

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

*Members of the public also have the option to join the meeting over Zoom
(See below for more details)**

7:00 P.M.

April 16, 2024

AGENDA

<p><u>PLEASE NOTE:</u> DUE TO THE SIZE OF THE AGENDA, THE BOARD WILL HOLD A SECOND MEETING ON APRIL 30, 2024.</p>
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I. APPROVAL OF MINUTES

A. Approval of the March 19, 2024 and the March 26, 2024 minutes.

II. OLD BUSINESS

A. **550 Sagamore Avenue** - Rehearing Request (LU-24-9)

B. REQUEST TO POSTPONE The request of **Kerrin J Parker Revocable Trust of 2012 (Owner)**, for property located at **86 Haven Road** whereas relief is needed to construct an addition to the existing structure which requires the following: 1) Variance from Section 10.521 to a) allow a 9 foot front yard where 10 feet is required by front yard averaging; b) to allow a building coverage of 29% where 20% is allowed; and 2) Variance from Section 10.321 to allow of 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 206 Lot 27 and lies within the Single Residence B (SRB) District. **REQUEST TO POSTPONE** (LU-23-192)

C. REQUEST TO POSTPONE The request of **Atlas Commons LLC (Owner)**, for property located at **581 Lafayette Road** whereas relief is needed for after-the-fact installation of an awning sign which requires the following: 1) Variance from Section 10.1251.20 to allow a 32 square foot awning sign whereas 20 square feet is allowed. Said property is located on Assessor Map 229 Lot 8B and lies within the Gateway Corridor (G1) District. (LU-24-1) **REQUEST TO POSTPONE**

III. NEW BUSINESS

- A.** The request of **Chinburg Development LLC (Owner)**, for property located at **6 Boyd Road** whereas relief is needed to demolish the existing structure and construct a new primary dwelling which requires the following: 1) Variance from Section 10.521 to allow a) 6,703 square feet of lot area where 7,500 square feet are required; b) 6,703 square feet of lot area per dwelling unit where 7,500 square feet are required; c) 85 feet of frontage where 100 feet are required; and d) 68 feet of lot depth where 70 feet are required. Said property is located on Assessor Map 175 Lot 13 and lies within the General Residence A (GRA) District. (LU-24-23)
- B.** The request of **Chinburg Development LLC (Owner)**, for property located at **216 Woodbury Avenue** whereas relief is needed to demolish the existing structure and construct a new primary dwelling which requires the following: 1) Variance from Section 10.521 to allow 66 feet of frontage where 100 feet are required. Said property is located on Assessor Map 175 Lot 3 and lies within the General Residence A (GRA) District. (LU-24-24)
- C.** The request of **Cyrus Beer and Erica Gardner Beer (Owners)**, for property located at **64 Mount Vernon Street** to amend the Variances granted on March 19, 2024 for the demolition of the existing detached shed and construction of a new shed to include the following: 1) Variance from section 10.521 to allow a 2 foot side yard where 10 feet is required. Said property is located on Assessor Map 111 Lot 30 and lies within the General Residence B (GRB) and Historic Districts. (LU-24-20)
- D.** The request of **O'Brien Family Revocable Trust of 2018 (Owner)**, for property located at **3 Moebus Terrace** whereas relief is needed demolish the existing structure and construct a new primary structure which requires the following: 1) Variance from Section 10.521 to allow a) 10,823 square feet of lot area where 15,000 square feet is required; and b) 10,823 square feet of lot area per dwelling unit where 15,000 square feet is required. Said property is located on Assessor Map 207 Lot 21 and lies within the Single Residence B (SRB) District. (LU-24-40)
- E.** The request of **Maxico LLC (Owner)**, for property located at **865 Islington Street** whereas relief is needed to establish a yoga studio with more than 2,000 square feet of gross floor area which requires a Special Exception from Section 10.440, Use #4.41 where it is permitted by Special Exception. Said property is located on Assessor Map 172 Lot 11 and lies within the Character District 4-W (CD4-W). (LU-24-41)

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_Bb0OQ4jiSV2QQpoa5OhkwQ

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

7:00 P.M.

March 19, 2024

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

MEMBERS EXCUSED: Thomas Rossi

ALSO PRESENT: Stefanie Casella, Planning Department

Chair Eldridge called the meeting to order at 7:00 p.m. She stated that New Items E through I would be discussed at the March 26 meeting. She welcomed new member Thomas Nies.

I. APPROVAL OF MINUTES

A. Approval of the February 21, 2024 minutes.

*Mr. Mannle moved to **approve** the February 21, 2024 minutes as submitted, seconded by Ms. Record. The motion **passed** unanimously, 7-0.*

II. OLD BUSINESS

Alternate Ms. Record took a voting seat and Alternate Ms. Geffert recused herself.

- A.** 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 10.520 to allow a building coverage of 20.5% where 20% is allowed; 2) Variance from Section 10.331 to extend, enlarge, or change the lawful nonconforming use without conforming to the Ordinance; and 3) 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)

Chair Eldridge read the petition into the record. She noted that there were comments from the Planning Department staff and a change to the application, which she read [Timestamp 5:31]. She

said the Staff found the following errors that needed to be corrected on the site plan: 1) the boundary line along Andrew Jarvis Drive should have a front yard setback because it is a secondary front yard; 2) the zoning summary table does not match any of the setbacks shown on the plan; 3) all dimensions on the provided column should reflect the distance from the boundary line to the closest point of the existing or proposed structure and have a corresponding call-out on the plan; 4) the initial request was to construct a 600 sf addition and the applicant did not provide an explanation for the change; and 5) updated floor plans and elevations were not submitted. Without that information and along with the corrections to the site plan, the Staff said there wasn't enough information for the Board to make an informed decision, and they determined that the application is incomplete and recommend postponing it until a time when these documents can be provided.

*Mr. Mannle moved to **postpone** the application until the Planning Staff deems it complete.*

Ms. Casella clarified that those comments were in the packet prior to the newer submission that was sent after the packet went out. She said the applicant did submit new materials and were aware that the Board may not have seen them, and if that was the case, she asked that it be on the record.

Vice-Chair Margeson seconded the motion.

Vice-Chair Margeson said she received the email addition on March 19th but there were still issues about the 600 sf addition and the table. She said it was a significant application and she wasn't comfortable reviewing it under the Planning Staff completely vetted it. Mr. Rheume said he would not vote in favor of the motion. He said he reviewed the additional information and didn't see anything fatal with the first application put forward. He said the applicant changed the lot lines around and he wanted to give the applicant the opportunity to explain it to the Board, and if the Board had concerns, they could then move to postpone. Mr. Mattson said that, from the Planning Department comments, it looked like the boundary line along Andrew Jarvis Drive having a front yard setback was corrected. He said it seemed like there was another change to one of the other setbacks but it didn't change his overall interpretation of the plans. He asked if the table column on one of the site plans was an issue that had not been corrected. Ms. Casella agreed but said she could list them later. She said she still had concerns about the updated table but didn't think it should hold the application back. She said there would need to be conditions attached to an approval, however. She said the Board could approve what was submitted subsequent because it's on the record, but there were other changes that did not equal what the Staff was asking for, so there were still errors in the new submission. She asked that it be postponed until the April meeting due to noticing issues. There was further discussion. [Timestamp 10:14]

*Mr. Mannle **amended** his motion and moved to **postpone** the application until the April 16 meeting. Vice-Chair Margeson seconded.*

*The motion **failed** by a vote of 3-4, with Mr. Rheume, Mr. Mattson, Mr. Nies, and Chair Eldridge voting in opposition to the motion.*

SPEAKING TO THE PETITION

[Timestamp 13:50] Attorney Chris Mulligan was present on behalf of the applicant, along with the project engineer Joe Coronati and board members of the Friends of Lafayette House. He reviewed the petition and noted that the site plan had not really changed but that the proper front yard and secondary front yard setbacks were not accurately depicted. He explained that the property had a Lafayette Road address but no frontage on it and that there was frontage on Andrew Jarvis Drive but no access from it, so the front yard setback should be on Lafayette Road and the secondary front yard setback should be on Andrew Jarvis Drive. He said the side yard setback of 10 feet was the one that most impacted the project because that was where the proposed addition was and that the addition was well within the setback. He said the relief they needed was to expand a preexisting nonconforming use and building and that the addition would go a bit over the 20 percent building coverage requirement. He said the facility had existed for 40 years and a modest caretaker quarters for the onsite caretakers was proposed to be built. He said the new quarters would be included in the 13 bedrooms, 12 for the residents and one for the onsite caretaker. He said there would be a weekend respite staff to replace the caretaker and the plan was to move the weekend respite caretakers into the 13th bedroom that was presently housing the caretakers and move the caretakers into the proposed new unit. He said the number of rooms would not increase but that the caretaker's unit would be additional living space that would have no impact on the neighbors. He then reviewed the variance criteria and said they would be met. Regarding the discrepancies on the floor and site plans on how large the addition would be, he said the floor plans were dimensioned internally to be just under 600 square feet. He said when the plan was originally submitted, the property had not been surveyed and they submitted information based on the City's tax maps. He said the Planning Department felt that the applicant was close enough to the building coverage requirement that they wanted a survey, so when the applicant did the survey, they dimensioned the addition so that the exterior walls and corners would be dimensioned on the plan.

[Timestamp 29:04] Mr. Rheume said there was nothing in the ordinance that was called a group home and asked if it was a residential care facility. Ms. Casella agreed. Mr. Rheume said there was no previous history found and asked how the use came about. Attorney Mulligan said he didn't know but submitted the original subdivision plan, which indicated that the property was conveyed by someone to the Great Bay School, after which a nonprofit took it over. He believed that the building was acquired for the present purpose. Mr. Rheume said the history indicated that the building was used for this purpose from circa 1984. Attorney Mulligan agreed. Mr. Rheume said it was not permitted in the SRB District if it had more than five residents, and the change in the lot coverage was a result of taking a survey. Ms. Casella said the 20.4 percent for lot coverage was rounded down to 2 percent. It was further discussed.

Mr. Nies confirmed that there would not be additional residents at the facility but just a more modern and separate caretaker's unit. He said in the description of the property, Attorney Mulligan referred to a separate caretaker's apartment that will make living arrangements easier and more desirable for the house manager and staff. In the description of meeting the variance criteria for substantial justice, he said Attorney Mulligan referred to it as necessary to ensure the continued successful operation. He asked Attorney Mulligan to further elaborate. Attorney Mulligan said

obtaining staff was a challenge and they wanted to keep the excellent staff they had, and improving the property would allow them to do that and was necessary.

Vice-Chair Margeson asked what would happen with the existing caretaker space. Attorney Mulligan said it would be one of the existing 13 bedrooms that would be used by the weekend respite staff. Mr. Mattson asked about the jog at the corner near Jarvis Drive and if it was the only portion that was considered frontage as opposed to the whole lot line behind the two residences that were listed as a side yard. Mr. Coronati agreed and said the legal frontage was Andrew Jarvis Drive and that it came down to where the sides and rears were. He said that was the reason the table was incorrect and that they would correct it. Mr. Mattson asked if there was only one frontage. Mr. Coronati said the addition was about 37 feet away from the side setback. Mr. Mattson asked if the 10-ft side yard setback was correct. Attorney Mulligan said they would not need relief from it because that part of the structure would not be expanded.

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. Mannle asked Ms. Casella if the facility had ever applied for or received a variance for its nonconforming use. Ms. Casella said it wasn't on record.

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

- 1. The facility shall be limited to 12 care residents or residents under care; and*
- 2. The applicant shall provide updated plans to the Planning Department reflecting appropriate setback requirements for the project.*

Mr. Mattson seconded.

[Timestamp 40:45] Mr. Rheume said that, in terms of the actual structure and as the Planning Department staff indicated, the applicant did put forward that they were slightly above the 20 percent maximum. He said they were still below it and it was based off a surveyed result, and he was confident that it would be accurate and not an issue that would cause the applicant to return before the Board. In terms of the setbacks, he said there was some confusion about a front yard and side yard and so on, and the applicant through the revision process should have been more diligent but he felt that what the applicant was asking for in terms of an addition was far away from the setbacks. Regardless of the orientation, he said there was no concern that the applicant would be building the addition and creating a future problem that would have to come back to the Board. He said it was not a permitted use in the zone but there was a long history of it being there. He asked if there was a provision back in 1984 or if something was allowed to support this type of facility that

negated it coming before the Board. He said the applicant was not asking to intensify. He said he included his conditions so that the use would continue that way and the extra room would be for the caretaker, and he wanted to ensure that there was something on record that the facility is still limited to the initial patients and that the approval was to add on more potential for the caretakers.

Mr. Rheame reviewed the criteria and said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He said the addition would be on the back end of the property and not visible from Andrew Jarvis Drive, and nothing would affect the overall feel of the structure. He said it was a use that had been there a long time and the neighborhood had integrated itself around it, and there was nothing about the unpermitted use that was negative toward the neighborhood. He said granting the variances would do substantial justice because the public would not lose anything that would outweigh the benefit to the property owner in having that capability still in the community. He said it would not diminish the values of surrounding properties because it was a small addition and well within the required setbacks, it was not visible to the neighbors, and the use was a longstanding one that had not demonstrated any impacts to the neighborhood. Regarding hardship, he said the unique factor was that it had been a long-term use. He said the Board didn't know the variance history for it but they did know that it was represented at the time the property was subdivided and there was clear intent that the group home use was part of the original concept. He said that was unique and why this parcel did not represent the zoning as a whole, which was a hardship. He said the use is a reasonable one because the intensity of the use was not being increased and it was a modest addition that would provide better caretaker accommodations. Mr. Mattson concurred and said the main reason he supported the motion was because the variance requested was for a use that has always been in place for the structure and will not get more intense. He said it was an existing nonconforming use coming before the Board for a modification to a building, but the addition didn't need any dimensional relief, so it made a lot of sense to support it.

Vice-Chair Margeson said she would not support the motion for the same reasons she voted to continue the application. She said the table was not correct in the site plan, and according to the Staff Memo, the applicant was close to needing a dimensional variance. She said that, before the Board voted on applications, they needed have clean submissions and make sure there were not any errors in any of the applicant's materials. Mr. Mannle said he also could not support it because he and the Planning Staff had no idea whether the applicant received a variance or approval from any of the other land use boards for a nonconforming use. Chair Eldridge said the fact that the facility had been there for 40 years and there were no minutes from the meeting was a moot point, and if the Board denied the application because they wanted more information, they could place the applicant in a Fisher v. Dover situation, She said she could postpone the petition instead of denying it. Mr. Mattson said approving the current application would resolve the previous missing history because it would now have an approved nonconforming use. Mr. Mannle said approving the addition would not approve a nonconforming use, it would only acknowledge it.

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

III. NEW BUSINESS

Alternate Ms. Geffert took a voting seat.

- A. The request of **Kerrin J. Parker Revocable Trust of 2012 (Owner)**, for property located at **86 Haven Road** whereas relief is needed to construct an addition to the existing structure which requires the following: 1) Variance from Section 10.521 to a) allow a 9 foot front yard where 10 feet is required by front yard averaging; b) to allow a building coverage of 29% where 20% is allowed; and 2) Variance from Section 10.321 to allow of 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 206 Lot 27 and lies within the Single Residence B (SRB) District. (LU-23-192)

SPEAKING TO THE PETITION

[Timestamp 53:13] Attorney Derek Durbin was present on behalf of the applicant along with the owner Kerrin Parker. He reviewed the petition, noting that the property was oddly shaped and small compared to nearby ones, and was in a unique setting. He said the requested second floor was for adequate headroom and more functionality of an additional bathroom and bedroom. He said the applicant also wanted to add a farmer's porch on the front. He reviewed the criteria.

Vice-Chair Margeson asked if the house was crooked. Ms. Parker said there was a sidewalk to Little Harbor that fronted half of the house, so the street ended halfway down and the sidewalk started, making the house a little crooked. Vice-Chair Margeson asked about the average front yard setback calculation of 12 feet. Attorney Durbin said it was 10 feet but the house was currently based on where the steps went to 18 inches or above grade, so it was 12 feet. Vice-Chair Margeson said the packet showed that it was 8.1 feet. Attorney Durbin said it really wasn't 8.1 feet. Ms. Geffert asked how close the porch would be to the sidewalk. Ms. Parker said the house dropped back four feet and the front entry was the closest to the sidewalk, so the porch would not come in any closer to the street. Ms. Geffert said the plans and the zoning map didn't show the sidewalk. Ms. Parker said the sidewalk curved away from the house. Ms. Geffert said she wanted to ensure that the sidewalk would not be adversely affected. Chair Eldridge said the new farmer's porch wouldn't come out any more than the existing top stoop of the stairway. Mr. Nies said the site plan showed that the existing setback was 12 feet but the letter said the revisions would lead to one foot farther than the existing setback. Attorney Durbin said he made a drafting error that may have been related to the 10-ft calculation and that it would really be three feet farther than existing at that one side. Mr. Rheume said the pathway leading up to the house's front entrance would be three feet shorter. Attorney Durbin said there would be stairs, and at the closest point, the setback would be three feet closer. Ms. Parker said the deck would only be three feet and the steps would be in the same footprint as the porch, so they would not be coming more forward. Mr. Rheume asked why there was a 3-ft setback. Attorney Durbin said the site plan didn't show the front steps but only the yellow part on the site plan, which was the footprint of the house before the steps, so the steps actually stepped out. Mr. Rheume then said 12-ft existing on the plan wasn't correct. Attorney Durbin said it was shown

as a block and he couldn't distinguish if it was intended to depict the front steps. He said the farmer's porch would be nine feet from the property boundary and they believed that the existing condition was 12 feet to the 18" mark of the front steps. He said it wasn't a good site plan and there was a lot of history behind it, but they measured from the 18" point to come up with the twelve feet. Mr. Rheume said something was sticking out three feet farther than it used to, and he asked how much closer it would appear to people walking down the street. Chair Eldridge said the applicant said they were keeping the steps as they were but changing the materials. Mr. Mattson said there was a landing in the existing situation and no landing in the new plan, just steps to the porch.

Chair Eldridge opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD

Mr. Rheume said he wasn't in favor of moving forward with the application because he didn't think the Board understood what was proposed. He suggested postponing it and requiring a resubmission. The Board discussed a date for the postponement.

Vice-Chair Margeson moved to re-open the public hearing to ask the applicant for a postponement date. Ms. Geffert seconded.

Attorney Durbin said he didn't know if a surveyor would be willing to just do the front boundary without doing the others. It was further discussed and decided that the petition would be continued to the April 16 meeting.

There was no public comment, and Chair Eldridge closed the public hearing. There was further discussion. [Timestamp 1:22:50]

Vice-Chair Margeson moved to continue the application to the April 16 meeting, with the direction to the applicant to provide accurate measurements of the front yard setback as they exist currently and as they would be proposed, which was driving the variance request after the construction.

Mr. Mannle seconded the motion. The motion passed unanimously, 7-0.

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

- B.** The request of **DFG I LLC (Owner)**, for property located at **750 Lafayette Road** whereas relief is needed to construct a freestanding Automated Teller Machine (ATM) which requires the following: 1) Variance from Section 10.1530 to allow an ATM in a freestanding structure. Said property is located on Assessor Map 244 Lot 8 and lies within the Gateway Corridor 1 (G1) District. (LU-23-194)

SPEAKING TO THE PETITION

[Timestamp 1:26:30] Keith Coven was present on behalf of the applicant and reviewed the petition. He noted that the ATM could not be attached to the building because traffic patterns and a fire lane had to be maintained and there was an existing use inside the building, so they were proposing that the ATM be placed in a landscaped island. He noted that there was an existing ATM for a different financial business on the other side of the building, so the proposed location was the only one on the site that would work. He reviewed the criteria and said they would be met.

Vice-Chair Margeson asked what would happen to the other ATM. Mr. Coven said it would remain. Vice-Chair Margeson said the zoning ordinance was clear that the standalone ATM was not allowed. She said the applicant said the hardship was that the ATM would interfere with the building's design and other tenants in the building, and she asked what other hardship there would be. Mr. Coven said they would have to redesign the site and do site improvements. Vice-Chair Margeson asked if there was a place to put the ATM in the building's interior. Mr. Coven said the ATM was a drive-thru one and the other ATM belonged to someone else.

Chair Eldridge opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DISCUSSION OF THE BOARD

[Timestamp 1:32:15] Mr. Mattson said he didn't really have a problem with the project but thought the Board had to consider the literal enforcement of the ordinance section in question and it wasn't clear to him why freestanding ATMs were not allowed. Ms. Casella said she thought it had to do with traffic patterns and the ATM being an accessory structure. Vice-Chair Margeson said the Board had a similar application before where the ATM was an accessory use but without a principal building or use because no bank was attached to it. She said the ordinance wanted unattended electronic devices to be covered and closed for the safety of pedestrians and bank users safety and to prevent crimes. Chair Eldridge said she didn't have a good idea of a traffic pattern of if the ATM would be covered and she said she wasn't getting a full picture of what was being requested. Vice-Chair Margeson agreed and said there was no rendering of exactly where the ATM would be or how it would look in place. She thought the Planning Board would address it because it was a busy site. Mr. Nies said the previous Board actions in 2012 approved a one-lane drive-thru facility, and he asked if the applicant needed a similar approval. Ms. Casella said that assuming that the proposed use is located on that single lane, it would be an add-on and would go through site plan amendment, so there would be a review of the traffic pattern and any alterations as a result of the ATM installation. Vice-Chair Margeson said there were missing details and that she would be unlikely to support the petition. She noted that the ATM provision was extremely detailed in the ordinance and any deviation from it had to demonstrate real hardship, which she did not think the applicant did. She suggested continuing the application so that more information could be provided.

DECISION OF THE BOARD

*Mr. Mattson moved to **grant** the variance for the application as presented, seconded by Ms. Geffert.*

Mr. Mattson said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance. He said the additional ATM would not alter the essential character of the neighborhood or threaten the public's health, safety or welfare or otherwise injure public rights. He said the location of the ATM would be as close to being attached to the building as it could be, which was in the spirit of the ordinance, but due to the existing structure and location of the travel lane, the ATM was just barely not attached. He said it would not conflict with the implicit and explicit purposes of the ordinance. He said granting the variance would do substantial justice because the benefit to the applicant would not be outweighed by any harm to the general public or other individuals. He said the other bank had an ATM and the applicant's bank did not, so it would be a benefit to the applicant. He said there was no reason to believe that the values of surrounding properties would be diminished. He said literal enforcement of the ordinance would result in unnecessary hardship due to special conditions of the property that distinguished it from others in the area, and there was no fair and substantial relationship between the general public purposes of the ordinance's provision and the specific application of that provision to the property. He said if the ATM were attached to the building, there would be no variance request, but there was an existing structure on the property that had a glass façade and there was a travel lane, so a fair and substantial relationship did not exist because the ATM would be as close to being an attached one as possible. He said the use was a reasonable one because it was a bank wanting an ATM that someone could drive up to.

Ms. Geffert said that, based on the information presented and the fact that the applicant was going for site plan review, whether the ATM in question satisfied the zoning requirements for a drive-thru facility would be considered separately. She suggested that the Board's approval be conditioned on that site plan review. She said she thought the standalone ATM satisfied other criteria because of the traffic pattern established but didn't want to muddy the waters by saying that it was almost attached. She said it was very close to being attached, however, and that the criteria related to auto access and not creating things beyond the Board's consideration. She said the ATM's proximity to the building did not change its essential character. Chair Eldridge said it was a drive-up ATM and wasn't sure how great a hardship it was, so she was unlikely to support the motion.

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

*Vice-Chair Margeson moved to **deny** the application. She said the variance was contrary to the public interest and the spirit of the ordinance would not be observed. She said the ordinance was very explicit about prohibiting standalone ATMs and the application markedly conflicted with it.*

*Mr. Mannle seconded the motion. The motion **passed** by a vote of 5-2, with Ms. Geffert and Mr. Mattson voting in opposition to the motion.*

Mr. Rheume resumed his voting seat, and Alternate Ms. Geffert took a voting seat.

- C. The request of **Cyrus Beer** and **Erika Beer (Owners)**, for property located at **64 Mt Vernon Street** whereas relief is needed to demolish an existing detached shed and construct a new two-story accessory detached shed which requires the following: 1) Variance from Section 10.573.20 to allow an accessory structure more than 10 feet in height and more than 100 square feet in area a) to be set back 5 feet from the side property line where 10 feet is required and b) to be set back 5 feet from the rear property lines where 19 feet is required. Said property is located on Assessor Map 111 Lot 30 and lies within the General Residence B (GRB) and Historic District. (LU-24-20)

SPEAKING TO THE PETITION

[Timestamp 1:48:40] The applicant Cyrus Beer was present to speak to the application. He explained why he wanted to place a second floor on the shed and move it five feet away from the lot line. He reviewed the criteria and noted that the Historic District Commission unanimously approved the project and that the abutters were also in favor.

Mr. Rheume said there was an odd jog to the property and it looked like the corner of the shed was close to it. He asked Ms. Casella if the applicant had to maintain five feet from the jog. Ms. Casella as they did, as advertised. Mr. Beer said there was a hill that came down and five feet would fit without regrading. He said ten feet would take away some of the backyard space. Mr. Rheume said the advertisement was for 19 feet but the table showed it as 25 feet required. He asked if the 19 feet was based on the height of the structure. Ms. Casella said the correct setback would be 19 feet. It was further discussed. Ms. Geffert asked Mr. Beer to review the hardship again, which he did.

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

*Vice-Chair Margeson moved to **grant** the variance for the application as presented and advertised, seconded by Ms. Geffert.*

Vice-Chair Margeson said the project would not be contrary to the public interest and the spirit of the ordinance would be observed. She said the Board required that the proposed use must not conflict with the explicit or implicit uses of the ordinance and must not alter the essential characteristics of the neighborhood nor threaten the public's health, safety, or welfare or otherwise injure public rights. She said the public's rights were the movement of light and air and that the applicant could have moved the left and rear yard setbacks more in, but they stated that there were topography reasons that make it difficult and the applicant was improving the setback requirements

off the existing use of the current shed, so she found that the spirit and intent of the ordinance were satisfied. She said substantial justice would be done because the benefit to the application would not be outweighed by harm to the general public or other individuals. She said the house was on a dead-end lot that was irregularly configured, along with a lot of other irregularly-configured lots. She said granting the variance would not diminish the values of surrounding properties because the applicant would bring the shed out of the setbacks as much as possible and improving it would not harm property values in the area. She said literal enforcement of the ordinance would result in unnecessary hardship due to the special conditions of the property that distinguished it from others in the area, and there was no fair and substantial relationship between the general public purpose of the ordinance's provision and the specific application of that provision to the property. She said the proposed use was a reasonable one because a shed is a reasonable accessory use to a house. She said there were special conditions of the property, including the topography that sloped upwards that made the literal enforcement of the ordinance's requiring setbacks for the left and rear yard difficult to comply with. Ms. Geffert concurred and had nothing to add.

Mr. Rheume said he saw a hardship in that the property was burdened on the rear and opposite side property lines by the 1900 decision of the hospital to build right up to the property line. He said he had no concerns with the rear property line but was concerned with the jog and thought the applicant needed to work with his architect to make sure what the dimension was. He thought it would work itself out, however, with the approval process with the City Staff. Mr. Nies said if the petition was approved with a 5-ft setback from the jog, he wanted to ensure that it was clear that the applicant would have to work through the permitting process to have five feet at that corner.

The motion passed unanimously, 7-0.

Alternate Ms. Record took a voting seat and Ms. Geffert returned to alternate status.

- D.** The request of **Ryan Family Trust (Owner)**, for property located at **199 McDonough Street** whereas relief is needed to construct an addition to the existing primary residential structure which requires the following: 1) Variance from Section 10.521 to allow a 9.5 foot rear yard where 20 feet is required; 2) Variance from Section 10.516.20 to allow a 9.5 foot rear yard where 15 feet is required for a rear yard adjoining a railroad right-of-way; 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 144 Lot 42 and lies within the General Residence C (GRC) District. (LU-24-18)

SPEAKING TO THE PETITION

[Timestamp 2:13:05] The applicant Peter Ryan was present and reviewed the petition. He noted that the addition would not be visible from McDonough Street and the materials would match the existing house. He reviewed the criteria and said they would be met.

Vice-Chair Margeson asked how the porch would be accessed after the addition was put on. Mr. Ryan referred to the diagram to show how a door would be moved to access the backyard. Vice-Chair Margeson said the rear yard setback was going from 8 to 9.5, and given that the porch would not be moved, she asked why there was more of a setback. Ms. Casella said it had to do with the lot angling away. She said the closest corner was 8 feet but would be 9.5 feet where the addition was going, so it would still be nonconforming. She said the deck would not factor in because it was below 18 inches and didn't count as a rear yard structure. Mr. Rheume said the drawing didn't show the actual setback for the addition and asked Mr. Beer if he attested that it was 2-1/2 feet, i.e. 7 feet plus 2-1/2 feet equaling 9-1/2 feet to get to the proposed addition at that corner. Mr. Beer agreed. Vice-Chair Margeson noted that there was an existing fence along the back of the property, which was the first time she had seen an application that involved railroad property.

Chair Eldridge opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

Elizabeth Bratter of 159 McDonough Street said she was in favor of the petition because it was not contrary to any of the criteria, which she explained in detail. She said most of the homes in the neighborhood were nonconforming and the addition would not change the railroad setback.

[Timestamp 2:19:40]

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

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

DECISION OF THE BOARD

*Mr. Nies moved to **grant** the variances for the petition as presented and advertised, seconded by Mr. Mannle.*

Mr. Nies said granting the variances would not be contrary to the public interest and would not conflict with any of the general purposes of the ordinance. He said there was no evidence that there would be an adverse impact on the health, safety, and welfare of the public. He said substantial justice would be done because the benefit to the applicant would cause no harm to the public. He said it was an unusual neighborhood, lot size, and location, and many of the changes would not be visible from the street and possibly not from the neighbors. He said granting the variances would not diminish the values of surrounding properties. He said literal enforcement of the ordinance would result in unnecessary hardship. He said the special conditions included that the lot was unusual, and if the Board insisted on enforcing all the setbacks, the 35-ft deep lot would have 15 feet in the middle that could possibly be built on. He said the proposal was making a minor change to the property and the conditions of the lot imposed a hardship, so there was no reasonable reason to disapprove the petition and create an unnecessary hardship to the owner. Mr. Mannle concurred and said the lot was the hardship. He said it was slightly bigger than any house lot in the south end.

Mr. Rheaume said he agreed with the motion. He said the fact that the back setback was up against an open area of the railroad and more open area behind it was also a hardship and was a unique characteristic. He said there was no concerns about light and air to neighboring properties because the applicant's proposal for a small one-story addition was modest and in keeping with that. He said the 15-ft setback was from a railroad right-of-way and that he had yet to figure out why the ordinance included that requirement. He said the Board ran into that situation before and the variance was granted, but he felt that it was a needless requirement and said he was not in favor of considering that to be a negative for the application.

The motion passed unanimously, 7-0.

THE FOLLOWING ITEMS WILL BE HEARD ON TUESDAY, MARCH 26, 2024

- E.** The request of **Cherie A Holmes and Yvonne P Goldsberry (Owners)**, for property located at **45 Richmond Street** whereas relief is needed for the following: 1) Variance from Section 10.515.14 to install a mechanical unit 8.5 feet from the side property line whereas 10 feet is required. Said property is located on Assessor Map 108 Lot 18 and lies within the Mixed Residential Office (MRO) and Historic District. (LU-24-19)
- F.** The request of **Atlas Commons LLC (Owner)**, for property located at **581 Lafayette Road** whereas relief is needed for after-the-fact installation of an awning sign which requires the following: 1) Variance from Section 10.1251.20 to allow a 32 square foot awning sign whereas 20 square feet is allowed. Said property is located on Assessor Map 229 Lot 8B and lies within the Gateway Corridor 1 (G1) District. (LU-24-1)
- G.** The request of **Lonza Biologics (Owner)**, for property located at **101 International Drive** to add four (4) above ground storage tanks which requires the following: 1) from Section 308.02(c) of the Pease Development Ordinance to allow an above ground storage tank (AST) exceeding a 2,000 gallon capacity per facility. Said property is located on Assessor Map 305 Lot 6 and lies within the Airport Business Commercial (ABC) District. (LU-23-108)
- H.** The request of **Henrik Edin and Kathleen Edin (Owners)**, for property located at **85 Pinehurst Road** whereas relief is needed to construct a second floor addition to the existing attached garage which requires the following: 1) Variance from Section 10.521 to allow a) a 4.5 foot side yard where 10 feet is required; b) a building coverage of 29% where 25% is allowed; 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; and 3) Variance from Section 10.515.14 to install a mechanical unit 2.5 feet from the left side property line whereas 10 feet is required. Said property is located on Assessor Map 221 Lot 73 and lies within the General Residence A (GRA) District. (LU-24-22)

- I. The request of **Susan Javurek** and **Michael Roche (Owners)**, for property located at **45 Kent Street** whereas relief is needed to demolish an existing 1-story addition, reconstruct a two-story addition and add a deck on the rear of the existing residential structure and relocate a bulkhead which requires the following: 1) Variance from Section 10.521 to a) allow a 5.5 foot left side yard where 10 feet is required; and b) to allow a building coverage of 35% where 25% is allowed; and 2) Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 113 Lot 145 and lies within the General Residence A (GRA) District. (LU-24-25)

IV. OTHER BUSINESS

There was no other business.

V. ADJOURNMENT

The meeting adjourned at 9:30 p.m.

Respectfully submitted,

Joann Breault
BOA Recording Secretary

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

7:00 P.M.

March 26, 2024

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

MEMBERS EXCUSED: ML Geffert, Alternate

ALSO PRESENT: Jillian Harris, Planning Department

Chair Eldridge called the meeting to order at 7:00 p.m. She said there was a request to postpone New Business Item II. B, Atlas Commons LLC (Owner) for property at 581 Lafayette Road.

*Mr. Rossi moved to take the item out of order, seconded by Mr. Mannle. The motion **passed** unanimously, 7-0.*

Chair Eldridge then read the item into the record.

*Mr. Mannle moved to **postpone** the item, seconded by Mr. Rossi.*

Mr. Mannle said it was a simple request that the Board granted all the time. Mr. Rossi asked if there should be a date certain to postpone the petition to. The Board agreed.

*Mr. Mannle **amended** his motion and moved to **postpone** the item to the April 16 meeting, seconded by Mr. Rossi. The motion **passed** unanimously, 7-0.*

Chair Eldridge said there was also a request to withdraw by the applicant for New Business Item II.C, Lonza Biologics (Owner) for property located at 101 International Drive, which required no action from the Board.

I. OLD BUSINESS

A. Request for 1-Year Extension - 411 South Street (LU-22-67)

DECISION OF THE BOARD

*Mr. Mannle moved to **grant** the one-year extension, seconded by Mr. Rossi.*

Mr. Rheaume said he would support the motion but found that the applicant's explanation for the reason for postponing was wanting. He said the individual sounded like they were having job issues but that it didn't relate to why they needed a one-year extension. Mr. Rossi said it must be a financial hardship and that he would not want to spend a lot of money on a renovation if he was out of a job, so he was more sympathetic to the rationale than other cases the Board had seen.

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

II. NEW BUSINESS

- A.** The request of **Cherie A Holmes** and **Yvonne P Goldsberry (Owners)**, for property located at **45 Richmond Street** whereas relief is needed for the following: 1) Variance from Section 10.515.14 to install a mechanical unit 8.5 feet from the side property line whereas 10 feet is required. Said property is located on Assessor Map 108 Lot 18 and lies within the Mixed Residential Office (MRO) and Historic District. (LU-24-19)

SPEAKING TO THE PETITION

[Timestamp 7:43] Project architect Anne Whitney was present on behalf of the applicant. She said there was enough setback to place the heat pump and noted that the Historic District Commission (HDC) approved the fencing around it, so it seemed like a good place to locate the generator. She said the fence was tall on that side and the property line got narrower as it went back. She said the location of the windows also made it difficult. She showed a few photos and reviewed the criteria.

There were no questions from the Board. 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 variance request as presented and advertised, seconded by Mr. Mannle.*

Mr. Rossi said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance. He said there was no public interest that would be served by not allowing the variance. He said the proposed location for the generator was sort of in a no-man's land between the two properties and didn't stick out like it didn't belong there, and the HVAC system also had a presence in that area. He said substantial justice would be done because there would be no loss to the public that would outweigh the benefit to the applicant. He said granting the variance would not diminish the values of surrounding properties, noting that the unit would be quiet and would barely run except in an emergency. He said literal enforcement of the provisions of the ordinance would result in an unnecessary hardship due to the special conditions of the property, which were the

limited size and shape of the lot and the undesirability of alternative locations for the unit which would, if placed in the back of the property, inhibit the owners' enjoyment of the land unnecessarily. Mr. Mannle concurred and had nothing to add.

The motion passed unanimously, 7-0.

- B. REQUEST TO POSTPONE** The request of **Atlas Commons LLC (Owner)**, for property located at **581 Lafayette Road** whereas relief is needed for after-the-fact installation of an awning sign which requires the following: 1) Variance from Section 10.1251.20 to allow a 32 square foot awning sign whereas 20 square feet is allowed. Said property is located on Assessor Map 229 Lot 8B and lies within the Gateway Corridor (G1) District. **REQUEST TO POSTPONE (LU-24-1)**

DECISION OF THE BOARD

The petition was **postponed** to the April 16 meeting.

- C. REQUEST TO WITHDRAW** The request of **Lonza Biologics (Owner)**, for property located at **101 International Drive** to add four (4) above ground storage tanks which requires the following: 1) from Section 308.02(c) of the Pease Development Ordinance to allow an above ground storage tank (AST) exceeding a 2,000 gallon capacity per facility. Said property is located on Assessor Map 305 Lot 6 and lies within the Airport Business Commercial (ABC) District. **REQUEST TO WITHDRAW (LU-23-108)**

The applicant **withdrew** the petition, and there was no action needed from the Board.

- D.** The request of **Henrik Edin and Kathleen Edin (Owners)**, for property located at **85 Pinehurst Road** whereas relief is needed to construct a second floor addition to the existing attached garage which requires the following: 1) Variance from Section 10.521 to allow a) a 4.5 foot side yard where 10 feet is required; b) a building coverage of 29% where 25% is allowed; 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; and 3) Variance from Section 10.515.14 to install a mechanical unit 2.5 feet from the left side property line whereas 10 feet is required. Said property is located on Assessor Map 221 Lot 73 and lies within the General Residence A (GRA) District. (LU-24-22)

SPEAKING TO THE PETITION

[Timestamp 15:41] The applicant Henrik Edin was present and said he bought the property in 2021 and wanted to build an addition on top of the existing attached garage within the required setback from the property line. He said the space would be used for two bedrooms and would convert an existing bedroom into a home office and laundry space that would not expand the existing building coverage. He noted that there was an existing raised patio behind the garage that was built by the

previous owner that made the existing building coverage exceed the maximum 25 percent. He said he discovered that a permit was not filed for constructing the patio and that he intended to file an after-the-fact permit. He said he also wanted to install a mini split unit beside the side setback. He reviewed the criteria and said they would be met.

[Timestamp 19:07] Mr. Rheume verified that the existing garage was within the 10-ft setback, which was 4-1/2 feet from the property line. He said the Planning Department comments indicated that the patio met the required setbacks for an accessory structure, which meant that it was five feet from the property line and less than 100 square feet in total area, and therefore could be 5 feet from the property line. Ms. Harris said it was greater than the 100 square feet so it would be set back from any lot line at least the height of the building or the applicable yard requirement, whichever was less. She said in the applicant's case, the applicant clarified to the City Staff that the patio varied from 22 inches to 38 inches, so they would look at a setback of about 3.2 feet for the greatest height of that patio. Mr. Rossi referred to the relief requested with regard to the left side setback. He said it was 4.5 feet but wasn't in the diagram, and he asked if the mechanical unit was closer than 4.5 feet. Ms. Harris said it was a separate item. Mr. Rossi said it wasn't in the table of existing and proposed conditions but was just in the text. He asked if the table should read 2.5 feet. Ms. Harris said an asterisk referenced the mechanical unit. Mr. Rossi then said the way it was phrased was adequate to provide the relief needed for the mechanical.

Mr. Nies said the patio was considered an accessory structure but the definition of an accessory structure in the ordinance was that it is a subordinate building having walls and a roof. He asked if it was common practice that accessory structures were extended to items without a roof. Ms. Harris said it would be under 'structure' rather than 'building', which was defined separately. She said the City looked at a structure as any production or piece of work artificially built up or composed of parts and joined together in some definite matter. She said in this case, under the definition of accessory building or structure, the City looked at the language that cites that it would be attached in a substantial manner to the main building in order to be considered part of the main building. Mr. Nies said he thought there was confusion in the definition. Ms. Harris said the definition contemplated structure as well.

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 variance requests as presented and advertised, seconded by Mr. Mannle.*

[Timestamp 24:52] Mr. Rossi said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He said the purpose of the setback requirements related to the specific variances being requested was to preserve open space and light,

and there was abundant room between the applicant's structure and the one on the adjacent property, and approval of the variance would not negatively impact the feeling of space and light between the structure and the one on the adjacent property. He said substantial justice would be done because there would be no loss to the public with regard to allowing the variance request to move forward, and therefore nothing that would outweigh the benefit to the applicant. He said granting the variances would not diminish the values of surrounding properties because the project design was nice and comported very well with the rest of the neighborhood and would only enhance the value of the surrounding properties by bringing up the value of the applicant's property. He said the hardship was the special conditions of the property that distinguished it from other properties in the area. With regard to the lot coverage, he said the special condition was that the structure in question is a patio that is only 18 inches or more above grade, so it isn't a bulky structure, and that was a special condition that leaned toward his saying that this aspect of the zoning ordinance is really not meant to prevent this sort of a structure where it is located. Particularly in the applicant's case, he thought it would be silly of the Board to require the owner to remove that structure at this point in time, especially since the owner had nothing to do with the noncompliance. He said there was no other logical space to put the mechanical unit on the property, which was the special condition that weighed in favor of granting that variance.

Mr. Mannle concurred. He said that, for an application that seemed to have a lot going on, the variance request was asking for very little. He said the left yard setback had not changed except for the mechanical unit, which wasn't listed other than adding it, and the building coverage had not changed at all. He said there was a raised structure that added to it that happened in the past 15 years, but given the current status, the request was minimal.

The motion passed unanimously, 7-0.

- E. The request of **Susan Javurek and Michael Roche (Owners)**, for property located at **45 Kent Street** whereas relief is needed to demolish an existing 1-story addition, reconstruct a two-story addition and add a deck on the rear of the existing residential structure and relocate a bulkhead which requires the following: 1) Variance from Section 10.521 to a) allow a 5.5 foot left side yard where 10 feet is required; and b) to allow a building coverage of 35% where 25% is allowed; and 2) Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 113 Lot 145 and lies within the General Residence A (GRA) District. (LU-24-25)

SPEAKING TO THE PETITION

[Timestamp 30:15] Attorney Monica Kaiser was present on behalf of the applicant, along with the applicant Susan Javurek and project engineer John Chagnon. Attorney Kaiser said there was an existing two-story house with a front porch and stairs, and a one-story addition and a bulkhead, concrete stairs, and a retaining wall. She said another area has a 3-season room take took up one

floor and would be improved but not expanded. She said they proposed to remove the existing addition on the back of the house, the concrete stairs, and the bulkhead, and construct a two-story addition. She said there would be new stairs, retaining wall, and a new deck on the back of the house. She said they needed a variance for the bulkhead that was relocated from the driveway side to the north side of the property because it was in the side setback and the building coverage exceeded what was permitted. She said the ordinance was unclear and counted more things as coverage than before because it measured from the existing grade instead of just the ground. She said the proposed addition looked big but took the place of the existing addition and the other items, which she thought made a difference. She asked if there were questions at this point.

[Timestamp 35:35] Mr. Rossi asked if the proposed deck was included in the building coverage calculation. Attorney Kaiser said it was. She noted that the chart indicated the existing building coverage and all the numbers added up to the 28 percent, but she didn't know if the concrete steps had been counted. She said the proposed conditions indicated that the main structure had changed and gone from 1,071 square feet to 1,333 square feet, which was the biggest change. She said the garage was counted and the deck/porch was counted as the enlarged deck, and the stairs and slightly larger bulkhead were all counted as proposed building coverage. She said the driveway area on the proposed was similar to the existing, but there was a change in grade from the driveway that would not change and there were some new landscaping features in addition to the retaining wall and the steps, which was the reason the bulkhead was moved. Mr. Mattson said the addition itself looked like it was entirely within all the yard setbacks, and he asked if the bulkhead was over 18 inches tall. Mr. Chagnon said the bulkhead could be a sloped one and it counted until it got to be more than 18 inches above the ground. He said the entirety of it is counted due to the way it was constructed.

[Timestamp 41:10] Vice-Chair Margeson asked Attorney Kaiser to review again what was included in the proposed building coverage. Attorney Kaiser said the addition was included within the main structure. Mr. Chagnon said the addition was 462 square feet, which was included with the house. He said the back deck was 99 square feet, the area in the front called a porch was 32 square feet, and together they were 131 square feet. Attorney Kaiser further explained that the existing was 51 square feet of front porch and back porch, and in the proposed, the number went from 51 square feet to 131 square feet, which included the deck off the back of the addition.

[Timestamp 43:40] Mr. Rossi said the applicant highlighted quite a few lots near the house that were nonconforming, and he asked if there was a quantitative analysis and if the other lots were similarly nonconforming. Attorney Kaiser explained that Exhibit F was a markup of the tax map. She said she looked at each tax card in the neighborhood, including the ones on the tax map that looked like decent-sized houses. She noted that the tax map hadn't been updated to reflect new construction. She said she added the footprint information for the structures the best that she could and that it wasn't a precise number but it was clear that a number of those properties had one- or two-car garages in the back and some had substantial additions and had not removed existing garages or sheds. She said some of them were over the 30 percent building coverage. She said some lots on Sherburne Road were recently unmerged and built upon, and those lots may have over 30 percent building coverage, and Elwyn Avenue had a few new builds on substandard lots. She said she would have to return with specific information, however. She reviewed the criteria in full.

The Board had no further questions. Chair Eldridge opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DISCUSSION OF THE BOARD

[Timestamp 53:04] Mr. Rossi said he would have appreciated a more quantitative analysis of the lot coverages in the surrounding properties, but looking at the tax map and the corner of Lincoln Avenue and Kent Street, it seemed apparent that the lot coverage with the structure was going to be at least equal to if not exceeding what was being proposed than the current variance request. He said Lot 72 across the street on Lincoln Avenue was similar, and both of those were legitimately within the neighborhood and seemed to have similar kinds of coverages as to what was being proposed. He said another factor that weighed in favor of the variance request was the open space behind it, the parkland in the back of the lot, and the addition would not encroach any further on the side setbacks because the only real action was towards the rear of the property. He said even though 35 percent building coverage was a big number, he could see it.

DECISION OF THE BOARD

*Mr. Rheume moved to **grant** the variance requests as presented and advertised, seconded by Mr. Mattson.*

[Timestamp 54:56] Mr. Rheume said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He said it was reflective of the general characteristics of the neighborhood. He said the applicant might be somewhat imprecise but made a good faith effort and, looking at it without precise measuring, the applicant made a good argument that a lot of those properties were undersized relating to what the lot requirement is to the GRA. He said the lot was typical of the others at about 5,500 square feet or so. He said there was a substantial history of these properties being built out to a fair degree above what is required by the ordinance for the GRA, so the applicant demonstrated that. He said the proposed addition would be in the back side of the house and would not affect the street view significantly. He said the height, even though it was two stories, was covered up by the front of the house, so for the general purposes of the ordinance in terms of the look and feel of the neighborhood, nothing was changing. He said granting the variances would do substantial justice. He said there was nothing in the public interest that would outweigh the applicant's desire for a more effective use of their lot and the addition they needed for a decent-sized home that wasn't gigantic. He said a person walking by would not see much of a change in the bulk of the changes on the back side of the property. He said granting the variances would not diminish the values of surrounding properties because the addition was tasteful and not overly excessive and was largely in conformance with the zoning ordinance requirements and would not affect light and air on either side excessively. He said the hardship was that the lot was smaller than required in the GRA, which gave some leeway for saying there was a hardship

from a lot coverage standpoint. He said there was required relief on the side yard setback but it was a bulkhead, which was a minor structure that no one would really notice and would not impose on the neighbor's light and air. He said it was really about the lot coverage, 10 percent above what was allowed, and that it was about 7 or 8 percent than what was currently there. He agreed with Mr. Rossi that it was open to the back, so strictly applying the zoning ordinance to this particular parcel would not be appropriate. He said there was enough space in the back that the look and feel of it was such that it would not feel imposing on neighboring properties. He said the request was a reasonable one, an expansion of an existing residential use in a tasteful manner and in keeping to the overall height of the structure and within the setback requirements.

