

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

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

**7:00 P.M.**

**April 22, 2025**

**AGENDA**

**I. OLD BUSINESS**

**A. 84 Pleasant Street** – Second Rehearing Request

**II. NEW BUSINESS**

- A.** The request of **William J. Armstrong JR Revocable Trust** (Owners), for property located at **70 Stark Street** whereas relief is needed to construct a detached accessory workshop structure which requires the following: 1) Variance from Section 10.573.20 to permit a 10-foot rear yard where 20 feet is required. Said property is located on Assessor Map 159 Lot 50 and lies within the General Residence A (GRA) District. (LU-25-37)
  
- B.** The request of **Paul and Karolina Roggenbuck** (Owners), for property located at **2 Sylvester Street** whereas relief is needed to construct a second dwelling and associated driveway on the lot which requires the following: 1) Variance from Section 10.513 to allow more than one free-standing dwelling on a lot; 2) Variance from Section 10.1114.31 to allow a second driveway on the lot; and 3) Variance from Section 10.521 to allow a lot area per dwelling unit of 7,899 s.f. where 15,000 s.f. is required. Said property is located on Assessor Map 232 Lot 35 and lies within the Single Residence B (SRB) District. (LU-25-34)
  
- C.** The request of **Colbea Enterprises LLC** (Owners), for property located at **1980 Woodbury Avenue** whereas relief is needed to demolish and redevelop an existing gas station and convenience store which requires the following: 1) Special Exception from Section 10.440, Use #8.122 to allow a convenience goods 2 use with 24 hours per day operation; 2) Variance from Section 10.5B33.20 to allow for a front lot line build out of 0% where a minimum of 75% is required for a commercial building; 3) Variance from Section 10.5B34.60 to allow for a front setback from the lot line of 27 feet on Woodbury Avenue and 46 feet on Gosling Road where a maximum of 20 feet is required; 4) Variance from Section 10.5B83.10 to allow for parking

spaces to be located between the principal building and the street; 5) Variance from Section 10.835.32 to allow for drive-through lanes, bypass lanes and stacking lanes to be located within 13 feet of the property line where 30 feet is required; 6) Variance from Section 10.835.31 to allow outdoor service facilities to be located within 38 feet of a lot line where 50 feet is required. 7) Variance from Section 10.843.33 to allow for pump islands to be located within 28 feet of the lot lines where 40 feet is required; 8) Variance from Section 10.1251.10 to allow for an aggregate sign area of 454 s.f. where a maximum of 223.5 s.f. is allowed; 9) Variance from Section 10.1251.20 to allow a 134 s.f. freestanding sign where a maximum of 100 s.f. is allowed; 10) Variance from Section 10.1253.10 to allow for a freestanding sign at a) a height of 26.5 feet where a maximum of 20 feet is allowed and b) two freestanding signs at a setback of 3 feet where 10 feet is required; and 11) Variance from Section 1252.40 to allow illumination of a gas pump canopy area that shall not be included in the sign area where it is distinguished from the background only by color stripes. Said property is located on Assessor Map 239 Lot 11 and lies within the Gateway Corridor (G1) District. (LU-25-39)

- D.** The request of **Lonza Biologics** (Owners), for property located at **101 International Drive** whereas relief is needed to construct a canopy with supporting structure which requires relief from the following: 1) Variance from Section 304.04(c) of the Pease Development Ordinance to allow a canopy and supporting structures for an outdoor patio to be located within 70-feet of the front property line. Said property is located on Assessor Map 305 Lot 6 and lies within the Airport Business Commercial (ABC) District. (LU-25-47)
- E.** The request of **Adam and Reagan Ruedig** (Owners), for property located at **70 Highland Street** whereas relief is needed to demolish the existing garage and bulkhead and to construct a new detached garage and bulkhead which requires the following: 1) Variance from Section 10.521 to allow a) building coverage at 26% where a maximum of 25% is allowed; b) a 2 foot rear yard where 18 feet is required; c) a 2 foot right side yard setback where 10 feet is required; and 2) Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 134 Lot 27 and lies within the General Residence A (GRA) District. (LU-25-40)
- F. WITHDRAWN** The request of **Jeannette MacDonald** (Owner), for property located at **86 Farm Lane** whereas relief is needed to subdivide the existing property into 3 separate lots. The proposed parent lot requires the following: 1) Variance from Section 10.521 to allow a) 28-foot rear yard setback where 30 feet is required; and b) 23-foot secondary front yard where 30 feet is required. Proposed lots 1 and 2 require the following: 2) Variance from Section 10.521 to allow a) 13,125 s.f. of lot area where 15,000 s.f. is required; b) 13,125 s.f. of lot area per dwelling unit where 15,000 s.f. is required; and c) 75 feet of continuous street frontage where 100 feet is required. Said property is located on Assessor Map 236 Lot 74 and lies within the Single Residence B (SRB) District. (LU-25-41) **WITHDRAWN**

#### 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\\_MDRp\\_rOUTW-DT0usrUvbSg](https://us06web.zoom.us/webinar/register/WN_MDRp_rOUTW-DT0usrUvbSg)



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  
DATE: *Revised* April 22, 2025  
RE: Zoning Board of Adjustment April 22, 2025

---

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

### I. Old Business

- A. 84 Pleasant St – Second Request for Rehearing

### II. New Business

- A. 70 Stark Street
- B. 2 Sylvester Street
- C. 1980 Woodbury Ave
- D. 101 International Drive
- E. 70 Highland Street
- F. 86 Farm Lane - **WITHDRAWN**

## I. OLD BUSINESS

- A. Second request of **Working Stiff Properties, LLC** for property located at 84 Pleasant Street and 266, 270, 278 State Street to rehear the granted Variance from the March 18, 2025 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 granted at the February 19, 2025 meeting to hear Variance 2(b) only: 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.

*The Board voted to **grant** the variance as presented with the following condition:*

*1) The presented height for both the Times Building and the addition on the Church St. elevation are affirmed as presented.*

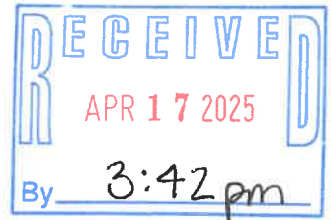
A second request for rehearing was filed within 30 days of the Board's decision and therefore the request has been placed on the next scheduled meeting for April 22, 2025. If the Board votes to grant the request, a hearing will be scheduled for next month's Board meeting or at another time to be determined 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 March 18, 2025 consideration of the case.

The March 18, 2025 rehearing application can be referenced at the following link:

[https://files.portsmouthnh.gov/files/planning/apps/PleasantSt\\_84/84\\_PleasantSt\\_Rehearing\\_BOA\\_03192025.pdf](https://files.portsmouthnh.gov/files/planning/apps/PleasantSt_84/84_PleasantSt_Rehearing_BOA_03192025.pdf)

The past application can be referenced in the November 19, 2024 meeting packet found at the following link: [https://files.cityofportsmouth.com/agendas/2024/BOA/11-19-2024%20Meeting/11-19-2024\\_BOA\\_Packet.pdf](https://files.cityofportsmouth.com/agendas/2024/BOA/11-19-2024%20Meeting/11-19-2024_BOA_Packet.pdf)



## The Law Office of Scott E. Hogan

Phone: 603-969-1183

P.O. Box 57  
Lyndeborough, New Hampshire 03082

hoganlaw@comcast.net

### MOTION FOR REHEARING PURSUANT TO RSA 677:2

TO: Portsmouth Zoning Board of Adjustment (Zoning Board, Board, or ZBA)  
FROM: Working Stiff Properties LLC ("WSP"), owner of real property located at 92-94 Pleasant Street  
BY: Scott E. Hogan, Esq.  
RE: ZBA Decision of March 18, 2025 re-approving the request of **PNF Trust of 2013, for property located at 84 Pleasant Street and 266, 270, 278 State Street**, regarding its variance request for additional height<sup>1</sup>  
DATE: April 17, 2025

### COMPULSORY SECOND MOTION FOR REHEARING

On March 18, 2025 this Board re-approved the request of **PNF Trust of 2013, for property located at 84 Pleasant Street and 266, 270, 278 State Street**, regarding its variance request for additional height, as referenced above.

New Hampshire caselaw is clear regarding a party's obligation to file a second Motion for Rehearing after its initial Motion has been denied, "when the bases for aggrievement change

1

Following the Board's original November 19, 2024 decision on the Applicant's various variance requests, the Applicant's request for Variance 2(b) is, and has been the only remaining issue following from that decision. That request being 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.

following a ZBA's decision on rehearing". A new Motion for Rehearing raising such issues is required before an appeal challenging those new bases may be made. (see e.g. Dziama v. City of Portsmouth, 140 N.H. 542, 545 (1995); McDonald v. Town of Effingham Zoning Bd. of Adjustment, 152 N.H. 171, 174 (2005); Weiss v. Town of Sunapee, No. 2022-0309 (N.H. Aug. 23, 2023).

Per the New Hampshire Supreme Court:

*"Whether the plaintiffs were required to file a second motion for rehearing to perfect their appeal to superior court is controlled by statute. McDonald v. Town of Effingham Zoning Bd. of Adjustment, 152 N.H. 171, 174 (2005).*

*RSA 677:3, I (2016). Thus, in order to perfect an appeal to the superior court, the statute requires that the appellant first move for rehearing with the ZBA within 30 days after the ZBA's decision. See RSA 677:2 (2016). That requirement, once met, vests the superior court with subject matter jurisdiction over the appeal. However, in such an appeal, "no ground not set forth in the application" for rehearing "shall be urged, relied on, or given any consideration by a court unless the court for good cause shown shall allow the appellant to specify additional grounds." RSA 677:3, I. By this plain language, the appellant is thereby limited in its appeal to the grounds set forth in the motion for rehearing unless good cause is shown why the court should allow additional grounds.*

*As we explained in Dziama v. City of Portsmouth, when the bases for aggrievement change following a ZBA's decision on rehearing, a new motion for rehearing raising such new issues is required before an appeal to the superior court challenging those new bases may be made. Dziama v. City of Portsmouth, 140 N.H. 542, 545 (1995). Otherwise, the court is limited to consideration of the errors alleged in the first rehearing motion. Id. Thus, in the absence of a second motion for rehearing allowing the ZBA the first opportunity to pass upon any alleged errors in its decision, the plaintiff has not preserved the new issues for appellate review. Id." Weiss v. Town of Sunapee, No. 2022-0309 (N.H. Aug. 23, 2023). (Emphasis added).*

Thus WSP is obligated to file this second Motion for Rehearing, to preserve its rights to ultimately seek review of its initial issues, and the new, distinct issues presented by the Board's recent process and its March 18, 2025 re-approval, as discussed below.

#### MARCH 18, 2025 ZONING BOARD HEARING

##### New Issues:

- The configuration of voting members between the Board's original approval of variance relief requested by PNF Trust of 2013, and the Board's March 18, 2025 decision reaffirming the original approvals of 2b of the application, and specifically the new testimony and evidence from the Applicant and others, the new deliberations/bases/ and the ultimate different votes of Board members, based on those new issues presented by the Applicant and others during the 3-18-25 hearing.
- (e.g., When deliberating the hardship requirement at the 3-18-25 hearing one member noted their prior vote to approve, "but now" the configuration of the Applicant's configuration of its desired 17 units is larger. (The Applicant's desire for the 17 units is what motivates its request for the subject height variance).
- At the 3-18-25 hearing, the Applicant stated that it desired to 'recreate' the former, non-existent Times Building, *while acknowledging that it could comply with the Zoning Ordinance height requirement*. The Applicant described their "Times Building" issues, and their desire to "sync story heights" and elevators, etc., and without their requested design with extra height, they might not achieve their 17 units, as it would "bring the feasibility of the entire project in question". Additional

statements during the public hearing confirmed “No, it’s not necessary”, but “necessary to have the 17 units”, and the Applicant’s “desire” to “have the floors line up”.

- At the 3-18-25 hearing Board members discussed the current design and configuration of the 17 units motivating the request for additional height at 84 Pleasant Street, and also acknowledged that the additional height at 84 Pleasant Street isn’t necessary.
- After the 3-18-25 public hearing closed, the Board’s own deliberations included statements questioning whether the relief was necessary, specifically regarding hardship, and whether desiring to “recreate” the former nonexistent Times Building was a “Special Condition” of the property, and otherwise acknowledging that the Times Building could be ‘recreated’ without the need for relief for additional height. Member statements included, “I’m struggling with what is real hardship”, and “While they don’t need it, it lets them have 17 units”. “Not a hardship in my book.” “I voted {previously} to approve but now the configuration of the 17 units is larger”. “I don’t see hardship. They can recreate the Times Building without it”.

#### NEW ISSUE: PORTSMOUTH’S SEVEN MEMBER ZONING BOARD

New Hampshire law is clear that every municipal Zoning Board SHALL consist of five members:

**“673:3 Zoning Board of Adjustment and Building Code Board of Appeals. –**

I. The zoning board of adjustment shall consist of 5 members. The members of the board shall either be elected in the manner prescribed by RSA 669, or appointed in a manner prescribed by the local legislative



body. Each member of the board shall be a resident of the municipality in order to be appointed or elected.”

*On March 18, 2025, three members of the Board voted to deny the request for additional height.*

However, the City of Portsmouth Zoning Ordinance Section 10.230 (Zoning Board of Adjustment) has an ‘asterisk footnote’ on “Zoning Board of Adjustment” that states:

“By Act of the Legislature, the Portsmouth Zoning Board of Adjustment consists of 7 members and 2 alternates.”

The Ordinance does not provide any legal citation or reference for that proposition.

Given that, under-signed counsel contacted state reference librarians to determine the source of the un-cited authority in the Portsmouth Zoning Ordinance that allows the City’s Zoning Board seven members, when the law allows only five for other municipalities. The result of their research revealed a 1953 Act of the Legislature, specific to Portsmouth, as follows:

## CHAPTER 342.

### AN ACT RELATIVE TO THE BOARD OF ADJUSTMENT IN THE CITY OF PORTSMOUTH.

*Be it enacted by the Senate and House of Representatives in General Court convened:*

1. **City of Portsmouth.** The board of adjustment for zoning regulations in the city of Portsmouth shall consist of seven members. The term of office of each member shall be five years, provided that the two additional members of the board provided for by this section shall originally be appointed one to serve for one year and one to serve for three years. The two additional members as provided for herein shall be appointed as the members of the present board are appointed.

2. **Application of Laws.** Parts of section 57 of chapter 51 of the Revised Laws as are inconsistent with the provision of this act are superseded in so far as the board of the city of Portsmouth are concerned. Nothing herein shall be deemed to affect in any way the appointment or term of office of the members of the Portsmouth board of adjustment in office at the time this act takes effect.

3. **Takes Effect.** This act shall take effect upon its passage.  
[Approved May 1, 1953.]

The Zoning Board's seven member configuration must comply with the original legislative authority granted above, including the original terms of appointment for additional members, and terms, since that time. This issue must also be considered by the Board in the context of new issues comprising the basis of this Second Motion for Rehearing.

### CONCLUSION

For all the reasons stated above, this Second Motion for Rehearing is compulsory for WSP to pursue their right of appeal, and good cause has been shown, thus WSP respectfully

requests the Board to grant this Second Motion for Rehearing. The Applicant has not met its burden on each of the five mandatory variance requirements, and there is a fundamental question about the rare configuration and terms of the Board, and compliance with the specific authority given to it for such. The prior WSP Motion and its submissions and testimony to this Board are hereby incorporated by reference in this Second Motion for Rehearing.

Respectfully submitted,

Working Stiff Properties LLC

By its attorney,  
THE LAW OFFICE OF SCOTT E. HOGAN

*/s/ Scott E. Hogan*

Scott E. Hogan, Esq.  
P.O. Box 57  
Lyndeborough, NH 03082  
603-969-1183  
[hoganlaw@comcast.net](mailto:hoganlaw@comcast.net)  
NH Bar ID#: 10542

CC:  
Client  
Trevor P. McCourt, Assistant City Attorney

## II. NEW BUSINESS

- A. The request of **William J. Armstrong JR Revocable Trust** (Owners), for property located at **70 Stark Street** whereas relief is needed to construct a detached accessory workshop structure which requires the following: 1) Variance from Section 10.573.20 to permit a 10-foot rear yard where 20 feet is required. Said property is located on Assessor Map 159 Lot 50 and lies within the General Residence A (GRA) District. (LU-25-37)

### Existing & Proposed Conditions

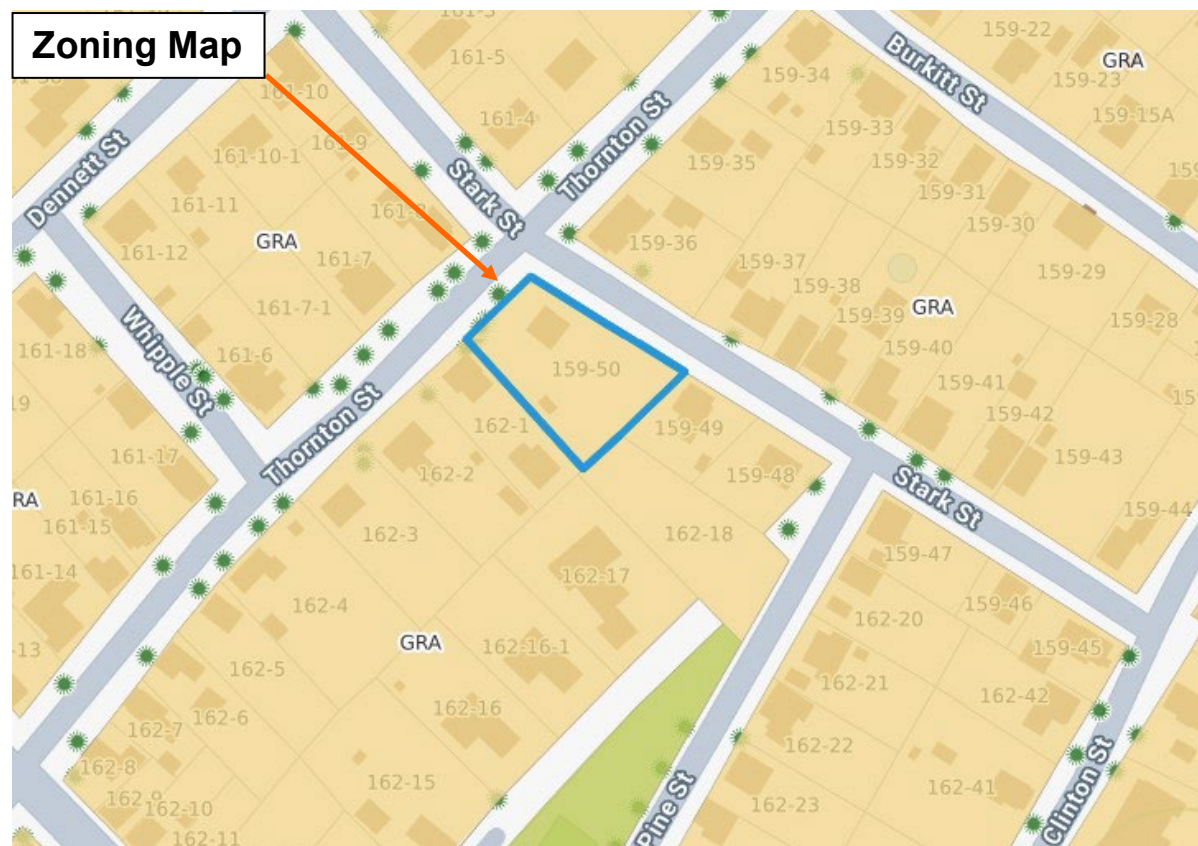
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	SF Residential	Construct detached accessory structure	Primarily residential
<u>Lot area (sq. ft.):</u>	14,729	14,729	7,500 min.
<u>Primary Front Yard (Stark St)(ft)</u>	11.7	11.7	15 min.
<u>Secondary Front Yard (Thornton St)(ft.):</u>	28.6	28.6	15 min.
<u>Left Yard (ft.):</u>	Primary Structure: 40	Accessory Structure: 10.5	10 min.
<u>Rear Yard (ft.):</u>	36.8	10	20 min.
<u>Height (ft.):</u>	Primary: 26.7	Accessory: 23	35 max.
<u>Building Coverage (%):</u>	18	22.5	25 max.
<u>Open Space Coverage (%):</u>	75.5	68.8	30 min.
<u>Parking:</u>	4	4	2 min.
<u>Estimated Age of Structure:</u>	1940	Variance request(s) shown in red.	

### Other Permits/Approvals Required

- Building Permit
- Site Plan Review



## Neighborhood Context



## Previous Board of Adjustment Actions

- No previous BOA history was found.

## Planning Department Comments

The applicant is requesting relief to construct a new detached accessory workshop structure. The new structure meets all requirements except for the rear yard setback and requires relief to be located 10 feet from the rear property line where 20 feet is required.

## Variance Review Criteria

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

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

## 10.235 Certain Representations Deemed Conditions

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

**APPLICATION OF WILLIAM J. ARMSTRONG, JR. REVOCABLE TRUST**  
**70 Stark Street, Portsmouth, Tax Map 159, Lot 50**

**APPLICANT'S NARRATIVE**

**I. THE PROPERTY:**

The applicant, William J. Armstrong, Trustee, seeks a variance from Section 10.573.20 to permit the construction of a workshop within the rear yard setback.

The property has been the applicant and his family's primary residence since 1999. It is in the GRA zone and consists of two family dwelling and garage. Mr. Armstrong's father was a home building contractor and he inherited an impressive collection of woodworking tools that hold great personal and sentimental value. The proposal is to construct a woodworking shop with a second story storage space. Electricity will be installed, however, there are no plans to tie into the existing water service at this time.

The lot is fairly large in comparison to most of the lots in the vicinity, and sits at the corner of Stark and Thornton Streets. As such, it has two 15 foot front yard setbacks, which pushes the building envelope to the south east of the lot. Section 10.573.20 provides that an accessory building or structure more than 10 feet in height or more than 100 square feet in area shall be set back from any lot line at least the height of the building or the applicable yard requirement, whichever is less. As proposed, the height of the workshop is 22.9 feet to the peak. The applicable rear yard setback in the GRA zone is 20 feet. As proposed, the workshop would be 10.2 feet from the rear lot line.

Compliance with the required side yard setback would compromise a fair portion of the Armstrongs' actual useable backyard and squeeze the workshop uncomfortably close to the main structure. The property most affected by this proposal, 245 Thornton Street, has a barn structure, previously used for boat building, of similar size and height in approximately the same location set back approximately the same distance from the lot line and will not be negatively affected in any way. The project and the property otherwise fully comply with all dimensional requirements in the GRA zone.

**II. CRITERIA:**

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

**Granting the requested variance will not be contrary to the spirit and intent of the ordinance nor will it be contrary to the public interest.** The "public interest" and "spirit and intent" requirements are considered together pursuant to Malachy Glen Associates v. Chichester, 152 NH 102 (2007). The test for whether or not granting a variance would be contrary to the public interest or contrary to the spirit and intent of the

ordinance is whether or not the variance being granted would substantially alter the characteristics of the neighborhood or threaten the health, safety and welfare of the public.

In this case, were the variance to be granted, there would be no change in the essential characteristics of the neighborhood, nor would any public health, safety or welfare be threatened. A proposed workshop on this property is entirely appropriate and consistent with the existing residential neighborhood in which it sits. The workshop is similar in size and location to the accessory structure on the nearest adjacent lot. The essentially residential character of the neighborhood would remain unchanged. Additionally, the proposed use would not create any threat to the public health, safety and welfare. There remains adequate light, air, access and distance between structures.

**Substantial justice would be done by granting the variance.** Whether or not substantial justice will be done by granting a variance requires the Board to conduct a balancing test. If the hardship upon the owner/applicant outweighs any benefit to the general public in denying the variance, then substantial justice would be done by granting the variance. The project could be constructed in compliance with the 20 foot rear yard setback only by sacrificing a substantial portion of the Armstrongs' back yard and squeezing the workshop towards the main structure. This loss to the applicant far outweighs any gain to the public if the variance is denied.

**The values of surrounding properties will not be diminished by granting the variance.** The project meets all dimensional requirements in this zone except for the rear yard setback requirement. The immediate abutter has an accessory barn structure in almost the exact same adjacent location on their lot which has caused no negative impacts on property values in the neighborhood. The values of the surrounding properties will not be negatively affected in any way.

**There are special conditions associated with the property which prevent the proper enjoyment of the property under the strict terms of the zoning ordinance and thus constitute unnecessary hardship.** The property is an unusually large, trapezoidal corner lot, burdened by two front yard setbacks, which limits the building envelope available to the applicant. The existing built environment on the lot counsels against siting the proposed workshop in compliance with the rear yard setback requirement.

**The use is a reasonable use.** The proposed accessory use is similar in character and is consistent with the existing use of the adjacent and abutting properties and those within the neighborhood. Accessory uses are permitted by right.

**There is no fair and substantial relationship between the purpose of the ordinance as it is applied to this particular property.** The purpose of setback requirements is to assure properties are developed with adequate light, air, access and building separation. Many, if not all, of those concerns would be frustrated if the applicant were forced to comply with the ordinance and squeeze the workshop into the



existing backyard and closer to the primary structure. There is no fair and substantial relationship between the purposes of the rear yard setback requirements and its application to this property.

**III. Conclusion.**

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

Respectfully submitted,

Dated: March 18, 2025

By: *Christopher P. Mulligan*  
Christopher P. Mulligan, Esquire





MAP FOR REFERENCE ONLY  
NOT A LEGAL DOCUMENT

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

Geometry updated 09/26/2024

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

$$1'' = 88.25047046895399 \text{ ft}$$





Stark Street view



Thornton Street view



Left and rear yard view







Accessory barn structure

245 Thornton Street

Dec 06 2024 - 2:37pm  
\\TFM-BEDFORD\Projects\Civil-Survey\MSO Projects\47317-01 - Stark Street - Portsmouth\47317-01 - Armstrong - 70 Stark Street\Carlson Survey\Drawings\47317-01 Survey.dwg



PURSUANT TO NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES LAN 503.09(24):  
I CERTIFY THAT THIS SURVEY AND PLAN WERE PREPARED BY THOSE UNDER MY  
DIRECT SUPERVISION AND ARE THE RESULT OF A FIELD SURVEY CONDUCTED IN  
APRIL 2021 & OCTOBER 2024. THIS SURVEY CONFORMS TO THE ACCURACY  
REQUIREMENTS OF AN URBAN SURVEY OF THE NEW HAMPSHIRE CODE OF  
ADMINISTRATIVE RULES OF THE BOARD OF LICENSURE FOR LAND SURVEYORS. THIS  
SURVEY IS CORRECT TO THE BEST OF MY PROFESSIONAL KNOWLEDGE, AND THE  
FIELD TRAVERSE SURVEY EXCEEDS A PRECISION OF 1:15,000.



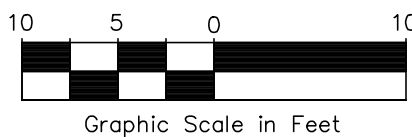
LICENSED LAND SURVEYOR

2024-12-06  
DATE

Copyright 2024 © TFMoran, Inc.  
48 Constitution Drive, Bedford, N.H. 03110

All rights reserved. These plans and materials may not be copied,  
duplicated, replicated or otherwise reproduced in any form whatsoever  
without the prior written permission of TFMoran, Inc.

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



REV.	DATE	DESCRIPTION	DR	CK

#### NOTES:

- THE PARCEL IS LOCATED IN THE GENERAL RESIDENCE A (GRA) ZONING DISTRICT.
- THE PARCEL IS SHOWN ON THE CITY OF PORTSMOUTH ASSESSOR'S MAP 159 AS LOT 50.
- THE PARCEL IS LOCATED IN ZONE X AS SHOWN ON NATIONAL FLOOD INSURANCE PROGRAM (NFIP), FLOOD INSURANCE RATE MAP (FIRM) ROCKINGHAM COUNTY, NEW HAMPSHIRE, PANEL 259 OF 681, MAP NUMBER 33015C0259F, MAP REVISED JANUARY 29, 2021.
- | DIMENSIONAL STANDARDS:        | REQUIRED:  | EXISTING:       |
|-------------------------------|------------|-----------------|
| MINIMUM LOT AREA:             | 7,500 S.F. | 14,729 S.F.     |
| CONTINUOUS STREET FRONTAGE:   | 100'       | 153.4' STARK ST |
| LOT DEPTH:                    | 70'        | 98.3'           |
| MINIMUM YARD DIMENSIONS:      |            |                 |
| FRONT:                        | 15'        | 11.7'           |
| SIDE:                         | 10'        | 40.1'           |
| REAR:                         | 20'        | 36.8'           |
|                               |            | 6.7' (SHED)     |
| MAXIMUM STRUCTURE DIMENSIONS: |            |                 |
| STRUCTURE HEIGHT:             | 35'        | 26.7'           |
| BUILDING COVERAGE:            | 25%        | 15.5%           |
| MINIMUM OPEN SPACE:           | 30%        | 75.5%           |
- OWNER OF RECORD:  
MAP 159 LOT 50:  
WILLIAM J. ARMSTRONG, JR. REVOCABLE TRUST  
70 STARK STREET  
PORTSMOUTH, NH 03801  
RCRD BK#5463 PG#1641
- PARCEL AREA:  
MAP 159 LOT 50:  
14,729 S.F.  
(0.3381 ACRES)
- THE INTENT OF THIS PLAN IS TO SHOW THE LOCATION OF BOUNDARIES IN ACCORDANCE WITH THE CURRENT LEGAL DESCRIPTIONS. IT IS NOT AN ATTEMPT TO DEFINE THE EXTENT OF OWNERSHIP OR DEFINE THE LIMITS OF TITLE.
- THE PURPOSE OF THIS PLAN IS TO SHOW THE BOUNDARY LINES AND CURRENT SITE FEATURES OF MAP 159 LOT 50.
- FIELD SURVEY COMPLETED BY TCE IN APRIL 2021 & OCTOBER 2024 USING A LEICA TS-16 AND CARLSON SURVPC DATA COLLECTION SOFTWARE.
- HORIZONTAL DATUM IS NAD83 (2011) PER REDUNDANT NETWORK RTK GPS OBSERVATIONS. THE VERTICAL DATUM IS NAVD86 PER REDUNDANT NETWORK RTK GPS OBSERVATIONS.
- EASEMENTS, RIGHTS, AND RESTRICTIONS SHOWN OR IDENTIFIED ARE THOSE WHICH WERE FOUND DURING RESEARCH PERFORMED AT THE ROCKINGHAM COUNTY REGISTRY OF DEEDS. OTHER RIGHTS, EASEMENTS, OR RESTRICTIONS MAY EXIST WHICH A TITLE EXAMINATION OF SUBJECT PARCEL(S) WOULD DETERMINE.
- THE LOCATION OF ANY UNDERGROUND UTILITY INFORMATION SHOWN ON THIS PLAN IS APPROXIMATE. TFMORAN, INC. MAKES NO CLAIM TO THE ACCURACY OR COMPLETENESS OF UNDERGROUND UTILITIES SHOWN. PRIOR TO ANY EXCAVATION ON SITE THE CONTRACTOR SHALL CONTACT DIG SAFE.
- THIS PARCEL IS SUBJECT TO THE CITY OF PORTSMOUTH ZONING ORDINANCE ARTICLE 5 SECTION 10.516.30 "CORNER LOT VISION OBSTRUCTION" THAT REQUIRES ON A CORNER LOT NO STRUCTURE, ACCESSORY STRUCTURE, LANDSCAPING, OR SCREENING WHICH OBSTRUCTS VISIBILITY SHALL BE ERRECTED OR MAINTAINED BETWEEN THE HEIGHTS OF 2.5 AND 10 FEET ABOVE THE EDGE OF PAVEMENT GRADES WITHIN 20 FEET FROM THE INTERSECTION OF STREETS SIDELINES.

TAX MAP 159 LOT 50  
**EXISTING CONDITIONS PLAN**  
**ARMSTRONG RESIDENCE**  
**70 STARK STREET**  
**PORTSMOUTH, NEW HAMPSHIRE**  
**COUNTY OF ROCKINGHAM**

OWNED BY  
**WILLIAM J. ARMSTRONG, JR. REVOCABLE TRUST**

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

DECEMBER 6, 2024

Seacoast Division



Civil Engineers  
Structural Engineers  
Traffic Engineers  
Land Surveyors  
Landscape Architects  
Scientists

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

47317-03	DR	RJB	FB	606	S-1
	CK	BMK	CADFILE	SEE MARGIN	

#### PLAN REFERENCES:

- "PLAN OF ELM PLACE, SITUATED IN PORTSMOUTH N.H.", DATED 1856, RCRD #008.
- "LOT LINE REVISION, PINE STREET, PORTSMOUTH, NEW HAMPSHIRE FOR JOYCE M. MAYO & CITY OF PORTSMOUTH" BY DURGIN, VERRA AND ASSOCIATES, INC., DATED 6/9/93 WITH REVISION 1 DATED 10/4/93. RCRD PLAN #D-22643.

LEGEND:	ASSESSORS MAP / LOT NUMBER
MAP 137 LOT 11	A.G.
A.G.	ABOVE GRADE
B.G.	BELOW GRADE
BK. PG.	BOOK/PAGE
EL.	ELEVATION
EM	ELECTRIC METER
EP	EDGE OF PAVEMENT
IRF	IRON ROD FOUND
IRS	IRON ROD SET
N/F	NOW OR FORMERLY
PSNH	PUBLIC SERVICE OF NEW HAMPSHIRE
RCRD	ROCKINGHAM COUNTY
	REGISTRY OF DEEDS
S.F.	SQUARE FEET
○	IRON PIPE/ROD FOUND/SET
⊗	CATCH BASIN
⊗	DECIDUOUS TREE
⊗	WATER GATE VALVE
⊗	SEWER MANHOLE
⊗	UTILITY POLE
⊗	SIGN
OHU	OVERHEAD UTILITIES
○	CHAINLINK FENCE
○	STOCKADE FENCE
---	APPROXIMATE ABUTTER LINE
---	BOUNDARY LINE
---	SETBACK LINE
---	TREE LINE
---	HEDGE/SHRUB LINE
G	GAS LINE
W	WATER LINE
CONCRETE	
PAVEMENT	
PAVER WALK	
WOOD DECK	
LANDSCAPED AREA	

THORNTON STREET  
(PUBLIC-RIGHT-OF-WAY)

MAP 159 LOT 36  
N/F  
GERALD KELLY & MARYELLEN HURLEY  
69 STARK STREET  
PORTSMOUTH, NH 03801  
RCRD BK. 2347 PG. 260

STARK STREET  
(PUBLIC-RIGHT-OF-WAY)

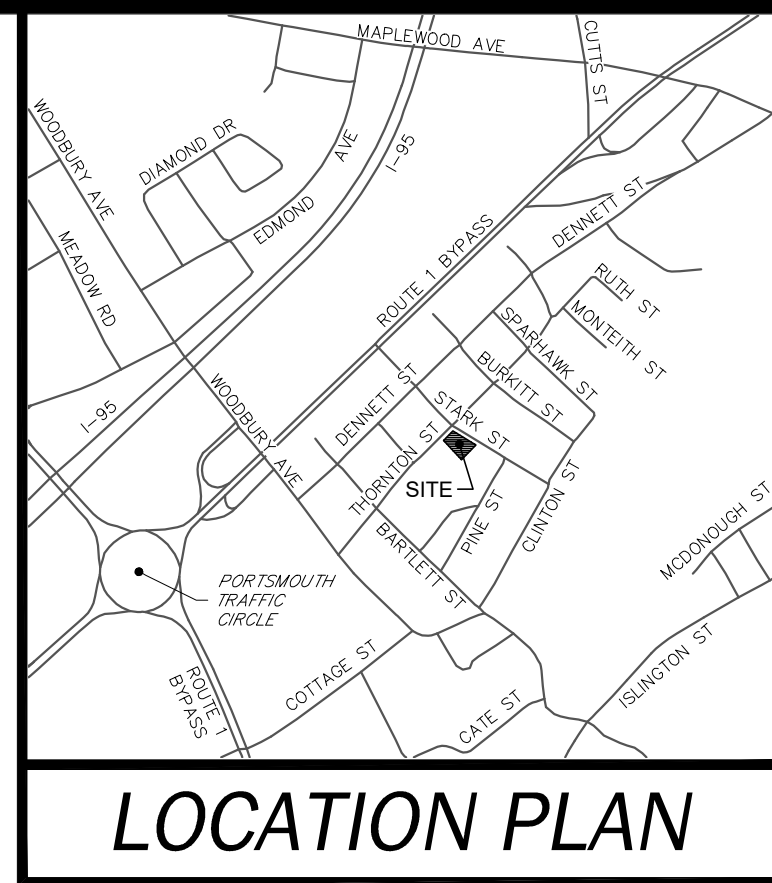
MAP 159 LOT 50  
14,729 S.F.  
(0.3381 ACRES)

MAP 162 LOT 1  
N/F  
JEFFREY PAUL MCMAHON  
& LISA HAGERTY-MCMAHON  
1282 SHEILA LANE  
PACIFICA, CA 94044  
RCRD BK. 6214 PG. 1016

MAP 159 LOT 49  
N/F  
GLENN A. & MORRISSETTE S. KILLIAN  
100 STARK STREET  
PORTSMOUTH, NH 03801  
RCRD BK. 5349 PG. 1445

MAP 162 LOT 18  
N/F  
JOYCE M. & ELVIN SR. MAYO  
252 DENNETT STREET  
PORTSMOUTH, NH 03801  
RCRD BK. 2559 PG. 1530

MAP 162 LOT 17  
N/F  
JEFFREY P. BARTOLINI  
& ABIGAIL R. ROEMER  
55 PINE STREET  
PORTSMOUTH, NH 03801  
RCRD BK. 6274 PG. 1684





Mar 31, 2025 - 2:32pm  
F:\MS-C Projects\47317 - Stark Street - Portsmouth\47317-01 - Armstrong - 70 Stark Street\Carlson Survey\Draws\47317-01 Survey.dwg

## LEGEND:

MAP 137 LOT 11	ASSESSORS MAP / LOT NUMBER
A.G.	ABOVE GRADE
B.G.	BELOW GRADE
BK. PG.	BOOK/PAGE
EL.	ELEVATION
EM	ELECTRIC METER
EP	EDGE OF PAVEMENT
IRF	IRON ROD FOUND
IRS	IRON ROD SET
N/F	NOW OR FORMERLY
PSNH	PUBLIC SERVICE OF NEW HAMPSHIRE
RCRD	ROCKINGHAM COUNTY
	REGISTRY OF DEEDS
	SQUARE FEET
S.F.	IRON PIPE/ROD FOUND/SET
	CATCH BASIN
	DECIDUOUS TREE
	WATER GATE VALVE
	SEWER MANHOLE
	UTILITY POLE
	SIGN
	OVERHEAD UTILITIES
	CHAINLINK FENCE
	STOCKADE FENCE
	APPROXIMATE ABUTTER LINE
	BOUNDARY LINE
	SETBACK LINE
	TREE LINE
	HEDGE/SHRUB LINE
	GAS LINE
	WATER LINE
	CONCRETE
	PAVEMENT
	PAVER WALK
	WOOD DECK
	LANDSCAPED AREA
	PROPOSED WALKWAY

MAP 159 LOT 36  
N/F  
GERALD KELLY & MARYELLEN HURLEY  
69 STARK STREET  
PORTSMOUTH, NH 03801  
RCRD BK. 2347 PG. 260

**STARK STREET**  
(PUBLIC-RIGHT-OF-WAY)

**THORNTON STREET**  
(PUBLIC-RIGHT-OF-WAY)

## PLAN REFERENCES:

- "PLAN OF ELM PLACE, SITUATED IN PORTSMOUTH N.H.", DATED 1856, RCRD #008.
- "LOT LINE REVISION, PINE STREET, PORTSMOUTH, NEW HAMPSHIRE FOR JOYCE M. MAYO & CITY OF PORTSMOUTH" BY DURGIN, VERRA AND ASSOCIATES, INC., DATED 6/9/93 WITH REVISION 1 DATED 10/4/93, RCRD PLAN #0-22643.



PURSUANT TO NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES LAN 503.09(24):  
I CERTIFY THAT THIS SURVEY AND PLAN WERE PREPARED BY THOSE UNDER MY  
DIRECT SUPERVISION AND ARE THE RESULT OF A FIELD SURVEY CONDUCTED IN  
APRIL 2021 & OCTOBER 2024. THIS SURVEY CONFORMS TO THE ACCURACY  
REQUIREMENTS OF AN URBAN SURVEY OF THE NEW HAMPSHIRE CODE OF  
ADMINISTRATIVE RULES OF THE BOARD OF LICENSURE FOR LAND SURVEYORS. THIS  
SURVEY IS CORRECT TO THE BEST OF MY PROFESSIONAL KNOWLEDGE, AND THE  
FIELD TRAVERSE SURVEY EXCEEDS A PRECISION OF 1:15,000.

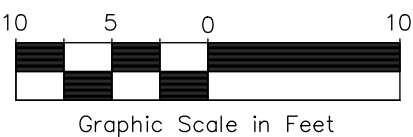


2025-03-31  
DATE

Copyright 2025 © TFMoran, Inc.  
48 Constitution Drive, Bedford, N.H. 03110

All rights reserved. These plans and materials may not be copied,  
duplicated, replicated or otherwise reproduced in any form whatsoever  
without the prior written permission of TFMoran, Inc.

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



REV.	DATE	DESCRIPTION	DR	CK
1	3/31/2025	REVISED COVERAGE CALCULATIONS	BMK	JCC

## NOTES:

- THE PARCEL IS LOCATED IN THE GENERAL RESIDENCE A (GRA) ZONING DISTRICT.
- THE PARCEL IS SHOWN ON THE CITY OF PORTSMOUTH ASSESSOR'S MAP 159 AS LOT 50.
- THE PARCEL IS LOCATED IN ZONE X AS SHOWN ON NATIONAL FLOOD INSURANCE PROGRAM (NFIP), FLOOD INSURANCE RATE MAP (FIRM) ROCKINGHAM COUNTY, NEW HAMPSHIRE, PANEL 259 OF 681, MAP NUMBER 33015C0259F, MAP REVISED JANUARY 29, 2021.
- | DIMENSIONAL STANDARDS:        | REQUIRED:  | EXISTING:       | PROPOSED:       |
|-------------------------------|------------|-----------------|-----------------|
| MINIMUM LOT AREA:             | 7,500 S.F. | 14,729 S.F.     | 14,729 S.F.     |
| CONTINUOUS STREET FRONTAGE:   | 100'       | 153.4' STARK ST | 153.4' STARK ST |
| LOT DEPTH:                    | 70'        | 98.3'           | 98.3'           |
| MINIMUM YARD DIMENSIONS:      |            |                 |                 |
| FRONT:                        | 15'        | 11.7'           | 11.7'           |
| SIDE:                         | 10'        | 40.1'           | 10.5'           |
| REAR:                         | 20'        | 36.8'           | 10.2'           |
|                               |            | 6.7' (SHED)     | 6.7' (SHED)     |
| MAXIMUM STRUCTURE DIMENSIONS: |            |                 |                 |
| STRUCTURE HEIGHT:             | 35'        | 26.7'           | 26.7'           |
| BUILDING COVERAGE:            | 25%        | 18.0%           | 22.5%           |
| MINIMUM OPEN SPACE:           | 30%        | 75.5%           | 68.8%           |
| IMPERVIOUS COVERAGE:          |            | 24.5%           | 31.2%           |
- OWNER OF RECORD:  
MAP 159 LOT 50:  
WILLIAM J. ARMSTRONG, JR. REVOCABLE TRUST  
70 STARK STREET  
PORTSMOUTH, NH 03801  
RCRD BK#5463 PG#1641
- PARCEL AREA:  
MAP 159 LOT 50:  
14,729 S.F.  
(0.3381 ACRES)
- THE INTENT OF THIS PLAN IS TO SHOW THE LOCATION OF BOUNDARIES IN ACCORDANCE WITH THE CURRENT LEGAL DESCRIPTIONS. IT IS NOT AN ATTEMPT TO DEFINE THE EXTENT OF OWNERSHIP OR DEFINE THE LIMITS OF TITLE.
- THE PURPOSE OF THIS PLAN IS TO SHOW THE BOUNDARY LINES AND PROPOSED SITE FEATURES OF MAP 159 LOT 50.
- FIELD SURVEY COMPLETED BY TCE IN APRIL 2021 & OCTOBER 2024 USING A LEICA TS-16 AND CARLSON SURVPC DATA COLLECTION SOFTWARE.
- HORIZONTAL DATUM IS NAD83 (2011) PER REDUNDANT NETWORK RTK GPS OBSERVATIONS. THE VERTICAL DATUM IS NAVD88 PER REDUNDANT NETWORK RTK GPS OBSERVATIONS.
- EASEMENTS, RIGHTS, AND RESTRICTIONS SHOWN OR IDENTIFIED ARE THOSE WHICH WERE FOUND DURING RESEARCH PERFORMED AT THE ROCKINGHAM COUNTY REGISTRY OF DEEDS. OTHER RIGHTS, EASEMENTS, OR RESTRICTIONS MAY EXIST WHICH A TITLE EXAMINATION OF SUBJECT PARCEL(S) WOULD DETERMINE.
- THE LOCATION OF ANY UNDERGROUND UTILITY INFORMATION SHOWN ON THIS PLAN IS APPROXIMATE. TFMORAN, INC. MAKES NO CLAIM TO THE ACCURACY OR COMPLETENESS OF UNDERGROUND UTILITIES SHOWN. PRIOR TO ANY EXCAVATION ON SITE THE CONTRACTOR SHALL CONTACT DIG SAFE.
- THIS PARCEL IS SUBJECT TO THE CITY OF PORTSMOUTH ZONING ORDINANCE ARTICLE 5 SECTION 10.516.30 "CORNER LOT VISION OBSTRUCTION" THAT REQUIRES ON A CORNER LOT NO STRUCTURE, ACCESSORY STRUCTURE, LANDSCAPING, OR SCREENING WHICH OBSTRUCTS VISIBILITY SHALL BE ERRECTED OR MAINTAINED BETWEEN THE HEIGHTS OF 2.5 AND 10 FEET ABOVE THE EDGE OF PAVEMENT GRADES WITHIN 20 FEET FROM THE INTERSECTION OF STREETS SIDELINES.

TAX MAP 159 LOT 50  
**PROPOSED CONDITIONS PLAN**  
**ARMSTRONG RESIDENCE**  
**70 STARK STREET**  
**PORTSMOUTH, NEW HAMPSHIRE**  
**COUNTY OF ROCKINGHAM**

OWNED BY

**WILLIAM J. ARMSTRONG, JR. REVOCABLE TRUST**

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

MARCH 18, 2025

Seacoast Division



Civil Engineers  
Structural Engineers  
Traffic Engineers  
Land Surveyors  
Landscape Architects  
Scientists

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

47317-03	DR	OMS	FB	606	
	CK	BMK	CADFILE	SEE MARGIN	
					S-1



CODE SUMMARY

THESE BUILDING PLANS HAVE BEEN DESIGNED IN ACCORDANCE WITH THE INTERNATIONAL RESIDENTIAL CODE - 2015 EDITION FOR NEW HAMPSHIRE

ABBREVIATIONS & SYMBOLS

AND AT CENTER LINE	GALV. GA. G.C. GL. GR. GYF.	GALVANIZED GAUGE GENERAL CONTRACTOR GLASS GRADE GYPSUM	SIM. S&P SVG. SH. SFECS. SQ. STD. STAGG. STL. STOP. STRUCT. SUSP.	SIMILAR SHELF & POLE SERVICE SHELVES SPECIFICATIONS SQUARE STANDARD STAGGERED STEEL STORAGE STRUCTURAL SUSPENDED
ACOUST. APPROX. ARCH. ADJ. A.F.F. A.D.	ACOUSTICAL APPROXIMATE ARCHITECTURAL ADJUSTABLE ABOVE FINISH FLOOR AREA DRAIN	HGT. / HT. HDND. H.P. H.M. HORIZ.	HEIGHT HARDWOOD HIGH POINT HOLLOW METAL HORIZONTAL	T. T&B TBD T&G TYP. T.W. T.O. T.O.F. T.O.F.W. T.O.S. T.O.W. TEL. TEMP. TLT.
BSMT. BOARD BUILDING BLOCK BLOCKING BEAM BET. BOT.	BASEMENT BOARD BUILDING BLOCK BLOCKING BEAM BETWEEN BOTTOM	INSUL. INCAND. I.D. I.P.S. INV.	INSULATION INCANDESCENT INSIDE DIAMETER INSIDE PIPE SIZE INVERT	T. T&B TBD T&G TYP. T.W. T.O. T.O.F. T.O.F.W. T.O.S. T.O.W. TEL. TEMP. TLT.
CAB. CAULKING CASED OPENING CEILING CEMENT CENTER (ON) CERAMIC CLOSET CLEAN OUT CLEAR COLUMN CONCRETE CONTINUOUS CONSTRUCTION COUNTERSUNK COURSES CUBIC CARPET CAST IRON CONCRETE MASONRY UNIT	CABINET CAULKING CASED OPENING CEILING CEMENT CENTER (ON) CERAMIC CLOSET CLEAN OUT CLEAR COLUMN CONCRETE CONTINUOUS CONSTRUCTION COUNTERSUNK COURSES CUBIC CARPET CAST IRON CONCRETE MASONRY UNIT	JST. JT.  LAY. LAM. LT.WT. LCC  M.B. M.O. MAX. MFR. MTL. MECH. MIN. MISC. MLDG.  N. N.I.C. N.T.S. NO.	JOIST JOINT  LAVATORY LAMINATED LIGHT WEIGHT LEAD COATED COPPER  MASONRY BLOCK MASONRY OPENING MAXIMUM MANUFACTURER METAL MECHANICAL MINIMUM MISCELLANEOUS MOULDING  NORTH NOT IN CONTRACT NOT TO SCALE NUMBER	T. T&B TBD T&G TYP. T.W. T.O. T.O.F. T.O.F.W. T.O.S. T.O.W. TEL. TEMP. TLT.  U.N.O.  V.I.F. VERT.  W/ W/O W.L.G. W/H W/O W.W.F W.W.M W.G. W.I. W.R.
DBL. D.F. D.A. DIA. DIM. DO. DET. DN DN DNGS.	DOUBLE DOUGLAS FIR DOUBLE ACTING DIAMETER DIMENSION DITTO DETAIL DOWN DOWN DISHWASHER DRAWINGS	O.H. OPNG. OFF. O.D. O.C. OA  FLYKND. F.T. PVC. FR. FNL. PTN. ELEVATOR PLAS. FL. POL.	OVERHEAD OPENING OPPOSITE OUTSIDE DIAMETER ON CENTER OVERALL  PLYWOOD PRESSURE TREATED POLYVINYL CHLORIDE PAIR PANEL PARTITION PENNY (NAIL SIZE) PLASTER PLATE POLISHED	W/ W/O W.L.G. W/H W/O W.W.F W.W.M W.G. W.I. W.R.
EA. EL. ELEV. ELV. EQ. EXIST. EXP. JT. EXP. EXT.	EACH ELEVATION (GRADE) ELEVATION (FACADE) ELEVATOR EQUAL EXISTING EXPANSION JOINT EXPOSED EXTERIOR	FLYKND. F.T. PVC. FR. FNL. PTN. ELEVATOR PLAS. FL. POL.	PLYWOOD PRESSURE TREATED POLYVINYL CHLORIDE PAIR PANEL PARTITION PENNY (NAIL SIZE) PLASTER PLATE POLISHED	W/ W/O W.L.G. W/H W/O W.W.F W.W.M W.G. W.I. W.R.
FDN. F.E. FGL. FIN. F.O. FLR. F.D. FLUOR. FT. F.S.	FOUNDATION FIRE EXTINGUISHER FIBERGLASS FINISH(ED) FACE OF FLOOR FLOOR DRAIN FLUORESCENT FEET - FOOT FULL SIZE	R. RAD. REINF. R.O. REQD. RF. R.D.  SECT. SHT. SHTNGS.	RISER RADIUS REINFORCED / REINFORCING ROUGH OPENING REQUIRED ROOF ROOF DRAIN  SECTION SHEET SHEATHING	W/ W/O W.L.G. W/H W/O W.W.F W.W.M W.G. W.I. W.R.
<p><b>LEGEND</b></p> <p>NEW FOUNDATION WALL</p> <p>EXIST. FOUNDATION WALL</p> <p>NEW 2" X 6" STUD EXTERIOR WALL</p> <p>EXIST. 2" X 6" STUD EXTERIOR WALL</p> <p>NEW 2" X 4" STUD INTERIOR WALL</p> <p>EXIST. 2" X 4" STUD INTERIOR WALL</p> <p>DISTURBED AREAS TO BE PATCHED TO MATCH</p> <p>EXIST. EXTERIOR WALLS TO BE REMOVED</p> <p>EXIST. INTERIOR WALLS TO BE REMOVED</p> <p>NEW WINDOWS</p> <p>NEW DOORS</p> <p>CEILING HEIGHT</p> <p>SURFACE ELEVATIONS</p> <p>SECTIONS</p> <p>EXTERIOR ELEVATIONS</p> <p>INTERIOR ELEVATIONS</p> <p>ROOM OR AREA NUMBER</p> <p>DETAILS</p>				

WARREN - ARMSTRONG  
70 STARK STREET  
PORTSMOUTH, NH



PERSPECTIVE DRAWING

LIST OF SUBCONTRACTORS

PLUMBING:

ELECTRICAL:

ARTISAN ELECTRICAL CONTRACTORS, INC.  
PO BOX 603  
DOVER, NH 03821  
P: 603-743-4005

SITE CONTRACTOR:

RYE BEACH LANDSCAPING, LLC  
8 PERENNIAL PLACE  
EXETER, NH 03833  
WWW.RYEBEACHLANDSCAPING.COM  
P: 603-964-6888  
E-MAIL: DESIGN@RYEBEACHLANDSCAPING.COM

SITE ENGINEER:

THORON, INC.  
110 COMMERCE WAY, SUITE 102  
PORTSMOUTH, NH. 03801  
P: 603-431-2222

STRUCTURAL ENGINEER:

INFORMATION SHOWN ON THE COVER SHEET AND GENERAL NOTES SHEETS APPLIES TO ALL TRADES FOR THE WORK OF THIS PROJECT, AND INCLUDES TYPICAL NOTES WITH SPECIFIC CODE REQUIREMENTS FOR THOSE TRADES. CROSS-REFERENCE THE CODE SUMMARY WITH THE DRAWINGS AND SPECIFICATIONS.

