

**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.

June 17, 2025

AGENDA

I. APPROVAL OF MINUTES

- A. Approval of the May 20, 2025 meeting minutes.
- B. Approval of the May 27, 2025 meeting minutes.

II. OLD BUSINESS

- A. The request of **Harborside Property Management LLC (Owner)**, for property located at **92 Brewster Street** whereas relief is needed to demolish the existing structure and construct a single-family home with Accessory Dwelling Unit which requires the following: 1) Variance from Section 10.521 to allow a) 2,884 s.f. of lot area where 3,500 s.f. are required, b) 2,884 s.f. of lot area per dwelling unit where 3,500 s.f. are required, c) 52.33 feet of continuous street frontage where 70 feet are required, d) 9.5 foot right side yard where 10 feet are required, and e) 10 foot rear yard where 20 feet are required. Said property is located on Assessor Map 138 Lot 54 and lies within the General Residence C (GRC) District. (LU-25-25)
- B. 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) 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; 2) Variance from Section 10.5B34.60 to allow for a front setback from the lot line of 27 feet on Woodbury Avenue and 53.5 feet on Gosling Road where a maximum of 20 feet is required; 3) Variance from Section 10.5B83.10 to allow for parking spaces to be located between the principal building and the street; 4) Variance from Section 10.835.31 to allow outdoor service facilities to be located within 34.5 feet and 40.5 of a lot line where 50 feet is required. 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 10.843.33 to allow for pump islands to be located within 34.5 feet of the lot lines where 40 feet is required; 7) Variance from Section 10.1251.10 to allow for an aggregate sign area of 309 s.f. where a maximum of 223.5 s.f. is allowed; 8) Variance from Section 10.1251.20 to allow a 134 s.f. freestanding sign where a maximum of 100 s.f. is allowed; and 9) Variance from Section 10.1253.10 to allow for a freestanding sign at a height of 26.5 feet where a maximum of 20 feet is allowed. Said property is located on Assessor Map 239 Lot 11 and lies within the Gateway Corridor (G1) District. (LU-25-39)

- C. REQUEST TO WITHDRAW** The request of **Mezansky Family Revocable Trust (Owners)**, for property located at **636 Lincoln Avenue** whereas relief is needed to demolish an existing detached garage and to construct an addition to the primary structure which requires the following: 1) Variance from Section 10.521 to a) allow a 2 foot left side yard setback where 10 feet is required; b) allow a 12.5 foot rear yard setback where 20 feet is required; c) allow 39% building coverage where 25% is the maximum allowed; and 2) Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 148 Lot 17 and lies within the General Residence A (GRA) District. **REQUEST TO WITHDRAW**

III. NEW BUSINESS

- A.** The request of **Life Storage LP C/O Sovran Self Storage (Owner)**, for property located at **70 Heritage Avenue** whereas relief is needed for after-the-fact installation of mini-storage units which requires the following: 1) Variance from Section 10.531 to allow a 2-foot rear setback where 50 feet is required; and 2) Variance from Section 10.330 to allow the expansion of a nonconforming use where it is not permitted. Said property is located on Assessor Map 285 Lot 11-B and lies within the Industrial (I) District. (LU-25-36)
- B.** The request of **Suzanne S. Dargie (Owner)**, for property located at **35 Boss Avenue** whereas relief is needed to construct a two-story addition to the existing single-family home which requires the following: 1) Variance from Section 10.521 to a) allow a 8.5 foot right side yard where 10 feet is required and b) 22.5% building coverage where a maximum of 20% is permitted. Said property is located on Assessor Map 152 Lot 42 and lies within the Single Residence B (SRB) District. (LU-25-72)
- C.** The request of **Port Hunter LLC (Owner)**, for property located at **361 Miller Avenue** whereas relief is needed to demolish the existing detached garage and construct a new detached garage which requires the following: 1) Variance from Section 10.521 to allow a building coverage of 26% where a maximum of 25% is permitted; 2) Variance from Section 10.573.20 to a) allow an accessory building with a 10.5 foot rear setback where 20 feet is required; and b) a 6 foot left side yard setback where 10 feet is required. Said property is located on Assessor Map 131 Lot 33 and lies within the General Residence A (GRA) District. (LU-25-76)

