



City of Portsmouth
Planning & Sustainability Department
1 Junkins Ave, 3rd Floor
Portsmouth, NH
(603)610-7216

MEMORANDUM

TO: Zoning Board of Adjustment
FROM: Jillian Harris, Principal Planner
DATE: May 22, 2024
RE: Zoning Board of Adjustment May 28, 2024

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

- I. Old Business**
 - A. 581 Lafayette Road

- II. New Business**
 - A. 235 Marcy Street
 - B. 40 Winter Street
 - C. 43 Holmes Court
 - D. 366 Broad Street
 - E. 692 State Street

I. OLD BUSINESS

- A. 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)

Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Commercial	Commercial	Mixed-Use Corridor
<u>Awning Sign Area (sq. ft.):</u>	32	32	20 max
<u>Northern facing façade building frontage(ft.):</u>	90	90	
<u>Western facing façade building frontage (ft.):</u>	125	125	
<u>Northern facing façade sign area (sq. ft.)</u>	75	75	135 max.
<u>Western facing façade sign area (sq. ft.):</u>	58.2	58.2	187.5 max.
<u>Estimated Age of Structure:</u>	1972	Variance request(s) shown in red.	

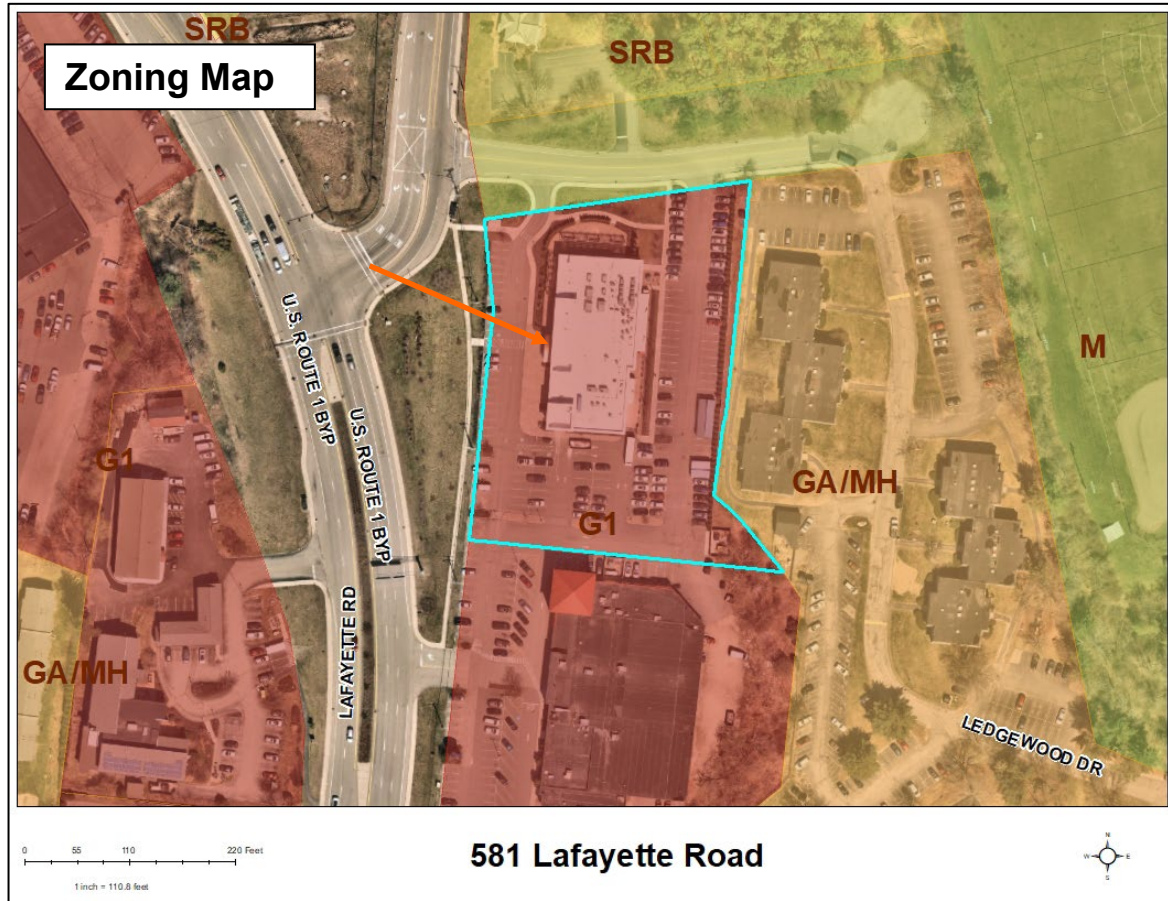
Other Permits/Approvals Required

- Sign Permit

Neighborhood Context



Aerial Map



Zoning Map

581 Lafayette Road

Previous Board of Adjustment Actions

September 22, 2015 - The Board **approved** the following to allow a restaurant with associated parking:

1. A Special Exception under Section 10.440, Use #9.52 to allow a restaurant with 492 seats where 250 to 500 seats are allowed by Special Exception.
2. A Variance from 10.593.10 to allow a restaurant to be located 92.1' from a residential district where 200' is required.
3. A Variance from 10.531 to allow 16.5% open space where 11% exists and 20% is required.
4. A Variance from Section 10.1112.50 to allow 154 off-street parking spaces where 184 exist and 132 are the maximum allowed.
5. A Variance from Section 10.1113.20 to allow parking in the front yard or between a building and a street for 34 spaces where 38 exist and 0 spaces are permitted.
6. A Variance from 10.1113.10 to allow 28 existing and 30 proposed off-street parking spaces to be partially located on a lot separate from that of the principal use.
7. A Variance from Section 10.1114.21 to allow 10 off-street parking spaces to be 17.5' in length where 19' is required.
8. A Variance from 10.1124.20 to allow off-street loading or maneuvering areas to be 87.7' from an adjoining Residential or Mixed Residential District where 100' is required.

May 18, 2021 - The Board granted the request to add an indoor golf simulators in an existing restaurant which required the following: 1) A Special Exception from Section 10.440 Use #4.30 to allow an indoor recreation use where the use is permitted by Special Exception.

Planning Department Comments

This application was postponed at the May 21, 2024 Board of Adjustment meeting as a courtesy to the applicant, as there was no one present to represent the application.

The applicant is requesting relief to appropriately permit an awning sign that has already been installed at the front entrance on the western facing facade.

The property is located in Sign District 5 (Section 10.232) which allows a maximum awning sign area of 20 square feet (Section 10.1251.20). The awning sign in need of relief is 32 square feet.

Maximum aggregate sign area allowed in Sign district 5 is 1.5 square feet per linear foot of building frontage (Section 10.1251). The western façade measures 125 feet, which gives the applicant a maximum of 187.5 square feet of aggregate sign area on that side of the

building. The addition of the awning sign brings the total aggregate sign area on the western facing façade to 58.2 square feet.

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.

Written Reason for Equitable Labor Variance.

581 Lafayette RD Portsmouth NH

TOUR GOLF & GRILL

The reason we are asking for a Variance is, The owner of Tour was unaware, that the previously hired Sign Company was not following the legislature and rules, by checking the Town laws and following procedure. (for sizing of lettering on awning, nor did they apparently pull a permit.) The prior Sign Company told him they were following the correct steps.

We are here now asking that due to the circumstances of the Hardship of replacing such an Awning would be unnecessary cost of thousands of dollars at this time. Cost wise for our client in this economy we ask that this variance allowed to keep the size as was installed. 10.233.25

The neighbors will not be harmed nor will property values or assets be diminished from this black and white, classic, non illuminated lettering. Also it might actual help as a wayfinding point for travelers passing through or for direction purposes in an already busy intersection. 10.233.24/.21

The Awning size is just a minor bit larger than the allotted size and we hope that due to the distance of our neighbors, and viewing capacity. That you allow us this variance and to keep the awning as is. We will not enlarge or change what is there, and will observe all aspects of the allowed variance.10.233.22

This will help our client to continue his endeavors, focused on creating amazing restaurants and event places where we can gather and grow our community.10.233.23

Tour Golf is now aware and remedied its future with Signage, by in trusting his Signage creation and development with us at Signs East LLC. As you can ask your constituents, we insist on directly following and filing correct paperwork, and permits. Focus on prompt replies and presentation of documents. As well as we maintain our reputation with high end quality products, while installation upon legitimate legal Signage per town allowances.

Thank you for your time,

Tor Larson

Signs East LLC.

SignsEast.com



11/1/2023

RE: TOUR Sign Installation

Please let it be known that TOUR, LLC has contracted Signs East of Kingston, NH to design, build, and install new signage at our 581 Lafayette Rd, Portsmouth, NH location.

Signs East has our permission to file for and pull a sign permit with the City of Portsmouth.

Please direct any questions to Ryan Lent, owner of TOUR, LLC. I can be reached at 603-812-7775 or ryan@nnehospitality.com.

Thank you,

A handwritten signature in blue ink, appearing to be "RL" followed by a horizontal line.

Ryan Lent

President

NNE Hospitality Group



← 125.5" →
TOUR 30"

24" **GOLF & GRILL** 51"
192"

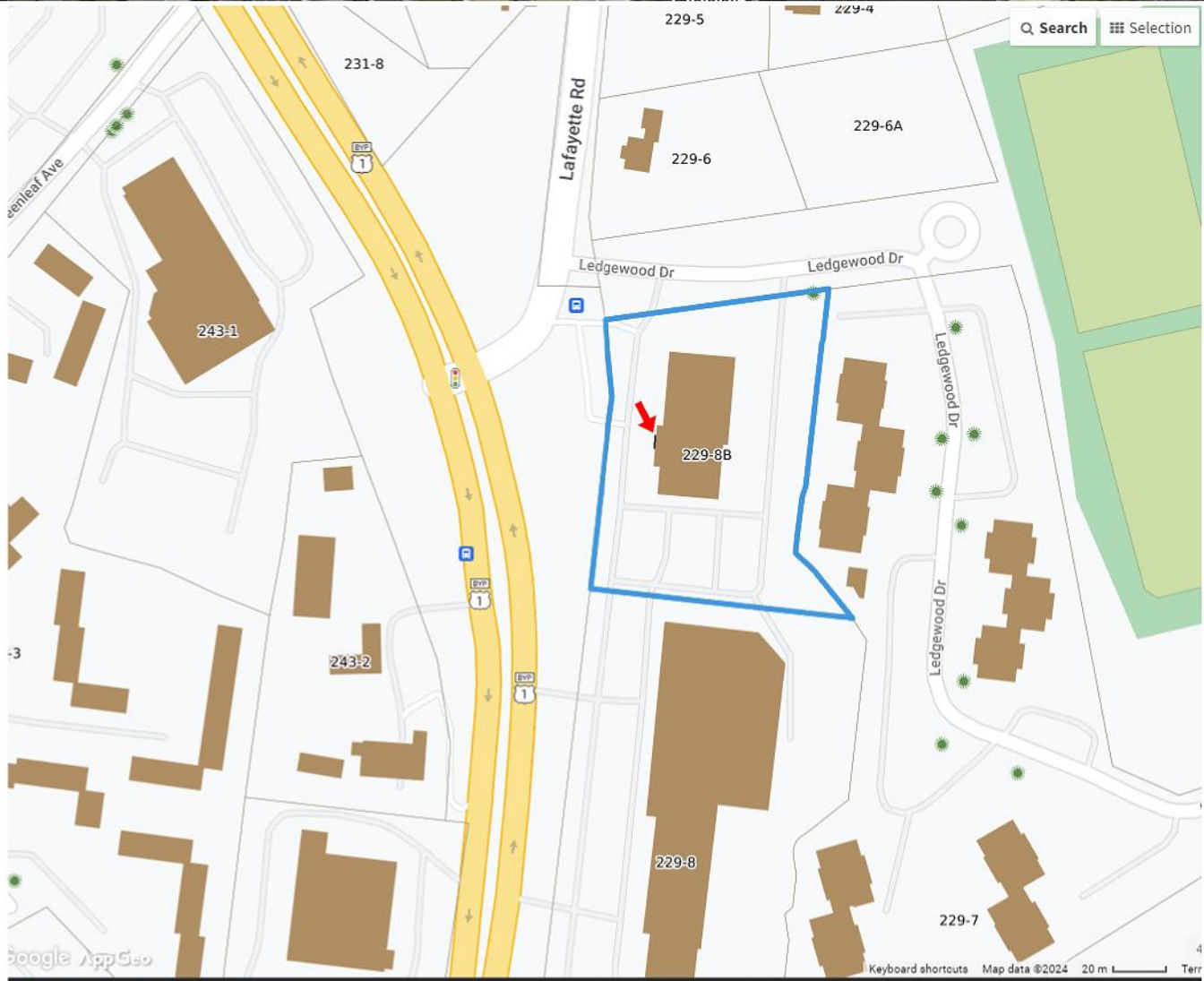
222"



5'

15'

TOUR



II. NEW BUSINESS

- A. The request of **Sakuntalala LLC (Owner)**, for property located at **235 Marcy Street** whereas relief is needed to demolish an existing 1-story addition and reconstruct a two-story attached garage addition on the rear of the existing residential structure, which requires the following: 1) Variance from Section 10.521 to allow a 7-foot left side yard for the addition where 10 feet is required; and 2) Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 103 Lot 12 and lies within the General Residence B (GRB) and Historic Districts. (LU-24-68)

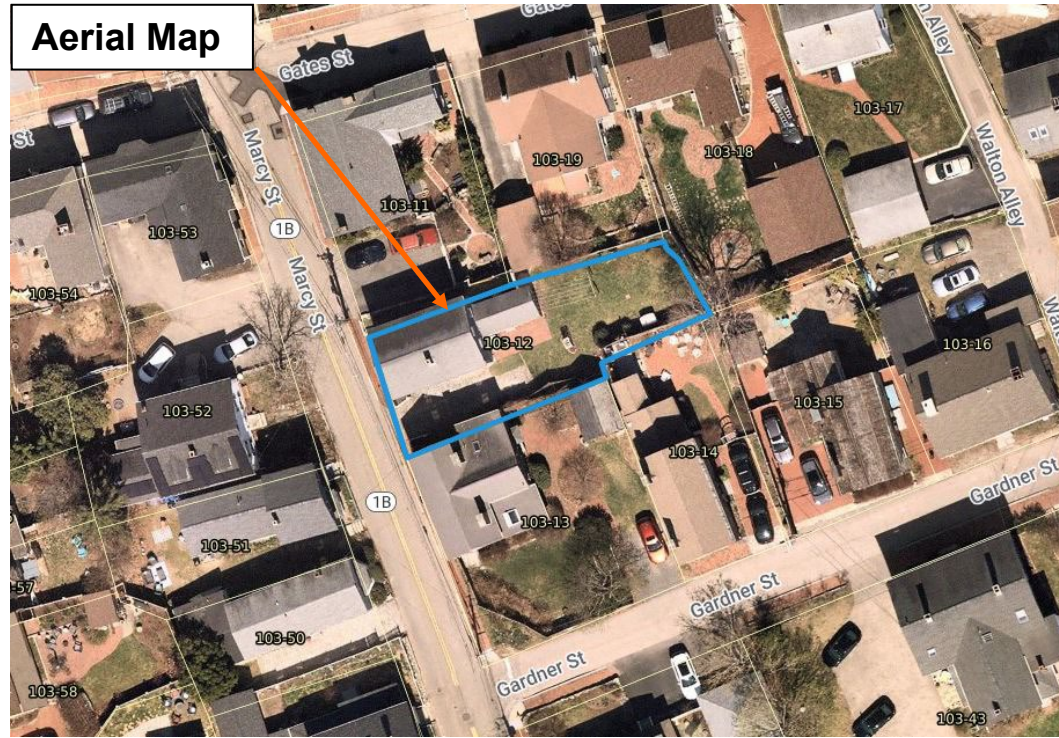
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family Dwelling	addition to rear	Primarily residential
<u>Lot area (sq. ft.):</u>	3,590	3,590	5,000 min.
<u>Street Frontage (ft.):</u>	40.7	40.7	80 min.
<u>Lot depth (ft.)</u>	100	100	60 min.
<u>Front Yard (ft.):</u>	0.2	0.2	5 min.
<u>Left Yard (ft.):</u>	2.8 (Primary Structure) 5.1 (Rear Addition)	2.8 (Primary Structure) 7 (Rear Addition)	10 min.
<u>Right Yard (ft.):</u>	14.7	12.2	10 min.
<u>Rear Yard (ft.):</u>	46	43	25 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	24.2	29.2	30 max.
<u>Open Space Coverage (%):</u>	58.6	30.8	25 min.
<u>Parking</u>	2	>2	2
<u>Estimated Age of Structure:</u>	1896	Variance request(s) shown in red.	

Other Permits/Approvals Required

- Historic District Commission Review

Neighborhood Context



Previous Board of Adjustment Actions

No Previous BOA history found.

Planning Department Comments

The applicant proposes to demolish an existing one-story addition on the rear of the single-family dwelling and construct a two-story attached garage addition. The property is an existing non-conforming lot and the primary structure was constructed 2.8 feet from the left side property line. The existing one-story addition is located 5.1 feet from the left side property line and the addition is proposed to be 7.1 feet where 10 feet is the required side setback. The applicant intends to renovate the existing primary structure and reconfigure the driveway with pervious pavers and retaining walls 18" and under in height.

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 SAKUNTALA LLC
235 MARCY STREET, PORTSMOUTH
Map 103, Lot 12

APPLICANT'S NARRATIVE

I. **THE PROPERTY:**

The applicant, Sakuntala LLC, owns the property located at 235 Marcy Steet, which consists of a single-family dwelling on an irregularly shaped, non-conforming lot. The property is in the GRB zone and the Historic District. The property is non-conforming as to lot area, lot area per dwelling, frontage, and front and left side yard setbacks. Properties on either side of it have structures that are actually on the lot lines.

The applicant acquired the property last fall and intends to make significant and needed upgrades. The applicant plans to replace the existing asphalt shingles clapboard, replace the roofing, restore and reinstall windows, repair and replace trim and casings, install wood corner boards, and install gutters. As part of the proposed upgrades, the applicant seeks to add additional living space, as the dwelling is relatively modest.

According to city tax records, the main dwelling dates back to 1896. A subsequent small ± 193 square foot addition was added to the rear of the building. Its provenance is unknown. This addition is bare studs on the interior, has no heat or insulation, and no interior finish. It has no proper foundation, and the wood framed floor sits on the dirt, propped up by a few bricks here and there. There does not appear to be any frost protection whatsoever. The addition appears to have been built on-grade. Needless to say, the addition is substandard as living space.

The applicant proposes to remove this addition and add an approximately ± 395 square foot, two story attached garage addition as shown in the submitted plans. Because of the narrowness of the lot, the proposed garage bay will be oriented to the rear of the lot. This, and the approximately three foot drop in grade from right to left on the property, requires the installation of a retaining wall. At its closest point, the retaining wall will be three feet from the left lot line. The new addition will be ± 7.1 feet from the left lot line, which is more compliant than the existing addition to be removed, which is ± 5.1 feet from the left lot line.

In order to proceed, the applicant needs relief from section 10.321 of the ordinance to permit the extension or enlargement of a lawful nonconforming structure which such extension or enlargement does not conform to the left side yard setback of ten feet (10.521). The existing main dwelling structure, which will not be modified or enlarged, is non-compliant as to lot area, lot area per dwelling, frontage and front and side yard setbacks, as shown on the submitted plans. While the applicant does not believe variances are necessary to "lock in" these existing non-conformities, they are called out on the plans out of an abundance of caution, and, to the extent it is deemed necessary, we are requesting relief from these dimensional requirements as well.

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 in any fashion by this project. The existing structure and lot are already non-compliant with the left side yard setback and the new addition will be more compliant than the one it is replacing. The neighborhood is notable for setback encroachments, and the directly abutting properties on either side of this one have zero foot setbacks.

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. The project requires review and approval from the Historic District Commission, further assuring the public interest will be adequately protected.

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. The existing main house already encroaches closer to the left side lot line than the proposed addition, and the proposed addition is more compliant than the existing addition to be removed. The nearest affected neighbor has a garage with a zero foot setback to the applicant’s left side yard. The existing addition is such that it has limited utility as living space. Denying the variances would be unjust to the applicant.

The values of surrounding properties will not be diminished by granting the variance. The proposal will result in substantial upgrades to and investment in the existing dwelling. This will increase the value of the applicant’s property and those around it. The proposed new addition will be more compliant with the left side yard

setback than the one it will replace. 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 a narrow, irregularly shaped lot and is non-conforming as to lot area, lot area per dwelling, frontage, and front and left side yard setbacks. Properties on either side of it have structures that are actually sited on the lot lines. The existing addition to be removed is of substandard construction and limited utility.

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 side yard setback requirement is to assure adequate light, air and access to and between structures. The existing main dwelling and addition to be replaced already encroach into the required setback to a greater extent than what is here proposed, and have for a long period of time without any negative impacts whatsoever. There is no way for the applicant to comply with the lot area, lot area per dwelling, frontage and front yard setback requirements, should that be deemed necessary.

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: April 29, 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

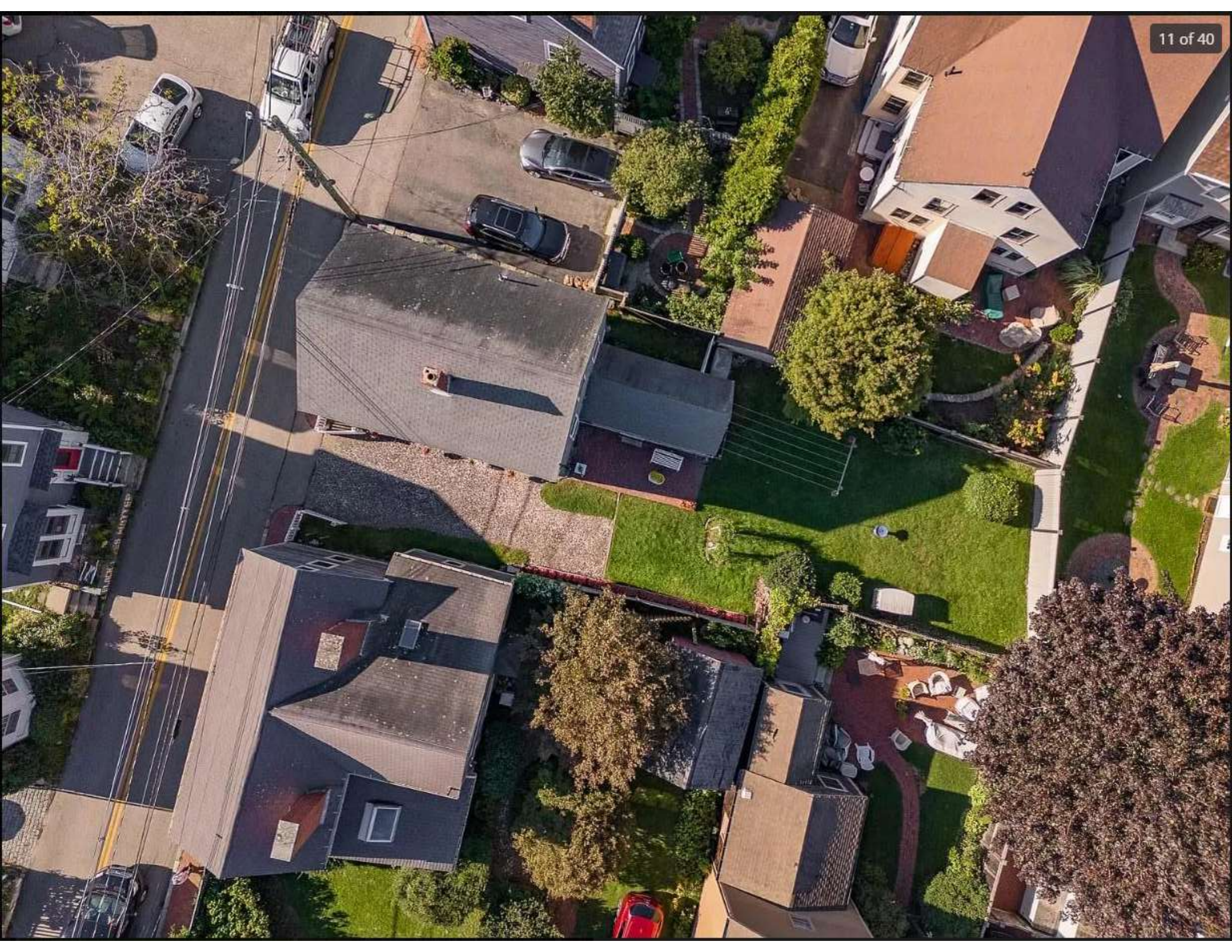
Print map scale is approximate. Critical layout or measurement activities should not be done using this resource.