DATE: 03/11/2025

LIST OF DRAWINGS

- T-1 TITLE SHEET
- T-2 GENERAL NOTES
- A-1 FOUNDATION PLAN
- A-2 FIRST FLOOR WORKSHOP PLAN
- A-3 SECOND FLOOR STORAGE PLAN
- A-4 FRONT ELEVATION
- A-5 RIGHT SIDE ELEVATION
- A-6 REAR ELEVATION
- A-7 LEFT SIDE ELEVATION
- A-8 DOOR AND WINDOW SCHEDULE
- A-9 CROSS SECTION A - A

LOCATION MAP

ARCHITECT STAMP

MIGHTY ROOTS  
DESIGN-BUILD-CABINETRY

COPYRIGHT 2025

THE MATERIAL CONTAINED IN THESE DRAWINGS AND THE DESIGN THEY ARE INTENDED TO CONVEY ARE THE EXCLUSIVE PROPERTY OF MIGHTY ROOTS. POSSESSION AND USE HEREOF IS GRANTED ONLY CONFIDENTIALLY IN CONNECTION WITH CONSTRUCTION OF THE BUILDINGS DEPICTED HEREIN AS AUTHORIZED BY MIGHTY ROOTS. THE RECIPIENT AGREES TO ABIDE BY THESE RESTRICTIONS ANY USE, REPRODUCTION OR DISCLOSURE OF ANY INFORMATION, IN WHOLE OR IN PART, CONTAINED HEREIN, WITHOUT WRITTEN PERMISSION OF MIGHTY ROOTS IS EXPRESSLY PROHIBITED.

REVISION TABLE		
NUMBER	DATE	REVISION BY DESCRIPTION

DRAWINGS PROVIDED BY:  
MIGHTY ROOTS  
13 ALDEN AVE.  
GREENLAND, NH 03840

TITLE SHEET

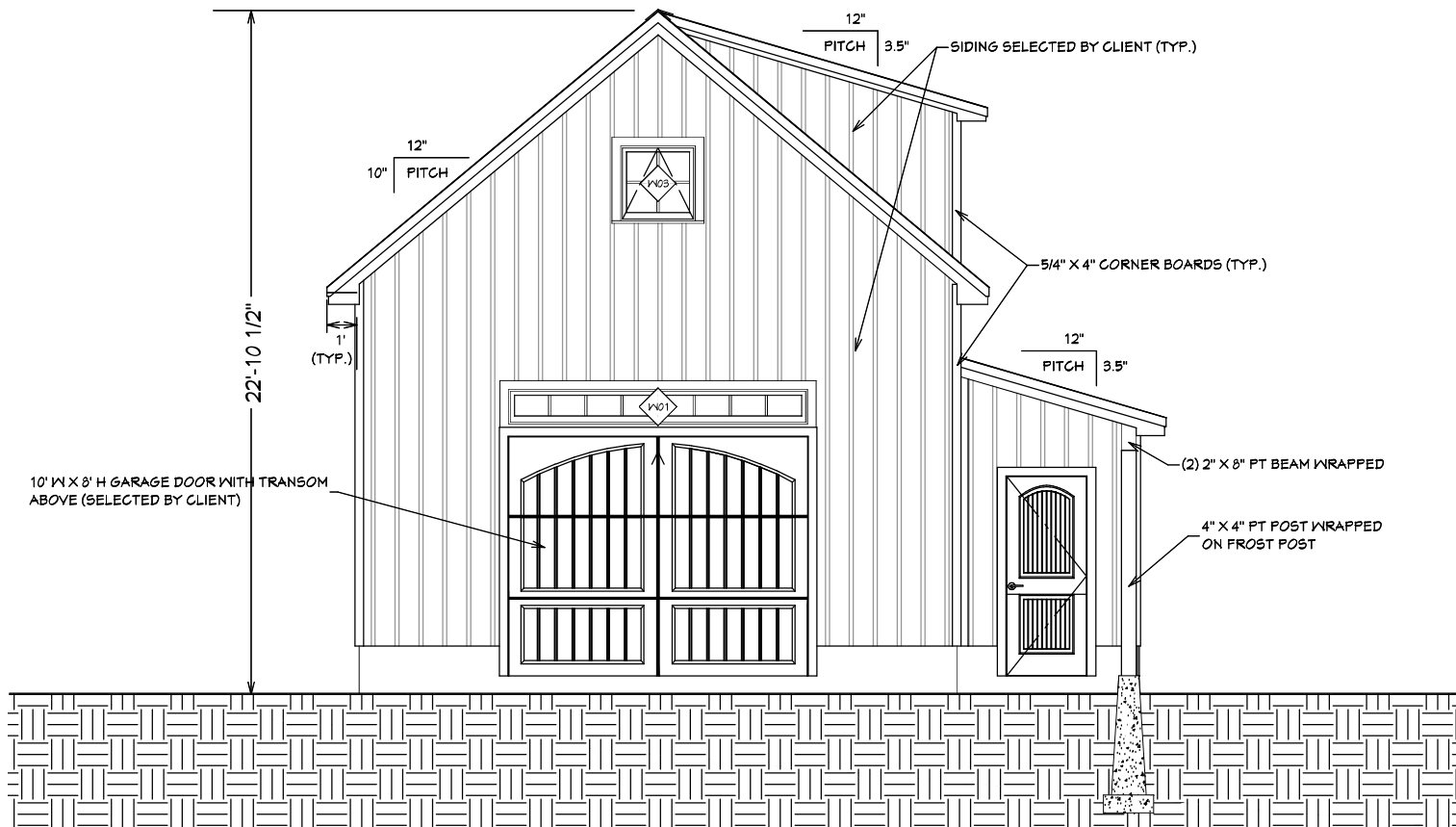
CLIENT:  
WARREN - ARMSTRONG  
70 STARK STREET  
PORTSMOUTH, NH

DATE:  
3/12/2025

SCALE:

SHEET:

T-1



**FRONT ELEVATION**

REVISION TABLE	NUMBER	DATE	REVISED BY	DESCRIPTION

DRAWINGS PROVIDED BY:  
MIGHTY ROOTS  
13 ALDEN AVE.  
GREENLAND, NH 03840

**FRONT ELEVATION**

CLIENT:  
WARREN - ARMSTRONG  
70 STARK STREET  
PORTSMOUTH, NH

DATE:

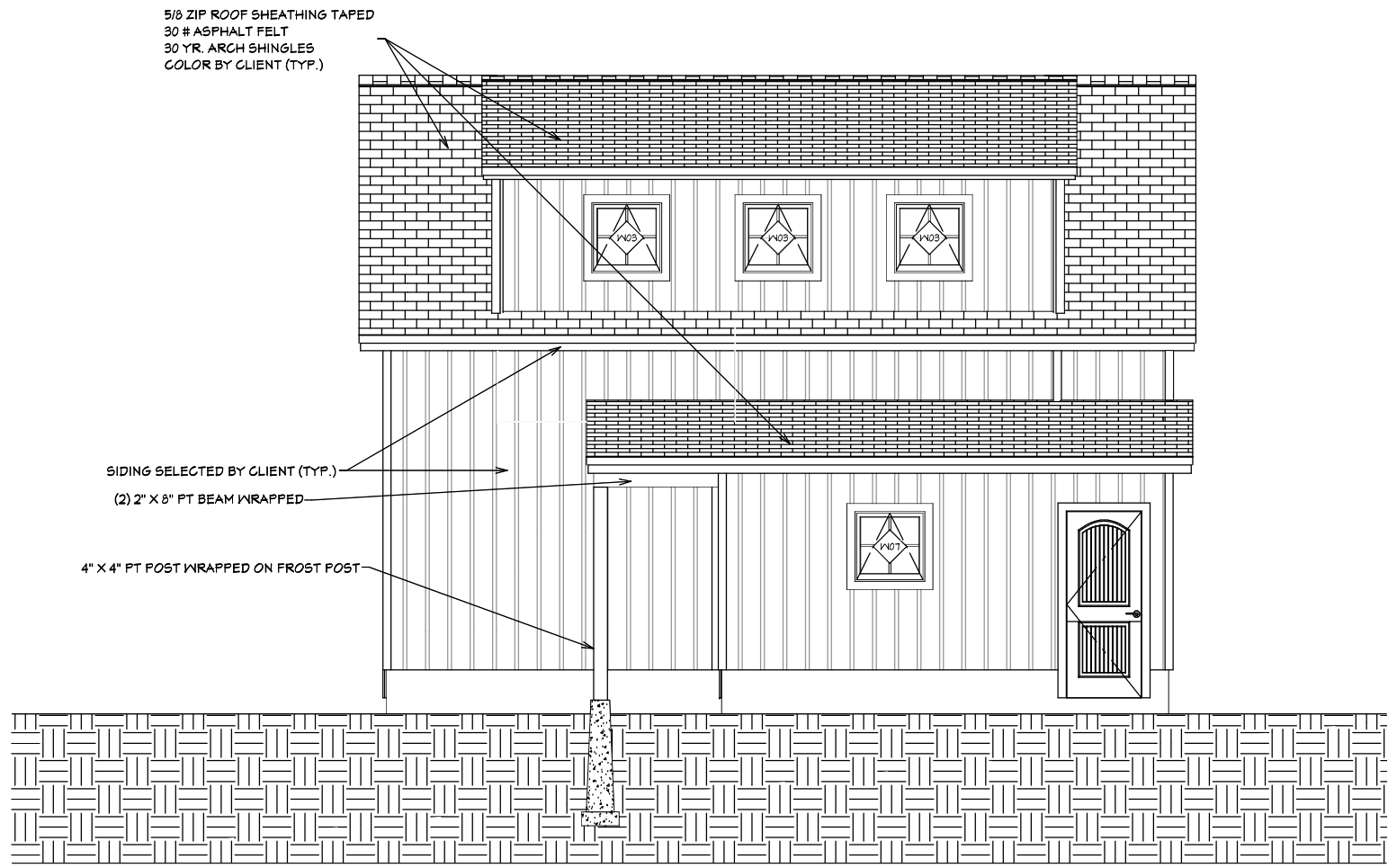
3/12/2025

SCALE:

1/4" = 1' - 0"

SHEET:

**A-4**



**RIGHT SIDE ELEVATION**

--

REVISION TABLE	REVISION	DATE	DESCRIPTION
NUMBER	DATE	REVISION	DESCRIPTION

DRAWINGS PROVIDED BY:  
**MIGHTY ROOTS**  
13 ALDEN AVE.  
GREENLAND, NH 03840

**RIGHT SIDE  
ELEVATION**

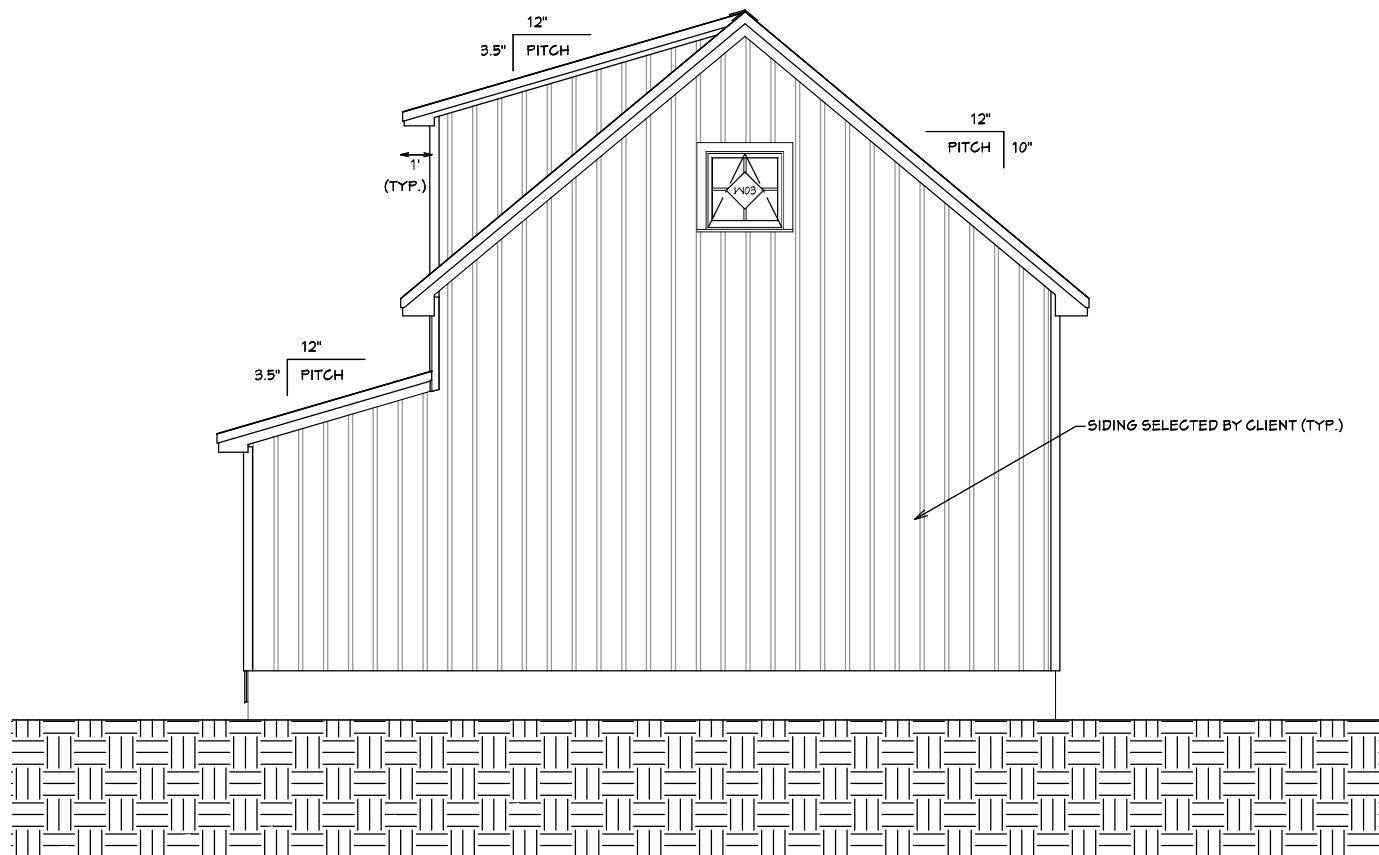
CLIENT:  
**WARREN - ARMSTRONG**  
70 STARK STREET  
PORTSMOUTH, NH

DATE:  
3/12/2025

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

SHEET:

**A-5**



**REAR ELEVATION**

REVISION TABLE			
NUMBER	DATE	REVISED BY	DESCRIPTION

DRAWINGS PROVIDED BY:  
 MIGHTY ROOTS  
 13 ALDEN AVE.  
 GREENLAND, NH 03840

**REAR ELEVATION**

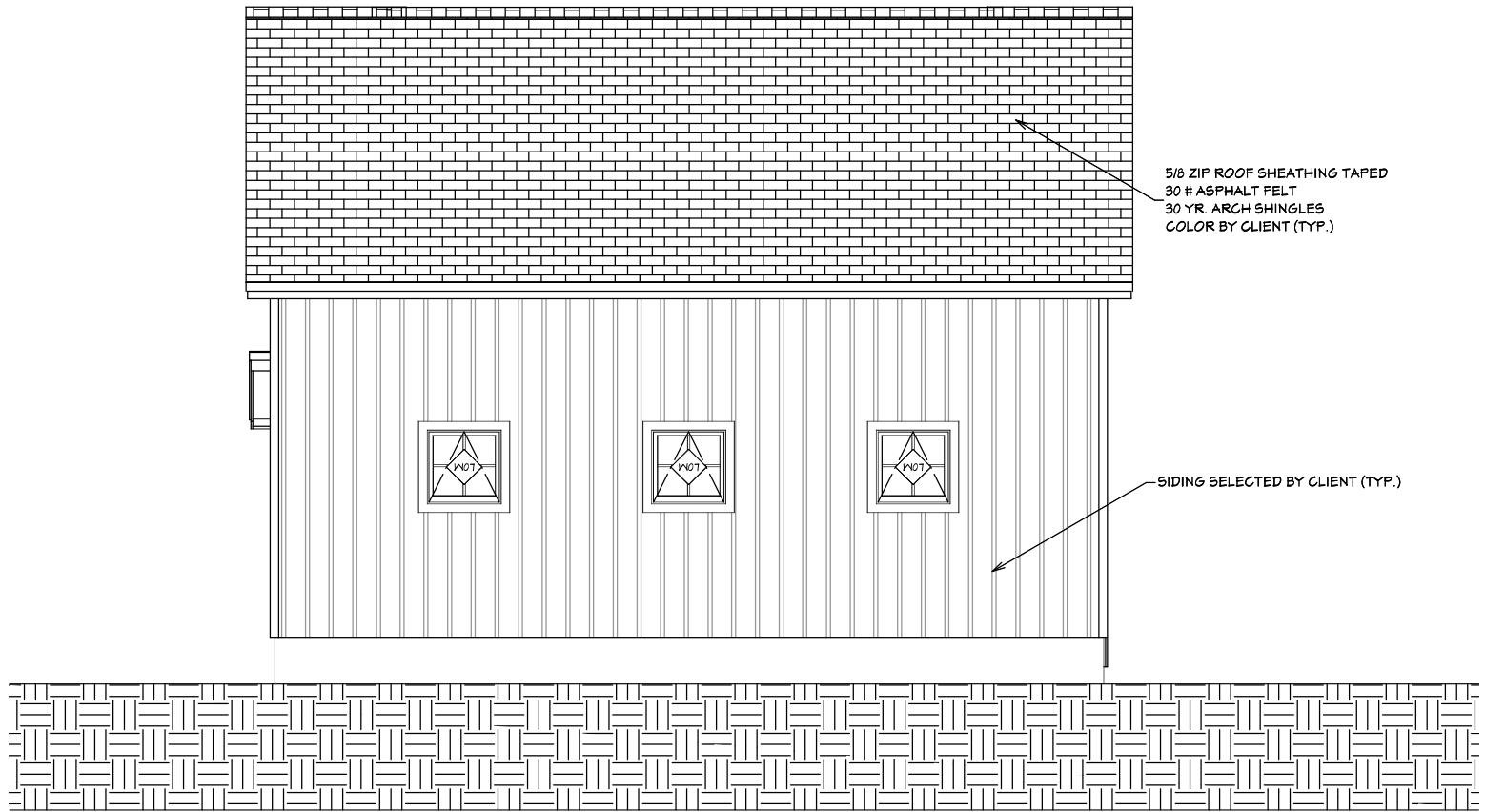
CLIENT:  
 WARREN - ARMSTRONG  
 70 STARK STREET  
 PORTSMOUTH, NH

DATE:  
 3/12/2025

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

SHEET:

**A-6**



LEFT SIDE ELEVATION

REVISION TABLE			
NUMBER	DATE	REVISED BY	DESCRIPTION

DRAWINGS PROVIDED BY:  
MIGHTY ROOTS  
13 ALDEN AVE.  
GREENLAND, NH 03840

LEFT SIDE  
ELEVATION

CLIENT:  
WARREN - ARMSTRONG  
70 STARK STREET  
PORTSMOUTH, NH

DATE:

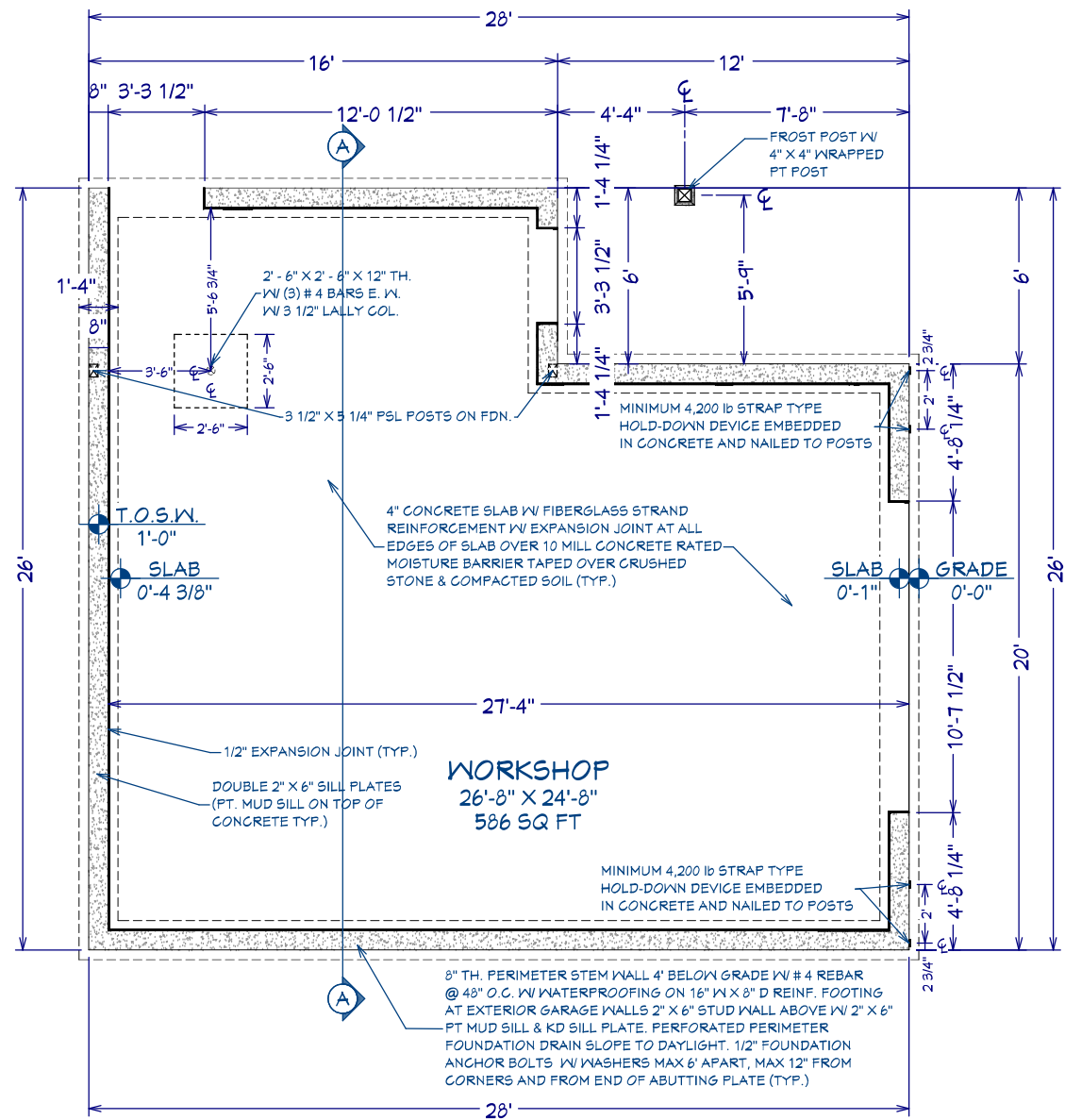
3/12/2025

SCALE:

1/4" = 1' - 0"

SHEET:

A-7



## FOUNDATION PLAN

REVISION TABLE			
NUMBER	DATE	REVISOR	DESCRIPTION

DRAWINGS PROVIDED BY:  
MIGHTY ROOTS  
13 ALDEN AVE.  
GREENLAND, NH 03840

## FOUNDATION PLAN

CLIENT: WARREN - ARMSTRONG  
70 STARK STREET  
PORTSMOUTH, NH

DATE:

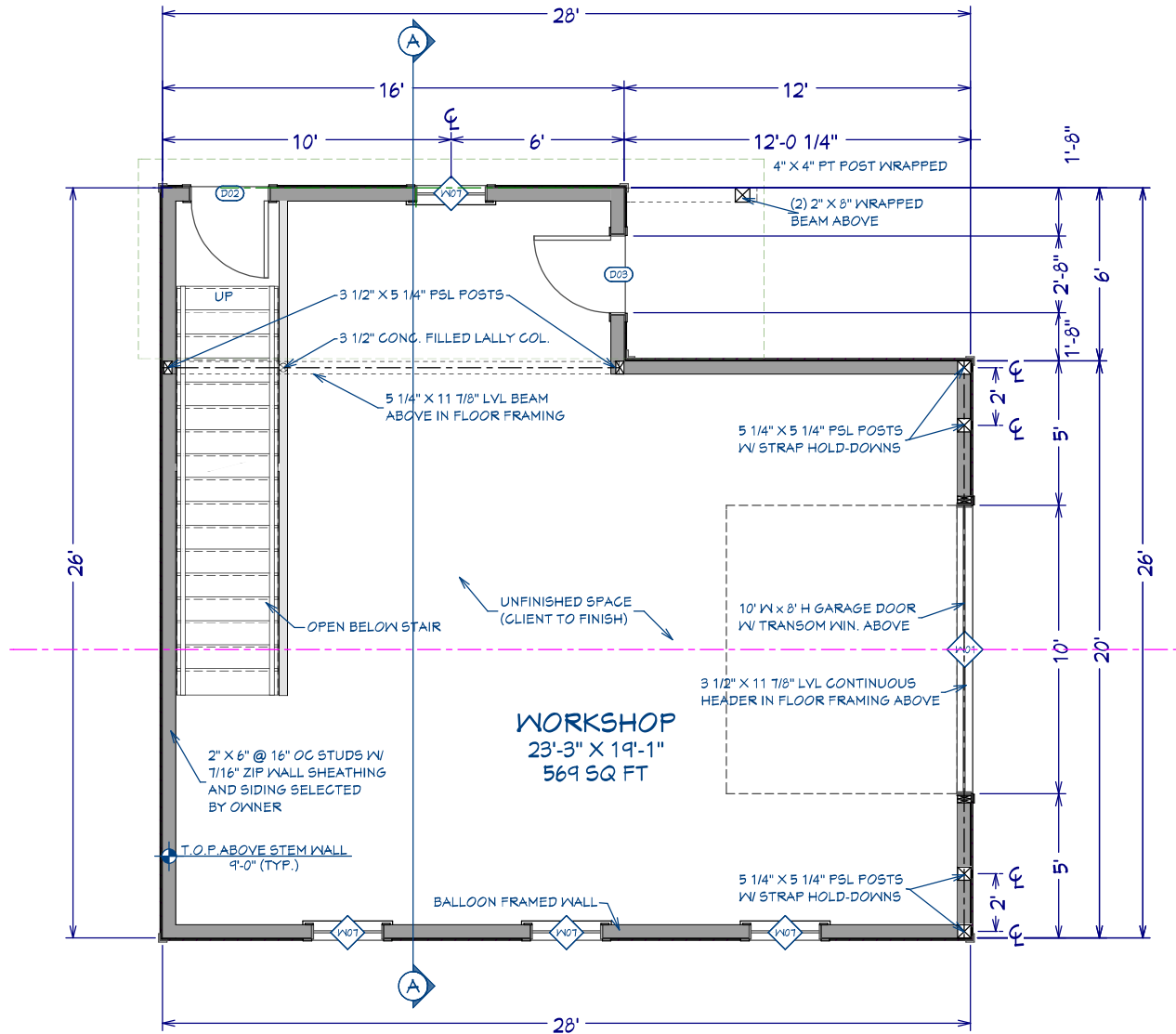
3/12/2025

SCALE:

$$1/4" = 1' - 0"$$

SHEET:

A-1



**FIRST FLOOR WORKSHOP PLAN**

REVISION TABLE		
NUMBER	DATE	REVISOR

DRAWINGS PROVIDED BY:  
**MIGHTY ROOTS**  
 13 ALDEN AVE.  
 GREENLAND, NH 03840

**FIRST FLOOR  
 WORKSHOP PLAN**

CLIENT:  
**WARREN - ARMSTRONG**  
 70 STARK STREET  
 PORTSMOUTH, NH

DATE:

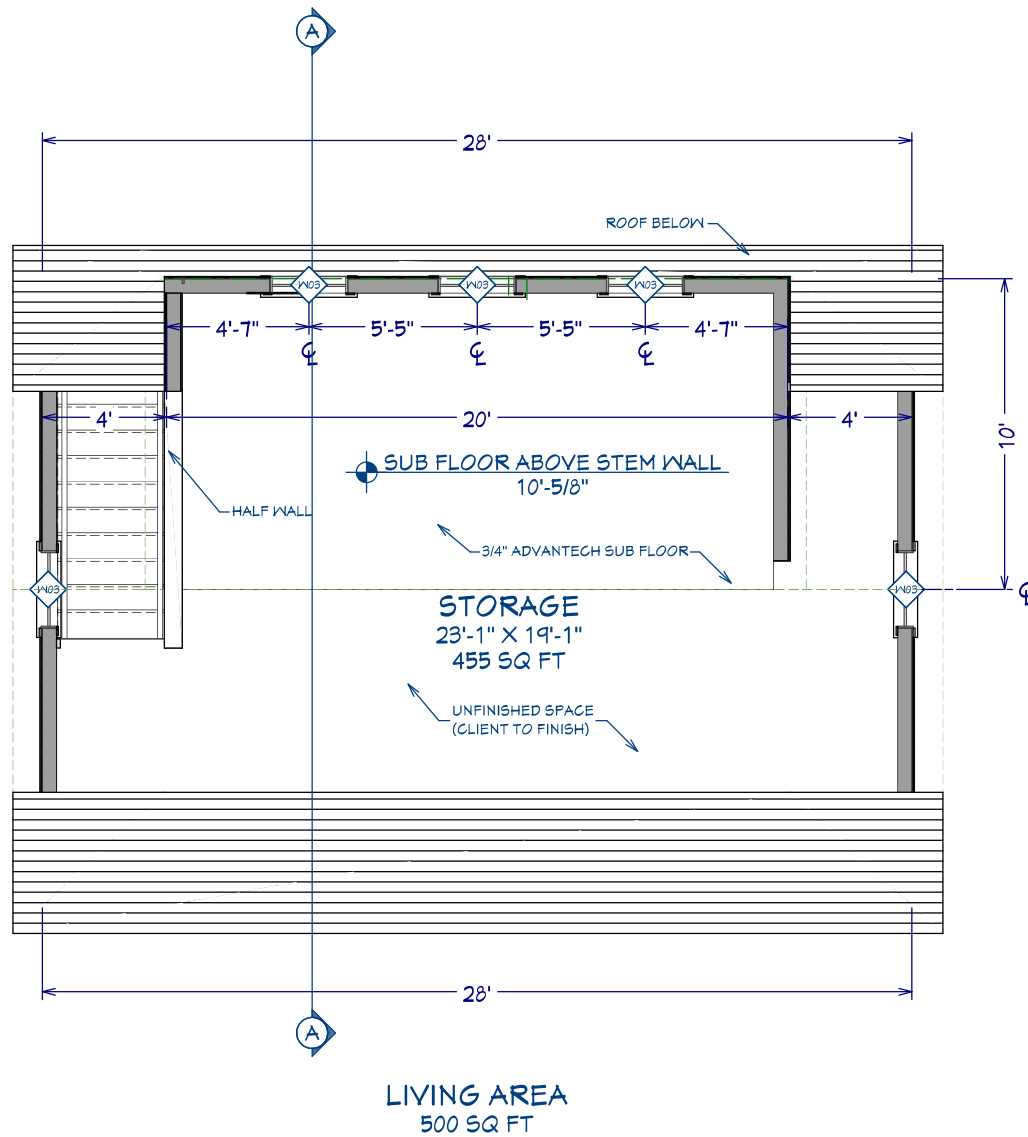
3/12/2025

SCALE:

1/4" = 1' - 0"

SHEET:

**A-2**



## SECOND FLOOR STORAGE PLAN

REVISION TABLE	NUMBER	DATE	REVISION BY	DESCRIPTION

DRAWINGS PROVIDED BY:  
MIGHTY ROOTS  
13 ALDEN AVE.  
GREENLAND, NH 03840

## SECOND FLOOR STORAGE PLAN

CLIENT:  
WARREN - ARMSTRONG  
70 STARK STREET  
PORTSMOUTH, NH

DATE:

3/12/2025

SCALE:

1/4" = 1' - 0"

SHEET:

A-3



## II. NEW BUSINESS

- B.** The request of **Paul and Karolina Roggenbuck** (Owners), for property located at **2 Sylvester Street** whereas relief is needed to construct a second dwelling and associated driveway on the lot which requires the following: 1) Variance from Section 10.513 to allow more than one free-standing dwelling on a lot; 2) Variance from Section 10.1114.31 to allow a second driveway on the lot; and 3) Variance from Section 10.521 to allow a lot area per dwelling unit of 7,899 s.f. where 15,000 s.f. is required. Said property is located on Assessor Map 232 Lot 35 and lies within the Single Residence B (SRB) District. (LU-25-34)

### Existing & Proposed Conditions

	Existing	Proposed	Permitted / Required
<u>Land Use:</u>	Residential	<b>*Second Dwelling and second driveway</b>	Primarily Residential
<u>Lot area (sq. ft.):</u>	15,798	15,798	15,000 min.
<u>Lot area per dwelling unit (sq.ft.):</u>	15,798	<b>7,899</b>	15,000 min.
<u>Primary Front Yard (Sylvester St) (ft.):</u>	Primary Structure: 0	Second Dwelling: 18	0 min. (per 0.516.10)
<u>Secondary Front Yard (Middle Rd) (ft.):</u>	Primary Structure: >30	Primary Structure: >30 Second Dwelling: >30	16.5 min. (per 10.516.10)
<u>Right Yard (ft.):</u>	Primary Structure: >10	Primary Structure: >10 Second Dwelling: 10.5	10 min.
<u>Rear Yard (ft.):</u>	Shed: 12	Shed: 12 Second Dwelling: 30	30 min.
<u>Height (ft.):</u>	Primary Structure: 27	Primary Structure: 27 Second Dwelling: 24	35 max.
<u>Building Coverage (%):</u>	10.2	18.1	20 max.
<u>Open Space Coverage (%):</u>	84	69	40 min.
<u>Parking:</u>	2	8	4
<u>Estimated Age of Structure:</u>	1934	<b>Variance request(s) shown in red.</b>	

**\*Relief needed for more than one free-standing dwelling on a lot per Section 10.513 and for more than one driveway on the lot per Section 10.1114.31**

### Other Permits/Approvals Required

- Building Permit

## Neighborhood Context



## Previous Board of Adjustment Actions

- **September 16, 2014** – Appeal the action of the City Council in resolving that they did not have jurisdiction over the request of the property owners to restore involuntarily merged lots pursuant to RSA 674:39aa. The Board voted to **grant** the Appeal.
- **November 18, 2014** – Subdivide one lot into two. Proposed Lot One: Variances from Section 10.521 to allow the following: a) a lot area and lot area per dwelling unit of 10,183± s.f. where 15,000 s.f. is required; b) a right side yard setback for an existing structure of 2.9'± where 10' is required. Proposed Lot Two: Variances from Section 10.521 to allow the following: a) a lot area and lot area per dwelling unit of 5,609± s.f. where 15,000 s.f. is required; b) a lot depth of 79.94'± where 100' is required; c) continuous street frontage of 70.1'± where 100' is required. The Board voted to **deny** the petition as presented and advertised.

## Planning Department Comments

The applicant is requesting to construct a second dwelling on the lot with a second driveway that will require relief for more than one freestanding dwelling on the lot, more than one driveway on the lot and a lot area per dwelling unit that is less than the required minimum.

## Variance Review Criteria

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

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

## 10.235 Certain Representations Deemed Conditions

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



Karolina and Paul Roggenbuck  
2 Sylvester Street  
Portsmouth, NH 03801

March 26, 2025

City of Portsmouth Zoning Board of Adjustment  
1 Junkins Avenue  
Portsmouth, NH 03801

Re: Variance requests for Secondary Dwelling at 2 Sylvester Street

This letter constitutes a formal request for a variance from the City of Portsmouth Zoning Ordinance, section “10.513 One Dwelling Per Lot,” to permit the construction of a secondary dwelling unit at 2 Sylvester Street, Portsmouth, NH, at the southeast side of the property, to the right of the primary residence. In conjunction, we are requesting a variance from section “10.521 Lot Area Per Dwelling Unit,” and section “10.1114.31 Driveways” to build a second driveway.

The proposed dwelling will have a footprint of 1,252 square feet and will consist of a living area of two bedrooms and one bathroom (gross living area of 1,002 square feet). The living area is on the second floor above a three-car garage. Two of the garages are meant for the tenant of the secondary dwelling, while the third garage is designed for us, the owners of the primary residence. The existing shed/garage to the right of the primary residence cannot fit a contemporary car. The proposed dwelling will be used as a rental property, and to provide additional income to support the costs of a long term medical diagnosis, and eventually as housing for our retired parents. The architectural design of the secondary dwelling is intended to match the Dutch Colonial house with a gambrel roof that is common throughout Portsmouth and the Seacoast area. The style would allow for adequate garage space and comfortable size of living area while also maintaining a roof pitch that allows for proper drainage. Detailed plans, architectural drawings, and site photos are attached to this request.

This variance request is submitted in accordance with Article 2, Section 10.233 of the Portsmouth Zoning Ordinance. We respectfully submit that this request meets all the criteria necessary for the Board to authorize a variance, as outlined in Section 10.233.20:

1. The variance will not be contrary to the public interest (section 10.233.21):

The proposed variance (section “10.513 One Dwelling Per Lot”, section “10.521 Lot Area Per Dwelling Unit,” section “10.1114.31 Driveways”) will benefit the public by providing valuable housing within the community on a quiet, dead-end street. The variance will not negatively impact public health, safety, or welfare, and does not duly violate the objectives of the Ordinance. The secondary dwelling will be designed and constructed in a manner that is compatible with the character of the neighborhood and will retain its residential character. It will not overcrowd the street or create excessive traffic or noise. The property will provide adequate air and light, and will in fact improve the aesthetics of the street, as it would fill a currently empty lot between two residences.

2. The spirit of the Ordinance will be observed: (section 10.233.22)

The spirit and intent of the Zoning Ordinance are to promote the health, safety and the general welfare of Portsmouth and its region. The proposed variance adheres to its underlying principles in that it does not disturb the wellbeing of the neighborhood in any way. Variance from sections "10.513 One Dwelling Per Lot," "10.521 Lot Area Per Dwelling Unit," and "10.1114.31 Driveways" would be consistent with the neighborhood, as many of the adjacent and neighboring lots are smaller and have multiple driveways for single dwellings and/or have accessory dwellings. The proposed use is reasonable due to the property's size and conditions. The construction process will follow appropriate guidelines and the secondary dwelling will not negatively impact the neighbors or the surrounding area.

3. Substantial justice will be done: (section 10.233.23)

Granting this variance will result in substantial justice because denying it would prevent the reasonable use of the property. Adhering strictly to the ordinance, could render the property impractical for use and devalue the property significantly. Granting a variance for a secondary dwelling (section "10.513") in conjunction with a variance for lot area per dwelling (section "10.521"), and a second driveway for that dwelling (section "10.1114.31"), would be just in that adjacent properties are much smaller and have accessory dwellings and/or second driveways for a singular dwelling. Granting the variance would have no significant adverse impact on any neighbor, and there is no harm to the general public. The variance would allow us a reasonable and fair use of our property as has been allowed to other residents of Sylvester Street and adjacent properties on Marjorie Street.

4. The values of surrounding properties will not be diminished: (section 10.233.24)

The proposed variance will not diminish the values of surrounding properties. In fact, the variance might even enhance the value of the surrounding properties. This is because currently the proposed location of the secondary dwelling looks like a flat, empty, unused lot between the primary residence and the adjacent property. It appears as though a building may have been demolished and the lot stands empty. A variance from section "10.521 Lot Area Per Dwelling Unit" would allow us fair and reasonable use of this space, and would not create any obstructions to any neighbors, and would be consistent with the lot sizes in the area. Granting a variance from section "10.513 One Dwelling Per Lot" and with it the necessary second driveway (section "10.1114.31 Driveways"), the secondary dwelling will actually fill in the space, and improve the aesthetics of the neighborhood on the street. Building this secondary dwelling may also likely improve the acoustics on the street - Sylvester Street, being steeply downhill from Middle Road and surrounded by hills on southwest and southeast sides, creates a sort of bowl, and with the open lot the sound travels and echoes loudly. The secondary dwelling would create a barrier for the sound and keep it from creating a loud echo. The secondary dwelling will not cause obstruction for the surrounding properties as there are already tall mature trees bordering the property. It will not cause overcrowding and will still provide adequate air and light to the surrounding properties.

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

Owing to the special conditions of the property that distinguish it from other properties in the area:

(i) No fair and substantial relationship exists between the general public purposes of the ordinance and the specific application of that provision to the property.

The denial of the requested variance will do nothing to contribute to the public's health and safety. The current primary residence was built on the lot in the 1930's, prior to the City's regulations. Our plan is to make the most efficient use of the property while abiding by the spirit of the ordinance.

We request a variance from section "10.513: One Dwelling Per Lot" in conjunction with a variance for section "10.521 Lot Area Per Dwelling Unit".

The current lot size is 0.363 acres or 15,798 sq. ft. It is larger than the minimum lot size for zone SRB. It is also significantly larger than adjacent properties and other properties in the neighborhood. The lot in general is a wide but shallow lot, as seen on the survey, and occupies the equivalent of three lots adjacent to the backyard, along the northeast side.

Dividing the lot size into two for each residence (primary and secondary) leaves each with 0.1815 acres or 7,899 sq. ft., which is still larger than several of the adjacent properties. One of those properties at 1 Marjorie Street - directly behind the primary residence of 2 Sylvester Street - is only 0.07 acres, which is 1/5 of our lot size. The other adjacent properties at 610 Middle Road and 3 Marjorie Street are 0.14 acres and 0.15 acres respectively, which is less than half of our lot size. The adjacent property at 6 Sylvester Street is the same size as our property at 0.37 acres and has a Detached Accessory Dwelling Unit. The property across the street at 1 Sylvester street is also the same size, at 0.37 acres and has an Detached Accessory Dwelling Unit. The large size of our lot would easily allow two dwellings on the property, and would still be consistent with the character of the neighborhood.

We have taken care to ensure the building coverage, when considering the new secondary dwelling, is approximately 15% of the lot and does not exceed the maximum allowable under the zoning code.

We are requesting a variance from section "10.1114.31 Driveways" to construct a second driveway to the secondary dwelling. This additional driveway will be approximately 18' by 40' and constructed of asphalt. The purpose of this second driveway is to provide parking for the tenant and access to the garage of the secondary dwelling. A detailed site plan is included with this request.

The existing driveway's location, size, and configuration do not provide adequate access for the proposed secondary dwelling. A second driveway is necessary to minimize traffic congestion and to improve safety for both the main residence and the secondary dwelling occupants. Use of the existing driveway for the secondary dwelling would mean eliminating off-street parking for the primary residence, it would only allow access to one garage space, and would create an unsafe driving-in and backing-out situation from the garage. A second driveway will allow for separate ingress and egress, as well as provide two off-street parking spots for the occupants of the secondary dwelling. The proposed location of the secondary dwelling and the required parking spaces necessitates a second driveway to maintain the aesthetic appeal of the property

and ensure the functionality of both the main residence and the secondary dwelling.

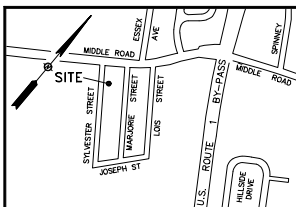
Secondly, adjacent and neighboring properties with similar or smaller size lots have two driveways, some for a single house. The adjacent property at 6 Sylvester Street has a second driveway for the DADU at 4 Sylvester Street. The neighboring property at 3 Sylvester Street has two driveways for a single house on a lot sized 0.15 acres. The property adjacent to the backyard at 610 Middle Road has two driveways for a single residence on a lot sized 0.14 acres. The property across the street at 1 Sylvester Street, has a single driveway, however it is a very wide and deep driveway, affording the residents to park a boat on a trailer along with several cars. If necessary, we are willing to decrease the width of the existing driveway for the primary residence to two car widths, or approximately 20 feet. Granting a variance for a second driveway for our property, which has a total street frontage of approximately 277 feet, will allow us the same use of our property which has been allowed to the neighbors.

We are also requesting relief from the 30 foot front yard setback, specifically, using a front yard average (Section "10.516.10 Front Yard Exceptions for Existing Alignments") to build the secondary dwelling at a setback of 18 feet. Taking into consideration the primary residence of 2 Sylvester Street, which has a setback of 0 feet, and the primary residence of 6 Sylvester Street with a setback of 6 feet, the average is 3 feet front setback. With the dimension of the secondary dwelling, the required 30 foot rear yard setback, and the necessary second driveway, a shorter setback and, therefore, a shorter driveway would mean a smaller impervious surface to prevent drainage issues. The existing alignment of neighboring properties along Sylvester Street establishes a pattern of reduced front yard setbacks, and building the proposed project at a front setback of 18 feet will not be out of character with the neighborhood. The proposed project is designed to be compatible with the existing streetscape and will not negatively impact the character of the neighborhood.

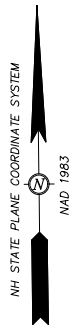
(ii) The proposed use is a reasonable one, because the lot is zoned for residential - single family, and the use will remain so. The proposed design will allow for an appropriate use of the property without adverse impact on the surrounding neighborhood. Applying a rigid interpretation of the requirements of the Zoning Ordinance would make it very difficult for us, the owners, to have reasonable use of our property, as has been allowed to other properties on Sylvester Street and adjacent Marjorie Street.

Therefore, based on the aforementioned points, we respectfully request that the Board find that this variance request complies with the requirements of Article 2, Section 10.233 of the Portsmouth Zoning Ordinance and grant the requested relief.

Sincerely,  
Karolina and Paul Roggenbuck



LOCUS  
(N.T.S.)



**[232-122]**  
JENSEN LESLIE  
JACOB ESTES  
639 MIDDLE ROAD  
PORTSMOUTH, NH 03801  
BK: 6508 PG: 2314

**[232-125]**  
IAN & EMMA ASHEY  
585 MIDDLE RD  
PORTSMOUTH, NH 03801  
BK: 5384 PG: 44

**[232-123]**  
JEREMY GREB  
623 MIDDLE ROAD  
PORTSMOUTH, NH 03801  
BK: 4789 PG: 1130

**[232-33]**  
JIM HAM IOZZO  
610 MIDDLE ROAD  
PORTSMOUTH, NH 03801  
BK: 4201 PG: 2196

**[232-32]**  
BREAUNE BOUDREAU VARNNEY  
1 MARJORIE STREET  
PORTSMOUTH, NH 03801  
BK: 6558 PG: 533

**[232-30]**  
LISA TURNER  
MATTHEW TURNER  
3 MARJORIE ST  
PORTSMOUTH, NH 03801  
BK: 4455 PG: 2138

**[232-35]**  
TOTAL 3.5  
0.397 ACRES S

**[232-43]**  
TAYLOR P. ANDREWS  
1 SYLVESTER STREET  
PORTSMOUTH, NH 03801  
BK: 6434 PG: 43

**[232-36]**  
JAMES SMOLKE  
SHEILA MURRAY  
6 SYLVESTER ST  
PORTSMOUTH, NH 03801  
BK: 6540 PG: 2151

**[232-29]**  
GAUDREAU FAMILY REVOCABLE TRUST  
STEVEN R. & JENNIFER GAUDREAU, TRUSTEES  
5 MARJORIE ST  
PORTSMOUTH, NH 03801  
BK: 6162 PG: 1007

#### LEGEND:

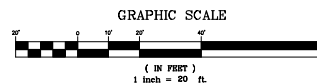
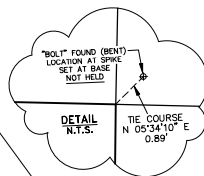
- ..... IRON ROD
- ..... BOLT
- ..... IRON PIPE
- WOOD FENCE
- EOP.....EDGE OF PAVEMENT
- .....CATCH BASIN
- .....CATCH BASIN
- .....DRAIN MANHOLE
- .....SEWER MANHOLE
- W — WATER LINE
- S — SEWER LINE
- D — DRAIN LINE
- OHW — OVERHEAD WIRES
- ..... CRUSHED STONE
- ..... CONCRETE BLOCK RETAINING WALL
- ..... CONCRETE PAVERS WALKWAY
- ..... CONCRETE SIDEWALK

#### SURVEYOR'S CERTIFICATION

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

LICENSED LAND SURVEYOR

DATE



#### NOTES:

- OWNER OF RECORD: PAUL ROGGENBUCK & KAROLINA ROGGENBUCK  
ADDRESS: 2 SYLVESTER STREET, PORTSMOUTH, NH 03801  
DEED REFERENCE: BK:6544 PG:2045  
TAX SHEET / LOT: 232/35
- ZONED: SRB SINGLE RESIDENCE B  
MIN. LOT AREA: 15,000 S.F.  
FRONTAGE: 100'  
SIDE YARD SETBACK: 10'  
MINIMUM OPEN SPACE: 40%  
MAX. DRIVEWAY WIDTH: 24'  
LOT DEPTH: 100'  
BUILDING COVERAGE: 20%  
HEIGHT: SLOPED ROOF 35'
- THE INTENT OF THIS PLAN IS TO SHOW THE PROPOSED GARAGE/ADU IN SUPPORT OF A VARIANCE APPLICATION.
- THE LOCATION OF ALL UNDERGROUND UTILITIES SHOWN HEREON ARE APPROXIMATE AND ARE BASED UPON THE FIELD LOCATION OF ALL VISIBLE STRUCTURES (IE CATCH BASINS, MANHOLES, WATER GATES ETC.) AND INFORMATION COMPILED FROM PLANS OF RECORD, AND PLANS PROVIDED BY UTILITY COMPANIES AND GOVERNMENTAL AGENCIES. ALL CONTRACTORS SHOULD NOTIFY, IN WRITING, SAID AGENCIES PRIOR TO ANY EXCAVATION WORK AND CALL DIG-SAFE @ 1-888-DIG-SAFE.
- HORIZONTAL DATUM: NAD83, VERTICAL DATUM: NAVD83. ESTABLISHED BY SURVEY GRADE GPS OBSERVATIONS. UNITS: US SURVEY FOOT.
- THE PLAN IS BASED UPON A FIELD SURVEY UPDATED IN SEPTEMBER - OCTOBER OF 2024 WITH TRIMBLE S5 ROBOTIC TOTAL STATION, CARLSON BRX7 RTK GPS UNITS, PANASONIC FZ-M1/TRIMBLE TSC7 DATA COLLECTORS.
- THE PARCEL SHOWN HEREON LIES WITHIN ZONE X (AREA OF MINIMAL FLOOD HAZARD) AS IDENTIFIED ON FLOOD INSURANCE RATE MAP, ROCKINGHAM COUNTY, NEW HAMPSHIRE, MAP NUMBER 3301SC0270F, EFFECTIVE DATE 1/29/2021 BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY.
- CONTRACTOR TO VERIFY SITE BENCHMARKS BY LEVELING BETWEEN 2 BENCHMARKS PRIOR TO THE ESTABLISHMENT OF ANY GRADES OR ELEVATIONS. DISCREPANCIES ARE TO BE REPORTED TO JAMES VERRA AND ASSOCIATES, INC.

#### EXISTING IMPERVIOUS COVERAGE

EXISTING HOUSE	694 S.F.
EXISTING SHED(S)	419 S.F.
DECK & STAIRS	499 S.F.
EXISTING ASPHALT	690 S.F.
RETAINING WALLS	60 S.F.
CONCRETE WALK	182 S.F.
<b>TOTAL</b>	<b>2,544 S.F. ± OR 16%</b>

#### PROPOSED IMPERVIOUS COVERAGE

EXISTING HOUSE	694 S.F.
EXISTING SHED	419 S.F.
DECK & STAIRS	499 S.F.
EXISTING ASPHALT	690 S.F.
RETAINING WALLS	60 S.F.
CONCRETE WALK	182 S.F.
PROPOSED STRUCTURE	1,252 S.F.
PROPOSED ASPHALT	848 S.F.
<b>TOTAL</b>	<b>4,643 S.F. ± OR 29%</b>

#### REFERENCE PLANS:

- "PLAT OF LAND & LIMITED ELEVATIONS, 4 SYLVESTER STREET, PORTSMOUTH, NEW HAMPSHIRE, ASSESSOR'S PARCEL 232-36 FOR JARED J. SAULNIER," DATED DECEMBER 13, 2022, PREPARED BY AND OF FILE WITH THIS OFFICE. JVA JOB #24021.
- "PROSPECT PARK, ANNEX NO. 3, PORTSMOUTH, NH, BELONGING TO LEAVITT, WOODWORTH & SWEATT" SURVEYED APRIL 30, 1903 AND PREPARED BY JOHN N. MCCLINTOCK, RORD PLAN 00225.
- "PLAN OF LAND, PORTSMOUTH, N.H. FOR MAX MILTON," DATED JULY 1974, AND PREPARED BY JOHN W. DURGIN, NOT RECORDED. FN: 72A, PN: 4336, ON FILE THIS OFFICE.
- "A PLAN OF LAND IN PORTSMOUTH, N.H., FOR THE CHASE HOME FOR CHILDREN" DATED SEPTEMBER 10, 1980 AND PREPARED BY JOHN W. DURGIN, NOT RECORDED AND ON FILE WITH THIS OFFICE. JMD FN: 71A PN: 5890.
- "EASEMENT PLAN, PLAN FOR: ACCESS EASEMENT, MARJORIE STREET, PORTSMOUTH, NH," DATED MARCH 2013 AND PREPARED BY BEALS ASSOCIATES, PLLC, RORD PLAN #0-37716.
- "PLAT OF LAND PREPARED FOR ARNE, LLC, (TAX MAP 232 LOT 43-1) 3 SYLVESTER STREET, PORTSMOUTH, NH," DATED FEBRUARY 15, 2019 AND PREPARED BY BOUDREAU LAND SURVEYING INC. RORD PLAN #0-41324.
- "SUBDIVISION PLAN, TAX MAP 232 - LOT 35 FOR USA & BRETT COMACK, 2 SYLVESTER STREET, CITY OF PORTSMOUTH, COUNTY OF ROCKINGHAM, STATE OF NEW HAMPSHIRE," LAST REVISED NOVEMBER 4, 2014 AND PREPARED BY AMBIT ENGINEERING, INC. NOT RECORDED, AMBIT JOB #2397.