- D.** The request of **Maureen A Rousseau and Daniel A Indoe (Owner)**, for property located at **239 Broad Street** whereas relief is needed to remove an existing detached accessory structure and to construct an addition to the primary structure which requires the following: 1) Variance from Section 10.521 to allow a secondary front yard setback of 6 feet where 15 feet is required. Said property is located on Assessor Map 131 Lot 15 and lies within the General Residence A (GRA) District. (LU-25-75)
- E.** The request of **Greengard Center for Autism (Owner)**, for property located at **89 Brewery Lane** whereas relief is needed for a change of use from an assisted living home with 5 residents to an assisted living center with 6 residents which requires the following: 1) Variance from Section 10.440, Use #2.11 for an assisted living center where it is not permitted. Said property is located on Assessor Map 146 Lot 26 and lies within the Character District 4-L2 (CD4-L2). (LU-25-77)

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_mwwx7wCCQH-kocfjoFiNqg

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

7:00 P.M.

May 20, 2025

MEMBERS PRESENT: Phyllis Eldridge, Chair; David Rheame; Thomas Rossi; Paul Mannle; Jeffrey Mattson; Thomas Nies

MEMBERS EXCUSED: Vice-Chair Beth Margeson; Jody Record, Alternate

ALSO PRESENT: Jillian Harris, Planning Department

Chair Eldridge called the meeting to order at 7:00 p.m. She stated that Old Business Petition F, 636 Lincoln Avenue, was re-noticed to the May 27 meeting.

She stated that Old Business Petition G, 1980 Woodbury Avenue, was requested to be postponed by the applicant and asked that it be taken out of order so that it could be addressed and postponed. Mr. Rossi read the petition into the record.

*Mr. Rossi moved to take Petition G, 1980 Woodbury Avenue, out of order. Mr. Mannle seconded. The motion **passed** unanimously, 6-0.*

*Mr. Rossi then moved to **postpone** Petition G, 1980 Woodbury Avenue, to the June 17 meeting. Mr. Mannle seconded. The motion **passed** unanimously, 6-0.*

I. APPROVAL OF MINUTES

A. Approval of the April 15, 2025 meeting minutes.

*Mr. Rossi moved to **approve** the April 15 minutes as submitted. Mr. Mattson seconded. The motion **passed** unanimously, 6-0.*

B. Approval of the April 22, 2025 meeting minutes.

*Mr. Rossi moved to **approve** the April 22 minutes as submitted. Mr. Mattson seconded. The motion **passed** unanimously, 6-0.*

Note: The Board decided that they would address as a group Section II, Old Business, Petitions A through E, the Kane Company (Owners) for removing, replacing, and relocating existing freestanding signs at Kane properties. Chair Eldridge read each of the five petitions into the record.

