

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

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

7:00 P.M.

September 17, 2024

AGENDA

I. APPROVAL OF MINUTES

A. Approval of the August 20, 2024 meeting minutes.

II. OLD BUSINESS

- A.** The request of **Jared Majcher (Owner)**, for property located at **84 Thaxter Road** whereas relief is needed to construct an attached garage and 1.5-story addition and to demolish an existing detached garage which requires the following: 1) Variance from Section 10.521 to a) allow 22% building coverage where 20% is allowed; b) allow a 15.5 foot front setback where 30 feet is required; and 2) Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 166 Lot 34 and lies within the Single Residence B (SRB) District. (LU-24-135)
- B.** The request of **Zeng Kevin Shitan Revocable Trust of 2017 (Owner)**, for property located at **377 Maplewood Avenue** whereas relief is needed to demolish the existing accessory building and construct a new detached accessory dwelling unit which requires the following: 1) Variance from Section 10.521 to a) allow a building coverage of 37.5% where 25% is allowed; b) allow an open space of 24.5% where 30% is required; c) allow a secondary front yard setback of 6 feet where 10 feet is required; d) allow a left yard setback of 4.5 feet where 10 feet is required; e) allow a rear yard setback of 3 feet where 20 feet is required; and 2) Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 141 Lot 22 and lies within the General Residence A (GRA) and Historic Districts. (LU-24-133)

III. NEW BUSINESS

- A. The request of **Jonagold Empire LLC (Owners)**, and **Benjamin Otis (Applicant)** for property located at **230 Lafayette Road, Unit 10 A/B** whereas relief is needed to establish a medical office in units 10 A and 10 B which requires the following: 1) Variance from Section 10.440 Use #6.20 to allow a medical office use where it is not allowed. Said property is located on Assessor Map 151 Lot 6-D10B and lies within the General Residence A (GRA) District. (LU-24-143)
- B. The request of **Condos at Rock Hill (Owners)**, and **Stewart Bradley (Applicant)**, for property located at **962 Islington Street and 964 Islington Street** whereas relief is needed to demolish and reconstruct the existing front steps which requires the following relief: 1) Variance from Section 10.521 for a) an 11 foot front yard where 30 is required, and b) 30% building coverage where 20% is allowed; and 2) Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 171 Lot 1 and lies within the Single Residence B (SRB) District. (LU-24-146)
- C. The request of **Ryan and Joanna Brandt (Owners)** for property located at **570 Dennett Street** whereas relief is needed to demolish the existing single car detached garage and construct a new single car garage which requires the following: 1) Variance from Section 10.571 to allow an accessory structure to be located in the required front yard and closer to the street than the principal building; 2) Variance from Section 10.573 to allow a 3 foot secondary front yard where 14 feet are required; and 3) Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 161 Lot 12 and lies within the General Residence A (GRA) District. (LU-24-156)

IV. OTHER BUSINESS

V. ADJOURNMENT

**Members of the public also have the option to join this meeting over Zoom, a unique meeting ID and password will be provided once you register. To register, click on the link below or copy and paste this into your web browser:*

https://us06web.zoom.us/webinar/register/WN_tdY_mZuYQB0pmCLUOhhQsw

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

7:00 P.M.

August 20, 2024

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

MEMBERS EXCUSED: None.

ALSO PRESENT: Stefanie Casella, Planning Department

I. APPROVAL OF MINUTES

A. Approval of the July 16, 2024 meeting minutes.

Mr. Nies requested that a sentence be added on the 133 Pearson Street petition under the Decision of the Commission on page 4, as follows: Mr. Nies confirmed that the City had a recorded easement on the adjacent property that was registered in the Rockingham County Registry of Deeds.

*Mr. Rossi moved to **approve** the minutes as amended, seconded by Mr. Mannle. The motion **passed** unanimously, 7-0.*

*Mr. Rheame moved to take Petition 2F, 84 Thaxter Road, and Petition 2G, 377 Maplewood Avenue, out of order to **postpone** them. Mr. Mannle seconded.*

*Mr. Rheame moved to **postpone** Petition 2F, 84 Thaxter Road, to the September 17 meeting, seconded by Vice-Chair Margeson. Mr. Rheame said the applicant's representative was not able to participate due to sickness. The motion **passed** unanimously, 7-0.*

*Mr. Rossi moved to **postpone** Petition 2G, 377 Maplewood Avenue, to the September 17 meeting. Mr. Rheame seconded. Mr. Rossi said the applicant's representative was not able to participate. The motion **passed** unanimously, 7-0.*

II. NEW BUSINESS

- A.** The request of **Martha and Brian Ratay (Owners)**, for property located at **0 Broad Street** whereas relief is needed to construct a primary structure and detached garage on a vacant lot which requires the following: 1) Variance from Section 10.521 to allow a) 6,101 square feet

of lot area where 7,500 is required, b) 6,101 square feet of lot area per dwelling unit where 7,500 is required, c) 60 feet of street frontage where 100 feet are required, d) 31% building coverage where 25% is allowed, e) 5 foot right side yard where 10 feet are required, and f) 2 foot rear yard where 20 feet are required. Said property is located on Assessor Map 221 Lot 96 and lies within the General Residence A (GRA) District. (LU-24-119)

SPEAKING TO THE PETITION

[Timestamp 6:17] The applicant Mr. Ratay was present and said they wanted to build a single-family residence in keeping with the size and characteristics of the neighborhood. He noted that they also owned the abutting lot and had been paying property taxes on the vacant lot. He said they had eight letters from the neighbors in support of the project. He reviewed the criteria.

[Timestamp 18:45] Mr. Rossi asked if the portion of the garage from the current structure that goes over onto the lot was counted. Mr. Ratay agreed. He said the house and the garage were 28 percent coverage, and the added 120 feet from the existing garage put it at 31 percent coverage. Mr. Rheume said a few of the elevation labels looked switched. He asked about the stairway. Mr. Satay explained that the stairs wrapped partially around the side and around the back to the door of the garage. Mr. Rheume asked if there was an intent to make the structure an ADU. Mr. Satay said there was not. Mr. Rheume said there was a complete second story to the garage and the three windows would face a neighboring property. Mr. Satay said he changed the windows to privacy ones that were square and higher up. Mr. Rheume said the garage looked like a two-car one. Mr. Satay agreed. Mr. Rheume asked if the applicant considered enlarging the garage in the opposite corner or using a common driveway for both properties. Mr. Satay said it would be hard to figure out, especially if he sold the other property. He said the other driveway looked like it belonged there. Mr. Rheume asked if the applicant was proposing any of the garage styles shown in the photos. Mr. Satay said he possibly was. Vice-Chair Margeson verified that the applicant would continue ownership of both lots for now. She said if the applicant conveyed the other lot, he would be stuck with a garage, and she asked if he thought about moving the other garage more firmly onto the other lot. Mr. Satay said he did not because he might sell the other property. He said he would stay in the new house. Vice-Chair Margeson said it was unique to find a structure from one lot to be on another lot and it would be a complication if the two lots were sold. Mr. Satay said he would have to tear the garage down and rebuild it to make it functional. Mr. Mannle asked what the square footage of the easement planned to convey to Lot 42. Mr. Satay said he didn't now, that he only knew the garage square footage. Mr. Mannle asked if the square footage was deducted from the current square footage of the building lot. Ms. Casella said the applicant was not proposing to do an easement now and was only trying to create that easement when the other property sells. Mr. Rheume asked about the front setback requirement. Mr. Satay said the city's setback from the frontage was 15 square feet and that he had a deed on that lot from the Rockingham Registry of Deeds stating that he could not build within 20 feet from the lot. He said his lawyer told him the city could not force them to do so. Mr. He said he moved it back to the 20-ft line and was honoring the deed. Mr. Rheume said it appeared that the same restriction applied to the other lot. Mr. Satay said he was sure it was on both lots but one lot had an existing home. Mr. Rheume asked if the arborvitae were on the applicant's property or the neighbor's, and Mr. Satay said it was on the neighbor's property.

Chair Eldridge opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD

[Timestamp 34:08] *Mr. Rossi moved to **grant** the variances for the petition as presented and advertised, seconded by Mr. Mattson.*

Mr. Rossi said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He said the purpose of the zone was to promote the development of moderate-to-high density single-family housing. He said it would do substantial justice because he thought there was some merit to the tax history argument, where a property owner has paid tax on a lot over a period of time and the city considers it a buildable lot. He said it was so that the owner could utilize the lot based on that concept of taxation. He said granting the variances would not diminish the values of surrounding properties, noting all the letters of support from the neighbors. He said literal enforcement of the ordinance would result in an unnecessary hardship. He said the property had a unique aspect relating to the garage on the neighboring lot that impinged on the property and because of that, the request for lot coverage made it appear as a higher number that it really was due to the garage structure. He said in its current situation it was a special condition of the property, regardless of who owned the other property. He said the Broad Street neighborhood's character was very tangible and what was proposed would fit within that character not only architecturally but also in spacing, density of the other development in the area, and the fact that it will continue to be single family dwelling. Mr. Mattson concurred. He said the lot was created before the current zoning standards, so it was undersized, which contributed to some of the relief needed. He said the lot was consistent with other lots on that side of Broad Street in terms of light, air, and privacy.

[Timestamp 37:30] Mr. Rheume said he would not support the motion because he had concerns about the proposed garage structure and the overlap onto two properties. He said to consider the lot a buildable one was an issue that had to be addressed in more detail as to how it would be dealt with in the future and dividing it into two properties. He said to approve it now would require that something would have to be worked out, and he said he didn't hear anything about the setback from the makers of the motion associated with the proposed garage, which was very tight up against the property line. He said the Board was approving the project in perpetuity and the garage would be there longer than any of the arborvitae. He said the neighbor would also decide what would be done with the arborvitae. He said it was a very tight setback for a two-story structure with windows overlooking the neighbor's property. He understood that the neighbors supported it but thought the project did not meet the Board's criteria. He said there was room for the project to be reworked. Mr. Rossi said he did not address the garage but he thought the proposed location was consistent with what else was found in the neighborhood, and on that basis he was comfortable with it. He said the

arborvitae played no factor in his considerations. Vice-Chair Margeson said she also would not support the motion for the same reasons as Mr. Rheume's. She said the garage could be pulled out of the side yard setback. She said it was a blank slate and there needed to be an attempt to put it within the building envelope. She said she was also uncomfortable with the fact that there was so much speculation, especially about the easement issues regarding access to the existing garage.

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

- B.** The request of **Meadowbrook Inn Corporation (Owners)**, for property located at **549 US Route 1 Bypass** whereas relief is needed to construct a 4-story hotel with 116 rooms with requires the following: 1) Special Exception from Section 10.440 use #10.40 to allow a hotel or motel with up to 125 rooms; and 2) Variance from Section 10. 5B41.80 to allow 7.85% community space where 10% is required. Said property is located on Assessor Map 234 Lot 51 and lies within the Gateway Corridor (G1) District. (LU-24-113)

SPEAKING TO THE PETITION

[Timestamp 42:56] Attorney James Scully was present on behalf of the applicant, with project engineer Alan Roscoe and architect Jason Diorio. Attorney Scully said the site plan showed the location as a proposed development area near Portsmouth Chevrolet, so it had always been considered a future development area. He said the proposed hotel would have a low impact on the Coakley Road neighborhood and avoid additional traffic concerns at the intersection. Regarding the variance request, he said the zoning changed and the property was moved into the Gateway District that had a requirement of 10 percent open space. He said the applicant wanted to bring that requirement down so that the wetlands were not impacted.

[Timestamp 46:42] Mr. Roscoe reviewed the site plan, proposed hotel layout, and parking spaces. He said they would only build 62 spaces and use the existing ones there now. He said the hotel use would not create any traffic peaks, and there would be an increase in overall traffic that would result in a slight increase in traffic flow. He said they would have catch basins for the drainage and any overflow would discharge into the wetlands. He said they would do their best to reduce impervious also. He said they met all the dimensional zoning requirements except for the open space one.

[Timestamp 52:17] Attorney Scully reviewed the special exception and variance criteria.

[Timestamp 58:18] Mr. Mannle asked about the community space. Attorney Scully said it would begin at the end of the crosswalk at Coakley, extend around the hotel, and then wrap all around the property. He said the abutters had asked if it could be made a walking loop, which he said the applicant would consider through the planning process. Mr. Mannle noted that on the same map it was also listed as potential expansion spaces. Attorney Scully said it was misleading and would be a community space. Mr. Roscoe said they would remove it from the plan. Vice-Chair Margeson said the applicant stated that the car dealership would still exist on the site and there would be ingress and egress to service the hotel. She asked if the applicant went before the Technical Advisory Committee (TAC). Attorney Scully said they had not. Vice-Chair Margeson said the applicant

would then have to demonstrate that there would be no increase in the level of traffic congestion in the vicinity. She said they were adding a 116-room hotel to a vacant lot and that there would be a significant increase in the traffic congestion. She said the applicant had to demonstrate to the Board through a trip generation report what those numbers would be. Mr. Roscoe said they did their own in-house analysis for the uses allowed by right. He said the proposal would add traffic but not decrease the level of service to the intersection and that the peak hours would not coincide with the hotel's use. Vice-Chair Margeson said she had to see the numbers.

[Timestamp 1:03:48] Mr. Rheume said he had the same concerns as Mr. Mannle. He read the ordinance's definition of a community space and asked how the applicant thought that what they proposed was a community space. Attorney Scully said it would create a walking environment for folks. He said the lot was unique and wasn't sure that anyone would drive there to access the community space; he said they wanted to utilize it primarily for the Coakley Road residents. He said the hope was that it would be a walking trail accessible to the public, however. Mr. Rheume said one of the driving factors was the wetlands area, but a portion of the proposed community space was within the wetland buffer. He asked how that made sense but in other areas did not make sense. Attorney Scully said the community space was designed within the 100-ft wetland buffer, which was already a disturbed area and would not go into undisturbed wetland area. Mr. Rheume said a good portion of the lot was taken up by the dealership, and he asked how there would be potential changes to offer a more useful community space as part of the bargain of getting another structure in the form of a hotel. Attorney Scully said it would be helpful to have shared parking behind the building. He said they added some green space to the egress portion but the parcel was maxed out in terms of what they were allowed to do with the dealership and what they could fit with the hotel. He said it was an attempt to tastefully design the hotel where they just missed the community space requirement due to the size of the lot without impeding on the wetlands.

[Timestamp 1:08:00] Chair Eldridge opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

No one spoke.

SPEAKING IN OPPOSITION TO THE PETITION

Steve Workman said he was the Director of Transport New Hampshire and their focus was on the most underserved choice of different transportation options. He said it was about traffic concerns on the Route One Bypass, the circle, and the two intersections at Coakley Road and Borthwick Avenue and not against any property owner's rights. He said the applicant's claim that there would be zero impact on traffic was not true and there were professional ways to figure it out. He asked at what point it was said that the infrastructure was not safe or efficient enough to approve these types of projects. He said the Department of Transportation had a 10-year transportation improvement plan that governed road construction and that the Coakley Road intersection and the circle were scheduled to be revisited and to eliminate the Coakley Road intersection and put a connector road from Coakley Road further down that would connect to Borthwick Avenue. He said construction on

that intersection would begin in 2031 and asked if it was the right time to look at projects like the applicant's. He said it needed to be more of a city-wide discussion.

Connie Romano of 3 Coakley Road said she almost got hit at that intersection several times because drivers ran the lights and made illegal turns. She said it was a danger that had to be addressed. She said she would not even use the crosswalk because it was too dangerous.

Christina Gallmeyer of 50 Coakley Road said traffic was horrible and drivers flew through the neighborhood when they tested cars from the dealership. She said peak hours would definitely be affected and that something had to be done about the traffic.

Kristin Marquis of 2 Larry Lane said people already used the existing greenspace for walking their dogs and playing with their children. She asked where people would park if they came just for the community space. She asked what the hotel's check-in and check-out times were.

Thomas Morley of 30 Coakley Road said there were serious traffic and transportation concerns. He said the project should meet the requirement for open space. He said no one from the public would use the greenspace. He asked that the space be re-oriented toward the neighborhood and better designed, and he suggested that a sidewalk be added on Coakley Road.

Breegan Johnson of 92 Coakley Road said she had two children and didn't let them near that intersection because the drivers ran through it constantly.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Dan Bernier of 96 Coakley Road said his issue was the traffic but also people who went south on Route One through the dealership and came out through Coakley Road. He asked how people would exit if that intersection was going to be closed for a new throughway.

Jacqueline Rice of 54 Coakley Road said it was mentioned at the community meeting that there would be food and drinks at the hotels, and she asked where those patrons would park.

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

DISCUSSION OF THE BOARD

[Timestamp 1:25:10] Chair Eldridge suggested referring the petition to TAC so that the Board could get the necessary information to make a decision. Vice-Chair Margeson said it was the applicant's responsibility to bring that information to the Board and it was the applicant's burden to prove that there would not be a substantial increase in the traffic in the vicinity. It was further discussed.

[Timestamp 1:27:11] *Mr. Mannle moved to **deny** the special exception and variance requests. No one seconded, and Mr. Mannle withdrew his motion.*

Mr. Mannle said he could not support either request. He said the Board did approvals based on what was presented by the applicant, and the fact that the map was presented showing the community

space and also listed a potential expansion space. He said it seemed that the community space was basically whatever property would be left over after the hotel was done. He said the hotel could easily fit on the other side of the dealership and found it disingenuous that the applicant was using the special exception to propose a hotel that came with a 10 percent community space but there was no space to do it. He said the applicant provided no traffic studies, even though there was a community outreach meeting and the residents said they had a problem with the traffic. Mr. Nies said he was concerned about the lack of information that supported the claim that there would not be an impact on traffic, which he found difficult to believe. He noted that the earlier proposal that was withdrawn included a traffic study and had hoped that the Board could discuss it. He said the quality of the community space also concerned him because it was difficult for him to look at a green strip along a traffic circle and call it a meaningful public space. He said it also wasn't clear how any of the spaces were consistent with the guidelines in the zoning ordinance relating to what community space is supposed to look like.

[Timestamp 1:32:08] Mr. Rheume said the Planning Board would see the community space piece during site plan review if the petition made it that far and would determine if it met the definition of community space. He said the applicant's argument for saying that they could only give 7-1/2 percent instead of 10 percent was due to the wetlands. He said there was already an existing land intensive use on the property and the applicant wanted to add another very land intensive use, which was really what was contributing to the applicant's inability to give the 10 percent. From that perspective, he said he could not see why the variance should be granted. He said it was important that the Board understand the traffic study in more detail because there would definitely be a traffic impact. He said a complicated factor was the future changes to Coakley Road that would impact the project. He said the Board could either deny the petition or give the applicant another opportunity to provide the information the Board needed. Mr. Rossi said he had been intrigued about seeing proposals come before the Board as that area had been rezoned as a Gateway District one. He said an objective was to promote a high-quality pedestrian environment, but the applicant's proposal didn't come close to doing that. Mr. Mattson said he did buy the argument that the property is huge and there are a lot of wetlands, so the ten percent was slightly misleading, but he thought the proposed community space was not very useful and that a lot of it was due to the other intensive use on the property. He said he avoided the area at certain times because the traffic was so bad. He said he would be more comfortable voting after receiving more information. Chair Eldridge said she also wanted to give the developer an opportunity to come back with more information, so if the Board got something they could approve, it would not be a Fisher v. Dover situation. Mr. Rheume suggested that the application be broken up into pieces.

DECISION OF THE BOARD

*Mr. Rheume moved to **deny** the variance request, seconded by Mr. Mannle.*

[Timestamp 1:37:48] Mr. Rheume said the petition failed two criteria, the spirit of the ordinance and the unnecessary hardship. He said the property was recently rezoned but it was part of a vision that the city was trying to create in the area, like the walkability and requiring these properties to be

more integrated into the community. He said there were opportunities to use this property in a more community manner to help support the area as opposed to it remaining as a general business and a sterile strip along the Route One Bypass. He said there was no reason why the applicant couldn't make the ten percent if there was another proposed use or a reconfiguration of what would be done there. He said the applicant said the hardship was due to the wetlands, but Mr. Rheume thought it was being driven by the intensity of the existing and proposed uses of the property. He said it failed two criteria and should be disapproved. Mr. Mannle concurred and said it seemed to him that the proposed community space was basically what was left over, and he did not consider a 30-ft wide green border with a split rail fence running down the middle of it bordering a traffic circle as viable community space. Chair Eldridge said denying the variance would not allow the Board to move on to other things that might have solutions, and she thought the wetlands was a hardship.

*The motion to deny **passed** by a vote of 6-1, with Chair Eldridge voting in opposition.*

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

[Timestamp 1:42:00] Mr. Mannle said it was up to the applicant to present an application that addressed all the criteria, and saying that there would not be any traffic impact didn't cut it. He said they failed Section 10.233.24, no creation of a traffic safety hazard or substantial increase in the level of traffic congestion in the vicinity. He said the map also concerned him because there were about sixty spaces of paved parking area inside the 100-ft wetland buffer. He said he didn't know when that variance was granted, but as much as the applicant had a concern for the wetlands, he thought they had less concern for the Coakley Road residents. He said the hotel could be built on the other side of the dealership and the corner of Coakley Road and the Route One Bypass could be a nice community space. Vice-Chair Margeson said there would be an increase in the level of traffic and the applicant failed to provide the Board with information on that. Mr. Mattson said he shared the same concerns. He agreed that the traffic in that section was bad and the project would create excessive traffic but he wanted to see results one way or another, so he was inclined to vote against the motion. Mr. Rheume agreed. He said the Board was assuming that it wouldn't meet their criteria. He said he was irritated that the applicant wasn't better prepared by providing the information the Board needed, but he did not think it was fair to deny the special exception on the assumption that the traffic is such a magnitude that it triggers a special exception. Mr. Rossi asked if the applicant could come back for a hotel use without triggering Fisher v. Dover if the special exception was denied. Ms. Casella said she would have to check with the Legal Department because it hadn't come up before. Mr. Rossi said he was reluctant to support the motion without knowing that. Chair Eldridge said she would want to know more before approving a denial. Vice-Chair Margeson said the representation from the applicant was that there would not be a substantial increase in traffic. She said it wasn't just the lack of information but the fact that the Board was allowed to rely on their common sense and inferences. She said there would be an increase in traffic. Mr. Mannle said it was incumbent on the applicant to provide that information, and if he did not, it called for a denial. He said the Board should not reward incomplete applications.

*The motion to deny **passed** by a vote of 4-3, with Mr. Rheaume, Mr. Mattson, and Chair Eldridge voting in opposition.*

- C. The request of **Daisy L. and Bert J. Wortel (Owners)**, for property located at **245 Marcy Street** whereas relief is needed to remove the existing 6-foot fence and replace with a new 6-foot fence which requires the following: 1) Variance from Section 10.515.13 to allow a 6-foot fence in the front yard area where 4 feet is allowed. Said property is located on Assessor Map 103 Lot 13 and lies within the General Residence B (GRB) and Historic Districts. (LU-24-131)

SPEAKING TO THE PETITION

[Timestamp 2:03:12] The applicant Daisy Wortel was present and said someone hit her fence and she wanted to replace it in kind. She said the fence was near the electrical panel and she wanted to align it to the property line to have access to maintain that panel. She reviewed the criteria.

[Timestamp 2:09:26] Mr. Rheaume asked if the request went before the Historic District Commission. Ms. Wortel said she was told that it didn't have to because the fence was proposed in kind. Mr. Rheaume said the ordinance was created to reduce the feeling of a wall effect created by a tall fence up against a public way. He asked why the applicant thought the fence would not impact the public. Ms. Wortel there were only two walls, the one on Marcy Street and the one on Gardner Street. She said the fence had been like that for a long time without any impact, and the neighbors were fine with it. She said there was a lot of vehicle and pedestrian traffic that caused privacy concerns. Vice-Chair Margeson said she lived in the neighborhood that that the property had always looked walled off and like a barrier. She said Ms. Wortel's concerns were the same ones all the neighbors on the street had and that the property was not unique. She said one of the issues about living in the Historic District is that visitors want to see the houses. She said the way the fence was placed did create a barrier. She asked why a 4-ft fence was not sufficient enough for privacy. Ms. Wortel said the street was noisy and it was more of a safety issue. Mr. Rossi asked what Ms. Wortel would do with the fence if the application was denied. Ms. Wortel said she would change the posts.

Chair Eldridge opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

Stephen Houlihan of 17 Gardner Street said he was an abutter and that he understood the Board's concerns but that the fence did not block the view of the house or other nearby houses.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DISCUSSION AND DECISION OF THE BOARD

[Timestamp 2:16:55] Mr. Rheume said the fence would deteriorate over time and asked if it should be replaced with a fence of the same height at that time. He said the Board had a lot of similar cases but that a fence was often set back far enough from a walking path. In this case, he said the fence was high and right up against walking paths and the street and created a walled-off feeling to the property. He said the applicant talked about green elements that could supplement a shorter fence, which he thought was a potential option that would satisfy the ordinance. He said the fence would not prevent anyone from doing anything nefarious. Mr. Rossi said the Board could not approve the variance within the context of how they interpreted the ordinance, but the fence would be replaced one board at a time and would not be the same fence ten years from now. He said it could exist in perpetuity without any action from the Board. He said their actions would be somewhat inconsequential but thought the Board should remain true to their purpose.

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

[Timestamp 2:20:27] Mr. Rossi said the petition must fail only one criteria, and that was Section 10.233.22, observing the spirit of the ordinance. He said the purpose of the ordinance was to prevent a walled-off feel for people who are walking in areas that are ones that the city wants pedestrians to feel comfortable in, and this was one such area. He said it did not comply with the spirit of the ordinance to have a 6-ft fence there. He said a 6-ft stockade fence was not a security device. He said he didn't think there was a substantial justice argument in that case either and that it could possibly fail other criteria. Vice-Chair Margeson said she thought it failed the spirit of the ordinance. She said the barrier-like feeling was exactly what was happening with the property now, and to allow it to continue, especially in that area, was very much against the ordinance.

Mr. Nies said there would be no loss to the public by allowing the 6-ft fence to be replaced. He said the fence already existed and it was an area where many of the buildings were right on the sidewalks. He said they had walls all along Marcy Street and that other properties in the area had 6-ft fences on the street. He said he did not think it would change the essential character of the neighborhood or be inconsistent with the spirit of the ordinance. He said the loss to the applicant was outweighed by any public benefit by enforcing the ordinance, and the loss in privacy and in enjoying the property vastly outweighed any benefit to the public by requiring a lower fence in that part of the lot. Mr. Mannle agreed. He said the fence was already there and was falling apart. He said the owner would still have a loss of privacy with a 4-ft fence because she could not connect the fence due to the electrical panel. He said he had not heard a public outcry for taking down the fence, especially from the south end. Chair Eldridge said it came down to the fact that the Board did not allow 6-ft fences in front of buildings in certain areas of town, so she could not support it.

*The motion to deny **passed** by a vote of 5-2, with Mr. Nies and Mr. Mannle voting in opposition.*

- D.** The request of **Thomas Kressler (Owner)**, for property located at **34 Garfield Road** whereas relief is needed to construct a single-story addition to the front of the existing home which requires the following: 1) Variance from Section 10.521 for a) 24% building coverage where 20% is allowed; and b) a 24.5-foot front yard where 30 feet is required; and 2)

Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 268 Lot 84 and lies within the Single Residence B (SRB) District. (LU-24-134)

SPEAKING TO THE PETITION

[Timestamp 2:27:20] Attorney Richard Russo was present on behalf of the applicant. He said they wanted permission for a single-story addition to the master bedroom that would add a master bath and closet. He said the property was unique because the lot and house were small for that district and there was a wetland behind the property. He said the addition would be as far from the wetlands as possible. He reviewed the criteria and said they would be met.

[Timestamp 2:33:48] Mr. Rheume asked what contributed to the total coverage that relief was needed for, noting that there were some accessory buildings. He said he saw an open space calculation but not one for the building coverage. Attorney Russo said there was a building coverage notation in the packet. Mr. Rheume said the wetlands dictated the location of the addition but the project was entirely within the 100-ft buffer, and he asked if it would have to go before the Planning Board or the Conservation Commission. Ms. Casella said the square footage was under the requirement amount for a Conditional Use Permit, so it fit the exception in the ordinance. Vice-Chair Margeson asked if the reason for putting the addition in the front was due to the wetlands. Attorney Russo said it was to get it as far away from the wetlands to enjoy the property. Mr. Rossi asked if it would encroach on the back setback if it were flipped over. Attorney Russo said it would because there was a deck within 25 feet of the back setback.

Chair Eldridge opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD

[Timestamp 2:38:32] Mr. Rossi said he was troubled by the fact that all the other homes along the street were set back from the street similarly to the current setback from this house, and allowing an addition along the front would break with the rest of the streetscape. Mr. Rheume agreed but thought it was a modest addition and a small expansion forward for the purpose of an ensuite. He said in terms of the total coverage, there were other concerning factors on the property, like the shed and the deck. He said the Board was striving to not overburden the property with a lot of accessory structures, but those structures were a moderate imposition. He said the addition would be close to the front yard setback but it was modest. He said the adjacent properties were about the same size, but some other properties in the neighborhood were larger. He said they were all one-story structures, so he could approve it.

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

Mr. Rheaume referred to his previous comments. He said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He said the addition would protrude on the front a bit beyond what was allowed and a bit closer than some of the other properties. He said there was enough variety across the neighborhood and the addition's modest nature and its extension into the front yard would not be excessive and would look natural and not violate the essential characteristics of the neighborhood. He said it would do substantial justice because the ordinance didn't want to overburden the property with lots of taller structures. He said it was a two percent variation in the total coverage and that some of the other elements were also modest. He said the front setback was modest overall to the width and the imposition of the setback request, so nothing in the public purpose would outweigh the benefit that the applicant would get from the master suite. He said granting the variances would not diminish the values of surrounding properties because having a small addition in the front yard was a residential use, so it would be consistent and would not negatively impact surrounding property values. As for hardship, he said the property was substantially smaller than the ones envisioned for the zone and had setbacks that were envisioned for a bigger lot that hemmed the structure in. He said any expansion would require taking up more room and some relief from the Board. Mr. Nies said 38 Garfield Street had about the same setback and the siting of the small addition screened by the trees would be unnoticeable.

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

- E. The request of **Heritage NH LLC (Owner)**, and **SWET Studios LLC (Applicant)**, for property located at **2800 Lafayette Road** whereas relief is needed for a change of use for Unit 17 to a health club including the following special exception from Section 10.440, Use #4.42 to allow a health club greater than 2,000 sf of gross floor area. Said property is located on Assessor Map 285 Lot 2 and lies within the Gateway Corridor (G1) District. (LU-24-128)

SPEAKING TO THE PETITION

[Timestamp 2:45:40] Project contractor Ben Middleton was present on behalf of the applicant. He said the total combined spaces were 4,100 square feet and to create the health club space, they needed to combine Units 17 and 18. He said the project would only be an interior renovation. He reviewed the criteria and said they would be met.

The board had no questions. Chair Eldridge opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD

*Mr. Nies moved to **grant** the special exception for the petition as presented and advertised, and Mr. Rossi seconded.*

[Timestamp 2:51:08] Mr. Nies said the use was allowed by special exception. He said there was no evidence that there would be a hazard created due to toxic materials and no detriment to property values within the vicinity or a change to the essential characteristics of the neighborhood. He said it would just be another commercial activity. He said there would be some traffic but most of the classes would be held after some of the other stores closed, so he did not see any indication that there would be a creation of a traffic or safety hazard. He said there would not be an excessive demand on municipal services because the applicant would use the existing utilities, and it was just an interior change that would pose no increase in stormwater runoff. Mr. Rossi concurred.

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

- F. REQUEST TO POSTPONE** The request of **Jared Majcher (Owner)**, for property located at **84 Thaxter Road** whereas relief is needed to construct an attached garage and 1.5-story addition and to demolish an existing detached garage which requires the following: 1) Variance from Section 10.521 to a) allow 22% building coverage where 20% is allowed; b) allow a 15.5 foot front setback where 30 feet is required; and 2) Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 166 Lot 34 and lies within the Single Residence B (SRB) District. **REQUEST TO POSTPONE (LU-24-135)**

DECISION OF THE BOARD

The petition was **postponed** to the September 17 meeting.

- G. REQUEST TO POSTPONE** The request of **Zeng Kevin Shitan Revocable Trust of 2017 (Owner)**, for property located at **377 Maplewood Avenue** whereas relief is needed to demolish the existing accessory building and construct a new detached accessory dwelling unit which requires the following: 1) Variance from Section 10.521 to a) allow a building coverage of 37.5% where 25% is allowed; b) allow an open space of 24.5% where 30% is required; c) allow a secondary front yard setback of 6 feet where 10 feet is required; d) allow a left yard setback of 4.5 feet where 10 feet is required; e) allow a rear yard setback of 3 feet where 20 feet is required; and 2) Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 141 Lot 22 and lies within the General Residence A (GRA) and Historic Districts. **REQUEST TO POSTPONE (LU-24-133)**

DECISION OF THE BOARD

The petition was **postponed** to the September 17 meeting.

- H.** The request of **KR Investments LLC (Owner)**, for property located at **271 Sagamore Avenue** whereas relief is needed to demolish the existing house and construct a new house with an attached garage which requires the following: 1) Variance from Section 10.521 to allow a) 28% building coverage where 25% is allowed; b) lot area of 6,880 sf where 7,500 sf is required; c) lot area per dwelling unit of 6,880 sf where 7,500 sf is required; and d) a continuous lot frontage of 60.08 feet where 100 feet is required. Said property is located on Assessor Map 221 Lot 15 and lies within the General Residence A (GRA) District. (LU-24-136)

SPEAKING TO THE PETITION

[Timestamp 2:54:53] Attorney F. X. Bruton was present on behalf of the applicant, along with the applicant's representatives Alex Kates and Tyler Rueger. Attorney Bruton reviewed the petition. He said the lot size percentage was advertised at 28 percent but they only needed 27.5 percent. He said the lot was unique because it was narrow, and the proposed house would be modest but would have two garage spaces. He said the existing property had a single-family house and a single garage and the garage encroached on the side and rear setbacks. He said last year the Board granted variances for an addition to the existing house but that his proposal was better. He reviewed the criteria.

[Timestamp 3:05:10] Mr. Rossi asked if the deck was above 18 inches and included in the lot coverage calculation. Attorney Bruton agreed. Mr. Rossi asked if it was possible to have it less than 18 inches off the ground so that it wouldn't need a variance. Mr. Rueger said it would depend on the grade of the house and how low they could get the foundation. Mr. Rossi said the house on the property on the right-hand side looked like it was rotated counterclockwise, and he asked what drove that orientation. Mr. Kates said they swung it over a few degrees to allow for better ingress and egress for the garage. Vice-Chair Margeson said the building coverage was about three percent over what was allowed by zoning and asked the applicant why he thought it was not impactful to the neighbors. Attorney Bruton said they were taking a one-story garage away and creating a house that has two stories but removing the encroachment next to the abutter. He said that was a positive for the abutter and the abutter was in support. Mr. Mannle said a significant amount of pavement was being added to get to the garage at the back of the house. He said the applicant was starting with a clean slate and asked why he could not comply with every building ordinance related to the building. Attorney Bruton said they were asking for the variance because of the design with the 2-car garage and they were within the envelope of every setback. Mr. Mannle asked why the previous project couldn't be built. Attorney Bruton said the current project was a different configuration.

Chair Eldridge opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD

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

[Timestamp 3:15:56] Mr. Rheume said the applicant had been before the Board before. He said it was a buildable lot and had a house on it for a long time, and it was the same as many other properties in the neighborhood that had houses on them that would not change the fundamental characteristics in that sense. Regarding total coverage, he said the applicant got a similar amount of relief for an expansion of an existing home before. He said granting the variances would not be contrary to the public spirit and would observe the spirit of the ordinance. He said the project would continue the current rhythm of the street and would be fully compliant with all the other setback requirements. He said the lot was oddly shaped but the house would face in the same direction as the other homes and it would be more conforming by removing the separate garage and using a slightly longer building to put an integrated garage into. He said substantial justice would be done because it was a modest increase in total coverage of three percent, and the balance weighed in favor of the applicant. He said it was not the imposition of the change in size but it was that three additional percent beyond what is allowed by right. He said the applicant could add onto the original house but was proposing to demolish the house and replace it with the same encroachment. He said granting the variances would not diminish the values of surrounding properties because it would be a single-family home in a district of single-family homes and most of the addition would be in the rear of the property. He said it would look the same from the front and would become more compliant with the setbacks, so it would increase the values. He said the special conditions of the property relative to the zone it was in are that the lot is smaller by about eight percent than what the zone requires. He said the applicant was asking for an additional three percent of coverage and some of that was for a patio. He said the property would not be overburdened by the additional percent of coverage. He said it was a reasonable request within those confines and would improve the overall compliance with the zoning ordinance. Mr. Rossi concurred. He said that area of Sagamore Avenue was very walkable and the design of the new structure would fit right into the neighborhood and would not diminish anyone's enjoyment of the walkable streetscape.

Vice-Chair Margeson said she would not support it. She agreed that the Board had a similar case before on Sagamore Avenue and that she made the motion to approve it but she construed it too narrowly, and she thought the Board was looking at this application too narrowly. She said she was concerned about the teardown of an existing building on the property and did not think the applicant accurately addressed that. She said it could alter the essential character of the area of old New Englanders, so it failed the spirit and intent. She said the 2.5 percent increase over what is allowed is de minimis but it was a very long structure and the lot would look quite filled, even though it met the building envelope. Mr. Mannle agreed. He said he supported the previous application because it was an innovative renovation of an existing structure. He said if the property was going to be a blank slate, there was no reason why the applicant could not conform to all the zoning requirements that he could. Mr. Rheume said the building was long and narrow but it sat on a long and narrow lot. He said it would look fine, and there were other similar examples of it in the neighborhood.

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

*Vice-Chair Margeson moved to go beyond the 10:00 rule, seconded by Mr. Rossi. The motion **passed** unanimously, 7-0.*

- I. The request of **Maxico LLC (Owner)**, and **The Wheel House of New Hampshire LLC (Applicant)**, for property located at **865 Islington Street** whereas relief is needed for a change of use to an instructional studio including the following special exception from Section 10.440, Use #4.42 to allow an instructional studio greater than 2,000-sf gross floor area. Said property is located on Assessor Map 172 Lot 11 and lies within the Character District 4-W (CD4-W). (LU-24-139)

SPEAKING TO THE PETITION

[Timestamp 3:26:13] The applicant Guy Johnson was present. He reviewed the petition and said all the modifications for the pottery studio space would be internal. He said the studio would be compatible with the nearby Button Factory. He reviewed the special exception criteria.

[Timestamp 3:30:50] Vice-Chair Margeson asked how many square feet the studio would be. Mr. Johnson said it would be 3,194 square feet. Mr. Rheume asked if there would toxic materials stored on site. Mr. Johnson said that the clay was dirt and the glazes were considered non-toxic. Vice-Chair Margeson asked about the kilns. Mr. Johnson said he spoke to the fire department and was confident that the risks were not significant. He said the kilns were electric and would be vented to the outside. He said they currently had two kilns but might have three in the future.

Chair Eldridge opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Richard Donahue of 871 Islington Street said he was the president of the condo association that was part of the Button Factory. He said he was concerned about traffic and parking because it was a large open lot that was shared with several other businesses. He said part of the lot was recently repaved but the one in front of the building was not, so there was no formal parking there, which he thought had to be addressed. He said people who visited the businesses parked in the condo's lot and that people used the lot as a place to do U-turns. He said another concern was that the Button Factory was over 100 years old and the plumbing in the complex was a mystery. He said the condos shared a waste line with the Button Factory but he wasn't sure where the sewer lines for the other buildings went. He said a pottery place would generate a lot of liquid and wastewater.

Mr. Johnson said they were mitigating the waste concern and every sink would have a special trap for that purpose. He said they had the parking they needed on their own property and that they would be happy to work with the condo association to mitigate whatever they could.

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

DECISION OF THE BOARD

[Timestamp 3:38:20] Mr. Nies said it was odd to lump a pottery studio under a section of the ordinance for health clubs, yoga, and other athletic studios. Mr. Rheume said he found it odd that the ordinance for a city that claimed they were all about their arts community did not reflect that well. Ms. Casella said there wasn't a perfect box to fit it in but it was the closest that the Planning Department could find. She said it was a studio and it was instructional. Vice-Chair Eldridge said the fact that it was not defined in the ordinance gave her pause, but she would support it because it was near the Button Factory that also had artistic endeavors going on.

*Mr. Mattson moved to **grant** the special exception for the petition as presented, seconded by Mr. Nies.*

Mr. Mattson said the project was permitted by special exception and that granting it would pose no hazard to the public or adjacent properties on account of potential fire, explosion, or release of toxic materials. He said reasonable measures of safety were being taken. He said there would be no detriment to property values in the vicinity or change to the essential characteristics of any area including residential neighborhoods and business and industrial districts on account of the location or scale of buildings and other structures, parking areas, accessways, odors, noise, dust, pollutants, outside storage of equipment and vehicles, and so on. He said it would fit into the neighborhood and would be near the Button Factory and other studios. He said granting the special exception would pose no creation of a traffic safety hazard or potential increase in the level of traffic or congestion in the vicinity, noting that there would be some additional traffic but not a substantial increase or a hazard. He said it would be good if the parking lot lines could be worked out, but there wasn't much anyone could do about U-turns. He said it would pose no excessive demand on municipal services including but not limited to water, sewer, waste disposal, police and fire protection, and so on, and would pose no significant increase in stormwater runoff onto adjacent properties or streets because it would be all internal changes. Mr. Nies concurred. Mr. Rossi said he would not support the motion because he thought it was important to have a dissenting vote to reflect the fact that there was mention of this particular use for a special exception in the ordinance. He said the Board was making a stretch interpretation and he did not think they would always want to do that.

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

III. OTHER BUSINESS

Mr. Rheume asked if there would be a second meeting to discuss how to the Board conducted itself. Chair Eldridge said she would speak to the Planning Department.

IV. ADJOURNMENT

The meeting adjourned at 10:45 p.m.