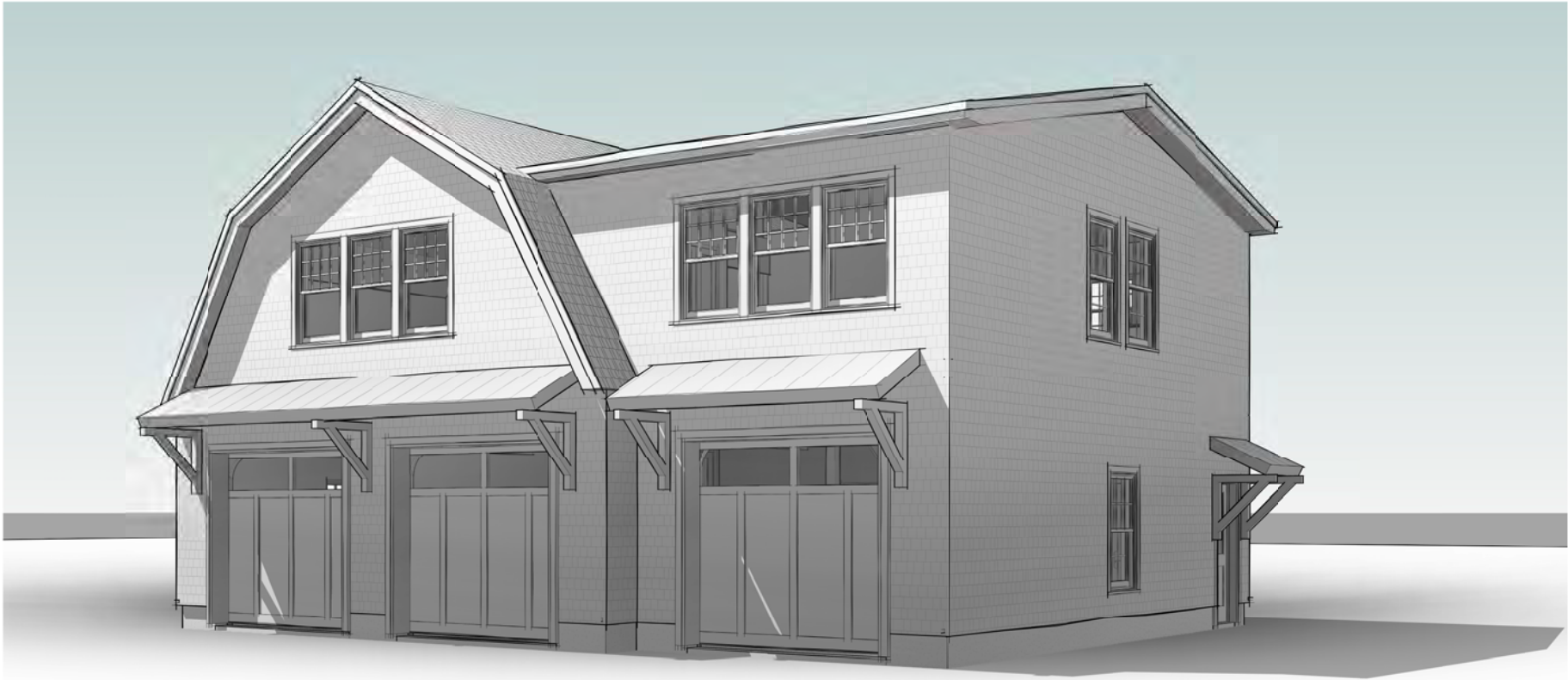
PRELIMINARY  
SUBJECT TO CHANGE

REV. NO.	DATE	DESCRIPTION	APPROV.
<b>PROPOSED PLAN</b> <b>2 SYLVESTER STREET</b> <b>PORTSMOUTH, NEW HAMPSHIRE</b> <b>TAX MAP 232 LOT 35</b> <b>PREPARED FOR AND LAND OF:</b> <b>PAUL AND KAROLINA ROGGENBUCK</b>			
JVA JAMES VERRA & ASSOCIATES, INC.		180 / REL DRAWN BY RMF PROJECT MGR	DATE: 12/19/2024 JOB NO: 24-2067 SCALE: 1" = 20' DWG NAME: 24-2067.DWG PLAN NO: 24-2067.DWG SHEET: V1

101 SHATTUCK WAY, SUITE 8, NEWINGTON, N.H., 03801 - 603-436-3557 - ©2024



# 2 SYLVESTER PORTSMOUTH, NH



① PERSPECTIVE

## CONCEPTUAL DESIGN 10-21-24

DRAWING INDEX		
NUMBER	SHEET NAME	DISCIPLINE
A0	COVER SHEET	ARCHITECTURAL
A1	BASEMENT FLOOR PLAN	ARCHITECTURAL
A2	GARAGE FLOOR PLAN	ARCHITECTURAL
A4	ROOF PLAN	ARCHITECTURAL
A5	ELEVATIONS	ARCHITECTURAL
A6	BUILDING SECTIONS	ARCHITECTURAL

CONCEPTUAL DESIGN - NOT FOR CONSTRUCTION



www.willowandsagedesign.com  
860.716.3802

2 SYLVESTER STREET PORTSMOUTH NH

Scale:  
Date: 10-21-24  
Project Number:

REVISIONS		
NO.	DESCRIPTION	DATE

CONCEPTUAL DESIGN  
COVER SHEET

A0

COPYRIGHT © 2021

#### GENERAL UNIT RCP NOTES

GENERAL CONTRACTOR SHALL VERIFY ALL FIELD CONDITIONS AND DIMENSIONS. NOTIFY ARCHITECT IF FIELD CONDITIONS ARE DIFFERENT THAN SHOWN IN THE DRAWINGS.



#### GENERAL PLAN NOTES

1. GENERAL CONTRACTOR SHALL VERIFY ALL FIELD CONDITIONS AND DIMENSIONS. NOTIFY ARCHITECT IF FIELD CONDITIONS ARE DIFFERENT THAN SHOWN IN THE DRAWINGS.
2. EXTERIOR DIMENSIONS ARE GIVEN FROM FACE OF STUD TOP OF FACE OF STUD, TOP.
3. INTERIOR DIMENSIONS ARE GIVEN FROM FACE OF FINISH TO FACE OF FINISH.
4. EXTERIOR OPENINGS ARE DIMENSIONED TO CENTER LINE OF OPENING UNLESS NOTED OTHERWISE.
5. ALL WORK SHALL COMPLY WITH APPLICABLE LOCAL, CODES AS WELL AS STATE AND FEDERAL GUIDELINES.

#### LIABILITY/DISCLAIMER

WHILE GREAT EFFORT HAS BEEN EXERTED TO INSURE THAT THIS PLAN IS COMPLETE AND ACCURATE, WILLOW AND SAGE DESIGN LLC ASSUMES NO LIABILITY FOR ANY BUILDING CONSTRUCTION DOCUMENTS PROVIDED BY WILLOW AND SAGE DESIGN LLC ARE PROVIDED AS IS. IT IS THE RESPONSIBILITY OF THE CONTRACTOR OR OWNER TO PERFORM BUILDING REVIEWS BEFORE BEGINNING CONSTRUCTION. THESE INCLUDE BUT ARE NOT LIMITED TO THE FOLLOWING:  
A) VERIFY ALL DIMENSIONS  
B) REVIEW ALL BUILDING REQUIREMENTS  
C) VERIFY COMPLIANCE WITH THE LOCAL BUILDING CODES  
D) DIVERSIFY ACTUAL SITE CONDITIONS  
ANY DISCREPANCIES ON THIS PLAN MUST BE RESOLVED BY THE CONTRACTOR/OWNER PRIOR TO CONSTRUCTION. CONSTRUCTION OF ANY BUILDING SHOULD NOT BE UNDERTAKEN WITHOUT THE ASSISTANCE OF A QUALIFIED BUILDING PROFESSIONAL.

THE CONTENT OF THIS PLAN SHEET IS PROVIDED BY WILLOW AND SAGE DESIGN LLC FOR THE PURPOSE OF CONVEYING THE DESIGNER'S INTENT TO THE ENGINEER OF RECORD, CONTRACTOR OR HOME OWNER. IF NO STRUCTURAL ENGINEER STAMP APPEARS ON THIS PLAN SHEET THE CONTRACTOR AND/OR HOME OWNER SHALL BE RESPONSIBLE FOR ASSURING THE STRUCTURAL INTEGRITY OF THE BUILDING.



www.willowandsagedesign.com  
860-716-3902

2 SYLVESTER STREET PORTSMOUTH NH

Scale: 1/4" = 1'-0"  
Date: 10-21-24  
Project Number:

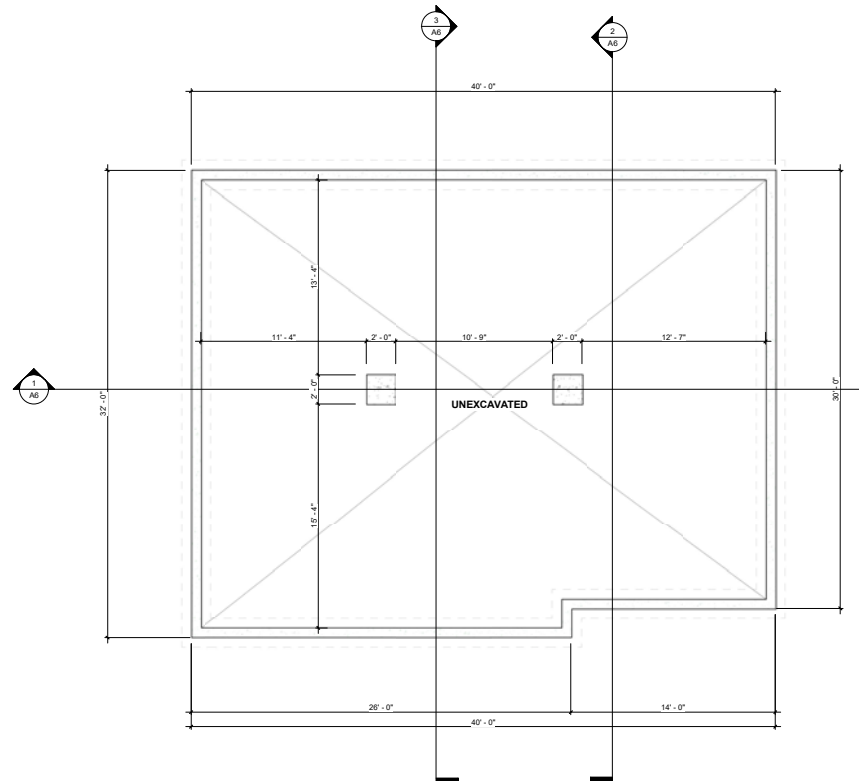
REVISIONS		
NO.	DESCRIPTION	DATE

#### CONCEPTUAL DESIGN

#### BASEMENT FLOOR PLAN

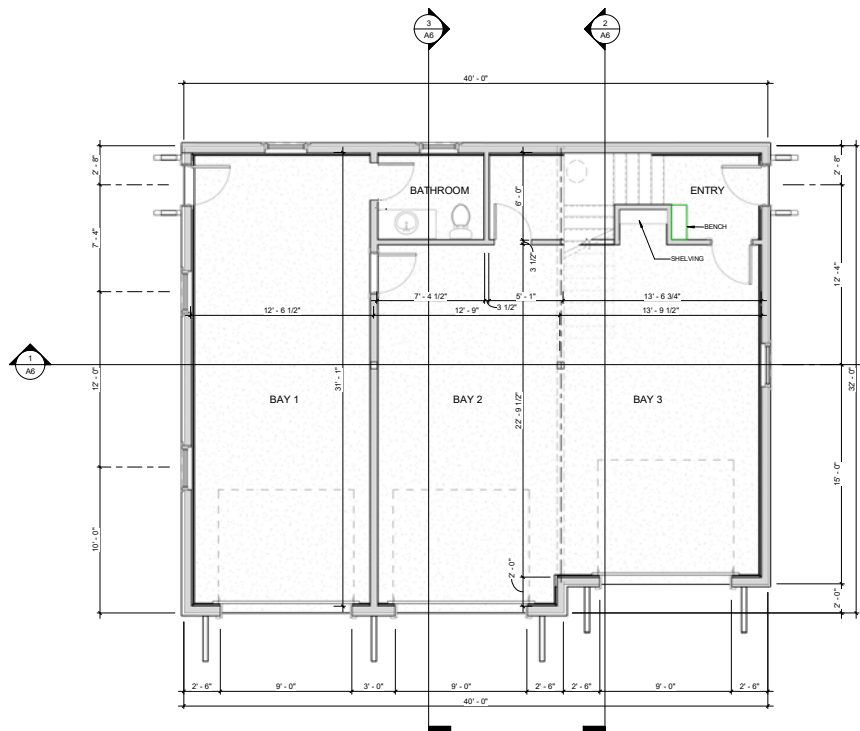
# A1

COPYRIGHT © 2021



① FOUNDATION PLAN  
1/4" = 1'-0"

CONCEPTUAL DESIGN - NOT FOR CONSTRUCTION



① GARAGE FLOOR PLAN  
1/4" = 1'-0"

**GENERAL UNIT RCP NOTES**

GENERAL CONTRACTOR SHALL VERIFY ALL FIELD CONDITIONS AND DIMENSIONS. NOTIFY ARCHITECT IF FIELD CONDITIONS ARE DIFFERENT THAN SHOWN IN THE DRAWINGS.

**GENERAL PLAN NOTES**

1. GENERAL CONTRACTOR SHALL VERIFY ALL FIELD CONDITIONS AND DIMENSIONS. NOTIFY ARCHITECT IF FIELD CONDITIONS ARE DIFFERENT THAN SHOWN IN THE DRAWINGS.  
2. EXTERIOR DIMENSIONS ARE GIVEN FROM FACE OF STUD TO FACE OF STUD. TYP.  
3. INTERIOR DIMENSIONS ARE GIVEN FROM FACE OF FINISH TO FACE OF FINISH.  
4. EXTERIOR OPENINGS ARE DIMENSIONED TO CENTER LINE OF OPENING UNLESS NOTED OTHERWISE.  
5. ALL WORK SHALL COMPLY WITH APPLICABLE LOCAL CODES AS WELL AS STATE AND FEDERAL GUIDELINES.

**LIABILITY/DISCLAIMER**

WHILE GREAT EFFORT HAS BEEN EXERCISED TO INSURE THAT THIS PLAN IS COMPLETE AND ACCURATE, WILLOW AND SAGE DESIGN, LLC ASSUMES NO LIABILITY FOR ANY BUILDING CONSTRUCTION DOCUMENTS PROVIDED BY WILLOW AND SAGE DESIGN, LLC ARE PROVIDED AS IS. IT IS THE RESPONSIBILITY OF THE CONTRACTOR OR OWNER TO PERFORM BUILDING REVIEWS BEFORE BEGINNING CONSTRUCTION. THESE INCLUDE BUT ARE NOT LIMITED TO THE FOLLOWING:  
A) VERIFY ALL DIMENSIONS  
B) REVIEW ALL BUILDING REQUIREMENTS  
C) VERIFY COMPLIANCE WITH THE LOCAL BUILDING CODES  
D) VERIFY ACTUAL SITE CONDITIONS  
ANY DISCREPANCIES ON THIS PLAN MUST BE RESOLVED BY THE CONTRACTOR/OWNER PRIOR TO CONSTRUCTION. CONSTRUCTION OF ANY BUILDING SHOULD NOT BE UNDERTAKEN WITHOUT THE ASSISTANCE OF A QUALIFIED BUILDING PROFESSIONAL.  
THE CONTENT OF THIS PLAN SHEET IS PROVIDED BY WILLOW AND SAGE DESIGN, LLC FOR THE PURPOSE OF CONVEYING THE DESIGNER'S INTENT TO THE ENGINEER OF RECORD. CONTRACTOR OR HOME OWNER IF NO STRUCTURAL ENGINEER STAMP APPEARS ON THIS PLAN SHEET THE CONTRACTOR AND/OR HOME OWNER SHALL BE RESPONSIBLE FOR ASSURING THE STRUCTURAL INTEGRITY OF THE BUILDING.



www.willowandsagedesign.com  
860.716.3902

2 SYLVESTER STREET PORTSMOUTH NH

Scale: 1/4" = 1'-0"  
Date: 10-21-24  
Project Number:

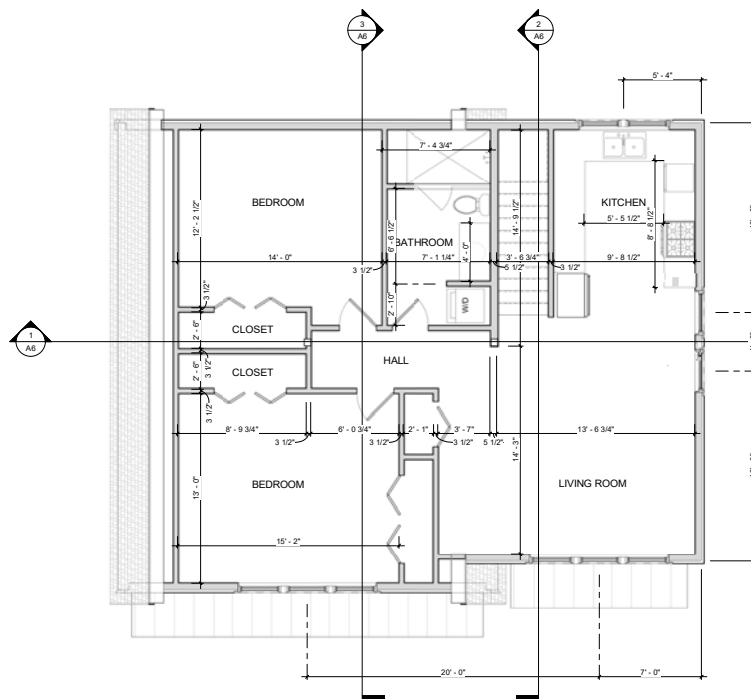
REVISIONS		
NO.	DESCRIPTION	DATE

CONCEPTUAL DESIGN  
GARAGE FLOOR  
PLAN

A2

COPYRIGHT © 2021

CONCEPTUAL DESIGN - NOT FOR CONSTRUCTION



① SECOND FLOOR  
1/4" = 1'-0"

**GENERAL UNIT RCP NOTES**

GENERAL CONTRACTOR SHALL VERIFY ALL FIELD CONDITIONS AND DIMENSIONS. NOTIFY ARCHITECT IF FIELD CONDITIONS ARE DIFFERENT THAN SHOWN IN THE DRAWINGS.

**GENERAL PLAN NOTES**

1. GENERAL CONTRACTOR SHALL VERIFY ALL FIELD CONDITIONS AND DIMENSIONS. NOTIFY ARCHITECT IF FIELD CONDITIONS ARE DIFFERENT THAN SHOWN IN THE DRAWINGS.
2. EXTERIOR DIMENSIONS ARE GIVEN FROM FACE OF STUD TO FACE OF STUD.
3. INTERIOR DIMENSIONS ARE GIVEN FROM FACE OF FINISH TO FACE OF FINISH.
4. EXTERIOR OPENINGS ARE DIMENSIONED TO CENTER LINE OF OPENING UNLESS NOTED OTHERWISE.
5. ALL WORK SHALL COMPLY WITH APPLICABLE LOCAL CODES AS WELL AS STATE AND FEDERAL GUIDELINES.

**LIABILITY/DISCLAIMER**

WHILE GREAT EFFORT HAS BEEN EXERTED TO INSURE THAT THIS PLAN IS COMPLETE AND ACCURATE, WILLOW AND SAGE DESIGN LLC ASSUMES NO LIABILITY FOR ANY BUILDING CONSTRUCTION FROM THIS PLAN. ALL CONSTRUCTION DOCUMENTS PROVIDED BY WILLOW AND SAGE DESIGN LLC ARE PROVIDED AS-IS. IT IS THE RESPONSIBILITY OF THE CONTRACTOR OR OWNER TO PERFORM BUILDING REVIEWS BEFORE BEGINNING CONSTRUCTION. THESE INCLUDE BUT ARE NOT LIMITED TO THE FOLLOWING:  
A) VERIFY ALL DIMENSIONS  
B) REVIEW ALL BUILDING REQUIREMENTS  
C) VERIFY COMPLIANCE WITH THE LOCAL BUILDING CODES.  
D) VERIFY ACTUAL SITE CONDITIONS.  
ANY DISCREPANCIES ON THIS PLAN MUST BE RESOLVED BY THE CONTRACTOR/OWNER PRIOR TO CONSTRUCTION. CONSTRUCTION OF ANY BUILDING SHOULD NOT BE UNDERTAKEN WITHOUT THE ASSISTANCE OF A QUALIFIED BUILDING PROFESSIONAL.

THE CONTENT OF THIS PLAN SHEET IS PROVIDED BY WILLOW AND SAGE DESIGN LLC FOR THE PURPOSE OF CONVEYING THE DESIGNER'S INTENT TO THE ENGINEER OF RECORD, CONTRACTOR OR HOME OWNER. IF NO STRUCTURAL ENGINEER STAMP APPEARS ON THIS PLAN SHEET, THE CONTRACTOR AND/OR HOME OWNER SHALL BE RESPONSIBLE FOR ASSURING THE STRUCTURAL INTEGRITY OF THE BUILDING.



www.willowandsagedesign.com  
800-716-3902

2 SYLVESTER STREET PORTSMOUTH NH

Scale: 1/4" = 1'-0"  
Date: 10-21-24  
Project Number:

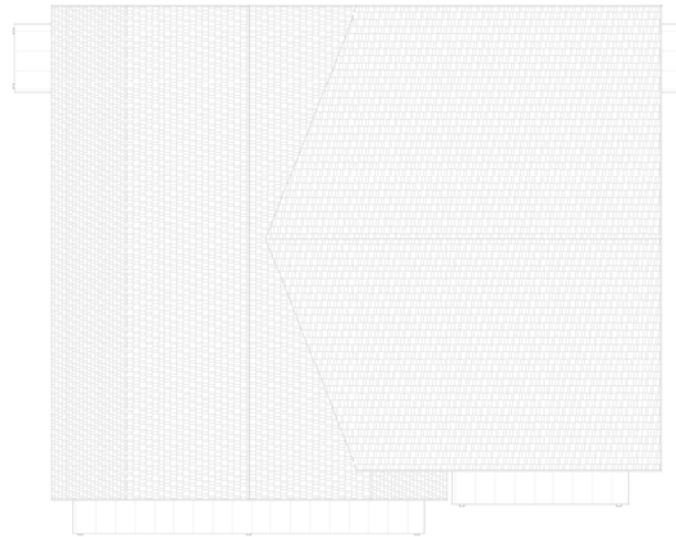
REVISIONS		
NO.	DESCRIPTION	DATE

CONCEPTUAL DESIGN  
SECOND FLOOR  
PLAN

A3

COPYRIGHT © 2021

BID SET - NOT FOR CONSTRUCTION



① ROOF PLAN  
1/4" = 1'-0"

**GENERAL UNIT RCP NOTES**  
GENERAL CONTRACTOR SHALL VERIFY ALL FIELD CONDITIONS AND DIMENSIONS. NOTIFY ARCHITECT IF FIELD CONDITIONS ARE DIFFERENT THAN SHOWN IN THE DRAWINGS.

**GENERAL PLAN NOTES**  
1. GENERAL CONTRACTOR SHALL VERIFY ALL FIELD CONDITIONS AND DIMENSIONS. NOTIFY ARCHITECT IF FIELD CONDITIONS ARE DIFFERENT THAN SHOWN IN THE DRAWINGS.  
2. EXTERIOR DIMENSIONS ARE GIVEN FROM FACE OF STUD TO FACE OF STUD TIP.  
3. INTERIOR DIMENSIONS ARE GIVEN FROM FACE OF FINISH TO FACE OF FINISH.  
4. EXTERIOR OPENINGS ARE DIMENSIONED TO CENTER LINE OF OPENING UNLESS NOTED OTHERWISE.  
5. ALL WORK SHALL COMPLY WITH APPLICABLE LOCAL CODES AS WELL AS STATE AND FEDERAL GUIDELINES.

**LIABILITY/DISCLAIMER**  
WHILE GREAT EFFORT HAS BEEN EXPERTED TO INSURE THAT THIS PLAN IS COMPLETE AND ACCURATE, WILLOW AND SAGE DESIGN LLC ASSUMES NO LIABILITY FOR ANY BUILDING CONSTRUCTION DOCUMENTS PROVIDED BY WILLOW AND SAGE DESIGN LLC ARE PROVIDED AS IS. IT IS THE RESPONSIBILITY OF THE CONTRACTOR OR OWNER TO PERFORM BUILDING REVISIONS BEFORE BEGINNING CONSTRUCTION. THESE INCLUDE BUT ARE NOT LIMITED TO THE FOLLOWING:  
A) VERIFY ALL DIMENSIONS  
B) REVIEW ALL BUILDING REQUIREMENTS  
C) VERIFY COMPLIANCE WITH THE LOCAL BUILDING CODES.  
ANY DISCREPANCIES ONT HIS PLAN MUST BE RESOLVED BY THE CONTRACTOR/OWNER PRIOR TO CONSTRUCTION. CONSTRUCTION OF ANY BUILDING SHOULD NOT BE UNDERTAKEN WITHOUT THE ASSISTANCE OF A QUALIFIED BUILDING PROFESSIONAL.  
  
THE CONTENT OF THIS PLAN SHEET IS PROVIDED BY WILLOW AND SAGE DESIGN LLC FOR THE PURPOSE OF CONVEYING THE DESIGNERS INTENT TO THE ENGINEER OF RECORD, CONTRACTOR OR HOME OWNER. IF NO STRUCTURAL ENGINEER STAMP APPEARS ON THIS PLAN SHEET THE CONTRACTOR AND/OR HOME OWNER SHALL BE RESPONSIBLE FOR ASSURING THE STRUCTURAL INTEGRITY OF THE BUILDING.



www.willowandsagedesign.com  
860-716-3902

2 SYLVESTER STREET PORTSMOUTH NH

Scale: 1/4" = 1'-0"  
Date: 10-21-24  
Project Number:

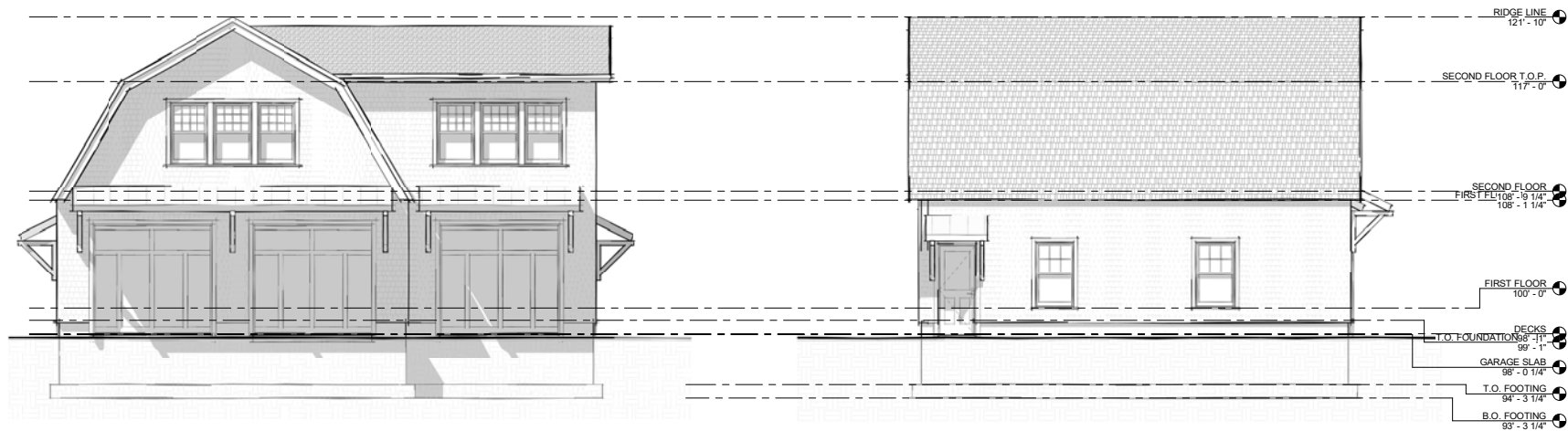
REVISIONS		
NO.	DESCRIPTION	DATE

CONCEPTUAL DESIGN  
ROOF PLAN

A4

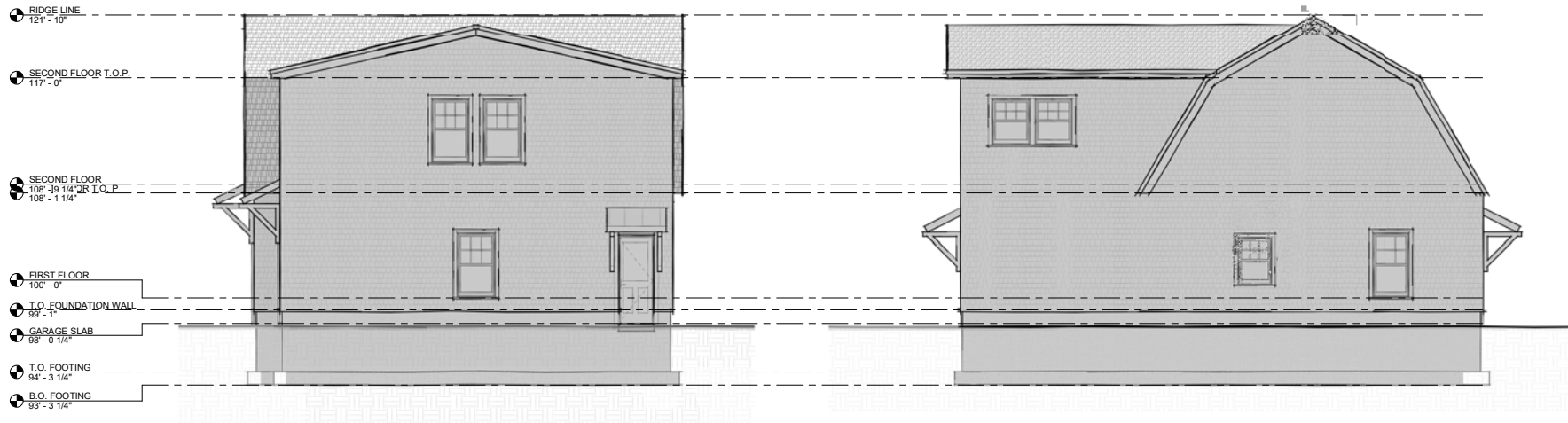
COPYRIGHT © 2021

BID SET - NOT FOR CONSTRUCTION



① SOUTH ELEVATION  
1/4" = 1'-0"

② WEST ELEVATION  
1/4" = 1'-0"



③ EAST ELEVATION  
1/4" = 1'-0"

④ NORTH ELEVATION  
1/4" = 1'-0"

REVISIONS		
NO.	DESCRIPTION	DATE

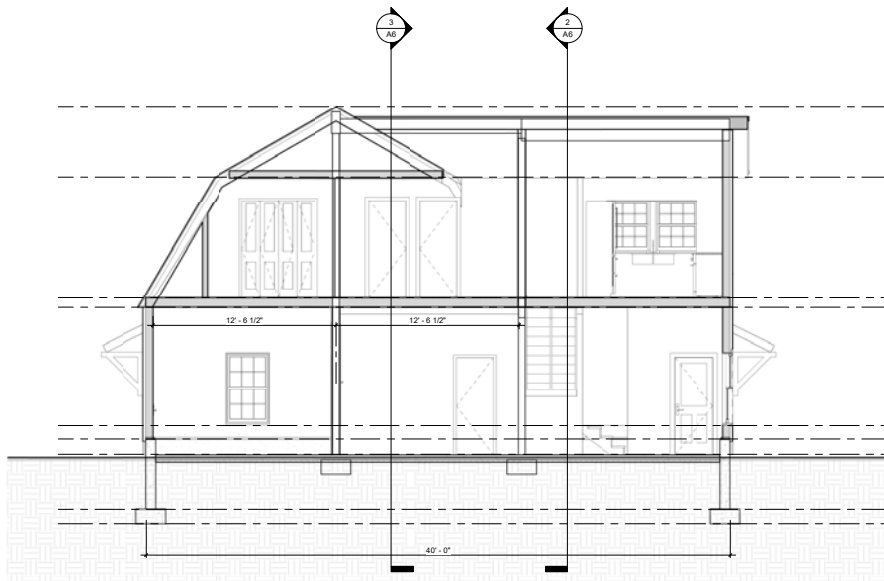
REVISIONS		
NO.	DESCRIPTION	DATE

CONCEPTUAL DESIGN

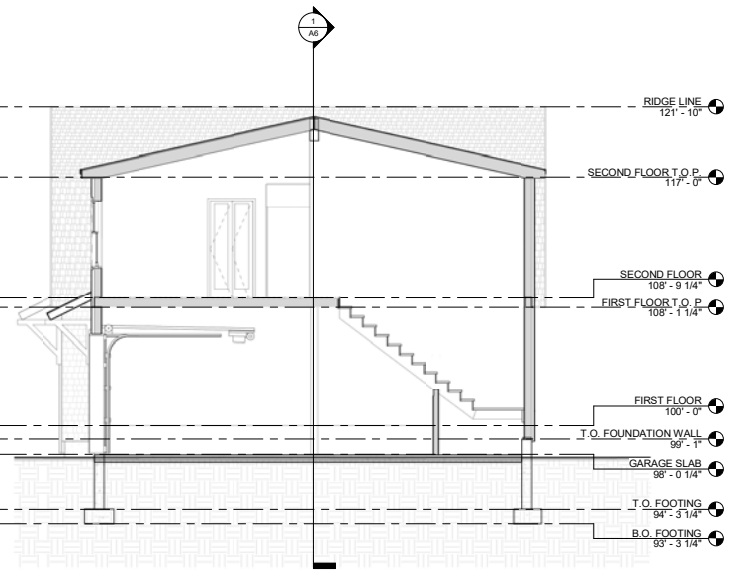
BUILDING  
SECTIONS

A6

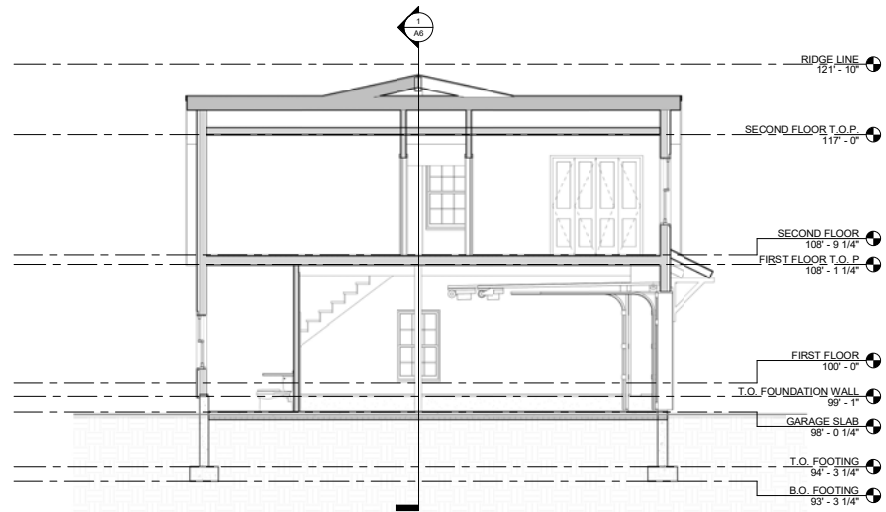
COPYRIGHT © 2021



① LONGITUDINAL SECTION  
1/4" = 1'-0"



② SECTION @ KITCHEN/LIVING ROOM  
1/4" = 1'-0"



③ SECTION @ BEDROOMS  
1/4" = 1'-0"

BID SET - NOT FOR CONSTRUCTION



Karolina and Paul Roggenbuck  
2 Sylvester Street  
Portsmouth, NH 03801

Proposed Secondary Dwelling location  
(not to scale)

photo 1

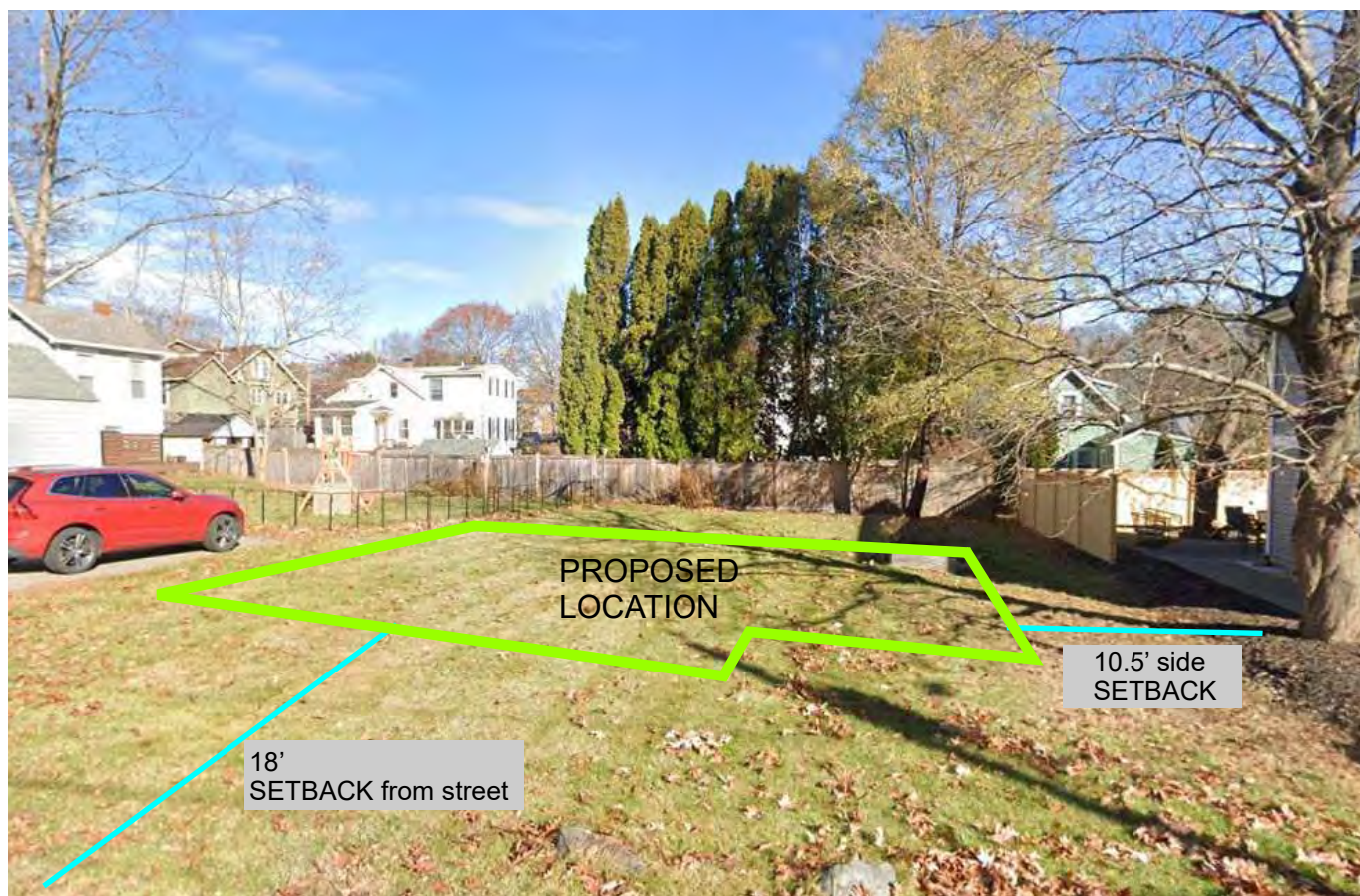




Karolina and Paul Roggenbuck  
2 Sylvester Street  
Portsmouth, NH 03801

Proposed Secondary Dwelling location  
(not to scale)

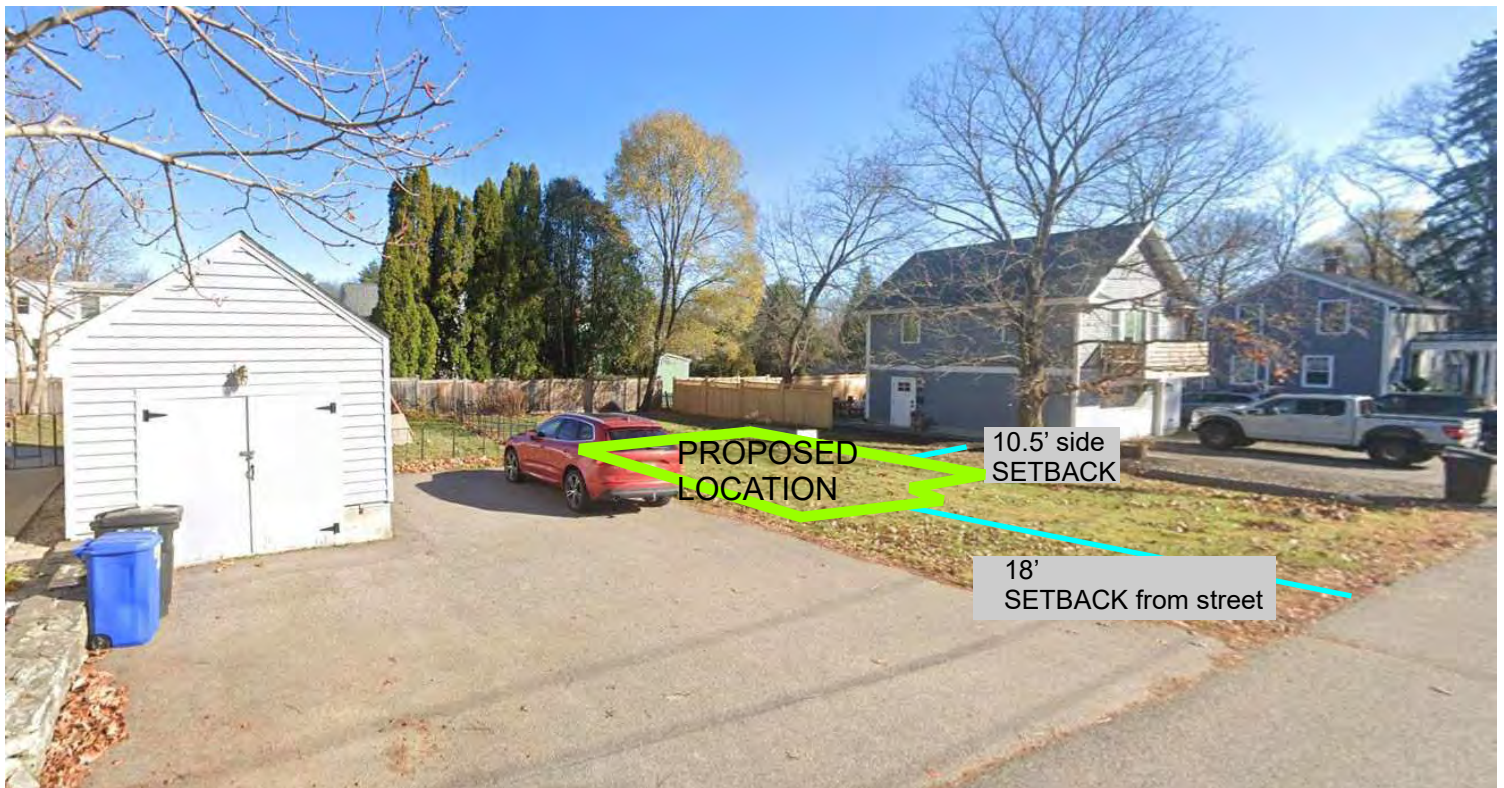
photo 2



Karolina and Paul Roggenbuck  
2 Sylvester Street  
Portsmouth, NH 03801

Proposed Secondary Dwelling location  
(not to scale)

photo 3





Karolina and Paul Roggenbuck  
2 Sylvester Street  
Portsmouth, NH 03801

site photos (page 1 of 7)





Karolina and Paul Roggenbuck  
2 Sylvester Street  
Portsmouth, NH 03801

site photos (page 2 of 7)





Karolina and Paul Roggenbuck  
2 Sylvester Street  
Portsmouth, NH 03801

site photos (page 3 of 7)





Karolina and Paul Roggenbuck  
2 Sylvester Street  
Portsmouth, NH 03801

site photos (page 4 of 7)





Karolina and Paul Roggenbuck  
2 Sylvester Street  
Portsmouth, NH 03801

site photos (page 5 of 7)





Karolina and Paul Roggenbuck  
2 Sylvester Street  
Portsmouth, NH 03801

site photos (page 6 of 7)





Karolina and Paul Roggenbuck  
2 Sylvester Street  
Portsmouth, NH 03801

site photos (page 7 of 7)



## II. NEW BUSINESS

C. The request of **Colbea Enterprises LLC** (Owners), for property located at **1980 Woodbury Avenue** whereas relief is needed to demolish and redevelop an existing gas station and convenience store which requires the following: 1) Special Exception from Section 10.440, Use #8.122 to allow a convenience goods 2 use with 24 hours per day operation; 2) Variance from Section 10.5B33.20 to allow for a front lot line build out of 0% where a minimum of 75% is required for a commercial building; 3) Variance from Section 10.5B34.60 to allow for a front setback from the lot line of 27 feet on Woodbury Avenue and 46 feet on Gosling Road where a maximum of 20 feet is required; 4) Variance from Section 10.5B83.10 to allow for parking spaces to be located between the principal building and the street; 5) Variance from Section 10.835.32 to allow for drive-through lanes, bypass lanes and stacking lanes to be located within 13 feet of the property line where 30 feet is required; 6) Variance from Section 10.835.31 to allow outdoor service facilities to be located within 38 feet of a lot line where 50 feet is required. 7) Variance from Section 10.843.33 to allow for pump islands to be located within 28 feet of the lot lines where 40 feet is required; 8) Variance from Section 10.1251.10 to allow for an aggregate sign area of 454 s.f. where a maximum of 223.5 s.f. is allowed; 9) Variance from Section 10.1251.20 to allow a 134 s.f. freestanding sign where a maximum of 100 s.f. is allowed; 10) Variance from Section 10.1253.10 to allow for a freestanding sign at a) a height of 26.5 feet where a maximum of 20 feet is allowed and b) two freestanding signs at a setback of 3 feet where 10 feet is required; and 11) Variance from Section 1252.40 to allow illumination of a gas pump canopy area that shall not be included in the sign area where it is distinguished from the background only by color stripes. Said property is located on Assessor Map 239 Lot 11 and lies within the Gateway Corridor (G1) District. (LU-25-39)

### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Gas Station and Convenience Store	<b>Gas Station and Convenience Store* Site Redevelopment</b>	Mixed Uses
<u>Lot area (sq. ft.):</u>	38,399	38,399	10,000 min. (Sec. 10.5B42.40)
<u>Street Frontage (ft.):</u>	375.2	375.2	100 min. (Sec. 10.5B32.30)
<u>Lot depth (ft.):</u>	200	200	NR min.
<u>Front Yard (Woodbury Ave) (ft.):</u>	10.4	27	0-20 max.



<u>Secondary Front Yard (Gosling Rd.) (ft.)</u>	>20	46	0-20	max.
<u>Left Yard (ft.):</u>	>10	34.8	10	min.
<u>Rear Yard (ft.):</u>	13	40.5	15	min.
<u>Height (ft.):</u>	18.4	28.8	40	max.
<u>Building Coverage (%):</u>	19.3	18.5	70	max.
<u>Building Footprint (SF):</u>	7,402	4,580	10,000	max
<u>Open Space Coverage (%):</u>	19	19.6	10	min.
<u>Front Lot Line Build Out (%)</u>	9	0	75	min.
<u>Facade Orientation</u>	Perpendicular	Parallel	Parallel	
<u>Drive-through, Bypass, Stacking Lanes setback (ft.)</u>	N/A	13	30	min.
<u>Outdoor Service Facilities setback (ft.)</u>	N/A	38	50	min.
<u>Pump Islands setback (ft.)</u>	23	28	40	min.
<u>Parking</u>	19	19**	12	min.
<u>Estimated Age of Structure:</u>	1995	Variance request(s) shown in red.		

\*Special Exception required for Convenience Goods 2 use 24 hours per day in the G1 District

\*\* Variance from Section 10.5B83.10 to allow for parking spaces to be located between the principal building and the street

### Signs Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Building Frontage (ft.):</u>	210	149	
<u>Wall Sign (SF)</u>	N/A	118.1	200 max.
<u>Freestanding Sign (SF)</u>	N/A	134	100 max.
<u>2<sup>nd</sup> Freestanding Sign (SF)</u>	N/A	61.2	75 (on different street from primary driveway) max.
<u>Freestanding Sign Setback (ft.)</u>	N/A	3	10 min.

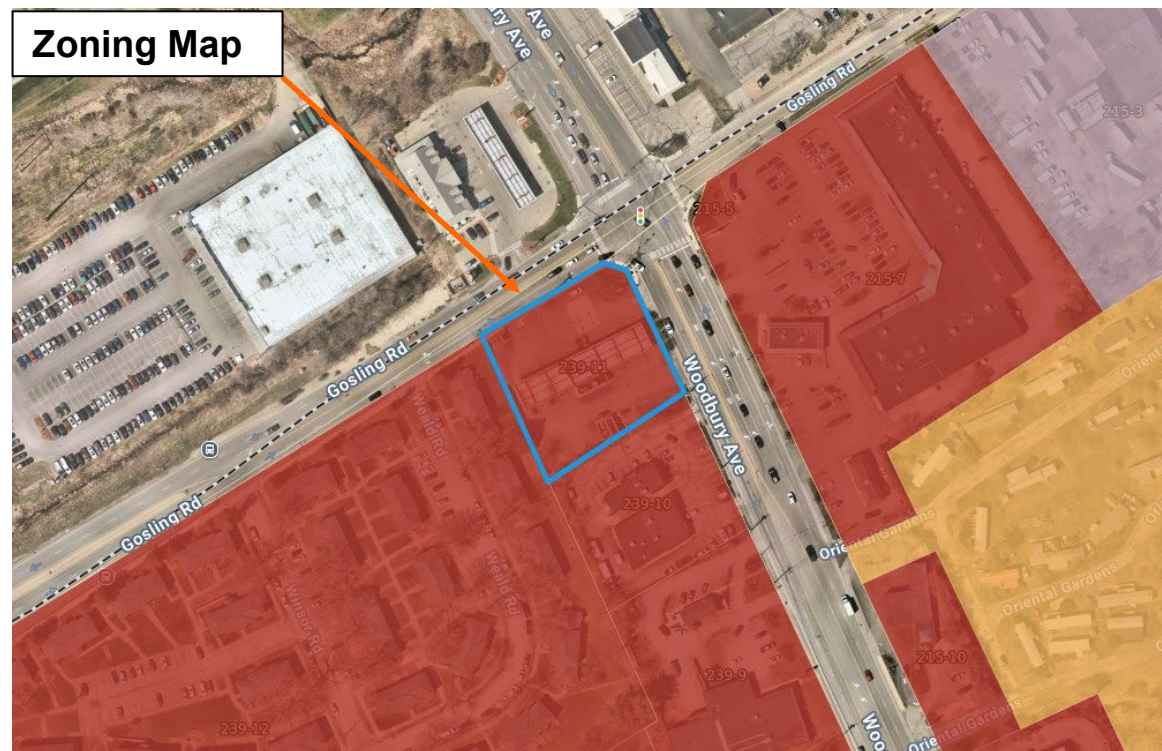
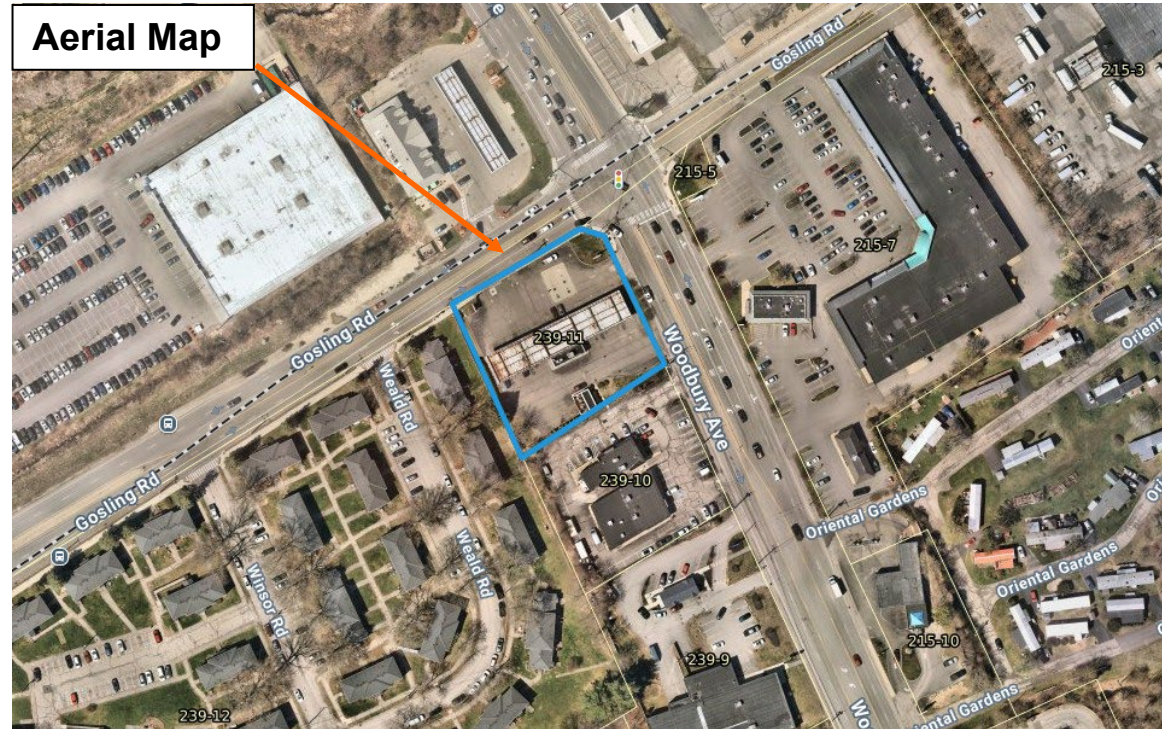
<u>2<sup>nd</sup> Freestanding Sign Setback (ft.)</u>	N/A	3	10 (on different street from primary driveway) min.
<u>Freestanding Sign Height (ft.)</u>	N/A	26.5	20 max.
<u>2<sup>nd</sup> Freestanding Sign Height (ft.)</u>	N/A	8	15 (on different street from primary driveway) max.
<u>Canopy Sign (SF)</u>	N/A	16 (x 5)***	20 max.
<u>Aggregate Sign area (SF)</u>	N/A	454	223.5 (1.5x bldg. frontage) max.
		Variance request(s) shown in red.	