II. OLD BUSINESS

- A. The request of **The Kane Company (Owners)** for property located at **210 Commerce Way** whereas relief is needed to remove, replace and relocate an existing freestanding sign which requires the following: 1) Variance from Section 10.1253.10 for a freestanding sign to be setback 4 feet from the front property line where 20 feet is required. Said property is located on Assessor Map 216 Lot 1-4; and lies within the Office Research (OR) District. (LU-25-35)
- B. The request of **The Kane Company (Owners)** for property located at **170 and 190 Commerce Way** whereas relief is needed to remove, replace and relocate two existing freestanding signs which requires the following: 1) Variance from Section 10.1253.10 for two freestanding signs to be setback a) 2 feet and b) 10.5 feet from the front property line where 20 feet is required. Said property is located on Assessor Map 216 Lot 1-2 and lies within the Office Research (OR) District. (LU-25-42)
- C. The request of **The Kane Company (Owners)** for property located at **195 Commerce Way** whereas relief is needed to remove, replace and relocate an existing freestanding sign which requires the following: 1) Variance from Section 10.1253.10 for a freestanding sign to be setback 6 feet from the front property line where 20 feet is required. Said property is located on Assessor Map 216 Lot 1-8 and lies within the Office Research (OR) District. (LU-25-43)
- D. The request of **The Kane Company (Owners)** for property located at **215 Commerce Way** and **75 Portsmouth Boulevard** whereas relief is needed to remove, replace and relocate two existing freestanding signs which requires the following: 1) Variance from Section 10.1253.10 for two freestanding signs to be setback a) 1.5 feet and b) 9.5 feet from the front property line where 20 feet is required. Said property is located on Assessor Map 216 Lot 1-8a and lies within the Office Research (OR) District. (LU-25-44)
- E. The request of **The Kane Company (Owners)** for property located at **230 Commerce Way** whereas relief is needed to remove, replace and relocate an existing freestanding sign which requires the following: 1) Variance from Section 10.1253.10 for a freestanding sign to be setback 4 feet from the front property line where 20 feet is required. Said property is located on Assessor Map 216 Lot 1-5 and lies within the Office Research (OR) District. (LU-25-45)

SPEAKING TO THE PETITIONS

[Timestamp 15:48] Attorney John Bosen was present on behalf of the applicant, with Neil Hansen of Tighe & Bond. Attorney Bosen stated that they were seeking the same relief for seven different properties. He noted that two signs currently existed at 170 and 190 Commerce Way in the right-of-

way that would be relocated onto the property. He said those buildings were commercial office buildings built in 1980 on a private road at the time but that the road later became a public road. He said the applicant would update and replace all the existing signs to modernize them and increase their visibility to the road. He referred to the Sign Relocation Plan to show the location of all the existing and proposed signs. He addressed the criteria and said they would be met.

[Timestamp 20:54] Mr. Nies said that the existing and proposed conditions for 210 Commerce Way seemed to show that there was no freestanding sign on 210 Commerce Way now but that the applicant proposed to replace the sign in approximately the same location. He asked what the hardship was that caused the sign to need a setback. Attorney Bosen said it was due to the sign setback line that would put the sign in the parking lot.

[Timestamp 22:04] Mr. Rheume referred to the diagram called the Overall Site Sign Location Plan that had a representation of the proposed sign. He said he understood that the sign dimensions were 48"x60" but some of that 60 inches was a support post. He said he was confused by some of the other dimensions because they indicated different things. Mr. Hansen said the graphic was hard to read. He said the 120 inches was the total height, including the footing. Mr. Rheume said there was a 10-ft long pole of which three feet were stuck in the ground and there were seven feet above it. He asked what the 72-ft dimension referred to. Mr. Hansen said he had no answer. Mr. Rheume said he looked at all the properties and found that 210 Commerce Way did not currently have a sign, and he asked what drove the 4.2-ft setback for that property and indicated that it was the right spot for the sign. Mr. Hansen said it was based on the site conditions and that they were trying to locate the sign where it would be visible from the road but would not block the sight lines. He said the 210 Commerce Way property had a large tree, so they wanted to site the sign so that the tree would not block it. Mr. Rheume said the applicant was sort of all over the place with all the dimensions and that he wanted to understand why so much relief was needed. Mr. Hansen said it was about finding a location that had the best visibility from the roadway. Mr. Rheume said the one that concerned him the most was for the 215 Commerce Way property because that one was particularly close to the property line at 1.8 feet but was advertised as 1-1/2 feet. He said the property had the most current wall signage associated with it, which was very prominent and visible. He asked why the small sign needed to be positioned so close to the property line where 20 feet was required, noting that it was a lot of relief asked for. Mr. Hansen said the sign was an existing one and that they were replacing it at the existing location. Mr. Rheume asked if there would be any disadvantage to pulling it back, and Mr. Hansen said he did not think that they wanted to go as far back as 20 feet. Mr. Rheume said in most cases, the 20-ft corner was shown, so there was an argument to be made that if the sign was not 20 feet back from the roadway, then it was close to it. It was further discussed. Mr. Rheume said the signs were also modest ones and more like those found in Sign District 2 rather than Sign District 4, and the applicant did not want to require a 5-ft setback in a Sign District 2. Mr. Mannle asked how many of the sign requests were after-the-fact permission ones. Mr. Hansen said none of them were. Mr. Mannle asked if the applicant had variances for all the signs. Mr. Hansen said he did not know when the signs were installed but that they were all being replaced by the proposed signs. Mr. Mannle said there were no variance requests in the packet