1" = 44,125,513,890,696,21 ft



235 MARCY STREET







3 of 40







REVISIONS:

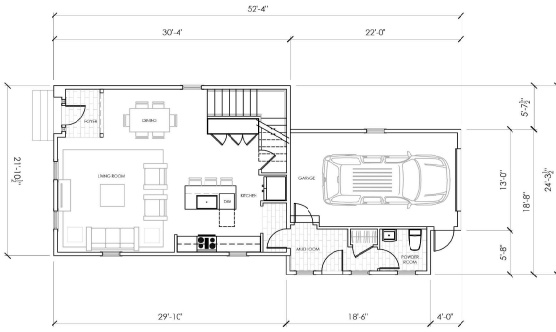
NANDA RESIDENCE
235 MARCY STREET
PORTSMOUTH, NEW HAMPSHIRE



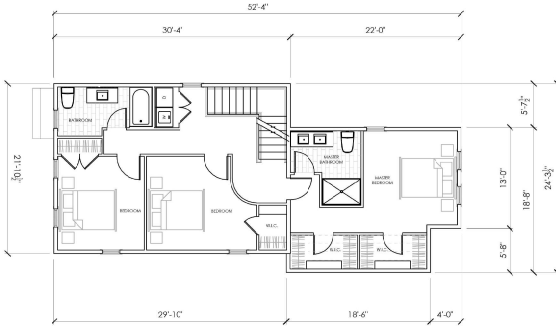
CJ ARCHITECTS
233 VAUGHAN STREET SUITE 101
PORTSMOUTH, NH 03801
(603) 411-2808
www.cjarchitects.net

DATE: 5/21/2024
DRAWN BY: RLD
APPROVED BY: C.J.G.
SCALE: 1/8" = 1'-0"
JOB NUMBER: 22308
© COPYRIGHT CJ ARCHITECTS LLC

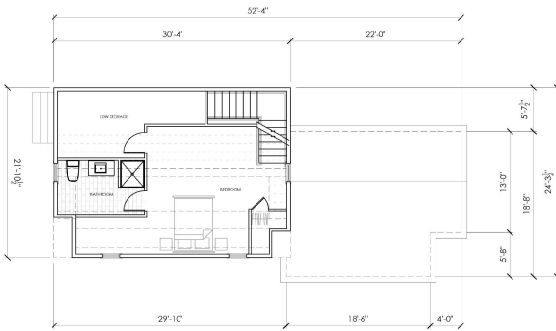
A1



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



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



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



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

MIDPOINT OF SLOPING ROOF
31'-0"
EXISTING TO REMAIN
EXISTING AGP



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



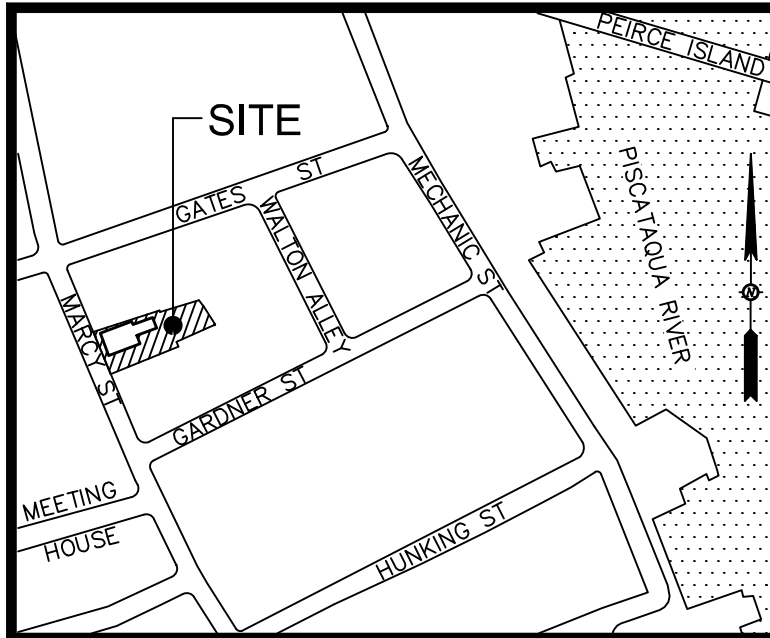
BACK ELEVATION
1/8" = 1'-0"

MIDPOINT OF SLOPING ROOF
31'-0"
EXISTING TO REMAIN
EXISTING AGP



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

NOT FOR CONSTRUCTION



LOCUS (N.T.S.)

LEGEND:

-STONE BOUND (AS NOTED)
-IRON PIPE (AS NOTED)
-STOCKADE FENCE
- ▒BRICK
- ▒CONCRETE
- ▒CRUSHED STONE
-UTILITY POLE
-UTILITY POLE W/TRANSFORMER
-GUY
- OHV—OVERHEAD WIRES
-UTILITY POLE WITH ARM & LIGHT
- ⓂELECTRIC METER
- RCRDROCKINGHAM COUNTY REGISTRY OF DEEDS
- 101-03TAX SHEET / LOT NO.
- EOPEDGE OF PAVEMENT
- ▒CATCH BASIN
- ⊙SEWER MANHOLE
- ⊙WATER SHUT OFF VALVE
- ⊙HYDRANT
- ⊙DECIDUOUS SHRUB
- ⊙CONIFEROUS SHRUB
- ⊙GAS METER
- ⊙BOLLARD POST

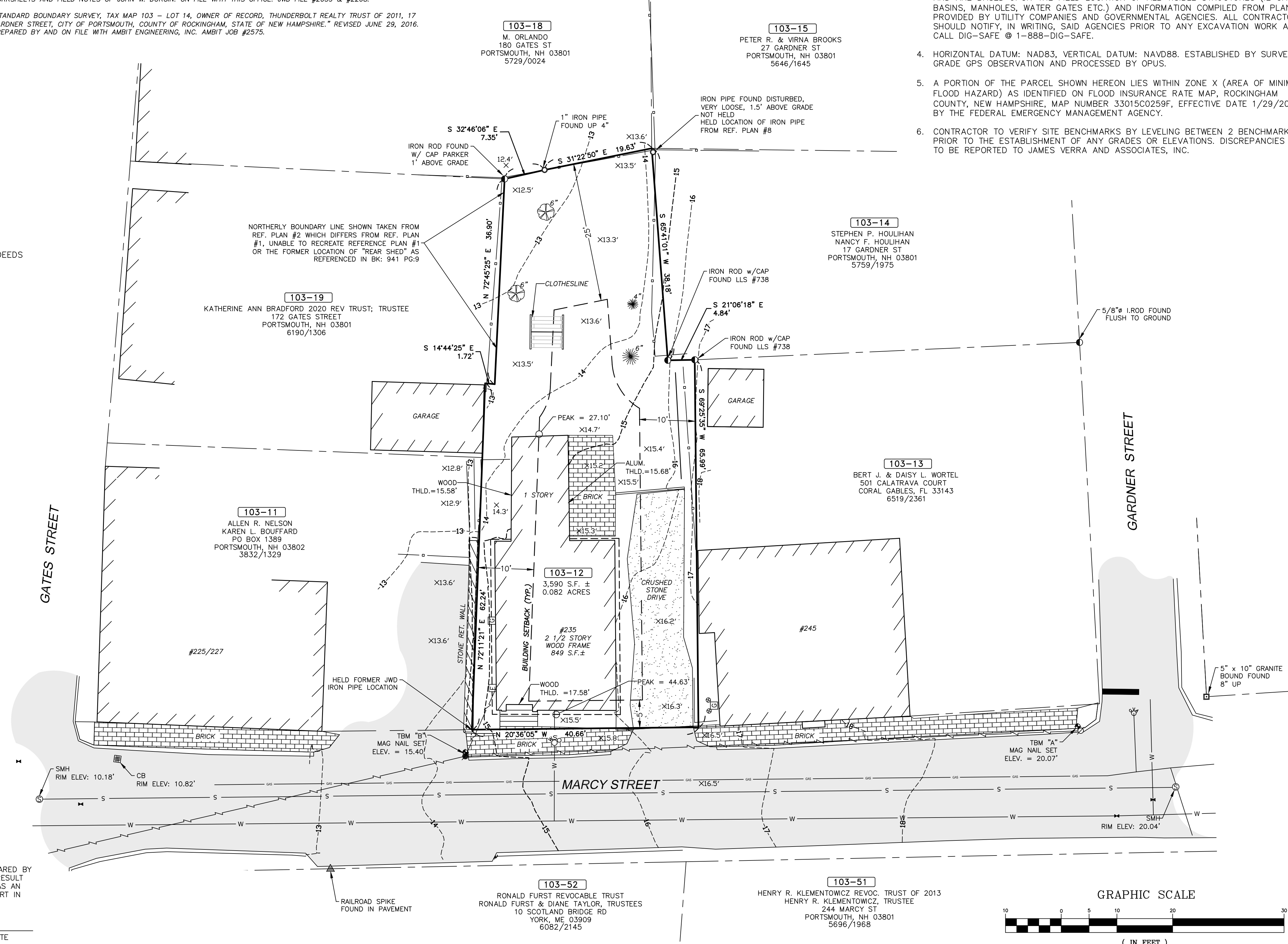
REFERENCE PLANS:

1. "SKETCH OF LOT 170-172 GATES ST. PORTSMOUTH, N.H." DATED FEBRUARY 3, 1938 AND PREPARED BY JOHN W. DURGIN CIVIL ENGINEERS. ON FILE WITH THIS OFFICE, JWD FILE #2059.
2. "PLAN OF LOT PORTSMOUTH, NH FOR THEODORE JR. & AUDREY M. DOWNS." DATED OCTOBER 1975 AND PREPARED BY JOHN W. DURGIN CIVIL ENGINEERS. ON FILE WITH THIS OFFICE, JWD FILE #2268 PLAN #3287.
3. "PLAN OF LOT NO. 180 GATES STREET PORTSMOUTH, NH FOR CHARLES L. & JANE D. KAUFMANN." DATED SEPTEMBER 1970 AND PREPARED BY JOHN W. DURGIN CIVIL ENGINEERS. ON FILE WITH THIS OFFICE FILE, JWD #2059 PLAN #3165.
4. "PLAN OF LOT ~ NO. 245 MARCY ST. ~ FOR CHARLES L. AND JANE D. KAUFMANN." DATED SEPTEMBER 1970 AND PREPARED BY JOHN W. DURGIN CIVIL ENGINEERS. ON FILE WITH THIS OFFICE FILE, JWD #2268 PLAN #3166.
5. "LOT LINE REVISION #135 AND #143 MARCY ST PORTSMOUTH, NH." DATED MAY 1977 AND PREPARED JOHN W. DURGIN CIVIL ENGINEERS. ONE FILE WITH THIS OFFICE FILE, JWD # 2936 PLAN # 3342
6. STAKE OUT WORKSHEET FOR WHITE, 180 GATES STREET PORTSMOUTH NH. PREPARED BY PARKER SURVEY ASSOCIATES. PARKER JOB #7103. ON FILE WITH MILLENNIUM ENGINEERING INC.
7. WORKSHEETS AND FIELD NOTES OF JOHN W. DURGIN. ON FILE WITH THIS OFFICE. JWD FILE #2059 & #2268.
8. "STANDARD BOUNDARY SURVEY, TAX MAP 103 - LOT 14, OWNER OF RECORD, THUNDERBOLT REALTY TRUST OF 2011, 17 GARDNER STREET, CITY OF PORTSMOUTH, COUNTY OF ROCKINGHAM, STATE OF NEW HAMPSHIRE." REVISED JUNE 29, 2016. PREPARED BY AND ON FILE WITH AMBIT ENGINEERING, INC. AMBIT JOB #2575.

NOTES:

1. OWNER OF RECORD.....SAKUNTALA LLC
ADDRESS.....4 ANDREW WAY, MADBURY, NH 03823
DEED REFERENCE.....6511/2347
TAX SHEET / LOT.....103/12
2. ZONED:GENERAL RESIDENCE B DISTRICT (GRB)

MINIMUM LOT AREA ..5000 S.F. FRONT YARD SETBACK5'
FRONTAGE80' SIDE YARD SETBACK10'
BUILDING COVERAGE.. 30% REAR YARD SETBACK25'
MINIMUM OPEN SPACE...25%
3. THE LOCATION OF ALL UNDERGROUND UTILITIES SHOWN HEREON ARE APPROXIMATE AND ARE BASED UPON THE FIELD LOCATION OF ALL VISIBLE STRUCTURES (IE CATCH BASINS, MANHOLES, WATER GATES ETC.) AND INFORMATION COMPILED FROM PLANS PROVIDED BY UTILITY COMPANIES AND GOVERNMENTAL AGENCIES. ALL CONTRACTORS SHOULD NOTIFY, IN WRITING, SAID AGENCIES PRIOR TO ANY EXCAVATION WORK AND CALL DIG-SAFE @ 1-888-DIG-SAFE.
4. HORIZONTAL DATUM: NAD83, VERTICAL DATUM: NAVD88. ESTABLISHED BY SURVEY GRADE GPS OBSERVATION AND PROCESSED BY OPUS.
5. A PORTION OF 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 33015C0259F, EFFECTIVE DATE 1/29/2021 BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY.
6. 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.

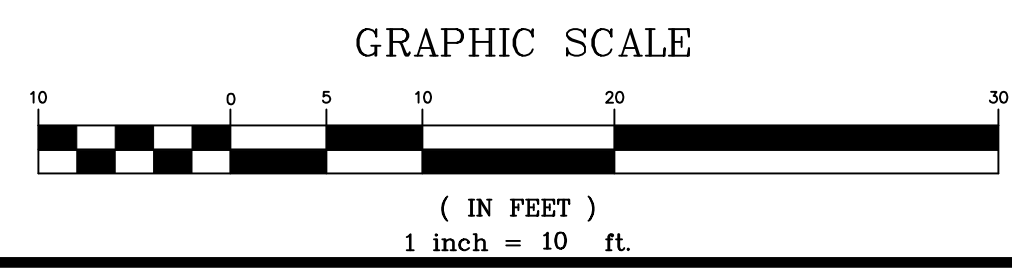


**PRELIMINARY
SUBJECT TO CHANGE**

SURVEYOR'S CERTIFICATION

"I HEREBY CERTIFY THAT THIS SURVEY AND PLAN 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)."

LICENSED LAND SURVEYOR _____ DATE _____



SURVEYOR:

101 SHATTUCK WAY, SUITE 8,
NEWINGTON, N.H., 03801-7876
603-436-3557
JOB NO: 247-2001

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

ISSUED FOR:
ENGINEERING REVIEW

ISSUE DATE:
2/8/2024

REVISIONS	NO.	DESCRIPTION	BY	DATE
	1			

DRAWN BY: _____ REL/TAW
APPROVED BY: _____ RMF
DRAWING FILE: 24-2001.DWG

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

APPLICANT:
SAKUNTALA LLC
4 ANDREW WAY
MADBURY, NH 03823

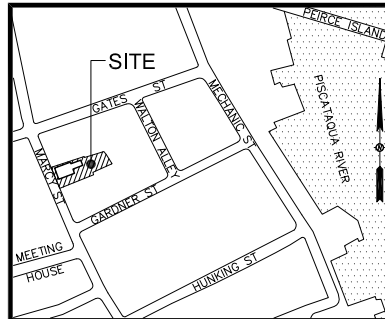
OWNER:
SAKUNTALA LLC
4 ANDREW WAY
MADBURY, NH 03823

PROJECT:
**235 MARCY STREET
TAX MAP 103, LOT 12
PORTSMOUTH, NH**

TITLE:
**EXISTING CONDITIONS
PLAN**

SHEET NUMBER:
S-1

ALTUS JOB# 5515



REFERENCE PLAN

"EXISTING CONDITIONS PLAN, TAX MAP 103, LOT 12, 235 MARCY STREET, PORTSMOUTH, NH", BY JAMES VERRA AND ASSOCIATES, INC., DATED FEBRUARY 8, 2024.

ZONING SUMMARY

ZONE: GRB (GENERAL RESIDENCE B) – EXISTING RESIDENCE TO BE RENOVATED & PROPOSED GARAGE ADDITION
 EXISTING LOT AREA: 0.248 AC ± (3,590 S.F. ±)

DIMENSIONAL REQUIREMENTS

DIMENSIONAL REQUIREMENTS	REQUIRED	EXISTING	PROPOSED
MIN. LOT AREA:	5,000 S.F.	3,590 S.F. ±	3,590 S.F. ± ** ***
MIN. LOT AREA PER DWELLING UNIT:	5,000 S.F.	3,590 S.F. ±	3,590 S.F. ± ** ***
DWELLING UNITS:	—	1	1
MIN. STREET FRONTAGE:	80'	40.66'	40.66' ** ***
MIN. LOT DEPTH:	60'	100' ± (AVERAGE)	100' ± (AVERAGE)
FRONT SETBACK: *	5' (0.0')*	0.2' ± (EX. STEPS)	0.2' ± (EX. STEPS) ***
SIDE SETBACK (LEFT):	10'	2.8' ±	2.8' ± ***
SIDE SETBACK (RIGHT):	10'	14.7' ±	12.2' ±
REAR SETBACK:	25'	46' ±	43' ±
MAX. HEIGHT (SLOPED ROOF):	35'	<35'	<35' (PROP.)
MAX. BUILDING COVERAGE:	30 %	24.2 % ± (INCL. STEPS)	29.2 % ± (INCL. STEPS)
MIN. OPEN SPACE:	25 %	58.6 % ±	30.8 % ±

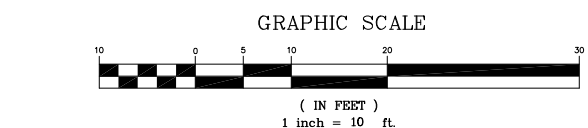
* FRONT SETBACK CAN BE THE AVERAGE OF ABUTTING PROPERTIES (0.0' + 0.0' / 2 = 0.0')
 ** "STEPS/DECK" ARE ALLOWED 5' INTO THE FRONT SETBACK. THE PROP. STEPS MEET THIS REQ. WITH ADJUSTED SETBACK BASED ON AVERAGE ADJACENT FRONT SETBACKS
 *** EXISTING LOT OF RECORD
 *** VARIANCE REQUIRED

NOTES:

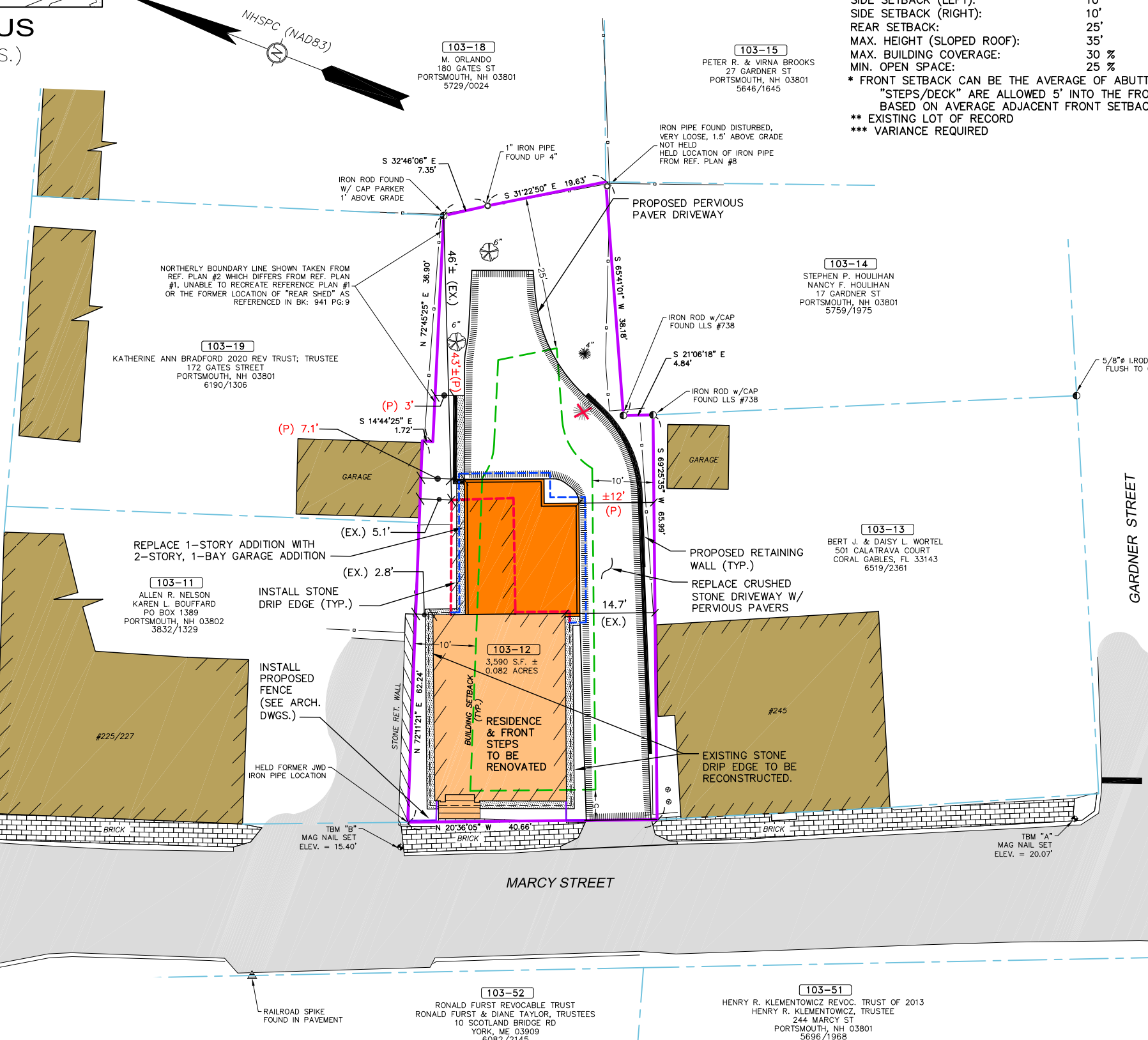
1. THE SOLE PURPOSE OF THIS PLAN IS TO OBTAIN A BOARD OF ADJUSTMENT SITE PLAN APPROVAL TO REPLACE A PORTION OF THE EXISTING RESIDENCE WITH A GARAGE ADDITION & ASSOCIATED PROPOSED DRIVEWAY.
2. THERE ARE NO WETLANDS ON THE PROPERTY.
3. THE PARCEL IS NOT LOCATED IN THE 250-FOOT NHDES SHORELAND PROTECTION BUFFER.
4. BUILDING COVERAGE CALCULATIONS:
 EX. RESIDENCE (850 SF±) + EX. STEPS (20 SF±) = 870 SF±
 870 SF ± / 3,590 SF = 24.2% ±
 RENOVATED RESIDENCE (640 SF±) + EX. STEPS (20 SF±) + PROP. GARAGE (390 SF±) = 1,050 SF±
 1,050 SF ± / 3,590 SF = 29.2% ±
5. IMPERVIOUS COVERAGE/OPEN SPACE CALCULATIONS:
 EX. BLDG/STEPS (870 SF ±) + EX. GRAVEL DRIVEWAY (420 SF±) + EX. BRICK PATIO (150 SF±) + EX. BRICK SIDEWALK (10 SF±) + EX. PAVER SURFACE (35 SF±) = 1,485 SF± / 3,590 SF = 41.4% IMP. THEREFORE OPEN SPACE IS 58.6%
 RENOVATED BLDG/PROPOSED GARAGE ADDITION/EX. STEPS (1,050 SF±) + PROP. PERVIOUS PAVER DRIVEWAY (0 SF±) + PROPOSED RETAINING WALLS (225 SF±) + EX. BRICK SIDEWALK (10 SF±) = 1,285 SF± / 3,590 SF = 35.8% ± (REDUCTION OF EFFECTIVE IMPERVIOUS)
 PROPOSED PERVIOUS PAVER DRIVEWAY IS (1,200 SF±) THEREFORE OPEN SPACE IS 3,590 SF - 1,285 SF± - 1,200 SF± = 1,105 SF± / 3,590 SF = 30.8% ± OPEN SPACE

LEGEND:

- STONE BOUND (AS NOTED)
- IRON PIPE (AS NOTED)
- STOCKADE FENCE
- ▒ BRICK
- ▒ CONCRETE
- ▒ CRUSHED STONE
- RCRD ROCKINGHAM COUNTY REGISTRY OF DEEDS
- 101-03 TAX SHEET / LOT NO.
- EOP EDGE OF PAVEMENT
- DECIDUOUS SHRUB
- * CONIFEROUS SHRUB
- ⊕ BOLLARD POST
- * CONIFEROUS SHRUB TO BE REMOVED
- PROPERTY LINE
- BUILDING SETBACK LINE
- ▒ EXISTING RESIDENCE TO BE RENOVATED
- ▒ PROPOSED BUILDING ADDITION
- ▒ EXISTING PAVEMENT
- ▒ PROPOSED PAVER DRIVEWAY LIMITS



LOCUS
(N.T.S.)



