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

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

7:00 P.M. February 19, 2025

## **AGENDA**

## I. APPROVAL OF MINUTES

- **A.** Approval of the January 22, 2025 meeting minutes.
- **B.** Approval of the January 28, 2025 meeting minutes.

#### II. OLD BUSINESS

- A. 84 Pleasant Street Rehearing Request (LU-24-219)
- **B. 222 Court Street** Extension Request (LU-23-12)
- C. The request of 361 Hanover Steam Factory LLC (Owner), and Hampshire Development Corporation LLC (Applicant), for property located at 361 Hanover Street whereas relief is needed to expand and renovate the existing commercial building and convert it to multi-family residential and to construct three new multi-family residential buildings which requires the following: 1) Variance from Section 10.642 to allow residential principal uses on the ground floor of the buildings; and 2) Variance from Section 10.5A41 Figure 10.5A41.10D to a) allow for "Apartment", "Rowhouse" and "Duplex" building types where they are not permitted; and b) allow a ground floor height of 10.5 feet where 12 feet is required. Said property is located on Assessor Map 138 Lot 63 and lies within the Character District 5 (CD5) District and the Downtown Overlay District. (LU-24-196)
- **D.** The request of **Millport INC (Owner)**, for property located at **1001 Islington Street** whereas relief is needed for a change of use to extend the existing health club into the adjacent unit wherein relief is required from the Zoning Ordinance including the following special exception from Section 10.440, Use #4.42 to allow a health club greater than 2,000 s.f. of gross floor area. Said property is located on Assessor Map 172 Lot 4 and lies within the Character District 4-W (CD4-W). (LU-24-209)

## III. NEW BUSINESS

- A. The request of Paula J. Reed Revocable Trust (Owner), for property located at 410 Richards Avenue whereas an equitable waiver is needed for the construction of a garage which requires the following: 1) Equitable waiver for an accessory structure with a 3-foot left side yard where 3.5 feet was previously granted. Said property is located on Assessor Map 112 Lot 10 and lies within the General Residence A (GRA) District. (LU-25-10)
- **B.** The request of **Paula J. Reed Revocable Trust (Owner),** for property located at **410 Richards Avenue** whereas an after the fact variance is needed for the construction of a garage which requires the following: 1) Variance from Section 10.521 to permit a 3-foot left yard where 3.5 feet were previously granted. Said property is located on Assessor Map 112 Lot 10 and lies within the General Residence A (GRA) District. (LU-25-11)

#### IV. ADJOURNMENT

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

https://us06web.zoom.us/webinar/register/WN\_yZztWqnVToe9fmJY7m-BsA

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

7:00 P.M. January 22, 2025

**MEMBERS PRESENT:** Phyllis Eldridge, Chair; Beth Margeson, Vice Chair; David Rheaume;

Paul Mannle; Jeffrey Mattson; Thomas Nies; Jody Record, Alternate

**MEMBERS EXCUSED:** Thomas Rossi

ALSO PRESENT: Jillian Harris, Planning Department

Chair Eldridge called the meeting to order at 7:00 p.m. Alternate Jody Record took a voting seat for the evening. Chair Eldridge noted that Items E thru I would be held at the January 28<sup>th</sup> meeting. She noted that Item III.C, Millport INC, was requested to be postponed by the applicant.

Mr. Mannle moved to take Item III.C, Millport INC, 1001 Islington St out of order to postpone. Mr. Mattson seconded. The motion **passed** unanimously, 7-0.

Vice-Chair Margeson moved to **postpone** Item III.C, Millport INC, 1001 Islington St, to the February 19 meeting, seconded by Mr. Rheaume. The motion **passed** unanimously, 7-0.

## I. APPROVAL OF MINUTES

A. Approval of the **December 17, 2024** meeting minutes.

Mr. Nies asked that in the last paragraph on page 2, the phrase "and would omit the other two plans" be deleted, so the sentence now reads: "He asked if the applicant was committed to developing the CUP proposal if the variances were approved."

Mr. Rheaume asked that the bottom paragraph on page 13 be amended by changing the phrase "He noted that the condo was created with relief from the Board" to "He noted that the adjacent condo complex was created with relief from the Board." The sentence now reads: "He noted that the condo was created with relief from the Board and was already bordered by an MRB parcel that also had a business on it."

Vice-Chair Margeson noted that there was a typographical error on page 2, second-to-last paragraph, and that the word 'kid' was used instead of 'kind'. The sentence now reads: 'Vice-Chair Margeson asked what kind of commercial uses were contemplated under the vested plan."

Mr. Nies moved to **approve** the December 17, 2024 minutes as amended, seconded by Mr. Mattson. The motion **passed** with all in favor.

## II. OLD BUSINESS

# A. 84 Pleasant Street - Rehearing Request

[Timestamp 9:23] Chair Eldrige read the request into the record. She said the adjacent property owner near Working Stiff Properties wanted a rehearing about the granted variances from the November 19, 2024 meeting, specifically for Item 2B, an approval of a 50-ft height for the building. Vice-Chair Margeson said the letter referenced photos and sketches that were submitted, yet the Board did not have them. Chair Eldridge said she would have better understood the reason for the rehearing request if she had seen the photos and sketches. Mr. Rheaume suggested postponing the rehearing to know exactly what the appellant's concerns were before the Board made a judgment.

## **DECISION OF THE BOARD**

Mr. Mannle moved to **postpone** the rehearing to the February 19 meeting, seconded by Vice-Chair Margeson. The motion **passed** unanimously, 7-0.

Mr. Rheaume recused himself from the following petition.

B. The request of 361 Hanover Steam Factory LLC (Owner), and Hampshire Development Corporation LLC (Applicant), for property located at 361 Hanover Street whereas relief is needed to expand and renovate the existing commercial building and convert it to multifamily residential and to construct three new multi-family residential buildings which requires the following: 1) Variance from Section 10.642 to allow residential principal uses on the ground floor of the buildings; 2) Variance from Section 10.5A41 - Figure 10.5A41.10D to a) allow for "Apartment", "Rowhouse" and "Duplex" building types where they are not permitted; b) allow a ground floor height of 10.5 feet where 12 feet is required; and 3) Variance from Article 15 - Definition of Penthouse - to allow a penthouse with a setback of 8 feet from all roof edges where 15-20 feet is required and to allow no greater than 80% of the gross living area of the level of the floor below where 50% is the maximum. Said property is located on Assessor Map 138 Lot 63 and lies within the Character District 5 (CD5) District and the Downtown Overlay District. (LU-24-196)

## SPEAKING TO THE PETITION

[Timestamp 16:05] Attorney John Bosen was present on behalf of the applicant, with owners Steve Wilson and Shane Forsley. Attorney Bosen said they wanted to withdraw the penthouse request portion of the petition. He said they also discovered that there was no evidence of a burial ground at the location. He said they provided a traffic study that would be vetted by the Traffic Committee and the Planning Board. He said he believed that they answered all the Board's questions previously and that their focus was to eliminate the commercial aspect from the ground floor.

[Timestamp 19:17] Vice-Chair Margeson asked about the land use variance. Attorney Bosen said it was addressed at the previous hearing. Mr. Nies said the Board had three proposals brought to them: the original plan, the Conditional Use Permit (CUP) plan, and now this plan that looked like a hybrid of the original plan and the CUP plan. Attorney Bosen said the original plan was approved at design review and that the applicant did not want to build that. He said there was a concern in the CUP plan as to the right to be able to use Hill Street, which would put the multimodal way in jeopardy. He said they thought the hybrid plan was the best plan because it still fit into the character of the neighborhood. Mr. Nies asked if the applicant formally withdrew the CUP plan from the Planning Board's consideration. He said he saw no record of it but just a request to get rid of the penthouse variance. Attorney Bosen said they were formally withdrawing the request for the penthouse variance. He said the CUP plan was illustrative of what they could have done but they did not know if they would have received a CUP approval from the Planning Board. Mr. Nies asked how many residential units were in the plan. Mr. Wilson explained that the original plan that was vested by the Planning Board had 42 units, six of which were commercial ones, but the present plan would have 42 residential units. He said they would eliminate the commercial in Buildings B and C, so they were able to drop the elevation of those buildings by one story and therefore would eliminate those floors. He said two units in Building D would be converted on the first floor to residential. He said Building A would return to the general form of the original vested building because they would add a story to that building and it would have the same 24 residential units plus the two converted units on the first floor to make 26 units, for a total of 42 units. He said it was a reduction in the number of units but an increase in residential units by four. Mr. Nies noted that at the previous meeting, Attorney Bosen said there were 46 residential units in the CUP proposed total, assuming that commercial was converted to residential. He said now the applicant was saving that there were 42 units. Mr. Wilson said at the previous hearing, they were talking about the unit count if the CUP were approved, so that would have been if the additional story had been allowed on Building A. He said the multimodal way would have had to include autos, which would have been a problem because it was a dead-end street. Mr. Nies said the traffic study was completed on December 1 and the CUP proposal was being looked at then, so he thought the study must be assuming 46 units instead of 42 units. Mr. Wilson said he believed so but that he wanted to give them the maximum number of units as a delta for the study. Mr. Nies said the Board asked for all the heights of the stories but only received the ground and second-story heights. Mr. Wilson said there was an illustration that showed the other floors. Mr. Nies said the Board did not have that information.

[Timestamp 27:15] Vice-Chair Margeson asked if Building A was accessed by Foundry Place. Mr. Wilson said it wasn't. Vice-Chair Margeson asked if it was accessed by the path through the project. Mr. Wilson said it was accessed through the driveway off Hanover Street. Vice-Chair Margeson asked if the first two sets of windows from the ground floor up were for the first floor. Mr. Wilson said the first set of windows was for the first floor, the second set was for the second floor, the third set was for the third floor, and then there was the attic. Vice-Chair Margeson said the Board's packet showed the attic as the fourth floor. Mr. Wilson said it was not considered to be a fourth floor but was at the fourth-floor level and had residences in it. He explained that, by the zoning's definition, if it was under the roof, it was allowed to be occupied. Vice-Chair Margeson said there were discrepancies in the façade modulation length requirement and in the existing and proposed building front principal max setback and asked whether the applicant needed a variance

for it. Ms. Harris said it was an existing condition of the existing building. Mr. Nies said the applicant's letter showed the project next to the 407 Hanover Street building streetscapes and indicated that they would be submitted prior to the meeting. He asked if they were in the packet or not. He said one showed a Hanover Street perspective but he was unclear if it had 407 Hanover Street in it. Mr. Forsley said it was in their submission and was a rendering from Hanover Street, and also a head-on view from Pearl Street and a perspective from Rock Street. Mr. Nies asked where the illustrations showing 407 Hanover Street next to the project were. Mr. Forsley said he did not think any illustrations showed that.

Chair Eldridge asked for a motion to suspend the rules and a motion to accept the withdrawal of the penthouse variance request.

Vice-Chair Margeson moved to **suspend** the rules, seconded by Mr. Mattson. The motion **passed** unanimously, 6-0.

Mr. Mattson moved to accept the withdrawal of the penthouse variance request, seconded by Vice-Chair Margeson. The motion **passed** by a vote of 5-1, with Mr. Nies voting in opposition.

Chair Eldridge opened the public hearing.

## SPEAKING TO, FOR, OR AGAINST THE PETITION

[Timestamp 35:26] Elizabeth Bratter of 159 McDonough Street said the requested information that the Board had asked for was not provided, like floor plans for Buildings B, C and D, elevations, and views. She asked how the variances could be voted on when the packet still had information that did not match the design plans. She said the applicant did not clarify what type of mansard roof would be used, which could make the building four stories and was not allowed in the zone. She noted several other inconsistencies in the packet.

Nicole Lapierre of 44 Rock Street said the penthouse was still referenced in the application as four stories and a penthouse. She said there were incorrect street widths and development entrances in the traffic study and that it also stated Foundry Place as an access point. She said the project would impact the neighborhood. She said the project was dependent in part on public land, which she didn't think the taxpayers deserved without public notice and an opportunity to speak to it. She said the grading on Rock Street appeared flat in the rendering and asked if there was a plan to change the grading. She said there were too many things that were unclear and that she was in opposition.

Attorney John Lyons, said he represented Hill Hanover LLC, a direct abutter that included 317, 319, 327, 329, 337 and 339 Hanover Street and was before the Board to say that they objected to the variance that allowed for the apartment, rowhouse, and duplex buildings. He said the applicant was talking about the withdrawal of the multimodal way and the right-of-way known as Hill Street and that the application indicated that the property also had legal frontage on Hanover Street and had the right of way to use Hill Street. He said if Hill Street were used for ingress and egress for the project, parking for the units would occur. He said the right-of-way was very narrow and could be used as a direct access for Bridge Street. He said the impact to his clients would be severe due to the number

of trips up and down the narrow street and the parking that would occur. He said the traffic study did not indicate that Hill Street would be used for ingress and egress. He said he was in opposition, but if the variance were granted, he asked that Hill Street not be a right-of-way for ingress and egress for the 42 units.

[Timestamp 46:00 ] Vice-Chair Margeson asked where the plans for Hill Street were in the packet. Attorney Lyons said it was Figure 7 in the last plan but in the new plan, Hanover Street and the three new buildings were indicated as well as the multimodal way leading from Hanover Street. He said Hill Street was shown running down to Bridge Street. Vice-Chair Margeson asked how someone could prevent people from using the right-of-way. Attorney Lyons said his client would have to enforce it. Mr. Mattson asked how a private right-of-way got a street sign and was used as an easement for the public to cross. Attorney Lyons said as part of the Foundry Place development, the streetscape had to be divided in half, but the City recognized it as a private right-of-way. Mr. Mattson asked if the public had an easement to use that right-of-way. Attorney Lyons said they did not and that it was being debated who had the use of it compared to his client and his property, Mr. Wilson's property, and also a condo building between the two properties. He said the rear of Foundry Place also abutted the right-of-way. Vice-Chair Margeson said she thought Attorney Lyons said previously that there was another right-of-way that a building would go on. Attorney Lyons said his clients claimed that the Hill Street right-of-way runs down through a parking lot where the development is being proposed, and if correct, there could be something worked out and the development could be built.

Susan Sperry said she was the co-chair of the Portsmouth Historic Cemetery Committee and wanted to clarify that she did extensive research and could not find any grants or deeds dating back to the 1800s that marked that there had been a cemetery anywhere in that area. She said books that did not have citations were not reliable and could not be proof of anything, so she could not prove that there had been a cemetery.

Marcie Vaughan of 407 Hanover Street said the rowhouse streetscape was not submitted by the applicant, which was important because of the way the building overshadowed her 225-year-old home and would impact her property values, her light and air, and her privacy. She said she was in favor of developing the property, but the plan was incomplete, inaccurate and inconsistent. She said if approved and no condition bound the development, the applicant could build whatever he wanted. She said she wanted to know exactly what the project would look like and whether the grade of the properties would be changed. She said the rowhouses were not consistent with the neighborhood.

Attorney Bosen said a lot of the concerns were issues unrelated to their request for zoning relief, like grading, roof styles, traffic, and whether the building fit the neighborhood. He said they were only seeking relief from commercial units on the ground floor in a plan that was vetted by the Planning Board and that the abutters' concerns could be addressed in front of the other boards.

Elizabeth Bratter said the Board could not address the variances until they saw what the project is. She said the applicant's plan was not accurate and that the Planning Board did not address the second CUP plan because it was in a work session and not voted on.

Marcie Vaughan said she thought they would be impacted by the structure's massing and scale facing her house. She asked if the property would be graded down to street level or 11 feet higher. [Timestamp 1:08:08] Robin Husslage of 27 Rock Street (via Zoom) referred to her submitted letter in which she pointed out numerous errors and conflicting information. She said the developer stated that access would be provided by way of Rock Street and Foundry Place and a new driveway would intersect Hanover Street on the south side. She said access was not provided by Foundry Place and the location of the new driveway was moved since the traffic study, which would greatly impact the congestion and traffic. She said there were further inaccuracies in the traffic study such as the width of Rock Street, and no mention of Pearl Street, a 2-way street that had the old entrance opposite it. She said half the development buildings had mansard roofs but no surrounding properties had those. She said there was no modulation proposed on Building B, which was 82 feet long and facing Rock Street. She said she wanted to support the developer but that the had not gone far enough on reducing the height of Building D and confirming the entrance into the development.

Vice-Chair Margeson asked the applicant why the building couldn't be oriented so that traffic came off Foundry Place. Mr. Wlson said they didn't own the land between Foundry Place and their building. He said it was owned by the City and was a no-build area, and there was no place from Foundry Place where his property could be accessed. He said Hill Street was indicated as a public right-of-way three months ago, but their plan in front of the Planning Board showed a barricade of the traffic from their project to that area. He said the Planning Board vested the project's elevations. He said he had no intention to put their traffic down Hill Street.

Marcy Vaughan reiterated that she wanted information on what the rowhouse would look like and she wanted the streetscape rendering that the applicant promised.

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

## DISCUSSION OF THE BOARD

[Timestamp 1:21:37] Mr. Mattson said he had faith in the City Staff that only the two variance criteria presented were needed. He said the Hill Street problem was not the Board's purview. He said the site would get developed one way or another and that the applicant could build things without variances. He said the two main points were whether the applicant could have residential instead of commercial on the first floor, which he thought would be favorable to the neighborhood, and whether the applicant could reduce a 12-ft first floor to 10-1/2 feet. He said apartments, rowhouses, and duplexes were more desirable than a big box building. He said it seemed like a winwin situation and that he had enough information to allow what was requested, even though there were discrepancies in the plan. Vice-Chair Margeson said what concerned her was the legal issue surrounding the application, and that she wished there was more of gatekeeping function with a checklist about pending legal issues before the Staff and Board's time was taken up with it. She said if the Board approved it, the project might still not be built. She said she believed the Board had enough information to make that determination but thought the fundamental problem with the property was the CD5 zoning itself and not being in character with that zoning. She said the more natural way to access the property would be through Foundry Place. She said another issue was that the Board got testimony from Attorney Lyons for the abutters that the variances if approved would

reduce the values of their properties. She said the Board could say that Hill Street would not be used for ingress and egress. Mr. Mannle said the Board did not have enough information but that they approved variances as presented and not based on a variance request, which meant that if there were discrepancies or contradictions in the application, the applicant could choose which one he wanted. He said the Board knew that the abutters would be affected, and he was not comfortable approving any application that had so many inconsistencies. Chair Eldridge agreed and said she was also concerned that 407 Hanover Street was not included. She said it was important for her to get some scale from a streetscape view, and she would have liked to see the rear of the building. She said she was also concerned about the length of the unbroken face of the building. It was further discussed. Mr. Nies said a lot of changes were made that improved the project considerably but the Board did not have a concise package of what was being proposed now. He said people raised concerns about the requested variances, like the rowhouse, and in some cases did not get answers. Mr. Mannle said the project was going in the right direction but had a long way to go. The issue of whether Fisher v. Dover would apply was discussed.

## **DECISION OF THE BOARD**

Mr. Mannle moved to deny the variance requests.

He said if the Board approved them, the applicant might not make any more improvements. He said the applicant did not meet the five criteria, especially diminishing the values of surrounding properties. He said if the denial triggered Fisher v. Dover, the applicant would have to make changes to the project that would be more positive and address the concerns of the abutters. Chair Eldridge said invoking Fisher v. Dover would be counterproductive because it would have to be a major change. It was further discussed.

*No one seconded the motion, and Mr. Mannle withdrew his motion.* 

Vice-Chair Margeson moved to **continue** the petition to the February 19 meeting. Mr. Nies seconded.

Vice-Chair Margeson said she wanted to see a standalone variance application that had the information needed to support the variance request for the rowhouse, the three buildings, and the difference in floor height. She said she also wanted to see renderings and streetscapes from the immediate surrounding area, like Hanover, Rock, Pearl and Hill Streets, and a clear number of units. Mr. Nies asked that the information be in one packet and that the number of parking spaces be included.

The motion **passed** by a vote of 5-1, with Mr. Mannle voting in opposition and Mr. Rheaume recused.

Mr. Rheaume returned to his voting seat.

## III. NEW BUSINESS

A. The request of 111 Front Street LLC (Owner), for property located at 65 Griffin Road whereas relief is needed for after-the-fact construction of a front porch and rear deck which requires the following: 1) Variance from Section 10.521 to a) allow a 21.5 foot front yard setback where 30 feet is required; b) allow a 6.5 foot left side yard setback where 10 feet is required; c) allow a 29 foot rear yard setback where 30 feet is required; and 2) 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 located on Assessor Map 258 Lot 31 and lies within the Single Residence B (SRB) District. (LU-24-210)

## **SPEAKING TO THE PETITION**

[Timestamp 1:59:30] Attorney Derek Durbin was present on behalf of the applicant. He explained that it was a unique situation because the property was the last one before the Griffin Park commercial complex. He said the application was an after-the-fact one because the applicant received the building permits that were issued in the belief that a fence ran along the left side of the property and marked the easterly boundary and extended out to an old boundary marker near the Griffin Road pavement. He said the setbacks were calculated based on that understanding. He said those plans were based on a recorded lot line adjustment plan from 1977 but that it was later discovered that the land was never formally conveyed. He said his client had a property survey done in October and discovered that a small corner of the deck also encroached into the rear yard setback. He said a rear entryway and stairs that also encroached were removed. He said the mistake was an honest one. He reviewed the criteria and said they would be met.

[Timestamp 2:10:16] Mr. Nies asked why a variance wasn't requested before for the porch since it expanded into the front yard setback. Attorney Durbin said it was believed that the property boundary was farther north and closer to the edge of the pavement due to the fact that there was an old property boundary marker pin situated directly north of another pin close to the edge of the fence, so the line was drawn directly straight out from the end of the fence to the old boundary marker, which was not a valid marker. He said that resulted in confusion on where the front property line was, as well as the side property line. Mr. Rheaume noted that the packet showed it as a right yard encroachment instead of a left yard one. Ms. Harris said it was an error. Mr. Rheaume said there was no indication in the Board's packet that there was another pin resulting from the surveyor's plan. He asked Attorney Durbin if his client believed in good faith that there was a pin farther out and had based the front property line on that. Attorney Durbin agreed and further explained it. Mr. Rheaume said the survey made it clear that one pin was the old boundary and one was marked for the intended new boundary that never got deeded over. He said it was a legitimate reason for the side yard setback but a lot less legitimate for the front yard setback that went up to eight feet of front setback that the new porch encroached into. Attorney Durbin agreed and said a front entryway to the house was torn off and the porch was a larger feature than what existed then. He said what was found on the property was some sort of boundary marker out from the pin close to the edge of the pavement. Mr. Rheaume asked how it was discovered because there was no deed recorded. Attorney Durbin said there was a subsequent meeting with the Inspection Department when an additional change to the home was being considered, so the client knew he had to get a survey done. He said it was assumed that it was just the front porch at that point but then it was realized that the corner of the deck also encroached. Mr. Rheaume said it would at least solve the

side yard setback. He asked why the applicant did not just convey the property per the original plan and complete the deeded conveyance. Attorney Durbin said they did not know if the neighbor would agree to that and that everyone considered the fence to be the boundary line.

Vice-Chair Margeson said the packet showed a stamp for the Rockingham County Registry of Deeds from September 1977, so it was recorded. Attorney Durbin said at the time planning boards would approve lot line adjustment plans in the 1970s and there was never a condition placed for the recording of a deed, and property owners often believed that the property was conveyed, as well as some municipal officials. He said now they knew that a deed was needed to convey the land. Vice-Chair Margeson said the Staff Memo indicated that the building permit review relied upon a site plan that was provided for a lot line adjustment plan recorded in 1977. She said she was confused because the house was bought last year, so the title work was done then. She said there was no mention of the deed to current owners. Attorney Durbin said the contractor did a review of the municipal files, which is where the lot line adjustment plan was located, and did not do the title research.

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 variances as presented and advertised, seconded by Mr. Mannle.

[Timestamp 2:23:23] Mr. Nies said it was clearly an accident and that there was no intent to violate the zoning ordinance. He said it was a minor variance request due to the lot's location and would have no effect on light and air or the public's health, safety, or welfare. He said if the variances were not granted, the applicant would have to remove the porch and there would be no benefit to the public to cause the applicant that unnecessary expense. He said there was also no evidence that it would have any impact on the values of surrounding properties, noting that no one testified to that and none of the abutters complained. He said there were special conditions to the lot, including its location adjacent to commercial properties on one side and city-owned land on the other. He said there were houses on two sides to the east and south but they were not close and the nonconforming structure had no impact on those. He said the current property is sited on one side of it and the requested relief is relatively minor, just a few feet in the front and facing the road, and well off the right-of-way of Griffin Road. For those reasons, he said there was no fair and substantial relationship between the strict enforcement of the ordinance and the property that is justified. Mr. Mannle concurred and had nothing to add.

Mr. Rheaume suggested a condition that the left side setback relief will be measured against the original property boundary prior to the 1977 record of an alternate property line. He said if the lot line were adjusted and the conveyance done in the future, he would not want it to be used as a justification for building something even closer to that property line. Mr. Nies and Mr. Mannle

accepted the condition. Mr. Rheaume said he supported the motion, noting that the front porch was an open structure with a lot of open space around the home and property and was something that he thought the Board would have easily allowed. He said the back deck discrepancy was likely a construction error but seemed far away from the property lines.

The amended motion was:

- *Mr.* Nies moved to **grant** the variances as presented and advertised with the following **condition**:
  - The left side setback relief will be measured against the original property boundary prior to the 1977 record of an alternate property line.

Mr. Mannle concurred. The motion **passed** unanimously, 7-0.

**B.** The request of **N. E. Marine** and **Industrial Inc (Owner)**, for property located at **200 Spaulding Turnpike** whereas relief is needed to install a freestanding sign 2 feet from the front property line which requires the following: 1) Variance from Section 10.1241 for a 30 square foot freestanding sign where freestanding signs are not allowed. Said property is located on Assessor Map 237 Lot 56 and lies within the Gateway Corridor (G1) and Single Residence B (SRB) Districts. (LU-24-208)

## SPEAKING TO THE PETITION

[Timestamp 2:28:53] Attorney Monica Kaiser was present on behalf of the applicant, along with Shannon McNalley, the property trustee. Attorney Kaiser reviewed the petition. She said the property had frontage on Spaulding Turnpike, Farm Lane and on a paper street but the only access from the right-of-way into the property was from the driveway on Farm Lane. She said the property was bisected by two zones and the driveway was in the SRB zone. She said the owner wanted to remedy it by putting a freestanding sign just before the driveway entrance on Farm Lane to post a graphic with the name of the business and a marquee below to replace letters. She said the sign would be close enough to the road for the drivers to see it and make the appropriate turn. She said GPS did not often track to the property well, and other commercial properties had signage in that immediate area. She reviewed the criteria and said they would be met.

[Timestamp 2:36:16] Vice-Chair Margeson verified that the sign would not be illuminated. Mr. Rheaume asked if the applicant had considered getting the address changed to a Farm Lane address so that people could find it more easily. Ms. McNalley said she had not. Mr. Rheaume asked why the applicant felt she needed the capability to have the bottom four lines that could be changed out with different letters. Ms. McNalley said the public considered her business a wholesale one and did not know that it was open to the public. She said the lines would also be useful to advertise sales. She said the main purpose for the sign was so that people could find the business.

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. Rheaume moved to grant the variance as presented and advertised, seconded by Ms. Record.

Mr. Rheaume said he thought it was a reasonable request, based off the unique situations that the applicant found herself in. He said her business was not only in one zone, which wasn't common and drove the variance that was needed. He said if it were all in the G1 zone, it would not be an issue. He said the applicant's total requested amount of signage square footage was still farther west than what the G1 District would say is the maximum allowed and that the sign would be at 174 sf where 300 sf would be allowed. He said the neighborhood was protective of the SRB portion of the property but it was for something more significant in development rather than a small sign. He said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance. He said the sign ordinance tried to prevent visual clutter and protect single-family residence neighborhoods from signage by businesses and he thought the application met that requirement because the sign would be outside of where the actual neighborhood is and would be positioned on the opposite side of the driveway, closer to where vehicles would access the property from the more traveled highway than through the neighborhood. He said it would comply with the overall spirit of the ordinance for a G1 district. He said substantial justice would be done, noting that there was nothing that the public would have a stake in that would say the applicant's need to better direct traffic to her business and help explain what the business is would outweigh that. He said granting the variance would not diminish the values of surrounding properties because the modest sign would be far away from the established neighborhood and would not impact the nature of those properties' values. He said the special conditions of the lot includes that it is a very large lot and the business is in the G1 district, which is about one-third of the lot, but the remaining 2/3 of the lot is in the SRB zone where the driveway goes through, and the address is not actually the road the driveway is on. He said the request was reasonable compared to what the applicant could have asked for if it was zoned G1. He said it was still well below the total amount of signage required. Ms. Record concurred and had nothing to add.

*The motion passed unanimously, 7-0.* 

C. REQUEST TO POSTPONE The request of Millport INC (Owner), for property located at 1001 Islington Street whereas relief is needed for a change of use to extend the existing health club into the adjacent unit wherein relief is required from the Zoning Ordinance including the following special exception from Section 10.440, Use #4.42 to allow a health club greater than 2,000 s.f. of gross floor area. Said property is located on Assessor Map 172 Lot 4 and lies within the Character District 4-W (CD4-W). REQUEST TO POSTPONE (LU-24-209)

## **DECISION OF THE BOARD**

The petition was **postponed** to the February 19 meeting.

**D.** The request of **Custom House LLC**, **(Owner)**, for property located at **40 Pleasant Street** whereas relief is needed to install a projecting sign which requires the following: 1) Variance from Section 10.1251.20 for a 20 square foot projecting sign where 12 square feet is the maximum allowed. Said property is located on Assessor Map 107 Lot 81 and lies within the Character District 5 (CD5), Historic and Downtown Overlay Districts. (LU-24-206)

#### SPEAKING TO THE PETITION

[Timestamp 2:45:30] Dan Harmer of 40 Pleasant Street was present. He said the restaurant Howling Wolf Taqueria took over the previous Book and Bar location and he thought it would be best to keep the same dimensions and bracket of the former sign and just swap the hardware. He said he then discovered that the previous Book and Bar sign was nonconforming. 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

[Timestamp 2:49:14] Eric Holstein, owner of Howling Wolf Taqueria, said he tried to have the current sign painted but it was falling apart. He said it was best to remake the sign in the same dimensions and use the existing hardware.

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

## **DECISION OF THE BOARD**

Mr. Mattson moved to **grant** the variance as presented, seconded by Vice-Chair Margeson.

[Timestamp 2:52:00] Mr. Mattson said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance. He said the proposed use would not conflict with the purpose of the ordinance because the sign is a business sign advertising that business and will have the same dimensions as the previous sign. He noted that the applicant even tried to keep the same sign. He said signage was allowed to advertise the business and altering the writing and logo would not alter the essential character of the neighborhood nor threaten the public's health, safety or welfare. He said the sign was high enough and out of the way and safely secured to the wall. He said granting the variance would do substantial justice because there was no reason to think that the change in the sign would harm the general public, and it could be a benefit to the applicant to approve it. He said granting the variance would not diminish the values of surrounding properties, noting that there was no testimony saying that would be the case and there was no reason that it would be because the sign would be a similar use to what was there before. He said literal enforcement of the ordinance would result in unnecessary hardship and there would be no fair and substantial relationship between the general purpose of the ordinance provision and the specific application to the property. He said the intent was not to have an overly large sign that would impose on the public or distract drivers. He said the property already had a sign of the same

dimensions and location that was not in violation until recently discovering that it was not in conformance. He said the new sign would be consistent and the proposed use is a reasonable one, replacing the existing sign in the same dimensions and location. Vice-Chair Margeson concurred and noted that the building was a priceless one in downtown Portsmouth and the less it was impacted, the better.

The motion **passed** by a vote of 6-1, with Mr. Nies voting in opposition.

## III. ADJOURNMENT

The meeting adjourned at 9:52 p.m.

Submitted,

Joann Breault BOA Recording Secretary

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

7:00 P.M. January 28, 2025

**MEMBERS PRESENT:** Phyllis Eldridge, Chair; Beth Margeson, Vice Chair; David Rheaume;

Paul Mannle; Jeffrey Mattson; Thomas Nies; Jody Record, Alternate

**MEMBERS EXCUSED:** Thomas Rossi

ALSO PRESENT: Stefanie Casella, Planning Department

Chair Eldridge called the meeting to order at 7:00 p.m. Alternate Jody Record took a voting seat for the evening.

## I. PUBLIC HEARINGS - NEW BUSINESS

Mr. Mattson recused himself from is voting seat for the next petition because he was the applicant.

A. The request of Michele Kathryn Arbour and Jeffrey M. Mattson (Owners), for property located at 86 Emery Street whereas relief is needed to construct a firewood shed which requires the following: 1) Variance from Section 10.571 to allow an accessory structure to be located closer to the street than the primary structure. Said property is located on Assessor Map 220 Lot 87-1 and lies within the Single Residence B District (SRB) (LU-24-215)

#### SPEAKING TO THE PETITION

[Timestamp 6:37] The owner/applicant Jeffrey Mattson was present to review the petition. He said the firewood shed would be closer to Myrtle Avenue, which is a secondary frontage, and an accessory building was not allowed to be closer to a street than the principal building. He noted the shed's dimensions and setbacks. He reviewed the criteria and said the hardship was that the property was burdened by the zoning restriction because of the secondary building being closer to the street. He said the use of a firewood shed next to a fire pit patio would be a reasonable one.

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 variance for the petition as presented and advertised, seconded by Mr. Mannle.

[Timestamp 12:50] Mr. Nies said the lot had a strange shape, and the secondary front yard was a very small part of the lot that abuts Myrtle Avenue. He said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance, and it would not affect the health, safety, and welfare of the neighborhood nor would it affect light and air. He said the shed structure was very low and complied with all height requirements. He said the ordinance is designed in part to prevent clutter in front of buildings, and even though the yard was a secondary front one, it was not really in front of the building but was on the side. He said he could not see any benefit to the public by denying the variance, and the applicant would have a less useful firepit if denied, so granting the variance would do substantial justice. He said there was no evidence that there would be any effect on surrounding property values because the structure was a small one for storage of firewood and on a large lot. He said the hardship was the lot's special conditions of having an unusual shape and a very short frontage along the street, technically giving it a secondary front yard. He said the main building is close to 100 feet from the street and the proposed structure is 75 feet away and on the side of the building and would be almost unnoticeable from Myrtle Street. He said because of the special conditions of the property, there did not appear to be a fair and substantial relationship between the purpose of the ordinance as specifically applied to the property and the request. Mr. Mannle concurred and had nothing to add.

The motion **passed** unanimously by a vote of 6-0, with Mr. Mattson recused.

Mr. Mattson returned to his voting seat and Mr. Record recused herself from the following petition.

**B.** The request of **909 West End LLC (Owner),** for property located at **909 Islington Street** whereas relief is needed to allow a restaurant which requires the following: 1) Special Exception from Section 10.440, Use # 9.42 to allow a Restaurant with an occupant load from 50 to 250 people where it is allowed by Special Exception. Said property is located on Assessor Map 172 Lot 7 and lies within the Character District 4-W (CD4-W). (LU-24-221)

## **SPEAKING TO THE PETITION**

[Timestamp 16:06] Meghan Boland of Chinburg Builders representing the applicant was present and reviewed the petition. She said they had a tenant for a 3,000-sf vacant space in the building. She reviewed the existing and proposed elevations for the new restaurant called Louie's. She reviewed the special exception criteria and said they would be met.