for any of the signs. Mr. Rossi noted that the roads were private roads at one time. Mr. Mannle asked when the road turned into a public one. Mr. Hansen said he did not know.

Chair Eldridge opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITIONS

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

DECISION OF THE BOARD [Timestamp 29:55]

*Mr. Rossi moved to **grant** the variances for Petitions II.A through II.E as presented and advertised, with the following **condition**:*

- 1. For 215 Commerce Way, the sign shall be located an additional five feet farther back than indicated in the submitted materials for a total setback of 6.5 feet.*

Mr. Rheume seconded the motion.

Mr. Rossi said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He said the purpose and spirit of the signage ordinance was to maintain and enhance the character of the City's commercial districts and residential neighborhoods. He said it was a Commercial Office Area and that the signage was consistent with that use and would not distract from it in any way and would actually enhance it by making it easier to find the intended buildings within a fairly large complex containing a lot of different lots. He said substantial justice would be done because the loss to the applicant for not being able to direct traffic to commercial properties within the area would not outweigh the loss to the public by having those signs erected. He said they were public roadways that would primarily be visible to people who had already entered into the commercial property and would have an interest in finding their way around. He said granting the variances would not diminish the values of surrounding properties because each property was undergoing similar treatments and one would not impact the value of the others. He said someone would not be able to see any of them unless they took an exit from the through traffic areas and went specifically into the complex, and that it would have no impact on properties that were in the broader definition of the neighborhood. He said literal enforcement of the ordinance would result in unnecessary hardship due to the special conditions of the property, including the setback that would place the signage in an unreasonable location where the signs would not be visible from the roadway, or they would diminish the accessibility of certain parking areas. He said overall, the locations of the signs were consistent with what was already there, regardless of whether they had variances or were grandfathered in. He said there was not much of a change going on, so literal enforcement of the ordinance would really not serve any purpose related to the intentions of the ordinance. He said that criterion was also satisfied.

[Timestamp 33:55] Mr. Rheume referred to the spirit of the ordinance and said he thought what the applicant was presenting were relatively modest signs of 20 square feet in overall dimension, equivalent to a Sign District 2 as opposed to a Sign District 4, which was the Office Research

District with a freestanding sign limit of 100 square feet and five times as much as what the applicant was asking for. He said the applicant was asking for only 20 percent of what would be allowed, so it would be more in accordance with Sign District 2. He said the relief asked from the 20 square feet was appropriate. From a hardship standpoint, he said the applicant had shown that there were some existing layouts set up many years ago that forced signage closer than the 20 square feet, which was subsequently applied when the property lines were set up differently. He said it became a public way at an undetermined time and what was there was grandfathered in, but now the applicant was trying to upgrade that to a more uniform appearance, which was a more positive thing for the complex. He said the sign was still 20 feet from the traveled way, even though the property line was closer to where the sign was, and the overall effect was still within the characteristics of the Office Research District. He said another hardship was that the same applicant owned many of the properties that had been a large property at one time that was uniquely developed and that the applicant was placing the signs to create a uniform appearance to the whole complex. He said the condition included with the motion was important because the one sign that he felt was unusually close to the road went back to the spirit of being at least five feet away and was more like a Sign District 2.

