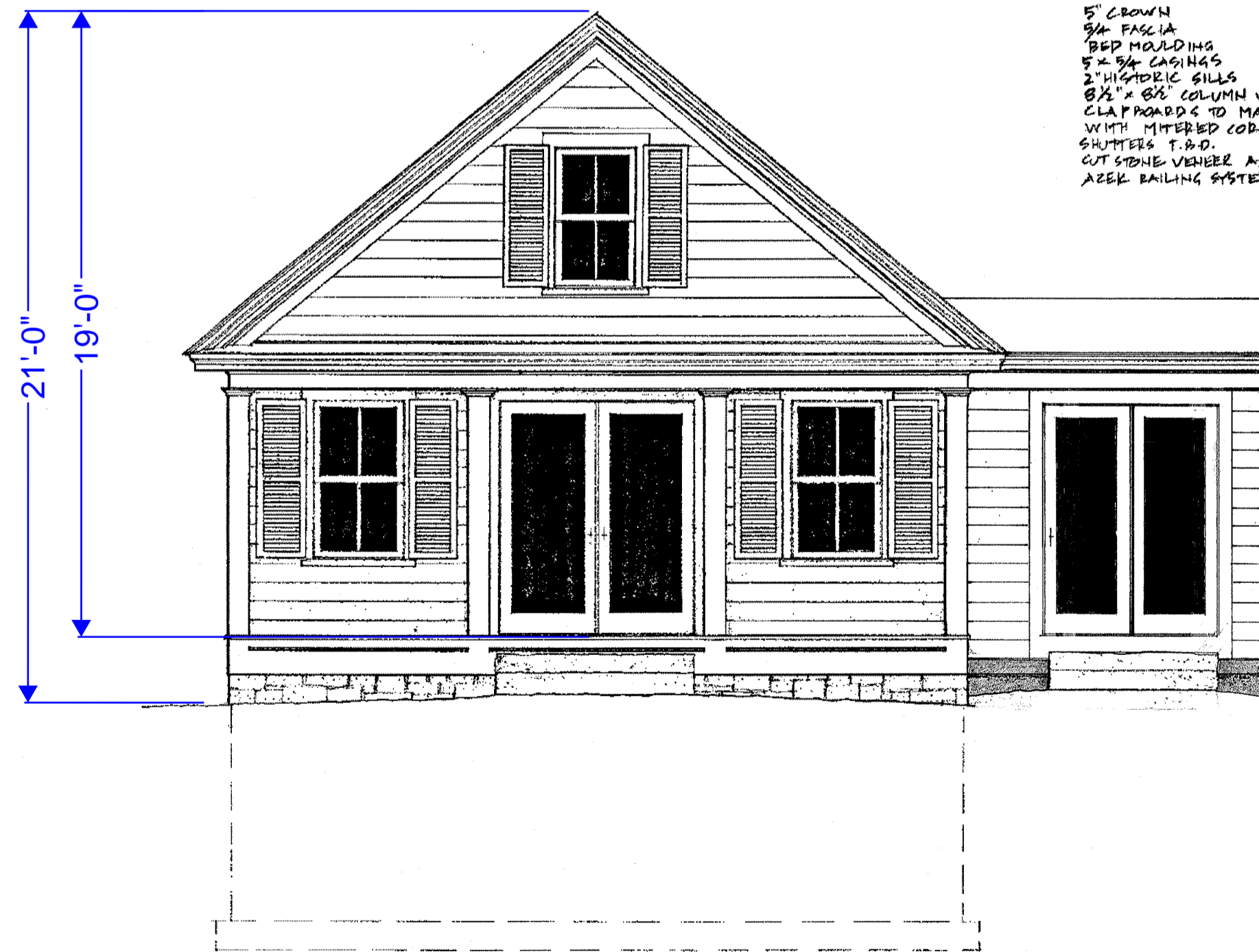
TITLE: SITE & FLOOR PLANS & PHOTOS
SCALE: 1"=10' & 1/4"=1'0'
DATE: 1.28.2021
REVISIONS: 3.30.2021 8.9.2023