[Timestamp 18:11] Vice-Chair Margeson asked if the occupancy load of the restaurant at 127 people would include the outdoor seating. Evan Mullen, principal architect from Portland Architects, was present on behalf of the tenant and said the proposed outdoor seating was mostly conceptual and the first step was to get the special exception. He said there would be 119 occupants

for the interior and eight for the exterior. Vice-Chair Margeson asked Ms. Casella if the outdoor dining was part of the application. Ms. Casella said the outdoor dining would be a Conditional Use Permit (CUP) in that district. Ms. Boland said the outdoor dining was conceptual and should have been excluded from the plan. Mr. Mullen said the impetus for the hearing was the building permit submission and that they wanted to indicate on the life safety plan the potential number of occupants on the high end that they could accommodate.

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

[Timestamp 22:30] Mr. Rheaume said it was a straightforward application in terms of the proposed use. He said the standards as provided by the ordinance for the particular use is permitted by special exception for CD-4W and that the applicant demonstrated that their internal and likely external occupancy load would be well within the 50-250 person limit. He said no hazard would be posed to the public or adjacent properties on account of potential fire, explosion, or release of toxic materials. He said there was nothing about the restaurant use especially in that quasiindustrial/commercial zone that would present an unusual hazard to the public related to any of those concerns. He said there would be no detriment to property values in the vicinity or change in the essential characteristics of the area's residential neighborhoods and business and industrial districts, including structures, parking areas, accessways, odor, smoke, gas, dust, pollutant, noise, heat, vibration, and unsightly outdoor storage of equipment or vehicles. He said there was nothing to indicate that it would be a concern because most of the restaurant use would be internal to the modest space it would occupy. He said the district was a combination of residential and commercial/light industrial uses, so there would be no creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity. He noted that there had been numerous buildings in the area before and since, and there was nothing to indicate that the restaurant use would be more intensive than other uses in the area that would result in an unusual amount of traffic. He said the area saw a decent amount of residential traffic as well as commercial and industrial traffic. He said there would be no excessive demand on municipal services including but not limited to water, sewer, waste disposal, police and fire protection, and schools. He said it was a restaurant use and would need some of those, but a restaurant use did not have excessive demands on any of those services. He said there would be no significant increase of stormwater runoff onto adjacent properties or streets, noting that the area had been already built out and there was no new construction. He said the use would be in a highly paved area and that no impervious surfaces would be made pervious. He said the petition met all the criteria for the special exception.

Mr. Mattson concurred. He said surrounding the outside of the structure was still all part of the parcel and private property, which was set back quite a ways from the actual public right of way, which was a benefit. He said a restaurant in the building would be a nice addition to the West End.

The motion **passed** unanimously by a vote of 6-0, with Ms. Record recused.

Ms. Record returned to her voting seat.

C. The request of Gary B. Dodds Revocable Trust (Owner), for property located at 294 Lincoln Avenue whereas relief is needed to demolish the two existing detached garages and construct a new attached garage which requires the following: 1) Variance from Section 10.521 to allow 28% building coverage where 25% is the maximum allowed. Said property is located on Assessor Map 130 Lot 24 and lies within the General Residence A (GRA) District. (LU-24-225)

#### **SPEAKING TO THE PETITION**

[Timestamp 27:54] The owner Gary Dodds was present to review the petition. He said one of the two existing garages was in disrepair and the other one was a temporary shed for storage, and he proposed demolishing both for the new garage. He said there would be a bigger setback and more room for someone to back out of the garage. He reviewed the criteria and said they would be met. He said a few letters of approval from the neighbors were submitted.

[Timestamp 38:50] Vice-Chair Margeson referred to Note 10 on the site plan that indicated that a variance is required from Section 10.1114.32 to allow vehicles to back into a public street. She said the applicant said that on the fourth garage bay, people would back out in a little turnaround and then go out to the street front. Mr. Dodds agreed and said people would not back out onto Miller Avenue, which was one of the reasons he pushed everything forward. Vice-Chair Margeson said the structure was a new one that was more than just the replacement of a garage because it had office space above and storage space. She asked who would use the office space. Mr. Dodds said he would and that he lived there. Vice-Chair Margeson said the trust was on Sagamore Road. Mr. Dodds said that was an error. Vice-Chair Margeson said it was a 3-family apartment building, with the three smaller garages being accessed off Lincoln Avenue and the larger garage being accessed off Miller Avenue by the turnaround. She said why the fourth garage was much larger than the others. Mr. Dodds said it was because it could not be accessed from inside the house due to a staircase that went along the side. He said the office area above it also made it bigger and was not living space. Vice-Chair Margeson said the office space had enough square footage that it could be converted to an ADU in the future. Ms. Casella said ADUs were not allowed with multi-family buildings.

Chair Eldridge opened the public hearing.

## SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke, and Chair Eldridge closed the public hearing. Ms. Casella said there was a person on Zoom with a comment and asked that the public hearing be re-opened.

Vice-Chair Margeson moved to re-open the public hearing, seconded by Mr. Nies.

Erica Wygonik (no address given) said she lived down the street and thought it was a great project with the potential to clean things up, but it seemed big. She said the fourth bay seemed like a double garage, so it looked like a total of five garage spaces. She asked what the hardship was.

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

## **DISCUSSION OF THE BOARD**

[Timestamp 45:47] Vice-Chair Margeson said she would not support the application because she thought it was not merely a garage but was four garages with office space and storage space on top. She said it took it out of the accessory use designation and she wasn't sure how the office related an accessory use to the principal use. She said it was the GRA District but thought the garage with four bays and the office and storage spaces seemed like more of a complex and less of a residential use. She said the requested variance was minor but thought the project as presented and advertised would threaten the general character of the area. She said she rode around the area and did not see anything similar to the applicant's proposal, and she noted that it would be seen from Lincoln and Miller Avenues. Mr. Rheaume agreed that it was more than just a garage and perhaps should not have been presented the way it was, but he said it had to be compared against what was being asked for in terms of relief. He said the applicant was asking for three percent over the total lot coverage requirement, which was less than 300 square feet, so by right he could build the majority of what was proposed. He said it was really an extension of the house. He noted that a home office was common now. He said the rest of the space was storage that did not lend itself to a residential use. He said four units were allowed in the zone as a special exception and noted that the current three units were grandfathered in. He said the applicant was allowed to have four parking spots that could be outdoor ones but chose to make them indoor, which would be a positive benefit for rentals. He said it came down to what was being asked for relief and that the applicant as allowed to do all the things he proposed except for the additional 300 square feet, and a portion of it was a one-story structure. He said it should be allowed in terms of what was being asked for relief. Mr. Nies asked if the use of the home occupation applied to an office built separate from the home. Ms. Casella said if the applicant had decided to create an address for a business, that would be considered a home occupation, but what the applicant presented to the Board did not constitute a home occupation. She said a tenant fit-up building permit would be required for a home occupation because a certain percentage of the main floor would be required.

## **DECISION OF THE BOARD**

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

Ms. Casella asked that a condition be added to remove Note 10 from the site plan that said a variance is required for backing out of the garage space. She said it was not advertised and the applicant said he did not intend to back out. Mr. Rheaume and Mr. Mattson agreed.

The **amended** motion was:

Mr. Rheaume moved to **grant** the variance for the petition as presented and advertised, with the following **condition**:

Note 10 from the site plan stating a "variance from Section 10.1114.32 (b) is required to exit parking by backing into or from a public street," shall be removed.

Mr. Mattson seconded the motion.

[Timestamp 52:25] Mr. Rheaume said the relief asked for was small and there were many other homes in the area that had big additions put on for multiple purposes. He said the applicant's one was centered around the garage use on the first floor and had some additional uses on the second. He said an office is not a business and not considered a home occupation. He said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance. He said the Board was trying to not put an excessive number of very large amounts of additional structure on it. He said the applicant is allowed to have most of this and that the section added on is relatively modest. He said even with the height associated with some of the major section of the garage, it would not unduly impact the neighboring properties for light and air. He said substantial justice would be done because there was nothing with the nature of the relief asked for that the general public has a greater benefit than the applicant would. He said the values of surrounding properties would not be diminished, noting that the one of the current garages was dilapidated and the other was temporary. He said the new garage would look like a continuation of the welldesigned house. He said the hardship was that the applicant had a somewhat larger lot that gave it more room on either side, with a continuous drive around it that created the two curb cuts. He said the garages would be positioned so that it is possible for people to back out within the property. He said a small amount of relief was being asked for and that the use is a reasonable one. Mr. Mattson concurred and said it is not a single-family home but a 3-unit structure that is already on the property. He said it made more sense to have multiple garage bays and that it would be an added desirability for living in New England winters and an improvement of what was there.

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

**D.** The request of **Treadwell LLC (Owner)**, for property located at **93 Pleasant Street** whereas relief is needed to permit the provision of required parking spaces to be located on a separate lot in the same ownership within 300 feet of the property line of the lot in question, which requires the following: 1) Special Exception from Section 10.1113.112 to allow five (5) of the required parking spaces to be located at 134 Pleasant Street, Map 116, Lot 30. Said property is located on Assessor Map 107 Lot 74 and lies within the Character District 4 (CD4), Historic and Downtown Overlay Districts. (LU-24-216)

## **SPEAKING TO THE PETITION**

[Timestamp 59:12] Attorney F. X. Bruton was present on behalf of the applicant, along with principle Marie Bodi and architect Tracy Kozak. Attorney Bruton reviewed the petition and said the Treadwell Inn had 20 spaces on site and would utilize five spaces from the Citizen Bank parking lot that were currently underutilized. He said they wanted to add signage for the hotel patrons and designate the spaces across from the front door of the bank closest to the road. He said it would

satisfy the criteria because it was within 300 feet of the property line. He reviewed the criteria for special exception and said they would be met.

[Timestamp 1:04:30] Mr. Rheaume said the Staff Report had information about parking requirements at the Treadwell Mansion property, and he asked if Attorney Bruton knew what the parking requirement was for that particular parcel per the zoning ordinance and what they currently had for parking spaces and whether they had the extra five spaces to give up. Attorney Bruton said they had 33 spaces and currently five spaces for the Treadwell Inn's exclusive use. Ms. Kozak said zero commercial banks require zero parking in the downtown. Mr. Rheaume said the packet indicated that to memorialize the use of the five spaces, a licensed agreement was proposed and that the applicant also provided a copy of one for a similar hotel on Middle Street. He asked if that relationship between a particular hotel and the related property was done by special exception by the Board. Attorney Bruton said it was done at the Planning Board level as part of the approval process and that there was common ownership. Mr. Rheaume said his concern was that the special exception is granted for the life of the property and he asked how the Board made sure when they memorialized the relationship that it had a similar level of perpetuity and how a license agreement would meet that as opposed to an easement. Attorney Bruton said they utilized the form that the City typically would use for that arrangement and that the wording was approved by the Legal Department. He said the easement issue was a little trickier legally. Ms. Casella said she did recommend a condition that the Planning Board and Legal Department have final review on whatever agreement is drafted. She said the Treadwell Mansion is in the DOD but the bank lot is not. Mr. Rheaume asked if the zero parking requirement was related to the DOD. Attorney Bruton said he believed it was. Vice-Chair Margeson said the parking lot license agreement provided as an example is registered, which would deal with some of the perpetuity issues, but she asked if the license agreement would survive if the two entities fell out of common ownership. She said she would assume that the special exception would expire if there was no more common ownership, so she thought the Treadwell Mansion would not be able to park five cars at the bank. Attorney Bruton said Article 5 granted the license for a nonrevocable royalty-free license, so that would ease the concern about easement because the license could be revokable and the document is non-revokable. Vice-Chair Margeson said it may complicate the special exception if granted because it is no longer a common ownership. Attorney Bruton said the rules allowed for it.

[Timestamp 1:14:11] Ms. Casella said the bank is in the CD-4 District, and under Section 10.5A44.21, "uses in the character district that are not located in the DOD district shall provide off-street parking in accordance with Section 10.1112". She said she believed that was the typical parking requirement table, which would be based on use. Mr. Rheaume said he was fine with it.

Chair Eldridge opened the public hearing.

## SPEAKING TO, FOR, OR AGAINST THE PETITION

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

#### **DECISION OF THE BOARD**

Vice-Chair Margeson moved to **grant** the special exception for the petition with the following **condition**:

- The final parking agreement will be submitted to the Planning and Legal Department for review and approval.

Mr. Mattson seconded.

[Timestamp 1:15:45] Vice-Chair Margeson said Section 10.233.21, standards as provided by the ordinance for the parking use permitted by special exception, and Article 10.1113.112 permits the granting of a special exception for the provision if required parking on another lot in the same ownership is within 300 feet of the property line of the lot in question. She said the requirement was satisfied. Referring to Section 10.322.22, she said granting the special exception would pose no hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials. She said there was the provision of having five cars parked in a lot across the street, so there would be none of that. Referring to Section 10.322.23, she said there would be no detriment to property values in the vicinity or a change in the essential characteristics of any area including residential neighborhoods or business and industrial districts on account of the location and scale of buildings or other structures, parking areas, accessways, odor, smoke, gas, pollution, noise, glare, heat, vibration, or unsightly outdoor storage of equipment, vehicles or other materials. She said the provision of having five parking spaces at the Citizens Bank property did not touch on any of those areas. Referring to Section 10.233.24, she said the project would pose no creation of a traffic safety hazard or substantial increase in the level of traffic in the vicinity. She said it was a very minor request of five parking spots in an area that had a municipal parking lot with significant traffic going around it. She said the movement of five cars in one day would not really impinge on it and the people who parked in those spaces would be walking to the hotel. Referring to Section 10.233.25, she said there would be no excessive demand on municipal services including but not limited to water, sewer, waste disposal, police and fire protection, and schools. Referring to Section 10.233.26, she said there would be no increase of stormwater runoff onto adjacent properties or streets, noting that there was nothing about parking that would increase stormwater runoff. She said the parking lot was already built. She said there was a condition that the Planning Department wanted, which was that the final parking agreement would be submitted to the Planning and Legal Departments for review and approval.

Mr. Mattson concurred and said he was glad the ordinance had the provision because he thought a lot of the most desirable parts of downtown were created before parking, and a lot of what is desired would not be allowed now due to the parking requirements. Mr. Rheaume said he was willing to go forward. He asked if the motion maker would consider another condition that there be adequate parking remaining at the alternate lot to meet the requirements of the current use. Vice-Chair Margeson and Mr. Mattson agreed.

#### The **amended** motion was:

Vice-Chair Margeson moved to **grant** the special exception for the petition with the following **conditions**:

1. The final parking agreement will be submitted to the Planning and Legal Department for review and approval, and

2. There is adequate parking remaining on the alternate lot per the requirements of the use, to be determined by Planning Staff.

Mr. Mattson seconded.

Mr. Nies pointed out that the property card showed the building as 30,000 sf of gross floor area and 16,000 sf feet of living area. He said it was larger than a 10,000 sf building but thought the added condition was a good one. Vice-Chair Margeson said she believed the parking calculation was made by the usable square area and not the gross area.

The motion **passed** by a vote of 6-1, with Mr. Mannle voting in opposition.

Mr. Rheaume recused himself from the following petition.

E. The request of Martin Husslage (Owner), for property located at 48 Langdon Street whereas relief is needed to demolish the existing dwelling and accessory structure, subdivide the property from one lot into two and to construct a single-family structure with attached Accessory Dwelling Unit on one lot and a two-family attached dwelling on the second lot. The project requires the following: 1) Variance from Section 10.521 to allow 2,832 square feet per dwelling unit for the proposed two-family dwelling lot where 3,500 square feet per dwelling unit is required. Said property is located on Assessor Map 138 Lot 47 and lies within the General Residence C (GRC) District. (LU-24-227)

## **SPEAKING TO THE PETITION**

[Timestamp 1:24:27] Attorney Tim Phoenix was present on behalf of the applicant, along with the applicant Martin Husslage and Corey Caldwell of TF Moran. Attorney Phoenix said the project went though many iterations and that they wanted to demolish the existing dwelling and accessory structure in favor of a 2-lot subdivision with a single-family home and an ADU on one lot and a duplex on the other lot. He explained that they had 94-1/2 percent of the total needed for the three dwelling units. He reviewed the proposed conditions and noted that the tax map had 28 lots less than or equal to 3500 square feet, so more than 45 percent of the lots on the tax map did not meet the lot area or the lot area per dwelling unit requirements. He said their memo identified several lots that were fairly close. He reviewed the criteria. He said there was a letter of opposition from the owner of 43 Cornwall Street, whose points he thought were inapplicable. He said that owner lived behind the applicant's property and had a 6-unit building on a .193 acre lot, which translated to 1,401sf of lot area per dwelling unit.

[Timestamp 1:41:21] Mr. Nies said the properties Attorney Phoenix highlighted and showed the Board and said were all in the same zone were really not in the same zone because the properties along Islington Street and some properties to the east of Rock Street were not. Attorney Phoenix said his point was the properties in the general area. Mr. Nies said the applicant provided a list of nearby properties that included mostly the properties on Langdon Street, and many of them exceeded the residential unit to lot area requirement, but he said Attorney Phoenix referenced the Walker vs. the City of Manchester case in which a number of variances were given in the same area. He asked how many of those properties were given variances. Attorney Phoenix said that

many if not most of the lots and buildings preceded zoning, but his point was that the project fit in with the area as it exists today. Mr. Nies said he was not convinced that the cited case was completely relevant because of the language in that case. He said the applicant's letter also cited other properties, and he asked how Attorney Phoenix reconciled his comment about the surrounding properties with Zoning Ordinance 10.233.50 that stated "whether surrounding properties violate a provision or standard shall not be a factor in determining whether the spirit of the ordinance shall be observed". Attorney Phoenix said he thought that section was overstated and believed that someone should give consideration to whether the property fits in with what's around it. He said it did fit in. Mr. Mattson asked if the applicant considered subdividing and having two single-family homes, each with an ADU, so that no variance would be required. Attorney Phoenix said they did consider it but the owner preferred to have both the value and size of the duplex for his own purposes, whether he kept or sold it. He said the project fit into the neighborhood.

[Timestamp 1:44:54] Vice-Chair Margeson said it was not a matter of whether or not it fit in, it was whether or not there are special conditions of that land that really merit a variance from the application of the ordinance to the land. She asked what the hardship was for not putting a singlefamily house on Lot A with perhaps an ADU. Attorney Phoenix said the hardship was that the lot was large compared to most of the lots nearby, so the fact that it is a large lot that will allow the division of the lot. He said when all the other requirements of the variance were factored in, they believed it met the hardship. Vice-Chair Margeson said she went through the area and it seemed like there was only one other house on the street that was a duplex and a teardown and that all the houses seemed to be the same age. She said all the difficult conditions of the property were things that could be easily addressed. Attorney Phoenix they were trying to balance the fact that they were at a corner where there was a fair amount of traffic and the driveway is close to that corner, so if they moved the home, they would need side yard setbacks. He said it was pretty close and that to deny the owner on a technicality that he did not quite meet 3500 square feet was not fair. Vice-Chair said the Lot A variance request was driven by the fact that there is a duplex on that lot and has nothing to do with the subdivision. She said the 3500 square feet minimum was not arbitrary. Attorney Phoenix said his point was that just because it was 3500 square feet did not mean that the Board could not reasonably approve something less than that under all the circumstances that the applicant argued, including more housing stock. Mr. Nies said the applicant was creating a hardship by splitting the property into two lots. Attorney Phoenix said the lot is larger than many of the others and the lot area and lot area per dwelling unit fit into the neighborhood.

Chair Eldridge opened the public hearing.

## SPEAKING IN FAVOR OF THE PETITION

[Timestamp 1:52:09] Corey Caldwell said when the project team looked at the balance test of the application, they looked at the five existing nonconformities, which he named. He said they would remove the five nonconformities in exchange for one, and in doing so would be able to preserve more open space for the two lots than for the existing one lot.

## SPEAKING IN OPPOSITION TO THE PETITION

Tom Waterman of 43 Cornwall Street said the applicant's property was a large rectangular lot and that he had always known that it would be developed because it was big, but the plan to create four dwelling units seemed excessive. He said if the applicant's goal was to have more rental income, he could just add another single-family house and an ADU and have four rental units. He said he could request a variance to add an ADU to an existing rebuilt duplex on the same property without subdividing. He said the Board heard a similar case in 2019 at 41 Salem Street, where they tried to fit two large duplexes on that large piece of property, and it was denied. He said 41 Salem Street now had three single-family homes there. He said he did not feel that the applicant demonstrated a hardship for asking for a 19 percent less-than-required lot size.

Attorney Phoenix said the applicant's proposal was different than the 41 Salem Street project because it was not two large duplexes. He said they would also remove the current violations.

## SPEAKING TO, FOR, OR AGAINST THE PETITION

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

## **DISCUSSION OF THE BOARD**

Timestamp 1:57:40] Chair Eldridge said she struggled with the application because she felt that the Board could accept that it was compliant at 94.5 percent and that the building itself fit on the lot, but she was also persuaded by Mr. Nies' argument that the applicant created the subdivision and was now asking the Board to forgive him for making it somewhat unbuildable. Mr. Mannle said the applicant clearly created the hardship for the Board, noting that the applicant could have drawn the lot line and had plenty of room with no variance needed for a two-family dwelling on one lot and single-family dwelling on the other lot. He said all the things that the applicant said would be cleaned up would have been taken care of by that. He said the applicant kept switching from 80 percent to 94 percent, but it was 80 percent. He said he did not see the hardship and thought the applicant was trying to backdoor a four-family by throwing in an ADU, which was why they were playing with the lot lines. It was further discussed. Mr. Mattson said he had no problem with subdividing the lot but did with the issue that was created upon subdivision to put the two units on. He said it was not a huge risk but was being created as part of the subdivision. He said the most convincing thing he found was removing the five nonconformities, but he asked why the applicant would create a nonconformity if he was starting fresh.

## **DECISION OF THE BOARD**

Vice-Chair Margeson moved to **deny** the variance for the application as presented and advertised, seconded by Mr. Mannle.

Vice-Chair Margeson said the applicant is subdividing a lot that is oversized for this district, but the reality is that they have not demonstrated hardship. She said it failed on Section 10.233.25, "The enforcement of the provision of the ordinance will result in an unnecessary hardship. The property has special conditions that distinguish it from other properties in the area, and owing to those special conditions, a fair and substantial relationship does not exist between the general public

purposes of the ordinance provision and the specific application of that provision to the property, and the proposed use is a reasonable one." Vice-Chair Margeson said the lot area was 3500 square feet minimum and the applicant would not need a variance if he built a single-family home on Lot A. She said the Board's purview was to see whether there is a hardship, and she said the applicant did not demonstrate that he could not build a single-family on Lot A and therefore would not need a variance for the lot area. For those reasons, she said the application should be denied. Mr. Mannle concurred and had nothing to add. Mr. Mattson said the special conditions that distinguished the property from others in the area was not that it was similar to other properties in the area. He said the applicant presented it as a justification for the hardship that there were other similar properties in the area. Mr. Nies said he struggled because of the hardship criteria. He said many of the special conditions that the applicant talked about were resolved by splitting it into two properties. He said he was trying to figure out the special condition that justifies the variance requested, and the only thing he could come up with was that the property is slightly smaller than what is required under the ordinance for a duplex for two residences, and he said that is not significantly different than any other property in the area.

The motion **passed** unanimously, 6-0, with Mr. Rheaume recused.

## II. ADJOURNMENT

The meeting adjourned at 9:06 p.m.

Submitted,

Joann Breault BOA Meeting Minutes Taker



City of Portsmouth Planning Department 1 Junkins Ave, 3<sup>rd</sup> Floor Portsmouth, NH (603)610-7216

## **MEMORANDUM**

TO: Zoning Board of Adjustment FROM: Jillian Harris, Principal Planner

Stefanie Casella, Planner

DATE: February 13, 2025

RE: Zoning Board of Adjustment February 19, 2025

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

## **II. Old Business**

A. 84 Pleasant Street – Request for Rehearing

B. 222 Court Street – Extension Request

C. 361 Hanover Street

D. 1001 Islington St.

## **III. New Business**

- A. 410 Richards Avenue Equitable Waiver
- B. 410 Richards Avenue Variance

## **II. OLD BUSINESS**

A. The request of **Working Stiff Properties, LLC** for property located at 84 Pleasant Street and 266, 270, 278 State Street to rehear the granted Variances from the November 19, 2024 BOA meeting.

## **Planning Department Comments**

At the November 19, 2024 Board of Adjustment meeting the Board considered the request of **PNF Trust of 2013**, **(Owner)**, for property located at **84 Pleasant Street** and **266**, **270**, **278 State Street** whereas relief is needed to merge the lots and construct a four-story mixed-use building which requires the following: 1) Variance from Section 10.5A41.10.C to allow a) 98% building coverage where 90% is maximum, b) 0% open space where 10% is minimum, and c) 53% shopfront façade glazing on Pleasant Street and 52% on State Street where 70% is the minimum required; 2) Variance from Section 10.5A21.B to allow a) 55 feet of building height where 47 feet is permitted with a penthouse, b) a fourth story addition at 50 feet in height to the Church street elevation where 3 full stories and a short fourth are allowed with 45 feet maximum height permitted; 3) Variance from Section 10.642 to allow 43% ground floor residential area where 20% is maximum.

The Board voted to **grant** the variances as presented and advertised for Variance No. 1 in its entirety, Variance No. 3 in its entirety, and Variance 2(b) only. The Board voted to **deny** the request for variance No. 2(a).

A request for rehearing was filed within 30 days of the Board's decision and the Board considered the request at the next scheduled meeting on January 22, 2025. The Board voted to postpone the decision to the February 19, 2025 meeting, pending further consideration of attachments that were missing from the electronic file for the submitted request. If the Board votes to grant the request, a hearing will be scheduled for next month's Board meeting or at another time to be determined by the Board.

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

The past application can be referenced in November 19, 2024 meeting packet found at the following link: <a href="https://files.cityofportsmouth.com/agendas/2024/BOA/11-19-2024">https://files.cityofportsmouth.com/agendas/2024/BOA/11-19-2024</a> BOA Packet.pdf

## MOTION FOR REHEARING

266, 270, 278 State Street & 84 Pleasant Street
Portsmouth, NH 03801
Tax Map 107, Lots 77-80
LU-24-195

## I. INTRODUCTION.

Working Stiff Properties LLC ("WSP"), owner real property located at 92-94 Pleasant Street and abutter to the proposed project located at 266, 270, 278 State Street & 84 Pleasant Street Portsmouth, NH 03801, Tax Map 107, Lots 77-80 (the "Project Property") submits this Motion for Rehearing with respect to the Portsmouth Zoning Board of Adjustment's ("Board") grant of the variances, which as provided for in the Board's Notice of Decision is detailed as follows:

The Zoning Board of Adjustment, at its regularly scheduled meeting of Tuesday, November 19, 2024, considered [the] application for merging the lots and constructing a four-story mixed-use building which requires the following: 1) Variance from Section 10.5A41.10.C to allow a) 98% building coverage where 90% is maximum, b) 0% open space where 10% is minimum, and c) 53% shopfront façade glazing on Pleasant Street and 52% on State Street where 70% is the minimum required; 2) Variance from Section 10.5A21.B to allow a) 55 feet of building height where 47 feet is permitted with a penthouse, b) a fourth story addition at 50 feet in height to the Church street elevation where 3 full stories and a short fourth are allowed with 45 feet maximum height permitted; 3) Variance from Section 10.642 to allow 43% ground floor residential area where 20% is maximum. Said property is shown on Assessor Map 107 Lot 77 Map 107 Lot 78, Map 107 Lot79, Map 107 Lot 80 and lies within the Character District 4 (CD4), Historic and Downtown Overlay Districts. As a result of said consideration, the Board voted to to [sic] grant the variances as presented and advertised for Variance No. 1 in its entirety, Variance No. 3 in its entirety, and Variance 2(b) only.

Specifically, WSP requests rehearing relative to the Board's grant of Variance 2(b) for a fourth story addition at 50 feet in height to the Church Street elevation where 3 full stories and a short fourth are allowed with 45 feet maximum height permitted.

WSP incorporates herein by reference all past testimony and submissions of the Project Property by its Owner and Applicant, the public, and the Board's deliberation of the same.

#### II. STANDARD OF REVIEW

RSA 677:2 states: "Within 30 days after any order or decision of the zoning board of adjustment, or any decision of the local legislative body or a board of appeals in regard to its zoning, the selectmen, any party to the action or proceedings, or any person directly affected thereby may apply for a rehearing in respect to any matter determined in the action or proceeding, or covered or included in the order, specifying in the motion for rehearing the ground therefore; and the board of adjustment, a board of appeals, or the local legislative body, may grant such rehearing if in its opinion good reason therefore is stated in the motion."

"A motion for rehearing made under RSA 677:2 shall set forth fully every ground upon which it is claimed that the decision or order complained of is unlawful or unreasonable." RSA 677:3. Upon the filing of a Motion for Rehearing, the ZBA is required to grant or deny the application within thirty (30) days or suspend the order or decision complained of pending further consideration. Id.

The purpose of the Motion for Rehearing process is to allow the ZBA the first opportunity to address or pass upon errors which it might have made at its public hearing, before an appeal to the Superior Court is taken. <u>Bourassa v. Keene</u>, 108 N.H. 261 (1967). As a general rule, a rehearing should be granted if the petitioner can demonstrate to the Board that it committed *technical error* or that there is *new evidence that was not available at the time of the first hearing*. <u>The Board of Adjustment in New Hampshire</u>, A Handbook for Local Officials, NH OEP, Pages IV-4 (2013) (emphasis added).

#### III. GROUNDS FOR REHEARING

# VARIANCE 2(B) WAS NOT PROPERLY CONSIDERED BY THE BOARD, AND ITS VOTE TO GRANT THE SAME WAS NOT PROPERLY SUPPORTED

The ZBA erred in determining that Variance 2(b) satisfied the necessary requirements to obtain the requested variance.

Pursuant to New Hampshire law and the City of Portsmouth Zoning Ordinance, to obtain a variance, an applicant must satisfy each of five factors: (a) the variance will not be contrary to the public interest; (b) special conditions exist such that literal enforcement of the ordinance results in unnecessary hardship; (c) the variance is consistent with the spirit of the ordinance; (d)

substantial justice is done; and (e) the variance must not diminish the value of the surrounding properties.

In considering the three (3) part application with subsections, the Board decided to lump five of the six variance requests together, resulting in a significant amount of confusion when it came time for the Board members to vote. The final vote swept Variance 2(b) into the "lump", though Variance 2(b) was not properly supported by the Board, and, furthermore, it is not referenced in 4 of the 5 Findings of Fact included with the Board's Notice of Decision; Variance 2(b) is only alluded to vaguely in the Finding of Facts relative to Section 10.233.24, which states in pertinent part:

- The penthouse on the Church Street side isn't objectionable and will not diminish the values of surrounding properties.
- There is a concern from one of the abutters [WSP], but it is the downtown area and the space taken up is slightly larger than what is called for. None of the things relief is being asked for are things that would affect the abutter.

WSP believes that "isn't objectionable" does *not* apply to any of the five (5) required Variance criteria; and, "Things" is vague and not descriptive to include any of the five (5) required variance criteria. WSP supports this as follows:

- 1. The Board should not have granted Variance 2(b) because:
  - a. The Applicant did not prove hardship. The application is for new construction for a penthouse space, with a height of 50 feet which exceeds the current CMU (cinderblock building) addition height of 32 feet by 18 feet, and the zoning ordinance permitted height limit of 45 feet by 5 feet.
  - b. Much like during its deliberation, the Board did not actually address the hardship criteria for Variance 2(b) in its Notice of Decision.
  - c. The Applicant would like to build higher than the ordinance allows, however such height is *not necessary* (except to maximize profit).
  - d. The Board "mainly" refers to the Times Building reproduction, noting "the additional height of 50 feet is a difficult issue."
  - e. The Applicant's attorney, Christopher Mulligan "understands economic concerns are not first and foremost in consideration"
  - f. Board Member comments include:
    - i. Financial consideration "is not within our purview"
    - ii. Did "not find any hardship for the penthouse to go up to 55 feet..."
    - iii. "Because this is *new* construction, my feeling always goes to you have a blank slate, why can't you conform?"
    - iv. "Penciling out a project is not one of our criteria"
    - v. "I have a problem with clean-slate projects intentionally violating the variances when they don't have to."

- g. In fact, the Board denied Variance 2(a) based on the lack of hardship, and as noted in the Finding of Fact "the Board voted to deny the request for variance No. 2(a) because it fails the hardship criterion as there are no special conditions of the property that drive the need for a penthouse."
- 2. Variance 2(b) is contrary to the character district zoning intent:
  - a. Regarding Variance 2(a), the Board stated that the 'justice' criteria "mainly" refers to the Times Building historic reproduction, noting "the additional height of 50 feet is a difficult issue."
    - i. The cinderblock addition behind 84 Pleasant, however, is decidedly *not* historic
    - ii. There is no historic reproduction or restoration need for the existing cinderblock addition to go higher
    - iii. Raising the height of the cinderblock addition to include a contemporary penthouse addition that exceeds the height of the historic townhouse, and juts forward up and over the ridgeline of the historic townhouse towards Pleasant Street is also decidedly not historic, and defies the character zoning intentions.
  - b. The Board applied the variance criteria in an inconsistent and even contradictory manner in its approval of Variance 2(b) and its denial of Variance 2(a).
    - i. In the Board's denial of Variance 2(a), discussed and voted upon immediately following the approval of Variance 2(b), a Board Member states that the building heights decided when the character zoning ordinances were created some ten years ago may seem arbitrary, "but still, they're the ordinance." The question remains, how do these acknowledgements of the ordinance *not* apply to Variance 2(b) if they apply to Variance 2(a)?
    - ii. Note, the Applicant submitted plans and renderings labeled "B0A1," "B0A2," and "B0A4" which do not accurately depict the 84 Pleasant Street townhouse ridgeline as effected by the applicant's proposed 'rear' "Church Street" addition. The 50' addition 'in back' actually comes up and over the historic townhouse roof ridgeline to the front of the 84 Pleasant townhouse roof, as shown in applicant-submitted drawing B0A6. All renderings should depict an overframe over the top of the historic 1850 townhouse roof if B0A6 is accurate. See applicant drawing B0A6 which shows the 'jut-out' above the 84 Pleasant historic townhouse ridgeline (but does not show the depth dimension).
  - c. The Board did not specifically address the 'justice' criteria regarding Variance 2(b) specifically in Findings of Fact.
- 3. The Board's grant of Variance 2(b) diminishes the value of WSP's property at 92-94 Pleasant Street:
  - a. 92-94 Pleasant Street is a direct and contiguous abutter.
  - b. WSP's original 1850 townhouse structure shares a firewall with the contiguous and original historic 1850 townhouses at 84 Pleasant Street.

- c. The ell behind 92-94 Pleasant Street physically abuts the existing 1960s cinderblock addition of the Applicant's property at 84 Pleasant Street.
- d. The Applicant's renderings neglect to include the dormered windows on the Church Street side of WSP's historic townhouse at 92-94 Pleasant Street, as well as the solar hot water panels atop the 1-story ell.
- e. The Applicant's renderings *do* include non-code-compliant glazing on its proposed façade;
- f. The Applicant's renderings depict new windows on the existing CMU addition and its proposed additional height which suggests a visual break, transparency, and reflection; windows are not permitted on a façade that sits on a property line, and they were not approved in the Applicant's first round of applications.
- g. The increase in height of eighteen (18) feet above the existing 1960s cinderblock addition—which new addition as rendered in applicant-submitted drawing BOA6, goes up over the ridgeline of the original and historic townhouse towards Pleasant Street—would create a gargantuan solid mass hovering over 92-94 Pleasant Street.
- h. The proposed CMU addition height would in actuality create a new looming solid mass outside WSP property's third floor dormered windows, greatly decreasing "light and air" compared to existing conditions, reducing sunset light time by more than an hour, photos and sketches of which are submitted herein and hereto.

## IV. CONCLUSION

The Board's grant of Variance 2(b) is not consistent with the ordinance because a variance approval must meet all five (5) criteria, and the application did not do so as laid out directly above. In approving the Applicant's proposal, specifically Variance 2(b), the Board erred as it was in conflict with the Zoning Ordinance, State law, and its own comments during the meeting.