Respectfully submitted,

Joann Breault
BOA Recording Secretary

II. OLD BUSINESS

- A. The request of **Jared Majcher (Owner)**, for property located at **84 Thaxter Road** whereas relief is needed to construct an attached garage and 1.5-story addition and to demolish an existing detached garage which requires the following: 1) Variance from Section 10.521 to a) allow 22% building coverage where 20% is allowed; b) allow a 15.5 foot front setback where 30 feet is required; and 2) Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 166 Lot 34 and lies within the Single Residence B (SRB) District. (LU-24-135)

Existing & Proposed Conditions

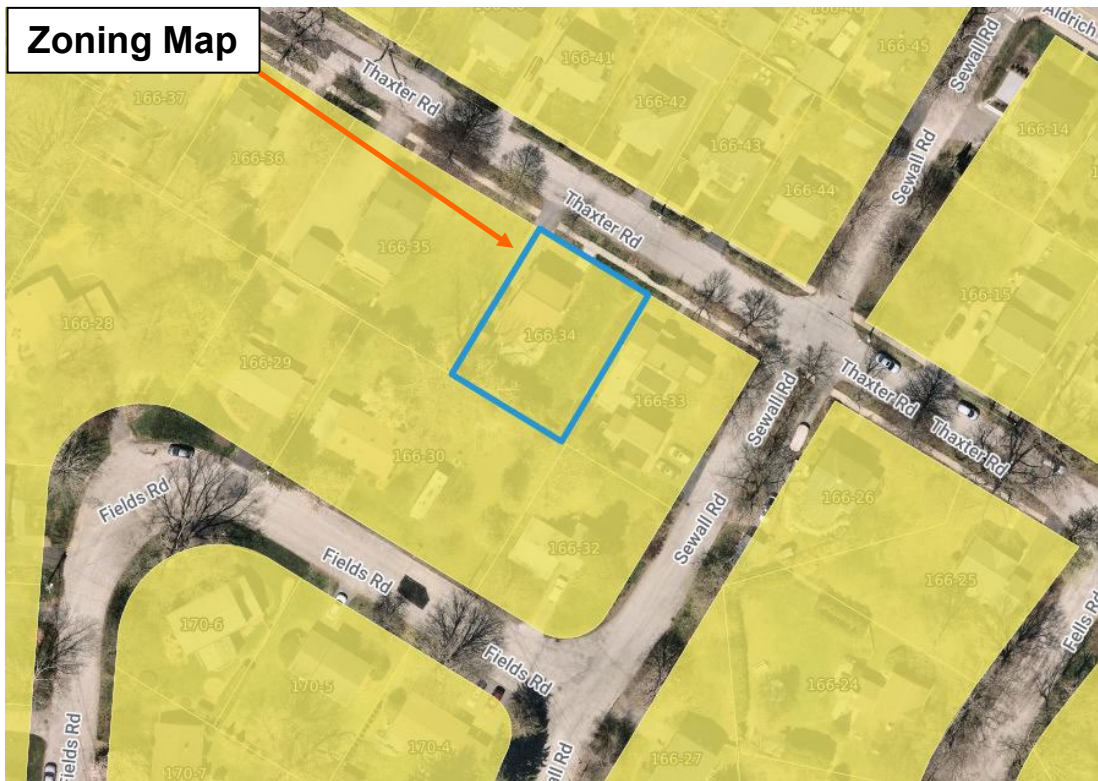
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>	
<u>Land Use:</u>	Single-family Residence	*Construct an addition to the primary structure	Primarily residential	
<u>Lot area (sq. ft.):</u>	7,500	7,500	15,000	min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	7,500	7,500	15,000	min.
<u>Lot depth (ft.):</u>	100	100	100	min.
<u>Street Frontage (ft.):</u>	75	75	100	min.
<u>Front Yard (ft.):</u>	15.5	15.5*	30	min.
<u>Right Yard (ft.):</u>	35	12	10	min.
<u>Left Yard (ft.):</u>	Primary Structure: 11 Detached Garage: 2.5	11	10	min.
<u>Rear Yard (ft.):</u>	Primary Structure: 30 Detached Garage: 7	30	30	min.
<u>Height (ft.):</u>	<35	<35	35	max.
<u>Building Coverage (%):</u>	17	22	20	max.
<u>Open Space Coverage (%):</u>	73	72	40	min.
<u>Parking:</u>	>2	>2	2	min.
<u>Estimated Age of Structure:</u>	1935	Variance request(s) shown in red.		

*** Relief needed to construct an addition to the already non-conforming primary structure that would further impact the non-conformity.**

Other Permits/Approvals Required

- Building Permit

Neighborhood Context



Previous Board of Adjustment Actions

No Previous BOA History found.

Planning Department Comments

The applicant is proposing to construct a 1.5-story addition to the primary structure that will include an attached garage and additional living space above. A porch will be added to the existing front steps. The applicant is also proposing to demolish the existing detached garage and move the driveway from its existing location to the area in front of the proposed attached garage addition. The existing primary structure is located 15.5 feet from the front property line and the proposed addition has been designed to match the existing roofline and design of the existing home. The addition and porch are proposed to be located within the front setback and will increase the building coverage over the 20% maximum permitted, therefore the applicant is requesting the required relief.

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.

BY: VIEWPOINT & HAND DELIVERY

July 24, 2024

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

**RE: Variance Application of JP and Allison Majcher
84 Thaxter Road, Portsmouth (Tax Map 166, Lot 34)**

Dear Stefanie,

Please find a copy of the following submission materials in connection with the variance application filed on behalf of JP and Allison Majcher for property located at 84 Thaxter Road:

- 1) Landowner Letter of Authorization;
- 2) Narrative to Variance Application;
- 3) Plans (Site Plan and Architectural Plans);
- 4) Photographs of Property.

A copy of the above application materials is being delivered to the Planning Department today. 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.

CITY OF PORTSMOUTH
NARRATIVE
TO VARIANCE APPLICATION

JP Majcher and Allison Majcher
(“Applicants”)

84 Thaxter Road
Tax Map 166, Lot 34

INTRODUCTION

JP Majcher and Allison Majcher own the property located at 84 Thaxter Road (the “Property” or the “Applicants’ Property”). The Property is 0.17 acre in size. There is a one and a half story single-family home on the Property that the Applicants reside in. It is zoned Single Family Residence B (“SRB”). The home on the Property was built in 1935.

The Property consists of one lot and a portion of another. **Exhibit A**. The land is described in the current deed as “the whole of Lot No. 58...and the Northwesterly half of Lot No. 57” on a plan prepared by John W. Durgin, dated July 24, 1924, titled, “Plan of Westfield Park, Portsmouth, N.H.”. **Exhibit B**. The Property has been conveyed with the current land description since at least 1929. The properties on Thaxter Road consisted primarily of 50’ x 100’ lots when the subdivision was created. It was not unusual at the time for lots to be merged or lot lines to be adjusted unilaterally by deed conveyance. There were no subdivision regulations or Planning Board to regulate land subdivisions in 1929. Many properties on Thaxter Road remain in their original configurations, including the four lots across the street from the Applicants’ Property: Tax 166, Lots 41-44. There are no properties on Thaxter Road that comply with the 15,000 square foot lot size requirement applicable to the SRB Zoning District.

Existing Nonconformities

Non-Conformity	Requirement	Existing Condition	Feature/
Rear Setback	30’	7.5’ (+/-)	Detached Garage
Right Yard Setback		2.5’ (+/-)	Detached Garage
Front Setback	20’	15.5’ (+/-)	House Steps

Proposed Conditions

Garage and Front Porch Additions

The Applicants, who are expecting a baby, would like to construct a one and a half story addition onto the left side of their home to accommodate a single-car garage with living space above. The addition would match the existing roofline and design of the existing home. As part of the exterior renovation of the home, they would also like to add a small porch area onto the front of the home.

ZONING RELIEF SUMMARY

The Applicants seek the following variances from the Portsmouth Zoning Ordinance (the “Ordinance”):

Article 10.521: To allow 22% (+/-) building coverage where 17% (+/-) exists and 20% is allowed.

Article 10.521: To allow a 15.5' (+/-) front yard setback where 15.5 (+/-) exists and 30' is required.

Section 10.321: To allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance.

VARIANCE CRITERIA

Granting the variances will not be contrary to the public interest and will observe the spirit of the Ordinance.

In the case of *Chester Rod & Gun Club, Inc. v. Town of Chester*, the Court observed that the requirements that a variance not be "contrary to the public interest" or "injure the public rights of others" are coextensive and are related to the requirement that the variance be consistent with the spirit of the ordinance. 152 N.H. 577 (2005). 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. “There 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.” *Harborside Assoc v. Parade Residence Hotel*, 162 N.H. 508, 514 (2011).

The primary purpose of the building coverage limitation set forth in the Ordinance is to prevent the overcrowding of structures on land. In the present instance, the Applicants are seeking a 2% deviation from what is allowed by the Ordinance. In the context of the Applicants' Property, this amounts to 150 square feet of building coverage above what the Ordinance allows for, which is the equivalent to a small deck or patio area. The Property itself only has 50% of the lot area that the Ordinance requires. The Applicants have made a conscious effort to reduce the footprint and size of the addition to the minimum necessary to allow for a functional one-car garage and to accommodate the 2nd floor living space they need to continue residing in the home long-term, which is their goal. The home is very small for a modern family, particularly when you consider the fact that one of the Applicants primarily works remotely from the house.

While it could be said that the Applicants are creating a new non-conformity on the Property with the requested increase in building coverage, this is arguably offset by the elimination of the existing non-conforming detached garage. The detached garage on the Property has a rear setback of 7.5' (+/-) and a right yard setback of 2.5' (+/-). The entirety of the garage encroaches into the rear and right yard setbacks. The garage itself has little function and acts as a glorified shed for the Applicants. By allowing a single car attached garage, the Applicants will have functional storage space for a car and their personal belongings.

What the Applicants have proposed is consistent with the prevailing character of the neighborhood. The properties that comply with the SRB Zone building coverage limitation in this area of Thaxter Road are the outliers. The few that do comply with the building coverage limitation, such as the abutting property at 64 Thaxter Road (Lot 166-35), are significantly larger. **Exhibit C.**

The neighborhood itself is characterized by substandard single-family home lots that exceed the building coverage requirement and have structures that encroach into one or more setbacks. **Exhibit D.** There are also numerous examples in the surrounding neighborhood of homes with attached garage additions of a similar design to that proposed by the Applicants, including: 145 Thaxter Rd. (Lot 166-16), 175 Thaxter Rd. (Lot 166-17) and 176 Thaxter Road (Lot 166-20).

The proposed additions will not extend further into the front yard setback than the existing home. The additions will have no negative impact upon the light, air and space of any abutting property, consistent with the objectives of the Ordinance, and will eliminate an existing setback non-conformity.

For the foregoing reasons, granting the variances will not alter the essential character of the neighborhood or otherwise have any negative impact upon the public's health, safety or welfare.

Substantial justice will be done by granting the variances.

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 public would not realize any gain by denying the variances. The additions to the home are reasonable and in keeping with the character of the neighborhood. The increase in building coverage above what is permitted by the Ordinance is minimal and will not overcrowd or otherwise overburden the Property. To the contrary, the demolition of the detached non-conforming garage in the rear and the improved appearance of the home with the additions should only benefit the neighbors and the public. Denying the variances would constitute a loss to the Applicants, who have a very small single-family home and need additional living and storage space for their growing family.

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

As stated above, what is proposed is in keeping with the character of the neighborhood and other homes within it. The additions are tasteful and will integrate naturally with the existing design of the home. The improved appearance of the home and the elimination of the non-conforming detached garage in the rear should only add value to surrounding properties. Granting the variances will certainly not take value away from surrounding properties.

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

Current zoning does not reflect the character of the neighborhood, which consists primarily of small lots that exceed the SRB District 20% building coverage limitation. Municipalities have an obligation to have their zoning ordinances reflect the current character of neighborhoods. *Belanger v. Nashua*, 121 N.H. 389 (1981). Absent this, the Board must consider the prevailing character of a neighborhood as part of its hardship analysis.

The Property has special conditions that distinguish it from surrounding properties. It is one of the only properties that has under 20% building coverage. Of the others that have less than 20% building coverage, all are larger lots.

The Applicants' Property was created and developed long before the enactment of current SRB zoning standards. The home and detached garage are quite small by modern standards. Notwithstanding, these structures account for 17% (1,238 sf.) in building coverage. The Applicants cannot reasonably expand upon either structure on the Property without exceeding the 20% coverage threshold.

In the present case, the Applicants are seeking a trade-off in non-conformities by eliminating the detached garage that violates the rear and right yard setbacks and constructing an attached garage with living space above that improves the functionality of their home. The 22% building coverage proposed is consistent with other similarly situated properties in the neighborhood. For these reasons, there is no fair and substantial relationship between the general purposes of the Ordinance provisions and their application to the Property.

Finally, the proposed use is reasonable. The Applicants will continue to use the Property as a single-family residence which is encouraged and permitted by right in the SRB Zoning District.

CONCLUSION

In conclusion, the Applicants have demonstrated why their application meets the criteria for granting the variances requested and respectfully request that the Board's approval of the same.

Respectfully Submitted,

Dated: July 24, 2024

JP and Allison Majcher

By and Through Their Attorneys,
Durbin Law Offices PLLC



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

Return To:



LCHIP	ROA654550	25.00
TRANSFER TAX	RO124026	16,350.00
RECORDING		14.00
SURCHARGE		2.00

WARRANTY DEED

KNOW ALL PERSONS BY THESE PRESENTS: That Daniel T. Marchibroda of 84 Thaxter Road, Portsmouth, NH 03801, for consideration paid, grants to Jared Paul Majcher and Allison Mary Moloney Majcher of 84 Thaxter Rd, Portsmouth, NH 03801, as joint tenants with rights of survivorship with WARRANTY COVENANTS:

A certain lot of land, together with the sewer, cement side-walks, grading and buildings therein and/or thereon, situate on the Southeasterly side of Islington Street in said Portsmouth and known as Thaxter Road on a plan entitled "Plan of Westfield Park, Portsmouth, NH and drawn by John W. Durgin, C.E. and recorded in Rockingham Registry of Deeds as Plan #0643. Said parcel is bounded and described as follows, viz:

Beginning at the Northwesterly corner of lot No. 58 at lot No. 59 as shown on said plan, the same being the property now or formerly of Ralph Badger and thence running in a Southeasterly direction by said Thaxter Road, seventy-five (75) feet; thence turning and running in a Southwesterly direction one hundred (100) feet to the Northwesterly side line of lot No. 74 as shown on said plan; thence turning and running in a Northwesterly direction by the side line of said lot No. 74 and lot No. 73 as shown on said plan to lot No. 59 as shown on said plan, the land of said Badger; thence turning and running in a Northeasterly direction one hundred (100) feet to Thaxter Road at the point of beginning.

Meaning and intending hereby to convey the whole of lot No. 58 as shown on said plan and the Northwesterly half of lot No. 57 as shown on said Plan.

Subject to the reservations, conditions and restrictions contained in deeds of R. Clyde Margeson et als. Dated August 27, 1929, and recorded in Rockingham County Registry of Deeds, Book 855, Page 474, and Edward L. Paterson dated August 27, 1929, recorded in said Rockingham County Registry of Deeds in Book 853, Page 164.

Being the same property as conveyed from Alan L. Fleischman, Trustee of the Fleischman Revocable Trust u/t/a dated May 24, 1996, as amended to Daniel T. Marchibroda, a single man, dated December 01, 2016 and recorded on December 09, 2016 in Book 5781 at Page 0292, Rockingham County records.

WARRANTY DEED

(continued)

For informational purposes only: 84 Thaxter Rd, Portsmouth, NH 03801.

Tax Parcel # 0166/ 0034/ 0000/ /

TOGETHER WITH and subject to any and all covenants, easements, conditions, stipulations, and restrictions of record, insofar as the same are enforceable and in effect.

The Grantor hereby releases all rights in homestead.

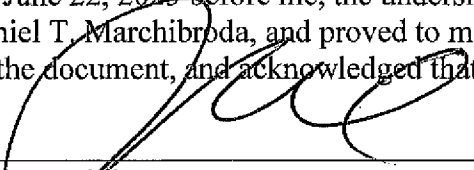
IN WITNESS WHEREOF, the undersigned have executed this document on this 22nd day of June, 2023.



Daniel T. Marchibroda

State of NEW HAMPSHIRE
County of Rockingham

On June 22, 2023 before me, the undersigned notary public, personally appeared the above Daniel T. Marchibroda, and proved to me by license to be the persons whose names are signed on the document, and acknowledged that they did it voluntarily for their its stated purpose.



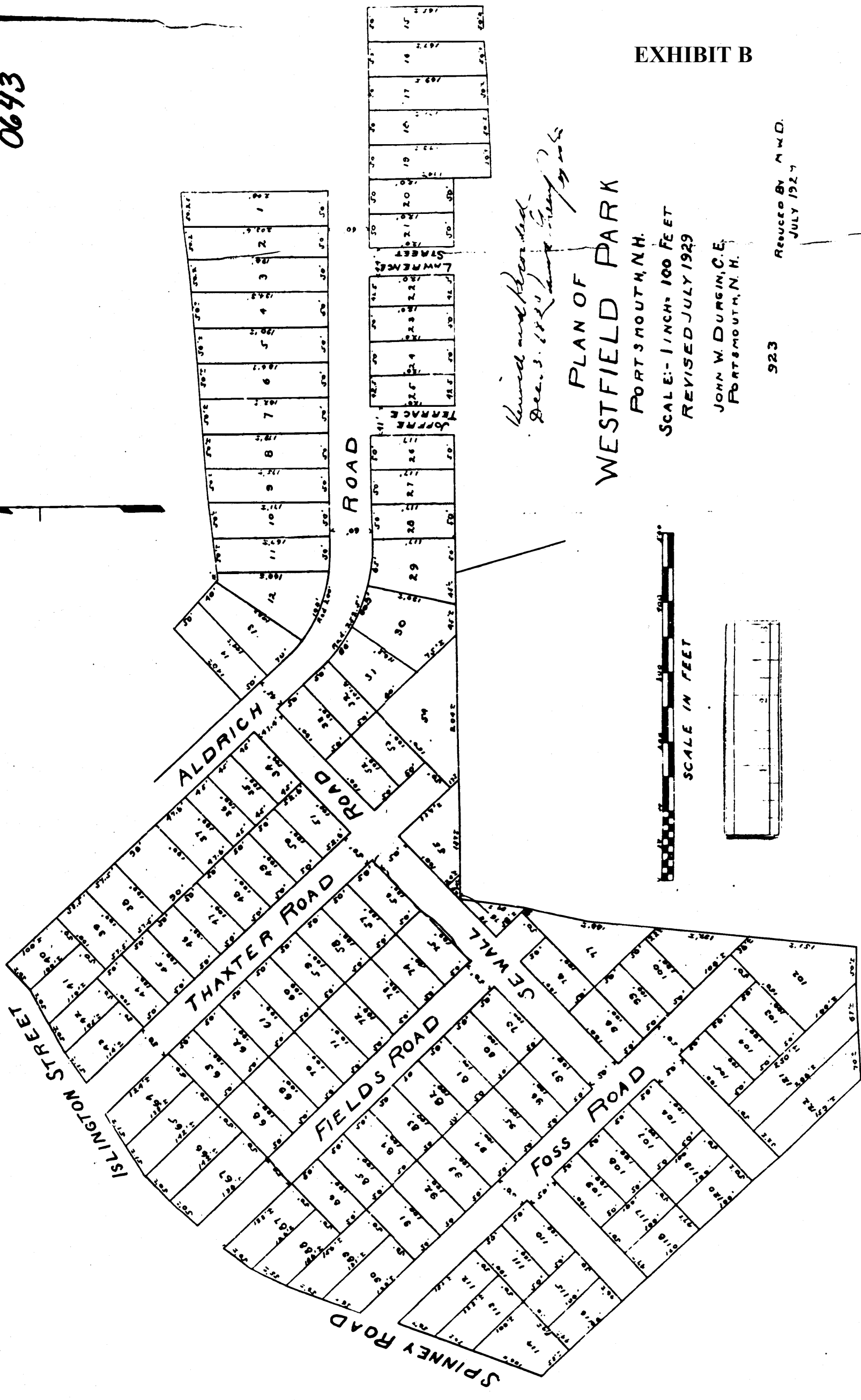
Notary Public
My Commission Expires:

[SEAL]



0643

EXHIBIT B



*Revised and altered
Dec. 3. 1929*

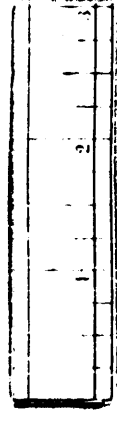
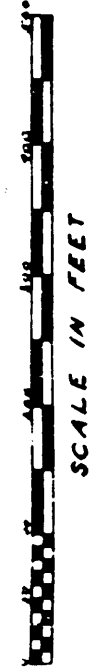
PLAN OF
WESTFIELD PARK
PORTSMOUTH, N.H.

SCALE: - 1 INCH = 100 FEET
REVISED JULY 1929

JOHN W. DURGIN, C.E.
PORTSMOUTH, N.H.

923

Revised By A.M.D.
JULY 1929



See Book 80 Plat 4

EXHIBIT C

Location to Majcher House	Street #	Street	Owner	Lot Number	Acres	Land Square Footage	Building Coverage	Building Coverage %
same side of Thaxter	98	Thaxter	Steven Katona/Marie Wood	166-33	0.17	7405.0	2321	31.3
right side abutter	64	Thaxter	Jim & Mary Nocas	166-35	0.28	12197.0	1858	15.2
across Thaxter Road	105	Thaxter	James & Regina Flynn	166-44	0.12	5227.0	1134	21.7
across Thaxter Road	93	Thaxter	Kevin Edge & Cindy Bradeen	166-43	0.11	4792.0	1348	28.1
across Thaxter Road	83	Thaxter	Peter & Jean Ward	166-42	0.11	4792.0	1250	26.1
across Thaxter Road	73	Thaxter	Joanne Samuels Revocable Trust	166-41	0.11	4792.0	971	20.3
Behind Property-Fields Road	120	Fields	Nancy Tulois	166-32	0.16	6970.0	1160	16.6
Behind Property-Fields Road	110	Fields	David Caldwell	166-30	0.32	13939.0	1492	10.7
Behind Property-Fields Road	100	Fields	Richard & Janice Trafton	166-29	0.16	6970.0	1488	21.3
same side of thaxter	38	Thaxter	Madison Tidwell & Brendan Barker	166-36	0.17	7405.2	1352	18.3
same side of thaxter	26	Thaxter	Linda & John Leland	166-37	0.14	6098.4	1848	30.3
same side of thaxter (corner of Islington)	954	Islington	Amy Averback	166-38	0.18	7840.8	1766	22.5
same side of thaxter	122	Thaxter	James & Sarah Holly	166-26	0.16	6969.6	1301	18.7
same side of Thaxter	218	Thaxter	Barbara Levenson Revocable Trust	167-12	0.22	9583.2	2632	27.4
							Avg Coverage	22.0
Majcher House (current)	84	Thaxter	Jared & Allison Majcher	166-34	0.17	7405.0	1262	17.0

145 Thaxter Road	House with similar attached garage on the side of the house
175 Thaxter Road	House with similar attached garage on the side of the house
176 Thaxter Road	House with similar attached garage on the side of the house

EXHIBIT D



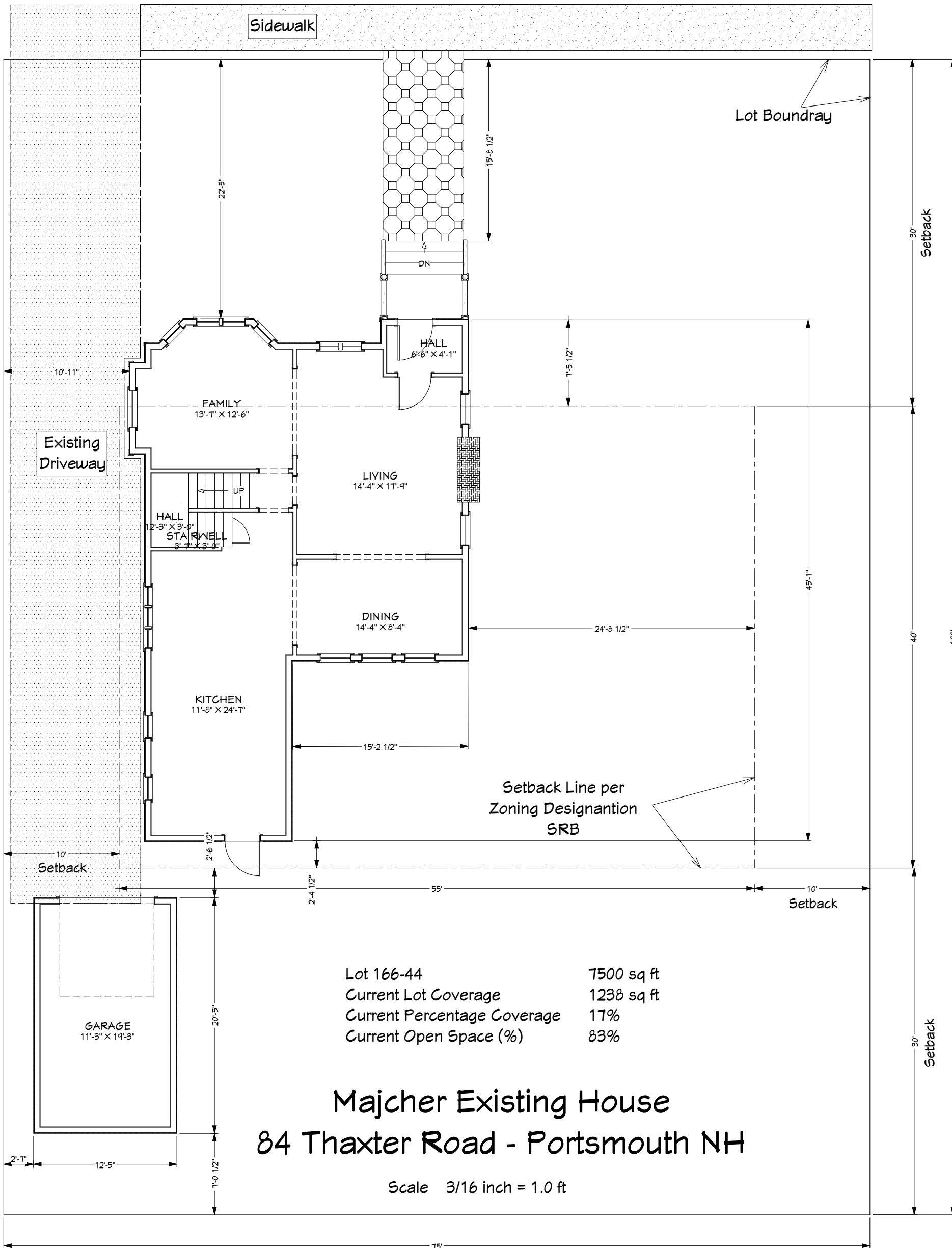
**MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT**

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.

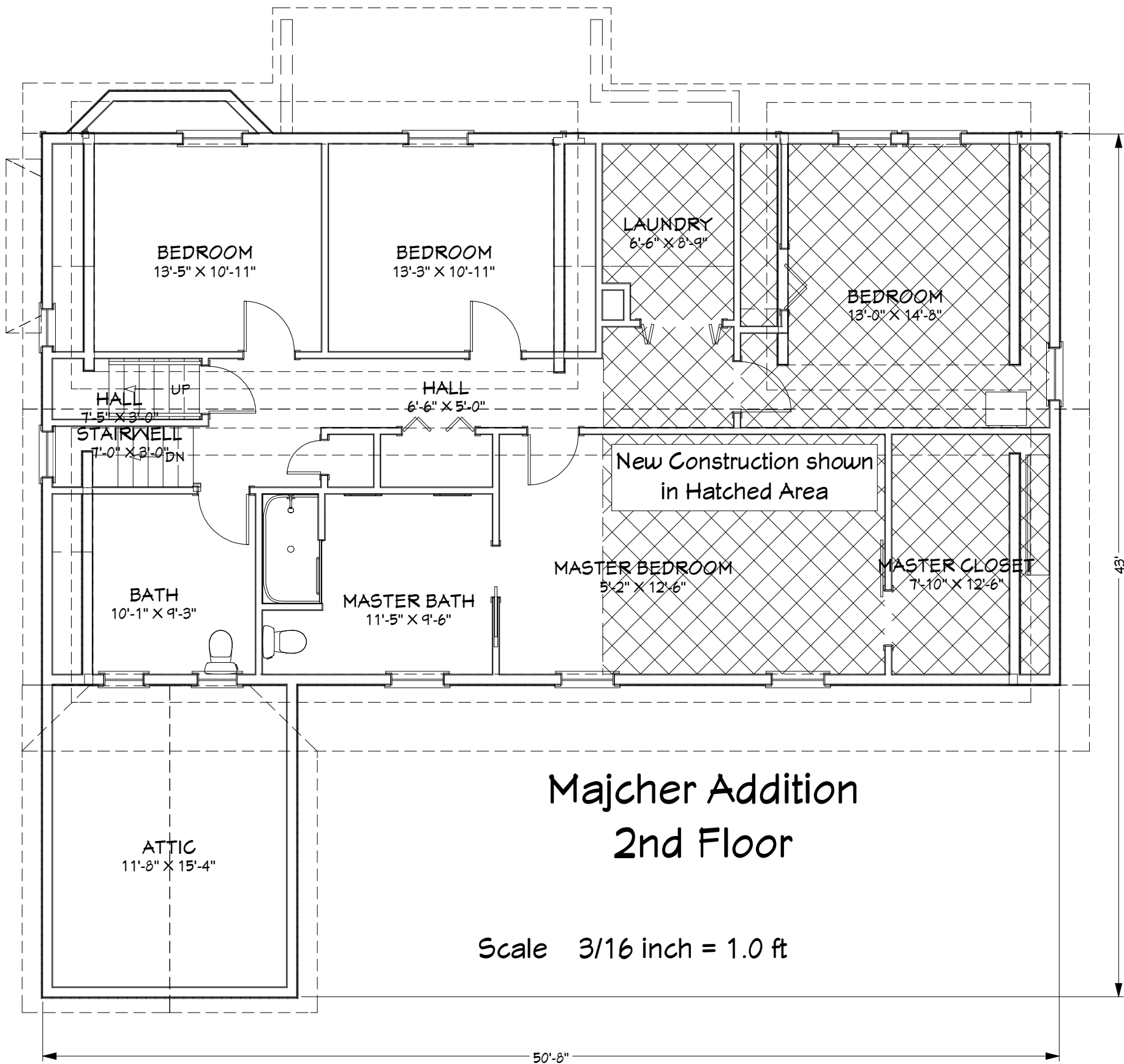
Thaxter Road



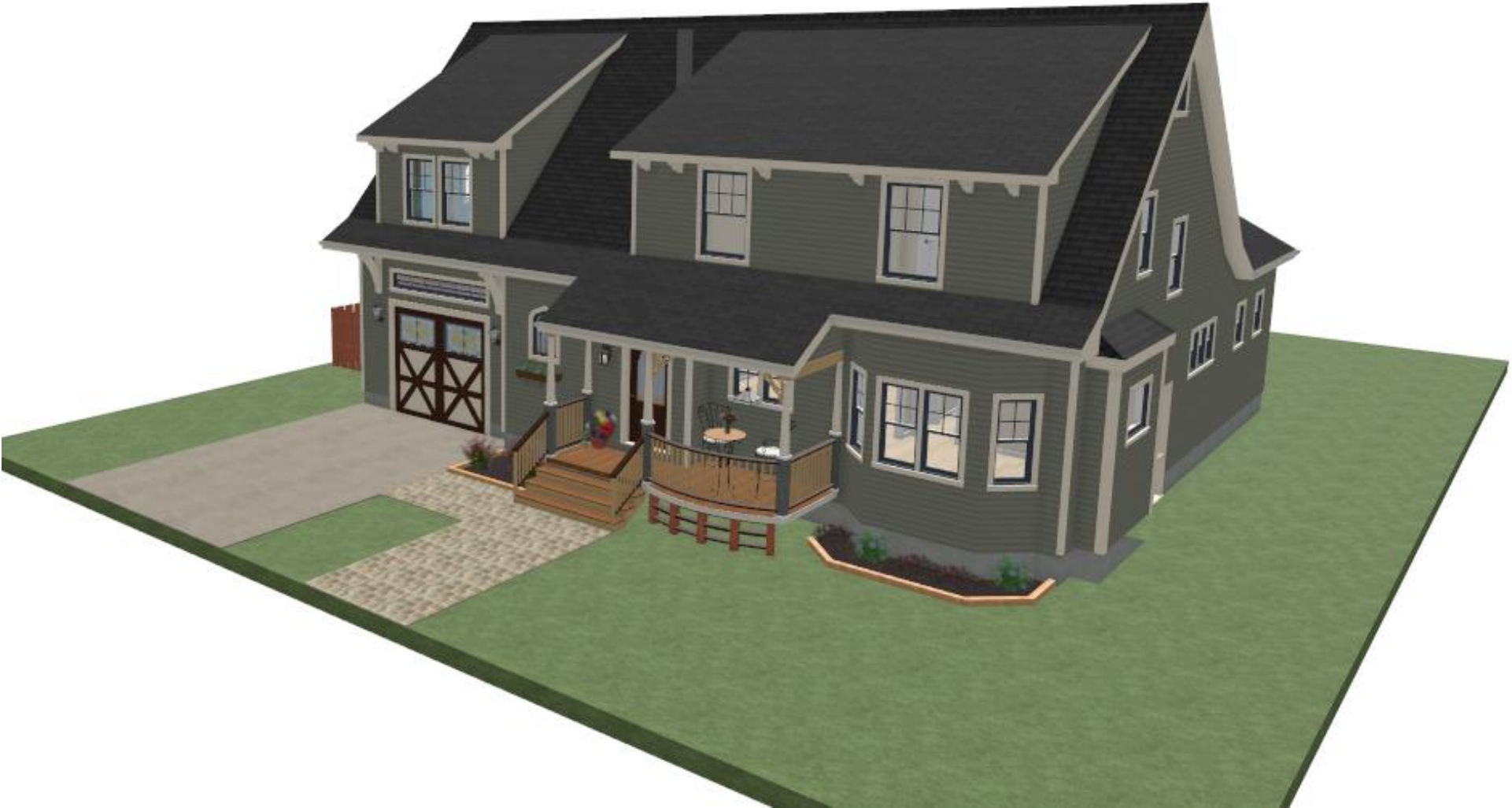
Lot 166-44 7500 sq ft
 Current Lot Coverage 1238 sq ft
 Current Percentage Coverage 17%
 Current Open Space (%) 83%

Majcher Existing House 84 Thaxter Road - Portsmouth NH

Scale 3/16 inch = 1.0 ft



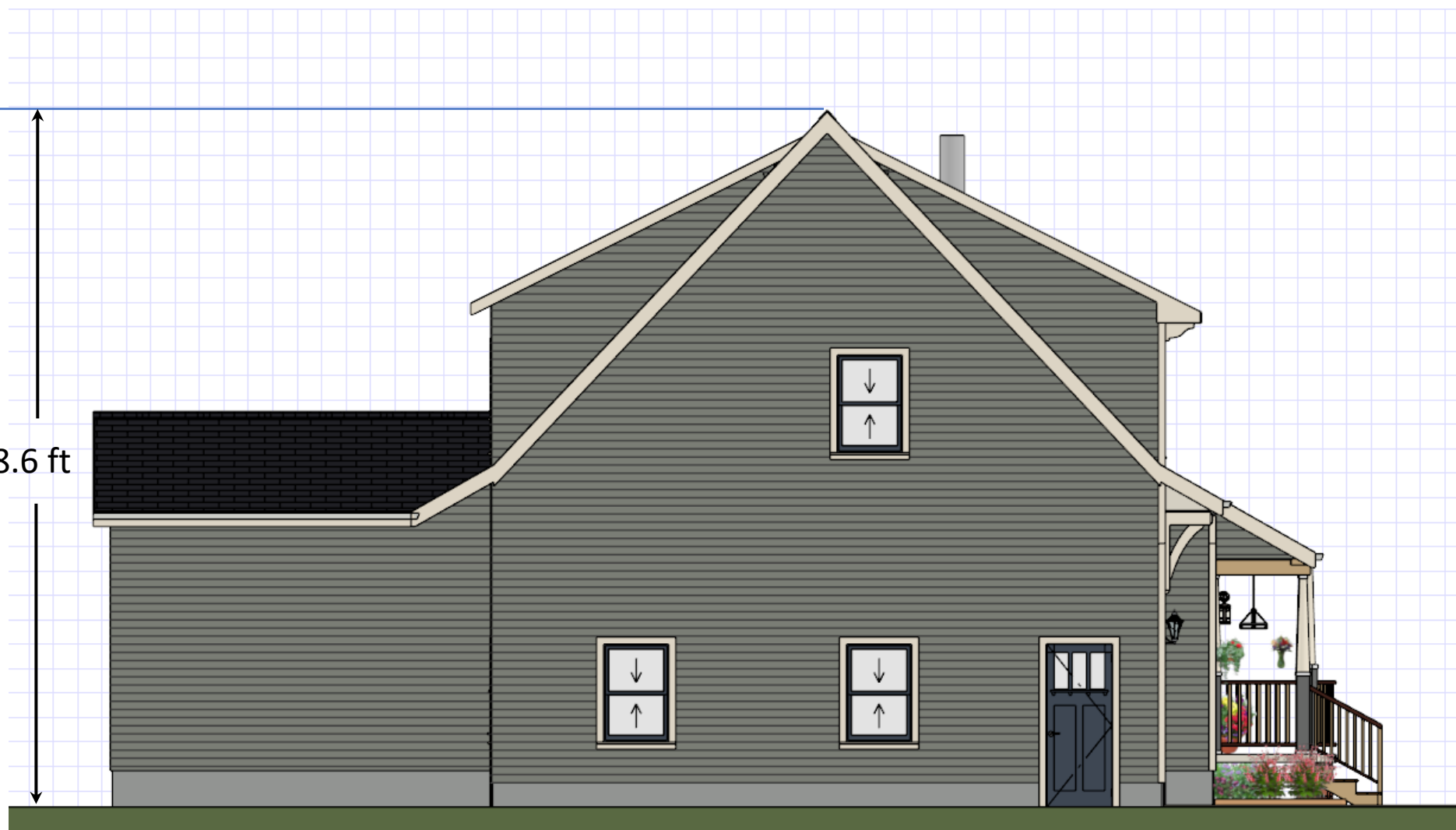








28.6 ft





Left – Front View of House



Left –Rear View of House



Right Side View of House



Front View of House



Rear Yard / Garage View



Property Information

Property ID 0166-0043-0000
Location 93 THAXTER RD
Owner EDGE KEVIN



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 using
 this resource.

II. OLD BUSINESS

B. The request of **Zeng Kevin Shitan Revocable Trust of 2017 (Owner)**, for property located at **377 Maplewood Avenue** whereas relief is needed to demolish the existing accessory building and construct a new detached accessory dwelling unit which requires the following: 1) Variance from Section 10.521 to a) allow a building coverage of 37.5% where 25% is allowed; b) allow an open space of 24.5% where 30% is required; c) allow a secondary front yard setback of 6 feet where 10 feet is required; d) allow a left yard setback of 4.5 feet where 10 feet is required; e) allow a rear yard setback of 3 feet where 20 feet is required; and 2) Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 141 Lot 22 and lies within the General Residence A (GRA) and Historic Districts. (LU-24-133)

Existing & Proposed Conditions

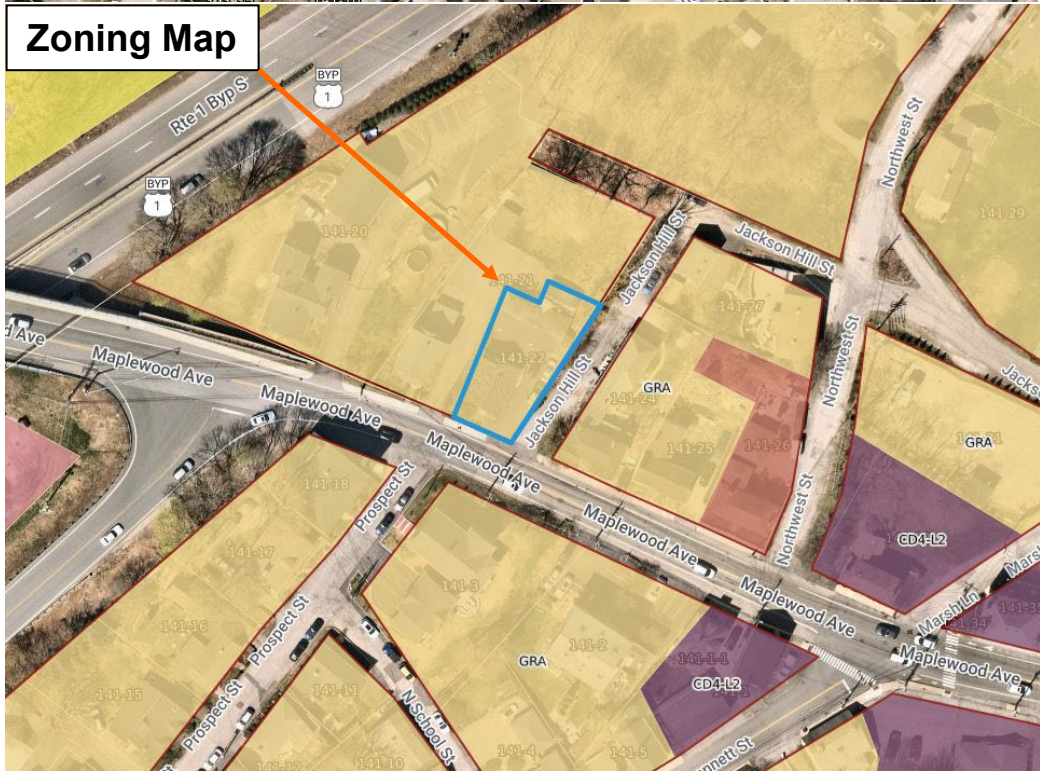
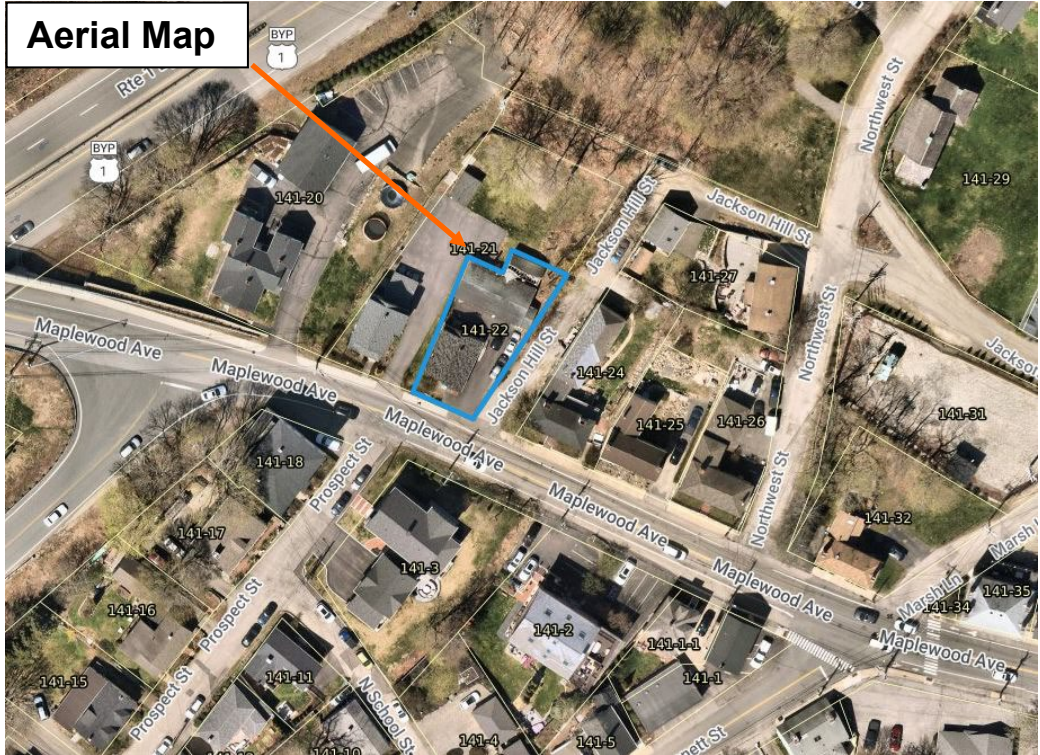
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>	
<u>Land Use:</u>	Single-family	*Demolish existing accessory building and construct new detached accessory dwelling unit	Primarily Residential	
<u>Lot area (sq. ft.):</u>	5,277	5,277	7,500	min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	5,277	5,277	7,500	min.
<u>Lot depth (ft.):</u>	108	108	100	min.
<u>Street Frontage (ft.):</u>	42	42	70	min.
<u>Front Yard (ft.):</u>	7	7	15	min.
<u>Secondary Front Yard (ft.):</u>	0.2	6	10	
<u>Side Yard (ft.):</u>	House: 2.9 Accessory Building: 4.5	4.5	10	min.
<u>Rear Yard (ft.):</u>	Accessory Building: 2.2	3	20	min.
<u>Building Coverage (%):</u>	45.3	37.5	25	max.
<u>Open Space Coverage (%):</u>	20.5	24.5	30	min.
<u>Parking</u>	3	3	3	
<u>Estimated Age of Structure:</u>	1941	Variance request(s) shown in red.		