\*\*\*Variance from Section 1252.40 to allow illumination of a gas pump canopy area that shall not be included in the sign area where it is distinguished from the background only by color stripes.

#### Other Permits/Approvals Required

- TAC / Planning Board Site Plan Review
- Planning Board - Conditional Use Permit (Motor Vehicle Service Station and Drive-through Uses)
- Sign Permit

## Neighborhood Context



## Previous Board of Adjustment Actions

- **July 18, 1995** – 1) A Special Exception as allowed in Article II, Section 10-206(17) to construct an entire new gasoline service station facility with a 40' x 45' convenience store, a 36' x 175.85' canopy and a 10' x 24' storage building, and 2) a Variance from Article II, Section 10-302 to allow the canopy: a) a 67.3' front yard where 70' is the minimum required, b) a 14.3' right side yard where the minimum is 30', and; c) a 9.2' left yard where the minimum is 30', 3) a Variance from Article II, Section 10-402(1) to allow the storage building a 6' rear yard where 10' is the minimum required, 4) a Variance from Article II, Section 10-206 to allow the outdoor storage of two 1000 gallon propane tanks where such use is not allowed, and; 5) a Variance from Article IX, Section 10-901 to allow: a) a 72.3 s.f. freestanding sign at the corner of Gosling Road and Woodbury Avenue with a 10' setback where 35' is required, and; b) a 72.3 s.f. freestanding sign abutting Gosling Road on the right side of the property with 0' front and 25'± side yards where 35' is the minimum required. The Board voted to **grant** the request for a Special Exception and Variances #2 and #3 as advertised and presented. The Board voted to **grant** the request for Variance #5 with the **stipulation**:
  - That the 72.3 s.f. freestanding sign abutting Gosling Road on the right of the property be maintained with a 5' front yard rather than a 0' front yard.

The Board voted to **deny** the request for Variance #4 as advertised and presented.

## Planning Department Comments

The applicant is requesting to redevelop the existing gas station and convenience store site at the intersection of Woodbury Ave. and Gosling Rd. on the Newington town line. The proposed Convenience Goods 2 use operating 24 hours per day requires a Special Exception and the proposed Motor Vehicle Service Station and Drive-through Facility uses require a Conditional Use Permit from the Planning Board. The proposed project is to construct a single-story, 4,580 s.f. convenience store with drive-thru and four fueling islands and requires relief from several dimensional requirements as proposed. The applicant is also proposing replacement of all signage on the property as part of the redevelopment and is seeking relief from Article 12 for the proposed sign package.

## 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.*

### **Variance Review Criteria**

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

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

**AND**

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

**OR**

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

### **10.235 Certain Representations Deemed Conditions**

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



Civil Engineers  
Structural Engineers  
Traffic Engineers  
Land Surveyors  
Landscape Architects  
Scientists

**NEW  
HAMPSHIRE  
200**

April 1, 2025

Portsmouth Zoning Board of Adjustment  
Planning and Sustainability Department  
1 Junkins Ave, 3<sup>rd</sup> Floor  
Portsmouth, NH 03801

via ViewPoint Cloud

**RE: Zoning Board of Adjustment Submittal  
1980 Woodbury Avenue – Colbea Enterprises, LLC – Tax Map 239 Lot 11  
TFM Project #46077.16**

Dear Board Members,

On behalf of our client, Colbea Enterprises, LLC, please find a Variance Application submission relative to the above-referenced project. The following materials are included in this submission:

- **Check for Board of Adjustment Non-Residential Application and Signs made out to “City of Portsmouth” (\$4,300);**
- **Special Exception Written Statement (1 copy);**
- **Variance Request Written Statements (1 copy of each);**
- **Letter of Authorization (1 copy);**
- **Site Photos (1 copy);**
- **Floor Plan, Elevations, and Photos from other Seasons Corner Market New Hampshire Locations (1 copy at 11”x17”);**
- **Sign Plan (1 copy at 11”x17”);**
- **Existing Conditions Plan (1 copy at 11”x17”); and**
- **Variance Plans titled “Proposed Gas Station and Convenience Store, 1980 Woodbury Avenue, Portsmouth New Hampshire, dated March 19, 2025” (1 copy at 11”x17”).**

#### Project Description

The project proposes the redevelopment of a gas station and convenience store located at 1980 Woodbury Avenue. The existing Tax Map 239 Lot 11 is approximately 0.8815 acres and is located within the Gateway Corridor Mixed Residential District (G1). The site is located at the intersection of Woodbury Avenue and Gosling Road at the Portsmouth-Newington town line.

TFMoran, Inc.  
48 Constitution Drive, Bedford, NH 03110  
T(603) 472-4488      www.tfmoran.com



TFMoran, Inc. Seacoast Division  
170 Commerce Way–Suite 102, Portsmouth, NH 03801  
T(603) 431-2222



**Zoning Board of Adjustment Submittal**  
**1980 Woodbury Avenue – Colbea Enterprises, LLC – Tax Map 239 Lot 11**  
**TFM Project #46077.16**

**March 18, 2025**

The existing site contains a 1,787 s.f. convenience store, centered between eight fueling islands (16 total fueling stations) with a canopy above both the convenience store and fueling islands. The canopy is 18.4' tall and set back 10.4' from the front property line along Woodbury Avenue.

The proposed project is to construct a single story, 4,580 s.f. convenience store with drive-thru and four fueling islands (eight total fueling stations). The four fueling islands will be located underneath a canopy located 27.4' from the front property line along Woodbury Avenue. The canopy and convenience store will both have a height of less than 40'. A total of 19 parking spaces are proposed, 11 of which, including two accessible spaces, are located along the front of the convenience store and the remaining 8 spaces at the fueling stations. Associated improvements include but are not limited to access, grading, utilities, stormwater management system, lighting, and landscaping.

Included in the submittal package are floor plans and elevations for the most recently constructed Seasons Corner Market in Tilton, NH and site photos from the Nashua, NH location.

The applicant requests a Special Exception for the proposed use, Convenience Store 2, within the Gateway Corridor Mixed Residential District. Based on our review of the City of Portsmouth's Zoning Ordinance, the applicant is also requesting a variance from the following sections. Included in the submittal items are written statements explaining how the requests comply with the requirements of the Zoning Ordinance.

Variance Request #1

Requirement: Portsmouth Zoning Ordinance ("PZO") Section 10.5B33.20, to allow for a Front Lot Line build out of 0 feet where a minimum of 127.5 feet would be the required 75% build out as required by the PZO for commercial and mixed-use buildings.

Variance Request #2

Requirement: Portsmouth Zoning Ordinance ("PZO") Section 10.5B34.60, to allow for a Front Setback from the lot line of 27.4 feet where a maximum of 20 feet is required.

Variance Request #3

Requirement: Portsmouth Zoning Ordinance ("PZO") Section 10.5B83.10, to allow for parking spaces to be located between the principal building and the street.

Variance Request #4

Portsmouth Zoning Ordinance ("PZO") Section 10.835.31, to allow for outdoor service facilities (transaction windows, menu boards, speakers, etc.) to be within the required setback of 50 feet – approximately 35 feet ± from the applicable lot lines.

Variance Request #5

Requirement: Portsmouth Zoning Ordinance ("PZO") Section 10.85.32, to allow for drive-through lanes, bypass lanes and stacking lanes (collectively the "drive-through lanes") to come within 13 feet of the required 30-foot setback from the applicable lot lines.

Variance Request #6

Requirement: Portsmouth Zoning Ordinance ("PZO") Section 10.843.33, to allow for fuel pumps to come within 28 feet of the required 40-foot setback from the applicable lot lines.

**Zoning Board of Adjustment Submittal**  
**1980 Woodbury Avenue – Colbea Enterprises, LLC – Tax Map 239 Lot 11**  
**TFM Project #46077.16**

**March 18, 2025**

Variance Request #7

Requirement: Portsmouth Zoning Ordinance (“PZO”) Section PZO 10.1251.10, to allow for a greater aggregate sign area (of 453.26 square feet) than the maximum area of 1.5’ per linear foot (which is 223.50 square feet) of the building frontage per establishment.

Variance Request #8

Requirement: Portsmouth Zoning Ordinance (“PZO”) Section PZO 10.1251.20, to allow for a larger sign area of 135 square feet where the PZO allows for a maximum sign area of 100 square feet.

Variance Request #9

Requirement: Portsmouth Zoning Ordinance (“PZO”) Section PZO 10.1253.10, to allow for a sign height of 26.25 feet where the PZO allows for a maximum sign height of 20 feet. Additionally, the Applicant requests a sign setback of 3.4 feet from the travel way where the PZO requires a setback of at least 10 feet.

We appreciate your consideration of these matters and look forward to presenting this project to you in the near future.

We respectfully request that we be placed on the upcoming agenda for the Zoning Board of Adjustment meeting on April 15, 2025.

If you have any questions or concerns, please do not hesitate to contact us.

Respectfully,  
**TFMoran, Inc.**



**Jason Cook**  
*Civil Project Engineer*

JKC/crr

### **Relief Requested**

The Applicant requests a Special Exception as per the Portsmouth Zoning Ordinance (the “PZO”) **Section 10.230, *et seq.***, to allow for Convenience Goods Store (C-2) use in the G1 Zone.

### **Background and Facts**

The Applicant is the owner of 1980 Woodbury Avenue in Portsmouth, NH, which is sometimes referred to as Tax Map 239, Lot 11 (the “Property”).

The Property is zoned Gateway Corridor (“G1” (*a Mixed Residential District*)) and sits right on the border of Portsmouth and Newington, NH. The Property is currently developed with a Mobil Fueling Station that is leased by the Applicant.

The Applicant intends to take the Property back from the Lessee and construct its own fueling station under its in-house brand, Season’s Corner Market. Notably, the Applicant is a family-owned company that retains and maintains its businesses as opposed to selling their businesses off post approvals. They operate many similar facilities in NH (Nashua, Hooksett and Tilton) along with some 55+ sites in RI, MA and NH.

The Property is currently surrounded by almost entirely commercial businesses save a residential multi-family housing development, which sits in the same zone, that directly abuts the site to the East off of Gosling Road where a large wooden fence, as well as a chain link fence and some vegetation provide screening and a buffer.

The Property is a corner lot with ingress/egress along both Gosling Road, as well as Woodbury Avenue.

Notably, there is a fire hydrant at the southwest corner of the Property very close to a utility pole.

The current Mobil Fueling Station has a convenience store, a large canopy that extends out both sides of the store, and there are eight (8) fueling islands with a total of twelve (12) fuel pumps. The Applicant intends to reduce the scope of the canopy, as well as reduce the number of fueling pumps to four (4) fueling islands with a total of eight (8) fuel pumps.

Additionally, the convenience store building (the “Store”) will be oriented to be flush against and, present facing to, Woodbury Avenue. Currently, the one entrance for Mobil faces Woodbury Avenue but is obscured by the large canopy.

The Applicant intends to have a ‘drive-through’ lane, which will be relative to ‘co-brand’ business (*i.e., Heavenly Donuts, Mary Lou’s Coffee, Honeydew Coffee, etc.*) that would be subordinate to the Store and fueling uses.

As it is intended that the Store will involve the preparation of food for off-site consumption the Applicant seeks a Special Exception for a Convenience Goods 2 Store as per the PZO.

According to a quick registry search the Property was conveyed from a previous owner (*Duncan Construction Company, Inc.*) in 2010 to Greenback Security, LLC. *See* Rockingham County Registry of Deeds at Book 5089, Page 870. Prior to the 2010 conveyance the Property was owned by Duncan Construction Company, Inc., since October 22, 1958, according to the same deed. The 1958 deed is recorded at Book 2461, Page 58, and appears to be too old to view online. Portsmouth adopted Zoning in 1926 and, while this Property may have been conforming at one time, the lot is not conforming under today’s standards, which is readily evident from all the dimensional relief needed to replace one fueling station with another fueling station.

### **Special Exception Criteria**

10.232.20 Special exceptions shall meet all of the following standards:

10.232.21: Standards as provided by this Ordinance for the particular **use** permitted by special exception;

*The proposed use requiring a Special Exception is a convenience store (C-Store) that would be collectively part of a fueling station. C-Stores are quite commonly attached to fueling stations. The fueling station aspect of the proposed use is an otherwise allowed use by right. Across Gosling Road there is a Cumberland Farms in Newington that has a fueling station and C-Store so what is being proposed is consistent with the surrounding area.*

*Finally, the existing business at the Property is a fueling station with a C-Store so what is being proposed is consistent with the ongoing activity to the Property.*

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

*The C-Store does not pose any immediate threat of fire, explosives, or toxins. Nor is the proposed C-Store a threat to the public or the adjacent properties.*

*Again, the adjacent properties are all commercial, some are fueling stations with C-Stores, others also have a drive through components (Dunkin) the same as the proposed project.*

*To the extent that the fueling station's gasoline may have the potential of fire, explosions, or toxins, the Applicant will use state-of-the-art protective measures to ensure public safety. That said, a Special Exception is not needed to allow for the fueling stations. Nonetheless, the aforesaid safety measures will aid to ensure the C-Store and, the public that frequents the C-Store, will be protected from any of the aforesaid threats.*

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

*The proposed use is a commercial use that is permitted in the zone. There is already a fueling station with a C-Store on site.*

*Additionally, there is the aforesaid Cumberland Farms across Gosling Road that is a similar commercial business.*

*Thus, the essential characteristics of the area remain unchanged.*



*As such, the proposed use is consistent with the surrounding area. Furthermore, what is being proposed will be an improvement to what is currently on site as the existing fueling station is working with outdated equipment.*

*Consequently, the proposal will aid in property values and will not be detrimental to the same.*

*There will be no outdoor storage of any equipment or vehicles. Nor will there be any odor, smoke, gas, dust, or other pollutants. The noise level will be no different from what is already in place.*

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

*What is being proposed is replacing one fueling station with a C-Store with another fueling station with a C-Store. The proposed project will also be reducing the number of fuel pumps on site from eight stations to four stations.*

*As such, the proposal may result in reducing the amount of traffic but it will certainly not add more traffic than what is already existing today. Additionally, The Applicant has retained traffic engineers for many projects throughout New England, all whom classify vehicle trips to our facilities as pass by trips, not destination trips, hence the level trip generation on the surrounding streets. Curb cuts are being modified to help vehicle ingress and egress, and the site has been designed to optimize safety, especially under the gas canopy, with only drive in (not stacked) fueling positions.*

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

*Similar response as above.*

*What is being proposed is replacing one fueling station with a C-Store with another fueling station with a C-Store. The proposed project will also be reducing the number of fuel pumps on site from eight stations to four stations.*

*As such, the proposal may result in reducing such demands but it will certainly not add further strain on the above referenced services in comparison to what is already existing today.*

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

*The project is well designed and the Applicant has engaged one of the most reputable engineering firms in the state to ensure that the Applicant's project's design will effectively handle all matters relative to stormwater runoff.*

## **VARIANCE #1 from PZO 10.5B33.20**

### **Relief Requested**

The Applicant (*Colbea, LLC*) request a variance from the *Portsmouth Zoning Ordinance* (*“PZO”*) *Section 10.5B33.20*, to allow for a Front Lot Line build out of 0 feet where a minimum of 127.5 feet would be the required 75% build out as required by the PZO for commercial and mixed-use buildings. However, the proposed project is outside the required 20-foot setback for this provision of the PZO to apply.

### **Background/Facts**

The Applicant is the owner of 1980 Woodbury Avenue in Portsmouth, NH, which is sometimes referred to as Tax Map 239, Lot 11 (the “Property”).

The Property is zoned Gateway Corridor (“G1” (*a Mixed Residential District*)) and sits right on the border of Portsmouth and Newington, NH. The Property is currently developed with a Mobil Fueling Station that is leased by the Applicant.

The Applicant intends to take the Property back from the Lessee and construct its own fueling station under its in-house brand, Season’s Corner Market. Notably, the Applicant is a family-owned company that retains and maintains its businesses as opposed to selling their businesses off post approvals. They operate many similar facilities in NH (Nashua, Hooksett and Tilton) along with some 55+ sites in MA and NH.

The Property is currently surrounded by almost entirely commercial businesses save a residential multi-family housing development, which sits in the same zone, that directly abuts the site to the East off of Gosling Road where a large wooden fence, as well as a chain link fence and some vegetation provide screening and a buffer.

The Property is a corner lot with ingress/egress along both Gosling Road, as well as Woodbury Avenue.

Notably, there is a fire hydrant at the southwest corner of the Property very close to a utility pole.

The current Mobil Fueling Station has a convenience store, a large canopy that extends out both sides of the store, and there are eight (8) fueling islands with a total of twelve (12) fuel pumps. The Applicant intends to reduce the scope of the canopy, as well as reduce the number of fueling pumps to four (4) fueling islands with a total of eight (8) fuel pumps.

Additionally, the convenience store building (the “Store”) will be oriented to be flush against and, present facing to, Woodbury Avenue. Currently, the one entrance for Mobil faces Woodbury Avenue but is obscured by the large canopy.

The Applicant intends to have a ‘drive-through’ lane, which will be relative to ‘co-brand’ business (*i.e.*, *Heavenly Donuts*, *Mary Lou’s Coffee*, *Honeydew Coffee*, *etc.*) that would be subordinate to the Store and fueling uses.

According to a quick registry search the Property was conveyed from a previous owner (*Duncan Construction Company, Inc.*) in 2010 to Greenback Security, LLC. *See* Rockingham County Registry of Deeds at Book 5089, Page 870. Prior to the 2010 conveyance the Property was owned by Duncan Construction Company, Inc., since October 22, 1958, according to the same deed. The 1958 deed is recorded at Book 2461, Page 58, and appears to be too old to view online. Portsmouth adopted Zoning in 1926 and, while this Property may have been conforming at one time, the lot is not conforming under today’s standards, which is readily evident from all the dimensional relief needed to replace one fueling station with another fueling station.

## **Variance Criteria**

### ***Portsmouth Zoning Ordinance (“PZO”) Section 10.5B33.20***

#### **1. Granting the variance would not be contrary to the public interest because:**

The standard for prongs one and two of the variance criteria is whether the requested relief, if granted, will *alter the essential character of the neighborhood* or *negatively impact the health, welfare, and safety of the surrounding area* and *mere conflict with the terms of the ordinance is insufficient* as all variance requests are somewhat averse to an ordinance, hence why the relief is sought in the first instance. Harborside Associates, L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508 (2011).

Furthermore, it is important to note that prong 1 is in the negative. That is to say that it does not require the Applicant to prove that the proposed use is IN the public interest, but only to prove that it is NOT CONTRARY TO the public interest.

Here, the immediate ask is to allow for Front Lot Line Build Out of 0 feet where the PZO would otherwise require 127.5 feet.

The ask is minimal. The Lot is small and, given that there will be fuel pumps and drive through lanes, the Store will have to be placed in the middle of the Lot. There is no reason to have the Store closer to the front line of the Property and to do so would not make sense for a convenience store fueling station.

That said, the Property has been historically used as a fueling station, which is an allowed use and, despite the need for a Special Exception to allow for a convenience store, such use has been at the Property for decades. This relief would be required for any similar convenience store and fueling use, much as it sits today or for any similar use in the future.



Consequently, there is no reason to believe that by granting this variance it would *alter the essential character of the neighborhood* since a fueling station/convenience store has been in place for so many years.

Similarly, given that the same use has been active on this Property for so many years there is no reason to suspect or to conclude that an approval would *negatively impact the health, welfare, and safety of the surrounding area*. Indeed, there is simply no evidence to point to that would suggest the public is at any risk.

Moreover, the minimal ask is only in *mere conflict* with the PZO.

**2. If the variance were granted, the spirit of the ordinance would be observed because:**

As a matter of law, the analysis for both prongs one and two of the Variance criteria are the same. As such, the Applicant incorporates and repeats the narrative of Prong 1 (above) and reiterates the same for Prong 2. Harborside Associates, L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508 (2011).

**3. Granting the variance would do substantial justice because:**

Perhaps the only guiding rule [on this standard] is that any loss to the individual that is not outweighed by a gain to the general public is an injustice. Malachy Glen Assocs. v. Town of Chichester, 155 N.H. 102, 109 (2007).

Here, the loss to the Applicant in not approving this variance would far outweigh any benefit to the general public.

The ask here is fairly minimal – to allow for a Front Lot Line Build Out of 0 feet because the Store is setback beyond the required 20 feet from the Front Line of the Property.

As such, by granting the variance the Applicant can make the most of their investment and improve the Property, as well as give the commercial use that currently exists at the Property a

much needed 'face-lift' and overall modernization of all of the convenience store and fueling components, bringing the fueling systems up to date with state of the art technology that is much safer to use and operate than the current system that is likely 25+ years old.

If denied, the public gains nothing, as this Proposal will be an improvement as to what is currently on site and said improvements will aid in the Property living up to its highest taxpaying potential.

**4. If the variance were granted, the values of the surrounding properties would not be diminished because:**

The surrounding area is zoned to allow for the fueling station and there has been a convenience store on site for decades and, moreover, there is another convenience store/fueling station directly across the street on the Newington side of Gosling Road. As such, this is an appropriate use for the area.

Very plainly, there is no evidence to suggest that granting this relief would negatively impact the surrounding property values.

**5. Unnecessary Hardship:**

"Hardship," under NH RSA 674:33, I (b) (1) (A) and (B) is a straight forward three step analyses;

- a. What are the special conditions of the property, if any;
- b. 'No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property,' **which can be said another way that if the variance is granted would it unreasonably frustrate the purpose ordinance;** and,
- c. Is the proposed use reasonable?

First, the special conditions (a) are satisfied due to the small size of the Property and the use that has historically existed at this location for decades.

The Property is a corner lot that is well suited for the in/out traffic that is inherent of a fueling station/convenience store.

What is being proposed is slightly smaller than what exists today because the amount of fuel pumps will be reduced by 50%.

To the extent that any residential areas will be impacted by the Proposal there is already adequate screening. This Property is literally the gateway from Newington into Portsmouth and is surrounded by several other commercial properties that would be expected to be in the vicinity of a fueling station.

Next is (b), whether “[n]o fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property.” See NH RSA 674:33, *et seq.* Or, again, if the variance is granted will it **unreasonably frustrate the purpose of the PZO.**

The purpose and goals of the applicable ordinance is to avoid overcrowding, and life and safety. More specifically, the City of Portsmouth desires to control the size of buildings along the Front Lot Line as it is preferred under the PZO to have buildings flush against the Front Lot Line for aesthetics.

Here, it does not make sense to have the front of the Store up against the Front Lot Line. This is not a historic building and fueling stations/convenience stores generate short visits by the public so the Front Lot Line should be clear, the building setback, and the fuel pumps prevalent.

Overall, we contend that what the Applicant is asking for with respect to this relief will not unreasonably frustrate the purpose of the PZO.

Lastly (c), the proposed use for the Property is for a fueling station and the applicable Zone allows for that use and, to the extent further relief is needed for the convenience store piece, such a use has been present for so long that the proposed use is reasonable.



## **VARIANCE #2 from PZO 10.5B34.60**

### **Relief Requested**

The Applicant (*Colbea, LLC*) request a variance from the *Portsmouth Zoning Ordinance* (*“PZO”*) *Section 10.5B34.60*, to allow for a Front Setback from the lot line of 0 feet where a maximum of 20 feet is required.

### **Background/Facts**

The Applicant is the owner of 1980 Woodbury Avenue in Portsmouth, NH, which is sometimes referred to as Tax Map 239, Lot 11 (the “Property”).

The Property is zoned Gateway Corridor (“G1” (*a Mixed Residential District*)) and sits right on the border of Portsmouth and Newington, NH. The Property is currently developed with a Mobil Fueling Station that is leased by the Applicant.

The Applicant intends to take the Property back from the Lessee and construct its own fueling station under its in-house brand, Season’s Corner Market. Notably, the Applicant is a family-owned company that retains and maintains its businesses as opposed to selling their businesses off post approvals. They operate many similar facilities in NH (Nashua, Hooksett and Tilton) along with some 55+ sites in MA and NH.

The Property is currently surrounded by almost entirely commercial businesses save a residential multi-family housing development, which sits in the same zone, that directly abuts the site to the East off of Gosling Road where a large wooden fence, as well as a chain link fence and some vegetation provide screening and a buffer.

The Property is a corner lot with ingress/egress along both Gosling Road, as well as Woodbury Avenue.

Notably, there is a fire hydrant at the southwest corner of the Property very close to a utility pole.

The current Mobil Fueling Station has a convenience store, a large canopy that extends out both sides of the store, and there are eight (8) fueling islands with a total of twelve (12) fuel pumps. The Applicant intends to reduce the scope of the canopy, as well as reduce the number of fueling pumps to four (4) fueling islands with a total of eight (8) fuel pumps.

Additionally, the convenience store building (the “Store”) will be oriented to be flush against and, present facing to, Woodbury Avenue. Currently, the one entrance for Mobil faces Woodbury Avenue but is obscured by the large canopy.

The Applicant intends to have a ‘drive-through’ lane, which will be relative to ‘co-brand’ business (*i.e., Heavenly Donuts, Mary Lou’s Coffee, Honeydew Coffee, etc.*) that would be subordinate to the Store and fueling uses.

According to a quick registry search the Property was conveyed from a previous owner (*Duncan Construction Company, Inc.*) in 2010 to Greenback Security, LLC. *See* Rockingham County Registry of Deeds at Book 5089, Page 870. Prior to the 2010 conveyance the Property was owned by Duncan Construction Company, Inc., since October 22, 1958, according to the same deed. The 1958 deed is recorded at Book 2461, Page 58, and appears to be too old to view online. Portsmouth adopted Zoning in 1926 and, while this Property may have been conforming at one time, the lot is not conforming under today’s standards, which is readily evident from all the dimensional relief needed to replace one fueling station with another fueling station.

### **Variance Criteria**

***Portsmouth Zoning Ordinance (“PZO”) Section 10.5B34.60***

**1. Granting the variance would not be contrary to the public interest because:**

The standard for prongs one and two of the variance criteria is whether the requested relief, if granted, will *alter the essential character of the neighborhood* or *negatively impact the health, welfare, and safety of the surrounding area* and *mere conflict with the terms of the ordinance is insufficient* as all variance requests are somewhat averse to an ordinance, hence why the relief is sought in the first instance. Harborside Associates, L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508 (2011).

Furthermore, it important to note that prong 1 is in the negative. That is to say that it does not require the Applicant to prove that the proposed use is IN the public interest, but only to prove that it is NOT CONTRARY TO the public interest.

Here, the immediate ask is to allow for Front Building Setback of 0 feet where the PZO would otherwise require a maximum of 20 feet.

The ask is minimal. The Lot is small and, given that there will be fuel pumps and drive through lanes, the Store will have to be placed in the middle of the Lot. There is no reason to have the Store closer to the front line of the Property and to do so would not make sense for a convenience store fueling station.

That said, the Property has been historically used as a fueling station, which is an allowed use and, despite the need for a Special Exception to allow for a convenience store, such use has been at the Property for decades. This relief would be required for any similar convenience store and fueling use, much as it sits today or for any similar use in the future.

Consequently, there is no reason to believe that by granting this variance it would *alter the essential character of the neighborhood* since a fueling station/convenience store has been in place for so many years.

Similarly, given that the same use has been active on this Property for so many years there is no reason to suspect or to conclude that an approval would *negatively impact the health, welfare, and safety of the surrounding area*. Indeed, there is simply no evidence to point to that would suggest the public is at any risk.

Moreover, the minimal ask is only in *mere conflict* with the PZO.

**2. If the variance were granted, the spirit of the ordinance would be observed because:**

As a matter of law, the analysis for both prongs one and two of the Variance criteria are the same. As such, the Applicant incorporates and repeats the narrative of Prong 1 (above) and reiterates the same for Prong 2. Harborside Associates, L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508 (2011).

**3. Granting the variance would do substantial justice because:**

Perhaps the only guiding rule [on this standard] is that any loss to the individual that is not outweighed by a gain to the general public is an injustice. Malachy Glen Assocs. v. Town of Chichester, 155 N.H. 102, 109 (2007).

Here, the loss to the Applicant in not approving this variance would far outweigh any benefit to the general public.

The ask here is fairly minimal – to allow for a Front Building Setback of 0 feet because the Store is setback well beyond the required maximum of 20 feet from the Front Lot Line of the Property.



As such, by granting the variance the Applicant can make the most of their investment and improve the Property, as well as give the commercial use that currently exists at the Property a much needed ‘face-lift’ and overall modernization of all of the Store and fueling components, bringing the fueling systems up to date with state-of-the-art technology that is much safer to use and operate than the current system at the Property.

If denied, the public gains nothing, as this Proposal will be an improvement as to what is currently on site and said improvements will aid in the Property living up to its highest taxpaying potential.

**4. If the variance were granted, the values of the surrounding properties would not be diminished because:**

The surrounding area is zoned to allow for the fueling station and there has been a convenience store in site for decades and, moreover, there is another convenience store/fueling station directly across the street on the Newington side of Gosling Road. As such, this is an appropriate use for the area.

Very plainly, there is no evidence to suggest that granting this relief would negatively impact the surrounding property values.

**5. Unnecessary Hardship:**

“Hardship,” under NH RSA 674:33, I (b) (1) (A) and (B) is a straight forward three step analyses;

- a. What are the special conditions of the property, if any;
- b. ‘No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the

property,’ which can be said another way that if the variance is granted *would it unreasonably frustrate the purpose ordinance*; and,

c. Is the proposed use reasonable?

First, the special conditions (a) are satisfied due to the small size of the Property and the use that has historically existed at this location for decades.

The Property is a corner lot that is well suited for the in/out traffic that is inherit of a fueling station/convenience store.

What is being proposed is slightly smaller than what exists today because the amount of fuel pumps will be reduced by 50%.

To the extent that any residential areas will be impacted by the Proposal there is already adequate screening. This Property is literally the Gateway from Newington into Portsmouth and is surrounded by several other commercial properties that would be expected to be in the vicinity of a fueling station.

Next is (b), whether “[n]o fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property.” *See* NH RSA 674:33, *et seq.* Or, again, if the variance is granted will it *unreasonably frustrate the purpose of the PZO.*

The purpose and goals of the applicable ordinance is to avoid overcrowding, and life and safety. More specifically, the City of Portsmouth desires to control the location of commercial buildings to be close to the Front Lot Line and likely encourage parking behind the commercial property for both aesthetics and to thwart overcrowding the neighborhood.

Here, it does not make sense to have the front of the Store up against the Front Lot Line. This is not a historic building and fueling stations/convenience stores generate short visits by the public so the Front Lot Line should be clear, the building setback, and the fuel pumps prevalent.

Overall, we contend that what the Applicant is asking for with respect to this relief will not unreasonably frustrate the purpose of the PZO and is, indeed, appropriate for a fueling station.

Lastly (c), the proposed use for the Property is for a fueling station and the applicable Zone allows for that use and, to the extent further relief is needed for the convenience store piece, such a use has been present for so long that the proposed use is reasonable.

## **VARIANCE #3 from PZO 10.5B83.10**

### **Relief Requested**

The Applicant (*Colbea, LLC*) request a variance from the *Portsmouth Zoning Ordinance* (*“PZO”*) *Section 10.5B83.10*, to allow for parking spaces to be located between the Principal building and the street.

### **Background/Facts**

The Applicant is the owner of 1980 Woodbury Avenue in Portsmouth, NH, which is sometimes referred to as Tax Map 239, Lot 11 (the “Property”).

The Property is zoned Gateway Corridor (“G1” (*a Mixed Residential District*)) and sits right on the border of Portsmouth and Newington, NH. The Property is currently developed with a Mobil Fueling Station that is leased by the Applicant.

The Applicant intends to take the Property back from the Lessee and construct its own fueling station under its in-house brand, Season’s Corner Market. Notably, the Applicant is a family-owned company that retains and maintains its businesses as opposed to selling their businesses off post approvals. They operate many similar facilities in NH (Nashua, Hooksett and Tilton) along with some 55+ sites in MA and NH.

The Property is currently surrounded by almost entirely commercial businesses save a residential multi-family housing development, which sits in the same zone, that directly abuts the site to the East off of Gosling Road where a large wooden fence, as well as a chain link fence and some vegetation provide screening and a buffer.

The Property is a corner lot with ingress/egress along both Gosling Road, as well as Woodbury Avenue.



Notably, there is a fire hydrant at the southwest corner of the Property very close to a utility pole.

The current Mobil Fueling Station has a convenience store, a large canopy that extends out both sides of the store, and there are eight (8) fueling islands with a total of twelve (12) fuel pumps. The Applicant intends to reduce the scope of the canopy, as well as reduce the number of fueling pumps to four (4) fueling islands with a total of eight (8) fuel pumps.

Additionally, the convenience store building (the “Store”) will be oriented to be flush against and, present facing to, Woodbury Avenue. Currently, the one entrance for Mobil faces Woodbury Avenue but is obscured by the large canopy.

The Applicant intends to have a ‘drive-through’ lane, which will be relative to ‘co-brand’ business (*i.e., Heavenly Donuts, Mary Lou’s Coffee, Honeydew Coffee, etc.*) that would be subordinate to the Store and fueling uses.

According to a quick registry search the Property was conveyed from a previous owner (*Duncan Construction Company, Inc.*) in 2010 to Greenback Security, LLC. *See* Rockingham County Registry of Deeds at Book 5089, Page 870. Prior to the 2010 conveyance the Property was owned by Duncan Construction Company, Inc., since October 22, 1958, according to the same deed. The 1958 deed is recorded at Book 2461, Page 58, and appears to be too old to view online. Portsmouth adopted Zoning in 1926 and, while this Property may have been conforming at one time, the lot is not conforming under today’s standards, which is readily evident from all the dimensional relief needed to replace one fueling station with another fueling station.

### **Variance Criteria**

***Portsmouth Zoning Ordinance (“PZO”) Section 10.5B83.10***

**1. Granting the variance would not be contrary to the public interest because:**

The standard for prongs one and two of the variance criteria is whether the requested relief, if granted, will *alter the essential character of the neighborhood* or *negatively impact the health, welfare, and safety of the surrounding area* and *mere conflict with the terms of the ordinance is insufficient* as all variance requests are somewhat averse to an ordinance, hence why the relief is sought in the first instance. Harborside Associates, L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508 (2011).

Furthermore, it important to note that prong 1 is in the negative. That is to say that it does not require the Applicant to prove that the proposed use is IN the public interest, but only to prove that it is NOT CONTRARY TO the public interest.

Here, the immediate ask is to allow for off street parking to be present between the principal Building (aka the Store) and the front Property line.

The ask is minimal. The Lot is small and, given that there will be fuel pumps and drive through lanes, the Store will have to be placed in the middle of the Lot. There is no reason to have the Store closer to the front line of the Property and to do so would not make sense for a convenience store fueling station.

That said, the Property has been historically used as a fueling station, which is an allowed use and, despite the need for a Special Exception to allow for a convenience store, such use has been at the Property for decades. This relief would be required for any similar convenience store and fueling use, much as it sits today or for any similar use in the future.

Consequently, there is no reason to believe that by granting this variance it would *alter the essential character of the neighborhood* since a fueling station/convenience store has been in place for so many years.

Similarly, given that the same use has been active on this Property for so many years there is no reason to suspect or to conclude that an approval would *negatively impact the health, welfare, and safety of the surrounding area*. Indeed, there is simply no evidence to point to that would suggest the public is at any risk.

Moreover, the minimal ask is only in *mere conflict* with the PZO.

**2. If the variance were granted, the spirit of the ordinance would be observed because:**

As a matter of law, the analysis for both prongs one and two of the Variance criteria are the same. As such, the Applicant incorporates and repeats the narrative of Prong 1 (above) and reiterates the same for Prong 2. Harborside Associates, L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508 (2011).

**3. Granting the variance would do substantial justice because:**

Perhaps the only guiding rule [on this standard] is that any loss to the individual that is not outweighed by a gain to the general public is an injustice. Malachy Glen Assocs. v. Town of Chichester, 155 N.H. 102, 109 (2007).

Here, the loss to the Applicant in not approving this variance would far outweigh any benefit to the general public.

The ask here is fairly minimal – to allow for off street parking to occur between the front Property line and the Store. Generally, any fueling station is setup so people pull into the site and park in front of the convenience store to enter – not park around back only to walk around front.

As such, by granting the variance the Applicant can make the most of their investment and improve the Property, as well as give the commercial use that currently exists at the Property a much needed ‘face-lift’ and overall modernization of all of the Store and fueling components, bringing the fueling systems up to date with state-of-the-art technology that is much safer to use and operate than the current system at the Property.

If denied, the public gains nothing, as this Proposal will be an improvement as to what is currently on site and said improvements will aid in the Property living up to its highest taxpaying potential.

**4. If the variance were granted, the values of the surrounding properties would not be diminished because:**

The surrounding area is zoned to allow for the fueling station and there has been a convenience store in site for decades and, moreover, there is another convenience store/fueling station directly across the street on the Newington side of Gosling Road. As such, this is an appropriate use for the area.

Very plainly, there is no evidence to suggest that granting this relief would negatively impact the surrounding property values.

**5. Unnecessary Hardship:**

“Hardship,” under NH RSA 674:33, I (b) (1) (A) and (B) is a straight forward three step analyses;

- a. What are the special conditions of the property, if any;
- b. ‘No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the

property,’ which can be said another way that if the variance is granted *would it unreasonably frustrate the purpose ordinance*; and,

c. Is the proposed use reasonable?

First, the special conditions (a) are satisfied due to the small size of the Property and the use that has historically existed at this location for decades.

The Property is a corner lot that is well suited for the in/out traffic that is inherit of a fueling station/convenience store.

What is being proposed is slightly smaller than what exists today because the amount of fuel pumps will be reduced by 50%.

To the extent that any residential areas will be impacted by the Proposal there is already adequate screening. This Property is literally the Gateway from Newington into Portsmouth and is surrounded by several other commercial properties that would be expected to be in the vicinity of a fueling station.

Next is (b), whether “[n]o fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property.” *See* NH RSA 674:33, *et seq.* Or, again, if the variance is granted will it *unreasonably frustrate the purpose of the PZO.*

The purpose and goals of the applicable ordinance is to avoid motor vehicles parking in front of buildings in a neighborhood where the Zoning is tailored to keep buildings close to the Front Lot line likely for aesthetics. More specifically, the City of Portsmouth desires to control the location of commercial buildings to be close to the Front Lot Line and likely encourage parking



behind the commercial property for both aesthetics and to thwart overcrowding the neighborhood.

Here, it does not make sense to have the front of the Store up against the Front Lot Line. This is not a historic building and fueling stations/convenience stores generate short visits by the public so the Front Lot Line should be clear, the building setback, and the fuel pumps prevalent.

As such, it is far more logical to allow the parking to take place between the Store and the Front Lot line.

Overall, we contend that what the Applicant is asking for with respect to this relief will not unreasonably frustrate the purpose of the PZO and is, indeed, appropriate for a fueling station.

Lastly (c), the proposed use for the Property is for a fueling station and the applicable Zone allows for that use and, to the extent further relief is needed for the convenience store piece, such a use has been present for so long that the proposed use is reasonable.

## **VARIANCE #4 from PZO 10.835.31**

### **Relief Requested**

The Applicant (*Colbea, LLC*) request a variance from the *Portsmouth Zoning Ordinance* (***“PZO”***) ***Section 10.835.31***, to allow for outdoor service facilities (transaction windows, menu boards, speakers, *etc.*) to be within the required setback of 50 feet – approximately 35 feet +/- from the applicable lot lines.

### **Background/Facts**

The Applicant is the owner of 1980 Woodbury Avenue in Portsmouth, NH, which is sometimes referred to as Tax Map 239, Lot 11 (the “Property”).

The Property is zoned Gateway Corridor (“G1” (*a Mixed Residential District*)) and sits right on the border of Portsmouth and Newington, NH. The Property is currently developed with a Mobil Fueling Station that is leased by the Applicant.

The Applicant intends to take the Property back from the Lessee and construct its own fueling station under its in-house brand, Season’s Corner Market. Notably, the Applicant is a family-owned company that retains and maintains its businesses as opposed to selling their businesses off post approvals. They operate many similar facilities in NH (Nashua, Hooksett and Tilton) along with some 55+ sites in MA and NH.

The Property is currently surrounded by almost entirely commercial businesses save a residential multi-family housing development, which sits in the same zone, that directly abuts the site to the East off of Gosling Road where a large wooden fence, as well as a chain link fence and some vegetation provide screening and a buffer.

The Property is a corner lot with ingress/egress along both Gosling Road, as well as Woodbury Avenue.

Notably, there is a fire hydrant at the southwest corner of the Property very close to a utility pole.

The current Mobil Fueling Station has a convenience store, a large canopy that extends out both sides of the store, and there are eight (8) fueling islands with a total of twelve (12) fuel pumps. The Applicant intends to reduce the scope of the canopy, as well as reduce the number of fueling pumps to four (4) fueling islands with a total of eight (8) fuel pumps.

Additionally, the convenience store building (the “Store”) will be oriented to be flush against and, present facing to, Woodbury Avenue. Currently, the one entrance for Mobil faces Woodbury Avenue but is obscured by the large canopy.

The Applicant intends to have a ‘drive-through’ lane, which will be relative to ‘co-brand’ business (*i.e., Heavenly Donuts, Mary Lou’s Coffee, Honeydew Coffee, etc.*) that would be subordinate to the Store and fueling uses.

According to a quick registry search the Property was conveyed from a previous owner (*Duncan Construction Company, Inc.*) in 2010 to Greenback Security, LLC. *See* Rockingham County Registry of Deeds at Book 5089, Page 870. Prior to the 2010 conveyance the Property was owned by Duncan Construction Company, Inc., since October 22, 1958, according to the same deed. The 1958 deed is recorded at Book 2461, Page 58, and appears to be too old to view online. Portsmouth adopted Zoning in 1926 and, while this Property may have been conforming at one time, the lot is not conforming under today’s standards, which is readily evident from all the dimensional relief needed to replace one fueling station with another fueling station.

## **Variance Criteria**

### ***Portsmouth Zoning Ordinance (“PZO”) Section 10.835.31***

#### **1. Granting the variance would not be contrary to the public interest because:**

The standard for prongs one and two of the variance criteria is whether the requested relief, if granted, will *alter the essential character of the neighborhood* or *negatively impact the health, welfare, and safety of the surrounding area* and *mere conflict with the terms of the ordinance is insufficient* as all variance requests are somewhat averse to an ordinance, hence why the relief is sought in the first instance. Harborside Associates, L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508 (2011).

Furthermore, it important to note that prong 1 is in the negative. That is to say that it does not require the Applicant to prove that the proposed use is IN the public interest, but only to prove that it is NOT CONTRARY TO the public interest.

Here, the immediate ask is to allow for outdoor service facilities (transaction windows, menu boards, speakers, etc.) to encroach into the required 50-foot setback and come within 35 feet +/- of the Property lines.

The ask is minimal. The Lot is small and, given that there will be fuel pumps and drive through lanes, the Store will have to be placed in the middle of the Lot. Indeed, the dimensional constraints are such that this section of the PZO would be difficult, if not impossible, to comply with.

That said, the Property has been historically used as a fueling station, which is an allowed use and, despite the need for a Special Exception to allow for a convenience store, such use has been

at the Property for decades. This relief would be required for any similar convenience store and fueling use, much as it sits today or for any similar use in the future.

The outdoor service facilities are common for any drive-through and there are other drive-throughs in the vicinity of the Property.

Consequently, there is no reason to believe that by granting this variance it would *alter the essential character of the neighborhood* since a fueling station/convenience store has been in place for so many years.

Similarly, given that the same use has been active on this Property for so many years there is no reason to suspect or to conclude that an approval would *negatively impact the health, welfare, and safety of the surrounding area*. Indeed, there is simply no evidence to point to that would suggest the public is at any risk.

Moreover, the minimal ask is only in *mere conflict* with the PZO.

**2. If the variance were granted, the spirit of the ordinance would be observed because:**

As a matter of law, the analysis for both prongs one and two of the Variance criteria are the same. As such, the Applicant incorporates and repeats the narrative of Prong 1 (above) and reiterates the same for Prong 2. Harborside Associates, L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508 (2011).

**3. Granting the variance would do substantial justice because:**

Perhaps the only guiding rule [on this standard] is that any loss to the individual that is not outweighed by a gain to the general public is an injustice. Malachy Glen Assocs. v. Town of Chichester, 155 N.H. 102, 109 (2007).

Here, the loss to the Applicant in not approving this variance would far outweigh any benefit to the general public.



The ask here is fairly minimal – to allow for a minor encroachment into a setback for the standard outdoor service facilities that are inherit with fueling stations and similarly situated businesses.

As such, by granting the variance the Applicant can make the most of their investment and improve the Property, as well as give the commercial use that currently exists at the Property a much needed ‘face-lift’ and overall modernization of all of the Store and fueling components, bringing the fueling systems up to date with state-of-the-art technology that is much safer to use and operate than the current system at the Property.

If denied, the public gains nothing, as this Proposal will be an improvement as to what is currently on site and said improvements will aid in the Property living up to its highest taxpaying potential.

**4. If the variance were granted, the values of the surrounding properties would not be diminished because:**

The surrounding area is zoned to allow for the fueling station and there has been a convenience store in site for decades and, moreover, there is another convenience store/fueling station directly across the street on the Newington side of Gosling Road. As such, this is an appropriate use for the area.

Very plainly, there is no evidence to suggest that granting this relief would negatively impact the surrounding property values.

**5. Unnecessary Hardship:**

“Hardship,” under NH RSA 674:33, I (b) (1) (A) and (B) is a straight forward three step analyses;

- a. What are the special conditions of the property, if any;

- b. 'No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property,' **which can be said another way that if the variance is granted *would it unreasonably frustrate the purpose ordinance***; and,
- c. Is the proposed use reasonable?

First, the special conditions (a) are satisfied due to the small size of the Property and the use that has historically existed at this location for decades.

The Property is a corner lot that is well suited for the in/out traffic that is inherent of a fueling station/convenience store.

What is being proposed is slightly smaller than what exists today because the amount of fuel pumps will be reduced by 50%.

To the extent that any residential areas will be impacted by the Proposal there is already adequate screening. This Property is literally the Gateway from Newington into Portsmouth and is surrounded by several other commercial properties that would be expected to be in the vicinity of a fueling station.

Next is (b), whether "[n]o fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property." See NH RSA 674:33, *et seq.* Or, again, if the variance is granted will it **unreasonably frustrate the purpose of the PZO.**

The purpose and goals of the applicable ordinance is to avoid motor vehicles parking in front of buildings in a neighborhood where the Zoning is tailored to keep buildings close to the Front Lot line likely for aesthetics. More specifically, the City of Portsmouth desires to control the

location of commercial buildings to be close to the Front Lot Line and likely encourage parking behind the commercial property for both aesthetics and to thwart overcrowding the neighborhood.

The purpose and goals of the applicable ordinance provide for buffering between the Property line and the activity of a drive-through and, in this case, its outdoor services facilities. This is done for both aesthetics and life and safety.

Here, there is already sufficient buffering between the proposed drive-through lanes and the abutting western property line. Furthermore, the corner of the Property where this activity will be located is the furthest point from any other activity taking place on site.

Overall, we contend that what the Applicant is asking for with respect to this relief will not unreasonably frustrate the purpose of the PZO and is, indeed, appropriate for a fueling station.

Lastly (c), the proposed use for the Property is for a fueling station and the applicable Zone allows for that use and, to the extent further relief is needed for the convenience store piece, such a use has been present for so long that the proposed use is reasonable.

## **VARIANCE #5 from PZO 10.835.32**

### **Relief Requested**

The Applicant (*Colbea, LLC*) request a variance from the *Portsmouth Zoning Ordinance* (***“PZO”***) ***Section 10.85.32***, to allow for drive-through lanes, bypass lanes and stacking lanes (*collectively the “drive-through lanes”*) to come within 13 feet of the required 30-foot setback from the applicable lot lines.

### **Background/Facts**

The Applicant is the owner of 1980 Woodbury Avenue in Portsmouth, NH, which is sometimes referred to as Tax Map 239, Lot 11 (the “Property”).

The Property is zoned Gateway Corridor (“G1” (*a Mixed Residential District*)) and sits right on the border of Portsmouth and Newington, NH. The Property is currently developed with a Mobil Fueling Station that is leased by the Applicant.

The Applicant intends to take the Property back from the Lessee and construct its own fueling station under its in-house brand, Season’s Corner Market. Notably, the Applicant is a family-owned company that retains and maintains its businesses as opposed to selling their businesses off post approvals. They operate many similar facilities in NH (Nashua, Hooksett and Tilton) along with some 55+ sites in MA and NH.

The Property is currently surrounded by almost entirely commercial businesses save a residential multi-family housing development, which sits in the same zone, that directly abuts the site to the East off of Gosling Road where a large wooden fence, as well as a chain link fence and some vegetation provide screening and a buffer.

The Property is a corner lot with ingress/egress along both Gosling Road, as well as Woodbury Avenue.

Notably, there is a fire hydrant at the southwest corner of the Property very close to a utility pole.

The current Mobil Fueling Station has a convenience store, a large canopy that extends out both sides of the store, and there are eight (8) fueling islands with a total of twelve (12) fuel pumps. The Applicant intends to reduce the scope of the canopy, as well as reduce the number of fueling pumps to four (4) fueling islands with a total of eight (8) fuel pumps.

Additionally, the convenience store building (the “Store”) will be oriented to be flush against and, present facing to, Woodbury Avenue. Currently, the one entrance for Mobil faces Woodbury Avenue but is obscured by the large canopy.

The Applicant intends to have a ‘drive-through’ lane, which will be relative to ‘co-brand’ business (*i.e., Heavenly Donuts, Mary Lou’s Coffee, Honeydew Coffee, etc.*) that would be subordinate to the Store and fueling uses.

According to a quick registry search the Property was conveyed from a previous owner (*Duncan Construction Company, Inc.*) in 2010 to Greenback Security, LLC. *See* Rockingham County Registry of Deeds at Book 5089, Page 870. Prior to the 2010 conveyance the Property was owned by Duncan Construction Company, Inc., since October 22, 1958, according to the same deed. The 1958 deed is recorded at Book 2461, Page 58, and appears to be too old to view online. Portsmouth adopted Zoning in 1926 and, while this Property may have been conforming at one time, the lot is not conforming under today’s standards, which is readily evident from all the dimensional relief needed to replace one fueling station with another fueling station.



## **Variance Criteria**

### ***Portsmouth Zoning Ordinance (“PZO”) Section 10.835.32***

#### **1. Granting the variance would not be contrary to the public interest because:**

The standard for prongs one and two of the variance criteria is whether the requested relief, if granted, will *alter the essential character of the neighborhood* or *negatively impact the health, welfare, and safety of the surrounding area* and *mere conflict with the terms of the ordinance is insufficient* as all variance requests are somewhat averse to an ordinance, hence why the relief is sought in the first instance. Harborside Associates, L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508 (2011).

Furthermore, it is important to note that prong 1 is in the negative. That is to say that it does not require the Applicant to prove that the proposed use is IN the public interest, but only to prove that it is NOT CONTRARY TO the public interest.

Here, the immediate ask is to allow for drive-through lanes, bypass lanes, and stacking lanes to encroach into the required 30-foot setback up to 13 feet along the westerly side of the Property.

The Lot is small and given those constraints the Store will have to be placed in the middle of the Lot. Approximately 30 feet from the westerly side of the Property is where the edge of the logical location for the Store.

Despite this ask, there is buffering between the Property and the abutting property to the west. Traffic will enter from either entrance and circle around behind the Store at the most remote part of the Property from the intersections of Gosling Road and Woodbury Avenue. In

doing so, the ‘action’ from the drive-through will be as pushed as far back as possible in light of the dimensional constraints of the Property.