WSP respectfully requests that the Board rehear the Application as presented, or if the Board determines it to be appropriate and the rules so allow, just Variance 2(b) of the Application as it has met its burden of showing that good reason exists to rehear the Application.

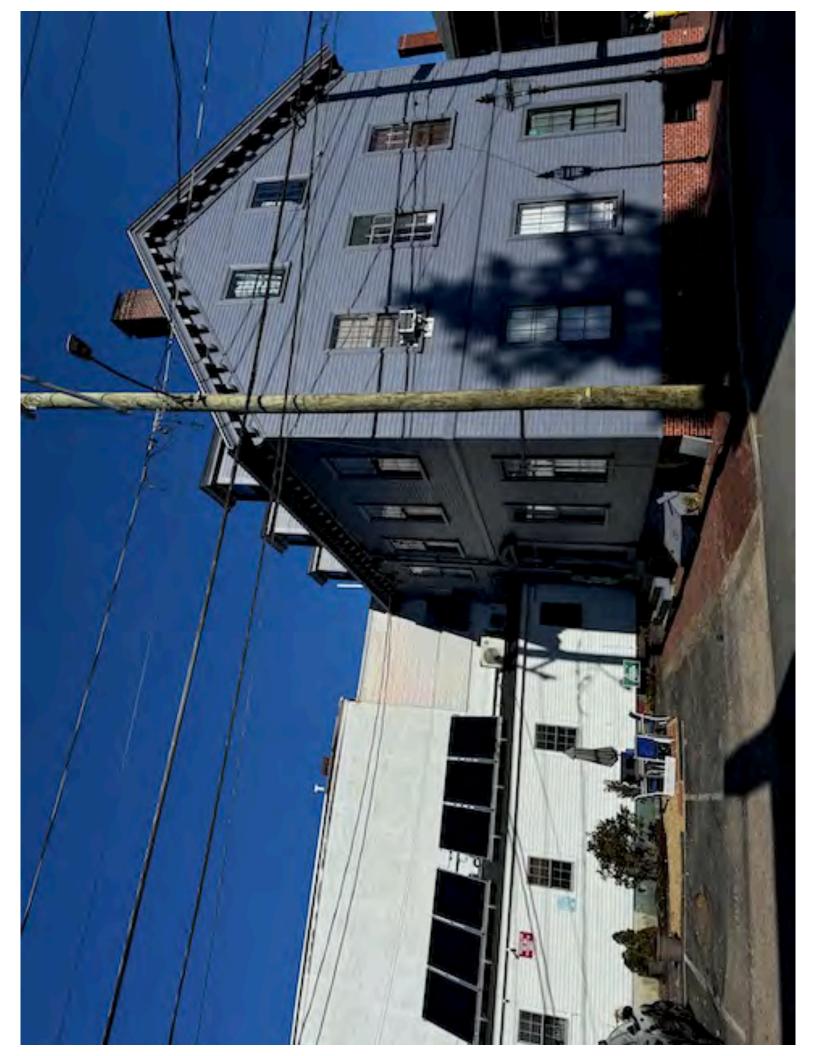
Finally, WSP recognizes that the Applicant has submitted a request for rehearing regarding height, generally, and how the Board voted. Should the Applicant's request for rehearing be granted, and said rehearing reopens the issue for height to incorporate the concerns and requests contained herein in such a manner that WSP effectively argues its rehearing request, then WSP would withdraw its request or merge its rehearing request into that of the Applicant's.

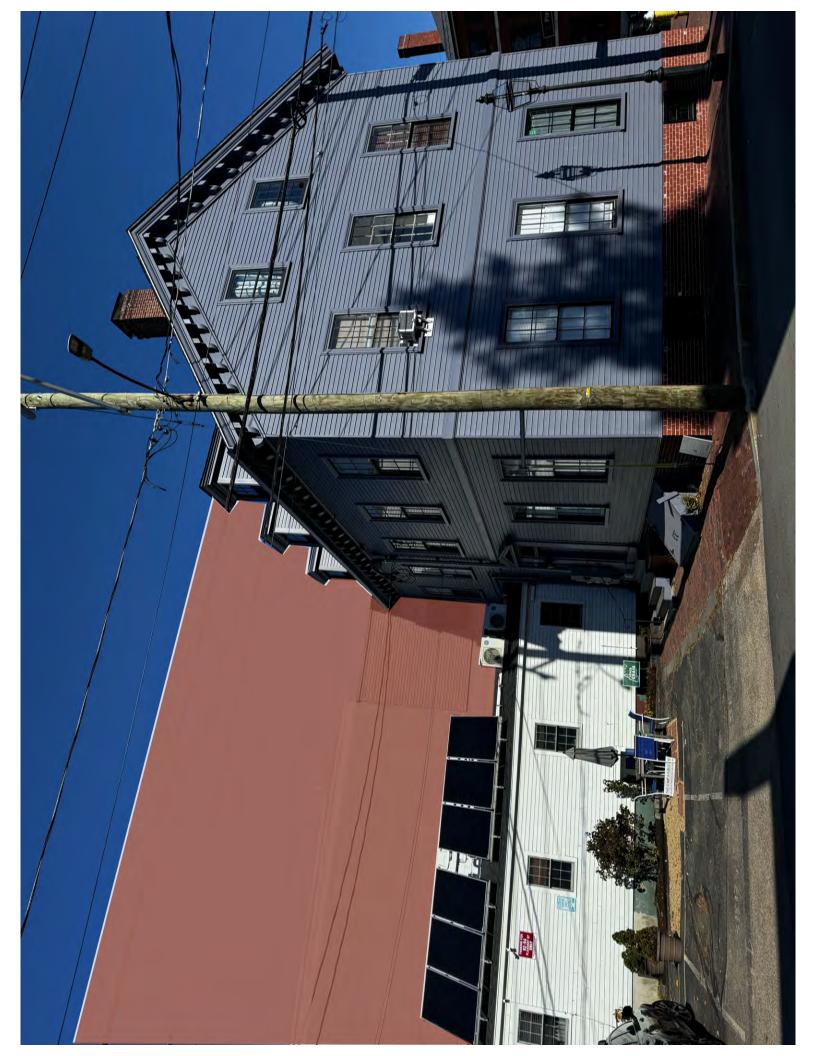
Respectfully Submitted,

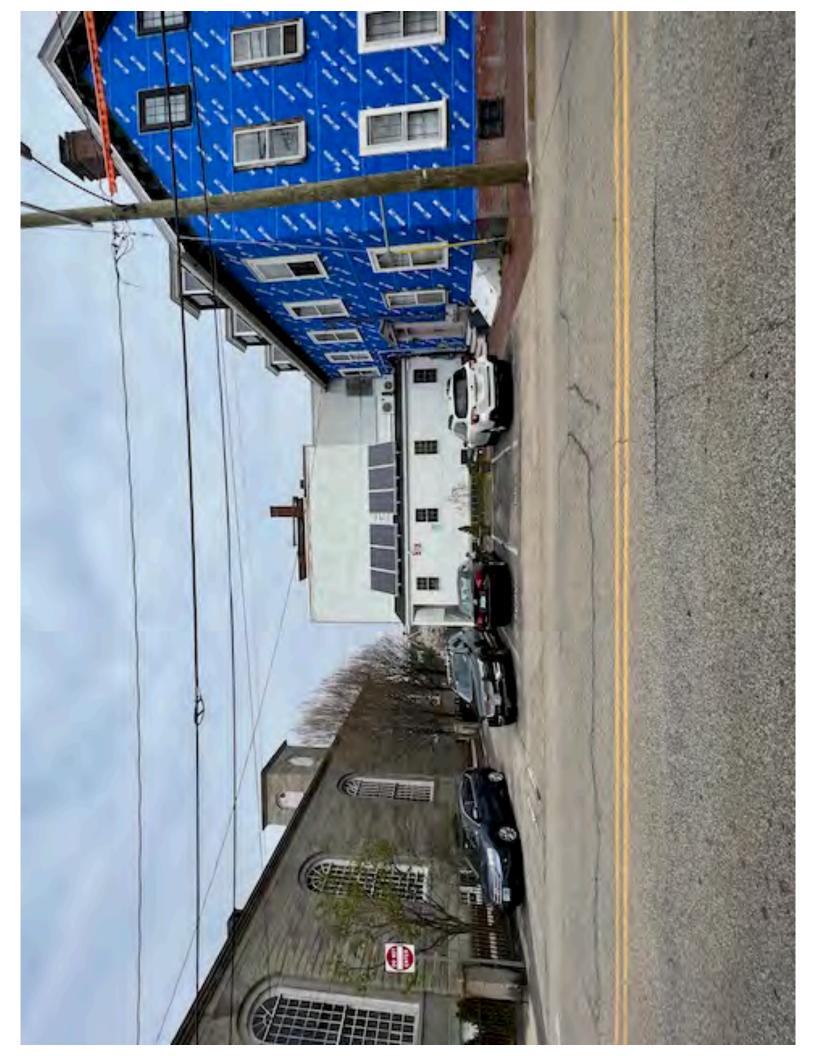
Working Stiff Properties LLC

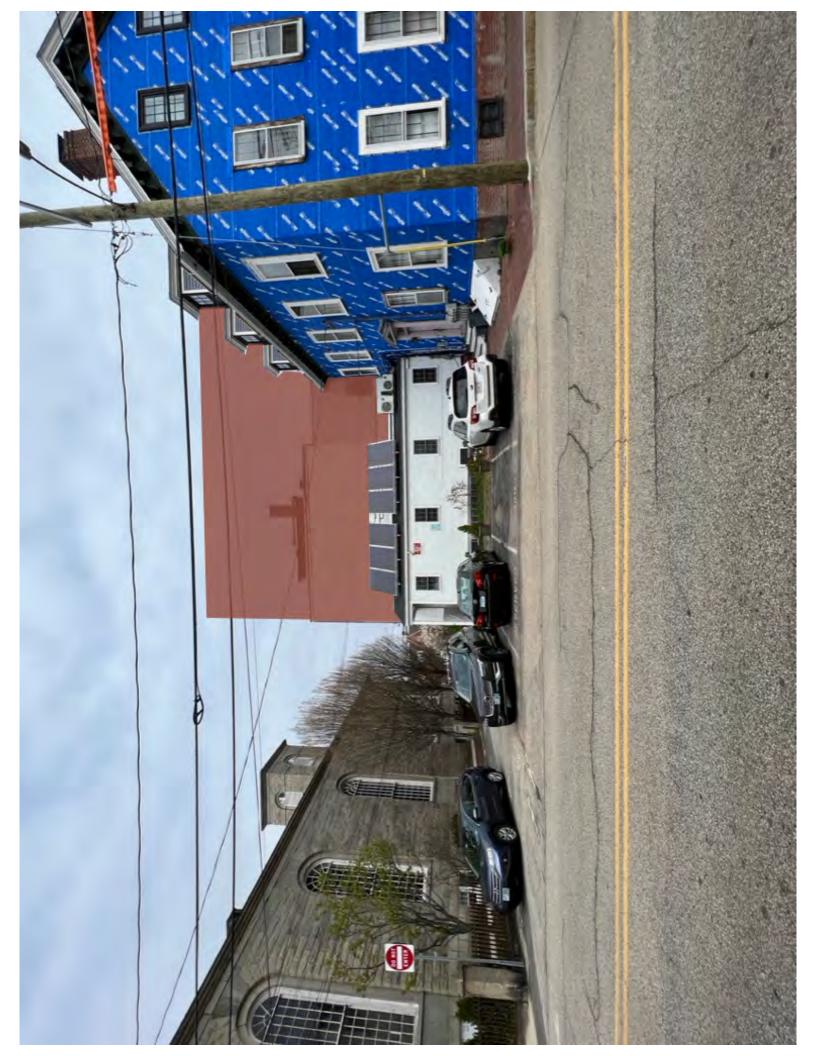
Barbara Jenny, Manager

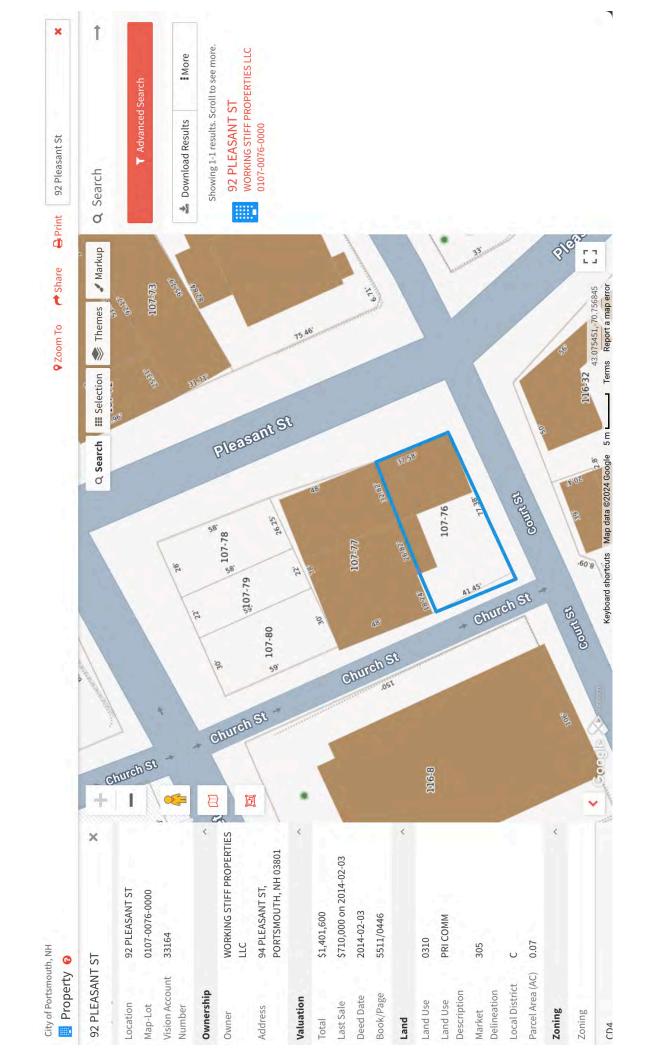
Matthew Beebe, Manager













BOA - 10/22/24

Accept, orth original stamp and signature, codes the contain unaufficient modification

PROJECT
RESTORATION AND EXPANSION OF 266, 270 278 SIATE STREET
AND 84 PLEASANT ST, PORTSMOUTH NH

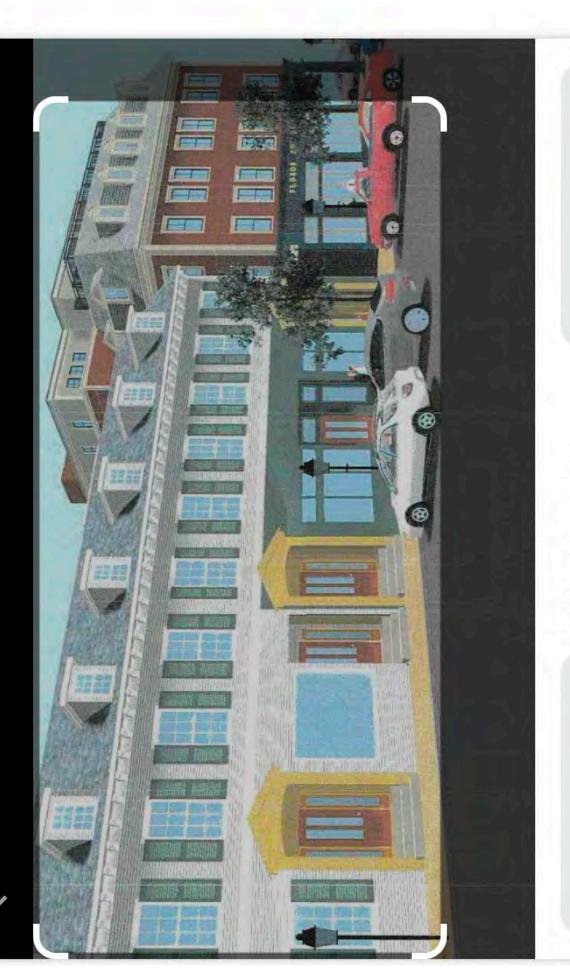
PNF TRUST OF 2013 282 MIDDLE STREET PORTSMOUTH, NH 03801

THE

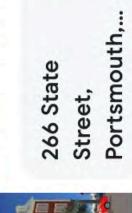
COURT STREET ELEVATION

B0A.6

COURT STREET ELEVATION SCALE: 14° = 1'-0"

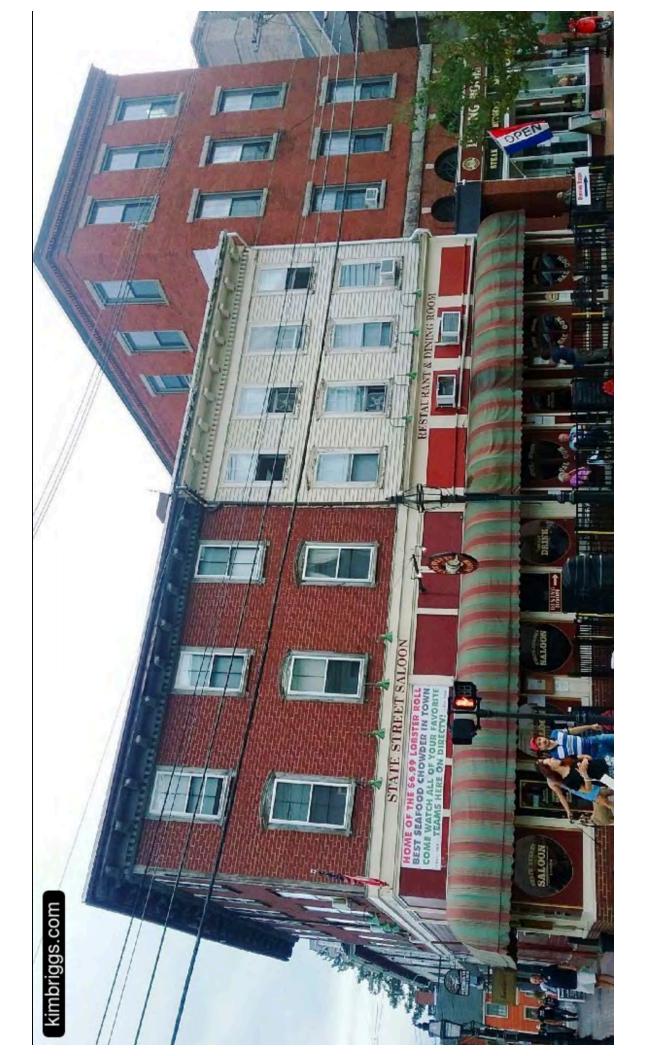


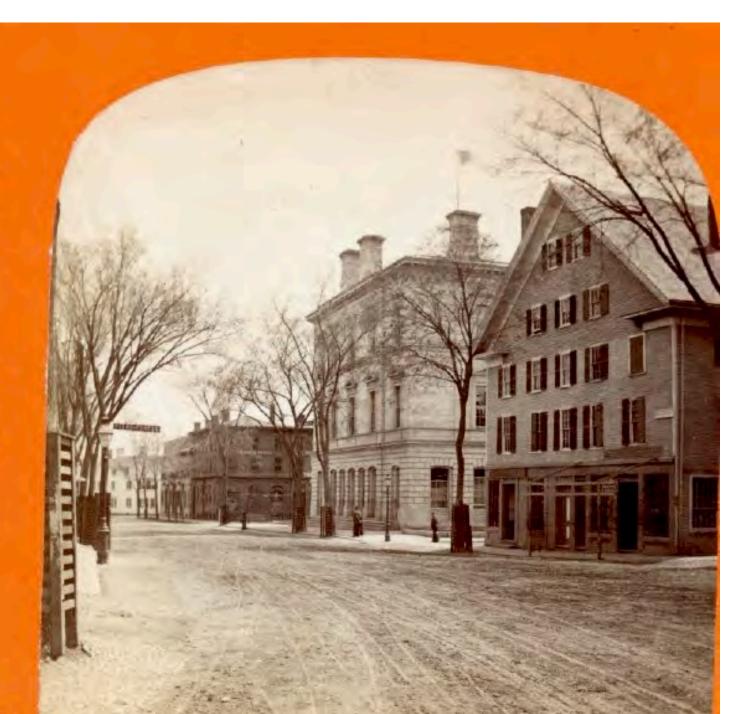








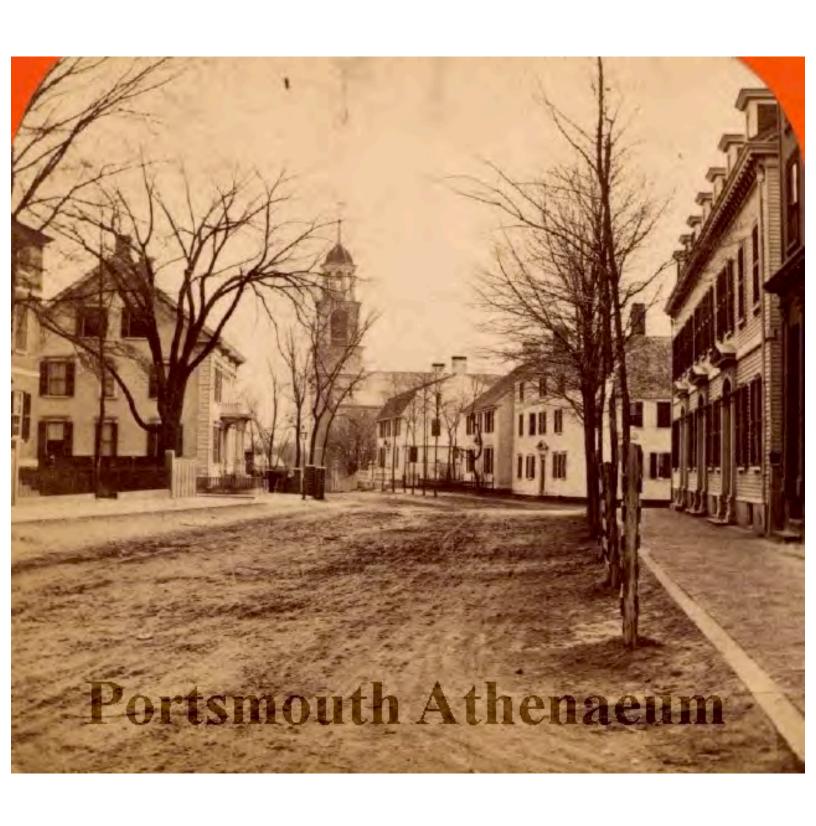




Portsmouth Athenaeum



Portsmouth Athenaeum



### Rebuild of 266, 270 & 278 State Street and 84 Pleasant Street after fire

(/dashboard/projects/9296) Land Use Application

### LU-24-219

Your Submission

### **Attachments**

Guests (0)

- Preliminary Application Review
- Address Verification Review
- ▶ Land Use Permit -- Planning Department Review and Fee Calculation

Application Permit Fee

and Use Code Review

Historic District Commission Approval

.and Use Conditions of Approval Review

**3uilding Permit Issued** 

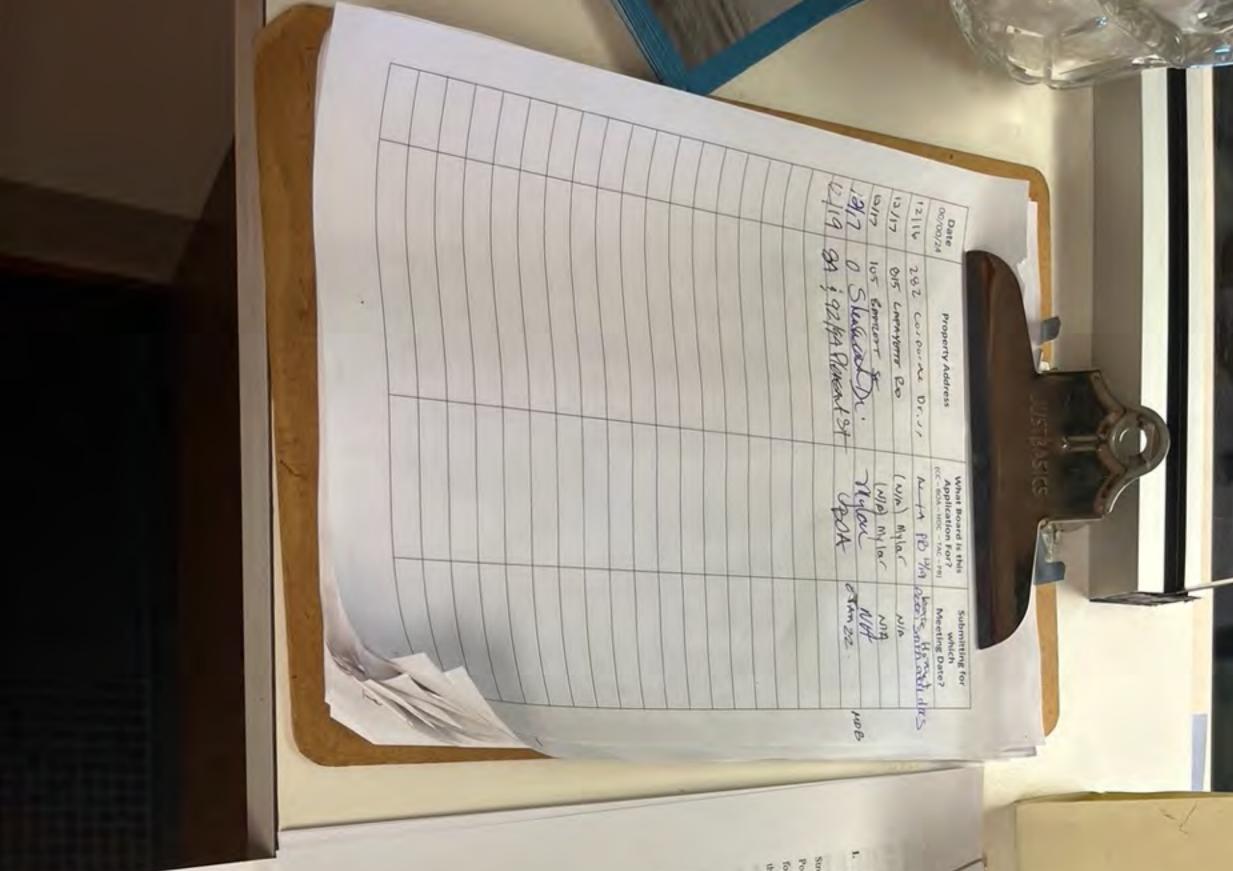
### **Attachments**

Attachment	File
Owner's Authorization Required  Owner authorization is required for someone other than the owner of the property to submit an application.	Owner-Abutter.pdf Uploaded on Dec 16, 2024 at 7:38 pm
Site Plan  A site plan is a required submission for most applications.  In most cases, either tax maps or surveyed plans are acceptable. Tax maps can be accessed online through the City's online mapping tool at https://portsmouthnh.mapgeo.io (https://portsmouthnh.mapgeo.io) or at https://www.cityofportsmouth.com/city/maps-portsmouth. (https://www.cityofportsmouth.com/city/maps-portsmouth)	05 84-88 and 92-94 M Uploaded on Dec 16, 2024 at 6:52 pm
Pleasant Motion for Rehearing.pdf  Motion for Rehearing from Working Stiff Properties LLC - text	Pleasant Motion for Re  Uploaded on Dec 16, 2024 at 6:53 pm
text	·

01 photo - Court St POV 194 Pleasant existing 84 rear.jpeg existing conditions, photo, POV from Court St	O1 photo - Court St PO Uploaded on Dec 16, 2024 at 6:54 pm
O2 Court Street POV - 94 Pleasant photo with proposed 84 mass.png Court St POV 1, photoshopped, showing applicant's proposed addition mass	O2 Court Street POV Uploaded on Dec 16, 2024 at 6:56 pm
03 photo POV wide COurt St 94 Pleasant w 84 rear CMU existing.jpeg Court St POV2, wide angle photo of existing conditions, including South Church	O3 photo POV wide CO Uploaded on Dec 16, 2024 at 6:57 pm
O4 Court Street wide POV 2 - 94 Pleasant photo with proposed 84 mass.png Court St POV 2 wide angle photo, photoshopped to include applicant's proposed addition mass	O4 Court Street wide P Uploaded on Dec 16, 2024 at 6:58 pm
06 B0A6 Applicant rendering.pdf Applicant's elevation from Court Street B0A6	06 B0A6 Applicant ren Uploaded on Dec 16, 2024 at 7:27 pm
07 Screenshot.png thumbnails showing increase in height from 2019 to 2024	07 Screenshot.png
applications	Uploaded on Dec 16, 2024 at 7:29 pm
08 Screenshot.png State St Saloon and Times Building pre-fire	08 Screenshot.png Uploaded on Dec 16, 2024 at 7:30 pm

09 p0004_167-2.jpeg history Atheneum photo, from Market Square POV	09 p0004_167-2.jpeg Uploaded on Dec 16, 2024 at 7:31 pm
10 p0004_169a-2.jpeg history - Atheneum photo POV Junkins Ave	10 p0004_169a-2.jpeg Uploaded on Dec 16, 2024 at 7:32 pm
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# PLANNING DEPARTMENT

Please ring the bell for service. Thank you!

Proposed Budy

Fiscal Year

# MOTION FOR REHEARING 266, 270, 278 Some Survey & 94 Pleasant Street 266, 270, 278 Some Survey & 94 Pleasant Street Pertamoults, NH 03801 Pertamoults, NA 107, Lots 77-80 Tax Map 107, Lots 77-80

portsmouth, NH 03801. Tax Map 107, Lots 77-80 (the "Project Property") submitts this Motion for Rehearing with respect to the Portsmouth Zoning Board of Adjustment's ("Board") grant of the variances, which as provided for in the P Working Sift Properties LLC ("WSP"), owner real property located at 92.94 pleasant and abutter to the severe LLC ("WSP"), owner real property located at 92.94 pleasant

the variances, which as provided for in the Board's Notice of Decision is detailed as follows: The Zoning Board of Adjustment, at its regularly schoduled meeting of Toesday, November 19, 2024, considered (the) application for merging the lots and constructing a four-story mixed-use building which requires the following:

1) Variance from Section 10.5A41.10.C to allow a) 98% building coverage where 90% is maximum, b) 9% open space where 10% is minimum, and c) 53% shopfront foreade glasting on Pleasant Street and 52% on State Street where 70% is the minimum required. 2) Variance from Section 52% on State Street where 70% is the minimum required. 2) Variance from Section 10.5A21.B to allow a) 55 feet of building height where 47 feet is permitted with a penthouse, b) a fourth story addition at 50 feet in height to the Church street elevation where 3 full storics and a short fourth are allowed with 45 feet maximum height permitted; where 3 full storics and a short fourth are allowed with 45 feet maximum height permitted a) Variance from Section 10.642 to allow 43% ground floor residential area where 20% is maximum. Said property is shown on Assessor Map 107 Lot 77 Map 107 Lot 78, Map 107 Lot 79, Map 107 Lot 80 and lies within the Character District 4 (CD4). Historic and Downtown Overlay Districts. As a result of said consideration, the Board voted to to [sic] grant the variances as presented and advertised for Variance No. 1 in its entirety, Variance grant the variances as presented and advertised for Variance No. 1 in its entirety.

fourth story addition at 50 feet in height to the Church Street elevation where 3 full stories and a Specifically. WSP requests rehearing relative to the Board's grant of Variance 2(b) for a

short fourth are allowed with 45 feet maximum height permitted.

Property by its Owner and Applicant, the public, and the Board's deliberation of the same. WSP incorporates herein by reference all past testimony and submissions of the Project

Page 1 of 6

HE PORTSMOUTH LE AND PEDESTRIAN I IS BEING UPDATED!

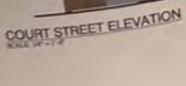
MARKET STATES

BOA.6









### **II. OLD BUSINESS**

B. Request for 1-Year Extension – **222 Court Street** (LU-23-12)

### **Planning Department Comments**

On February 28, 2023 the Board of Adjustment granted the following variances for the installation of one 24 by 28 foot mural and one 3 by 2 foot sign:

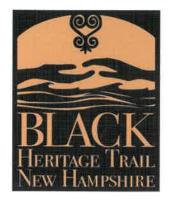
- 1) Variance from Section 10.1251.10 to allow max aggregate sign area of 686 square feet where 36 square feet is allowed;
- 2) Variance from Section 10.1251.20 to allow max area for individual sign of 678 where 16 square feet is allowed;
- 3) Variance from Section 10.1242 to allow more than one sign on a building facing the street; and
- 4) Variance from Section 10.1271 to allow a sign on the side of the building that is not facing a street.

The Board voted to grant the request with the following condition:

1. The sign is an artistic image only featuring Ona Judge and will not be altered for any other purpose

The approvals listed above are scheduled to expire on February 28, 2025. The Ordinance allows for a one-time, one-year extension if the request is acted on prior to the expiration date. The applicant has requested an extension as a permit has not yet been obtained. A letter from the applicant and the 2023 letter of decision is included in the meeting packet. You can view the original application material at the following link:

https://files.portsmouthnh.gov/files/planning/apps/CourtSt\_222/CourtSt\_222\_BOA\_0228202 3.pdf





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

January 16, 2025

Dear Ms. Eldridge and Members of the Zoning Board of Adjustment:

In 2023 the ZBA approved our application for a variance to allow us to have a mural on the side of our headquarters building at 222 Court Street. We have finally received funding that is allowing us to move forward with the project. As per your letter of March 7, 2023 confirming the approval, we are submitting this letter as a request for a one-year extension on this approval to February 28, 2026.

Thank you for your consideration.

Sincerely,

JerriAnne Boggis
Executive Director



### CITY OF PORTSMOUTH

Planning Department 1 Junkins Avenue Portsmouth, New Hampshire 03801

(603) 610-7216

### **ZONING BOARD OF ADJUSTMENT**

March 7, 2023

Black Heritage Trail of New Hampshire 222 Court Street Portsmouth, New Hampshire 03801

RE: Board of Adjustment request for property located at 222 Court Street (LU-23-12)

Dear Property Owner:

The Zoning Board of Adjustment, at its regularly scheduled meeting of **Tuesday**, **February 28**, **2023**, considered your application for the installation of one 24 by 28 foot mural and one 3 by 2 foot sign which requires the following: 1) Variance from Section 10.1251.10 to allow max aggregate sign area of 686 square feet where 36 square feet is allowed; 2) Variance from Section 10.1251.20 to allow max area for individual sign of 678 where 16 square feet is allowed; and 3) Variance from Section 10.1242 to allow more than one sign on building facing the street; and 4) Variance from Section 10.1271 to allow a sign on the side of the building that is not facing a street. Said property is shown on Assessor Map 116 Lot 33 and lies within the Character District 4-L1 (CD4-L1) and Historic District. As a result of said consideration, the Board voted to **grant** the request with the following **condition**:

1) The sign is an artistic image only featuring Ona Judge and will not be altered for any other purpose.