AMENDED PROPOSED WEST (FRONT) ELEVATION
1/4" = 1'-0"

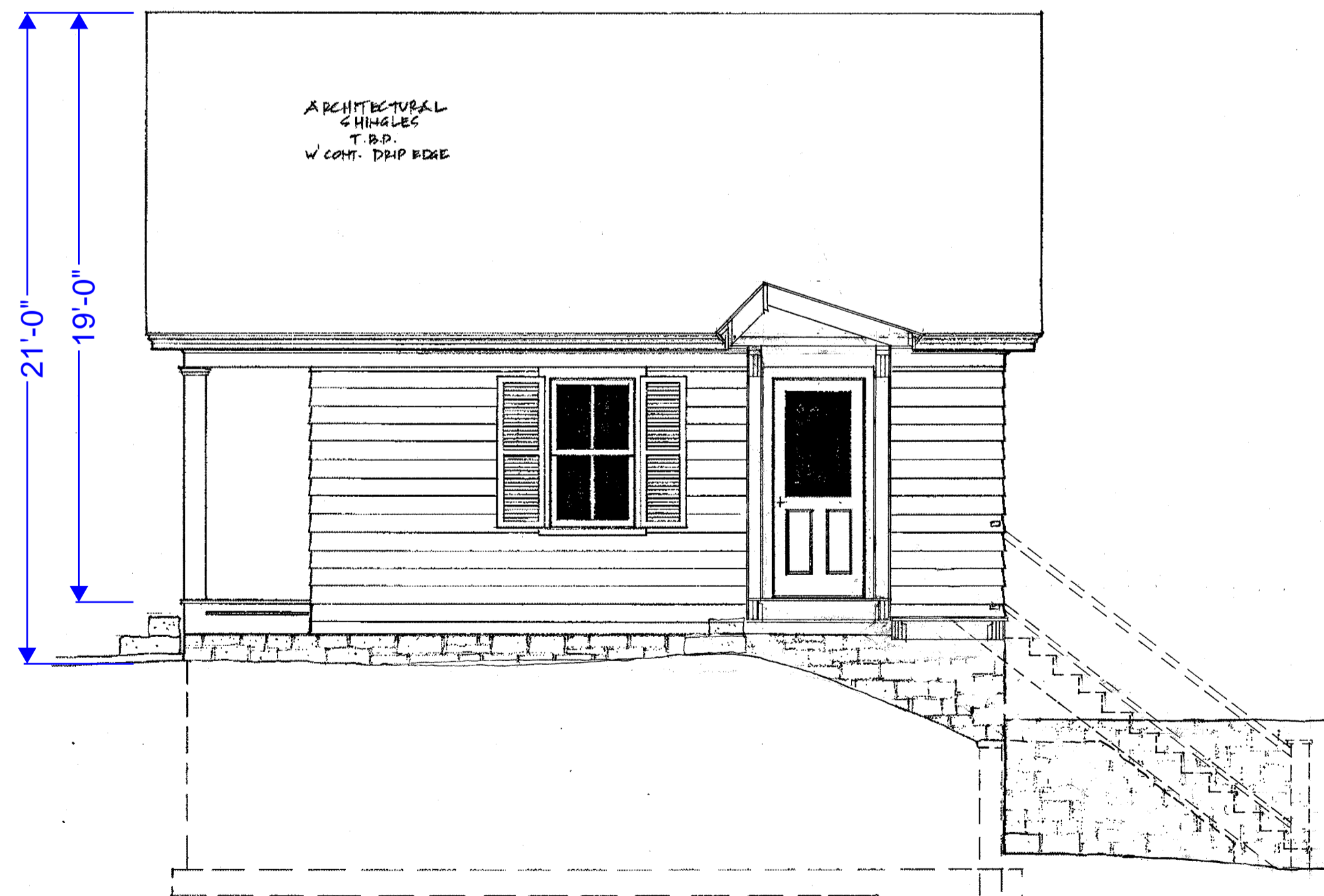


AMENDED PROPOSED SOUTH ELEVATION
1/4" = 1'-0"