[Timestamp 36:47] Mr. Mannle said he could not support the application because the applicant did not demonstrate any hardship and did not know when the road went public, and so on. He said the applicant could comply with the zoning ordinance and every one of the buildings was well marked. Mr. Mattson said two factors that swayed him were that the actual property lines were not where the road asphalt ended but were set back quite a ways into the grass already, so the effect was that the signs were farther back from the actual road than would be implied from the measurement. Secondly, he said he understood the logic of having a sign setback, and in this situation it may not be as important, but for him what was important was the triangular 20-ft sign exclusion zone. He said he could see how that could have a safety issue, but none of the signs were in that area, so there was no relief needed for it. Mr. Rheume noted that the 210 and 230 Commerce Way buildings had no wall signage at all, so there was no current way of knowing what businesses were in there. He said most of the other properties, like 170 and 190 Commerce Way, had modest existing signage, and he thought 215 Commerce Way had a good-sized sign, which was the one the Board was asking to be pushed farther back away from the road to be more respectful toward the zoning ordinance.

*The motion **passed** by a vote of 4-2, with Mr. Nies and Mr. Mannle voting against.*

F. RE-ADVERTISED FOR MAY 27, 2025 The request of **Mezansky Family Revocable Trust (Owners)** for property located at **636 Lincoln Avenue** whereas relief is needed to demolish an existing detached garage and to construct an addition to the primary structure which requires the following: 1) Variance from Section 10.521 to a) allow a 2 foot left side yard setback where 10 feet is required; b) allow a 16 foot rear yard setback where 20 feet is required; c) allow 39% building coverage where 25% is the maximum allowed; and 2) Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the

Ordinance. Said property is located on Assessor Map 148 Lot 17 and lies within the General Residence A (GRA) District. (LU-25-27) **RE-ADVERTISED FOR MAY 27, 2025**

DECISION

*The petition was **re-noticed** to the May 27 meeting.*

G. REQUEST TO POSTPONE - 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 (*approved April 22, 2025*); 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; and 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. Said property is located on Assessor Map 239 Lot 11 and lies within the Gateway Corridor (G1) District. (LU-25-39) – **REQUEST TO POSTPONE**

DECISION OF THE BOARD

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

III. NEW BUSINESS

A. The request of **Deer Street Hospitality LLC (Owners)** for property located at **165 Deer Street** whereas relief is needed for a marquee sign and a freestanding sign which requires the following: 1) Variance from 10.1251.20 for a 67.5 s.f. marquee sign where 20 s.f. is allowed; 2) Variance from 10.1273.10 to allow a marquee sign to be placed on top and to be 24 inches tall; 3) Variance from 10.1253.10 to allow a freestanding sign to be setback 0 feet where 5 feet is required. Said property is located on Assessor Map 125 Lot 17 and lies

within the Character District 5 (CD5), Municipal (M), and Downtown Overlay Districts.
(LU-25-60)

SPEAKING TO THE PETITION

[Timestamp 41:15] Mike Leary of Sundance Signs was present on behalf of the applicant. He said the property was Homewood Suites by Hilton. He said there were several iterations since construction began, so they wanted to put the marquee sign on the top entrance of the building where it could be seen from Deer Street. He noted that other nearby hotels received variances for larger signs. He said his client wanted a 24” high sign where 18 inches was allowed for channel letters. He said part of that was the size of the building where the marquee was visible. He said the other request was for a zero setback, and he explained that there were building piers that ran up and were at the setback, so they wanted to just go in line with the piers of the building that were zero to one foot from that property line. He reviewed the criteria and said they would be met.