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

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

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

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

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

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

Very truly yours,

Phyllis Eldridge, Chair of the Zoning Board of Adjustment

cc: Shanti Wolph, Chief Building Inspector

Rosann Maurice-Lentz, City Assessor

Phyllis Eldridge

# Findings of Fact | Variance City of Portsmouth Zoning Board of Adjustment

Date: 02-28-2023

Property Address: 222 Court Street

Application #: LU-23-12

Decision: Grant with Stipulation

### **Findings of Fact:**

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

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

Section 10.233 Variance Evaluation Criteria	Finding (Meets Criteria)	Relevant Facts
10.233.21 Granting the variance would not be contrary to the public interest.	YES	A compelling case could be made that it will be an enrichment for the public.
10.233.22 Granting the variance would observe the spirit of the Ordinance.	YES	This particular zone allowed a permitted use for a museum, and what the Black Heritage Trail of NH is doing is creating a free-to-the-public art display that would be considered akin to an open access museum for anyone to see, which is consistent with the spirit of the ordinance.
10.233.23 Granting the variance would do substantial justice.	YES	<ul> <li>There will be no loss to the public.</li> <li>There would be no gain to be had by the owners of the property that would be outweighed by a loss to the public.</li> </ul>

10.233.24 Granting the variance would not diminish the values of surrounding properties.	YES	<ul> <li>The abutter seemed to have no objection to the mural, noting that the abutter would be in a position to make an objection if he thought there was an impact to his property values.</li> <li>The absence of any public comment is taken to meant that there is support for the idea and that the proposal will not have a negative impact on surrounding properties.</li> </ul>
10.233.25 Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship.  (a)The property has special Conditions that distinguish it from other properties in the area. AND (b)Owing to these special conditions, a fair and substantial relationship does not exist between the general public purposes of the Ordinance provision and the specific 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.	YES	The special condition of the property is that it contains the brick wall that was placed there at some time in history, and that wall needs to be preserved by applying a coat of paint anyway. Therefore, making an artistic use of it is very consistent, and a unique aspect of the property is that it needs to have paint on the wall in order to preserve it, so that's the special condition that justifies the use in this manner.

### Stipulation

1. The sign is an artistic image only featuring Ona Judge and will not be altered for any other purpose.

### **II. OLD BUSINESS**

C. The request of 361 Hanover Steam Factory LLC (Owner), and Hampshire Development Corporation LLC (Applicant), for property located at 361 Hanover Street whereas relief is needed to expand and renovate the existing commercial building and convert it to multi-family residential and to construct three new multi-family residential buildings which requires the following: 1) Variance from Section 10.642 to allow residential principal uses on the ground floor of the buildings; 2) Variance from Section 10.5A41 - Figure 10.5A41.10D to a) allow for "Apartment", "Rowhouse" and "Duplex" building types where they are not permitted; b) allow a ground floor height of 10.5 feet where 12 feet is required. Said property is located on Assessor Map 138 Lot 63 and lies within the Character District 5 (CD5) and the Downtown Overlay District. (LU-24-196)

### **Existing & Proposed Conditions**

	Existing	Proposed	Permitted / Required	
Land Use:	Commercial	**Residential apartment, rowhouse, and duplex style buildings***	Mixed use	
Lot area (sq. ft.):	43,245	Lot 1: 4,717 Lot 2: 38,528	NR	min.
Primary Front (Hanover St) Yard (ft.):	Bldg. A: 99	Bldg. A: N/A* Bldg. B: 0 Bldg. C: 5 Bldg. D: 2	5	max.
Secondary Front Yard (Rock St) (ft.):	A: 0	A: 0 B: 2 C: N/A D: N/A	5	max
Right Yard (ft.):	5	5	NR	max
Secondary Front Yard (Foundry PI) (ft.):	0	A: 0 B: N/A C: N/A D: N/A	5	max.
Height (ft.):	18 (approx.)	A: 40 B: 36 C: 36 D: 40	40	max.
Ground Floor Height (ft)	10	10.5	12	min.
Building Coverage (%):	38	72	95	max.
Open Space Coverage (%):	<5	>5	5	min.
Parking:	57	71		

Estimated Age of	1850	Variance request(s) shown in red.
Structure:		

<sup>\*</sup>Existing condition – Proposed Bldgs. meet requirement.

Full CD5 Zoning Table can be found on Exhibit A of the application materials.

### Other Permits/Approvals Required

- Building Permit
- Site Plan Approval Technical Advisory Committee and Planning Board
- Subdivision/LLA Approval Technical Advisory Committee and Planning Board

<sup>\*\*</sup>Apartment, Rowhouse, and Duplex style buildings are not allowed building types under section 10.10.5A41 figure 10.5A41.10D

<sup>\*\*\*</sup>Residential principal uses are not allowed on the ground floor in the Downtown Overlay District per Section 10.642

### **Neighborhood Context**



### **Previous Board of Adjustment Actions**

- June 12, 1979 The Board denied the following: 1) Variance from Article II, Section 10-213 and Article XII, Section 10-1210 to allow a dance ballroom in an existing building with 90 parking spaces where 167 are required.
- May 28, 1985 The Board granted the following: A Variance from Article II, Section 10-207 to allow the operation of a recreational facility including squash courts, nautilus, exercise rooms, and swimming pool in an industrial district. The Board denied the following: A Variance from Article XII, Section 10-1201, Table 7 to allow for 36 parking spaces are required.
- **September 17, 2013** The Board **granted** the following: 1) Variance from Section 10.1113.111 to allow required parking spaces to be located on a separate lot from the principal use at a municipally owned uncovered parking facility where a municipally owned covered parking facility is required.

### **Planning Department Comments**

The applicant is proposing to subdivide the property, renovate and further develop the existing commercial structure into multi-family residential, and construct 3 new multi-family residential buildings on the site. Please see the following link for the December 17, 2024 application submittal:

https://files.cityofportsmouth.com/files/planning/apps/HanoverSt\_361/HanoverSt\_361\_BOA\_11192024.pdf

At the December 17, 2024 meeting, the Board voted to **postpone** the hearing and requested the applicant provide the following information for the January 22, 2025 meeting:

- 1. Plan and elevations of Building A;
- 2. Definitive number of stories in Building D;
- 3. Height elevations for all buildings;
- 4. Streetscape showing project next to 407 Hanover Street;
- **5.** More information about the possible burial ground;
- **6.** Clarity on the height of each story within each building; and
- **7.** Traffic study if it has been done already.

Please see the following link for the January 22, 2025 application submittal: <a href="https://files.portsmouthnh.gov/files/planning/apps/HanoverSt\_361/Hanover\_St\_361\_BOA\_0">https://files.portsmouthnh.gov/files/planning/apps/HanoverSt\_361/Hanover\_St\_361\_BOA\_0</a> <a href="https://files.portsmouthnh.gov/files/planning/apps/HanoverSt\_361/Hanover\_St\_361\_BOA\_0">https://files.portsmouthnh.gov/files/planning/apps/HanoverSt\_361/Hanover\_St\_361\_BOA\_0</a>

At the January 22, 2025 meeting, the Board voted to accept the **withdrawal** of Variance 3: from Article 15 - Definition of Penthouse - to allow a penthouse with a setback of 8 feet from all roof edges where 15-20 feet is required and to allow no greater than 80% of the gross living area of the level of the floor below where 50% is the maximum.

The Board also voted to **postpone** the hearing and requested the applicant provide the following information for the February 19, 2025 meeting:

- 1. Renderings and streetscapes from Hanover Street, Rock Street, Pearl Street and Hill Street:
- 2. Streetscape showing project next to 407 Hanover Street;
- 3. Define the number of units and parking spaces proposed;
- 4. Concise application package that does not reference previous plans and without inconsistencies in the information provided.

If the Board decides to grant approval of the requested variances, staff recommends the following condition for consideration:

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

### Variance Review Criteria

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

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

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

### 10.235 Certain Representations Deemed Conditions

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

## CITY OF PORTSMOUTH ZONING BOARD OF ADJUSTMENT

### 361 HANOVER STREET, PORTSMOUTH, NEW HAMPSHIRE

**Tax Map 138 Lot 63** 

361 Hanover Steam Factory, LLC.

### **APPLICANT'S PROJECT NARRATIVE**

### THE APPLICANT

The Applicant is 361 Hanover Steam Factory, LLC who acquired the property at 361 Hanover Street, formerly the home of Heineman, in November 2021. The Applicant has hired Hampshire Development Corp., ("HDC"), a regional development company to redevelop, expand and convert the existing historic building on the site into a multi-family residential building and convert the existing surface parking along Rock Street and Hanover Street into three multi-family residential buildings with all required resident parking located inside the building and visitor parking within the courtyard between the buildings.

### **PURPOSE**

361 Hanover Steam Factory is seeking variances to allow for a purely residential housing project without any first-floor commercial use. The project will consist of approximately 40-48 residential housing units with the final number and configuration to be determined with input from the Technical Advisory Committee, the Planning Board, and other relevant parties. This project is shown on the within illustrations and plans to closely represent the square footage and elevation of the project although colors textures and fenestrations may change. At this stage Building A will consist of 26-34 units, Building B will have 4 units, Building C will have 2 units and Building D will have 8 units. The project will also have a total of 71 on-site parking spaces which exceed the amount of parking required under the Portsmouth Zoning Ordinance ("Ordinance"). This plan will require three (3) variances from this Board. The first variance is from Section 10.642 of the Ordinance that requires ground floor commercial uses in the Downtown Overlay District. The second variance is also from the Downtown Overly District that requires that the minimum height of the ground-floor level of the buildings to be 12 feet and the third variance is from Section 10.5A41.10D to allow "Apartment", "Rowhouse" and "Duplex" building types where they are not permitted.

### **EXISTING CONDITIONS - THE PROPERTY**

The lot is irregularly shaped, with approximately 188' frontage on 361 Hanover Street and it abuts a city-owned property fronting on Rock Street and Foundry Place. There are two existing structures on the lot. See Figure 1.



*Figure 1 – Existing Conditions* 

### HISTORIC LAND USE

The Property has a long history of Industrial and Commercial land use. Built in the late 19th century as a 5-story structure with a flat roof and slab on grade, the main building was originally owned and occupied by the Portsmouth Steam Factory. In the late 19<sup>th</sup> century, a fire reduced the buildings to two-stories. In the 1950s, the building was later occupied with an auto dealership/repair shop and later, in the 1970s, an architectural design firm. In 21<sup>st</sup> Century, the building was occupied by an international publishing company. A single story "modern" block addition with a shed roof was added mid-century toward the rear facing Foundry Place which was used as a loading dock for shipping and receiving.

### **EXISTING ZONING**

Consistent with other properties along Foundry Place and Hill Street, the property is zoned CD5. The CD5 District is an urban zoning district that allows for a wide array of higher density commercial and residential uses. The Property is also subject to several Overlay Districts.

The entire property also sits in the Downtown Overlay District ("DOD") which was established as an overlay to promote the economic vitality of the downtown by ensuring continuity of pedestrian oriented business uses along street.

The northern half of the property is also located within the North End Incentive Overlay District (NEIOD).

The goals and objectives of the North End Vision Plan (the "North End Vision Plan") are focused on generating buildings, land uses, and site designs that support economic development while being respectful and sensitive to the surrounding context. Buildings are intended to step up or down in transitional areas - like the property at 361 Hanover Street – in response to the surrounding land use pattern.

This stepping element is why the North End Incentive Overlay District (the "NEIOD"), and its encouragement of larger buildings, does not carry over to the parking lot portion of the property along Hanover Street.

In the case of 361 Hanover Street, the North End Vision Plan called for high density zoning and taller, commercial, or mixed-use buildings along Foundry Place and lower buildings along Hanover Street.

The Building Height Standards for 361 Hanover Street are limited to three (3) stories or 40'. Some of the heights of the abutting structures are as follows: 349 Hanover Street (multi-unit condominium); 39' to flat roof. 45 Pearl Street (The Pearl); 47' to peak plus 12' steeple. 48 Pearl Street (single family); 32' to peak. 394 Hanover Street (single family); 32' to peak. 407 Hanover Street (single family); 30' to peak (4' grade change from front to back of lot). 100 Foundry Place (Parking Garage); 62' to top of wall plus appurtenant structures up to 72' high. 89 Foundry Place (new multi-use development); 50' to flat roof plus appurtenant structures up to 60' high. See neighboring property heights map attached.

Although the Downtown Overlay District (the "DOD") includes 361 Hanover Street it is important to acknowledge that there are no other properties fronting on Hanover Street included in the DOD. This is a result of the DOD following property lines of the entire parcel. No other parcel spans the area between Foundry Place and Hanover Street. Under the Zoning Ordinance, the DOD requires ground-floor commercial uses within all buildings with the intention of activating the street edge and enhance the pedestrian experience.

Unfortunately, in this area along Hanover Street, only 293 Hanover Street is designed and used as a ground floor commercial use. All other adjacent properties along Hanover Street and its intersecting streets have residential uses on the ground floor. Simply put, commercial uses in this

section of the city is not practical and not in keeping with residential characteristics of this neighborhood.

### REQUESTED ZONING RELIEF

Approval of the current application requires approval of the following variances:

- 1. Ground Floor Commercial Uses The Downtown Overlay District (the "DOD") requires the ground-floor level of the buildings to be restricted to commercial uses. Additionally, in the CD5, all buildings are required to be either mixed-use (with upper floor residential uses) or commercial uses (on all floors). Thus, if the requested variance allowing for ground-floor residential uses is granted, the resulting residential buildings require zoning relief to allow for an "Apartment", "Duplex", and Rowhouse" buildings on the Property.
- 2. <u>Minimum First Floor Height</u> The CD5 Character District requires the minimum height of the ground floor to be 12 feet. The purpose of this requirement is two-fold: to design ground-floor spaces to support commercial uses and to ensure that ground-floor residential uses to be elevated above the sidewalk for privacy concerns.
- 3. <u>Building types</u> The zoning ordinance in Section 10.5A41.10D does not permit "Rowhouse", "Apartment" or "Duplex" housing in this zone.

### VARIANCE CRITERIA

The Applicant believes that this project meets the criteria necessary for granting the requested variances.

Granting the requested variances will not be contrary to the spirit and intent of the ordinance nor will it be contrary to the public interest. The "public interest" and "spirit and intent" requirements are considered together pursuant to Malachy Glen Associates v. Chichester, 152 NH 102 (2007). The test for whether or not granting a variance would be contrary to the public interest or contrary to the spirit and intent of the ordinance is whether or not the variance being granted would substantially alter the characteristics of the neighborhood or threaten the health, safety and welfare of the public.

In this case, were the variances to be granted, there would be no change in the essential characteristics of the neighborhood, nor would any public health, safety or welfare be threatened. The property is located at the transition from larger (and taller) buildings located along Foundry Place and Hill Street to smaller, more traditionally scaled buildings along Hanover and Rock Streets. Approval of the variance to allow for ground-floor commercial use of the buildings will not adversely impact the health, safety and welfare of the public. The essentially urban character of the neighborhood will not be altered in any fashion by this project, nor will the health, safety or welfare of the public be threatened by granting the relief requested, as what is proposed is

consistent with the mass and scale of neighboring buildings. The project must obtain further approval from the Planning Board so the interest of the public will be more than adequately protected.

- Ground Floor Commercial Uses Approval of the variance to allow ground-floor residential uses in the buildings will result in a positive impact on the health, safety, and welfare of the public. The buildings on the property are located within a densely developed residential neighborhood where commercial uses are largely located along Islington and Bridge Streets.
- Minimum First-Floor Height Approval of the variance to allow the ground-floor height of the existing historic building to be approximately 10.5' versus 12' will result in a positive impact on the health, safety and welfare of the public given the ground floor of the building is primarily being used for covered parking and no commercial uses are proposed for the building. By reducing the minimum first floor height, it will also help reduce the overall height and massing of the buildings.
- Figure 10.5A41.10D The Character Standards of the CD5 zone require a mix of building types that do not consist of Rowhouse, Duplex or Apartment type buildings. The ordinance further states that streets need sidewalks in order to create an urban setting which the Applicant submits in not appropriate in this neighborhood. Although the property is not located in the Historic District, the buildings have been designed in such a fashion as if it were. The Streetscapes submitted with this application depict building types that are more appropriate than what is allowed by right in this zone.

<u>Substantial justice would be done by granting the variances</u>. Whether or not substantial justice will be done by granting a variance requires the Board to conduct a balancing test. If the hardship upon the owner/applicant outweighs any benefit to the general public in denying the variance, then substantial justice would be done by granting the variance. It is substantially just to allow a property owner the reasonable use of his or her property. In this case, there is no benefit to the public in denying the variances that is not outweighed by the hardship upon the owner.

- Ground Floor Commercial Uses Substantial justice will be done by approval of the variance to allow ground-floor residential uses in the buildings. Approval will result in a benefit to the public and will outweigh the hardship to the owner leasing any commercial space within a densely developed residential neighborhood with limited on-street parking. Furthermore, granting of this variance will eliminate competition for on-street parking with existing residents as well as the significant activity and congestion associated with commercial uses.
- <u>Minimum First-Floor Height</u> Substantial justice will be done by approval of the variance to allow the ground-floor height of the existing historic building to be 10'6"

versus 12'. Approval will result in a benefit to the public and will outweigh the hardship to the owner of using an additional 18" of the height of the ground floor of the building when the primary use of the ground-floor is for covered parking and no commercial uses are proposed for the building.

• <u>Figure 10.5A41.10D</u> - Substantial justice will be done by approval of the variance to allow building "Rowhouse", "Apartment" and "Duplex" buildings as shown on our plans.

The values of surrounding properties will not be diminished by granting the variances. Granting of the variances will not adversely impact the values of the surrounding properties will not be negatively affected in any way. Moreover, denial of the variances may result in an adverse impact on the values of the surrounding properties given the ground-floor commercial requirement which may result in spillover parking within the neighborhood, as well as lighting and noise impacts. Denial of the variances will likely result in a larger building (footprint, volume and height) being constructed along Hanover Street. A larger building that can be constructed as of right, coupled with ground-floor commercial uses will likely diminish the value of the surrounding properties.

- Ground Floor Commercial Uses The values of the surrounding properties will not be diminished by approval of the variance to allow ground-floor residential uses in the buildings. Approval of the variances will result in a benefit to the public and increase the added value of the surrounding properties.
- Minimum First-Floor Height The values of the surrounding properties will not be diminished by approval of the variance to allow the ground-floor height of the existing historic building to be 10'6" versus 12'. Approval of the variances will result in a benefit to the public and increase the added value to the surrounding properties. The shorter ground floor height of the existing building will improve the design of the upper floors of the building adding value to the project and, indirectly, the added value of the surrounding properties.
- Figure 10.5A41.10D The values of the surrounding properties will not be diminished by approval of the variance to allow building "Rowhouse", "Apartment" and "Duplex" buildings as shown on our plans. The streetscapes submitted with this application support that these building types are more in line with the neighborhood, especially when compared to development standards set forth in the Ordinance.

There are special conditions associated with the property which prevent the proper enjoyment of the property under the strict terms of the zoning ordinance and thus constitute unnecessary hardship. The two historic structures on the property date back to the late 19<sup>th</sup> century. Although the property has its legal frontage on Hanover Street, and fronts along Foundry Place and Rock Street. However, the City owns a thin strip of land consisting of 7,300 SF located

between the Property and the City's right-of-way for Foundry Place and Rock Street. This thin strip remains from the former Rock Street Garage property that was once used by the DPW prior to construction of Foundry Place. This is also the only property in this section of the North End that spans Foundry Place to Hanover Street. The property also has an eight (8) foot grade change from Foundry Place to Hill Street. Additionally, the existing historic building is located behind a 56-space surface parking lot; more than 100 feet from Hanover Street.

- Ground Floor Commercial Uses The special conditions associated with the property
  and its unique location on upper Hanover Street creates a hardship for the requirement
  of ground-floor commercial uses. Approval of the variances will result in a better
  design and a property enjoyment of the property and be consistent with the surrounding
  neighborhood context.
- Minimum First-Floor Height The special conditions associated with the property and the historic structure constitutes a hardship for the requirement of 12' first-floor heights. Approval of the variances will result in a reasonable use of the ground floor of the property and be consistent with the physical attributes of the building. Allowing the ground-floor height of the existing historic building to be 10'6" versus 12' will result in a better design and a property enjoyment of the property and be consistent with the surrounding neighborhood context.
- <u>Figure 10.5A41.10D</u> This property sits in the CD5 zone but is surrounded by residential properties so to require the Applicant to build consistent with the standards of the Ordinance will add to the existing hardship. To allow "Rowhouse" "Duplex" and "Apartment" type buildings is a reasonable use of the property and be consistent with the surrounding neighborhood context.

<u>The use is a reasonable use</u>. Except for the ground floor residential use, all the proposed uses of the buildings are permitted in the CD5.

- <u>Ground Floor Commercial Uses</u> Allowing for residential ground floor uses is not only reasonable given the surrounding context but also preferred given the lack of commercial uses along the Hanover Street corridor.
- <u>Minimum First-Floor Height</u> The use of the existing historic structure is reasonable given it does not front directly on a public way and is located more than 100 feet from Hanover Street and, if approved, will have three residential buildings between the front façade and Hanover Street.
- <u>Figure 10.5A41.10D</u> The use of "Rowhouse", "Apartment" and "Duplex" building types is not only reasonable, but also preferred.

There is no fair and substantial relationship between the purpose of the ordinance as it is applied to this particular property. The requirements for ground-floor commercial uses, added first-floor height and the smaller penthouse attic level do not present a fair and substantial relationship between the purpose of the ordinance as it is applied to this particular property. Thus, there is no fair and substantial relationship between the purposes of the height requirements and their application to this property.

- Ground Floor Commercial Uses The requirement of ground-floor commercial uses in all the existing or proposed buildings bears no fair and substantial relationship between the ordinance and this particular property. In contrast, approval of the variances will avoid any off-site impacts of commercial activity at this location, result in a benefit to the public, and increase the added value to the surrounding properties.
- Minimum First Floor Height The requirement of a 12' first-floor height in the existing building bears no fair and substantial relationship between the ordinance and this particular property. In contrast, allowing the ground-floor height of the existing historic building to be 10'6" versus 12' will result in a benefit to the public and increase the added value to the surrounding properties. The shorter ground floor height of the existing building will improve the design of the upper floors of the building adding value to the project and, indirectly, the added value of the surrounding properties.
- <u>Figure 10.5A41.10D</u> The "Rowhouse", "Apartment" and "Duplex" building make sense for this section of the City particularly in light of the alternative urban looking structures the development standards of the CD5 zone otherwise require.

### I. Conclusion.

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

Respectfully submitted,

DATE: February 4, 2025

John K. Bosen, Esquire

	ZONIN	G DEVELOP	MENT STANDARI			
CDS: CHARACTER DISTRICT 5	DOD: DOWNTOWN OVERLAY DISTRICT					
	REQUIRED	EXISTING	PROPOSED - Building A	PROPOSED - Building B	PROPOSED - Building C	PROPOSED - Building D
Height	2-3 stories 40'	2 Stories/ 18' +/-	3 stories with attic/ 40'	3 stories / 36'	3 stories / 36'	3 stories with attic/ 40'
Penthouses	may exceed bldg height by 2'	N/A	N/A	N/A	N/A	N/A
Roof appurtenance	may exceed bldg height by 10'	<10'	<10'	No	No	<10'
Façade Types		N/A	N/A	N/A	N/A	N/A
Building Types	commercial, live-work, mixed use, flex space & community.	Commerical	Apartment	Rowhouse	Duplex	Apartment
Front (principle) max S/B	5	99'	99'	0'	5'	2'
Front (secondary) max S/B	5	0'	0,	2'	N/A	N/A
Side S/B	NR	NR	NR	NR	NR	NR
Rear yard S/B	5'	N/A	N/A	>5'	>5'	>5'
Front lotline buildout	80% min	100%	100%	80%	80%	80%
Lot area (sf)	NR	N/A	N/A	N/A	N/A	N/A
LOT area per dwelling	NR	N/A	N/A	N/A	N/A	N/A
Building coverage, maximum	95%	38%	47%	8%	6%	11.0%
Maximum building footprint	20,000	14,808	18,082	3,116	2,280	4,320
Ground floor area per use, max	15,000	14,808	<15,000	3,116	2,280	4,320
Open space, minimum	5%	<5%	>5%	>5%	>5%	>5%
Permitted uses		Commercial	Residential	Residential	Residential	Residential
Block length, max (ft)	225	205'	205'	82'	40'	72'
Façade modulation length, max (ft)	100	205	205	82'	40'	72'
Entrance spacing, max (ft)	50	>50'	50	20'	20'	<50'
Floor height above sidewalk, max	36"	0'	0'	24"	24"	24'
Ground story height, min	12'	10'	10.5'	12'	12'	12'
Second story height, min	10'	10'	10.5'	11'	11'	11'
Glazing, shopfront, min	70%	N/A	N/A	N/A	N/A	N/A
Glazing, other	20%-50%	>20%	>20%	>20%	>20%	>20%
Roof types	flat, gable, hip, gambrel, mansard	Flat	Mansard	Hip	Hip	Mansard

S/B = Setback

# Exhibit B





Building B





**Building D** 













# PROPOSED DEVELOPMENT

## OWNER/APPLICANT:

361 HANOVER STEAM FACTORY, LLC 41 INDUSTRIAL DRIVE UNIT 20 EXETER, NH 03833

## CIVIL ENGINEER/LAND SURVEYOR:

AMBIT ENGINEERING, INC. 200 GRIFFIN ROAD, UNIT 3 PORTSMOUTH, N.H. 03801 TEL. (603) 430-9282

## ARCHITECT:

SCOTT BROWN 29 WATER STREET, SUITE 209 NEWBURYPORT, MA 01950 TEL. (978) 465-3535

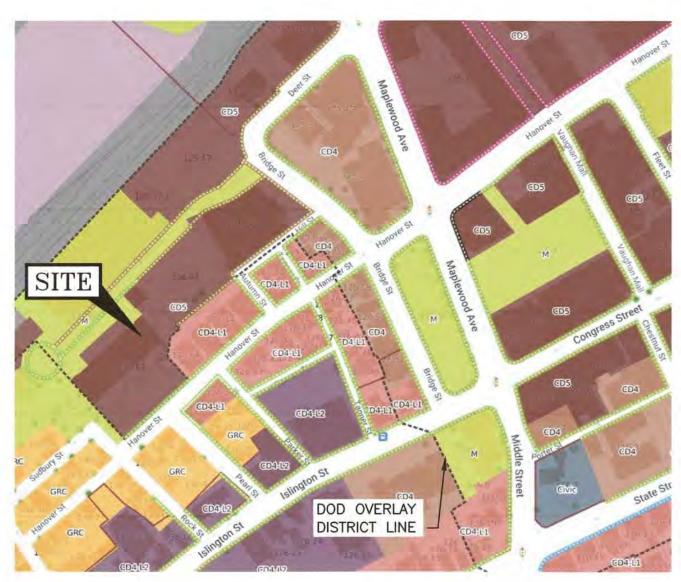
## PLANNING CONSULTANT:

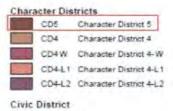
NICHOLAS CRACKNELL

TEL. (978) 270-4789

## LAND USE ATTORNEY:

**BOSEN & ASSOCIATES** 266 MIDDLE STREET PORTSMOUTH, N.H. 03801 TEL. (603) 427-5500

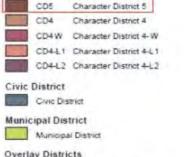




Municipal District Municipal District Overlay Districts

OLOD Osprey Landing Overlay District Historic District

	BUILDING HEIG STANDARDS		
Heigh required area	rement	Maximu building height*	
	1 Story	20'	
_	2 Stories	35"	
_	2 Stories (short 3rd*)	35*	
_	2-3 Stories	40'	
_	2-3 Stories (short 4th	") 45"	
-	2-4 Stories	50"	
_	2-4 Stories (short 5th	*) 60'	
	2-5 Stories	60*	
*Pentho	use Levels may exceed th	e building h	2



Downtown Overlay District MAP 10.5A21B

Heigh requir area	rement	Maximum building height*
	1 Story	20'
_	2 Stories	35'
	2 Stories (short 3rd*)	35*
_	2-3 Stories	40'
_	2-3 Stories (short 4th)	') 45'
-	2-4 Stories	50"
-	2-4 Stories (short 5th)	') 60'
	2-5 Stories	60*

## DWG NO.

SUBDIVISION PLAN SITE ORTHOPHOTO DEMOLITION PLAN

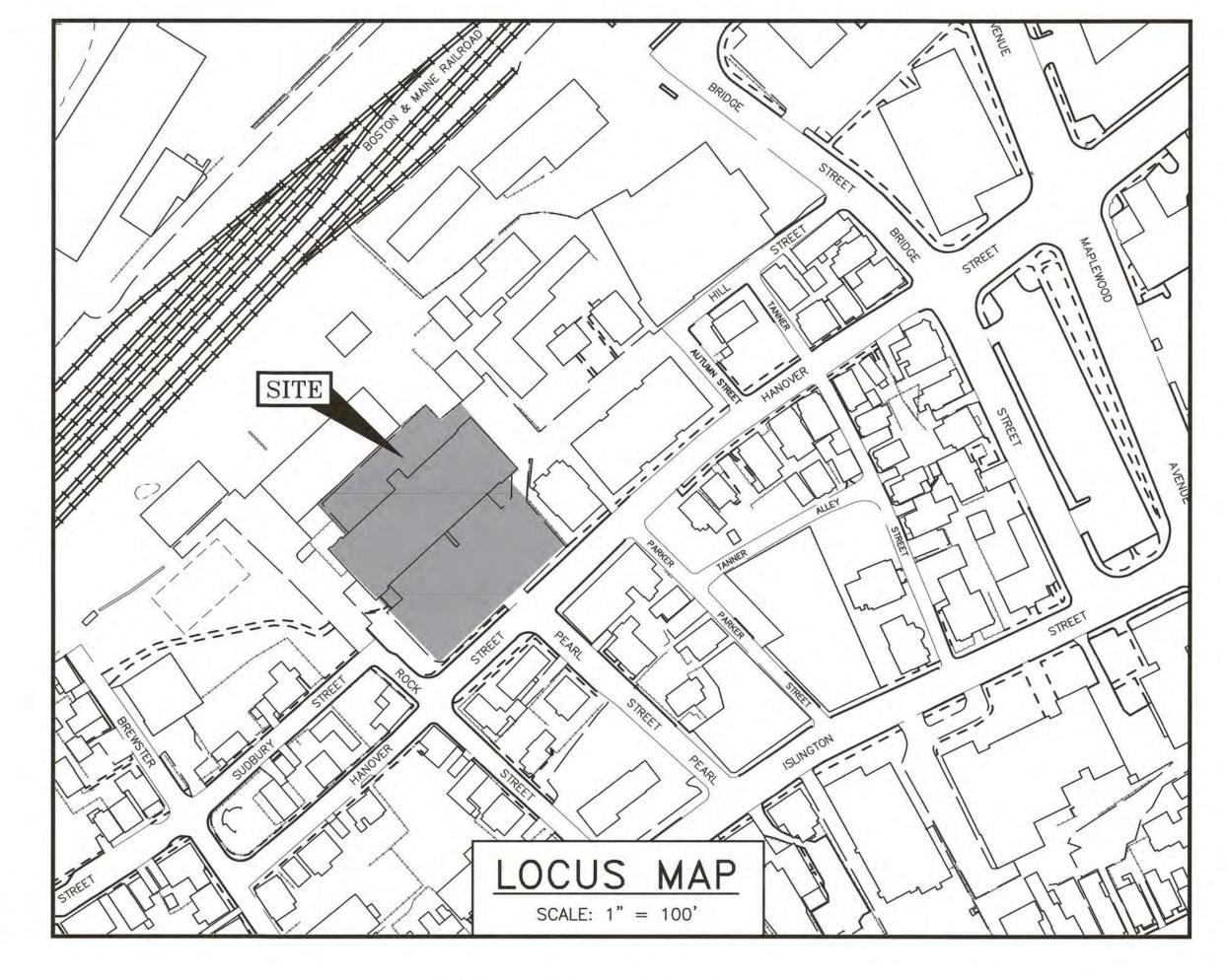
## INDEX OF SHEETS

EXISTING CONDITIONS PLAN SITE PLAN

LICENSE AREA PLAN

# 361 HANOVER STREET

# PORTSMOUTH, NEW HAMPSHIRE VARIANCE APPLICATION PLAN





## UTILITY CONTACTS

**ELECTRIC: EVERSOURCE** 1700 LAFAYETTE ROAD PORTSMOUTH, N.H. 03801 Tel. (603) 436-7708, Ext. 555.5678 ATTN: MICHAEL BUSBY, P.E. (MANAGER)

SEWER & WATER: PORTSMOUTH DEPARTMENT OF PUBLIC WORKS 680 PEVERLY HILL ROAD PORTSMOUTH, N.H. 03801 Tel. (603) 427-1530 ATTN: JIM TOW

## NATURAL GAS: UNITIL

325 WEST ROAD PORTSMOUTH, N.H. 03801 Tel. (603) 294-5144 ATTN: DAVE BEAULIEU

COMMUNICATIONS: FAIRPOINT COMMUNICATIONS JOE CONSIDINE 1575 GREENLAND ROAD GREENLAND, N.H. 03840 Tel. (603) 427-5525

CABLE:

COMCAST

155 COMMERCE WAY

ATTN: MIKE COLLINS

PORTSMOUTH, N.H. 03801

Tel. (603) 679-5695 (X1037)

## Exhibit C

PERMIT LIST: PORTSMOUTH HDC: PORTSMOUTH ZONING BOARD: PORTSMOUTH SITE REVIEW: PORTSMOUTH CONDITIONAL USE PERMIT:

## LEGEND:

	LLUL	.ND.
EXISTING	PROPOSED	
		PROPERTY LINE SETBACK
s	s	SEWER PIPE
SL	SL	SEWER LATERAL
G	— G —	GAS LINE
— D ——	— D —	STORM DRAIN
— w —	— w —	WATER LINE
—— ws ——		WATER SERVICE
UGE —	UGE —	UNDERGROUND ELECTRIC
—— OHW ———	—— OHW ——	OVERHEAD ELECTRIC/WIRES FOUNDATION DRAIN
ш		EDGE OF PAVEMENT (EP)
100	100	CONTOUR
97x3	98x0	SPOT ELEVATION
-0-	•	UTILITY POLE
-\(\rightarrow\)-\(\rightarrow\)-\(\rightarrow\)		WALL MOUNTED EXTERIOR LIGHTS
		TRANSFORMER ON CONCRETE PAD
		ELECTRIC HANDHOLD
450 GSO	450 GS0	SHUT OFFS (WATER/GAS)
$\bowtie$	GV	GATE VALVE
	+++YD	HYDRANT
(Ⅲ) CB	CB	CATCH BASIN
(\$)	SMH	SEWER MANHOLE
(10)	DMH	DRAIN MANHOLE
(1)	<b>●</b> TMH	TELEPHONE MANHOLE
14)	14)	PARKING SPACE COUNT
PM		PARKING METER
LSA	\ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \	LANDSCAPED AREA
TBD	TBD	TO BE DETERMINED
CI	CI	CAST IRON PIPE
COP	COP	COPPER PIPE
DI	DI	DUCTILE IRON PIPE
PVC	PVC	POLYVINYL CHLORIDE PIPE
RCP	RCP	REINFORCED CONCRETE PIPE
AC VC	-	ASBESTOS CEMENT PIPE
VC EP	VC EP	VITRIFIED CLAY PIPE
EL.	EL.	EDGE OF PAVEMENT ELEVATION
FF	FF	FINISHED FLOOR
INV	INV	INVERT
S =	S =	SLOPE FT/FT
TBM	ТВМ	TEMPORARY BENCH MARK
TYP	TYP	TYPICAL

VARIANCE APPLICATION PLAN PROPOSED DEVELOPMENT **361 HANOVER STREET** PORTSMOUTH, N.H.