Mr. Mattson concurred. He said the variances being asked for seemed more intense than they really were because for the setback, it was really to the bulkhead rather than the addition itself, and pertaining to the building coverage, it was an undersized lot so it didn't take a lot of extra square footage to go up in percentage. He said it was a reasonable request.

The motion passed unanimously, 7-0.

At this point in the meeting, Vice-Chair Margeson suggested a special meeting at which the Board could review their rules, noting that they hadn't looked at them in about three years. Chair Eldridge said there was also the question of a structure v. a building, which was something the Board had issues with before, and that it would also be a good time to ask questions about other confusing issues. Ms. Harris suggested a workshop. Mr. Rheume said in the past it was typically done as a work session and was publicly noticed but there was no public hearing, and it was an opportunity for members to bring up questions and recommendations for changes in the rules. He recommended that the questions be provided in advance so they could be placed on the agenda. Chair Eldridge said she would discuss it with the Planning Department and set up a time.

III. ADJOURNMENT

The meeting was adjourned at 8:02 p.m.

Respectfully submitted,

Joann Breault
BOA Recording Secretary

II. OLD BUSINESS

- A. Request to hear the decision to deny 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)

Planning Department Comments

On Wednesday, February 21, 2024 the Board of Adjustment considered 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.

The Board's motion to approve failed 3-3 resulting in a denial of the application. Subsequent motion to deny failed 3-3. Members who voted to deny provided comments that the hardship criteria was not met. The letter of decision and findings of fact have been included in the meeting packet along with the motion for rehearing.

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

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

REQUEST FOR REHEARING

TO: Portsmouth Zoning Board of Adjustment (“ZBA”)
FROM: R. Timothy Phoenix, Esquire
DATE: March 22, 2024
RE: Request for Rehearing
The Francis E. Mouflouze Revocable
Trust of 2015, Owner/Applicant
Property Location: 550 Sagamore Avenue
Tax Map 222, Lot 11, Single Residence (SRB) District

Dear Chair Eldridge and Zoning Board Members:

Now come Francis E. Mouflouze, Ted W. Alex and Patricia Cameron, Trustees of The Francis E. Mouflouze Revocable Trust of 2015 (“Mouflouze” or “Applicant”) and request that the Zoning Board of Adjustment (“ZBA”) rehear and reverse its February, 2024 decision denying two (2) requests for variance relief. Applicants’ submission dated January 31 and February 2, 2024 and oral presentation on February 21, 2024 are incorporated herein by reference.

I. EXHIBITS

1. 2/26/23 Notice of Decision/Findings of Fact – 2/21/2024 Hearing.
2. Draft Minutes of 2/21/2024 ZBA Meeting.

II. RELIEF REQUESTED

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

III. STANDARD OF REVIEW

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

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

The purpose of the statutory scheme is to allow the ZBA to have the first opportunity to pass upon any alleged errors in its decision so that the court may have the benefit of the board's judgment in hearing the appeal. Town of Bartlett Board of Selectmen v. Town of Bartlett

Zoning Board of Adjustment, 164 NH 757 (2013). Rehearing is designed to afford local zoning boards of adjustment an opportunity to correct their own mistakes before appeals are filed with the courts. Fisher v. Boscawen, 121 NH 438 (1981).

IV. FACTS & PROCEDURAL HISTORY

550 Sagamore Avenue is a 1.44 acre (62,754 sq. ft.) lot in the SRB zoning district (“SRB”) with 139.8 feet of frontage, which contains a 1960-era single-family home with the front steps slightly encroaching into the front setback (“the Property”). The 62,754 sq. ft. lot area is over four times the SRB Zone’s required 15,000 sq. ft. lot area and lot area per dwelling unit. The Property’s lot depth (434 ft.) is more than three times its width.

On October 17, 2023, Mouflouze requested two variances to construct two garage-under duplex structures on the Property in a district permitting one single-family dwelling per lot. The ZBA denied that application and denied rehearing. Mouflouze sought review by the Housing Appeals Board (“HAB”) and stayed the appeal to present a new proposal responsive to the concerns raised by abutters and ZBA members at the October 17th hearing.

On February 21, 2024, Mouflouze appeared before the ZBA with an application for a single variance to replace the existing single-family home with a colonial-style home/barn design containing three units (“the Revised Project”). **(1/31/2024 Submission revised 2/2/2024, Exhibits A & B)**. The Revised Project proposed a single, dimensionally-compliant structure maintaining:

- The appearance of a single-family home.
- A 283 ft. wooded buffer to the Walker Bungalow properties;
- A 65’ left side yard;
- Compliant density¹;
- Open space of 80.6%, double the minimum required 40%;
- Building coverage of 5,647 sq. ft. or 9.0%, less than half the 20% limit.

The Revised Project’s 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.

¹ One 3-unit on 1.44 acres or 62,754 sq.ft. (20,918 sq.ft./unit) meets the SRB density requirements (15,000 sq.ft./lot) and equals a density of 2.08 units per acre, thus meeting the underlying purpose of the SRB zone to provide dwellings “at low to medium densities (approximately 1 to 3 dwellings per acre),” See PZO §10.521 and §10.410.

On February 21, five regular ZBA members and two alternate members were present at the meeting. Member Rossi recused himself from Mouflouze's application leaving a 6 member board. After determining that the application did not constitute a second application "before the Board" barred by its Rules of Procedure VII.4, the ZBA declined to invoke Fisher v. Dover, 120 N.H. 187 (1980) and considered the merits of the Revised Project.

The Property sits in an eclectic and transitional section of the surrounding area, which includes single-family homes on much smaller lots, a recently approved development of 4 single family homes on a 1.95 acre lot across the street in the more restrictive SRA Zone, and waterfront businesses toward the Sagamore Creek Bridge. **(See Mouflouze Submission dated 1/31/2024, revised 2/2/2024 Exhibits F, I).** Other multi-family dwellings exist north toward the cemetery and south toward Cliff Road. Importantly, across the street is a densely developed apartment complex and condominium development^{2,3}. The context of the busy Sagamore Avenue, confluence of four zones and surrounding multi-unit development, coupled with the dimensionally compliant architectural design evoking the New England Farmstead, provide an opportunity to create sorely needed housing in a manner that preserves the character of the neighborhood.

After Mouflouze's presentation, members of the public addressed the ZBA. Two community members, Gerald Duffy (previous Sagamore Avenue resident) and Byron Matto spoke in support of the Revised Project and emphasized Portsmouth's housing shortage. They specifically noted that Mouflouze's three-unit structure was the type of middle-level housing opportunities needed in Portsmouth based on the findings in the upcoming report from one of the City's Housing Initiatives, *Portsmouth Listens: Places to Live Study Circle*. (See Link: https://www.cityofportsmouth.com/sites/default/files/2024-03/Places%20to%20Live_Report-

² The Sagamore Court Apartment Complex in the GA/MH District across the street contains 144 units on 15.01 acres. Density is 9.6 units per acre, far exceeding GA/MH purpose to provide for garden apartments at moderate densities of up to 4 dwellings per acre PZO §10.410, as only 65 units would be permitted pursuant to the Ordinance requirement of 10,000 sf per dwelling unit (15.01 acres x 43560sf/acre= 653,836sf/10000sf= 65.38). PZO §10.521 Also, across the street, one lot south of Sagamore Court, is the Tidewatch condominium complex in the SRA District, the purpose of which is to provide areas for single family dwellings at low to medium densities, approximately 1 to 3 dwellings per acre. With 117 units on 53.59 acres, density is compliant at 2.18 units per acre, PZO §10.10410, but meets neither the current zoning ordinance SRA purpose of single-family dwelling units, Id, nor the maximum of 53 units which could be placed on the lot given the 1 acre minimum lot size per dwelling unit. PZO §10.521.

³ If developed as a Planned Unit Development today, Tidewatch's density would be determined by the number of lots that could be developed in a conventional subdivision, likely less than 53 Units. PZO §10.723.1, §10.725.2.

[Out_2024-02-22_Final_Reduced%20Size.pdf](#)). The ZBA erroneously did not refer to written public comment submitted by Robert McElwain, which was not in the Board Packet⁴. (https://files.cityofportsmouth.com/agendas/2024/BOA/02-21-2024+Meeting/2-21-2024+Public+Comment_rev.pdf).

Three nearby residents opposed the Revised Project with one raising concerns regarding traffic, another claiming a negative effect on her desired single-family neighborhood⁵. Mr. Lee claimed the Revised Project did not meet the variance criteria and opined, without supporting analysis or valuations, that the Revised Project would diminish the value of surrounding properties. Local attorney MacCallum and three former City Council Members, none of whom reside in the neighborhood and would be directly affected, rounded out the opposition, claiming the Revised Project did not meet the hardship prong of the variance criteria.

The ZBA commenced deliberation with substantive discussion by three of the six sitting members. Member Rheaume discussed the improved proposal, which had resolved his previous concerns related to whether granting the variance would be contrary to the public interest and observe the spirit of the ordinance; he further opined that there were special conditions of the Property, noting it was large enough to accommodate the proposed three units. **(ZBA 2/21/2024 Minutes, p. 10.)** Member Mattson concurred and elaborated on the Property's special conditions which included size, but also its depth relative to the width/frontage. He noted both factors prevented a traditional subdivision. **(Id.)** He also opined that there was no fair and substantial relationship between the purposes of the Ordinance where the Revised Project complies with dimensional requirements. Lastly, he opined that the proposed use is reasonable. **(Id.)**

Vice Chair Margeson stated she could not support the application due to the absence of any hardship, because the Mouflouze had not demonstrated an inability to construct a single-family home in conformity with the Ordinance. **(ZBA 2/21/2024 Minutes, p. 10.)** She noted that the convergence of zones was intentionally created by the city with the densely developed projects located on larger lots across the street while the smaller lots on the east side of Sagamore were more appropriately designated SRB. **(Id.)** She added that the abutter purchased in reliance believing the Property would remain single-family absent exceptional circumstances.

⁴ The Applicant and Gary Cameron submitted written comment and addressed the Board at the meeting. Mr. Elwain did not speak at the meeting and it appears his favorable comment was not considered.

⁵ The Revised Project sites the structure 65 feet from the lot line shared with 546 Sagamore Avenue and proposes dense landscaping along the north lot line.

Vice Chair Margeson did not believe that the Revised Project constituted “exceptional circumstances.” **(ZBA 2/21/2024 Minutes, p. 10.)**

Remaining ZBA Members offered no comment. Member Mattson moved to approve the application and summarized how it met the five variance criteria, building on his earlier comments. **(ZBA 2/21/2024 Minutes, p. 11.)** Member Mattson ticked through the variance criteria, applying the Malachy Glen test for the first two prongs of the criteria. He noted the three units on the large lot satisfied the purposes of the Ordinance and the architectural design ensured the Revised Project would not alter the essential character of the neighborhood. He noted that the three units did not threaten the public safety and improved it by eliminating cars backing out into busy Sagamore Avenue. (Id.) Member Mattson cited the professional appraisal from Mouflouze’s expert, Brian White, which had determined that the Initial Project’s two duplexes/four units would not diminish surrounding property values. He concluded by repeating his earlier comments on hardship: size, shape, and depth as well as location among more densely developed properties created special conditions. **(ZBA 2/21/2024 Minutes, p. 11.)** He continued by noting the absence of any fair and reasonable relationship between the purpose of the regulation given the dimensionally compliant structure. Lastly, he noted that the proposed use was reasonable because it fit in with the surrounding residential uses. **(ZBA 2/21/2024 Minutes, p. 11.)**

Member Rheume suggested a condition that no building permit issue until the Initial Application’s appeal was resolved and Mr. Mattson agreed. Member Rheume also observed that the barn-structure in back, while large, complied with yard setbacks for the SRB Zone, which are less restrictive than the SRA Zone across the street. **(ZBA 2/21/2024 Minutes, p. 11.)** Member Rheume also noted that the location toward the front of the lot preserved the wooded buffer and provided a benefit to abutters, particularly those on Walker Bungalow as compared to a compliant subdivision with a road and three house lots, which would eliminate much of the wooded buffer. **(ZBA 2/21/2024 Minutes, p. 12.)**

With no further comments, Member Mattson restated his Motion, which resulted in a 3-3 tie vote. Reviewing the language in the Board’s Rules of Procedure, VI.6. Vice Chair Margeson requested a motion to deny to see if it garnered a fourth vote. Member Mannle then moved to deny the Revised Project, stating that while he appreciated the improved design, he was “bound by the rules” and did not see the hardship. While large, he said at 140 feet, it was not narrow.

(ZBA 2/21/2024 Minutes, p. 12.) Member Record agreed stating, without detail, that she did not see any “conditions which would influence” the Revised Project and found no hardship.

(Id.) The motion to deny also failed 3-3.

Member Mattson then raised the special conditions of the Property with Mr. Mannle, pointed out the 434 foot depth of the Property as compared to its 140 foot width, but Mr. Mannle appeared unconvinced, claiming incorrectly that the Property is a 140 feet by 280 feet rectangle⁶. Ultimately the discussion ended with Acting Chair Margeson suggesting the applicant could “take whatever comments they wanted to use for an appeal if necessary.” (ZBA 2/21/2024 Minutes, p. 12.)

Mouflouze timely requests rehearing of the ZBA’s denial of the Revised Project.

V. CLAIMS OF ERROR

A. Rehearing is required where two tie votes leave the Applicant without a clear decision and its sole finding is based on misapprehension of fact.

A ZBA’s failure 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. RSA 676:3 I. See also Alcorn v. Rochester, 114 N.H. 491 (1974). (noting the absence of a clear decision deprived applicant the specificity needed for judicial review). The ZBA Findings of Fact list only the lack of special conditions of the Property, but do not complete the hardship analysis nor make findings on the other four criteria, though Member Margeson stated, without elaboration, that the application also suffered from a “spirit and intent problem.” The absence of findings of facts on the remaining four elements of the variance criteria fail to provide meaningful guidance to Mouflouze, particularly in the context of the two tie votes. Accordingly, rehearing is justified.

The language of RSA 674:33, III is also problematic as applied to Portsmouth’s 7 Member Board, which benefits from special legislation. Laws 1953, Ch. 342:12:

⁶ The Property has more than one distance noted on each side property line: 152.34 feet plus 282.33 totaling 434.67 feet on the left (north) side. On the right (south) side lot line, the distance is 247.20 feet plus 200.00 feet totaling 447.20 feet. Calculating the lot depth as required by the Ordinance by averaging the length of the two side lot lines, the resulting depth of 434 feet is over three times the lot width and over four times the depth of a conforming SRB lot. (Exhibit A to Mouflouze submittal dated January 31, 2024 and revised February 2, 2024)

The concurring vote of any 3 members of the board shall be necessary to take any action on any matter on which it is required to pass.

Portsmouth's Rules of Procedure require 4 votes to approve an application; if acting on a Request for Rehearing for a variance or special exception, a majority vote is required, or if there is a tie, three affirmative votes will grant the rehearing. See Rules of Procedure, VI. However, there is no failsafe provision when the ZBA acts on an application in the first instance. The Rules simply state that if a motion to approve results in a tie, "the resulting decision is denial, unless a subsequent motion receives 4 affirmative votes". See Rules of Procedure, VI⁷.

This rule conflicts with State guidance to 5 member ZBAs with a 3 member quorum, which strongly advises applicants be afforded an opportunity to continue until a full board is present given the requirement of three concurring votes. As applied to Portsmouth's 7 member board and requirement of 4 affirmative votes, the same guidance weighs in favor of a continuance. See The Board of Adjustment in New Hampshire: A Handbook for Municipal Officials, NH Office of Planning and Development (2023) at III-17:

Failure of a motion does not mean that the opposite prevails.

The legislature codified this principle in 2018 with revisions to RSA 674:33, III. Whereas the prior version of the statute required three votes to reverse an administrative action or to approve an application, it was silent on denials. As now drafted, three concurring votes are required "to take any action on any matter on which it is required to pass."

In other words, if a motion to grant a variance fails by a 2 in favor, 3 opposed margin, that does not mean that the variance is automatically disapproved. In such a case, one of the three members who disapproved the motion should now propose their own new motion to disapprove the application stating the reasons for denial. The board should then vote on that motion which would likely pass, 3-2. This is especially important when there are fewer than 5 board members present since motions could result in a tie. Alternate motions should be put forward but if the board truly cannot find something at least 3 members can agree on, the meeting should be continued until a fifth member can be present. Since three votes are necessary to take any action, if there is not a full board, even with alternates serving, the chair should give the applicant the option of postponing the hearing until five members

⁷ It appears that this language was last reviewed in 2018 based upon a review of the ZBA Minutes for September and October 2018.

are present and available to vote. If the applicant chooses to proceed with the hearing, he/she should be advised that a hearing before a 3- or 4-member board will not be grounds for a rehearing in the event the application is denied. (Emphasis added.)

Applying the State's guidance to Portsmouth's 7 member (4 member quorum) ZBA, if a motion to grant a variance fails by a tie 3-3 vote, the decision should not automatically be denial. Similarly, if a motion to deny fails by a tie 3-3 vote, the decision should not be considered an approval. Instead, Mouflouze's application should have been continued until a full board was present and available to vote and failure to do so constitutes procedural error. To the extent Portsmouth ZBA Rules conflict, it appears they do not reflect the latest statutory revisions. Given the tie vote, the ZBA should grant rehearing as a matter of fundamental fairness.

Similarly, public comment in favor was not read into the record and some members appear to have overlooked the dimensions of the lot in a manner which directly impacts the ZBA's only finding, "Special conditions exist because it is a bigger lot, but it is not narrow considering it had a 140 foot width." As noted on page 6, the Property depth is three times the width and four times the depth of an average SRB lot. There is no factual basis for an assertion that the lot depth is 280 feet, supporting the ZBA conclusion that the lot is not particularly narrow. (**Exhibit A to Mouflouze submittal dated 1/31/2024 and revised 2/2/2024**). Where this is the only finding relied upon by the ZBA, rehearing is required.

B. Rehearing is required because the ZBA's hardship analysis is marred by its misapprehension of evidence demonstrating: special conditions, the absence of a fair and substantial relationship between the Ordinance and its application, and the reasonableness of the proposal given the surrounding area.

The reasoning offered by the ZBA in the findings of fact is that "Special conditions exist because it is a bigger lot, but it is not narrow considering it had a 140 foot width." Respectfully, this finding lacks support in the record and is therefore an unlawful basis for finding that no hardship exists. The flawed reasoning is demonstrated by the ZBA member inaccurate statements and erroneous analysis of unnecessary hardship. Specifically, Member Mannle opined that the Property's size *was* a special condition, but incorrectly judged it to be a 140 foot by 280 foot rectangle, so determined it was not narrow. Member Record agreed and indicated that she did not see conditions supporting the Revised Project, whether she meant special conditions related to the parcel or the conditions in the surrounding area is not clear from the

context. What is clear, respectfully, is that these statements preceding a motion to deny for want of hardship demonstrate factual and legal errors requiring rehearing.

Acting Chair Margeson said she could not support the application because, “there had been no demonstration that the Applicant couldn’t use the property for a single-family residence.” She also asserted that “the abutter had bought into the neighborhood relying on the zoning ordinance and that [the Property] wouldn’t change except for exceptional circumstances and... the application did not meet that exceptional circumstance.” Respectfully, this sentiment, while in the context of a hardship discussion, is tantamount to advocating for denial because the request conflicts with the Ordinance. The law is clear that a variance cannot be denied simply because the request does not comply. Chester Rod & Gun Club, Inc. v. Town of Chester, 152 N.H. 577, 581 (2005); (See also Malachy Glen Associates, Inc. v. Town of Chichester, 152 N.H. 102, 107 (2007) (“The mere fact that the project encroaches on the buffer, which is the reason for the variance request, *cannot* be used by the ZBA to deny the variance.”)).

Requiring a demonstration that the applicant cannot use the Property for a single-family home is also not the hardship test to be applied post Simplex Technologies, Inc. v. Town of Newington, 145 N.H. 727, 731 (2001). The standard to evaluate the hardship criteria is also not “exceptional circumstances.” The three part test of Simplex, codified in an amended RSA 674:33 begins with whether: special conditions exist, there is fair and substantial relationship between the purposes of the Ordinance and its application, and the proposed use is reasonable. The Revised Project soundly satisfies this test.

The first prong of the hardship test is whether special conditions distinguish this property from others in the area. Though the ZBA appeared to find the large size of the Property to be a special condition, it determined the Property was not narrow so there were no special conditions. The record demonstrates that the Property is four times the required minimum lot size and three times the depth, yet its width and frontage preclude a traditional subdivision.

Beyond its physical characteristics, its vicinity also support a finding of special conditions. **(See Mouflouze Memorandum dated 1/31/2024 and revised 2/2/2024 and in particular, Exhibits E, F, H, and I).** The immediate northerly lot, another lot three doors away, and a southerly lot two doors away are very small and no not meet SRB lot size and frontage requirements. In both directions near Cliff Road and Verdun Avenue are other homes on much smaller lots. Across the street are two very large lots with a multi-apartment complex containing

multiple large buildings and a large multi-building townhouse style condominium complex. Only a handful of lots in the SRB zone are within the immediate proximity to the large apartment complex and condominium complex. In order to find special conditions, it is not necessary for the Property to be the only burdened property, but only that it be burdened distinctly. Garrison v. Town of Henniker, 154 N.H. 26, 32-33 (2006).

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

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

Consider also Rancourt v. City of Manchester, 149 N.H. 51 (2003) (Hardship also exists if special conditions of the land render the use for which the variance is sought is reasonable and special conditions include the property's unique setting in its environment). Given: the several different zoning districts in close proximity; various sized lots and lot size requirements in the area; large residential buildings across the street; many nearby lots noncompliant with the density, lot size and/or frontage requirements of the zone in which they are located, and where

the proposed project is less impactful than a standard subdivision, the Property has special conditions. Likewise, the nature of the area, and the negative effects of a standard subdivision demonstrate that there is no rational basis for applying the strict requirements of the zoning ordinance by prohibiting a single three-unit structure designed as a New England Farmstead on an oversized lot.


The final prong of the hardship criteria is whether the proposed use is reasonable. The evidence clearly establishes that the structure is aesthetically pleasing and designed as a New England Farmstead with much of it unseen from the street. The Revised Project is also dimensionally compliant and the placement of the structure at the front of the Property matches other developed lots and preserves a significant wooded buffer. Denial of the Revised Project in favor of a compliant subdivision featuring a *cul de sac* that would decimate the wooded area elevates form over substance. Lastly, the Revised Project is a residential use in a residential zone and, based on the testimony of Gerald Duffy and Byron Matto, fulfills a need for middle level housing the community lacks.

VI. CONCLUSION

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

Respectfully submitted,

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

By: 

R. Timothy Phoenix
Monica F. Kieser



CITY OF PORTSMOUTH

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

EXHIBIT 1

ZONING BOARD OF ADJUSTMENT

February 26, 2024

Frances E. Mouflouze Revocable Trust of 2015
936 SOUTH ST #1
Portsmouth, New Hampshire 03801

RE: Board of Adjustment request for property located at 550 Sagamore Avenue (LU-24-9)

Dear Property Owner:

The Zoning Board of Adjustment, at its regularly scheduled meeting of **Wednesday, February 21, 2024**, considered your application for demolishing 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 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 approve the request, but the motion to approve failed 3-3 resulting in a **denial** of the application. Subsequent motion to deny failed 3-3. Members who voted to deny provided comments that the hardship criteria was not met.

The Board's decision may be appealed up to thirty (30) days after the vote. Any action taken by the applicant pursuant to the Board's decision during this appeal period shall be at the applicant's risk. Please contact the Planning & Sustainability Department for more details about the appeals process.

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

Very truly yours,

Beth Margeson, Vice Chair of the Zoning Board of Adjustment

cc:

R. Timothy Phoenix, Attorney, Hoefle, Phoenix, Gormley and Roberts, PLLC
Eric Weinrieb, Engineer, Altus Engineering

Findings of Fact | Variance

City of Portsmouth Zoning Board of Adjustment

Date: 2-21-2024

Property Address: 550 Sagamore Avenue

Application #: LU-24-9

Decision: **Motion to approve failed 3-3 resulting in a denial of the application. Subsequent motion to deny failed 3-3. Comments provided for the record to document how the request failed to meet the hardship criteria.**

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.		
10.233.23 Granting the variance would do substantial justice.		
10.233.24 Granting the variance would not diminish the values of surrounding properties.		
10.233.25 Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship. (a)The property has special Conditions that distinguish it from other properties in the area. AND (b)Owing to these special conditions, a fair		<ul style="list-style-type: none"> Special conditions do exist because it is a bigger lot, but it is not narrow, considering that it had a 140-ft width.

<p>and substantial relationship does not exist between the general public purposes of the Ordinance provision and the specific application of that provision to the property; and the proposed use is a reasonable one.</p> <p>OR</p> <p>Owing to these special conditions, the property cannot be reasonably used in strict conformance with the Ordinance, and a variance is therefore necessary to enable a reasonable use of it.</p>		
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**MINUTES OF THE
BOARD OF ADJUSTMENT MEETING
EILEEN DONDERO FOLEY COUNCIL CHAMBERS
MUNICIPAL COMPLEX, 1 JUNKINS AVENUE
PORTSMOUTH, NEW HAMPSHIRE**

7:00 P.M.

February 21, 2024

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

MEMBERS EXCUSED: Phyllis Eldridge, Chair

ALSO PRESENT: Stefanie Casella, Planning Department

Vice-Chair Margeson was Acting Chair for the evening. She called the meeting to order at 7:00 p.m. Both alternates took voting seats.

I. APPROVAL OF MINUTES

A. Approval of the January 23, 2024 minutes.

*Ms. Geffert moved to **approve** the minutes, seconded by Mr. Mannle.*

There were a few recommended changes as follows:

On page 4, Vice-Chair Marge was changed to Margeson.

On page 5, the word ‘surmised’ was changed to ‘observed’ to read as follows: “Mr. Rossi observed that there was no quantitative analysis of any kind.”

On page 7, the phrase ‘of substantial increase’ was changed to ‘or substantial increase’ so that the phrase now reads: “no creation of a traffic hazard or substantial increase in the level of traffic congestion”.

On page 9, it was added to Mr. Rheame’s motion discussion that the hardship was his second criterion identified as the reason he thought the petition failed.

On page 11, Mr. Rheame and not Mr. Rossi made the motion and amended motion, and Mr. Rossi seconded.

*The motion to approve the **amended** minutes **passed** unanimously, 7-0.*

reconditioned and there was a new residential structure built as part of that; he said it was a good argument that that portion of Chapel St had no businesses on it. He said he thought that spoke to the first two criteria that look at the characteristics of the neighborhood. In terms of the lot area per dwelling unit, he said it was an existing structure and that the real change was in 1987 when it was condoized and broken up into five components that made the lot area per unit of the condo a fixed entity. He said although 3,000 sf was required, the current square footage was 968 sf and was being reduced to 806 sf, which wasn't that substantial of a change and in both cases went below what was required. He said it was a reasonable request and did reflect a hardship because the building was subdivided in 1987. Acting Chair Margeson said she would support the petition, noting that she had been vigilant in the past about the DOD being important for the economic vitality of the City and that it was a very intentional zoning provision. She said the ground floor in the DOD should consist entirely of non-residential but that Unit One was residential and was a preexisting nonconforming use, so she thought that was really the hardship.

The motion passed unanimously, 7-0.

- 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)

Mr. Rossi recused himself from the petition.

SPEAKING TO THE PETITION

[Timestamp 1:02:30] Attorney Tim Phoenix was present on behalf of the applicant and introduced the applicant's son Ted Alex, project engineer Eric Weinberg, the appraiser Brian White, and the architects Mark Gianniny and Richard Desjardins. He briefly presented the Fisher v. Dover issue. He said the previous application was denied and on appeal, which had to be done because if the Board found that Fisher v. Dover did apply, the applicant could not proceed and would have nothing. He said the applicant did a material change of having one structure instead of two and was only asking for one variance.

[Timestamp 1:09:55] The Board discussed whether Fisher v. Dover should be invoked and decided that it should not. Attorney Phoenix reviewed the petition and criteria. He noted that the applicant could do a 3-lot subdivision with a road and three standalone homes if he wanted to. He said the lot was four times the minimum lot size in the area and that the applicant could accomplish the same functionality by what they proposed. He said the extra units wouldn't be noticeable and that they were in an area that had a confluence of different zoning requirements, so the project would fit in.

[Timestamp 1:23:54] Mr. Rheume asked what the thinking was in positioning the new structures, in particular the barn structure that was so close to the property line, and what options the project

team had. Attorney Phoenix said one of the issues was the closeness of the house near the lot line and that they wanted to give it some space. Mr. Weinberg said they tried to figure out where to put the driveway compared to the existing one. He said it almost met the setbacks on the other side. He said they wanted to balance the open space between the houses and the development area on each side instead of moving it closer north to the house on the opposite side. Mr. Rheaume said they were past the end of the existing house but not by much. Mr. Weinberg said they tried to push it as forward as possible. Mr. Rheaume said the parking requirement was only four spaces and that the applicant would provide a lot more than that. He asked if the applicant would provide parking space in front of the garage for Unit 3. Mr. Weinberg agreed and said there would be two spaces for each unit and additional parking behind the garage bays.

[Timestamp 1:29:20] Acting Chair Margeson said the lot's size was quite large and asked how much square footage of the lot was being built on. Mr. Weinberg said it was about 25,000 sf, which was about 40 percent of the lot. Acting Chair Margeson said it reduced the lot area per dwelling unit by 8,000 sf. Mr. Weinberg said it would be no different than having a 40-acre parcel with a single-family house on it because it was still one lot. Acting Chair Margeson said the size of the lot allowed for three dwellings to go on it when actually it was only 25,000 sf of the lot being built on. Mr. Weinberg said they could have proposed one giant building and used up all the forest area. Acting Chair Margeson asked why the applicant couldn't build a single residence home on the lot. Attorney Phoenix said the hardship was how large the lot was. He said they believed there were special conditions because the lot was four times the required lot size, and considering its overall envelope, he asked why the applicant would want a McMansion that would cover just as much area when he could provide more affordable housing. He noted that the depth of the property was three times its width. He said the primary issue was the lot area per dwelling unit to keep neighbors from being on top of each other and have light and air.

Acting Chair Margeson opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

Gerald Duffy of 428 Pleasant Street said he lived on Sagamore Avenue for a few years. He said Portsmouth was experiencing a critical housing problem and that it was the City's role to enable housing construction for a wide variety of residents.

Byron Matto of 17 Field Road said the project was in line with the broader objectives of the City's housing policies and also adhered to the zoning criteria. He explained how the project met each criteria and said the project would alleviate the housing shortage and serve a critical public need.

SPEAKING IN OPPOSITION TO THE PETITION

Duncan MacCallum of 536 State Street said there had to be special conditions to constitute a hardship, and the kind of hardship that justified the granting of a variance wasn't the personal circumstances of the property owner but had to be in the land itself. He said there was no hardship.

Linda Brown of 650 Sagamore Avenue said the only thing that changed in the application was that one structure was decreased. She said the traffic would still be a concern and thought the variance request was pure greed to make more money using every inch of the property.

Christana Wille McKnight of 546 Sagamore Ave said the project would directly impact her family and that she would not have bought the house if the proposed three-family condo were there. Paige Trace of 27 Hancock Street said there was no hardship and that the City needed affordable housing for everyone.

Esther Kennedy of 41 Pickering Avenue said the City had zoning laws and she did not see a hardship. She asked that the Board support the people who lived in that area.

Petra Huda of 280 South Street said it was an SRB single-family residence, which meant one unit and not three. She said it would not be consistent with the neighborhood and the SRB District.

Jim Lee of 520 Sagamore Ave said he was a secondary abutter to the project and didn't think it was the right place for it. He said the ordinance said three or four dwelling units could not be built on that lot and a two-family unit could not be built. He explained why the criteria were not met.

Suzan Harding of 594 Sagamore Ave said she didn't feel someone had to devour every little piece of property to build something on it. She said she bought her property to appreciate the peace and quiet and the land behind it and never imagined this project would be built there.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Attorney Phoenix said the point was made that the project would take the property out of compliance, which was what every variance did. He said the traffic would go through Planning Board approval. He said there would be fencing and screening to protect the neighbors to the north and south. He said the 3-building coverage was 1,882 sf per unit, including the garage. He said it wasn't about greed and that the zones across the street and their intense uses couldn't be ignored and there was much greater density up the street than what the applicant proposed.

The owner's son Ted Alex of 104 Locke Road, Rye, said the plan was reduced from four to three homes and would allow over half the lot to stay in its natural state. He said it had been about keeping his mother in an assisted living home. He noted that his mother died a few days ago.

Gary Cameron of 110 Field Road called in via Zoom and said there were inaccurate and inappropriate comments made. He said it was never about greed but about allowing his mother-in-law to self-finance her living in her few remaining years with dignity.

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

DISCUSSION OF THE BOARD

[Timestamp 2:29:14] Mr. Rheume said it wasn't about greed but was about the fact that people's properties were one of their major assets and everyone wanted to maximize the value of that asset. He said the Board existed to look at anything related to the ordinance and to look through the criteria to see if an ordinance is being correctly applied to a property. He said there were special conditions that said when zoning is applied to a particular parcel, it might not make as much sense as other parcels, but it came down to the criteria. He said he logically appreciated what the applicant tried to do in coming back before the Board. He said the applicant went back to the original characteristics of the neighborhood by trying to create the single-family home look in the front and putting the additional units in the rear to make it look like there could have been a building there previously. He said what the application came down to was the special conditions of the property and whether the lot was large enough to accommodate three single-family homes and was sufficient reason to allow the one structure being there. He said there was nothing in the previous decision about the Board saying that the present home could not be demolished, but he said it could be and that someone could put a new structure of indeterminate size on the lot. He said the key factor was hardship and the special conditions and whether the size of the proposed structure allowed the Board to conclude that it could be an acceptable use for the property.

Mr. Mattson agreed that the hardship criteria was the most important. He said the lot size in a single-family zone only had to be 15,000 sf and the lot was 62,000 sf, which could fit four single-family homes. Relating to hardship, he said it wasn't only the size of the property but also its shape that affected it and affected how easily it could be subdivided. He said the ordinance did not allow more than one freestanding dwelling on a property, which was partially why the previous project was denied. He said the applicant was only asking for one variance and the single structure resulted in a 94 percent open space, which had an effect of it looking like a single-family home from the street and fitting in with the neighborhood's existing character. He said one could also apply the big apartment buildings across the street that were part of the character of the neighborhood. He said the project had a fair and substantial relationship to the ordinance and preserved light, air, and privacy, it had the 94 percent open space, and the single structure was within the setbacks and met the density requirements. For those reasons, he said the hardship could be met.

Acting Chair Margeson said she could not support the application because it failed on hardship. She said there had been no demonstration by the applicant showing that the property couldn't be used for a single-family residence. She said the characteristics of the neighborhood was intentionally set out by the City, noting that Sagamore Court was the Garden Apartments/Mobile Home District, Tidewatch was a planned unit development, and there was the SRB zone across the street, and a lot of that was because most of the lots were smaller sizes. She said there was a spirit and intent problem but that the application mostly failed on hardship. She said an abutter bought into an area relying on the zoning ordinance and that it wouldn't change except for an exceptional circumstances, and she didn't think the application met that exceptional circumstance.

DECISION OF THE BOARD

*Mr. Mattson moved to **grant** the variance for the application as requested, seconded by Mr. Rheaume.*

Mr. Mattson said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance, and the proposed use would not conflict with the explicit or implicit purpose of the ordinance. He said the way the SRB District was defined, it was 1-3 dwellings per acre, and that was how the 15,000 sf per dwelling was arrived at. He said this project was almost 21,000 sf per dwelling. He said the project must not alter the essential characteristics of the neighborhood. He said in the current project, the structure from the street looked like a big farmhouse with a barn attached. He noted that there were other 3-unit dwellings within the property's proximity. He said the project would not threaten the public's health, welfare, or safety or injure public rights. He also noted that the new design allowed someone to drive forward instead of having to back out on Sagamore Ave, so public safety would be improved. He said granting the variance would do substantial justice because he did not see any harm to the general public outweighing the potential benefit to the applicant to make use of their property and that this type of proposal was much better than a subdivision approach. He said granting the variance would not diminish the values of surrounding properties, noting that the Board heard from a professional appraiser that the previously proposed 4-unit project would not do so, so it was fair to say that a single building with three units would not. He said literal enforcement of the ordinance would result in an unnecessary hardship, meaning that because of the special conditions of the property that distinguished it from other properties in the area, there was no fair and substantial relationship between the general public purposes of the ordinance's provision and the specific application of that provision to the property. He said the general public purposes of the ordinance were to preserve light, air and privacy, and in this situation, that would be maintained because it was entirely within the setbacks and met the density. He said the special conditions of the lot were that it was more than four times the size required in a single residence district and was relatively narrow and deep, and those factors, combined with the fact that it was also in proximity to other zones that allowed great density, created special conditions for the property. He said the proposed use was a reasonable one and that the proposed building would not alter the essential characteristics of the neighborhood and would fit in with the residential purposes of the zoning.

Mr. Rheaume suggested a **stipulation** stating that a building permit will not be issued until such time that the legal status of the BOA's action on October 17, 2023 is resolved. Mr. Mattson agreed.

Mr. Rheaume said if the motion passed, the applicant would be bound on which way they chose to go. He said a concern he had with the barn structure was the open space in the back crowding the house to the front of the property, and he also had concerns with the 576 Sagamore Ave property, which was the most affected from a light and air standpoint. He said nothing that the applicant proposed fell within the required setback for the zone. He said the SRB zone was generous to the amount of buildable area and there was only a 10-ft setback on either side. He said the SRA zone on the other side of the street required bigger lots and was more restrictive on the setback, so in that sense the applicant was within his rights. From a light and air standpoint, he said the most imposing portion of the proposed structure was toward the back, so it came down to hardship. He said the

Board was not responsible to solve the City's housing crisis but was looking at what the property had for characteristics. He said the parcel's size and shape had the ability that if it were subdivided and continued to have the same number of proposed homes, it made more sense to create smaller units more clustered together that preserved the open area in the back of the property, which was a general benefit to property owners, especially Walker Bungalow. He said he knew it was more impactful to the people on the Sagamore Avenue end of the property, but that it made sense overall as a holistic solution. He said the issue of the micro neighborhood v. the macro neighborhood, and he asked if the Board was considering it against the adjacent properties or if it more broadly included a larger area around the property. He said there was no distinct requirement that the Board had to follow, but there was a fair amount of variety in the overall neighborhood. He said what was proposed would not feel out of character of that overall neighborhood, so in that more macro sense, he thought it met the criteria and recommended approval.

The **amended** motion was as follows:

*Mr. Mattson moved to **grant** the variance with the following **condition**:*

- *A building permit shall not be issued until such time that the legal status of the BOA's action on October 17, 2023 is resolved by the appeal to the Housing Appeals Board.*

*Mr. Rheaume seconded. The vote **failed** by a tie of 3-3, with Mr. Mannle, Ms. Record, and Acting Chair Margeson voting in opposition.*

[Timestamp 2:52:39] The Board discussed whether they should move to deny or move to approve with different criteria. Acting Chair asked for a motion to deny.

*Mr. Mannle moved to **deny** the variances on the grounds of hardship. Ms. Record seconded.*

Mr. Mannle said he appreciated what the applicant did to improve the project but was bound by the rules and that he didn't see the hardship in the property. He said a special condition did exist because it was a bigger lot, but he wouldn't say it was narrow, considering that it had a 140-ft width. Ms. Record agreed and said she didn't see what could be there to influence what the applicant was proposing to put there and that she didn't see the hardship.

*The motion **failed** by a tie vote of 3-3 with Ms. Geffert, Mr. Rheaume, and Mr. Mattson voting in opposition.*

Mr. Mattson said Mr. Mannle noted the special conditions of the property by addressing the narrowness of it. He said it was 434 feet deep, where a typical lot would only be 100 ft deep, so even if it was 140 ft wide, it was more than four times as deep. He said if one considered a square v. a rectangle, it was an elongated narrow-shaped parcel. Mr. Mannle said it was a rectangle of 140 x 280 ft. Mr. Rheaume said he empathized with the makers of the motion and that he mostly struggled with the hardship as well, but within the context, he thought it made sense. Acting Chair Margeson said the applicant could take whatever comments they wanted to use for an appeal if necessary.

- 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)

SPEAKING TO THE PETITION

[Timestamp 3:02:20] Applicants Cynthia and Michael Walker were present to speak to the petition. Ms. Walker reviewed the reasons why they wanted to build a one-car garage and place it in the proposed location. She said they also wanted to extend the back of the house by six feet as part of the addition plan. Mr. Walker reviewed the criteria and said they would be met.

Mr. Rossi said the only part of the project that perplexed him was the placement of the garage. He agreed that there was a lot of open space around that corner of the property but was concerned that pushing the garage within two feet of the lot just because the owners of 50 Willow Lane had no plans to expand their structure's footprint felt like a race of who got there first. He said if there was a 2-ft setback allowed for the garage, the light and space issues would be more difficult for Willow Lane in the future if they wanted to build close to that lot line. Mr. Walker said there was an existing fence on the back that he was going to continue for 40 feet, so all that would be seen from the neighbor's lot would be the top of the garage. Mr. Rossi asked why the garage couldn't be moved back and attached to where the addition was being built. Mr. Walker said the original plan had it attached just on one corner, but they had to ensure that the turn could be made into the garage. He said the other option was to put it further down, but that even went closer to the other house to the left. Mr. Walker said it would preserve a private yard space and let more sun into the house. He said the neighbor couldn't add onto the space between the two houses, given the confines of the property. Ms. Clark said the owner of 50 Willow Lane had no objection and saw the logic of placing the garage there. She said it would also minimize the amount of pavement. Acting Chair Margeson said there wouldn't be a turning problem if the garage was placed next to the addition. Mr. Walker said they wanted to put a gate between the garage and the house to have a nice hardscape behind the house. He said if they pushed it back, they'd have to push it all the way back into the garage and the door would face the left, so the garage and door would have to be wider.

Acting Chair Margeson opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke, and Acting Chair Margeson closed the public hearing.

II. OLD BUSINESS

- B. REQUEST TO POSTPONE** The request of **Kerrin J. Parker Revocable Trust of 2012 (Owner)**, for property located at **86 Haven Road** whereas relief is needed to construct an addition to the existing structure which requires the following: 1) Variance from Section 10.521 to a) allow a 9 foot front yard where 10 feet is required by front yard averaging; b) to allow a building coverage of 29% where 20% is allowed; and 2) Variance from Section 10.321 to allow of 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 206 Lot 27 and lies within the Single Residence B (SRB) District. (LU-23-192) **REQUEST TO POSTPONE**

Planning Department Comments

The applicant is requesting a one month continuance to gather the information requested by the Board. See continuance request letter included in meeting packet.

BY: VIEWPOINT & HAND DELIVERY

March 27, 2024

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

**RE: Request for Continuance
Variance Application of Kerrin J. Parker, Trustee of the Kerrin J. Parker
Revocable Trust of 2012
86 Haven Road, Tax Map 206, Lot 27**

Dear Stefanie,

Please accept the following letter requesting a one-month continuance of the hearing concerning the above-referenced variance application to the month of May. The Owner of the property is in the process of engaging a surveyor to comply with the request made by the Board at its March 19th meeting. We anticipate that it will take some time to accomplish this.

Sincerely,



Derek R. Durbin, Esq.

II. OLD BUSINESS

- C. **REQUEST TO POSTPONE** The request of **Atlas Commons LLC (Owner)**, for property located at **581 Lafayette Road** whereas relief is needed for after-the-fact installation of an awning sign which requires the following: 1) Variance from Section 10.1251.20 to allow a 32 square foot awning sign whereas 20 square feet is allowed. Said property is located on Assessor Map 229 Lot 8B and lies within the Gateway Corridor (G1) District. (LU-24-1) **REQUEST TO POSTPONE**

Planning Department Comments

The applicant is requesting a one month continuance to provide information requested by staff.

III. NEW BUSINESS

- A.** The request of **Chinburg Development LLC (Owner)**, for property located at **6 Boyd Road** whereas relief is needed to demolish the existing structure and construct a new primary dwelling which requires the following: 1) Variance from Section 10.521 to allow a) 6,703 square feet of lot area where 7,500 square feet are required; b) 6,703 square feet of lot area per dwelling unit where 7,500 square feet are required; c) 85 feet of frontage where 100 feet are required; and d) 68 feet of lot depth where 70 feet are required. Said property is located on Assessor Map 175 Lot 13 and lies within the General Residence A (GRA) District. (LU-24-23)

Existing & Proposed Conditions

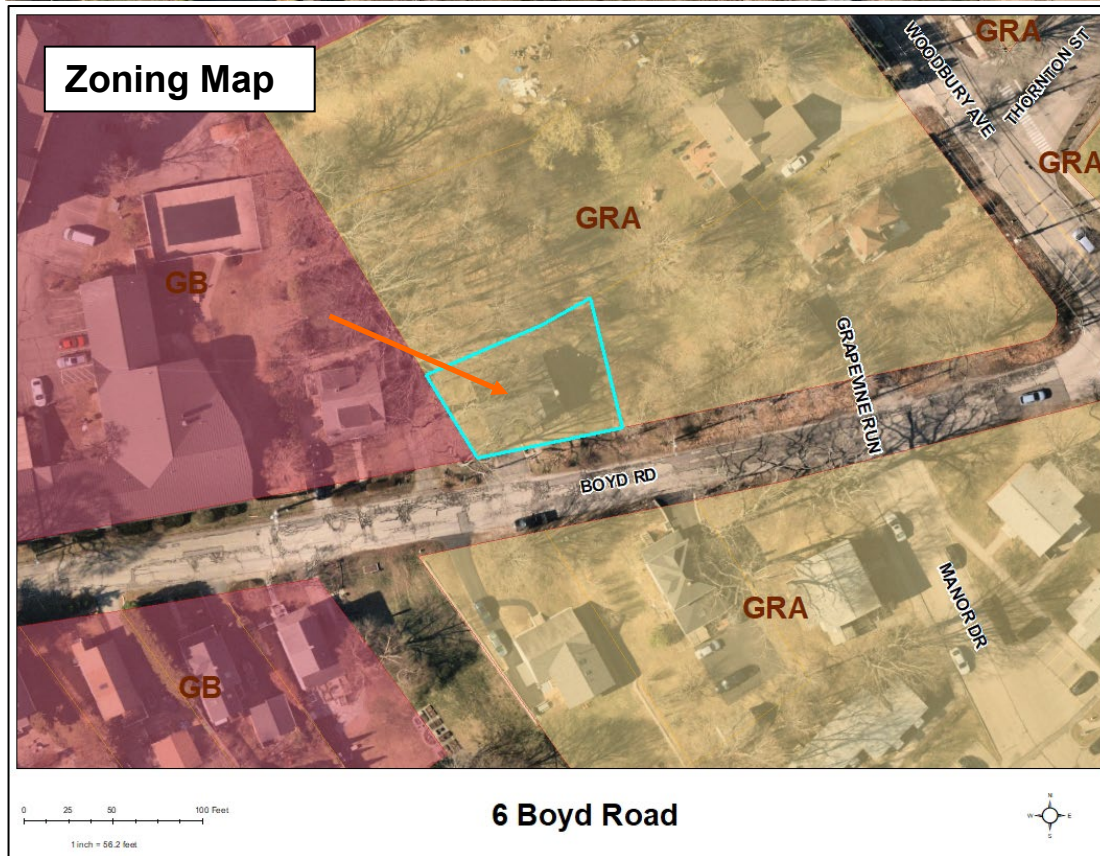
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family dwelling	*Demolish the existing structure and build new primary structure	Primarily residential
<u>Lot area (sq. ft.):</u>	6,703	6,703	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	6,703	6,703	7,500 min.
<u>Street Frontage (ft.):</u>	85	85	100 min.
<u>Lot depth (ft.)</u>	68	68	70 min.
<u>Front Yard (ft.):</u>	18		15 min.
<u>Left Yard (ft.):</u>	12	>11	10 min.
<u>Right Yard (ft.):</u>	>12	11	10 min.
<u>Rear Yard (ft.):</u>	14	21	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	20.5	24.1	25 max.
<u>Open Space Coverage (%):</u>	70	63	30 min.
<u>Parking</u>	2	2	2
<u>Estimated Age of Structure:</u>	1951	Variance request(s) shown in red.	