ENGINEER:

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

ISSUED FOR: **APPROVAL**
 ISSUE DATE: **APRIL 29, 2024**

REVISIONS

NO.	DESCRIPTION	BY	DATE
0	INITIAL SUBMISSION	EDW	04/29/24

DRAWN BY: **RLH**
 APPROVED BY: **EDW**
 DRAWING FILE: **5518.DWG**

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

APPLICANT:
SAKUNTALA LLC
 4 ANDREW WAY
 MADBURY, NH 03823

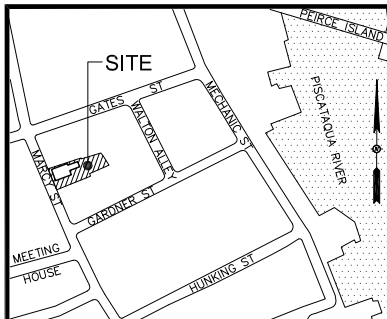
OWNER:
SAKUNTALA LLC
 4 ANDREW WAY
 MADBURY, NH 03823
 RCRD DEED BK 6511, PG 2347

PROJECT:
235 MARCY STREET
TAX MAP 103, LOT 12
PORTSMOUTH, NH

TITLE:
BOARD OF ADJUSTMENT
SITE PLAN

SHEET NUMBER:
C - 1

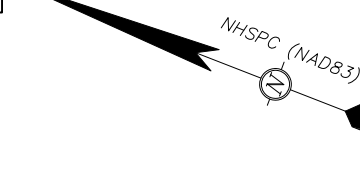
ALTUS JOB# 5518



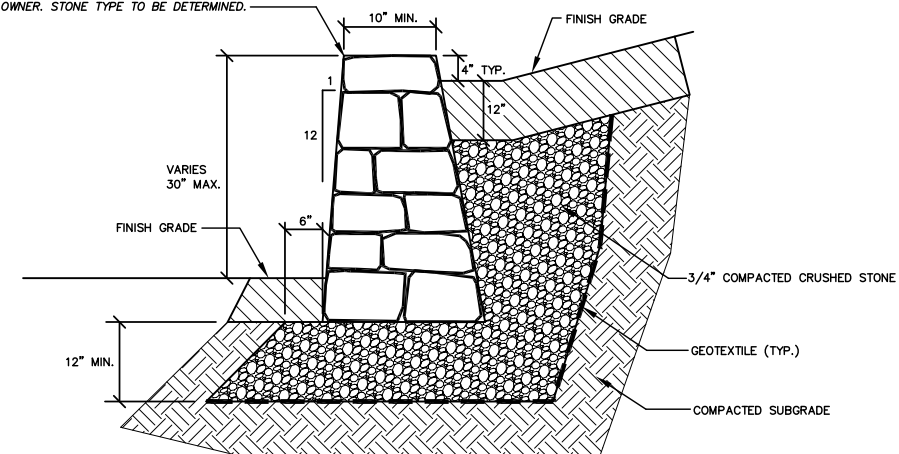
REFERENCE PLAN

"EXISTING CONDITIONS PLAN, TAX MAP 103, LOT 12, 235 MARCY STREET, PORTSMOUTH, NH", BY JAMES VERRA AND ASSOCIATES, INC., DATED FEBRUARY 8, 2024.

LOCUS
(N.T.S.)

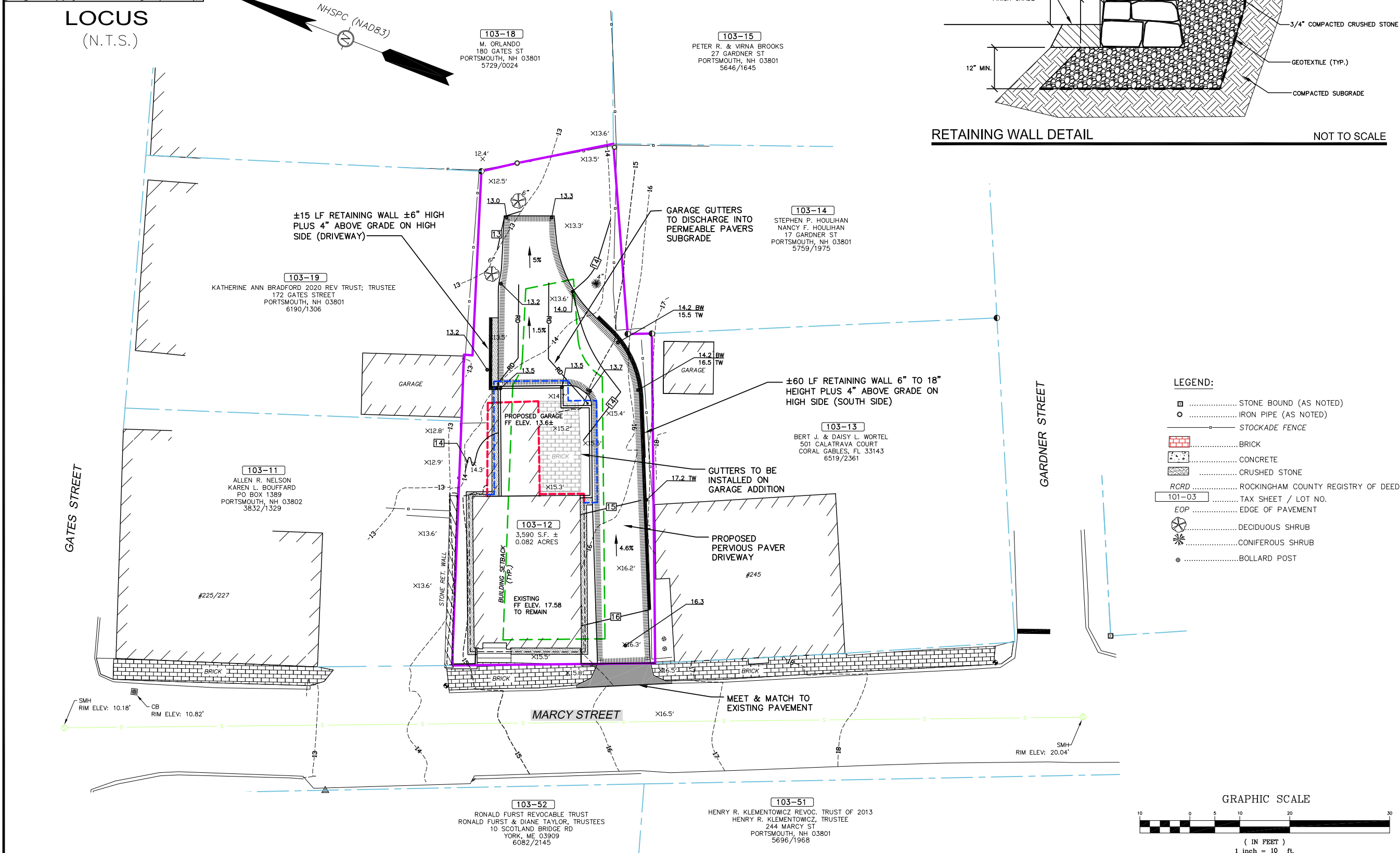


STONE RETAINING WALL, DRY LAID LOOK, MORTAR TAPPED, 1/12 BATTER ON FRONT AND BACK OF WALL. CONTRACTOR TO CONSTRUCT 6' LONG SAMPLE PANEL OF WALL FOR REVIEW AND APPROVAL BY OWNER. STONE TYPE TO BE DETERMINED.



RETAINING WALL DETAIL

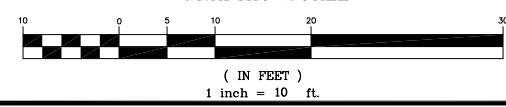
NOT TO SCALE



LEGEND:

- STONE BOUND (AS NOTED)
- IRON PIPE (AS NOTED)
- STOCKADE FENCE
- ▤ BRICK
- ▥ CONCRETE
- ▧ CRUSHED STONE
- RCRD ROCKINGHAM COUNTY REGISTRY OF DEEDS
- 101-03 TAX SHEET / LOT NO.
- EOP EDGE OF PAVEMENT
- ⊙ DECIDUOUS SHRUB
- ⊛ CONIFEROUS SHRUB
- ⊙ BOLLARD POST

GRAPHIC SCALE



ENGINEER:

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

ISSUED FOR: **APPROVAL**
 ISSUE DATE: **MAY 13, 2024**

REVISIONS

NO.	DESCRIPTION	BY	DATE
0	INITIAL SUBMISSION	EDW	04/29/24
1	ADD RET. WALL DETAIL	EDW	05/13/24

DRAWN BY: _____ RLH
 APPROVED BY: _____ EDW
 DRAWING FILE: 5518.DWG

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

APPLICANT:
 SAKUNTALA LLC
 4 ANDREW WAY
 MADBURY, NH 03823

OWNER:
 SAKUNTALA LLC
 4 ANDREW WAY
 MADBURY, NH 03823
 RCRD DEED BK 6511, PG 2347

PROJECT:
 235 MARCY STREET
 TAX MAP 103, LOT 12
 PORTSMOUTH, NH

TITLE:
PRELIMINARY BOARD OF ADJUSTMENT SITE PLAN

SHEET NUMBER:
C - 1

ALTUS JOB# 5518

II. NEW BUSINESS

- B. The request of **Colleen M .Cook (Owner)**, for property located at **40 Winter Street** whereas relief is needed for the following: 1) Variance from Section 10.515.14 to install a mechanical unit 3.5 feet from the side property line whereas 10 feet is required. Said property is located on Assessor Map 145 Lot 96 and lies within the General Residence C (GRC) District. (LU-24-74)

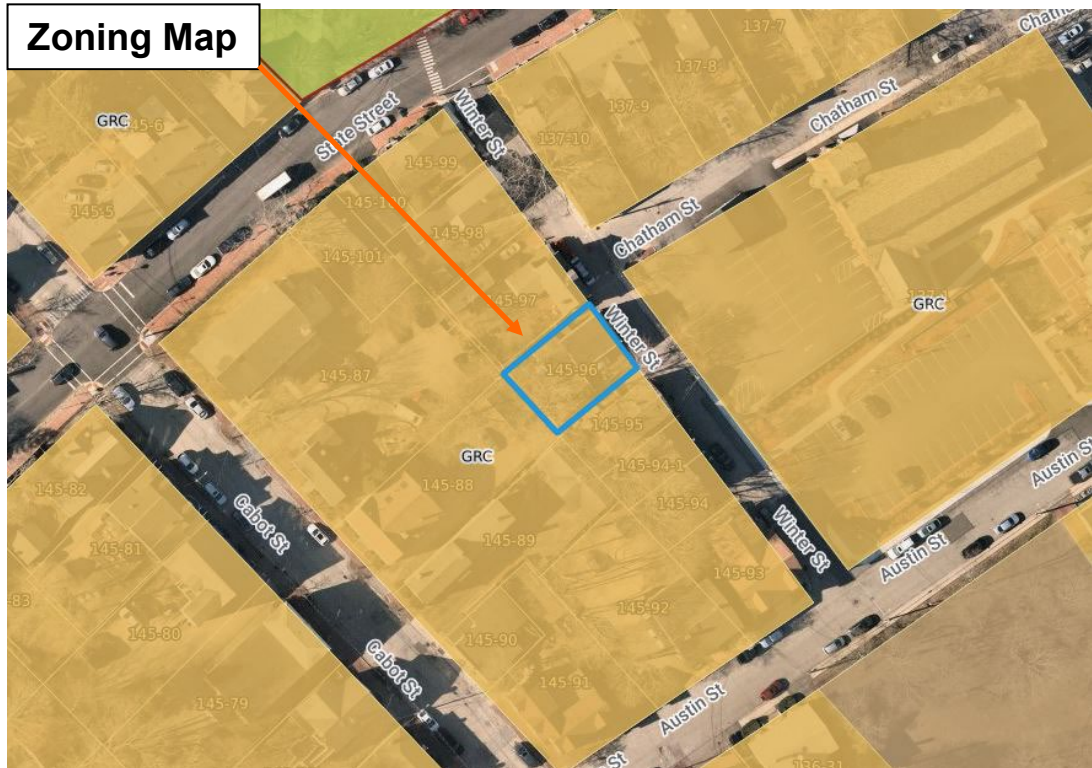
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use</u>	Single-family dwelling	Mechanical Unit	Primarily Residential
<u>Lot area (sq. ft.):</u>	2,614	2,614	3,500 min.
<u>Front Yard (ft.):</u>	0	0	5 min.
<u>Right Yard (ft):</u>	3.9 (Structure)	3.5 (Mechanical Unit)	10 min.
<u>Parking:</u>	2	2	2
<u>Estimated Age of Structure:</u>	1880	Variance request(s) shown in red.	

Other Permits/Approvals Required

- Mechanical/Electrical Permit

Neighborhood Context



Previous Board of Adjustment Actions

July 18, 2017 – The Board granted relief from the Zoning Ordinance for an addition including: 1) Variances from Section 10.521 to allow a right side yard setback of 9'5 ½" ± where 10' is required. 2) A Variance from Section 10.321 to allow a lawful nonconforming structure to be reconstructed, extended, or enlarged without conforming to the requirement of the ordinance.

Planning Department Comments

The existing single-family dwelling dates to 1880 on an existing non-conforming lot. The applicant is proposing the installation of a mini-split mechanical unit in the right side yard of the structure behind an existing fence.

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.

Narrative for application of Colleen Cook, 40 Winter street, Portsmouth NH

This proposal is for a mini split system to be placed on the homeowners property in a location that lacks sufficient side yard setbacks. Required side set back is 10 ft and actual set back space would only be 3"4. It should be noted that the location requested for the main unit is hidden behind a fence and will not be able to be seen or detected either by neighbors or the public at large, making it an ideal location. The fence will also limit any noise, as the unit is projected to be 30 decibels of noise which is the estimated noise of a whisper, which the fence should mute to nothing.

Criteria 1

The variance will not be contrary to public interests as the location is hidden on the side of the house where it will not be seen. Other locations will impede use of the house in significant ways for parking and use of the yard.

Criteria 2

The spirit of the ordinance will be observed in that the view is undetectable to neighboring properties and to the public making this an optimal location. The spirit is also consistent with section 10.122 which speaks to the commitment to sustainability and environmental issues as this will provide a substantially more energy efficient and environmentally friendly means of heat and cooling than is currently present.

Criteria 3

Substantial justice will be done in that this space will be the least intrusive location and will hide main unit from public view and the view of neighbors and will not diminish views of any surrounding properties

Criteria 4

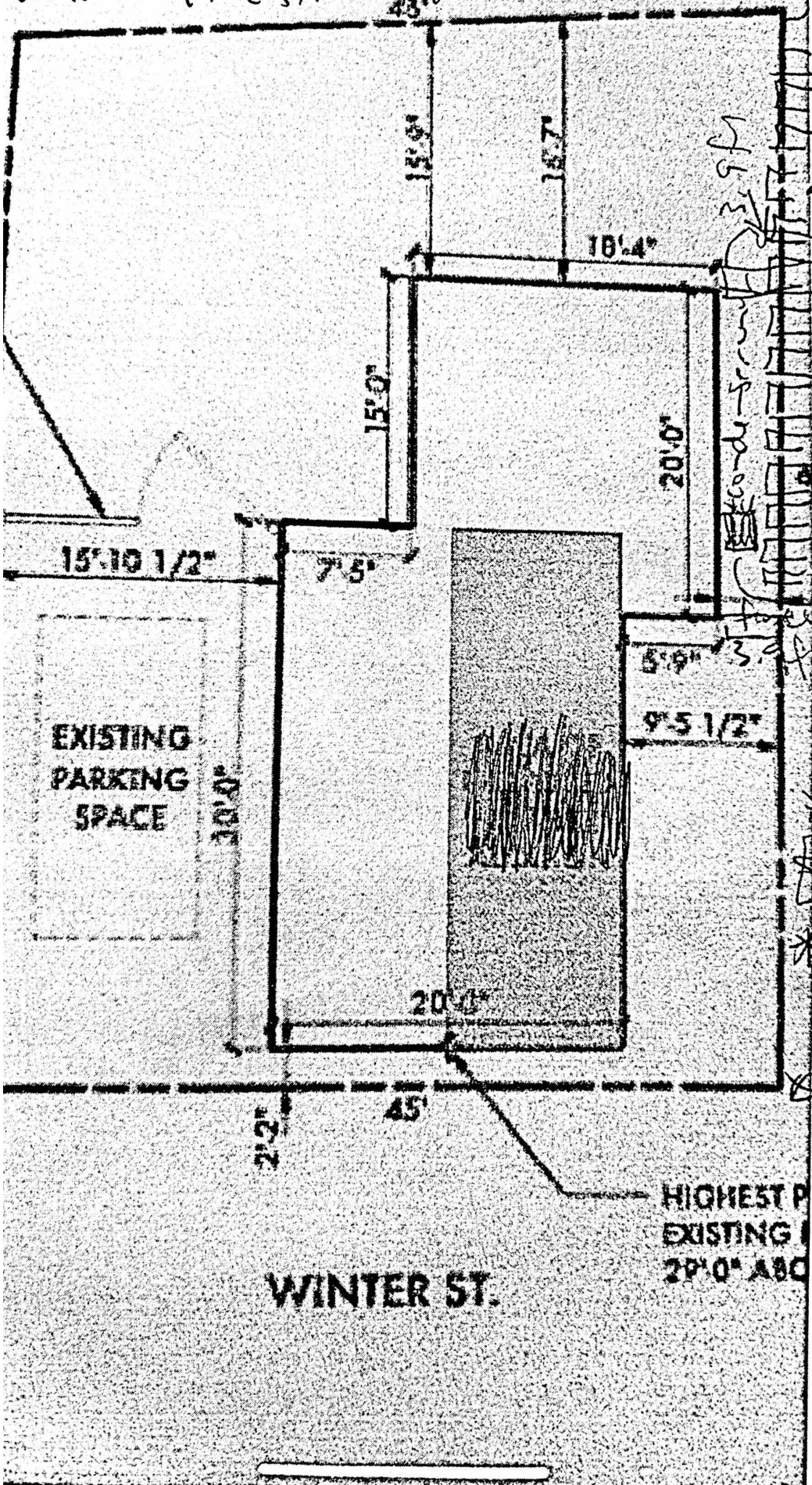
Views of surrounding properties will not be diminished as the main unit site is hidden behind a fence and undetectable to the view of the public and or neighboring properties.

Criteria 5

Literal enforcement of the ordinance will result in unnecessary hardship as this is a pre-existing, nonconforming lot leaving essentially no other reasonable options for installing units. Other locations will not only lead to limited usage of small space available to the owner, but will also be more visible to the public and and increase inefficiencies of the operation of the system and unduly increase costs to the homeowner significantly. This is an extremely small pre-existing lot with very limited space and or options.

Condenser unit will be hidden from neighbors + public by existing fence which will also shield noise which is estimated to be sound of a whisper 30 decibels