HALEYWARD

TYPICAL

200 Griffin Rd. Unit 14 Portsmouth, New Hampshire 03801 603.430.9282

PLAN SET SUBMITTAL DATE: 2 JANUARY 2024

PORTSMOUTH APPROVAL CONDITIONS NOTE:

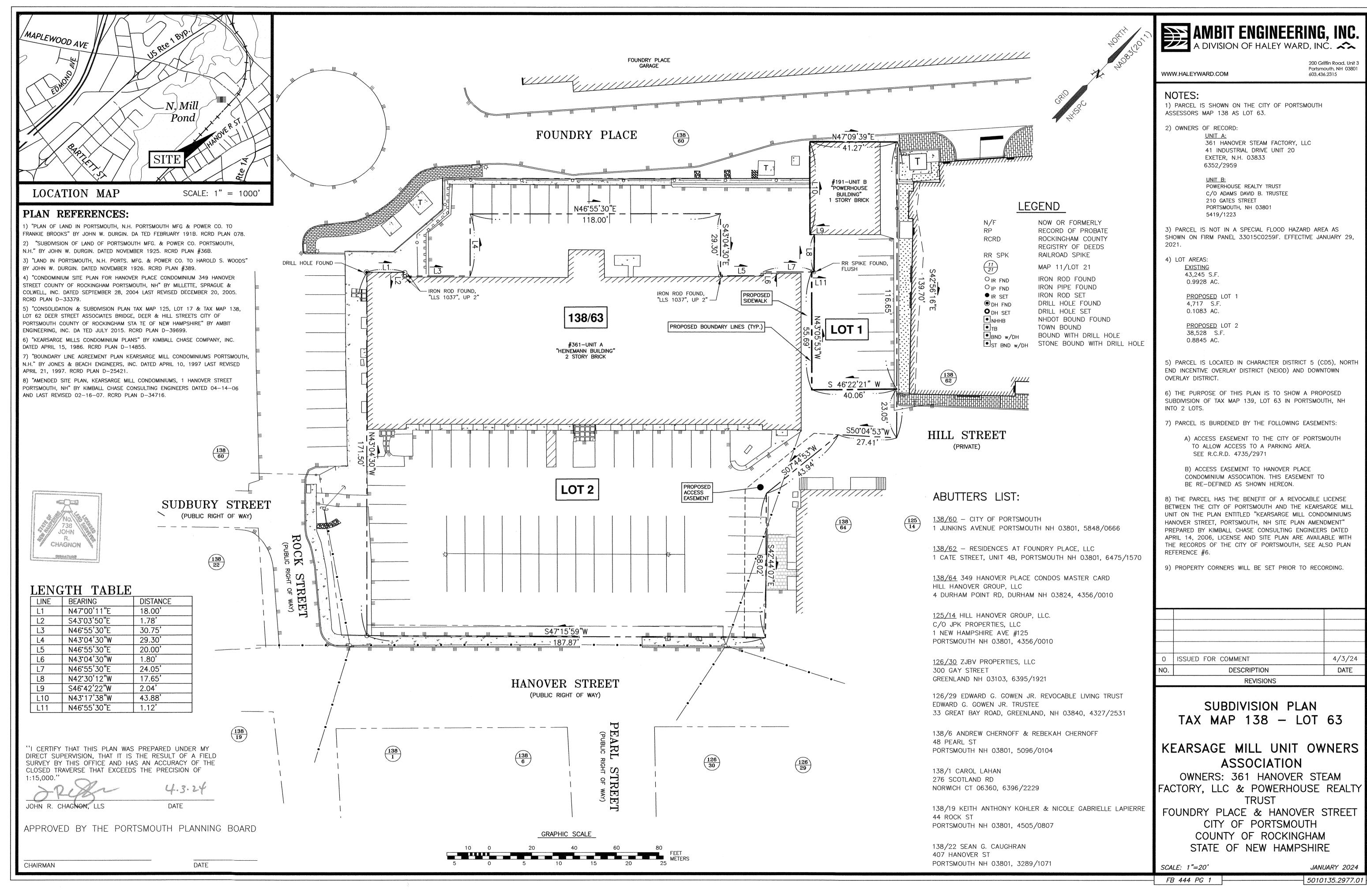
PORTSMOUTH SITE PLAN REVIEW REGULATIONS.

CHAIRMAN

ALL CONDITIONS ON THIS PLAN SET SHALL REMAIN IN EFFECT IN

APPROVED BY THE PORTSMOUTH PLANNING BOARD

PERPETUITY PURSUANT TO THE REQUIREMENTS OF THE CITY OF



200 Griffin Road, Unit 3

AMBIT ENGINEERING, INC.

WWW.HALEYWARD.COM

200 Griffin Road, Unit 3 Portsmouth, NH 03801 603.436.2315

## NOTES:

1) PARCEL IS SHOWN ON THE CITY OF PORTSMOUTH ASSESSORS MAP 138 AS LOT 63.

## 2) APPLICANT:

361 HANOVER STEAM FACTORY, LLC 41 INDUSTRIAL DRIVE UNIT 20 EXETER, NH 03833 6352/2959

3) THE PURPOSE OF THIS PLAN IS TO SHOW SITE FEATURES AS OF FEBRUARY 2023 ON THE CITY OF PORTSMOUTH ASSESSOR'S MAP 138 LOT 63.

0 ISSUED FOR COMMENT 4/3/24

NO. DESCRIPTION DATE

REVISIONS

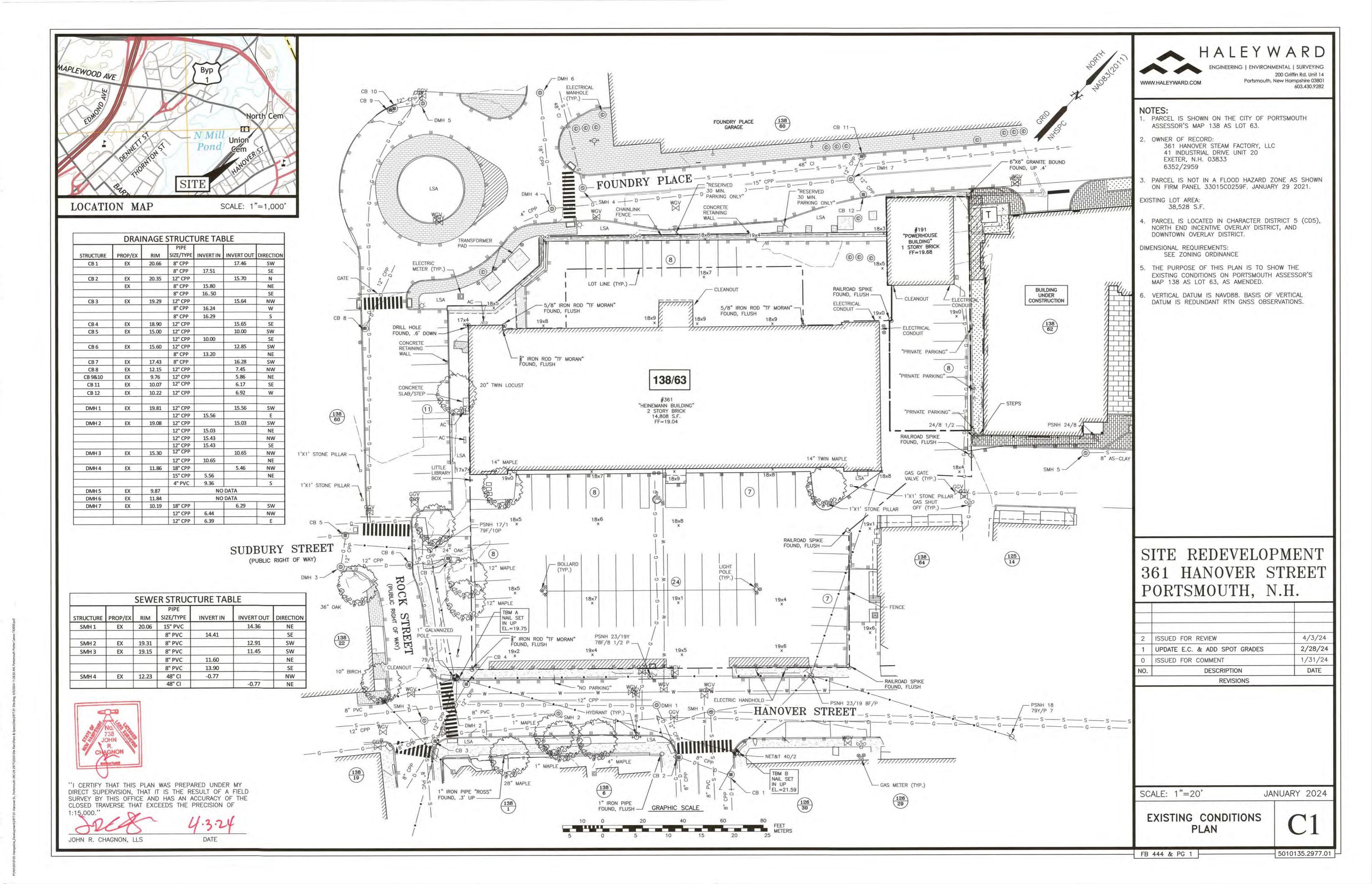
SITE ORTHOPHOTO
TAX MAP 138 - LOT 63

361 HANOVER STEAM FACTORY, LLC
FOUNDRY PLACE & ROCK STREET
CITY OF PORTSMOUTH
COUNTY OF ROCKINGHAM
STATE OF NEW HAMPSHIRE

SCALE: 1"=20'

FEBRUARY 2023

5010135-2977.01



HA

IALEYWAR

ENGINEERING | ENVIRONMENTAL | SURVEYING
200 Griffin Rd. Unit 14
Portsmouth, New Hampshire 03801
603.430.9282

## NOTES:

1) THE CONTRACTOR SHALL NOTIFY DIG SAFE AT 1-888-DIG-SAFE (1-888-344-7233) AT LEAST 72 HOURS PRIOR TO COMMENCING ANY EXCAVATION ON PUBLIC OR PRIVATE PROPERTY.

2) UNDERGROUND UTILITY LOCATIONS ARE BASED UPON BEST AVAILABLE EVIDENCE AND ARE NOT FIELD VERIFIED. LOCATING AND PROTECTING ANY ABOVEGROUND OR UNDERGROUND UTILITIES IS THE SOLE RESPONSIBILITY OF THE CONTRACTOR AND/OR THE OWNER. UTILITY CONFLICTS SHOULD BE REPORTED AT ONCE TO THE DESIGN ENGINEER.

3) CONTRACTOR SHALL INSTALL AND MAINTAIN EROSION CONTROL MEASURES IN ACCORDANCE WITH THE "NEW HAMPSHIRE STORMWATER MANUAL, VOLUME 3, EROSION AND SEDIMENT CONTROLS DURING CONSTRUCTION. (NHDES DECEMBER 2008).

4) COORDINATE ACCESS IN STREET/ROW AREAS ADJACENT TO DEMOLITION TO INSURE SAFE PASSAGE. UTILIZE DETOURS IF NEEDED.

5) EXISTING UTILITIES TO BE ABANDONED SHALL BE REMOVED TO THE UTILITY MAIN AND CAPPED PER THE UTILITY COMPANY REQUIREMENT.

## SITE REDEVELOPMENT 361 HANOVER STREET PORTSMOUTH, N.H.

1 UPDATE 7/3/24
0 ISSUED FOR COMMENT 4/3/24
NO. DESCRIPTION DATE
REVISIONS



SCALE: 1"=20'

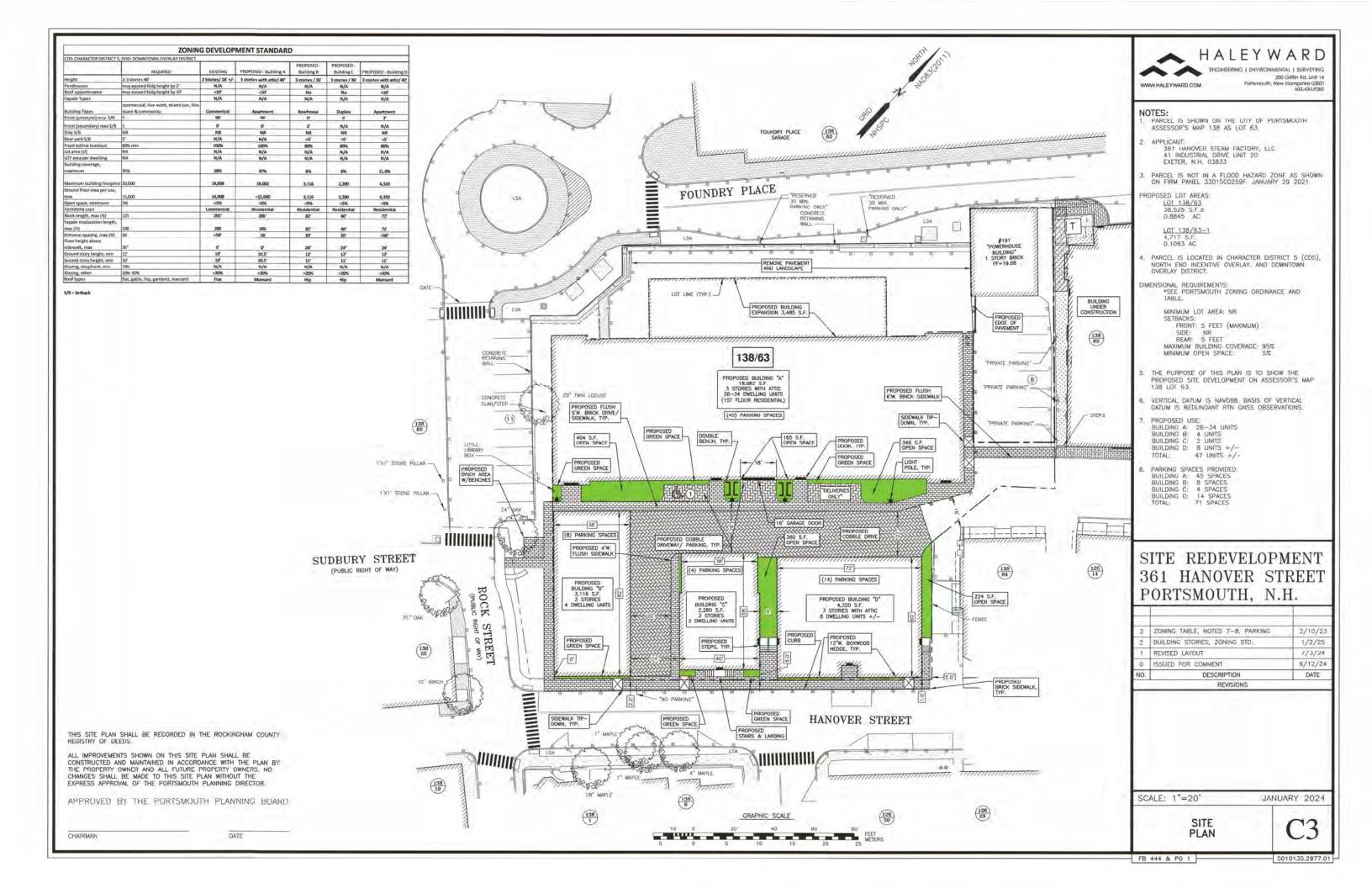
JANUARY 2024

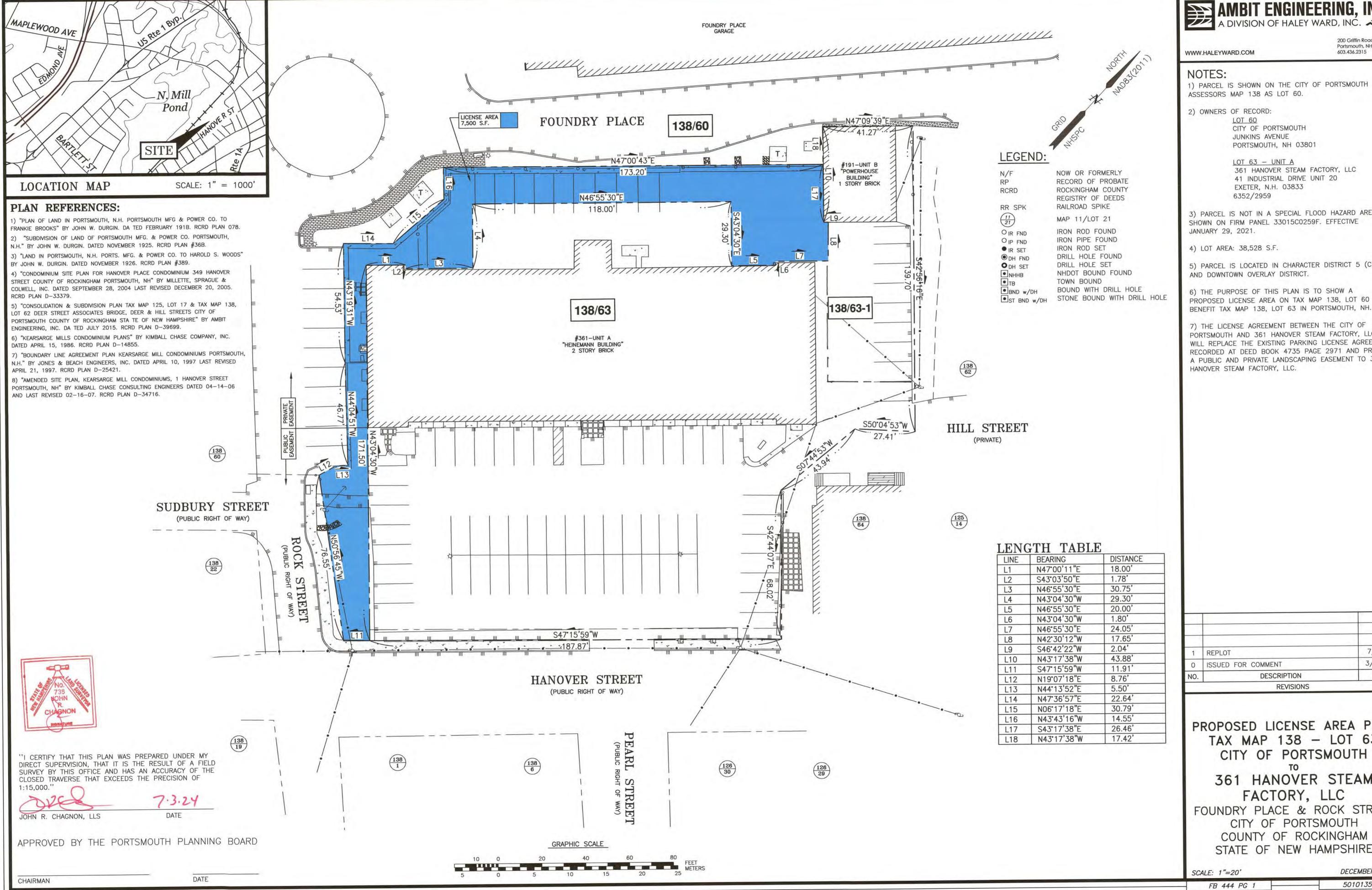
DEMOLITION PLAN

C2

FB 444 & PG 1

5010135.2977.01





AMBIT ENGINEERING, INC. A DIVISION OF HALEY WARD, INC.

200 Griffin Road, Unit 3 Portsmouth, NH 03801 603.436.2315

3) PARCEL IS NOT IN A SPECIAL FLOOD HAZARD AREA AS SHOWN ON FIRM PANEL 33015C0259F. EFFECTIVE

5) PARCEL IS LOCATED IN CHARACTER DISTRICT 5 (CD5)

PROPOSED LICENSE AREA ON TAX MAP 138, LOT 60 TO BENEFIT TAX MAP 138, LOT 63 IN PORTSMOUTH, NH.

PORTSMOUTH AND 361 HANOVER STEAM FACTORY, LLC WILL REPLACE THE EXISTING PARKING LICENSE AGREEMENT RECORDED AT DEED BOOK 4735 PAGE 2971 AND PROVIDE A PUBLIC AND PRIVATE LANDSCAPING EASEMENT TO 361

7/3/24 3/21/24 DATE

PROPOSED LICENSE AREA PLAN TAX MAP 138 - LOT 63 CITY OF PORTSMOUTH 361 HANOVER STEAM

FOUNDRY PLACE & ROCK STREET CITY OF PORTSMOUTH COUNTY OF ROCKINGHAM STATE OF NEW HAMPSHIRE

DECEMBER 2022

5010135.2977.01

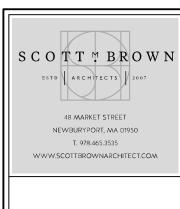
# Building "A" Elevations



WEST ELEVATION (MIRRORED ON EAST ELEVATION TYP.)
Scale: 1/8" = 1'-0"



SOUTH ELEVATION



ADDITIONS/ALTERATIONS TO THE:

361 HANOVER STREET, PORTSMOUTH, NH 03801 HEINEMANN BUILDING

REVISION & REISSUE NOTES					
No.	Date	Notes			
Р	roject #	Project Manager	Date		
20	024-09	X.X.	04.02.2024		
Scale: AS NOTED					
PROPOSED					

A2.4

**ELEVATIONS** 



2 NORTH ELEVATION
Scale: 1/8" = 1'-0"



361 HANOVER STREET, PORTSMOUTH, NH 03801 HEINEMANN BUILDING ADDITIONS/ALTERATIONS TO THE:

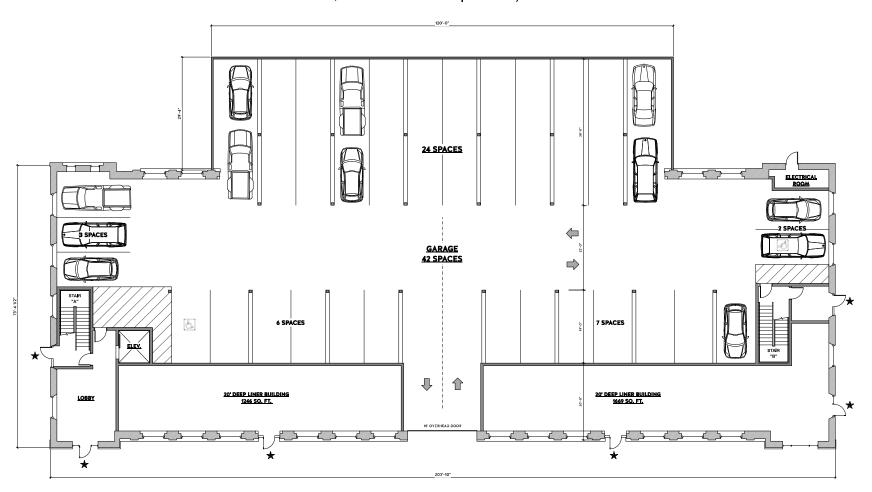
REVISION & REISSUE NOTES No. Date Notes 2024-09 X.X. 04.02.2024 Scale: AS NOTED

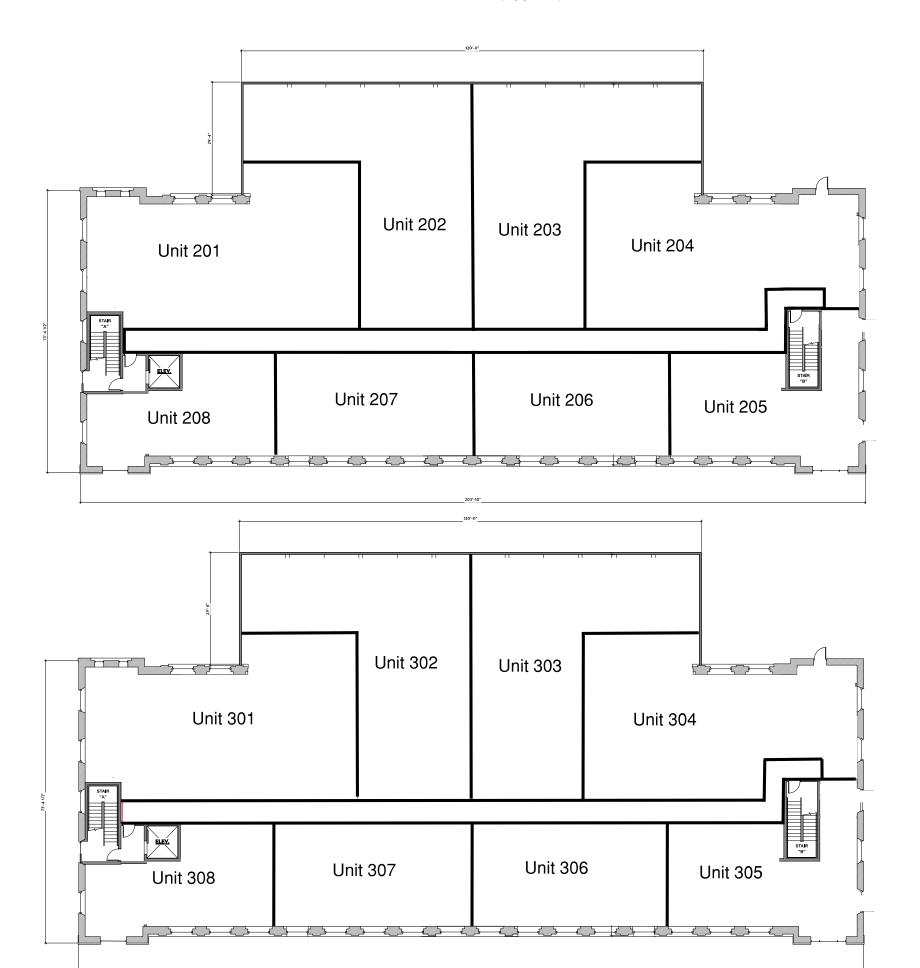
A2.5

**PROPOSED ELEVATIONS** 

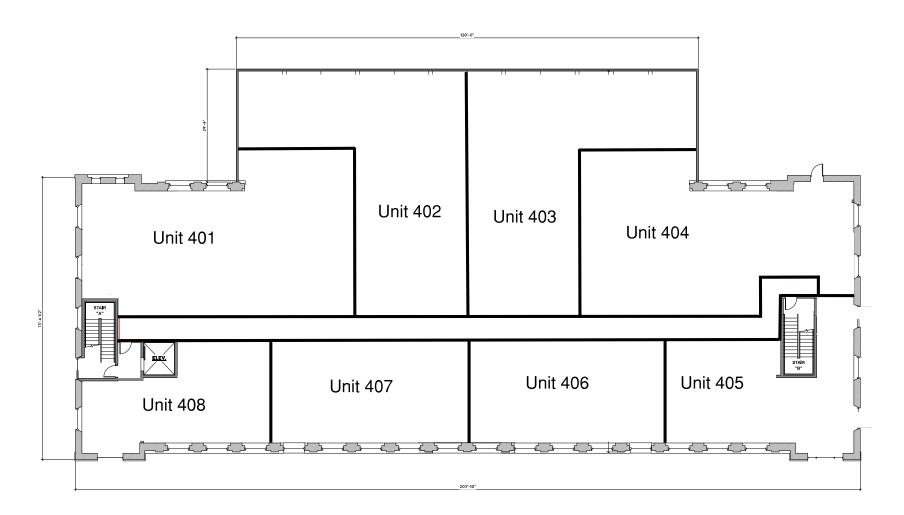
## Building "A" Floorplans

## 1st Floor Parking Plan (Commercial Units Shown, Residential Requested)



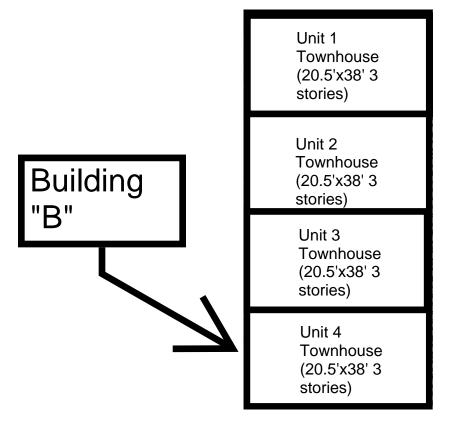


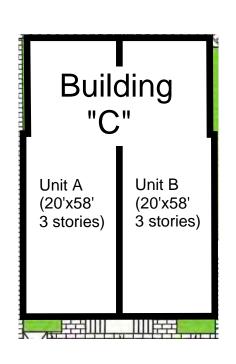
## 4th Floor (Typical)

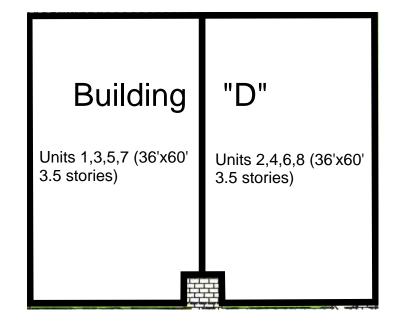


Buildings "B, C, & D" Floorplans

# ZBA "Preferred Plan" Building B, C, D Floor plans







Neighboring Property Heights



### **II. OLD BUSINESS**

D. The request of Millport INC (Owner), for property located at 1001 Islington Street whereas relief is needed for a change of use to extend the existing health club into the adjacent unit wherein relief is required from the Zoning Ordinance including the following special exception from Section 10.440, Use #4.42 to allow a health club greater than 2,000 s.f. of gross floor area. Said property is located on Assessor Map 172 Lot 4 and lies within the Character District 4-W (CD4-W). (LU-24-209)

## **Existing & Proposed Conditions**

	Existing	Proposed	Permitted / Required
Land Use:	Health Club /Apartments	*Convert 1,695 SF to yoga room >2,000 sq.ft. GFA	Primarily Mixed-Use
Parking	109	109	10 (1 space per 250 GFA)
		Variance request(s) shown in red.	

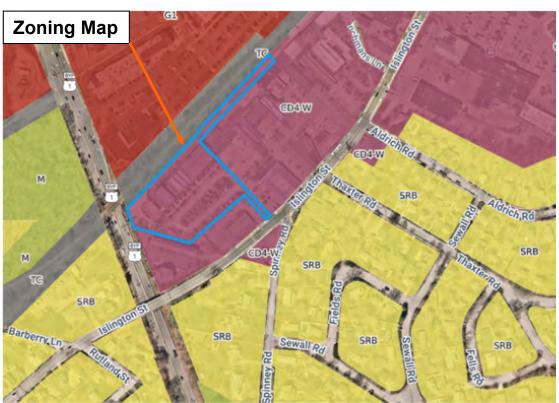
<sup>\*</sup>Special Exception for a health club use greater than 2,000 SF GFA

## Other Permits/Approvals Required

• Building Permit

## **Neighborhood Context**





### **Previous Board of Adjustment Actions**

- November 21, 1978 A Variance from Article III, Section 10-302 to allow construction of an addition to an existing building, 40' from the left and rear property lines where 50' is required for each. It was voted that your request be granted.
- January 21, 1997 A Variance from Article IX, Section 10-908 Table 14 to allow a 6' x 9' sign with a 1" side yard where 7' is the minimum required. The Board denied the request. They found that the request was excessive to allow a 1" side yard setback.
- September 16, 1997 A request is being made to eliminate the stipulation allowing only one and two bedroom apartments as part of the previous Variance request, thus allowing 2 three bedroom apartments. It was voted that your request be granted to remove the stipulation that only one and two bedroom apartments be allowed, thus allowing 2 three bedroom apartments.
- March 21, 2000 A Special Exception as allowed in Article II, Section 10-208[51] to install an un-manned internet switching station in an existing brick building to the rear of the apartment building. It was voted that your request be granted as presented and advertised.
- April 7, 2020 A Variance from Section 10.1530 to allow an accessory use as
  defined in this section to be conducted on a lot adjacent to the lot containing
  the principal use or building. The Board voted to postpone your request until
  the April 21, 2020, meeting.
- April 21, 2020 A Variance from Section 10.1530 to allow an accessory use
  as defined in this section to be conducted on a lot adjacent to the lot
  containing the principal use or building. The Board voted to grant your petition
  as presented.

### **Planning Department Comments**

The applicant is requesting a special exception to convert 1,695 SF of existing commercial space into a yoga room for workout studio space. The 3,600 SF building is sited on the property with a 63-unit apartment building and consists of 2 commercial units. The health club and yoga studio was approved for their current 1,440 SF space in 2023. The 1,695 SF expansion into the adjoining space requires a Special Exception as it would create a health club larger than 2,000 Square feet.

### **Special Exception Review Criteria**

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

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

### 10.235 Certain Representations Deemed Conditions

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

City of Portsmouth
1 Junkins Ave
Portsmouth, NH 03801

To Whom it May Concern,

We respectfully submit this narrative to address the Special Exception criteria for the proposed fit-up of an additional 1,695 square feet of the Pilates/Fitness studio to be located at 1001 Islington Street Unit C1. The Pilates/Fitness studio is currently located at 1001 Islington Street Unit C2.

Please see summary of compliance by section below.

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

- The fit-up consists of the expansion of the existing studio into the adjacent vacant space which
  was previously leased for commercial business use.
- The proposed studio expansion is an allowable use under the current zoning ordinance, subject
  to a special exception. It will adhere to all applicable design, safety and operational standards
  outlines in the ordinance, including building code compliance and compatibility with the
  surrounding property uses. All necessary permit and inspections will be obtained to ensure
  compliance.

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

- There will be no hazard to the public or adjacent property on account of potential fire, explosion
  or release of toxic materials. The expansion of this studio does not create any significant
  potential for hazards such as potential fires, explosions, etc. based on the intended use of the
  space.
- In addition, the existing building has a fire alarm & fire suppression system. This expansion
  project will include any required modifications to ensure proper coverage per NFPA code.
- 3. No detriment to property values in the vicinity or change in the essential characteristics of any area including residential neighborhoods or business and industrial districts on account of the location or scale of buildings and other structures, parking areas, accessways, odor, smoke, gas, dust, or other pollutant, noise, glare, heat, vibration, or unsightly outdoor storage of equipment, vehicles or other materials.
  - There will be no detriment to property values in the vicinity or change in the essential characteristics of any area as there will be no significant exterior changes.
  - The regular daily function of the expanded fitness center will not cause any disruption to neighboring dwellings in the form of odors, smoke, gas, noise, etc. There will be no unsightly outdoor storage of equipment or other materials.
- 4. No creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity.

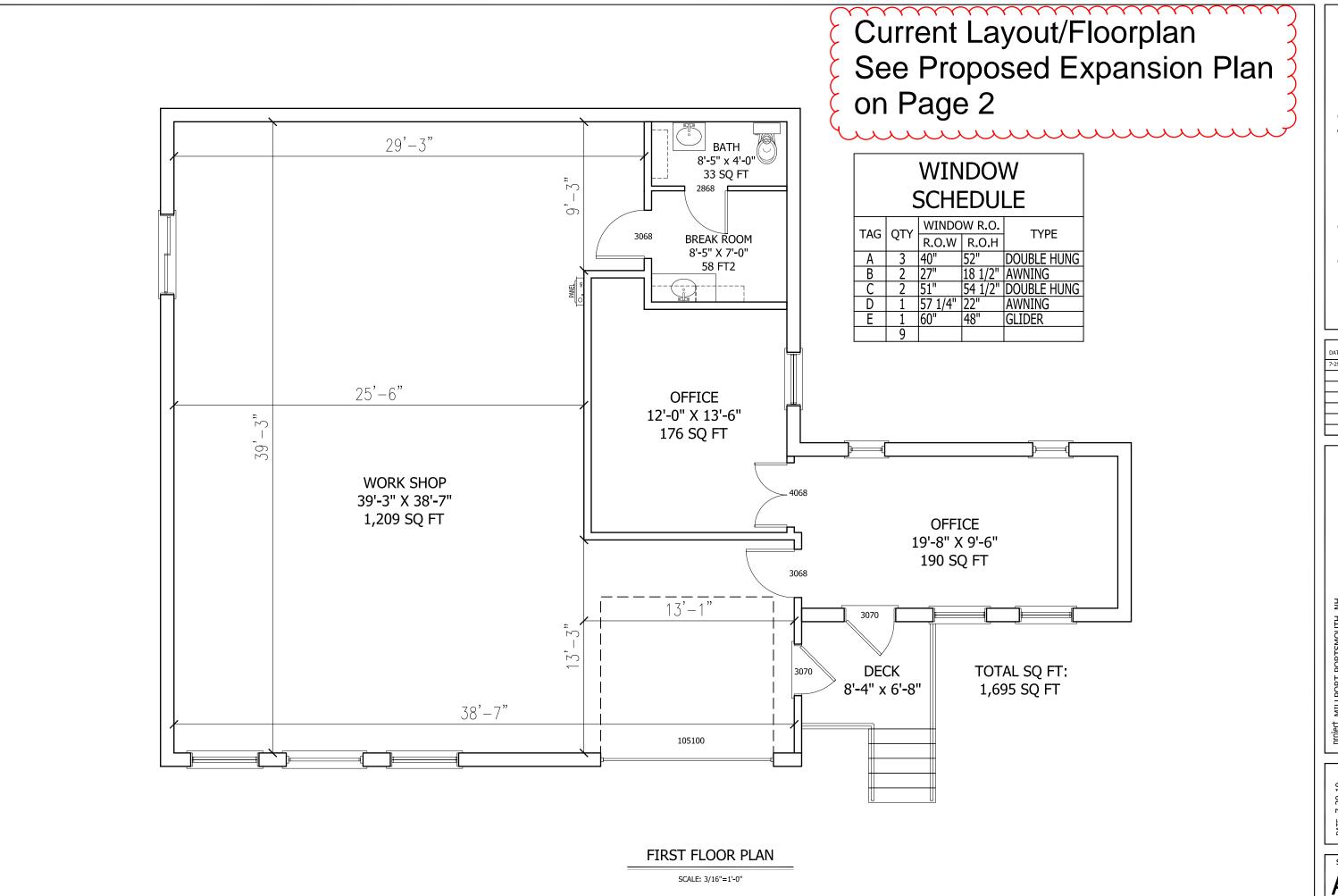
Parking for this Pilates Studio is in a separate lot away from the entrance at Islington Street.
 There will be no substantial increase in either the level of traffic congestion in the vicinity or traffic safety hazards.