*Relief needed to construct an addition to the already non-conforming primary structure that would further impact the non-conformity.

Other Permits/Approvals Required

- Building Permit
- Historic District Commission Approval

Neighborhood Context



Previous Board of Adjustment Actions

- **September 15, 2020** – The Board denied a variance to demolish an accessory building and construct a new free standing dwelling which requires the following: 1) A Variance from Section 10.513 to allow more than one free standing dwelling on a lot. 2) Variances from Section 10.521 to allow: a) a lot area per dwelling unit of 2,638 square feet where 7,500 is the minimum required; b) 43% building coverage where 25% is the maximum allowed; c) a 4.5' secondary front yard where 15' is required; d) a 3' left side yard where 10' is required; and e) a 5.5' rear yard where 20' is required. 3) A Variance from Section 10.321 to allow a building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance.

Planning Department Comments

The applicant is requesting to demolish the existing accessory building and construct a new detached accessory dwelling unit (DADU). The proposed DADU requires dimensional relief for the proposed location and to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance.

Fisher vs. Dover

The Board previously denied variances to construct a new free-standing dwelling on the lot with a greater footprint and different design. Staff feels the change to a DADU and reduced footprint is a significant enough change that would not evoke Fisher v. Dover, but the Board may want to consider whether Fisher vs. Dover is applicable before this application is considered.

“When a material change of circumstances affecting the merits of the applications has not occurred or the application is not for a use that materially differs in nature and degree from its predecessor, the board of adjustment may not lawfully reach the merits of the petition. If it were otherwise, there would be no finality to proceedings before the board of adjustment, the integrity of the zoning plan would be threatened, and an undue burden would be placed on property owners seeking to uphold the zoning plan.” Fisher v. Dover, 120 N.H. 187, (1980).

Variance Review Criteria

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

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

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

OR

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

10.235 Certain Representations Deemed Conditions

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

BY: VIEWPOINT & HAND DELIVERY

July 23, 2024

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

**RE: Variance Application of Kevin Shitan Zeng, Trustee of the Kevin Shitan Zeng Revocable Trust of 2017
377 Maplewood Avenue, Portsmouth (Tax Map 141, Lot 22)**

Dear Stefanie,

Please find a copy of the following submission materials in connection with the variance application filed on behalf of Kevin Zeng for property located at 377 Maplewood Avenue.

- 1) Landowner Letter of Authorization;
- 2) Narrative to Variance Application;
- 3) Site Plan;
- 4) Architectural Plans;
- 5) Photographs of Property.

A copy of the above application materials is being delivered to the Planning Department today. 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

Kevin Shitan Zeng, Trustee of The Kevin Shitan Zeng Revocable Trust of 2017, owner of property located at 377 Maplewood Avenue, identified on Portsmouth Tax as Map 141, Lot 22 (the "Property"), hereby authorizes **Durbin Law Offices, PLLC, Brendan McNamara, and TFMoran**, to file any zoning board, planning board, historic district commission 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.

Kevin Zeng
Kevin Zeng (Apr 24, 2024 08:03 EDT)
Kevin Shitan Zeng, Trustee

April 23, 2024






Landowner Authorization Form -4-23-2024

Final Audit Report

2024-04-24

Created:	2024-04-23
By:	Derek Durbin (derek@durbinlawoffices.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAx9I4SAUtdmbM-8_VfxidkKmCi6TMyAxv

"Landowner Authorization Form -4-23-2024" History

-  Document created by Derek Durbin (derek@durbinlawoffices.com)
2024-04-23 - 2:12:43 PM GMT- IP address: 108.36.120.94
-  Document emailed to Kevin Zeng (kevin158499@gmail.com) for signature
2024-04-23 - 2:12:46 PM GMT
-  Email viewed by Kevin Zeng (kevin158499@gmail.com)
2024-04-24 - 12:03:20 PM GMT- IP address: 174.212.38.33
-  Document e-signed by Kevin Zeng (kevin158499@gmail.com)
Signature Date: 2024-04-24 - 12:03:42 PM GMT - Time Source: server- IP address: 174.212.38.33
-  Agreement completed.
2024-04-24 - 12:03:42 PM GMT

**CITY OF PORTSMOUTH
ZONING BOARD OF ADJUSTMENT
APPLICATION NARRATIVE**

Kevin Shitan Zeng, Trustee
The Kevin Shitan Zeng Revocable Trust of 2017
377 Maplewood Avenue
Portsmouth, NH 03801
(Owner/Applicant)

INTRODUCTORY STATEMENT

The Property

Kevin Shitan Zeng is the owner of the property located at 377 Maplewood Avenue, identified on Portsmouth Tax Map 141 as Lot 22 (the “Property” or the “Applicant’s Property”). The Property is zoned General Residence A (“GRA”) and lies within the Historic District. It is a 5,277 square foot parcel of land that contains a small, two-story, single-family home situated close to Maplewood Avenue that was built in 1941. Just to the rear of the existing home in the northerly portion of the Property, there is a detached, wood-framed, single-story building that was built in the early 1900s and is believed to have served as a sailmaking shop and potentially other purposes in its early history. This building has fallen into significant disrepair over many decades. It is missing portions of the exterior walls and floor and is unsafe to enter. It has been determined, in consultation with the City’s Historic District Commission (“HDC”) that it would be infeasible to rehabilitate the building which does not have any unique architectural features.

With the existing buildings on it, the Property is non-conforming in the following respects:

Non-Conformity	Requirement	Existing Condition
Building Coverage	25% (maximum)	45.3%
Open Space	30% (minimum)	20.5%
Rear Setback	20’	2.2’
Primary Front Setback	15’	7.3’ (House)
Secondary Front Yard	10’	0.2’
Left Side Setback	10’	2.9’ (House) 4.5’ (Accessory Building)

In addition to the above non-conformities, the Property does not allow for proper vehicular ingress and egress from the parking spaces.

Proposed ADU

The Applicant would like to demolish the accessory building in the rear of the Property and replace it with a smaller building and attached garage that would serve as an accessory dwelling unit (“ADU”) to the single-family home on the Property. The ADU would have only bedroom and bathroom. In conjunction with the construction of the ADU, the Applicant would be restoring and rehabbing the single-family home, which has also fallen into disrepair. The ADU is designed to be “subordinate” to, but aesthetically consistent to the principal residence. The sense of a utilitarian building is maintained with the exterior reflected look like a simple building in the Carriage House style, with historic type trim detailing and windows and doors.

Vehicular access and parking would also be improved upon so that vehicles are not forced to back into the street, as they often must do now.

The Applicant held a work session with the HDC on June 12, 2024. The HDC had only favorable comments for the proposal and supports the demolition of the existing structure.

2020 Variance Application

The Applicant filed an application with the Board in 2020 that was denied. At the time, the Applicant was seeking to demolish the accessory building on the Property and replace it with a free-standing, single-family dwelling (not ADU). **Exhibit A**. The proposed replacement building would have been significantly larger and contained more amenities and living space than the ADU that is currently proposed. The building footprint of the proposed ADU is 1,104 sf. and would have 749 sf. of grossing living area (“GLA”). The footprint of the previously proposed free-standing second dwelling was 1,402 sf. and would have contained approximately 1,608 sf. of GLA by way of comparison. The existing building has a footprint of 1,506 sf.

The prior proposal required more building coverage, open space and setback relief than what is currently proposed. In addition, the Applicant needed variances for lot area per dwelling unit and to allow a second free-standing single-family dwelling on the Property. A consensus of the Board felt that the prior proposal was too aggressive and that the proposed dwelling was too large and would occupy too much of the available land area of the Property thus creating an unsafe condition for vehicles entering and exiting the Property and traveling on Maplewood Avenue. **Exhibit B**. The stacked parking configuration would have required vehicles to back into Maplewood Avenue due to the lack of turn-around on the Property. Mr. Mulligan “recommended that the Applicant do a redesign that addressed the parking configuration and eliminated the stacked parking backing out onto Maplewood Avenue.” **Id. at Pg. 11**. “He noted that the proposed building was fairly large and that there was room to reduce it and make it more like a detached ADU, which might allow for configuring the parking in a safer way.” **Id.** Other Board Members reiterated this concern in voting against the application, suggesting that a smaller building and a plan to address parking and vehicular access and maneuverability would alleviate their concerns. **Id.** What is clear from the Meeting Minutes is that the Board’s underlying concern with approving the variances related primarily to vehicular access, parking and maneuverability.

The Applicant listened to the Board's concerns and redesigned the proposed building to fully address the concerns raised by the Board when it voted against the prior application on September 15, 2020. The result is a smaller ADU building that is more conforming to the requirements of the Ordinance and allows for adequate parking, vehicular access and maneuverability. The new application is materially different in scale, conformance and level of relief sought and therefore satisfies the standard set by the NH Supreme Court in the case of *Fisher v. Dover*, 120 N.H. 187 (1980).

SUMMARY OF ZONING RELIEF

The Applicant seeks the following variances from the Zoning Ordinance (the "Ordinance"):

Section 10.521 (Table of Dimensional Regulations)

1. To allow building coverage of 37.5% (+/-) where 45.3% exists and 25% is the maximum allowed.
2. To allow open space of 24.5% (+/-) where 20.5% exists and 30% is required.
3. To allow a secondary front yard setback of 6.1' (+/-) where 0.2' exists and 10' is required.
4. To allow a left yard setback of 4.5'(+/-) where 4.5' exists and 10' is required.
5. To allow a rear yard setback of 3.2'(+/-) where 2.2' exists and 20' is required.

Section 10.440 (1.20) (Table of Uses)

6. To allow a detached accessory dwelling unit in a new building that does not conform with the dimensional requirements of the Ordinance.

Section 10.321 (Non-Conforming Structures)

7. To allow a building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance.

VARIANCE CRITERIA

Granting the variances will not be contrary to the public interest and will observe the spirit of the Ordinance.

In the case of *Chester Rod & Gun Club, Inc. v. Town of Chester*, the Court observed that the requirements that a variance not be "contrary to the public interest" or "injure the public rights of others" are coextensive and are related to the requirement that the variance be consistent with the spirit of the ordinance. 152 N.H. 577 (2005). 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. "There 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." *Harborside Assoc v. Parade Residence Hotel*, 162 N.H. 508, 514 (2011).

The goal of GRA Zoning is "to provide areas for **single-family, two family and multifamily dwellings**, with appropriate **accessory uses**, at *moderate to high densities...[.]*" (*italics added*). See PZO, Section 10.410. The neighborhood itself is densely settled. **Exhibit C**. The properties across Maplewood Avenue consist of condominiums. Of the six immediately surrounding properties on the same side of Maplewood Avenue, the following three have more than one dwelling unit on them:

357 Maplewood Ave (Lot 141-24)
4 dwelling units
0.14 acres

33 Northwest Street (141-27)
2 detached dwelling units
0.12 acres

399 Maplewood Ave (141-20)
3 dwelling units
0.60 acres

The property at 33 Northwest Street (Lot 141/27) has two detached single-family residential units on it. Most of the surrounding properties, if not all of them, have buildings on them that encroach into one or more boundary setbacks.

If approved, the Applicant's plans will result in the following improvements to the existing non-conformities of the Property:

Non-Conformity	Existing Condition	Proposed Condition	Change (+/-)
Building Coverage	45.3%	37.5%	(+) 7.8%
Open Space	20.5%	24.5%	(+) 4.0%
Rear Setback	2.2'	3.2'	(+) 1'
Prim. Front Setback	15'	7.3'(House)	No Change
Sec. Front Yard	0.2'	6.1'	(+) 5.9'
Left Side Setback	2.9' (House) 4.5' (Accessory Building)	2.9' (House) 4.5' (Accessory Building)	No Change

Building coverage restrictions are intended to prevent the overcrowding of buildings on land. The purpose of the setback requirements is to maintain adequate light, air and space between buildings on contiguous properties to address spacing, privacy and fire safety concerns. The Applicant's plans are consistent with these objectives. The Applicant will be improving setback conditions. Moreover, there will be a reduction in lot coverage associated with the new building and an increase in open space.

The addition of an ADU to the Property falls in line with the character of the surrounding area and is consistent with the objectives of GRA Zoning. Overall, the conditions and appearance of the Property will be greatly improved by the demolition and replacement of an unsightly building that is structurally unsound with a tastefully designed ADU that meets current building and life safety codes and is architecturally consistent with the primary residence. Parking and vehicular ingress and egress will also be greatly improved from what exists.

For the foregoing reasons, granting the variances will be beneficial to public health, safety and welfare and will not negatively alter the essential character of the neighborhood.

Substantial justice will be done by granting the variance relief.

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 public would not realize any gain by denying the variances. The rear building on the Property has no functional, historic or aesthetic value and constitutes an eyesore. If the variance relief is denied, the rear building will continue to deteriorate, which represents a loss to the Applicant and the public.

By granting the variances requested, the public benefits from a well-designed building that meets all current codes and adds little additional demand upon municipal services. The design of the proposed ADU has received a favorable review by the HDC and will integrate naturally with the surrounding neighborhood. The new building will achieve greater compliance with the Ordinance's dimensional requirements than the existing building, thus improving the light, air and space for abutting properties.

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

The proposed ADU building will only enhance the value(s) of surrounding properties. If anything, the existing building detracts from the value of the Applicant's property and surrounding properties. The construction of a new, carriage-house style ADU in the rear of the Property that is architecturally consistent with the primary residence on the Property and other similar structures in the neighborhood can only benefit surrounding property values.

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

The Property has several special conditions that distinguish it from surrounding properties. It is one of a few properties in the neighborhood that has more than one building on it. Of the other surrounding properties that do have more than one building on them, the others have two or more dwelling units. As pointed out above, the property at 33 Northwest Street has two single-family detached dwellings on it. What the Applicant is proposing is more consistent with the spirit and intent of the Ordinance, as the use would be accessory to the single-family home on the Property.

The Property is considered a corner lot with primary frontage on Maplewood Avenue and secondary frontage on a "passageway", which the City refers to as Jackson Hill Street on its tax maps. Therefore, the Property is uniquely burdened by two 15' front yard setbacks as opposed to one 15' front yard setback and two 10' side yard setbacks.

The Property has an unusual shape and has only *one* abutting property to the left and rear of it (383 Maplewood Avenue). It appears that these properties were once part of a larger parcel that was subdivided. The property at 383 Maplewood Avenue has only one building on it which is situated to the far left-front portion of the property, a significant distance away from where the ADU is proposed. There would be no buildings to the left or rear of the proposed ADU. Therefore, the construction of a new building in the rear of the Property will have minimal impact upon the property at 383 Maplewood Avenue.

Likewise, the abutting building at 357 Maplewood Avenue (Lot 141-24) is located across Jackson Hill Street, a considerable distance away from where the ADU is proposed, and is at a much higher grade, thus minimizing the impact that a new building would have on that property.

The proposed ADU will achieve greater compliance with the Ordinance and have less visible impact upon abutters and the public than the existing building. For the foregoing reasons, there is no fair and substantial relationship between the general purposes of the Ordinance provisions and their application to the Property.

The use is also reasonable and consistent with the objective(s) of GRA Zoning “to provide areas for **single-family**, **two family** and **multifamily dwellings**, with appropriate **accessory uses**, at *moderate to high densities...[.]*” (*italics added*). Adding an accessory dwelling to an area that is already densely settled will not change the character of the neighborhood.

CONCLUSION

In conclusion, the Applicant has demonstrated that his application meets the five (5) criteria for granting the variances requested and respectfully requests that the Board approve his application.

Dated: July 23, 2024

Respectfully Submitted,

Kevin Shitan Zeng, Trustee

By and Through His Attorneys,
Durbin Law Offices PLLC



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

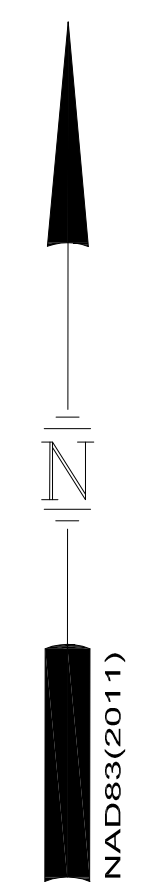
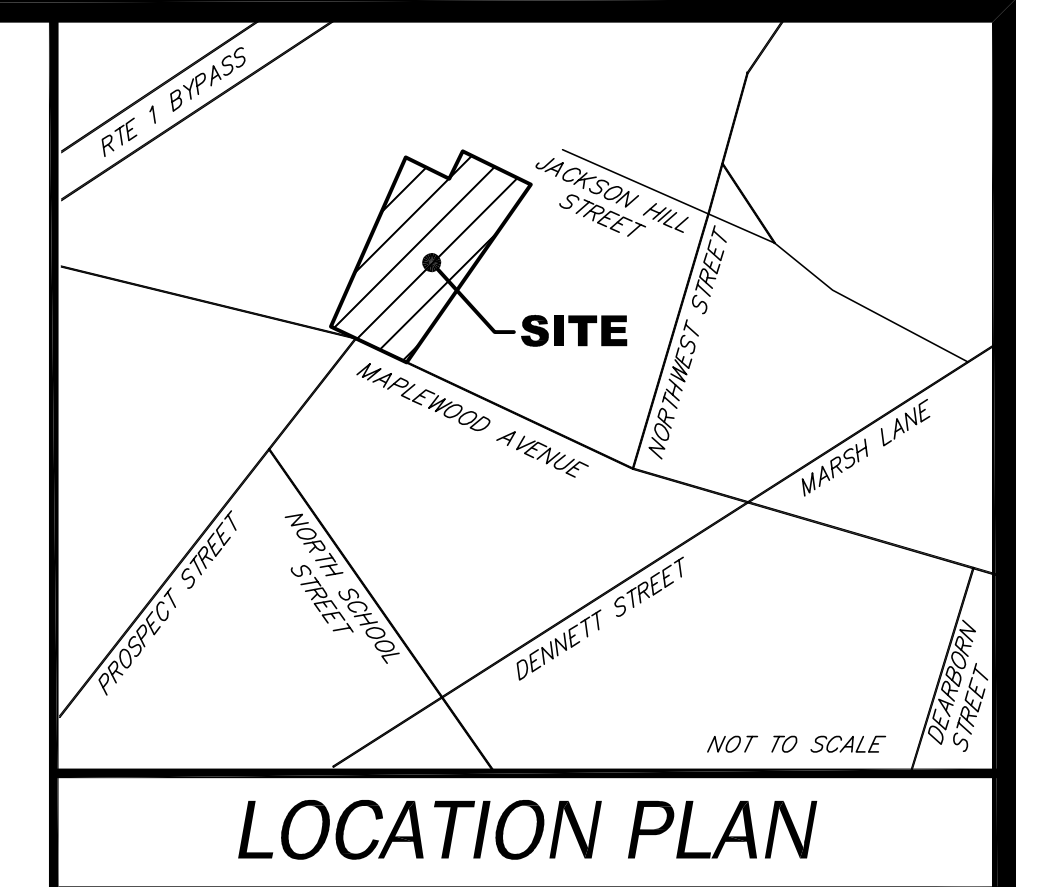
LEGEND:

BK/PG	BOOK / PAGE
N/F	NOW OR FORMERLY
NAD83	NORTH AMERICAN DATUM OF 1983
RCRD	ROCKINGHAM COUNTY REGISTRY OF DEEDS
S.F.	SQUARE FEET
EP	EDGE OF PAVEMENT
EMTR	ELECTRIC METER
VGC	VERTICAL GRANITE CURBING
MAP 47 LOT 11	ASSESSOR'S MAP NUMBER / LOT NUMBER
---	PROPERTY LINE
OHU	OVERHEAD UTILITY LINES
○	UTILITY POLE
□	CONCRETE
▨	PAVEMENT EDGE
▩	BRICK
▧	CRUSHED STONE

PLAN REFERENCES:

- "PLAN OF LOT NO. 377 MAPLEWOOD AVENUE PORTSMOUTH, N.H." BY JOHN W. DURGIN CIVIL ENGINEERS DATED MAR. 1957. FILE NO. 738. NOT RECORDED.
- "PLAN OF LOT NO. 357 MAPLEWOOD AVENUE, PORTSMOUTH, N.H." BY JOHN W. DURGIN CIVIL ENGINEERS DATED APRIL 1928. RCRD PLAN #0397.
- "LOT LINE REVISION PLAN 347 & 335 MAPLEWOOD AVENUE PORTSMOUTH, NEW HAMPSHIRE, ASSESSOR'S PARCEL: 141-025 & 141-026, OWNERS: PAUL B. HEAD II & HOLLY HEAD & 335 MAPLEWOOD AVENUE, LLC" BY JAMES VERRA AND ASSOCIATES, INC. DATED 10-01-2013 WITH REVISION 2 DATED 8-1-2014. RCRD PLAN #D-38755.
- "NEW HAMPSHIRE GAS & ELEC. CO. PLAN SHOWING REQUESTED RIGHT OF WAY ACROSS MARGUERITE MILLER PROPERTY JACKSON HILL ST., PORTSMOUTH N.H." RCRD PLAN #01256.

EXHIBIT A



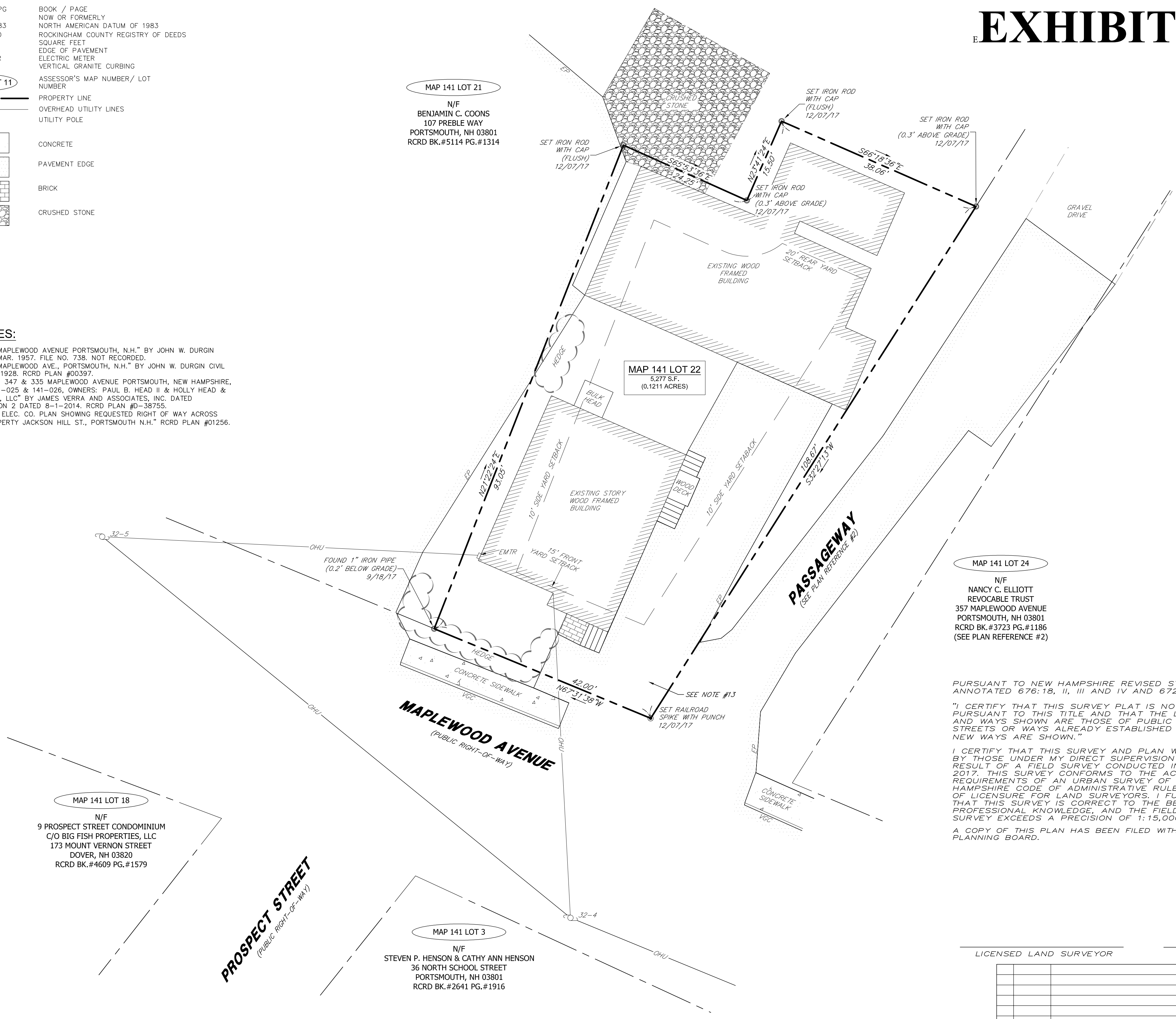
MAP 141 LOT 21
N/F
BENJAMIN C. COONS
107 PREBLE WAY
PORTSMOUTH, NH 03801
RCRD BK.#5114 PG.#1314

MAP 141 LOT 22
5,277 S.F.
(0.1211 ACRES)

MAP 141 LOT 24
N/F
NANCY C. ELLIOTT
REVOCABLE TRUST
357 MAPLEWOOD AVENUE
PORTSMOUTH, NH 03801
RCRD BK.#3723 PG.#1186
(SEE PLAN REFERENCE #2)

MAP 141 LOT 18
N/F
9 PROSPECT STREET CONDOMINIUM
C/O BIG FISH PROPERTIES, LLC
173 MOUNT VERNON STREET
DOVER, NH 03820
RCRD BK.#4609 PG.#1579

MAP 141 LOT 3
N/F
STEVEN P. HENSON & CATHY ANN HENSON
36 NORTH SCHOOL STREET
PORTSMOUTH, NH 03801
RCRD BK.#2641 PG.#1916



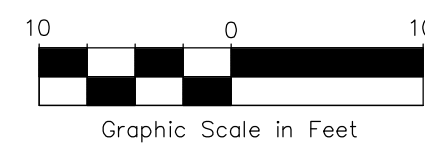
PURSUANT TO NEW HAMPSHIRE REVISED STATUTES ANNOTATED 676:18, II, III AND IV AND 672:14:

"I CERTIFY THAT THIS SURVEY PLAT IS NOT A SUBDIVISION PURSUANT TO THIS TITLE AND THAT THE LINES OF STREETS AND WAYS SHOWN ARE THOSE OF PUBLIC OR PRIVATE STREETS OR WAYS ALREADY ESTABLISHED AND THAT NO NEW WAYS ARE SHOWN."

I CERTIFY THAT THIS SURVEY AND PLAN WERE PREPARED BY THOSE UNDER MY DIRECT SUPERVISION AND ARE THE RESULT OF A FIELD SURVEY CONDUCTED IN SEPTEMBER, 2017. THIS SURVEY CONFORMS TO THE ACCURACY REQUIREMENTS OF AN URBAN SURVEY OF THE NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES OF THE BOARD OF LICENSURE FOR LAND SURVEYORS. I FURTHER CERTIFY THAT THIS SURVEY IS CORRECT TO THE BEST OF MY PROFESSIONAL KNOWLEDGE, AND THE FIELD TRAVERSE SURVEY EXCEEDS A PRECISION OF 1:15,000.

A COPY OF THIS PLAN HAS BEEN FILED WITH THE LOCAL PLANNING BOARD.

LICENSED LAND SURVEYOR _____ DATE _____



REV.	DATE	DESCRIPTION	DR	CK

NOTES:

- THE PARCEL IS LOCATED IN THE GENERAL RESIDENCE A (GRA) ZONE.
- THE PARCEL IS SHOWN ON THE CITY OF PORTSMOUTH ASSESSOR'S MAP 141 AS LOT 22.
- THE PARCEL IS LOCATED IN FLOOD ZONE X AS SHOWN ON FLOOD INSURANCE RATE MAP, ROCKINGHAM COUNTY, NEW HAMPSHIRE, PANEL 259 OF 681, MAP NUMBER 33015C0259E, EFFECTIVE DATE: MAY 17, 2005.
- OWNER OF RECORD:
MAP 141 LOT 22
KEVIN SHITAN ZENG
377 MAPLEWOOD AVENUE
PORTSMOUTH, NH 03801
RCRD BK.#5748 PG.#286
- ZONING REQUIREMENTS:
MINIMUM LOT DIMENSIONS:
LOT AREA 7,500 S.F.
LOT AREA PER DWELLING UNIT 7,500 S.F.
CONTIGUOUS STREET FRONTAGE 100 FT
DEPTH 70 FT
MINIMUM YARD DIMENSIONS:
FRONT 15 FT
SIDE 10 FT
REAR 20 FT
MAXIMUM STRUCTURE DIMENSIONS:
STRUCTURE HEIGHT 35 FT
SLOPED ROOF 30 FT
FLAT ROOF 8 FT
ROOF APPURTENANCE HEIGHT 8 FT
BUILDING COVERAGE 25%
MINIMUM OPEN SPACE: 30%
PER THE CITY OF PORTSMOUTH ZONING ORDINANCE ARTICLE V, SECTION 10.520.
- TOTAL PARCEL AREA:
MAP 141 LOT 22
5,277 S.F.
(0.1211 ACRES)
- THE INTENT OF THIS PLAN IS TO SHOW THE LOCATION OF BOUNDARIES IN ACCORDANCE WITH THE CURRENT LEGAL DESCRIPTIONS. IT IS NOT AN ATTEMPT TO DEFINE UNWRITTEN RIGHTS, DETERMINE THE EXTENT OF OWNERSHIP OR DEFINE THE LIMITS OF TITLE.
- HORIZONTAL DATUM IS NAD83 (2011) PER STATIC GPS OBSERVATIONS.
- THE PURPOSE OF THIS PLAN IS TO SHOW THE BOUNDARY LINES AND MAJOR IMPROVEMENTS OF MAP 141 LOT 22.
- EXISTING USE OF THE PROPERTY IS RESIDENTIAL.
- FIELD SURVEY COMPLETED BY TODD C. EMERSON IN SEPTEMBER 2017 USING A TOPCON DS103 AND TOPCON TESLA DATA COLLECTOR.
- EASEMENTS, RIGHTS, AND RESTRICTIONS SHOWN OR IDENTIFIED ARE THOSE WHICH WERE FOUND DURING RESEARCH PERFORMED AT THE ROCKINGHAM COUNTY REGISTRY OF DEEDS. OTHER RIGHTS, EASEMENTS, OR RESTRICTIONS MAY EXIST WHICH A TITLE EXAMINATION OF THE SUBJECT PARCEL WOULD DETERMINE.
- PARCEL IS SUBJECT TO AN EASEMENT TO THE NEW HAMPSHIRE GAS AND ELECTRIC COMPANY AS DESCRIBED IN BK.#974 PG.#269. SAID EASEMENT IS BASED ON THE LOCATION OF A UTILITY POLE AND ANCHOR THAT NO LONGER EXIST, AND THEREFORE, IS NOT PLOTTABLE. SEE PLAN REFERENCE #4.

TAX MAP 141 LOT 22
STANDARD BOUNDARY SURVEY

377 MAPLEWOOD AVENUE
PORTSMOUTH, NEW HAMPSHIRE
COUNTY OF ROCKINGHAM

OWNED BY
KEVIN SHITAN ZENG

SCALE: 1" = 10' (22x34)
1" = 20' (11x17)

FEBRUARY 21, 2018

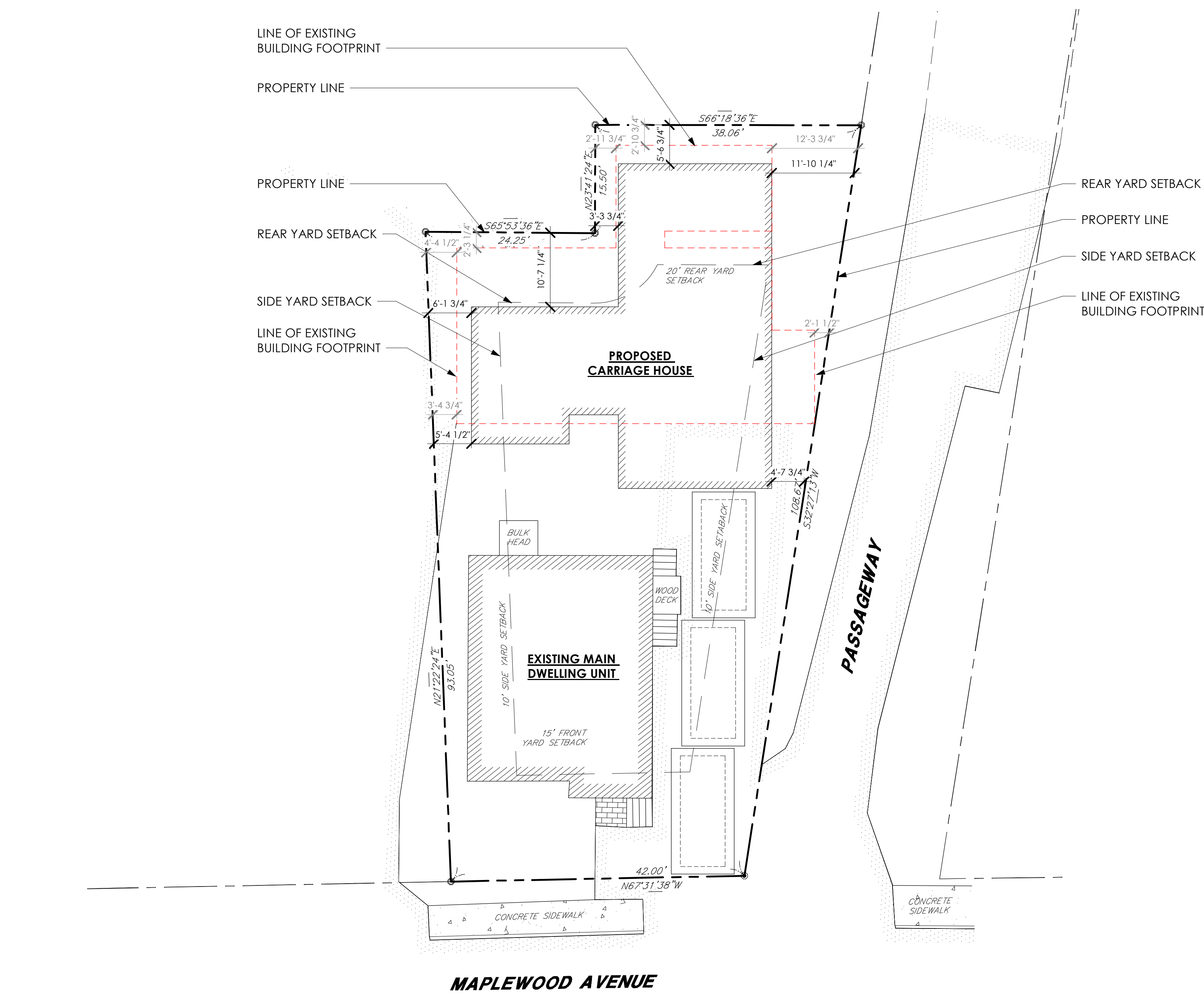
45926.20

DR FB
CK CADFILE

TFM **MSC**
A division of TFMoran, Inc.

Civil Engineers
Structural Engineers
Traffic Engineers
Land Surveyors
Landscape Architects
Scientists

170 Commerce Way, Suite 102
Portsmouth, NH 03801
Phone (603) 431-2222
Fax (603) 431-0910
www.msceingineers.com



GENERAL SITE NOTES

- ELEVATIONS NOTED ARE ARCHITECTURAL WHERE FIRST FLOOR AT EACH BUILDING IS ESTABLISHED AS 100'-0" FOR RELATIVE DIMENSIONING. SEE CIVIL SITE SURVEY BY TFMORAN FOR ACTUAL ELEVATIONS.
- REFER TO TFMORAN CIVIL SITE SURVEY CONDUCTED IN SEPTEMBER OF 2017, ON SHEET A0.01 FOR ALL SITE INFORMATION NOT PROVIDED BY ARCHITECT.
- DO NOT SCALE DRAWINGS - DIMENSIONS SHALL GOVERN. VERIFY ALL DIMENSIONS IN FIELD PRIOR TO FINAL PLACEMENT OF MATERIALS. NOTIFY THE ARCHITECT IN WRITING OF ANY DISCREPANCIES.
- DIMENSIONS ARE AS FOLLOWS UNLESS NOTED OTHERWISE:
 - TO FINISH FACE AT EXTERIOR AND INTERIOR LOCATIONS
 - TO FINISH FLOOR
 - TO FINISH FACE AT CEILING
 - TO DRIP EDGE FOR ROOF LINES

- THE PARCEL IS LOCATED IN THE GENERAL RESIDENCE A (GRA) ZONE.
- THE PARCEL IS SHOWN ON THE CITY OF PORTSMOUTH ASSESSOR'S MAP 141 AS LOT 22.
- THE PARCEL IS LOCATED IN FLOOD ZONE X AS SHOWN ON FLOOD INSURANCE RATE MAP, ROCKINGHAM COUNTY, NEW HAMPSHIRE, PANEL 259 OF 681, MAP NUMBER 33015C0259E, EFFECTIVE DATE: MAY 17, 2005
- OWNER OF RECORD:
MAP 141 LOT 22
KEVIN SHITAN ZENG
377 MAPLEWOOD AVENUE
PORTSMOUTH, NH 03801
RCRD BK. #5748 PG. #286

ZONING REQUIREMENTS: ZONE GRA

MINIMUM LOT DIMENSIONS:	
LOT AREA	7,500 S.F.
LOT AREA PER DWELLING UNIT	7,500 S.F.
CONTIGUOUS STREET FRONTAGE	100 FT
DEPTH	70 FT
MINIMUM YARD DIMENSIONS:	
FRONT	15 FT
SIDE	10 FT
REAR	20 FT
MAXIMUM STRUCTURE DIMENSIONS:	
STRUCTURE HEIGHT	35 FT
SLOPED ROOF	30 FT
FLAT ROOF	30 FT
ROOF APPURTENANCE HEIGHT	8 FT
BUILDING COVERAGE:	25%
MINIMUM OPEN SPACE:	30%

PER THE CITY OF PORTSMOUTH ZONING ORDINANCE ARTICLE V, SECTION 10.520.