[Timestamp 46:53] Mr. Rheume said there appeared to be a property line near Sign C and there was some distance between the property line and the sign, but it was advertised as zero feet. He asked if there was some setback for the sign. Mr. Leary said there were two building piers on the drawing. Mr. Rheume said those piers seemed closer to the property line and that he believed the sign was actually set back a few feet. Ms. Harris said the number was rounded because it was so close. Mr. Rheume asked if there was an easement related to the hotel property due to the driveway that went on the neighboring property and was used to access the turnaround drop-off area for the hotel use. Mr. Leary agreed. Mr. Rheume said the marquee sign was limited to 20 square feet but it was indicted that it was 67 square feet as a result of the 2-ft high letters, which he further discussed. He asked if the letters were hollow. Mr. Leary said they were standard channel letters so there was space between them except from the side view that showed the mounting and where the wire was run. Mr. Rheume asked if most of the height of the letters were open air, and Mr. Leary agreed. It was further discussed. Mr. Nies asked why the marquee sign and freestanding sign in the front of the building were right next to each other and what purpose the freestanding sign served. Mr. Leary said the marquee sign was elevated so that someone coming down the road and turning onto the right-of-way would see the space that allowed that person to pull in.

Chair Eldridge opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD [Timestamp 53:08]

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

Mr. Rheume said the marquee sign and the square footage associated with it seemed quite a bit larger than what the Board allowed, but the overall square footage was sort of overestimated by the way it was looked at from a zoning ordinance standpoint. He said some of the lettering was one foot high, but the lettering was open, so it was not like a massive sign. He said the fundamental feel of it would be something different from being 67 square feet and two feet high. He said the small sign on the ground would be needed because the marquee sign would not be seen once someone approached the building, from a traffic standpoint. He said it would reinforce the turn-in to vehicles turning into the drive on the neighboring property. He reviewed the criteria and said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He said the applicant's signage for the building was overall modest compared to the much larger signage of some of the other nearby hotels, so there were similar things seen in the neighborhood that would not make the applicant's sign look and appear different. He said the applicant met the spirit and general characteristics of the neighborhood. He said granting the variances would do substantial justice because there was nothing in the public interest from a traffic safety standpoint to indicate that it was not decent signage. He said it was relatively modest signage that served the public interest and would not outweigh the applicant's need to properly display information about his hotel that would allow guests to find it. He said it would not diminish the values of surrounding properties because the area was a highly commercial one. He said the signage would not be imposing in a way that would negatively affect the property values of the other commercial buildings. He said the hardship was the setback for the freestanding sign because it was slightly set back from the property line, but the property line was tight and there was also an easement that went across onto the neighboring property for the road. He said under normal circumstances the Board would not have had a discussion about the setback for Sign C. He said it was on the neighboring property but was guaranteed by an easement, so the affected property line was farther away, which was a unique characteristic about the property. He said the property was situated on a corner and there was not a lot of opportunity for a wall sign, so using the marquee sign made the most sense. He said a unique set of circumstances drove the signage and was in keeping with what the Board was trying to do to minimize the amount of signage in their character districts. Mr. Mattson concurred. He said the freestanding sign was located between the two pillars of the building and the building was slightly closer to the property line than the sign, so it seemed reasonable. He said the convincing factor about the marquee sign was that the letters were see-thru ones and made the sign very different than if it were a solid one.

[Timestamp 59:22] Mr. Nies said he would not support the motion. He said he had no problem with the freestanding sign because it served the purpose, nor with the location of the marquee sign or the fact that it was lighted, but he said the ordinance was clear about the sign sizes in that area and that he heard no justification as to why the sign needed to be larger than what was called for in the ordinance. Chair Eldridge said the sign ordinance changed the dimensions for different districts but did not take into account the size of the building that the sign was being put on. She said she thought that those sign restrictions did not mean a lot when one building might be a third of the size of another building. She said the applicant's proposed sign was a reasonable scale for the building and that she would support it. Mr. Rossi said he shared that concern but thought that, since there was no backing to the letters, the actual square footage of the sign was quite a bit smaller than

presented. He said he did not think that the applicant needed anything close to 64 square feet. He suggested that the motion have a condition to indicate that the Board was not approving a 64-sf sign. Ms. Harris said that was the way the Planning Department measured the sign.