*Demolition of the existing structure will create a vacant lot which requires conformance with section 10.311

Other Permits/Approvals Required

- Building Permit

Neighborhood Context



Previous Board of Adjustment Actions

No previous history found.

Planning Department Comments

The applicant is requesting relief to demolish and rebuild a single family home on an undersized lot. The new structure will be less non-conforming than the existing structure. Relief for the undersized lot is required per section 10.311 of the Zoning Ordinance. Section provided below for your convenience.

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

Applicant has included the request for relief from section 10.311. Staff do not believe this is applicable for a variance as it is the provision that triggers the need for dimensional variances after demolition.

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.

MEMORANDUM

To: Portsmouth Zoning Board of Adjustment (“ZBA”)
From: R. Timothy Phoenix, Esq.
Monica F. Kieser, Esq.
Date: March 27, 2024
Re: Chinburg Development, LLC Owner/Applicant
Project location: 6 Boyd Road
Tax Map 175, Lot 13
General Residence A (GRA) Zone

Dear Chair Eldredge and Zoning Board Members:

On behalf of Chinburg Development, LLC (“Chinburg” or “Applicant”) we are pleased to submit this memorandum and the attached exhibits in support of zoning relief to be considered by the ZBA at its April 16, 2024 meeting.

I. EXHIBITS

- A. Rockingham County Registry of Deed Plan 44009 – by Jones and Beach Engineers
 - Existing Plot Plan
 - Proposed Plot Plan
- B. Architectural Elevations and Floor Plans – by Art Form Architecture, Inc.
 - Country Farmhouse
- C. Site photographs
 - Satellite
 - Street View
- D. Tax Card
- E. City GIS Map – depicting surrounding area and zoning districts
- F. Tax Map 175

II. PROPERTY/PROJECT

6 Boyd Road is a pre-existing 6,703 s.f. lot with 85 feet of frontage in the General Residence A (“GRA”) District (“the Property” or “Lot 13”). **(Exhibit A.)** The Property abuts the General Business District and the Best Western/Wynwood Inn/Roundabout Diner & Lounge. The Property contains small, single-family ranch which dates back to the 1950s. **(Exhibits C, D.)** The Property was part of an approved Site Plan obtained by Maple Heights Realty, LLC permitting eight units on the adjacent Map 175, Lot 1. The new owner intends to remove the existing single-family home and construct a new single-family home compliant with yard setbacks, building coverage, and open space requirements (“the Project”). Because the Property

does not comply with lot area, frontage, and lot depth requirements, Planning Staff have advised that relief is required from the Portsmouth Zoning Ordinance (“PZO”) to redevelop it with a new single-family home.

III. **RELIEF REQUIRED**

- 1.) PZO §10.521 – Table of Dimensional Standards
 - a. To permit reconstruction of a single-family home on a lot with 6,703 s.f. of lot area where 7,500 s.f. is required.
 - b. To permit a dwelling on a preexisting lot containing 6,703 s.f. where 7,500 s.f. is required.
 - c. To permit reconstruction of a single-family home on a lot with 85 feet of frontage where 100 feet is required.
 - d. To permit reconstruction of a single-family home on a lot with 68 feet of lot depth where 70 feet is required.
- 2.) PZO §10.311 – to permit reconstruction of a single-family home on a substandard lot.

IV. **VARIANCE REQUIREMENTS**

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

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

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

1. The use of land, buildings and structures for business, industrial, residential and other purposes – The proposal requests variance to allow reconstruction of a new single-family home on an existing, developed, but substandard lot. There will be no change in use.
2. The intensity of land use, including lot sizes, building coverage, building height and bulk, yards and open space – A single-family home exists and will be reconstructed to meet yard setbacks, building coverage, and open space.

3. The design of facilities for vehicular access, circulation, parking and loading
The Project provides the required number of parking spaces for a single-family home.
4. The impacts on properties of outdoor lighting, noise, vibration, stormwater runoff and flooding – There will be no change to existing conditions where a single-family residence upon the lot will be reconstructed and comply with yard setbacks, building coverage, and open space.
5. The preservation and enhancement of the visual environment – The newly constructed home will improve the visual environment.
6. The preservation of historic districts, and buildings and structures of historic or architectural interest – The Property is not in the Historic District.
7. The protection of natural resources, including groundwater, surface water, wetlands, wildlife habitat and air quality – Redevelopment of the Property has no adverse impact compared to existing conditions.

Based upon the foregoing, the variances do not “in a marked degree conflict with the ordinance such that they violate the ordinance’s basic zoning objectives.” Malachy Glen, supra, which 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 in a thickly settled area of the City abutting the General Business District and property with several commercial uses. The reconstruction of a tasteful single-family home where a single-family home now exists will beautify the lot and provide attractive modern housing in place of the existing dated single-family home. Granting the variances to reconstruct a single-family home on a lot that does not meet lot area, frontage, or depth requirements, but has nonetheless supported a single-family home for decades, will neither “alter the essential character of the locality,” nor “threaten the public health, safety or welfare”. Accordingly, the first two prongs of the variance criteria are satisfied.

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.

Chinburg is constitutionally entitled to the use of the lot as it sees fit; including redevelopment for a permitted single-family home with an incorporated garage, fully zoning compliant except the dimensions of the lot, which cannot be changed. “The right to use and enjoy one's property is a fundamental right protected by both the State and Federal Constitutions.” N.H. CONST. pt. I, arts. 2, 12; U.S. CONST. amends. V, XIV; Town of Chesterfield v. Brooks, 126 N.H. 64 (1985) at 68. Part I, Article 12 of the New Hampshire Constitution provides in part that “no part of a man's property shall be taken from him, or applied to public uses, without his own consent, or that of the representative body of the people.” Thus, our State Constitutional protections limit the police power of the State and its municipalities in their regulation of the use of property. L. Grossman & Sons, Inc. v. Town of Gilford, 118 N.H. 480, 482 (1978).

“Property” in the constitutional sense has been interpreted to mean not the tangible property itself, but rather the right to possess, use, enjoy and dispose of it. Burrows v. City of Keene, 121 N.H. 590, 597 (1981). (emphasis added). The Supreme Court has held that zoning ordinances must be reasonable, not arbitrary and must rest upon some ground of difference having fair and substantial relation to the object of the regulation. Simplex Technologies, Inc. v. Town of Newington, 145 N.H. 727, 731 (2001); Chesterfield at 69.

Granting the requested variance allows for tasteful redevelopment of an existing 6,703 s.f. lot with 85 feet of frontage and a 68 foot lot depth from the existing dated single-family home to a new single-family home will reinvigorate the Property and provide attractive housing in a City experiencing significant demand. There is absolutely no harm to any neighbor or the general public from granting these variances. It follows that there is no benefit to the public from denial. Conversely, Chinburg will be greatly harmed by denial as it will lose the opportunity to reasonably redevelop the Property with an updated attractive, single-family home meeting all other requirements, requesting only relief for lot dimensions that cannot under any circumstances be met.

Because the public receives no benefit from denial that outweighs the harm to the owner from such a denial, the Project also meets this element of the variance criteria.

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

The Project replaces a small, dated, single-family home with a tastefully designed code-compliant and new single-family home and improvements meeting yard setbacks, building coverage and open space. Relief is only requested for the lot dimensions, which have long existed and supported a single family home. These factors clearly demonstrate that redevelopment of the lot to replace the existing single-family home with another single-family home will not diminish surrounding property values. Accordingly, the Project meets the fourth prong of the variance criteria.

5. Denial of the variances results in an unnecessary hardship.

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

The Property has long existed and contains a small single-family home, despite not meeting the lot area, lot area per dwelling, lot depth, and frontage requirements, conditions which cannot be remedied. Because there is no way to make the lot, thus the Project, comply with the GRA requirements, special conditions exist.

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

Lot area and depth, density limits, and frontage requirements exist in order to: prevent overburdening/overcrowding of the land; permit areas for stormwater management; and allow for adequate light, air and sightlines. The Property has long existed with a single-family home, constructed circa 1951, despite its dimensions. It will continue to support a single-family home. The Project's building coverage and open space compliance ensure no increase in stormwater runoff while compliant yard setbacks maintain adequate separation between neighbors and space for stormwater treatment. Accordingly, there is no fair and substantial relationship between the general public purposes of the Ordinance and its specific application to redevelopment of with the same permitted, single-family use in a new otherwise dimensionally-compliant home.

c. The proposed use is reasonable.

If the use is permitted, it is deemed reasonable. Vigeant v. Hudson, 151 N.H. 747 (2005). Single-family residential uses are permitted in the GRA Zone. The Project will construct a new, code-compliant, single-family home to replace a dated home. The new home will comply with

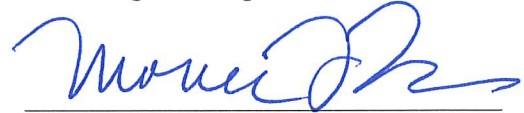
yard setbacks, building coverage, and open space. Accordingly, the proposed use is reasonable and denial of the requested variance would create an unnecessary hardship.

V. CONCLUSION

For all the reasons stated, Chinburg respectfully requests that the Portsmouth Zoning Board of Adjustment grant the requested variances to permit redevelopment of the Property.

Respectfully submitted,
Chinburg Development, LLC

By:



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

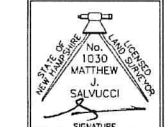
PLAN REFERENCE:

"LOT LINE ADJUSTMENT PLAN, TAX MAP 175, LOTS 1, 2, & 3, GRAPEVINE RUN, 212, 214, & 216 WOODBURY AVE. PORTSMOUTH, NH 03801." PREPARED BY JONES & BEACH ENGINEERS, INC. TO BE RECORDED.

TAX MAP 175 LOT 4
 KUZINS BORDEN HOSPITALITY II, LLC
 C/O KEYBANK ATTN: SERVING DEPT
 300 WOODBURY AVE.
 PORTSMOUTH, NH 03801
 BK 3355, PG 1325

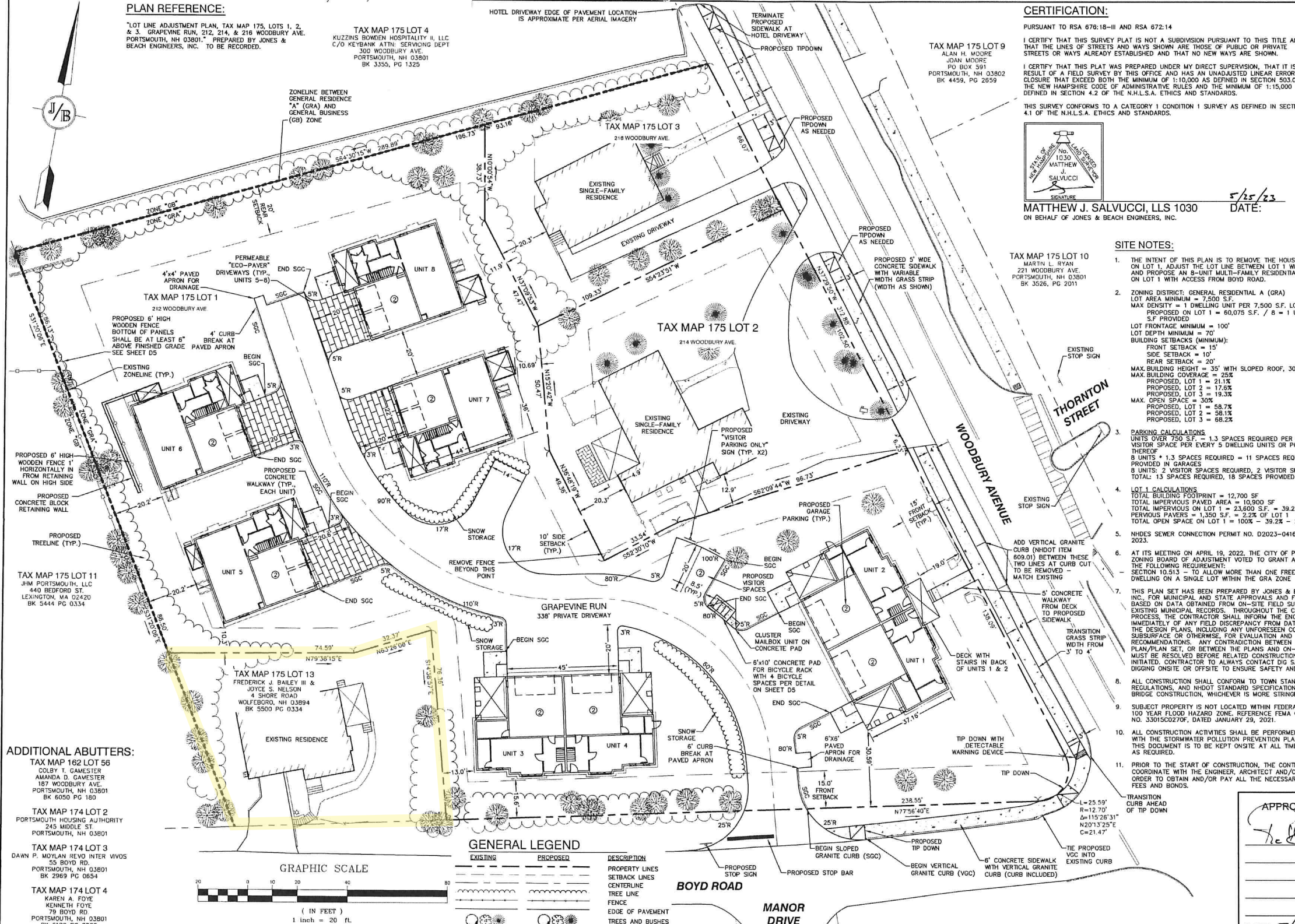
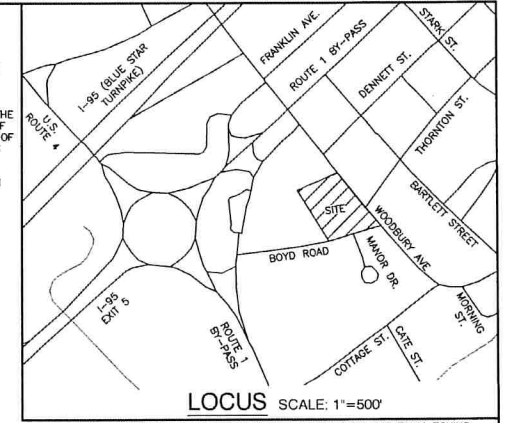
CERTIFICATION:

PURSUANT TO RSA 676:18-III AND RSA 672:14
 I CERTIFY THAT THIS SURVEY PLAT IS NOT A SUBDIVISION PURSUANT TO THIS TITLE AND THAT THE LINES OF STREETS AND WAYS SHOWN ARE THOSE OF PUBLIC OR PRIVATE STREETS OR WAYS ALREADY ESTABLISHED AND THAT NO NEW WAYS ARE SHOWN.
 I CERTIFY THAT THIS PLAT WAS PREPARED UNDER MY DIRECT SUPERVISION, THAT IT IS THE RESULT OF A FIELD SURVEY BY THIS OFFICE AND HAS AN UNADJUSTED LINEAR ERROR OF CLOSURE THAT EXCEEDS BOTH THE MINIMUM OF 1:10,000 AS DEFINED IN SECTION 503.04 OF THE NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES AND THE MINIMUM OF 1:15,000 AS DEFINED IN SECTION 4.2 OF THE N.H.L.S.A. ETHICS AND STANDARDS.
 THIS SURVEY CONFORMS TO A CATEGORY 1 CONDITION 1 SURVEY AS DEFINED IN SECTION 4.1 OF THE N.H.L.S.A. ETHICS AND STANDARDS.



MATTHEW J. SALVUCCI, LLS 1030
 ON BEHALF OF JONES & BEACH ENGINEERS, INC.

5/25/23
 DATE:



SITE NOTES:

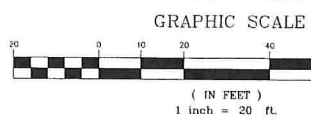
- THE INTENT OF THIS PLAN IS TO REMOVE THE HOUSE AND GARAGE ON LOT 1, ADJUST THE LOT LINE BETWEEN LOT 1 WITH LOTS 2 & 3, AND PROPOSE AN 8-UNIT MULTI-FAMILY RESIDENTIAL DEVELOPMENT ON LOT 1 WITH ACCESS FROM BOYD ROAD.
- ZONING DISTRICT: GENERAL RESIDENTIAL A (GRA)
 LOT AREA MINIMUM = 7,500 S.F.
 MAX DENSITY = 1 DWELLING UNIT PER 7,500 S.F. LOT AREA
 PROPOSED ON LOT 1 = 60,075 S.F. / 8 = 1 UNIT PER 7,509 S.F. PROVIDED
 LOT FRONTAGE MINIMUM = 100'
 BUILDING SETBACKS (MINIMUM):
 FRONT SETBACK = 15'
 SIDE SETBACK = 10'
 REAR SETBACK = 20'
 MAX. BUILDING HEIGHT = 35' WITH SLOPED ROOF, 30' WITH FLAT ROOF
 MAX. BUILDING COVERAGE = 25%
 PROPOSED, LOT 1 = 21.1%
 PROPOSED, LOT 2 = 17.6%
 PROPOSED, LOT 3 = 19.3%
 MAX. OPEN SPACE = 30%
 PROPOSED, LOT 1 = 58.7%
 PROPOSED, LOT 2 = 58.1%
 PROPOSED, LOT 3 = 68.2%
- PARKING CALCULATIONS
 UNITS OVER 750 S.F. = 1.3 SPACES REQUIRED PER UNIT PLUS 1 VISITOR SPACE PER EVERY 5 DWELLING UNITS OR PORTION THEREOF
 8 UNITS * 1.3 SPACES REQUIRED = 11 SPACES REQUIRED, 16 SPACES PROVIDED IN GARAGES
 8 UNITS: 2 VISITOR SPACES REQUIRED, 2 VISITOR SPACES PROVIDED
 TOTAL: 13 SPACES REQUIRED, 18 SPACES PROVIDED.
- LOT 1 CALCULATIONS
 TOTAL BUILDING FOOTPRINT = 12,700 SF
 TOTAL IMPROVED PAVED AREA = 10,900 SF
 TOTAL IMPROVEMENT ON LOT 1 = 23,600 S.F. = 39.2% OF LOT 1
 TOTAL PAVEMENTS = 1,350 S.F. = 2.2% OF LOT 1
 TOTAL OPEN SPACE ON LOT 1 = 100% - 39.2% - 2.2% = 58.6%
- NHDES SEWER CONNECTION PERMIT NO. D2023-0416, DATED MAY 18, 2023.
- AT ITS MEETING ON APRIL 19, 2022, THE CITY OF PORTSMOUTH ZONING BOARD OF ADJUSTMENT VOTED TO GRANT A VARIANCE FROM THE FOLLOWING REQUIREMENT:
 SECTION 10.513 TO ALLOW MORE THAN ONE FREE-STANDING DWELLING ON A SINGLE LOT WITHIN THE GRA ZONE
- THIS PLAN SET HAS BEEN PREPARED BY JONES & BEACH ENGINEERS, INC. FOR MUNICIPAL AND STATE APPROVALS AND FOR CONSTRUCTION. BASED ON DATA OBTAINED FROM ON-SITE FIELD SURVEY AND EXISTING MUNICIPAL RECORDS, THROUGHOUT THE CONSTRUCTION PROCESS, THE CONTRACTOR SHALL INFORM THE ENGINEER IMMEDIATELY OF ANY FIELD DISCREPANCY FROM DATA AS SHOWN ON THE DESIGN PLANS, INCLUDING ANY UNFORESEEN CONDITIONS, SUBSURFACE OR OTHERWISE, FOR EVALUATION AND RECOMMENDATIONS. ANY CONTRADICTION BETWEEN ITEMS ON THIS PLAN/PLAN SET, OR BETWEEN THE PLANS AND ON-SITE CONDITIONS, MUST BE RESOLVED BEFORE RELATED CONSTRUCTION HAS BEEN INITIATED. CONTRACTOR TO ALWAYS CONTACT DIG SAFE PRIOR TO DIGGING ON-SITE OR OFF-SITE TO ENSURE SAFETY AND OBEY THE LAW.
- ALL CONSTRUCTION SHALL CONFORM TO TOWN STANDARDS AND REGULATIONS, INCLUDING STANDARD SPECIFICATIONS FOR ROAD AND BRIDGE CONSTRUCTION, WHICHEVER IS MORE STRINGENT.
- SUBJECT PROPERTY IS NOT LOCATED WITHIN FEDERALLY DESIGNATED 100 YEAR FLOOD HAZARD ZONE, REFERENCE FEMA COMMUNITY PANEL NO. 33015C0270F, DATED JANUARY 29, 2021.
- ALL CONSTRUCTION ACTIVITIES SHALL BE PERFORMED IN ACCORDANCE WITH THE STORMWATER POLLUTION PREVENTION PLAN (S.W.P.P.P.). THIS DOCUMENT IS TO BE KEPT ON-SITE AT ALL TIMES AND UPDATED AS REQUIRED.
- PRIOR TO THE START OF CONSTRUCTION, THE CONTRACTOR SHALL COORDINATE WITH THE ENGINEER, ARCHITECT AND/OR OWNER, IN ORDER TO OBTAIN AND/OR PAY ALL THE NECESSARY LOCAL PERMITS, FEES AND BONDS.
- ALL PROPOSED SIGNAGE SHALL CONFORM WITH THE TOWN ZONING REGULATIONS, UNLESS A VARIANCE IS OTHERWISE REQUESTED.
- ALL SIGNAGE AND PAVEMENT MARKINGS SHALL BE IN ACCORDANCE WITH THE LATEST EDITION OF THE MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES (M.U.T.C.D.) AND NHDOT STANDARDS AND SPECIFICATIONS (NON-REFLECTORIZED PAVEMENT MARKINGS), UNLESS OTHERWISE NOTED.
- ALL STOP BARS SHALL BE 18" IN WIDTH IN A COLOR OF WHITE; ALL TRAFFIC ARROWS SHALL BE PAINTED IN A COLOR OF WHITE.
- ALL BUILDING DIMENSIONS SHALL BE VERIFIED WITH THE ARCHITECTURAL AND STRUCTURAL PLANS PROVIDED BY THE OWNER. ANY DISCREPANCIES SHOULD BE BROUGHT TO THE ATTENTION OF THE ENGINEER AND OWNER PRIOR TO THE START OF CONSTRUCTION. BUILDING DIMENSIONS AND AREAS TO BE TO OUTSIDE OF MASONRY, UNLESS OTHERWISE NOTED.
- SNOW TO BE STORED AT EDGE OF PAVEMENT AND IN AREAS SHOWN ON THE PLANS, OR TRUCKED OFFSITE TO AN APPROVED SNOW DUMPING LOCATION.
- ALL CONSTRUCTION ACTIVITIES SHALL CONFORM TO LABOR OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (OSHA) RULES AND REGULATIONS.
- ALL CONDITIONS ON THIS PLAN SHALL REMAIN IN EFFECT IN PERPETUITY PURSUANT TO THE REQUIREMENTS OF THE SITE PLAN REVIEW REGULATIONS.
- THIS SITE PLAN SHALL BE RECORDED IN THE ROCKINGHAM COUNTY REGISTRY OF DEEDS.
- ALL IMPROVEMENTS SHOWN ON THIS SITE PLAN SHALL BE CONSTRUCTED AND MAINTAINED IN ACCORDANCE WITH THE PLAN BY THE PROPERTY OWNER AND ALL FUTURE PROPERTY OWNERS. NO CHANGES SHALL BE MADE TO THE SITE PLAN WITHOUT THE EXPRESS APPROVAL OF THE PORTSMOUTH PLANNING DEPARTMENT.
- THE OWNER OF EACH UNIT SHALL STORE TRASH IN THEIR GARAGE. TRASH WILL BE PICKED UP BY A PRIVATE HAULER.
- THE TAX MAP AND LOT NUMBERS ARE BASED ON THE CITY OF PORTSMOUTH TAX RECORDS AND ARE SUBJECT TO CHANGE.
- THIS SURVEY IS NOT A CERTIFICATION TO OWNERSHIP OR TITLE OF LANDS SHOWN. OWNERSHIP AND ENCUMBRANCES ARE MATTERS OF TITLE EXAMINATION NOT OF A BOUNDARY SURVEY. THE INTENT OF THIS PLAN IS TO RETRACE THE BOUNDARY LINES OF DEEDS REFERENCED HEREON. OWNERSHIP OF ADJOINING PROPERTIES IS ACCORDING TO ASSESSOR'S RECORDS. THIS PLAN MAY OR MAY NOT INDICATE ALL ENCUMBRANCES EXPRESSED, IMPLIED OR PRESCRIPTIVE.
- SURVEY THE LINES SHOWN HEREON ARE NOT BOUNDARY LINES. THEY SHOULD ONLY BE USED TO LOCATE THE PARCEL SURVEYED FROM THE FOUND MONUMENTS SHOWN AND LOCATED BY THIS SURVEY.
- AN ACCESS EASEMENT SHALL BE GRANTED TO THE CITY OF PORTSMOUTH FOR ACCESS AND LEAK DETECTION OF THE WATER MAIN, SHUTOFFS, AND METERS ON THE PROPERTY. EASEMENT DESCRIPTION MUST BE APPROVED BY THE CITY'S LEGAL DEPARTMENT AND ACCEPTED BY THE CITY COUNCIL.
- FOR ADDITIONAL BOUNDARY INFORMATION AND MONUMENTS, SEE BOUNDARY LINE ADJUSTMENT PLAN.
- ON-SITE SALT STORAGE IS PROHIBITED WITHIN 250' OF AN INLAND WETLAND UNLESS COMPLETELY COVERED AND CONTAINED IN A STRUCTURE.
- BUILDINGS SHALL BE CONSTRUCTED IN THE FOOTPRINTS SHOWN HEREON. NOTIFY THE PROJECT ENGINEER IF THE PROPOSED ROOF LAYOUT, GUTTERS, AND/OR ROOF LINES ARE MODIFIED AFTER FINAL PLANS ARE SUBMITTED. UNITS 1-4 WILL NOT HAVE BASEMENTS, SUMP PUMPS, OR FOUNDATION DRAINS.
- AREA OF DISTURBANCE = 58,000 S.F. (ON AND OFF SITE)
- IF BOYD ROAD IS RECONSTRUCTED PRIOR TO THE SITE WORK IN BOYD ROAD BEING CONSTRUCTED, BOYD ROAD WILL REQUIRE A MILL AND FILL PAVEMENT RESURFACING FOR ALL DISTURBED AREAS TO THE SATISFACTION OF THE DEPARTMENT OF PUBLIC WORKS.

ADDITIONAL ABUTTERS:

- TAX MAP 162 LOT 56
 COLBY T. GAMESTER
 AMANDA D. GAMESTER
 187 WOODBURY AVE.
 PORTSMOUTH, NH 03801
 BK 6050 PG 180
- TAX MAP 174 LOT 2
 PORTSMOUTH HOUSING AUTHORITY
 245 MIDDLE ST.
 PORTSMOUTH, NH 03801
- TAX MAP 174 LOT 3
 DAWN P. MOYLAN REVOC INTER VIVOS
 55 BOYD RD.
 PORTSMOUTH, NH 03801
 BK 2989 PG 0654
- TAX MAP 174 LOT 4
 KAREN A. FOYE
 KENNETH FOYE
 79 BOYD RD.
 PORTSMOUTH, NH 03801
 BK 6108 PG 2989

GENERAL LEGEND

EXISTING	PROPOSED	DESCRIPTION
[Symbol]	[Symbol]	PROPERTY LINES
[Symbol]	[Symbol]	SETBACK LINES
[Symbol]	[Symbol]	CENTERLINE
[Symbol]	[Symbol]	TREE LINE
[Symbol]	[Symbol]	FENCE
[Symbol]	[Symbol]	EDGE OF PAVEMENT
[Symbol]	[Symbol]	TREES AND BUSHES
[Symbol]	[Symbol]	UTILITY POLE



Design: JAC	Draft: DJM	Date: 01/05/22
Checked: JAC	Scale: 1"=20'	Project No.: 21254
Drawing Name: 21254-PLAN.dwg		
THIS PLAN SHALL NOT BE MODIFIED WITHOUT WRITTEN PERMISSION FROM JONES & BEACH ENGINEERS, INC. (JBE). ANY ALTERATIONS, AUTHORIZED OR OTHERWISE, SHALL BE AT THE USER'S SOLE RISK AND WITHOUT LIABILITY TO JBE.		



REV.	DATE	REVISION	BY
13	5/23/23	ADDED SEWER CONNECTION PERMIT NUMBER	DJM
12	5/15/23	REVISED PER NHDES SEWER CONNECTION COMMENTS	DJM
11	5/5/23	ADDED CONDITIONS OF APPROVAL	DJM
10	2/22/23	REVISED PER TAC CONDITIONS OF APPROVAL	DJM
9	1/23/23	REVISED BIORETENTION BERM DETAIL PER REVIEW ENGINEER	DJM

J/B Jones & Beach Engineers, Inc.
 Civil Engineering Services
 85 Portsmouth Ave. PO Box 219 Stratham, NH 03885
 603-772-4746 FAX: 603-772-0227
 E-MAIL: JBE@JONESANDBEACH.COM

Plan Name:	SITE PLAN
Project:	"GRAPEVINE RUN" 212, 214, & 216 WOODBURY AVE. PORTSMOUTH, NH 03801
Owners of Record:	MAPLE HEIGHTS REALTY, LLC 16 ACADIA LANE, EXETER, NH 03833 BK 6474 PG 2215

APPROVED - PORTSMOUTH, NH
 PLANNING BOARD
 [Signature]
 DATE: 7/18/23

PROJECT PARCEL
 CITY OF PORTSMOUTH
 TAX MAP 175, LOTS 1, 2, & 3

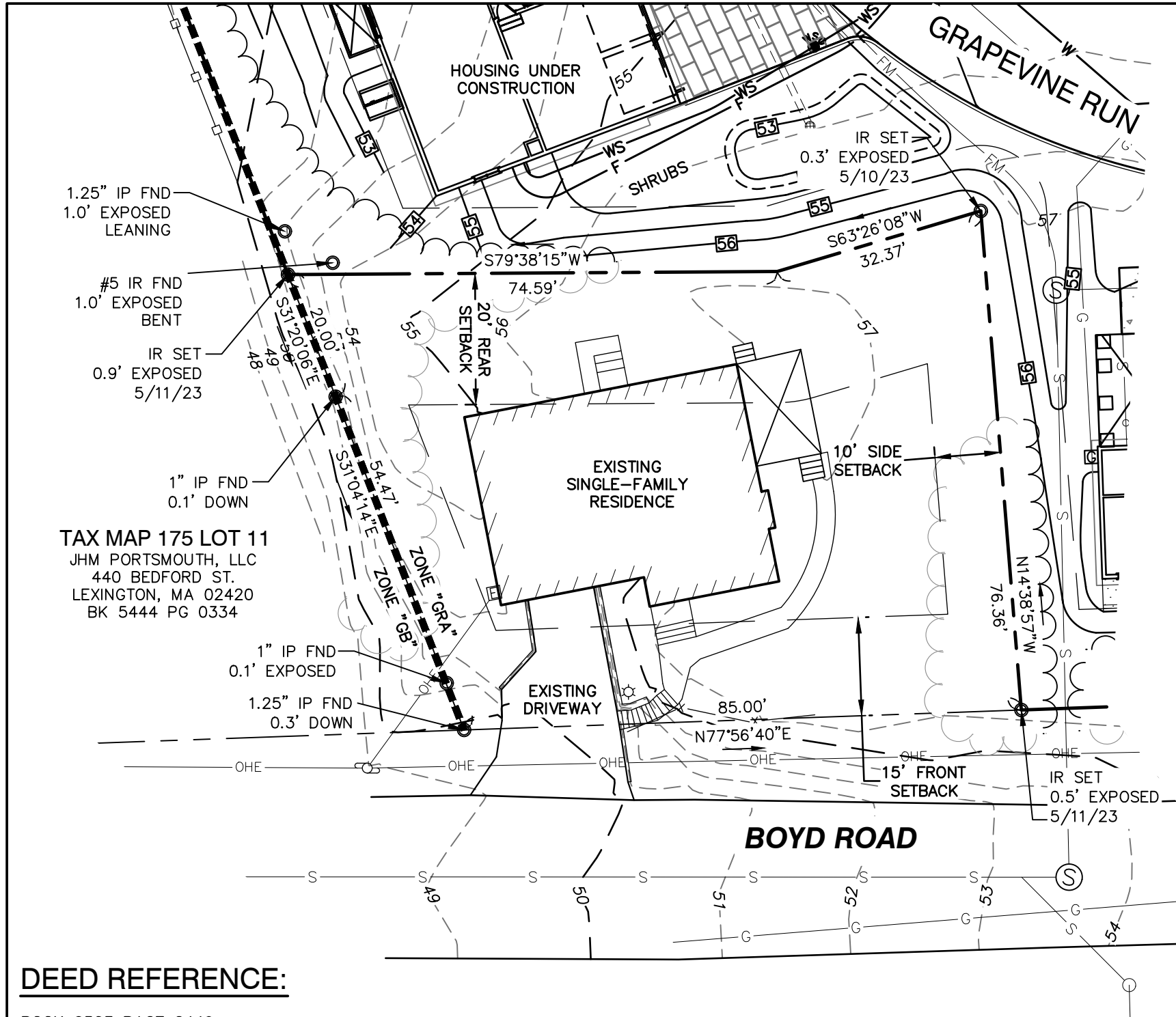
APPLICANT
 TUCK REALTY CORP.
 ATTN: TURNER PORTER
 149 EPPER RD., SUITE 2A
 EXETER, NH 03833

TOTAL LOT AREA
 80,484 SQ. FT.
 1.85 ACRES

DRAWING No.	C2
SHEET 5 OF 23	JBE PROJECT NO 21254

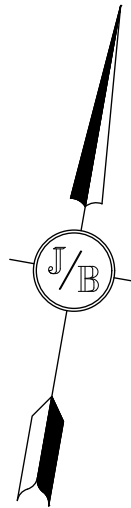
D-44009

EXHIBIT A



EXISTING CONDITIONS NOTES:

1. UNDERGROUND FACILITIES, UTILITIES AND STRUCTURES HAVE BEEN PLOTTED FROM FIELD OBSERVATION AND THEIR LOCATION MUST BE CONSIDERED APPROXIMATE ONLY. NEITHER JONES & BEACH ENGINEERS, INC., NOR ANY OF THEIR EMPLOYEES TAKE RESPONSIBILITY FOR THE LOCATION OF ANY UNDERGROUND STRUCTURES OR UTILITIES NOT SHOWN THAT MAY EXIST. IT IS THE RESPONSIBILITY OF THE CONTRACTOR TO HAVE ALL UNDERGROUND STRUCTURES AND/OR UTILITIES LOCATED PRIOR TO EXCAVATION WORK BY CALLING 1-888-DIG-SAFE (1-888-344-7233).
2. VERTICAL DATUM: NAVD 88. HORIZONTAL DATUM: NH STATE PLANE
3. SUBJECT PROPERTY IS NOT LOCATED WITHIN FEDERALLY DESIGNATED 100 YEAR FLOOD HAZARD ZONE. REFERENCE FEMA COMMUNITY PANEL NO. 33015C0259F, DATED JANUARY 29, 2021.



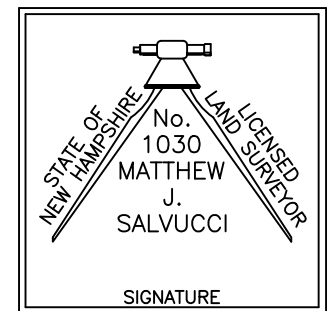
ZONING SUMMARY		
ZONE	GENERAL RESIDENTIAL (GRA)	EXISTING
MINIMUM LOT AREA	7,500 S.F.	6,703 S.F.
MINIMUM LOT FRONTAGE	100'	85'
MINIMUM LOT DEPTH	70'	68'
FRONT SETBACK	15'	18'
SIDE SETBACK	10'	12'
REAR SETBACK	20'	14'
MAXIMUM BUILDING COVERAGE	25%	20.5%
MINIMUM OPEN SPACE COVERAGE	30%	70%

DEED REFERENCE:

BOOK 6503 PAGE 2449

PLAN REFERENCE:

"LOT LINE ADJUSTMENT PLAN, TAX MAP 175, LOTS 1, 2, & 3" DATED JANUARY 5, 2022, AND REVISED THROUGH MAY 10, 2023. PREPARED BY JONES & BEACH ENGINEERS, INC. R.C.R.D. D-44008.



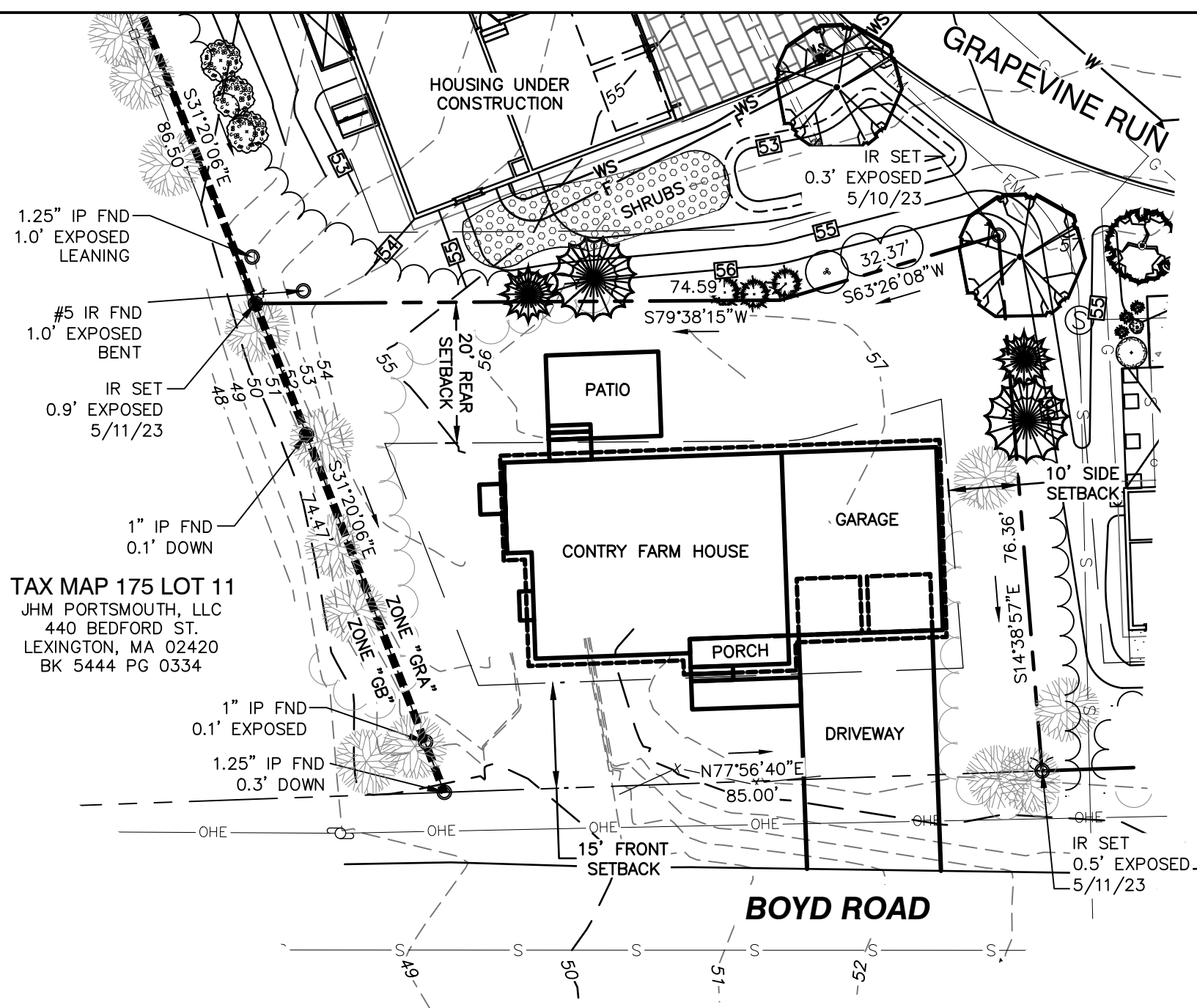
Design: JAC	Draft: DJM	Date: 2/5/24
Checked: JAC	Scale: 1" = 20'	Project No.: 21254
Drawing Name: 21254-PLAN-EXHIBITS.dwg		
THIS PLAN SHALL NOT BE MODIFIED WITHOUT WRITTEN PERMISSION FROM JONES & BEACH ENGINEERS, INC. (JBE). ANY ALTERATIONS, AUTHORIZED OR OTHERWISE, SHALL BE AT THE USER'S SOLE RISK AND WITHOUT LIABILITY TO JBE.		

Rev.	Date	Revision	By
0	2/5/24	ISSUED FOR REVIEW	KDR

J/B Jones & Beach Engineers, Inc.
 Civil Engineering Services
 85 Portsmouth Ave. PO Box 219 Stratham, NH 03885
 603-772-4746
 E-Mail: JBE@jonesandbeach.com

Drawing Name: **PLOT PLAN**
 TAX MAP 175, LOT 13
 Project: 6 BOYD ROAD, PORTSMOUTH, NH 03801
 Owner of Record: CHINBURG DEVELOPMENT LLC
 3 PENSTOCK WAY, NEWMARKET, NH 03857

DRAWING No. **P1**
 SHEET 1 OF 2
 JBE PROJECT No. 21254



TAX MAP 175 LOT 11
 JHM PORTSMOUTH, LLC
 440 BEDFORD ST.
 LEXINGTON, MA 02420
 BK 5444 PG 0334

SITE NOTES:

1. THE INTENT OF THIS PLAN IS TO REMOVE THE EXISTING HOUSE AND CONSTRUCT A NEW HOUSE.
2. TOTAL BUILDING COVERAGE = 1,620 S.F. (24.1%)
 TOTAL BUILDING FOOTPRINT WITH 12" OVERHANGS = 1,836 S.F. (27.3%)
 PATIO/PORCH/WALKWAY AREA = 428 S.F.
 DRIVEWAY AREA = 390 S.F.
 TOTAL IMPERVIOUS SURFACE WITHOUT OVERLAPS = 2,485 S.F. (37.0%)
3. THIS PLAN SET HAS BEEN PREPARED BY JONES & BEACH ENGINEERS, INC., FOR MUNICIPAL AND STATE APPROVALS AND FOR CONSTRUCTION BASED ON DATA OBTAINED FROM ON-SITE FIELD SURVEY AND EXISTING MUNICIPAL RECORDS. THROUGHOUT THE CONSTRUCTION PROCESS, THE CONTRACTOR SHALL INFORM THE ENGINEER IMMEDIATELY OF ANY FIELD DISCREPANCY FROM DATA AS SHOWN ON THE DESIGN PLANS, INCLUDING ANY UNFORESEEN CONDITIONS, SUBSURFACE OR OTHERWISE, FOR EVALUATION AND RECOMMENDATIONS. ANY CONTRADICTION BETWEEN ITEMS ON THIS PLAN/PLAN SET, OR BETWEEN THE PLANS AND ON-SITE CONDITIONS, MUST BE RESOLVED BEFORE RELATED CONSTRUCTION HAS BEEN INITIATED. CONTRACTOR TO ALWAYS CONTACT DIG SAFE PRIOR TO DIGGING ONSITE OR OFFSITE TO ENSURE SAFETY AND OBEY THE LAW.
4. SUBJECT PROPERTY IS NOT LOCATED WITHIN FEDERALLY DESIGNATED 100 YEAR FLOOD HAZARD ZONE. REFERENCE FEMA COMMUNITY PANEL NO. 33015C0270F, DATED JANUARY 29, 2021.

ZONING SUMMARY		
ZONE	GENERAL RESIDENTIAL (GRA)	PROVIDED
MINIMUM LOT AREA	7,500 S.F.	6,703 S.F.
MINIMUM LOT FRONTAGE	100'	85'
MINIMUM LOT DEPTH	70'	68'
FRONT SETBACK	15'	16'
SIDE SETBACK	10'	11'
REAR SETBACK	20'	21'
MAXIMUM BUILDING COVERAGE	25%	24.1%
MINIMUM OPEN SPACE COVERAGE	30%	63.0%

Design: JAC Draft: DJM Date: 2/5/24
 Checked: JAC Scale: 1" = 20' Project No.: 21254
 Drawing Name: 21254-PLAN-EXHIBITS.dwg
 THIS PLAN SHALL NOT BE MODIFIED WITHOUT WRITTEN PERMISSION FROM JONES & BEACH ENGINEERS, INC. (JBE). ANY ALTERATIONS, AUTHORIZED OR OTHERWISE, SHALL BE AT THE USER'S SOLE RISK AND WITHOUT LIABILITY TO JBE.

Rev.	Date	Revision	By
0	2/5/24	ISSUED FOR REVIEW	KDR

J/B Jones & Beach Engineers, Inc.
 Civil Engineering Services
 85 Portsmouth Ave. 603-772-4746
 PO Box 219
 Stratham, NH 03885 E-Mail: JBE@jonesandbeach.com

Drawing Name: **SITE PLAN**
 TAX MAP 175, LOT 13
 Project: 6 BOYD ROAD, PORTSMOUTH, NH 03801
 Owner of Record: CHINBURG DEVELOPMENT LLC
 3 PENSTOCK WAY, NEWMARKET, NH 03857

DRAWING No.
C1
 SHEET 2 OF 2
 JBE PROJECT
 No. 21254

2/21/2024

Country Farmhouse

016.124.v3 GR (2/21/2024)

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Art Form Architecture, LLC

603-431-9559



Dear Builders and Home Buyers,

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

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

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

Facade Changes:

- To maintain design integrity, we pay particular attention to features on the front facade, including but not limited to door surrounds, window casings, finished porch column sizes, and roof friezes. While we may allow builders to add their own flare to aesthetic elements, we don't allow our designs to be stripped of critical details. Any such alterations require the express written consent of Art Form.
- Increasing ceiling heights usually requires adjustments to window sizes and other exterior elements.