- TOTAL PARCEL AREA:
MAP 141 LOT 22
5,277 S.F.
(0.1211 ACRES)

LOT COVERAGE	EXISTING	PROPOSED
TOTAL LOT SIZE:	5,277 S.F.	5,277 S.F.
MAIN DWELLING UNIT:	884 S.F.	884 S.F.
REAR STRUCTURE:	1,506 S.F.	1,402 S.F.
TOTAL COVERAGE:	2,391 S.F.	2,286 S.F.
PERCENTAGE LOT COVERAGE:	45.3%	43.3%

Revisions:

#	Description	Date

DIMA
DESTEFANO MAUGEL ARCHITECTS
22 Ladd Street
Portsmouth, NH, 03801
PH: 603.431.8701
DeStefanoMaugel.com

NEW CONSTRUCTION FOR
377 MAPLEWOOD AVE.
PORTSMOUTH, NH 03801

Title:
PROPOSED SITE PLAN

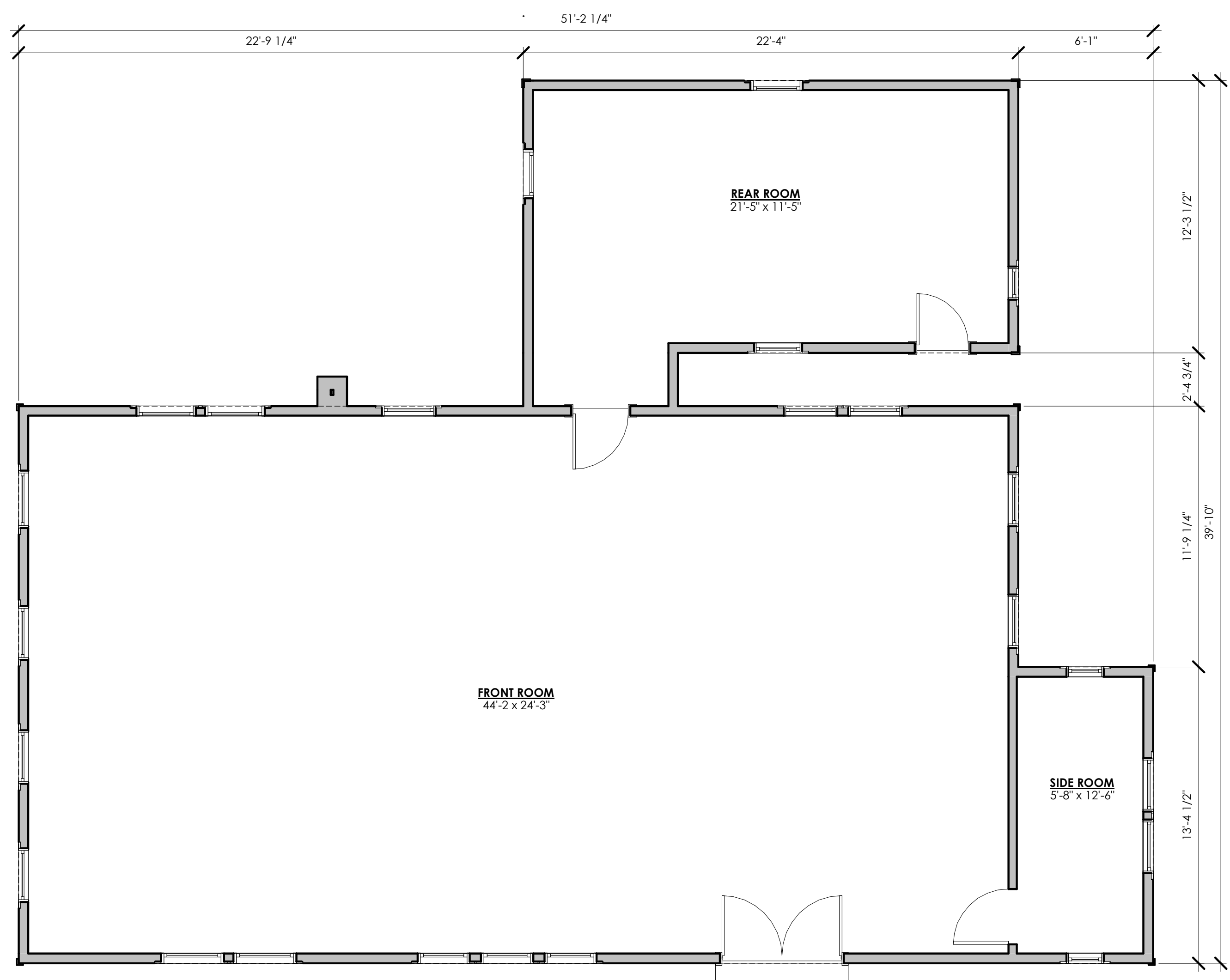
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Project No.: 202013
Date: 15 SEPTEMBER, 2020

A0.01

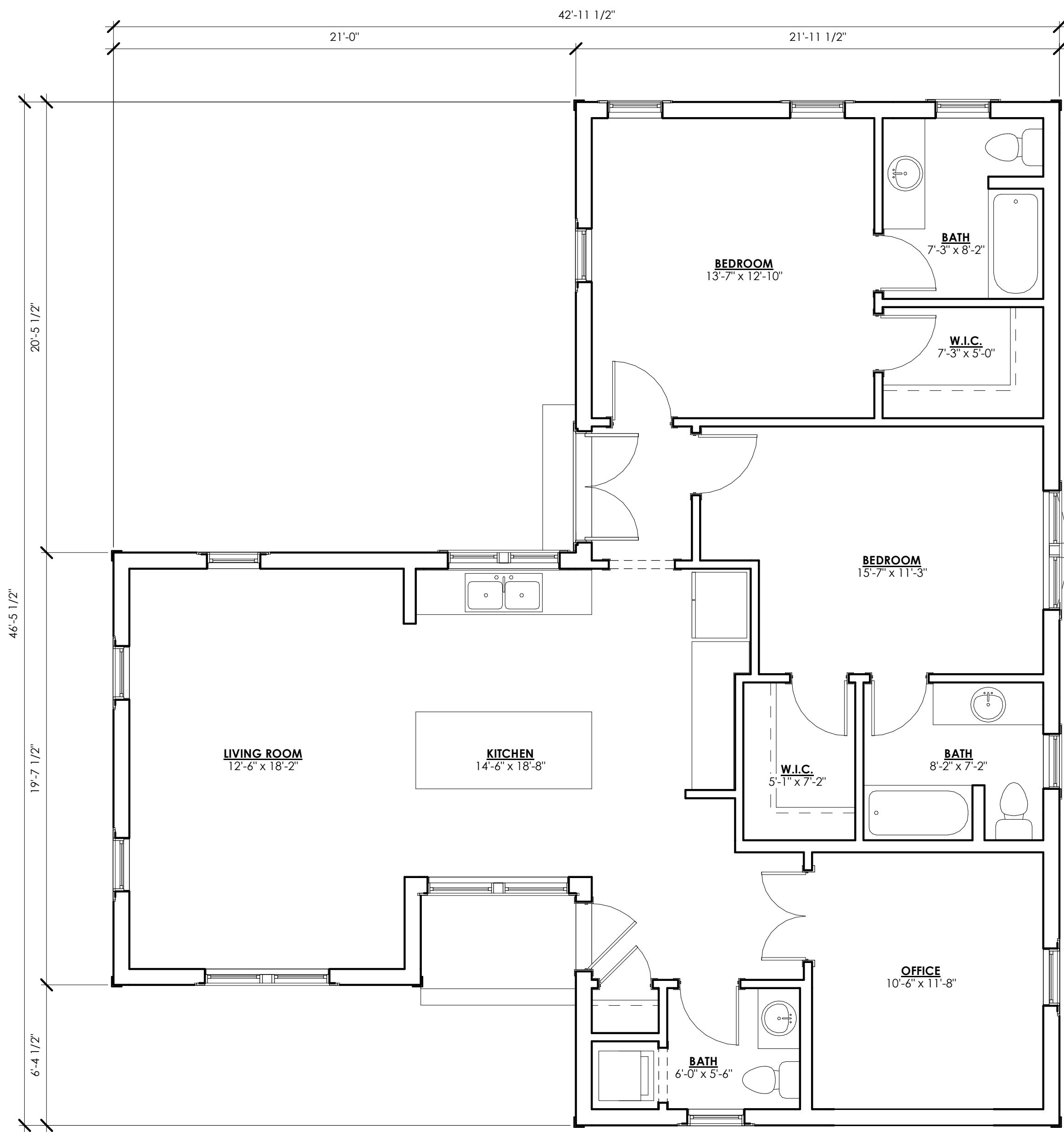
- GENERAL SITE NOTES**
- ELEVATIONS NOTED ARE ARCHITECTURAL WHERE FIRST FLOOR AT EACH BUILDING IS ESTABLISHED AS 100'-0" FOR RELATIVE DIMENSIONING. SEE CIVIL SITE SURVEY BY TFMORAN FOR ACTUAL ELEVATIONS.
 - REFER TO TFMORAN CIVIL SITE SURVEY CONDUCTED IN SEPTEMBER OF 2017, ON SHEET A0.01 FOR ALL SITE INFORMATION NOT PROVIDED BY ARCHITECT.
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 - TO FINISH FLOOR
 - TO FINISH FACE AT CEILING
 - TO DRIP EDGE FOR ROOF LINES

Revisions:

#	Description	Date



EXISTING FLOOR PLAN 2
1/4" = 1'-0"



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

DIMIA
DESTEFANO MAUGEL ARCHITECTS
 22 Ladd Street
 Portsmouth, NH, 03801
 PH: 603.431.8701
 DeStefanoMaugel.com

NEW CONSTRUCTION FOR
377 MAPLEWOOD AVE.
 PORTSMOUTH, NH 03801

Title:
 EXISTING AND PROPOSED FLOOR PLANS

Scale: As indicated
 Drawn By: AM
 Checked By: DB
 Project No.: 202013
 Date: 15 SEPTEMBER, 2020

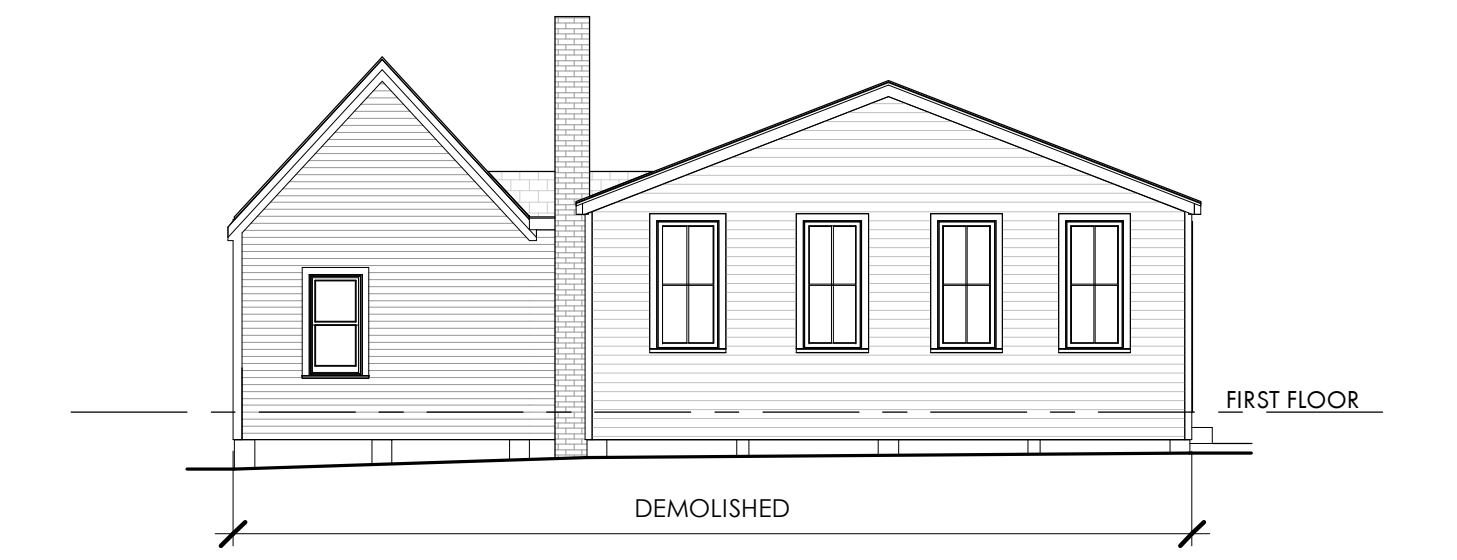
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EXISTING STREET VIEW



PROPOSED STREET VIEW



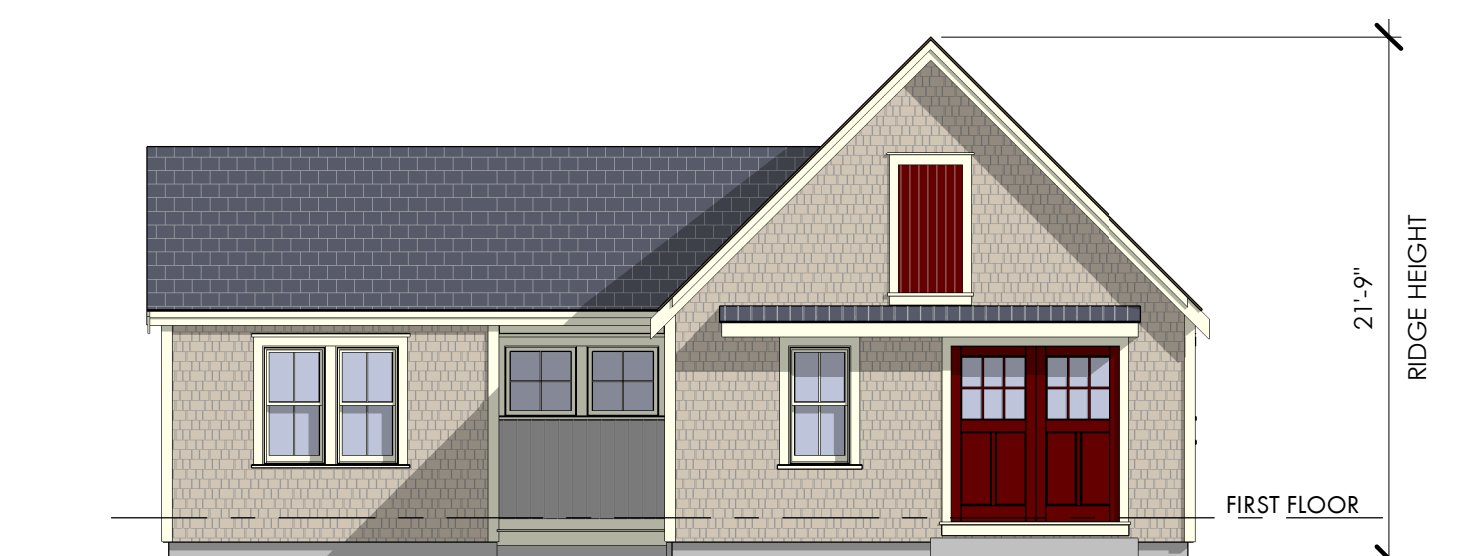
EXISTING WEST ELEVATION 8
1/8" = 1'-0"



PROPOSED WEST ELEVATION 4
1/8" = 1'-0"



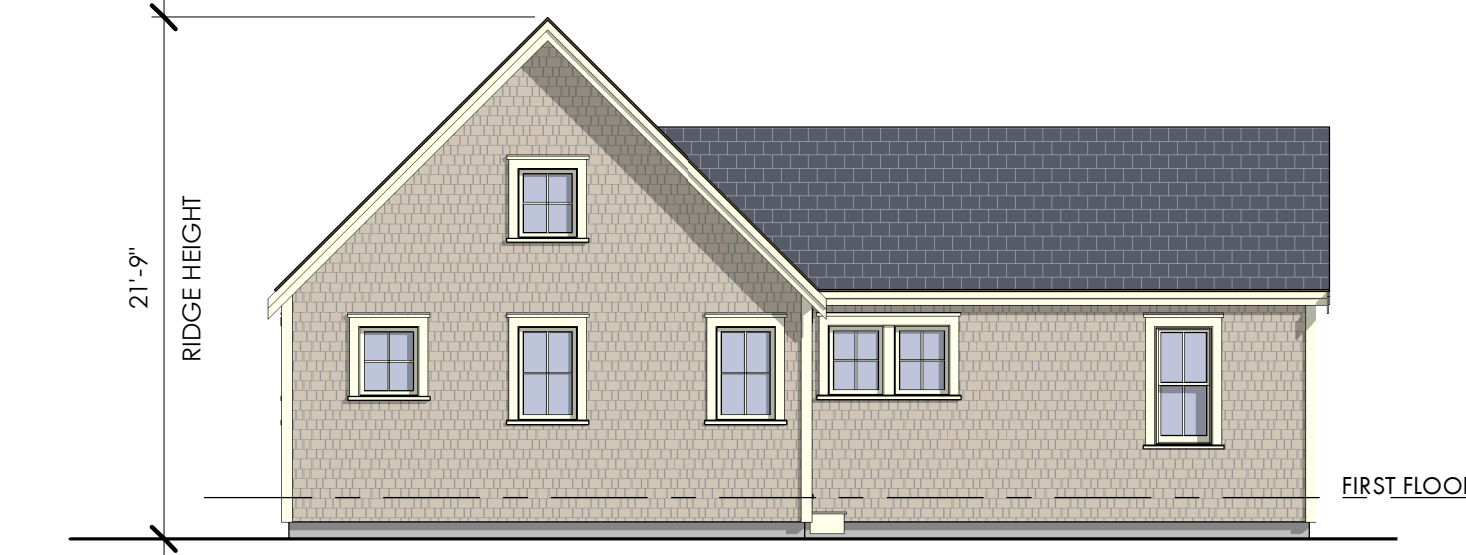
EXISTING SOUTH ELEVATION 7
1/8" = 1'-0"



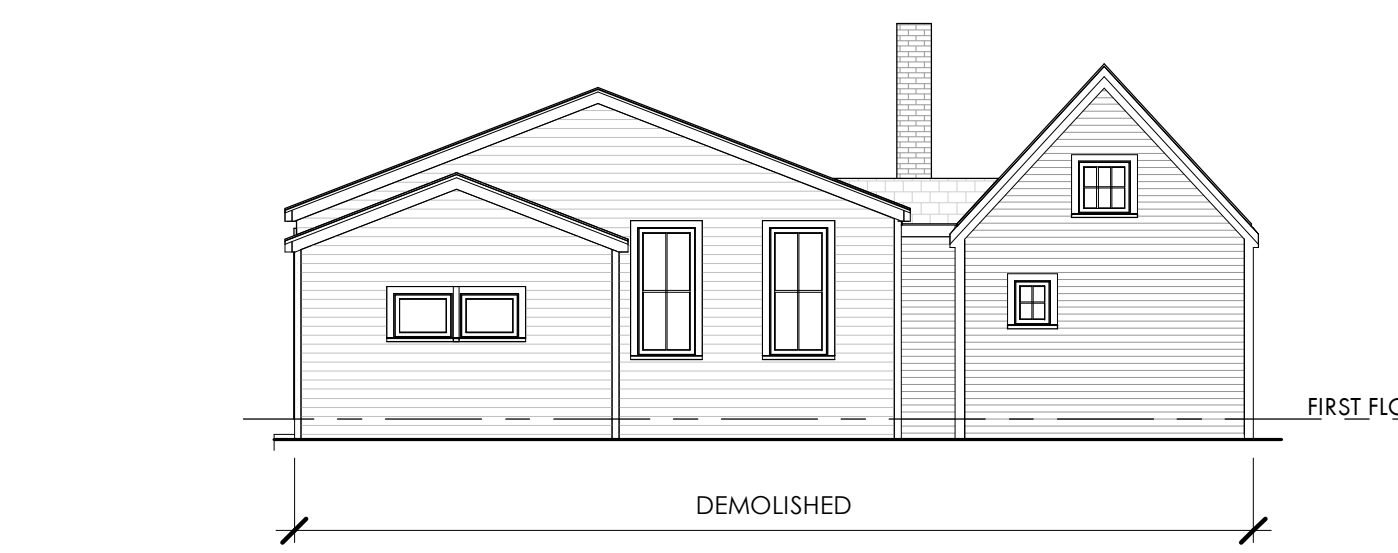
PROPOSED SOUTH ELEVATION 3
1/8" = 1'-0"



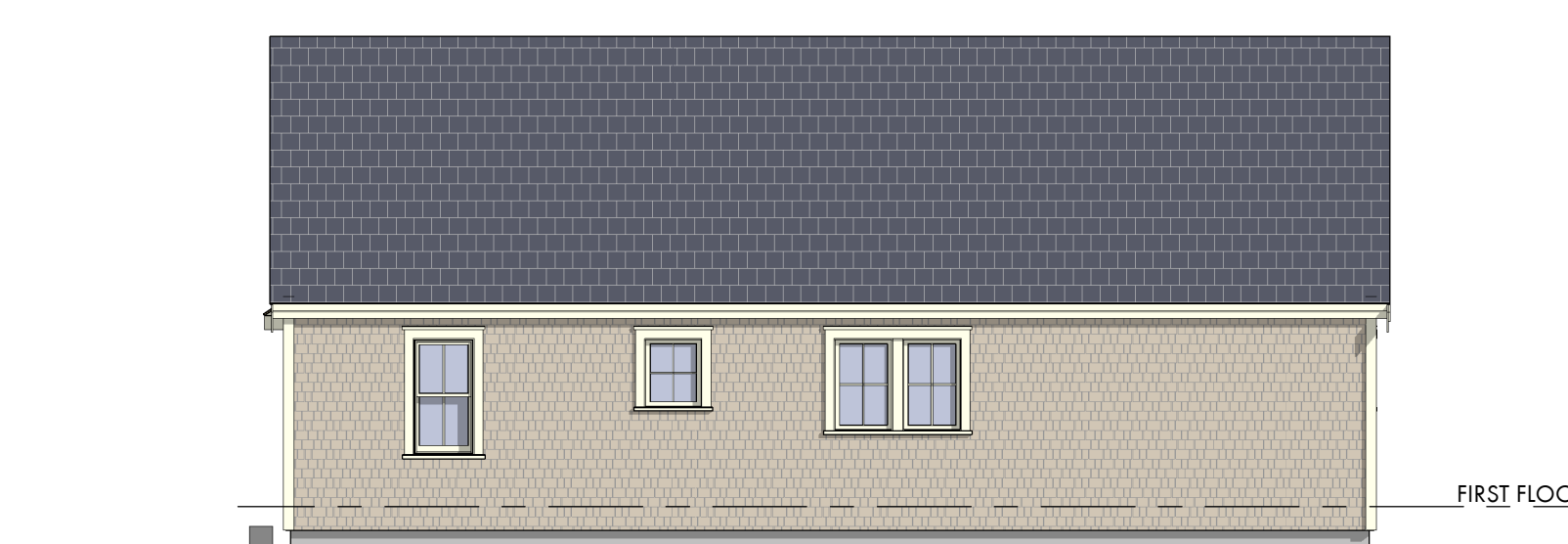
EXISTING NORTH ELEVATION 6
1/8" = 1'-0"



PROPOSED NORTH ELEVATION 2
1/8" = 1'-0"



EXISTING EAST ELEVATION 5
1/8" = 1'-0"



PROPOSED EAST ELEVATION 1
1/8" = 1'-0"

GENERAL SITE NOTES

1. ELEVATIONS NOTED ARE ARCHITECTURAL WHERE FIRST FLOOR AT EACH BUILDING IS ESTABLISHED AS 100'-0" FOR RELATIVE DIMENSIONING. SEE CIVIL SITE SURVEY BY TFMORAN FOR ACTUAL ELEVATIONS.
2. REFER TO TFMORAN CIVIL SITE SURVEY CONDUCTED IN SEPTEMBER OF 2017, ON SHEET A0.01 FOR ALL SITE INFORMATION NOT PROVIDED BY ARCHITECT.
3. DO NOT SCALE DRAWINGS - DIMENSIONS SHALL GOVERN. VERIFY ALL DIMENSIONS IN FIELD PRIOR TO FINAL PLACEMENT OF MATERIALS. NOTIFY THE ARCHITECT IN WRITING OF ANY DISCREPANCIES.
4. DIMENSIONS ARE AS FOLLOWS UNLESS NOTED OTHERWISE:
 - a. TO FINISH FACE AT EXTERIOR AND INTERIOR LOCATIONS
 - b. TO FINISH FLOOR
 - c. TO FINISH FACE AT CEILING
 - d. TO DRIP EDGE FOR ROOF LINES

Revisions:
Description Date

DIMA
DESTEFANO
MAUGEL
ARCHITECTS
22 Ladd Street
Portsmouth, NH, 03801
PH: 603.431.8701
DeStefanoMaugel.com

NEW CONSTRUCTION FOR
377 MAPLEWOOD AVE.
PORTSMOUTH, NH 03801

Title:
EXISTING /
PROPOSED
ELEVATIONS &
CONTEXT IMAGE

Scale: As indicated
Drawn By: AM
Checked By: DB
Project No.: 202013
Date: 15 SEPTEMBER, 2020

A0.03

EXHIBIT B

BOARD OF ADJUSTMENT MEETING PORTSMOUTH, NEW HAMPSHIRE

Remote Meeting via Zoom Conference Call

7:00 P.M.

SEPTEMBER 15, 2020

MINUTES

MEMBERS PRESENT: Chairman David Rheaume, Vice-Chairman Jeremiah Johnson, Jim Lee, Peter McDonell, Christopher Mulligan, John Formella, Arthur Parrott, Alternate Phyllis Eldridge, Alternate Chase Hagaman

MEMBERS ABSENT: None

ALSO PRESENT: Peter Stith, Planning Department

Chairman Rheaume noted that Petition C, 50 New Castle Avenue, had been withdrawn by the applicant.

I. APPROVAL OF MINUTES

A) Approval of the minutes of the meeting of August 18, 2020

*It was moved, seconded, and passed unanimously (7-0) to **approve** the minutes as presented.*

II. OLD BUSINESS

A) Request of **Arbor View & the Pines, Owners**, for property located at **145 Lang Road** for a one year extension of the variances that were granted on November 20, 2018. Said property is shown on Assessor Map 287 Lot 1 and lies within the Garden Apartment/Mobile Home Park (GA/MH) District.

Vice-Chair Johnson recused himself from the petition, and Alternate Ms. Eldridge assumed a voting seat.

Chairman Rheaume noted that the applicant submitted a letter to the Board explaining his reasoning for the one-year extension and that he had no building permit as yet.

*Mr. Mulligan moved to **grant** the one-year extension, and Mr. Parrott seconded.*

Mr. Mulligan said the project was substantial and that it wasn't unreasonable to allow an extension. He noted that the applicant requested it within the two-year timeframe per the ordinance, so he saw no reason not to grant it. Mr. Parrott concurred, adding that the request was

timely and had almost become pro forma. Chairman Rheume cautioned against indicating that two-year extensions were automatically granted, noting that the applicant had two years to get the project done, but he agreed that it was a large project and was no doubt impacted by COVID.

*The motion **passed** by unanimous vote, 7-0.*

III. PUBLIC HEARINGS – NEW BUSINESS

A) Petition of **Nathan & Stacey Moss, Owners**, for property located at **5 Pamela Street** wherein relief was needed from the Zoning Ordinance to construct a one-story rear addition which requires the following: 1) A Variance from Section 10.521 to allow 26% building coverage where 20% is the maximum allowed. 2) A 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 shown on Assessor Map 292 Lot 119 and lies within the Single Residence B (SRB) District.

Vice-Chair Johnson resumed his voting seat, and Ms. Eldridge returned to alternate status.

SPEAKING TO THE PETITION

The applicant Nathan Moss reviewed the petition and criteria and said they would be met.

Mr. Stith reviewed the Board's prior approval of the petition, stating that the applicant was before the Board in 2018 to extend the garage and received a 5-ft side yard setback, but the building coverage was calculated in error. He said there was now a more descriptive tabulation of the lot coverage that showed the existing coverage at 24 percent, so the applicant should have gotten a building coverage setback back in 2018. As a result, the building coverage was going from 24 percent to 26 percent.

There were no questions from the Board. Chairman Rheume opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one was present to speak, and Chairman Rheume closed the public hearing.

DECISION OF THE BOARD

*Mr. McDonell moved to **grant** the variances for the petition as presented, and Mr. Parrott seconded.*

Mr. McDonell said the request was straightforward and that it was a small lot with a relatively modest ranch home and a modest addition in terms of square footage, and he didn't think it would change the effect of what was there. He said it was a reasonable request, notwithstanding that the building coverage increase was greater than the actual two percent. He said granting the variances would not be contrary to the public interest or the spirit of the ordinance and the

proposed use would not alter the essential character of the neighborhood or threaten the public's health, safety, or welfare. He said it was a modest addition and that similar additions were done up and down the block, and that it was common for small homes to be added onto over the years. He said substantial justice would be done because the benefit to the applicant was obvious and wasn't outweighed by any harm to the public. He also noted that no neighbors had spoken against it and that he couldn't see that neighbors or the general public would be concerned with an addition like that. He said granting the variances would not diminish the values of surrounding properties, noting that he had heard no testimony to that effect. He said the project would benefit the property, which would result in benefiting surrounding properties. He said literal enforcement of the ordinance would result in unnecessary hardship due to the special conditions of the property that distinguished it from others in the area. He said the property was similar to others in the area, but the lot's size was smaller than the required minimal lot area and the modest addition wouldn't implicate special conditions that the Board could distinguish from other properties in the area. He saw no relationship between the purpose of the building coverage ordinance and the application because the total building coverage in that zone was limited to 20 percent. He said the proposed use was reasonable and would remain what it was, a modest single-family home, and he said the Board should approve the request.

Mr. Parrott concurred, adding that it was obviously a small tasteful addition situated toward the center of the lot and was as far away from the neighbors as it could be, so it would not have a detrimental effect on the neighborhood and easily met all the criteria.

The motion passed by unanimous vote, 7-0.

B) Petition of **Stephen & Bridget Viens, Owners**, for property located at **78 Marne Avenue** wherein relief was needed from the Zoning Ordinance to replace existing 1 car garage with new 2 car garage and mudroom which requires the following: 1) Variances from Section 10.521 to allow a) 27% building coverage where 25% maximum is allowed; b) a 9.5' secondary front yard where 15' is required; and c) an 11.5' rear yard where 20' is required. 2) A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 222 Lot 40 and lies within the General Residence A (GRA) District.

SPEAKING TO THE PETITION

The applicants Stephen and Bridge Viens were present. Mr. Viens reviewed the petition and criteria. He said all his neighbors were in favor of the project.

Mr. Mulligan noted that the driveway came off Marne Avenue and asked if the applicant would abandon that driveway. Mr. Viens said there would only be 10 feet from the street to the garage door, which wouldn't leave much space, and that one of the bays was only 16 feet due to the new mudroom. He said he hoped to keep both driveways.

Mr. Stith said only one driveway per lot was allowed, and if the applicant kept both driveways, he would have to request another variance. Mr. Mulligan asked if the Department of Public Works would have to approve a curb cut for the new driveway, and Mr. Stith agreed. Mr. Mulligan said the plan showed that the new addition would be 11'8" from the rear yard, but the relief advertised was 11'5". Mr. Stith said the Planning Department had been using the half-foot instead of the plus/minus measurement. Vice-Chair Johnson asked the applicant if he had considered putting the new garage more toward the front yard or making it an ell-shaped one, noting that the Cape had an extended addition on both sides that made for a long building. Mr. Viens said he had not considered it because it was all about creating a mudroom.

Chairman Rheume opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one was present to speak, and Chairman Rheume closed the public hearing.

DECISION OF THE BOARD

*Mr. Mulligan moved to **grant** the variances for the petition as presented and advertised, and Vice-Chair Johnson seconded.*

Mr. Mulligan said the property had been added onto a few times, making the structure long, but it was set back pretty far from Marne Avenue such that there was no usable backyard, so he could understand why the owner wouldn't want an ell-shaped garage. He said it was also a good way to take advantage of the fact that Verdun Avenue wasn't much of a traveled street. He said granting the variances would not be contrary to the public interest or to the spirit of the ordinance because the essential residential character of the neighborhood would remain intact and the public's health, safety, and welfare would not be implicated. He said it would result in substantial justice because the loss to the applicant if the Board were to require strict compliance with the ordinance would outweigh any gain to the public. He said granting the variances would not diminish the value of surrounding properties but would improve them, noting that a mudroom and a two-car garage were amenities normally seen in modern homes. He said the special conditions of the property were that it was a corner lot on two roads that weren't traveled much. He said there was no fair and substantial relationship between the purpose of the setback and building coverage ordinances and their application to the property. He said it was a small amount of relief requested and was a residential use in a residential zone and met all the criteria.

Vice-Chair Johnson concurred, noting that Mr. Mulligan made a good point about the usable space within the yard. He thought a more compliant concept could have been worked out for the front yard, but he realized that it was a tight neighborhood, and it helped that there was an open view across the street. He said the project should be approved.

*The motion **passed** by unanimous vote, 7-0.*

C) WITHDRAWN Petition of **Timothy & Alexandra Lieto, Owners**, for property located at **50 New Castle Avenue** wherein relief is needed from the Zoning Ordinance to construct a two-story rear addition which requires the following: 1) A Variance from Section 10.521 to allow a 22' rear yard where 30' is required. 2) A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 101 Lot 33 and lies within the Single Residence B (SRB) District. **WITHDRAWN**

*It was acknowledged by the Board that the applicant had **withdrawn** the petition.*

D) Petition of **KSC, LLC, Owner, and Lafayette Animal Hospital, LLC, Applicant**, for property located at **2222 Lafayette Road** wherein relief was needed from the Zoning Ordinance to allow a Veterinary Clinic/Hospital which requires the following: 1) A Special Exception from Section 10.440 Use #7.50 to allow a Veterinary Care use where the use is allowed by Special Exception. Said property is shown on Assessor Map 267 Lot 2 and lies within the Gateway Neighborhood Mixed Use Corridor (G1) District.

SPEAKING TO THE PETITION

Attorney Brad Lown was present on behalf of the applicant and reviewed the petition and special exception requirements. He stated that the clinic usually got 4-8 patients per hour for 30-minute visits and rare overnights; there were two veterinarians, 12 staff people and 29 parking spaces; and the clinic was just being moved down the street and across the road to a slightly larger space.

There were no questions from the Board. Chairman Rheaume opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

David McGrath said he was the owner of KSC, LLC and was happy to be part of the community.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one else was present to speak, and Chairman Rheaume closed the public hearing.

DECISION OF THE BOARD

*Mr. Lee moved to **grant** the special exception request, and Mr. Parrott seconded.*

Mr. Lee said it was a simple request, just relocating the same business across and down the road to a better location. He said granting the special exception would create no hazard to the public or adjacent properties on account of odors, smoke, noise, fire, explosions, and so on. He said it would create no traffic safety hazards or substantial increase in the level of traffic in the vicinity and no excessive demand on municipal services, as well as no increase in stormwater runoff onto adjacent properties or streets.

Mr. Parrott concurred, noting that the property had been vacant for some time and that it was good to see it getting filled up. He said it was a benign use of the property and would fit in nicely with the neighborhood, and that it satisfied all the requirements and should be approved.

Chairman Rheume said that the only criterion that was potentially marginal was the increase in traffic, but the business would be moved from one side of the street to the opposite in a location suited for a small amount of incoming and ongoing traffic, so he thought it passed all the hurdles.

The motion passed by unanimous vote, 7-0.

E) Petition of **Kenton Slovenski, Owner**, for property located at **175 Grant Avenue** wherein relief was needed from the Zoning Ordinance to construct a two-story addition with an attached accessory dwelling unit which requires the following: 1) A Variance from Section 10.521 to allow a lot area of 13,950 square feet where 15,000 square feet is the minimum required. Said property is shown on Assessor Map 251, Lot 41 and lies within the Single Residence B (SRB) District.

Mr. Parrott recused himself from the petition, and Alternate Mr. Hagaman took a voting seat.

SPEAKING TO THE PETITION

Attorney Derek Durbin on behalf of the owner was present, as was the owner Kenton Slovenski. Attorney Durbin reviewed the petition and said the owner wanted to renovate his one-story ranch home to accommodate an ADU. He said it would be similar to other two-story homes in the area, and the ADU would be fully integrated into the vertical extension and would be living space for a family member. He also noted that the property was deficient and needed a lot of work.

Vice-Chair Johnson asked if there were other multi-family uses in the surrounding area. Attorney Durbin said he knew there were a few duplexes around but not a lot of multi-family uses. He said he had a list of all the ADUs permitted in Portsmouth and that there weren't many because not many lots met the 15,000 s.f. minimum in the ordinance. Mr. Hagaman asked if the purpose of the ADU was to provide housing for a family member rather than renting it out. Attorney Durbin said the goal was to provide an independent living space for the applicant's brother or another family member. Mr. Hagaman said the Board received a letter from someone concerned about the aesthetics of the design and placement of the bumpout, and he asked if the stairs could be put in the back so that no bumpout was required. Attorney Durbin said there was ledge in the back.

Vice-Chair Johnson asked Mr. Stith if the property would be considered a single-family home with an ADU or a two-unit property. Mr. Stith said the applicant would have to get a Conditional Use Permit first. He thought the home would be assessed as an occupancy of two instead of a two-family home, and that the applicant would have to be certified yearly to ensure that the ADU still met the criteria for an ADU. It was further discussed.

Chairman Rheume opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

No one was present to speak in favor of the petition.

SPEAKING AGAINST THE PETITION

Amy Dickinson said she was a resident of the neighborhood and was concerned about the ADU because she thought it would set a dangerous precedent for others in the neighborhood to start adding apartments that didn't meet the square footage requirement, would increase traffic, and wouldn't be maintained by a renter as well as it would be by an owner.

Chairman Rheume said the State of New Hampshire passed the ADU law to increase housing stock, and that one of the goals was that all communities must allow ADU units within single-family areas. He said the City was required to develop an ordinance around it to allow ADUs in single resident districts throughout Portsmouth.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one else was present to speak, and Chairman Rheume closed the public hearing.

DECISION OF THE BOARD

Vice-Chair Johnson said the applicant's neighborhood was the perfect application of the purpose of the ADU law overall because it had a less dense area infill and a fair amount of space per person as well as modest-sized properties, but he struggled with how to phrase the hardship eloquently. Mr. Hagaman agreed.

*Vice-Chair Johnson moved to **grant** the variance for the application as presented, and Mr. Hagaman seconded.*

Vice-Chair Johnson said he would echo his first few sentences about the application being appropriate. He said he lived in a similar neighborhood where the majority of residential properties came up short of the 15,000 s.f. criterion. He said granting the variance would not alter the essential character of the neighborhood or impact the public's health, safety, or welfare, and the spirit of the ordinance would be observed. He said one could look at this neighborhood and say that having an ADU was not meeting the character of the neighborhood, but the Board had to consider the current ordinances applied to the zone. He said there weren't a lot of properties with ADUs that were seen as a defining character, but the intent was reflected by changes in the ordinance and whether the size and density of the neighborhood were big enough to accept small uses like that. He said it was self-governing by the nature and size of the ADU as to how many people could live there and wasn't much different than everyone living in a single-family home. He said granting the variance would do substantial justice because the loss to the applicant if not granted would be greater than any perceived loss to the public or neighbors. He said the value of surrounding properties would not be diminished because the ADU would be a new addition to the housing stock and it was hard to argue that it wouldn't raise surrounding

property values. He saw no market decrease in values due to an ADU and thought it would increase resale values. He said literal enforcement of the ordinance would result in unnecessary hardship because the applicant had bought into the concept of what a Single Residence B Zone was and what the entitlements were and weren't, and he didn't feel that a one thousand plus or minus difference in square footage of the lot size undermined any of the ordinance's intent. He said it was a proven fact with other residences that a property of that size was capable of housing two units that were both small sizes.

Mr. Hagaman concurred. He said he had leaned heavily on how the hardship was presented by the applicant, and he thought what made the property unique compared to others was that it was positioned to do exactly what the applicant proposed to do. He said that was relatively uncommon, except for it being a relatively smaller lot than what was required. He said the special condition was that it checked all the boxes except for lot size, which was a unique thing not only for the neighborhood but for the city as a whole.

Chairman Rheume said that other New Hampshire communities were perhaps more affected by what the ADU law was trying to do, but that Portsmouth was an old community with a lot of established properties of two-acre lots with single-family homes, which used up a lot of available land to create those sorts of structures. He explained how the current environment was a lack of housing overall and also had an aging population that struggled to find smaller living spaces, and if they remained in their homes because they couldn't find smaller ones, it denied opportunities for younger families. He said the ADU law was designed to create a space that the aging population could take advantage of as well as continue to create housing opportunities for younger people who could serve as part of the workforce. He said if the City held applicants to the rigid standard of 15,000 square feet, they'd run the risk of defying the spirit of the ordinance and the spirit of the law behind the ordinance.

*The motion **passed** by unanimous vote, 7-0.*

F) Petition of the **Rhonda Stacy-Coyle Revocable Trust, Owner**, for property located at **36 Richards Avenue** wherein relief was needed from the Zoning Ordinance to install a heat pump unit which requires the following: 1) A Variance from Section 10.521 to allow a 2' right side yard where 10' is required. Said property is shown on Assessor Map 136 Lot 14 and lies within the Mixed Residential Office (MRO) District.

Mr. Parrott resumed his voting seat, and Mr. Hagaman resumed alternate status.

SPEAKING TO THE PETITION

The heating unit consultant Sue Morrison was present on behalf of the applicant and reviewed the petition and criteria. She said the Historic District Commission (HDC) had approved it with a stipulation that a surrounding fence would hide the unit from view. She said she accounted for the spacing that the unit needed from the building structure for adequate air flow

Chairman Rheume opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one was present to speak, and Chairman Rheaume closed the public hearing.

DECISION OF THE BOARD

*Mr. Formella moved to **grant** the variance for the petition as presented, and Mr. Lee seconded.*

Mr. Formella said that granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance because it would not alter the essential character of the neighborhood or threaten the public's health, safety, or welfare. He said no one would even know that the unit was there. He said substantial justice would be done because if the Board didn't grant the variance, it would be a loss to the applicant because the property couldn't have the heating unit, and there would be no gain to the public because they wouldn't have been harmed by the unit. He said granting the variance would not diminish the values of surrounding properties, noting that there was no evidence that it would do so. He said literal enforcement of the ordinance would result in unnecessary hardship to the applicant because special conditions of the property included a small lot, a small amount of outdoor space, and an existing nonconformity on the right sideyard. He said there was just a 2-ft setback where ten feet were required, so the Board wasn't creating any new nonconformity. He said there was no fair and substantial relationship between the purpose of the setback provision and its application to the property and that the proposed use was reasonable and should be granted.

Mr. Lee concurred and had nothing to add. Chairman Rheaume said he would support the motion because the only concerns of the setback relief were the light and air to the neighbors, but the neighbor's property wouldn't be impacted because it was a multi-use one.

*The motion **passed** by unanimous vote, 7-0.*

G) Petition of the **Kevin Shitan Zeng Revocable Trust, Owner**, for property located at **377 Maplewood Avenue** wherein relief was needed from the Zoning Ordinance to demolish an accessory building and construct a new free standing dwelling which requires the following: 1) A Variance from Section 10.513 to allow more than one free standing dwelling on a lot. 2) Variances from Section 10.521 to allow: a) a lot area per dwelling unit of 2,638 square feet where 7,500 is the minimum required; b) 43% building coverage where 25% is the maximum allowed; c) a 4.5' secondary front yard where 15' is required; d) a 3' left side yard where 10' is required; and e) a 5.5' rear yard where 20' is required. 3) A Variance from Section 10.321 to allow a building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 141 Lot 22 and lies within the General Residence A (GRA) District.

SPEAKING TO THE PETITION

Attorney Derek Durbin was present on behalf of the applicant, as was the project architect Daniel Barton. Attorney Durbin said the existing building behind the main home predated that home and

was believed to have been a sail-making shop in the past, and that they proposed to demolish and replace it with a smaller carriage house structure. He said the HDC had a site visit and determined that the existing building was too structurally unsound to reconstruct. He said there would be two dwellings on the property to house family members. He reviewed the criteria and gave examples of other similar homes in the area that had ADUs.

Mr. Hagaman said the carriage house seemed to be equal to or more dominant than the main house. Mr. Barton noted the work session they had with the HDC, where it was decided that a new structure that was appropriate for the neighborhood should replace the existing one. He said the carriage house might look large but was really a small structure and its size was similar to the existing building. He said they reduced the roof pitch on one side of the building to replicate the front of the existing building and that the ridge height of the new gable wasn't too far off from the requirement. He said the building had a similar relationship in grade to the existing building.

Mr. Mulligan confirmed that the existing structure had not been used for a long time and could have been used as a dwelling before. He said the passageway was part of Jackson Hill Avenue and asked if it was a paper street. Attorney Durbin said it didn't meet the definition of a street but was shown as one on the City map. Mr. Mulligan said the existing conditions plan identified the passageway as a gravel lane and that the proposed stacked parking looked like it would back out into Maplewood Avenue traffic. He said stacked parking wasn't safe or appropriate for the property and asked if there was another way out of the property. Attorney Durbin said the property connected to Jackson Hill Avenue, which he thought the City maintained. He said the stacked parking was an existing condition due to the funky parking layout and that it worked for the property. He said cars would pull out of the lot and go up to Jackson Hill Avenue to the right. Mr. Mulligan asked if that was the way the applicant currently got out of the property, and Attorney Durbin said he wasn't sure. Mr. Mulligan asked what the improvement was in that case and how one would go up the gravel drive at the edge of the passageway and make a right turn. Mr. Barton said the Jackson Hill Avenue passageway was a thruway, but its grade increased in height above the applicant's property as one left Maplewood Avenue. He said the ADU was up against a tall embankment, so pulling into the driveway and being able to loop up through Jackson Hill Avenue would only be feasible if the grade was changed.