whisper
30 decibels



fence in front

3.9 ft exists
4 ft house
+ side
setback

fence

condenser unit
location
6 inches from
house +

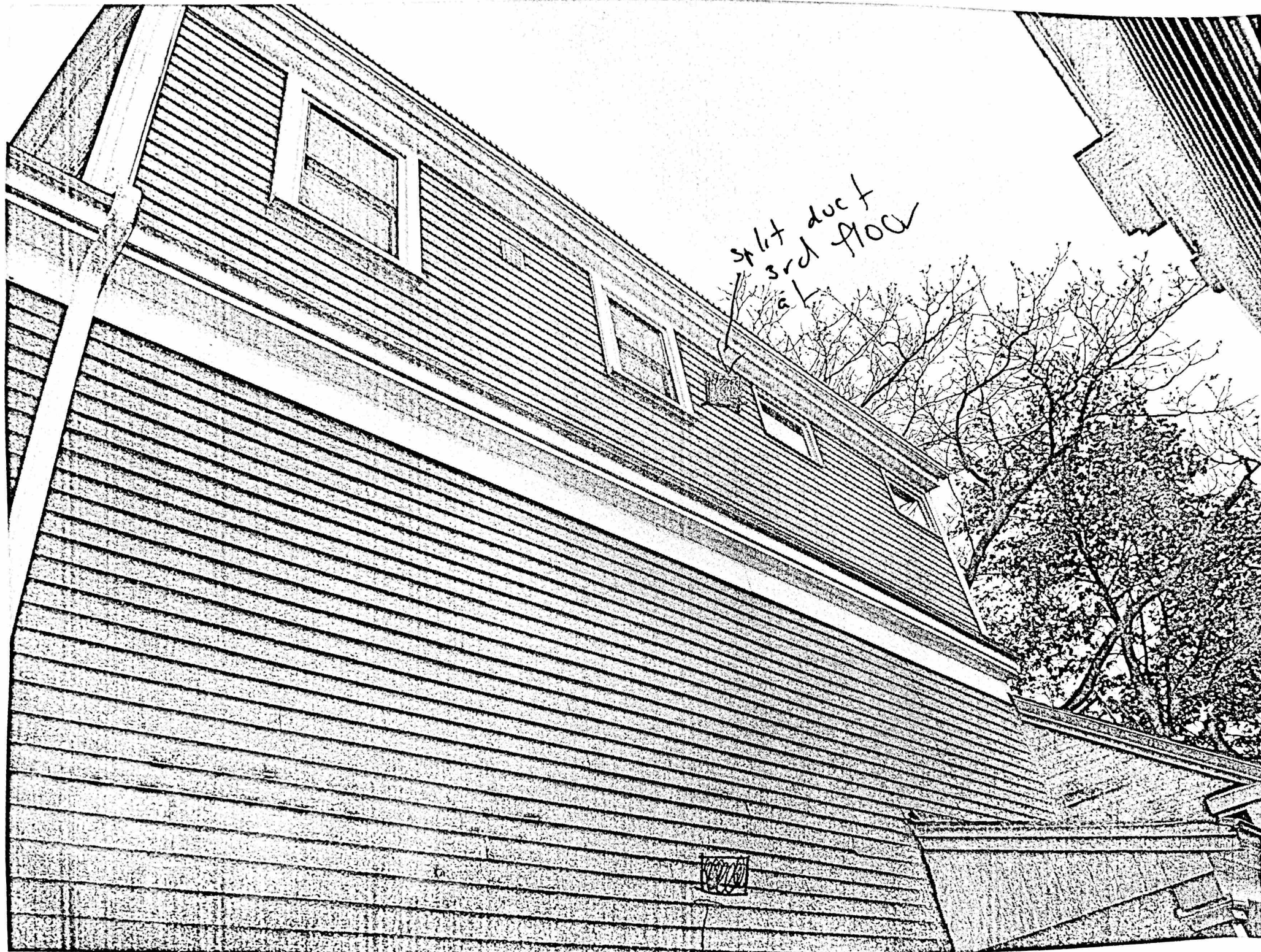
3.3 from
side set back

39 ft from
rear set back

26 ft from
rear set
back

HIGHEST P
EXISTING
20'0" ABC

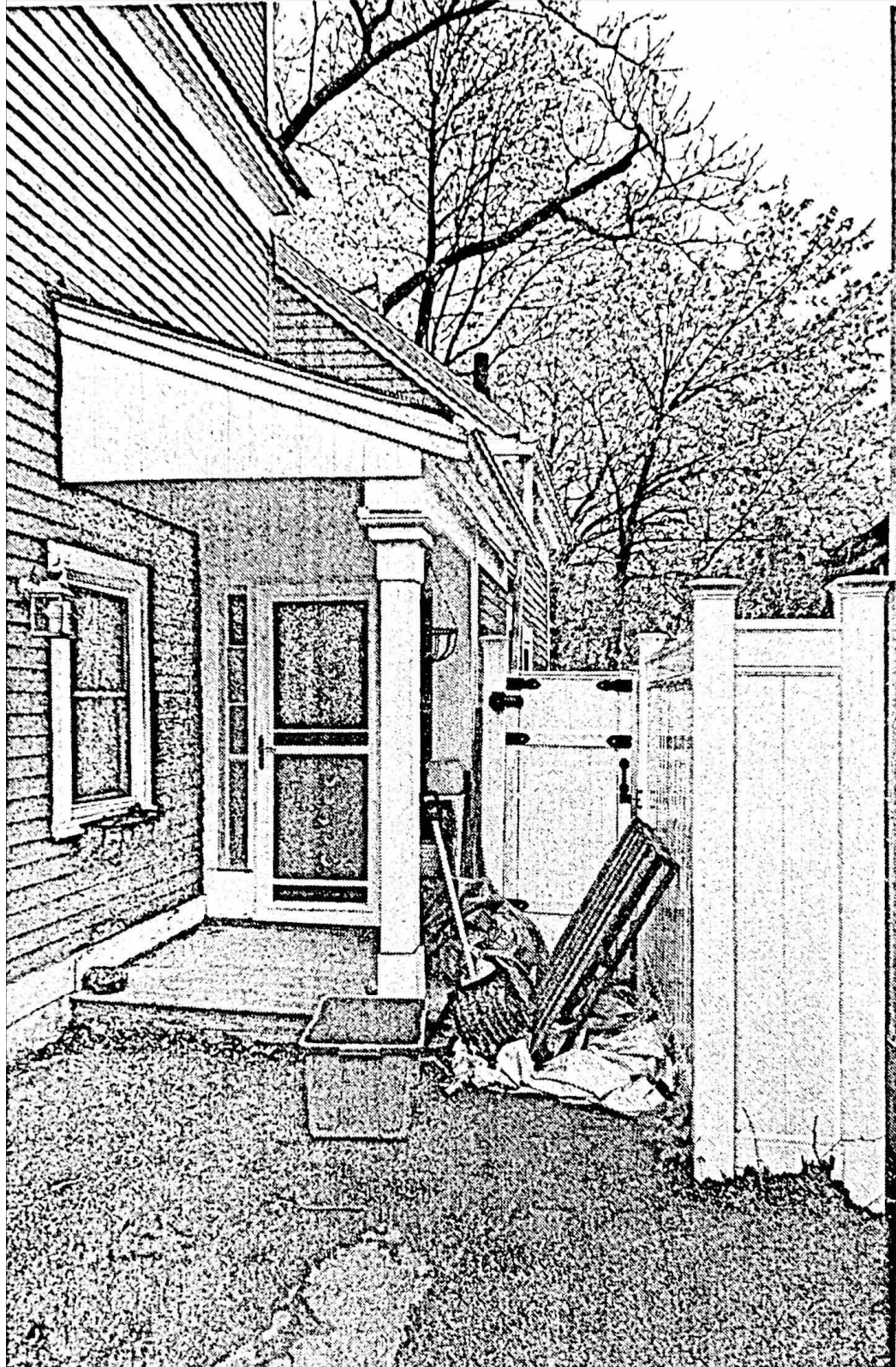
WINTER ST.



split duct
3rd floor



100-100-100





II. NEW BUSINESS

- C. The request of **Stephen A. Singlar and Kathryn L. Singlar (Owners)**, for property located at **43 Holmes Court** whereas relief is needed to amend a Variance granted on December 20, 2022 to demolish the existing dwelling and construct a new single-family dwelling which requires the following: 1) Variance from Section 10.531 to allow a 16 foot front yard where 30 feet is required. Said property is located on Assessor Map 101 Lot 14 and lies within the Waterfront Business (WB) and Historic Districts. (LU-22-227)

Existing & Proposed Conditions

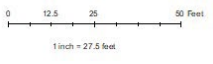
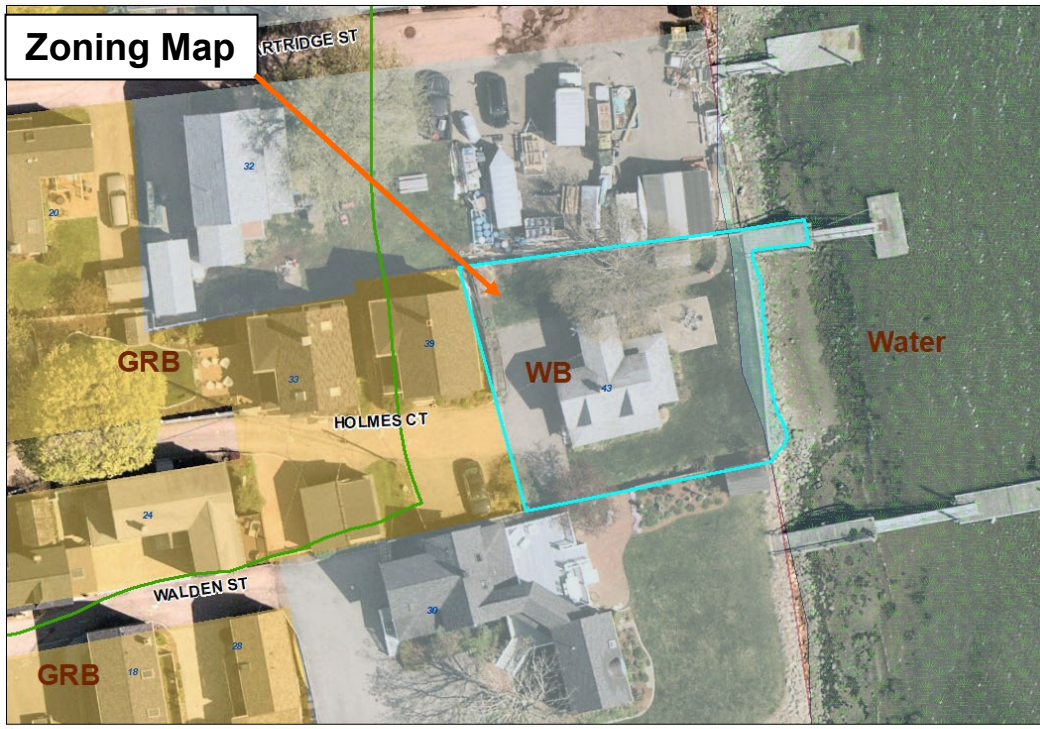
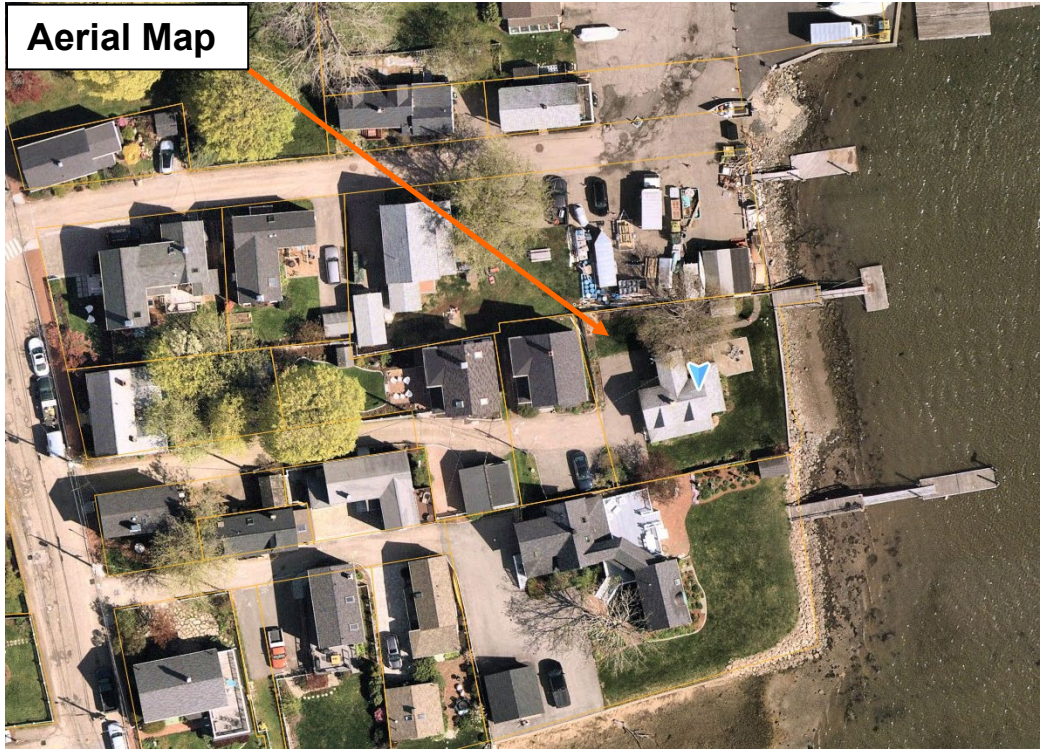
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family Dwelling	Demo existing and construct new SFD*	Primarily waterfront uses
<u>Lot area (sq. ft.):</u>	5,353	5,353*	20,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	5,353	5,353	NR
<u>Street Frontage (ft.):</u>	0	0*	100 min.
<u>Lot depth (ft.)</u>	75	75*	100 min.
<u>Front Yard (ft.):</u>	19	16	30 min.
<u>Left Yard (ft.):</u>	14	14*	30 min.
<u>Right Yard (ft.):</u>	14	14*	30 min.
<u>Rear Yard (ft.):</u>	26	21	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	17	22	30 max.
<u>Open Space Coverage (%):</u>	59	64	20 min.
<u>Parking</u>	2	2	2
<u>Estimated Age of Structure:</u>	1749	Variance request(s) shown in red.	

*Variances granted on December 20, 2022

Other Permits/Approvals Required

- Historic District Commission
- Building Permit

Neighborhood Context



43 Holmes Court



Previous Board of Adjustment Actions

December 20, 2022 – The Board granted relief from the Zoning Ordinance for demolishing the existing single-family dwelling and constructing a new single-family dwelling including: 1) Variances from Section 10.531 to allow a) a lot area of 5,353 square feet where 20,000 square feet is required; b) 0 feet of street frontage where 100 feet is required; c) 75' of lot depth where 100 feet is required; d) a 17 foot front yard where 30 feet is required; e) a 14 foot left side yard where 30 feet is required; and f) a 14 foot right side yard where 30 feet is required. 2) A Variance from Section 10.440, Use # 1.10 to allow a single-family dwelling where the use is not permitted.

Planning Department Comments

The Board granted several variances on December 20, 2022 to demolish the existing single-family dwelling and to construct a new single-family dwelling on the existing non-conforming lot. The applicant submitted a Wetlands Permit application to NHDES subsequently and recently received correspondence that the permit could not be approved unless the home was moved at least 1' farther away from the shoreline of the river. The applicant is requesting to modify the proposed location of the home to comply with this change and requests amended approval of the relief required for the front yard setback.

Variance Review Criteria

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

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

10.235 Certain Representations Deemed Conditions

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

BY: VIEWPOINT & HAND DELIVERY

April 30, 2024

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

**RE: Variance Application of Stephen and Kathryn Singlar
43 Holmes Court, Tax Map 101, Lot 14**

Dear Stefanie,

Our Office represents Stephen and Kathryn Singlar, owners of the property located at 43 Holmes Court. The following materials have been submitted for consideration at the Zoning Board of Adjustment's May 2024 meeting:

- 1) Variance Application (filed through Viewpoint);
- 2) Landowner Letter of Authorization;
- 3) Narrative to Variance Application;
- 4) Variance Plan;
- 5) Floor Plans and Elevations;
- 6) Tax Map with Zoning Overlay;
- 7) Tax Map;
- 8) Photographs of the Property.

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

Sincerely,



Derek R. Durbin, Esq.

LANDOWNER LETTER OF AUTHORIZATION

Stephen and Kathryn Singlar, record owners of property located at 43 Holmes Court, Portsmouth, NH 03801, Tax Map 101, Lot 14 (the "Property"), hereby authorizes **Durbin Law Offices, PLLC, Altus Engineering, Inc. and Brendan McNamara, and their agents and representatives** to file any building, zoning, planning or other municipal permit applications with the City of Portsmouth for said Property and to appear before its land use boards. This Letter of Authorization shall be valid until expressly revoked in writing.



Stephen Singlar

November 14, 2022




Kathryn Singlar

November 14, 2022

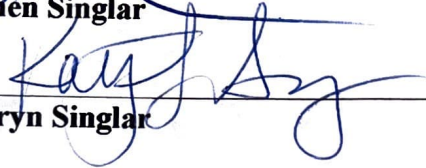
LANDOWNER LETTER OF AUTHORIZATION

Stephen and Kathryn Singlar, record owners of property located at 39 Holmes Court, Portsmouth, NH 03801, Tax Map 101, Lot 13 (the "Property"), hereby authorizes **Durbin Law Offices, PLLC, Altus Engineering, Inc. and Brendan McNamara and their agents and representatives** to file any building, zoning, planning or other municipal permit applications with the City of Portsmouth for said Property and to appear before its land use boards. This Letter of Authorization shall be valid until expressly revoked in writing.



Stephen Singlar

November 14, 2022



Kathryn Singlar

November 14, 2022

**CITY OF PORTSMOUTH
ZONING APPLICATION NARRATIVE**

Stephen Singlar and Kathryn Singlar
(Owners/Applicants)
Tax Map 101, Lot 14
43 Holmes Court
Portsmouth, NH 03801

INTRODUCTION

The Property

The Property at 43 Holmes Court, Portsmouth (the “Property”) is located in the Waterfront Business (WB) District. It contains a non-conforming two-bedroom single-family residence constructed around the year 1749. The home has undergone considerable modifications over time. Very little of the original structure remains. What does remain is in poor condition and has very few redeeming qualities. The home is also prone to flooding given its low elevation and proximity to the Piscataqua River. It does not comply with current flood zone requirements.

The Property is uniquely situated. The Property is landlocked in the sense that it has no frontage on a public street. It is accessed via a private right-of-way (“ROW”) across 39 Holmes Court, which is also owned by the Applicants. The surrounding neighborhood consists of single-family residences. All other properties on Holmes Court are zoned General Residence B (“GRB”) consistent with their existing use. **Exhibit A**.

Procedural History

On December 20, 2022, the Zoning Board of Adjustment (“Board”) granted several variances for the Property relative to the Applicants’ plans to demolish the existing home and construct a new one in its place. **Exhibit B**. One of the variances granted was to allow a 17’ front yard setback where 30’ is required under Section 10.521 of the Portsmouth Zoning Ordinance (“Ordinance”).

Following the Board’s decision, the Applicant submitted a Wetlands Permit application to the NH Department of Environmental Services (“NH DES”). The NH DES would not approve the Applicants’ Wetlands Permit unless they moved the home at least 1’ farther away from the shoreline of the river. Accordingly, the Applicants have modified their plans to allow for a 1’ greater setback to the river. This shift in the placement of the home means that the proposed setback to the front (westerly) property boundary decreased by 1’ to 16’ (+/-), thus requiring the Applicants to file a new variance application for the front yard setback. Otherwise, the Applicants’ plans for the home are substantially the same and all other variances granted to the Applicants carry forward and remain valid.

SUMMARY OF ZONING RELIEF

The Applicants seek a variance from Section 10.521 of the Ordinance allow a front yard setback of 16'(+/-) where 19' exists and 30' is required.¹

VARIANCE CRITERIA

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

In the case of *Chester Rod & Gun Club, Inc. v. Town of Chester*, the Court noted that since the provisions of all ordinances represent a declaration of public interest, any variance will, in some measure, be contrary to the ordinance, but to be contrary to the public interest or injurious to public rights of others, "the variance must 'unduly, and in a marked degree' conflict with the ordinance such that it violates the ordinance's 'basic zoning objectives.'" *Id.* The Court observed that "[t]here are two methods of ascertaining whether granting a variance would violate an ordinance's basic zoning objectives: (1) examining whether granting the variance would alter the essential character of the neighborhood or, in the alternative; and (2) examining whether granting the variance would threaten the public health, safety, or welfare." *152 N.H. 577 (2005)*.

Minimum building setback requirements are generally intended to create and preserve separation between buildings on abutting properties in order to maintain light, air, space and to protect against the spread of fire. The proposed home will impose no additional burden on surrounding properties. It will only extend 3' closer to the front (westerly) boundary than the existing home, which is a minimal difference. The distance between the homes on 39 Holmes Court and 43 Holmes Court will be approximately 19'. The other residences on Holmes Court are located much closer to one another than 19'.

If the Property were zoned consistently with others on Holmes Court, that are zoned GRB, no relief would be needed to construct the new home. The required setbacks would be: 5' (front); 10' (sides) and 25' (rear). In the case of *Belanger v. Nashua*, the NH Supreme Court opined: "[w]hile we recognize the desired interrelationship between the establishment of a plan for community development and zoning, we believe that municipalities must also have their zoning ordinances reflect the current character of neighborhoods." *121 N.H. 389 (1981)*.

¹ The Property does not have a "front yard" by definition; therefore, a variance should not be required. The definition for "yard, front" under Section 10.1530 of the Ordinance says: [a] yard extending across the full width of a lot between the street right of way line and nearest point of any building. Front yard dimensions are to be measured from the street where a plan of the street is on file with the Rockingham County Registry of Deeds or in City records, or in the absence of such plan, from a line 25 feet from and parallel to the center line of the traveled way.

Granting the variance will allow the Applicants to demolish a flood-prone home that is in poor condition and replace it with a new code-compliant structure at a higher elevation that is further from the river. The existing home cannot be elevated while meeting current building requirements. The NH DES has determined that having the home located farther from the river than what exists or what was previously proposed will improve the environmental conditions of the Property.

The aesthetic, structural and environmental improvements to the Property are in the best interest of the public and are consistent with the spirit of the Ordinance. For the foregoing reasons, granting the front yard setback variance will not alter the essential character of the area or threaten the public health, safety or welfare.

It is important to point out that when the Board approved the variances in December 2022, much of the discussion centered around the continued use of the Property for residential purposes. **Exhibit C**. There was little or no discussion concerning the dimensional relief sought. The Board did not express any concern with the proximity of the proposed home to the front property boundary. What is proposed is only 1' closer to the front boundary than what was approved in December 2022, a difference is inconsequential.

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

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

The existing home suffers from physical and functional obsolescence. Granting the front yard setback variance will allow for a more functionally designed home that complies with current building and life safety codes and flood elevation requirements. This will mitigate the risk of future flooding and structural damage. The structural integrity of the existing foundation is compromised due to water intrusion and poor construction. The floor plan is also dysfunctional. The home has only one bathroom which is located on the first floor.

Shrinking the house by 1' so that it complies with the front yard setback variance that was previously granted would compromise the integrity of the design, which has undergone rigorous review at the local and state levels due to its location. Moreover, it is not a realistic option for the Applicants, who are only proposing 1,297 square feet of livable space.

Denying the front yard setback variance will result in a loss to the landowner, who cannot feasibly renovate the home while meeting current flood elevation and building code requirements. This loss is not outweighed by any gain to the public. To the contrary, the public interest is served by granting the variance.

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

A newly constructed home with a tasteful design and modern amenities will only help to maintain and potentially improve surrounding property values. The home will be similar to or even slightly smaller in size than many of the homes that surround. The design is architecturally consistent with the character of the area and will be a natural fit for the neighborhood.

D. Denying the variance would constitute an unnecessary hardship.

The Property has a myriad of special conditions that distinguish it from surrounding properties. The Property does not have frontage on a public street, which means that it does not have a true “front yard”, as defined by Section 10.1530 of the Ordinance. It is accessed by a private drive across the property at 39 Holmes Court.

In addition to the Ordinance’s goals of preserving the light, air and space of abutting properties, the primary purpose behind requiring a certain front yard setback is to promote a consistent streetscape. In the present instance, the Property is at the end of a private ROW with no other homes on the same side of the “street”. Therefore, there is no streetscape to maintain consistency with. Other homes that are located on the public portion of the Holmes Court ROW are located much closer to the street than the proposed home because they are zoned GRB which only requires a 5’ front yard setback.

The Property is non-conforming in almost every respect to WB zoning standards. The buildable envelope of the Property is so small that nothing other than a small shed could be built upon it without requiring variances. In addition, the Property has historically contained a single-family home and been used for residential purposes, consistent with the surrounding neighborhood.

The Property is abutted to the rear by the Piscataqua River, which means that it is subject to multiple layers of state and local regulation that restrict the size and location of any structure to be built upon the Property. In the present instance, the NH DES would not allow the structure to be built in the location previously approved by the City.

As a result of the special conditions of the Property, there is no fair and substantial relationship between the general purposes of the front yard setback restriction and its application to the proposed building.

CONCLUSION

In conclusion, the Applicants have met the five (5) criteria for granting the front yard setback variance and respectfully request the Board's approval of their application.

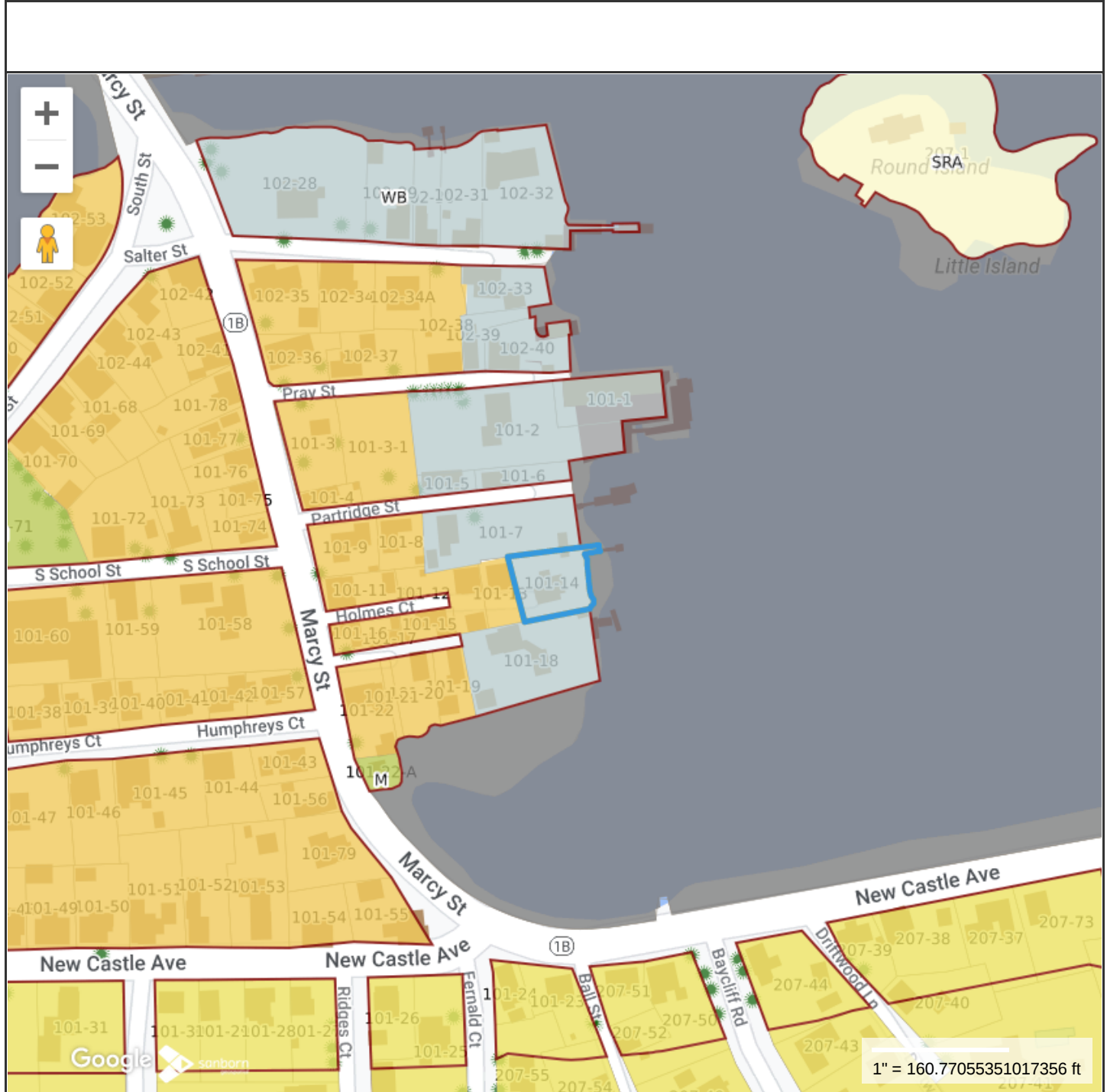
Respectfully Submitted,

Dated: April 30, 2024

Stephen and Katheryn Singlar



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



Property Information

Property ID 0101-0014-0000
Location 43 HOLMES CT
Owner SINGLAR STEPHEN A & KATHRYN L



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.