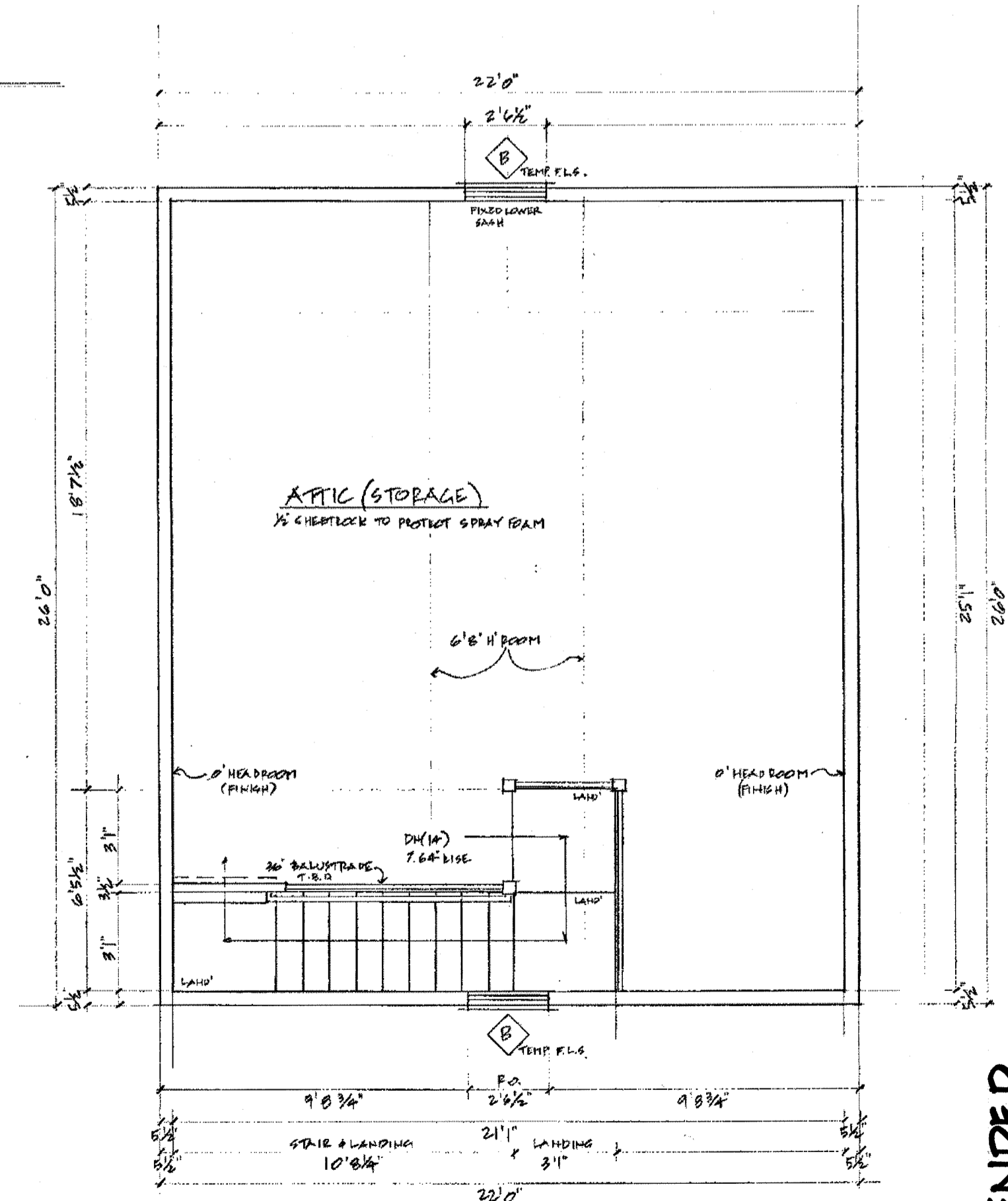


AMENDED PROPOSED EAST ELEVATION
1/4" = 1'-0"