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

There will be no significant increase in demand on municipal services. There is no new water,
 sewer or waste disposal required beyond what is already available on site and used previously.

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

There will be no significant increase of stormwater runoff onto adjacent property or streets.
 There are existing catch basins and drainage in the parking lot and there is no concern about any significant increase in vehicles in the lot.



Builders Inc.

Chinburg Bu

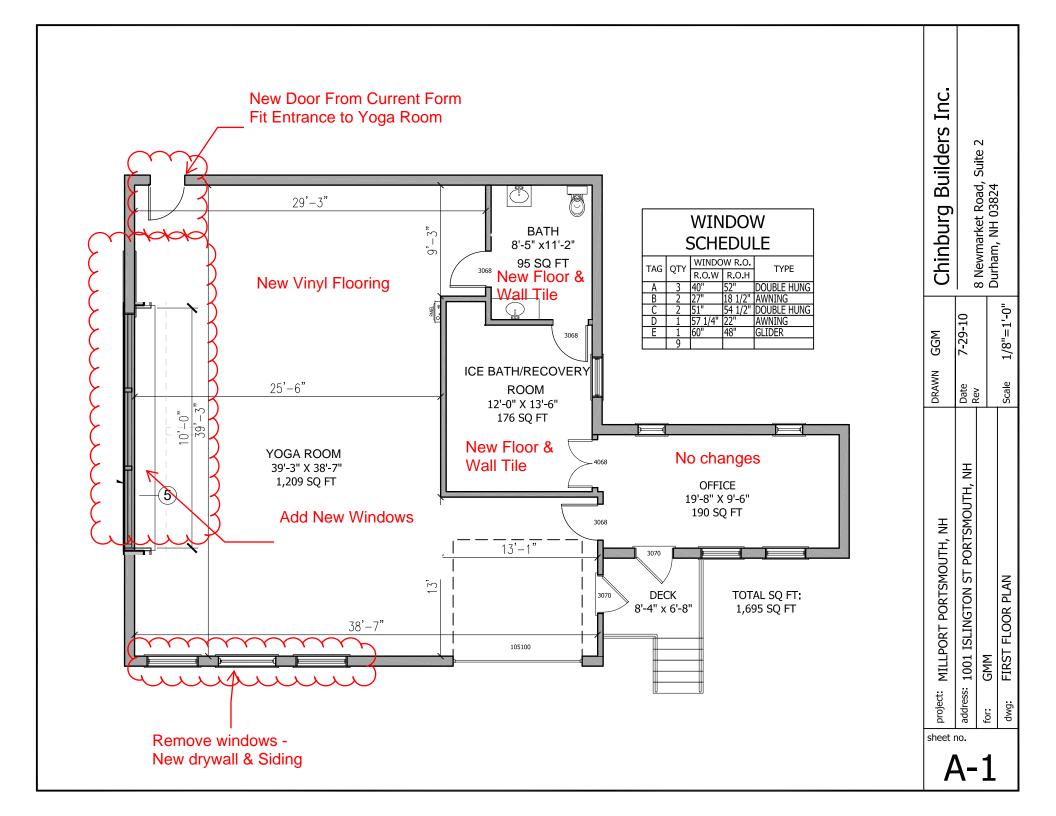
DATE: F	REVISION:	
7-29-10	GGM	

project MILLPORT PORTSMOUTH, NH	or GMM	address 1001 ISLINGTON ST PORTSMOUTH, NH	dwg FIRST FLOOR
proje	for	addre	dwg

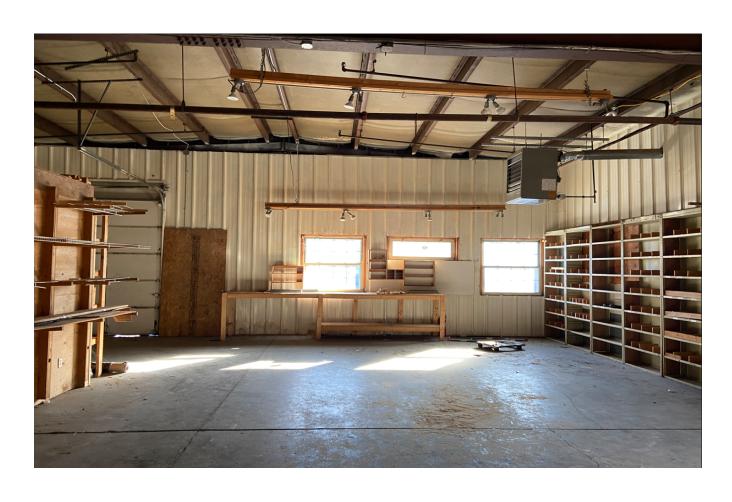
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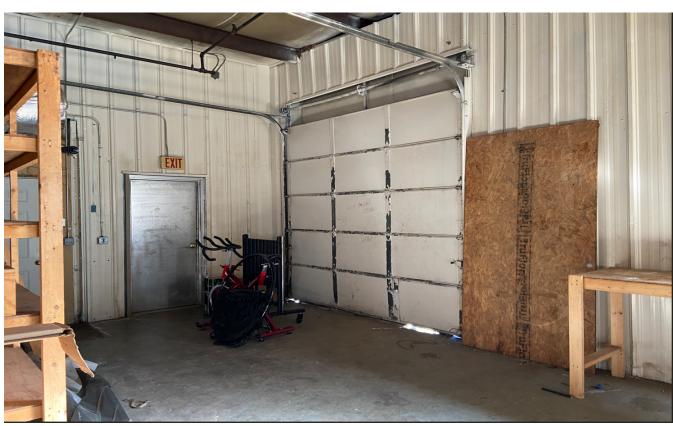
sheet no.

A-1



## 1001 Islington Street Unit C2 - Existing Conditions



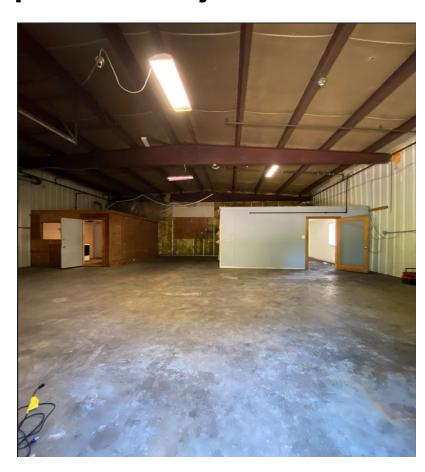




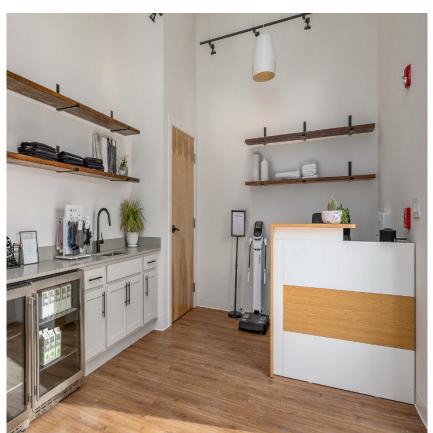


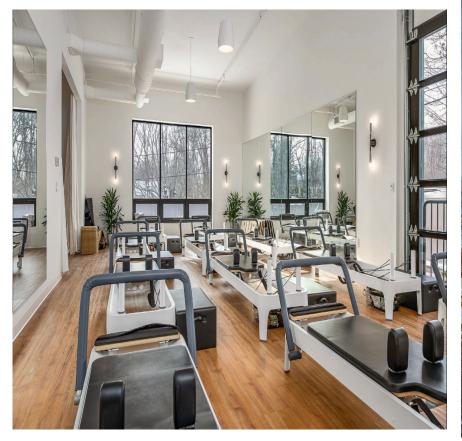
## 1001 Islington Street Unit C2 - Form Fitness Original Renovation Expansion Project to have similar scope/finishes.





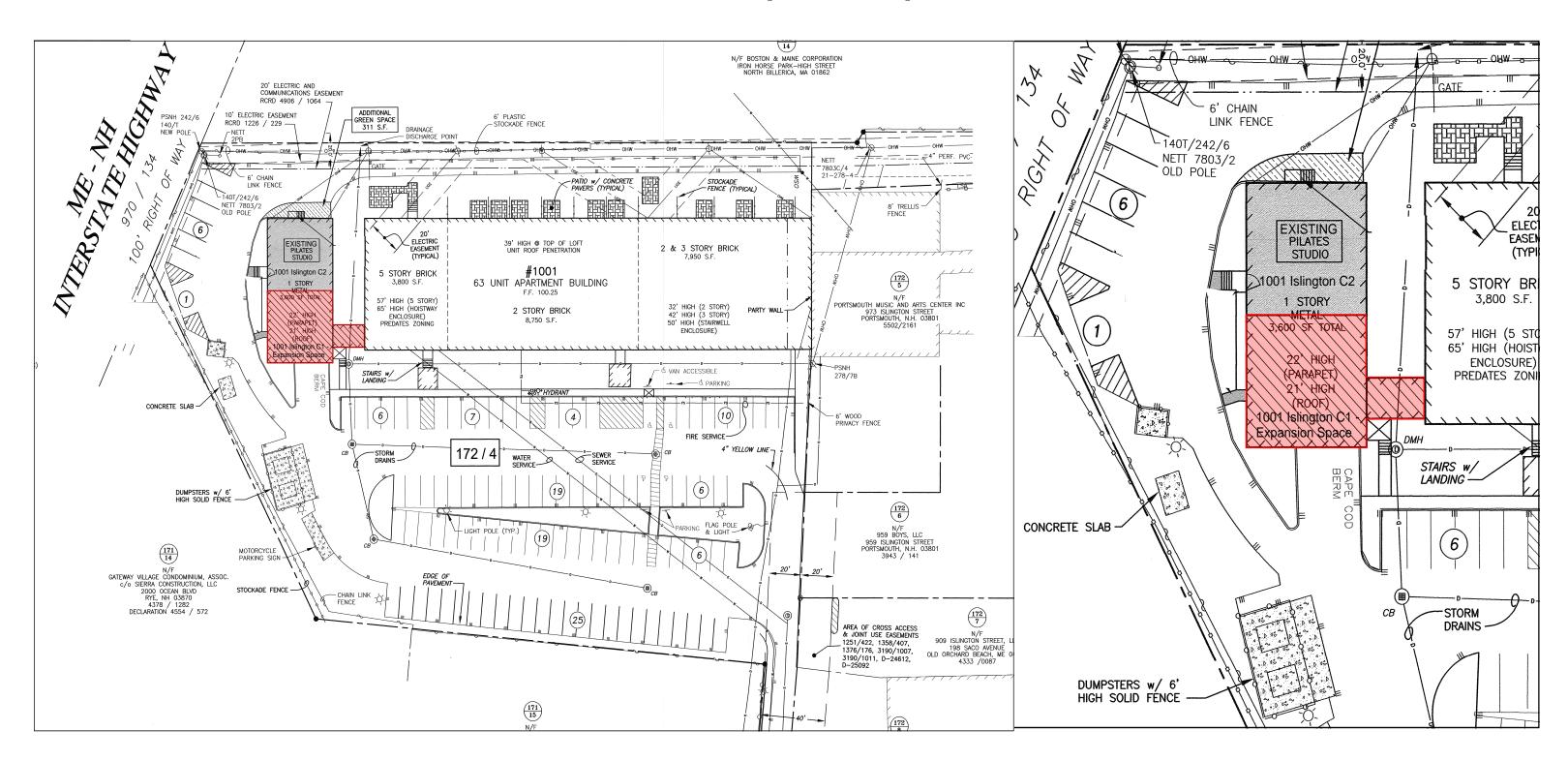








## 1001 Islington Street Site Plan View Unit C2: Form Fitness - Pilates Studio Unit C1: Proposed Expansion



#### **III. NEW BUSINESS**

A. The request of **Paula J. Reed Revocable Trust (Owner)**, for property located at **410 Richards Avenue** whereas an equitable waiver is needed for the construction of a garage which requires the following: 1) Equitable waiver for an accessory structure with a 3-foot left side yard where 3.5 feet was previously granted. Said property is located on Assessor Map 112 Lot 10 and lies within the General Residence A (GRA) District. (LU-25-10)

#### **Existing & Proposed Conditions**

	Existing	Proposed	Permitted / Required	
Land Use:	Single family dwelling	Demolish and reconstruct garage	Primarily residential	
Lot area (sq. ft.):	6,149	6,149	7,500	min.
Lot Area per Dwelling Unit (sq. ft.):	6,149	6,149	7,500	min.
Street Frontage (ft.):	50	50	100	min.
Lot depth (ft.)	123	123	70	min.
Front Yard (ft.):	15	15	15	min.
Left Yard (ft.):	3.5	3	10	min.
Right Yard (ft.):	6.5	6.5	10	min.
Rear Yard (ft.):	31	26	20	min.
Height (ft.):	8.6 (Garage)	11.1 (Garage)	35	max.
Building Coverage (%):	28.3	30*	25	max.
Open Space Coverage (%):	59.7	58.3	30	min.
<u>Parking</u>	3	3	2	
Estimated Age of Structure:	1917	Equitable Waiver req	uest(s) shown in	

<sup>\*12-26-2023</sup> Variance granted for 30% building coverage where 25% is the maximum allowed

#### **Neighborhood Context**





#### **Previous Board of Adjustment Actions**

- <u>February 16, 1999</u> The following relief from Zoning Ordinance was granted:
   A Variance from Article III Section 10-302(A) to allow a 22' x 23' two story addition with:
  - a) a 4'7" right side yard where 10' is the minimum required and
  - b) a building coverage of 27.2% where 25% is the maximum allowed.
- <u>December 19, 2023</u> The following relief from Zoning Ordinance was granted:

   Variance from Section 10.521 to permit a) 3.5 foot right side yard where 10 feet is required, and b) 30% building coverage where 25% is the maximum allowed; and 2) Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. As a result of said consideration, the Board voted to approve the requested variances from Section 10.521 and acknowledge that the request does not require relief from Section 10.321.

#### **Planning Department Comments**

The Zoning Board of Adjustment granted a variance on December 19, 2023 to demolish the existing detached garage and construct a new detached garage to be located 3.5' from the *right* side yard. The relief was erroneously noted as 3.5' from the *right* side yard where it should have been the *left* side yard (as you're looking at the property from the street).

The left front corner of the accessory structure was constructed 3.1' from the left side yard, as verified on an as-built survey, encroaching 4 inches into the relief that was granted. The back left corner was constructed 3.4' from the left side yard encroaching 1 inch into the relief that was granted. The applicant seeks an equitable waiver for the garage to be located as it was constructed 3' from the property line.

Should the Board make a motion to grant the request, Staff recommends the Board acknowledge that this approval will correct the relief granted for the left side yard where it was noted as the right side yard in the previous variance request.

#### **Equitable Waiver of Dimensional Requirement (RSA 674:33-a)**

- I. When a lot or other division of land, or structure thereupon, is discovered to be in violation of a physical layout or dimensional requirement imposed by a zoning ordinance enacted pursuant to RSA 674:16, the zoning board of adjustment shall, upon application by and with the burden of proof on the property owner, grant an equitable waiver from the requirement, if and only if the board makes all of the following findings:
  - (a) That the violation was not noticed or discovered by any owner, former owner, owner's agent or representative, or municipal official, until after a structure in violation had been substantially completed, or until after a lot or other division of land in violation had been subdivided by conveyance to a bona fide purchaser for value;
  - (b) That the violation was not an outcome of ignorance of the law or ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith on the part of any owner, owner's agent or

- representative, but was instead caused by either a good faith error in measurement or calculation made by an owner or owner's agent, or by an error in ordinance interpretation or applicability made by a municipal official in the process of issuing a permit over which that official had authority;
- (c) That the physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property; and
- (d) That due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected.
- II. In lieu of the findings required by the board under subparagraphs I(a) and (b), the owner may demonstrate to the satisfaction of the board that the violation has existed for 10 years or more, and that no enforcement action, including written notice of violation, has been commenced against the violation during that time by the municipality or any person directly affected.
- III. Application and hearing procedures for equitable waivers under this section shall be governed by RSA 676:5 through 7. Rehearings and appeals shall be governed by RSA 677:2 through 14.
- IV. Waivers shall be granted under this section only from physical layout, mathematical or dimensional requirements, and not from use restrictions. An equitable waiver granted under this section shall not be construed as a nonconforming use, and shall not exempt future use, construction, reconstruction, or additions on the property from full compliance with the ordinance. This section shall not be construed to alter the principle that owners of land are bound by constructive knowledge of all applicable requirements. This section shall not be construed to impose upon municipal officials any duty to guarantee the correctness of plans reviewed by them or property inspected by them.



# Wyskiel, Boc, Tillinghast & Bolduc, P.A. Attorneys at Law

\*Michael J. Bolduc

\*\*Thomas G. Ferrini

\*William R. Phipps

\*\*\*D. Lance Tillinghast

\*Christopher A. Wyskiel

William E. Boc - Retired

\* also admitted in Maine

\*\*also admitted in MA & VT

\*\*\*also admitted in MA, ME & VT

January 22, 2025

#### ORIGINAL HAND DELIVERED

And

Copy Uploaded as Attachment to Online Application Submittal

City of Portsmouth Zoning Board of Adjustment c/o Planning Department 1 Junkins Avenue, 3<sup>rd</sup> Floor Portsmouth, NH 03801

RE: Application for Equitable Waiver of Dimensional Requirement

By Paula J. Reid, Trustee of the Paula J. Reid 2003 Revocable Trust

410 Richards Avenue Tax Map 112, Lot 10

General Residence A ("GRA") zone

#### Dear Board Members:

This office represents Paula J. Reid, Trustee of the Paula J. Reid Revocable Trust, owner of the above referenced property. See Landowner Letter of Authorization Exhibit A. This letter supplements the online Land Use Application form submitted by the undersigned on Paula's behalf.

By Notice of Decision dated December 26, 2023, Portsmouth Case LU-23-198 (copy attached with Findings of Fact as Exhibit B), the Portsmouth ZBA granted variances to Paula Reid to tear down an existing dilapidated garage on her property in order to build a new one conforming to the dimensional requirement relief granted by the approved variances.

The variances granted allowed building a longer and slightly higher pitched garage, maintaining a pre-existing 3.5 foot right side yard setback. The variances were needed to lengthen the garage and keep an existing 3.5 foot right yard setback (where 10 feet is required) and slightly enlarge building coverage.

This application focuses on an encroachment to the variance allowed 3.5 foot right side yard setback.

Excavation, foundation pouring and subsequent construction were all planned, measured and laid out intending to conform to the granted variances, specifically the 3.5 right side yard setback. When the foundation was completed and garage construction underway, a City required foundation certification was completed by McEneaney Survey Associates of New England, the same surveyor who surveyed the lot and submitted plans for the variance applications. McEneaney's January 7, 2025 foundation certificate survey (copy attached as Exhibit C) shows the front corner of the garage encroaching four inches into the variance allowed 3.5 foot right yard setback. It shows the rear corner of the garage encroaching one inch into the same 3.5 foot right yard setback.

Paula's application qualifies for an Equitable Waiver of Dimensional Requirement. The elements are set forth in RSA 674:33-a, I (copy attached as Exhibit D). These facts support all four required elements:

- a. The violation was not noticed until the structure was completed. The violation was discovered after an "as built" survey was completed for a City required foundation certification. By the time that survey was completed the garage was fully framed and roofed with 85% of the siding applied. See photograph attached as Exhibit E. Further work on the garage stopped.
- b. The violation was the result of a good faith error in measurement. The general contractor staked the foundation appropriately for the excavators and the foundation company. Due to the space constraints of the project, the stakes were moved by the excavation company (there was no room to dig with the stakes in place). When the stakes were replaced, the excavators measured off the fence using the back side off the fence as a point rather than the front side of the fence. This is because a.) the fence is depicted as a bold line on the survey and b.) because the fence sits on the property line, they assumed it was my fence and not my neighbors. In fact, the encroachment at the rear of the garage is less than that of the front of the garage because in fact, a portion of my neighbor's fence is on my property.
- c. The physical or dimensional violation does not constitute a public or private nuisance nor diminish the value of other property in the area. The violation is 4 inches on the front corner and 1 inch on the back corner. It is not enough to visually notice. The garage is simply closer to a fence, not to a structure nor the neighbor's open yard.
- d. Due to the degree of past construction and investment, the cost of correction far outweighs the public benefit. The garage is fully framed as depicted in the attached photo.

The requested Equitable Waiver of Dimensional Requirements is well supported by the above and the attached. It should be granted. It is reasonable to do so.

On advice of City Planning Staff, this Application is simultaneously submitted with a Variance Application to amend the above referenced previously approved Variance to allow setback relief consistent with the Exhibit C Foundation Certification Survey. The recommendation to do that is in case this requested waiver is not approved.

The simultaneous Variance Application is submitted with it's own brief supplemental explanatory letter, incorporating by reference the facts of this Waiver Application and it's exhibits, and the Applicant's original November 29, 2023 Variance Application granted by Exhibit B attached (including all original Exhibits filed with it).

Sincerely

Christopher A. Wyskie

CAW/lew Enclosures

cc: Paula J. Reid

H:\RE & BUS\REID - PAULA - Portsmouth Variance\New Variance - 2025\Letter to Portsmouth ZBA 1-21-2025.docx

City of Portsmouth Zoning Board of Adjustment 1 Junkins Avenue, 3<sup>rd</sup> Floor Portsmouth, NH 03801

#### LETTER OF AUTHORIZATION

Re: ZBA Application(s) re: 410 D:

ZBA Application(s) re: 410 Richards Avenue, Portsmouth, NH Owners: Paula J. Reid, Trustee of the Paula J. Reid 2003 Revocable Trust

Dear Sir/Madam:

Paula J. Reid, individually and as Trustee of the Paula J. Reid 2003 Revocable Trust, authorize my attorney, Christopher A. Wyskiel of Wyskiel, Boc, Tillinghast & Bolduc, P.A. to represent me, individually and in my landowning trustee capacity, before the Zoning Board of Adjustment regarding applications for Equitable Waiver of Developmental Requirements and/or an amended variance for the above referenced property.

Sincerely,

Dated: January 17, 2025

Paula J. Reid, Individually and as Trustee of the Paula J. Reid 2003 Revocable Trust

H:\RE & BUS\REID - PAULA - Portsmouth Variance\New Variance - 2025\Authorization 1-17-2025.docx

Exh. A



#### CITY OF PORTSMOUTH

Planning Department 1 Junkins Avenue Portsmouth, New Hampshire 03801

(603) 610-7216

#### ZONING BOARD OF ADJUSTMENT

December 26, 2023

Paula J. Reid 2003 Revocable Trust 410 Richards Avenue Portsmouth, New Hampshire 03801

RE: Board of Adjustment request for property located at 410 Richards Avenue (LU-23-198)

Dear Property Owner:

The Zoning Board of Adjustment, at its regularly scheduled meeting of **Tuesday, December 19, 2023**, considered your application for demolishing and removing the existing detached garage and constructing a new detached garage and associated drainage improvements, which requires the following: 1) Variance from Section 10.521 to permit a) 3.5 foot right side yard where 10 feet is required, and b) 30% building coverage where 25% is the maximum allowed; and 2) Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 112 Lot 10 and lies within the General Residence A (GRA) District. As a result of said consideration, the Board voted to approve the requested variances from Section 10.521 and acknowledge that the request does not require relief from Section 10.321.

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

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

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

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

https://www.cityofportsmouth.com/planportsmouth/zoning-board-adjustment/zoning

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

Very truly yours,

Phyllis Eldridge

Phyllis Eldridge, Chair of the Zoning Board of Adjustment

cc: Shanti Wolph, Chief Building Inspector

Rosann Maurice-Lentz, City Assessor

Christopher A Wyskiel, Attorney, Wyskiel, Boc, Tillinghast and Bolduc P.A.

### Findings of Fact | Variance City of Portsmouth Zoning Board of Adjustment

Date: <u>12-19-2023</u>

Property Address: 410 Richards Avenue

Application #: LU-23-198

Decision: Grant

#### Findings of Fact:

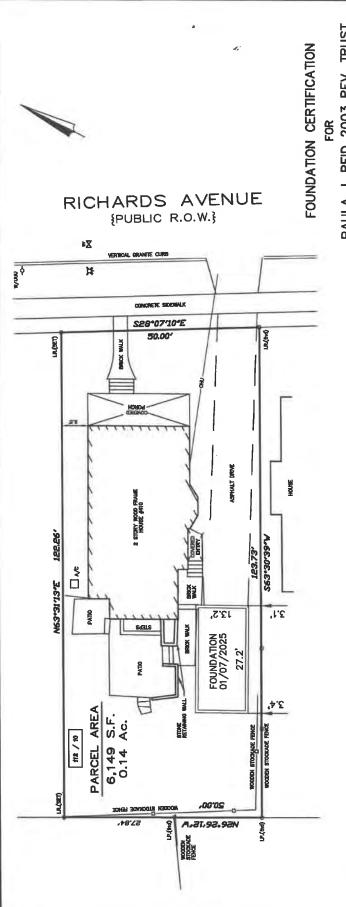
Effective August 23, 2022, amended RSA 676:3, It now reads as follows: The local land use board shall issue a final written decision which either approves or disapproves an application for a local permit and make a copy of the decision available to the applicant. The decision shall include specific written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

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

Section 10.233 Variance Evaluation Criteria	Finding (Meets Criteria)	Relevant Facts
10.233.21 Granting the variance would not be contrary to the public interest.	YES	<ul> <li>It is in the public interest to deal with drainage, given the climate changes.</li> </ul>
10.233.22 Granting the variance would observe the spirit of the Ordinance.	YES	The Board didn't think the minor variation in lot coverage was outside of it and that adding a garage is like what every other property in the neighborhood did.
10.233.23 Granting the variance would do substantial justice.	YES	The property owner will avoid an issue that has arisen and there is no contrary interest in preserving the zoning ordinance for the property without the variance granted.
10.233.24 Granting the variance would not diminish the values of surrounding properties.	YES	<ul> <li>The neighbor has said it is a fine change and there is no evidence that it willdiminish anyone's property value in the immediate area.</li> </ul>

10.233.25 Liferal enforcement of the provisions of the Ordinance would result in an unnecessary hardship.	YES	The property has special conditions of drainage issues and the garage is a hazard because the conditions.
(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		is a hazard because the walls aren't straight, and the specific application of the ordinance provisions to the property will result in an unnecessary hardship.
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.



PAULA J. REID 2003 REV. TRUST PORTSMOUTH, NEW HAMPSHIRE 410 RICHARDS AVENUE 1" = 15' JANUARY 7, 2025

A ssociates 22.5 M cEneaned S nrvey 5 7.5 N 10 M

R

P.O. Box 1166 - 181 WATSON ROAD DOVER, NH 03820 (603) 742-0911 MCENEANEY

of NEW ENGLAND

SURVEYING

CONSULTING

PLANNING

NOT TO BE RECORDED

FILE = 2467\DWGS\22-2467

PROJECT No - 22-2467

"I CERTIFY THAT THE FOUNDATION LOCATION SHOWN DOES NOT MEET THE INTENDED VARIANCE REQUIREMENT, AND IS LOCATED OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN."

REFERENCE IS MADE TO A ZONING BOARD OF ADJUSTMENT LETTER DATED DECEMBER 26, 2023 WHICH GRANTS A VARIANCE FROM SECTION 10.521 TO PERMIT A 3.5 FOOT RIGHT SIDE YARD WHERE 10 FEET IS REQUIRED.

1.) ZONING DISTRICT IS GENERAL RESIDENCE A (GRA)

NOTES

5

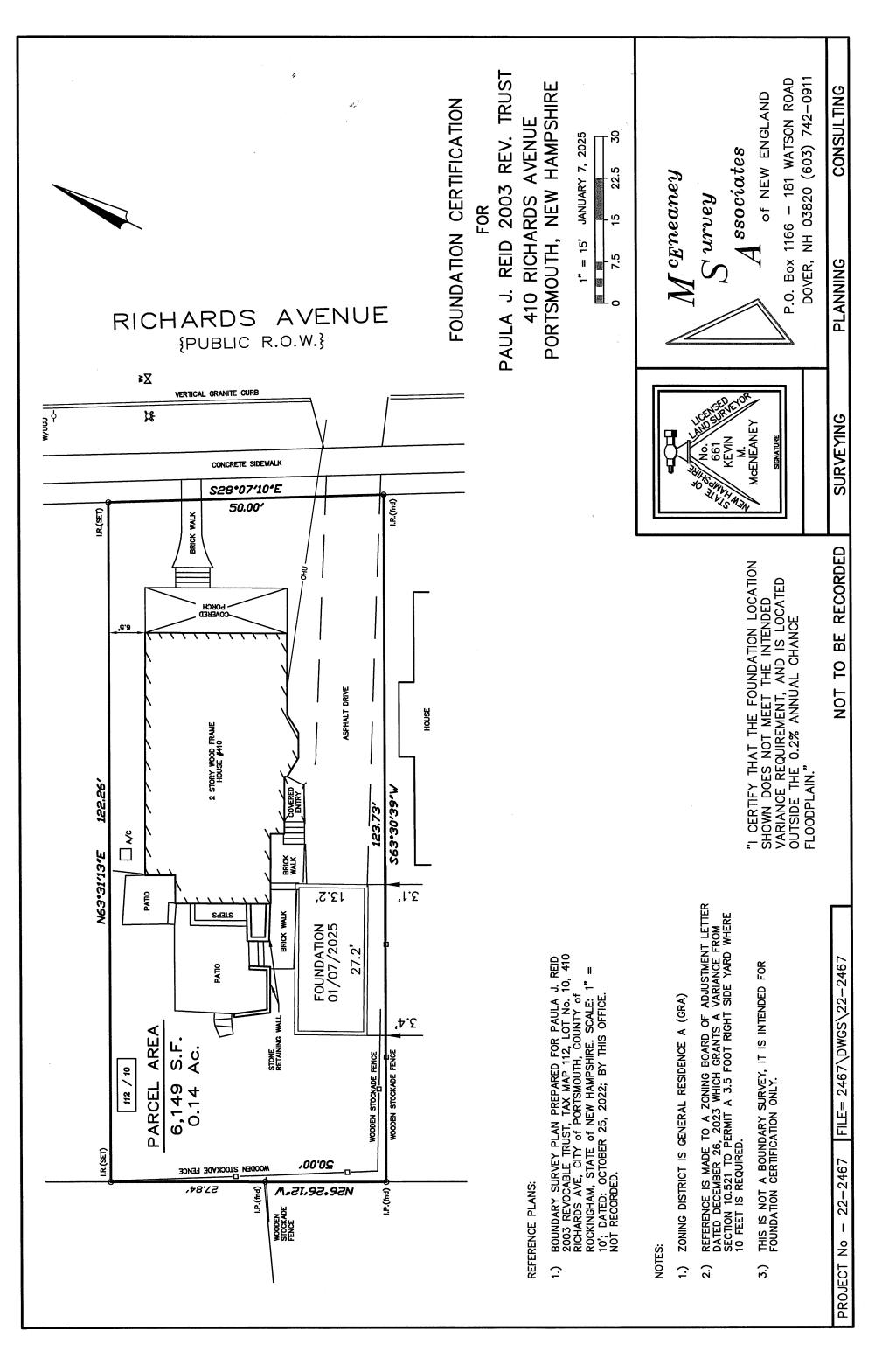
THIS IS NOT A BOUNDARY SURVEY, IT IS INTENDED FOR FOUNDATION CERTIFICATION ONLY.

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BOUNDARY SURVEY PLAN PREPARED FOR PAULA J. REID 2003 REVOCABLE TRUST, TAX MAP 112, LOT No. 10, 410 RICHARDS AVE, CITY of PORTSMOUTH, COUNTY of ROCKINGHAM, STATE of NEW HAMPSHIRE. SCALE: 1" = 10'; DATED: OCTOBER 25, 2022; BY THIS OFFICE. NOT RECORDED.

REFERENCE PLANS:

3



## TITLE LXIV PLANNING AND ZONING

## CHAPTER 674 LOCAL LAND USE PLANNING AND REGULATORY POWERS

#### Zoning Board of Adjustment and Building Code Board of Appeals

#### Section 674:33-a

674:33-a Equitable Waiver of Dimensional Requirement. -

I. When a lot or other division of land, or structure thereupon, is discovered to be in violation of a physical layout or dimensional requirement imposed by a zoning ordinance enacted pursuant to RSA 674:16, the zoning board of adjustment shall, upon application by and with the burden of proof on the property owner, grant an equitable waiver from the requirement, if and only if the board makes all of the following findings:

(a) That the violation was not noticed or discovered by any owner, former owner, owner's agent or representative, or municipal official, until after a structure in violation had been substantially completed, or until after a lot or other division of land in violation had been subdivided by conveyance to a bona fide purchaser for value;

(b) That the violation was not an outcome of ignorance of the law or ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith on the part of any owner, owner's agent or representative, but was instead caused by either a good faith error in measurement or calculation made by an owner or owner's agent, or by an error in ordinance interpretation or applicability made by a municipal official in the process of issuing a permit over which that official had authority;

(c) That the physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property; and

(d) That due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected.