Chairman Rheume said the grade difference was apparent. He said the parking situation spoke to the criteria in terms of lot area per dwelling unit and thought the key factor was having two separate dwelling units. He said he had looked at the properties with ADUs that Attorney Durbin had referred to. He said one looked like a converted garage in a second dwelling unit that was quite a bit smaller than the main structure and fit the character of a garage, and another one was an older home with a new addition. He said a carriage house was usually a smaller structure. He said the main house was about 800-900 square feet and the proposed carriage house was 1400-1500 square feet but would be just a single-floor dwelling. He asked if the main house had second-floor space. Mr. Barton said the second floor was more of a loft or attic space. Chairman Rheume said the new structure would be substantially larger than the existing structure and would be more in keeping with the idea of an ADU. It was further discussed.

Chairman Rheume opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one was present to speak, and Chairman Rheume closed the public hearing.

DISCUSSION OF THE BOARD

Mr. Mulligan referred to his previous comments and said he could not support the proposal because the requested lot area per dwelling was a third of what was required and half of what currently existed. He said jamming another residence into the property was problematic for a lot of reasons, and he recommended that the applicant do a redesign that addressed the parking configuration and eliminated the stacked parking backing out onto Maplewood Avenue. He said the petition met the hardship criteria because the property was unique, but the public's health, safety, and welfare were implicated and substantial justice would not be done. He said the loss to the public if the variances were granted would outweigh the gain to the applicant. Mr. Formella agreed. He said he could find a hardship on the lot area per dwelling unit because another dwelling unit could go there, but he felt that more work could have been done with the existing structure by reducing the footprint more. He noted that the proposed building was fairly large and that there was room to reduce it and make it more like a detached ADU, which might allow for configuring the parking in a safer way. He said there could be a proposal to get another unit on the lot that would require less building coverage. He said he could not support the petition and that he hoped it could be redesigned by reducing the size of the second structure.

Mr. Parrott agreed with Mr. Formella and Mr. Mulligan. He said the proposed building was very ambitious for the small lot, which was odd and challenging due to its topography. He said the proposal seemed to be built on the fact that there was a building there that apparently was never a dwelling before, but that it didn't matter because the issue was the available land. He said he was also concerned about the parking and thought backing out onto that busy part of Maplewood Avenue was very undesirable. He said when something new was designed, it should fix some of the existing problems. He said the proposal was too ambitious for the area and wouldn't work in the location, and that it wouldn't meet all the criteria, especially the first and second because it would be contrary to the public interest and to the spirit of the ordinance.

Mr. McDonell said he had been prepared to support a motion to approve because, given what was allowed as far as a multi-family dwelling in the zone and the lot's special conditions, he felt there was a necessary hardship. He said the dimensional requests for variances were all being decreased a bit, with the exception of the lot area per dwelling unit, and that got into the bigger reasons for the variance request to add another freestanding unit. However, he said he thought about the safety concerns that Mr. Mulligan brought up and agreed that there would be a threat to the public's safety, so he would support a motion to deny the variances.

Chairman Rheume agreed with Mr. McDonell's argument that the neighborhood was filled with multi-family dwelling-unit single structures but didn't think multi-structures with multiple units were common for the neighborhood. He said the few examples they saw were bigger lots that looked more like they had separate outbuildings. He said the applicant's proposal was to spread the dwelling unit out all over the very small lot and occupy a lot of space, which squeezed the

parking. He said there was a legitimate concern about entering and exiting the driveway, but that the Board would be endorsing the idea that one could get three cars in and out of that driveway on a regular basis. He said there were a lot of negatives, like the slope of the driveway and the street, plus the passage that would add more traffic. He said if the applicant could do an expansion on the main house or an upward expansion, it would allow room to park in or create a turnout, but the property was burdened by being in the HDC and the Commission might not look favorably on that. He said it was admirable that the applicant improved the setback slightly, but they were still asking for a lot of relief. He said what would be more in keeping with the other two examples would be something much more ADU-like, which would reduce some of the burden of the total occupied square footage on the property. He said it was unfortunate that the property was subdivided in such a way that it negatively affected the property's potential development. He said the Board wanted to see the structure replaced by something better, but that he could not support what was proposed.

DECISION OF THE BOARD

*Mr. Lee moved to **deny** the variances for the petition, and Mr. Formella seconded.*

Mr. Lee said a lot of the criteria were not met, including the spirit of the ordinance and the hardship, which he felt were the most relevant. Mr. Formella said the petition would also be contrary to the public interest because there would be a threat to the public's health, safety, and welfare. He said the requested dimensional relief and the parking configuration created an unsafe situation. He said a hardship could be found when it came to asking for an additional dwelling unit, but he thought it failed on the hardship, given the extent of the dimensional relief asked for, and that it would not be an unnecessary hardship to scale back the proposal and the requested dimensional relief.

*The motion to deny **passed** by unanimous vote, 7-0.*

H) Petition of **553-559 Islington Street, LLC, Owner** for property located at **553 Islington Street** wherein relief was needed from the Zoning Ordinance to construct a rear addition in conjunction with reconfiguration of the existing six-unit apartment building which requires the following: 1) A Variance from Section 10.5A41.10A to a lot area per dwelling unit of 1,201 s.f. where 3,000 s.f. per dwelling is required; 2) A Variance from Section 10.5A41.10A to allow 19.5% open space where 25% is the minimum required; 3) A Variance from Section 10.5A41.10A to allow a ground story height of 10' 7.5" where 11' is required; 4) A Variance from Section 10.321 to allow a nonconforming building or structure to be enlarged, reconstructed or extended without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 157 Lot 3 and lies within the Character District 4-L2 (CD4-L2) District.

SPEAKING TO THE PETITION

Attorney Steven Hyde was present on behalf of the applicant, including project architect Tim Brochu and project engineer John Chagnon. Attorney Hyde reviewed the petition, noting that the

addition would permit the reconfiguration and the addition of a larger central staircase and a corridor to permit ingress and egress. He said the property was unique because it was surrounded by commercial and mixed-use structures. He reviewed the criteria and said they would be met.

Chairman Rheume said he didn't see any dimensions for the former outbuilding on the right-hand side of the property and asked if the applicant exceeded the five feet. Attorney Hyde said they were not within the setback. Chairman Rheume said the driveway was a common one that was once access to a shoe company, and he asked if it meant that the property line was on the opposite side of the driveway and not more than 20 feet. Attorney Hyde said it was a shared 13-ft wide passageway and that their property line was not even halfway across the driveway. Mr. Chagnon said the back of the proposed addition was six feet from the property line. He said the passageway was not part of the lot or the adjacent lot and that it was a dedicated piece of land that was still owned by the former shoe company.

Chairman Rheume opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one was present to speak, and Chairman Rheume closed the public hearing.

DECISION OF THE BOARD

*Mr. Mulligan moved to **grant** the variances for the application as presented and advertised, and Mr. Parrott seconded.*

Mr. Mulligan said it was a substantial redevelopment of an existing nonconforming property and the required relief mimicked the existing nonconformities. He noted that there were already six grandfathered units on the property that would remain the same, but the applicant would do a full code-compliant renovation that would bring the property into the 21st Century. He said it wasn't much relief, given what already existed, so granting the variances would not be contrary to the public interest or the spirit of the ordinance. He said the character of the neighborhood wouldn't be materially affected and the public's health, safety, and welfare would not be implicated. He said the lot area per dwelling wasn't changing but was just getting reconfigured to improve the property and the public's welfare. He said substantial justice would be done because if the Board were to require the applicant to conform to the current zoning, it would likely mean that none of the improvements would take place and the property would be deficient, and the loss to the owner would outweigh any gain to the public. He said granting the variances would not diminish the values of surrounding properties because the most affected abutter was the gas station next door, which he didn't think would be affected one way or the other. He said the values of surrounding properties would be enhanced by bringing the property into substantial code compliance. He said that literal enforcement of the ordinance would result in an unnecessary hardship owing to the property's unique conditions, including abutting a gas station next door and railroad tracks to the rear, which distinguished the property from others in the area. He noted that it was already a pre-existing nonconforming property, which was an additional special condition. He said the property had existed for quite a while as a 6-unit apartment building, so

there was no fair and substantial relationship between the purpose of the provisions of the ordinance and their application to the property.

Mr. Parrott concurred and said the additional footprint represented by the addition, the stoop, and the deck were basically infills to the property, and the new walkway would make it look better. He said all the improvements would be a positive for the applicant and the neighborhood.

*The motion **passed** by unanimous vote, 7-0.*

IV. OTHER BUSINESS

There was no other business.

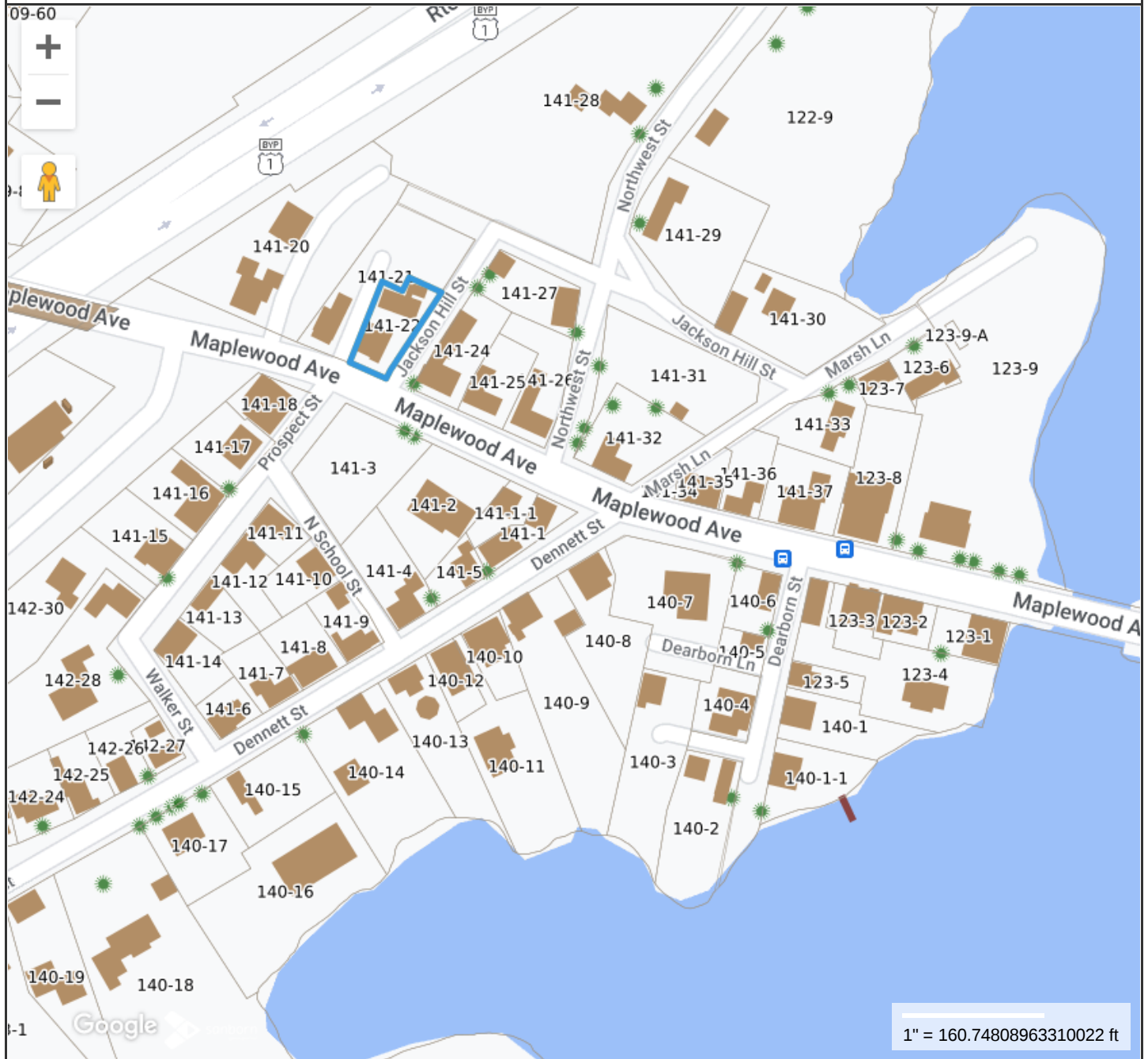
V. ADJOURNMENT

The meeting was adjourned at 10:15 p.m.

Respectfully submitted,

Joann Breault
BOA Recording Secretary

EXHIBIT C



Property Information

Property ID: 0141-0022-0000
 Location: 377 MAPLEWOOD AVE
 Owner: ZENG KEVIN SHITAN REVOC TRUST OF 2017



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

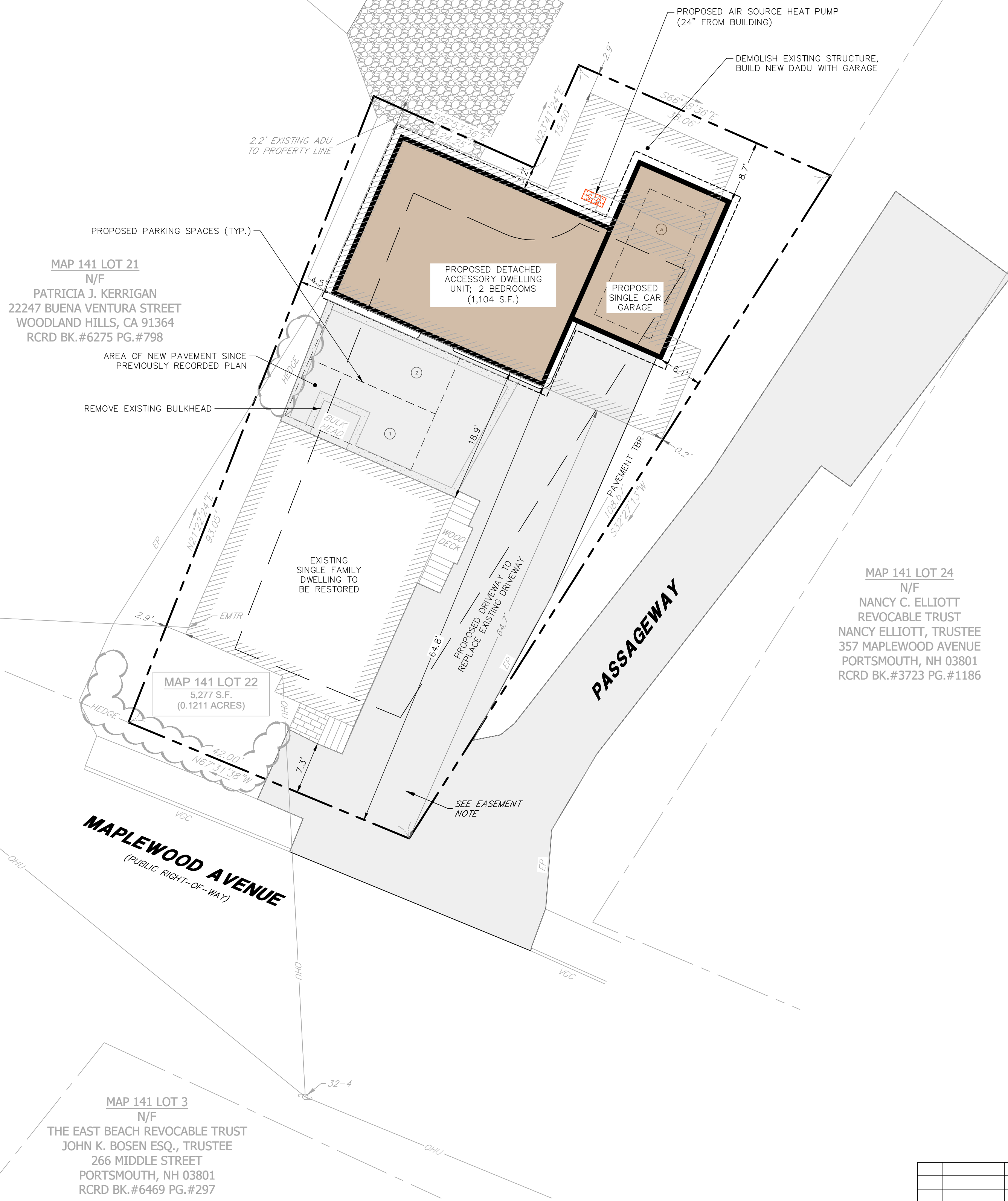
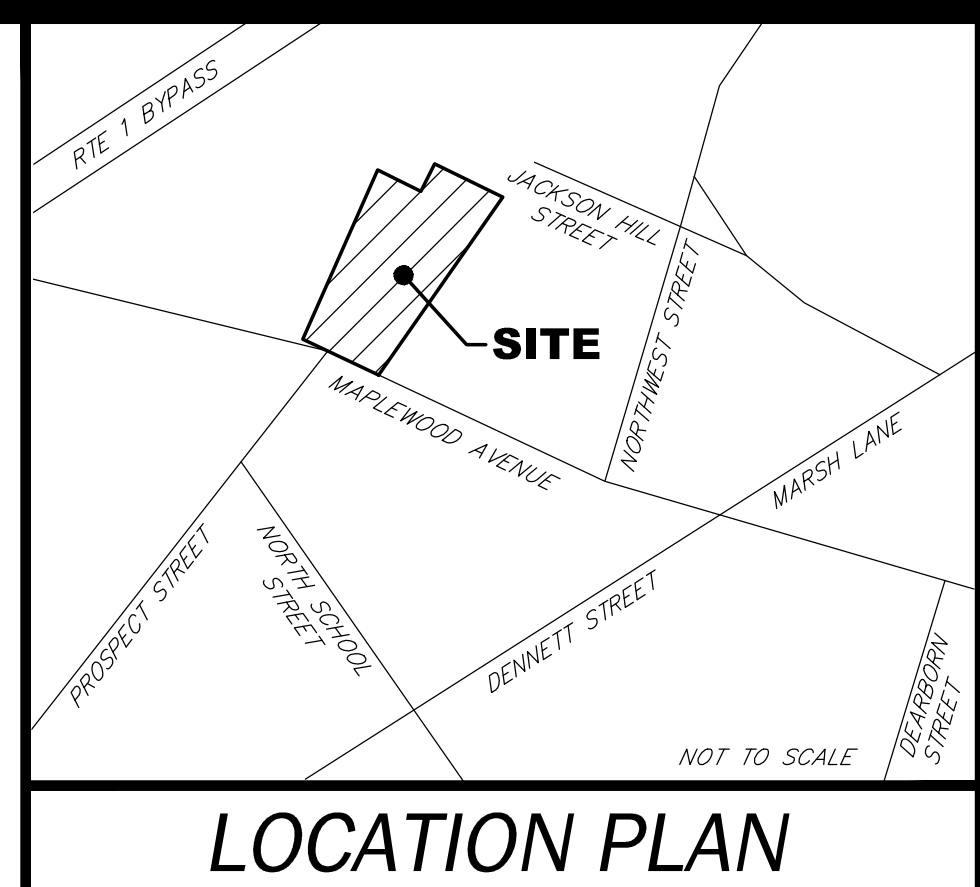
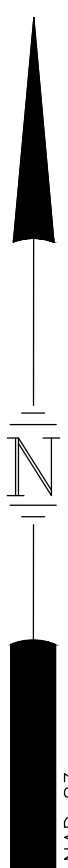
City of Portsmouth, NH makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.

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.

LEGEND:

BK/PG	BOOK / PAGE
N/F	NOW OR FORMERLY
NAD83	NORTH AMERICAN DATUM OF 1983
RCRD	ROCKINGHAM COUNTY REGISTRY OF DEEDS
S.F.	SQUARE FEET
EP	EDGE OF PAVEMENT
EMTR	ELECTRIC METER
VGC	VERTICAL GRANITE CURBING TO BE REMOVED
TBR	TO BE REMOVED
MAP 47 LOT 11	ASSESSOR'S MAP NUMBER/ LOT NUMBER
CHU	PROPERTY LINE
OHU	OVERHEAD UTILITY LINES
UPO	UTILITY POLE
BRICK	BRICK
CRUSHED STONE	CRUSHED STONE
PARKING SPACE	PARKING SPACE



SITE DATA

OWNER OF RECORD OF MAP 141 LOT 22: KEVIN SHITAN ZENG REVOCABLE TRUST OF 2017
 DEED REFERENCE TO PARCEL IS BK 5881 PG 2630
 AREA OF PARCEL = 5,277± SF OR 0.1211± ACRES

ZONED: GENERAL RESIDENCE A
 EXISTING USE: SINGLE FAMILY DWELLING
 PROPOSED USE: SINGLE FAMILY DWELLING WITH DETACHED ACCESSORY DWELLING UNIT

THE PURPOSE OF THIS PLAN IS TO DEPICT THE LOCATION OF A DETACHED ACCESSORY DWELLING UNIT. ASSOCIATED IMPROVEMENTS INCLUDE AND ARE NOT LIMITED TO ACCESS AND PARKING.

DIMENSIONAL REQUIREMENTS FOR ACCESSORY DWELLING UNIT (CURRENT ZONING)

	REQUIRED:	EXISTING:	PROPOSED (FOR DADU):
MINIMUM LOT DIMENSIONS:			
LOT AREA	7,500 SF (0.172± AC)	5,277 SF (0.1211± AC)	5,277 SF (0.1211± AC)
LOT FRONTAGE	100 FT	42.00 FT	42.00 FT
DEPTH	70 FT	108.67 FT	108.67 FT
MINIMUM YARD DIMENSIONS:			
FRONT	15 FT	64.7 FT	64.8 FT
SIDE	10 FT	0.2 FT	4.5 FT
REAR	20 FT	2.2 FT	3.2 FT
MAXIMUM STRUCTURE DIMENSIONS:			
STRUCTURE HEIGHT	35 FT	<35 FT	22 FT
ROOF APPURTENANCE HEIGHT	8 FT	0 FT	0 FT
BUILDING COVERAGE	25%	45.3%	37.5%
MINIMUM OPEN SPACE	30%	20.5%	24.5%
PARKING REQUIREMENTS			
PARKING SPACES (SEE CALCULATION)	3 SPACES	3 SPACES	3 SPACES
PARKING SPACE SIZE	8.5 FT X 19 FT	8.5 FT X 19 FT	8.5 FT X 19 FT
PARKING CALCULATIONS			
REQUIRED PARKING RATIO:			
RESIDENTIAL:	1.3 SPACES PER UNIT > 750 S.F.		
TOTAL REQUIRED = 2 UNITS >750 S.F. * 1.3 SPACES/UNIT = 2.6 SPACES			
TOTAL PROVIDED = 3 SPACES			
EASEMENT NOTE:			
PARCEL IS SUBJECT TO AN EASEMENT TO THE NEW HAMPSHIRE GAS AND ELECTRIC COMPANY AS DESCRIBED IN BK.#974 PG.#269. SAID EASEMENT IS BASED ON THE LOCATION OF A UTILITY POLE AND ANCHOR THAT NO LONGER EXIST, AND THEREFORE, IS NOT PLOTTABLE. SEE PLAN REFERENCE #4.			

VARIANCE PLAN

TAX MAP 141 LOT 22

VARIANCE PLAN

PROPOSED ACCESSORY DWELLING UNIT

377 MAPLEWOOD AVENUE

PORTSMOUTH, NEW HAMPSHIRE

OWNED BY AND PREPARED FOR

KEVIN SHITAN ZENG

1"=20' (11"X17')

SCALE: 1"=10' (22"X34') **JUNE 19, 2024**

Seacoast Division

TFM

Civil Engineers
Structural Engineers
Traffic Engineers
Land Surveyors
Landscape Architects
Scientists

170 Commerce Way, Suite 102
Portsmouth, NH 03801
Phone (603) 431-2222
Fax (603) 431-0910
www.tfmoran.com

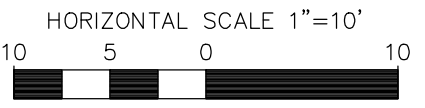
FILE NO.	45926.21	DR	JCC	FB	-	C-01
REV	DATE	DESCRIPTION		DR	CK	
1	7/19/2024	ADDITION OF AIR SOURCE HEAT PUMP		JCC	JCC	

Jul 19, 2024 - 12:49pm
 \\TFM-BEDFORDA\Projects\Civil-Survey\MSC Projects\45926 - Portsmouth Ave - Portsmouth\45926-21 Zeng - 377 Maplewood Ave - Portsmouth\45926-21 Site Plan.dwg

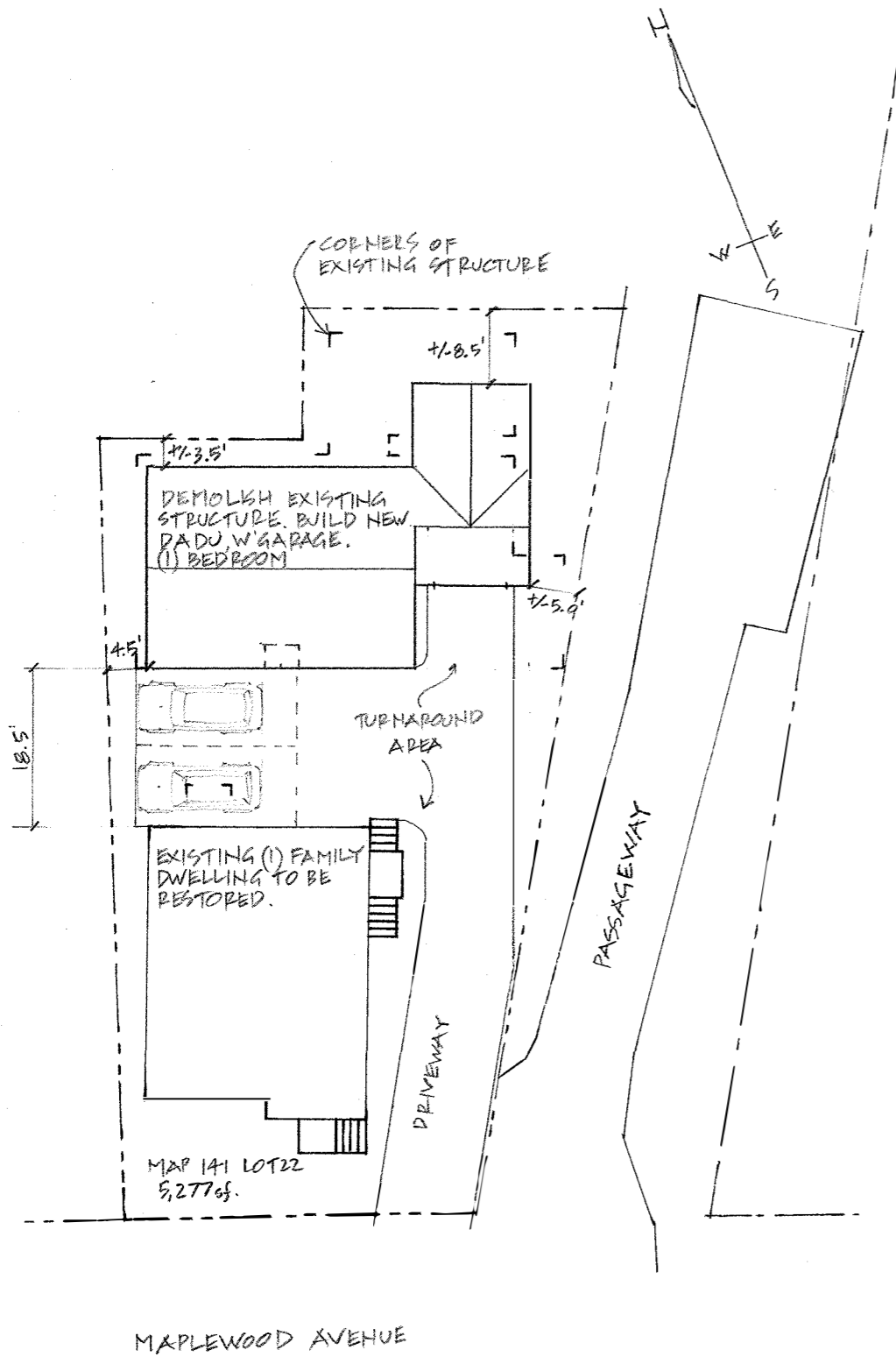
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This plan is not effective unless signed by a duly authorized officer of TFMoran, Inc.



1	7/19/2024	ADDITION OF AIR SOURCE HEAT PUMP		JCC	JCC				
REV	DATE	DESCRIPTION		DR	CK				



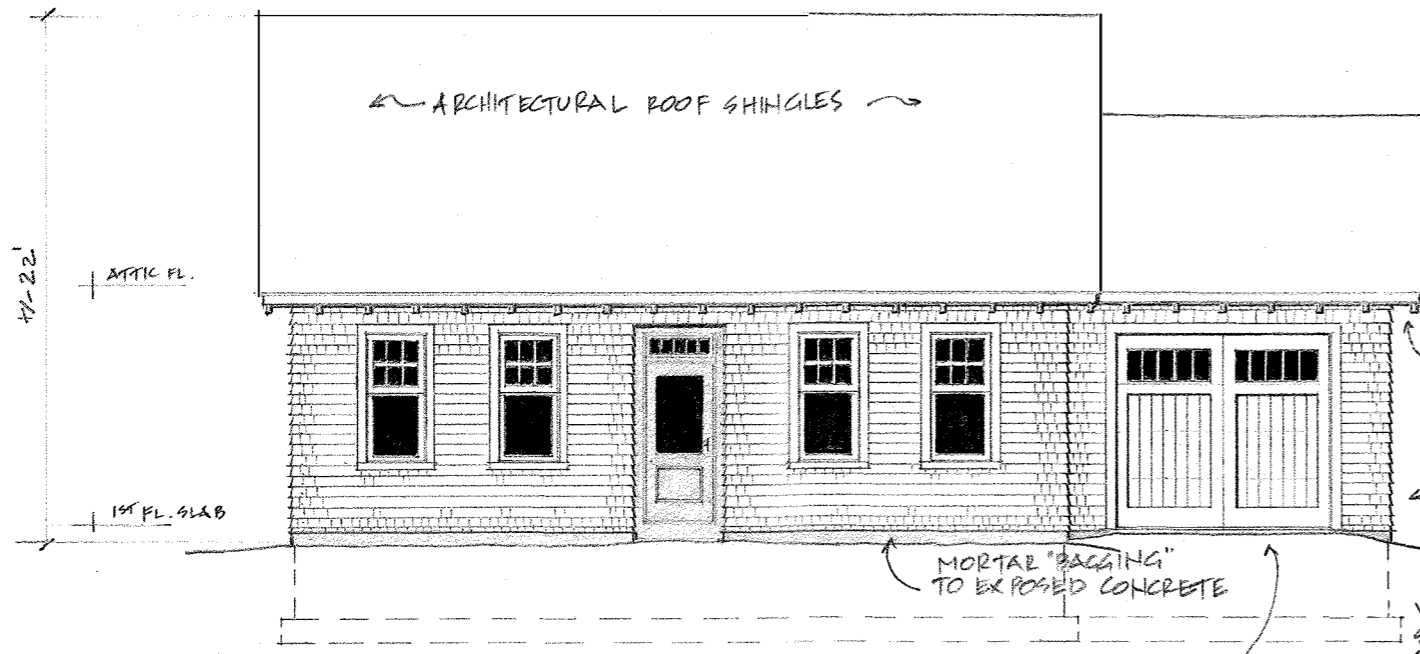
PROPOSED SITE PLAN 1"=20'



NEW ADU AT REAR TITLE: PROPOSED SITE PLAN & EXISTING PHOTOGRAPH
 OF 377 MAPLEWOOD AVE., SCALE: 1"=20'
 PORTSMOUTH, NH. DATE: 4.22.2024
 PAGE XI.

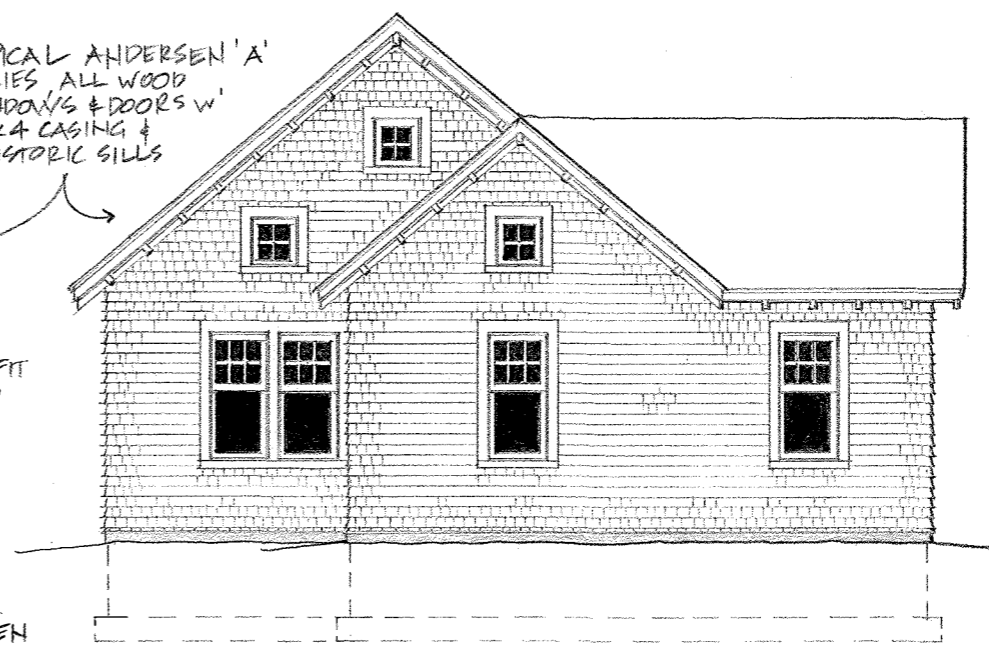
Brendan McNamara
 RESIDENTIAL ARCHITECTURE

603 682 1105 brenmcnamara@comcast.net



SOUTH (FRONT) ELEVATION

TYPICAL ANDERSEN 'A' SERIES, ALL WOOD WINDOWS & DOORS W' 5/4x4 CASING & 2" HISTORIC SILLS

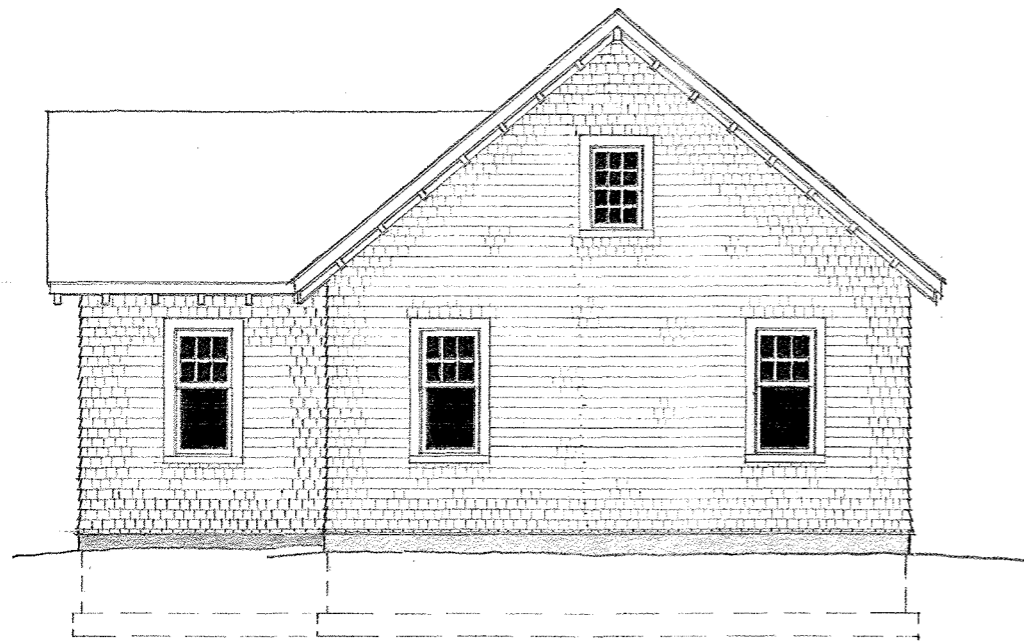


EAST (RIGHT) ELEVATION

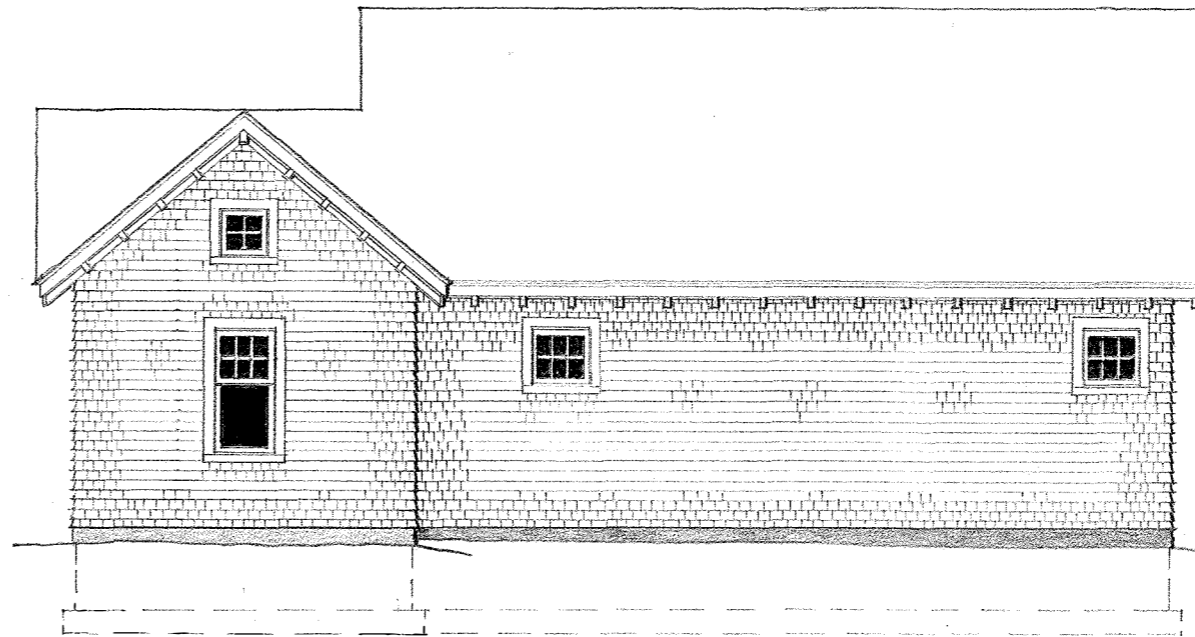
TITLE: PROPOSED SOUTH & EAST ELEVATIONS

NEW ADU AT REAR OF 377 MAPLEWOOD AVE., PORTSMOUTH, NH DATE: 4.22.2024

Brendan McNamara
RESIDENTIAL ARCHITECTURE



WEST (LEFT) ELEVATION



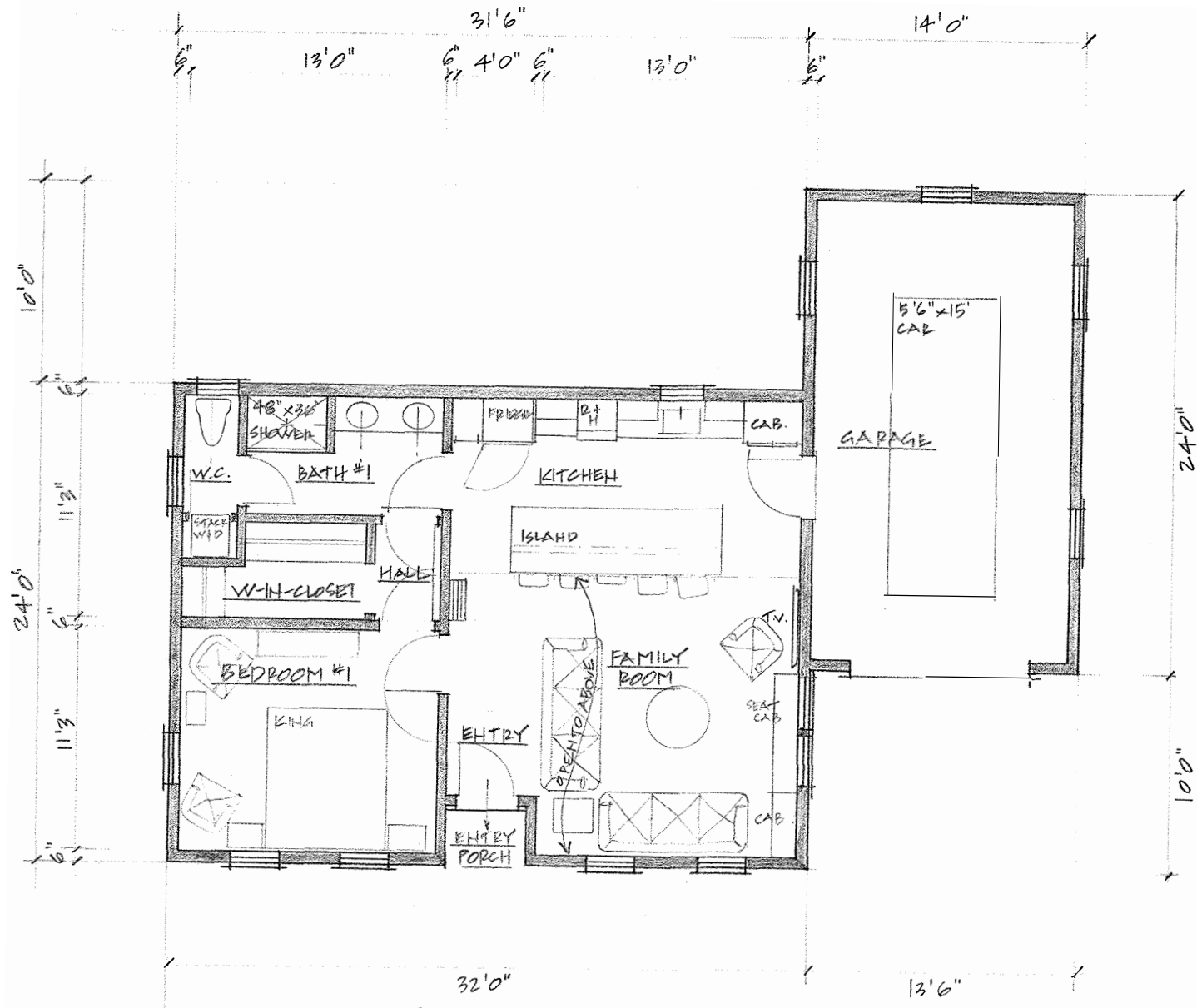
NORTH (REAR) ELEVATION

TITLE: PROPOSED WEST + NORTH ELEVATIONS

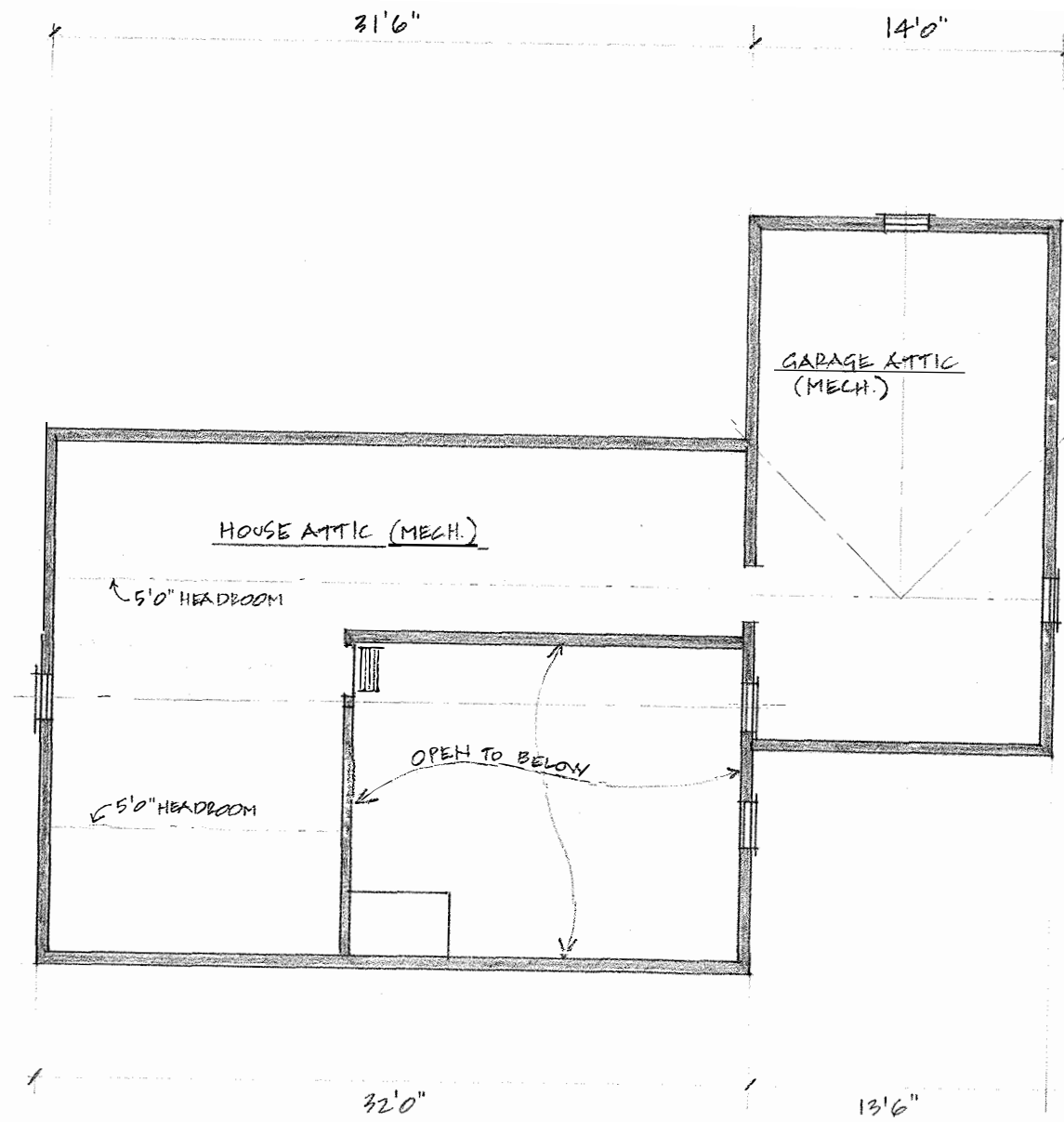
NEW ADU AT REAR OF 377 MAPLEWOOD AVE.,

SCALE: 1/8"=1'0" DATE: 4.22.2024
PORTSMOUTH, NH

Brendan McNamara
RESIDENTIAL ARCHITECTURE



FIRST FLOOR PLAN (SLAB)



ATTIC FLOOR PLAN

TITLE: PROPOSED FLOOR PLANS
 NEW ADU AT REAR OF 377 MAPLEWOOD AVE., PORTSMOUTH, NH
 SCALE: 1/8"=1'0"
 DATE: 4.22.2024
 PAGE A4.