The Property has been historically used as a fueling station, which is an allowed use and, despite the need for a Special Exception to allow for a convenience store, such use has been at the Property for decades. It is common for such businesses as the one being proposed to have a drive-through component and this relief would be required for any similarly situated business. Notably, there is a drive-through on the abutting property to the south (*Dunkin*) that, presumably, also does not comply with the applicable section of the PZO. Therefore, a drive-through – even one encroaching into the applicable setback – is consistent with the neighborhood.

Consequently, there is no reason to believe that by granting this variance it would *alter the essential character of the neighborhood* since a fueling station/convenience store has been in place for so many years.

Similarly, given that the same use has been active on this Property for so many years there is no reason to suspect or to conclude that an approval would *negatively impact the health, welfare, and safety of the surrounding area*. Indeed, there is simply no evidence to point to that would suggest the public is at any risk.

Moreover, the minimal ask is only in *mere conflict* with the PZO.

**2. If the variance were granted, the spirit of the ordinance would be observed because:**

As a matter of law, the analysis for both prongs one and two of the Variance criteria are the same. As such, the Applicant incorporates and repeats the narrative of Prong 1 (above) and reiterates the same for Prong 2. Harborside Associates, L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508 (2011).

**3. Granting the variance would do substantial justice because:**

Perhaps the only guiding rule [on this standard] is that any loss to the individual that is not outweighed by a gain to the general public is an injustice. Malachy Glen Assocs. v. Town of Chichester, 155 N.H. 102, 109 (2007).

Here, the loss to the Applicant in not approving this variance would far outweigh any benefit to the general public.

The ask here is fairly minimal – to allow for an encroachment into a setback to accommodate a common and typical drive-through component to a fueling station.

As such, by granting the variance the Applicant can make the most of their investment and improve the Property, as well as give the commercial use that currently exists at the Property a much needed ‘face-lift’ and overall modernization of all of the Store and fueling components, bringing the fueling systems up to date with state-of-the-art technology that is much safer to use and operate than the current system at the Property.

If denied, the public gains nothing, as this Proposal will be an improvement as to what is currently on site and said improvements will aid in the Property living up to its highest taxpaying potential.

**4. If the variance were granted, the values of the surrounding properties would not be diminished because:**

The surrounding area is zoned to allow for the fueling station and there has been a convenience store in site for decades and, moreover, there is another convenience store/fueling station directly across the street on the Newington side of Gosling Road. As such, this is an appropriate use for the area.

Very plainly, there is no evidence to suggest that granting this relief would negatively impact the surrounding property values.

**5. Unnecessary Hardship:**

“Hardship,” under NH RSA 674:33, I (b) (1) (A) and (B) is a straight forward three step analyses;

- a. What are the special conditions of the property, if any;
- b. ‘No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property,’ **which can be said another way that if the variance is granted *would it unreasonably frustrate the purpose ordinance***; and,
- c. Is the proposed use reasonable?

First, the special conditions (a) are satisfied due to the small size of the Property and the use that has historically existed at this location for decades.

The Property is a corner lot that is well suited for the in/out traffic that is inherit of a fueling station/convenience store.

What is being proposed is slightly smaller than what exists today because the amount of fuel pumps will be reduced by 50%.

To the extent that any residential areas will be impacted by the Proposal there is already adequate screening. This Property is literally the Gateway from Newington into Portsmouth and is surrounded by several other commercial properties that would be expected to be in the vicinity of a fueling station.

Next is (b), whether “[n]o fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property.” *See* NH RSA 674:33, *et seq.* Or, again, if the variance is granted will it **unreasonably frustrate the purpose of the PZO.**

The purpose and goals of the applicable ordinance provide for buffering between the Property line and the activity of a drive-through. This is done for both aesthetics and life and safety.

Here, there is already sufficient buffering between the proposed drive-through lanes and the abutting western property line. Furthermore, the corner of the Property where this activity will be located is the furthest point from any other activity taking place on site.

Overall, we contend that what the Applicant is asking for with respect to this relief will not unreasonably frustrate the purpose of the PZO and is, indeed, appropriate for a fueling station.

Lastly (c), the proposed use for the Property is for a fueling station and the applicable Zone allows for that use and, to the extent further relief is needed for the convenience store piece, such a use has been present for so long that the proposed use is reasonable.



## **VARIANCE #6 from PZO 10.843.33**

### **Relief Requested**

The Applicant (*Colbea, LLC*) request a variance from the *Portsmouth Zoning Ordinance* (*“PZO”*) *Section 10.843.33*, to allow for fuel pumps to come within 28 feet of the required 40-foot setback from the applicable lot lines.

### **Background/Facts**

The Applicant is the owner of 1980 Woodbury Avenue in Portsmouth, NH, which is sometimes referred to as Tax Map 239, Lot 11 (the “Property”).

The Property is zoned Gateway Corridor (“G1” (*a Mixed Residential District*)) and sits right on the border of Portsmouth and Newington, NH. The Property is currently developed with a Mobil Fueling Station that is leased by the Applicant.

The Applicant intends to take the Property back from the Lessee and construct its own fueling station under its in-house brand, Season’s Corner Market. Notably, the Applicant is a family-owned company that retains and maintains its businesses as opposed to selling their businesses off post approvals. They operate many similar facilities in NH (Nashua, Hooksett and Tilton) along with some 55+ sites in MA and NH.

The Property is currently surrounded by almost entirely commercial businesses save a residential multi-family housing development, which sits in the same zone, that directly abuts the site to the East off of Gosling Road where a large wooden fence, as well as a chain link fence and some vegetation provide screening and a buffer.

The Property is a corner lot with ingress/egress along both Gosling Road, as well as Woodbury Avenue.

Notably, there is a fire hydrant at the southwest corner of the Property very close to a utility pole.

The current Mobil Fueling Station has a convenience store, a large canopy that extends out both sides of the store, and there are eight (8) fueling islands with a total of twelve (12) fuel pumps. The Applicant intends to reduce the scope of the canopy, as well as reduce the number of fueling pumps to four (4) fueling islands with a total of eight (8) fuel pumps.

Additionally, the convenience store building (the “Store”) will be oriented to be flush against and, present facing to, Woodbury Avenue. Currently, the one entrance for Mobil faces Woodbury Avenue but is obscured by the large canopy.

The Applicant intends to have a ‘drive-through’ lane, which will be relative to ‘co-brand’ business (*i.e., Heavenly Donuts, Mary Lou’s Coffee, Honeydew Coffee, etc.*) that would be subordinate to the Store and fueling uses.

According to a quick registry search the Property was conveyed from a previous owner (*Duncan Construction Company, Inc.*) in 2010 to Greenback Security, LLC. *See* Rockingham County Registry of Deeds at Book 5089, Page 870. Prior to the 2010 conveyance the Property was owned by Duncan Construction Company, Inc., since October 22, 1958, according to the same deed. The 1958 deed is recorded at Book 2461, Page 58, and appears to be too old to view online. Portsmouth adopted Zoning in 1926 and, while this Property may have been conforming at one time, the lot is not conforming under today’s standards, which is readily evident from all the dimensional relief needed to replace one fueling station with another fueling station.

### **Variance Criteria**

***Portsmouth Zoning Ordinance (“PZO”) Section 10.843.33***

**1. Granting the variance would not be contrary to the public interest because:**

The standard for prongs one and two of the variance criteria is whether the requested relief, if granted, will *alter the essential character of the neighborhood* or *negatively impact the health, welfare, and safety of the surrounding area* and *mere conflict with the terms of the ordinance is insufficient* as all variance requests are somewhat averse to an ordinance, hence why the relief is sought in the first instance. Harborside Associates, L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508 (2011).

Furthermore, it important to note that prong 1 is in the negative. That is to say that it does not require the Applicant to prove that the proposed use is IN the public interest, but only to prove that it is NOT CONTRARY TO the public interest.

Here, the immediate ask is to allow for fuel pumps to encroach into the required 40-foot setback within 28 feet along the easterly side of the Property. Otherwise, all other sides of the Property comply with this section of the PZO.

The Lot is small and given those constraints the Store will have to be placed in the middle of the Lot and the fuel pumps will logically go in front of the Store. Notably, there will be fewer pumps than are currently on site today and, moreover, one can see on the current conditions plan that the configuration of the fuel pumps does not presently conform to this section of the PZO. Despite the aforesaid non-conformity, the current encroachment has not, to the best of our knowledge, ever caused any problems.

The Property has been historically used as a fueling station, which is an allowed use and, despite the need for a Special Exception to allow for a convenience store, such use has been at

the Property for decades. It is common for such businesses as the one being proposed to have a drive-through component and this relief would be required for any similarly situated business. Notably, there is another fueling station across Gosling Road in the abutting Town.

Consequently, there is no reason to believe that by granting this variance it would *alter the essential character of the neighborhood* since a fueling station/convenience store has been in place for so many years.

Similarly, given that the same use has been active on this Property for so many years there is no reason to suspect or to conclude that an approval would *negatively impact the health, welfare, and safety of the surrounding area*. Indeed, there is simply no evidence to point to that would suggest the public is at any risk.

Moreover, the minimal ask is only in *mere conflict* with the PZO.

**2. If the variance were granted, the spirit of the ordinance would be observed because:**

As a matter of law, the analysis for both prongs one and two of the Variance criteria are the same. As such, the Applicant incorporates and repeats the narrative of Prong 1 (above) and reiterates the same for Prong 2. Harborside Associates, L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508 (2011).

**3. Granting the variance would do substantial justice because:**

Perhaps the only guiding rule [on this standard] is that any loss to the individual that is not outweighed by a gain to the general public is an injustice. Malachy Glen Assocs. v. Town of Chichester, 155 N.H. 102, 109 (2007).

Here, the loss to the Applicant in not approving this variance would far outweigh any benefit to the general public.

The ask here is fairly minimal – to allow for the fuel pumps to encroach into a setback that would result in the Property being more conforming. Currently, Mobil has more fuel pumps than what the Applicant is proposing and, furthermore, does not conform to this section of PZO on multiple sides of the Property whereas, here, the ask is only relative to the front Property line.

As such, by granting the variance the Applicant can make the most of their investment and improve the Property, as well as give the commercial use that currently exists at the Property a much needed ‘face-lift’ and overall modernization of all of the Store and fueling components, bringing the fueling systems up to date with state-of-the-art technology that is much safer to use and operate than the current system at the Property.

If denied, the public gains nothing, as this Proposal will be an improvement as to what is currently on site and said improvements will aid in the Property living up to its highest taxpaying potential.

**4. If the variance were granted, the values of the surrounding properties would not be diminished because:**

The surrounding area is zoned to allow for the fueling station and there has been a convenience store in site for decades and, moreover, there is another convenience store/fueling station directly across the street on the Newington side of Gosling Road. As such, this is an appropriate use for the area.

Very plainly, there is no evidence to suggest that granting this relief would negatively impact the surrounding property values.

**5. Unnecessary Hardship:**

“Hardship,” under NH RSA 674:33, I (b) (1) (A) and (B) is a straight forward three step analyses;

- a. What are the special conditions of the property, if any;
- b. ‘No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property,’ **which can be said another way that if the variance is granted would it unreasonably frustrate the purpose ordinance;** and,
- c. Is the proposed use reasonable?

First, the special conditions (a) are satisfied due to the small size of the Property and the use that has historically existed at this location for decades.

The Property is a corner lot that is well suited for the in/out traffic that is inherit of a fueling station/convenience store.

What is being proposed is slightly smaller than what exists today because the amount of fuel pumps will be reduced by 50%.

To the extent that any residential areas will be impacted by the Proposal there is already adequate screening. This Property is literally the Gateway from Newington into Portsmouth and is surrounded by several other commercial properties that would be expected to be in the vicinity of a fueling station.

Next is (b), whether “[n]o fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property.” *See* NH RSA 674:33, *et seq.* Or, again, if the variance is granted will it **unreasonably frustrate the purpose of the PZO.**



The purpose and goals of the applicable ordinance provide for buffering between the Property line and the activity at the fuel pumps. This is done for both aesthetics and life and safety.

Here, what is being proposed is more conforming than what is on site today. Fuel pumps are clearly a normal aspect of any fueling station and the relief sought is minor distance from Woodbury Avenue. Otherwise, no relief is needed from any other setback relative to the fuel pumps.

Overall, we contend that what the Applicant is asking for with respect to this relief will not unreasonably frustrate the purpose of the PZO and is, indeed, appropriate for a fueling station.

Lastly (c), the proposed use for the Property is for a fueling station and the applicable Zone allows for that use and, to the extent further relief is needed for the convenience store piece, such a use has been present for so long that the proposed use is reasonable.

## **VARIANCE #7 from PZO 10.1251.10**

### **Relief Requested**

The Applicant (*Colbea, LLC*) request a variance from the **Portsmouth Zoning Ordinance** (***“PZO”***) **Section PZO 10.1251.10**, to allow for a greater aggregate sign area (*of 453.26 square feet*) than the maximum area of 1.5’ per linear foot (*which is 223.50 square feet*) of the building frontage per establishment.

### **Background/Facts**

The Applicant is the owner of 1980 Woodbury Avenue in Portsmouth, NH, which is sometimes referred to as Tax Map 239, Lot 11 (the “Property”).

The Property is zoned Gateway Corridor (“G1” (*a Mixed Residential District*)) and sits right on the border of Portsmouth and Newington, NH. The Property is currently developed with a Mobil Fueling Station that is leased by the Applicant.

The Applicant intends to take the Property back from the Lessee and construct its own fueling station under its in-house brand, Season’s Corner Market. Notably, the Applicant is a family-owned company that retains and maintains its businesses as opposed to selling their businesses off post approvals. They operate many similar facilities in NH (Nashua, Hooksett and Tilton) along with some 55+ sites in MA and NH.

The Property is currently surrounded by almost entirely commercial businesses save a residential multi-family housing development, which sits in the same zone, that directly abuts the site to the East off of Gosling Road where a large wooden fence, as well as a chain link fence and some vegetation provide screening and a buffer.

The Property is a corner lot with ingress/egress along both Gosling Road, as well as Woodbury Avenue.

Notably, there is a fire hydrant at the southwest corner of the Property very close to a utility pole.

The current Mobil Fueling Station has a convenience store, a large canopy that extends out both sides of the store, and there are eight (8) fueling islands with a total of twelve (12) fuel pumps. The Applicant intends to reduce the scope of the canopy, as well as reduce the number of fueling pumps to four (4) fueling islands with a total of eight (8) fuel pumps.

Additionally, the convenience store building (the “Store”) will be oriented to be flush against and, present facing to, Woodbury Avenue. Currently, the one entrance for Mobil faces Woodbury Avenue but is obscured by the large canopy.

The Applicant intends to have a ‘drive-through’ lane, which will be relative to ‘co-brand’ business (*i.e.*, *Heavenly Donuts*, *Mary Lou’s Coffee*, *Honeydew Coffee*, *etc.*) that would be subordinate to the Store and fueling uses.

According to a quick registry search the Property was conveyed from a previous owner (*Duncan Construction Company, Inc.*) in 2010 to Greenback Security, LLC. *See* Rockingham County Registry of Deeds at Book 5089, Page 870. Prior to the 2010 conveyance the Property was owned by Duncan Construction Company, Inc., since October 22, 1958, according to the same deed. The 1958 deed is recorded at Book 2461, Page 58, and appears to be too old to view online. Portsmouth adopted Zoning in 1926 and, while this Property may have been conforming at one time, the lot is not conforming under today’s standards, which is readily evident from all the dimensional relief needed to replace one fueling station with another fueling station.

## **Variance Criteria**

### ***Portsmouth Zoning Ordinance (“PZO”) Section PZO 10.1251.10***

#### **1. Granting the variance would not be contrary to the public interest because:**

The standard for prongs one and two of the variance criteria is whether the requested relief, if granted, will *alter the essential character of the neighborhood* or *negatively impact the health, welfare, and safety of the surrounding area* and *mere conflict with the terms of the ordinance is insufficient* as all variance requests are somewhat averse to an ordinance, hence why the relief is sought in the first instance. Harborside Associates, L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508 (2011).

Furthermore, it is important to note that prong 1 is in the negative. That is to say that it does not require the Applicant to prove that the proposed use is IN the public interest, but only to prove that it is NOT CONTRARY TO the public interest.

Here, the immediate ask is to allow for a maximum aggregate sign area of 453.26 square feet where 223.50 square feet is allowed.

The surrounding area contains many commercial properties and, likewise, many signs. The proposed project contains within it several businesses such as the co-brand food/beverage service, a drive-through, fuel pumps, and a convenience store.

The proposed sign is the Applicant’s standard sign. Although ‘standard’ what makes the needs of this sign different is, as discussed above, the number of items that must be displayed as there are multiple businesses and services that are being proposed. Additionally, the Applicant has an obligation to post the ever-changing fuel prices that must be displayed in a manner where

drivers can read in an instant said pricing information, as well as be informed as to what businesses and services are being offered at the site.

The proposed sign will be appropriate for the Zone and it will not alter the overall esthetic of the area since the area is commercial.

The Property has been historically used as a fueling station, which is an allowed use and, despite the need for a Special Exception to allow for a convenience store, such use has been at the Property for decades. It is common for such businesses as the one being proposed to have a drive-through component and this relief would be required for any similarly situated business. Notably, there is another fueling station across Gosling Road in the abutting Town.

Consequently, there is no reason to believe that by granting this variance it would *alter the essential character of the neighborhood* since a fueling station/convenience store has been in place for so many years and there are many large signs in the area.

Similarly, given that the same use has been active on this Property for so many years there is no reason to suspect or to conclude that an approval would *negatively impact the health, welfare, and safety of the surrounding area*. Indeed, there is simply no evidence to point to that would suggest the public is at any risk.

Moreover, the minimal ask is only in *mere conflict* with the PZO.

**2. If the variance were granted, the spirit of the ordinance would be observed because:**

As a matter of law, the analysis for both prongs one and two of the Variance criteria are the same. As such, the Applicant incorporates and repeats the narrative of Prong 1 (above) and reiterates the same for Prong 2. Harborside Associates, L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508 (2011).

**3. Granting the variance would do substantial justice because:**

Perhaps the only guiding rule [on this standard] is that any loss to the individual that is not outweighed by a gain to the general public is an injustice. Malachy Glen Assocs. v. Town of Chichester, 155 N.H. 102, 109 (2007).

Here, the loss to the Applicant in not approving this variance would far outweigh any benefit to the general public.

The ask here is fairly minimal – to allow for a slightly larger aggregate sign area.

A fueling station requires a sign of appropriate size to help customers find the business and see it from a distance so they have ample time to be in the correct lane to turn into the fueling station. Moreover, the sign needs to accurately convey the various businesses and amenities that will be available at the Property.

If the sign cannot be seen from a distance, the customers may not be able to enter the station in time and end up driving by or they may attempt to reach the station by cutting through multiple lanes, turning around in another business' driveway, etc.

The proposed sign will help bring in customers to the Property and it will not block any views, obstruct sightlines, or block any other abutting commercial properties.

As such, by granting the variance the Applicant can make the most of their investment and improve the Property, as well as give the commercial use that currently exists at the Property a much needed 'face-lift' and overall modernization of all of the Store and fueling components, bringing the fueling systems up to date with state-of-the-art technology that is much safer to use and operate than the current system at the Property.



If denied, the public gains nothing, as this Proposal will be an improvement as to what is currently on site and said improvements will aid in the Property living up to its highest taxpaying potential.

**4. If the variance were granted, the values of the surrounding properties would not be diminished because:**

The surrounding area is zoned to allow for the fueling station and there has been a convenience store in site for decades and, moreover, there is another convenience store/fueling station directly across the street on the Newington side of Gosling Road. As such, this is an appropriate use for the area.

Very plainly, there is no evidence to suggest that granting this relief would negatively impact the surrounding property values.

**5. Unnecessary Hardship:**

“Hardship,” under NH RSA 674:33, I (b) (1) (A) and (B) is a straight forward three step analyses;

- a. What are the special conditions of the property, if any;
- b. ‘No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property,’ **which can be said another way that if the variance is granted *would it unreasonably frustrate the purpose ordinance***; and,
- c. Is the proposed use reasonable?

First, the special conditions (a) are satisfied due to the small size of the Property and the use that has historically existed at this location for decades.

The Property is a corner lot that is well suited for the in/out traffic that is inherent of a fueling station/convenience store.

What is being proposed is slightly smaller than what exists today because the amount of fuel pumps will be reduced by 50%.

To the extent that any residential areas will be impacted by the Proposal there is already adequate screening. This Property is literally the Gateway from Newington into Portsmouth and is surrounded by several other commercial properties that would be expected to be in the vicinity of a fueling station.

The sign needs to be large enough so a driver can ascertain what amenities are present at the Property within a short span of time. Moreover, the sign has a lot of information to convey. First, the gas prices need to be displayed prominently – a requirement and staple of all gas stations. Second, there is a convenience store, the gas itself (Shell), and the co-brand business. As such, the extra square footage is needed to convey all the businesses and amenities.

Next is (b), whether “[n]o fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property.” *See* NH RSA 674:33, *et seq.* Or, again, if the variance is granted will it **unreasonably frustrate the purpose of the PZO.**

The purpose and goals of the applicable ordinance is to ensure that signage does not get too large, too many, too unsightly, or cause any too many distractions.

Here, despite the extra square footage the sign will not be abnormally large in comparison to many signs in the area. We contend the sign will be attractive as the Applicant has several similar businesses located throughout New England.

The sign's extra square footage is needed so that the Applicant can fit all the various businesses and amenities that will be offered in a manner that can be read safely by drivers who will only have a short span of time to ascertain the sign's verbiage.

Overall, we contend that what the Applicant is asking for with respect to this relief will not unreasonably frustrate the purpose of the PZO and is, indeed, appropriate for a fueling station.

Lastly (c), the proposed use for the Property is for a fueling station and the applicable Zone allows for that use and, to the extent further relief is needed for the convenience store piece, such a use has been present for so long that the proposed use is reasonable.

## **VARIANCE #8 from PZO 10.1251.20**

### **Relief Requested**

The Applicant (*Colbea, LLC*) request a variance from the *Portsmouth Zoning Ordinance* (*“PZO”*) *Section PZO 10.1251.20*, to allow for a larger sign area of 135 square feet where the PZO allows for a maximum sign area of 100 square feet.

### **Background/Facts**

The Applicant is the owner of 1980 Woodbury Avenue in Portsmouth, NH, which is sometimes referred to as Tax Map 239, Lot 11 (the “Property”).

The Property is zoned Gateway Corridor (“G1” (*a Mixed Residential District*)) and sits right on the border of Portsmouth and Newington, NH. The Property is currently developed with a Mobil Fueling Station that is leased by the Applicant.

The Applicant intends to take the Property back from the Lessee and construct its own fueling station under its in-house brand, Season’s Corner Market. Notably, the Applicant is a family-owned company that retains and maintains its businesses as opposed to selling their businesses off post approvals. They operate many similar facilities in NH (Nashua, Hooksett and Tilton) along with some 55+ sites in MA and NH.

The Property is currently surrounded by almost entirely commercial businesses save a residential multi-family housing development, which sits in the same zone, that directly abuts the site to the East off of Gosling Road where a large wooden fence, as well as a chain link fence and some vegetation provide screening and a buffer.

The Property is a corner lot with ingress/egress along both Gosling Road, as well as Woodbury Avenue.

Notably, there is a fire hydrant at the southwest corner of the Property very close to a utility pole.

The current Mobil Fueling Station has a convenience store, a large canopy that extends out both sides of the store, and there are eight (8) fueling islands with a total of twelve (12) fuel pumps. The Applicant intends to reduce the scope of the canopy, as well as reduce the number of fueling pumps to four (4) fueling islands with a total of eight (8) fuel pumps.

Additionally, the convenience store building (the “Store”) will be oriented to be flush against and, present facing to, Woodbury Avenue. Currently, the one entrance for Mobil faces Woodbury Avenue but is obscured by the large canopy.

The Applicant intends to have a ‘drive-through’ lane, which will be relative to ‘co-brand’ business (*i.e., Heavenly Donuts, Mary Lou’s Coffee, Honeydew Coffee, etc.*) that would be subordinate to the Store and fueling uses.

According to a quick registry search the Property was conveyed from a previous owner (*Duncan Construction Company, Inc.*) in 2010 to Greenback Security, LLC. *See* Rockingham County Registry of Deeds at Book 5089, Page 870. Prior to the 2010 conveyance the Property was owned by Duncan Construction Company, Inc., since October 22, 1958, according to the same deed. The 1958 deed is recorded at Book 2461, Page 58, and appears to be too old to view online. Portsmouth adopted Zoning in 1926 and, while this Property may have been conforming at one time, the lot is not conforming under today’s standards, which is readily evident from all the dimensional relief needed to replace one fueling station with another fueling station.

### **Variance Criteria**

***Portsmouth Zoning Ordinance (“PZO”) Section PZO 10.1251.20***

**1. Granting the variance would not be contrary to the public interest because:**

The standard for prongs one and two of the variance criteria is whether the requested relief, if granted, will *alter the essential character of the neighborhood* or *negatively impact the health, welfare, and safety of the surrounding area* and *mere conflict with the terms of the ordinance is insufficient* as all variance requests are somewhat averse to an ordinance, hence why the relief is sought in the first instance. Harborside Associates, L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508 (2011).

Furthermore, it important to note that prong 1 is in the negative. That is to say that it does not require the Applicant to prove that the proposed use is IN the public interest, but only to prove that it is NOT CONTRARY TO the public interest.

Here, the immediate ask is to allow for a maximum sign area of 135 square feet where 100 square feet is allowed.

The surrounding area contains many commercial properties and, likewise, many signs. The proposed project contains within it several businesses such as the co-brand food/beverage service, a drive-through, fuel pumps, and a convenience store.

The proposed sign is the Applicant’s standard sign. Although ‘standard’ what makes the needs of this sign different is, as discussed above, the number of items that must be displayed as there are multiple businesses and services that are being proposed. Additionally, the Applicant has an obligation to post the ever-changing fuel prices that must be displayed in a manner where drivers can read in an instant said pricing information, as well as be informed as to what businesses and services are being offered at the site.



The proposed sign will be appropriate for the Zone and it will not alter the overall esthetic of the area since the area is commercial.

The Property has been historically used as a fueling station, which is an allowed use and, despite the need for a Special Exception to allow for a convenience store, such use has been at the Property for decades. It is common for such businesses as the one being proposed to have a slightly larger sign conveying multiple businesses, as well as an array of information. Notably, there is another fueling station across Gosling Road in Newington that has signs much larger and taller than what is currently on the Property.

Consequently, there is no reason to believe that by granting this variance it would *alter the essential character of the neighborhood* since a fueling station/convenience store has been in place for so many years and there are many large signs in the area.

Similarly, given that the same use has been active on this Property for so many years there is no reason to suspect or to conclude that an approval would *negatively impact the health, welfare, and safety of the surrounding area*. Indeed, there is simply no evidence to point to that would suggest the public is at any risk.

Moreover, the minimal ask is only in *mere conflict* with the PZO.

**2. If the variance were granted, the spirit of the ordinance would be observed because:**

As a matter of law, the analysis for both prongs one and two of the Variance criteria are the same. As such, the Applicant incorporates and repeats the narrative of Prong 1 (above) and reiterates the same for Prong 2. Harborside Associates, L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508 (2011).

**3. Granting the variance would do substantial justice because:**

Perhaps the only guiding rule [on this standard] is that any loss to the individual that is not outweighed by a gain to the general public is an injustice. Malachy Glen Assocs. v. Town of Chichester, 155 N.H. 102, 109 (2007).

Here, the loss to the Applicant in not approving this variance would far outweigh any benefit to the general public.

The ask here is fairly minimal – to allow for a slightly larger sign area.

A fueling station requires a sign of appropriate size to help customers find the business and see it from a distance so they have ample time to be in the correct lane to turn into the fueling station. Moreover, the sign needs to accurately convey the various businesses and amenities that will be available at the Property.

If the sign cannot be seen from a distance, the customers may not be able to enter the station in time and end up driving by or they may attempt to reach the station by cutting through multiple lanes, turning around in another business' driveway, etc.

The proposed sign will help bring in customers to the Property and it will not block any views, obstruct sightlines, or block any other abutting commercial properties. Moreover, it would be consistent with the neighborhood when considering the size of the Cumberland Farms signs across Gosling Road.

As such, by granting the variance the Applicant can make the most of their investment and improve the Property, as well as give the commercial use that currently exists at the Property a much needed 'face-lift' and overall modernization of all of the Store and fueling components, bringing the fueling systems up to date with state-of-the-art technology that is much safer to use and operate than the current system at the Property.

If denied, the public gains nothing, as this Proposal will be an improvement as to what is currently on site and said improvements will aid in the Property living up to its highest taxpaying potential.

**4. If the variance were granted, the values of the surrounding properties would not be diminished because:**

The surrounding area is zoned to allow for the fueling station and there has been a convenience store in site for decades and, moreover, there is another convenience store/fueling station directly across the street on the Newington side of Gosling Road. As such, this is an appropriate use for the area.

Very plainly, there is no evidence to suggest that granting this relief would negatively impact the surrounding property values.

**5. Unnecessary Hardship:**

“Hardship,” under NH RSA 674:33, I (b) (1) (A) and (B) is a straight forward three step analyses;

- a. What are the special conditions of the property, if any;
- b. ‘No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property,’ **which can be said another way that if the variance is granted *would it unreasonably frustrate the purpose ordinance***; and,
- c. Is the proposed use reasonable?

First, the special conditions (a) are satisfied due to the small size of the Property and the use that has historically existed at this location for decades.

The Property is a corner lot that is well suited for the in/out traffic that is inherent of a fueling station/convenience store.

What is being proposed is slightly smaller than what exists today because the amount of fuel pumps will be reduced by 50%.

To the extent that any residential areas will be impacted by the Proposal there is already adequate screening. This Property is literally the Gateway from Newington into Portsmouth and is surrounded by several other commercial properties that would be expected to be in the vicinity of a fueling station.

The sign needs to be large enough so a driver can ascertain what amenities are present at the Property within a short span of time. Moreover, the sign has a lot of information to convey. First, the gas prices need to be displayed prominently – a requirement and staple of all gas stations. Second, there is a convenience store, the gas itself (Shell), and the co-brand business. As such, the extra square footage is needed to convey all the businesses and amenities.

Next is (b), whether “[n]o fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property.” *See* NH RSA 674:33, *et seq.* Or, again, if the variance is granted will it **unreasonably frustrate the purpose of the PZO.**

The purpose and goals of the applicable ordinance is to ensure that signage does not get too large, too many, too unsightly, or cause any too many distractions.

Here, despite the extra square footage the sign will not be abnormally large in comparison to many signs in the area. Indeed, as stated above the Cumberland Farm signs across the street are

significantly larger than signs at the Property now. We contend the sign will be attractive as the Applicant has several similar businesses located throughout New England.

The sign's extra square footage is needed so that the Applicant can fit all the various businesses and amenities that will be offered in a manner that can be read safely by drivers who will only have a short span of time to ascertain the sign's verbiage.

Overall, we contend that what the Applicant is asking for with respect to this relief will not unreasonably frustrate the purpose of the PZO and is, indeed, appropriate for a fueling station.

Lastly (c), the proposed use for the Property is for a fueling station and the applicable Zone allows for that use and, to the extent further relief is needed for the convenience store piece, such a use has been present for so long that the proposed use is reasonable.

## **VARIANCE #9 from PZO 10.1253.10**

### **Relief Requested**

The Applicant (*Colbea, LLC*) request a variance from the *Portsmouth Zoning Ordinance* (***“PZO”***) ***Section PZO 10.1253.10***, to allow for a sign height of 26.25 feet where the PZO allows for a maximum sign height of 20 feet. Additionally, the Applicant requests a sign setback of 3.4 feet from the travel way where the PZO requires a setback of at least 10 feet.

### **Background/Facts**

The Applicant is the owner of 1980 Woodbury Avenue in Portsmouth, NH, which is sometimes referred to as Tax Map 239, Lot 11 (the “Property”).

The Property is zoned Gateway Corridor (“G1” (*a Mixed Residential District*)) and sits right on the border of Portsmouth and Newington, NH. The Property is currently developed with a Mobil Fueling Station that is leased by the Applicant.

The Applicant intends to take the Property back from the Lessee and construct its own fueling station under its in-house brand, Season’s Corner Market. Notably, the Applicant is a family-owned company that retains and maintains its businesses as opposed to selling their businesses off post approvals. They operate many similar facilities in NH (Nashua, Hooksett and Tilton) along with some 55+ sites in MA and NH.

The Property is currently surrounded by almost entirely commercial businesses save a residential multi-family housing development, which sits in the same zone, that directly abuts the site to the East off of Gosling Road where a large wooden fence, as well as a chain link fence and some vegetation provide screening and a buffer.



The Property is a corner lot with ingress/egress along both Gosling Road, as well as Woodbury Avenue.

Notably, there is a fire hydrant at the southwest corner of the Property very close to a utility pole.

The current Mobil Fueling Station has a convenience store, a large canopy that extends out both sides of the store, and there are eight (8) fueling islands with a total of twelve (12) fuel pumps. The Applicant intends to reduce the scope of the canopy, as well as reduce the number of fueling pumps to four (4) fueling islands with a total of eight (8) fuel pumps.

Additionally, the convenience store building (the “Store”) will be oriented to be flush against and, present facing to, Woodbury Avenue. Currently, the one entrance for Mobil faces Woodbury Avenue but is obscured by the large canopy.

The Applicant intends to have a ‘drive-through’ lane, which will be relative to ‘co-brand’ business (*i.e., Heavenly Donuts, Mary Lou’s Coffee, Honeydew Coffee, etc.*) that would be subordinate to the Store and fueling uses.

According to a quick registry search the Property was conveyed from a previous owner (*Duncan Construction Company, Inc.*) in 2010 to Greenback Security, LLC. *See* Rockingham County Registry of Deeds at Book 5089, Page 870. Prior to the 2010 conveyance the Property was owned by Duncan Construction Company, Inc., since October 22, 1958, according to the same deed. The 1958 deed is recorded at Book 2461, Page 58, and appears to be too old to view online. Portsmouth adopted Zoning in 1926 and, while this Property may have been conforming at one time, the lot is not conforming under today’s standards, which is readily evident from all the dimensional relief needed to replace one fueling station with another fueling station.

## **Variance Criteria**

### ***Portsmouth Zoning Ordinance (“PZO”) Section PZO 10.1253.10***

#### **1. Granting the variance would not be contrary to the public interest because:**

The standard for prongs one and two of the variance criteria is whether the requested relief, if granted, will *alter the essential character of the neighborhood* or *negatively impact the health, welfare, and safety of the surrounding area* and *mere conflict with the terms of the ordinance is insufficient* as all variance requests are somewhat averse to an ordinance, hence why the relief is sought in the first instance. Harborside Associates, L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508 (2011).

Furthermore, it important to note that prong 1 is in the negative. That is to say that it does not require the Applicant to prove that the proposed use is IN the public interest, but only to prove that it is NOT CONTRARY TO the public interest.

Here, the immediate ask is to allow for a maximum sign height 26.25 feet where the PZO allows for 20 feet, as well as a sign setback of 3.4 feet where the PZO requires a minimum of 10 feet from the travel way.

The surrounding area contains many commercial properties and, likewise, many signs. The proposed project contains within it several businesses such as the co-brand food/beverage service, a drive-through, fuel pumps, and a convenience store.

The proposed sign is the Applicant’s standard sign. Although ‘standard’ what makes the needs of this sign different is, as discussed above, the number of items that must be displayed as there are multiple businesses and services that are being proposed. Additionally, the Applicant has an obligation to post the ever-changing fuel prices that must be displayed in a manner where

drivers can read in an instant said pricing information, as well as be informed as to what businesses and services are being offered at the site.

The proposed sign will be appropriate for the Zone and it will not alter the overall esthetic of the area since the area is commercial.

The Property has been historically used as a fueling station, which is an allowed use and, despite the need for a Special Exception to allow for a convenience store, such use has been at the Property for decades. It is common for such businesses as the one being proposed to have a slightly larger sign conveying multiple businesses, as well as an array of information. Notably, there is another fueling station across Gosling Road in the abutting Town that has signs much larger and taller than what is currently on the Property.

With respect to the sign's setback, the Property is unable to conform to the PZO's requirement of 10 feet. Indeed, the signage that is currently in place for Mobil is within the sign setback. Were the signage to be placed back 10 feet the signs would be awkwardly towards the middle of lot thereby further restricting the buildable area of the Property. Again, the lot is small. Furthermore, it would appear that there are many commercial businesses in the surrounding area that have signs within this setback requirement.

Consequently, there is no reason to believe that by granting this variance it would *alter the essential character of the neighborhood* since a fueling station/convenience store has been in place for so many years and there are many large signs in the area.

Similarly, given that the same use has been active on this Property for so many years there is no reason to suspect or to conclude that an approval would *negatively impact the health, welfare, and safety of the surrounding area*. Indeed, there is simply no evidence to point to that would suggest the public is at any risk.

Moreover, the minimal ask is only in *mere conflict* with the PZO.

**2. If the variance were granted, the spirit of the ordinance would be observed because:**

As a matter of law, the analysis for both prongs one and two of the Variance criteria are the same. As such, the Applicant incorporates and repeats the narrative of Prong 1 (above) and reiterates the same for Prong 2. Harborside Associates, L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508 (2011).

**3. Granting the variance would do substantial justice because:**

Perhaps the only guiding rule [on this standard] is that any loss to the individual that is not outweighed by a gain to the general public is an injustice. Malachy Glen Assocs. v. Town of Chichester, 155 N.H. 102, 109 (2007).

Here, the loss to the Applicant in not approving this variance would far outweigh any benefit to the general public.

The ask here is fairly minimal – to allow for a slightly larger taller sign that sits within the 10-foot setback.

A fueling station requires a sign of appropriate size to help customers find the business and see it from a distance so they have ample to time to be in the correct lane to turn into the fueling station. Moreover, the sign needs to accurately convey the various businesses and amenities that will be available at the Property.

If the sign cannot be seen from a distance, the customers may not be unable to enter the station in time and end up driving by or they may attempt to reach the station by cutting through multiple lanes, turning around in another business' driveway, etc.

The proposed sign will help bring in customers to the Property and it will not block any views, obstruct sightlines, or block any other abutting commercial properties. Moreover, it would be consistent with the neighborhood when considering the size of the Cumberland Farms signs across Gosling Road.

As such, by granting the variance the Applicant can make the most of their investment and improve the Property, as well as give the commercial use that currently exists at the Property a much needed ‘face-lift’ and overall modernization of all of the Store and fueling components, bringing the fueling systems up to date with state-of-the-art technology that is much safer to use and operate than the current system at the Property.

If denied, the public gains nothing, as this Proposal will be an improvement as to what is currently on site and said improvements will aid in the Property living up to its highest taxpaying potential.

**4. If the variance were granted, the values of the surrounding properties would not be diminished because:**

The surrounding area is zoned to allow for the fueling station and there has been a convenience store in site for decades and, moreover, there is another convenience store/fueling station directly across the street on the Newington side of Gosling Road. As such, this is an appropriate use for the area.

Very plainly, there is no evidence to suggest that granting this relief would negatively impact the surrounding property values.

**5. Unnecessary Hardship:**

“Hardship,” under NH RSA 674:33, I (b) (1) (A) and (B) is a straight forward three step analyses;

- a. What are the special conditions of the property, if any;
- b. 'No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property,' **which can be said another way that if the variance is granted would it unreasonably frustrate the purpose ordinance;** and,
- c. Is the proposed use reasonable?

First, the special conditions (a) are satisfied due to the small size of the Property and the use that has historically existed at this location for decades.

The Property is a corner lot that is well suited for the in/out traffic that is inherit of a fueling station/convenience store.

What is being proposed is slightly smaller than what exists today because the amount of fuel pumps will be reduced by 50%.

To the extent that any residential areas will be impacted by the Proposal there is already adequate screening. This Property is literally the Gateway from Newington into Portsmouth and is surrounded by several other commercial properties that would be expected to be in the vicinity of a fueling station.

The sign needs to be large enough so a driver can ascertain what amenities are present at the Property within a short span of time. Moreover, the sign has a lot of information to convey. First, the gas prices need to be displayed prominently – a requirement and staple of all gas stations. Second, there is a convenience store, the gas itself (Shell), and the co-brand business. As such, the extra square footage is needed to convey all the businesses and amenities.



Finally, the sign will need to be within the 10-foot setback due to the small size of the corner lot. Again, the current signs for Mobil, as well as many other commercial signs in the neighborhood, are already within said setback.

Next is (b), whether “[n]o fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property.” *See* NH RSA 674:33, *et seq.* Or, again, if the variance is granted will it **unreasonably frustrate the purpose of the PZO.**

The purpose and goals of the applicable ordinance is to ensure that signage does not get too large, too many, too unsightly, or cause any too many distractions.

Here, despite the extra height the sign will not be abnormally large in comparison to many signs in the area. Indeed, as stated above, the Cumberland Farm signs across the street are significantly larger than signs at the Property now. We contend the sign will be attractive as the Applicant has several similar businesses located throughout New England.

The sign’s extra height is needed so that the Applicant can fit all the various businesses and amenities that will be offered in a manner that can be read safely by drivers who will only have a short span of time to ascertain the sign’s verbiage.

Given the dimensional constraints of the small lot the setback relief would be needed no matter what sign was being proposed.

Overall, we contend that what the Applicant is asking for with respect to this relief will not unreasonably frustrate the purpose of the PZO and is, indeed, appropriate for a fueling station.

Lastly (c), the proposed use for the Property is for a fueling station and the applicable Zone allows for that use and, to the extent further relief is needed for the convenience store piece, such a use has been present for so long that the proposed use is reasonable.




Civil Engineers  
Structural Engineers  
Traffic Engineers  
Land Surveyors  
Landscape Architects  
Scientists

**NEW  
HAMPSHIRE  
200**

## Letter of Authorization

I, Michael Gazdacko, of Colbea Enterprises, LLC, 695 George Washington Highway, Lincoln, RI, hereby authorize TFMoran, Inc., 170 Commerce Way, Suite 102, Portsmouth, NH, to act on my behalf concerning property owned by Colbea Enterprises, LLC, 1980 Woodbury Avenue, Portsmouth, NH, known as Tax Map 239, Lot 11. I hereby appoint TFMoran, Inc. as my agent to act on my behalf in the review process, to include any required signatures.

  
\_\_\_\_\_  
Client Name *Michael Gazdacko, Colbea Enterprises LLC*

*November 5, 2024*  
\_\_\_\_\_  
Date

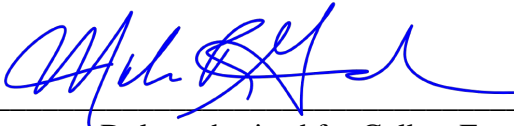
  
\_\_\_\_\_  
Witness

*11/5/24*  
\_\_\_\_\_  
Date



## **LETTER OF AUTHORITY/PERMISSION**

The undersigned, being the owner of the property known as 1980 Woodbury Avenue, Map 239, Lot 11, hereby grants authority and consent to attorneys at Cronin, Bisson & Zalinsky, P.C. to sign and file ZBA and Planning Board applications and any related materials on my behalf and deliver the same to the City of Portsmouth, represent me at any hearing(s) concerning these applications, and perform all other necessary actions in connection with such applications.



Signature Duly authorized for Colbea Enterprises, LLC

3/18/2025

Date

Michael Gazdacko, Director of Construction & Maintenance

Print name



Civil Engineers  
Structural Engineers  
Traffic Engineers  
Land Surveyors  
Landscape Architects  
Scientists

## **Site Photos**

**Proposed Gas Station and Convenience Store**

**1980 Woodbury Avenue  
Portsmouth, New Hampshire 03801**

**Taken on  
February 12, 2021**

Photo #1:



View of Gas Station and Convenience Store from Gosling Road

Photo #2:



View of Gas Station and Convenience Store from intersection of  
Gosling Road and Woodbury Avenue



Photo #3:



View of parking lot at rear of Convenience Store

Photo #4:



View of dumpster enclosure and storage building



Photo #5:



View of pylon sign along Woodbury Avenue

Photo #6:



View of pylon sign along Gosling Road

Photo #7:



Photo #8:



View of fence and arborvitaes between convenience store and adjacent residential use

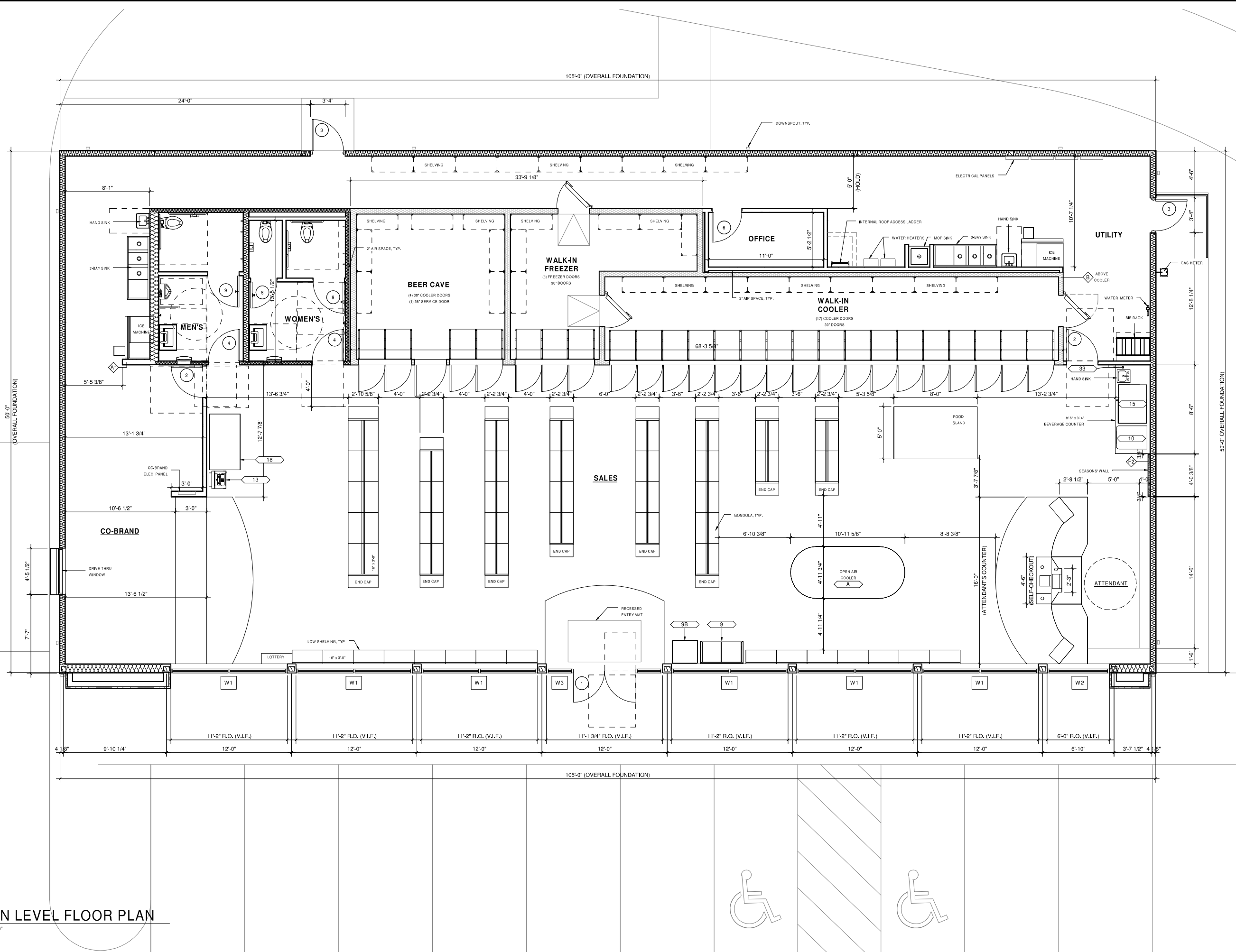


8/16/2025 5:13:58 PM  
C:\Users\cfrancis\OneDrive\Documents\2025 Revit Projects\62-1-00019 Colbea - Tilton, NH\A100\_L1\Final Revised\_Tenets.rvt  
A100 MAIN LEVEL FLOOR PLAN (SECTION 2)

1  
A100

MAIN LEVEL FLOOR PLAN

1/4" = 1'-0"



**HFA**  
HARRISON FRENCH  
& ASSOCIATES, LTD.

t 508.528.0770

31 Hayward Street  
Franklin, Massachusetts 02038  
www.hfa-ac.com

**STIPULATION FOR REUSE**  
THIS DRAWING WAS PREPARED FOR THE PROJECT OF COLBEA ENTERPRISES, LLC, 63 LACONIA ROAD, TILTON, NH 03276. IT IS NOT TO BE REUSED OR REPRODUCED IN ANY MANNER WITHOUT THE WRITTEN PERMISSION OF HARRISON FRENCH & ASSOCIATES, LTD. ANY REUSE OR REPRODUCTION OF THIS DRAWING FOR ANY OTHER PROJECT WITHOUT THE WRITTEN PERMISSION OF HARRISON FRENCH & ASSOCIATES, LTD. IS UNAUTHORIZED AND MAY BE CONTRARY TO THE LAW.

**COLBEA ENTERPRISES, LLC**

63 LACONIA ROAD  
TILTON, NH 03276

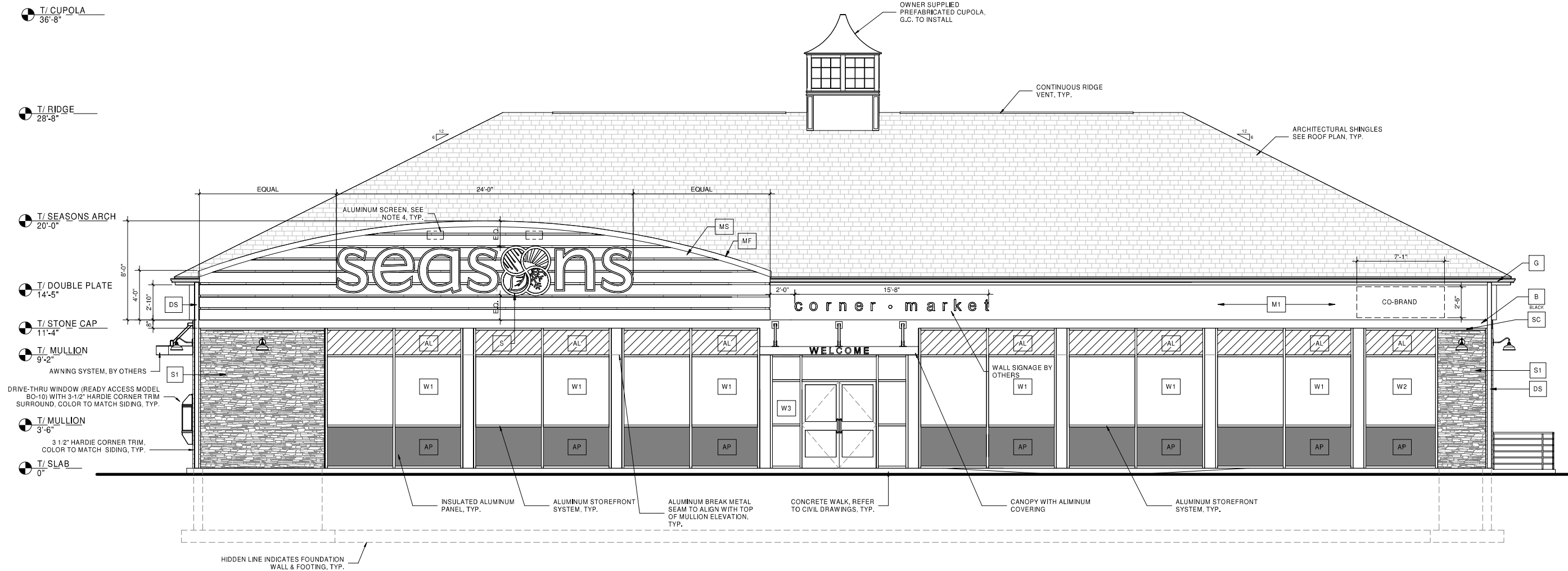
JOB NUMBER: 62-21-20019

ISSUE BLOCK		
1	REVISION 1	07/24/23
2	REVISION 2	08/16/23

CHECKED BY:	HAL
DRAWN BY:	RTM
DOCUMENT DATE:	05/15/23

MAIN LEVEL FLOOR PLAN

SHEET:  
**A100**



1 FRONT ELEVATION  
A200 1/4" = 1'-0"

- NOTES:**
1. REFER TO A601 FOR MATERIAL CALL OUT SPECIFICATION.
  2. G.C. IS TO PROVIDE POWER & INSTALL OWNER UED LED ROPE LIGHT (LIGHT WRAPS 4 SIDES OF BUILDING). REFER TO REFLECTED CEILING PLAN FOR ADDITIONAL INFORMATION.
  3. ALUMINUM STOREFRONT SYSTEM IS TO BE TEMPERED AS REQUIRED BY CODE. REFER TO 'STOREFRONT MATERIAL SPECIFICATIONS' ON SHEET A601 FOR ADDITIONAL INFORMATION.
  4. PROVIDE AND INSTALL (2) 8" x 16" SCREENED ALUMINUM VENTS ON BACK SIDE OF SEASONS' ARCH LOCATED AS HIGH AS POSSIBLE.
  5. THE GUARDRAIL SYSTEM, COLUMNS, STL PLATES, STL SADDLES, FASCIA BOARDS AND WOOD BEAM AT THE EXTERNAL BASEMENT ACCESS STAIRS SHALL BE PAINTED BLACK

STIPULATION FOR REUSE  
THIS DRAWING WAS PREPARED FOR  
TILTON, NEW HAMPSHIRE, AND IS NOT  
TO BE REUSED IN ANY OTHER PROJECT  
WITHOUT THE WRITTEN CONSENT OF  
HARRISON FRENCH & ASSOCIATES, LTD.  
OR ITS SUCCESSORS. ANY REUSE OF  
THIS DRAWING IN ANY OTHER PROJECT  
WITHOUT THE WRITTEN CONSENT OF  
HARRISON FRENCH & ASSOCIATES, LTD.  
OR ITS SUCCESSORS SHALL BE CONSIDERED  
A VIOLATION OF THE PROFESSIONAL  
ETHICS OF THE ARCHITECT AND ENGINEER  
REGISTERED IN THE STATE OF MASSACHUSETTS  
AND MAY BE CONTRARY TO  
THE LAW.