Floor plan layout and/or Structural Changes:

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

2/21/2024

Country Farmhouse

016.124.v3 GR (2/21/2024)

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Art Form Architecture, LLC

603-431-9559



2/21/2024

Country Farmhouse

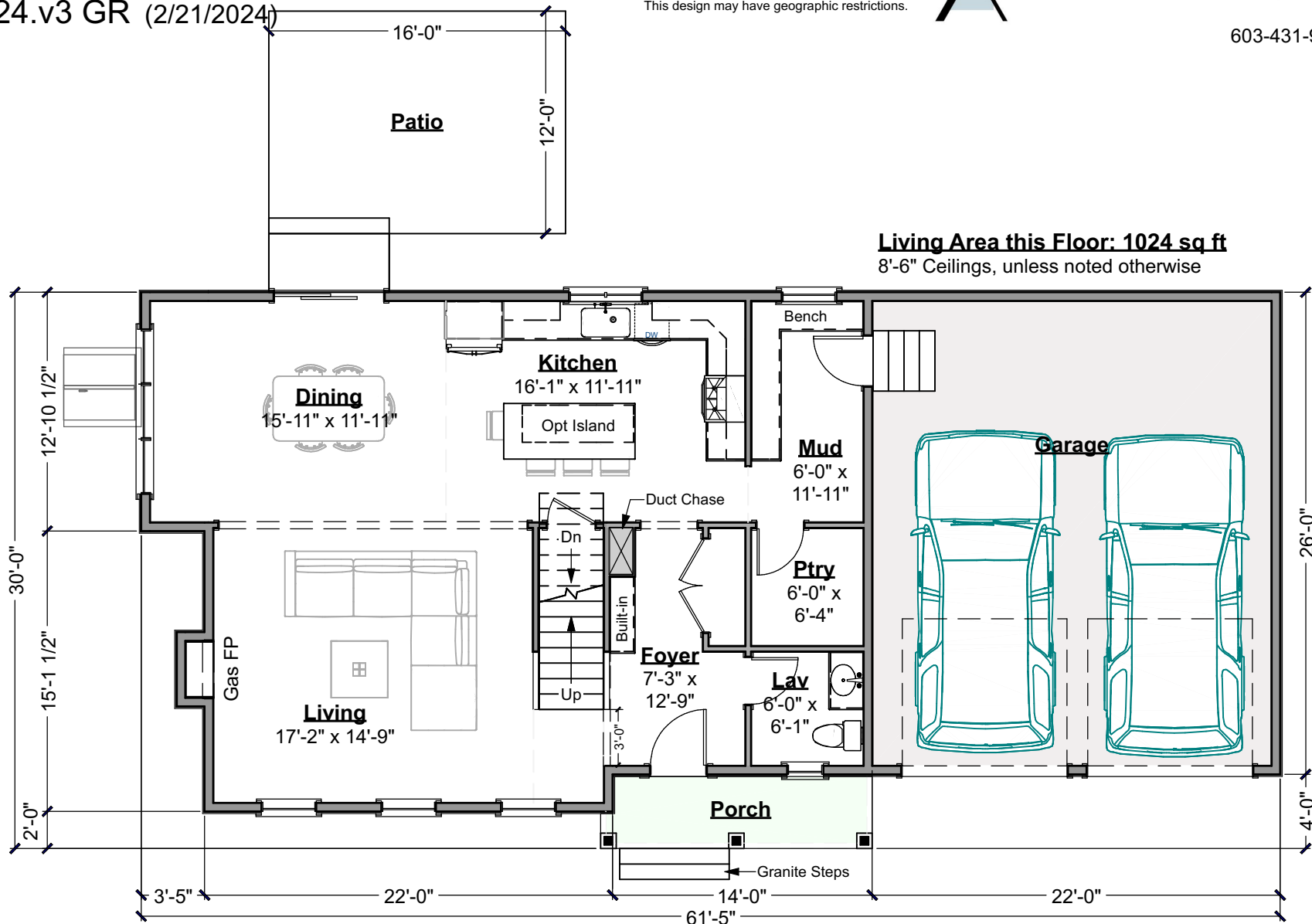
016.124.v3 GR (2/21/2024)

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Art Form Architecture, LLC

603-431-9559



First Floor Plan

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

2/21/2024

Country Farmhouse

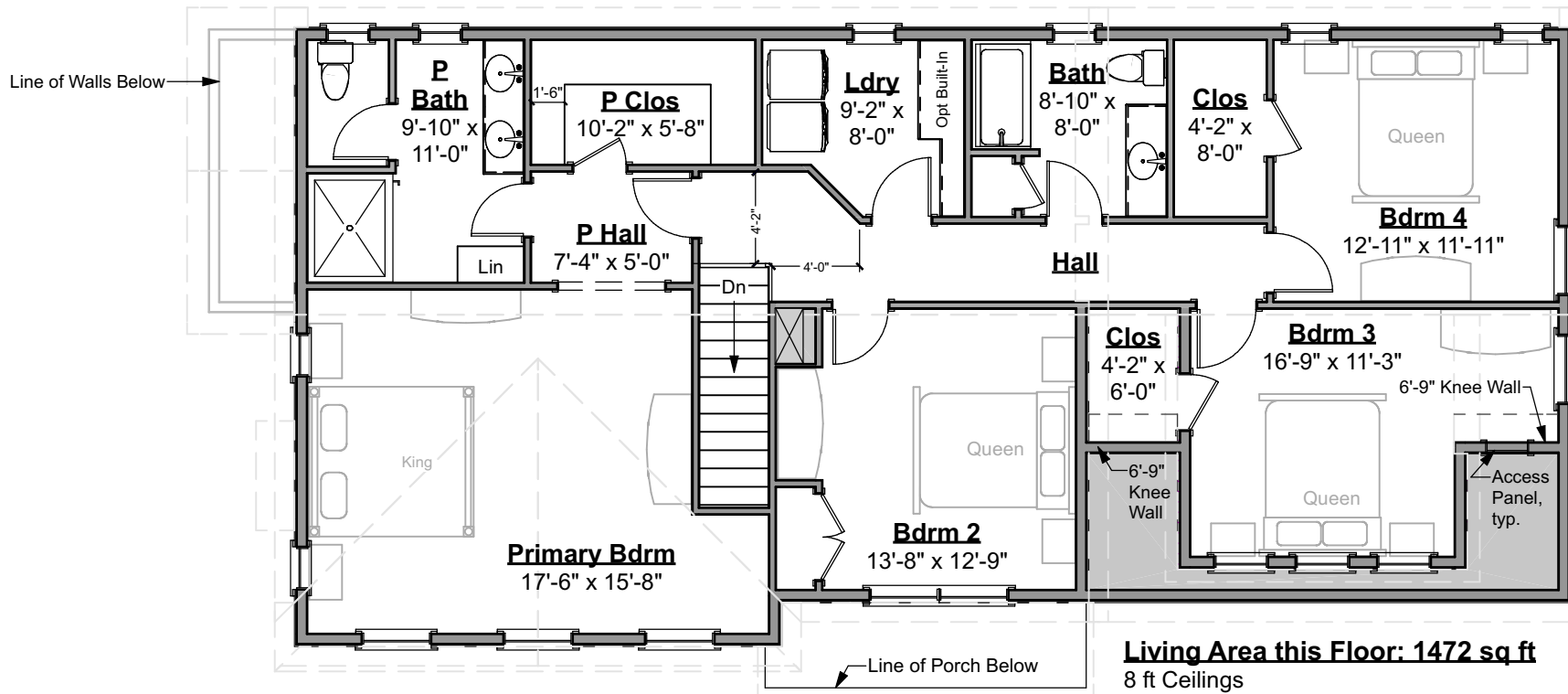
016.124.v3 GR (2/21/2024)

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Second Floor Plan

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

2/21/2024

Country Farmhouse

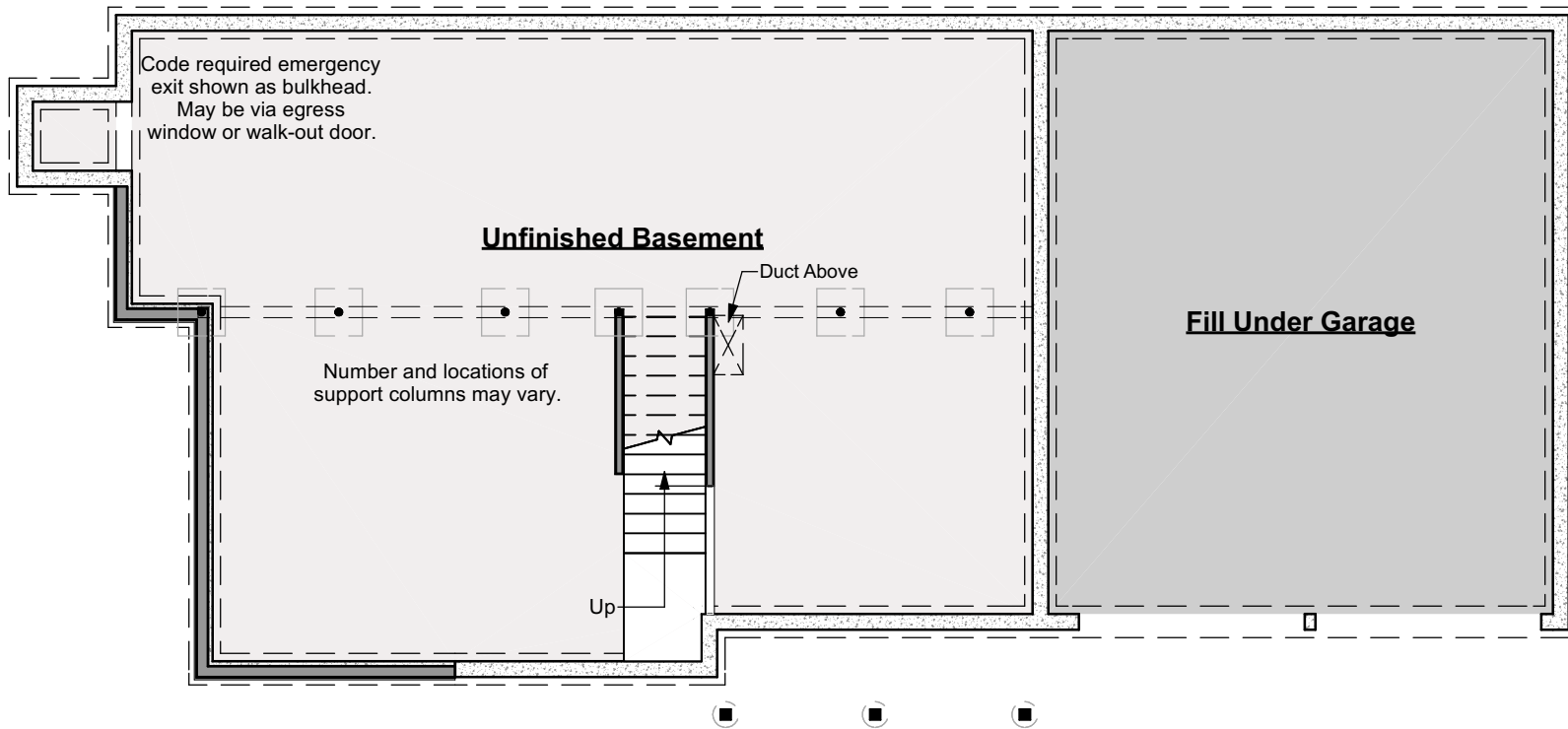
016.124.v3 GR (2/21/2024)

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Foundation Plan

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

2/21/2024

Country Farmhouse

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Front Elevation

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

2/21/2024

Country Farmhouse

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Right Elevation

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

2/21/2024

Country Farmhouse

016.124.v3 GR (2/21/2024)

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Rear Elevation

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

2/21/2024

Country Farmhouse

016.124.v3 GR (2/21/2024)

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Art Form Architecture, LLC

603-431-9559



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



Imagery ©2024 Google, Imagery ©2024 Airbus, Maine GeoLibrary, Maxar Technologies, U.S. Geological Survey, USDA/FPAC/GEO, Map data ©2024 100 ft

EXHIBIT C

Portsmouth, New Hampshire

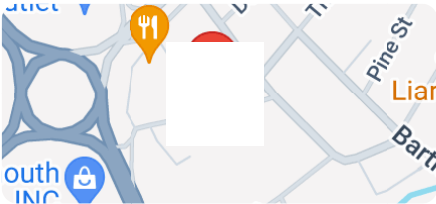
Google Street View

Sep 2019

See more dates



Image capture: Sep 2019 © 2024 Google



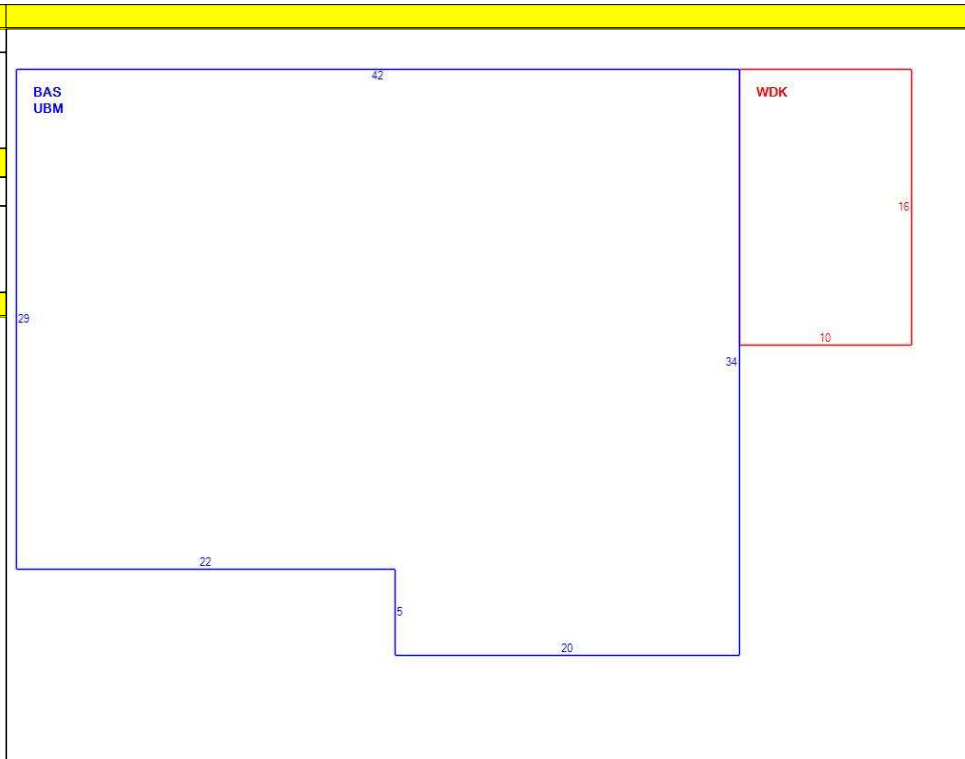
CURRENT OWNER				TOPO		UTILITIES		STRT / ROAD		LOCATION		CURRENT ASSESSMENT				2229 PORTSMOUTH, NH VISION							
CHINBURG DEVELOPMENT LLC 3 PENSTOCK WAY NEWMARKET NH 03857				1	Level	0	All Public	1	Paved			Description	Code	Appraised	Assessed			RESIDNTL RES LAND	1010 1010	138,000 184,600	138,000 184,600		
				2	Above			7	2 Off-St PKG														
SUPPLEMENTAL DATA												Total		322,600	322,600								
Alt Prcl ID 0175-0013-0000-0000 OLDACTN 62150 PHOTO WARD PREC. 1/2 HSE GIS ID 35292				CONDO C INLAW Y/ LOT SPLIT 2015 Reva JM Ex/Cr Appli Assoc Pid#																			
RECORD OF OWNERSHIP				BK-VOL/PAGE		SALE DATE		Q/U		V/I		SALE PRICE		VC		PREVIOUS ASSESSMENTS (HISTORY)							
CHINBURG DEVELOPMENT LLC				6503	2449	08-30-2023		U	I	3,274,933		21		Year	Code	Assessed	Year	Code	Assessed	Year	Code	Assessed	
MAPLE HEIGHTS REALTY LLC				6474	2215	03-31-2023		U	I	2,425,000		21		2022	1010	150,900	2021	1010	150,900	2020	1010	150,900	
BAILEY FREDERICK J III				5500	0334	12-06-2013		U	I	238,000		24			1010	184,600		1010	184,600		1010	184,600	
COLLINS GLORIA C LIVING REVOC TR 1999				4708	0976	09-15-2006		U	I	0													
Total												322,600	Total	335,500	Total	335,500							
EXEMPTIONS				OTHER ASSESSMENTS				This signature acknowledges a visit by a Data Collector or Assessor															
Year	Code	Description		Amount		Code	Description	Number	Amount		Comm Int												
Total				0.00																			
ASSESSING NEIGHBORHOOD												APPRAISED VALUE SUMMARY											
Nbhd		Nbhd Name		B		Tracing		Batch						Appraised Bldg. Value (Card)		138,000							
129														Appraised Xf (B) Value (Bldg)		0							
												Appraised Ob (B) Value (Bldg)		0									
												Appraised Land Value (Bldg)		184,600									
												Special Land Value		0									
												Total Appraised Parcel Value		322,600									
												Valuation Method		C									
Total Appraised Parcel Value														322,600									
BUILDING PERMIT RECORD												VISIT / CHANGE HISTORY											
Permit Id	Issue Date	Type	Description	Amount	Insp Date	% Comp	Date Comp	Comments				Date	Id	Type	Is	Cd	Purpose/Result						
26265	11-18-2017	BP		2,334	02-12-2018	100		REMOVE OLD OIL TANK. INS				08-10-2023	CKR	02	3	SR	Sales Review						
											04-14-2023	LS			AD	Address Change							
											02-12-2018	BH	02	2	50	Building Permit							
											07-18-2017	SG			FR	Field Review Stat Update							
											02-10-2015	DG			FR	Field Review Stat Update							
											10-02-2014	EH			SR	Sales Review							
											05-01-2014	LS			DE	Data Entry							
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	GRA			6,522 SF	22.65	1.0000	1	1.00	129	1.250	0		1.0000	28.31	184,600						
Total Card Land Units												0	AC	Parcel Total Land Area				0	Total Land Value				184,600

EXHIBIT D

CONSTRUCTION DETAIL			CONSTRUCTION DETAIL (CONTINUED)		
Element	Cd	Description	Element	Cd	Description
Style:	01	Ranch			
Model:	01	Residential			
Grade:	C	C			
Stories:	1				
Occupancy					
Exterior Wall 1	11	Clapboard			
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	12	Hardwood			
Interior Flr 2	14	Carpet			
Heat Fuel	02	Oil			
Heat Type:	04	Hot Water			
AC Type:	01	None			
Total Bedrooms	03	3 Bedrooms			
Total Bthrms:	1				
Total Half Baths	1				
Total Xtra Fixtrs	1				
Total Rooms:	6				
Bath Style:	1	Avg Quality			
Kitchen Style:	3	Below Avg Qual			
Kitchen Gr					
WB Fireplaces	1				
Extra Openings	0				
Metal Fireplace	0				
Extra Openings	0				
Bsmt Garage	1				

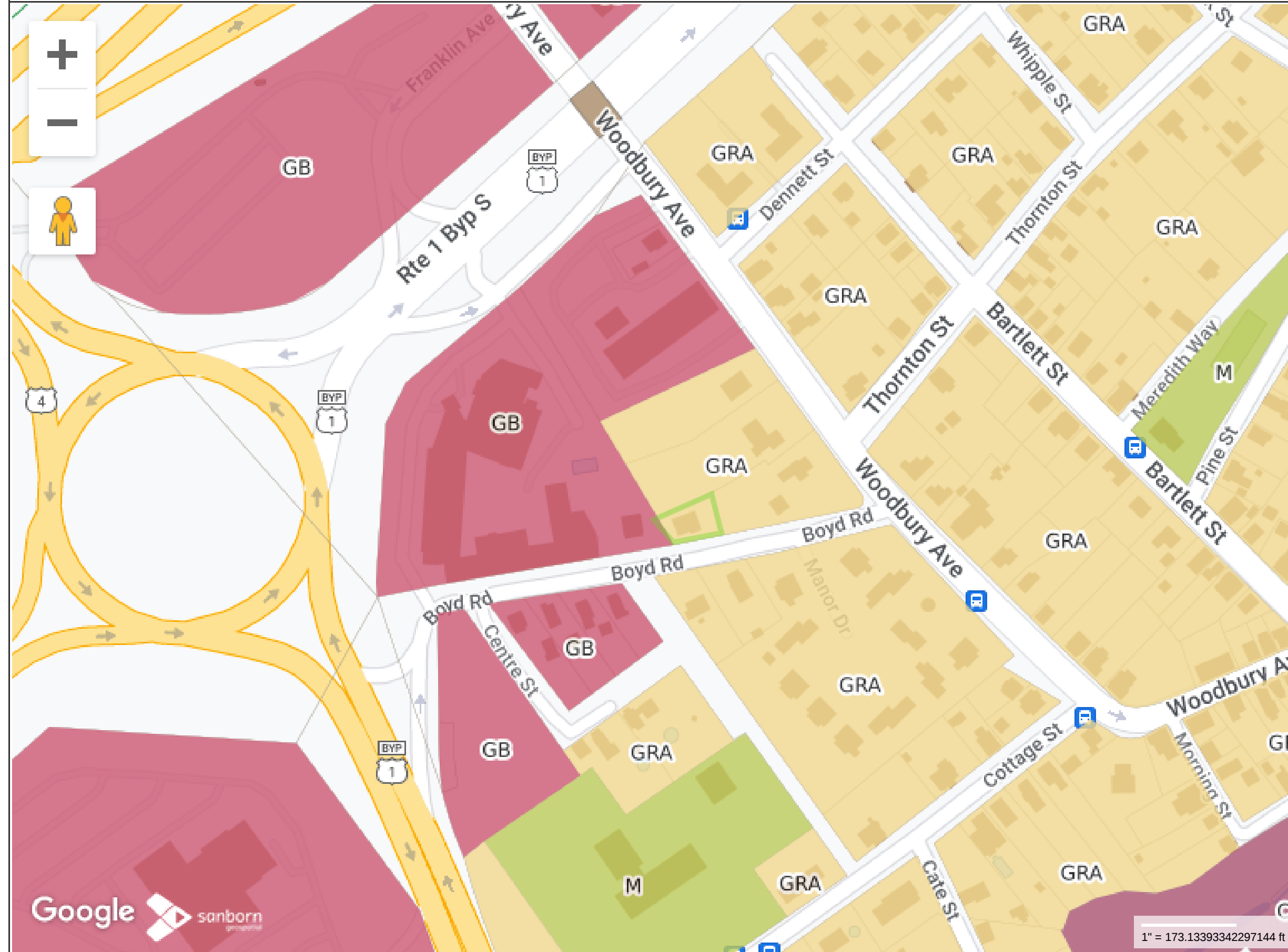
MIXED USE		
Code	Description	Percentage
1010	SINGLE FAM MDL-01	100
		0
		0

COST / MARKET VALUATION		
Adj. Base Rate		134.93
Building Value New		215,624
Year Built		1951
Effective Year Built		1983
Depreciation Code		FR
Remodel Rating		
Year Remodeled		
Depreciation %		36
Functional Obsol		
External Obsol		
Trend Factor		1
Condition		
Condition %		
Percent Good		64
RCNLD		138,000
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

BUILDING SUB-AREA SUMMARY SECTION							
Code	Description	Living Area	Floor Area	Eff Area	Unit Cost	Undeprec Value	
BAS	First Floor	1,318	1,318	1,318	134.93	177,843	
UBM	Basement, Unfinished	0	1,318	264	27.03	35,622	
WDK	Deck, Wood	0	160	16	13.49	2,159	
Ttl Gross Liv / Lease Area		1,318	2,796	1,598		215,624	



**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 E

1" = 173.13393342297144 ft

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

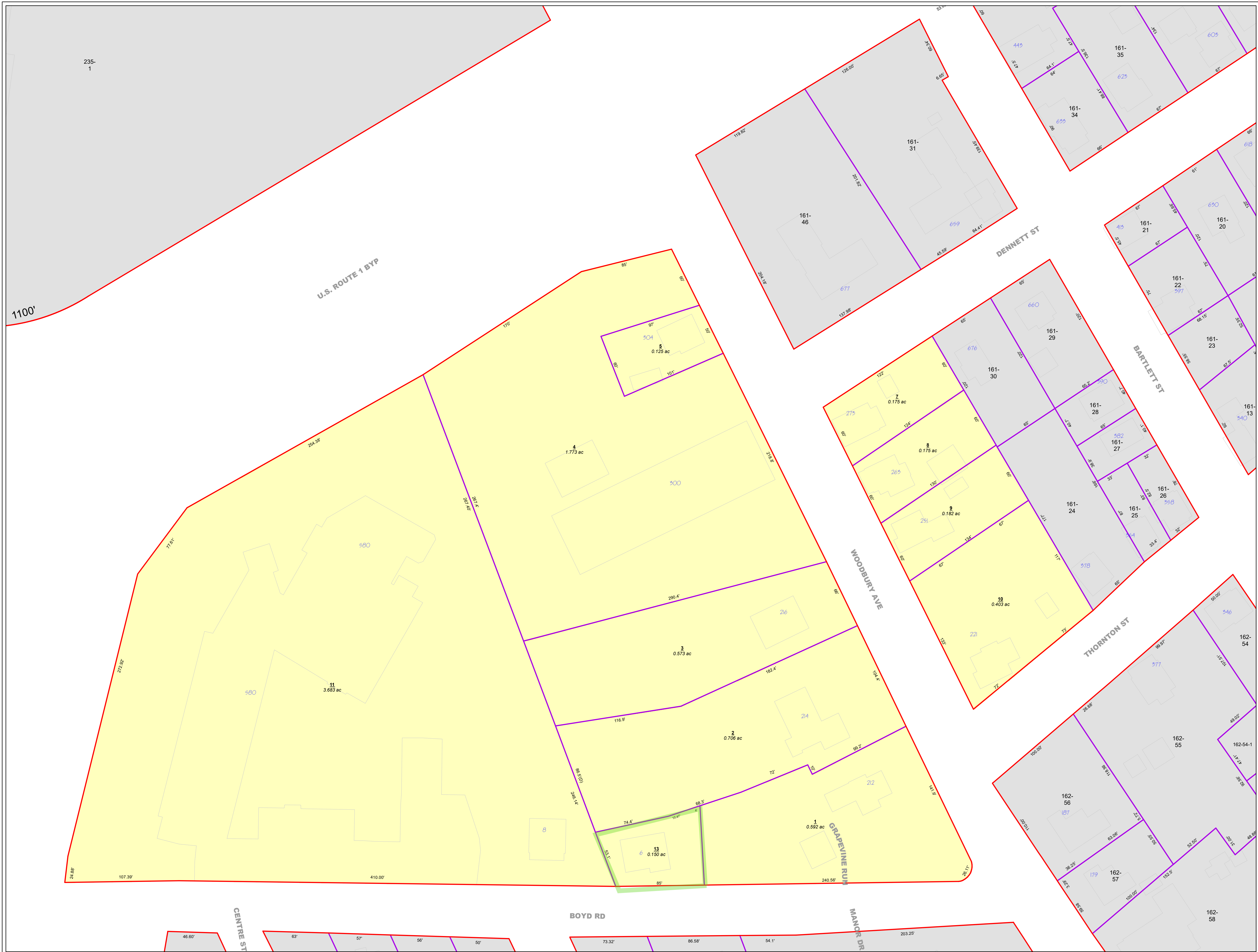
Municipal District

- Municipal District

Overlay Districts

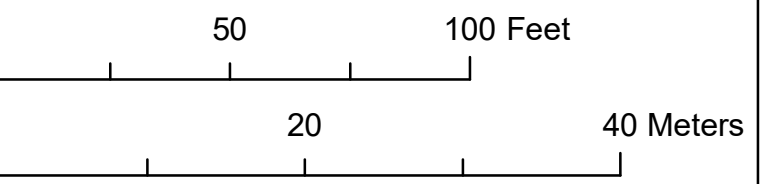
- OLOD Osprey Landing Overlay District
- Downtown Overlay District
- Historic District

City of Portsmouth

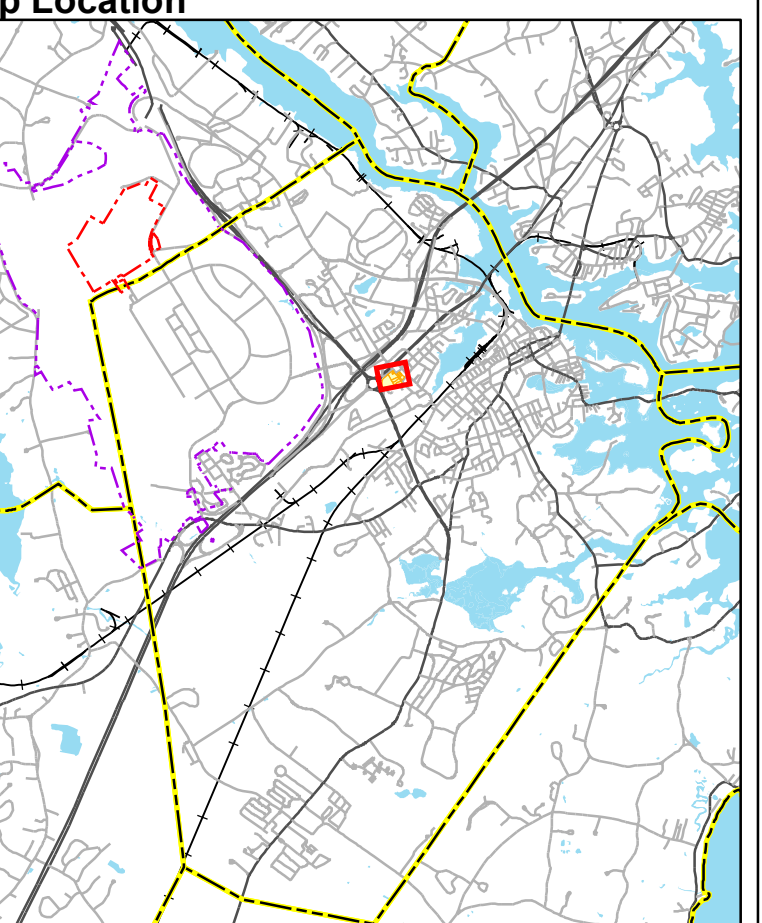
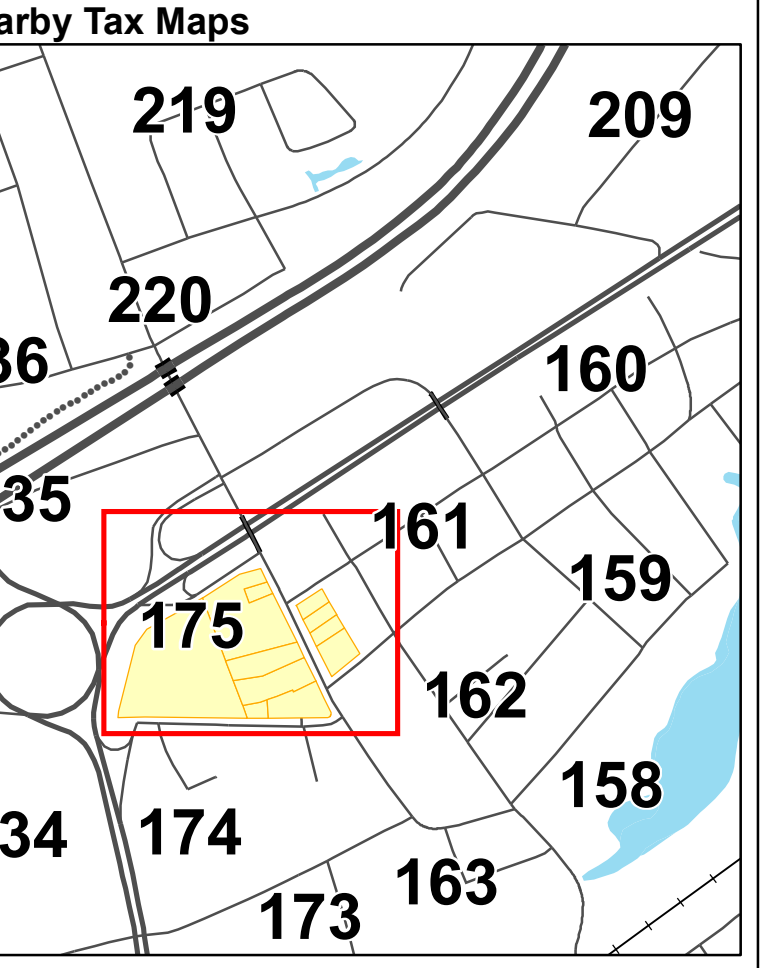


- Partial Legend**
 See the cover sheet for the complete legend.
- 7-5A** Lot or lot-unit number
 - 2.56 ac Parcel area in acres (ac) or square feet (sf)
 - Address number
 - 233-137 Parcel number from a neighboring map
 - 68' Parcel line dimension
 - SIMS AVE Street name
 - Parcel/Parcel boundary
 -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

EXHIBIT F



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.



III. NEW BUSINESS

- B.** The request of **Chinburg Development LLC (Owner)**, for property located at **216 Woodbury Avenue** whereas relief is needed to demolish the existing structure and construct a new primary dwelling which requires the following: 1) Variance from Section 10.521 to allow 66 feet of frontage where 100 feet are required. Said property is located on Assessor Map 175 Lot 3 and lies within the General Residence A (GRA) District. (LU-24-24)

Existing & Proposed Conditions

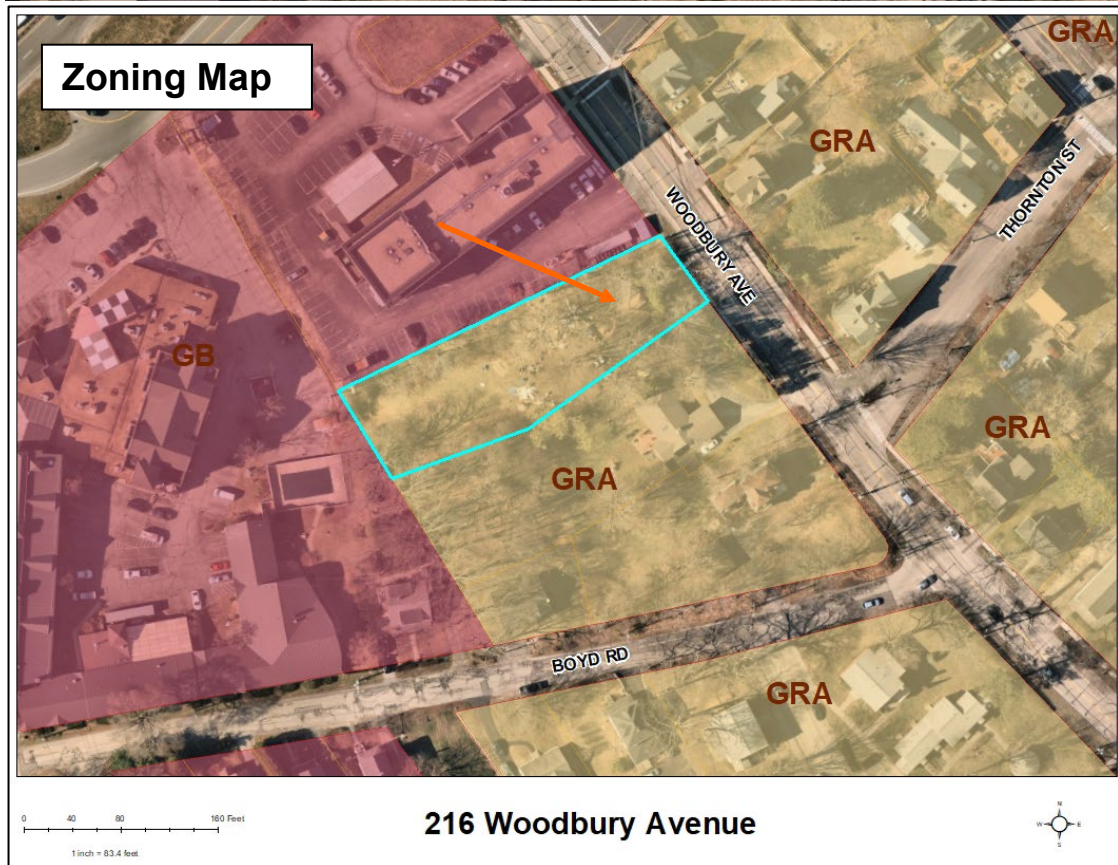
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family dwelling	*Demolish the existing structure and build new primary structure	Primarily residential
<u>Lot area (sq. ft.):</u>	7,933	7,933	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	7,933	7,933	7,500 min.
<u>Street Frontage (ft.):</u>	66	66	100 min.
<u>Lot depth (ft.)</u>	93	93	70 min.
<u>Front Yard (ft.):</u>	40	24	15 min.
<u>Left Yard (ft.):</u>	>10	12	10 min.
<u>Right Yard (ft.):</u>	>10	>10	10 min.
<u>Rear Yard (ft.):</u>	20	23	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	17.3	23.8	25 max.
<u>Open Space Coverage (%):</u>	69.6	61.6	30 min.
<u>Parking</u>	2	2	2
<u>Estimated Age of Structure:</u>	1935	Variance request(s) shown in red.	

*Demolition of the existing structure will create a vacant lot which requires conformance with section 10.311

Other Permits/Approvals Required

- Building Permit

Neighborhood Context



Previous Board of Adjustment Actions

No previous history found.

Planning Department Comments

The applicant is requesting relief for demolition and construction of a single-family home on a lot with less than the required street frontage. The proposed structure does not require any dimensional. Relief for the undersized lot is required per section 10.311 of the Zoning Ordinance. Section provided below for your convenience.

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

Applicant has included the request for relief from section 10.311. Staff do not believe this is applicable for a variance as it is the provision that triggers the need for dimensional variances after demolition.

Please note that the boundary defined in the aerial image found under “neighborhood context” does not reflect the most recent lot line adjustment that occurred

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.

MEMORANDUM

To: Portsmouth Zoning Board of Adjustment (“ZBA”)
From: R. Timothy Phoenix, Esq.
Monica F. Kieser, Esq.
Date: March 27, 2024
Re: Chinburg Development, LLC Owner/Applicant
Project location: 216 Woodbury Avenue
Tax Map 175, Lot 3
General Residence A (GRA) Zone

Dear Chair Eldredge and Zoning Board Members:

On behalf of Chinburg Development, LLC (“Chinburg” or “Applicant”) we are pleased to submit this memorandum and the attached exhibits in support of zoning relief to be considered by the ZBA at its April 16, 2024 meeting.

I. EXHIBITS

- A. Rockingham County Registry of Deed Plan 44009 – by Jones and Beach Engineers
 - Existing Plot Plan
 - Proposed Plot Plan
- B. Architectural Elevations and Floor Plans – by Art Form Architecture, Inc.
 - Sir Zach with Sun
- C. Site photographs
 - Satellite
 - Street View
- D. Tax Card
- E. City GIS Map – depicting surrounding area and zoning districts
- F. Tax Map 175

II. PROPERT/PROJECT

216 Woodbury Avenue is a 7,933 s.f. lot with 66.07 feet of frontage in the General Residence A (“GRA”) District (“the Property” or “Lot 3”). **(Exhibit B.)** The Property abuts the General Business District and the Holiday Inn and contains small, 1930s era, single-family. **(Exhibits C, D.)** The Property was part of an approved Site Plan obtained by Maple Heights Realty, LLC permitting eight units on the adjacent Map 175, Lot 1. The new owner intends to remove the existing single-family home and construct a new single-family home compliant with yard setbacks, building coverage, and open space requirements (“the Project”). While the Property complies with the lot area and lot depth requirements, Planning Staff have advised that

relief is required from the Portsmouth Zoning Ordinance (“PZO”) because the lot fails to comply with today’s frontage requirements.

III. **RELIEF REQUIRED**

- 1.) PZO §10.521 – Table of Dimensional Standards – to permit reconstruction of a single-family home on a lot with 66.07 feet of frontage where 100 feet is required.
- 2.) PZO §10.311 – to permit reconstruction of a single-family home on a lot with 66.07 feet of frontage where 100 feet is required.

IV. **VARIANCE REQUIREMENTS**

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

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

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

1. The use of land, buildings and structures for business, industrial, residential and other purposes – The proposal requests variance to allow reconstruction of a new single-family home on an existing developed lot that meets lot area and depth requirements. There will be no change in use.
2. The intensity of land use, including lot sizes, building coverage, building height and bulk, yards and open space – A single-family home exists and will be reconstructed to meet yard setbacks, building coverage, and open space.
3. The design of facilities for vehicular access, circulation, parking and loading – The Project provides the required number of parking spaces for a single-family home.
4. The impacts on properties of outdoor lighting, noise, vibration, stormwater runoff and flooding – There will be no change to existing conditions where a single-family residence upon the lot will be reconstructed and comply with yard setbacks, building coverage, and open space.
5. The preservation and enhancement of the visual environment – The newly constructed home will improve the visual environment.

6. The preservation of historic districts, and buildings and structures of historic or architectural interest – The Property is not in the Historic District.
7. The protection of natural resources, including groundwater, surface water, wetlands, wildlife habitat and air quality – Redevelopment of the Property has no adverse impact compared to existing conditions.

Based upon the foregoing, the variances do not “in a marked degree conflict with the ordinance such that they violate the ordinance’s basic zoning objectives.” Malachy Glen, supra, which 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 in a thickly settled area of the City and abuts the General Business District. The reconstruction of a tasteful single-family home where a single-family home now exists will beautify the lot and provide attractive modern housing in place of the existing single-family home. Granting the single variance for lot frontage to construct a new single family home where one currently exists will neither “alter the essential character of the locality,” nor “threaten the public health, safety or welfare”. Accordingly, the first two prongs of the variance criteria are satisfied.

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.

Chinburg is constitutionally entitled to the use of the lot as it sees fit; including redevelopment for a permitted single-family home with an incorporated garage, fully zoning compliant except for frontage, which cannot be changed. “The right to use and enjoy one's property is a fundamental right protected by both the State and Federal Constitutions.” N.H. CONST. pt. I, arts. 2, 12; U.S. CONST. amends. V, XIV; Town of Chesterfield v. Brooks, 126 N.H. 64 (1985) at 68. Part I, Article 12 of the New Hampshire Constitution provides in part that “no part of a man's property shall be taken from him, or applied to public uses, without his own

consent, or that of the representative body of the people.” Thus, our State Constitutional protections limit the police power of the State and its municipalities in their regulation of the use of property. L. Grossman & Sons, Inc. v. Town of Gilford, 118 N.H. 480, 482 (1978).

“Property” in the constitutional sense has been interpreted to mean not the tangible property itself, but rather the right to possess, use, enjoy and dispose of it. Burrows v. City of Keene, 121 N.H. 590, 597 (1981). (emphasis added). The Supreme Court has held that zoning ordinances must be reasonable, not arbitrary and must rest upon some ground of difference having fair and substantial relation to the object of the regulation. Simplex Technologies, Inc. v. Town of Newington, 145 N.H. 727, 731 (2001); Chesterfield at 69.

Granting the requested variance allows for tasteful and otherwise zoning-compliant redevelopment of an existing 7,933 s.f. lot with a single-family home. There is absolutely no harm to any neighbor or the general public from granting the frontage variance. It follows that there is no benefit to the public from denial. Conversely, Chinburg will be greatly harmed by denial as it will lose the opportunity to reasonably redevelop the Property with an updated attractive, single-family home meeting all other requirements, requesting only relief for a condition (frontage) that cannot under any circumstances be met.

Because the public receives no benefit from denial that outweighs the harm to the owner from such a denial, the Project also meets this element of the variance criteria.

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

The Project replaces a small, dated, single-family home with a tastefully designed code-compliant and dimensional-compliant new single-family home and related improvements requiring only the lot frontage variance, a situation that cannot be remedied. These factors, clearly demonstrate that redevelopment of the lot, requiring only a variance from the lot frontage requirements, will not diminish surrounding property values. Accordingly, the Project meets the fourth prong of the variance criteria.

5. Denial of the variances results in an unnecessary hardship.

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

The Property meets the lot size requirements and contains a small single-family home, but does not and cannot meet the lot frontage requirement, a condition which cannot be remedied. Because there is no way to make the lot, thus the Project, comply with the GRA frontage requirement, special conditions exist.

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

Frontage requirements are intended to provide adequate space between properties and buildings, area for sightlines, to reduce overcrowding, and provide land area for stormwater treatment. The Property is developed with a single-family lot now and has existed with 66' feet of frontage since 1966. It will continue to support a single-family home. The Project's building coverage and open space compliance ensure no increase in stormwater runoff while compliant yard setbacks maintain adequate separation between neighbors and space for stormwater treatment. Accordingly, there is no fair and substantial relationship between the general public purposes of the PZO application of the 100 foot lot frontage requirement to an existing lot redeveloped with the same permitted, single-family use in a new otherwise dimensionally compliant home.

- c. The proposed use is reasonable.

If the use is permitted, it is deemed reasonable. Vigeant v. Hudson, 151 N.H. 747 (2005). Single-family residential uses are permitted in the GRA Zone. The Project will construct a new code-compliant single-family home to replace a dated home. The new home will comply with yard setbacks, building coverage, and open space. Accordingly, the proposed use is reasonable and denial of the requested variance would create an unnecessary hardship.

V. CONCLUSION

For all the reasons stated, Chinburg respectfully requests that the Portsmouth Zoning Board of Adjustment grant the requested variances from PZO §10.521 and §10.311 to permit redevelopment of a lot with 66 feet of frontage.

Respectfully submitted,
Chinburg Development, LLC

By:



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

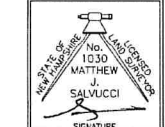
PLAN REFERENCE:

"LOT LINE ADJUSTMENT PLAN, TAX MAP 175, LOTS 1, 2, & 3, GRAPEVINE RUN, 212, 214, & 216 WOODBURY AVE. PORTSMOUTH, NH 03801." PREPARED BY JONES & BEACH ENGINEERS, INC. TO BE RECORDED.

TAX MAP 175 LOT 4
 KUZINS BOWDEN HOSPITALITY II, LLC
 C/O KEYBANK ATTN: SERVICING DEPT
 300 WOODBURY AVE.
 PORTSMOUTH, NH 03801
 BK 3355, PG 1325

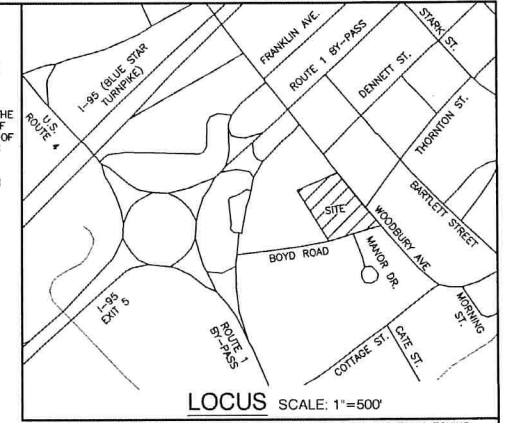
CERTIFICATION:

PURSUANT TO RSA 676:18-III AND RSA 672:14
 I CERTIFY THAT THIS SURVEY PLAT IS NOT A SUBDIVISION PURSUANT TO THIS TITLE AND THAT THE LINES OF STREETS AND WAYS SHOWN ARE THOSE OF PUBLIC OR PRIVATE STREETS OR WAYS ALREADY ESTABLISHED AND THAT NO NEW WAYS ARE SHOWN.
 I CERTIFY THAT THIS PLAT WAS PREPARED UNDER MY DIRECT SUPERVISION, THAT IT IS THE RESULT OF A FIELD SURVEY BY THIS OFFICE AND HAS AN UNADJUSTED LINEAR ERROR OF CLOSURE THAT EXCEEDS BOTH THE MINIMUM OF 1:10,000 AS DEFINED IN SECTION 503.04 OF THE NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES AND THE MINIMUM OF 1:15,000 AS DEFINED IN SECTION 4.2 OF THE N.H.L.S.A. ETHICS AND STANDARDS.
 THIS SURVEY CONFORMS TO A CATEGORY 1 CONDITION 1 SURVEY AS DEFINED IN SECTION 4.1 OF THE N.H.L.S.A. ETHICS AND STANDARDS.