Map Theme Legends

Zoning

Residential Districts

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




Mixed Residential Districts

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




Business Districts

	GB	General Business
	B	Business
	WB	Waterfront Business



Industrial Districts

	OR	Office Research
	I	Industrial
	WI	Waterfront Industrial






Airport Districts

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


Conservation Districts

	M	Municipal
	NRP	Natural Resource Protection


Character Districts

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




Civic District

	Civic District
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Municipal District

	Municipal District
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Overlay Districts

	OLOD	Osprey Landing Overlay District
	Downtown Overlay District	
	Historic District	

City of Portsmouth

CITY OF PORTSMOUTH



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

ZONING BOARD OF ADJUSTMENT

January 4, 2023

Stephen A and Kathryn L Singlar
21 Elliot Street
Exeter, 03833

RE: Board of Adjustment request for property located at 43 Holmes Court (LU-22-227)

Dear Property Owners:

The Zoning Board of Adjustment, at its regularly scheduled meeting of **December 20, 2022**, considered your application for demolishing the existing dwelling and constructing a new single-family dwelling which requires the following: 1) Variances from Section 10.531 to allow a) a lot area of 5,353 square feet where 20,000 square feet is required; b) 0 feet of street frontage where 100 feet is required; c) 75' of lot depth where 100 feet is required; d) a 17 foot front yard where 30 feet is required; e) a 14 foot left side yard where 30 feet is required; and f) a 14 foot right side yard where 30 feet is required. 2) A Variance from Section 10.440, Use # 1.10 to allow a single family dwelling where the use is not permitted.

Said property is shown on Assessor Map 101 Lot 14 and lies within the Waterfront Business (WB) and Historic District. As a result of said consideration, the Board voted to **grant** the variances as presented and advertised.

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

Approvals may also be required from other City Commissions or Boards. Once all required approvals have been received, applicant is responsible for applying for and securing a building permit from the Inspection Department prior to starting any project work.

This approval shall expire unless a building permit is issued within a period of two (2) years from the date granted unless an extension is granted in accordance with Section 10.236 of the Zoning Ordinance.

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

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

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

Very truly yours,

A handwritten signature in cursive script that reads "Beth I Margeson".

Beth Margeson, Acting Chair of the Zoning Board of Adjustment

cc: Shanti Wolph, Chief Building Inspector

Rosann Maurice-Lentz, City Assessor

Derek Durbin, Durbin Law Offices PLL

Findings of Fact | Variance

City of Portsmouth Zoning Board of Adjustment

Date: December 20, 2022

Property Address: 43 Holmes Court

Application #: LU-22-227

Decision: **Granted**

Findings of Fact:

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

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

Section 10.233 Variance Evaluation Criteria	Finding (Meets Criteria)	Relevant Facts
10.233.21 Granting the variance would not be contrary to the public interest.	YES	<ul style="list-style-type: none"> The existing use is residential and will not be changing.
10.233.22 Granting the variance would observe the spirit of the Ordinance.	YES	<ul style="list-style-type: none"> The property has existed as residential and the surrounding properties are residential. Creating a commercial business on the property would be disruptive to the entire street and neighborhood.
10.233.23 Granting the variance would do substantial justice.	YES	<ul style="list-style-type: none"> The nature of Holmes Court is such that it would be impractical to justify that it would contribute to the

		<p>waterfront business district.</p> <ul style="list-style-type: none"> The existing use will remain residential.
<p>10.233.24 Granting the variance would not diminish the values of surrounding properties.</p>	<p>YES</p>	<ul style="list-style-type: none"> The existing use will remain residential. The property has existed as residential and the surrounding properties are residential. Creating a commercial business on the property would be disruptive to the entire street and neighborhood.
<p>10.233.25 Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship.</p> <p>(a)The property has special Conditions that distinguish it from other properties in the area. AND (b)Owing to these special conditions, a fair and substantial relationship does not exist between the general public purposes of the Ordinance provision and the specific application of that provision to the property; and the proposed use is a reasonable one. OR Owing to these special conditions, the property cannot be reasonably used in strict conformance with the Ordinance, and a variance is therefore necessary to enable a reasonable use of it.</p>	<p>YES</p>	<ul style="list-style-type: none"> The property has existed as residential and the surrounding properties are residential. Creating a commercial business on the property would be disruptive to the entire street and neighborhood.

Stipulations
1.
2.
3.
4.

Holmes Court for access to 43 Holmes Court. He said they wanted the 2-ft setback for the dormer out of caution. In answer to further questions from Mr. Rheume, Mr. McNamara said the dormer was visually recessed from the continuation of the side wall, which was driven by appeals to the HDC. He said the heat pump would be placed on the side of the house vs. the back so that it wouldn't annoy the neighbors and that there would be sufficient space between the heat pump and the building for air ventilation.

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.

DECISION OF THE BOARD

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

Mr. Rossi said granting the variances would not be contrary to the public interest, supported by the fact that the design called for the addition of a dormer, which didn't really change the footprint of the structure itself. He said the only place where the change would be visible would be the adjacent property that was owned by the same owner. He said granting the variances would do substantial justice because there would be no gain to the public by denying the request and there would be an advantage to the owner and to the property's value by approving the variances. He said granting the variances would not diminish the values of surrounding properties, noting that the closest affected property was owned by the same owner and he was in the best position to judge whether the changes on one of his properties would diminish its value. He said the special condition of the property was that it was already nonconforming and there was nothing being done that would change the degree of nonconformance other than the heat pumps. He said he did not believe that the intent of the ordinance was to prevent the modernization of HVAC systems in antique homes. Therefore, he said he didn't think there was any relationship between the installation of heat pumps and the intent of the ordinance.

Mr. Rheume concurred. He said that type of New Englander lent itself to those types of roof dormers and it was a common way for homeowners to add extra square footage. He said normally the Board was concerned about setbacks and light and air to abutting properties, but the applicant owned both properties. He said window units were allowable but tended to be noisier than modern heat pumps condensers. He said zero-foot setbacks made him nervous but in this case it was common ownership and it sounded like the applicant did his research and was trying to make the noise go toward his own property. He said he recommended approval.

*The motion **passed** by unanimous vote, 6-0.*

F. The request of Stephen A and Kathryn L Singlar (Owners), for property located at 43 Holmes Court whereas relief is needed to demolish the existing dwelling and construct

a new single-family dwelling which requires the following: 1) Variances from Section 10.531 to allow a) a lot area of 5,353 square feet where 20,000 square feet is required; b) 0 feet of street frontage where 100 feet is required; c) 75' of lot depth where 100 feet is required; d) a 17 foot front yard where 30 feet is required; e) a 14 foot left side yard where 30 feet is required; and f) a 14 foot right side yard where 30 feet is required. 2) A Variance from Section 10.440, Use # 1.10 to allow a single family dwelling where the use is not permitted. Said property is located on Assessor Map 101 Lot 14 and lies within the Waterfront Business (WB) and Historic District. (LU-22-227)

SPEAKING TO THE PETITION

Attorney Derek Durbin was present on behalf of the applicant to review the petition, with project architect Brendan McNamara via Zoom and project engineer Erik Weinrieb. He noted that the 1749 single-family home was in poor shape and located in a flood zone. He said it couldn't be raised and that the only feasible thing to do was demolish it. Mr. McNamara said once a level of expenditure was exceeded on a home, it must meet current code and it would have to meet the flood zone requirements. He said lifting it up would exceed the expenditure, which would then initiate the rest of the house to meet existing code. He said the project got favorable feedback from the HDC work session. Attorney Durbin said the only nonconformance that would increase was the front yard setback. He reviewed the criteria and said they would be met.

Mr. Rossi asked if the grayed-out lots on the diagram were waterfront businesses except for one. Attorney Durbin agreed. Mr. Rossi said if the Board granted the variance, they would be continuing to restrict the small amount of waterfront available for business use, and he struggled with the propriety of doing that. Attorney Durbin said the home would be dysfunctional otherwise and would mitigate the flood risk. Mr. Rossi asked if the fact that it was already a residential use was a special condition of the property that created a hardship, and Attorney Durbin agreed. Acting-Chair Margeson said the flood zone was at eight feet and the City added a foot over that. She asked why the applicant didn't apply for a variance for relief for the extra foot to get out of the flood zone. Attorney Durbin said the true intent and best approach was to improve the property by demolishing the home and building a new one at a higher elevation. Mr. Weinrieb said the flood ordinance stated if there was substantial renovation, the building had to be lifted to one foot above, but new construction was two feet above. He said the buffer wasn't just for the new FEMA ordinances but also climate changes. It was further discussed.

Acting-Chair Margeson said she knew the HDC would deal with the property's demolition, but one of the criteria of the BOA when the property was in the Historic District was preservation of historic structures in the Historic District. She asked why the home had to be demolished. Attorney Durbin said it was in such rough shape that there wasn't a lot to salvage, and there was the floor elevation issue. Mr. McNamara said a site walk was done with the HDC and the exterior appearance of the house was of the late 1800s. He said the house had been reworked a few times and there was very little of the original structure left, except for the interior first floor. He said the concrete foundation was falling apart. He said the building code's requirements drove the need for demolition. Acting-Chair Margeson asked why the building couldn't be converted to a commercial use. Attorney Durbin said it would have to be a small waterfront marine-related use. He said the

area felt like a residential neighborhood and the applicant's property would be a nuisance and would have to be accessed via a residential property.

Acting-Chair Margeson opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

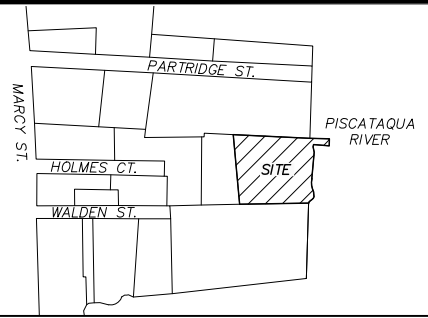
No one spoke, and Acting-Chair Margeson closed the public hearing.

DISCUSSION AND DECISION OF THE BOARD

Mr. Rossi said the argument that the building already had a residential use was compelling. Mr. Rheume said that only so many properties could fall into the waterfront business. He said he was an advocate of protecting every square inch of that waterfront but the applicant's property was so different and so isolated. He said the intent when it and the neighboring property was included in the waterfront district was that there might be some way of redoing it, but from a practical standpoint, he thought it would be negative to squeeze some business from a place that hadn't any had for a very long time. He said the nature of Holmes Court was such that it would be impractical to justify saying that it really contributed to the character of the waterfront businesses. He said it was a great thing for the City to try to preserve as much of the waterfront and keep that vibrancy aspect, but in the applicant's case, it didn't work and it made sense for the property to remain a residential use. (See meeting recording 2:55:07 for full summary). Acting-Chair Margeson said she would not support the application. She said demolition was within the HDC's purview but she didn't find the applicant's argument for demolishing persuasive. She said many buildings had different elements from different time periods and many foundations had to be lifted and replaced with new ones. She said she felt that the application failed the spirit and intent of the ordinance.

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

Mr. Rossi said the overarching issue was the fact that the Board was trying to judge the compliance of the residential use property according to the standards of the Waterfront Business Use Zone criteria, which he felt was a misapplication of those standards. He said the property wasn't one that lent itself to the intended purpose of waterfront business, so he thought it should be judged more in accordance with the residential use in the surrounding zone areas. He said that was the relevant fact that spoke to all the variance evaluation criteria and that he wouldn't repeat them one by one. Ms. Eldridge concurred and said granting the variances would not be contrary to the public interest because the residential use on a residential street area seemed appropriate. She said it would observe the spirit of the ordinance and would do substantial justice to what the property had been over the years. She said it didn't seem right to suggest that the property really belonged in another zoning district, given the concerns of the neighborhood and the private road. She said granting the variances would not diminish the values of surrounding properties and would most likely increase them. She said there were the flood plain concerns and the weakness of the structure, and the fact that the HDC had allowed demolition. She said there was a reason that the building could be torn down and she felt that a new building would increase property values. She said the hardships were many. Mr. Rossi added that the special condition of the property was that it was landlocked and the



LOCUS
(N.T.S.)

ZONING SUMMARY

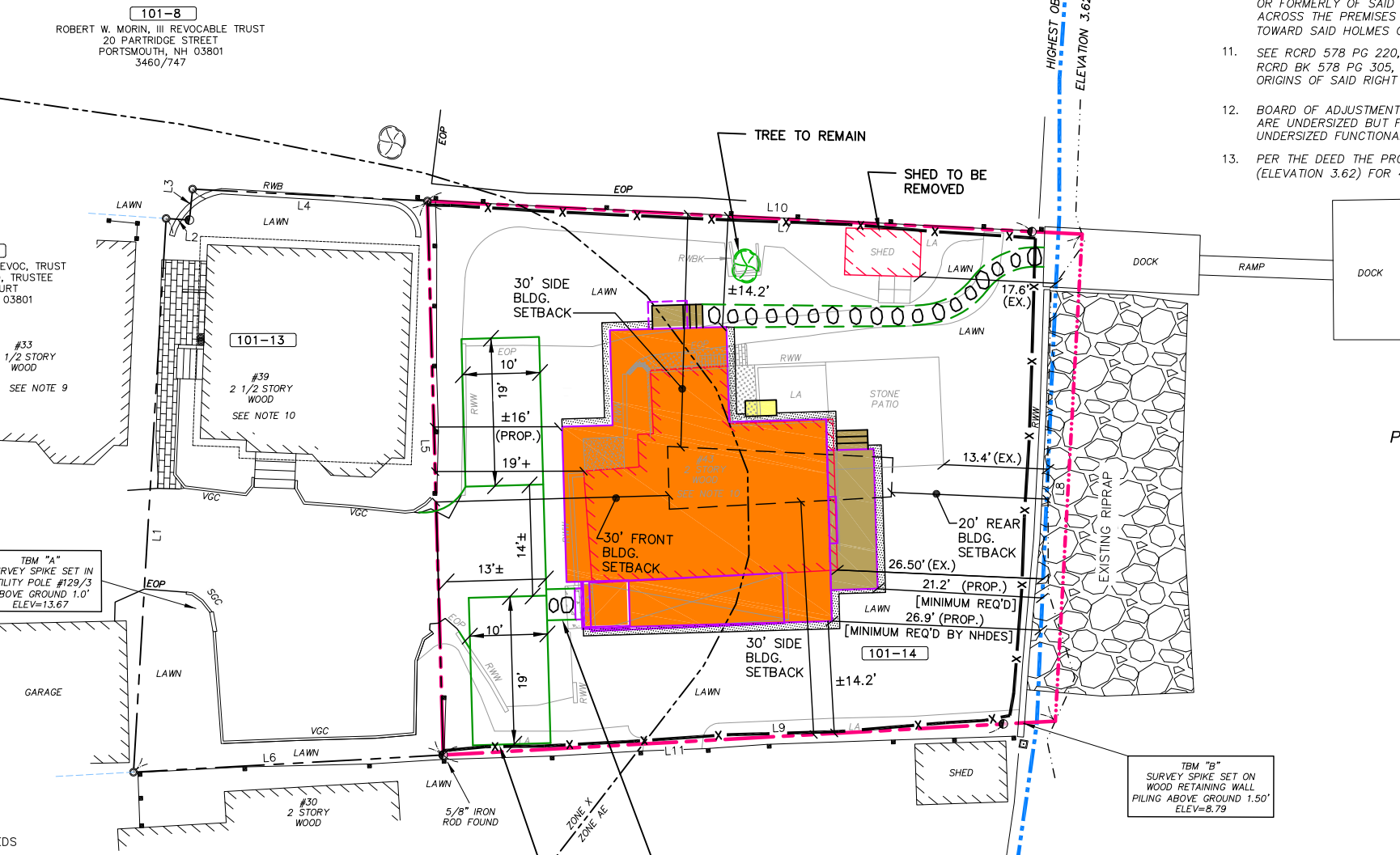
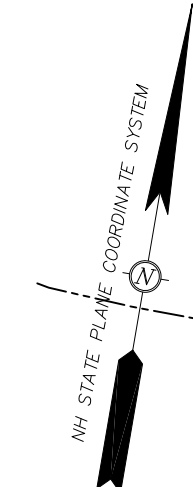
ZONE: WATERFRONT BUSINESS (WB) – SINGLE FAMILY RESIDENCE – EXISTING, TO BE REPLACED WITH SINGLE FAMILY RESIDENCE **
EXISTING LOT AREA: 5,353 S.F.± (0.12 AC.±)

DIMENSIONAL REQUIREMENTS	REQUIRED	EXISTING	PROPOSED
MIN. LOT AREA:	20,000 S.F.	±5,353 S.F.	±5,353 S.F. **
MIN. STREET FRONTAGE:	100'	0' (EX.) (HOLMES)	±0' (EXISTING) (NON-CONFORMING) **
DEPTH:	100'	±75'	±75' **
FRONT SETBACK:	30'	19'+ (EX.)	±16' (PROPOSED) *
SIDE SETBACK:	30'	±14.2' (EX.)	±14.2' (PROPOSED) **
REAR SETBACK:	20'	±26'+ (EX.)	±26'+ (PROPOSED RESIDENCE)/20'+ (PR. DECK) **
MAX. HEIGHT:	35'	<25' (EX.)	<25' (PROP. RESIDENCE)
MAX. BUILDING COVERAGE:	30%	±16.7% (EX.)(±895 SF)	±21.7% (±1,160 S.F.)
MIN. OPEN SPACE:	20%	±59.1% (±3,164 SF)	±64.1% (±3,434 SF)

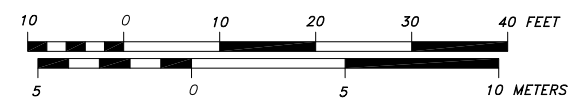
* ZONING RELIEF REQUIRED
** ZONING RELIEF PREVIOUSLY GRANTED

NOTES:

- OWNER OF RECORD.....STEPHEN A. SINGLAR and KATHRYN L. SINGLAR
ADDRESS.....21 ELLIOT STREET, EXETER, NH 03833
DEED REFERENCE.....6393/1443
TAX SHEET / LOT.....101-14
PARCEL AREA.....5,353 S.F.±(TO ELEV. 3.62)
- ZONED:.....WATERFRONT BUSINESS FRONT YARD SETBACK.....30'
MINIMUM LOT AREA..20,000 S.F. SIDE YARD SETBACK.....30'
FRONTAGE.....100' REAR YARD SETBACK.....20'
- THE RELATIVE ERROR OF CLOSURE WAS LESS THAN 1 FOOT IN 15,000 FEET.
- THE LOCATION OF ALL UNDERGROUND UTILITIES SHOWN HEREON ARE APPROXIMATE AND ARE BASED UPON THE FIELD LOCATION OF ALL VISIBLE STRUCTURES (IE CATCH BASINS, MANHOLES, WATER GATES ETC.) AND INFORMATION COMPILED FROM PLANS PROVIDED BY UTILITY COMPANIES AND GOVERNMENTAL AGENCIES. ALL CONTRACTORS SHOULD NOTIFY, IN WRITING, SAID AGENCIES PRIOR TO ANY EXCAVATION WORK AND CALL DIG-SAFE @ 1-888-DIG-SAFE.
- HORIZONTAL DATUM: NAD 1983 ESTABLISHED BY SURVEY GRADE GPS OBSERVATION AND NGS "OPUS" SOLUTION. REFERENCE FRAME: NAD83 (2011)(EPOCH: 2010.0000), US SURVEY FOOT.
VERTICAL DATUM: NAVD 1988. PRIMARY BENCHMARK: CITY OF PORTSMOUTH "ROBE".
- 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..
- THE PARCELS SHOWN HEREON LIES WITHIN ZONE AE (ELEVATION 8) & 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.
- THE HIGHEST OBSERVABLE TIDE LINE WAS DELINEATED BY MICHAEL CUOMO, NEW HAMPSHIRE CERTIFIED WETLAND SCIENTIST #004 ON MAY 20, 2022 & RECORDED BY JAMES VERRA AND ASSOCIATES, INC. UNDER THE DIRECTION OF MICHAEL CUOMO. NO FLAGS WERE SET.
- 33 HOLMES COURT IS "SUBJECT TO THE RIGHT OF WAY ACROSS SAID PREMISES FROM THE EASTERLY END OF HOLMES COURT." SEE RCRD BK 5838 PG 1715.
- 39 HOLMES COURT IS CONVEYED "TOGETHER WITH A RIGHT OF WAY ACROSS LAND NOW OR FORMERLY OF SAID CATLIN TO HOLMES COURT AND SUBJECT TO THE RIGHT OF WAY ACROSS THE PREMISES HEREBY CONVEYED FROM LAND NOW OR FORMERLY OF DOWNS TOWARD SAID HOLMES COURT." SEE RCRD BK 5829 PG 1412.
- SEE RCRD 578 PG 220, 10/17/1900, J. CORNELIUS COAKLEY TO JAMES FAY AND RCRD BK 578 PG 305, 11/12/1900, J. CORNELIUS COAKLEY TO MARGARET FOX FOR THE ORIGINS OF SAID RIGHT OF WAYS.
- BOARD OF ADJUSTMENT NOTE: THE TWO EXISTING PARKING SPACES ON THE PARCEL ARE UNDERSIZED BUT FUNCTIONAL SPACES. THEY ARE BEING REPLACED WITH ONE UNDERSIZED FUNCTIONAL SPACE AND ONE STANDARD SIZE PARKING SPACE.
- PER THE DEED THE PROPERTY BOUNDARY LINE EXTENDS TO THE LOW WATER MARK (ELEVATION 3.62) FOR 43 HOLMES COURT.



- LEGEND:**
- IRON ROD (AS NOTED)
 - IRON PIPE FOUND
 - GRANITE POST FOUND
 - △ SURVEY NAIL (AS NOTED)
 - 101-14 TAX SHEET / LOT NO.
 - WOOD FENCE
 - VINYL FENCE
 - UTILITY POLE
 - UTILITY POLE W/TRANSFORMER
 - GUY
 - UTILITY POLE WITH ARM & LIGHT
 - OHW OVERHEAD WIRES
 - EOP EDGE OF PAVEMENT
 - LA LANDSCAPED AREA
 - RWB LANDSCAPE BLOCK RETAINING WALL
 - RWBK BRICK RETAINING WALL
 - VGC VERTICAL FACED GRANITE CURB
 - RCRD ROCKINGHAM COUNTY REGISTRY OF DEEDS
 - CONCRETE
 - BRICK PAVERS
 - CRUSHED STONE
 - RIP RAP
 - RETAINING WALL



PISCATAQUA RIVER
(TIDAL)
EBB →

- PLAN REFERENCES:**
- "EXISTING CONDITIONS PLAN" DATED 8/15/22, BY JAMES VERRA AND ASSOCIATES, INC.
 - PORTSMOUTH G.I.S. (MAPGEO) DATA BASE.
 - SITE OBSERVATIONS BY ALTUS ENGINEERING, INC. OCTOBER 2022.