*The motion **failed** by a tie vote of 3-3, with Mr. Nies, Mr. Mannle, and Mr. Rossi voting against. (The motion would have needed four affirmative votes to pass).*

*Mr. Mannle then moved to **deny** the request. There was no second.*

*Mr. Rossi moved to **grant** the variances for the petition, with the following **condition**:*

- 1. The sign shall not be constructed with a backing behind the letters.*

Mr. Mattson seconded the motion.

[Timestamp 1:03:37] It was further discussed. Mr. Rossi restated his motion.

*Mr. Rossi moved to **grant** the variances for both the location of the freestanding sign and the square footage of the marquee sign, with the following **condition**:*

- 1. The letters shall remain as freestanding letters and shall not have a backing.*

Mr. Mattson seconded the motion.

Mr. Mattson said he understood why the Planning Department defined the signage square footage the way they did because if the sign were a see-thru one, the font thickness and letters would have to be determined, but because of that, he thought the sign had a very different feeling than if it were a solid sign, so with the condition included, he thought it was a reasonable relief request. Mr. Nies said he did not understand how the motion was different than the earlier one. Mr. Rheame explained that the motion was different because it helped clarify the intent of the Board.

*The motion **passed** by a vote of 4-2, with Mr. Nies and Mr. Mannle voting against.*

- B. The request of 3201 Lafayette Road LLC (Owners) and Jessica King (Applicant) for property located at 3201 Lafayette Road** whereas relief is needed to allow a group daycare facility which requires the following: 1) **Special Exception** from Section 10.440, Use #7.12 to allow a group daycare facility where it is allowed by Special Exception. Said property is located on Assessor Map 291 Lot 8 and lies within the Gateway Corridor (G1) District. (LU-25-49)

SPEAKING TO THE PETITION

[Timestamp 1:09:25] The applicant/owner Jessica King was present and reviewed the petition. She explained the boutique style of learning that her current daycare center had and said the care would be provided on the ground level of the building for children six weeks old up to two years and that

the second floor would be for pre-K to Grade 2 and for partial and day programming. She described what the interior would look like and said the outdoor space would include green space and fencing for the play area. She said there would be 20 parking spaces that could maximize the enrollment at 40 children. She said the parents would drop the children off to a childcare employee in front of the center and then would be free to go. She reviewed the special exception criteria

[Timestamp 1:18:31] Mr. Nies said the building was capable of handling 60 students but the parking limited the number to 40. He asked if the applicant could envision expanding the parking lot to move the number up to 60. Ms. King said they liked to operate between having 20 to 50 children, so 40 was a good number that allowed them to provide a higher level of care but still meet the needs of a significant amount of children. She said she did not envision increasing the number of parking spots. Mr. Rheaume verified that, of the two structures on the property, the two-story one would have the daycare use and the applicant would have nothing to do with the other building. Mr. Rossi asked where the fenced-in play area would be. Ms. King said it would be to the right of the building as one faced it and would be well set back from Lafayette Road. Mr. Rossi asked about the parents who would be coming southbound on Lafayette Road to drop their children off and then would have to turn left onto Lafayette Road. Ms. King said her current daycare location was also on Lafayette Road and encountered the same type of issue and had not received a lot of feedback about it. She said there was a traffic light intersection at the proposed location that would allow people to exit easily. Mr. Rossi said he was also concerned about a six-year-old darting out into Lafayette Road traffic if they wandered out of the fenced-in area, and he verified that the area was only accessible from the building. Mr. Mattson asked about the timing of drop-offs and pick-ups. Ms. King said they asked parents to give them a 25-minute window and that they limited it to a certain number of families. She said they did not get a lot of partial day programming. She said they were open from 7 a.m. to 5 p.m. and had a busy half-hour to 45-minute morning drop-off. She said they had no traffic issues with that at their present location.