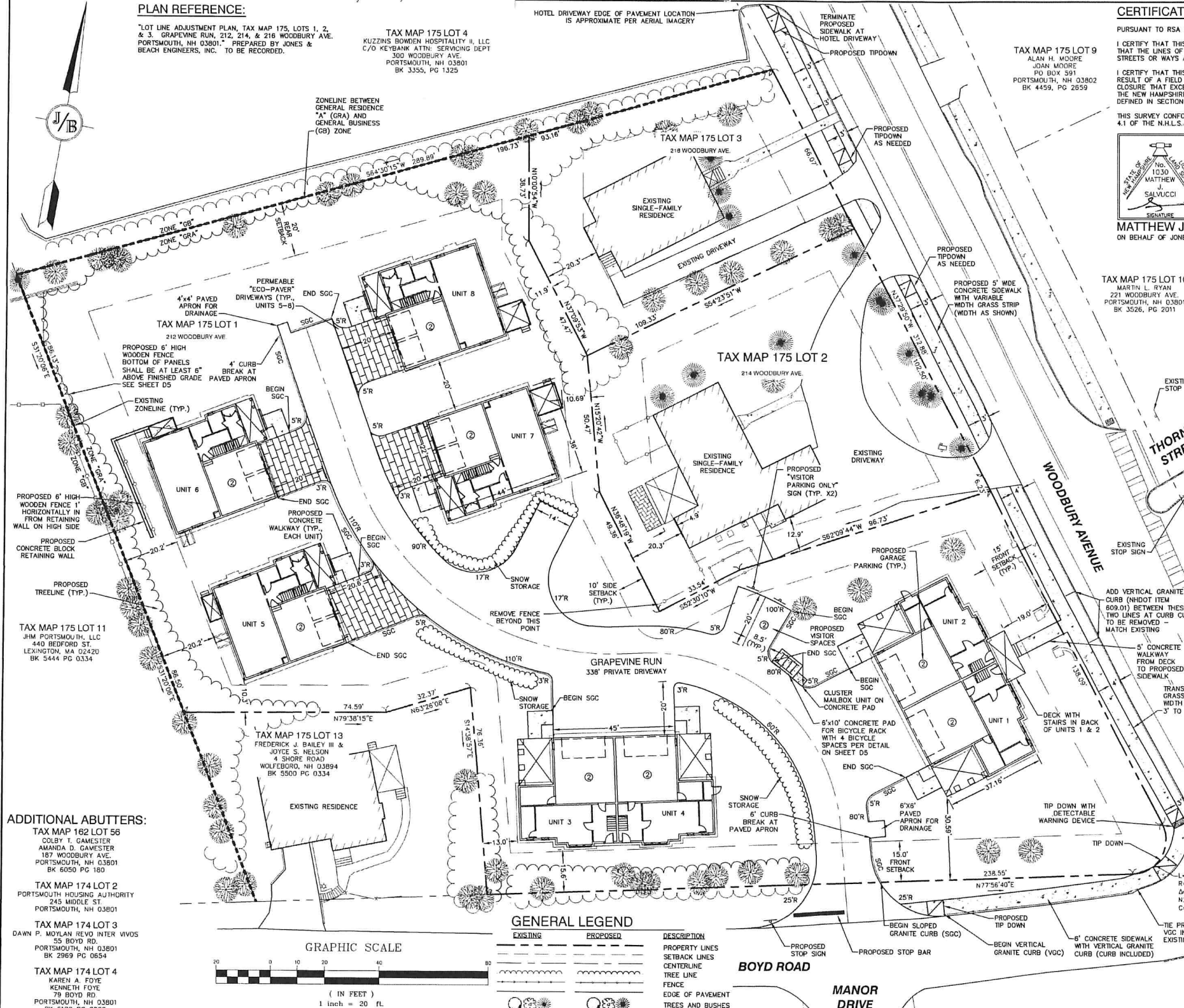
MATTHEW J. SALVUCCI, LLS 1030
 ON BEHALF OF JONES & BEACH ENGINEERS, INC.

5/25/23
 DATE:



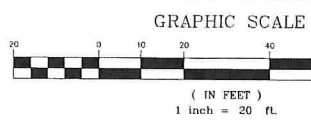
SITE NOTES:

- THE INTENT OF THIS PLAN IS TO REMOVE THE HOUSE AND GARAGE ON LOT 1, ADJUST THE LOT LINE BETWEEN LOT 1 WITH LOTS 2 & 3, AND PROPOSE AN 8-UNIT MULTI-FAMILY RESIDENTIAL DEVELOPMENT ON LOT 1 WITH ACCESS FROM BOYD ROAD.
- ZONING DISTRICT: GENERAL RESIDENTIAL A (GRA)
 LOT AREA MINIMUM = 7,500 S.F.
 MAX DENSITY = 1 DWELLING UNIT PER 7,500 S.F. LOT AREA
 PROPOSED ON LOT 1 = 60,075 S.F. / 8 = 1 UNIT PER 7,509 S.F. PROVIDED
 LOT FRONTAGE MINIMUM = 100'
 BUILDING SETBACKS (MINIMUM):
 FRONT SETBACK = 15'
 SIDE SETBACK = 10'
 REAR SETBACK = 20'
 MAX. BUILDING HEIGHT = 35' WITH SLOPED ROOF, 30' WITH FLAT ROOF
 MAX. BUILDING COVERAGE = 25%
 PROPOSED, LOT 1 = 21.1%
 PROPOSED, LOT 2 = 17.6%
 PROPOSED, LOT 3 = 19.3%
 MAX. OPEN SPACE = 30%
 PROPOSED, LOT 1 = 58.7%
 PROPOSED, LOT 2 = 58.1%
 PROPOSED, LOT 3 = 68.2%
- PARKING CALCULATIONS
 UNITS OVER 750 S.F. = 1.3 SPACES REQUIRED PER UNIT PLUS 1 VISITOR SPACE PER EVERY 5 DWELLING UNITS OR PORTION THEREOF
 8 UNITS * 1.3 SPACES REQUIRED = 11 SPACES REQUIRED, 16 SPACES PROVIDED IN GARAGES
 8 UNITS: 2 VISITOR SPACES REQUIRED, 2 VISITOR SPACES PROVIDED
 TOTAL: 13 SPACES REQUIRED, 18 SPACES PROVIDED.
- LOT 1 CALCULATIONS
 TOTAL BUILDING FOOTPRINT = 12,700 SF
 TOTAL IMPROVED PAVED AREA = 10,900 SF
 TOTAL IMPROVEMENT ON LOT 1 = 23,600 S.F. = 39.2% OF LOT 1
 TOTAL PERVIOUS PAVERS = 1,350 S.F. = 2.2% OF LOT 1
 TOTAL OPEN SPACE ON LOT 1 = 100% - 39.2% - 2.2% = 58.6%
- NHDES SEWER CONNECTION PERMIT NO. D2023-0416, DATED MAY 18, 2023.
- AT ITS MEETING ON APRIL 19, 2022, THE CITY OF PORTSMOUTH ZONING BOARD OF ADJUSTMENT VOTED TO GRANT A VARIANCE FROM THE FOLLOWING REQUIREMENT:
 SECTION 10.513 TO ALLOW MORE THAN ONE FREE-STANDING DWELLING ON A SINGLE LOT WITHIN THE GRA ZONE
- THIS PLAN SET HAS BEEN PREPARED BY JONES & BEACH ENGINEERS, INC. FOR MUNICIPAL AND STATE APPROVALS AND FOR CONSTRUCTION. BASED ON DATA OBTAINED FROM ON-SITE FIELD SURVEY AND EXISTING MUNICIPAL RECORDS, THROUGHOUT THE CONSTRUCTION PROCESS, THE CONTRACTOR SHALL INFORM THE ENGINEER IMMEDIATELY OF ANY FIELD DISCREPANCY FROM DATA AS SHOWN ON THIS PLAN/PLAN SET, OR BETWEEN THE PLANS AND ON-SITE CONDITIONS, SUBSURFACE OR OTHERWISE, FOR EVALUATION AND RECOMMENDATIONS. ANY CONTRADICTION BETWEEN ITEMS ON THIS PLAN/PLAN SET, OR BETWEEN THE PLANS AND ON-SITE CONDITIONS, MUST BE RESOLVED BEFORE RELATED CONSTRUCTION HAS BEEN INITIATED. CONTRACTOR TO ALWAYS CONTACT DIG SAFE PRIOR TO DIGGING ON-SITE OR OFF-SITE TO ENSURE SAFETY AND OBEY THE LAW.
- ALL CONSTRUCTION SHALL CONFORM TO TOWN STANDARDS AND REGULATIONS, INCLUDING ANY UNFORESEEN CONDITIONS, BRIDGE CONSTRUCTION, WHICH EVER IS MORE STRINGENT.
- SUBJECT PROPERTY IS NOT LOCATED WITHIN FEDERALLY DESIGNATED 100 YEAR FLOOD HAZARD ZONE, REFERENCE FEMA COMMUNITY PANEL NO. 33015C0270F, DATED JANUARY 29, 2021.
- ALL CONSTRUCTION ACTIVITIES SHALL BE PERFORMED IN ACCORDANCE WITH THE STORMWATER POLLUTION PREVENTION PLAN (S.W.P.P.P.). THIS DOCUMENT IS TO BE KEPT ON-SITE AT ALL TIMES AND UPDATED AS REQUIRED.
- PRIOR TO THE START OF CONSTRUCTION, THE CONTRACTOR SHALL COORDINATE WITH THE ENGINEER, ARCHITECT AND/OR OWNER, IN ORDER TO OBTAIN AND/OR PAY ALL THE NECESSARY LOCAL PERMITS, FEES AND BONDS.
- ALL PROPOSED SIGNAGE SHALL CONFORM WITH THE TOWN ZONING REGULATIONS, UNLESS A VARIANCE IS OTHERWISE REQUESTED.
- ALL SIGNAGE AND PAVEMENT MARKINGS SHALL BE IN ACCORDANCE WITH THE LATEST EDITION OF THE MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES (M.U.T.C.D.) AND NHDOT STANDARDS AND SPECIFICATIONS (NON-REFLECTORIZED PAVEMENT MARKINGS), UNLESS OTHERWISE NOTED.
- ALL STOP BARS SHALL BE 18" IN WIDTH IN A COLOR OF WHITE; ALL TRAFFIC ARROWS SHALL BE PAINTED IN A COLOR OF WHITE.
- ALL BUILDING DIMENSIONS SHALL BE VERIFIED WITH THE ARCHITECTURAL AND STRUCTURAL PLANS PROVIDED BY THE OWNER. ANY DISCREPANCIES SHOULD BE BROUGHT TO THE ATTENTION OF THE ENGINEER AND OWNER PRIOR TO THE START OF CONSTRUCTION. BUILDING DIMENSIONS AND AREAS TO BE TO OUTSIDE OF MASONRY, UNLESS OTHERWISE NOTED.
- SNOW TO BE STORED AT EDGE OF PAVEMENT AND IN AREAS SHOWN ON THE PLANS, OR TRUCKED OFFSITE TO AN APPROVED SNOW DUMPING LOCATION.
- ALL CONSTRUCTION ACTIVITIES SHALL CONFORM TO LABOR OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (OSHA) RULES AND REGULATIONS.
- ALL CONDITIONS ON THIS PLAN SHALL REMAIN IN EFFECT IN PERPETUITY PURSUANT TO THE REQUIREMENTS OF THE SITE PLAN REVIEW REGULATIONS.
- THIS SITE PLAN SHALL BE RECORDED IN THE ROCKINGHAM COUNTY REGISTRY OF DEEDS.
- ALL IMPROVEMENTS SHOWN ON THIS SITE PLAN SHALL BE CONSTRUCTED AND MAINTAINED IN ACCORDANCE WITH THE PLAN BY THE PROPERTY OWNER AND ALL FUTURE PROPERTY OWNERS. NO CHANGES SHALL BE MADE TO THE SITE PLAN WITHOUT THE EXPRESS APPROVAL OF THE PORTSMOUTH PLANNING DEPARTMENT.
- THE OWNER OF EACH UNIT SHALL STORE TRASH IN THEIR GARAGE. TRASH WILL BE PICKED UP BY A PRIVATE HAULER.
- THE TAX MAP AND LOT NUMBERS ARE BASED ON THE CITY OF PORTSMOUTH TAX RECORDS AND ARE SUBJECT TO CHANGE.
- THIS SURVEY IS NOT A CERTIFICATION TO OWNERSHIP OR TITLE OF LANDS SHOWN. OWNERSHIP AND ENCUMBRANCES ARE MATTERS OF TITLE EXAMINATION NOT OF A BOUNDARY SURVEY. THE INTENT OF THIS PLAN IS TO RETRACE THE BOUNDARY LINES OF DEEDS REFERENCED HEREON. OWNERSHIP OF ADJOINING PROPERTIES IS ACCORDING TO ASSESSOR'S RECORDS. THIS PLAN MAY OR MAY NOT INDICATE ALL ENCUMBRANCES EXPRESSED, IMPLIED OR PRESCRIPTIVE.
- SURVEY THE LINES SHOWN HEREON ARE NOT BOUNDARY LINES. THEY SHOULD ONLY BE USED TO LOCATE THE PARCEL SURVEYED FROM THE FOUND MONUMENTS SHOWN AND LOCATED BY THIS SURVEY.
- AN ACCESS EASEMENT SHALL BE GRANTED TO THE CITY OF PORTSMOUTH FOR ACCESS AND LEAK DETECTION OF THE WATER MAIN, SHUTOFFS, AND METERS ON THE PROPERTY. EASEMENT DESCRIPTION MUST BE APPROVED BY THE CITY'S LEGAL DEPARTMENT AND ACCEPTED BY THE CITY COUNCIL.
- FOR ADDITIONAL BOUNDARY INFORMATION AND MONUMENTS, SEE BOUNDARY LINE ADJUSTMENT PLAN.
- ON-SITE SALT STORAGE IS PROHIBITED WITHIN 250' OF AN INLAND WETLAND UNLESS COMPLETELY COVERED AND CONTAINED IN A STRUCTURE.
- BUILDINGS SHALL BE CONSTRUCTED IN THE FOOTPRINTS SHOWN HEREON. NOTIFY THE PROJECT ENGINEER IF THE PROPOSED ROOF LAYOUT, GUTTERS, AND/OR ROOF LINES ARE MODIFIED AFTER FINAL PLANS ARE SUBMITTED. UNITS 1-4 WILL NOT HAVE BASEMENTS, SUMP PUMPS, OR FOUNDATION DRAINS.
- AREA OF DISTURBANCE = 58,000 S.F. (ON AND OFF SITE)
- IF BOYD ROAD IS RECONSTRUCTED PRIOR TO THE SITE WORK IN BOYD ROAD BEING CONSTRUCTED, BOYD ROAD WILL REQUIRE A MILL AND FILL PAVEMENT RESURFACING FOR ALL DISTURBED AREAS TO THE SATISFACTION OF THE DEPARTMENT OF PUBLIC WORKS.



ADDITIONAL ABUTTERS:

- TAX MAP 162 LOT 56
 COLBY T. GAMESTER
 AMANDA D. GAMESTER
 187 WOODBURY AVE.
 PORTSMOUTH, NH 03801
 BK 6050 PG 180
- TAX MAP 174 LOT 2
 PORTSMOUTH HOUSING AUTHORITY
 245 MIDDLE ST.
 PORTSMOUTH, NH 03801
- TAX MAP 174 LOT 3
 DAWN P. MOYLAN REVOC INTER VIVOS
 55 BOYD RD.
 PORTSMOUTH, NH 03801
 BK 2989 PG 0654
- TAX MAP 174 LOT 4
 KAREN A. FOYE
 KENNETH FOYE
 79 BOYD RD.
 PORTSMOUTH, NH 03801
 BK 6108 PG 2989



GENERAL LEGEND

EXISTING	PROPOSED	DESCRIPTION
(Symbol)	(Symbol)	PROPERTY LINES
(Symbol)	(Symbol)	SETBACK LINES
(Symbol)	(Symbol)	CENTERLINE
(Symbol)	(Symbol)	TREE LINE
(Symbol)	(Symbol)	FENCE
(Symbol)	(Symbol)	EDGE OF PAVEMENT
(Symbol)	(Symbol)	TREES AND BUSHES
(Symbol)	(Symbol)	UTILITY POLE

Design: JAC	Draft: DJM	Date: 01/05/22
Checked: JAC	Scale: 1"=20'	Project No.: 21254
Drawing Name: 21254-PLAN.dwg		
THIS PLAN SHALL NOT BE MODIFIED WITHOUT WRITTEN PERMISSION FROM JONES & BEACH ENGINEERS, INC. (JBE). ANY ALTERATIONS, AUTHORIZED OR OTHERWISE, SHALL BE AT THE USER'S SOLE RISK AND WITHOUT LIABILITY TO JBE.		



REV.	DATE	REVISION	BY
13	5/23/23	ADDED SEWER CONNECTION PERMIT NUMBER	DJM
12	5/15/23	REVISED PER NHDES SEWER CONNECTION COMMENTS	DJM
11	5/5/23	ADDED CONDITIONS OF APPROVAL	DJM
10	2/22/23	REVISED PER TAC CONDITIONS OF APPROVAL	DJM
9	1/23/23	REVISED BIORETENTION BERM DETAIL PER REVIEW ENGINEER	DJM

J/B Jones & Beach Engineers, Inc.
 Civil Engineering Services
 85 Portsmouth Ave. PO Box 219 Stratham, NH 03885
 603-772-4746
 FAX: 603-772-0227
 E-MAIL: JBE@JONESANDBEACH.COM

Plan Name:	SITE PLAN
Project:	"GRAPEVINE RUN" 212, 214, & 216 WOODBURY AVE. PORTSMOUTH, NH 03801
Owners of Record:	MAPLE HEIGHTS REALTY, LLC 16 ACADIA LANE, EXETER, NH 03833 BK 6474 PG 2215

APPROVED - PORTSMOUTH, NH
 PLANNING BOARD
 [Signature]
 DATE: 7/18/23

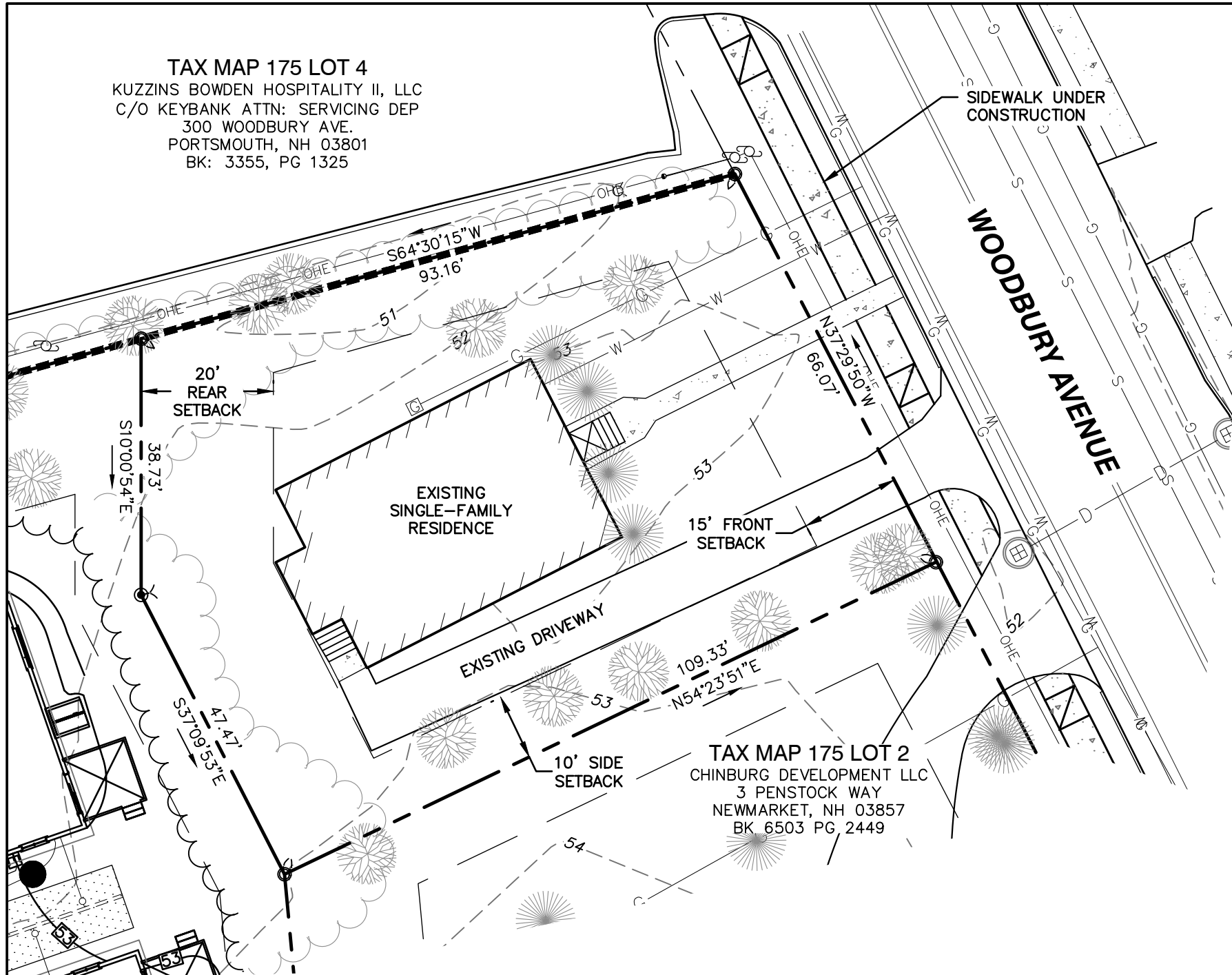
PROJECT PARCEL CITY OF PORTSMOUTH TAX MAP 175, LOTS 1, 2, & 3
APPLICANT TUCK REALTY CORP. ATTN: TURNER PORTER 149 EPPER RD., SUITE 2A EXETER, NH 03833
TOTAL LOT AREA 80,484 SQ. FT. 1.85 ACRES

DRAWING No.	C2
SHEET 5 OF 23	JBE PROJECT NO. 21254

D-44009

EXHIBIT A

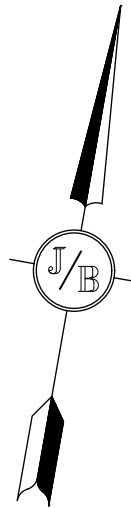
TAX MAP 175 LOT 4
 KUZZINS BOWDEN HOSPITALITY II, LLC
 C/O KEYBANK ATTN: SERVICING DEP
 300 WOODBURY AVE.
 PORTSMOUTH, NH 03801
 BK: 3355, PG 1325



TAX MAP 175 LOT 2
 CHINBURG DEVELOPMENT LLC
 3 PENSTOCK WAY
 NEWMARKET, NH 03857
 BK 6503 PG 2449

SIDEWALK UNDER CONSTRUCTION

WOODBURY AVENUE



EXISTING CONDITIONS NOTES:

1. UNDERGROUND FACILITIES, UTILITIES AND STRUCTURES HAVE BEEN PLOTTED FROM FIELD OBSERVATION AND THEIR LOCATION MUST BE CONSIDERED APPROXIMATE ONLY. NEITHER JONES & BEACH ENGINEERS, INC., NOR ANY OF THEIR EMPLOYEES TAKE RESPONSIBILITY FOR THE LOCATION OF ANY UNDERGROUND STRUCTURES OR UTILITIES NOT SHOWN THAT MAY EXIST. IT IS THE RESPONSIBILITY OF THE CONTRACTOR TO HAVE ALL UNDERGROUND STRUCTURES AND/OR UTILITIES LOCATED PRIOR TO EXCAVATION WORK BY CALLING 1-888-DIG-SAFE (1-888-344-7233).
2. VERTICAL DATUM: NAVD 88. HORIZONTAL DATUM: NH STATE PLANE
3. SUBJECT PROPERTY IS NOT LOCATED WITHIN FEDERALLY DESIGNATED 100 YEAR FLOOD HAZARD ZONE. REFERENCE FEMA COMMUNITY PANEL NO. 33015C0259F, DATED JANUARY 29, 2021.
4. FOR ADDITIONAL BOUNDARY INFORMATION, SEE PLAN REFERENCE.

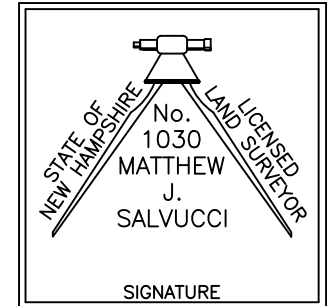
PLAN REFERENCE:

"LOT LINE ADJUSTMENT PLAN, TAX MAP 175, LOTS 1, 2, & 3" DATED JANUARY 5, 2022, AND REVISED THROUGH MAY 10, 2023. PREPARED BY JONES & BEACH ENGINEERS, INC. R.C.R.D. D-44008.

DEED REFERENCE:

BOOK 6503 PAGE 2449

ZONING SUMMARY		
ZONE	GENERAL RESIDENTIAL (GRA)	EXISTING
MINIMUM LOT AREA	7,500 S.F.	7,933 S.F.
MINIMUM LOT FRONTAGE	100'	66'
MINIMUM LOT DEPTH	70'	93'
FRONT SETBACK	15'	40'
SIDE SETBACK	10'	19'
REAR SETBACK	20'	20'
MAXIMUM BUILDING COVERAGE	25%	17.3%
MINIMUM OPEN SPACE COVERAGE	30%	69.6%



Design: JAC	Draft: DJM	Date: 2/5/24
Checked: JAC	Scale: 1" = 20'	Project No.: 21254
Drawing Name: 21254-PLAN-EXHIBITS.dwg		
THIS PLAN SHALL NOT BE MODIFIED WITHOUT WRITTEN PERMISSION FROM JONES & BEACH ENGINEERS, INC. (JBE). ANY ALTERATIONS, AUTHORIZED OR OTHERWISE, SHALL BE AT THE USER'S SOLE RISK AND WITHOUT LIABILITY TO JBE.		

Rev.	Date	Revision	By
0	2/5/24	ISSUED FOR REVIEW	KDR

J/B Jones & Beach Engineers, Inc.
 Civil Engineering Services
 85 Portsmouth Ave. 603-772-4746
 PO Box 219
 Stratham, NH 03885 E-Mail: JBE@jonesandbeach.com

Drawing Name: **PLOT PLAN**
 TAX MAP 175, LOT 3
 Project: 216 WOODBURY AVE. PORTSMOUTH, NH 03801
 Owner of Record: CHINBURG DEVELOPMENT LLC
 3 PENSTOCK WAY, NEWMARKET, NH 03857

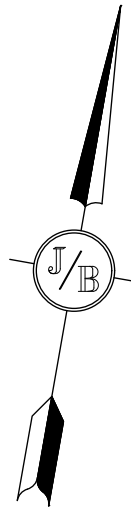
DRAWING No.
P1
 SHEET 1 OF 2
 JBE PROJECT
 No. 21254

TAX MAP 175 LOT 4
 KUZZINS BOWDEN HOSPITALITY II, LLC
 C/O KEYBANK ATTN: SERVICING DEP
 300 WOODBURY AVE.
 PORTSMOUTH, NH 03801
 BK: 3355, PG 1325

1.25" IP FND
 PINCHED TOP
 0.2' DOWN

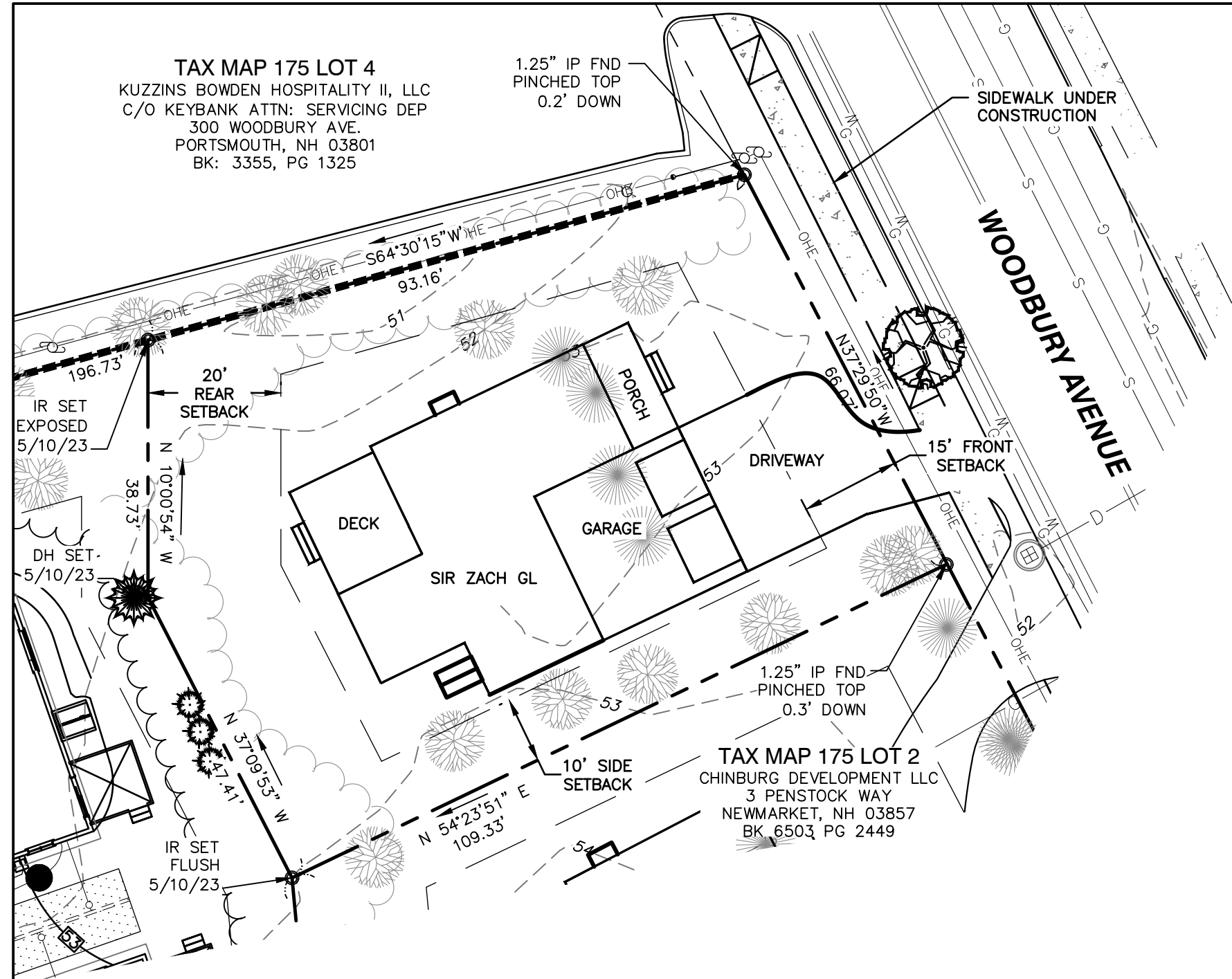
SIDEWALK UNDER
 CONSTRUCTION

WOODBURY AVENUE



SITE NOTES:

1. THE INTENT OF THIS PLAN IS TO REMOVE THE EXISTING HOUSE AND CONSTRUCT A NEW HOUSE.
2. TOTAL BUILDING COVERAGE = 1,893 S.F. (23.8%)
 TOTAL BUILDING FOOTPRINT WITH 12" OVERHANGS = 2,217 S.F. (27.9%)
 DECK/PORCH AREA = 392 S.F.
 DRIVEWAY AREA = 611 S.F.
 TOTAL IMPERVIOUS SURFACE WITHOUT OVERLAPS = 3,054 S.F. (38.4%)
3. THIS PLAN SET HAS BEEN PREPARED BY JONES & BEACH ENGINEERS, INC., FOR MUNICIPAL AND STATE APPROVALS AND FOR CONSTRUCTION BASED ON DATA OBTAINED FROM ON-SITE FIELD SURVEY AND EXISTING MUNICIPAL RECORDS. THROUGHOUT THE CONSTRUCTION PROCESS, THE CONTRACTOR SHALL INFORM THE ENGINEER IMMEDIATELY OF ANY FIELD DISCREPANCY FROM DATA AS SHOWN ON THE DESIGN PLANS, INCLUDING ANY UNFORESEEN CONDITIONS, SUBSURFACE OR OTHERWISE, FOR EVALUATION AND RECOMMENDATIONS. ANY CONTRADICTION BETWEEN ITEMS ON THIS PLAN/PLAN SET, OR BETWEEN THE PLANS AND ON-SITE CONDITIONS, MUST BE RESOLVED BEFORE RELATED CONSTRUCTION HAS BEEN INITIATED. CONTRACTOR TO ALWAYS CONTACT DIG SAFE PRIOR TO DIGGING ONSITE OR OFFSITE TO ENSURE SAFETY AND OBEY THE LAW.
4. SUBJECT PROPERTY IS NOT LOCATED WITHIN FEDERALLY DESIGNATED 100 YEAR FLOOD HAZARD ZONE. REFERENCE FEMA COMMUNITY PANEL NO. 33015C0270F, DATED JANUARY 29, 2021.



TAX MAP 175 LOT 2
 CHINBURG DEVELOPMENT LLC
 3 PENSTOCK WAY
 NEWMARKET, NH 03857
 BK 6503 PG 2449

ZONING SUMMARY

ZONE	GENERAL RESIDENTIAL (GRA)	PROVIDED
MINIMUM LOT AREA	7,500 S.F.	7,933 S.F.
MINIMUM LOT FRONTAGE	100'	66'
MINIMUM LOT DEPTH	70'	93'
FRONT SETBACK	15'	24'
SIDE SETBACK	10'	12'
REAR SETBACK	20'	23'
MAXIMUM BUILDING COVERAGE	25%	23.8%
MINIMUM OPEN SPACE COVERAGE	30%	61.6%

Design: JAC	Draft: DJM	Date: 2/5/24
Checked: JAC	Scale: 1" = 20'	Project No.: 21254
Drawing Name: 21254-PLAN-EXHIBITS.dwg		
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Rev.	Date	Revision	By
0	2/5/24	ISSUED FOR REVIEW	KDR

J/B Jones & Beach Engineers, Inc.
 Civil Engineering Services
 85 Portsmouth Ave. 603-772-4746
 PO Box 219
 Stratham, NH 03885 E-Mail: JBE@jonesandbeach.com

Drawing Name: **SITE PLAN**
 TAX MAP 175, LOT 3
 Project: 216 WOODBURY AVE. PORTSMOUTH, NH 03801
 Owner of Record: CHINBURG DEVELOPMENT LLC
 3 PENSTOCK WAY, NEWMARKET, NH 03857

DRAWING No.
C1
 SHEET 2 OF 2
 JBE PROJECT
 No. 21254

2/14/2024

Sir Zach with Sun

845.125.v5 GL (2/14/2024)

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Art Form Architecture, LLC

603-431-9559



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Dear Builders and Home Buyers,

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

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

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

Facade Changes:

- To maintain design integrity, we pay particular attention to features on the front facade, including but not limited to door surrounds, window casings, finished porch column sizes, and roof friezes. While we may allow builders to add their own flare to aesthetic elements, we don't allow our designs to be stripped of critical details. Any such alterations require the express written consent of Art Form.
- Increasing ceiling heights usually requires adjustments to window sizes and other exterior elements.

Floor plan layout and/or Structural Changes:

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

2/14/2024

Sir Zach with Sun

845.125.v5 GL (2/14/2024)

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2/14/2024

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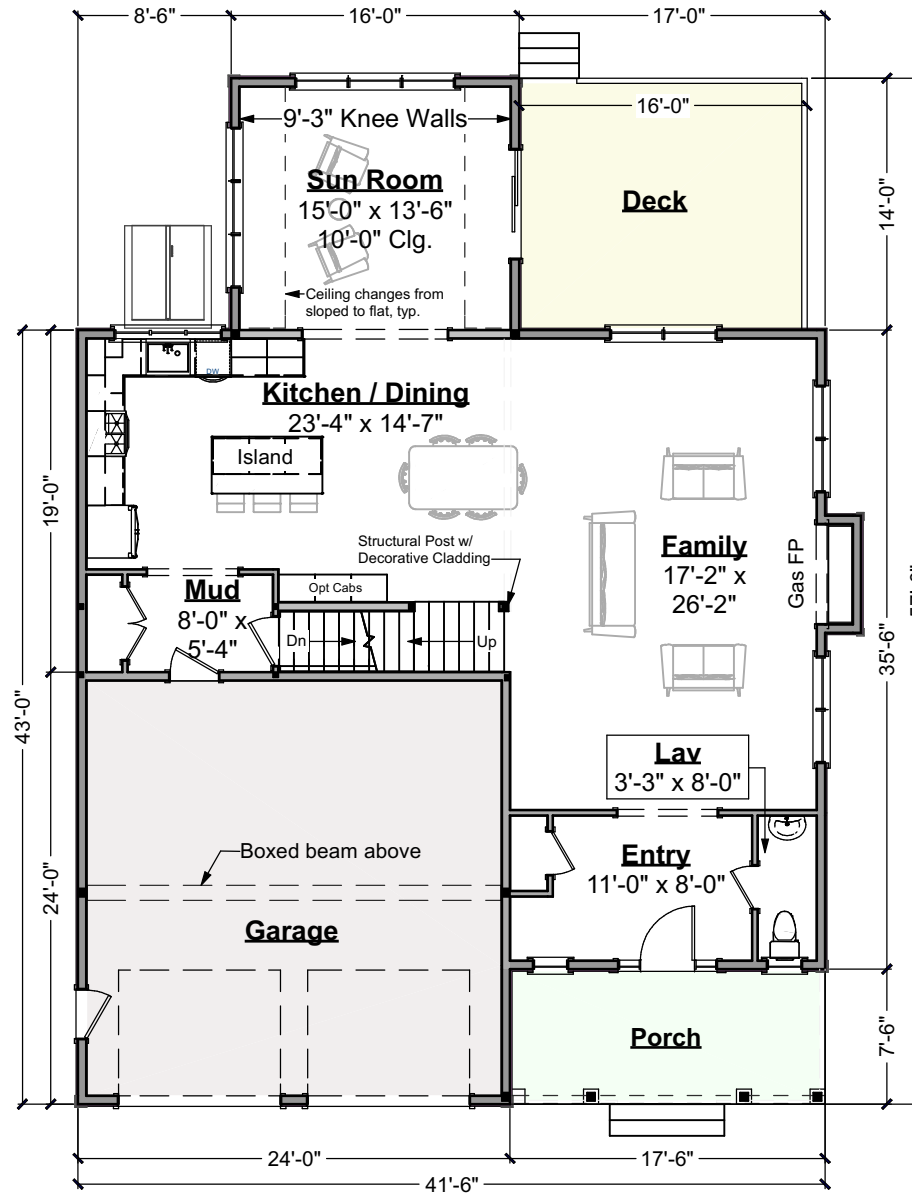
845.125.v5 GL (2/14/2024)

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Living Area this Floor: 1320 sq ft

9 ft Ceilings, unless noted otherwise

First Floor Plan

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

2/14/2024

Sir Zach with Sun

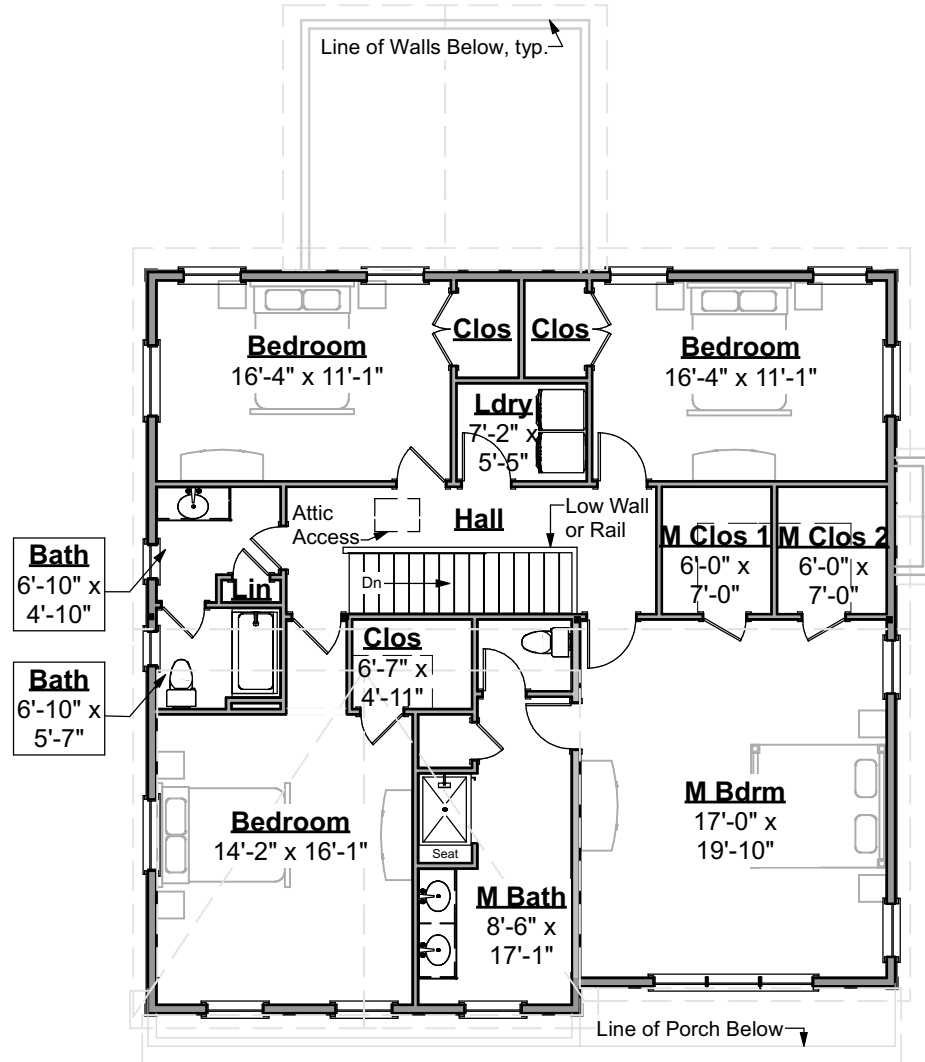
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Living Area this Floor: 1682 sq ft
8 ft Ceilings

Second Floor Plan

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

2/14/2024

Sir Zach with Sun

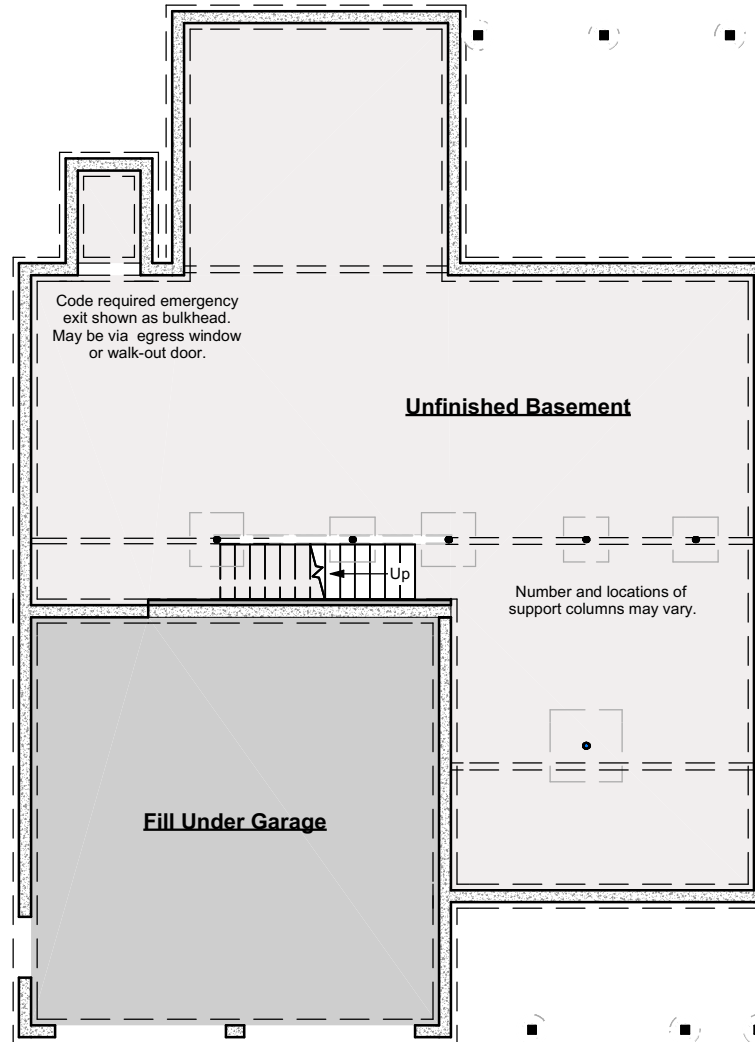
845.125.v5 GL (2/14/2024)

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

2/14/2024

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Front Elevation

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

2/14/2024

Sir Zach with Sun

845.125.v5 GL (2/14/2024)

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Right Elevation

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

2/14/2024

Sir Zach with Sun

845.125.v5 GL (2/14/2024)

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Art Form Architecture, LLC

603-431-9559



Rear Elevation

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

2/14/2024

Sir Zach with Sun

845.125.v5 GL (2/14/2024)

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Art Form Architecture, LLC

603-431-9559



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



Imagery ©2024 Google, Imagery ©2024 Airbus, Maine GeoLibrary, Maxar Technologies, U.S. Geological Survey, USDA/FPAC/GEO, Map data ©2024 100 ft

251 Woodbury Ave

Portsmouth, New Hampshire

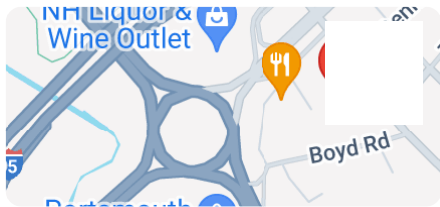
Google Street View

Sep 2019

[See more dates](#)



Image capture: Sep 2019 © 2024 Google



CURRENT OWNER		TOPO	UTILITIES	STRT / ROAD	LOCATION	CURRENT ASSESSMENT				2229 PORTSMOUTH, NH VISION	
CHINBURG DEVELOPMENT LLC 3 PENSTOCK WAY NEWMARKET NH 03857		1 Level	0 All Public	1 Paved		Description	Code	Appraised	Assessed		
				7 2 Off-St PKG		RESIDNTL	1010	161,300	161,300		
				1		RES LAND	1010	292,600	292,600		
SUPPLEMENTAL DATA						Total				453,900	453,900
Alt Prcl ID 0175-0003-0000-0000		OLDACTN 62050		CONDO C INLAW Y/ LOT SPLIT 2015 Reva JM Ex/Cr Appli							
PHOTO		WARD		Assoc Pid#							
PREC.		1/2 HSE									
GIS ID 35284											

RECORD OF OWNERSHIP		BK-VOL/PAGE	SALE DATE	Q/U	V/I	SALE PRICE	VC	PREVIOUS ASSESSMENTS (HISTORY)									
CHINBURG DEVELOPMENT LLC		6503	2449	08-30-2023	U	I	3,274,933	18	Year	Code	Assessed	Year	Code	Assessed	Year	Code	Assessed
MAPLE HEIGHTS REALTY LLC		6474	2216	03-31-2023	U	I	2,425,000	21	2022	1010	161,300	2021	1010	161,300	2020	1010	161,300
BAILEY FREDERICK J III		3919	1345	12-27-2002	U	I	0			1010	292,600			292,600			292,600
Total									453,900		Total		453,900		Total		453,900

EXEMPTIONS			OTHER ASSESSMENTS					This signature acknowledges a visit by a Data Collector or Assessor										
Year	Code	Description	Amount	Code	Description	Number	Amount	Comm Int										
Total			0.00															

ASSESSING NEIGHBORHOOD				APPRAISED VALUE SUMMARY													
Nbhd	Nbhd Name	B		Tracing		Batch											
131																	
NOTES																	
NEWER RF, MOSTLY ORIG WINDWS EXT AVG COND, PU WD SHINGLE EXT VERY OVERGROWN IN FRONT																	
Total Appraised Parcel Value								453,900									

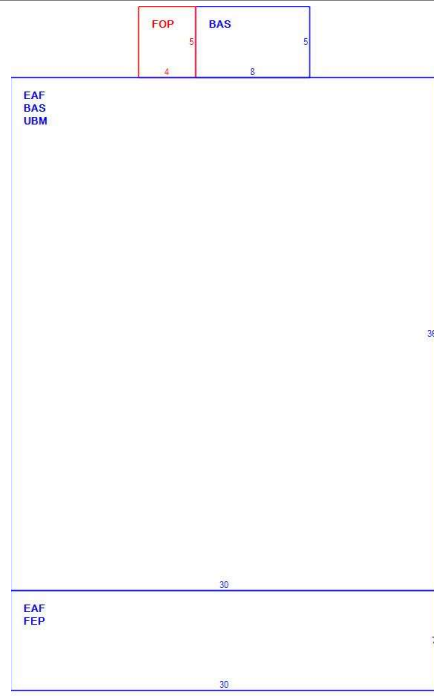
BUILDING PERMIT RECORD										VISIT / CHANGE HISTORY					
Permit Id	Issue Date	Type	Description	Amount	Insp Date	% Comp	Date Comp	Comments		Date	Id	Type	Is	Cd	Purpose/Result
LU-22-129	04-20-2023	BP	Misc Building P	0		0		PB PRELIIM/FINAL SUBD AP		08-10-2023	CKR	02	3	SR	Sales Review
06-910	10-23-2006			2,400		100		REMOVE UNDER TA		04-14-2023	LS			AD	Address Change
										07-19-2017	SG			FR	Field Review Stat Update
										08-26-2015	JG			41	Hearing Change
										03-06-2015	DG			FR	Field Review Stat Update
										05-01-2014	LS			DE	Data Entry
										01-21-2013	JM			08	Measur/Int Refusal No inf