PLAN INTENT:

THE SOLE PURPOSE OF THIS PLAN IS TO OBTAIN AN ADDITIONAL ±1-FOOT OF RELIEF FROM THE FRONT SETBACK (17' + PREVIOUSLY APPROVED, ±16- FEET PROPOSED) SO AS TO ALLOW THE OWNER TO CONSTRUCT THE SINGLE FAMILY RESIDENCE AS APPROVED BY ZBA ON 12/20/22 WHILE MEETING MINIMUM REQUIRED SETBACK FROM HIGHEST OBSERVABLE TIDE LINE (HOTL) AS REQUIRED BY NHDES-WETLANDS BUREAU IN THEIR APPROVAL DATED 04/05/24.

ENGINEER:

133 Court Street
(603) 433-2335

Portsmouth, NH 03801
www.altus-eng.com

ISSUED FOR:
BOARD OF ADJUSTMENT

ISSUE DATE:
APRIL 25, 2024

REVISIONS:

NO.	DESCRIPTION	BY	DATE
0	INITIAL SUBMISSION	EBS	10/25/22
1	ADJUST LOCATION OF PROP. BLDG BASED ON NHDES WETLANDS REQUIREMENTS	EBS	04/25/24

DRAWN BY: _____ RLH
APPROVED BY: _____ EBS
DRAWING FILE: 5328-BOA.DWG

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

OWNER/APPLICANT:

STEPHEN A. & KATHRYN L. SINGLAR
21 ELLIOT STREET
EXETER, NH 03833

PROJECT:

PROPOSED SITE DEVELOPMENT PLANS
#43 HOLMES COURT
PORTSMOUTH, NH

ASSESSOR'S PARCEL MAP 101-LOT 14

TITLE:

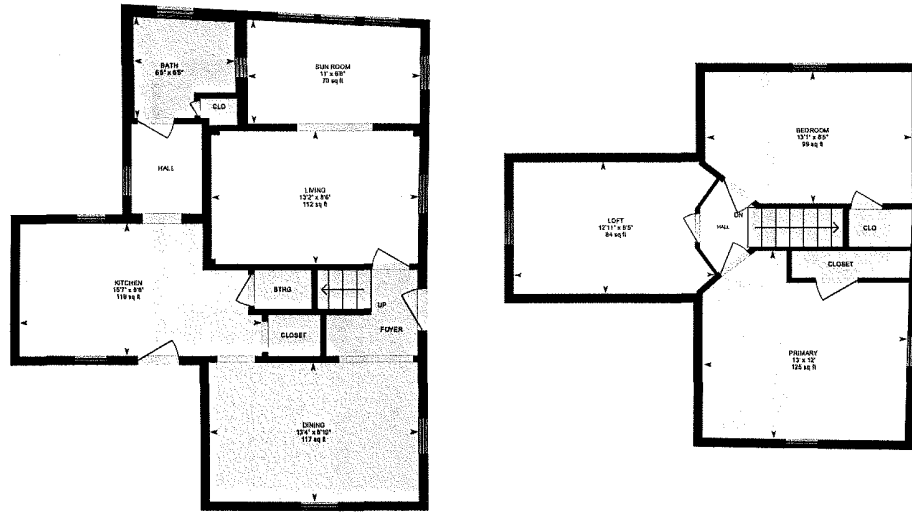
BOARD OF ADJUSTMENT SITE PLAN

SHEET NUMBER:

1 OF 1

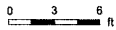
43 Holmes Ct, Portsmouth, NH

Main Building



Main Floor
Interior Area 574.76 sq ft

2nd Floor
Interior Area 369.05 sq ft



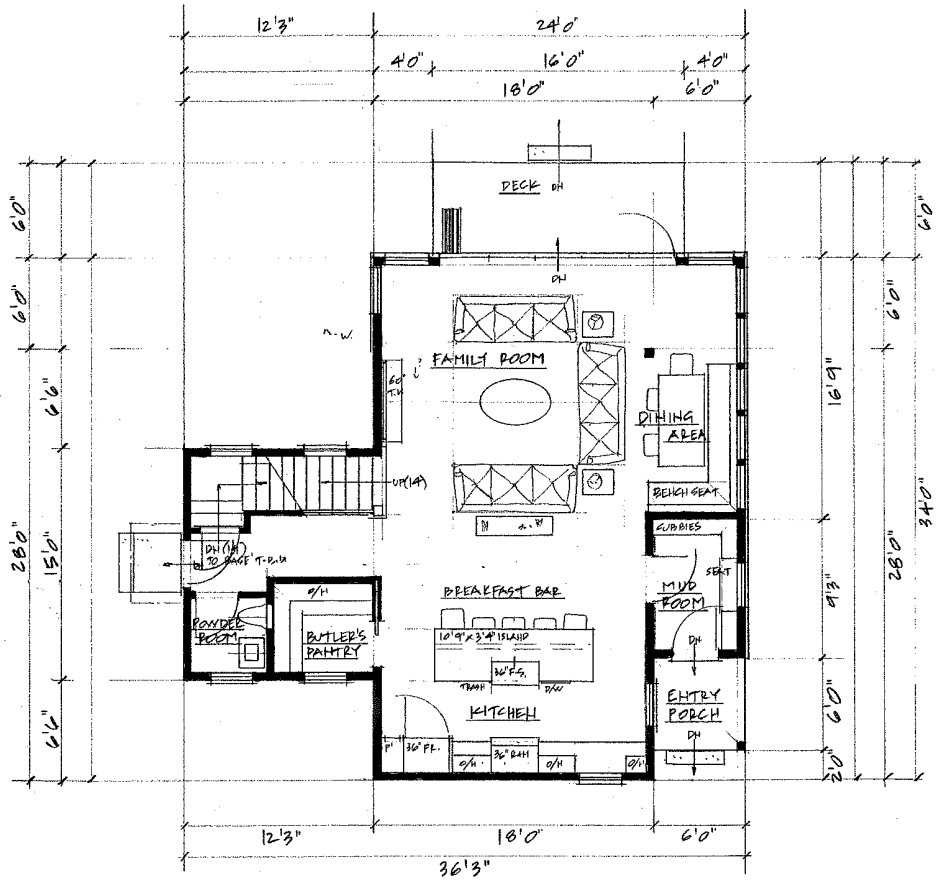
PREPARED: 2021/11/05

White regions are excluded from total floor area in iGUIDE floor plans. All room dimensions and floor areas must be considered approximate and are subject to independent verification.



EXISTING CONDITIONS

$\pm 1/8" = 1'0"$

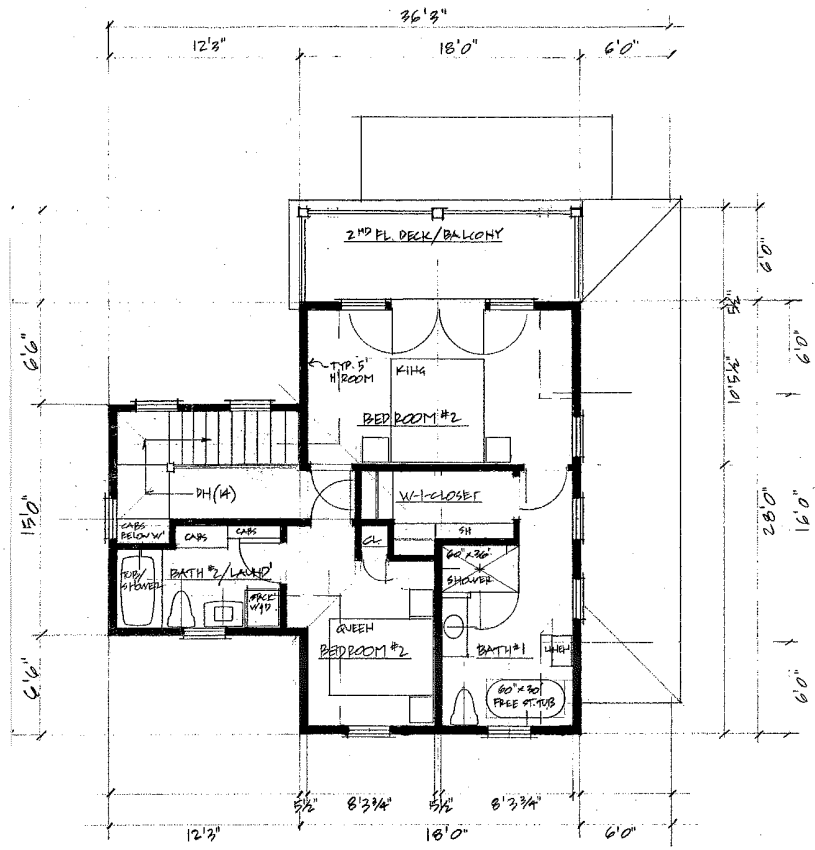


PROPOSED FIRST FLOOR PLAN

3.31.2022

1/8" = 1' 0"

HOUSE AREA = 952 sf.
 PORCH AREA = 36 sf.
 DECK AREA = 96 sf.
 TOTAL = 1,084 sf.



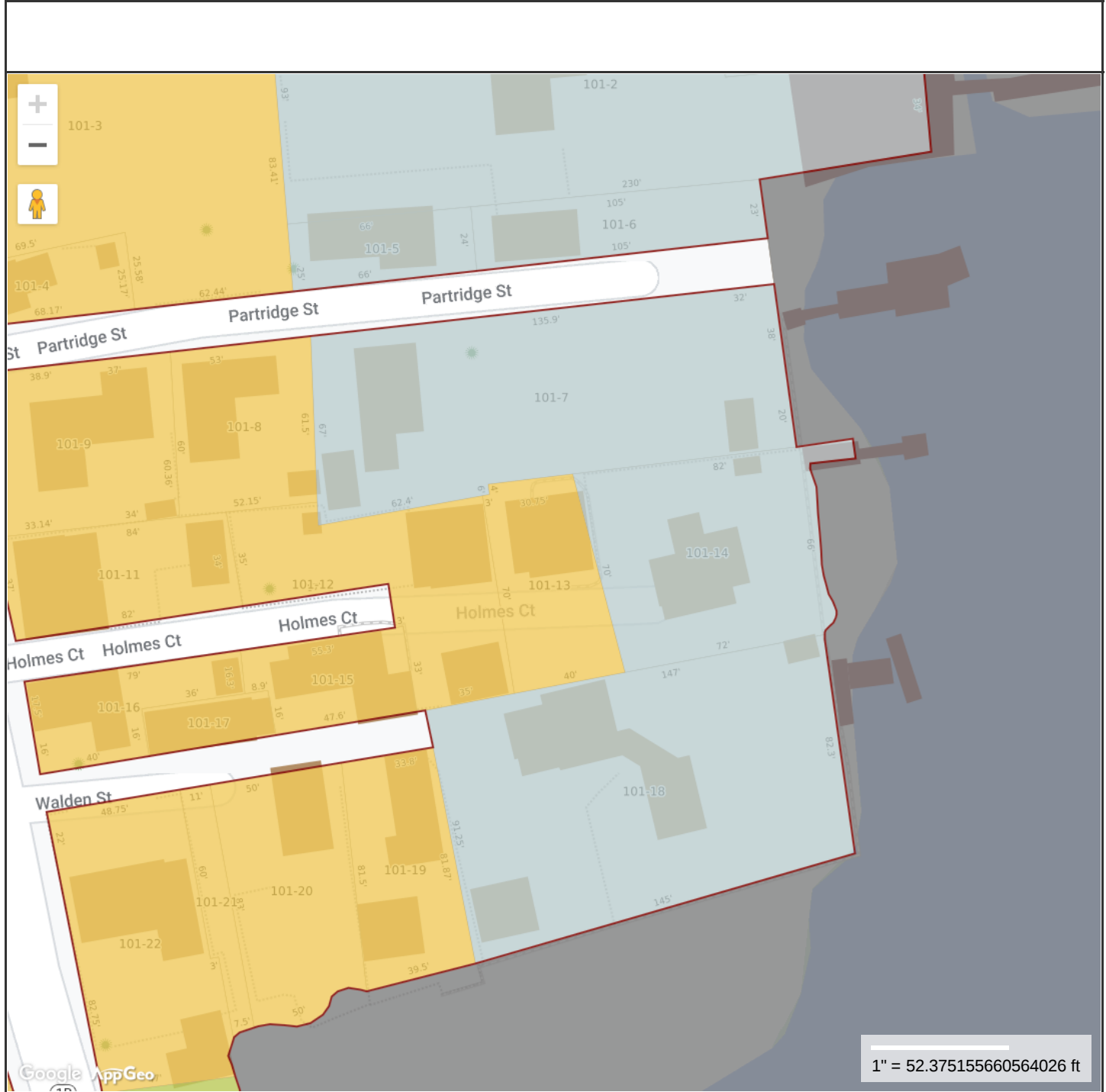
PROPOSED SECOND FLOOR PLAN

3.31.2022

1/8" = 1' 0"

PROPOSED NEW STRUCTURE TITLE: PROPOSED FLOOR PLANS
 AT 43 HOLMES COURT SCALE: 1/8" = 1' 0"
 PORTSMOUTH, NH DATE: 4.12.2022

REVISIONS:



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

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

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

Map Theme Legends

Zoning

Residential Districts

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




Mixed Residential Districts

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



Business Districts

	GB	General Business
	B	Business
	WB	Waterfront Business



Industrial Districts

	OR	Office Research
	I	Industrial
	WI	Waterfront Industrial






Airport Districts

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


Conservation Districts

	M	Municipal
	NRP	Natural Resource Protection


Character Districts

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




Civic District

	Civic District
---	----------------

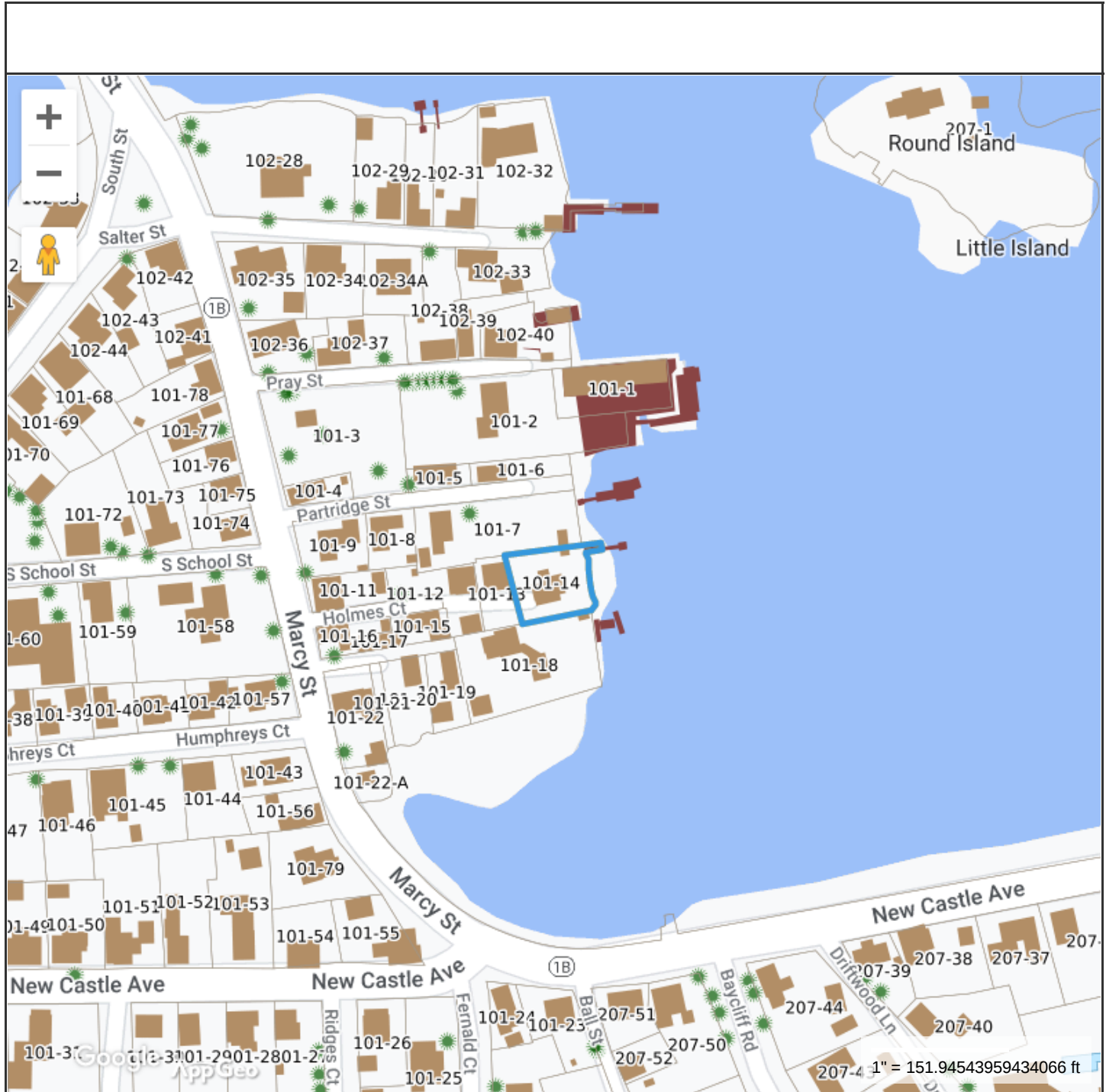
Municipal District

	Municipal District
---	--------------------

Overlay Districts

	OLOD	Osprey Landing Overlay District
	Downtown Overlay District	
	Historic District	

City of Portsmouth



Property Information

Property ID 0101-0014-0000
Location 43 HOLMES CT
Owner SINGLAR STEPHEN A & KATHRYN L



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

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



Front Elevation View



Left Elevation View



Rear Elevation View



View of Rear Yard



Right Elevation View



View of Parking Area



View of Holmes Court



View of 43 Holmes Court from New Castle Avenue

II. NEW BUSINESS

- D. The request of **366 Broad Street LLC (Owner)**, for property located at **366 Broad Street** whereas relief is needed to demolish the existing multi-family and single-family dwellings and accessory structure and reconstruct four single-family dwelling units, which requires the following: 1) Variance from Section 10.513 to allow more than one dwelling per lot. Said property is located on Assessor Map 221 Lot 68 and lies within the General Residence A (GRA) District. (LU-24-75)

Existing & Proposed Conditions

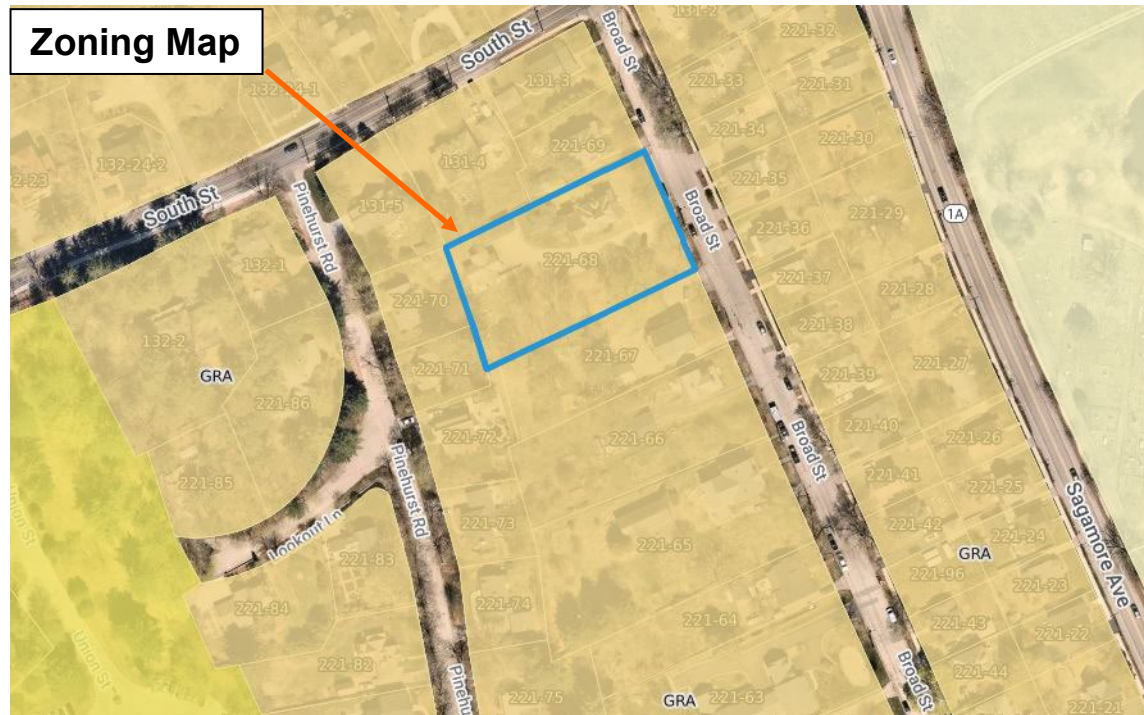
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Multi-family Dwelling	Demo existing and construct 4 SFD*	Primarily residential
<u>Lot area (sq. ft.):</u>	36,590	36,590	7,500 min.
<u>Street Frontage (ft.):</u>	146	146	100 min.
<u>Lot depth (ft.)</u>	246	246	70 min.
<u>Front Yard (ft.):</u>	53.5	25	15 min.
<u>Left Yard (ft.):</u>	77.2	12.4	10 min.
<u>Right Yard (ft.):</u>	2 (Garage)	12.8	10 min.
<u>Rear Yard (ft.):</u>	15.5	33.2	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	11	23.4	25 max.
<u>Open Space Coverage (%):</u>	66	51.3	30 min.
<u>Parking</u>	10+	8	6
<u>Estimated Age of Structure:</u>	1900	Variance request(s) shown in red.	

***Variance required for more than one dwelling per lot**

Other Permits/Approvals Required

- Site Plan Review (TAC and PB)
- Building Permit

Neighborhood Context



Previous Board of Adjustment Actions

No Previous BOA history found.

Planning Department Comments

The applicant is proposing to demolish the existing multi-family dwellings and accessory structures on the oversized lot and to construct four new single-family dwelling units. The proposal meets zoning requirements for the GRA District with the exception of proposing more than one dwelling unit per lot as required by Section 10.513 of the Zoning Ordinance. This will require site plan review before TAC and Planning Board if the variance is granted. If granted approval, staff recommends the following stipulation for consideration:

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

Variance Review Criteria

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

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

10.235 Certain Representations Deemed Conditions

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

APPLICATION OF GREEN & COMPANY
BUILDING and DEVELOPMENT, CORP.
366 Broad Street, Portsmouth, Tax Map 221, Lot 68

APPLICANT'S NARRATIVE

I. **THE PROPERTY:**

The applicant, Green & Company Building and Development Corp. is under contract to acquire the property located at 366 Broad Street. The property is within the General Residence A Zone. The property consists of a main structure with a carriage house attached by a breezeway, a standalone bungalow structure and a free-standing garage. There are seven (7) separate dwelling units spread over the three separate buildings on the property.

The property is non-compliant with current zoning both as to its use, dimensions, density, and property setbacks. Specifically, the property contains seven dwelling units where two dwelling units are permitted by right and four units are permitted by special exception. See 10.440.1.30 and 10.440.1.50. It is non-compliant with the required rear and right-side yard setbacks, as existing structures are 15.5 feet from the back property line and 2 feet respectively to the right property line, where 20 feet and 10 feet are required, see 10.521. It has 5,269.4 square feet of lot area per dwelling, where 7,500 square feet is required. Id. The lot is not compliant with 10.513 as there are two free-standing dwellings on the lot.