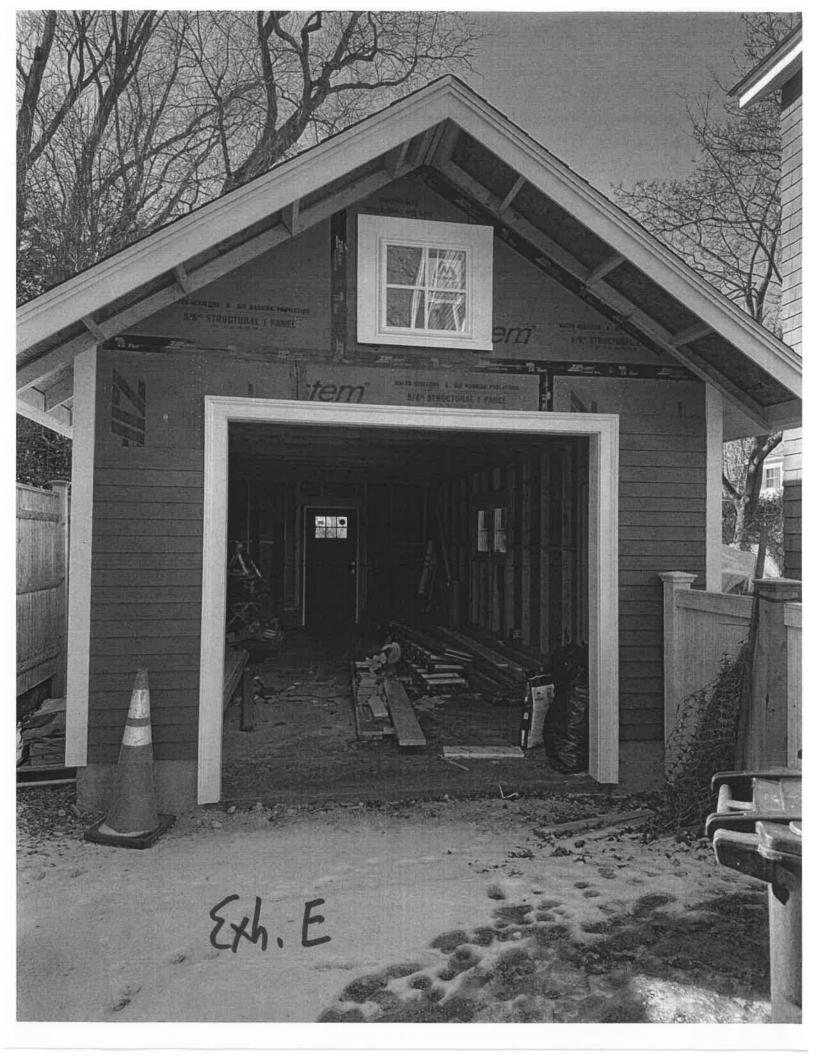
II. In lieu of the findings required by the board under subparagraphs I(a) and (b), the owner may demonstrate to the satisfaction of the board that the violation has existed for 10 years or more, and that no enforcement action, including written notice of violation, has been commenced against the violation during that time by the municipality or any person directly affected.

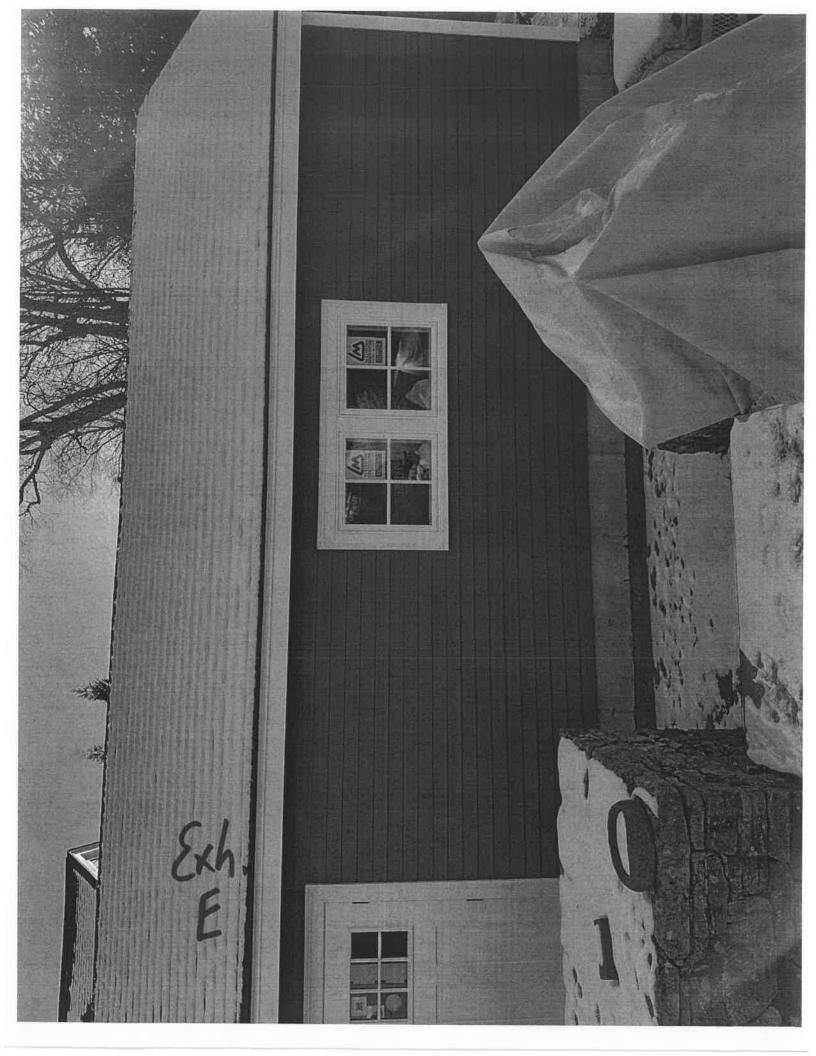
III. Application and hearing procedures for equitable waivers under this section shall be governed by RSA 676:5 through 7. Rehearings and appeals shall be governed by RSA 677:2 through 14.

IV. Waivers shall be granted under this section only from physical layout, mathematical or dimensional requirements, and not from use restrictions. An equitable waiver granted under this section shall not be construed as a nonconforming use, and shall not exempt future use, construction, reconstruction, or additions on the property from full compliance with the ordinance. This section shall not be construed to alter the principle that owners of land are bound by constructive knowledge of all applicable requirements. This section shall not be construed to impose upon municipal officials any duty to guarantee the correctness of plans reviewed by them or property inspected by them.

Source. 1996, 226:4, eff. Jan. 1, 1997.

Exh. D





#### LIST OF ABUTTERS

Applicant: Paula J. Reid, Trustee of the Paula J. Reid 2003 Revocable Trust 410 Richards Avenue, Portsmouth, NH Tax Map 112, Lot 10

Property Address	Tax Map/Lot No.	Owner(s)	RCRD Deed Ref.
420 Richards Avenue	Map 112, Lot 9	Amy E. Dutton Rev. Trust of 2003, Amy E. Dutton Murphy, Trustee	5225/39
390 Richards Avenue	Map 112, Lot 11	Stebbins Family Trust, John R. & Bridget M. Stebbins, Trustees	5636/563
399 Richards Avenue	Map 112, Lot 18	Barbara E. Collier Rev. Trust, Barbara E. Collier, Trustee	6315/246
409 Richards Avenue	Map 112, Lot 19	Stephen C. Buzzell Rev. Trust, Stephen C. Buzzell, Trustee, and and Jody E. Buzzell Rev. Trust, Jody E. Buzzell, Trustee	6035/840
419 Richards Avenue	Map 112, Lot 20	Thomas A. Nies Rev. Trust of 2010 and Denise M. Nies Rev. Trust of 2010, Thomas A. & Denise M. Nies, Trustees	5192/1225
295 Miller Avenue	Map 130, Lot 9	Kristen B. Mullen Rev. Living Trust, Kristen B. Mullen, Trustee	5699/1271
303 Miller Avenue	Map 130, Lot 10	The Twombly Trust, Dorothy C. Twombly, Trustee	2762/2766

#### Engineer/Surveyor:

Kevin M. McEneaney McEneaney Survey Associates of New England P. O. Box 681 Dover, NH 03821

#### Attorney:

Christopher A. Wyskiel Wyskiel, Boc, Tillinghast & Bolduc, P. A. 561 Central Avenue Dover, NH 03820

H:\RE & BUS\Reid, Paula - Portsmouth Variance\LIST OF ABUTTERS.docx

#### **III. NEW BUSINESS**

B. The request of **Paula J. Reed Revocable Trust (Owner)**, for property located at **410 Richards Avenue** whereas an after the fact variance is needed for the construction of a garage which requires the following: 1) Variance from Section 10.521 to permit a 3-foot left yard where 3.5 feet were previously granted. Said property is located on Assessor Map 112 Lot 10 and lies within the General Residence A (GRA) District. (LU-25-11)

#### A. Existing & Proposed Conditions

	Existing	Proposed	Permitted / Required	
Land Use:	Single family dwelling	Demolish and reconstruct garage	Primarily residential	
Lot area (sq. ft.):	6,149	6,149	7,500	min.
Lot Area per Dwelling Unit (sq. ft.):	6,149	6,149	7,500	min.
Street Frontage (ft.):	50	50	100	min.
Lot depth (ft.)	123	123	70	min.
Front Yard (ft.):	15	15	15	min.
Left Yard (ft.):	3.5	3	10	min.
Right Yard (ft.):	6.5	6.5	10	min.
Rear Yard (ft.):	31	26	20	min.
Height (ft.):	8.6 (Garage)	11.1 (Garage)	35	max.
Building Coverage (%):	28.3	30*	25	max.
Open Space Coverage (%):	59.7	58.3	30	min.
Parking	3	3	2	
Estimated Age of Structure:	1917	Variance request(s)	shown in red.	

<sup>\*12-26-2023</sup> Variance granted for 30% building coverage where 25% is the maximum allowed.

#### **Neighborhood Context**





#### **Previous Board of Adjustment Actions**

- <u>February 16, 1999</u> The following relief from Zoning Ordinance was granted:
   A Variance from Article III Section 10-302(A) to allow a 22' x 23' two story addition with:
  - c) a 4'7" right side yard where 10' is the minimum required and
  - d) a building coverage of 27.2% where 25% is the maximum allowed.
- <u>December 19, 2023</u> The following relief from Zoning Ordinance was granted: 1) Variance from Section 10.521 to permit a) 3.5 foot right side yard where 10 feet is required, and b) 30% building coverage where 25% is the maximum allowed; and 2) Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. As a result of said consideration, the Board voted to approve the requested variances from Section 10.521 and acknowledge that the request does not require relief from Section 10.321.

#### **Planning Department Comments**

The applicant is seeking an equitable waiver for the garage to be located as it was constructed 3' from the property line, as outlined in Item III.A. In the alternative, the applicant seeks the necessary variance for the garage to be located as it was constructed 3' from the left side yard.

Should the equitable waiver be granted, the variance application should be withdrawn by the applicant.

#### 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 <u>special conditions</u> 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.



## Wyskiel, Boc, Tillinghast & Bolduc, P.A. Attorneys at Law

\*Michael J. Balduc \*\*Themas G. Ferritii \*William R. Phipps \*\*\*D. Lance Tillinghast

\*Christopher A. Wyskiel

William E. Boc - Retired

\* also admitted in Maine
\*\*also admitted in MA & VT
\*\*\*also admitted in MA, ME & VT

January 22, 2025

#### ORIGINAL HAND DELIVERED

And

Copy Uploaded as Attachment to Online Application Submittal

City of Portsmouth Zoning Board of Adjustment c/o Planning Department 1 Junkins Avenue, 3<sup>rd</sup> Floor Portsmouth, NH 03801

RE: Application for Variance for Minor Sideline Setback Relief
By Paula J. Reid, Trustee of the Paula J. Reid 2003 Revocable Trust
410 Richards Avenue
Tax Map 112, Lot 10
General Residence A ("GRA") zone

#### Dear Board Members:

This office represents Paula J. Reid, Trustee of the Paula J. Reid Revocable Trust, owner of the above referenced property. See Landowner Letter of Authorization Exhibit A. This letter supplements the online Land Use Application form submitted by the undersigned on Paula's behalf.

By Notice of Decision dated December 26, 2023, Portsmouth Case LU-23-198 (copy attached with Findings of Fact as Exhibit B), the Portsmouth ZBA granted variances to Paula Reid to tear down an existing dilapidated garage on her property in order to build a new one conforming to the dimensional requirement relief granted by the approved variances.

The variances granted allowed building a longer and slightly higher pitched garage, maintaining a pre-existing 3.5 foot right side yard setback. The variances were needed to lengthen the garage and keep an existing 3.5 foot right yard setback (where 10 feet is required) and slightly enlarge building coverage.

Excavation, foundation pouring and subsequent construction were all planned, measured and laid out intending to conform to the granted variances, specifically the 3.5 right side yard setback. When the foundation was completed and garage construction underway, a City required foundation certification was completed by McEneaney Survey Associates of New England, the same surveyor who surveyed the lot and submitted plans for the variance applications. McEneaney's January 7, 2025 foundation certificate survey (copy attached as Exhibit C) shows the front corner of the garage encroaching four inches into the variance allowed 3.5 foot right yard setback. It shows the rear corner of the garage encroaching one inch into the same 3.5 foot right yard setback.

The Applicant filed an application for an Equitable Waiver for Dimensional Requirement for zoning relief from the above described/documented facts. If an Equitable Waiver is not granted, action on this variance application is appropriate.

#### **Specific Variance Request**

The variance previously granted by the Zoning Board of Adjustment is requested to be amended (or reissued as new) to specifically authorized relief from Section 10.521 Table of Dimensional Standards to allow:

- (a) Side yard setback relief to allow completion of construction of Applicant's substantially completed garage, modifying the previously granted setback relief granted by the ZBA's December 26, 2023 Notice of Decision, Case #LU-23-198, to the side yard setbacks confirmed by the McEneaney Survey Associates of New England Foundation Certification Plan dated January 7, 2025.
- (b) Building coverage relief to allow the above which increases existing 28.3% building coverage to 29.7% where a maximum building coverage of 25% is required for the GRA Zone.

#### Variance Criteria Addressed

But for minor (inches) foundation location of the garage, Applicant's contractors substantially complied with the ZBA's Exhibit B December 26, 2023 Notice of Decision. See photos attached as Exhibit E evidencing substantial completion of subject garage. No Exhibit D is attached to this application. Further work on the garage has ceased pending further ZBA action.

Justification for the variance remains exactly the same as explained by the undersigned's November 29, 2023 seven page letter with attached and referenced exhibits (all resubmitted herewith as numbered 1-10, as identified in said letter). The minor few inches of side yard setback encroachment do not render invalid the justification as explained in Applicant's original application, granted by the ZBA by it's December 26, 2023 Notice of Decision (which acknowledged the Board's finding that a variance from Section 10.321 as originally requested and addressed in said November 29, 2023 letter is not required to proceed with Applicant's garage plans.

This variance application is unnecessary if the ZBA grants Applicant's Equitable Waiver from Dimensional Requirement. If an equitable waiver is not granted however, the variances requested hereby are reasonable and should be granted.

Sincerely

Christopher A. Wyskiel

CAW/lew Enclosures

cc: Paula J. Reid

H:\RE & BUS\REID - PAULA - Portsmouth Variance\New Variance - 2025\Letter to Portsmouth ZBA #2 1-21-2025.docx

City of Portsmouth Zoning Board of Adjustment 1 Junkins Avenue, 3<sup>rd</sup> Floor Portsmouth, NH 03801

#### LETTER OF AUTHORIZATION

Re: ZBA Application(s) re: 410 Richards Avenue, Portsmouth, NH

Owners: Paula J. Reid, Trustee of the Paula J. Reid 2003 Revocable Trust

Dear Sir/Madam:

Paula J. Reid, individually and as Trustee of the Paula J. Reid 2003 Revocable Trust, authorize my attorney, Christopher A. Wyskiel of Wyskiel, Boc, Tillinghast & Bolduc, P.A. to represent me, individually and in my landowning trustee capacity, before the Zoning Board of Adjustment regarding applications for Equitable Waiver of Developmental Requirements and/or an amended variance for the above referenced property.

Sincerely,

Dated: January 17, 2025

Paula J. Reid, Individually and as Trustee of the Paula J. Reid 2003 Revocable Trust

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Exh. A



#### CITY OF PORTSMOUTH

Planning Department 1 Junkins Avenue Portsmouth, New Hampshire 03801

(603) 610-7216

#### **ZONING BOARD OF ADJUSTMENT**

December 26, 2023

Paula J. Reid 2003 Revocable Trust 410 Richards Avenue Portsmouth, New Hampshire 03801

RE: Board of Adjustment request for property located at 410 Richards Avenue (LU-23-198)

**Dear Property Owner:** 

The Zoning Board of Adjustment, at its regularly scheduled meeting of Tuesday, December 19, 2023, considered your application for demolishing and removing the existing detached garage and constructing a new detached garage and associated drainage improvements, which requires the following: 1) Variance from Section 10.521 to permit a) 3.5 foot right side yard where 10 feet is required, and b) 30% building coverage where 25% is the maximum allowed; and 2) Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 112 Lot 10 and lies within the General Residence A (GRA) District. As a result of said consideration, the Board voted to approve the requested variances from Section 10.521 and acknowledge that the request does not require relief from Section 10.321.

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

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

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

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

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

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

Very truly yours,

Phyllis Eldridge

Phyllis Eldridge, Chair of the Zoning Board of Adjustment

cc: Shanti Wolph, Chief Building Inspector

Rosann Maurice-Lentz, City Assessor

Christopher A Wyskiel, Attorney, Wyskiel, Boc, Tillinghast and Bolduc P.A.

### Findings of Fact | Variance City of Portsmouth Zoning Board of Adjustment

Date: <u>12-19-2023</u>

Property Address: 410 Richards Avenue

Application #: LU-23-198

Decision: Grant

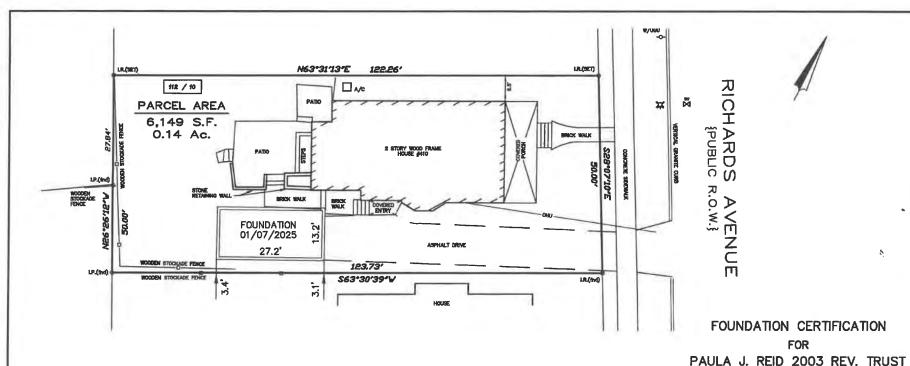
#### Findings of Fact:

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

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

Section 10.233 Variance Evaluation Criteria	Finding (Meets Criteria)	Relevant Facts
10.233.21 Granting the variance would not be contrary to the public interest.	YES	It is in the public interest to deal with drainage, given the climate changes.
10.233.22 Granting the variance would observe the spirit of the Ordinance.	YES	The Board didn't think the minor variation in lot coverage was outside of it and that adding a garage is like what every other property in the neighborhood did.
10.233.23 Granting the variance would do substantial justice.	YES	The property owner will avoid an issue that has arisen and there is no contrary interest in preserving the zoning ordinance for the property without the variance granted.
10.233.24 Granting the variance would not diminish the values of surrounding properties.	YES	<ul> <li>The neighbor has said it is a fine change and there is no evidence that it willdiminish anyone's property value in the immediate area.</li> </ul>

10.233.25 Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship.  (a) The property has special Conditions that distinguish it from other properties in the area. AND (b) Owing to these special conditions, a fair and substantial relationship does not exist between the general public purposes of the Ordinance provision and the specific 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.	YES	The property has special conditions of drainage issues and the garage is a hazard because the walls aren't straight, and the specific application of the ordinance provisions to the property will result in an unnecessary hardship.
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#### REFERENCE PLANS:

 BOUNDARY SURVEY PLAN PREPARED FOR PAULA J. REID 2003 REVOCABLE TRUST, TAX MAP 112, LOT No. 10, 410 RICHARDS AVE, CITY of PORTSMOUTH, COUNTY of ROCKINGHAM, STATE of NEW HAMPSHIRE, SCALE: 1" 10'; DATED: OCTOBER 25, 2022; BY THIS OFFICE. NOT RECORDED.

#### NOTES:

- 1.) ZONING DISTRICT IS GENERAL RESIDENCE A (GRA)
- REFERENCE IS MADE TO A ZONING BOARD OF ADJUSTMENT LETTER DATED DECEMBER 26, 2023 WHICH GRANTS A VARIANCE FROM SECTION 10.521 TO PERMIT A 3.5 FOOT RIGHT SIDE YARD WHERE

FILE= 2467\DWGS\22-2467

3.) THIS IS NOT A BOUNDARY SURVEY, IT IS INTENDED FOR FOUNDATION CERTIFICATION ONLY.

"I CERTIFY THAT THE FOUNDATION LOCATION SHOWN DOES NOT MEET THE INTENDED VARIANCE REQUIREMENT, AND IS LOCATED OUTSIDE THE 0.2% ANNUAL CHANCE

FLOODPLAIN."

NOT TO BE RECORDED



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7.5

410 RICHARDS AVENUE

PORTSMOUTH, NEW HAMPSHIRE 1" = 15' JANUARY 7, 2025

15

of NEW ENGLAND

P.O. Box 1166 - 181 WATSON ROAD DOVER, NH 03820 (603) 742-0911

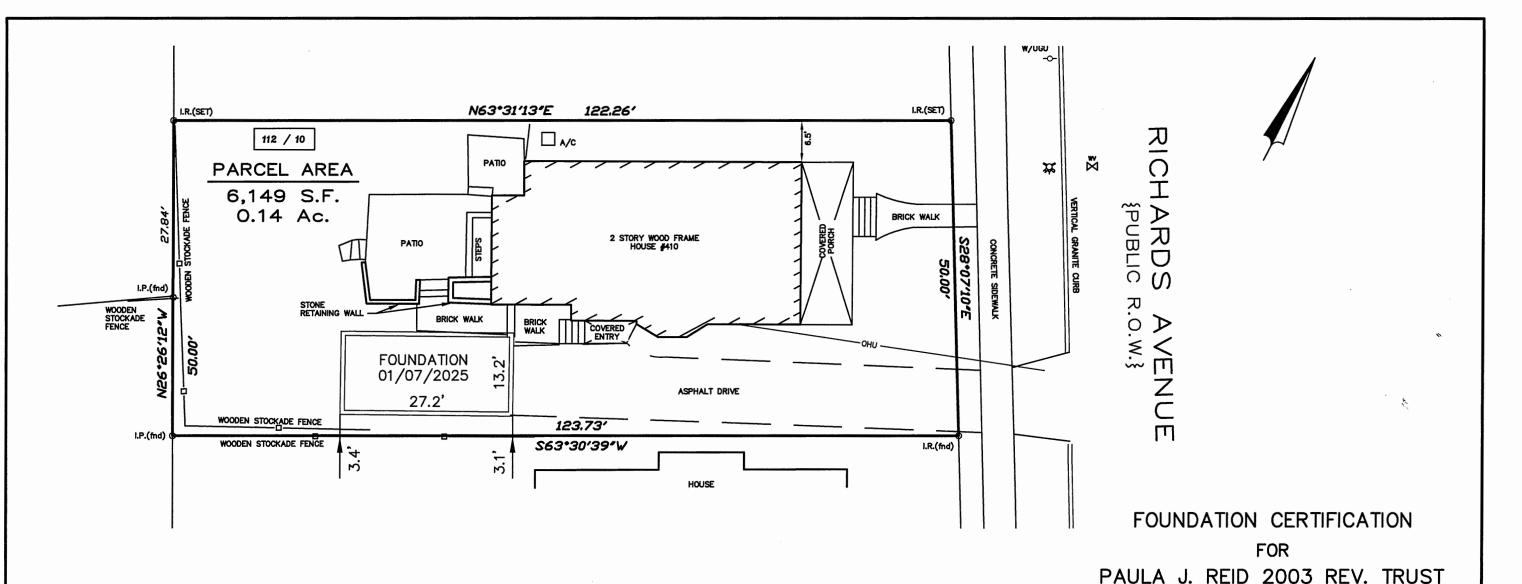
**SURVEYING** 



PROJECT No - 22-2467

**PLANNING** 

CONSULTING



#### REFERENCE PLANS:

1.) BOUNDARY SURVEY PLAN PREPARED FOR PAULA J. REID 2003 REVOCABLE TRUST, TAX MAP 112, LOT No. 10, 410 RICHARDS AVE, CITY of PORTSMOUTH, COUNTY of ROCKINGHAM, STATE of NEW HAMPSHIRE. SCALE: 1" = 10'; DATED: OCTOBER 25, 2022; BY THIS OFFICE. NOT RECORDED.

#### NOTES:

- 1.) ZONING DISTRICT IS GENERAL RESIDENCE A (GRA)
- 2.) REFERENCE IS MADE TO A ZONING BOARD OF ADJUSTMENT LETTER DATED DECEMBER 26, 2023 WHICH GRANTS A VARIANCE FROM SECTION 10.521 TO PERMIT A 3.5 FOOT RIGHT SIDE YARD WHERE 10 FEET IS REQUIRED.
- FOUNDATION CERTIFICATION ONLY.

"I CERTIFY THAT THE FOUNDATION LOCATION SHOWN DOES NOT MEET THE INTENDED VARIANCE REQUIREMENT, AND IS LOCATED OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN."

NOT TO BE RECORDED

**McENEANEY** 

 $c_{E}neaney$ ssociates

410 RICHARDS AVENUE

PORTSMOUTH, NEW HAMPSHIRE

1" = 15' JANUARY 7, 2025

of NEW ENGLAND

P.O. Box 1166 - 181 WATSON ROAD DOVER, NH 03820 (603) 742-0911

**SURVEYING** 

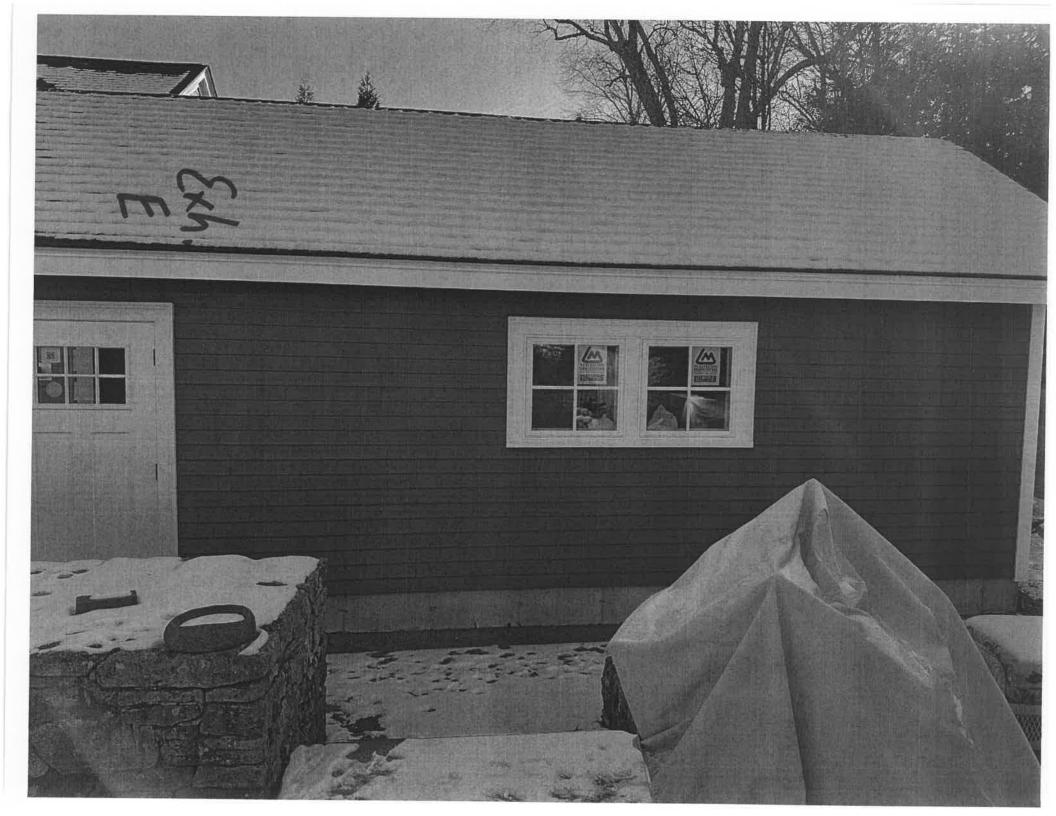
**PLANNING** 

CONSULTING

3.) THIS IS NOT A BOUNDARY SURVEY, IT IS INTENDED FOR

PROJECT No - 22-2467 FILE= 2467\DWGS\22-2467





#### LIST OF ABUTTERS

Applicant: Paula J. Reid, Trustee of the Paula J. Reid 2003 Revocable Trust 410 Richards Avenue, Portsmouth, NH Tax Map 112, Lot 10

Property Address	Tax Map/Lot No.	Owner(s)	RCRD Deed Ref.
420 Richards Avenue	Map 112, Lot 9	Amy E. Dutton Rev. Trust of 2003, Amy E. Dutton Murphy, Trustee	5225/39
390 Richards Avenue	Map 112, Lot 11	Stebbins Family Trust, John R. & Bridget M. Stebbins, Trustees	5636/563
399 Richards Avenue	Map 112, Lot 18	Barbara E. Collier Rev. Trust, Barbara E. Collier, Trustee	6315/246
409 Richards Avenue	Map 112, Lot 19	Stephen C. Buzzell Rev. Trust, Stephen C. Buzzell, Trustee, and and Jody E. Buzzell Rev. Trust, Jody E. Buzzell, Trustee	6035/840
419 Richards Avenue	Map 112, Lot 20	Thomas A. Nies Rev. Trust of 2010 and Denise M. Nies Rev. Trust of 2010, Thomas A. & Denise M. Nies, Trustees	5192/1225
295 Miller Avenue	Map 130, Lot 9	Kristen B. Mullen Rev. Living Trust, Kristen B. Mullen, Trustee	5699/1271
303 Miller Avenue	Map 130, Lot 10	The Twombly Trust, Dorothy C. Twombly, Trustee	2762/2766

#### Engineer/Surveyor:

Kevin M. McEneaney McEneaney Survey Associates of New England P. O. Box 681 Dover, NH 03821

#### Attorney:

Christopher A. Wyskiel Wyskiel, Boc, Tillinghast & Bolduc, P. A. 561 Central Avenue Dover, NH 03820

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# Wyskiel, Boc, Tillinghast & Bolduc, P.A. Attorneys at Law

\*Michael J. Bolduc \*\*Thomas G. Ferrini \*William R. Phipps \*\*\*D. Lance Tillinghast

\*Christopher A. Wyskiel William E. Boc - Retired

\* also admitted in Maine
\*\*\*also admitted in MA & VT
\*\*\*also admitted in MA, ME & VT

November 29, 2023

City of Portsmouth Zoning Board of Adjustment c/o Planning Department 1 Junkins Avenue, 3<sup>rd</sup> Floor Portsmouth, NH 03801

RE: Variance Application for Paula J. Reid, Trustee of the Paula J. Reid 2003 Revocable Trust 410 Richards Avenue
Tax Map 112, Lot 10
General Residence A ("GRA") zone

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

This office represents Paula J. Reid, Trustee of the Paula J. Reid Revocable Trust. This letter supplements the online Land Use Application form submitted by the undersigned on Paula's behalf. It first identifies submitted exhibits, then the specific zoning ordinance sections for which variances are requested, then explains (with reference to exhibits) Paula's garage and site redevelopment proposal and facts relevant to variance criteria to be met.

The variances are requested to facilitate Paula's demolition of her existing dilapidated garage to accommodate additional excavation and site work to address the serious stormwater drainage problems on her downward sloping lot, and then building a modestly enlarged replacement garage of similar scale. Paula's proposed work is reasonable. No fair and substantial relationship exists between the purposes of the dimensional requirements from which relief is sought, and their application to Paula's property with respect to her reasonable proposed work. The facts demonstrated by this application meet all the variance criteria set out in Portsmouth's Zoning Ordinance and N.H. statutory and common law.

# **Submitted Exhibits**

Submitted exhibits are numbered/lettered and summarily identified below. The numbering/lettering facilitates reference to the exhibits in the explanatory text that follows.

1. Landowner Letter of Authorization

- Existing Conditions Plan (boundary survey by McEneaney Survey Associates dated 10/25/2022)
- 3. New garage proposal plan (prepared by ASB Architecture with overlay to Existing Conditions Plan)
- 3A. Enlargement of Exhibit 3's overlay on Existing Conditions Plan
- 3B. Enlargement of Exhibit 3's Notes with existing/proposed dimensional calculations
- 4. October 1898 Rockingham County Registry recorded plan (original layout of lots)
- 5A. City Tax Map print of subject lot
- 5B. City Tax Map print/aerial view (arrow points to subject lot)
- 6. Two pictures of lot's street view and driveway showing lot's sloping topography to back yard
- 7. Three pictures of house showing anticipated gutter locations (recommended gutters to be confirmed by an installer not yet consulted)
- 8. Three pictures showing areas that flood with stormwater drainage
- 9. Three pictures of existing garage showing existing/abutting lot topography differences and screening/privacy fences
- 10. Ten pictures of neighborhood garages on Richards Avenue and Miller Avenue (in the vicinity of the subject lot)

# Specific Variance Requests

The existing garage located per Exhibit 2 and pictured in Exhibits 6, 8 and 9 is a conforming use on a non-conforming lot. Explained in more detail below, Paula proposes to remove this substandard structure to accommodate site drainage work to collect and naturally absorb/treat (by rain garden) substantial on-site stormwater drainage, then reconstruct the replacement garage depicted on Exhibit 3. Because of the proposed garage new construction and proposed lengthening by five (5) feet, variances from the following Zoning Ordinance sections are requested:

1. Section 10.321 to accommodate the modest enlargement of a lawful non-conforming structure by demolition/new construction replacement not conforming to the below dimensional requirements of the GRA zone.

# 2. Section 10.521 Table of Dimensional Standards:

- (a) Side yard setback relief to accommodate a five (5) foot lengthening of the existing garage's footprint by new construction located 3.5 feet from the property sideline where a 10 foot side yard setback is required in the GRA zone (existing garage is 3.5 feet from side yard property line)
- (b) Building coverage relief to allow the above which increases existing 28.3% building coverage to 29.7% where maximum building coverage of 25% is required for the GRA zone.

# **Development Proposal Explained/Facts Relevant to Requested Variances**

Paula's existing garage is in a state of disrepair. Renovation consistent with current building best practices is impractical. The overhead door is difficult to open. The existing garage's height and width do not accommodate replacement with new overhead garage doors, certainly not without overhead opening equipment. Its low slanted roof allows little headroom and does not best accommodate snow loading. Replacement by new construction is warranted and reasonable.

Paula's architect, Aimee Bentley, did not conduct any boring testing to verify existing foundation or footings, but slab construction is suspected. New construction could accommodate appropriate frost walls and flooring and also accommodate below described site drainage work.

The requested lengthening by five (5) feet will accommodate longer cars of present day popularity, as well as modest indoor storage (eliminating the need for an additional exterior accessory storage shed or structure).

The topography of the lot slopes from Richards Avenue downwards to the back yard. The main roof of the house pitches from the midline forward towards Richards Avenue (where drainage can be absorbed by the front yard and landscaped plantings), and toward the back yard. Dormered roofing on the driveway side and back of the house pitches much of the rear roof's rain runoff, together with runoff from the driveway and (back yard side of) garage, all into the back driveway side door entry and walkway along the existing driveway. See pictures at Exhibits 7 and 8. In rainstorms, this driveway area in front of the garage and the walkway to the house's side entry and along the side of the garage pools with water and pours into the rear yard with no good drainage absorption.

New construction will allow machinery excavation both for the new garage's foundation and underground drainage to accommodate driveway runoff and water collected from the roof by gutters on the house (see Exhibit 7 pictures) and new garage (see Exhibit 3). That collected water will funnel into underground drainage pipe(s) to a rain garden properly designed, developed and planted in the back yard corner behind the garage. This improvement cannot be

made by keeping the existing structure. Excavation for drainage and the rain garden cannot be practically done by hand. Larger machinery can't be otherwise brought into the back yard without existing garage demolition.

Continued use of the existing structure can't reasonably facilitate storm water drainage problem solutions. Continued use of the present garage isn't reasonable for present day conditions. The proposed modest lengthening is reasonable. Cars have gotten larger. Standard garages are not designed less than 24 feet (the existing is 22 feet). The slight widening (by less than one foot into back yard side) and heightening (by less than  $3\frac{1}{2}$  feet per zoning defined height) accommodates current building and roof trussing to meet code and typical New England snow load requirements.