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	GRA			24,973 SF	6.89	1.0000	1	1.00	131	1.700	0		1.0000	11.72	292,600				
Total Card Land Units														1	AC	Parcel Total Land Area		1	Total Land Value		292,600

EXHIBIT D

CONSTRUCTION DETAIL **CONSTRUCTION DETAIL (CONTINUED)**

Element	Cd	Description	Element	Cd	Description
Style:	05	Bungalow			
Model	01	Residential			
Grade:	C	C			
Stories:	1				
Occupancy	1				
Exterior Wall 1	14	Wood Shingle			
Exterior Wall 2					
Roof Structure:	03	Gable/Hip			
Roof Cover	03	Asph/F Gls/Cmp			
Interior Wall 1	03	Plastered			
Interior Wall 2					
Interior Flr 1	12	Hardwood			
Interior Flr 2	14	Carpet			
Heat Fuel	03	Gas			
Heat Type:	04	Hot Water			
AC Type:	01	None			
Total Bedrooms	02	2 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					
MIXED USE					
			Code	Description	Percentage
			1010	SINGLE FAM MDL-01	100
					0
					0
COST / MARKET VALUATION					
			Adj. Base Rate		129.97
			Building Value New		252,007
			Year Built		1935
			Effective Year Built		1983
			Depreciation Code		FR
			Remodel Rating		
			Year Remodeled		
			Depreciation %		36
			Functional Obsol		
			External Obsol		
			Trend Factor		1
			Condition		
			Condition %		
			Percent Good		64
			RCNLD		161,300
			Dep % Ovr		
			Dep Ovr Comment		
			Misc Imp Ovr		
			Misc Imp Ovr Comment		
			Cost to Cure Ovr		
			Cost to Cure Ovr Comment		

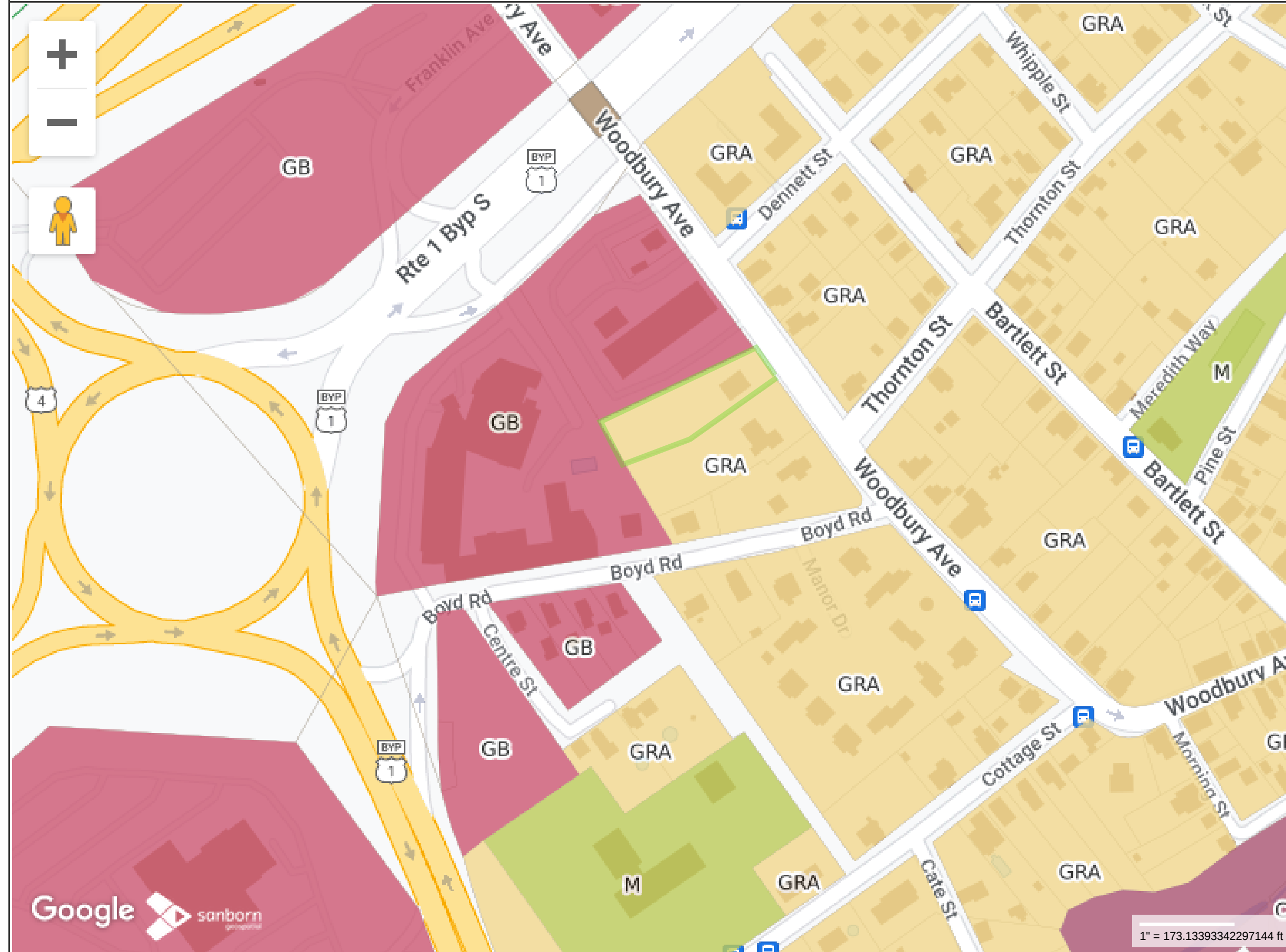


OB - OUTBUILDING & YARD ITEMS(L) / XF - BUILDING EXTRA FEATURES(B)

Code	Description	L/B	Units	Unit Price	Yr Blt	Cond. Cd	% Gd	Grade	Grade Adj.	Appr. Value

BUILDING SUB-AREA SUMMARY SECTION

Code	Description	Living Area	Floor Area	Eff Area	Unit Cost	Undeprec Value
BAS	First Floor	1,120	1,120	1,120	129.97	145,564
EAF	Attic Expansion	452	1,290	452	45.54	58,745
FEP	Porch, Enclosed	0	210	147	90.98	19,105
FOP	Porch, Open	0	20	4	25.99	520
UBM	Basement, Unfinished	0	1,080	216	25.99	28,073
Ttl Gross Liv / Lease Area		1,572	3,720	1,939		252,007



**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 E

1" = 173.13393342297144 ft

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

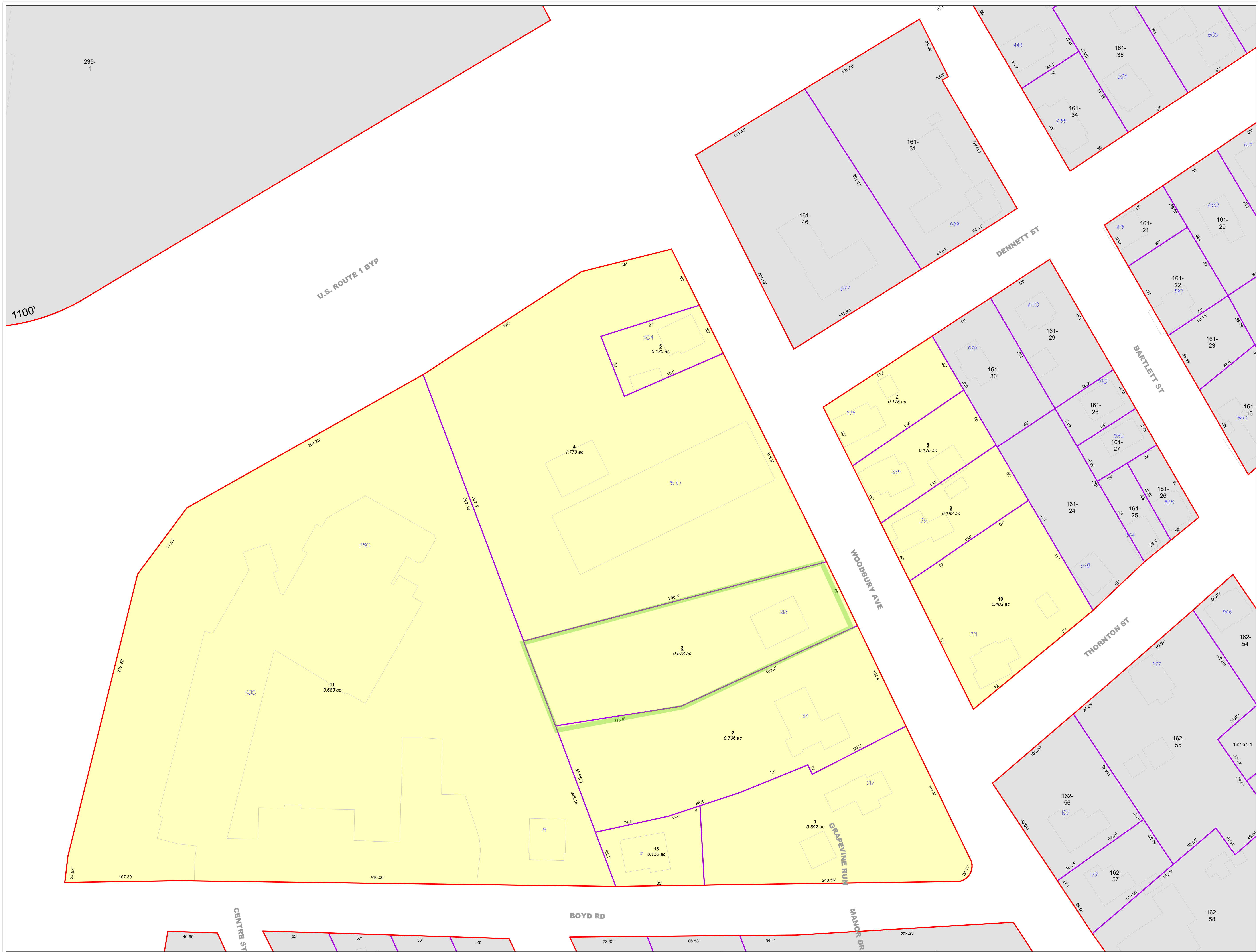
Municipal District

- Municipal District

Overlay Districts

- OLOD Osprey Landing Overlay District
- Downtown Overlay District
- Historic District

City of Portsmouth

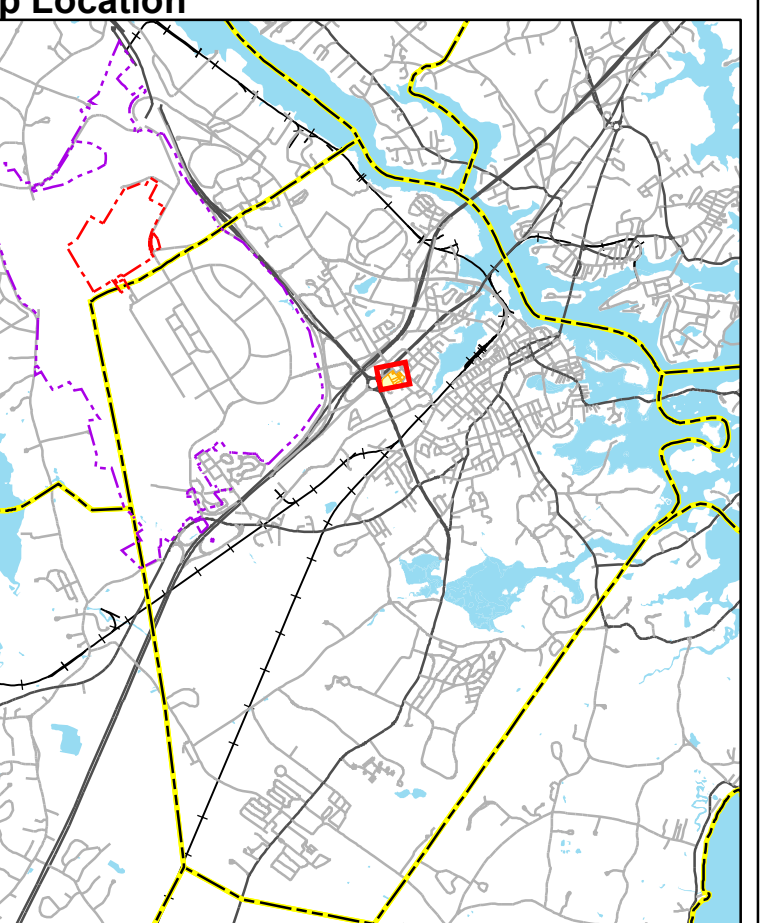
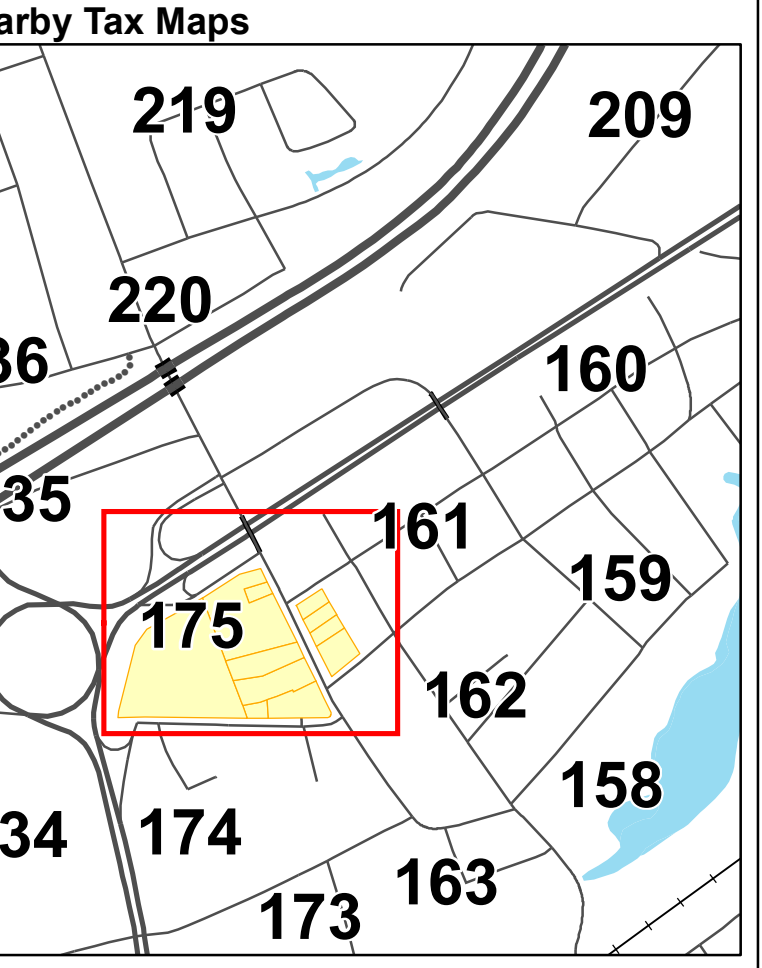


- Partial Legend**
 See the cover sheet for the complete legend.
- 7-5A** Lot or lot-unit number
 - 2.56 ac Parcel area in acres (ac) or square feet (sf)
 - Address number
 - 233-137 Parcel number from a neighboring map
 - 68' Parcel line dimension
 - SIMS AVE Street name
 - Parcel/Parcel boundary
 -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

EXHIBIT F



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.



III. NEW BUSINESS

C. The request of **Cyrus Beer and Erica Gardner Beer (Owners)**, for property located at **64 Mount Vernon Street** to amend the Variances granted on March 19, 2024 for the demolition of the existing detached shed and construction of a new shed to include the following: 1) Variance from section 10.521 to allow a 2 foot side yard where 10 feet is required. Said property is located on Assessor Map 111 Lot 30 and lies within the General Residence B (GRB) and Historic Districts. (LU-24-20)

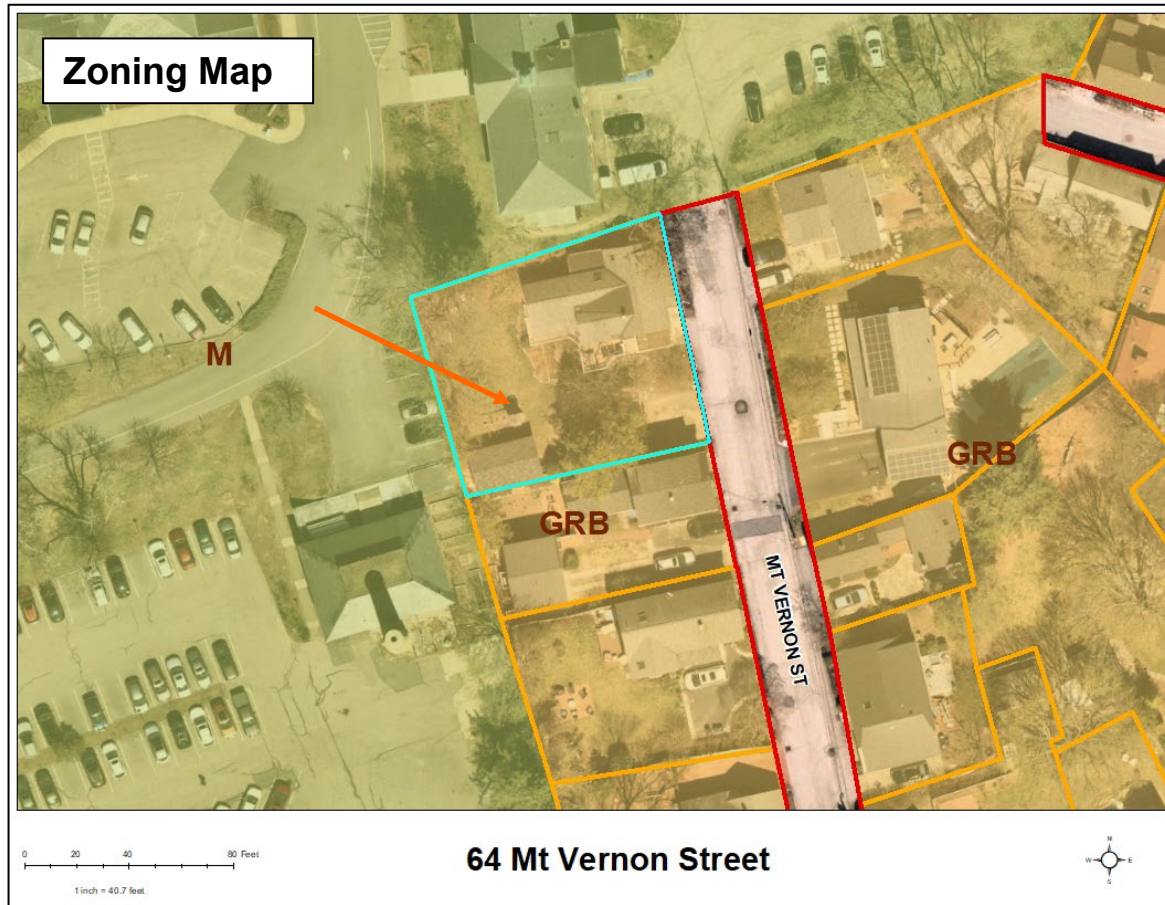
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family dwelling	Demolish and construct new shed	Primarily residential
<u>Lot area (sq. ft.):</u>	7,841	7,841	5,000 min
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	7,841	7,841	5,000 min
<u>Street Frontage (ft.):</u>	90	90	80 min
<u>Lot depth (ft.)</u>	96	96	60 min
<u>Front Yard (ft.):</u>	House: 5 Shed: >50	House: 5 Shed: >50	5 min
<u>Left Yard (ft.):</u>	Shed: 1	Shed granted on 3-19-24: 5 Requested 4-16-24: 2	10 min
<u>Right Yard (ft.):</u>	House: 3	House: 3	10 min
<u>Rear Yard (ft.):</u>	Shed: 3.5	Shed granted on 3-19-24: 5	25 min
<u>Height (ft.):</u>	Shed: 12	Shed: 23	35 max
<u>Building Coverage (%):</u>	24	25	30 max
<u>Open Space Coverage (%):</u>	>25	>25	25 min
<u>Parking</u>	2	2	2
<u>Estimated Age of Structure:</u>	1812	Variance request(s) shown in red.	

Other Permits/Approvals Required

- Building Permit
- Historic District Approval

Neighborhood Context



Previous Board of Adjustment Actions

March 20, 2018 –The Board **granted** the following: 1) Variance from Section 10.440, Use #17.20 to allow the keeping of farm animals where the use is not allowed; and 2) Variance from Section 10.573.10 to allow an accessory Structure 3' ± from the rear property line where 5' is required; with the following condition:

1) There will be no more than six chickens and no roosters.

February 15, 2022– The Board **granted** a Variance from Section 10.515.14 to allow a 4 foot setback where 10 feet is required for a mechanical unit.

March 19, 2024 – The Board granted the following: 1) Variance from Section 10.573.20 to allow an accessory structure more than 10 feet in height and more than 100 square feet in area a) to be setback 5 feet from the side property line where 10 feet is required and b) to be setback 5 feet from the rear property lines where 19 feet is required.

Planning Department Comments

The applicant is proposing to demolish the existing shed and reconstruct a new shed that will increase in size from 322.5 square feet to 448 square feet.

On March 19, 2024, the applicant was granted variances to have a 5 foot rear yard and 5 foot left side yard. The applicant worked with staff and was unable to keep the design consistent with the 5 foot approval for the jog of the property line. It was discovered that the original proposal represented a 2 foot side yard at that one corner and is back before the Board to request relief for those two feet. The design and side yards are the same as the original approval. This amendment clarifies and completes the relief required to build the design proposed at the March 19, 2024 meeting.

Variance Review Criteria

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

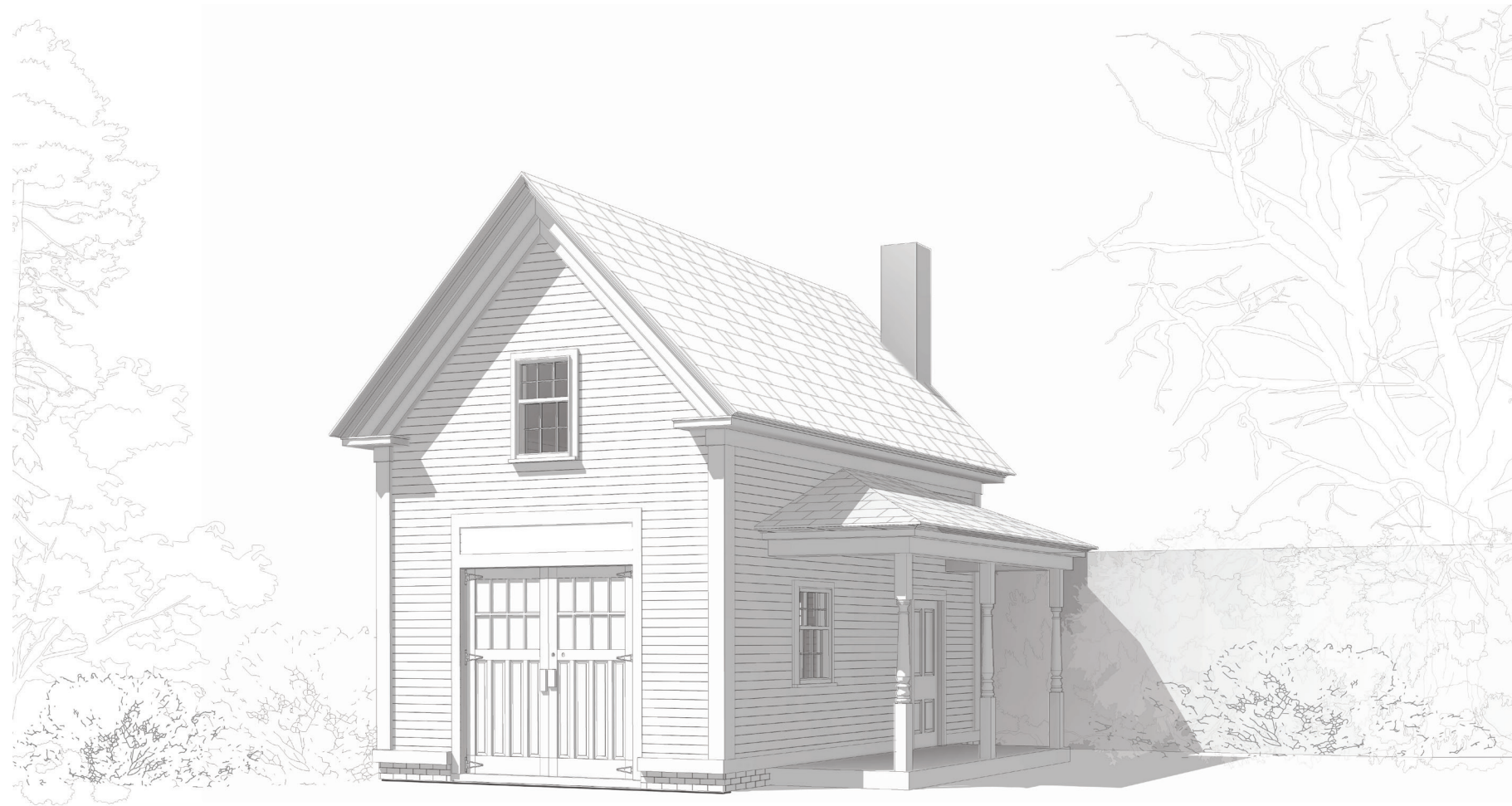
1. *Granting the variance would not be contrary to the public interest.*
2. *Granting the variance would observe the spirit of the Ordinance.*
3. *Granting the variance would do substantial justice.*
4. *Granting the variance would not diminish the values of surrounding properties.*
5. *The “unnecessary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

64 MT VERNON

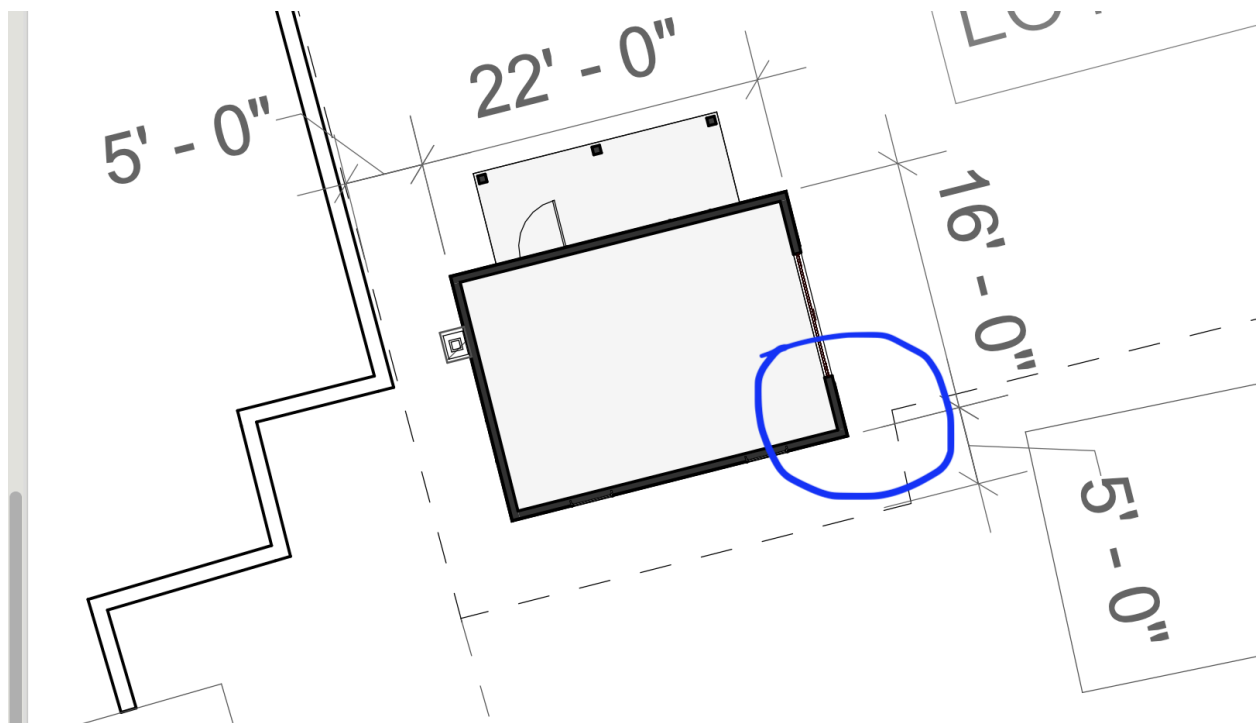
PORTSMOUTH, NH



*Application of Cyrus and Erika Beer
64 Mount Vernon St
Portsmouth NH*

I. Changes from last month's submission

Due to an oversight last month, we would like to amend our variance request to have a side yard setback of 2 feet instead of a side yard setback of 5 feet. We propose to maintain the exact same location for the proposed shed 5 feet from the lot line on the long south wall. However, because of the way the property line jogs around the south east corner of the existing shed, there is a point where the proposed shed would be 2 feet from the lot line. This 2 foot setback is shown circled in blue in the following image.



Again no changes have been made to the plans submitted from last month. This amended request for a 2 foot setback is only to account for the corner of the shed circled in blue. .

II. The Property

The applicants, Cyrus and Erika Beer, own and reside at the property located at 64 Mount Vernon St, which consists of a single family dwelling with a detached shed. The Beers purchased the property 11+ years ago with the shed and have lived there as their primary residence ever since. The shed rests on wood sills on the ground and is rotting. Animals have gotten in. Furthermore, the shed is only 1 foot or so from the property line and so doing work on the shed requires access to the neighbor's yard. It is also a violation of fire code. For these reasons the Beers would like to rebuild their shed and bring it in 5 feet off the lot line.

III. Specific Variance Requests

To complete this Project, the Applicant requests variances from the following ordinances:

1. Section 10.521 Table of Dimensional Standards:

- a. Side yard setback to be 2 feet instead of the 10 feet required in GRB.
- b. Rear yard setback to be 5 feet instead of the 25 feet as required in GRB. This was approved in March 2024.

IV. Variance Criteria

1. 10.233.21 The variance will not be contrary to the public interest.

- a. Rebuilding the shed will not alter the characteristics of the neighborhood.

Architecturally, as per plans on file with the HDC, the proposed shed will borrow design elements from our house and will be appropriate to the neighborhood. Furthermore, as the shed is tucked away and fairly well hidden from any street, the impact incurred will be minimized.

- b. Rebuilding the shed will not threaten the health, safety and welfare of the public.

By bringing the shed in off of the lot line, we will be able to work on the shed without standing in our neighbor's yard. This will improve the welfare of the

neighborhood. Safety will also be improved by giving additional distance as per fire code.

2. 10.233.22 The spirit of the ordinance will be observed..

- a. The proposed use is reasonable. Having a storage shed in one's backyard is a typical land use in the neighborhood.
- b. On Mount Vernon St. and in this neighborhood, houses often do not meet setback requirements and what we are proposing is not out of the ordinary
- c. What we are proposing is an improvement over what is there today as far as side and rear setbacks.

3. 10.233.23 Substantial justice will be done.

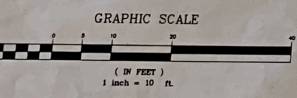
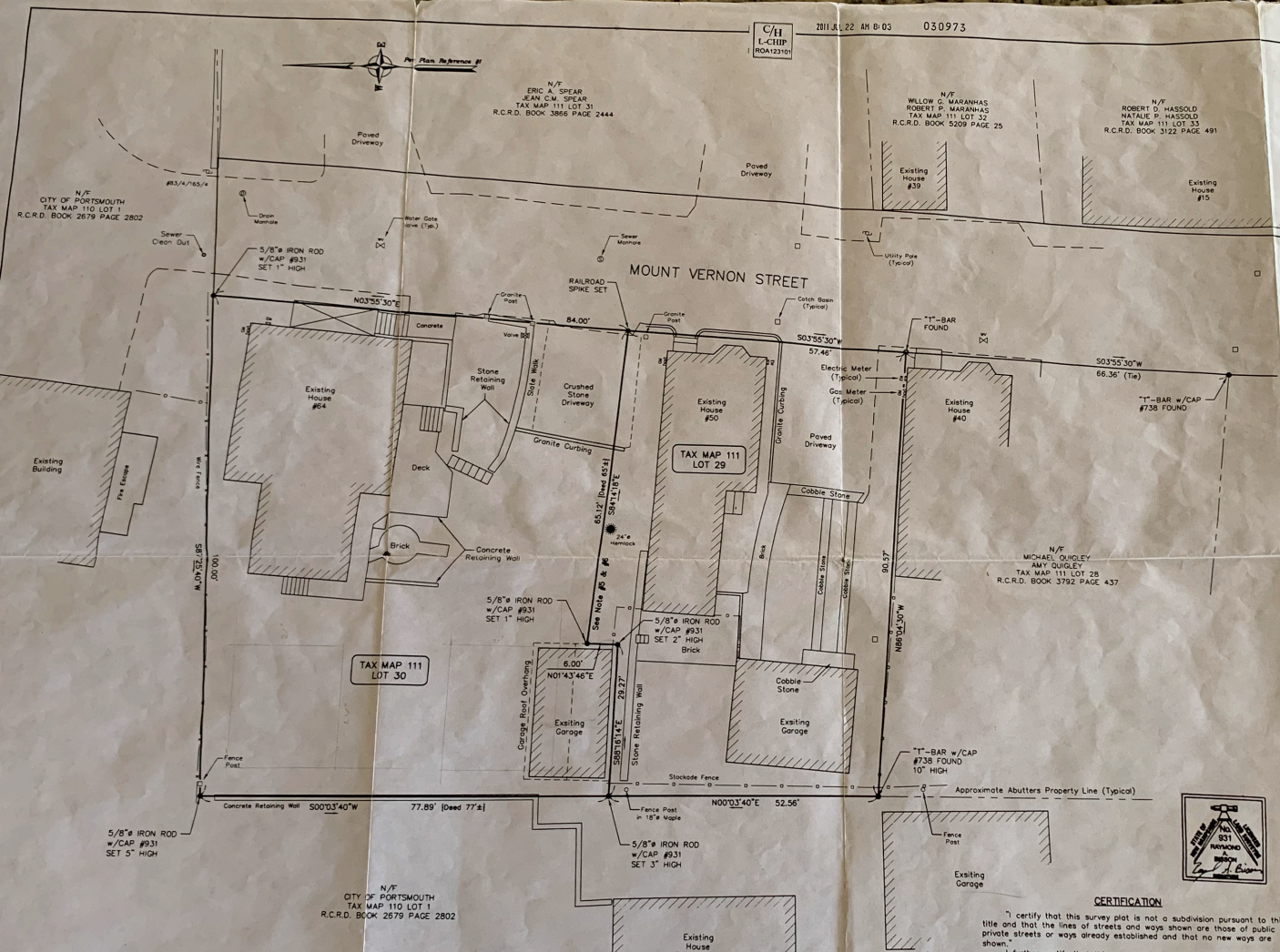
- a. The proposed use is reasonable.
- b. There is no advantage to the public that outweighs the hardship to the owners by denying this request

4. 10.233.24 The value of surrounding properties will not be diminished.

- a. Values of surrounding properties are expected to be enhanced by the additional setback and also by the proposed design and construction of a new shed

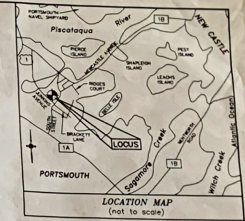
5. 10.233.25 Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship.

- a. Because the proposed variances in setbacks are an improvement over what exists today and because a new shed with a design in accordance with the style of the neighborhood is seen to enhance the neighborhood, and because the use is not changing, a literal enforcement of the zoning provisions would result in an unnecessary hardship for the homeowners



D-36884

C/H L-CHP ROA03210
2011 JUL 22 AM 0:03 030973



- PLAN REFERENCES.**
1. "LOT LINE RELOCATION PLAN ELEANOR M. TELLER PROBABLE LIVING TRUST & MARRON C. AND DONALD F. CLARK, 18 & 40 MOUNT VERNON STREET, PORTSMOUTH, N.H. ROCKINGHAM COUNTY" PREPARED BY AMBIT SURVEY DATED SEPTEMBER 1995, LAST REVISED NOVEMBER 27, 1995 AND RECORDED AT THE R.C.R.D. AS PLAN D-24425.
 2. "SURVEY & PERIMETER PLAN, ALTERATIONS & ADDITIONS, PORTSMOUTH HOSPITAL, PORTSMOUTH, N.H." PREPARED BY JAMES H. RITCHIE & ASSOCIATES FROM THE FILES OF JOHN W. DURGIN, PROVIDED BY JAMES VERRA AND ASSOCIATES.
 3. "PLAN OF TWO LOTS OF LAND SITUATE IN THE TOWN OF PORTSMOUTH, BELONGING TO THE HEIRS OF THE REV. MR. JOHN EMERSON, DECEASED."

- NOTES.**
1. OWNERS OF RECORD:
TAX MAP 111 LOT 29:
TED W. & SUSAN L. ALEX
R.C.R.D. BOOK 2038 PAGE 2570
DATED AUGUST 14, 1992
TAX MAP 111 LOT 30:
KRISTIN ALEXANDER
R.C.R.D. BOOK 5164 PAGE 2429
DATED APRIL 21, 2010
 2. TOTAL PARCEL AREAS:
TAX MAP 111 LOT 29:
5,250 Square Feet OR 0.12 Acres
TAX MAP 111 LOT 30:
7,670 Square Feet OR 0.18 Acres
 3. THE BASIS OF BEARING IS PER PLAN REFERENCE #1.
 4. MT VERNON RIGHT OF WAY IS 30 FEET IN WIDTH BASED UPON PLAN REFERENCE #3.
 5. REFERENCE IS MADE TO A QUITCLAIM DEED BETWEEN JOHN & HILMA JOHNSON AND LAUREL & LESLIE WALTER DATED SEPTEMBER 12, 1986 AND RECORDED AT THE R.C.R.D. AS BOOK 2630 PAGE 1609. SAID DEED'S PURPOSE WAS TO ESTABLISH AND CONFIRM THE COMMON BOUNDARY LINE BETWEEN TAX MAP 111 LOTS 29 & 30 & THAT THE SAID COMMON BOUNDARY LINE IS SITUATE SOUTHERLY OF THE GARAGE AND DRIVEWAY SITUATE UPON SAID WALTER LAND (TAX MAP 111 LOT 30).
 6. BASED UPON A 1978 AERIAL PHOTO BY COL-EAST, INC. (WHICH PHOTO SHOWS THE DRIVEWAY AND GARAGE AROUND THE TIME OF THE AGREEMENT), IT IS THIS FIRM'S OPINION THAT THE PROPERTY LINE WAS INTENDED TO RUN ALONG THE EAVES OF THE GARAGE ALLOWING FOR ACCESS OVER THE DRIVEWAY AND INTO THE GARAGE, 6 FEET FROM THE EXTERIOR WALL OF THE GARAGE PREVENTS THE DOORS FROM BEING UTILIZED.



STANDARD PROPERTY SURVEY
FOR PROPERTIES AT
50 & 64 Mount Vernon Street
Portsmouth, Rockingham County, New Hampshire
OWNED BY
Ted W. Alex **Kristin Alexander**
Susan L. Alex **64 Mount Vernon Street**
50 Mount Vernon Street
Portsmouth, NH 03801

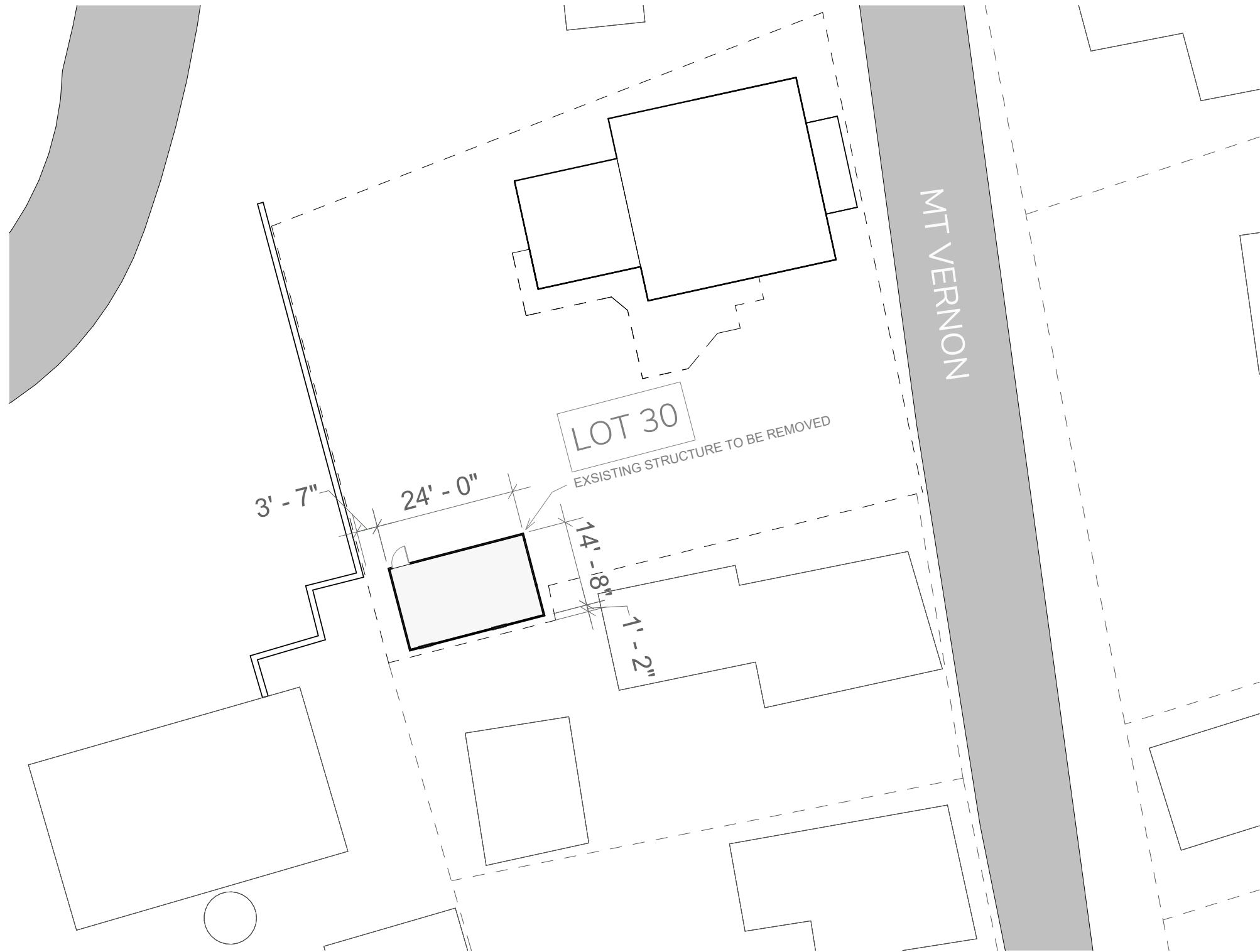
CERTIFICATION

"I certify that this survey plot is not a subdivision pursuant to this title and that the lines of streets and ways shown are those of public or private streets or ways already established and that no new ways are shown."
I further certify that this survey conforms to the ethics and standards set forth by the New Hampshire Land Surveyors Association for a category 1, condition 1 survey.
Raymond A. Bisson
Raymond A. Bisson, L.L.S., P.E. July 15, 2011

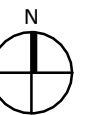
REV.	DATE	STATUS	BY	CHKD	APPD.
B	7/8/11	ADDED MONUMENTS SET	RAB	RAB	PLA
A	6/22/11	REVISED PROPERTY LINE & ADDED NOTE #6	RAB	RAB	PLA

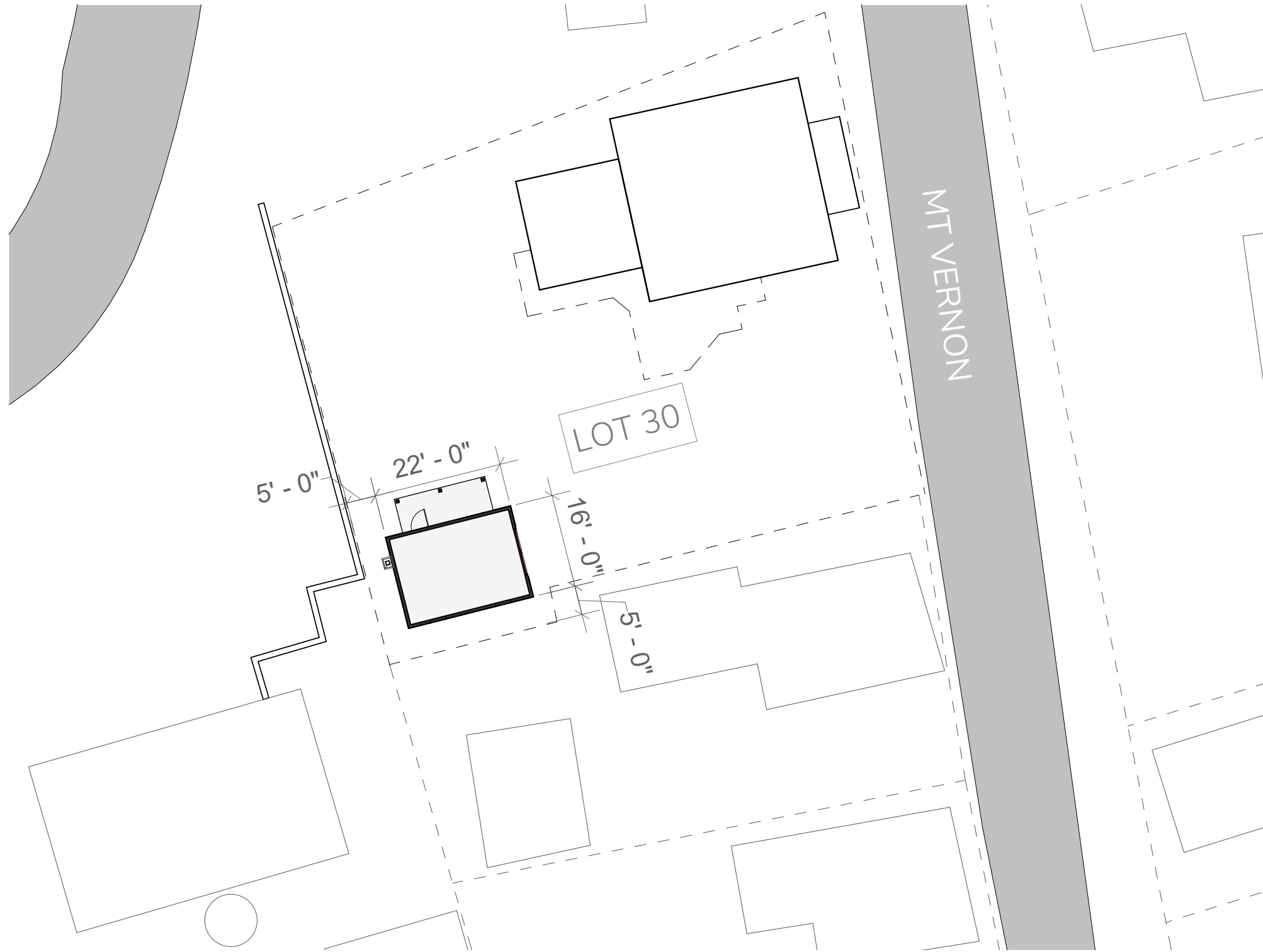
North
EASTERLY SURVEYING, Inc.
SURVEYORS IN N.H. & MAINE
(207) 438-0333
191 STATE ROAD, SUITE #1
KITTYRYE, MAINE 03904
SCALE: 1" = 10'
DRAWING NO: 11640 - 11645 Property
FIELD BOOK NO: "Portsmouth, NH #12"
DATE: 6/7/11
SHEET: 1 OF 1
DRAWN BY: R.A.B.
CHECKED BY: P.L.A.
Tax Map 111 Lots 29 & 30