The applicant proposes to replace the existing buildings on the site with four (4) new, energy efficient, free-standing, 3-4 bedroom single family dwellings, which will be designed to mimic the existing streetscape and architectural styles of homes seen along Broad Street.¹ The proposal will bring the property fully into compliance with all applicable dimensional requirements. It will provide a total of 14-16 bedrooms within the four structures, where 11 currently exist. The proposal requires relief from 10.513, which prohibits more than one free-standing dwelling on a lot within the GRA district.

As proposed, the project will cure all offending setback and lot area non-conformities. Multiple residential structures already exist on the site, and this proposal brings the property into much greater zoning compliance than currently exists and fulfills the intent of the zoning ordinance in the GRA zone, the purpose of which is to provide residential uses at moderate to high densities. Section 10.410.

¹ The applicant has submitted building elevations which demonstrate *possible* building design elements. The dimensions, footprints, and basic designs will be maintained as represented, but final decisions regarding design details regarding windows, colors, trim details, etc. have not been yet been finalized. However, the proposed dwellings will meet all applicable setback, height and lot coverage requirements.

The project will require site plan approval by the Planning Board in the event the requested relief is granted.

II. THE VARIANCE

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

Granting the requested variance 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.

In this case, were the variance to be granted, there would be no change in the essential characteristics of the neighborhood, nor would any public health, safety or welfare be threatened. A significantly non-compliant property will be transformed into one which is designed to mimic the existing streetscape along Broad Street.

The essentially residential character of the neighborhood will not be altered by this proposal, nor would the health, safety or welfare of the public be threatened by granting the relief requested, as what is proposed brings the property into much greater zoning compliance than the existing conditions.

The project requires site plan review and approval from the Planning Board, further assuring that the interest of the public will be adequately protected.

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. The proposed four dwelling units in this case would meet the 7500 square foot lot area per dwelling requirement and bring the property into compliance with use, density and setback requirements. A single multifamily structure with four dwelling units would be permitted by special exception.

In this case, there is no benefit to the public in denying the variance that is not outweighed by the hardship upon the owner.

The values of surrounding properties will not be diminished by granting the variance. The proposal eliminates significant zoning non-conformity. The property is large enough to accommodate four dwelling units under current zoning. Newly

constructed, energy efficient homes will increase property values. The home styles proposed are in keeping with the architectural styles seen throughout Broad Street. The values of the 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 as it exists now is non-conforming as to the number of permitted units, density, and setbacks. There is already more than one freestanding dwelling on the lot in violation of current zoning requirements. The property is relatively large at 36,590 sf.

The use is a reasonable use. The proposed residential use is permitted in this zone and is identical in character and is consistent with the existing use of the adjacent and abutting properties. The proposed plan conforms with all property setbacks, dimensional requirements, building coverage requirements and open space coverage requirements.

There is no fair and substantial relationship between the purpose of the ordinance as it is applied to this particular property. The proposed redevelopment brings the property into full compliance with density and setback requirements. The property is already non-conforming as to the prohibition against more than one free-standing dwelling on a lot. There is no fair and substantial relationship between the purpose of this requirement and its application to this property.

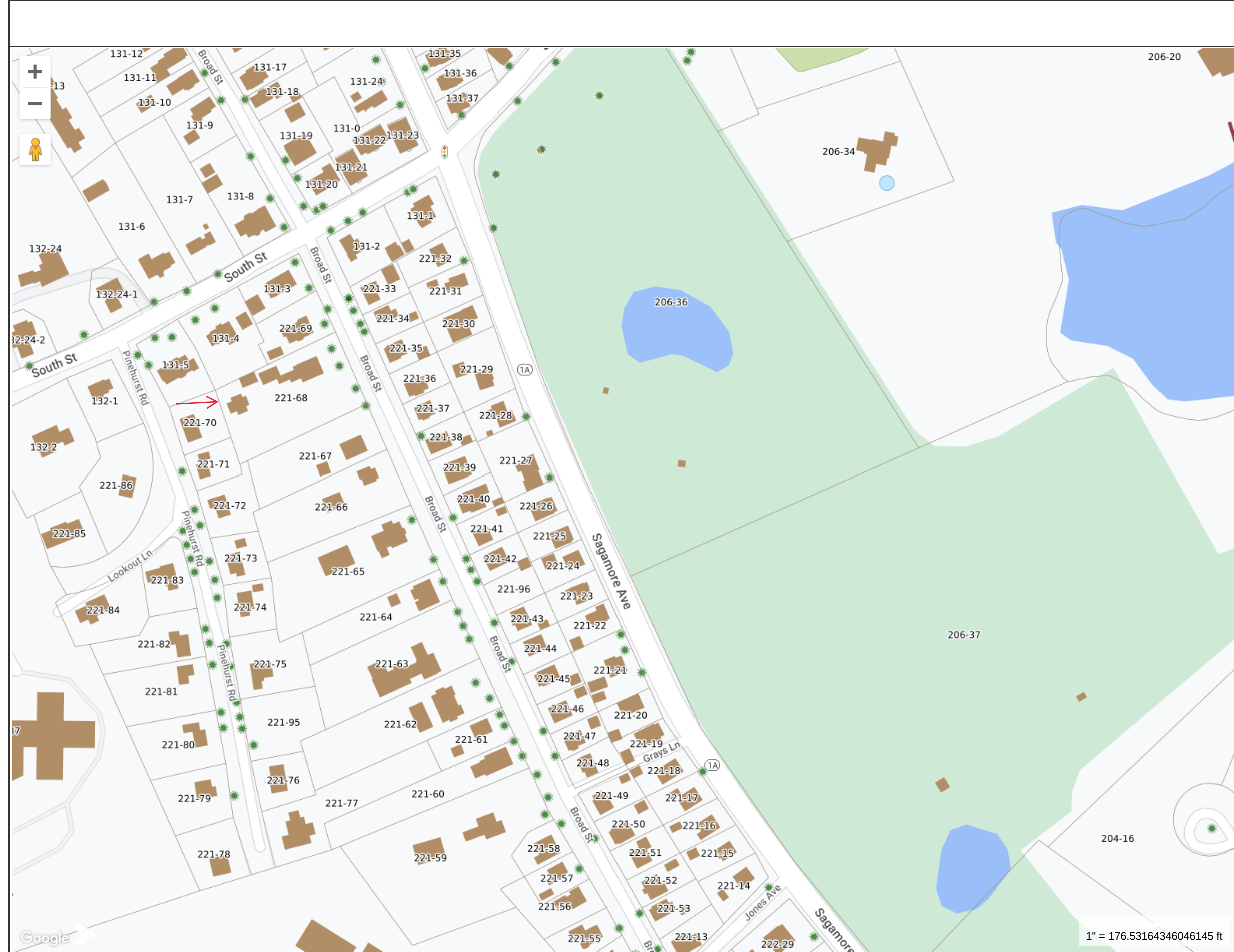
III. Conclusion.

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

Respectfully submitted,

Dated: May 1, 2024

By: *John K. Bosen*
John K. Bosen, Esquire



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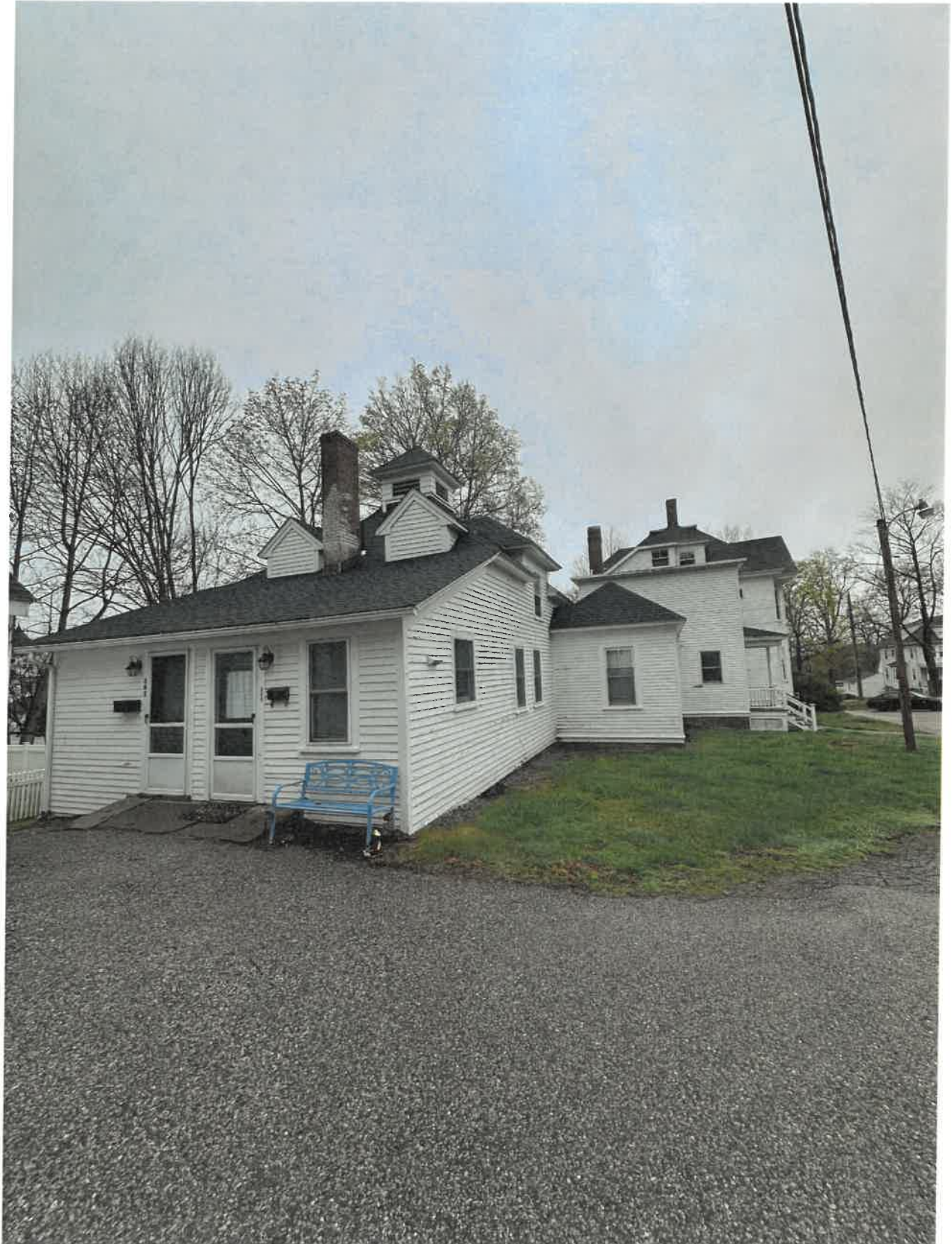
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Data updated 3/9/2022

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1" = 176.53164346046145 ft

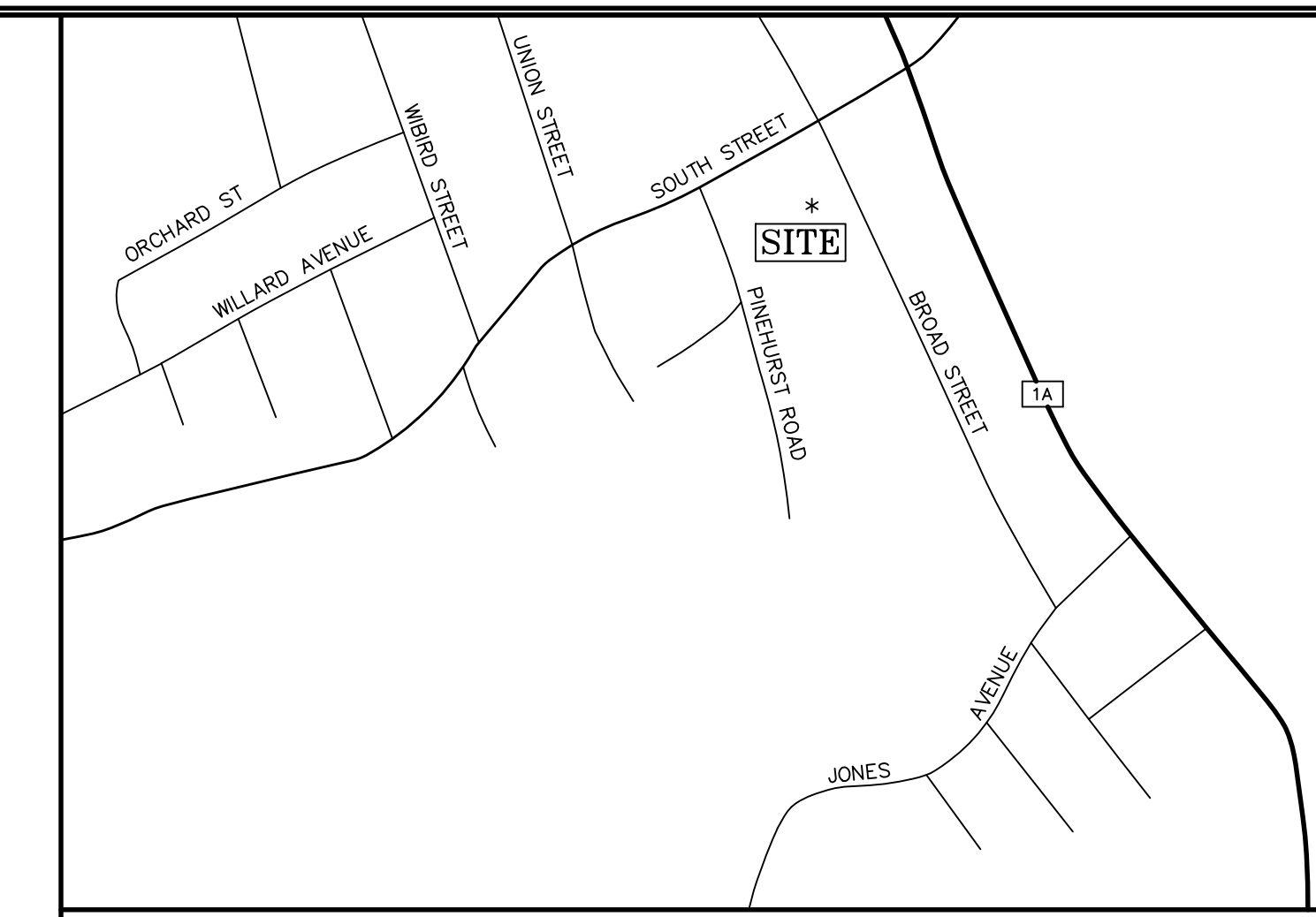
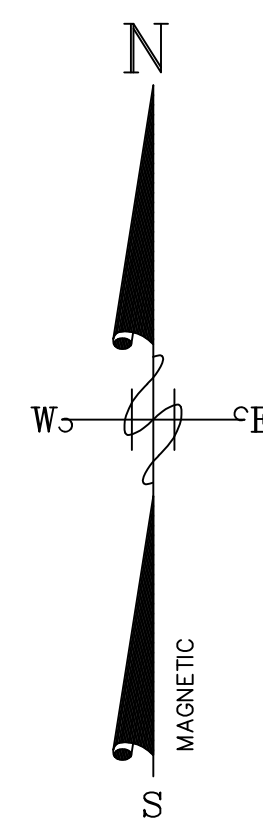




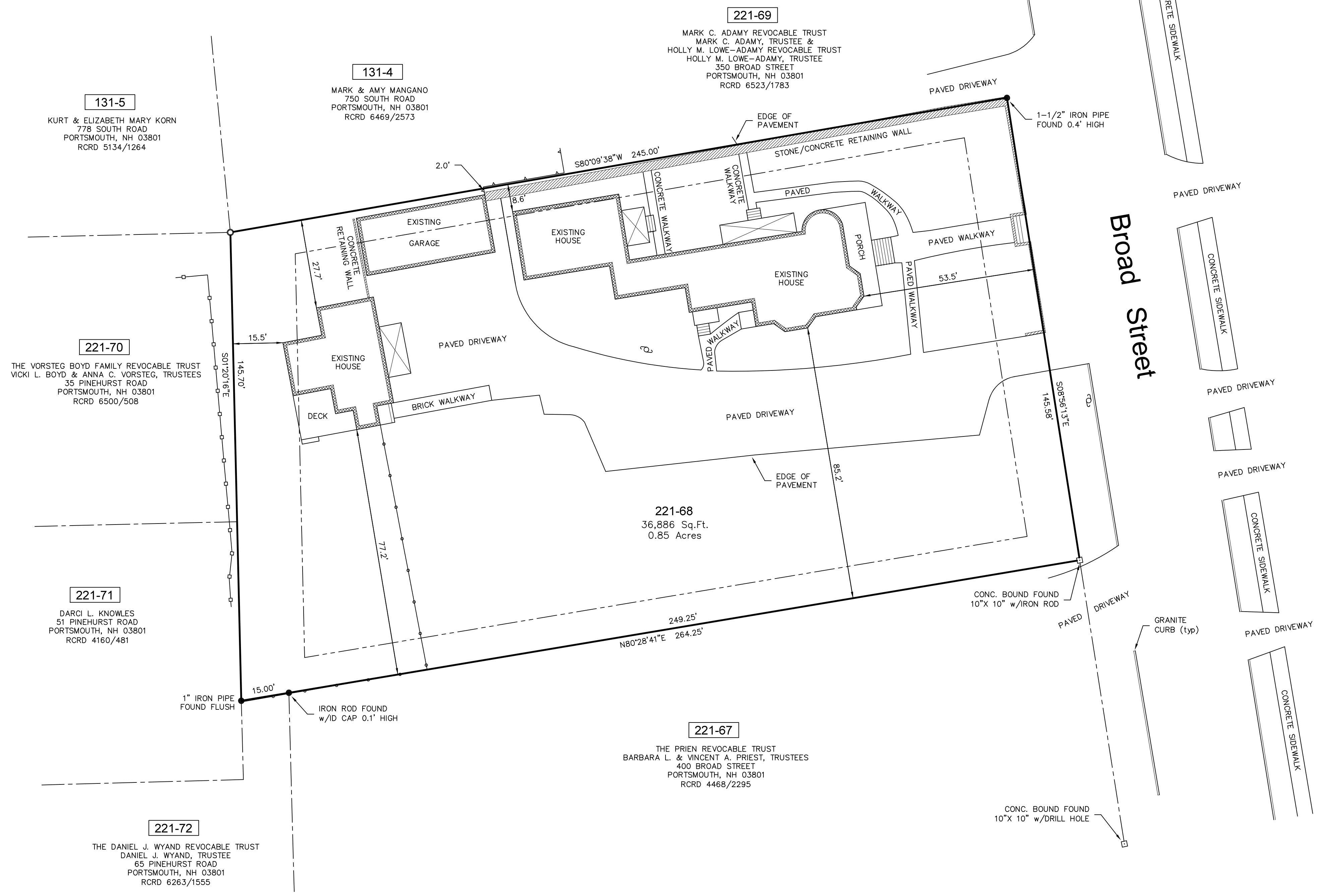








LOCATION PLAN



LEGEND

- 5/8" IRON ROD w/ID CAP TO BE SET STAMPED "ATLANTIC LLS 891"
- FOUND IRON ROD OR PIPE AS NOTED
- FOUND CONCRETE BOUND
- ⊕ UTILITY POLE
- n/f NOW OR FORMERLY
- R.C.R.D. ROCKINGHAM COUNTY REGISTRY OF DEEDS
- - - - - APPROXIMATE ABUTTERS LOT LINE
- - - - - EXISTING CHAIN LINK FENCE
- - - - - EXISTING WOOD STOCKADE FENCE
- - - - - EXISTING PVC FENCE
- - - - - BUILDING SETBACK LINE

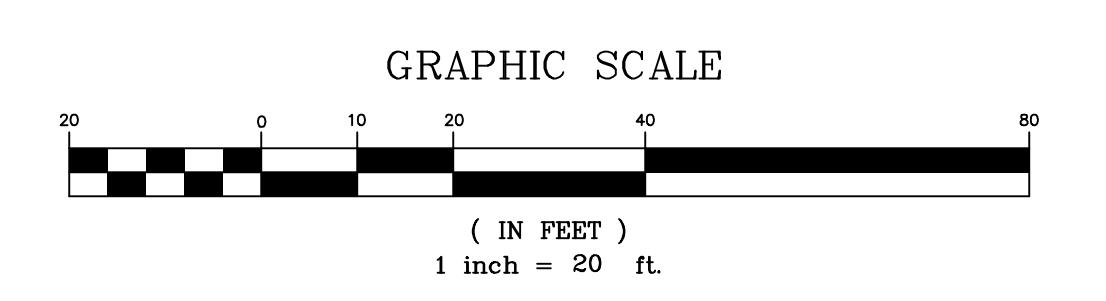
NOTES

1. RANDOM TRAVERSE ERROR OF CLOSURE IS LESS THAN 1 PART IN 10,000.
2. OWNER OF RECORD:
366 BROAD STREET, LLC
973 OCEAN BOULEVARD
RYE, NH 03870
TAX MAP 221, LOT 68
BOOK 6218, PAGE 2646 R.C.R.D.
PROPERTY ADDRESS:
366 BROAD STREET
PORTSMOUTH, NH 03801
3. ZONING DIMENSIONAL AND DENSITY REQUIREMENTS ARE AS FOLLOWS:
a. ZONING DISTRICT: GRA
b. BUILDING SETBACKS:
FRONT: 15'
REAR: 20'
SIDE: 10'
4. TOTAL EXISTING BUILDING COVERAGE = 11%
5. TOTAL EXISTING OPEN SPACE = 66%

ZBA PLAN of LAND

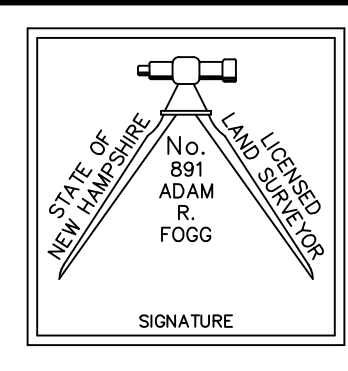
PREPARED FOR
366 Broad Street, LLC
 Tax Map 221 Lot 68
 R.C.R.D. Deed Book 6218 Page 2646
 LOCATED AT
366 Broad Street, Portsmouth, N.H.

ISSUE	DATE	DESCRIPTION	BY	CHKD.	APP.