Brendan McNamara
RESIDENTIAL ARCHITECTURE

603 682 1105 brenmcnamara@comcast.net



Accessory Building (Front View)



Accessory Building (Rear View)



Accessory Building



Accessory Building



Accessory Building – Interior



Accessory Building – Interior



Accessory Building – Interior



Accessory Building – Interior



House and Accessory Building – Front / Right Side View

Subject Lot	Map 141 Lot 22
Total Lot Area (s.f.)	5,277

Existing Conditions		
Structure	Total Area (s.f.)	Description
Existing Home	881	3/4 Story Wood Framed Building
Existing Garage	1510	Existing wood framed building
Decks/Stairs	85	
Bulkhead	28	
Pavement	1654	
Crushed Stone	35	
Open Space	1084	

Total Impervious	Coverage	Open Space
4193	79.5%	20.5%

Proposed Conditions		
Structure	Total Area (s.f.)	Description
Existing Home	881	3/4 Story Wood Framed Building
Proposed ADU	1097	ADU - overhang not included
Proposed ADU Overhang	136	
Decks/Stairs	85	
Bulkhead	28	
Pavement	1719	
Crushed Stone	35	
Utilities	4	Air Condenser at rear of ADU
Open Space	1292	

Total Impervious	Coverage	Open Space
3985	75.5%	24.5%

III. NEW BUSINESS

- A. The request of **Jonagold Empire LLC (Owners)**, and **Benjamin Otis (Applicant)** for property located at **230 Lafayette Road, Unit 10 A/B** whereas relief is needed to establish a medical office in units 10 A and 10 B which requires the following: 1) Variance from Section 10.440 Use #6.20 to allow a medical office use where it is not allowed. Said property is located on Assessor Map 151 Lot 6-D10B and lies within the General Residence A (GRA) District. (LU-24-143)

Existing & Proposed Conditions

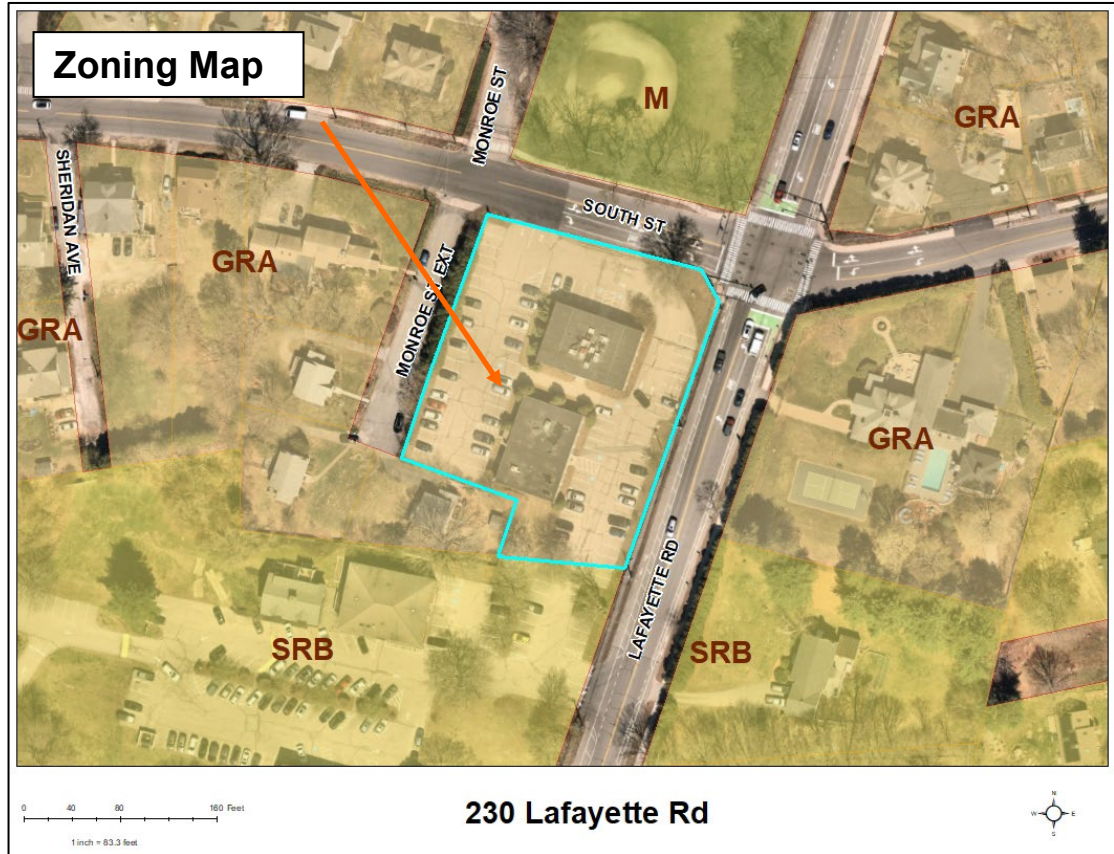
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Multi-unit office complex	*Convert existing professional office to medical office use	Primarily residential
<u>Parking:</u>	79	79	51
<u>Estimated Age of Structure:</u>	1969	Variance request(s) shown in red.	

*Medical office not permitted in the district

Other Permits/Approvals Required

- Building Permit – Tenant Fit Up

Neighborhood Context



Previous Board of Adjustment Actions

July 15, 2003 – The Board granted the request for the following: 1) Variance from Article II, Section 10-206 to allow Unit D12 to be used as a business office by Career Profiles (medical and general executive search company) in a district where such use was not allowed and 2) Variance from Article XII, Section 10-1204 Table 15 to eliminate 1 required parking space for the proposed use where 246 parking spaces are provided onsite.

Planning Department Comments

The applicant is requesting relief needed to convert an existing professional office into a medical office. This use requires a variance because the use is not permitted in the GRA district. This property consists of two buildings which house 16 office spaces. According to the applicant 14 out of the current 16 spaces are currently medical office uses and the conversion of these last two units will create 16 medical offices.

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.

Jonagold Empire LLC
Ground Floor Realty Development LLC
230 Lafayette Rd Unit 10A/B
Portsmouth, NH 03801

August 7, 2024

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

Subject: Request for Professional Medical Variance

Dear Members of the Portsmouth Zoning Board of Adjustment,

We are requesting a variance to change our property at 230 Lafayette Rd Unit 10A/B from Professional use to Medical Professional use. We initiated a building permit application for a tenant re-fit for a therapy and medical clinic. The property is zoned as residential. We purchased the property from lawyers (Professional) and plan to have the end use of this property be Medical Professional. The application, in addition to this letter, includes photos of the property and floor plan. There is no change to the exterior of the suite. This is within the Lafayette Professional Park Condominiums. Building D has 5 other suites within the building, all medical professionals as the end use. The adjacent building C has all medical professionals in that location. Allowing for medical professional use is consistent with the current use of this space.

This request for a variance is justified based on the following points:

1. Public Interest: Allowing for Medical Professional use in a building and an adjacent building that is currently medical professional use supports the local community by maintaining a consistent expectation in the buildings, adding a symbiotic service amongst medical professionals. This will support a balanced and vibrant neighborhood, promoting economic stability, and fostering community spirit.
2. Spirit of the Ordinance: This change respects the primary goals of the zoning ordinance by preserving the historical and business park character of the area, thus promoting a stable and family-friendly environment.
3. Substantial Justice: Approving the variance achieves a fair outcome for both the property owner and the community. There is no external change to the property, it will enhance the aesthetics and functional appeal within the suite, updating floors, ceiling and lighting, adding an accessible bathroom for all for appropriate medical use, without imposing any undue burden on the public.
4. Property Values: The proposed residential use will not diminish the value of surrounding properties. Exterior structures will not be affected, it is likely to enhance property values by

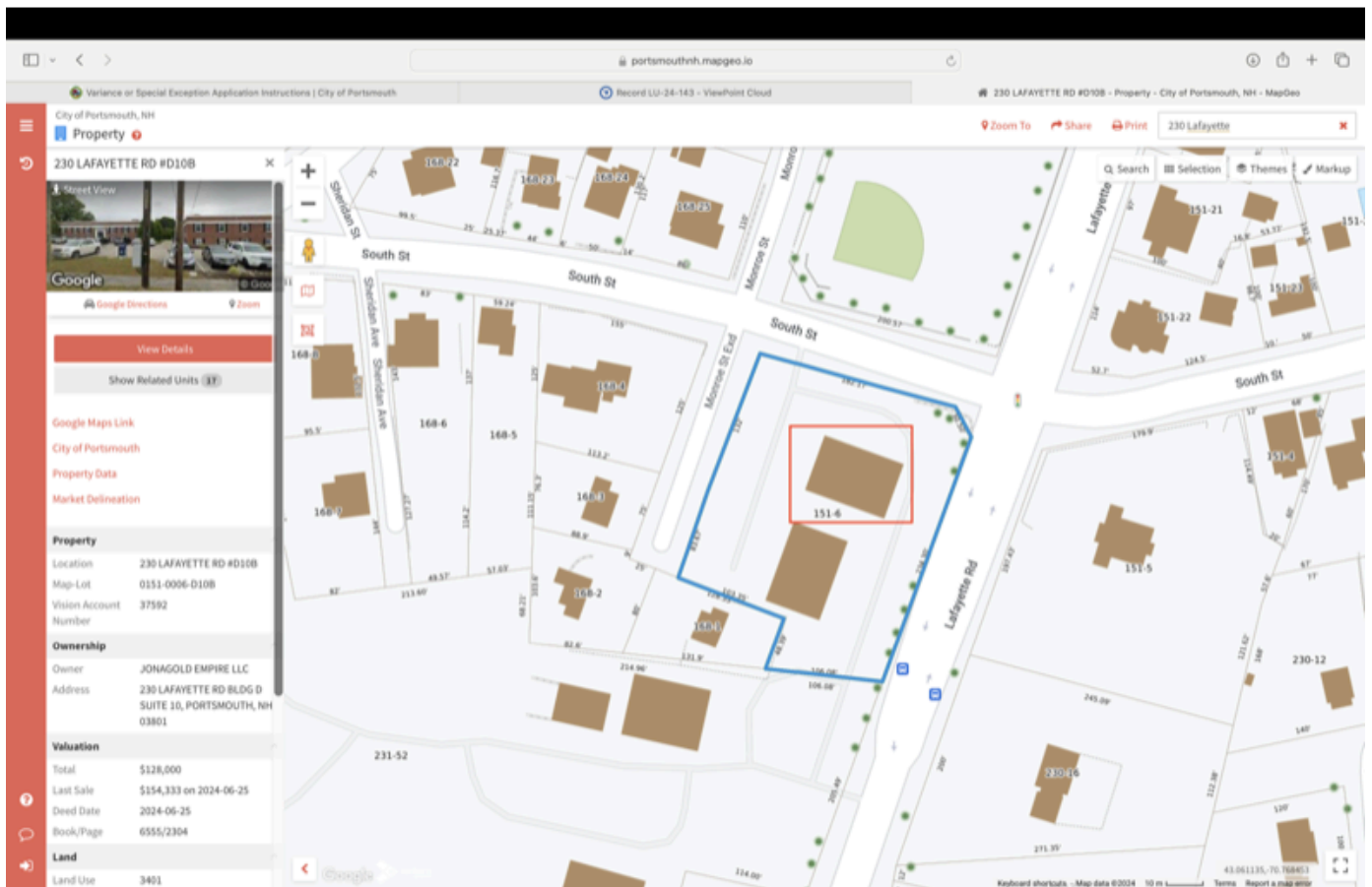
updating the floors, walls, ceiling and accessible bathroom contributing positively to the neighborhood's access, leading to a more modern medical professional layout.

5. Unnecessary Hardship: The current zoning restrictions create an undue hardship by limiting the property's best use. The variance allows a reasonable and historically consistent use of the property, aligning with its characteristics and the neighborhood's overall character. The consistent use of this property is for a Medical Professional use.

We believe this variance request meets all the necessary criteria and respectfully ask for your approval.

Sincerely,

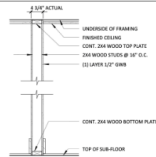
Ben Otis and Kristin Trapani-Otis - Jonagold Empire LLC
Aron Jeffrey- Ground Floor Realty Development LLC





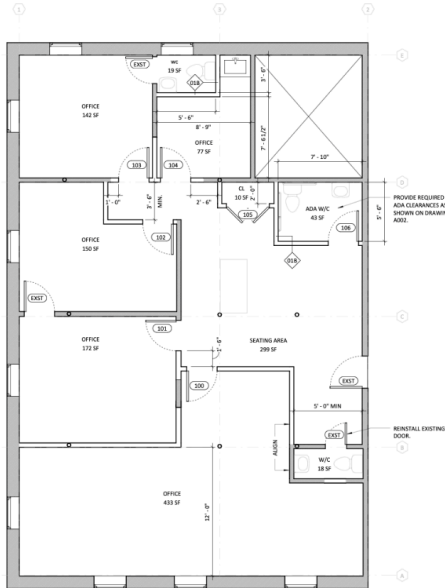


DOOR NO.	LOCATION	DOOR				FRAME		FIRE RATING	REMARKS
		WIDTH	HEIGHT	THICKNESS	MATERIAL	FRAME MATERIAL	FINISH		
130	1ST FLOOR	2'-10"	6'-8"	2"	WD	WD	N/A		
131	1ST FLOOR	2'-10"	6'-8"	2"	WD	WD	N/A		
132	1ST FLOOR	2'-10"	6'-8"	2"	WD	WD	N/A		
133	1ST FLOOR	2'-10"	6'-8"	2"	WD	WD	N/A		
134	1ST FLOOR	2'-10"	6'-8"	2"	WD	WD	N/A		
135	1ST FLOOR	4'-0"	6'-8"	2"	WD	WD	N/A		
136	1ST FLOOR	2'-10"	6'-8"	2"	WD	WD	N/A		

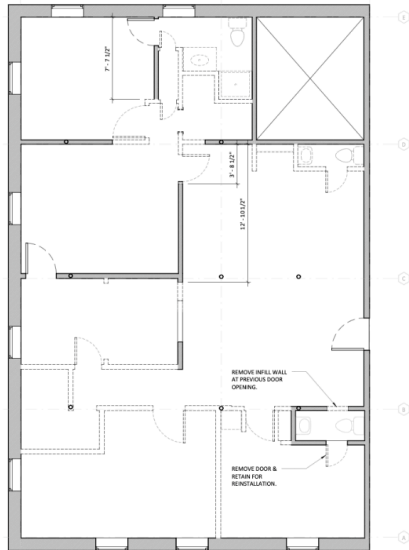


INTERIOR PARTITION
 THIS IS A U.S. ASSEMBLY TYPE, AS SHOWN, SEE GLUING FOR FURTHER DETAILS.
 THIS IS A U.S. ASSEMBLY TYPE, AS SHOWN, SEE GLUING FOR FURTHER DETAILS.

03 INTERIOR PARTITION
 1/2" = 1'-0"



02 SUITE FLOOR PLAN
 1/8" = 1'-0"



01 FLOOR DECONSTRUCTION PLAN
 1/8" = 1'-0"



FLOOR PLAN NOTES
 1. NEW WALLS TO BE PARTITION 05A U.G.N.

NOT FOR CONSTRUCTION

NUMBER	DATE	ISSUANCE / REVISION
REVISION SCHEDULE		

Placework
 230 LAFAYETTE ROAD
 SUITE 100, MEMPHIS, TN 38103

PROJECT NO. 24-00
230 LAFAYETTE ROAD
 1000 S.W. MEMPHIS, TN
 38103
PLANS & SCHEDULE

DATE: 02/23/24
 SHEET NO. **A100**

III. NEW BUSINESS

B. The request of **Condos at Rock Hill (Owners), and Stewart Bradley (Applicant)**, for property located at **962 Islington Street and 964 Islington Street** whereas relief is needed to demolish and reconstruct the existing front steps which requires the following relief: 1) Variance from Section 10.521 for a) an 11 foot front yard where 30 is required, and b) 30% building coverage where 20% is allowed; and 2) Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 171 Lot 1 and lies within the Single Residence B (SRB) District. (LU-24-146)

Existing & Proposed Conditions

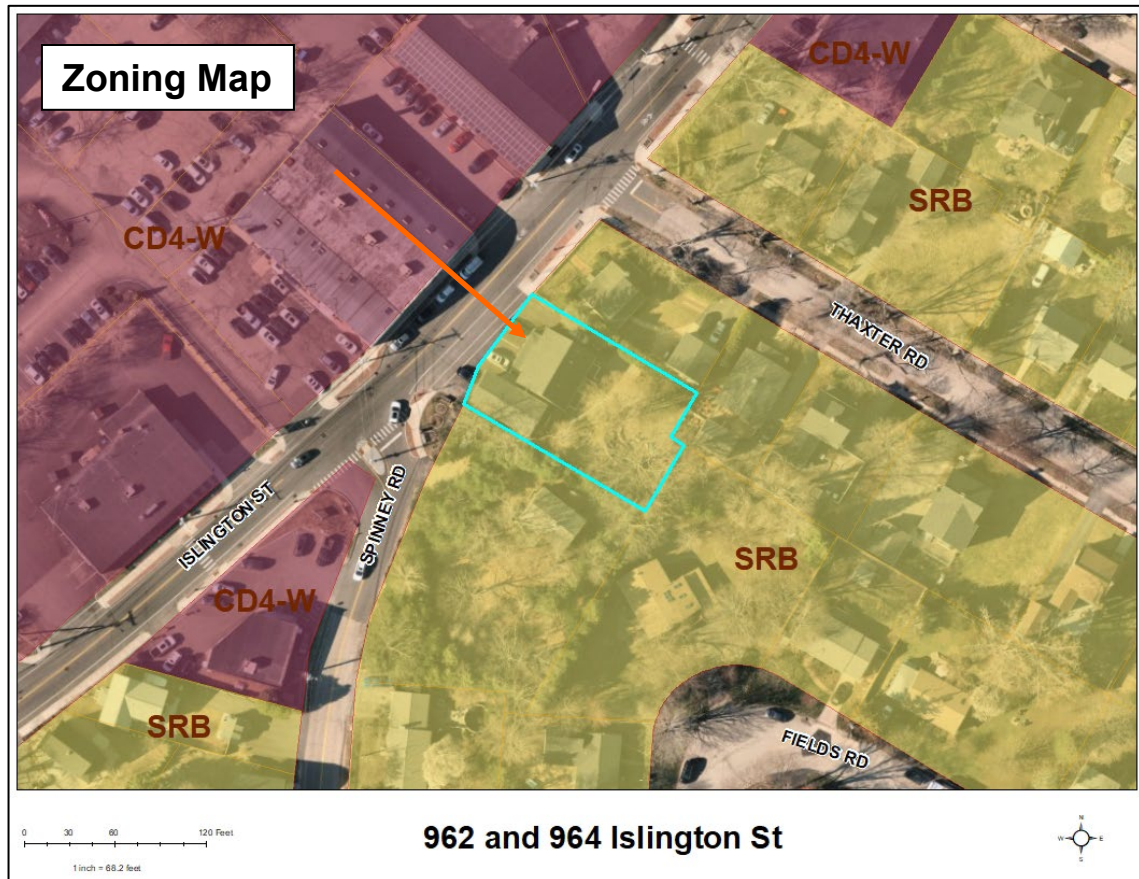
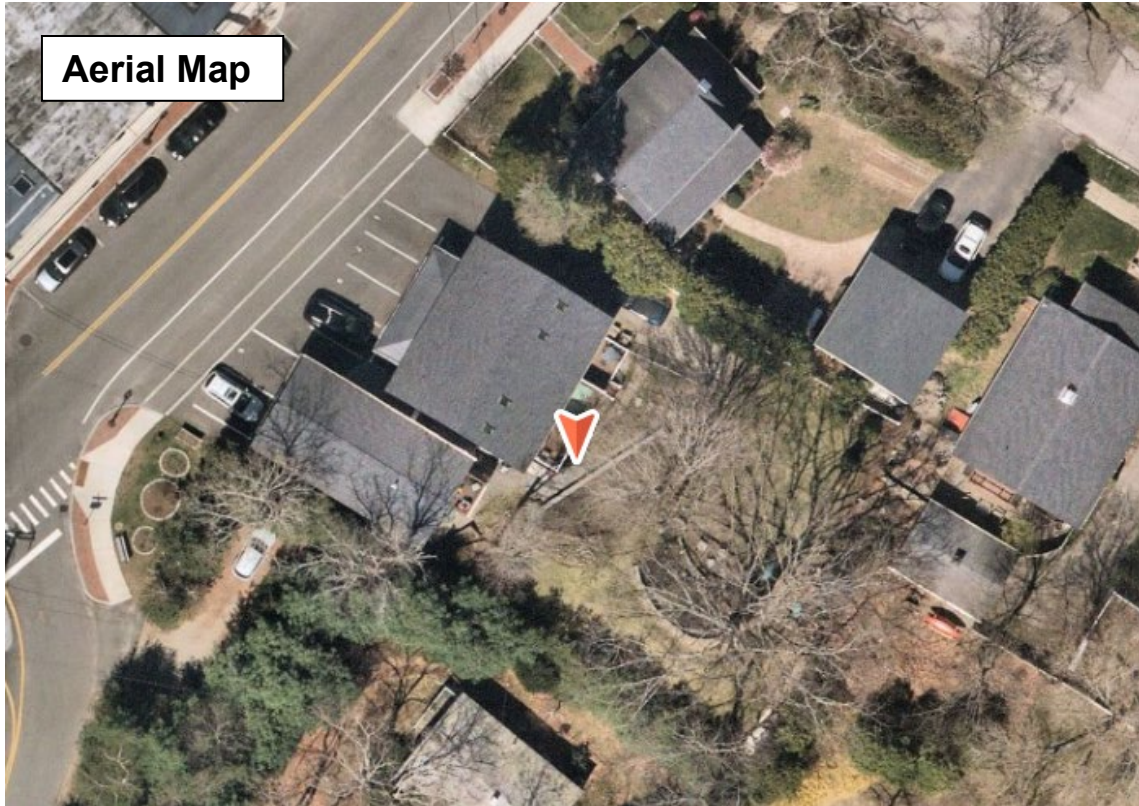
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Multi-family residence	*Reconstruct stairs	Primarily residential
<u>Lot area (sq. ft.):</u>	11,710	11,710	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	2,927.5	2,927.5	15,000 min.
<u>Street Frontage (ft.):</u>	86	86	100 min.
<u>Front Yard (ft.):</u>	11	11	30 min.
<u>Right Yard (ft.):</u>	Stairs are >10	Stairs will be >10	10 min.
<u>Left Yard (ft.):</u>	Stairs are >10	Stairs are >10	10
<u>Building Coverage (%):</u>	30	30	20 max.
<u>Open Space Coverage (%):</u>	>30	>30	30 min.
<u>Estimated Age of Structure:</u>	1900	Variance request(s) shown in red.	

*** Relief needed to construct an addition to the already non-conforming primary structure that would further impact the non-conformity.**

Other Permits/Approvals Required

- Building Permit

Neighborhood Context



Previous Board of Adjustment Actions

March 20, 2007 – The Board **granted** the following requests: 1) Special Exception as allowed in Article IV, Section 10-401 (A)(1)(d) to relocate an existing non-conforming dwelling unit on the 2nd floor to the 1st floor maintaining a total of four dwelling units on the property and eliminating the non-residential use in a district where only one dwelling unit is allowed on a lot in the Single Residence B district and 2) Variance from Article XII, Section 10-1201 (A)(3)(a) to allow the existing 5 parking spaces as laid out and to back out onto the street.

October 19, 1999 – The Board **granted** the following request for a Variance from Article IX, Section 10-908 to allow the following: a) a 2' x 10' (20 s.f.) attached sign, b) a 3' x 15' (45 s.f.) attached sign, and c) 2'6" x 16'8" (42 s.f.) projecting sign in a residential district where signs for a commercial use are not allowed.

Planning Department Comments

The applicant is requesting relief to remove the existing stairs on both sides of the existing porch and replace with code compliant stairs. The stairs as existing and proposed are nonconforming in setback and the site is non conforming in its building coverage. When these stairs are removed any existing non-conforming rights are forfeited. See Section 10.321 of the Zoning Ordinance. The zoning allows for exceptions when stairs and landings meet the minimum requirements for life safety, however the proposed stairs do not qualify as they are in excess of the building code requirements.

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.

Introduction

We are proposing the removal and replacement of existing stairs leading from the end of the porch attached to 962 Islington and an identical set of stairs leading from the end of the porch attached to 964. Neither sets of existing stairs comply with current building standards in that the rise of each step is inconsistent ranging from 8 inches to 6.5 inches between steps. The current steps at 962 have a total rise of 30 inches with a run of 39 inches. The steps at 964 have a rise of 26 inches with a run of 30 inches. Both sets of steps are 90 inches wide. In addition, the tread of each step is 10 inches wide and they have a slight downward slant making the stairs uncomfortable and unsafe to climb. We are prompted to replace the stairs to make our condo units safe and bring them into compliance with current building codes.

The new steps we would like to build will be placed in the same orientation to the porch as the existing stairs and will have a total rise of 33 inches and a run of 48 inches with each riser being $6 \frac{5}{8}$ th inches and will be 90 inches wide. They will have pressure treated stringers, vinyl board risers, and composite decking treads. We would like to complete this project in September 2024.

Code Narrative

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

The removal of the existing stairs to be replaced with stairs that meet current building codes will not have any impact on the public interest. The appearance of the new stairs will be indistinguishable from the old stairs as viewed from the street by a casual observer.

10.233.22 The spirit of the Ordinance will be observed.

We intend to follow both the letter and the spirit of the ordinance.

10.233.23 Substantial justice will be done;

The interest of the owners and residents of the Condos at Rock Hill will be served by providing safe and easier to climb stairs to enter the dwellings located at 962 and 964 Islington St. The interests of the general public will not be affected by the replacement of the exiting stairs unless of course they have business at either address and actually use the stairs.

The existing stairs have riser heights that vary between 6.5" to 8" between steps. The treads on the current steps are about 10" wide and are slightly angled down away from the risers. They are uncomfortable to climb and considerably below building code requirements. Substantial justice would be served by allowing us to replace these steps with new stairs that will have pressure treated stringers, consistent 6 5/8" risers, and 12" treads of composite decking. There will not be any modification to the porch. The public will be unimpacted both visually and physically.

10.233.24 The values of surrounding properties will not be diminished;

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

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

Enforcement of the setback rules disallowing the condo association to replace the existing stairs could result in injury to someone trying to navigate the current steps. The ages of the occupants of these two condos range from 78 to 5 years old. Anyone using these steps, regardless of their age finds them uncomfortable to climb and somewhat dangerous. An unnecessary hardship would continue if we were not allowed to replace the existing unsafe steps with new code conforming stairs.

N

TRITECH
ENGINEERING CORPORATION

ISLINGTON STREET

SPINNEY ROAD

MAP 166
LOT 38

KEVIN M. AND MALREEN SOMRIN
338 ISLINGTON STREET
PORTSMOUTH, NH
SCRD 3123-888

MAP 171
LOT 1A

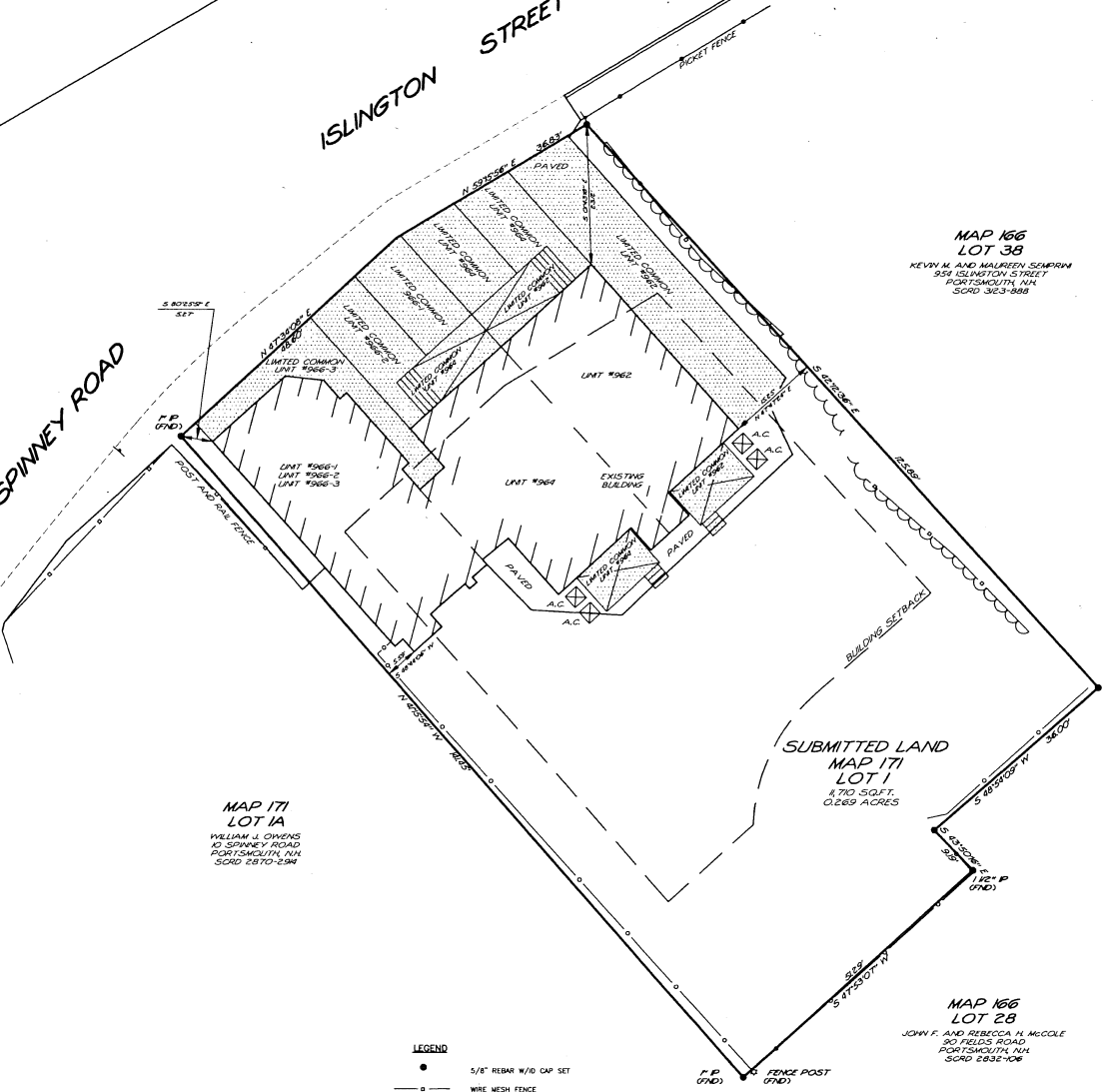
WILLIAM J. OWENS
10 SPINNEY ROAD
PORTSMOUTH, NH
SCRD 2870-594

MAP 166
LOT 37

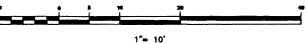
CATHERINE T. WALD
26 THAYER ROAD
PORTSMOUTH, NH
SCRD 2089-308

MAP 166
LOT 28

JOHN F. AND REBECCA H. MCCOLE
300 FIELDS ROAD
PORTSMOUTH, NH
SCRD 2838-108



- LEGEND**
- 5/8" REBAR W/D CAP SET
 - WIRE MESH FENCE
 - CHAIN LINK FENCE
 - SIGN
 - TREELINE



D-34468 sheet 1 of 1



Existing stairs
Left
962 Islington

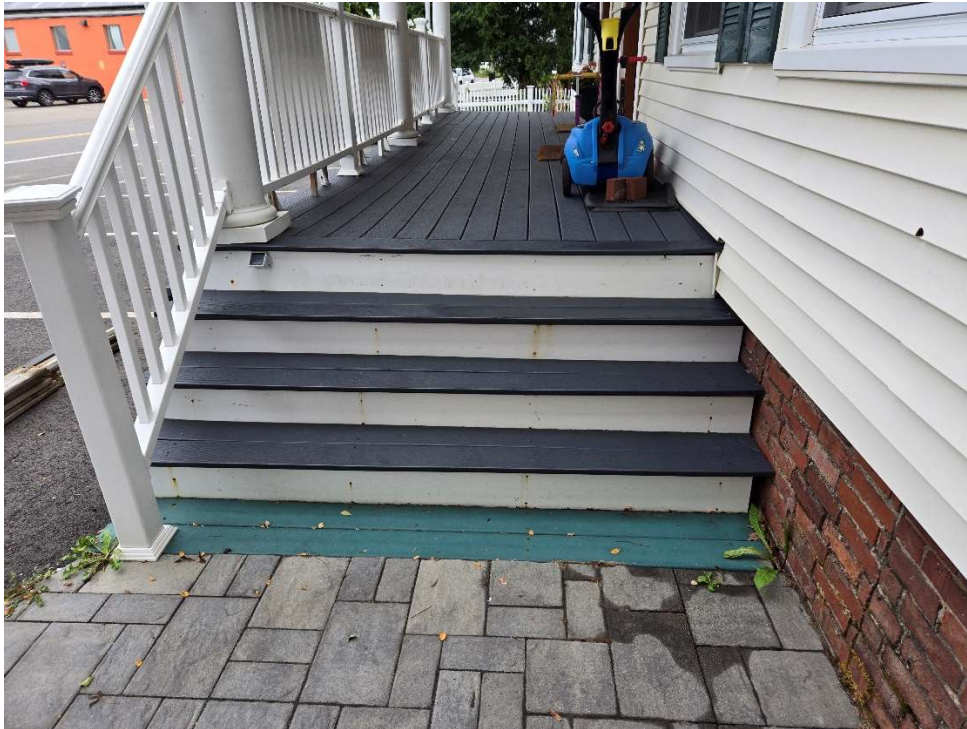


Existing stairs
Right
964 Islington

Pictured is the front of the building. The proposed stairs will be positioned just as the existing stairs. The new stairs will have a total run of 48" which is about 12" longer than the existing stairs.



Existing stairs,
left side, 962
Islington



Existing stairs,
right side, 964
Islington

hed Height

Stringer Placement (H):
7 5/8

Steps (D): **4**

Typ. Tread (B):
12

Stringer

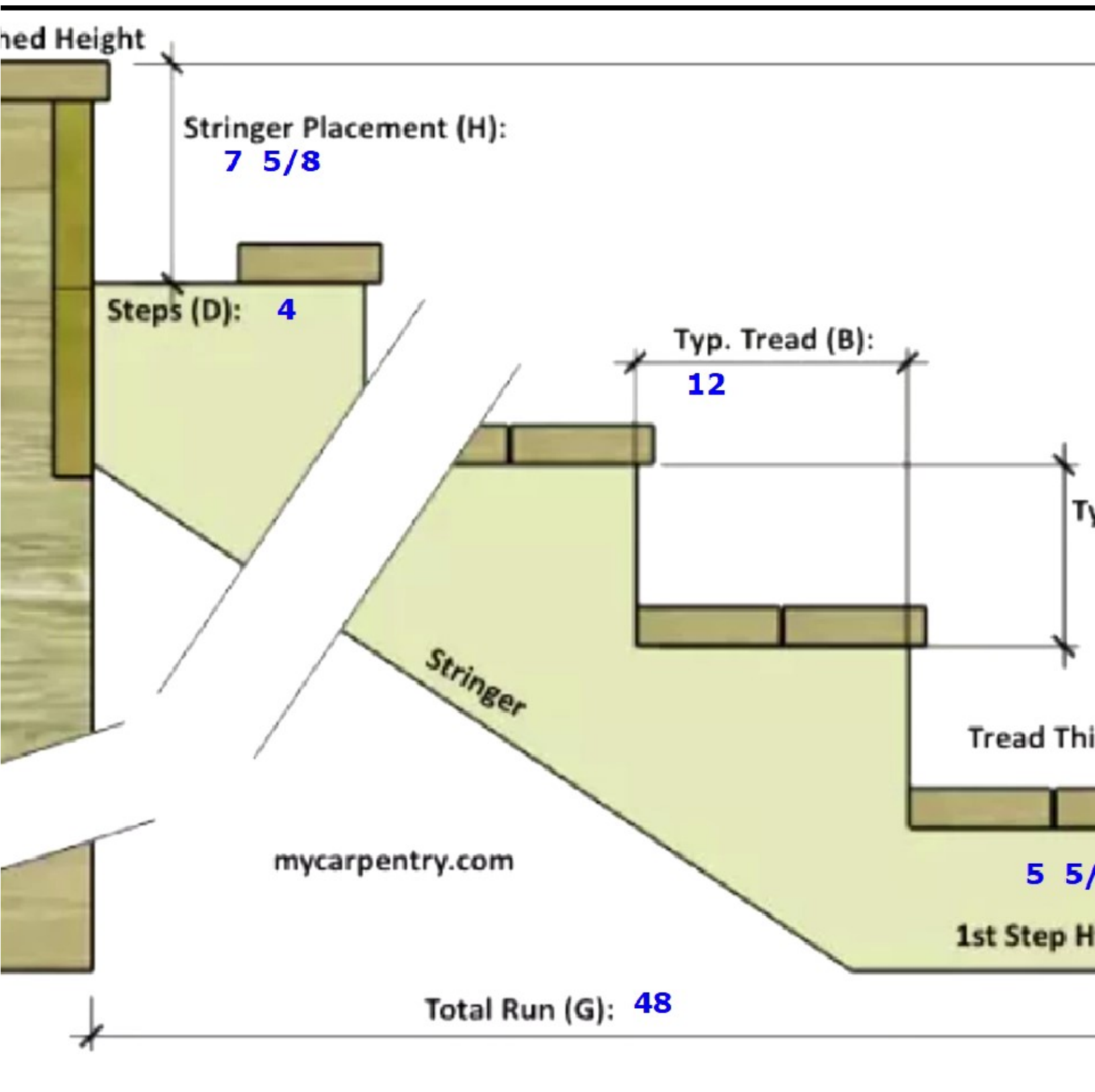
Tread Thi

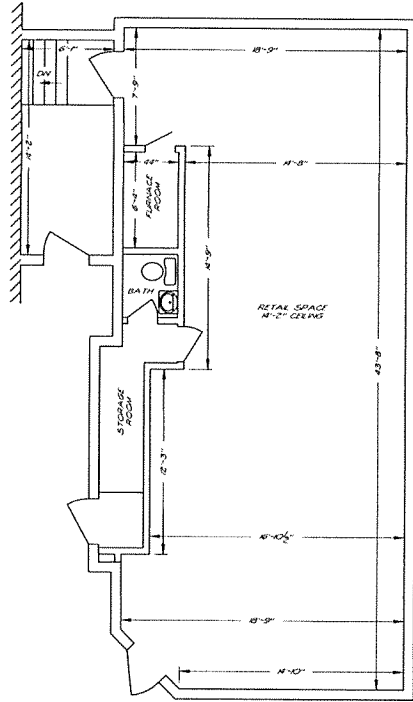
mycarpentry.com

5 5/8

1st Step H

Total Run (G): **48**

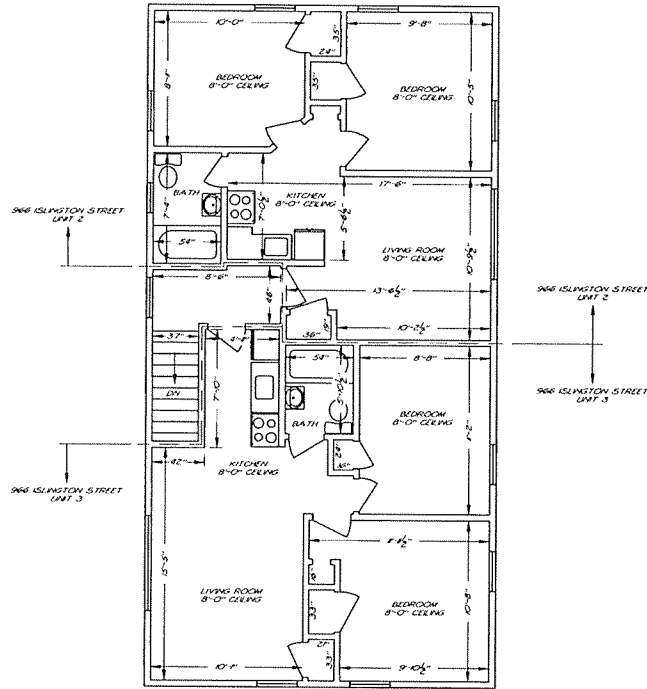




966 ISLINGTON STREET UNIT 1
SCALE: 1/4" = 1'-0"

NOTES:

1. PLAN REFERENCE: CONDOMINIUM SITE PLAN, THE CONDOMINIUMS AT ROCK HILL, UNITS 962, 964, 966-1, 966-2 & 966-3, ISLINGTON STREET & SPINNEY ROAD, PORTSMOUTH, NEW HAMPSHIRE, DATED DECEMBER 21, 2006, BY TRITECH ENGINEERING CORPORATION.
2. 966 ISLINGTON STREET UNIT 1 IS SUBSTANTIALLY COMPLETE.
3. TOTAL RETAIL AREA = 619 SQ. FT.
TOTAL GROSS AREA = 919 SQ. FT.
4. CURRENT OWNER: PREMIER SEACOAST HOLDINGS, LLC
P.O. BOX 551
PORTSMOUTH, NH 03802



966 ISLINGTON STREET UNITS 2 & 3
SCALE: 1/4" = 1'-0"

NOTES:

1. PLAN REFERENCE: CONDOMINIUM SITE PLAN, THE CONDOMINIUMS AT ROCK HILL, UNITS 962, 964, 966-1, 966-2 & 966-3, ISLINGTON STREET & SPINNEY ROAD, PORTSMOUTH, NEW HAMPSHIRE, DATED DECEMBER 21, 2006, BY TRITECH ENGINEERING CORPORATION.
2. 966 ISLINGTON STREET UNIT 2 & UNIT 3 ARE SUBSTANTIALLY COMPLETE.
3. UNIT 2 TOTAL LIVING AREA = 439 SQ. FT.
UNIT 3 TOTAL LIVING AREA = 480 SQ. FT.
4. CURRENT OWNER: PREMIER SEACOAST HOLDINGS, LLC
P.O. BOX 551
PORTSMOUTH, NH 03802

CERTIFICATION:

I HEREBY CERTIFY THAT THIS FLOOR PLAN IS ACCURATE AND COMPLES WITH RSA 556-B:25.9. ALL UNITS DEPICTED HEREON ARE SUBSTANTIALLY COMPLETE.