Paula anticipates her new construction demolition, site improvements (foundation, drainage and rain garden), and garage construction to be in the vicinity of \$100,000.00.

# Variance Criteria Addressed

Portsmouth Zoning (Section 10.233.20 and its subparts) and 10.233.31 restate the N.H. RSA 674:33, I variance criteria. N.H. case law provides further interpretive guidance. It is reasonable to grant the requested variances.

# 1. Granting the variance is not contrary to the public interest.

Under N.H. law, Applicants do not have an affirmative duty to show that granting the requested variance furthers the public interest. Rather, the burden is simply to show that granting it will not be contrary to the public interest. That this distinction suggests a relatively low standard was acknowledged by the N.H. Supreme Court's decision in Chester Rod and Gun Club, Inc. v Town of Chester, 152 N. H. 577 (2005). In considering this criteria, the Court recommends the ZBA consider whether the requested variance(s) would "unduly and to a marked degree" conflict with the basic premises of the Zoning Ordinance, or alter the essential character of the locality, or threaten the public health, safety or welfare. Id. at 508.

The proposed garage replacement will not alter the essential character of the locality. Tax Map prints (Exhibits 5A & B) and the pictures at Exhibit 10 show lots in the immediate vicinity of 410 Richards Avenue that have older as well as new replacement (some larger) garages in close proximity to lot lines and neighboring homes. The less than 1 foot widening (towards the middle of the lot) and modest 5 foot lengthening (for which variance relief is sought) will hardly be noticed as to size, placement and lot coverage. If anything will be noticed at all, it will be an attractive, new, functional garage, having replaced (for anyone who remembers) an old, in need of repair garage not used by the property's owner for parking a car.

The modest proposed redevelopment shown by Exhibit 3, does not threaten the public's health, safety or welfare. Demolition of the existing structure to excavate for drainage work and

an appropriate rain garden in the corner of the yard to accommodate collected stormwater drainage, improves the public health, safety and welfare. It certainly improves the subject lot. Appropriate accommodation of stormwater drainage on site helps prevent runoff to abutting properties.

# 2. The spirit of the ordinance is observed by granting the requested setback variances.

In considering this criteria, Courts have suggested it to be interdependent with and should be construed together with the "not contrary to the public interest" criteria. <u>Chester Rod and Gun Club</u> at 580. The points made above are equally relevant to this variance test.

Many lots in the GRA zone near Paula's were originally laid out having only 50 feet of frontage and are thus non-conforming as to frontage (many as to lot size also). See Exhibit 4 (2 pages). Over time, some of these narrow lots have been combined in whole or in part to form wider lots. See Exhibits 5A & 5B. Many narrow lots non-conforming as to size and frontage still exist, and have been developed with garages, new and old. See Exhibit 10 pictures.

Portsmouth's Zoning Ordinance 10.233.50 states that abutting properties' dimensional requirement violations cannot be considered as factors in determining whether the spirit of the ordinance would be observed by granting an applicant's requested variances. The spirit of the ordinance does, however, contemplate reasonable development on non-conforming lots.

For one example, Section 10.312, specifically 10.312.10, considers lots with insufficient frontage as conforming if the lot is shown on a Registry of Deeds recorded plan prior to March 21, 1966, and contains minimum zone required square footage. Paula's lot was first shown/created by the 1898 plan recorded as Rockingham Registry of Deeds Plan #00125. Exhibit 4. It has less than GRA zone required frontage. It does not meet the zone's required minimum lot size. However, as to size, Exhibit 3, see specifically 3B, shows how the proposed construction modestly increases the lot's building coverage by only 1.4%.

The spirit of the GRA zone dimensional requirement ordinance provisions also contemplate a reasonable width for lot development. This zone requires lots to be 100 feet wide. Subtracting both side yard 10 foot setbacks leaves at least an intended 80 feet of developable land area conforming to the ordinance. Exhibit 4 shows lots long ago created in the GRA zone not sized by this present day standard. Paula's 50 foot lot less both 10 foot side yard setbacks leaves only 30 feet to work with for reasonable development. The spirit of the ordinance contemplates development on non-conforming lots, but again the specific dimensioning of Paula's lot doesn't allow her reasonable proposal to conform to stated dimensional requirements. It is reasonable to grant the requested variances to facilitate Paula's reasonable site improvements.

The overall spirit of the ordinance encourages development appropriate for the public's health, safety and welfare. Demolition of the existing garage doesn't just promote new code appropriate construction facilitating reasonable use, but facilitates onsite machinery excavation to develop storm water drainage solutions consistent with present best practices. To insist that the existing structure stay put and used as best it can, essentially a storage shed, is inconsistent with the ordinance's spirit promoting safe and appropriate and usable development appropriate not just for present but future owners.

# 3. Granting the requested setback variance would do substantial justice.

This criteria requires consideration of all the facts relevant to the application, and a balancing of the public's and the Applicant's interests. One way to consider whether "substantial justice" would be done is to determine whether there is any gain to the public that is greater than the loss suffered by the Applicant if the variance is not granted. See, Farrar v City of Keene, 158 N. H. 684, 692 (2009). To apply this legal standard, the ZBA should imagine a scale, and on it weigh the loss suffered to Paula Reid as landowner/applicant on one side, against (on the other side of the scale) the public benefit to be gained by strict adherence to the Zoning Ordinance's dimensional requirements by denying the requested relief

Denying the variances simply because the proposed new construction modestly exceeds dimensional requirements makes no sense. Paula Reid would lose the opportunity to address the stormwater drainage problems that plague the side and back yards. Denial would preclude the opportunity to replace a worn out structure with one of up to date construction and more reasonably sized for use given today's automobile sizes and modest garage storage needs. The value of the improvement will enhance the property's assessment and thus the City's property tax revenue without increasing City service needs, school population, etc. It is hard to articulate any gain to the public, including immediate abutters, in denying the variance.

The proposed development is reasonable. It's in keeping with the neighborhood. As such, the scale tips in favor of Paula Reid.

# 4. Values of surrounding properties are not diminished by granting these requested setback relief.

ZBA Board members are legally permitted to rely upon their general knowledge and awareness of our area's rapidly appreciating real estate values and competitive real estate market. It is hard to imagine a good faith claim that Paula's reasonable proposal will have an adverse effect on surrounding property values. Property values in Portsmouth's desirable and high demand market continue to escalate. Property values in this general neighborhood will continue to rise after 410 Richards Avenue is improved as proposed.

5. Literal enforcement of the setback requirement from which relief is requested would result in unnecessary hardship because special conditions of the property distinguish it from others in the area, and no fair and substantial relationship exists between the general public purposes of the express setback, lot coverage, and new construction limitations and their specific application to this property.

Special conditions of the subject property do distinguish it from others in the GRA zone. The property's significant drainage problems are addressed above. Literal enforcement of the dimensional requirements and new construction prohibition creates the hardship of being unable to reasonably cure this property's drainage problem special conditions. The purpose of the ordinance sections from which relief is requested is to promote safe and orderly development in the zone. Everything addressed above evidences that literal enforcement (variance application denial) fails that general purpose. Granting the variances instead will allow these special conditions to be addressed to eliminate the drainage hardship the property now endures, and will allow a replacement structure of similar scale, but very modest enlargement, reasonable and appropriate for today's standards of garage use.

Additional special conditions on the site relevant to the application are these. The neighboring lot immediately abutting the existing and proposed garage is at a higher elevation. Both properties have privacy fences screening each site's structures and back yards from the other. See Exhibit 9 pictures. The modest lengthening of a new garage by 5 feet will hardly be seen on account of both fences and their differing heights, especially given the neighbor's fence being taller and at a higher elevation.

# Conclusion

All of the above evidence's Paula meeting all of the criteria required to grant the requested variances. Her proposed development will not threaten the public health, safety and welfare which is the general purpose of Portsmouth's Zoning Ordinance. The request variances are reasonable and should be granted.

Sincerely 15 / 15

Christopher A. Wyskiel

CAW/lew Enclosures

cc: Paula J. Reid

City of Portsmouth
Zoning Board of Adjustment
1 Junkins Avenue, 3<sup>rd</sup> Floor
Portsmouth, NH 03801

### LETTER OF AUTHORIZATION

Re: Variance - 410 Richards Avenue, Portsmouth, NH

Owners: Paula J. Reid, Trustee of the Paula J. Reid 2003 Revocable Trust

### Dear Sir/Madam:

Paula J. Reid, individually and as Trustee of the Paula J. Reid 2003 Revocable Trust, authorize my attorney, Christopher A. Wyskiel of Wyskiel, Boc, Tillinghast & Bolduc, P.A. to represent me, individually and in my landowning trustee capacity, before the Zoning Board of Adjustment regarding variance requests for the above referenced property.

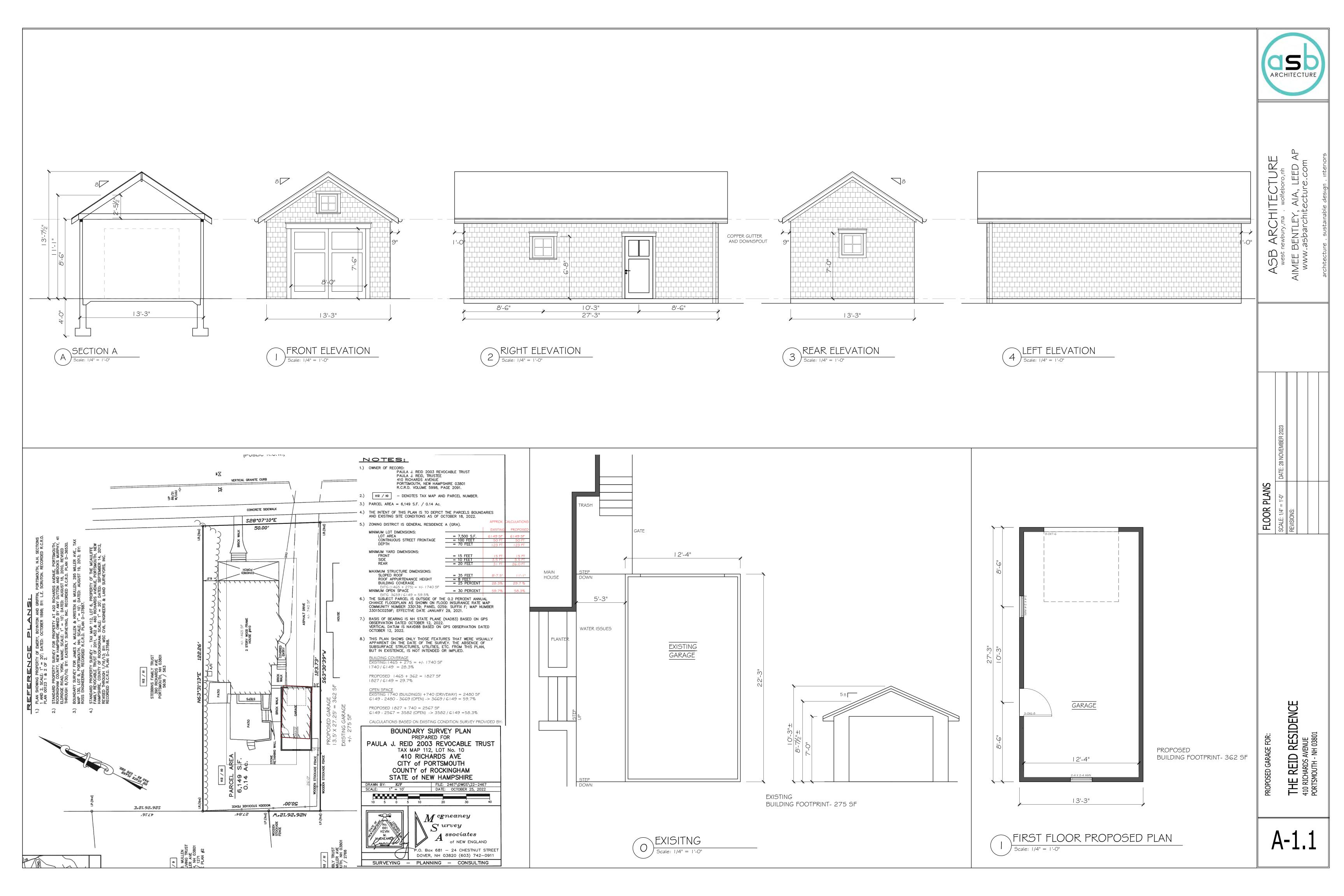
Sincerely,

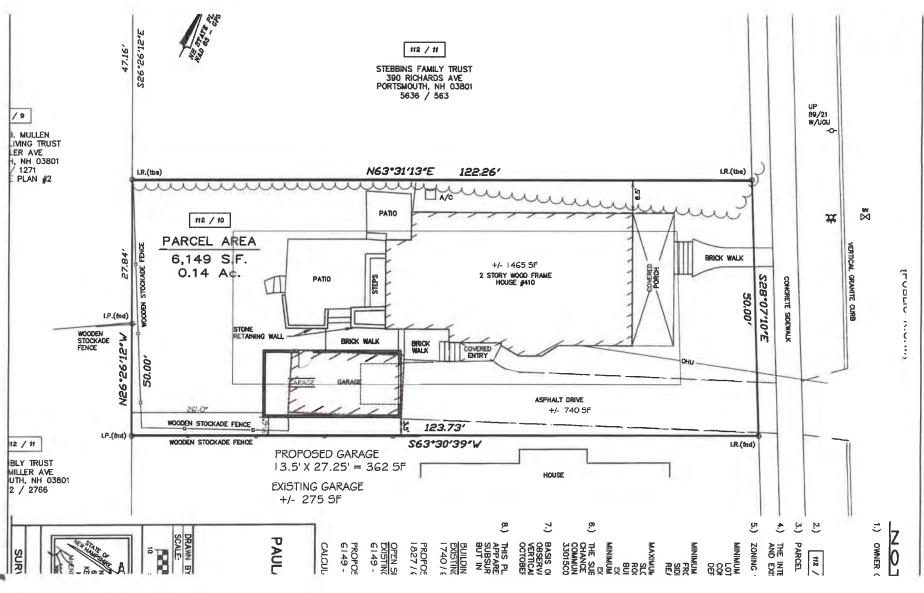
Dated: November 27, 2023

Paula J. Reid, Individually and as Trustee of the Paula J. Reid 2003 Revocable Trust

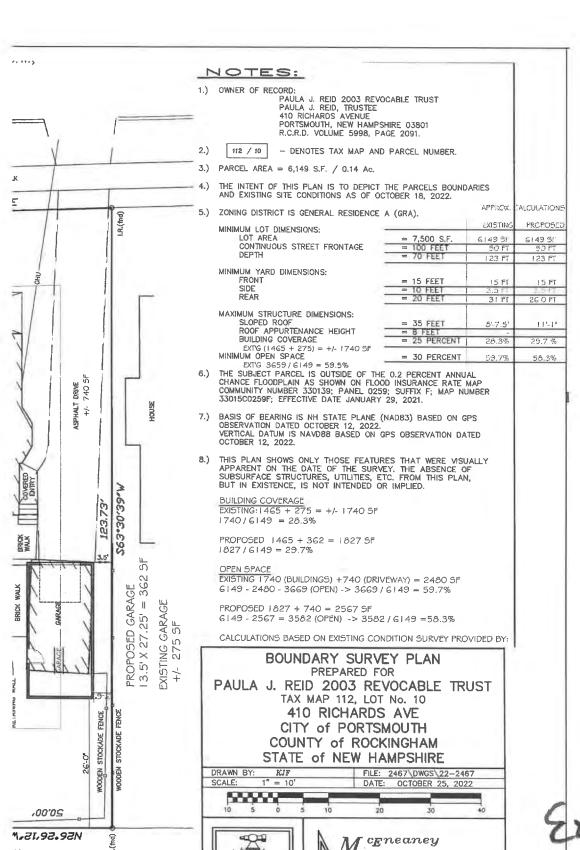
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REFERENCE PLANS:





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(Sheet 2 of 2)
dated October 1898 NTOINIT (previously 539/481 Microfilm Plan# 125 AVENUE 345 No 24 No 12 No.23  $N \circ II$ No 10 No 22 Section 2 No 9 EMCHY BOYN'I'DN & GAIF' No 21 Sureyed Octobe 1998. Scale 30 First to Estimated PORTSMOUTH N. H. PLAN SHOWING PROPERTY AVENUE No 20 410 Richards Ave No 8 AVENUE NoI9No 2  $N_0 18$ 9 W No17 No 5

Exh. 4 (p.192)

(Sheet 1 of 2)
duted October 1898
(Freviously 539/481) No 24 No.12 1 of 3 No 11 82/00 No 10 No 22 EMEHY BITYNTON & GHIF! No O ĭ No 21 1006. State 20 Per to the Lin AVENUE PLAN SHIDWING PROPERTY PORTSMOUTH No 8 No 20 Section 1 AVENUE wronged October 1686. No.19 No 2 No.18  $N_0$  6 No17 No 5 91 oN MILLER No16No 3 No.14 No 13 NoI

Micofilm Plan # 125

Exh. 4 (p.2.f2)

# 410 Richards Avenue 112 11 (<u>14</u>) 1" = 75.30551676083519 ft Print map scale is approximate. Critical layout or measurement activities should not be done using this resource. MAP FOR REFERENCE ONLY NOT A LEGAL DOCUMENT 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

Exh. SA

# 2023 Aerial View





# MAP FOR REFERENCE ONLY NOT A LEGAL DOCUMENT

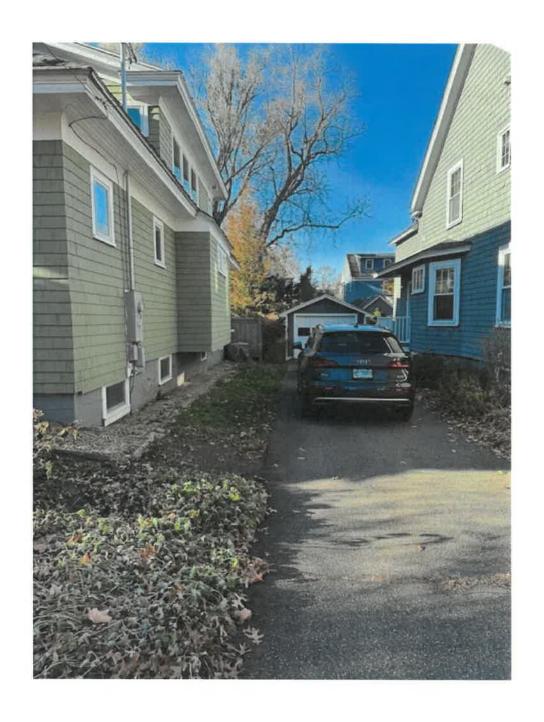
City of Portsmouth, NH makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.

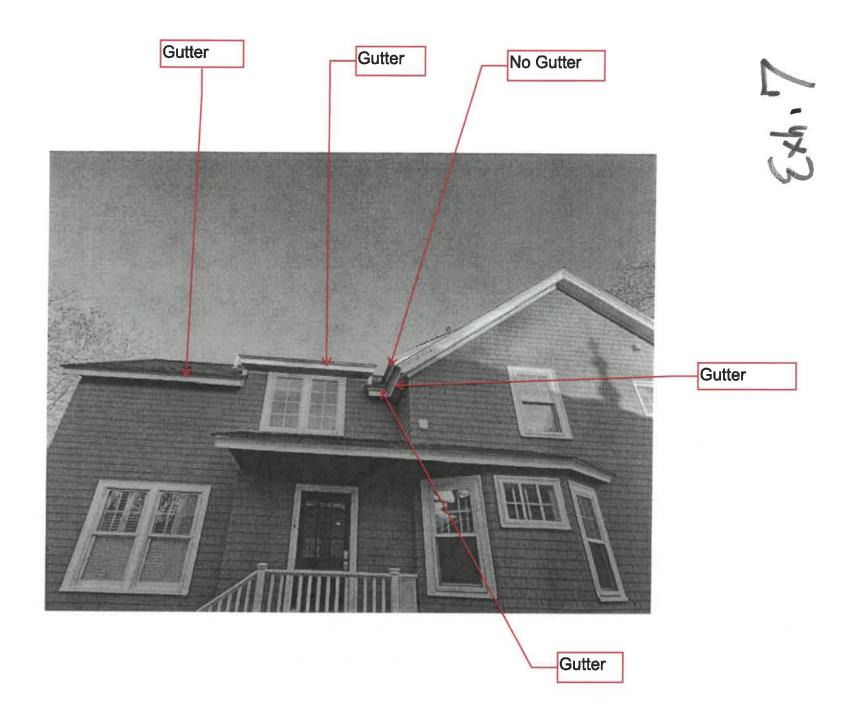
Geometry updated 06/21/2023 Data updated 3/9/2022 Print map scale is approximate.
Critical layout or measurement activities should not be done using this resource.

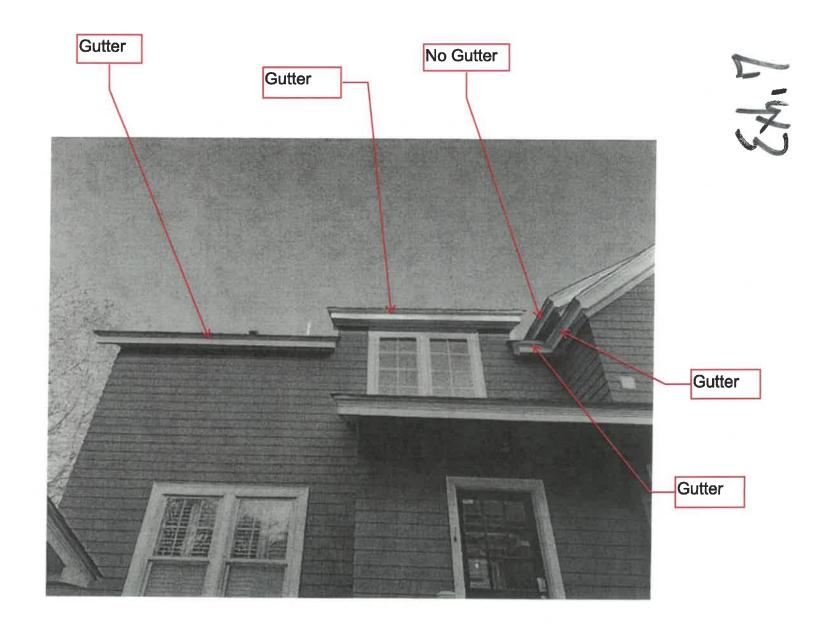


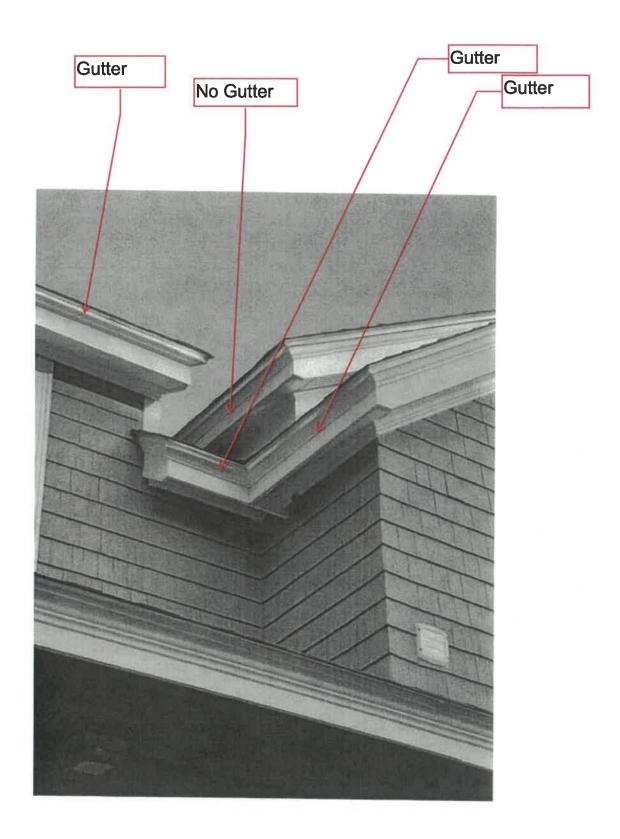


410 Richards Ave





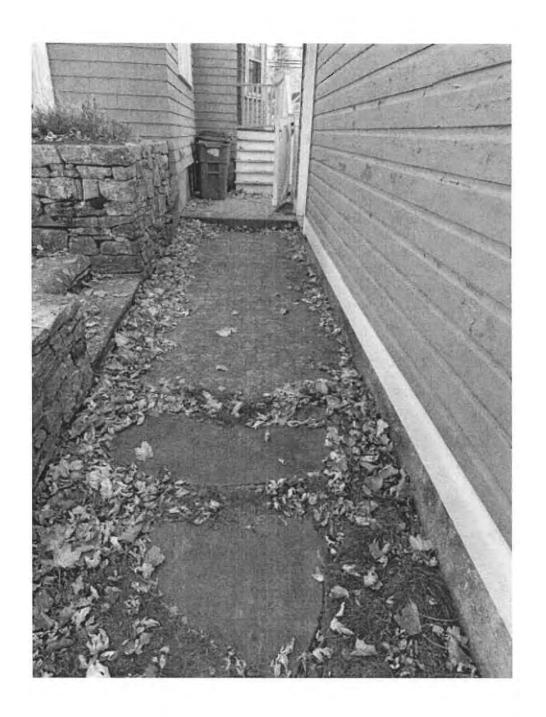


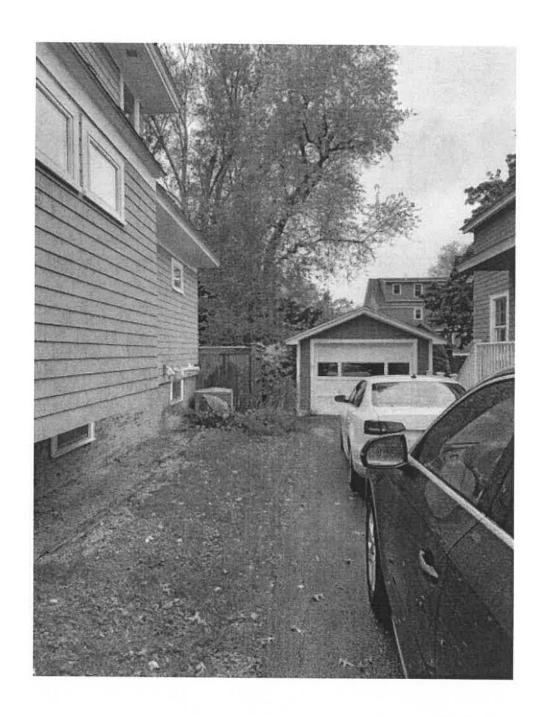


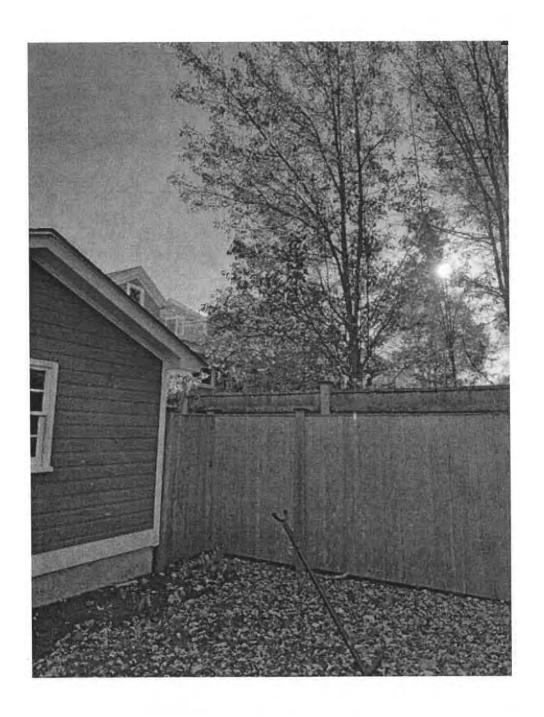




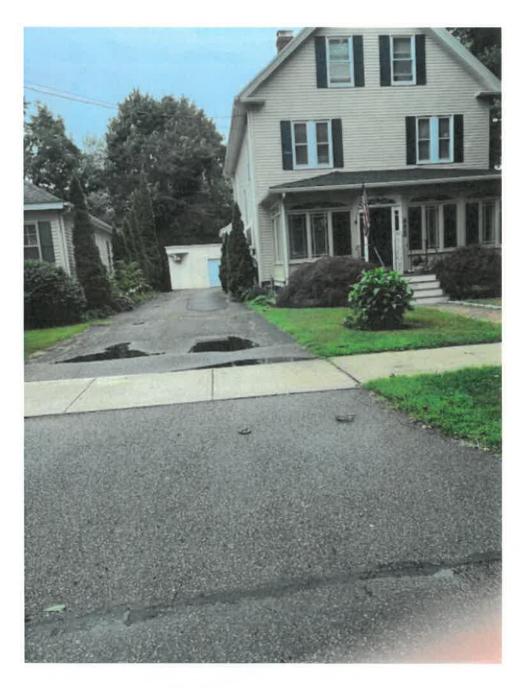
Exh,8



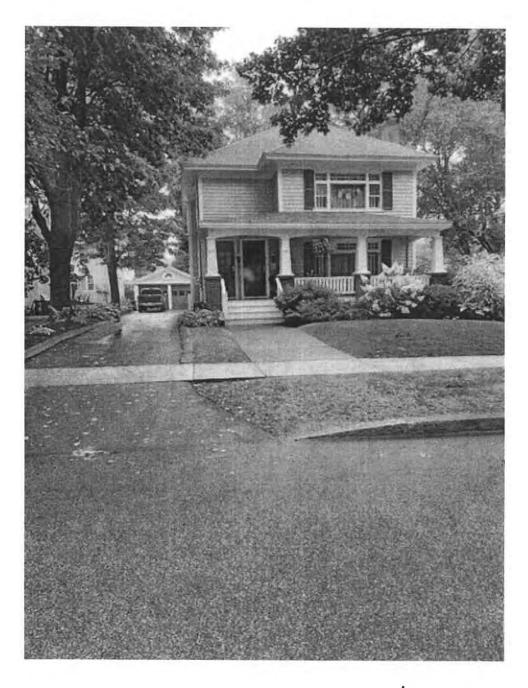




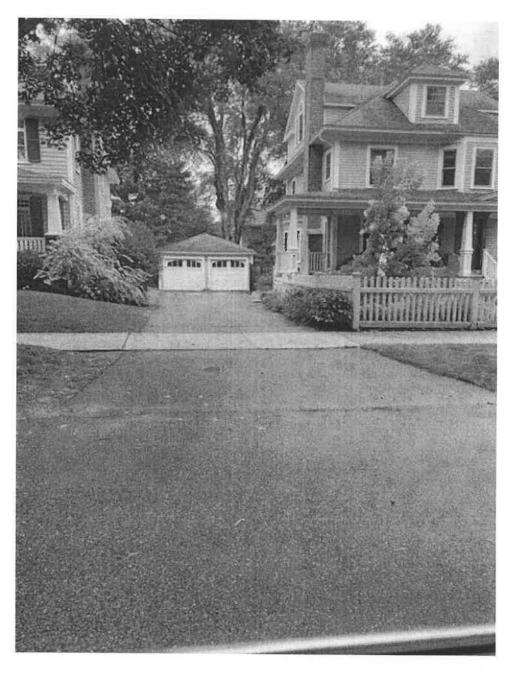




Richards Ave.



Richards Ave.



Richards Ave.



Richards Ave.



Richards Ave.



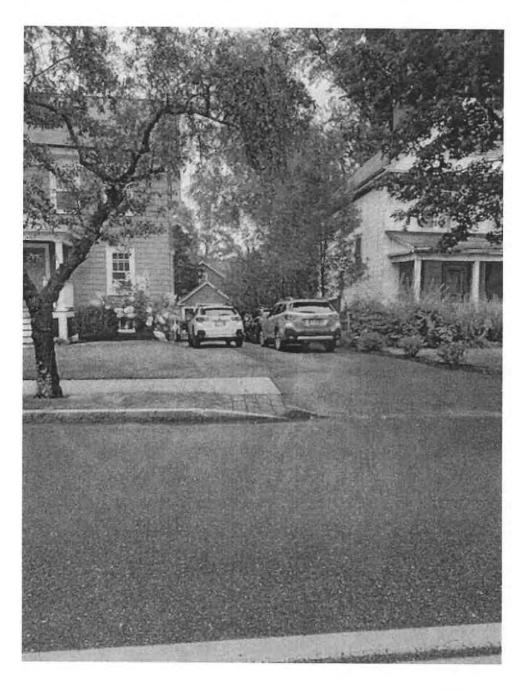
Richards Ave.



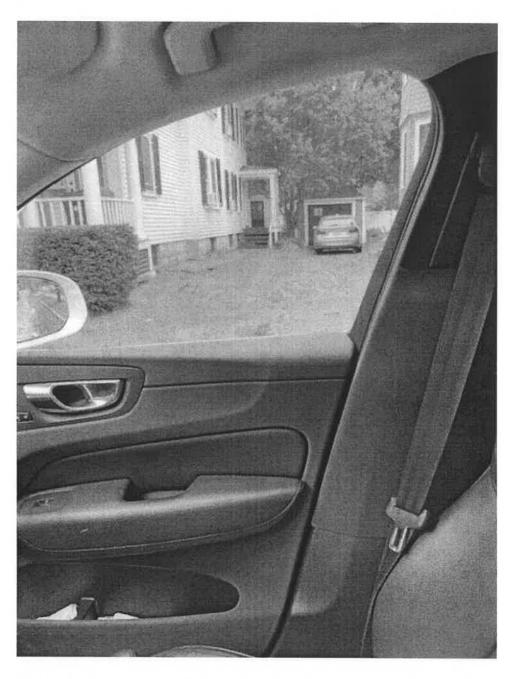
Richard Ave.



Richards Are.



Miller Ave.



Miller Ave.

# LIST OF ABUTTERS

Applicant: Paula J. Reid, Trustee of the Paula J. Reid 2003 Revocable Trust 410 Richards Avenue, Portsmouth, NH Tax Map 112, Lot 10

Property Address	Tax Map/Lot No.	Owner(s)	RCRD Deed Ref.
420 Richards Avenue	Map 112, Lot 9	Amy E. Dutton Rev. Trust of 2003, Amy E. Dutton Murphy, Trustee	5225/39
390 Richards Avenue	Map 112, Lot 11	Stebbins Family Trust, John R. & Bridget M. Stebbins, Trustees	5636/563
399 Richards Avenue	Map 112, Lot 18	Barbara E. Collier Rev. Trust, Barbara E. Collier, Trustee	6315/246
409 Richards Avenue	Map 112, Lot 19	Stephen C. Buzzell Rev. Trust, Stephen C. Buzzell, Trustee, and and Jody E. Buzzell Rev. Trust, Jody E. Buzzell, Trustee	6035/840
419 Richards Avenue	Map 112, Lot 20	Thomas A. Nies Rev. Trust of 2010 and Denise M. Nies Rev. Trust of 2010, Thomas A. & Denise M. Nies, Trustees	5192/1225
295 Miller Avenue	Map 130, Lot 9	Kristen B. Mullen Rev. Living Trust, Kristen B. Mullen, Trustee	5699/1271
303 Miller Avenue	Map 130, Lot 10	The Twombly Trust, Dorothy C. Twombly, Trustee	2762/2766

Engineer/Surveyor:

Kevin M. McEneaney

McEneaney Survey Associates of New England

P. O. Box 681

Dover, NH 03821

Architect:

Aimee Bentley

ASB Architecture

260 Main Street

West Newbury, MA 01985

# Attorney:

Christopher A. Wyskiel Wyskiel, Boc, Tillinghast & Bolduc, P. A. 561 Central Avenue Dover, NH 03820

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