**COLBEA ENTERPRISES,  
LLC**  
63 LACONIA ROAD  
TILTON, NH 03276  
JOB NUMBER: 62-21-20019

ISSUE BLOCK		
1	REVISION 1	07/24/23
2	REVISION 2	08/16/23

CHECKED BY:	HAL
DRAWN BY:	RTM
DOCUMENT DATE:	05/15/23

EXTERIOR  
ELEVATIONS  
FRONT

SHEET:  
**A200**

JOB NUMBER, 42-21-20013

CHECKED BY:	HAL
DRAWN BY:	RTM
DOCUMENT DATE:	05/15/23

EXTERIOR  
ELEVATIONS  
LEFT & RIGHT

A201







season

corner · market

DO NOT  
ENTER





ner · market

Clearance 14' 6"

Shell



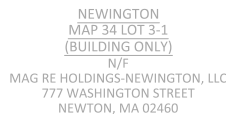
Regular 2.93

Diesel 2.99

OPENING SOON







NEWINGTON  
MAP 34 LOT 2  
N/F  
CFI PROPCO, LLC  
165 FLANDERS ROAD  
WESTBOROUGH, MA 01851  
RCRD BK.#6110 PG.#2160

NEWINGTON  
MAP 34 LOT 1  
N/F  
NEWINGTON CROSSING, LLC  
291 CARL BROGG HIGHWAY  
LEBANON, NH 04027  
RCRD BK.#6578 PG.#43

CURRENT ZONING IS GATEWAY CORRIDOR (G1) MIXED RESIDENTIAL DISTRICT.		REQUIRED	PROPOSED
USE: SMALL COMMERCIAL BUILDING			
MIN. LOT SIZE:	1.1 AC.		0.88 AC.
MIN. LOT FRONTAGE:	50'		>100'
MIN. BUILDING SETBACKS:			
FRONT	0' MIN/20' MAX.		27.4±'
SIDE	10'		34.8±'
REAR	15'		40.7'
MAX. BUILDING HEIGHT:	40'		<40'
MAX. BUILDING COVERAGE:	70%		18.8±%
MIN. OPEN SPACE:	10%		18.8±%
PARKING CALCULATIONS: (8.5'x19'x24')			

REQUIRED:  
MOTOR VEHICLE SERVICE STATION:  
2 SP.+ 1/400 SF GFA (4,580 SF) = 12 SPACES

PROPOSED: 19 SPACES & 9 STACKING

THE CONVENIENCE GOODS USE WILL REQUIRE A SPECIAL EXCEPTION WHICH IS VOTED ON BY THE ZONING BOARD OF ADJUSTMENT.

1. PZO 10.5833.20 – ALL BUILDINGS MUST HAVE A FRONT LOT LINE BUILD OUT OF AT LEAST 75% FOR COMMERCIAL AND MIXED-USE BUILDING TYPES.
2. PZO 10.5834.60 – FRONT BUILDING SETBACK FROM LOT LINE: 0 FT MIN. TO 20 FT MAX.
3. PZO 10.5883.10 – REQUIRED OFF-STREET PARKING SPACES SHALL NOT BE LOCATED BETWEEN A PRINCIPAL BUILDING AND A STREET.
4. PZO 10.835.31 – ALL OUTDOOR SERVICE FACILITIES (INCLUDING TRANSACTION WINDOWS, MENU BOARDS, SPEAKERS, ETC.) SHALL BE LOCATED A MINIMUM OF 50 FEET FROM ANY LOT LINE.
5. PZO 10.835.32 – ALL DRIVE-THROUGH LANES, BYPASS LANES, AND STACKING LANES SHALL BE LOCATED A MINIMUM OF 30 FEET FROM ANY LOT LINE.
6. PZO 10.843.33 – ALL PUMP ISLANDS SHALL BE SET BACK AT LEAST 40 FEET FROM ALL LOT LINES.
7. PZO 10.1251.10 – THE MAXIMUM AGGREGATE SIGN AREA SHALL BE AS FOLLOWS: 1.5' PER LINEAR FOOT OF BUILDING FRONTAGE PER ESTABLISHMENT.
8. PZO 10.1251.20 – THE MAXIMUM SIGN AREA FOR INDIVIDUAL FREESTANDING SIGNS SHALL BE 100 S.F.
9. PZO 10.1253.10 – THE MAXIMUM AND MINIMUM HEIGHTS AND MINIMUM SETBACKS FOR SIGNS IN EACH SIGN DISTRICT SHALL BE AS SET FORTH IN THE FOLLOWING TABLE, EXCEPT AS OTHERWISE PROVIDED HEREIN: MAXIMUM HEIGHT = 20', MINIMUM SETBACK FROM LOT LINE = 10'.

NUMBER (SEE ABOVE)	REQUIRED	EXISTING	PROPOSED
1	127.5' MIN	0'	0'
2	20' MAX	10.4	27.4'
3	NO PARKING	YES	YES
4	50' MIN	N/A	34.8' & 38.7'
5	30' MIN	N/A	11.2'
6	40' MIN	23.1'	34.7'
7	223.50 S.F. (149'x1.5')	-	392.11 S.F.
8	100 S.F. MAX	-	134 S.F.
9	20' MAX HEIGHT	-	26.25'
	10' MIN	-	3.4' FROM PL >10.1' FROM TRAVELWAY

## TAX MAP 239 LOT 11

## VARIANCE PLAN

## PROPOSED GAS STATION & CONVENIENCE STORE

**1980 WOODBURY AVENUE  
PORTSMOUTH, NEW HAMPSHIRE**

OWNED BY

**COLBEA ENTERPRISES, LLC**

**1"=40' (11"x17")**

E. 1'-20' (22'X34')

---

Seacoast Division  
 [REDACTED]

\_\_\_\_\_

# TEAM

## THE FIVE

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

C-01

COMMONWEALTH LAND TITLE INSURANCE COMPANY TITLE COMMITMENT FILE NO. 20CLT0055-NH, DATED DECEMBER 16, 2020 WAS EXAMINED AS PART OF THIS SURVEY. SURVEY EXCEPTIONS CONTAINED IN SCHEDULE B PART II OF THAT COMMITMENT WHICH THE SUBJECT PROPERTY IS SUBJECT TO AND/OR HAS THE BENEFIT OF ARE AS FOLLOWS:

ITEM 11 - NOTICE OF CONDEMNATION, EASEMENT RIGHTS, AND LIMITATION ON ACCESS AS DESCRIBED IN THE AMENDED NOTICE OF CONDEMNATION DATED 9/14/83 AND RECORDED IN VOLUME 2461, PAGE 163. (SEE PLAN REFERENCE 9)

ITEM 12 - THE FOLLOWING MATTERS DEPICTED ON BOUNDARY AND TOPOGRAPHIC PLAN, ASSESSORS MAP R-39--LOT11, WOODBURY AVE. & GOSLING ROAD, PORTSMOUTH, NEW HAMPSHIRE, PREPARED FOR MOBIL OIL CORPORATION DATED 12/6/1991 AND RECORDED AS PLAN D21731:

- A - MOBIL SIGN TRAVERSING THE NORTHERLY BOUNDARY. (SIGN SINCE HAS BEEN RELOCATED AND RESIDES ON THE PROPERTY, SHOWN HEREON)
- B - CATCH BASIN AND PIPES TRAVERSING THE NORTHERLY BOUNDARY. (AS SHOWN ON THE PLAN)
- C - CURBING AND CONCRETE WALKWAY, TRAVERSING THE NORTHERLY, EASTERLY AND SOUTHERLY BOUNDARIES.
- D - OBSERVATION WELL LOCATED WITHIN THE PROPERTY.

ITEM 13 - NOTICE OF RESTRICTIONS, INCLUDING RESTRICTIONS ON THE USE OF GROUNDWATER, AS RECORDED IN VOLUME 4011, PAGE 1268.  
(RESTRICTION NOT PLACEABLE AND THEREFORE NOT PLOTTED).

ITEM 14 - TERMS AND PROVISIONS OF LEASE BY AND BETWEEN DUNCAN CONSTRUCTION COMPANY, INC. AND MOBIL OIL CORPORATION AS EVIDENCED BY A NOTICE OF LEASE DATED 2/25/1992 AND RECORDED IN VOLUME 2936, PAGE 1157, AS AFFECTED BY SUPPLEMENTAL NOTICE OF LEASE RECORDED IN VOLUME 3113, PAGE 1212. ASSIGNMENTS OF THE LEASE ARE RECORDED IN VOLUME 3046, PAGE 2323 AND VOLUME 3689, PAGE 1468. DUNCAN CONSTRUCTION COMPANY, INC. AND ALLIANCE ENERGY LLC AS EVIDENCED AT VOLUME 4928, PAGE 2060. (NOT PLOTTABLE).

ON THE SOUTH, WALKWAY EVIDENCE OF PASSAGE BETWEEN  
SUBJECT PARCEL AND TAX MAP 239 LOT 10;

ON THE WEST, STOCKADE FENCE OVER RECORD LINE:

ON THE NORTH, OVERHEARD UTILITY WIRE OVER RECORD LINE;

ON THE NORTH, UTILITY POLE SUPPORT WIRE OVER RECORD LINE.

ON THE NORTH, LANE DIRECTORY SIGN OVER RECORD LINE:

MAP 239 LOT 12  
N/F  
YOUTH HOUSING AUTHORITY  
245 MIDDLE STREET  
PORTSMOUTH, NH 03801


PROPOSED CONCRETE  
PAD (TYP.)

PROPOSED MENU  
BOARD

FOUND, CRIMPED  
(HELD FOR LINE)

MAP 239 LOT 10  
N/F  
RIZ MAR REALTY TRUST  
C/O COLLIERS INTERNATIONAL  
NEW HAMPSHIRE  
175 CANAL STREET, SUITE 401  
MANCHESTER, NH 03101  
RCRD BK.#2695 PG.#2151

HORIZONTAL SCALE 1"=20'



A horizontal scale bar with alternating black and white segments. It is marked with '0' at the left end, '10' in the middle, and '20' at the right end.

THIS PLAN IS A PRELIMINARY CONCEPTUAL DESIGN FOR SITE LOCATION FEASIBILITY AND DISCUSSION PURPOSES ONLY. ADDITIONAL PERMITS, WAIVERS, AND VARIANCE MAY BE REQUIRED UPON FURTHER DESIGN, REVIEW, AND COORDINATION WITH THE CITY.

Copyright 2025 ©TFMoran, Inc.  
48 Constitution Drive, Bedford, N.H. 03110

All rights reserved. These plans and materials may not be copied, duplicated, replicated or otherwise reproduced in any form whatsoever without the prior written permission of TFMoran, Inc.

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



Mar 06, 2025 - 11:53am  
C:\Users\icoock\desktop\temp prints\temp cad\AcPublish\_13268\46077-16 Variance Plan.dwg







## II. NEW BUSINESS

- D. The request of **Lonza Biologics** (Owners), for property located at **101 International Drive** whereas relief is needed to construct a canopy with supporting structure which requires relief from the following: 1) Variance from Section 304.04(c) of the Pease Development Ordinance to allow a canopy and supporting structures for an outdoor patio to be located within 70-feet of the front property line. Said property is located on Assessor Map 305 Lot 6 and lies within the Airport Business Commercial (ABC) District. (LU-25-47))

### Existing & Proposed Conditions

	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Patio Canopy	Business, com. & trade related enterprises
<u>Front Setback (ft.)</u>	45	70
	Variance request(s) shown in red.	

### Other Permits/Approvals Required

- Pease Development Authority (PDA)

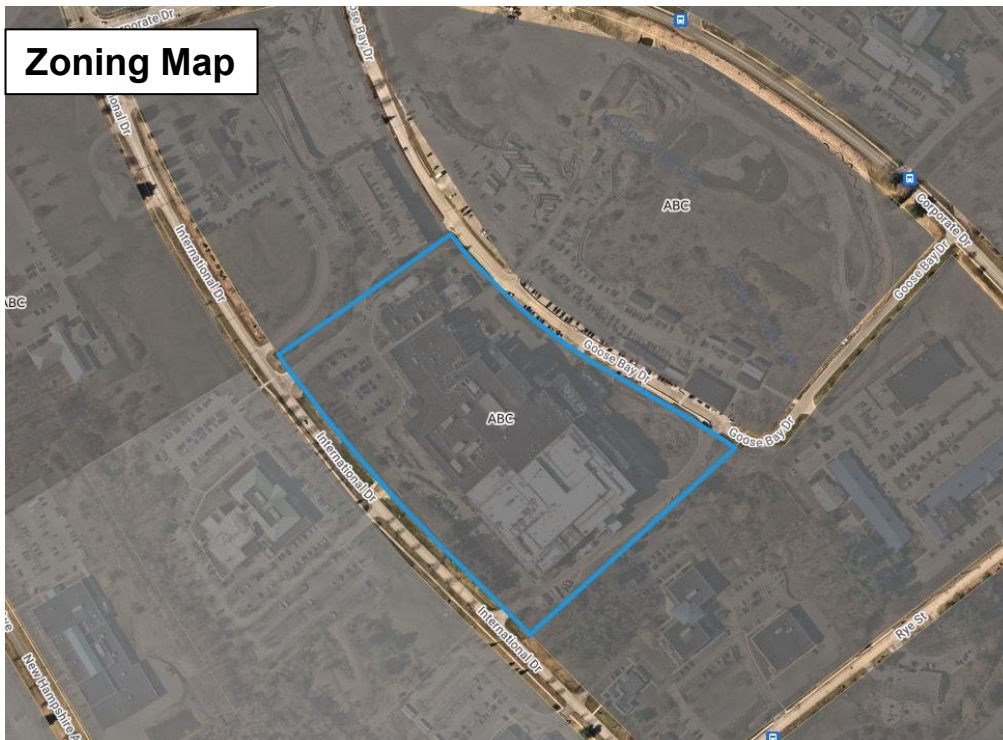


## Neighborhood Context

**Aerial Map**



**Zoning Map**



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

**December 15, 1998** – The Board **granted a variance** pursuant to the PDA regulations to allow 5 loading docks to be provided where 13 loading docks were required for the 130,000 s.f. expansion of the facility.

**February 20, 2001** – The Board **recommended approval** to the Pease Development Authority that a variance be granted to allow 5 loading docks where 28 loading docks are required.

**June 16, 2015** – The Board **recommended approval** to the Pease Development Authority of a variance to allow above ground storage tanks exceeding 2,000 gallon capacity for two existing and two proposed generators. The recommendation was given with a request to provide information on the life span of the above ground tanks.

**May 28, 2019** - The Board **recommended approval** to the Pease Development Authority of a variance to allow above ground storage tanks exceeding 2,000 gallon capacity.

**July 27, 2021** - The Board **recommended approval** to the Pease Development Authority to allow an above ground storage tank (AST) exceeding 2,000 gallon capacity per facility. Said property is shown on Assessor Map 305 Lot 6 and lies within the Airport Business Commercial (ABC) District.

**August 16, 2022** - The Board **recommended approval** to the Pease Development Authority for the addition of a 372 square foot wall sign which will result in 487.5 square feet of total sign area which requires the following: 1) A Variance from Section 306.01(d) to allow 487.5 square feet of total sign area where 200 square feet is the maximum allowed per lot. No additional BOA history found.

**June 18, 2024** – The Board **recommended approval** to the Pease Development Authority to add four (4) above ground storage tanks which requires relief from the following: 1) Section 308.02 (c) of the Pease Development Ordinance to allow an above ground storage tank (AST) exceeding 2,000 gallons capacity per facility.

### **Planning Department Comments**

The application was before the Pease Development Authority (PDA) Board meeting on March 11, 2025 and the PDA Board voted to support the applicant's request to move forward to seek a variance.

The PDA has its own land use and zoning regulations and is exempt from the City's regulations ordinance. For certain parcels in Pease, variance requests are sent to the City for a recommendation from the BOA. A motion to approve or deny will be a recommendation



and the recommendation will become an approval by the PDA Board after 14 days unless the applicant or PDA Board member requests a hearing (see Part 317.03(f) below).

The Chapter in the Pease Land Use Controls regarding the process for a variance is below. Part 317.03(c) states the BOA will apply the standards in Part 317.01(c) in its review of the application. These standards are attached hereto under Review Criteria.

317.03      Zoning Variances Referred to Local Municipalities for Administration

- (a) For parcels located within the Industrial Zone, Business and Commercial Zone, Natural Resource Protection Zone or portions of the Airport Industrial Zone not acquired by the Pease Development Authority pursuant to Section 13(g) of the Surplus Property Act, requests for a variance from the provisions of this zoning rule shall be referred to the zoning board of adjustment for the municipality in which the parcel is situated for administration in accordance with the provisions of this section.
- (b) Applications for a variance for parcels referred to in Subsection (a) shall be filed with the Pease Development Authority Building Inspector on forms prescribed by the Board and referred to the applicable zoning board of adjustment.
- (c) The zoning board of adjustment to which the application for a variance has been referred shall, in its review of the request, apply the substantive provisions of this Chapter.
- (d) Recommendations to the Board regarding requests for a zoning variance shall be made by the applicable zoning board of adjustment within sixty (60) days of referral. Notice of the recommendation shall be provided to the applicant and the Board within 48 hours of the decision.
- (e) The recommendation of the applicable zoning board of adjustment shall be forwarded to the Board along with a written report detailing the reasons for any recommendation for denial or approval with conditions.
- (f) A recommendation of the applicable zoning board of adjustment shall be deemed a final decision of the Board upon the expiration of fourteen (14) days from the date of notice, unless the applicant/developer or a member of the Board requests a hearing by the Board.
- (g) Where a hearing has been requested, the Board shall conduct a hearing and render a final decision on the variance request within thirty (30) days.

- (h) At the discretion of the Board the time period for rendering a final decision may be extended an additional thirty (30) days, or such additional time as may be consented to by the applicant.
- (i) The Board may approve, conditionally approve or deny the application notwithstanding the recommendation of the applicable zoning board of adjustment. In the case of denial of any application by the Board or where the Board elects not to follow the recommendation of the applicable zoning board of adjustment, the ground(s) for such action shall be stated in writing.

### Review Criteria

This application must meet the criteria for a **variance** of Part 317.01(c) of the Pease Land Use Controls below.

#### **PART 317. VARIANCES FROM ZONING PROVISIONS**

##### 317.01 General Provisions

58

- (a) Requests for a variance from the provisions of this zoning rule shall be filed with the Pease Development Authority Building Inspector on forms prescribed by the Board.
- (b) Applications for zoning variance approval shall set forth the specific provision of the rule or regulation involved and reasons why a variance should be granted.
- (c) A variance shall not be approved or recommended for approval unless it is in harmony with the general purpose and intent of these regulations and meets the following criteria:
  - (1) No adverse effect or diminution in values of surrounding properties would be suffered.
  - (2) Granting the variance would be of benefit to the public interest.
  - (3) Denial of the variance would result in unnecessary hardship to the person seeking it.
  - (4) Granting the variance would be substantial justice.
  - (5) The proposed use would not be contrary to the spirit of this zoning rule.
- (d) Reasonable conditions necessary to meet one or more of the standards in subsection (c) above may be attached to approval of a variance.



CELEBRATING OVER 35 YEARS OF SERVICE TO OUR CLIENTS

**HAND DELIVERED**

March 18, 2025

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

RE: Lonza Biologics  
101 International Drive, Tax Map 305, Lot 6

Dear Chair Eldridge and Board Members:

Enclosed please find supporting materials to accompany the information submitted via the City's on-line permitting system requesting variance relief to allow a canopy and related structural supports for a permitted outdoor patio within the 70 foot front setback. The construction cost for the canopy structure is \$125,000.00.

We respectfully request that this matter be placed on the Board's April 15, 2025 agenda. In the meantime, if you have any questions or require additional information do not hesitate to contact me.

Yours truly,  
DONAHUE TUCKER & CIANDELLA, PLLC

Eric A. Maher, Esq.  
[emaher@dtclawyers.com](mailto:emaher@dtclawyers.com)  
Enclosures

cc: Lonza Biologics  
Pease Development Authority

4930-3007-1850, v. 1

LIZABETH M. MACDONALD  
ROBERT M. DEROSIER  
CHRISTOPHER L. BOLDT  
SHARON CUDDY SOMERS  
DOUGLAS M. MANSFIELD  
KATHERINE B. MILLER  
CHRISTOPHER T. HILSON  
HEIDI J. BARRETT-KITCHEN  
ERIC A. MAHER  
CHRISTOPHER D. HAWKINS  
JOHN K. BOSEN  
CHRISTOPHER P. MULLIGAN  
ELAINA L. HOEPPNER  
WILLIAM K. WARREN  
BRIANA L. MATUSZKO  
BRANDON A. LATHAM

OF COUNSEL  
MOLLY C. FERRARA

RETIRED  
MICHAEL J. DONAHUE  
CHARLES E. TUCKER  
ROBERT D. CIANDELLA  
JOHN J. RATIGAN  
DENISE A. POULOS  
NICHOLAS R. AESCHLIMAN

DONAHUE, TUCKER & CIANDELLA, PLLC

16 Acadia Lane, P.O. Box 630, Exeter, NH 03833  
111 Maplewood Avenue, Suite D, Portsmouth, NH 03801  
Towle House, Unit 2, 164 NH Route 25, Meredith, NH 03253  
83 Clinton Street, Concord, NH 03301

**Pease Development Authority**  
**55 International Drive, Portsmouth, NH 03801, (603) 433-6088**



**Request for Appeal/Variance Application**

<b>For PDA Use Only:</b>			
Date Submitted: _____	Municipal Review: _____	Fee: _____	
Application Complete: _____	Date Forwarded: _____	Paid: _____	Check #: _____

<b>Action Requested (please check one):</b>	Appeal from Administrative Decision: <input type="checkbox"/>	Variance: <input checked="" type="checkbox"/>
---	---	---

**Applicant Information**

<b>Applicant:</b> Lonza Biologics, Inc.	<b>Contact Name:</b> Kristopher Tiernan
<b>Address:</b> 101 International Dr., Portsmouth, NH 03801	<b>Business Phone:</b> 603-928-9046
	<b>Mobile Phone:</b>
	<b>Fax:</b>

**Site Information**

<b>Address:</b> 101 International Drive		<b>Frontage:</b> 4,059 ft.
<b>Description of Property:</b> Existing Lonza Biologics Facility		<b>Left Side:</b> 1,500 ft +/-
		<b>Right Side:</b> 1,500 ft +/-
<b>Zone(s) Location:</b> Airport Business Comm.	<b>Lot #:</b> 6	<b>Rear:</b> 4,000 ft +/-
<b>Assessors Plan #:</b> 305	<b>Lot Area:</b> 46.03 ac.	
<b>Existing Use:</b> Existing Lonza Facility		<b>Proposed Use:</b> canopy with supporting structures on portion of property

**Request for Appeal from Administrative Decision:**

**Variance:**

<b>Applicable Rule/Regulation/Code Provision:</b>
<b>Applicable Zoning Regulation:</b>
<b>Interpretation Claimed:</b>
<b>Administrative Decision from which appeal is sought:</b>

<b>Zoning Regulation(s) from which Variance is Sought:</b>
Section 317.03 of PDA Land Use Controls to
permit canopy and supporting structure within
required 70' setback
<b>Reason(s) Why Variance Should Be Granted Including Circumstances Which Constitute Unnecessary Hardship:</b>
see attached

Please attach any required site plans or drawings to this application with a fee of \$ \_\_\_\_\_. All forms must be completely filled out and signed by the applicant or their agent before they will be accepted. Additional sheets may be attached if required. Completed forms must be returned to the PDA for a hearing by the PDA Zoning Adjustment and Appeals Committee or referral to the appropriate municipality. The applicant or their agent is required to attend the Public Hearing for the Appeal/Variance. If you have any questions, please contact the PDA Engineering Department at 603-433-6088.

**Certification**

I hereby certify under the penalties of perjury that the foregoing information and accompanying plans, documents, and supporting data are true and complete to the best of my knowledge.	
3/19/2025	Eric A. Maher, Counsel At
Date	Printed Name
Signature of Applicant	Lonza Biologics, Inc.

VARIANCE APPLICATION FOR  
Lonza Biologics, Inc. (“**Lonza**” or the “**Applicant**”) for property located at 101 International  
Drive (City Assessor Map 305, Lot 6) (the “**Property**”).

The Applicant seeks a variance from Section 304.04(c) of the Pease Development Authority’s (“PDA”) Land Use Controls to allow a canopy and related structural supports for an outdoor patio to be allowed within 70-feet of the front boundary line of the Property. The patio, as proposed, will be located in front of the existing Lonza Building on the Property (the “101 Building”), but does not require variance relief to be allowed within the front setback and has already been approved by the PDA.

The Applicant requests that the City’s Board of Adjustment recommend approval of the Applicant’s variance request to PDA’s Board of Directors pursuant the process outlined in Section 317.03 of the PDA’s Land Use Controls. The PDA Board of Directors authorized the Applicant to proceed to the Board of Adjustment at the PDA Board’s March 11, 2025 meeting.

**A. Factual Context**

The Property, which is leased by Lonza from the PDA, is 46.03 acres in size and is located within the Airport, Business and Commercial Zoning District. The Property has frontage along International Drive and Corporate Drive and is the location of Lonza’s Portsmouth facility.

The portion of the Property that is the subject of this application has frontage on International Drive, which is where the 101 Building is located. There is a line of parking to the immediate south of the 101 Building running parallel to International Drive. That line of parking expands to a larger parking lot in the southwestern corner of the Property (in the vicinity to where the Property abuts Tax Map 305, Lot 7 owned by the PDA). The Property is accessed from International Drive by an accessway located to the northwest of Building 101. An existing conditions plan is attached hereto as **Exhibit 1**.

The proposed patio starts approximately 3’-7” from the Property’s southeastern boundary line. The patio is proposed to be 74 feet wide and 61 feet long. The patio is permissible within the front setback under the PDA Zoning Ordinance and has already been approved administratively by PDA. The patio will replace a portion of the parking lot that runs parallel to International Drive. The patio will have a variety of moveable tables and chairs, as well as planters, which will provide for an attractive addition to the Property. A rendering of the patio is attached hereto as **Exhibit 2**.

The patio will be partially shaded by a canopy made of High-Density Polyethylene (“HDPE”) shade fabric. The structural poles for the canopy will be approximately 11 & 15 feet in height, with the shade fabric hung at heights between 10 and 14 feet. These structural poles and the sunshade are the subject of this variance application as the PDA considers the sunshade and structural supports to be structures that are proposed to be located in the front setback for the Property. Details related to the canopy are attached hereto as **Exhibit 3**.

The Applicant has also provided for a 20’ emergency vehicle access ramp that will allow for access to the patio and the 101 Building in the event of an emergency. Stormwater will be



managed by tying into the existing stormwater system on the Property, which treats runoff prior to introducing the same into the PDA stormwater system.

At the southwestern corner of the patio, the structural support for the canopy will be 45'-4" from the front lot line on the Property. At the approximate midpoint of the patio, the structural support will be located approximately 52'-8" from the front lot line of the Property. At the southeastern corner of the patio, the structural support for the canopy will be 59'-5" from the front lot line on the Property. **Exhibit 4** attached reflects a Patio Layout Drawing reflecting the patio and the distances of the structural supports from the front lot line. **Exhibit 5** reflects a Sketch Site Plan Rendering identifying the sunshade and the structural supports in relation to the front setback.

The Applicant will provide additional landscaping along the west, south, and easterly portions of the patio. The landscaping includes a variety of plant types to ensure a depth of screening, particularly for the canopy's structural supports. See **Exhibit 4**. The landscaping is permissible under the PDA Zoning Ordinance and has been approved by the PDA Board.

The topography of the Property in the vicinity of the proposed patio starts at an elevation between 61 and 63 feet at the paved portion of International Drive and increases to an elevation between 72 and 75 feet. As such, the patio will sit at the top of an embankment that already provides a measure of concealment from International Drive, which is in addition to the landscaping to be placed along and throughout the patio. A photograph depicting the 101 Building and the existing parking area is attached hereto as **Exhibit 6**.

The 101 Building constitutes the Applicant's primary facility on the Property. The Applicant employs 1500 employees at the 101 Building, which has various necessary amenities needed to employ that number of employees, which includes a cafeteria. The patio will allow the Applicant to provide a more pleasurable working environment, who will be able to enjoy meals and breaks outdoors, and the canopy that is the subject of this application will provide protection from the sun to make the patio safe and enjoyable. The proposed patio and associated canopy provide an attractive solution by replacing an existing parking lot with a well-landscaped exterior area with an easy to maintain sunshade that is not visually intrusive.

On March 11, 2025, the PDA Board of Directors approved of the above-referenced concept. In so doing, PDA reviewed the plans and project narrative and determined that the "proposed changes have no impact with regard to traffic, safety, or intensity of use and have inconsequential impact to the site." As such the administratively approved the project upon the condition that the Applicant obtain a recommendation for approval from "the City of Portsmouth Zoning Board of Adjustment for a variance to allow the sunshade support structures in the front yard setback." A copy of the PDA Board of Director's March 14, 2025 letter, confirming its March 14, 2025 vote is attached hereto as **Exhibit 7**.

## **B. Variance Criteria**

The variance criteria outlined in PDA 317.01(c) generally mirror those found within RSA 674:33, and will thus be analyzed pursuant to the statute and corresponding case law interpreting the same.



To obtain a variance pursuant to PDA 317.01, an applicant must show that that the variance is in harmony with the general purpose and intent of the PDA Land Use Controls and meets the following criteria: (1) no adverse effect or diminution in values of surrounding properties will be suffered; (2) granting the variance would be of benefit to the public interest; (3) denial of the variance would result in unnecessary hardship to the person seeking it; (4) granting the variance would be substantial justice; and (5) the proposed use would not be contrary to the spirit of the zoning rule.

**1. No adverse effect or diminution in values of surrounding properties will be suffered if the variance request is approved.**

Given the nature of the area and the existing use of the Property and surrounding properties, none of the surrounding properties will suffer any diminution in value or other adverse effects as a result of granting the requested variance. Certainly, the Applicant is aware of no evidence to the contrary. The neighborhood is already commercial and/or industrial in nature. The structural supports will largely blend in with the existing large-scale industrial development on the Property and will be located in the vicinity of a portion of the existing parking lot. The Applicant has proposed landscaping on around the structural supports to partially screen the supports from view. The placement of structural supports for a sunshade canopy over the proposed patio has been identified by PDA as being “inconsequential.”

Accordingly, the Applicant respectfully requests that the Board of Adjustment find that the requested variance will not diminish surrounding property values or cause other adverse effects.

**2. Granting the variance will be of benefit to the public interest.**

The New Hampshire Supreme Court has indicated that the requirement that a variance not be “contrary to the public interest” is coextensive and related to the requirement that a variance be consistent with the spirit of the ordinance. See Chester Rod & Gun Club v. Town of Chester, 152 N.H. 577, 580 (2005); Malachy Glen Associates, Inc. v. Town of Chichester, 155 N.H. 102, 105-06 (2007); and Farrar v. City of Keene, 158 N.H. 684, 691 (2009). A variance is contrary to the public interest only if it “unduly, and in a marked degree conflicts with the ordinance such that it violates the ordinance’s basic zoning objectives.” Chester Rod & Gun Club, 152 N.H. at 581; Farrar, 158 N.H. at 691. See also Harborside Associates, L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508, 514 (2011) (“[m]ere conflict with the terms of the ordinance is insufficient.”)

Moreover, these cases instruct boards of adjustment to make the determination as to whether a variance application “unduly” conflicts with the zoning objectives of the ordinance “to a marked degree” by analyzing whether granting the variance would “alter the essential character of the neighborhood” or “threaten the public health, safety or welfare” and to make that determination by examining, where possible, the language of the Zoning Ordinance. Additionally, the Supreme Court has stated that the mere fact that an applicant is seeking a variance is not a valid reason for denying the variance. See Malachy Glen Associates, Inc. v. Town of Chichester, 155

N.H. 102, 107 (2007); see also Harborside Associates, 162 N.H. at 2011 (“mere conflict with the terms of the ordinance is insufficient” to deny a variance).

While Part 304 of the PDA Zoning Ordinance, establishing dimensional requirements for various zones in the PDA, does not have an express purpose provision, the general purpose of the PDA’s Zoning Ordinance is to:

[P]romote the public health, safety and general welfare, promote the safe operation of air transportation, conserve the value of property within the jurisdiction of the Pease Development Authority, assure the most efficient use of the existing natural and manmade resources, provide adequate light, air and open space, encourage the appropriate and wise use of land and promote high quality economic development and employment.

PDA 301.01. See also PDA 317.01(c)(requiring that in addition to satisfying the variance criteria, variances “shall not be approved or recommended for approval unless it is in harmony with the general purpose and intent of these regulations ...”).

As a foundational matter, the Applicant’s proposal is in harmony with the general purpose and intent of the PDA Land Use Controls, and therefore not contrary to the public interest, because it will advance the general purposes articulated in PDA 301.01. The proposal will allow for an attractive use of the Property and will allow for the Applicant to provide a safe and aesthetically pleasing location for the Applicant’s employees to enjoy meals and breaks. The proposed canopy allows employees to do without the risk of sunburn or excessive heat. Such a use is consistent with the goals of the PDA to provide “high quality . . . employment” and continues the Applicant’s tradition of providing a safe and healthy work environment. The use of a canopy sunshade – as opposed to a more permanent pavilion – further promotes the efficient use of resources and provides access the light and air, while maintaining the appearance of open space. The proposal does not result in an intensification of the use of the Property, re-uses existing developed parking area, and has no potential of adversely impacting public health, safety, or welfare. Further, the minor relief sought will not alter the essential character of the neighborhood, which involves commercial, industrial, and institutional land uses.

As the Applicant’s variance proposal will be consistent with and advance the general purposes of the PDA Land Use Controls, and as it will not alter the essential character of the neighborhood or threaten the public health or safety, it would be reasonable and appropriate for the Board of Adjustment to conclude that granting the variances will benefit the public interest.

### **3. Denial of the variance would result in unnecessary hardship to Lonza.**

In New Hampshire, there are two options by which the Board of Adjustment can find that an unnecessary hardship exists:

(A) For purposes of this subparagraph, “unnecessary hardship” means that, owing to special conditions of the property that distinguish it from other properties in the area:

- (i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and
- (ii) The proposed use is a reasonable one.

or,

(B) If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, 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.

See RSA 674:33, I.

In Harborside Assocs. v. Parade Residence Hotel, the New Hampshire Supreme Court upheld the Portsmouth Board of Adjustment's finding that the physical improvements on a property, in that case the size of a building when compared to other buildings in the area within the context of sign variance request, could be considered "special circumstances." Affirming the analysis of the Board of Adjustment, the Supreme Court stated:

The [Respondent] is not attempting to meet the 'special conditions' test by showing that its *signs* would be unique in their settings, but that its *property* – the hotel and conference center – has unique characteristics that make the signs themselves a reasonable use of the property.

Harborside, 162 N.H. at 518 (emphasis added). Cf Farrar, 158, N.H. 689 (where variance sought to convert large, historical single use residence to mixed use of two residence and office space, size of residence was relevant to determining whether property was unique in its environment).

The "special conditions" of the Property for the purposes of this variance criterion are self-evident. The Property leased by Lonza from the PDA is 46 acres and appears larger than all surrounding privately leased parcels. The Property is improved by a large industrial facility that presently accommodates over 1500 employees. The existing use of the subject portion of the Property is parking that is already tied into the Property's existing stormwater management system, which makes the conversion of the Property to a patio and the use of the canopy system reasonable.

Due to these special conditions of the Property, there is no fair and substantial relationship between the public purposes of the PDA Land Use Controls and their specific application to the Property in this case. Front setbacks exist to ensure space for landscaping and parking facilities, establish a buffer from land uses and the public right-of-way, prevent visual obstructions from traffic and pedestrians, and prevent adverse aesthetic impacts. There is no relationship between these general purposes and their application to the current project. The property is an existing industrial land use. The portion of International Drive on which the Property has frontage is relatively flat with excellent lines of site. The proposed use sits atop an embankment that rises approximately 11 to 12 feet between the existing front parking area and the paved portion of the right of way. The structural supports will be screened by use of landscaping and the sunshade itself is of a minimal visual impact considering that the existing background remains the 101

Building. As the PDA Board of Directors determined there is no potential impact to traffic or safety arising from this proposal. Further, the proposed use will act as an improvement over the existing conditions, which is as a parking lot. Therefore, despite the technical lack of conformity, and as discussed above, the Applicant's proposal is consistent with PDA 301.01.

The variance is consistent with the PDA's stated purpose of encouraging the appropriate and wise use of land and promoting high quality employment. Stated differently, strictly enforcing the PDA 308.02(c) will not advance the public purposes of the PDA Land Use Controls, but granting the requested variances will clearly will.

Finally, because the Applicant's proposal constitutes an inconsequential change from the current industrial use, utilizing an existing parking area and drainage infrastructure, in an effort to provide a relaxing environment for employees to enjoy meals and breaks, the grant of the variance is reasonable under the circumstances. See Vigeant v. Town of Hudson, 151 N.H. 747, 752 - 53 (2005); and Malachy Glen, 155 N.H. at 107; see also Harborside at 518-519 (applicant did not need to show signs were "necessary" rather only had to show signs were a "reasonable use"). This is particularly so considering that the Property is surrounded by other commercial, industrial, and institutional uses.

Accordingly, the Applicant respectfully asserts that its application complies with the standard for Option A of the unnecessary hardship criterion and the Board of Adjustment should so find.

#### **4. Granting the variance will be substantial justice.**

As noted in Malachy Glen, *supra*, "perhaps the only guiding rule [on this factor] is that any loss to the individual that is not outweighed by a gain to the general public is an injustice." Malachy Glen, *supra*, citing 15 P. Loughlin, New Hampshire Practice, Land Use Planning and Zoning § 24.11, at 308 (2000) (quoting New Hampshire Office of State Planning, The Board of Adjustment in New Hampshire, A Handbook for Local Officials (1997)). In short, there must be some gain to the general public from denying the variance that outweighs the loss to the Applicant from its denial.

Granting the variance will provide a benefit to Lonza as it will permit the Lonza to provide a relaxing space for employees to enjoy breaks and meals. It will provide an intangible benefit meant to serve Lonza's broader goal of providing a healthy and productive work environment for its numerous employees. In this way, such initiatives, taken in their aggregate, improve employee retention and recruitment. The denial of the variance will deprive Lonza of a reasonable use of the Property and will prevent Lonza from performing an attractive improvement to its Property.

There is no discernible benefit to the general public that could be gained by denying the requested variance because the opposite is true: granting the variance will be a great benefit to the general public. As stated throughout, the intrusion into the front setback is minimal, involving merely the placement of sunshade and its structural supports to be placed over a permissible patio. If the variance is denied, the subject area will still be comprised of a parking area, which will be less visually appealing than the proposed patio and accompanying landscaping. Indeed, the denial

of the variance may prevent an improvement to the Property and would act as a net detriment to the public.

Because granting the requested variance will provide a benefit both to the Applicant and to the general public, and because there is no discernible benefit to the general public by denying the variance, Lonza's proposal accomplishes substantial justice.

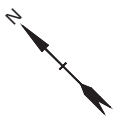
**5. The proposed use would not be contrary to the spirit of PDA 308.02(c).**

As referenced in Section 2, above, the requested variance will satisfy the "public interest" prong of the variance criteria because it advances the general purpose and intent of the PDA Land Use Controls and will not alter the essential character of the neighborhood or threaten the public health and welfare. As the New Hampshire Supreme Court has indicated in both Chester Rod & Gun Club and in Malachy Glen, the requirement that the variance not be "contrary to the public interest" is coextensive and is related to the requirement that the variance be consistent with the spirit of the ordinance. See Chester Rod & Gun Club, 152 N.H. at 580. A variance is contrary to the spirit of the ordinance only if it "unduly, and in a marked degree conflicts with the ordinance such that it violates the ordinance's basic zoning objectives." Chester Rod & Gun Club, 152 N.H. at 581; Farrar, 158 N.H. at 691. As discussed above, the requested variance is consistent with the general purpose and intent of the PDA Land Use Controls because of the reasons stated in Section 2. As a result, for the reasons stated above, the Applicant respectfully asserts that it would be reasonable and appropriate for the Board of Adjustment to conclude that the requested variance will not be contrary to the spirit of the PDA's Land Use Controls.

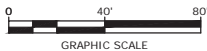
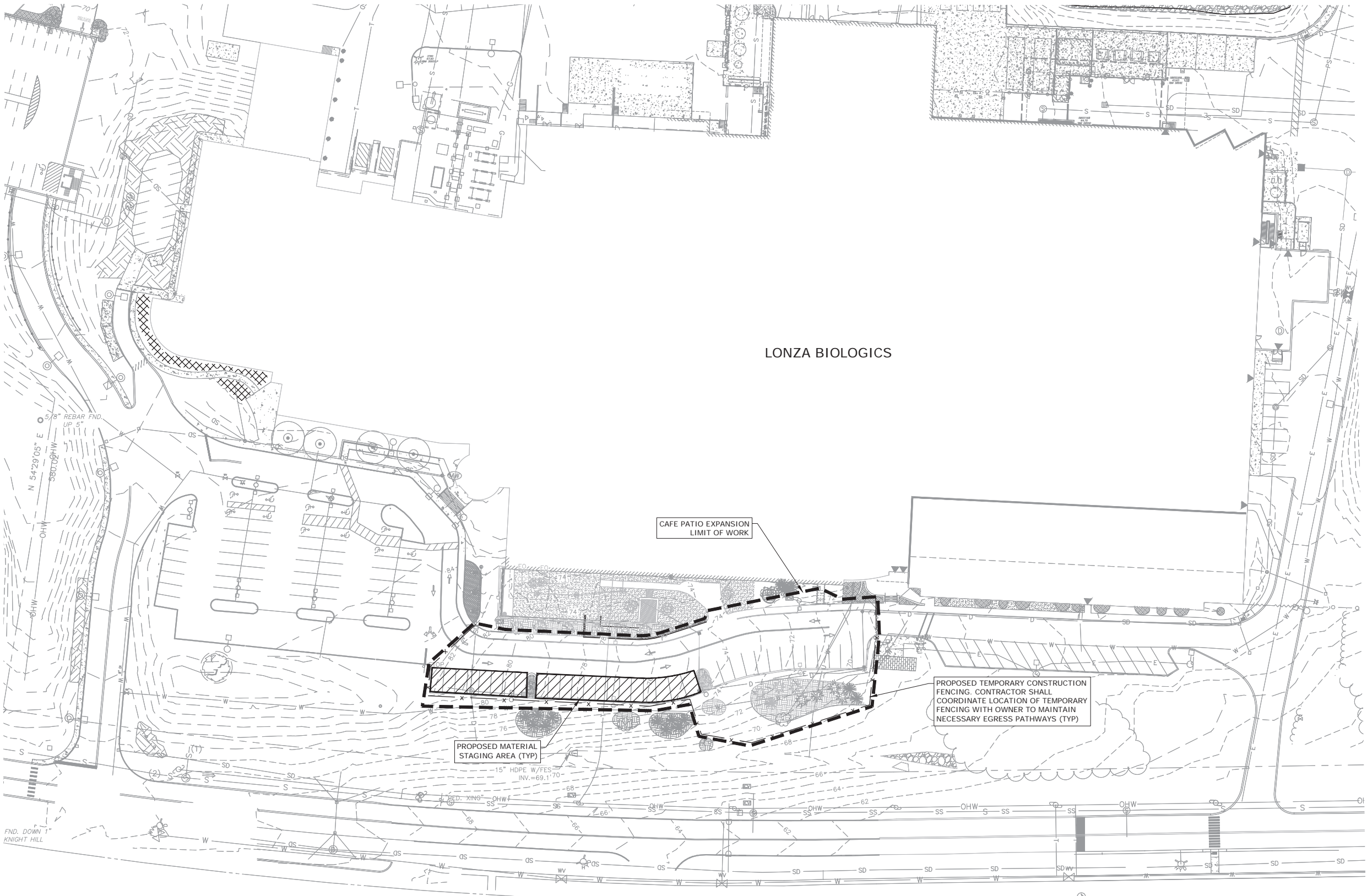
**C. Conclusion**

Lonza respectfully submits that its Variance Application meets the underlying standard of review and respectfully requests the same be granted.

Exhibit 1



Tighe&Bond



Cafe Patio Expansion

Lonza Biologics

Portsmouth,  
New Hampshire

MARK	DATE	DESCRIPTION
1	02-Aug-24	Revised per Client Comments
0	28-Jun-24	Patio Expansion - IFP

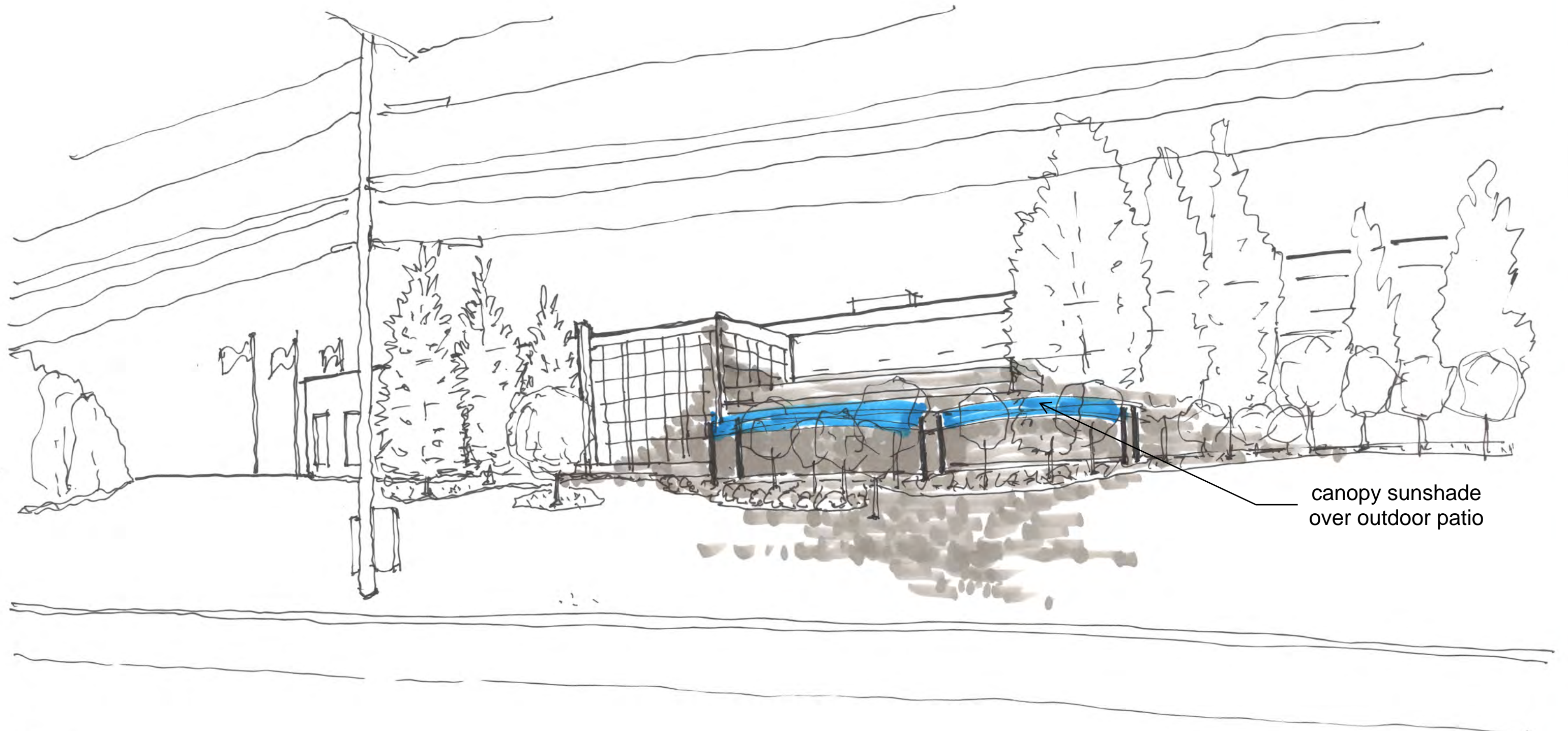
PROJECT NO:	L-0700-023
DATE:	June 27, 2022
FILE:	L-0700-023A-C-DSGN.DWG
DRAWN BY:	CJK/NHW
CHECKED BY:	NAH
APPROVED BY:	PMC

OVERALL EXISTING  
CONDITIONS

SCALE: AS SHOWN



## Exhibit 2

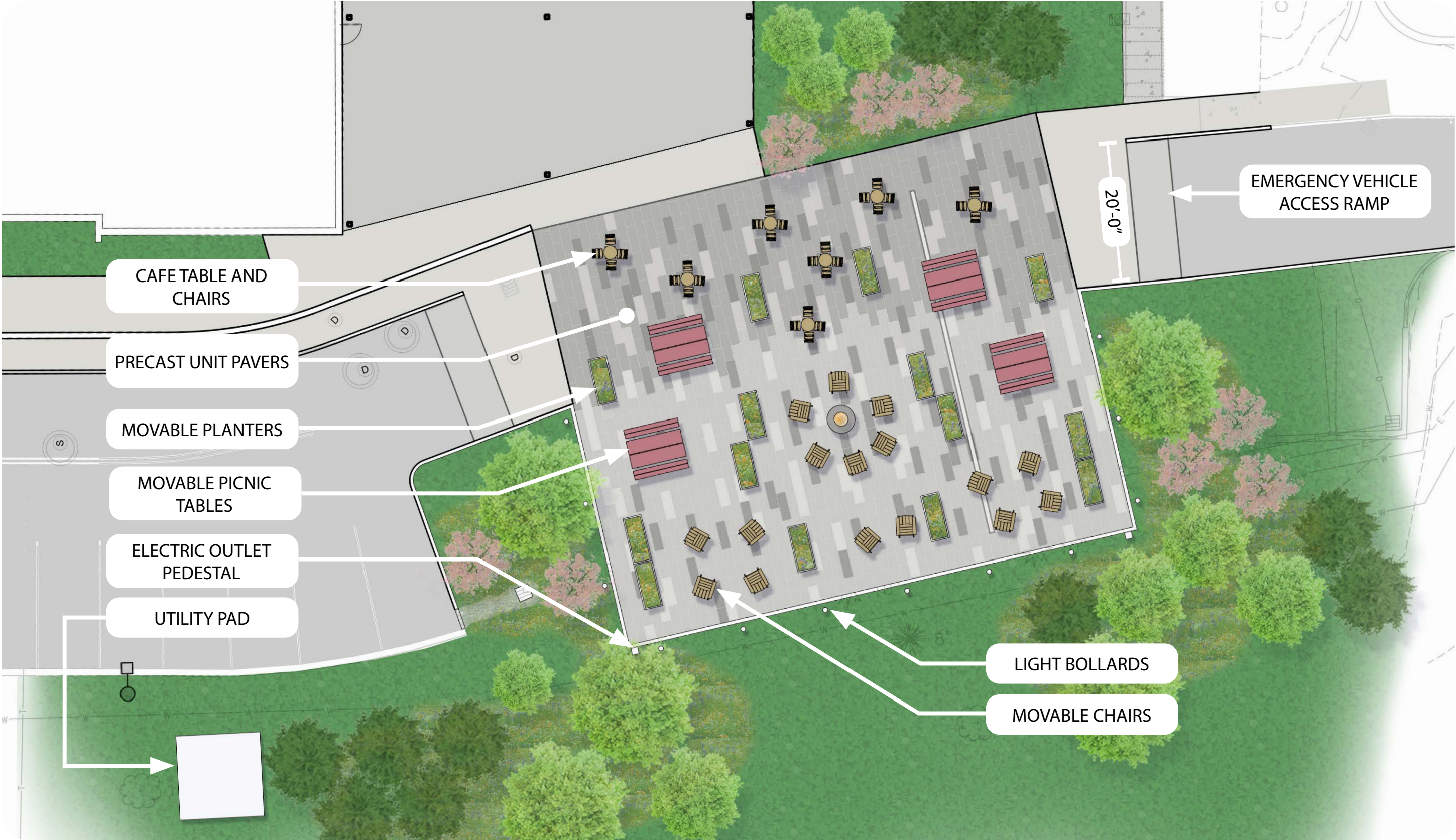


canopy sunshade  
over outdoor patio

March 12, 2025  
Lonza - Portsmouth  
Sketch Rendering-1  
View from International Dr. looking toward proposed  
outdoor patio with blue canopy sunshades.