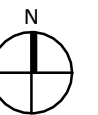


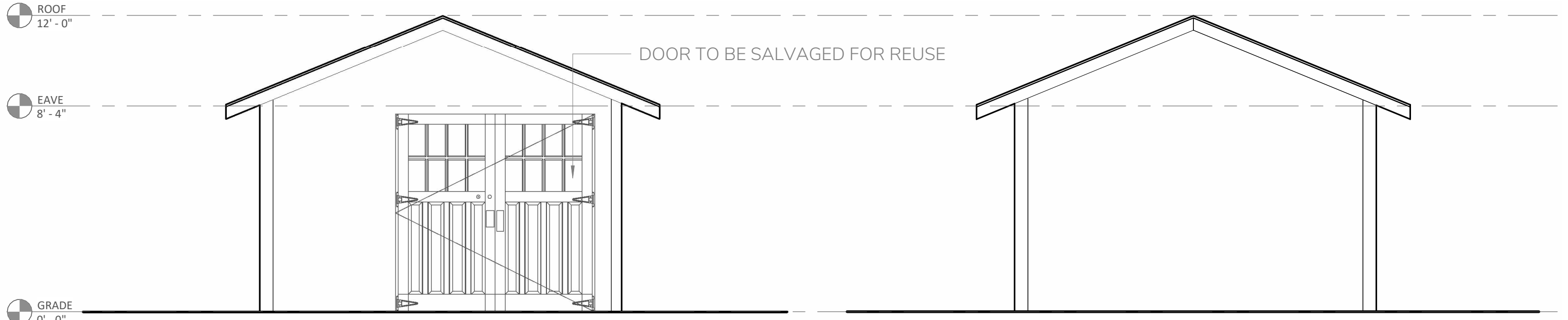
EXISTING SITE PLAN
1/16" = 1'-0"





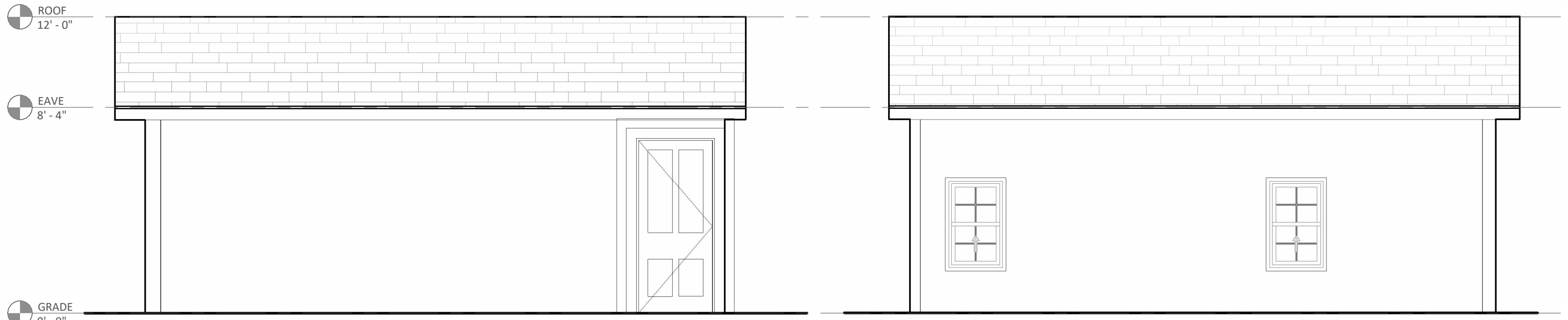
PROPOSED SITE PLAN
1/16" = 1'-0"





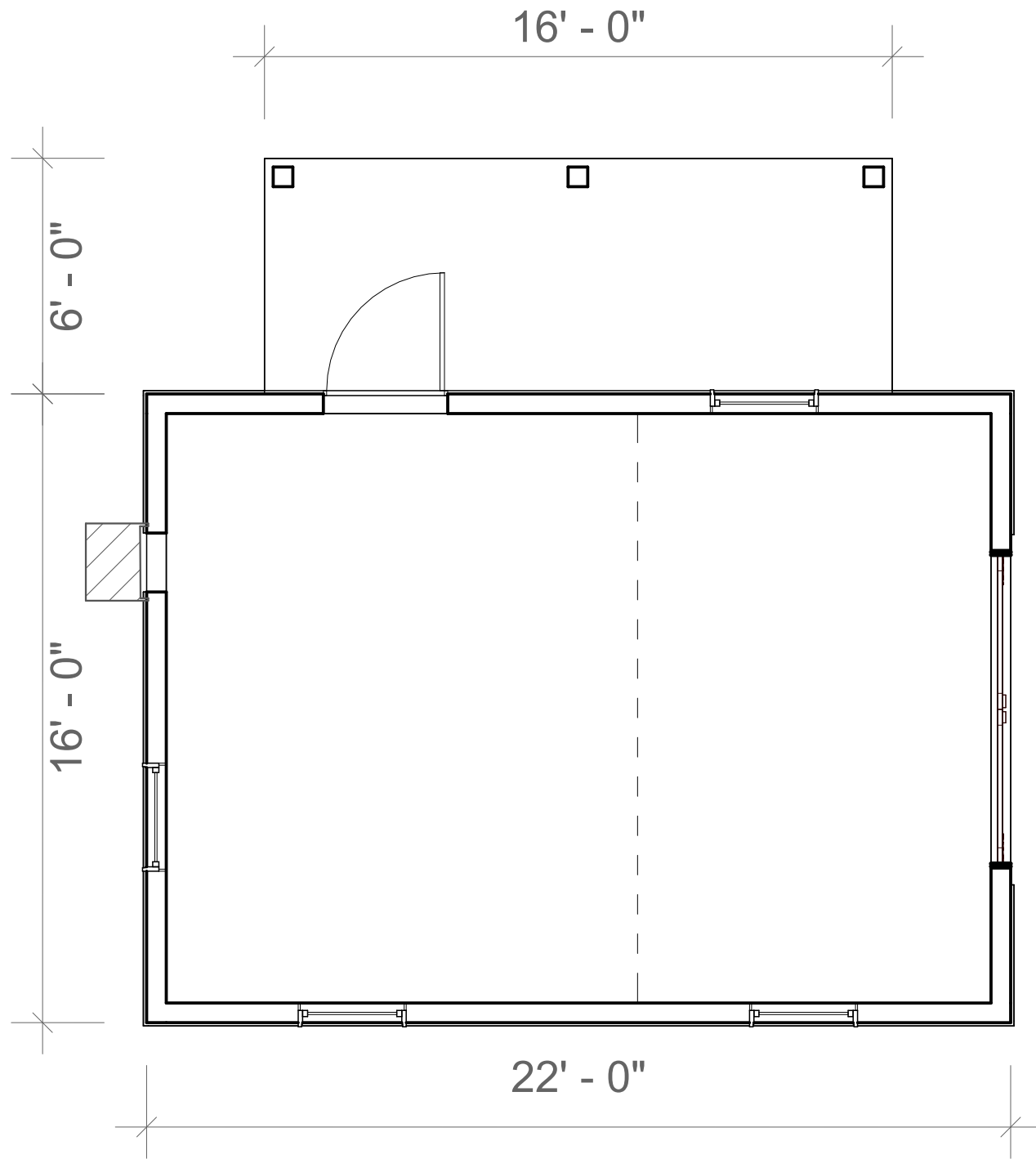
EXISTING EAST ELEVATION
1/4" = 1'-0"

EXISTING WEST ELEVATION
1/4" = 1'-0"

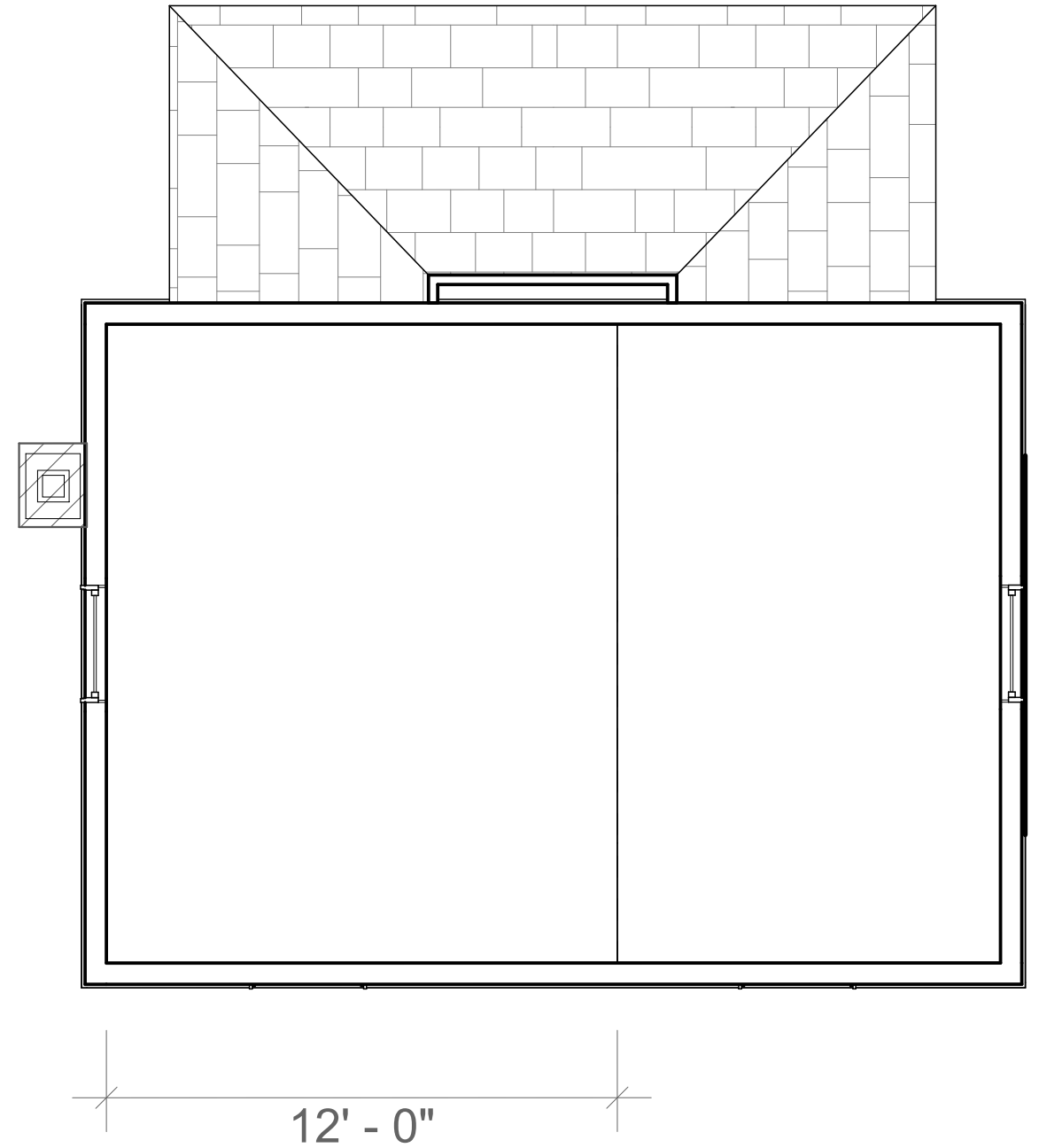


EXISTING NORTH ELEVATION
1/4" = 1'-0"

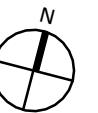
EXISTING SOUTH ELEVATION
1/4" = 1'-0"



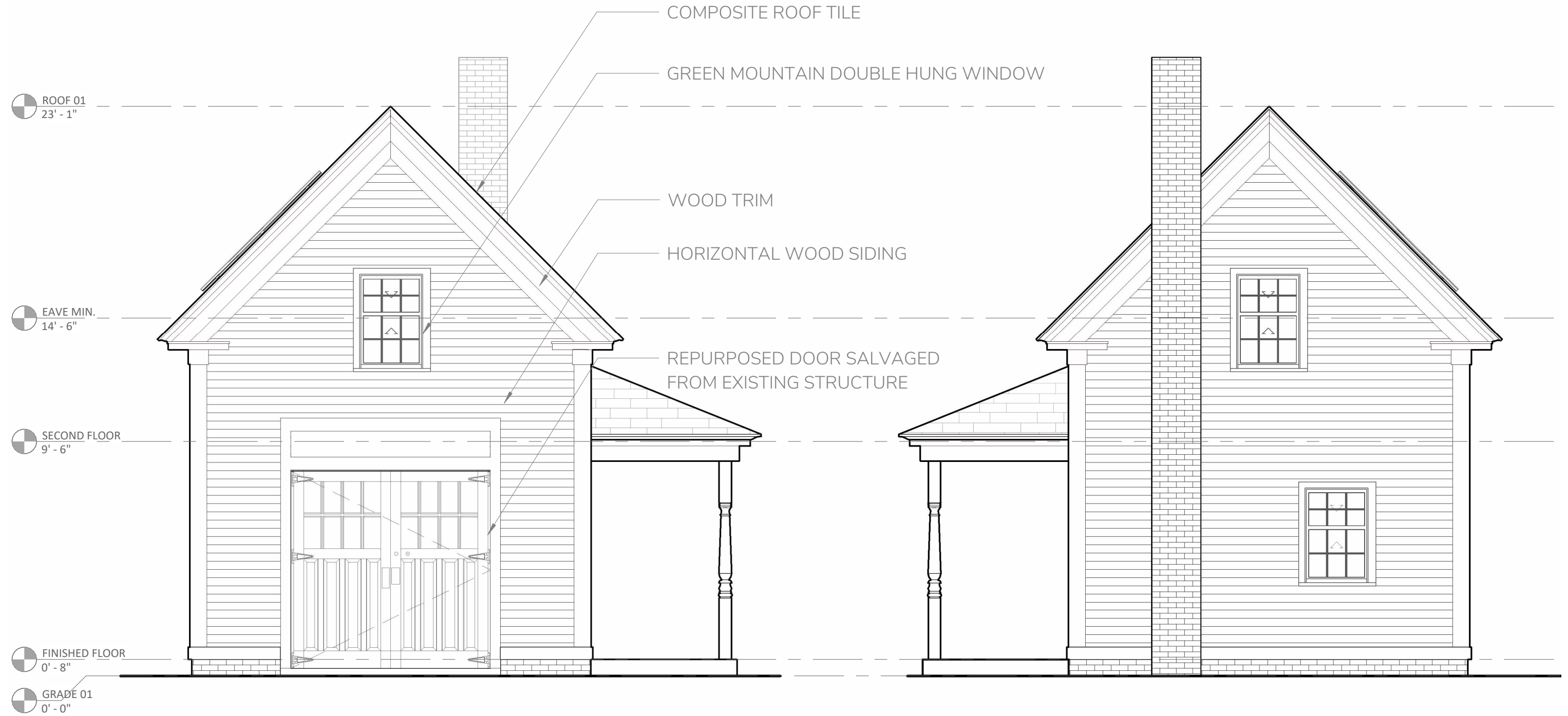
PROPOSED FIRST FLOOR PLAN
1/4" = 1'-0"



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



PROPOSED EAST + WEST ELEVATION



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

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



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

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



East Facade



West Facade



Existing Shed to Be Demolished
North Facade



South Facade

III. NEW BUSINESS

D. The request of **O’Brien Family Revocable Trust of 2018 (Owner)**, for property located at **3 Moebus Terrace** whereas relief is needed demolish the existing structure and construct a new primary structure which requires the following: 1) Variance from Section 10.521 to allow a) 10,823 square feet of lot area where 15,000 square feet is required; and b) 10,823 square feet of lot area per dwelling unit where 15,000 square feet is required. Said property is located on Assessor Map 207 Lot 21 and lies within the Single Residence B (SRB) District. (LU-24-40)

Existing & Proposed Conditions

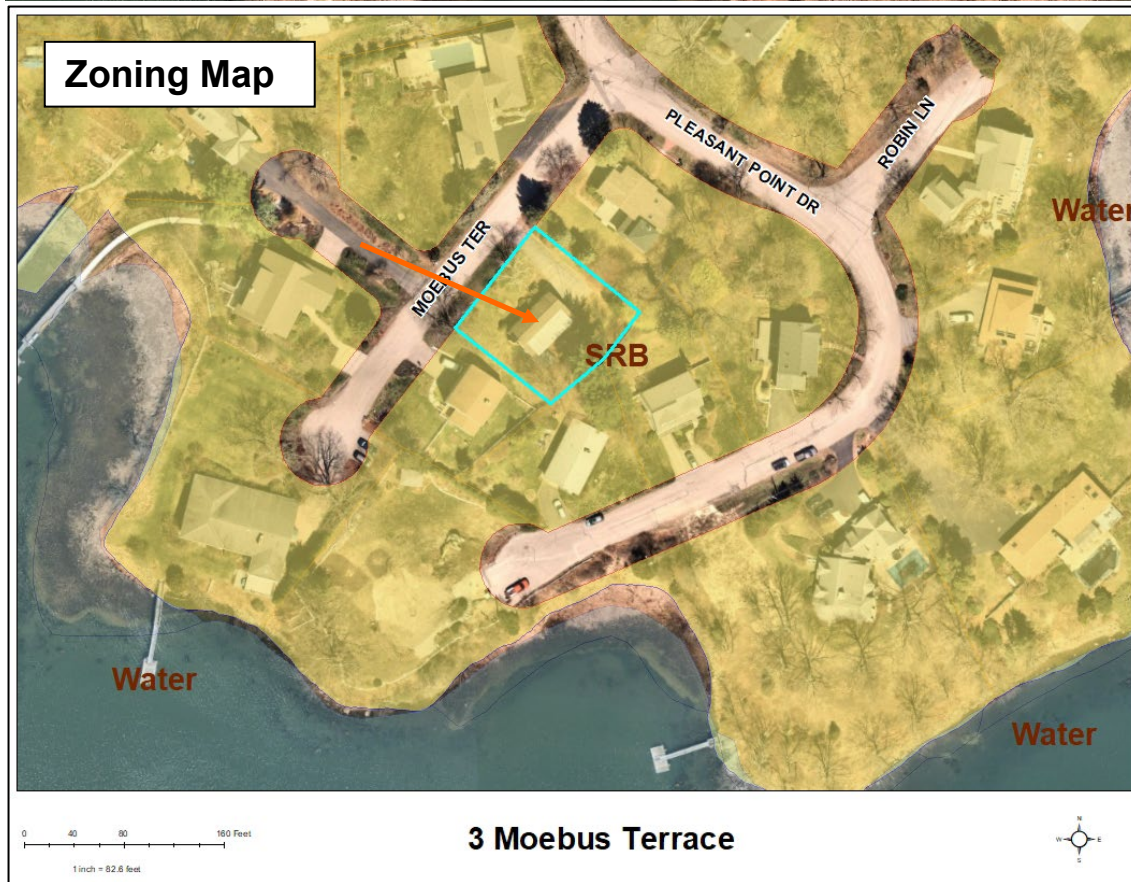
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family dwelling	*Demolish the existing structure and build new primary structure	Primarily residential
<u>Lot area (sq. ft.):</u>	10,823	10,823	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	10,823	10,823	15,000 min.
<u>Street Frontage (ft.):</u>	101	101	100 min.
<u>Lot depth (ft.):</u>	103	103	100 min.
<u>Front Yard (ft.):</u>	35.7	28.4	25.7 (Per 10.516.10) min.
<u>Left Yard (ft.):</u>	35.8	14.1	10 min.
<u>Right Yard (ft.):</u>	14.9	18.4	10 min.
<u>Rear Yard (ft.):</u>	20.8	33.5	30 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	14.3	19.8	20 max.
<u>Open Space Coverage (%):</u>	67.9	62.2	40 min.
<u>Parking</u>	2	2	2
<u>Estimated Age of Structure:</u>	1970	Variance request(s) shown in red.	

*Demolition of the existing structure will create a vacant lot which requires conformance with section 10.311

Other Permits/Approvals Required

- Building Permit

Neighborhood Context



Previous Board of Adjustment Actions

No previous history found.

Planning Department Comments

The applicant is requesting relief to demolish the existing structure and construct a new primary structure on an undersized lot. Relief for the undersized lot is required per section 10.311 of the Zoning Ordinance. Section provided below for your convenience.

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

Variance Review Criteria

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

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

AND

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

OR

 - (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 O'BRIEN FAMILY REVOCABLE TRUST
3 MOEBUS TERRACE, PORTSMOUTH
Map 207, Lot 21

APPLICANT'S NARRATIVE

I. **THE PROPERTY:**

The applicants, Kevin and Sandy O'Brien, acquired the property located at 3 Moebus Terrace, which consists of a single family dwelling with attached garage, last fall, after selling their previous home on Brigham Lane in Portsmouth, where they resided for over fifteen years. The property is in the SRB zone and is non-conforming as to lot area and lot area per dwelling unit. An existing elevated deck encroaches into the rear yard setback.

According to city tax records, the existing dwelling dates back to 1970. The dwelling is functionally obsolete. It has substandard insulation, unsafe and non-compliant windows, and mold. The existing dwelling is served by a private septic system in proximity to Little Harbor.

The O'Briens have considered carefully whether or not to renovate and remodel the existing structure to address these deficiencies, however, the cost to do so and appropriately modernize the dwelling would be prohibitive. Accordingly, we are proposing to raze the existing dwelling structure and replace it with a new dwelling which will meet all dimensional requirements under the zoning ordinance except for the pre-existing lot area deficiency, which cannot be remedied.

The existing elevated deck is approximately 8 feet high and encroaches into the 30 foot rear yard setback. By virtue of its height and the surrounding topography of the neighborhood, the deck significantly impacts the privacy of the property to the rear. The project will result in the deck being removed and the rear yard setback requirement being fully observed. The project will also result in the discontinuance of the existing septic system as the new home will be tied into city sewer.

The project requires relief from Section 10.521 – Table of Dimensional Standards, to permit lot area and lot area per dwelling of 10,823 square feet where 15,000 square feet is the minimum required. All other dimensional requirements of the ordinance are satisfied.¹

We have submitted herewith a site plan and building plans which demonstrate the applicants' preferred building design elements. While the applicants are committed to this design, it remains possible that the exact location and dimensions of some of the proposed improvements may change slightly as the proposal moves forward. For example, as the site plan notes, the final configuration of the proposed patio and front

¹ The front yard setback is determined by averaging the existing alignments of the principal buildings on the abutting properties under section 10.516.10, which would work out to a required 26 foot front yard.

steps will be determined in the field. Nevertheless, the project will meet all applicable setback, height and lot coverage requirements.

II. CRITERIA:

The applicants believe the within Application meets the criteria necessary for the Board to grant the requested variance.

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 pursuant to Malachy Glen Associates v. Chichester, 152 NH 102 (2007). 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 essentially residential characteristics of the neighborhood would not be altered by this project. The existing structure and lot are already non-compliant with the lot area and the identical non-conformity resulting from this project will in no way compromise the neighborhood.

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, but would, in fact, be enhanced as a result of the elimination of the existing septic system and the removal of the existing, non-compliant elevated deck.

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.

In this case, there is no benefit to the public in denying the variances that is not outweighed by the hardship upon the owner. There is no way for the applicants to comply with the lot area requirements given the size of the lot. Accordingly, the loss to the applicant clearly outweighs any gain to the public if the applicants were required to conform to the ordinance.

The values of surrounding properties will not be diminished by granting the variance. The proposal will result in a brand new, code-compliant dwelling. This will increase the value of the applicants’ property and those around it. The property will become fully compliant with the rear yard setback by eliminating the raised deck facing the neighbor to the rear, which currently is the property most affected by the existing

setback nonconformities. The values of surrounding properties will not be negatively affected in any way.

There are special conditions associated with the property which prevent the proper enjoyment of the property under the strict terms of the zoning ordinance and thus constitute unnecessary hardship. The property is non-conforming as to lot area, lot area per dwelling, and rear yard setback. Any residential development of this property would require relief from the lot area requirements.

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

There is no fair and substantial relationship between the purpose of the ordinance as it is applied to this particular property. The purpose of the lot area requirements is to prevent overcrowding of land. There has been a single family dwelling on this lot since at least 1970 without any negative impacts whatsoever.

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 lot area requirements and their application to this property.

III. Conclusion.

For the foregoing reasons, the applicants respectfully request the Board grant the variances as requested and advertised.

Respectfully submitted,

Dated: March 26, 2024

John K. Bosen
John K. Bosen, Esquire



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

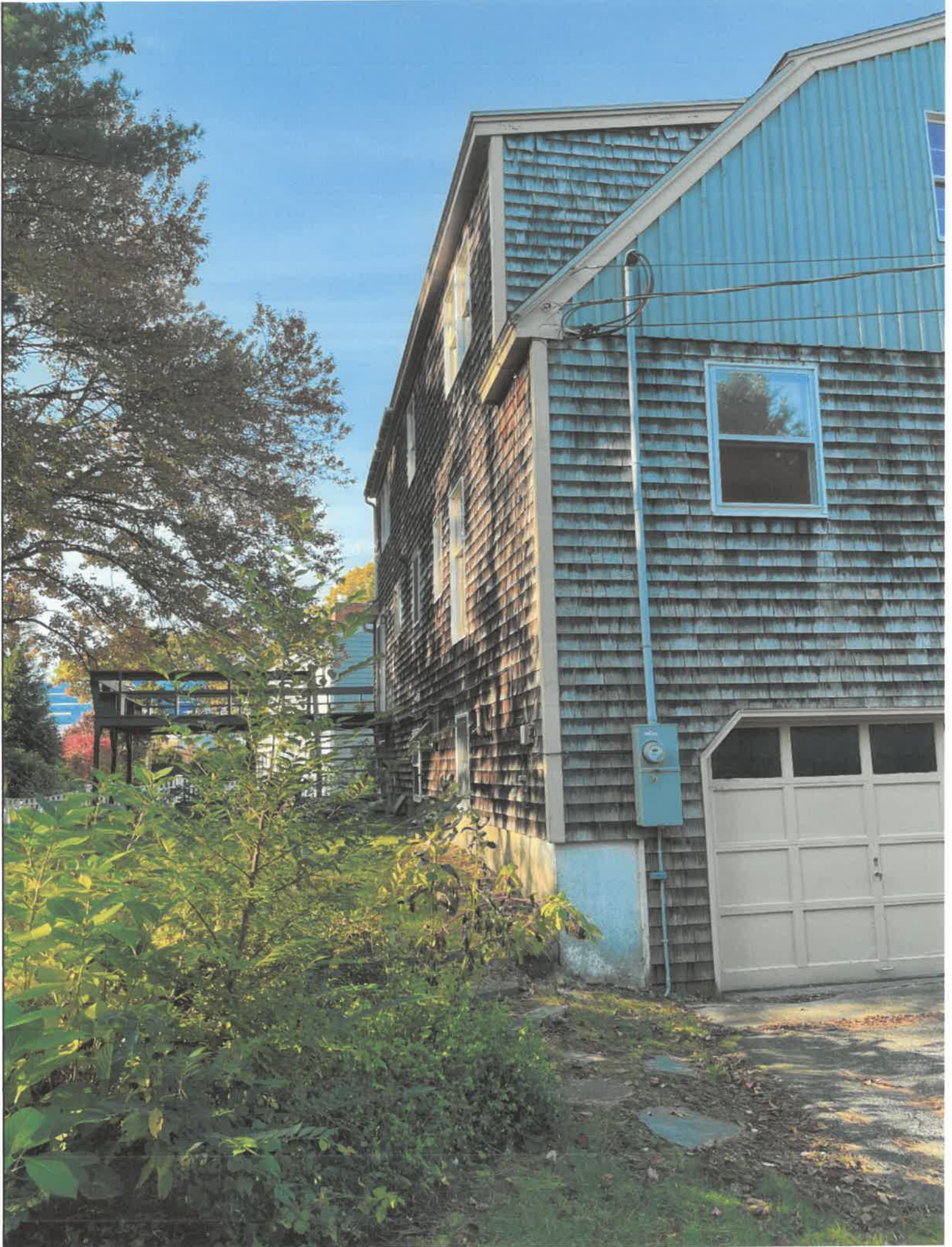
City of Portsmouth, NH makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.

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

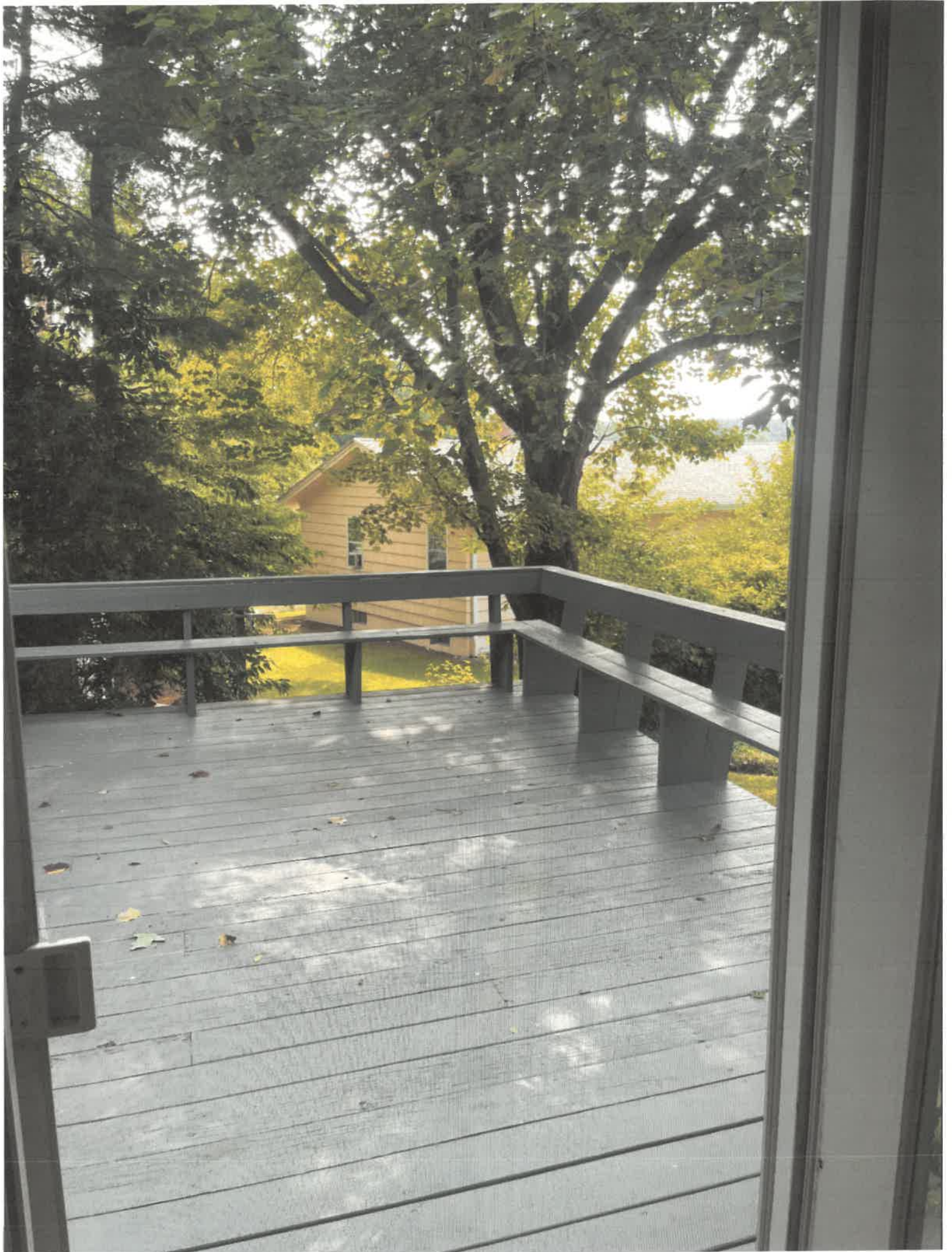
Print map scale is approximate.
Critical layout or measurement
activities should not be done using
this resource.













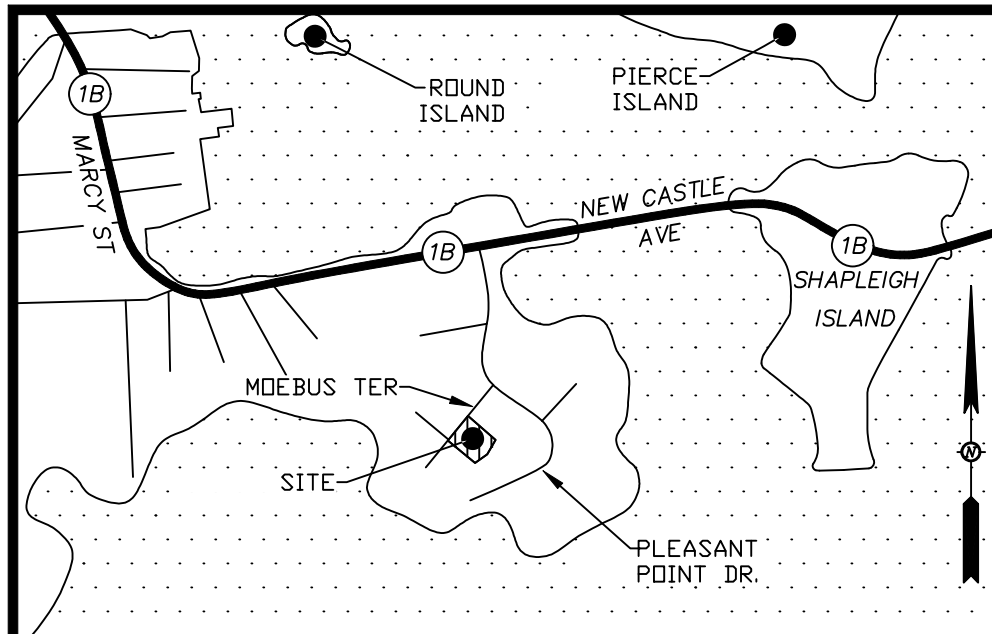




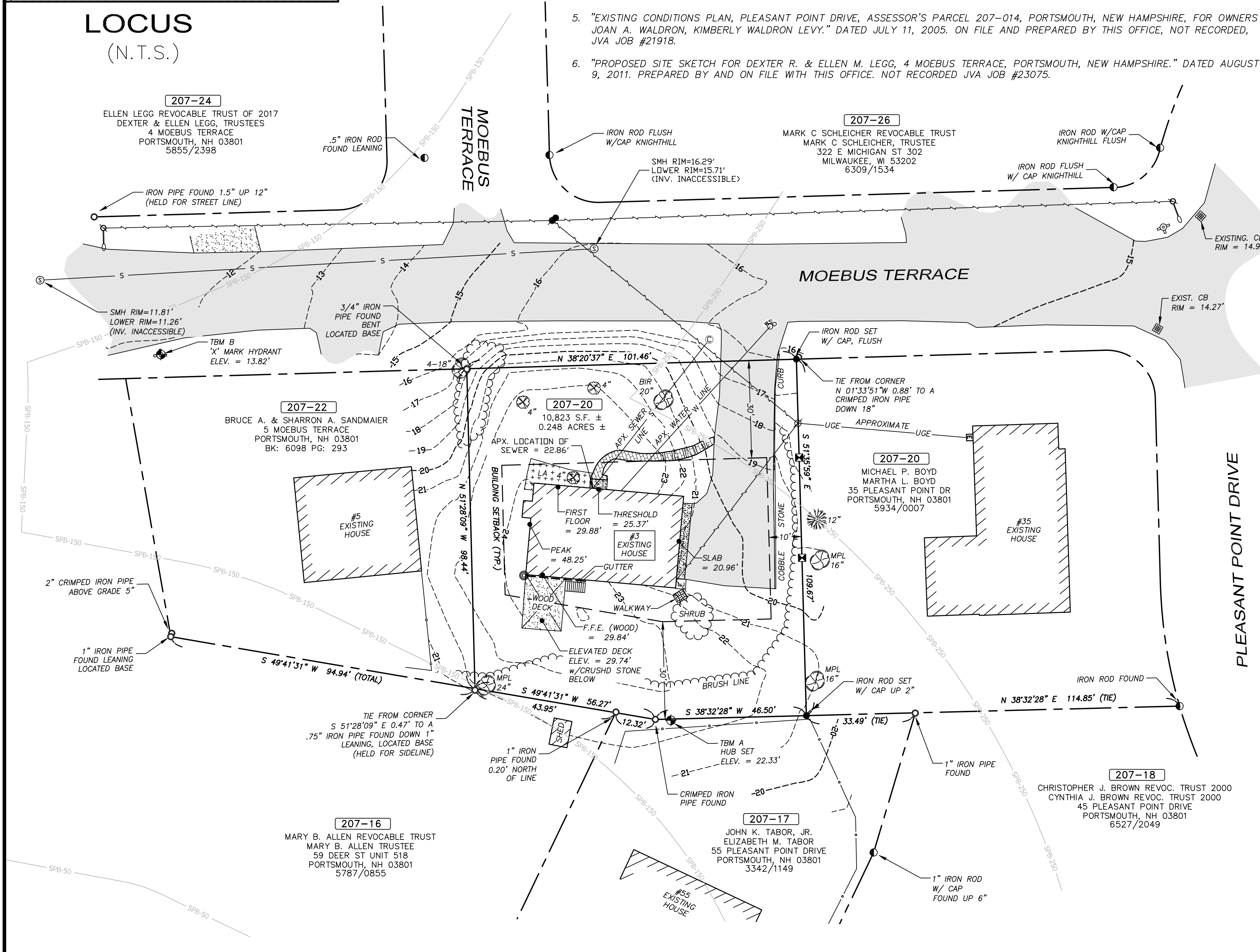








LOCUS
(N.T.S.)

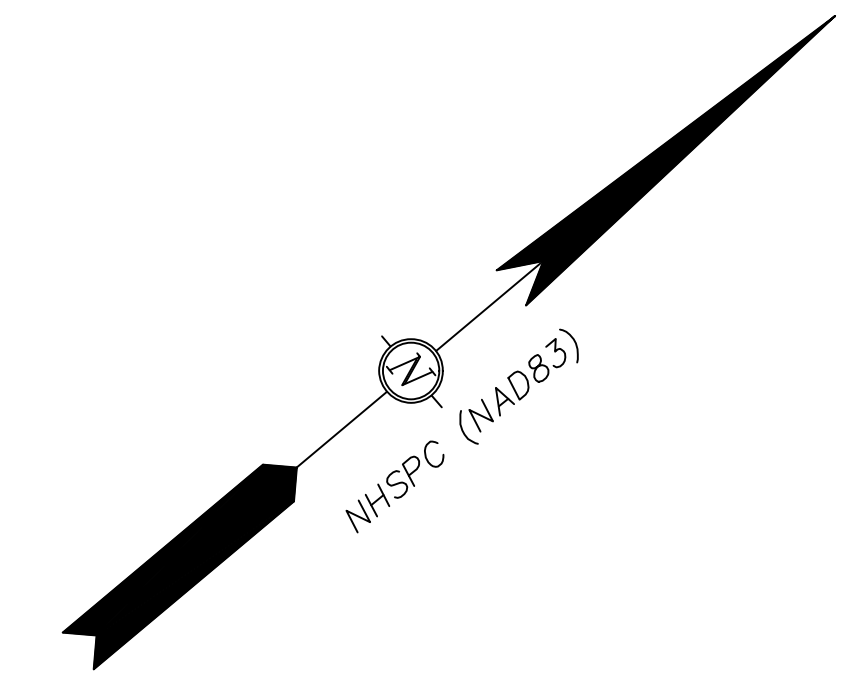


REFERENCE PLANS:

- "PLAN OF LOTS, NEWCASTLE AVENUE, PORTSMOUTH NH, FOR ROBERT A. MOEBUS & HENRY C. SIVK." DATED OCT. 1952 AND PREPARED BY JOHN W. DURGIN CIVIL ENGINEERS RCRD PLAN #02160-B.
- "LOT LINE ADJUSTMENT PLAN, FOR LAND OWNED BY STEPHEN J. LITTLE, KNOWN AS TAX MAP 207 LOT 25, LOCATED ALONG 2 MOEBUS TERRACE, & FOR ADJOINING LAND OWNED BY DONALD H. SARGENT LIVING TRUST, KNOWN AS TAX MAP 207 LOT 26, LOCATED ALONG 33 PLEASANT POINT DRIVE, PORTSMOUTH, N.H. COUNTY OF ROCKINGHAM." LAST REVISED OCTOBER 14, 2008 AND PREPARED BY KNIGHT HILL LAND SURVEYING SERVICES INC. RCRD PLAN #D-35680.
- "PLAN OF LOTS, NEWCASTLE AVENUE, PORTSMOUTH NH, FOR ROBERT A. MOEBUS & HENRY C. SIVK." LAST REVISED JULY 1955 PREPARED BY JOHN W. DURGIN CIVIL ENGINEERS. NOT RECORDED, AND ON FILE WITH THIS OFFICE. JWD FN: 2239, PN: 7187.
- "PLAN OF LOT, PLEASANT POINT DRIVE, PORTSMOUTH, N.H." DATED JULY 1970 AND PREPARED BY JOHN W. DURGIN, CIVIL ENGINEERS. NOT RECORDED AND ON FILE WITH THIS OFFICE. JWD FN: 2239.
- FIELD NOTES, WORKSHEETS, AND PLANS BY JOHN W. DURGIN. NOT RECORDED AND ON FILE WITH THIS OFFICE. JWD FN: 2239.
- "EXISTING CONDITIONS PLAN, PLEASANT POINT DRIVE, ASSESSOR'S PARCEL 207-014, PORTSMOUTH, NEW HAMPSHIRE, FOR OWNERS JOAN A. WALDRON, KIMBERLY WALDRON LEVY." DATED JULY 11, 2005. ON FILE AND PREPARED BY THIS OFFICE, NOT RECORDED, JVA JOB #21918.
- "PROPOSED SITE SKETCH FOR DEXTER R. & ELLEN M. LEGG, 4 MOEBUS TERRACE, PORTSMOUTH, NEW HAMPSHIRE." DATED AUGUST 9, 2011. PREPARED BY AND ON FILE WITH THIS OFFICE. NOT RECORDED JVA JOB #23075.

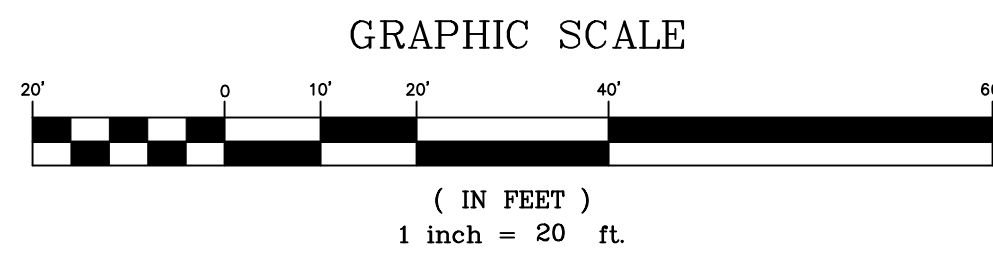
NOTES:

- OWNER OF RECORD.....O'BRIEN FAMILY REVOCABLE TRUST OF 2018
PAUL K. & SANDRA C. O'BRIEN TRUSTEES
ADDRESS.....20 BRIGHAM LANE PORTSMOUTH, NH 03801
DEED REFERENCE.....BK: 6510 PG: 2487
TAX SHEET / LOT.....207/21
- ZONED:SINGLE RESIDENCE B (SRB)
MINIMUM LOT AREA15,000 S.F. FRONT YARD SETBACK30'
FRONTAGE100' SIDE YARD SETBACK10'
SLOPED ROOF HEIGHT ...35' REAR YARD SETBACK30'
BUILDING COVERAGE20%
- THE LOCATION OF ALL UNDERGROUND UTILITIES SHOWN HEREON ARE APPROXIMATE AND ARE BASED UPON THE FIELD LOCATION OF ALL ABOVE GROUND VISIBLE STRUCTURES (IE CATCH BASINS, MANHOLES, WATER GATES ETC.) AND INFORMATION COMPILED FROM PLANS PROVIDED BY UTILITY COMPANIES AND GOVERNMENTAL AGENCIES. ALL CONTRACTORS SHOULD NOTIFY, IN WRITING, SAID AGENCIES PRIOR TO ANY EXCAVATION WORK AND CALL DIG-SAFE @ 1-888-DIG-SAFE. THE CITY OF PORTSMOUTH DOES NOT HAVE MUCH INFORMATION ON MOEBUS TERRACE, AND WAS UNABLE TO PROVED ANY CERTAINTY TO THE EXISTING LINES.
- HORIZONTAL DATUM: NAD83, VERTICAL DATUM: NAVD88. ESTABLISHED BY SURVEY GRADE GPS OBSERVATION AND PROCESSED BY OPUS.
- THE PARCEL SHOWN HEREON LIES WITHIN ZONE X (AREA OF MINIMAL FLOOD HAZARD) AS IDENTIFIED ON FLOOD INSURANCE RATE MAP, ROCKINGHAM COUNTY, NEW HAMPSHIRE, MAP NUMBER 33015C0278F, EFFECTIVE DATE 1/29/2021 BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY.
- CONTRACTOR TO VERIFY SITE BENCHMARKS BY LEVELING BETWEEN 2 BENCHMARKS PRIOR TO THE ESTABLISHMENT OF ANY GRADES OR ELEVATIONS. DISCREPANCIES ARE TO BE REPORTED TO JAMES VERRA AND ASSOCIATES, INC.
- SHORELAND PROTECTION BUFFER SHOWN BASED ON AERIAL PHOTOGRAPHY FROM GRANIT, AND IS NOT THE RESULT OF A FIELD SURVEY BY THIS OFFICE.



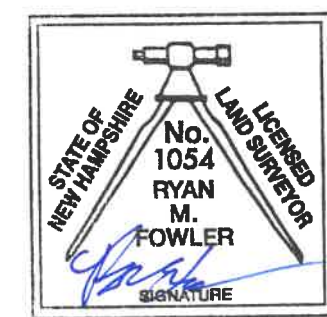
LEGEND:

- IRON REBAR SET
- IRON ROD FOUND
- IRON PIPE FOUND
- WOOD FENCE
- ▒ BRICK
- CONCRETE
- UTILITY POLE
- GUY
- OVERHEAD WIRES
- UTILITY POLE WITH ARM & LIGHT
- ⊞ ELECTRIC METER
- RCRD ROCKINGHAM COUNTY REGISTRY OF DEEDS
- 101-03 TAX SHEET / LOT NO.
- LA LANDSCAPED AREA
- CATCH BASIN
- SEWER MANHOLE
- W WATER
- S SEWER
- WATER SHUT OFF VALVE
- HYDRANT
- DECIDUOUS TREE
- CONIFEROUS TREE
- STONE WALL
- ⊕ TEMPORARY BENCHMARK
- SHRUB
- CLEANOUT
- SPB SHORELAND PROTECTION BUFFER
- BIR BIRCH
- MPL MAPLE
- UGE UNDERGROUND ELECTRIC



SURVEYOR'S CERTIFICATION

"I HEREBY CERTIFY THAT THIS SURVEY AND PLAT WERE PREPARED BY ME OR THOSE UNDER MY DIRECT SUPERVISION AND IS THE RESULT OF AN ACTUAL FIELD SURVEY MADE ON THE GROUND AND HAS AN ERROR OF CLOSURE OF GREATER ACCURACY THAN ONE PART IN FIFTEEN THOUSAND (1:15,000)."