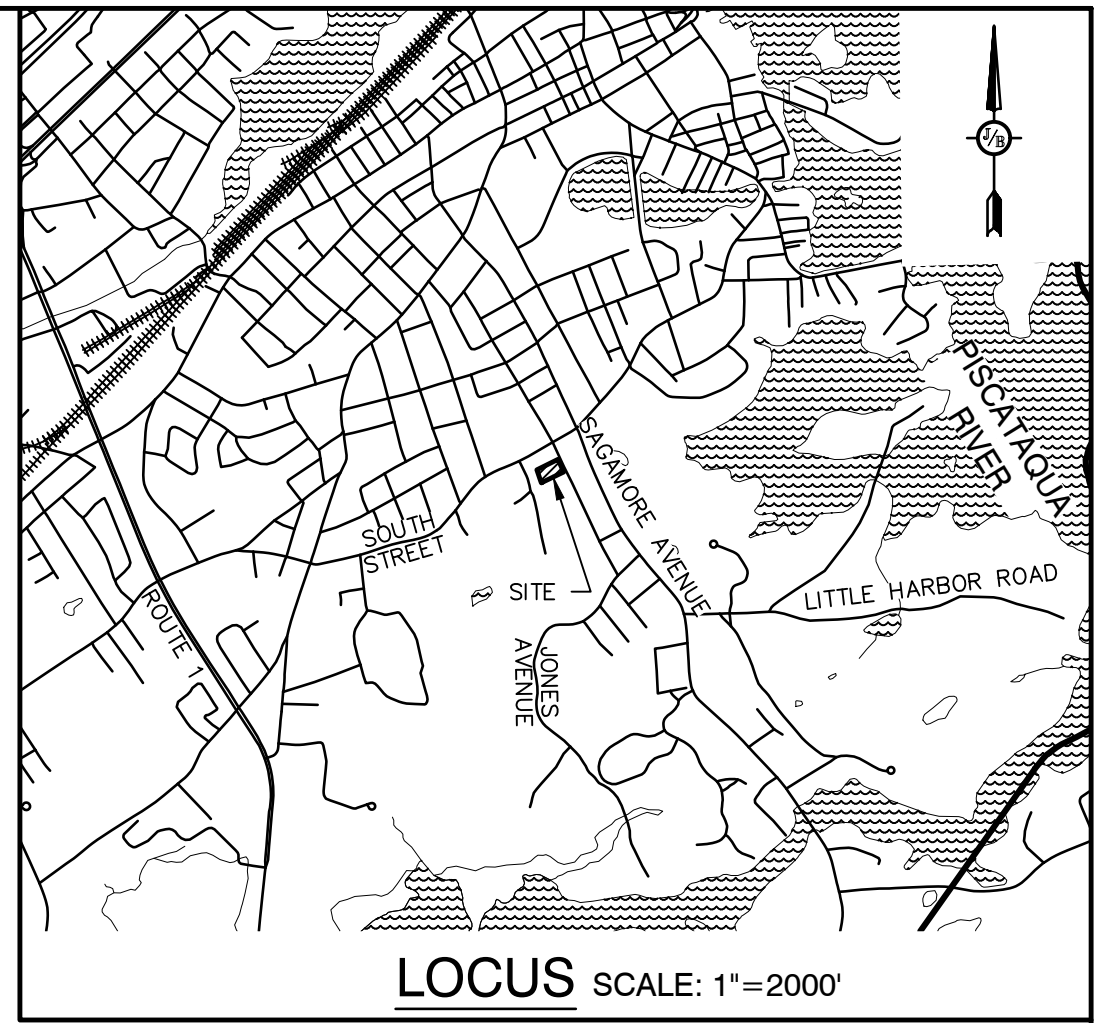
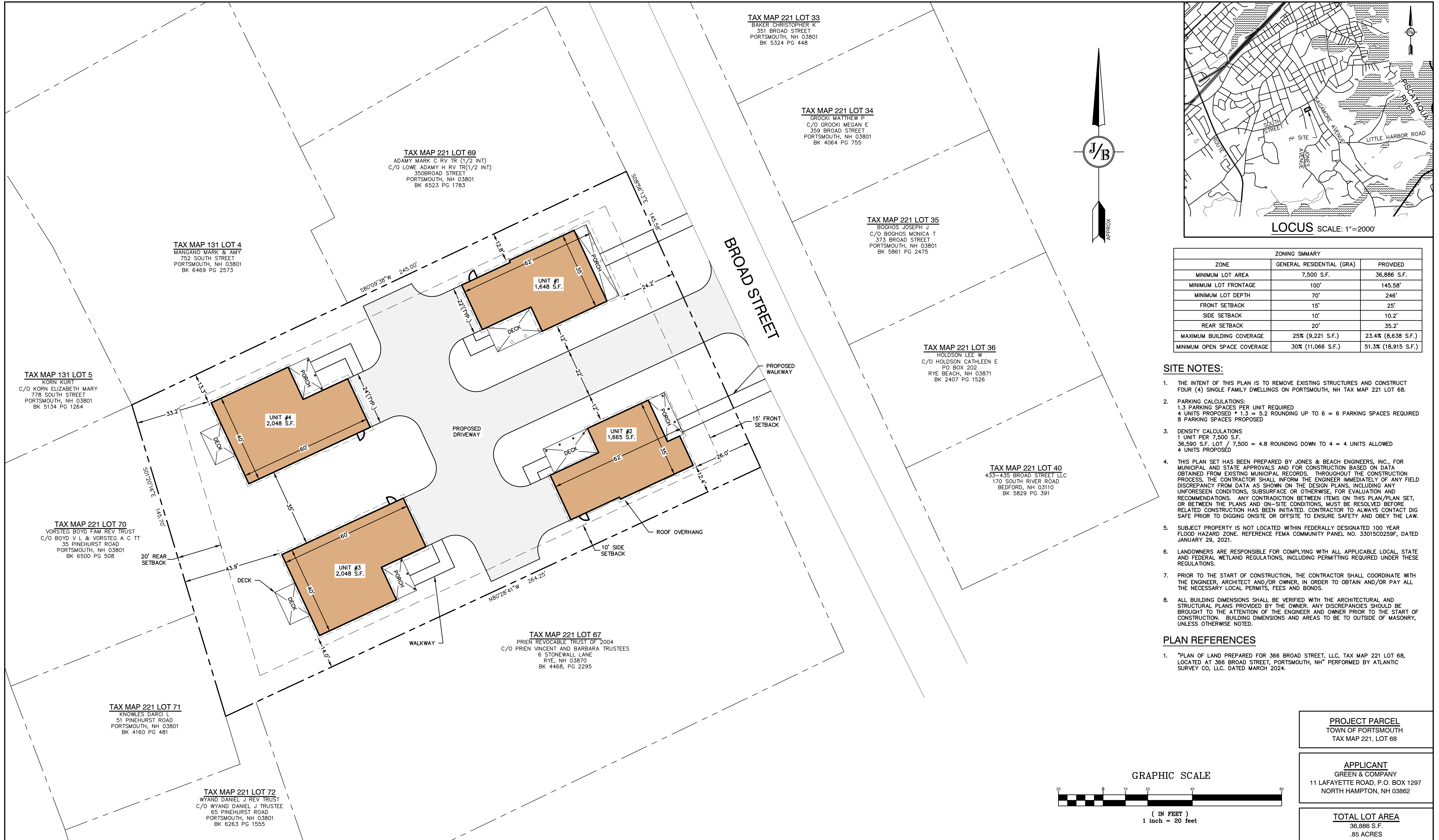


ATLANTIC
 SURVEY CO, LLC
 25 Nute Road, Dover, New Hampshire 03820
 603-659-8939

PREPARED BY:
 SURVEYORS
 PLANNERS
 SEPTIC DESIGNERS



DATE:	April, 2024
FIELDWORK BY:	AF
DESIGNED BY:	AF
CAD FILE:	24101-ZBA
PROJECT No.:	24101
SHEET	1 OF 1



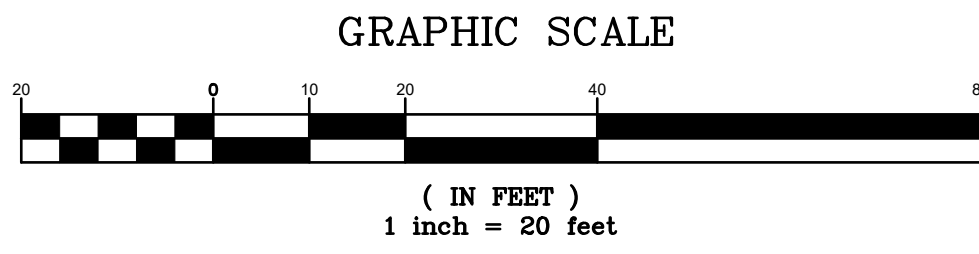
ZONING SUMMARY		
ZONE	GENERAL RESIDENTIAL (GRA)	PROVIDED
MINIMUM LOT AREA	7,500 S.F.	36,886 S.F.
MINIMUM LOT FRONTAGE	100'	145.58'
MINIMUM LOT DEPTH	70'	246'
FRONT SETBACK	15'	25'
SIDE SETBACK	10'	10.2'
REAR SETBACK	20'	35.2'
MAXIMUM BUILDING COVERAGE	25% (9,221 S.F.)	23.4% (8,638 S.F.)
MINIMUM OPEN SPACE COVERAGE	30% (11,066 S.F.)	51.3% (18,915 S.F.)

SITE NOTES:

- THE INTENT OF THIS PLAN IS TO REMOVE EXISTING STRUCTURES AND CONSTRUCT FOUR (4) SINGLE FAMILY DWELLINGS ON PORTSMOUTH, NH TAX MAP 221 LOT 68.
- PARKING CALCULATIONS:
1.3 PARKING SPACES PER UNIT REQUIRED
4 UNITS PROPOSED * 1.3 = 5.2 ROUNDING UP TO 6 = 6 PARKING SPACES REQUIRED
8 PARKING SPACES PROPOSED
- DENSITY CALCULATIONS
1 UNIT PER 7,500 S.F.
36,590 S.F. LOT / 7,500 = 4.8 ROUNDING DOWN TO 4 = 4 UNITS ALLOWED
4 UNITS PROPOSED
- THIS PLAN SET HAS BEEN PREPARED BY JONES & BEACH ENGINEERS, INC., FOR MUNICIPAL AND STATE APPROVALS AND FOR CONSTRUCTION BASED ON DATA OBTAINED FROM 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.
- SUBJECT PROPERTY IS NOT LOCATED WITHIN FEDERALLY DESIGNATED 100 YEAR FLOOD HAZARD ZONE. REFERENCE FEMA COMMUNITY PANEL NO. 33015C0259F, DATED JANUARY 29, 2021.
- LANDOWNERS ARE RESPONSIBLE FOR COMPLYING WITH ALL APPLICABLE LOCAL, STATE AND FEDERAL WETLAND REGULATIONS, INCLUDING PERMITTING REQUIRED UNDER THESE REGULATIONS.
- 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 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.

PLAN REFERENCES

- "PLAN OF LAND PREPARED FOR 366 BROAD STREET, LLC, TAX MAP 221 LOT 68, LOCATED AT 366 BROAD STREET, PORTSMOUTH, NH" PERFORMED BY ATLANTIC SURVEY CO, LLC, DATED MARCH 2024.



PROJECT PARCEL TOWN OF PORTSMOUTH TAX MAP 221, LOT 68
APPLICANT GREEN & COMPANY 11 LAFAYETTE ROAD, P.O. BOX 1297 NORTH HAMPTON, NH 03862
TOTAL LOT AREA 36,886 S.F. .85 ACRES

Design: JAC	Draft: KDR	Date: 4/24/24
Checked: JAC	Scale: 1" = 20'	Project No.: 24047
Drawing Name: 24047-ZBA.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	4/24/24	ISSUED FOR REVIEW	KDR

Designed and Produced in NH

J/B Jones & Beach Engineers, Inc.

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

Plan Name:	ZBA SITE PLAN
Project:	MULTI-FAMILY HOUSING 366 BROAD STREET, PORTSMOUTH, NH
Owner of Record:	366 BROAD STREET LLC 973 OCEAN BOULEVARD, RYE, NH 03870

DRAWING No.	C2
SHEET 2 OF 2 JBE PROJECT NO. 24047	

4/30/2024

New Englander

028.124.v9 GL (4/30/2024)

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4/30/2024

New Englander

028.124.v9 GL (4/30/2024)

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Front



Rear

Front & Rear Elevations
Scale: 1/8" = 1'-0"

4/30/2024

New Englander

028.124.v9 GL (4/30/2024)

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Right



Left

Right & Left Elevations
Scale: 1/8" = 1'-0"

4/30/2024

Rose Hip

821.124.v4 GL (4/30/2024)

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4/30/2024

Rose Hip

821.124.v4 GL (4/30/2024)

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Front



Rear

Front & Rear Elevations

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

4/30/2024

Rose Hip

821.124.v4 GL (4/30/2024)

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Right



Left

Right & Left Elevations

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

4/30/2024

Plan Name TBD

1171.124 GL (4/30/2024)

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4/30/2024

Plan Name TBD

1171.124 GL (4/30/2024)

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Front



Rear

Front & Rear Elevations

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

4/30/2024

Plan Name TBD

1171.124 GL (4/30/2024)

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603-431-9559



Right



Left

Right & Left Elevations

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

4/30/2024

Plan Name TBD

1171.124 GR (4/30/2024)

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

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Plan Name TBD 1171.124 GR

4/30/2024

Plan Name TBD

1171.124 GR (4/30/2024)

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Front



Rear

Front & Rear Elevations

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

4/30/2024

Plan Name TBD

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Right



Left

Right & Left Elevations

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

II. NEW BUSINESS

- E. The request of **Victoria Willingham and Robert Bowser (Owners)**, for property located at **692 State Street** whereas relief is needed for the following:
 1) Variance from Section 10.515.14 to install a mechanical unit 3 feet from the side property line whereas 10 feet is required. Said property is located on Assessor Map 137 Lot 6 and lies within the General Residence C (GRC) District. (LU-24-67)

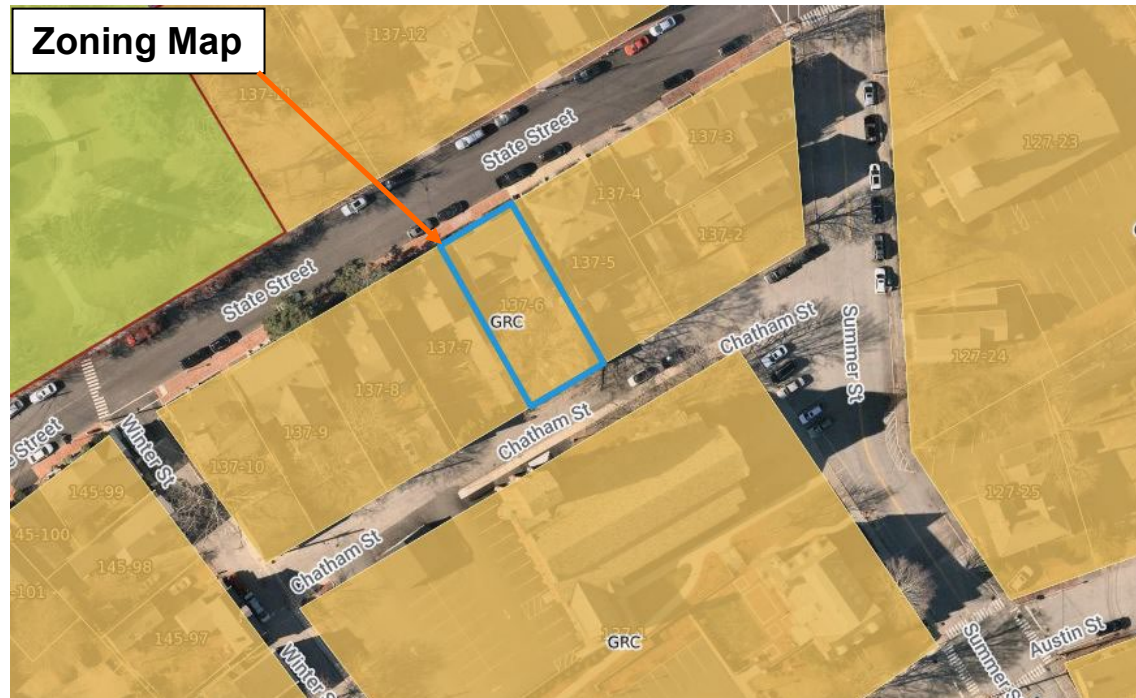
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use</u>	Single-family Dwelling	Mechanical Unit	Primarily Residential
<u>Lot area (sq. ft.):</u>	4,644	4,644	3,500 min.
<u>Front Yard (ft.):</u>	3	3	5 min.
<u>Left Yard (ft.):</u>	1 (SFD)	3 (Mech. Unit)	10 min.
<u>Parking:</u>	2	2	2
<u>Estimated Age of Structure:</u>	1830	Variance request(s) shown in red.	

Other Permits/Approvals Required

- Mechanical/Electrical Permit

Neighborhood Context



Previous Board of Adjustment Actions

July 16, 2002 – The Board **denied** the following relief from Zoning Ordinance including: 1) Variances from Article II, Section 10-206 to allow a dwelling unit in an accessory structure (garage) for a total of two dwelling units on the lot, and 2) a Variance from Article III, Section 10-302(A) to allow: a) two dwelling units on a 4,644 sf lot where 7,000 sf of lot area is required, b) a 2' rear yard where 20' is the minimum required, c) a 1' left side yard where 10' is the minimum required, and, d) 43% building coverage where 35% is the maximum allowed.

Planning Department Comments

The existing single-family dwelling dates to 1830 and is currently non-conforming as it was constructed 1 foot from the property line on the left side and approximately 3 feet from the front property line. The applicant is proposing the installation of a standby generator mechanical unit 3 feet from the left property line where 10 feet is required for a mechanical system. The proposed location is to the rear of the existing home behind an existing fence.

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.

Request for Variance

692 State Street

Reference - Building Permit Application BLDG-24-303

Project – Install home standby generator

Issue – The only feasible / safe location for the standby generator that is adjacent to the home (access to gas/electric) does not meet Portsmouth zoning code 10.515.14, that requires it to be 10 feet from a property line.

Portsmouth Zoning Reference - 10.515.14

10.515.14 "A mechanical system (i.e. HVAC, power generator, etc.) that is less than 36 inches above the ground level with a mounting pad not exceeding 10 square feet shall be exempt from yard requirements, but *shall be set back at least 10 feet from a property line*; and shall not be located closer to the street than the front of the principal structure."

Factors to Consider

- The homes in this little stretch along State Street, were *constructed in the 1850s, and the lots do not meet current zoning requirements*. The buildings are built almost to the property line. *See photos page 4.*
- The desired location is the only space adjacent to the home without first floor windows (generator safety guidelines). This allows gas/electric connections. *See photos page 5.*
- The desired location is the only place where the generator will not be visible to both my neighbours and is the least visible location. *See photos page 5.*
- I have asked my neighbour (Farrell Funeral home – John Leith), whose property line would be within 10 feet of the generator, and he is fine with this location. *See email capture on page 7.*
- Meeting the 10-foot property line zoning rule would create an economic and aesthetic hardship (see diagram page 6)
 - It would require me to place the generator in the middle of my yard and I would need to run underground gas/electric to this location. Easily increasing the cost of the project by 50%.
 - The generator would then be very visible to my home and my neighbours.

Variance Zoning Criteria

- **10.233.21 The variance will not be contrary to the public interest**
 - There is no impact on the public interest.
- **10.233.22 The spirit of the Ordinance will be observed**
 - The chosen location is the best for neighbors as it is the least visible.
- **10.233.23 Substantial justice will be done**
 - The variance would allow one house to more resilient without unnecessary expense that benefits no one.
- **10.233.24 The values of surrounding properties will not be diminished**
 - This would have no impact on property values.
- **10.233.25 Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship**
 - Enforcement of the ordinance would raise the cost of the installation by 50-100%, requiring underground gas/electric, as well as installation of some sort of visual barrier to make it visually acceptable.

Narrow spaces between homes mean generator needs to be at back of house. It is difficult to meet 10' feet from property line zoning requirement with this historic lots with homes built near edge of property line



Zoning map
property detail



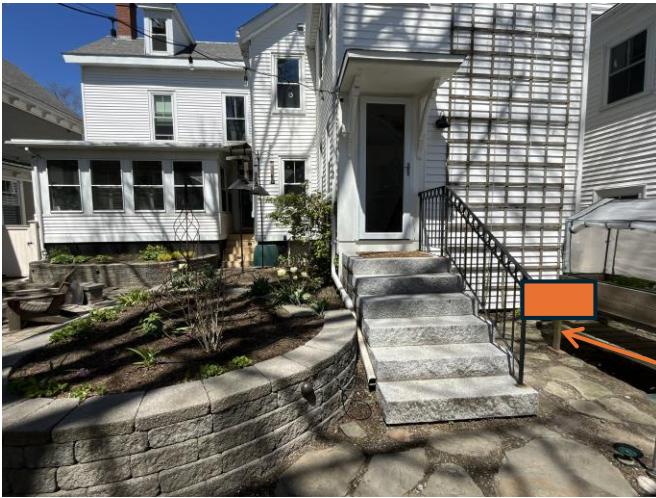
Between 692 State and neighbour on one side (Forbes residence, 698 State St.).



Between 692 State and neighbour on one side (Farrell Funeral home, 682 State St.)

Location chosen for generator is only available spot adjacent to house (for electric / Gas connection) without first floor windows (safety rule from generator install guidelines).

- This location also hides the generator from view of both neighbours.
 - The granite steps hide it from the Forbes residence.
 - It is behind a fence on the Farrell Funeral home side.



Requested Generator Location

Back Yard View – No other locations adjunct to House without windows

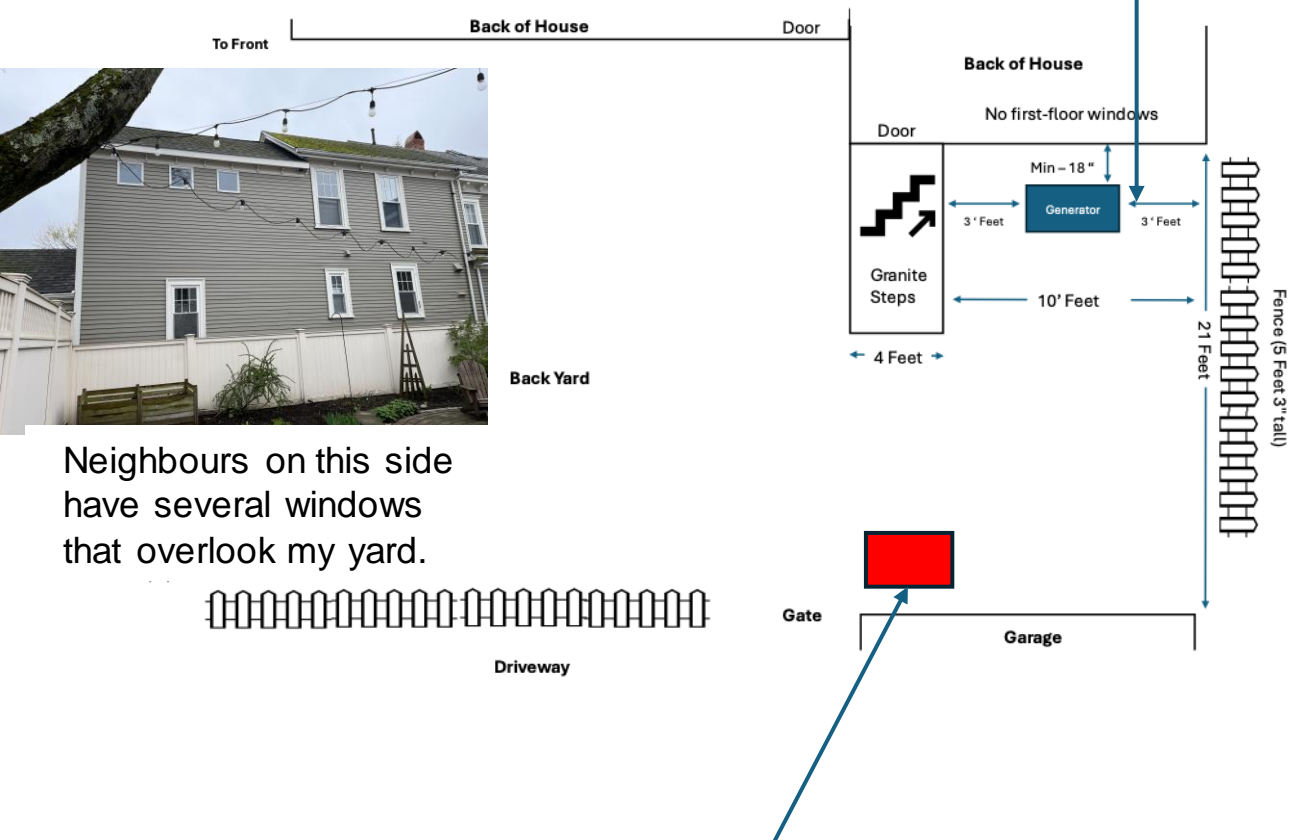


Back Yard View Detail – Hidden from view of both neighbours

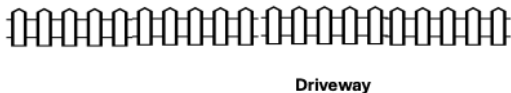
Generator Layout Diagram

Requested Location

- Next to house for gas / electric hook-up
- Out of sight of my neighbours



Neighbours on this side have several windows that overlook my yard.



10 Foot Zoning Compliant Location

- It would require me to place the generator in the middle of my yard and I would need to run underground gas / electric to this location and likely some sort of enclosure to shield in visually. Increasing the cost of the project by 50%-100%.
- The generator would then be very visible to my home and my neighbours.

Email from Neighbour (Farrell Funeral Homeowner – John Leith)