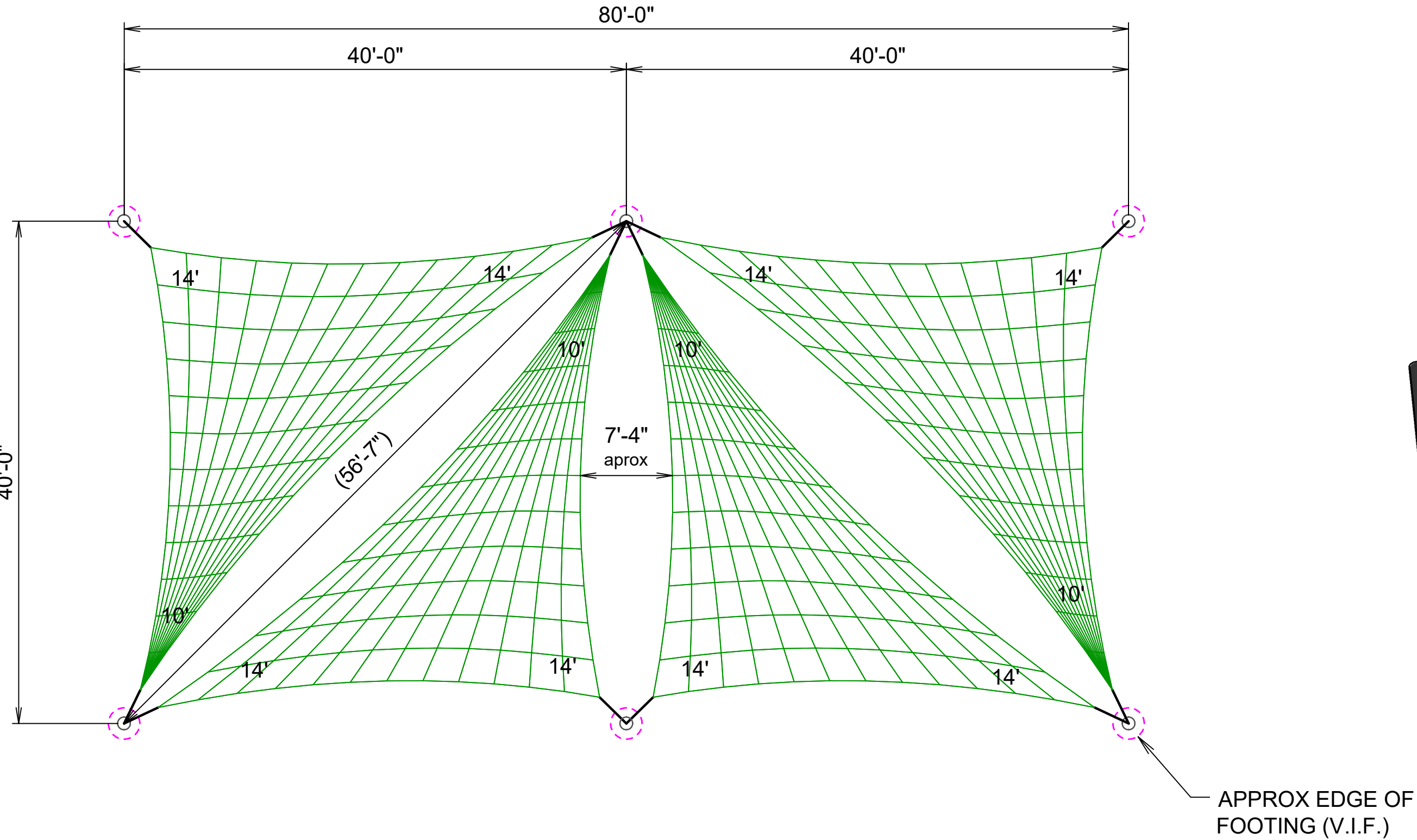


# LONZA CAFE PATIO - FURNITURE LAYOUT B



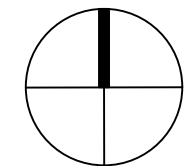


# Exhibit 3

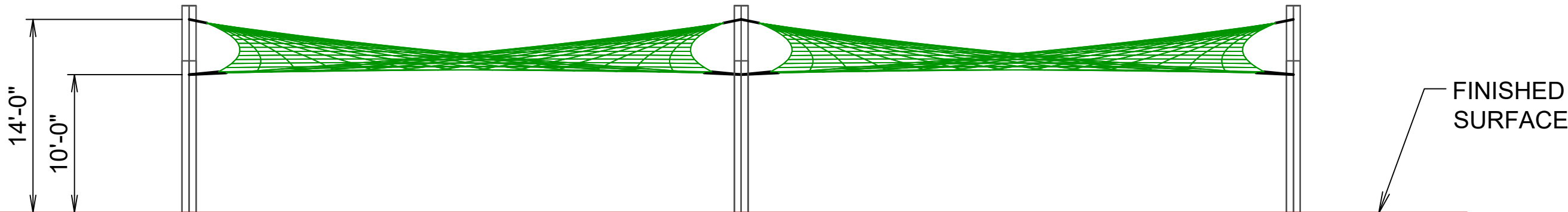


COVERAGE AREA	
PANEL #	SQ FT
PANEL 1	454.3
TOTAL (4)	1817.4

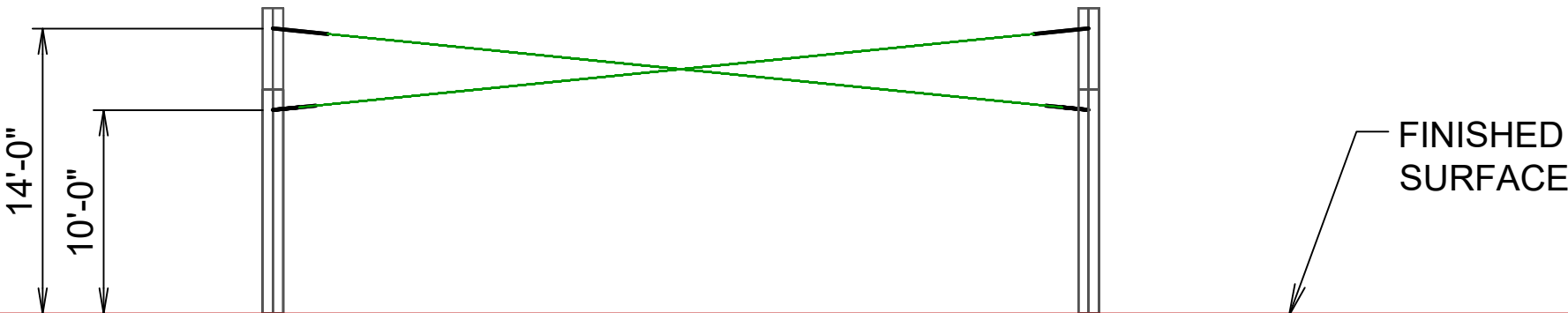
## PLAN VIEW



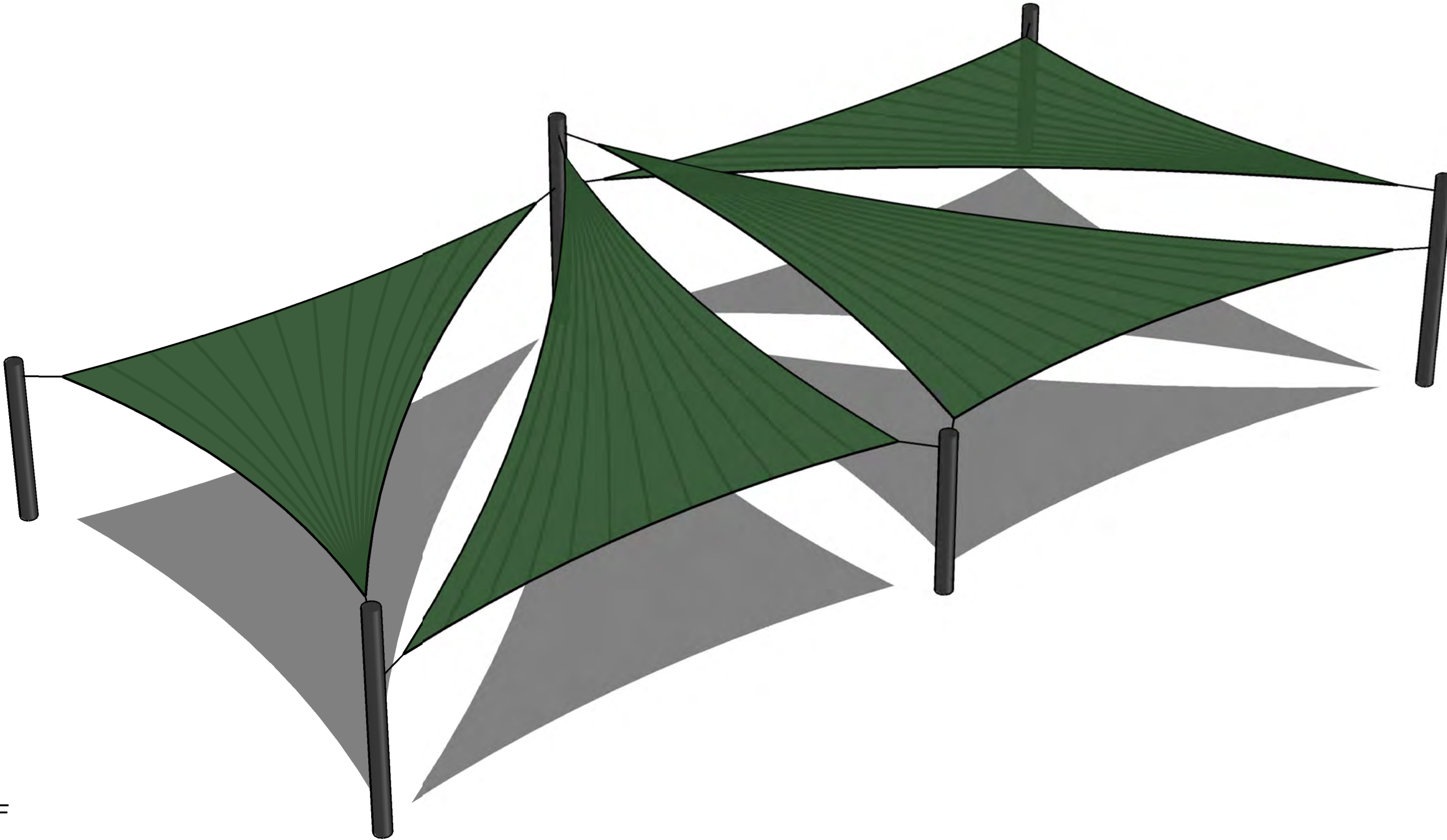
## PLAN NORTH



## SOUTH ELEVATION



## WEST ELEVATION



## PERSPECTIVE VIEW

**CUSTOMER:**

**AZ CORP**

**PROJECT NAME:**

**CAFE PATIO  
EXTENSION**

**LOCATION:**

**101 INTERNATIONAL DR  
PORTSMOUTH, NH 03801**

---

**STRUCTURE TYPE:**

**3PT SAIL JOINED**

**SIZE:**

**40' X 80' X 10'14'e**

THESE PLANS AND SPECIFICATIONS ARE THE PROPERTY OF  
USA SHADE AND FABRIC STRUCTURES  
AND SHALL NOT BE REPRODUCED WITHOUT THEIR WRITTEN PERMISSION.



**USASHADE**  
& Fabric Structures

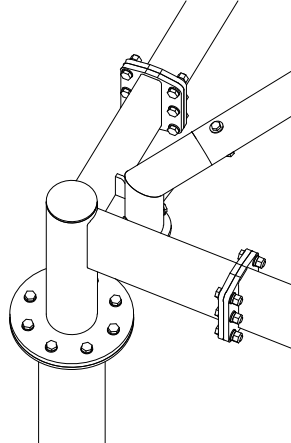
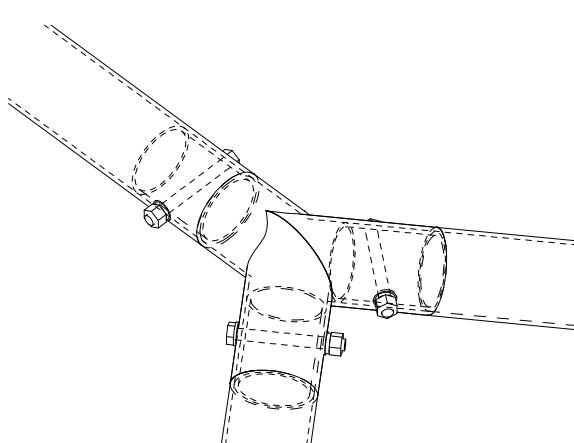
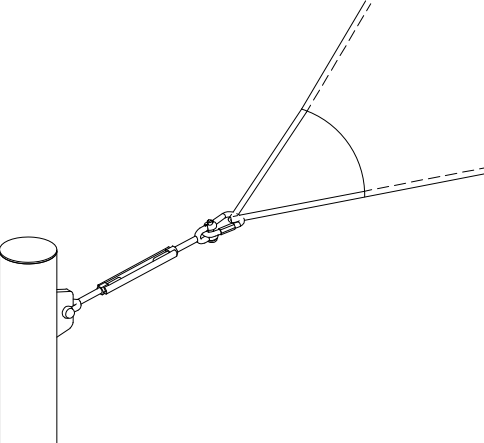
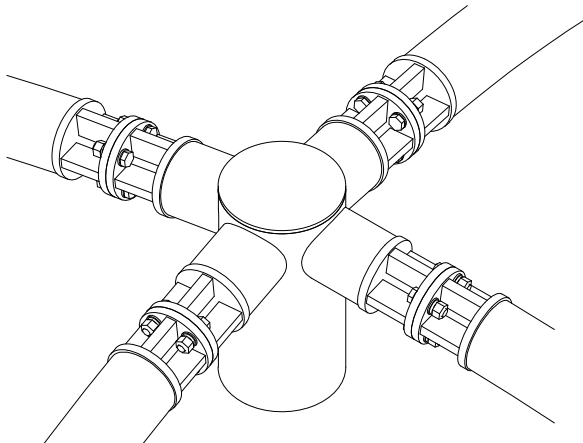
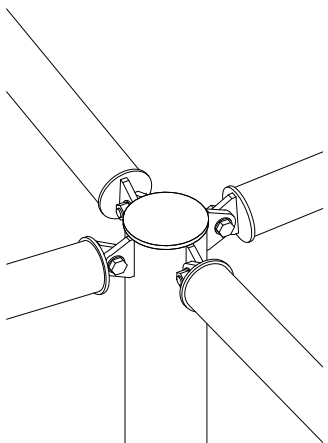
CORPORATE HEADQUARTERS  
2580 ESTERS BLVD., SUITE 110  
DFW AIRPORT, TX 75261  
800-966-5005

**CERTIFICATIONS:**  
IAS CERTIFICATION No: FA-428  
CLARK COUNTY MANUFACTURER  
CERTIFICATION NUMBER (NEVADA): 355

		REV	DESCRIPTION	DATE	DRW	CHK	ENG
Drawn By :	YH		01/17/25				
Checked By :	YH		01/17/25				
Approved By :	YH		01/17/25				

**As manufactured and installed by:**  
USA SHADE & Fabric Structures.

**Noah Ledbetter**  
**(972) 768-8006, (800) 966-5005**  
**[Noah.Ledbetter@usa-shade.com](mailto:Noah.Ledbetter@usa-shade.com)**



**Notes:**

**-All structures will have bolted connections for shipping and installations purposes.**

**-Standard details being shown as an example. Final details t.b.d. during final Engineering phase.**

**-All dimensions and heights must be field verified prior to any final design, fabrication or installation work**

**DRAWING DESCRIPTION:**

DWG. **NH1124NL18247**

PAGE 2000

REV.



Commercial 95 340	Commercial 95 340 FR
warp 670 N/50mm	580 N/50mm
weft 117%	98%
warp 2400 N/50mm	2000 N/50mm
weft 83%	71.5%
warp 990 N	930 N
weft 2000 N	2000 N
warp 184 N	194 N
weft 347 N	282 N
3500 kPa	3600 kPa
1937 N	1944 N
340 gsm ± 20	340 gsm ± 20
3m (folded)	3m (folded)
40m	40m
Flammability Index - 12	Flammability Index - 1
Ingtnitability Index - 10	Ingtnitability Index - 13
Spread of Flame Index - 7	Spread of Flame Index - 8
Heat Evolved Index - 5	Heat Evolved Index - 3
Smoke Developed Index - 4	Smoke Developed Index - 6

Commercial 95 340	Commercial 95 340 FR
warp 189.1 lbf warp 103.67% weft 462.3 lbf weft 63%	158.6 lbf 88.7% 412.3 lbf 49%
warp 52.2 lbf weft 52.2 lbf  422 lbf	43 lbf 39.6 lbf  408 lbf
340 gsm ± 20	340 gsm ± 20
9 ft. 10 in. (folded) 131 ft. 3 in.	9 ft. 10 in. (folded) 131 ft. 3 in.
ASTM E84 19B Class A	CSFM Title 19 1237.1 NFPA 701 Test Methods 1&2 ASTM E84 19B Class A



Please note, due to limitations of the printing process, colors pictured may not represent the true color.



145 Woodlands Drive,  
Braeside, Victoria 3195  
Australia  
Toll Free: +1 800 331 521  
au.cs@galepacific.com

5311 77 Center Drive, Suite 150,  
Charlotte, NC 28217  
USA  
Toll Free: +1 800 560 4667  
[cscommercial@galepacific.com](mailto:cscommercial@galepacific.com)

JAFZA 15, 6th Floor, Room 604  
Jebel Ali Free Zone, Dubai  
United Arab Emirates  
+971 4 881 7114  
cscommercial@galepacific.com

777 Hengshan W Road,  
Beilun, Ningbo, Zhejiang 315800  
China  
Toll Free: +1 800 331 521  
au.cs@galepacific.com

Toll Free: +1 800 560 4667  
cscommercial@galepacific.com

Tension Structures  
Awnings  
Shade Sails  
Car Park Structures



**GALE**  
PACIFIC  
COMMERCIAL FABRICS

Commercial  
**NinetyFive**

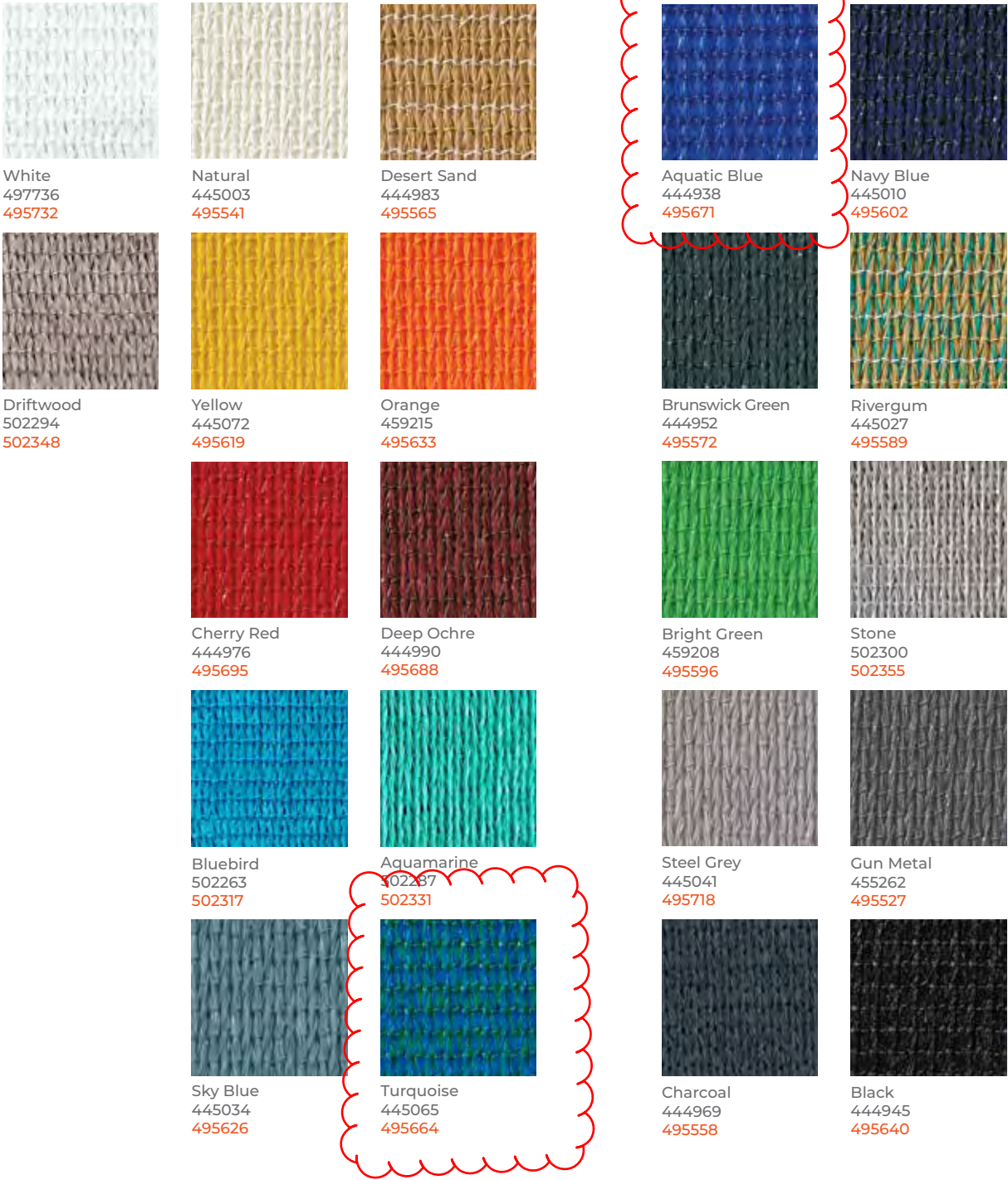
340 GSM | Standard & Flame Retardant

Commercial  
**NinetyFive**

340 GSM | Standard & Flame Retardant

The cornerstone of the GALE Pacific portfolio, Commercial NinetyFive brings over 25 years of versatility, reliability, and unmatched UV protection.

Free from lead and phthalates, Commercial NinetyFive is the first architectural shade fabric granted Oeko-Tex® 100 and Greenguard® certifications.



**Expansive color assortment**

Offering the most expansive color assortment of HDPE shade fabrics, Commercial NinetyFive ensures design accuracy with its precision-driven stentering process.

**Effortless installation**

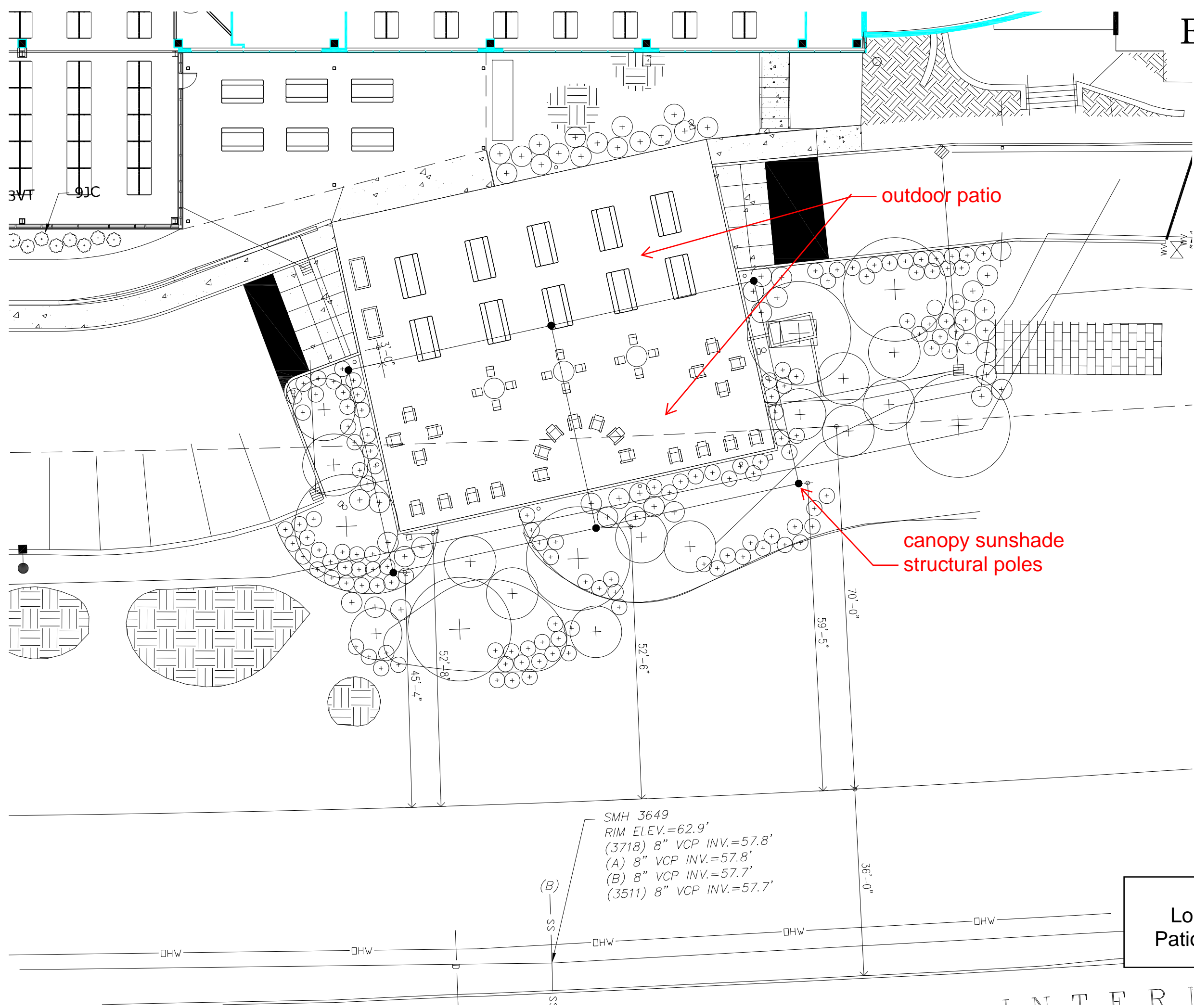
Designed for longevity and ease, these maintenance-free shades have a best-in-class lay flat process for effortless installation.

**Industry-leading UVR block**

Each shade offers an industry-leading 96% UVR block with full warranties against UV degradation.

All colors meet the most tested regional flame retardancy standards, including CSFM & NFPA 701 (Methods 1 & 2), which ensures our fabrics can be used globally.





March 12, 2025  
Lonza - Portsmouth  
Patio Layout Drawing



Exhibit 5



March 12, 2025  
Lonza - Portsmouth  
Sketch Site Plan Rendering  
Site plan view of the proposed  
outdoor patio with blue canopy sunshade





March 7, 2025  
Lonza - Portsmouth  
Existing Photo

View from International Drive looking toward Lonza  
and the proposed outdoor patio with sunshade





# EXHIBIT 7

55 International Drive Portsmouth, NH 03801

March 14, 2025

VIA Email: kristopher.tiernan@lonza.com

Kristopher Tiernan  
Lonza Biologics, Inc.  
101 International Drive  
Portsmouth, NH 03801

Re: Lonza Café Sunshades Administrative Approval

Dear Mr. Tiernan:

Regarding Lonza's request to amend the August 2022 site review approval of the café addition to the building at 101 International Drive by installing sunshades at the proposed patio area, the Pease Development Authority ("PDA") Board of Directors, at its March 11, 2025, meeting, granted concept approval.

Consequently, PDA has reviewed the plans and project narrative dated March 10, 2025, and determined that the proposed changes have no impact with regard to traffic, safety, or intensity of use and have an inconsequential impact to the site. As such, the request is approved administratively in accordance with Part 407.03(a) of the PDA Site Plan Regulations.

As a condition of this administrative site plan approval, the applicant is required to obtain a recommendation for approval from the City of Portsmouth Zoning Board of Adjustment for a variance to allow the sunshade support structures in the front yard setback.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael R. Mates".

Michael R. Mates, P.E.  
Director of Engineering  
Pease Development Authority

cc: Peter Britz, City of Portsmouth (VIA Email)

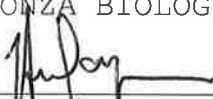
N: \ENGINEER\Board Approval Letters\Lonza Café Approval Sunshades.docx

LETTER OF AUTHORIZATION

I, Neil Bergeron, Network Lead, of Lonza Biologics Inc., owner of property depicted on Tax Map 305, Lot 6, do hereby authorize Donahue, Tucker and Ciandella, PLLC, to execute any land use applications to the City of Portsmouth and to take any action necessary for the application and permitting process, including but not limited to, attendance and presentation at public hearings, of the said property.

Dated: 30 JUN 2021

LONZA BIOLOGICS, Inc.

  
\_\_\_\_\_  
Neil Bergeron, Network Lead

S:\LJ-LZ\LONZA BIOLOGICS\GENERATOR VARIANCE\LETTER OF AUTHORIZATION.DOCX

## II. NEW BUSINESS

- E. The request of **Adam and Reagan Ruedig** (Owners), for property located at **70 Highland Street** whereas relief is needed to demolish the existing garage and bulkhead and to construct a new detached garage and bulkhead which requires the following: 1) Variance from Section 10.521 to allow a) building coverage at 26% where a maximum of 25% is allowed; b) a 2 foot rear yard where 18 feet is required; c) a 2 foot right side yard setback where 10 feet is required; and 2) Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 134 Lot 27 and lies within the General Residence A (GRA) District. (LU-25-40)

### Existing & Proposed Conditions

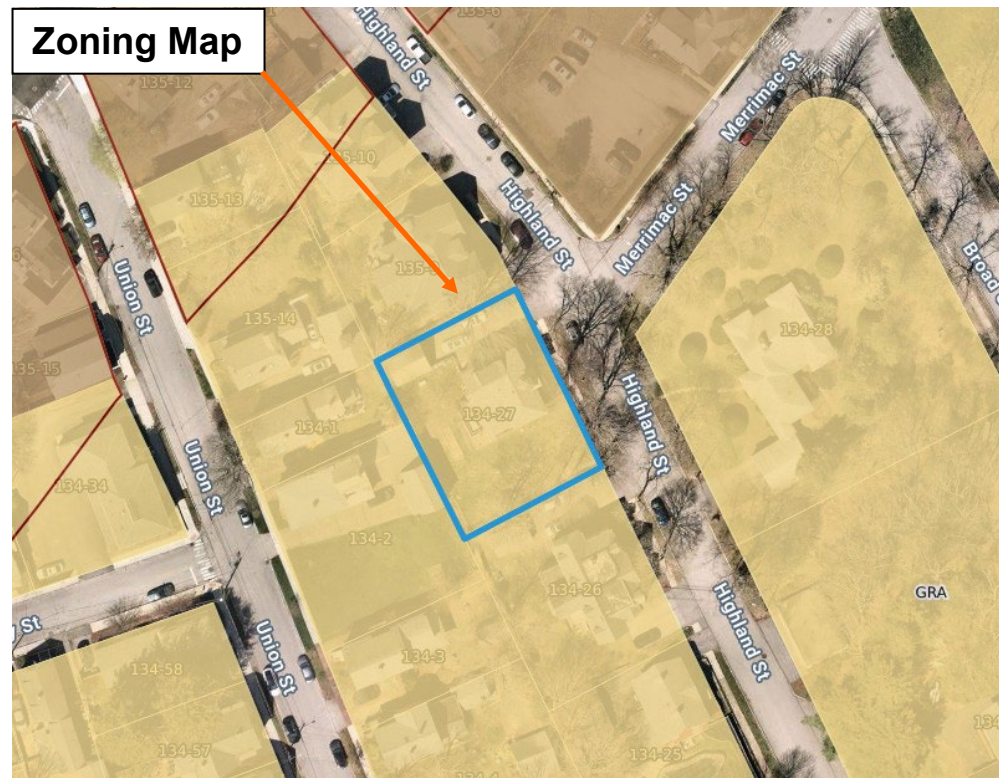
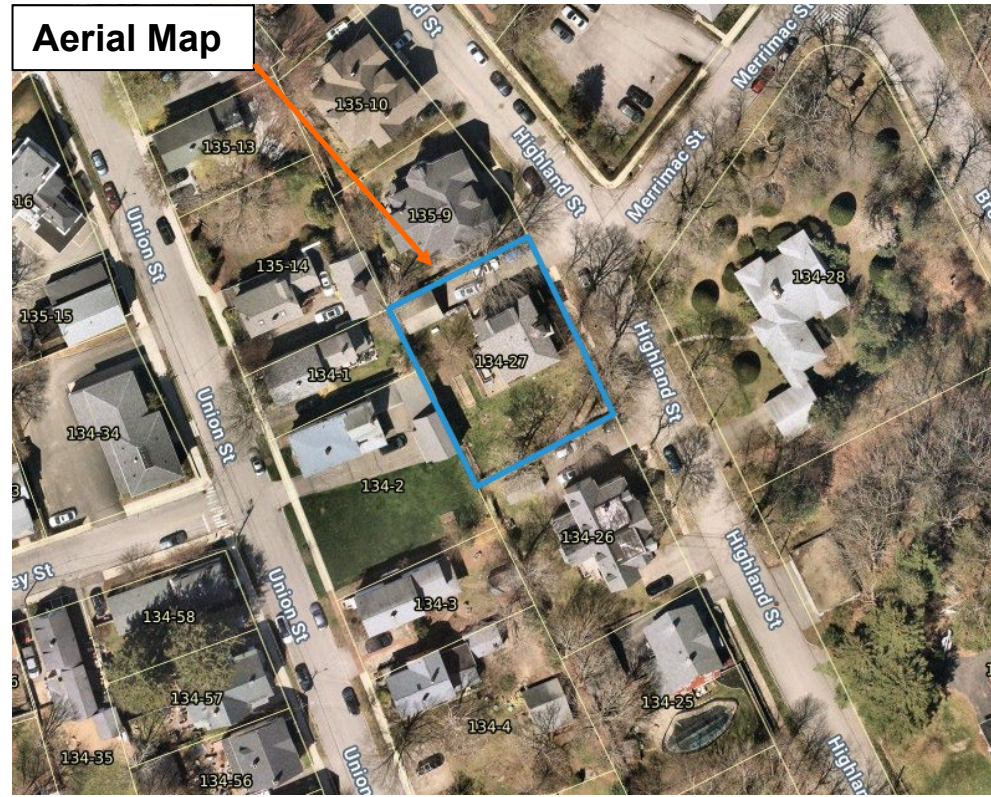
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family	Demo and reconstruct detached garage	Primarily Residential
<u>Lot area (sq. ft.):</u>	10,350	10,350	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	10,350	10,350	7,500 min.
<u>Lot depth (ft.):</u>	90	90	100 min.
<u>Street Frontage (ft.):</u>	115	115	70 min.
<u>Front Yard (ft.):</u>	10	10	15 min.
<u>Right Side Yard (ft.):</u>	Garage: 2	Garage: 2	10 min.
<u>Left Side Yard (ft.):</u>	>10	>10	10 min.
<u>Rear Yard (ft.):</u>	Garage: 2	Garage: 2	18 min. (10.573.20)
<u>Building Coverage (%):</u>	22.9	26	25 max.
<u>Open Space Coverage (%):</u>	62.5	57.9	30 min.
<u>Parking</u>	>2	>2	2
<u>Estimated Age of Structure:</u>	1874	Variance request(s) shown in red.	

### Other Permits/Approvals Required

- Building Permit



## Neighborhood Context





## Previous Board of Adjustment Actions

- **March 18, 1975** – To use the premises at 70 Highland Street for two professional offices. The Board voted to **deny** the petition as presented and advertised.

## Planning Department Comments

The applicant is requesting to demolish an existing detached garage and to construct a slightly larger new two-car detached garage. The garage is designed to give more length and space to fit modern vehicles and will require relief for rear and side yard setbacks, in addition to extension of an existing non-conforming structure. In addition to replacing the garage, the property owners would like to rebuild an existing bulkhead that accesses the basement at the rear of the house. The applicant also requests relief for building coverage greater than the maximum permitted.

## Variance Review Criteria

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

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

## 10.235 Certain Representations Deemed Conditions

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

**BY: VIEWPOINT & HAND DELIVERY**

March 19, 2025

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

**RE: Variance Application of Adam and Reagan Ruedig  
70 Highland Street, Tax Map 134, Lot 27**

Dear Stefanie,

Please find the following submission materials in connection Adam and Reagan Ruedig's variance application for their property located at 70 Highland Street, Portsmouth.

- 1) Landowner Authorization Letter.
- 2) Narrative to Variance Application (including photos).
- 3) Existing and Proposed Conditions Plans.
- 4) Floor Plans and Elevations.
- 5) Abutter Letter of Support (Conrad).

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

Sincerely,



Derek R. Durbin, Esq.

## LANDOWNER LETTER OF AUTHORIZATION

**Adam Ruedig and Reagan Ruedig**, record owners of property located at **70 Highland Street, Portsmouth NH**, identified on **Portsmouth Tax Map 134, as Lot 27** (the “Property”), hereby authorizes **Durbin Law Offices PLLC**, to file any building, zoning, planning or other municipal permit applications with the City of Portsmouth for said Property and to appear before its land use boards. This Letter of Authorization shall be valid until expressly revoked in writing.

  
Adam Ruedig (Feb 21, 2025 22:22 EST)

---

**Adam Ruedig, Owner**

---

**Reagan Ruedig, Owner**

LANDOWNER LETTER OF AUTHORIZATION

**Adam Ruedig and Reagan Ruedig**, record owners of property located at **70 Highland Street, Portsmouth NH**, identified on **Portsmouth Tax Map 134, as Lot 27** (the “Property”), hereby authorizes **Durbin Law Offices PLLC**, to file any building, zoning, planning or other municipal permit applications with the City of Portsmouth for said Property and to appear before its land use boards. This Letter of Authorization shall be valid until expressly revoked in writing.

---

**Adam Ruedig, Owner**

*Reagan Ruedig*

---

**Reagan Ruedig, Owner**

**CITY OF PORTSMOUTH  
NARRATIVE  
TO VARIANCE APPLICATION**

**Adam Ruedig and Reagan Ruedig  
(Owners/Applicants)  
70 Highland Street  
Tax Map 134, Lot 27**

**Introduction**

Property

The Property at 70 Highland Street (the “Property”) is a 10,350 square foot (sq. ft.) improved lot that lies within the General Residence A (“GRA”) Zoning District. The Property contains a two and a half-story single-family home that the Ruedig family resides in.

Detached Garage

There is a detached one and a half story, two-car garage on the Property at the end of the existing driveway on the Property that the Ruedigs have primarily used for storage of bikes, lawn tools and outdoor equipment and accessories. The Ruedigs believe the garage was constructed in the 1930s.

The garage suffers from functional obsolescence. Due to the limited length and width of the building, it is a tight fit for many modern vehicles, which is the reason why the Ruedigs primarily use it for storage-related purposes. The garage also suffers from a significant degree of physical obsolescence. When the Ruedigs purchased the Property in 2013, there was a tree adjacent to the southwest corner of the garage. The tree had basically grown into the building. As a result, the foundation slab, wall and sill on the southern side of the garage rotted over time from the continuous moisture and water intrusion. The roof on the garage is also failing and needs to be replaced. It makes little economic or practical sense to try to save and renovate the garage rather than demolish and rebuild it. As such, the Ruedigs are seeking the variances necessary to demolish the existing garage and construct a new two-vehicle garage with a slightly larger footprint in its place. Because the existing garage is non-conforming with respect to the right and rear yard setbacks, the Ruedigs cannot build within or expand upon the footprint without obtaining dimensional variances from the Zoning Ordinance. They would like to expand upon the existing footprint to give them more length and space to fit their vehicles, which is the purpose behind the original design of the garage. The existing garage has a building footprint of 371 sq. ft. and a height of 14’. The proposed garage would have a building footprint of 639 sq. ft. and a height of 17’-11”.

In conjunction with the proposed garage, the Ruedigs intend to remove the existing asphalt driveway and install a pervious paver driveway in its place. This will reduce the total impervious surface coverage of the Property and be an aesthetic improvement over what exists.

### Bulkhead

In addition to replacing the garage, the Ruedigs would like to rebuild an existing bulkhead that serves as access to the basement at the rear of the house. The bulkhead needs to be rebuilt to address water infiltration issues. The proposed bulkhead would be slightly larger than the existing feature to allow for a wider entry/exit point and staircase. This will make it easier for the Ruedigs to get items in and out of their basement. The existing bulkhead is 22 sq. ft whereas the proposed bulkhead would be 42 sq. ft.

While the proposed bulkhead will conform to the applicable building setbacks, the combination of the proposed garage and bulkhead will render the Property non-conforming with respect to building coverage, albeit by a very negligible amount.

### **Zoning Relief Summary**

The Applicant seeks the following variances from the Board:

#### **Article 10.521**

- a) **Building Coverage:** To allow 25.7% (+/-) building coverage where 22.9% (+/-) exists and 25% is allowed;
- b) **Rear Yard Setback:** To allow for a 2'(+/-) rear yard setback where 2' exists and 20' is required.
- c) **Right Yard Setback:** To allow a 2' right yard setback where 10' is required and 2' exists.

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

### **Variance Criteria**

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

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



A significant portion of the newly constructed garage expansion will comply with the right and rear yard setbacks. Those sections of the expanded garage that will not comply with the building setbacks are adjacent to open space on the abutting properties and will have little to no impact upon the light, air and space of those properties. It is important to point out that the proposed garage will not have any windows along the non-conforming aspects of the building. The existing garage has windows on all sides. The elimination of windows facing the affected neighboring properties will benefit the abutters and their privacy. The abutting landowners to the right (Conrads) wrote a letter of support for the variances after reviewing the Ruedigs plans. That letter has been included with the Ruedigs variance application.

The proposed location is the most logical area of the Property to construct the garage, as it is at the end of an already existing driveway cut. It would make little sense to try to construct a similar structure in any other location of the Property. The location and design of the proposed garage is also consistent with what exists on surrounding properties, as demonstrated by the photographs attached hereto as **Exhibit A**. There are numerous examples of similarly situated structures in the surrounding neighborhood. In fact, garages that fail to conform to the dimensional requirements of the Ordinance are the norm in the surrounding neighborhood rather than the exception.

The new garage and paver driveway result in an aesthetic improvement to the Property. The reduction in total impervious surface coverage on the Property will also benefit the neighbors and public, as it will allow more stormwater to drain into the ground as opposed to running off onto adjacent properties and the City storm drains. The City does not directly regulate impervious surface coverage on single-family residential properties.

The proposed garage and bulkhead expansions are reasonable in size and represent a minor increase in non-conformity that will be unnoticeable to anyone that is not intimately familiar with the Property.

For the foregoing reasons, granting the requested variances will not negatively alter the essential character of the neighborhood or otherwise constitute a detriment to the public's health, safety or welfare.

**Substantial Justice will be done in granting the variances.**

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

There is no public interest served by denying the variances related to the garage and bulkhead expansions. It would constitute a loss to the Applicants, however, to deny a reasonable request to demolish and rebuild these structures in reasonable manner. Both structures are in poor condition structurally and are inadequately dimensioned to serve their intended purposes. In the present instance, the loss to the Ruedigs associated with denying the variances outweighs any perceived gain that would be realized by the public.

**Surrounding property values will *not* be diminished by granting the requested variances.**

The proposed improvements are consistent with other similar structures in the surrounding neighborhood and will benefit the Property aesthetically, environmentally and otherwise. The proposed garage is tastefully designed and is in keeping with the historic character of the existing structure. If anything, the surrounding property values will benefit from granting the variances.

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

The Property has special conditions that distinguish it from surrounding properties such that there is no fair and substantial relationship between the general purposes of the Ordinance provisions and their application to the Property.

The Property contains a non-conforming detached garage that encroaches into the rear and right yards setbacks. It cannot be reconstructed or reasonably expanded upon without obtaining variance relief. The existing bulkhead and garage were constructed before current zoning standards were adopted in Portsmouth. The garage was constructed long before modern vehicles existed. It could not be foreseen that vehicles would be as wide, tall and long as they currently are. While designed to fit two vehicles and store personal belongings, the garage is inadequately dimensioned to serve these purposes now. In order to reconstruct the garage and bulkhead to serve their intended purposes, dimensional variances are needed from current zoning standards.

The proposed use of the Property is reasonable. The existing and proposed uses of the Property are the same and are permitted by right in the GRA Zoning District. The proposed modifications to the Property will allow for more functional garage and bulkhead structures on the Property.


### **Conclusion**

The five (5) criteria for granting each of the variances requested have been met for the reasons set forth above. The Ruedigs thank you for your time and consideration of their application and respectfully request your approval.

Respectfully Submitted

Dated: March 19, 2025

Adam and Reagan Ruedig

By:   
Derek R. Durbin, Esq.  
DURBIN LAW OFFICES PLLC  
144 Washington Street  
Portsmouth, NH 03801  
[derek@durbinlawoffices.com](mailto:derek@durbinlawoffices.com)

## EXHIBIT A



**Front Elevation of Ruedig Home and Garage  
70 Highland Street – TM 134-27**







**Garage to be Demolished**



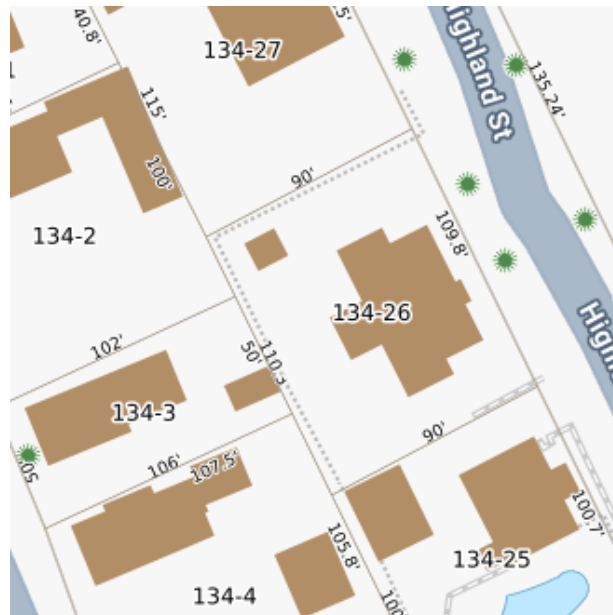


**Garage to be Demolished**





**Abutting Property to Left  
94 Highland Street - TM 134-26  
(Garage/Shed Structure within Right Yard Setback)**







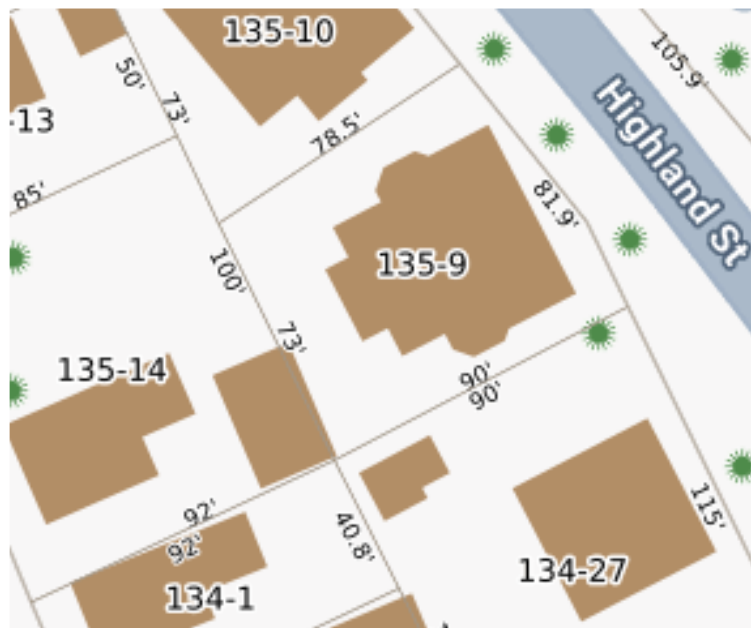
**112 Highland Street - TM 134-25  
(Garage Structure in Right Yard Setback)**







**Abutting Property to Right  
52 Highland Street – TM 135-9**





**Abutting Property to Rear Left (343 Union Street, TM 134-3)  
(Garage/Barn Structure in Right Yard Setback)**







**Abutting Properties to Rear Right  
323 Union Street – TM 134-2 & 315 Union Street – TM 134-1)  
(Garage/Barn Structure in Side Yard Setback)**









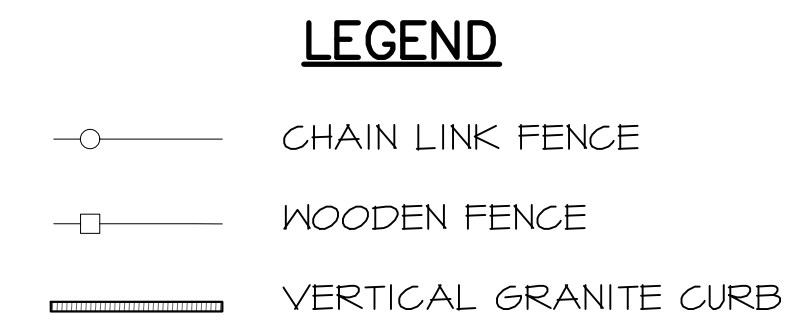


**(393 Union Street – TM 134-7 & 407 Union Street – TM 134-8)  
(Garage Structures in Side Yard Setbacks)**









LOCUS PLAN  
N.T.S.

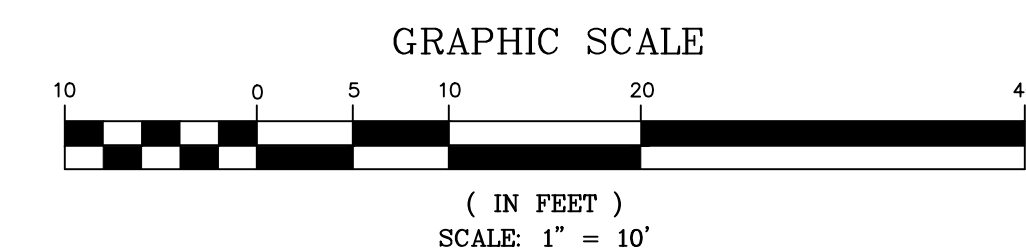
## NOTES

- 1) OWNER OF RECORD:
- ADAM & REAGAN RUEDIG  
TAX MAP 134, LOT 27  
70 HIGHLAND ST  
PORTSMOUTH, NH 03801  
RCRD: 5411-02T2  
AREA: 10,350 SF, 0.24 ACRES
- 2) BASIS OF BEARING HELD FROM PLAN REFERENCE #1.
- 3) PARCEL IS IN GENERAL RESIDENCE A ZONE (GRA):
- MINIMUM LOT AREA.....7,500 SF  
MIN. LOT AREA PER DWELLING UNIT.....7,500 SF  
MINIMUM FRONTAGE.....100 FT  
MINIMUM DEPTH.....70 FT
- SETBACKS:
- FRONT.....15 FT  
SIDE.....10 FT  
REAR.....20 FT
- MAXIMUM BUILDING HEIGHT:
- SLOPED ROOF.....35 FT  
FLAT ROOF.....30 FT
- MAXIMUM BUILDING COVERAGE.....25%  
MINIMUM OPEN SPACE.....30%
- 4) THE PARCEL IS NOT WITHIN A FEMA FLOOD ZONE, AS PER FLOOD INSURANCE RATE MAP #33015C0254F, PANEL 254 OF 681, DATED JANUARY 29, 2021. VERTICAL DATUM IS NAVD 1985.