[Signature] 12/27/06
ROBERT J. STORILL, P.E. (1993) DATE

TRITECH
ENGINEERING CORPORATION

700 CENTRAL AVENUE
PORTSMOUTH, NH 03803
TEL: 603 748 8707
FAX: 603 748 8830

REVISIONS
DATE DESCRIPTION

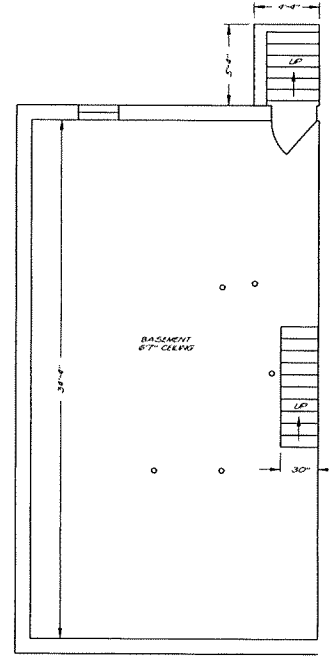
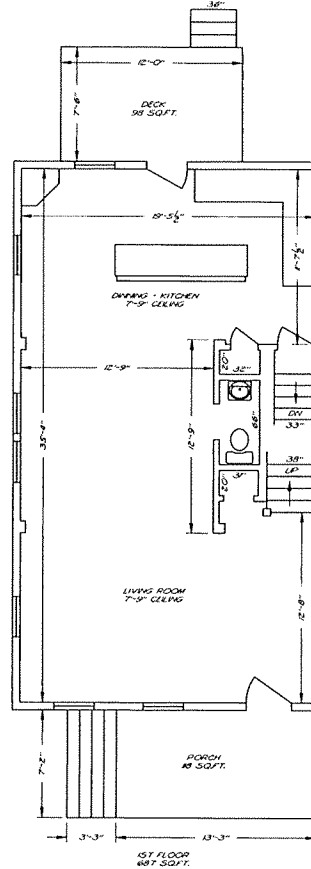
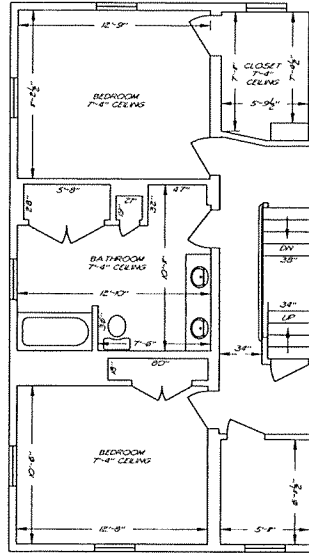
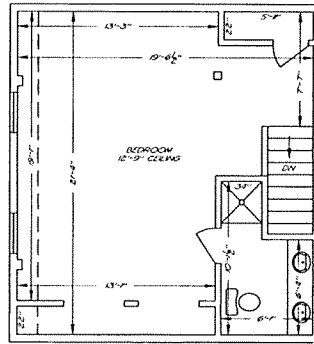


CONDOMINIUM FLOOR PLANS
THE CONDOMINIUMS AT ROCK HILL
UNITS 966-1, 966-2 & 966-3
966 ISLINGTON STREET
PORTSMOUTH, NEW HAMPSHIRE
DECEMBER 21, 2006 JOB NO. 06643
SCALE: 1/4" = 1'-0"

SHEET NO.

A-966

D-34468 sheet 4 of 4



962 ISLINGTON STREET
SCALE: 1/4" = 1'-0"

NOTES:

1. PLAN REFERENCE: "CONDOMINIUM SITE PLAN, THE CONDOMINIUMS AT ROCK HILL, UNITS 962, 964, 965-1, 966-2, 966A-3, ISLINGTON STREET & SPRING ROAD, PORTSMOUTH, NEW HAMPSHIRE" DATED DECEMBER 27, 2006, BY TRITECH ENGINEERING CORPORATION.
2. 962 ISLINGTON STREET IS SUBSTANTIALLY COMPLETE.
3. TOTAL LIVING AREA = 1,773 SQ. FT.
TOTAL GROSS AREA = 2,664 SQ. FT.
4. FINISHED FLOOR ELEVATION OF 1ST FLOOR = 103.92'.
5. CURRENT OWNER: PREMIER SEACOST HOLDINGS, LLC
P.O. BOX 851
PORTSMOUTH, NH 03802

CERTIFICATION:

I HEREBY CERTIFY THAT THIS FLOOR PLAN IS ACCURATE AND COMPLETS WITH FOR 555-0120 #. ALL UNITS DEPICTED HEREON ARE SUBSTANTIALLY COMPLETE.
[Signature] 12/27/06
852091 - S10002, PLE 19101 DATE

TRITECH
ENGINEERING CORPORATION

700 CENTRAL AVENUE
PORTSMOUTH, NEW HAMPSHIRE 03801
TEL: 603 852 3830
FAX: 603 852 3830

REVISIONS
DATE DESCRIPTION

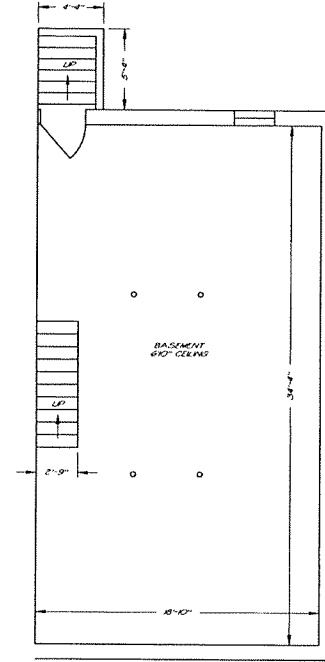
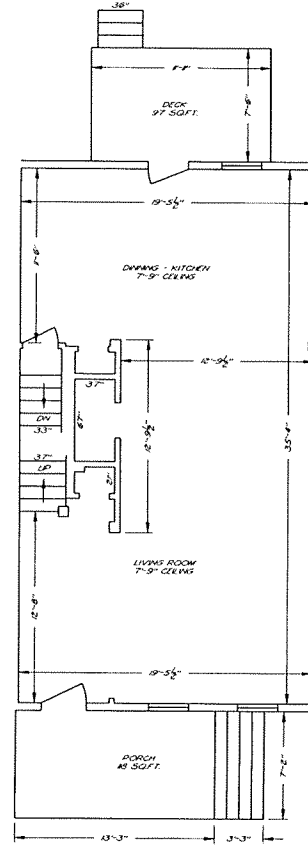
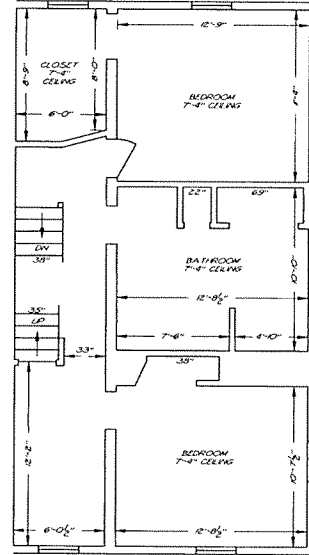
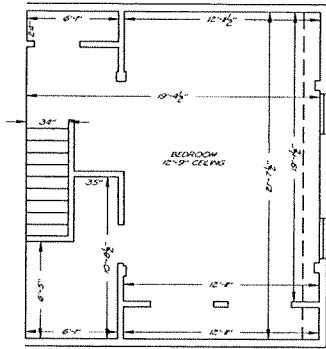


CONDOMINIUM FLOOR PLANS
THE CONDOMINIUMS AT ROCK HILL
962 ISLINGTON STREET
962 ISLINGTON STREET
PORTSMOUTH, NEW HAMPSHIRE
DECEMBER 25, 2006 JOB No. 0643
SCALE: 1/4" = 1'-0"

SHEET NO.

A-962

D-34468 sheet 2 of 4



964 ISLINGTON STREET
SCALE: 1/4" = 1'-0"

NOTES:

1. PLAN REFERENCE: CONDOMINIUM SITE PLAN, THE CONDOMINIUMS AT ROCK HILL, UNITS 962, 964 966-1, SEE-2, 8950-S, ISLINGTON STREET & SPRING ROAD, PORTSMOUTH, NEW HAMPSHIRE, DATED DECEMBER 21, 2006, BY TRITECH ENGINEERING CORPORATION.
2. 964 ISLINGTON STREET IS SUBSTANTIALLY COMPLETE.
3. TOTAL LIVING AREA = 1,782 SQ. FT.
TOTAL GROSS AREA = 2,665 SQ. FT.
4. FINISHED FLOOR ELEVATION OF 1ST FLOOR = 103.92'.
5. CURRENT OWNER: PREMIER SEACOAST HOLDINGS, LLC
P.O. BOX 961
PORTSMOUTH, NH 03802

CERTIFICATION:

I HEREBY CERTIFY THAT THIS FLOOR PLAN IS ACCURATE AND COMPLES WITH SEA 555-8:2011. ALL DIMS DUCTED HEREON ARE SUBSTANTIALLY COMPLETE.

Robert J. Gravel 12/21/06
ROBERT J. GRAVEL, P.E. #3903 DATE

D-34468 sheet 3 of 4

TRITECH
ENGINEERING CORPORATION

700 CENTRAL AVENUE
DORR, NEW HAMPSHIRE 03820
P.O. BOX 9742
PORTSMOUTH, NH 03802

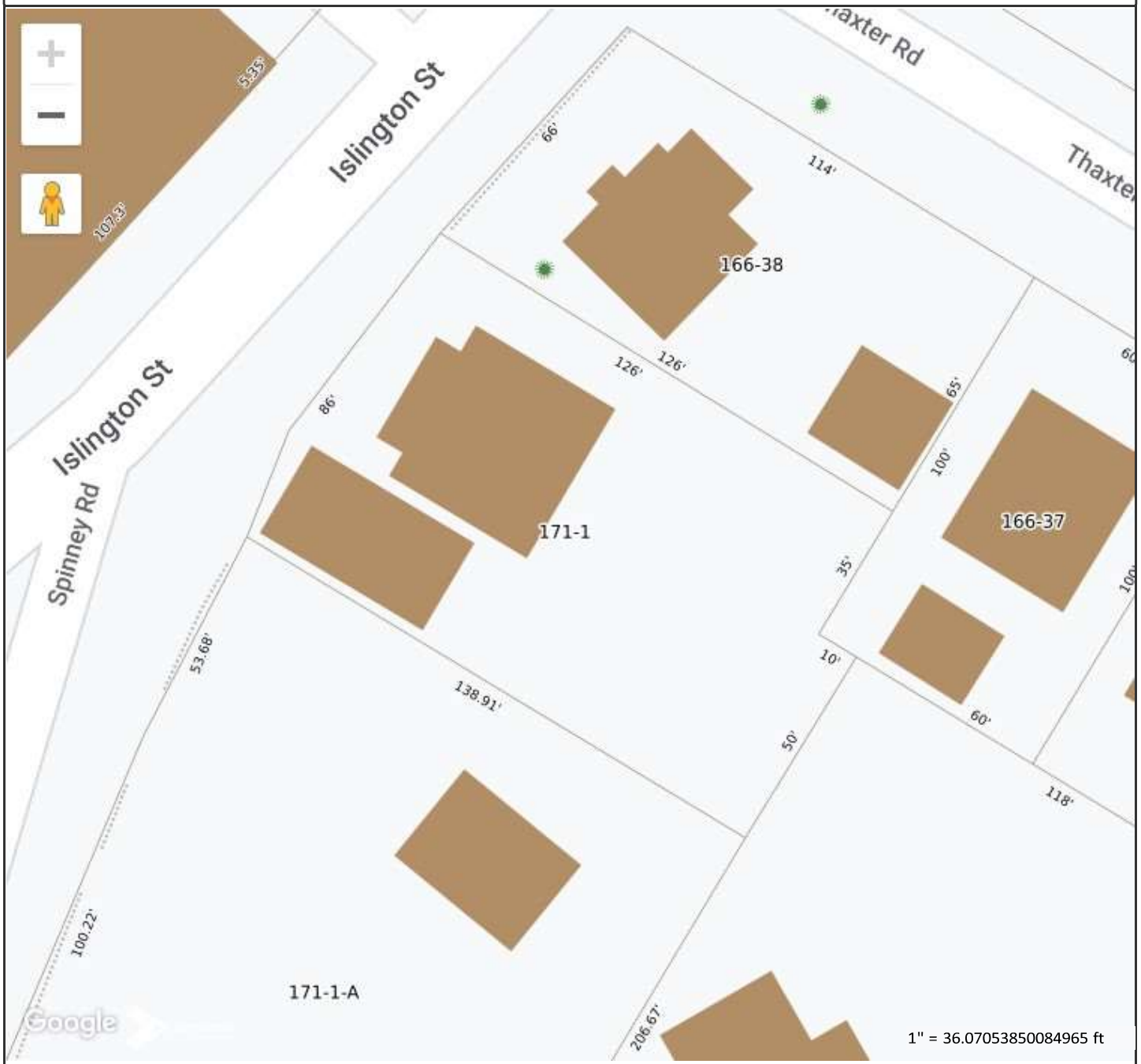
REVISIONS
DATE: DESCRIPTION:



CONDOMINIUM FLOOR PLANS
THE CONDOMINIUMS AT ROCK HILL
964 ISLINGTON STREET
PORTSMOUTH, NEW HAMPSHIRE
DECEMBER 21, 2006 JOB NO. 06943
SCALE: 1/4" = 1'-0"

SHEET NO. **A-964**

962, 964, 966 Islington St



Condos at Rock Hill
964 Islington St.
Portsmouth NH 03801

Date: July 25, 2024

To: Inspectors office

From: Jeremy Shaw, President of the condo association

Ref: Replacement of stairs at both ends of the porch in front of 962 and 964 Islington St.

The association has agreed to replace the stairs that are awkward to climb, and we believe do not meet building codes. We wish to replace these with new stairs that will be easier to climb and will comply with existing building codes.

We have appointed Stewart Bradley, a member of our association to manage this project. All communication concerning this project should be with Mr. Bradley.

Thank you.

Jeremy Shaw, President

III. NEW BUSINESS

C. The request of **Ryan and Joanna Brandt (Owners)** for property located at **570 Dennett Street** whereas relief is needed to demolish the existing single car detached garage and construct a new single car garage which requires the following: 1) Variance from Section 10.571 to allow an accessory structure to be located in the required front yard and closer to the street than the principal building; 2) Variance from Section 10.573 to allow a 3 foot secondary front yard where 14 feet are required; and 3) Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 161 Lot 12 and lies within the General Residence A (GRA) District. (LU-24-156)

Existing & Proposed Conditions

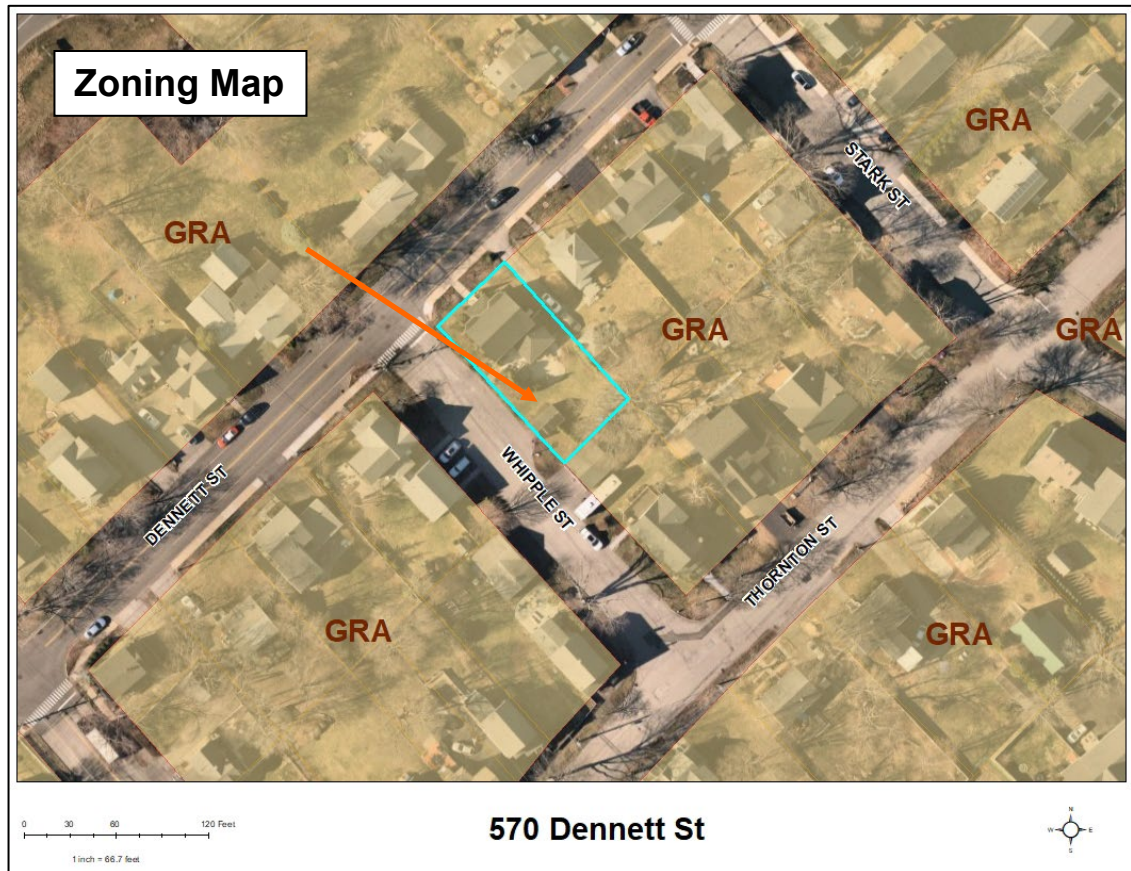
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family residence	*Demolish and reconstruct garage	Primarily residential
<u>Lot area (sq. ft.):</u>	7,405	7,405	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	7,405	7,405	7,500 min.
<u>Lot depth (ft.):</u>	120	120	70 min.
<u>Street Frontage (ft.):</u>	181	181	100 min.
<u>Primary Front Yard (Dennett) (ft.):</u>	6	6	15 min.
<u>Secondary Front Yard (Whipple St) (ft.):</u>	3	3	14 min.
<u>Left Yard (ft.):</u>	13	13	10
<u>Rear Yard (ft.):</u>	19	17	14 min.
<u>Height (ft.):</u>	<35	Shed: 14	35 max.
<u>Building Coverage (%):</u>	23	24	25 max.
<u>Open Space Coverage (%):</u>	>30	>30	30 min.
<u>Parking:</u>	2	2	2
<u>Estimated Age of Structure:</u>	1903	Variance request(s) shown in red.	

***Relief needed to construct an accessory structure in the front yard area and closer to the street than the principal structure**

Other Permits/Approvals Required

- Building Permit

Neighborhood Context



Previous Board of Adjustment Actions

August 9, 1988 – The Board **granted** the requested for the following Variance from Article III, Section 10-302 to allow the construction of a 406 s.f. deck with 25.57% lot coverage where a 20% lot coverage is allowed.

Planning Department Comments

The applicant is requesting relief to demolish the existing garage and construct a new garage in the same location. The new structure will be slightly larger to accommodate a modern car. Staff believe the difference between the existing building coverage condition and the 1988 variance may have to do with changes on the property. It is also possible that the proposed 408 sf deck was never built as the current building records do not show a deck with an area of 408 sf.

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.

Ryan & Joanna Brandt
570 Dennett St.
Portsmouth, NH 03801

Aug. 27, 2024

City of Portsmouth
Zoning Board of Adjustment
c/o Planning Department
1 Junkins Ave., 3rd Floor
Portsmouth, NH 03801

Re: Variance application for Ryan & Joanna Brandt, 570 Dennett St., MapGeo Property ID: 0161-0012-0000, General Residence A (GRA) zone

Dear members of the Zoning Board of Adjustment (and Planning Dept. staff):

This letter supplements the Land Use Application form submitted online as a part of the variance application for the single-car detached garage replacement project at my property. This letter describes submitted exhibits, then the specific zoning ordinance sections for which variances are requested, then addresses (with references to relevant exhibits) the facts and details for how the proposed project meets each of the ordinance criteria.

The variances are requested to execute the following project on my property:

- Demolish the existing, dilapidated single-car garage and concrete pad on the premises.
- Replace this with a single-car garage and concrete pad in the exact same location within the property, expanding the width by 2 feet toward the rear property line and the depth into my property by 4 feet.

Given the state of the existing garage that is falling into disrepair, is at risk of collapsing due to rot and not being weather tight, and is an eyesore within the neighborhood, this proposal is reasonable. No fair and substantial relationship exists between the purposes of the dimensional requirements from which relief is sought and the proposed project. The facts demonstrated by this application meet all the variance criteria set out in Portsmouth's Zoning Ordinance and NH statutory and common law.

Submitted Exhibits

Exhibits are numbered/lettered and defined below.

1. Site layout:
 - a. Existing conditions property sketch
 - b. Proposed garage overlay on existing conditions property sketch
2. New garage proposal plan, schematics & specs (prepared by Post Woodworking)
3. MapGeo print outs of subject lot (arrow points to existing garage on lot)
4. Photos of existing garage
5. Photos of neighboring lots within two (2) blocks with non-conforming garages
6. Letters of endorsement from abutting neighbors
 - a. MapGeo print-out detailing abutting neighbors' locations to subject lot
 - b. James & Mallory Parkington (592 Dennett St.)
 - c. Randy & Linda Briolat (260 Thornton St.)

- d. James & Jodi Gould (250 Thornton St.)
- e. Richard & Linda Stanwood (566 Dennett St.)

Specific Variance Requests

The existing garage located per Exhibit 1 and pictured in Exhibit 4 is a non-conforming use on a non-conforming lot. I'm seeking the following variances to demolish the existing cement pad and structure and replace it with a new cement pad and structure on the same footprint, expanding by 2 feet in width and 4 feet in depth. Due to the existing structure's location on the lot as well as proposed expansion, variances from the following Zoning Ordinance sections are requested:

1. 10.321 to accommodate the modest enlargement of a lawful non-conforming structure by demolition/replacement not conforming to the below dimensional requirements of the GRA zone.
2. Section 10.521 Table of Dimensional Standards:
 - a. Secondary front setback relief to replace the existing garage on the exact same footprint that has minimal-to-no setback from the property line where a 15-foot setback is required in the GRA zone.
 - b. Rear setback relief to accommodate a 2-foot lengthening of the existing garage's footprint by replacement located 17 feet from the property line where a 20-foot rear yard setback is required in the GRA zone.
3. 10.571 to accommodate the modest enlargement of a lawful non-conforming structure by demolition/replacement in a secondary front yard that is closer to a street (Whipple) than the principal building.

Facts relevant to requested variances

We purchased the property at 570 Dennett St. in 2015, which sits on a corner lot at the intersection of Dennett Street and Whipple Street. The existing single-car detached garage was a part of the property at that time of purchase and was in a state of disrepair. The garage is of unknown age. It has continued to deteriorate and rot since we purchased the property while we've explored a variety of options for what to do with it.

At this time, the walls are bowed, the roof has rotted through, and the roof is at risk of collapse, particularly under the weight of snow each winter. Multiple contractors have advised renovation consistent with current building practices is not possible.

The proposed project will replace this neighborhood eyesore with a new structure that improves the neighborhood on the exact same footprint as the existing structure, with very modest expansion of dimensions (2 feet width west toward the rear property line; 4 feet depth deeper into our property). The expansion will accommodate larger cars common today – the current 12' x 20' dimensions only fits the smallest of present-day vehicles when parked very carefully. Cars have gotten taller and wider.

As seen in Exhibit 6, all abutting neighbors have written letters in support of this modest project. This is also far from the only non-conforming garage in the immediate neighborhood. Exhibit 5 details 14 lots within just two blocks of our lot that have non-conforming garages obvious from the street – there may be more, and I only accounted for garages, not other non-conforming structures.

In particular, the Briolats at 260 Thornton Street have a precedent garage on the same street (Whipple Street) with their larger, two-story, two-car garage within two feet of our shared property line (with our

rear property line) and on the same minimal secondary front setback along Whipple Street as the existing single-story, single-car garage on our property. Our proposed replacement garage is smaller in size and asking for less relief than is required of this existing garage of our abutting neighbors. See photos in Exhibit 4 that show the two garages adjacent to each other.

Variance Criteria Addressed

Porstmouth Zoning (Section 10.233.20 and its subparts) and 10.233.31 restate the N.H. RSA 674:33, I variance criteria. It is reasonable to grant the requested variances.

- I. 10.233.21 – Granting the variance is not contrary to the public interest.

The proposed replacement garage will not negatively impact the essential character of the neighborhood. In fact, it will do the opposite by replacing an old, rundown structure with a new garage design (Exhibit 2). Rather than a base model garage, we are investing more in the replacement garage. Some of the additional-cost features that will enhance the neighborhood's character include a cupola, transom and larger windows, and an upgraded, custom garage door.

MapGeo printouts (Exhibit 3) show several lots in the immediate vicinity of 570 Dennet St. that have older as well as newer replacement garages within less than the required front, side, and/or rear setbacks of neighboring homes. In addition, expansion by 2 feet width and 4 feet deeper into the lot will hardly be noticed as to size, placement and lot coverage. If anything will be noticed at all, it will be a new, well-designed structure that has replaced an old, in-need-of-repair garage.

The modest proposed redevelopment shown in Exhibit 1 does not threaten the public's health, safety or welfare. The existing garage presents a safety hazard for walkers, should it collapse or fall down.

- II. 10.233.22 – The spirit of the ordinance is observed by granting the requested setback variances.

Our lot is a non-conforming lot. General Residence A requires a minimum 100 feet width based on the ordinance. Our lot is 120 feet by 61 feet. As a corner lot that means the 61-foot dimension is considered the width, 39 feet less than the modern ordinance minimum.

If we were to put a garage on our property that abides by the required 15-foot front and 20-foot rear setbacks, the garage would have to be placed in the very center of our lot (a total of 26 feet of available space for the planned 24-foot garage). The spirit of the ordinance considers development on non-conforming lots, but again the specific dimensioning of our lot doesn't allow reasonable proposal to conform to the dimensional requirements. It is reasonable to grant the requested variances to facilitate our proposed, reasonable site improvements.

Since our lot is a corner lot, unnecessary hardship already exists to abide by requirements of having two front yards. In particular, our proposed project complies with the section 10.571 (accessory building closer to a street than the principal building) with our primary, Dennett Street front yard. It is only because of our corner lot that this variance is required, given the existing garage (and its proposed replacement) location closer to Whipple Street than the principal building.

Lastly, the existing structure is in disrepair and at risk of collapse. To expect that it stay put and used as best it can is inconsistent with the ordinance's spirit of promoting safe and appropriate and usable development for us and future owners.

- III. 10.233.23 – Granting the requested setback variance would do substantial justice.

One way to consider if the variance would do substantial justice is to determine if there is any gain to the public that is greater than the loss suffered by the Applicant if the variance is not granted. In this scenario, the public does not “gain” in any way by retaining the existing, rotting structure. Our loss of the opportunity to replace this neighborhood eyesore with one of modern construction and more reasonably sized for use given today’s vehicle sizes provides more gain to the public than the alternative.

- IV. 10.233.24 – Values of surrounding properties are not diminished by granting the requested variances.

The primary way in which the proposed structure may be noticeable in the neighborhood is its width expansion by two feet along Whipple Street, which is not a prominent adjustment. Of course, the other way the proposed structure will potentially influence surrounding properties’ values is by replacing the rundown and rotting structure with a modern one with add-on design features (Exhibit 2) that will enhance the overall look of the neighborhood. There is no foreseeable way the values of surrounding properties would be diminished by granting the requested variance; if anything, it will do the opposite.

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

The existing structure’s placement on the lot is non-conforming. As explained thoroughly above, the proposed structure would sit on the same footprint, with modest expansion of 2 feet in width and 4 feet in depth. Because of the lot’s 61 feet in width, literal enforcement of the provisions of the Ordinance would require putting the proposed structure squarely in the middle of the property (24 feet in depth between required setbacks of 15 and 20 feet). Doing so would completely ruin the lot and property, removing any usable backyard. Also, given a variety of hard and soft landscaping within our yard that would have to be completely demolished and redeveloped, it would require major investment and reduce our property value in the process.

Conclusion

The above details and exhibits demonstrate the proposed project meets all of the criteria required to grant the requested variance. This is an investment made by our household that will inherently improve the neighborhood. The proposed plan also uses the existing structure’s footprint to limit any adjustments to the lot’s existing layout. It will not threaten the public health, safety and welfare which is the general purpose of the city’s Zoning Ordinance. The requested variances are reasonable and should be granted.

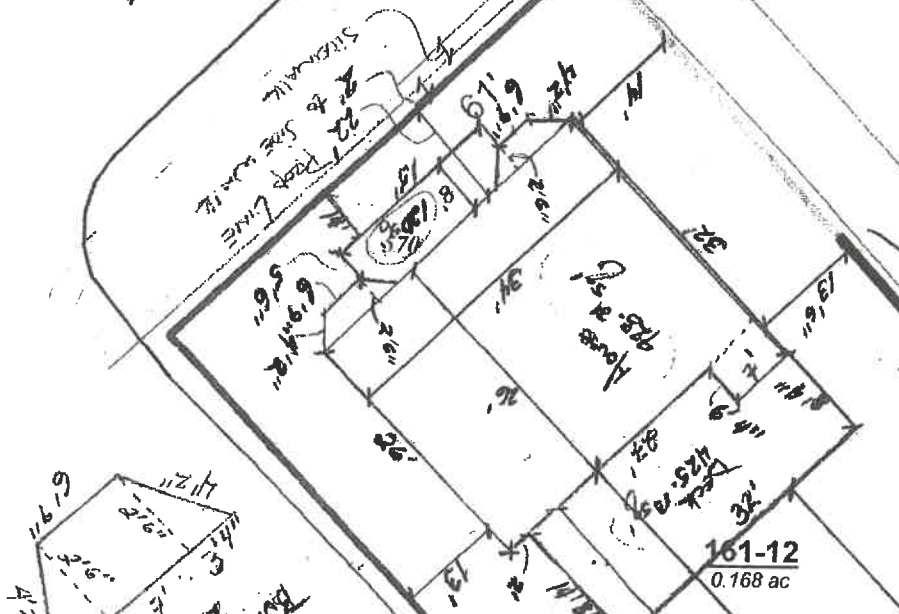
161-30
0.444 ac

DENNETT ST.

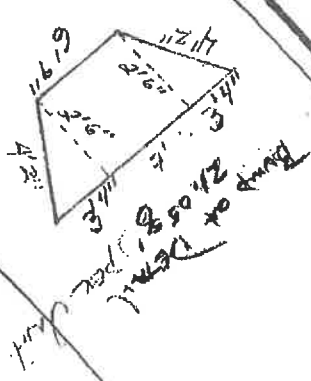
67' 566

EXHIBIT 1A
161-10-1
0.168 ac
Existing Conditions
570 DENNETT ST.
120'

161-11
0.168 ac



161-12
0.168 ac



161-7
0.336 ac
150' x 15'

WHIPPLE ST.

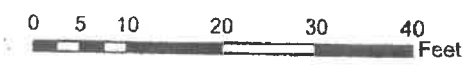


161-6
0.168 ac

161-18
0.183 ac

Property Sketch

CURRENT 12' wide
GARAGE 20' deep



101-30
0.444 ac

EXHIBIT 1B

161-10-1
0.168 ac

Existing Conditions
570 DENNETT ST.

161-11
0.168 ac

161-12
0.168 ac

161-7
0.336 ac

161-6
0.168 ac

161-18
0.183 ac

DENNETT ST.

WHIPPLE ST.

61' 566

120'

120'

120'

61'

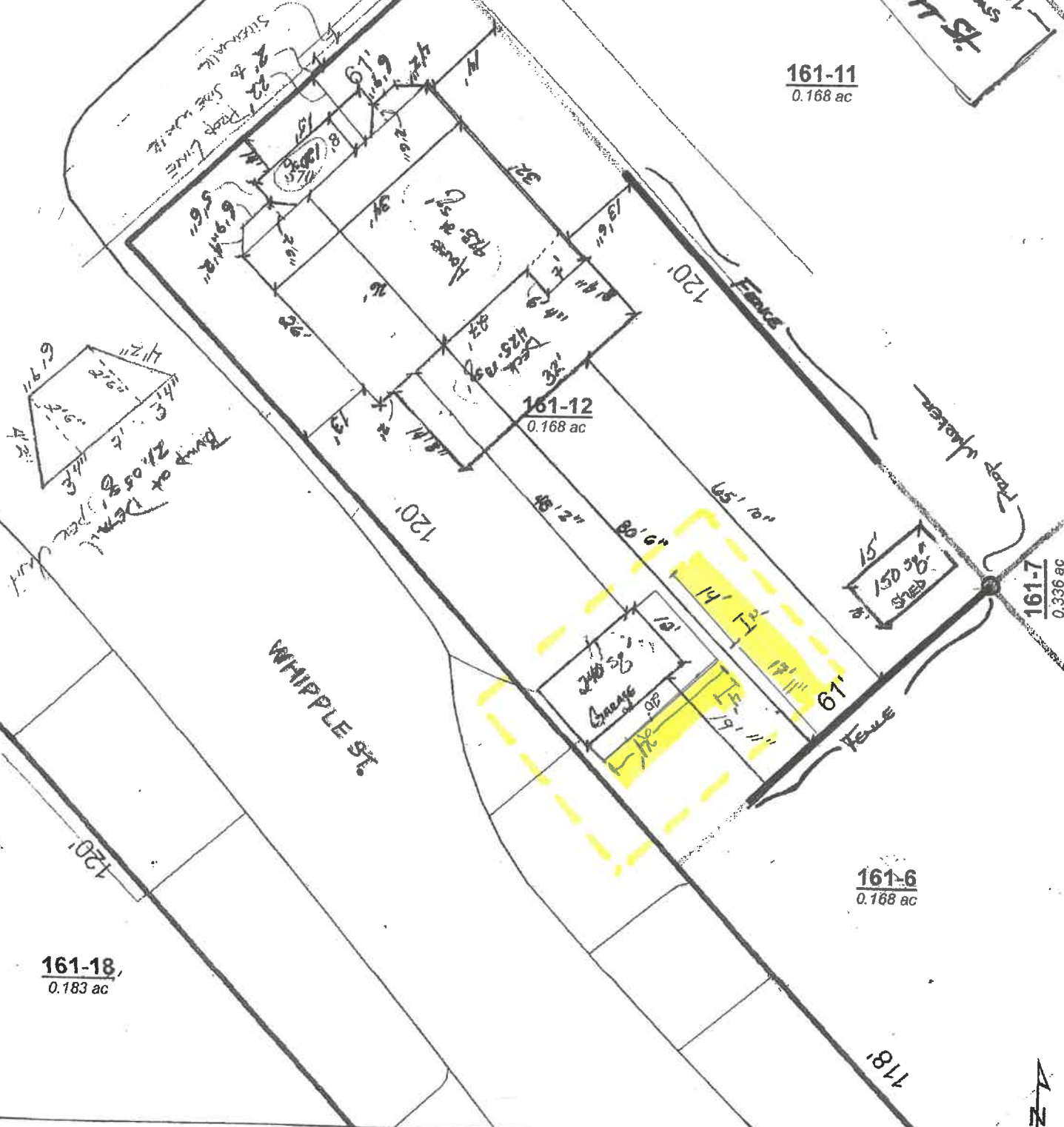
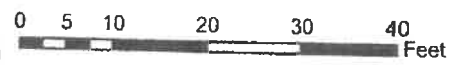
718'

Property Sketch

PROPOSED: 2' wider (14' total)

GARAGE

4' deeper (24' total)



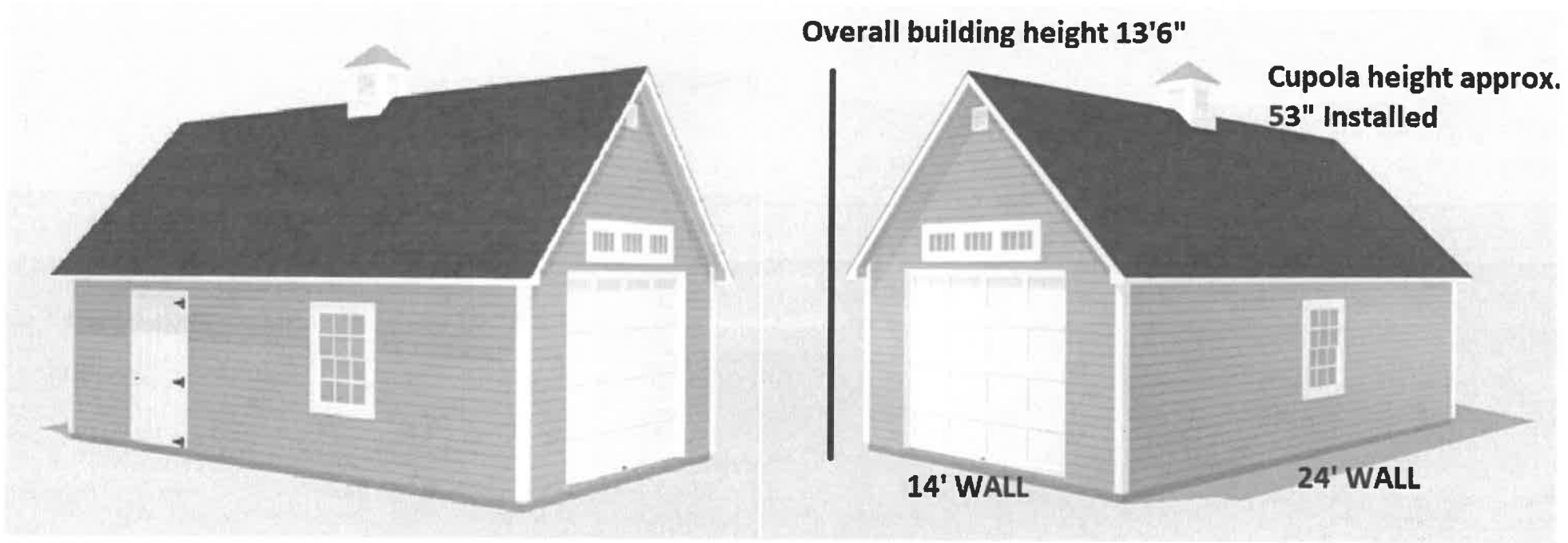
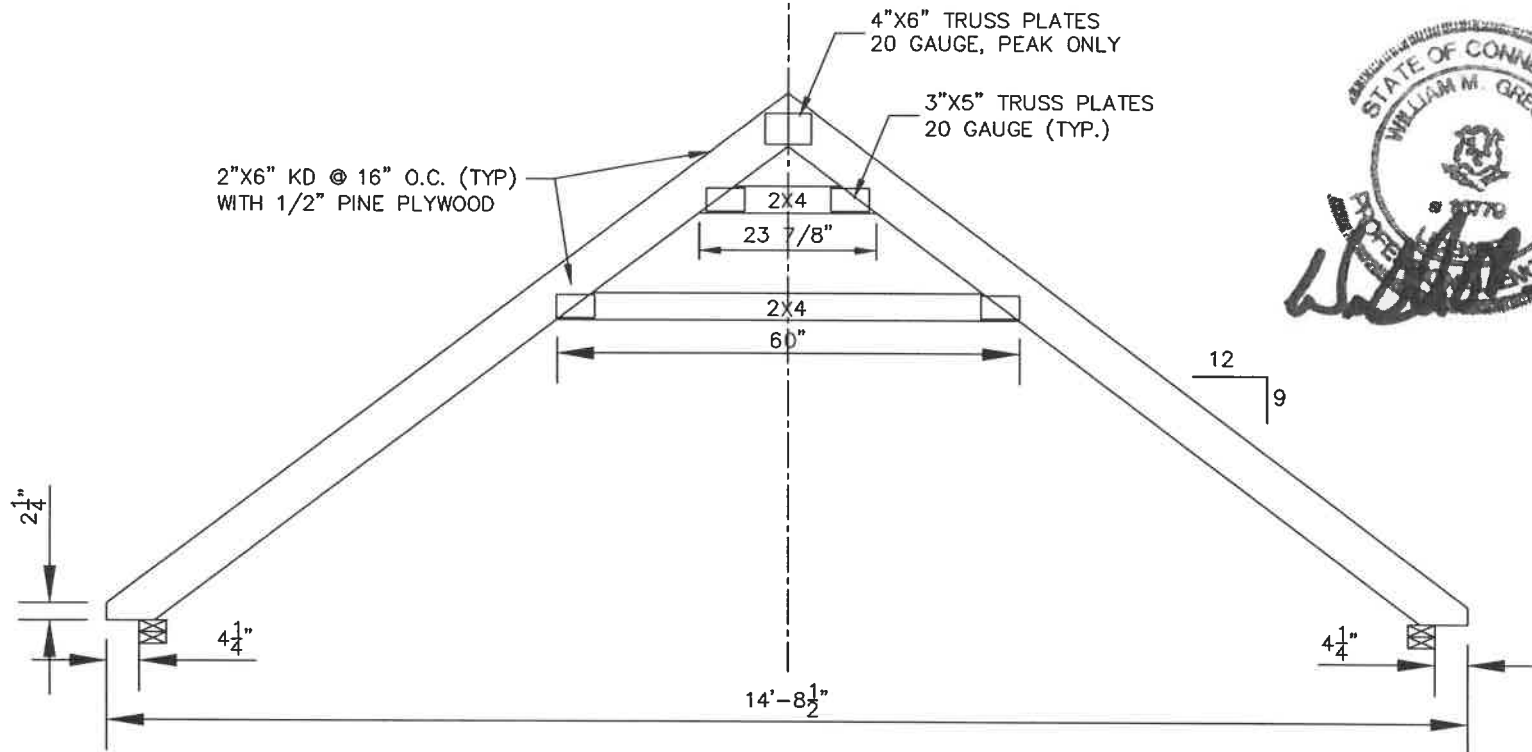
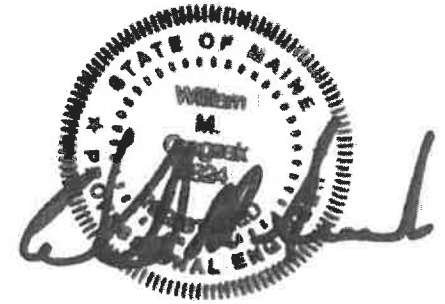
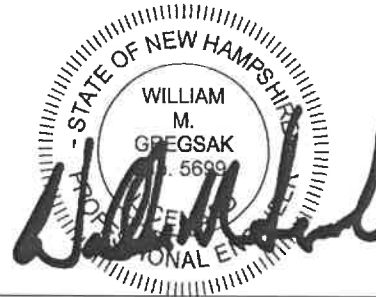


EXHIBIT 2

MAXIMUM GROUND SNOW LOAD = 75 PSF



PREPARED FOR:
 POST WOODWORKING, INC.
 163 KINGSTON ROAD
 DANVILLE, NH 03819
 (866) 794-7433



ROOF TRUSS 14' "A" FRAME

**POST
 WOODWORKING
 INC.
 DANVILLE, NH**

GREGSAK & SONS, INC.