3/20/2024
DATE

LICENSED LAND SURVEYOR

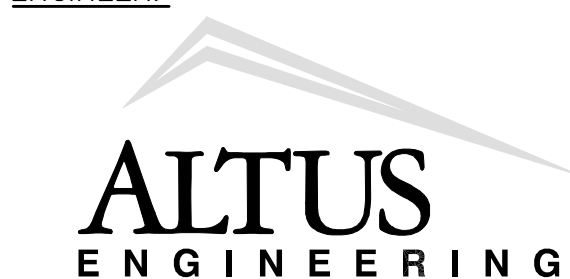
SURVEYOR:



101 SHATTUCK WAY, SUITE 8,
NEWINGTON, N.H., 03801-7876
603-436-3557

JOB NO: 23-2099

ENGINEER:



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

ISSUED FOR:

ZBA SUBMITTAL

ISSUE DATE:

3/20/24

REVISIONS

NO.	DESCRIPTION	BY	DATE
1			

DRAWN BY:

TAW/RMF

APPROVED BY:

RMF

DRAWING FILE:

23-2099EXCON.DWG

SCALE:

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

APPLICANT:

O'BRIEN FAMILY TRUST OF 2018
TRUSTEES
PAUL K. & SANDRA C. O'BRIEN
20 BRIGHAM LANE
PORTSMOUTH, NH 03801

OWNER:

O'BRIEN FAMILY TRUST OF 2018
TRUSTEES
PAUL K. & SANDRA C. O'BRIEN
20 BRIGHAM LANE
PORTSMOUTH, NH 03801

PROJECT:

**3 MOEBUS
TERRACE
TAX MAP 207
LOT 21
PORTSMOUTH, NH**

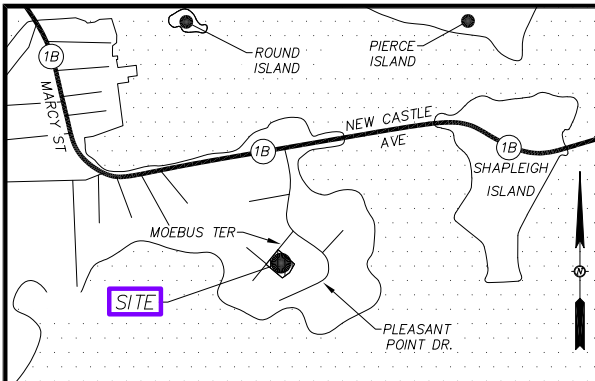
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**EXISTING
CONDITIONS
PLAN**

SHEET NUMBER:

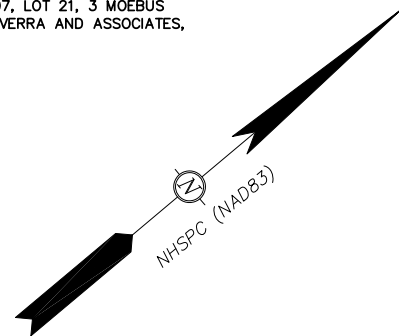
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ALTUS JOB#5503



REFERENCE PLAN

"EXISTING CONDITIONS PLAN, TAX MAP 207, LOT 21, 3 MOEBUS TERRACE, PORTSMOUTH, NH", BY JAMES VERRA AND ASSOCIATES, INC., DATED DECEMBER 6, 2023.



ZONING SUMMARY

ZONE: SRB (SINGLE RESIDENCE B) – EXISTING RESIDENCE TO BE REPLACED WITH SAME
 EXISTING LOT AREA: 0.248 AC ± (10,823 S.F. ±)

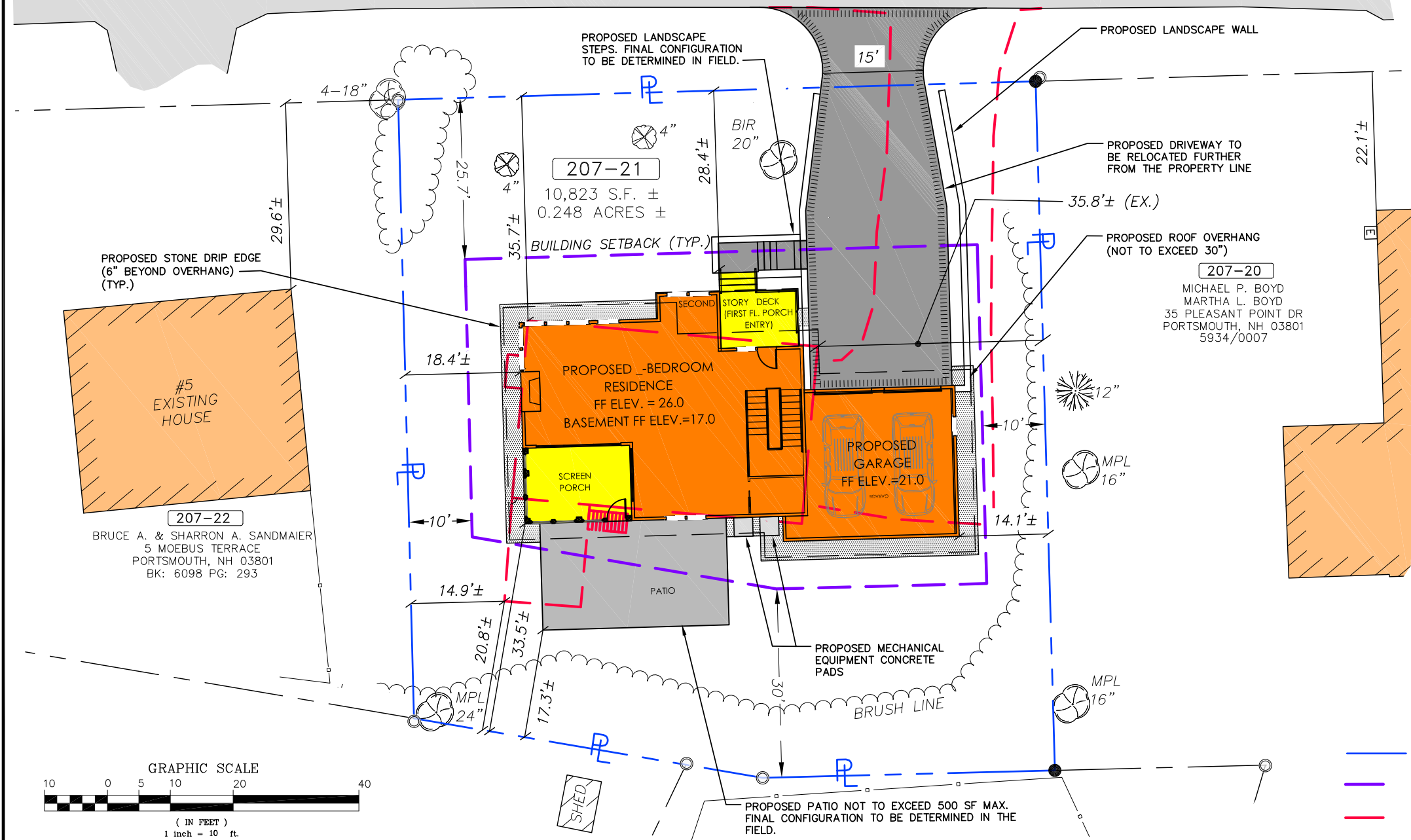
DIMENSIONAL REQUIREMENTS

	REQUIRED	EXISTING	PROPOSED
MIN. LOT AREA:	15,000 S.F.	10,823 S.F. ±	10,823 S.F. ±
MIN. LOT AREA PER DWELLING UNIT:	15,000 S.F.	10,823 S.F. ±	10,823 S.F. ± **
DWELLING UNITS:	–	1	1
MIN. STREET FRONTAGE:	100'	101'+	101'+
MIN. LOT DEPTH:	100'	103.5' ± (AVERAGE)	103.5' ± (AVERAGE)
FRONT SETBACK: *	30' (25.7')	35.7' ±	28.4' ± (NEW STEPS)
SIDE SETBACK (LEFT):	10'	35.8' ±	14.1' ±
SIDE SETBACK (RIGHT):	10'	14.9' ±	18.4' ±
REAR SETBACK:	30'	20.8' ±	33.5' ±
MAX. HEIGHT (SLOPED ROOF):	35'	<35'	<35' (PROP.)
MAX. BUILDING COVERAGE:	20 %	14.3 % ± (INCL. DECK)	19.8 % ± (INCL. DECK, PORCH, STEPS)
MIN. OPEN SPACE:	40 %	67.9 % ±	62.2 % ±

* FRONT SETBACK CAN BE THE AVERAGE OF ABUTTING PROPERTIES (29.6' + 22.1' / 2 = 25.7')
 ** "STEPS/DECK" ARE ALLOWED 5' INTO THE FRONT SETBACK. THE PROP. STEPS MEET THIS REQ. WITH ADJUSTED SETBACK BASED ON AVERAGE ADJACENT FRONT SETBACKS
 ** EXISTING LOT OF RECORD

LOCUS (N.T.S.)

MOEBUS TERRACE

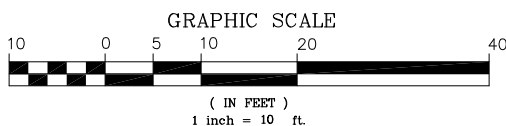


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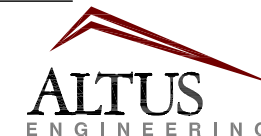
- THE SOLE PURPOSE OF THIS PLAN IS TO OBTAIN A BOARD OF ADJUSTMENT SITE PLAN APPROVAL TO REPLACE THE EXISTING RESIDENCE WITH A SLIGHTLY LARGER RESIDENCE WHILE CORRECTING A SETBACK DEFICIENCY (DECK TO BE REMOVED).
- THERE ARE NO WETLANDS ON THE PROPERTY.
- THE MAJORITY OF THE PARCEL IS LOCATED IN THE 150-FOOT TO 250-FOOT PORTION OF THE NHDES SHORELAND PROTECTION BUFFER.
- BUILDING COVERAGE CALCULATIONS:
 EX. RESIDENCE (1,325 SF±) + EX. DECK (225 SF±) = 1,550 SF±
 1,550 SF ± / 10,823 SF = 14.3% ±
 PROP. RESIDENCE (1,805 SF±) + PROP. FR. PORCH & STAIRS (130 SF±) + PROP. SCREEN PORCH (205 SF±) = 2,140 SF±
 2,140 SF ± / 10,823 SF = 19.8% ± (FLEXIBILITY OF 25 SF)
- IMPERVIOUS COVERAGE/OPEN SPACE CALCULATIONS:
 EX. BLDG/DECK (1,550 SF ±) + DRIVEWAY (1,700 SF±) + FRONT WALK & STEP (120 SF±) + COBBLESTONE CURB (30 SF±) + EX. WALK & CONCRETE SLAB (72 SF±) = 3,472 SF± = 32.1%
 THEREFORE OPEN SPACE IS 67.9%
 PROP. BLDG/DECK/PORCHES (2,140 SF±) + PROP. DRIVEWAY (1,265 SF±) + PROP. PATIO (500 SF±) + CONC. HVAC PADS (20 SF±) + RETAINING WALL/STONE/PAVER STEPS (150 SF±) = 4,075 SF± = 37.8% ±
 THEREFORE 62.2% ± OPEN SPACE

LEGEND:

- IRON REBAR SET
- IRON ROD FOUND
- IRON PIPE FOUND
- WOOD FENCE
- ▒ BRICK
- ▒ CONCRETE
- RCRD ROCKINGHAM COUNTY REGISTRY OF DEEDS
- 101-03 TAX SHEET / LOT NO.
- LA LANDSCAPED AREA
- ⊗ DECIDUOUS TREE
- ⊗ CONIFEROUS TREE
- TREE LINE
- SHRUB
- SPB SHORELAND PROTECTION BUFFER
- BIR BIRCH
- MPL MAPLE
- PROPERTY LINE
- BUILDING SETBACK LINE
- EXISTING BUILDING (TBR)



ENGINEER:



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

ISSUED FOR:

APPROVAL

ISSUE DATE:

MARCH 25, 2024

REVISIONS

NO.	DESCRIPTION	BY	DATE
0	INITIAL SUBMISSION	EDW	03/25/24

DRAWN BY:

RLH

APPROVED BY:

EDW

DRAWING FILE:

5503.DWG

SCALE:

22" x 34" - 1" = 10'
 11" x 17" - 1" = 20'

APPLICANT:

O'BRIEN FAMILY TRUST OF 2018 TRUSTEES
 PAUL K. & SANDRA C. O'BRIEN
 20 BRIGHAM LANE
 PORTSMOUTH, NH 03801
 OWNER:
 O'BRIEN FAMILY TRUST OF 2018 TRUSTEES
 PAUL K. & SANDRA C. O'BRIEN
 20 BRIGHAM LANE
 PORTSMOUTH, NH 03801

PROJECT:

3 MOEBUS TERRACE
TAX MAP 207
LOT 21
PORTSMOUTH, NH

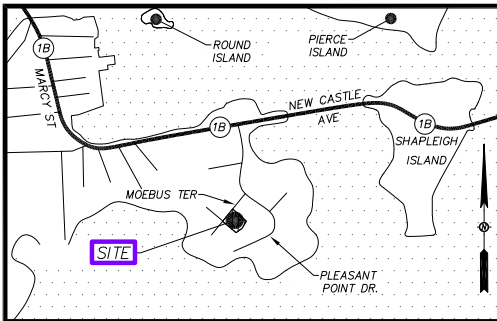
TITLE:

BOARD OF ADJUSTMENT
SITE PLAN

SHEET NUMBER:

C - 1

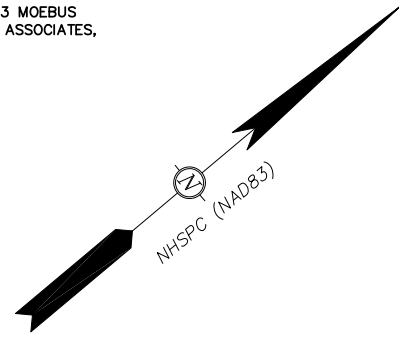
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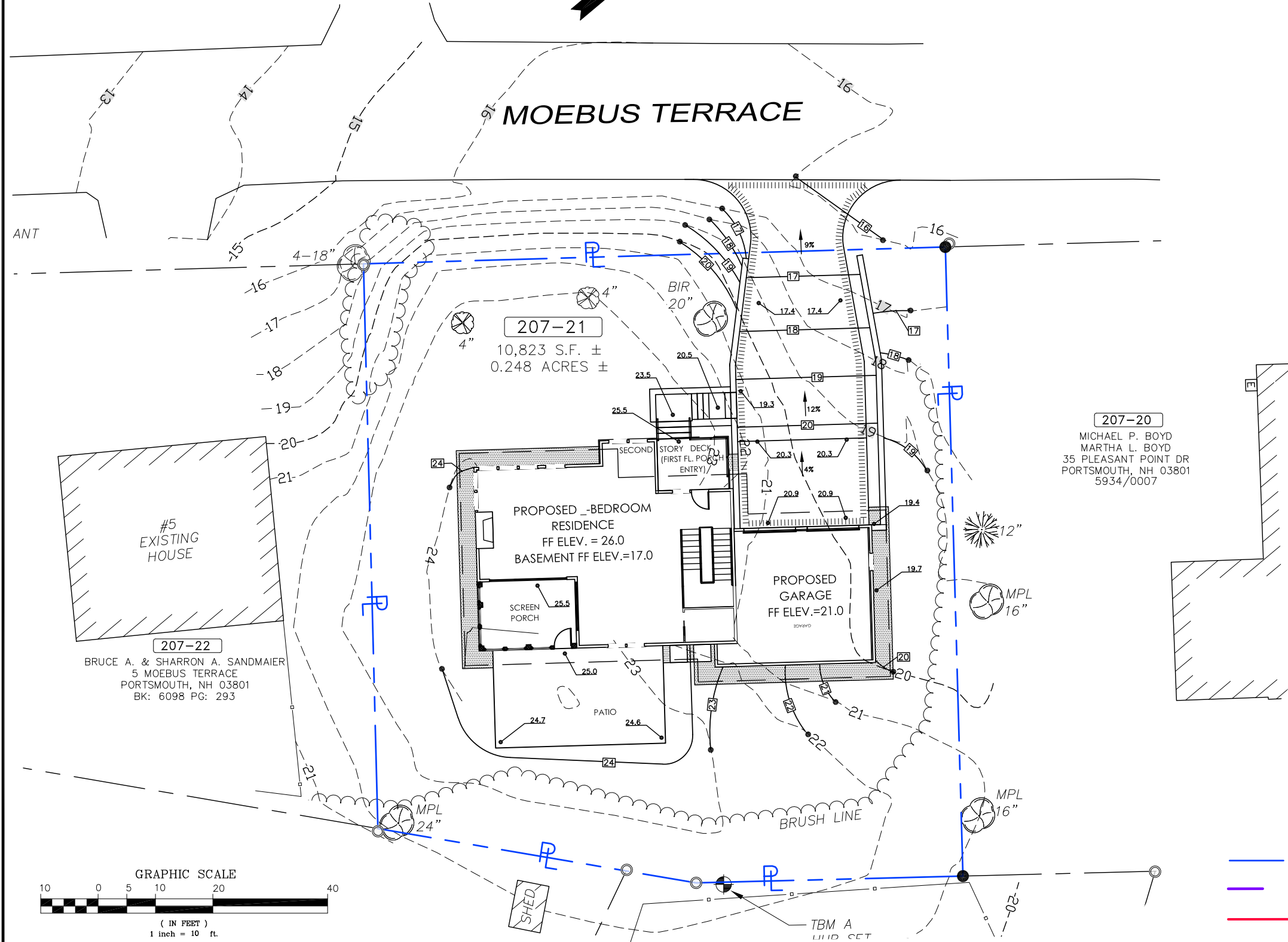
REFERENCE PLAN

"EXISTING CONDITIONS PLAN, TAX MAP 207, LOT 21, 3 MOEBUS TERRACE, PORTSMOUTH, NH", BY JAMES VERRA AND ASSOCIATES, INC., DATED DECEMBER 6, 2023.

LOCUS (N.T.S.)



MOEBUS TERRACE



NOTES:

1. THE SOLE PURPOSE OF THIS PLAN IS TO OBTAIN APPROVAL FOR A BOARD OF ADJUSTMENT SITE PLAN APPROVAL TO REPLACE THE EXISTING RESIDENCE WITH A SLIGHTLY LARGER RESIDENCE & REMEDY A SETBACK DEFICIENCY (DECK TO BE REMOVED).
2. THERE ARE NO WETLANDS ON THE PROPERTY.
3. THE MAJORITY OF THE PARCEL IS LOCATED IN THE 150-FOOT TO 250-FOOT PORTION OF THE SHORELAND PROTECTION BUFFER.

ENGINEER:

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

ISSUED FOR: **APPROVAL**

ISSUE DATE: **MARCH 25, 2024**

REVISIONS

NO.	DESCRIPTION	BY	DATE
0	INITIAL SUBMISSION	EDW	03/25/24

DRAWN BY: _____ RLH

APPROVED BY: _____ EDW

DRAWING FILE: _____ 5503.DWG

SCALE:

22" x 34" - 1" = 10'

11" x 17" - 1" = 20'

APPLICANT:

O'BRIEN FAMILY TRUST OF 2018 TRUSTEES
PAUL K. & SANDRA C. O'BRIEN
20 BRIGHAM LANE
PORTSMOUTH, NH 03801

OWNER:

O'BRIEN FAMILY TRUST OF 2018 TRUSTEES
PAUL K. & SANDRA C. O'BRIEN
20 BRIGHAM LANE
PORTSMOUTH, NH 03801

PROJECT:

3 MOEBUS TERRACE
TAX MAP 207
LOT 21
PORTSMOUTH, NH

TITLE:

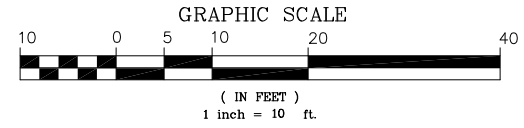
PRELIMINARY GRADING PLAN

SHEET NUMBER:

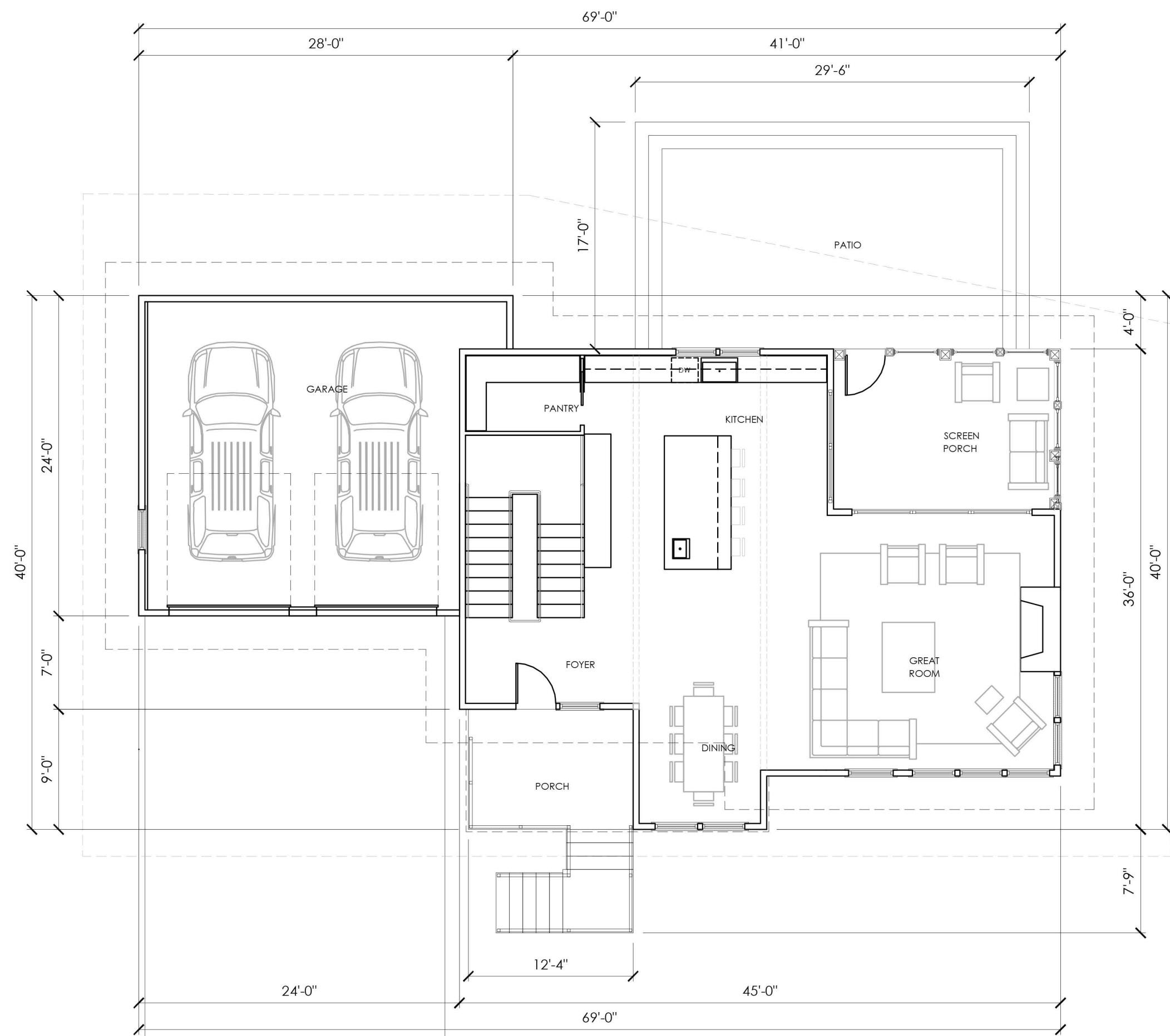
C - 2

LEGEND:

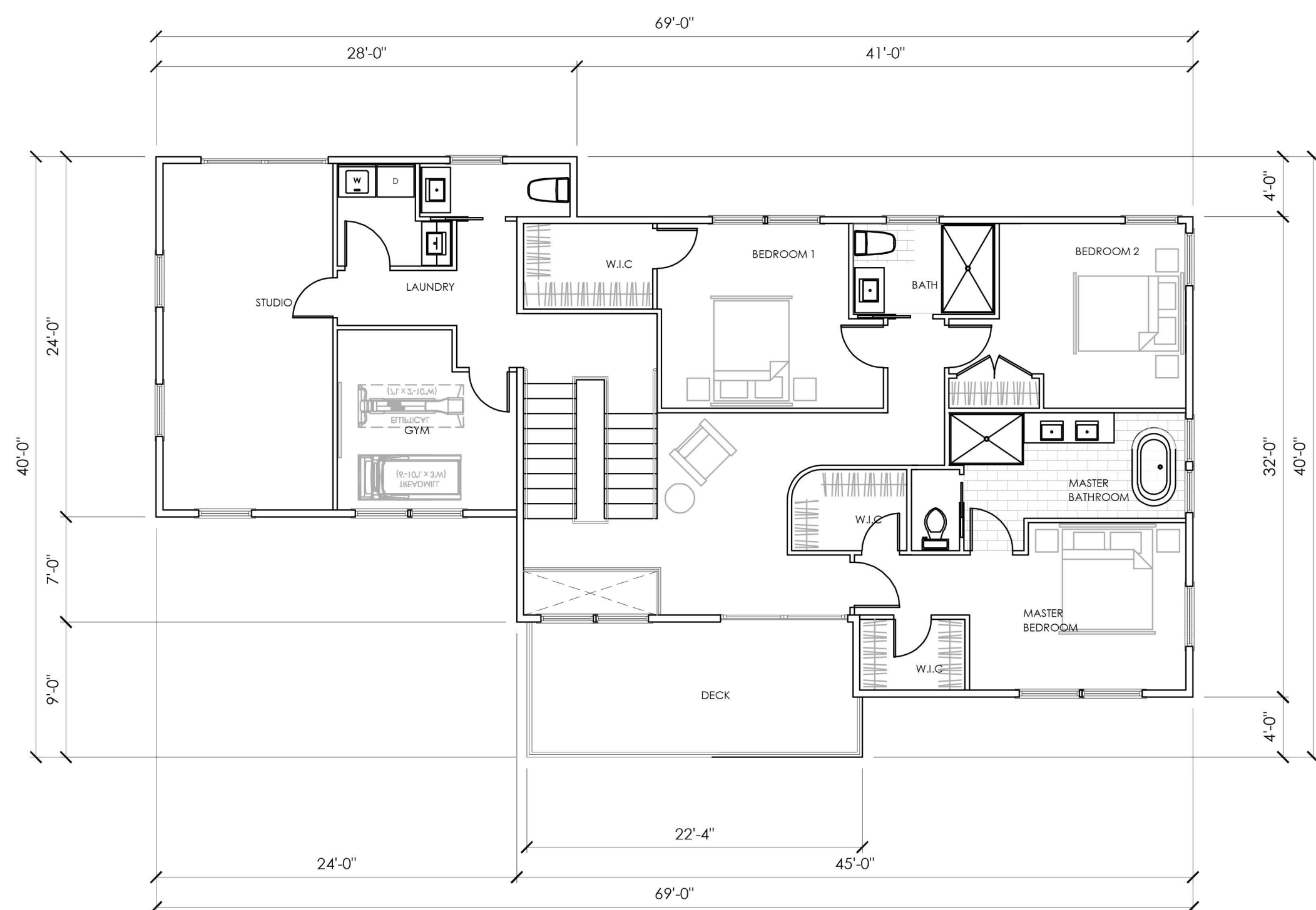
- IRON REBAR SET
- IRON ROD FOUND
- IRON PIPE FOUND
- WOOD FENCE
- ▒ BRICK
- ▒ CONCRETE
- RCRD ROCKINGHAM COUNTY REGISTRY OF DEEDS
- 101-03 TAX SHEET / LOT NO.
- LA LANDSCAPED AREA
- ⊙ DECIDUOUS TREE
- ⊙ CONIFEROUS TREE
- ~~~~~ TREE LINE
- SHRUB
- SPB SHORELAND PROTECTION BUFFER
- BIR BIRCH
- MPL MAPLE
- PROPERTY LINE
- BUILDING SETBACK LINE
- EXISTING BUILDING (TBR)



P5503



FIRST FLOOR PLAN
1/8" = 1'-0"



SECOND FLOOR PLAN
1/8" = 1'-0"



RIGHT ELEVATION
1/8" = 1'-0"



FRONT ELEVATION
1/8" = 1'-0"



LEFT ELEVATION
1/8" = 1'-0"



BACK ELEVATION
1/8" = 1'-0"

REVISIONS:

O'BRIEN RESIDENCE
3 MOEBUS TERRACE
PORTSMOUTH, NEW HAMPSHIRE



CJ ARCHITECTS
233 VAUGHAN STREET
SUITE 101
PORTSMOUTH, NH 03801
(603) 431-2808
www.cjarchitects.net

DATE: 04/16/2024
DRAWN BY: RLD
APPROVED BY: CJG
SCALE: 1/8" = 1'-0"
JOB NUMBER: 22308
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A1

NOT FOR CONSTRUCTION

III. NEW BUSINESS

- D. The request of **Maxico LLC (Owner)**, for property located at **865 Islington Street** whereas relief is needed to establish a yoga studio with more than 2,000 square feet of gross floor area which requires a Special Exception from Section 10.440, Use #4.41 where it is permitted by Special Exception. Said property is located on Assessor Map 172 Lot 11 and lies within the Character District 4-W (CD4-W). (LU-24-41)

Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Vacant Commercial Space	*Yoga Studio (Allowed by special Exception)	Mixed Uses
<u>Unit Square Footage:</u>	3154	3154	min.
<u>Parking (Spaces)</u>	44	44	35
<u>Estimated Age of Structure:</u>	1880	Special Exception request(s) shown in red.	

* A yoga studio is allowed by special exception when there is more than 2,000 sq.ft. of GFA

Other Permits/Approvals Required

- Building Permit (Tenant Fit Up)

Neighborhood Context



Previous Board of Adjustment Actions

January 25, 1983 – The Board **granted** the following: variance to allow 19,279 sf of lot area where 2 acres is required; variance to allow 49.59 feet of lot frontage where 200' is required; and 0 feet side yard where 50' is required.

September 27, 1983 – The Board granted the following: variance to allow 5.5% open space where 20% is required.

November 17, 2009 – The Board **granted** the following: Special Exception to allow a veterinary clinic in the Business Zone; and variance to allow a veterinary clinic in the Business Zone within 200 feet of a residential zone.

Planning Department Comments

The applicant is requesting a special exception to occupy a unit with more than 2,000 square feet of gross floor area and is located in the CD4-W zone. This use is allowed by special exception under Use# 4.42 of the Zoning Table found in Section 10.440

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.

1. Project narrative - introduction of your project, what it is, and why this particular property and location of your project is important.

Humble Warrior is a state of the art Infrared Yoga studio whose mission is to provide all students the opportunity to find their inner warrior through the practice of yoga. 865 Islington is the perfect location for Humble Warrior as buildings characteristics and natural beauty inspire and match Humble Warrior Brand identity. The proximity to housing and restaurants makes the location very appealing and with on site parking.

No exterior work is required for the fit up and the intention is to keep the natural beauty of the building as is.

2. Analysis Criteria - an application cannot be approved unless the 5 criteria have been met.

3. Analysis Criteria (from section 10.223 of the [Zoning Ordinance](#)):

1. 10.232.21 Standards as provided by this Ordinance for the particular use permitted by special exception;

The Standards are met per special exemption.

2. 10.232.22 No hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials;

There are no hazardous materials used at the yoga studio. We don't use any plastic and have exceptionally minimal waste.

3. 10.232.23 No detriment to property values in the vicinity or change in the essential characteristics of any area including residential neighborhoods or business and industrial districts on account of the location or scale of buildings and other structures, parking areas, accessways, odor, smoke, gas, dust, or other pollutant, noise, glare, heat, vibration, or unsightly outdoor storage of equipment, vehicles or other materials;

There are no pollutants, odors, gasses, storage or vehicles being used.

4. 10.232.24 No creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity;

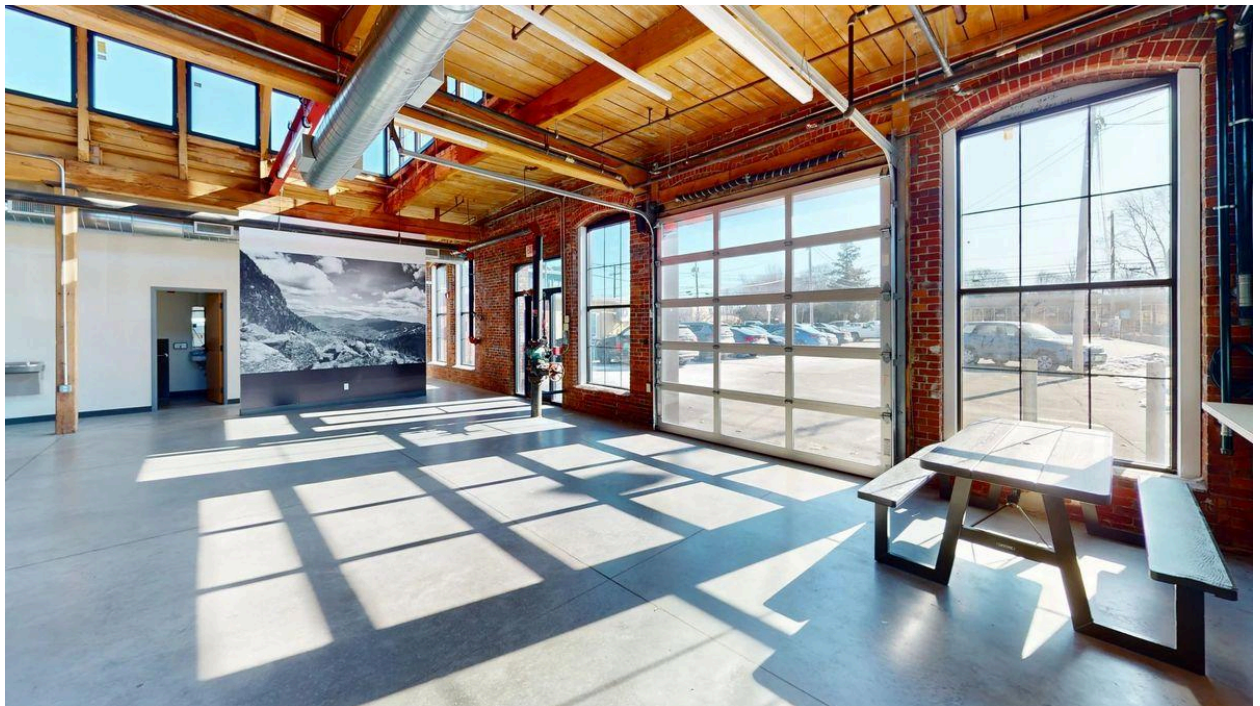
There will be no addition to traffic. There is sufficient on site parking for classes.

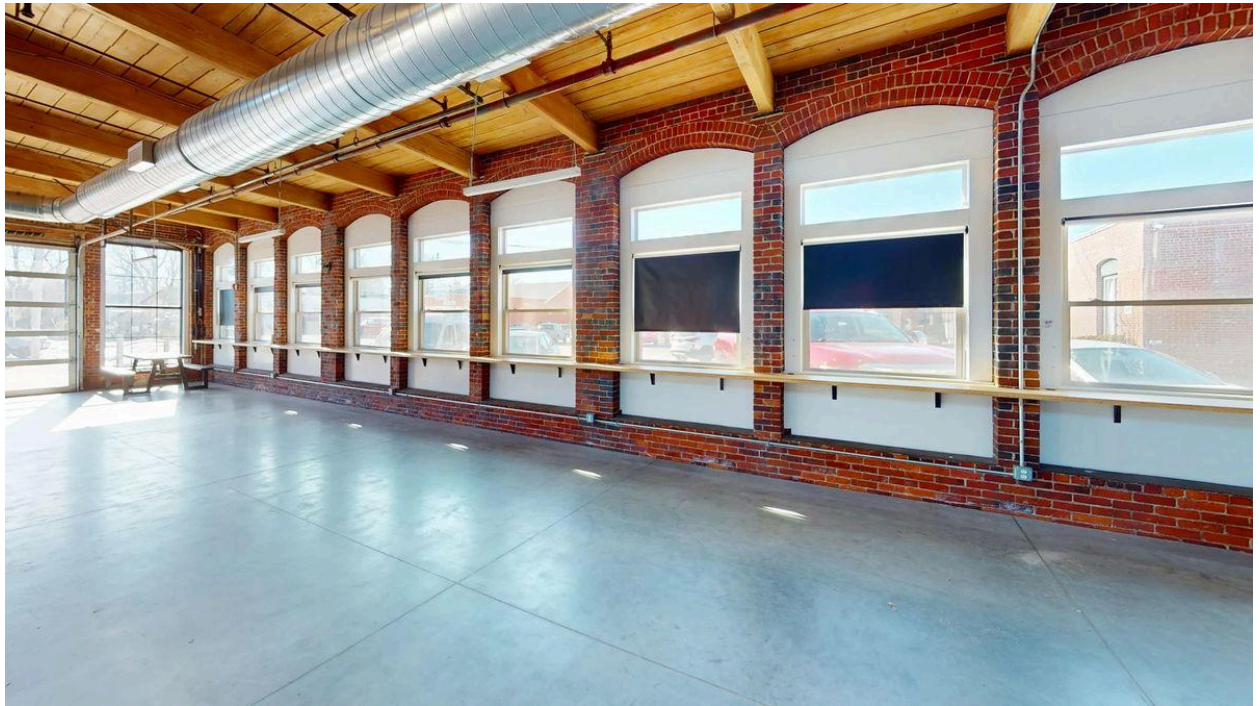
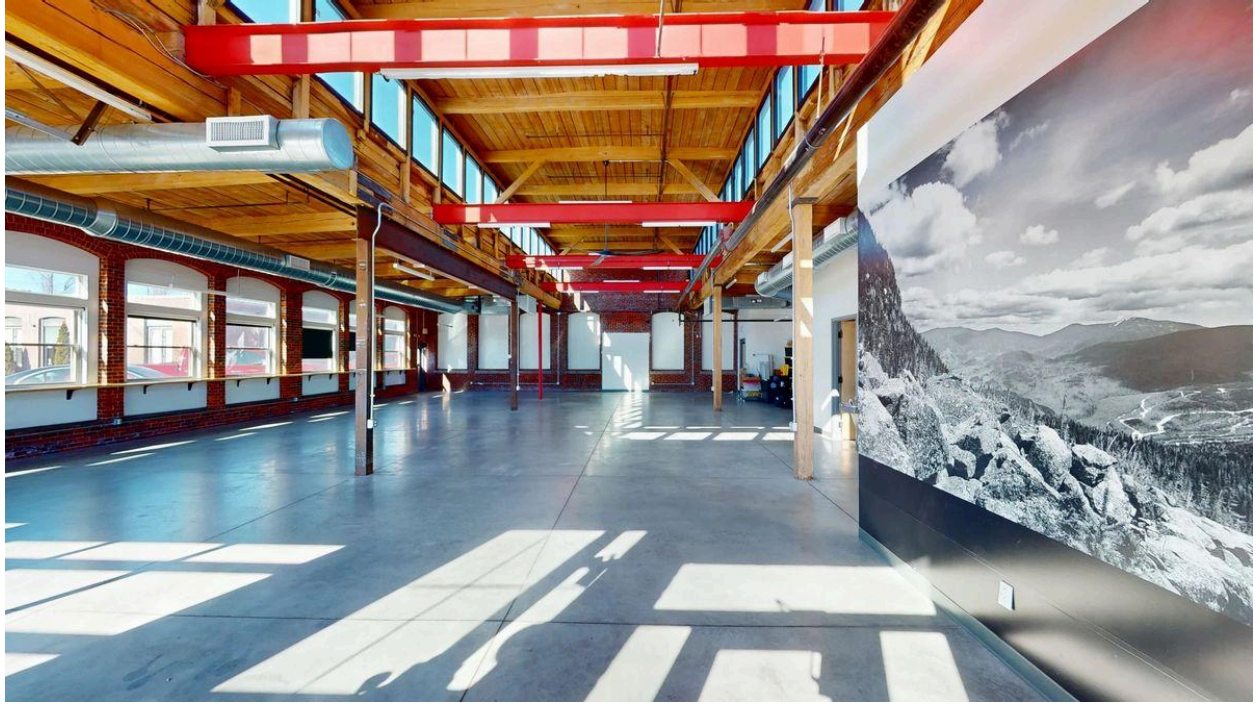
5. 0.232.25 No excessive demand on municipal services, including, but not limited to, water, sewer, waste disposal, police and fire protection and schools; and

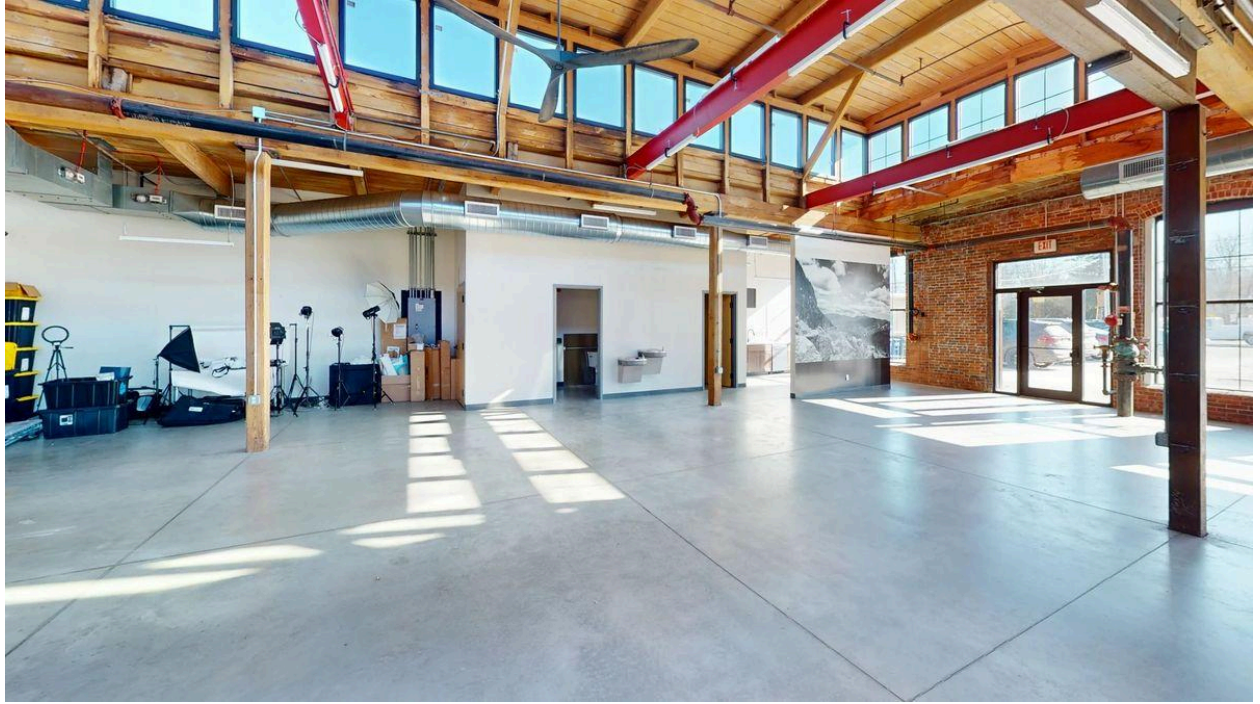
There will be no more demand on municipal services. Two bathrooms, one shower and one water fountain will be maintained that are currently on the property. We will not be adding any additional water other than a washer machine. This machine washes very minimal laundry per day.

6. 10.232.26 No significant increase of stormwater runoff onto adjacent property or streets.

There will be no increase of storm water as no exterior changes are proposed to be made.









**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.

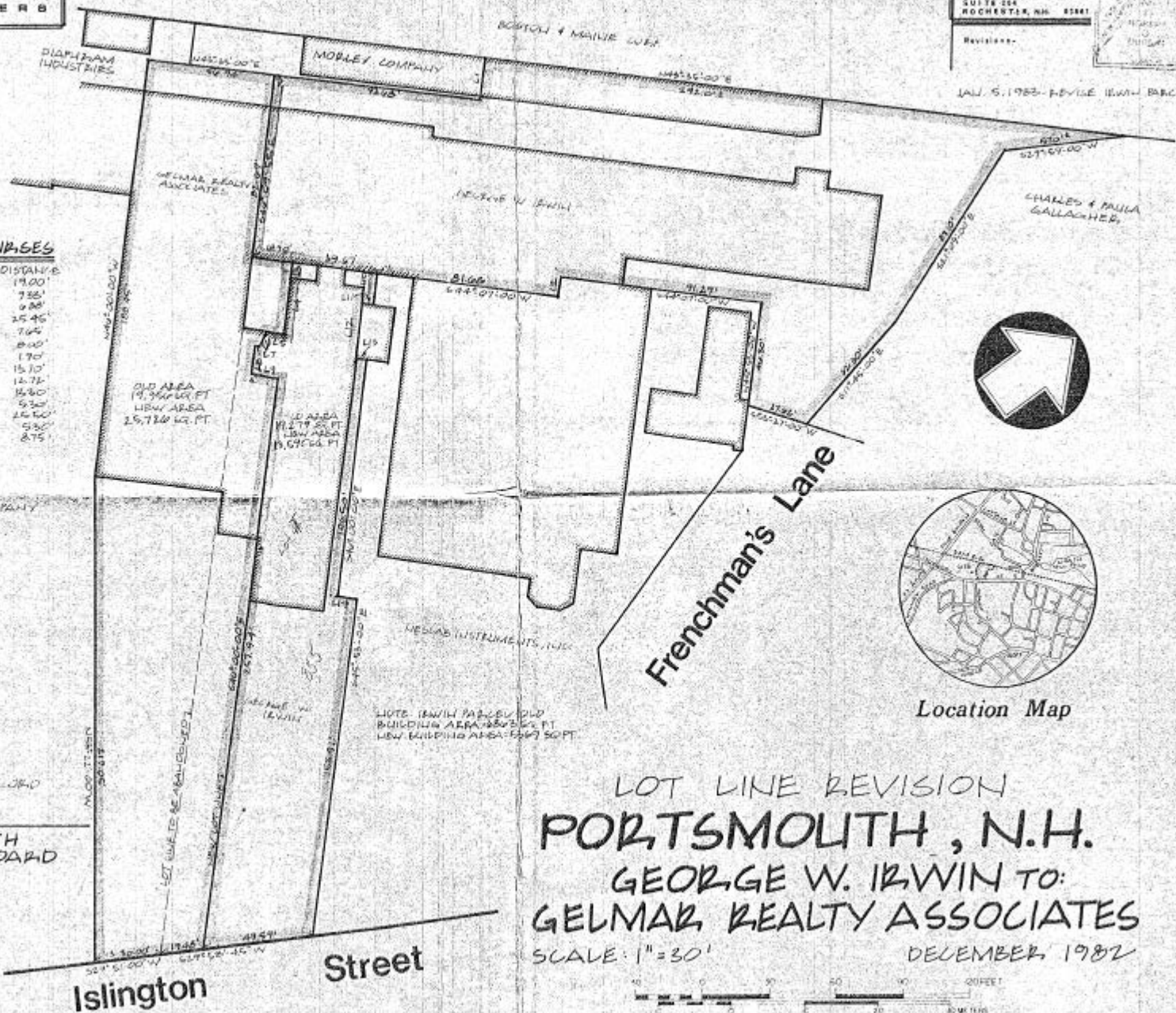
Geometry updated 08/24/2023
Data updated 3/9/2022

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

599 GREENLAND ROAD
PORTSMOUTH, NH 03801
1 WAKEFIELD STREET
SUITE 254
ROCHESTER, NH 05601



**ENGINEERS
SURVEYORS
DESIGNERS**



BOUNDARY COURSES

LINE	BEARING	DISTANCE
L1	N46°25'00"W	19.00'
L2	S45°55'00"E	735'
L3	S46°00'00"E	0.88'
L4	S46°00'00"E	25.45'
L5	N44°00'30"E	7.65'
L6	N22°40'05"W	8.00'
L7	N44°00'00"E	17.0'
L8	S40°00'00"E	15.10'
L9	S44°00'30"W	12.75'
L10	S46°00'00"E	15.30'
L11	S44°00'00"W	5.30'
L12	S46°00'00"E	22.50'
L13	N44°00'00"E	5.50'
L14	N44°00'00"E	8.75'



Location Map

LOT LINE REVISION
PORTSMOUTH, N.H.
GEORGE W. IRWIN TO:
GELMAR REALTY ASSOCIATES

SCALE: 1" = 30'

DECEMBER, 1982



APPROVED FOR RECORD
PORTSMOUTH
PLANNING BOARD

FILE NO. 28
PLAN NO. 4881

Islington Street