## REFERENCE PLANS

- 1) "PLAN OF LAND DAVID & SUE ALLEN 383 UNION ST PORTSMOUTH, N.H." BY AMBIT SURVEY CIVIL ENGINEERS & LAND SURVEYORS, DATED JUNE 1995. NOT RECORDED.
- 2) "PLAN OF LAND ESTATE OF GEORGE B. WARD PORTSMOUTH, N.H." BY JOHN W. DURGIN CIVIL ENGINEERS, DATED DECEMBER 1974. RCRD D-4932

1	1/30/2025	PRELIMINARY	
ISS.	DATE	DESCRIPTION OF ISSUE	
SCALE 1" = 10'			
CHECKED A.ROSS			
DRAWN D.D.D.			
<p><b><u>ROSS ENGINEERING, LLC</u></b>          Civil/Structural Engineering          &amp; Surveying          909 Islington St.          Portsmouth, NH 03801          (603) 433-7560</p>			
CLIENT			
MATT BEEBE 81 LINCOLN ST. PORTSMOUTH, NH 03801			
TITLE			
<p>EXISTING CONDITIONS          PLAN</p> <p>70 HIGHLAND ST.          PORTSMOUTH, NH 03801          TAX MAP 134, LOT 27</p>			
JOB NUMBER		DWG. NO.	ISSUE
24-066		1 OF 2	2



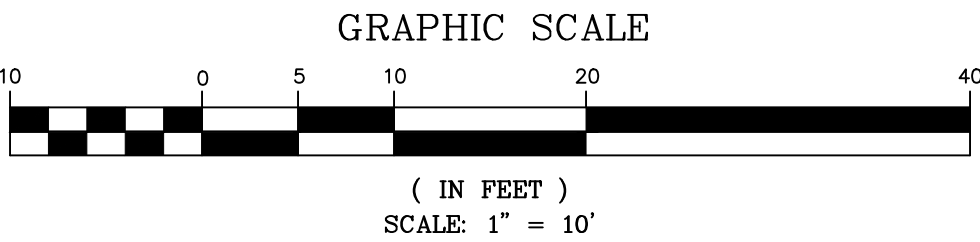
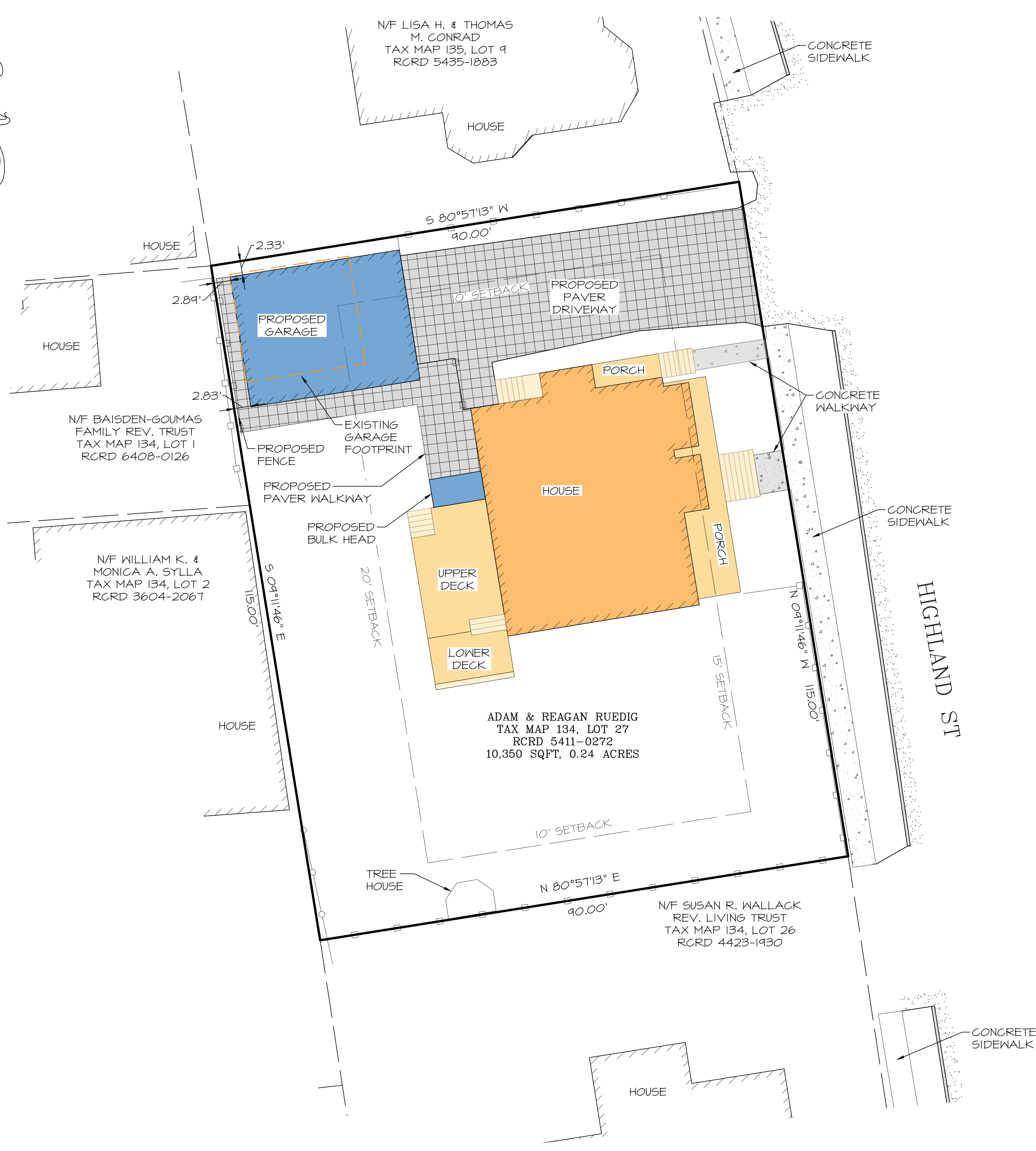


LEGEND

- CHAIN LINK FENCE
- WOODEN FENCE
- VERTICAL GRANITE CURB

NOTES

- 1) OWNER OF RECORD:  
ADAM & REAGAN RUEDIG  
TAX MAP 134, LOT 27  
TO HIGHLAND ST  
PORTSMOUTH, NH 03801  
RCRD: 5411-0212  
AREA: 10,350 SF, 0.24 ACRES
- 2) PARCEL IS IN GENERAL RESIDENCE A ZONE (GRA):  
MINIMUM LOT AREA.....7,500 SF  
MIN. LOT AREA PER DWELLING UNIT.....7,500 SF  
MINIMUM FRONTAGE.....100 FT  
MINIMUM DEPTH.....70 FT  
SETBACKS:  
FRONT.....15 FT  
SIDE.....10 FT  
REAR.....20 FT  
MAXIMUM BUILDING HEIGHT:  
SLOPED ROOF.....35 FT  
FLAT ROOF.....30 FT  
MAXIMUM BUILDING COVERAGE.....25%  
MINIMUM OPEN SPACE.....30%
- 3) BUILDING COVERAGE:  
EXISTING:  
HOUSE.....1,390 SF  
GARAGE.....371 SF  
PORCHES.....226 SF  
DECK & LANDINGS > 18".....271 SF  
BULKHEAD.....22 SF  
STAIRS > 18".....88 SF  
TOTAL.....2,368 SF  
COVERAGE = 2368 / 10350 = 22.9%
- PROPOSED:  
HOUSE.....1,390 SF  
GARAGE.....639 SF  
PORCHES.....226 SF  
DECK & LANDINGS > 18".....271 SF  
BULKHEAD.....42 SF  
STAIRS > 18".....88 SF  
TOTAL.....2,656 SF  
COVERAGE = 2656 / 10350 = 25.7%
- 4) OPEN SPACE:  
EXISTING:  
BUILDING COVERAGE.....2368 SF  
STAIRS < 18".....47 SF  
DECK < 18".....101 SF  
CONCRETE LANDING & WALKWAY.....93 SF  
ASPHALT.....1,269 SF  
TOTAL.....3,878 SF  
OPEN SPACE = 10350 - 3878 = 6472  
OPEN SPACE = 6472 / 10350 = 62.5%
- PROPOSED:  
BUILDING COVERAGE.....2656 SF  
STAIRS < 18".....47 SF  
DECK < 18".....101 SF  
CONCRETE WALKWAY & LANDING.....74 SF  
PERVIOUS PAVERS.....1,478 SF  
TOTAL.....4,356 SF  
OPEN SPACE = 10350 - 4356 = 5994  
OPEN SPACE = 5994 / 10350 = 57.9%



1	1/30/2025	PRELIMINARY	
ISS.	DATE	DESCRIPTION OF ISSUE	
SCALE	1" = 10'		
CHECKED	A.ROSS		
DRAWN	W.D.P		
ROSS ENGINEERING, LLC Civil/Structural Engineering & Surveying 909 Islington St. Portsmouth, NH 03801 (603) 433-7560			
CLIENT MATT BEEBE 81 LINCOLN ST. PORTSMOUTH, NH 03801			
TITLE  SITE PLAN  70 HIGHLAND ST. PORTSMOUTH, NH 03801 TAX MAP 134, LOT 27			
JOB NUMBER	DWG. NO.	ISSUE	
24-066	2 OF 2	2	

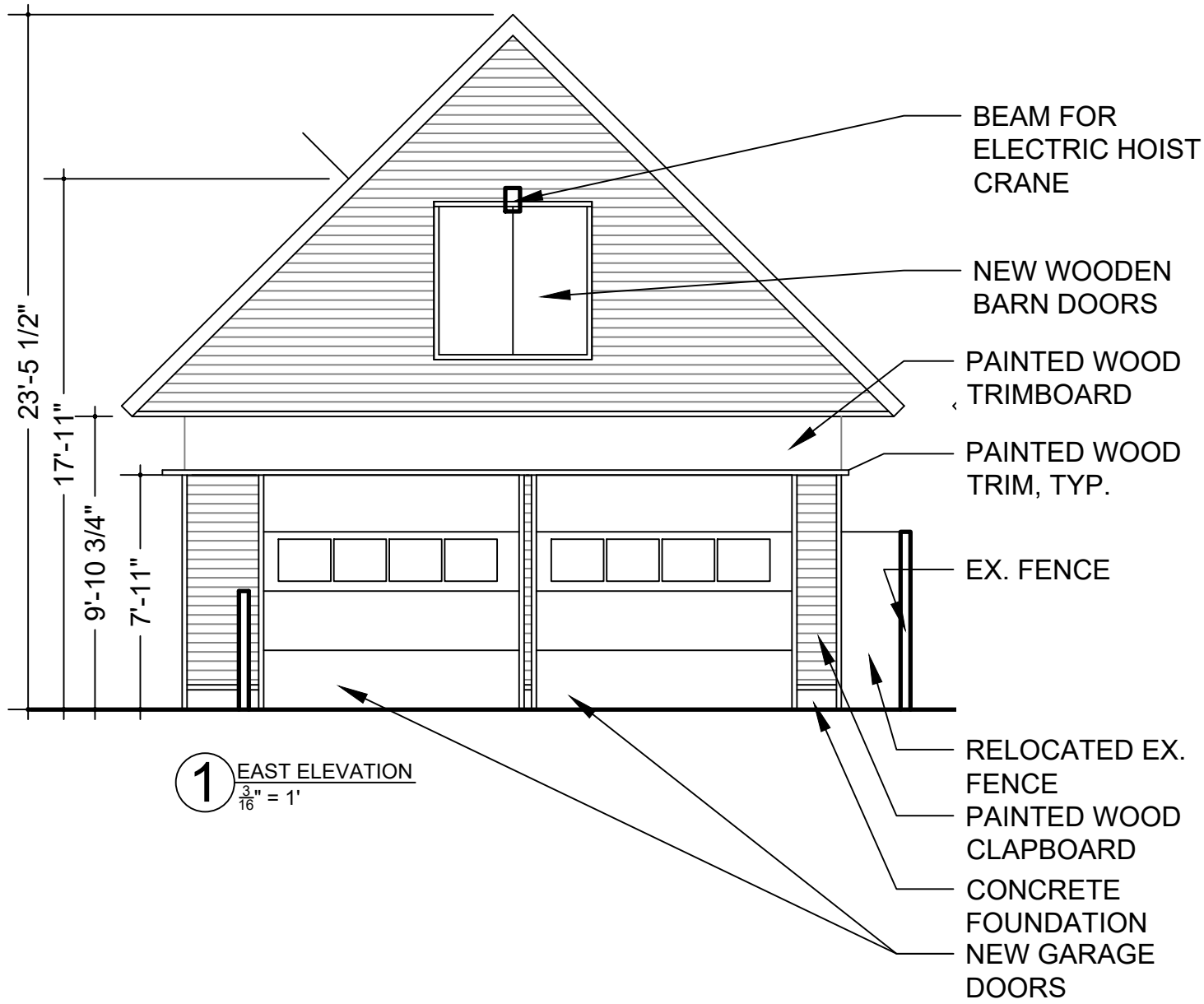
70 HIGHLAND

11.19.24  
DRAFT

ELEVATIONS

GARAGE

A300



70 HIGHLAND

11.19.24  
DRAFT

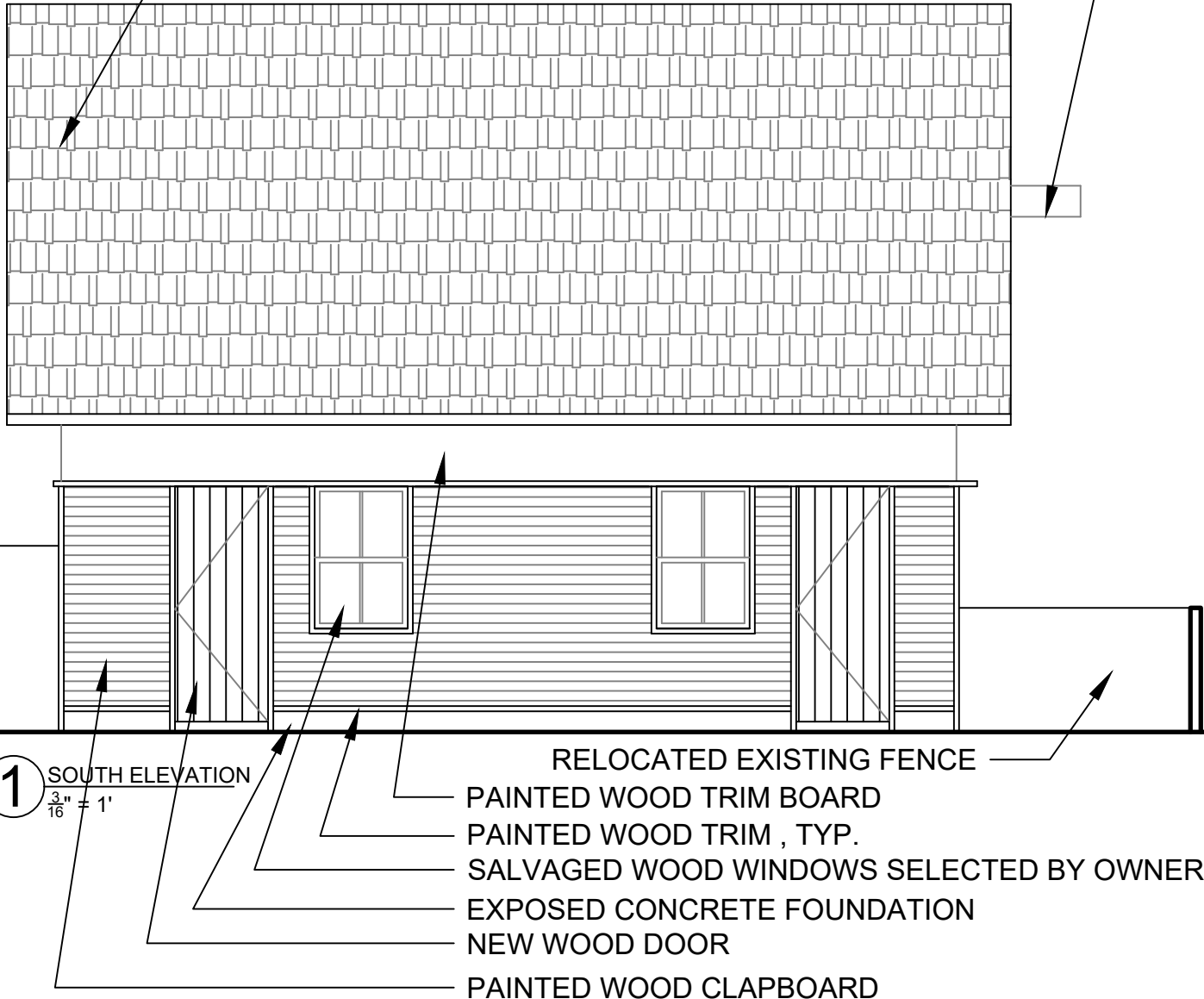
ELEVATIONS

GARAGE

**A301**

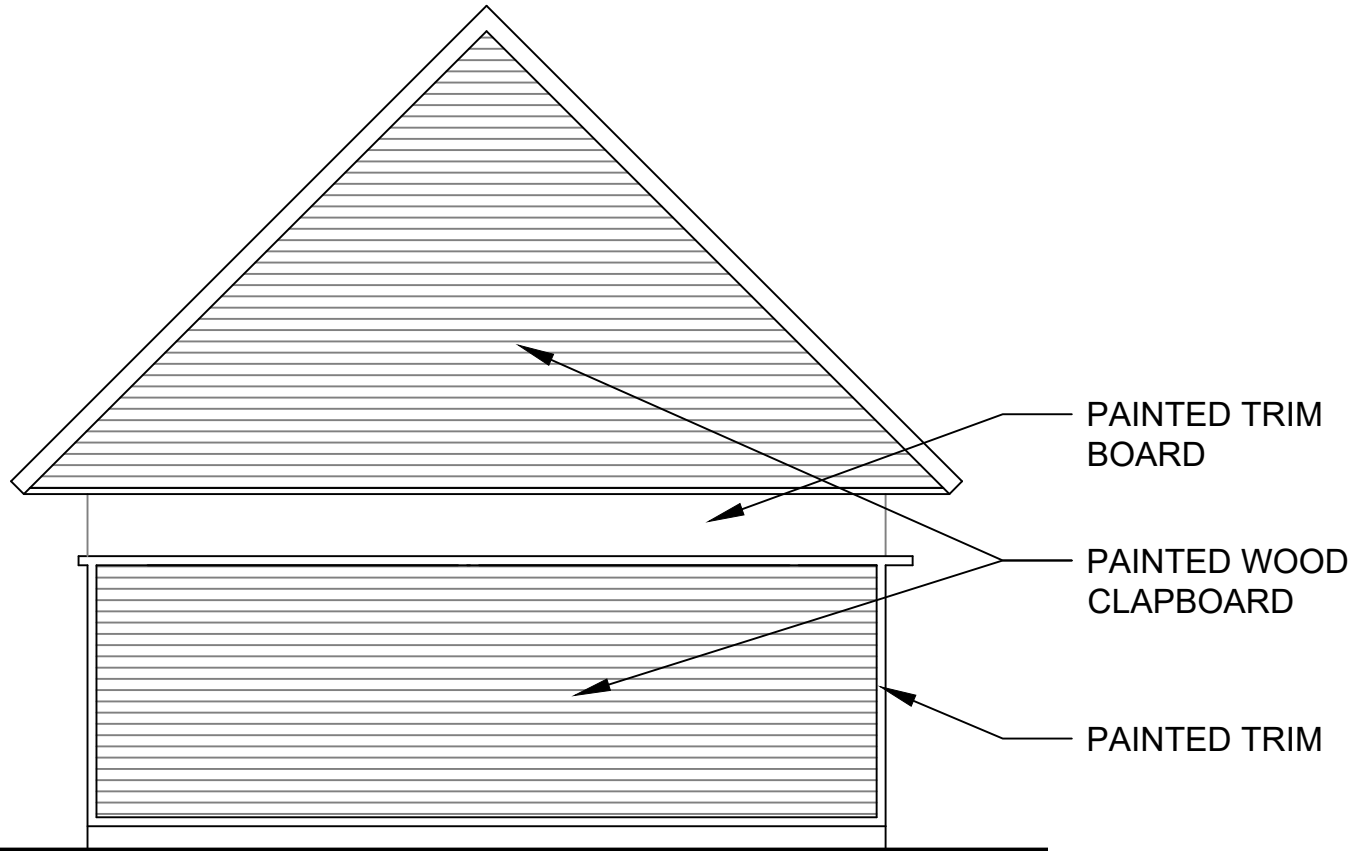
ASPHALT SHINGLE ROOF TO MATCH HOUSE

BEAM FOR ELECTRIC HOIST CRANE





70 HIGHLAND



11.19.24  
DRAFT

ELEVATIONS

GARAGE

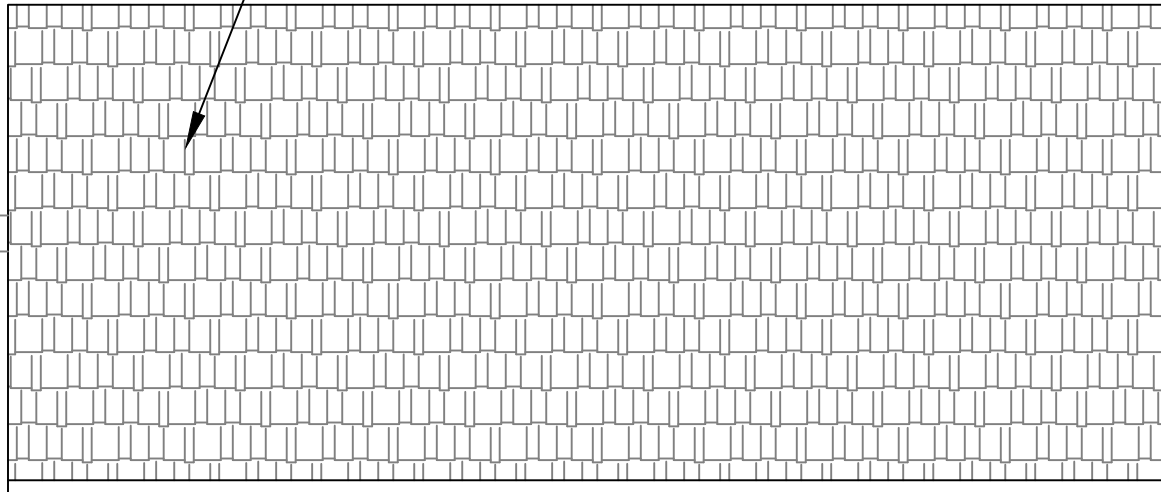
**A302**

1 WEST ELEVATION  
 $\frac{3}{16}'' = 1'$

70 HIGHLAND

BEAM FOR ELECTRIC HOIST CRANE

ASPHALT SHINGLES TO MATCH HOUSE ROOF



11.19.24  
DRAFT

ELEVATIONS

GARAGE

**A303**

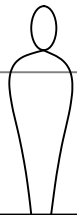
PAINTED TRIM BOARD

PAINTED WOOD TRIM

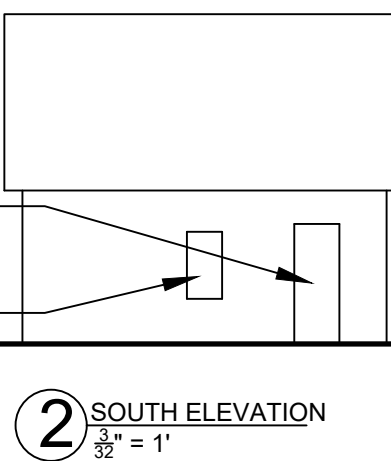
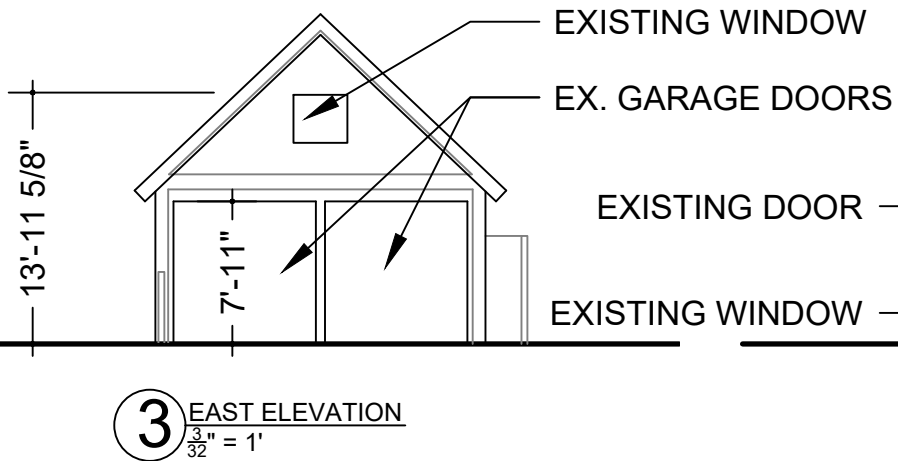
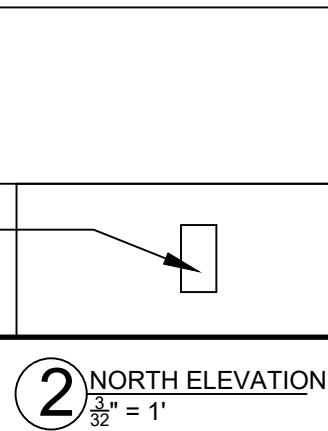
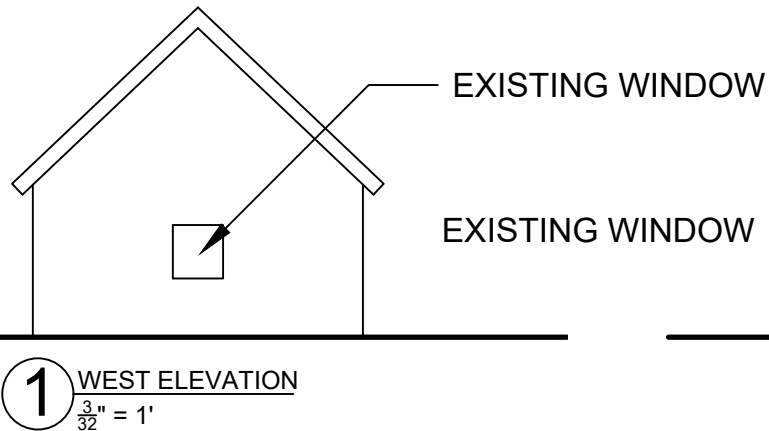
PAINTED WOOD CLAPBOARD

EXPOSED CONCRETE FOUNDATION

1 NORTH ELEVATION  
 $\frac{3}{16}" = 1'$



70 HIGHLAND



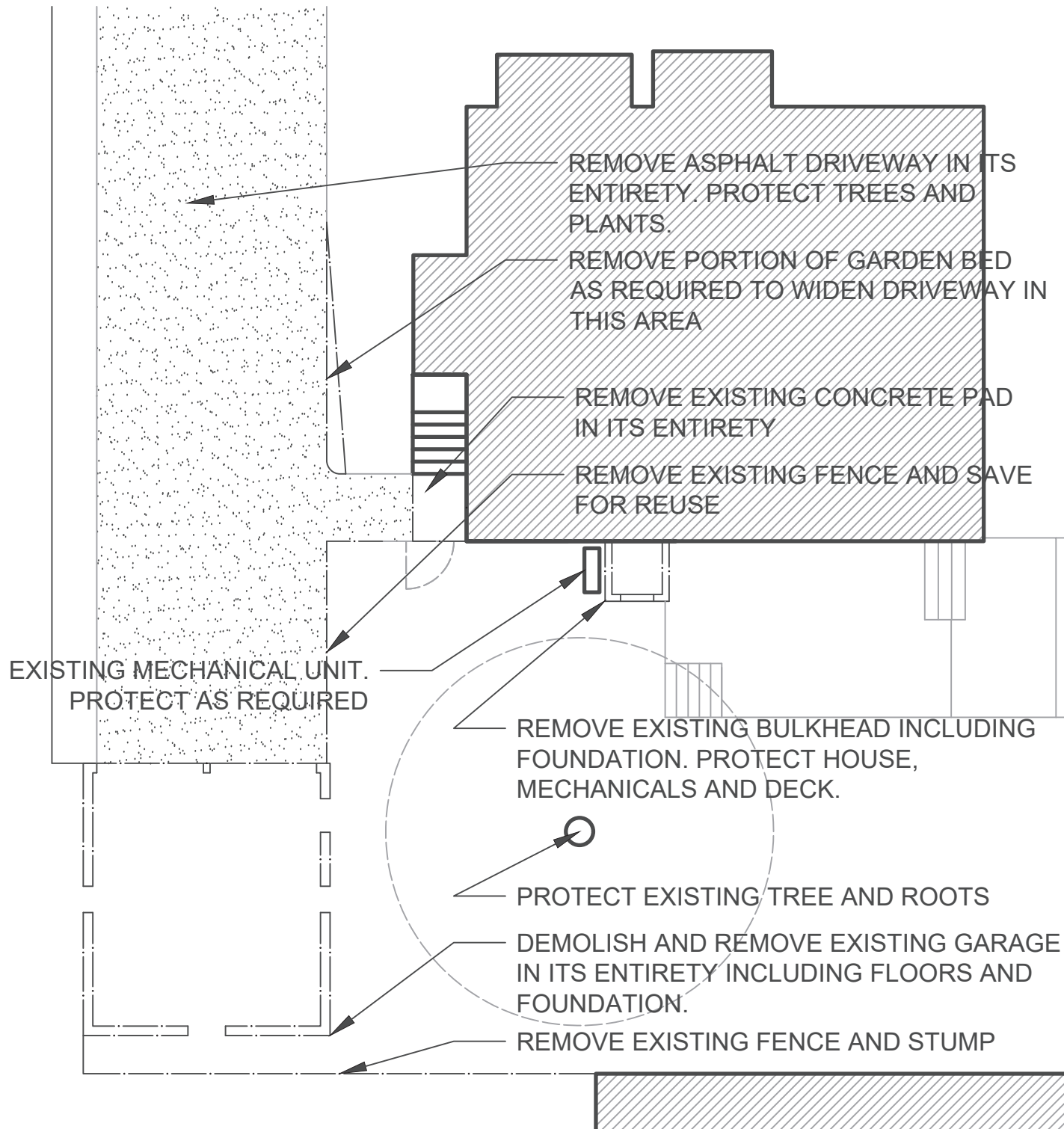
03.18.25  
DRAFT

EX. ELEVATIONS

GARAGE

**E300**





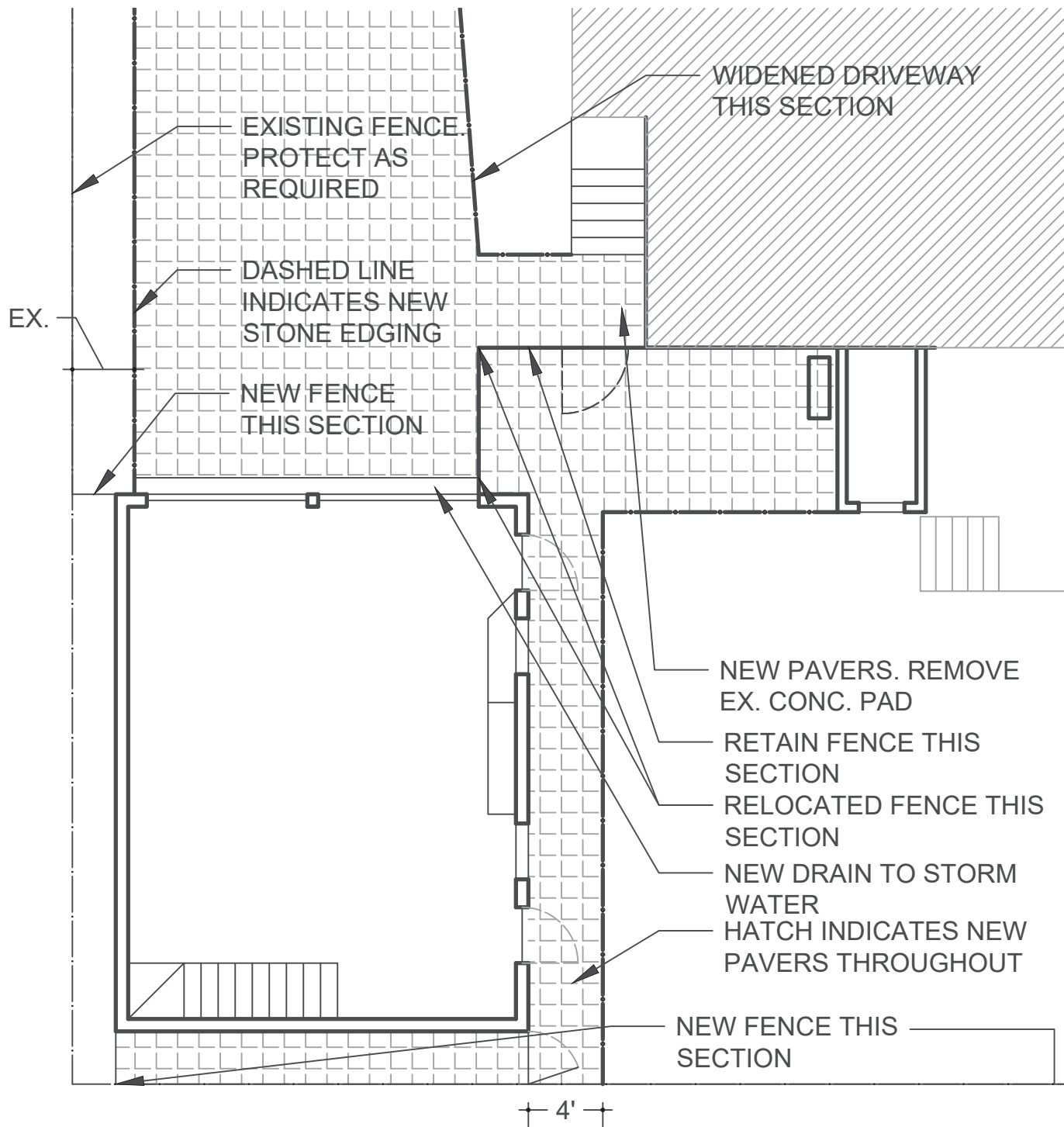
70 HIGHLAND

11.19.24  
DRAFT

DEMOLITION

GARAGE

**D100**



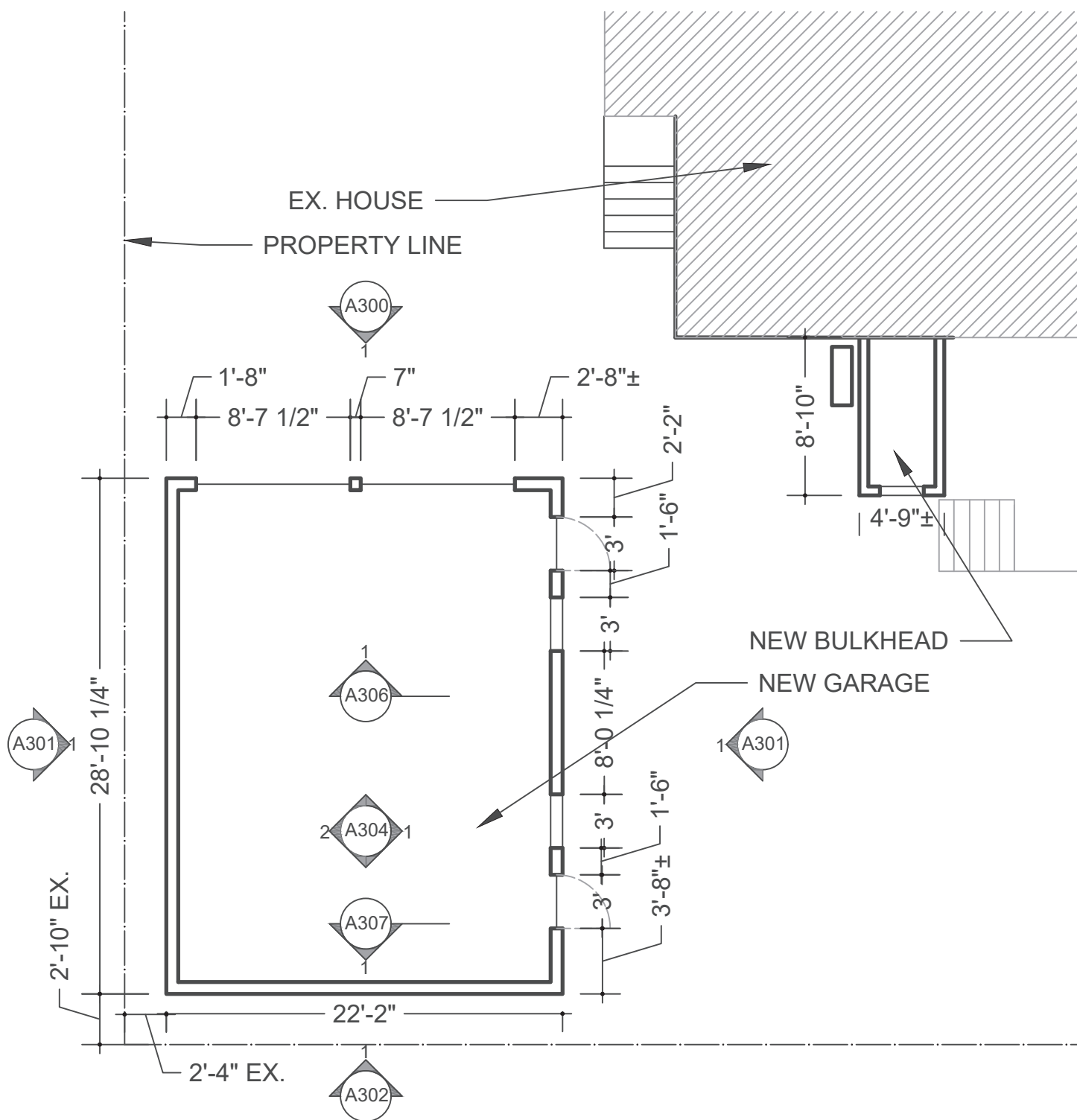
70 HIGHLAND

11.19.24  
DRAFT

SKETCH

GARAGE

**A100**



70 HIGHLAND

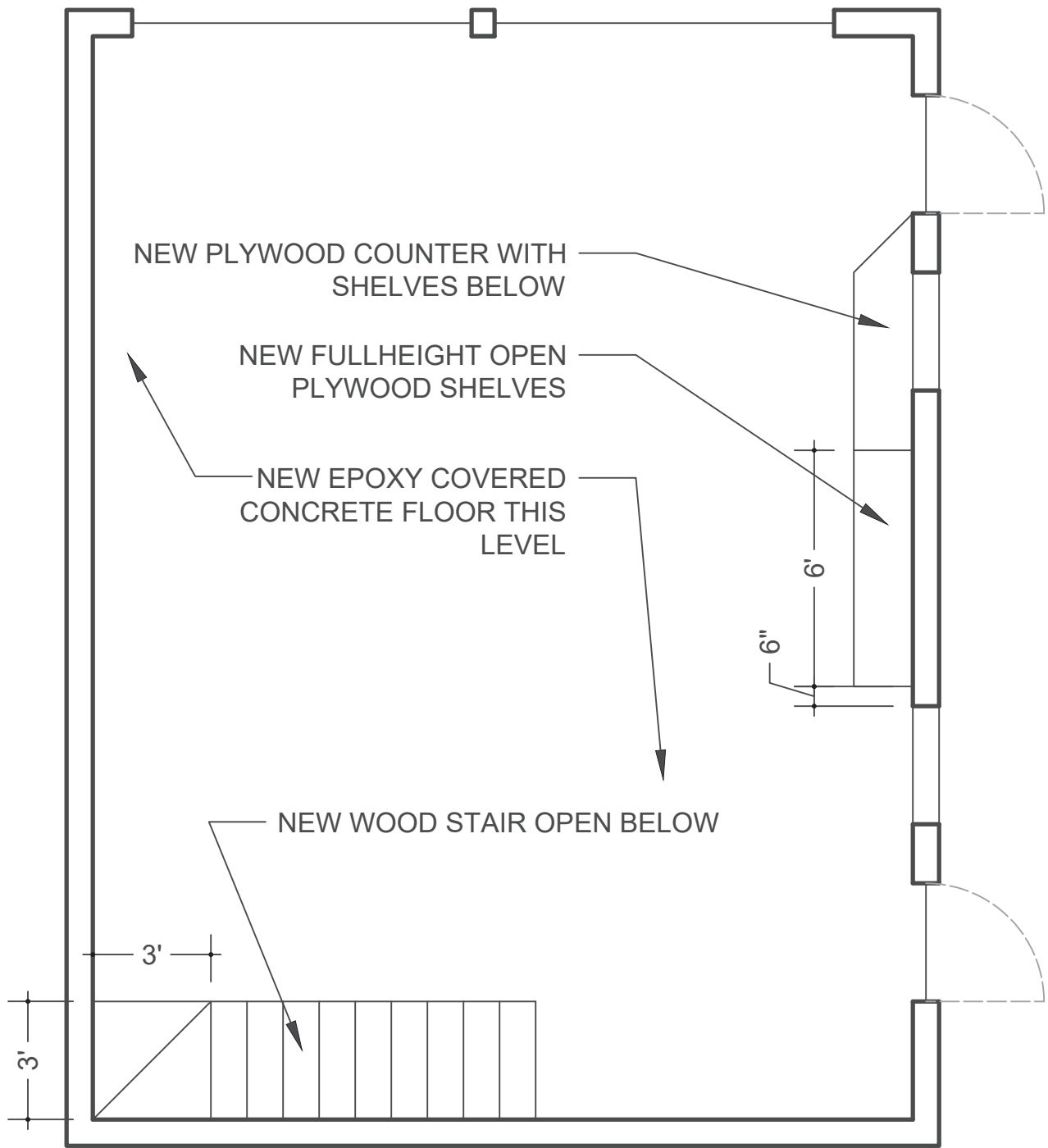
11.19.24  
DRAFT

DIM. PLAN

GARAGE

**A100**





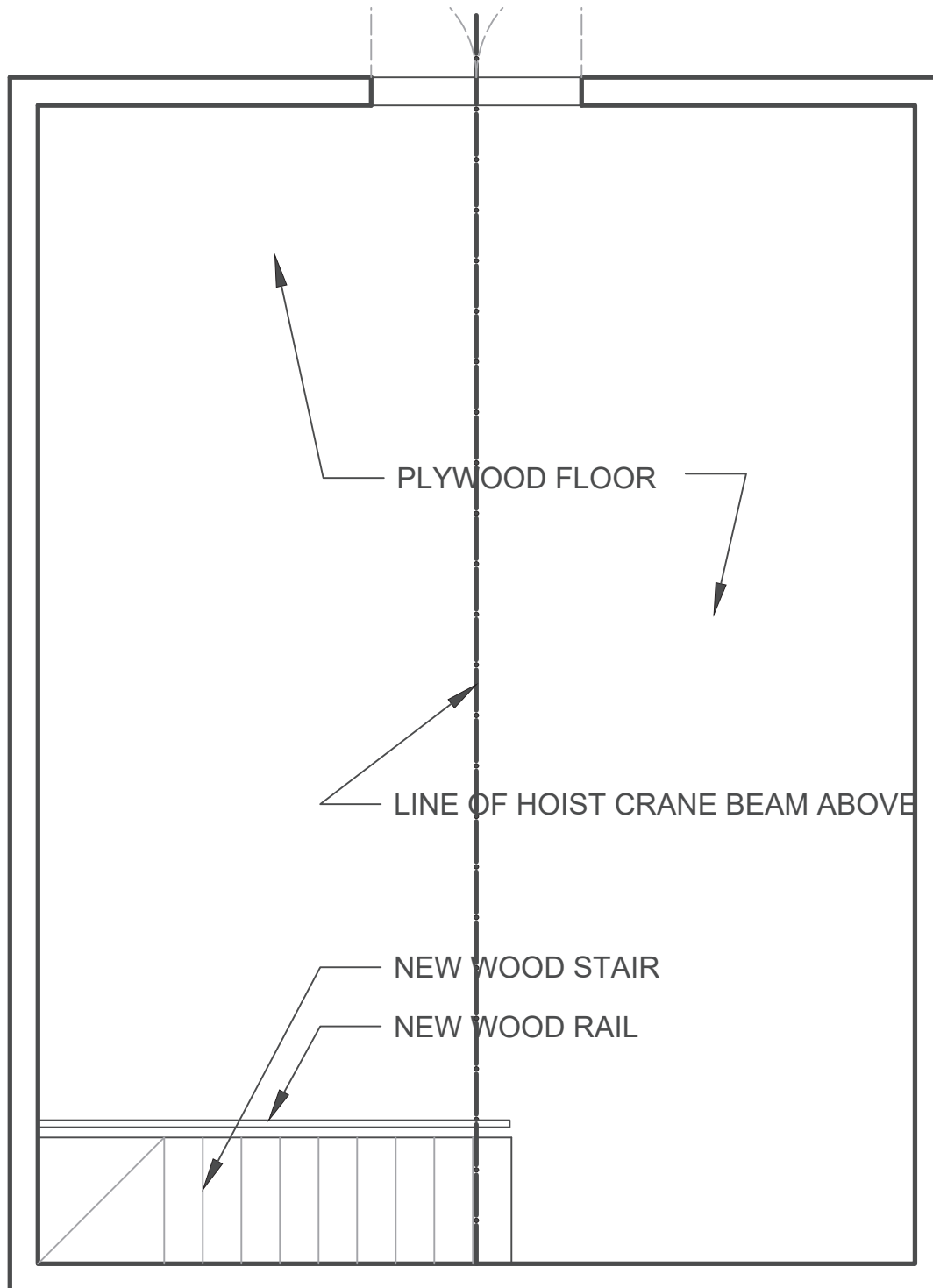
70 HIGHLAND

11.19.24  
DRAFT

DETAIL PLAN

GARAGE

**A200**



70 HIGHLAND

11.19.24  
DRAFT

SECOND FL.

GARAGE

**A201**

March 18, 2025

To: The Portsmouth Zoning Board of Adjustment,

We are the abutting neighbors of Reagan and Adam Ruedig who reside at 70 Highland Street. We have reviewed their plans for renovation of their garage. We approve them and have no reservations for their project.

Sincerely,

Lisa and Tom Conrad

52/ 54 Highland Street



## II. NEW BUSINESS

**F. WITHDRAWN** The request of **Jeannette MacDonald** (Owner), for property located at **86 Farm Lane** whereas relief is needed to subdivide the existing property into 3 separate lots. The proposed parent lot requires the following: 1) Variance from Section 10.521 to allow a) 28-foot rear yard setback where 30 feet is required; and b) 23-foot secondary front yard where 30 feet is required. Proposed lots 1 and 2 require the following: 2) Variance from Section 10.521 to allow a) 13,125 s.f. of lot area where 15,000 s.f. is required; b) 13,125 s.f. of lot area per dwelling unit where 15,000 s.f. is required; and c) 75 feet of continuous street frontage where 100 feet is required. Said property is located on Assessor Map 236 Lot 74 and lies within the Single Residence B (SRB) District. (LU-25-41) **WITHDRAWN**

### Planning Department Comments

The applicant is requesting to withdraw the request that was noticed and advertised.

**BY: VIEWPOINT & HAND DELIVERY**

April 22, 2025

City of Portsmouth  
Attn: Jillian Harris, Planner  
Zoning Board of Adjustment  
1 Junkins Avenue  
Portsmouth, NH 03801

**RE: Variance Application of Jeannette MacDonald aka Jeannette McMaster  
86 Farm Lane, Tax Map 236, Lot 74**

Dear Jillian,

Please accept the following letter requesting withdrawal of the above referenced variance application. The Applicant will revise her application per our discussion yesterday and resubmit it at a later date.

Sincerely,



Derek R. Durbin, Esq.

**From:** [Planning - Info - Shr](#)  
**To:** [Jan L. Crockett](#)  
**Subject:** FW: Public Comment for BOA 4/22  
**Date:** Monday, April 21, 2025 11:47:32 AM

---

**From:** Richard Palermo <[rjpalermo55@gmail.com](mailto:rjpalermo55@gmail.com)>  
**Sent:** Monday, April 21, 2025 9:31 AM  
**To:** Planning - Info - Shr <[Planning@portsmouthnh.gov](mailto:Planning@portsmouthnh.gov)>  
**Subject:** Letter of objection to 86 Farm Lane

You don't often get email from [rjpalermo55@gmail.com](mailto:rjpalermo55@gmail.com). [Learn why this is important](#)

To: The Chair of the Board, Planning Department  
From: Richard Palermo and Pilar Pardo, 55 Meadow Road (homeowners since 1998)  
Date: April 20, 2025

We are writing to express our objection to the request of Jeannette MacDonald for property located at 86 Farm Lane. It is my belief that this request is contrary to the public interest and therefore should be denied for the following reasons:

Section 10.243.24 of the Zone ordinance states the proposed structures, uses, or activities will not have significant adverse impacts on abutting and surrounding properties on account of traffic, noise, odors, vibrations, dust, fumes, hours of operation, and exterior lighting and glare.

- Approval of this request would result in a significant increase in noise due to the removal of the natural sound barrier provided by existing trees, bushes and shrubs. There are four lanes of traffic from Rt 16 and six lanes of traffic from Rt 95 that generate significant road noise. The city is currently working to mitigate road noise from Rt 95. It is contrary to that interest to remove an existing natural sound barrier that will cause noise to increase in this same area.

Section 10.243.25 of the Zone Ordinance states the proposed structures and uses will not have significant adverse impacts on natural or scenic resources surrounding the site, including wetlands, floodplains, and significant wildlife habitat.

- Lot 236-74 and the adjacent property 236-73 are home to a diverse wildlife population including but not limited to deer, rabbit, coyote, fisher cat and bobcat as well as many bird species such as red-tailed hawk, turkey and an occasional duck. Reducing this natural landscape will have an adverse effect on this population by reducing or eliminating this habitat. It is further likely to increase an already large rodent population by removing natural predators from the area.

Section 10.243.26 of the Zone ordinance states the proposed use will not cause or contribute to a significant decline in property values of adjacent properties.

- Approval of this request would have multiple negative effects that ultimately would lead to the decline in property value of many lots on Meadow Road in the range of 236-66 through 236-79.
  - Approval of this request would take a single conforming lot (236-74) and turn it into three non-conforming lots (236-74, 236-74-1, 236-74-2).
  - In so doing, it would set a negative precedent that would allow additional non-forming lots to be created in the area, specifically lot 236-73.
  - Likely, the planning board would receive a variance request to alter lot 236-73 from one conforming lot to four non-conforming lots similar to lots 236-69 to 236-72. Lot 236-73 is inaccessible as there is no road to access this property. Approval of the current request would create an access road and set precedent for further development.
  - If this request were to be approved, there is a strong probability that two currently conforming properties (lots 236-74 and 236-73) would be turned into seven non-conforming properties (3 from 236-74; 4 from 236-73).
  - The addition of two new houses, along with the likelihood of four more houses through future action facilitated by this approval, creating a total of six new houses, would lower property values of homeowners on Meadow Road. Currently, these homeowners have houses on three sides (front, left, right) but do not have houses in the rear. Instead, they enjoy a natural landscape of trees, grass and shrubs. Replacing this rear view with another house, creating homes on all sides (front, left, right, rear) would directly lower property values.

On a more personal note, we have included some pictures of the view of our backyard. The picture below was taken Monday morning, April 21 while writing this letter.





The following pictures were taken during the morning, afternoon and evening of the previous 24 hours. This shows both that there is a large population of deer and that this is their habitat. They aren't visiting this area – they den here. Clearing a large section of what is now natural habitat and sanctuary will adversely affect these animals. Additionally, this shows the beautiful scenery that neighbors on Meadow Road enjoy in their backyards. Allowing the destruction of this habitat would not benefit the neighborhood.

















In conclusion, we urge you to consider our concerns along with those of our neighbors when making your decision. Approving these exceptions would not benefit the neighborhood and would not serve the public interest. Thank you for your time and consideration.

**From:** [Jen L. Crockett](#)  
**To:** [Jen L. Crockett](#)  
**Subject:** RE: Site Plans  
**Date:** Thursday, April 17, 2025 8:58:13 AM

---

**From:** Matt S Turner <[mattsturner@gmail.com](mailto:mattsturner@gmail.com)>  
**Sent:** Sunday, April 13, 2025 10:17 AM  
**To:** Jillian Harris <[jharris@portsmouthnh.gov](mailto:jharris@portsmouthnh.gov)>; Stefanie L. Casella <[SLCasella@portsmouthnh.gov](mailto:SLCasella@portsmouthnh.gov)>  
**Subject:** Re: Site Plans

Some people who received this message don't often get email from [mattsturner@gmail.com](mailto:mattsturner@gmail.com). [Learn why this is important](#)

Hi again,

After doing some math and trying to relate that to the property - I can't support this request. I sent the following note in through the website contact us page as I don't know how else to convey my message as I can't be there on Tuesday. I would still love to see the plans just in case I am totally missing it. Either way, thanks again.

Thanks you for your time. I only received notice of my neighbors request last week and will not have the ability to be there so quickly on Tuesday. Regardless, I am not supportive of this at all. I could maybe understand a variance of 80 or 75% of 15k, but the request is 52%. At that size, including another driveway (which I don't understand as they already have big one and garage), that means this building will be right up on our house. No - I do not in anyway support this today. That is way too much of a variance, I don't know of any hardship whatsoever possible here, and even if then the second driveway, with its own variance ask, is unnecessary. I will send a copy of this to the two Planner email addresses I have as well but would like a receipt of some kind if possible. Thanks again, Matthew Turner. 3 Marjorie Street, Portsmouth



**From:** [Goumas, Kristina](#)  
**To:** [Planning - Info - Shr](#)  
**Subject:** Abutter Notice for Adam and Reagan Ruedig 70 Highland Street  
**Date:** Monday, April 14, 2025 1:14:48 PM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)  
[image005.png](#)

---

You don't often get email from [kristina.goumas@sapns2.com](mailto:kristina.goumas@sapns2.com). [Learn why this is important](#)

Dear Planning Department,

We received the abutter notice for Adam and Reagan Ruedig. We reviewed the plans Adam and Reagan have and see no issues with this and are in full support of the project. We recommend moving forward.

Thank you,  
Kristina Goumas & Ron Baisden  
315 Union Street, Portsmouth, NH

Kristina Goumas (*she/her*)  
*National Vice President, Customer Success – Support & Renewal Sales*  
**SAP NS2**  
M: 603-682-1852  
Email: [kristina.goumas@sapns2.com](mailto:kristina.goumas@sapns2.com)



---

**Re: Site Plans**

---

**From** Matt S Turner <mattsturner@gmail.com>

**Date** Tue 4/22/2025 6:42 AM

**To** Jillian Harris <jharris@portsmouthnh.gov>

**Cc** Stefanie L. Casella <SLCasella@portsmouthnh.gov>

Some people who received this message don't often get email from mattsturner@gmail.com. [Learn why this is important](#)

Good morning and thank you both,

I appreciate it. I have been able to see the plans now and would like to add on a few more points to why I do not support this (below). I am physically unable to make it these meetings so this is my only voice, and again I appreciate it. Thank you, Matthew

- This is not an ADU - this is another house.
- In the filing it says it is filling an 'empty lot' - but that is their yard. That is not a city lot that they can just claim separate.
- The filing says if not granted it could 'devalue the property significantly' - but seriously, if you look at how much - and how often - that property has sold, it has consistently gone up. There is no basis at all that it would go down.
- The filing says it will not negatively impact the neighborhood and I disagree - I believe this will negatively impact the neighborhood and specifically my home, my surroundings and yard, privacy, and so much more. This is not a hardship for them, why would I pay for it?
- Another section says the street is loud... loud? That is simply made up.
- This also reads like they are asking for only two garage bays / provides two additional parking spots, but the design is for three.

This is another house. This only negatively impacts us and all of the other neighbors. If for any reason whatsoever they bought that place - only months ago mind you - and thought it would negatively impact them then they should not have bought it. No - I do not support this at all. Thank you again for your time.

On Thu, Apr 17, 2025 at 8:57 AM Jillian Harris <jharris@portsmouthnh.gov> wrote:

Hello, I am just returning to the office and seeing your email. What property is this in regards to?

All of the application materials are posted online for the 4/15 meeting here:

<https://www.portsmouthnh.gov/planportsmouth/events/zoning-board-adjustment-38>

And for the second BOA meeting on 4/22 , they will be posted here today:

<https://www.portsmouthnh.gov/planportsmouth/events/zoning-board-adjustment-47>