ALL EXTERIOR TRIM TO BE AZEK OR SIMILAR.
5" CROWN
3/4" FASCIA
3/4" MOULDING
5/8" x 3/4" CASINGS
2" HINGED SILLS
3/4" x 3/4" COLUMN WRAPS
CLIP BOARDS TO MATCH APPEARANCE OF EXISTING
WITH HINGED CORNERS
SHUTTERS T.B.O.
CUT WHERE NECESSARY AS PER STONEVARD.COM
AZEK RAILING SYSTEM



AMENDED PROPOSED NORTH ELEVATION
1/4" = 1'-0"



PROPOSED ATTIC FLOOR PLAN
1/4" = 1'-0"

AMENDED

REMODEL & ADDITION AT
THE HARRIS RESIDENCE
2 MONROE STREET
PORTSMOUTH, NH.

TITLE: PROPOSED GARAGE ELEVATIONS & ATTIC PLAN

SCALE: 1/4" = 1'-0"

DATE: 1.28.2021

REVISIONS: 3.30.2021 8.9.2023

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

There is an existing public sidewalk in front of the property which is not impacted by the requested variance.

An existing retaining wall was replaced in kind as part of the approved plans and meets zoning requirements as it is considered a landscape element. The retaining wall extends further than the stairs requiring variance, and does not impact public sidewalk/interest.

The retaining wall follows the existing grade of the property. If the retaining wall were to be reduced in length, major re-grading of the property would be required, including the potential of requiring major structural improvements to the existing house foundation.

The outermost end of the retaining wall extends 5'-9" further than the end of the stairs. When measured to the tread at 18" above grade, this dimension increases to 8'-9", which is 10' from the property line. Per written correspondence with staff, front yard averaging requires a setback of 12' at the subject property. The Applicant is requesting a variance of 2' for the stairs to extend in to the 12' required setback.

10.233.22: The spirit of the ordinance will be observed;

Given the existing conditions, there are limited design options that are further detailed in items below. The existing condition was not code-compliant. Any design solution would have impacts to existing parking spaces on site and/or potential structural implications to existing residence.

The variance request is for the main entry stairs to extend 2' in to the required 12' setback. Retaining walls extend to within 18" of the property line, further than the stairs, and neighboring property has existing stairs near the property line that rise up to 4' above sidewalk grade (this is a grandfathered condition). The Applicant believes the proposed solution is the least intrusive to the public realm, creates a code-compliant solution, and does not impact neighboring property values by creating a less intrusive solution than already exists in the subject area.

10.233.23: Substantial justice will be done;

The existing condition was not code-compliant. There was no landing at the door to the resident entry, requiring occupants to stand 2-3 risers below entry and open the screen door outward, then enter the residence. The proposed solution allows for a code compliant entry to the residence and is not contrary to the public interest. The existing entry to the residence was relocated several feet further away from the property line, the most it could be without major structural implication to the residence, to minimize any dimensional impact.

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

The subject property is a corner lot, so per written correspondence with staff there is only one property, 18 Monroe, which is included in front yard averaging.

The adjacent property has existing stairs that end at/near the property line, which do not meet today's zoning requirements but are grandfathered in.

Given the subject property replaced retaining walls in kind, and adjacent property has existing stairs that extend to the property line, surrounding property values will not be diminished. The subject property's end of stairs will be set back almost 7' from the property line, and 10' when measured to the tread at 18" above grade.

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

In order to meet the setback provisions, a triple set of stair runs would be required, including two landings. The code required width of this layout would impact one of the existing parking spaces.

Visually and architecturally, this would not be a solution the fits in with the existing surrounding context. Most homes have a single set of stairs extending from the public realm/sidewalk up to the front door. The proposed solution maintains that architectural context, with a solution providing the most setback given existing conditions.





Existing Condition