ENGINEERING, ARCHITECTURE
 & CONSTRUCTION MANAGEMENT

P.O. BOX 271
 CHESTER, NEW HAMPSHIRE 03036
 PH: (603) 887-6979
 WWW.GREGSAK.COM

J.N. 2905

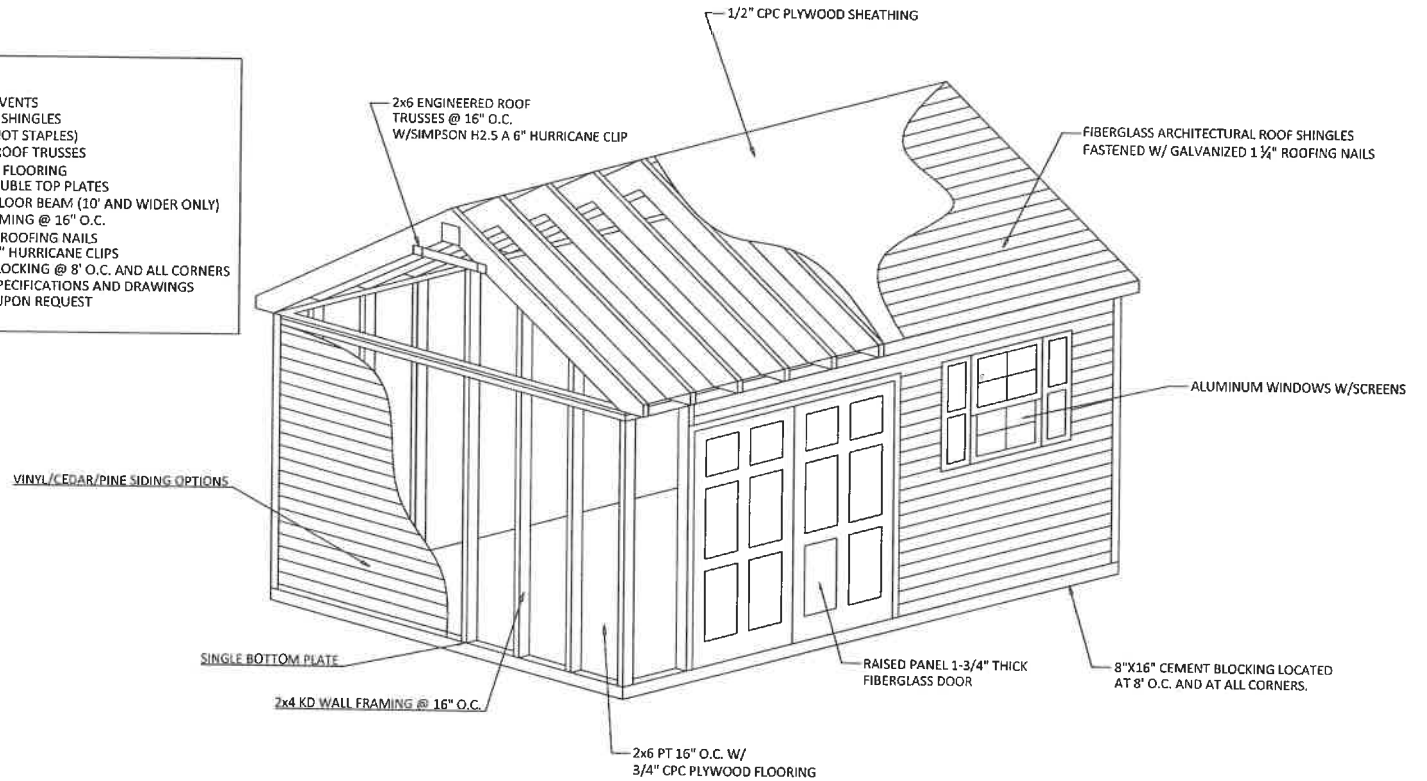
APRIL 2021
 SCALE: 1/2"=1'-0"

EXHIBIT 2

STANDARD FEATURES

VINYL/CEDAR/PINE SIDING OPTIONS
 ALUMINUM WINDOWS W/SCREENS
 ALUMINUM DRIP EDGE ON ALL SIDES
 LOCKING DOOR HANDLE
 FULL 1-3/4" THICK FIBERGLASS DOORS
 DOUBLE 2x DOOR HEADERS W/ JACK STUDS
 ALL PVC TRIM (VINYL SIDED ONLY)
 6' 4 1/2" STANDARD WALL HEIGHT
 ALL FLOORS 10' IN WIDTH (10'x12', 10'x14')
 HAVE RIM JOIST AT 6' 4" SEAM
 ALL FLOORS 12' IN WIDTH WITH A DOUBLE
 JOIST AT THE 6' SEAM
 ALL FLOORS WIDER WILL BE SEAMED AT 8'

SCREENED GABLE VENTS
 FIBERGLASS ROOF SHINGLES
 ROOFING NAILS (NOT STAPLES)
 2x6 LOAD RATED ROOF TRUSSES
 3/4" CPC PLYWOOD FLOORING
 INTERLOCKING DOUBLE TOP PLATES
 DOUBLE CENTER FLOOR BEAM (10' AND WIDER ONLY)
 2x6 PT FLOOR FRAMING @ 16" O.C.
 GALVANIZED 1 1/4" ROOFING NAILS
 SIMPSON H2.5 A 6" HURRICANE CLIPS
 8"x16" CEMENT BLOCKING @ 8' O.C. AND ALL CORNERS
 TRUSS LOADING SPECIFICATIONS AND DRAWINGS
 AVAILABLE UPON REQUEST



GREGSAK ENGINEERING, INC.



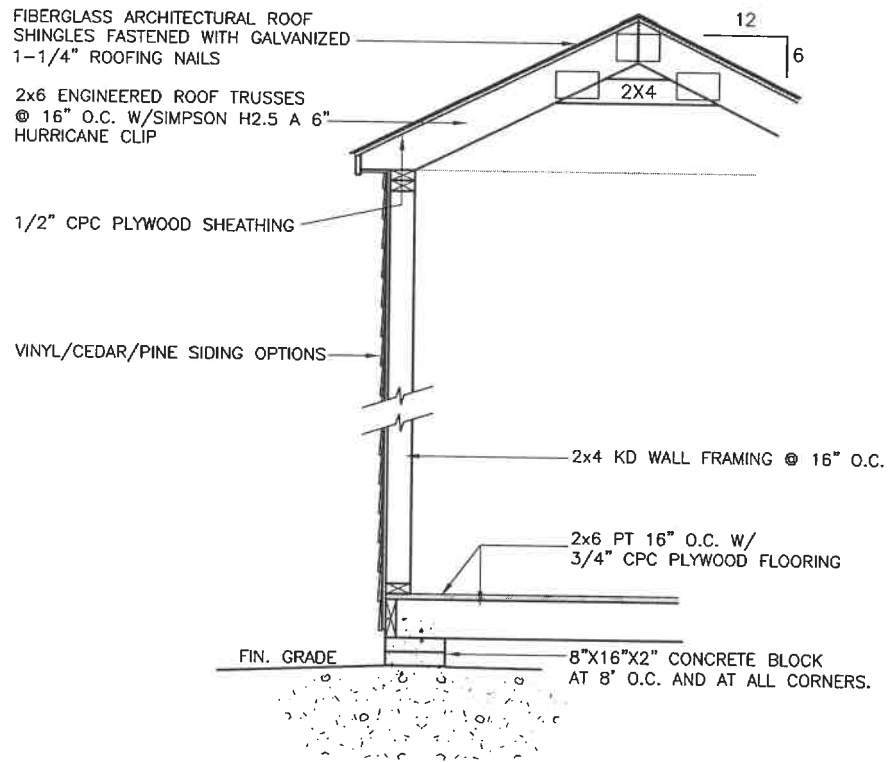
CIVIL AND STRUCTURAL
 ENGINEERS
 P.O. BOX 271
 CHESTER, NEW HAMPSHIRE 03036
 PH: (603) 887-6979
 FAX: (603) 887-6636
 www.gregsak.com

ISOMETRIC VIEW
 POST WOODWORKING TYPICAL SHED DESIGN
 163 KINGSTON ROAD
 DANVILLE NH

PREPARED FOR:
 POST WOODWORKING, INC.
 163 KINGSTON ROAD
 DANVILLE, NH 03819
 (866) 794-7433

Scale: NTS
 APRIL 18, 2016

EXHIBIT 2



GREGSAK ENGINEERING, INC.



CIVIL AND STRUCTURAL ENGINEERS
P.O. BOX 271
CHESTER, NEW HAMPSHIRE 03036
PH: (603) 887-6979
FAX: (603) 887-6636
www.gregsak.com

WALL SECTION
POST WOODWORKING TYPICAL SHED DESIGN
163 KINGSTON ROAD
DANVILLE NH

PREPARED FOR:
POST WOODWORKING, INC.
163 KINGSTON ROAD
DANVILLE, NH 03819
(866) 794-7433

Scale: 3/4"=1'-0"

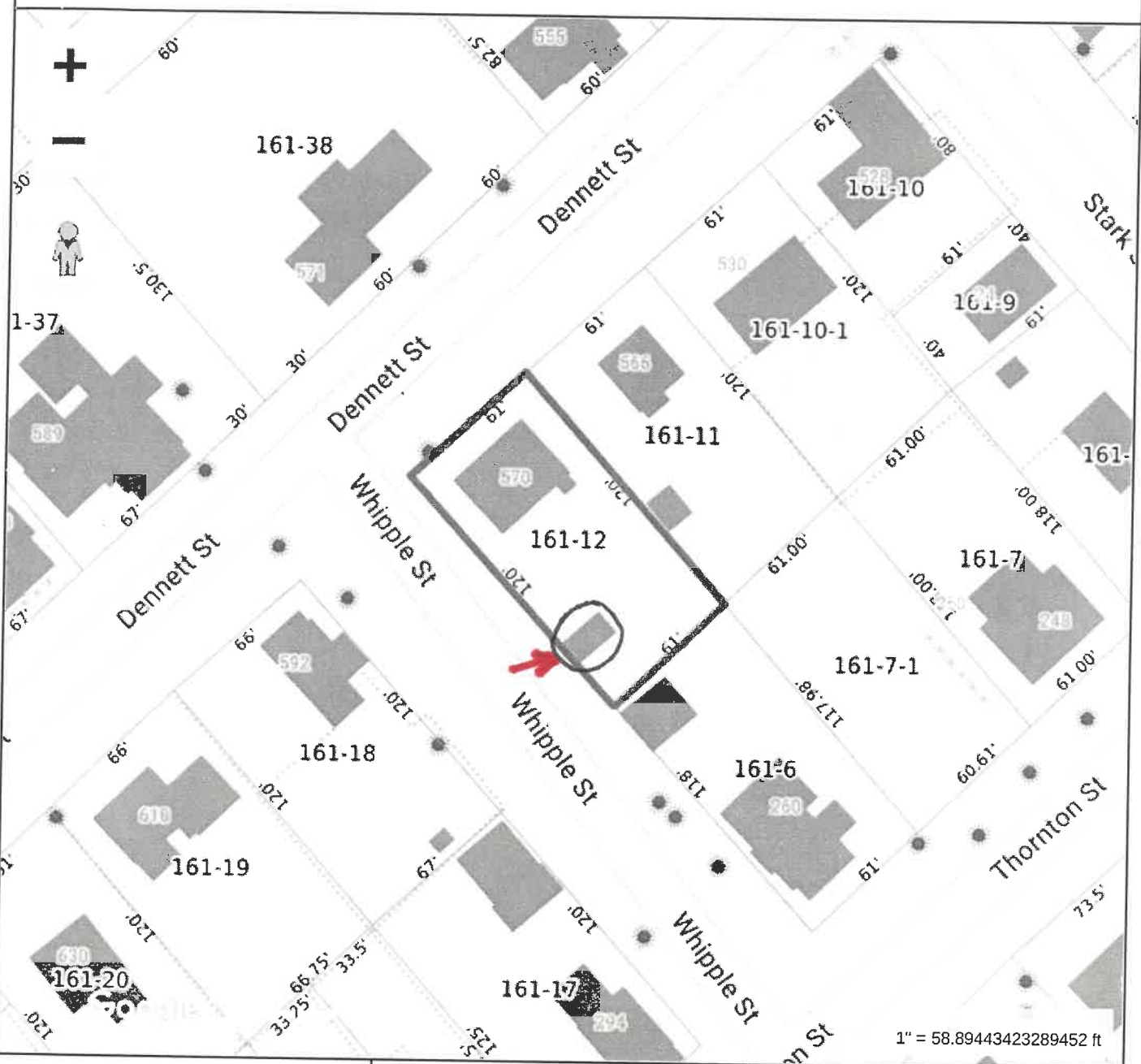


APRIL 18, 2016

JOB # 2430

EXHIBIT 2

MapGeo zoom print-out of subject lot



1" = 58.89443423289452 ft

Property Information

Property ID 0161-0012-0000
 Location 570 DENNETT ST
 Owner BRANDT RYAN M



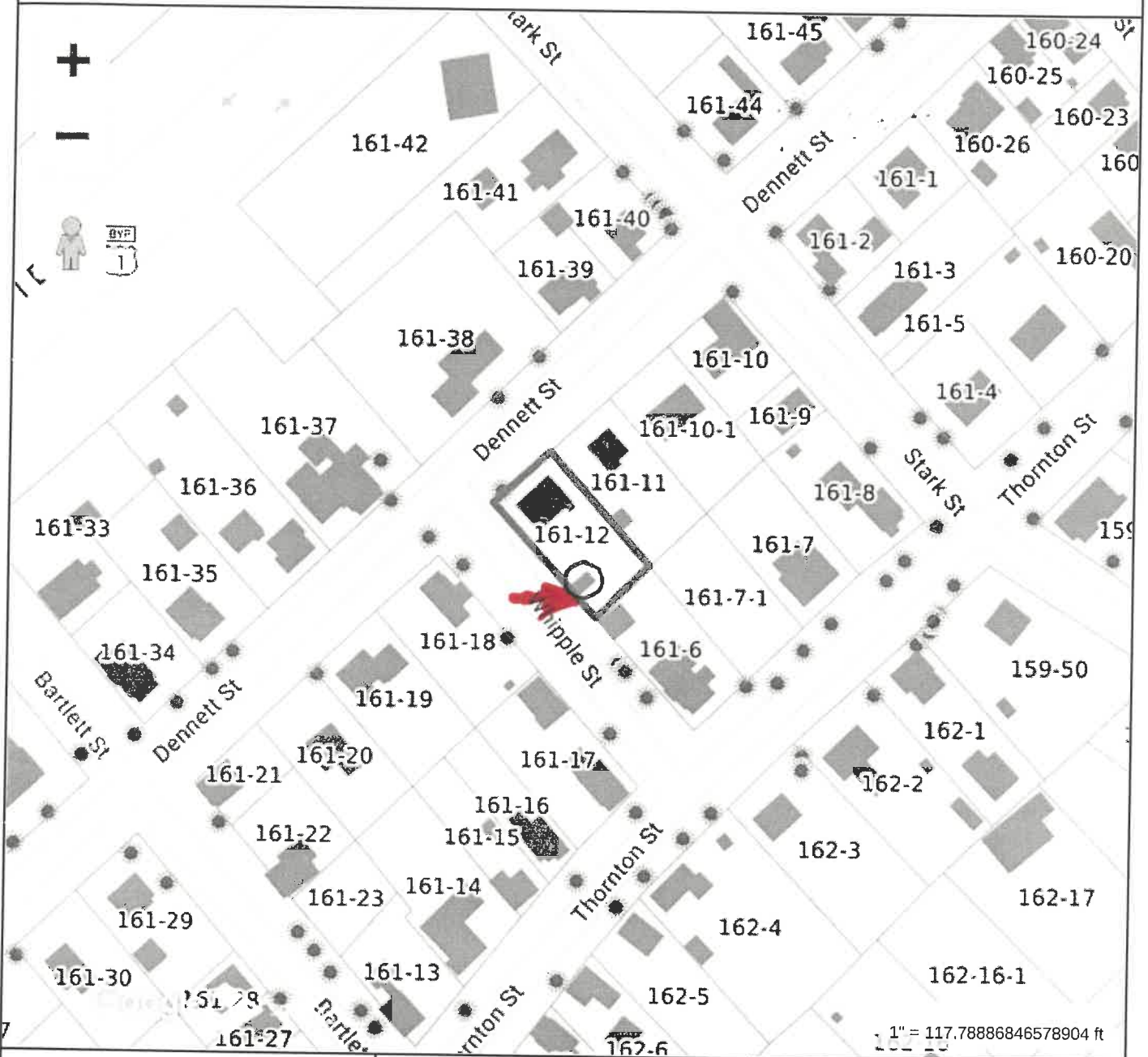
MAP FOR REFERENCE ONLY
 NOT A LEGAL DOCUMENT

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.

570 Dennett St. - Brandt



Property Information	
Property ID	0161-0012-0000
Location	570 DENNETT ST
Owner	BRANDT RYAN M


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.

Existing garage at 570 Dennett St.

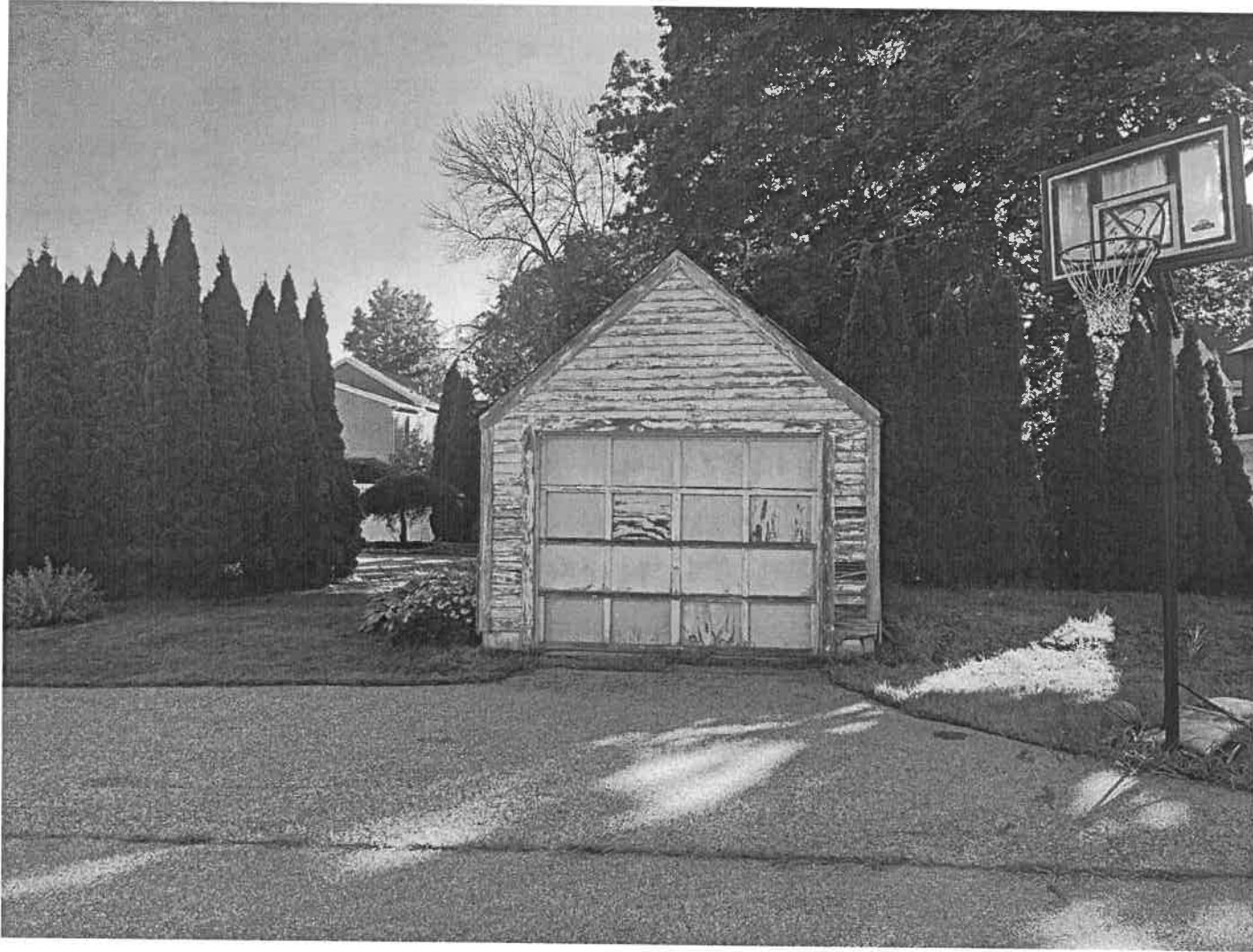
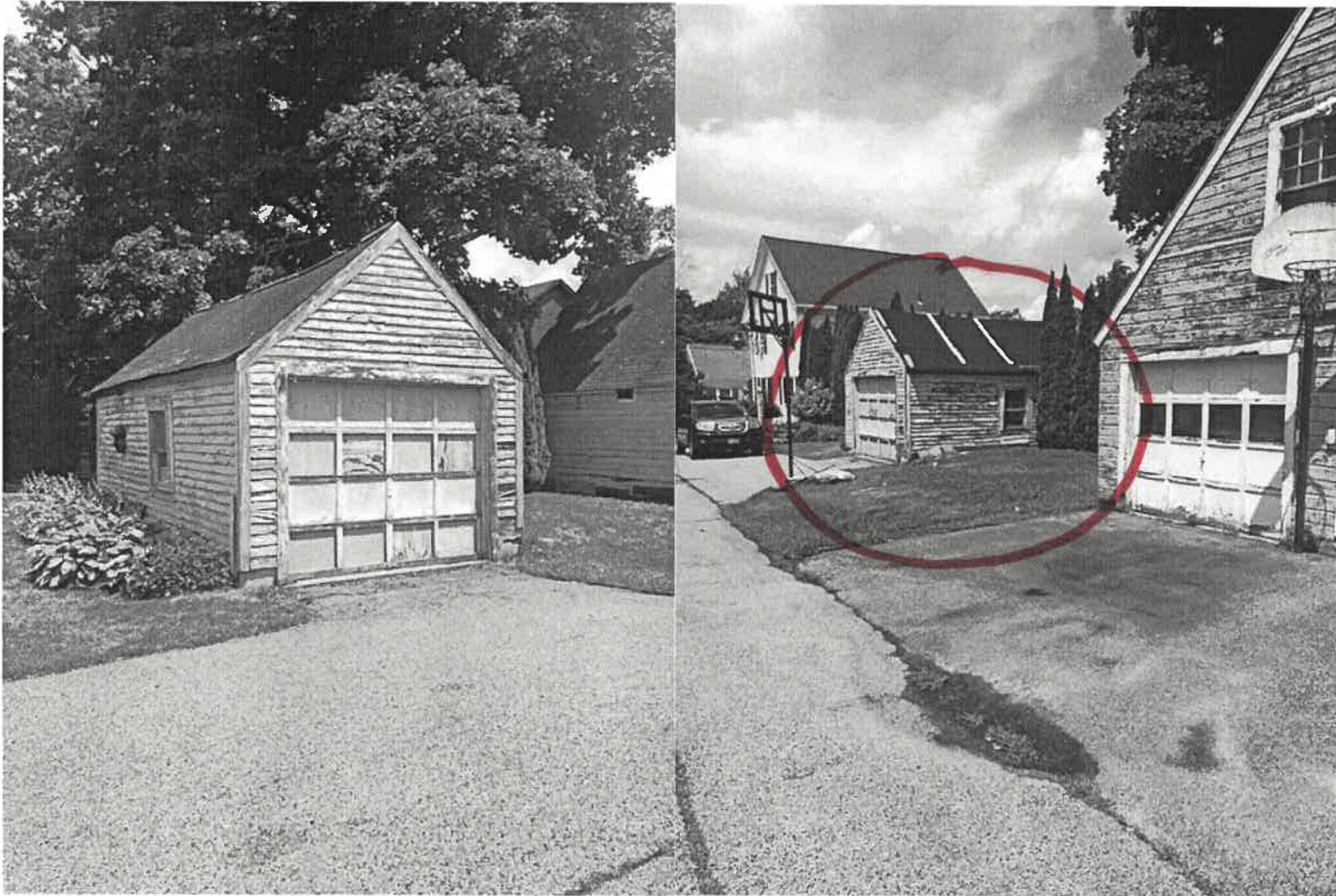


EXHIBIT 4

Existing garage at 570 Dennett St.



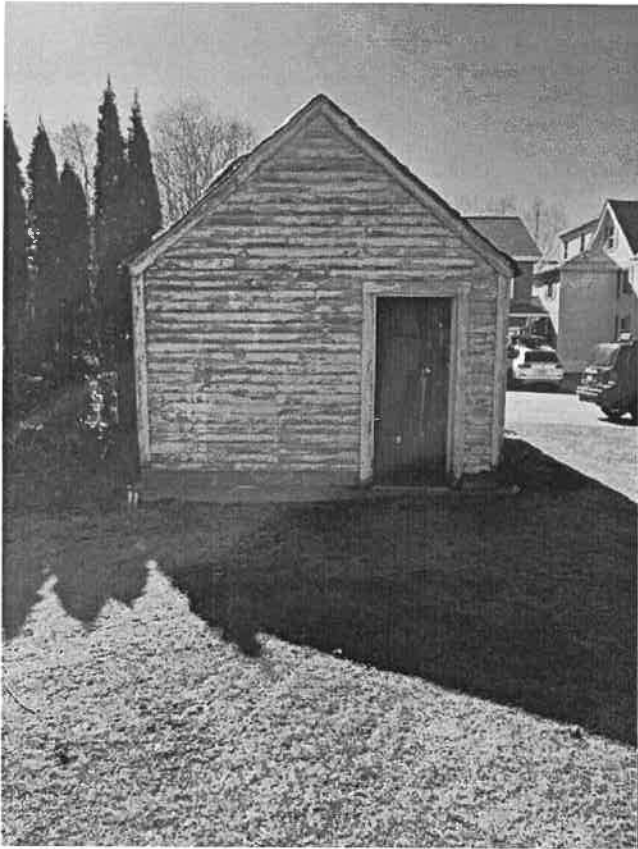


EXHIBIT 4

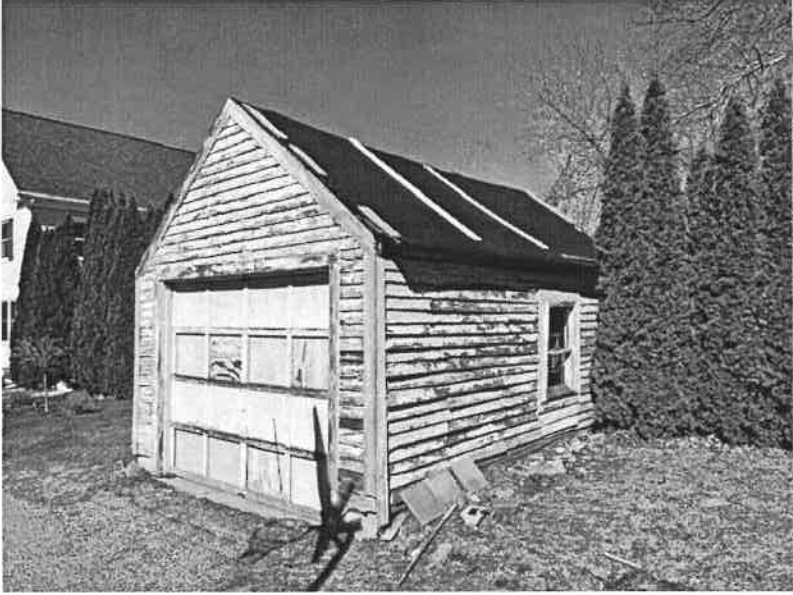



EXHIBIT 4

Neighboring lots within two blocks with non-conforming garages



Property Information	
Property ID	D161-0012-0000
Location	570 DENNETT ST
Owner	BRANDT RYAN M


MAP FOR REFERENCE ONLY
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 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.

Neighboring lots within two (2) blocks with non-conforming garages

1. 260 Thornton (abutter with garage on property line and no set back directly next to Brandt lot)



2. 566 Thornton (abutter with detached garage with no side setback next to Brandt lot)



3. 294 Thornton St. (across-Whipple neighbor without req'd side nor front setback)



4. 555 Dennett St.



5. 508 Dennett St.



6. 460 Dennett St.



7. 493 Dennett St.



8. 295 Thornton St.



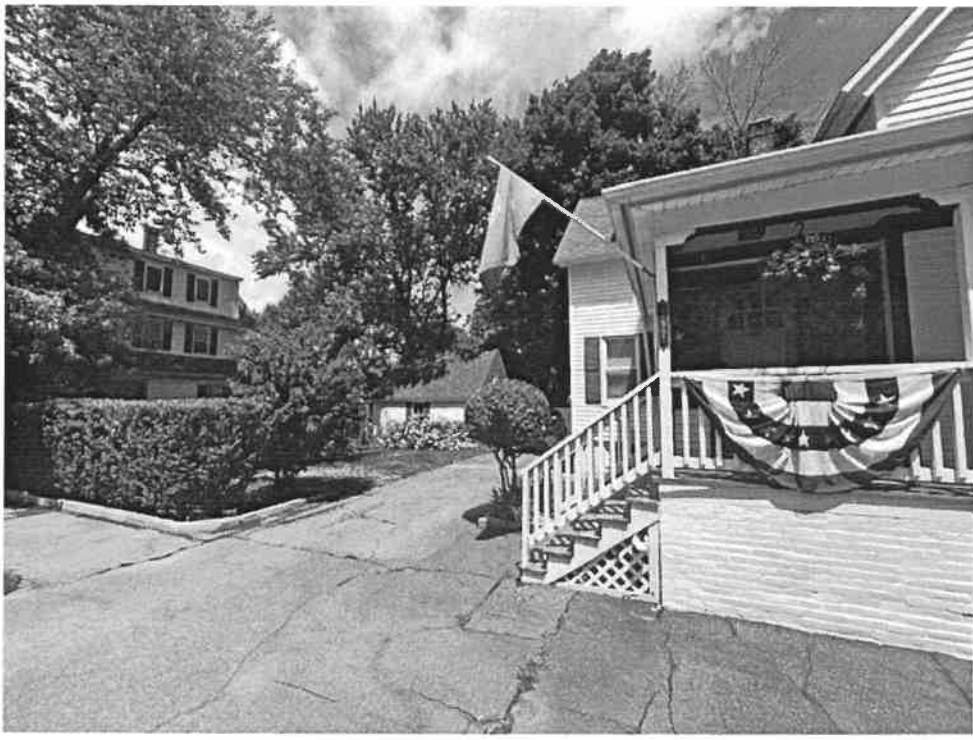
9. 325 Thornton St. & 337 Thornton St.



10. 340 Thornton St.



11. 397 Bartlett St.



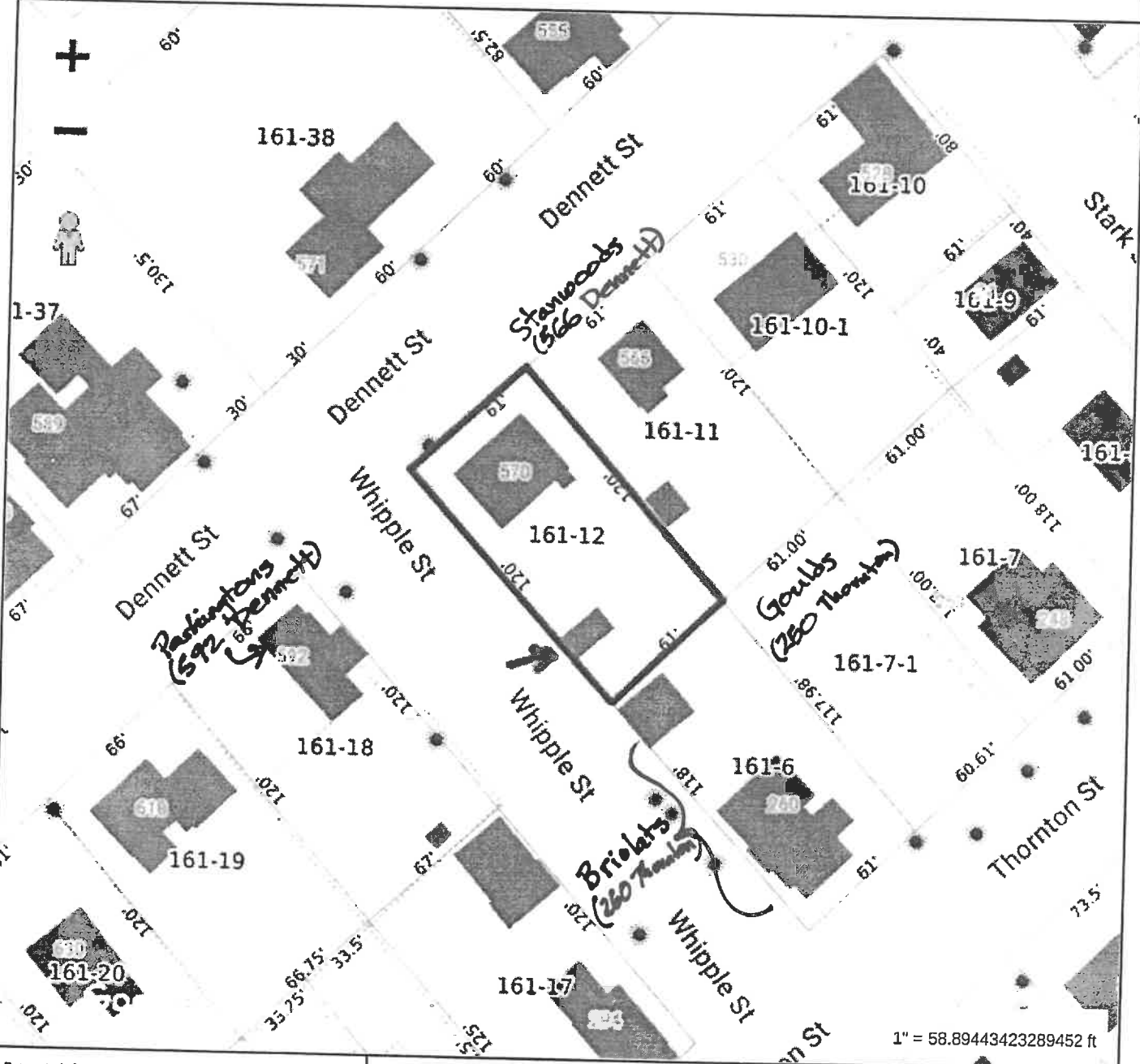
12. 623 Dennett St.



13. 589 Dennett St.



MapGeo zoom print-out of subject lot



Property Information
 Property ID 0161-0012-0000
 Location 570 DENNETT ST
 Owner BRANDT RYAN M



MAP FOR REFERENCE ONLY
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Geometry updated 08/24/2023
 Data updated 3/9/2022

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July 11, 2024

City of Portsmouth
Zoning Board of Adjustment
c/o Planning Department
1 Junkins Ave., 3rd Floor
Portsmouth, NH 03801

To: Members of Zoning Board of Adjustment & Planning Dept. Staff:

Mallory and I live with our family at 592 Dennett Street. We have been in our house since 2009. Our property directly abuts the property of Ryan and Joanna Brandt at 570 Dennett Street (we share common parking on Whipple Street). We are delighted to hear that the Brandt's plan to renovate/rebuild their garage, which is in a state of disrepair and has been for a long time. Ryan has shared their plans for a future garage in the same location and I understand that modest dimensional variances will be required to accommodate a new usable 1-car garage that is built to modern day standards. We fully support granting required variance(s) and are confident that this project would have no negative effect on our property and would in fact improve the overall condition and value of the neighborhood and surrounding properties. Please contact me should you have any questions.

Sincerely,



James Parkington
592 Dennett Street
Portsmouth, NH 03801
(603) 380-4883

Linda Briolat <lbriolat@comcast.net>

7/13/2024 2:03 PM

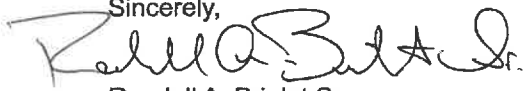
To rbriolatsr@comcast.net

City of Portsmouth
Zoning Board of Adjustment
c/o Planning Department
1 Junkins Ave.
Portsmouth, NH 03801

Members of Zoning Board of Adjustment and Planning Dept. Staff

I live at 260 Thornton Street. My property directly abuts the property of Ryan and Joanne Brandt at 570 Dennett Street. I am writing in support of their variance application. The Brandt's current garage is dilapidated. Ryan has shared the plans for the future garage and I feel confident it would not negatively impact my property but improve the overall condition and value of the neighborhood. Please contact me should you have any questions.

Sincerely,



Randall A. Briolat Sr

City of Portsmouth
Zoning Board of Adjustment
c/o Planning Dept.
1 Junkins Ave., 3rd Floor
Portsmouth, NH 03801

Members of the Zoning Board of Adjustment (and planning Department staff):

We live at 250 Thornton Street. Our property directly abuts the property of Ryan and Joanna Brandt at 570 Dennett St. We are writing in support of their variance application.

The Brandt's current garage is dilapidated. Ryan has shared the Brandt's plans for the future garage, and we feel confident it would not only not negatively affect my property and other abutter's properties, but would improve the overall condition and value of the neighborhood and properties therein.

This project has our full support.

Please contact us directly should you have any questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "James & Jodi Gould". The signature is written in dark ink and is positioned above the typed name.

James & Jodi Gould
250 Thornton Street
Portsmouth, NH 03801
860-428-1384

Sent from my iPad
July 17, 2024

City of Portsmouth
Zoning Board of Adjustment
c/o Planning Department
1 Junkins Ave., 3rd Floor
Portsmouth, N.H. 03801

Members of the Zoning Board of Adjustment (and Planning Dept. staff):

We live at 566 Dennett Street. Our property abuts the property of Ryan and Joanna Brandt at 570 Dennett Street. We are writing in support of their variance application. They want to replace their garage and Ryan has shared the Brandts' plans for their future garage. We feel confident it would not only not negatively affect our property and other abutters' properties, it would improve the overall condition and value of the neighborhood and properties therein. Please contact us should you have any questions.

Sincerely,

Linda Stanwood
Richard and Linda Stanwood
603-817-6113