Chair Eldridge opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD [Timestamp 1:25:03]

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

Mr. Nies said the use was permitted in that zone and had no specific standards applied to it, so it complied with the ordinance. He said granting the special exception would pose no hazard to the public or adjacent public on account of potential fire, explosion, or release of toxic materials. He said a daycare did not involve any of those activities and that it was a commercial area and the daycare activity was allowed by special exception, so it was difficult to see how it would have any

detriment to any property values. He said the daycare would be near some residential areas but was a large property that was set off, so he could not imagine that it would have any impact. He also noted that there was no evidence provided that the daycare would have an impact on property values and that minor changes such as fencing would not affect the neighbors. He said granting the special exception would pose no creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity. He said the applicant showed that they have a plan for drop-off and pick-up, which would have a regulated traffic flow on the property, with people entering in one spot and exiting at another spot. He said the parents would be entering and exiting from busy Route One, but a little over a block away to the north was a traffic light that would interrupt the flow of traffic a bit, which should help people merge if they decided that they had to go southbound. He said the applicant also had a plan to space out the arrivals and departures, which would help mitigate any traffic. He said 40 students were planned, so possibly 40 vehicles added on Route One twice a day was probably negligible considering the amount of traffic seen on Route One. He said there would be no excessive demand on municipal services because the daycare would be a daytime operation for 40 students and would not create an excessive load on water, sewage, waste disposal, or police and fire protection. He said the applicant was not planning any significant changes to the property at present, so there would not be a significant increase in stormwater onto adjacent properties and nearby streets. He said the petition met all the requirements for a special exception and should be granted. Mr. Mannle concurred and had nothing to add.

*The motion **passed** unanimously, 6-0.*

IV. OTHER BUSINESS

A. Zoning Board of Adjustment Rules and Regulations

[Timestamp 1:29:18] The Board discussed the BOA rules and regulations. Mr. Rossi referred to Section 6, Item 7, and asked about the meaning of the sentence ‘It is the Chair’s determination if there’s a deadlock and the request is denied’. Ms. Harris said it referred to tie votes. Chair Eldridge said it was part of the reason why the Board asked the motion maker to describe what failed so if it were denied, the Board had the means to protect themselves. Mr. Nies asked whether the sentence was needed, and he thought the idea of the sentence was that it was possible to get to a point where there would be a series of motions that all failed on a tie vote and the Chair would say that was enough and that they were done. Mr. Rheume said it reiterated the Chair’s power of saying that the Board was deadlocked and would consider the motion making at an end and gather some facts to inform the applicant of the Board’s thinking. Mr. Rossi suggested a clearer wording. It was further discussed and the Board decided to amend the sentence to say: ‘The Chair may make the determination that there is a deadlock and the request is denied’.

Mr. Nies asked about the redlined version in Section 7, Item 4 and whether it was supposed to say ‘an application for a variance OR a special exception’ instead of saying ‘an application for a variance OF a special exception’. It was decided that it was a typographical error and that it should say a variance OR a special exception.

Chair Eldridge referred to Section 4, Item 6, when the Board talked about meeting minimum requirements and said she wanted to get rid of the word ‘minimum’ because she felt that the petition either met the requirements or it did not. It was decided that the word ‘minimum’ would be struck anywhere it said ‘minimum requirements’.

Chair Eldridge asked Mr. Nies if he was satisfied with Mr. Rossi’s suggestion of four votes being necessary for a vote to pass. Mr. Nies agreed.

Chair Eldridge referred to Section 6, Item 12, the statement that no one would leave a meeting without permission without voting on a motion. Mr. Nies said the language was fine but odd, and he could not imagine that anyone would just get up and leave unless they were sick. Mr. Rheume suggested simplifying it to state that ‘no member shall leave a meeting without the permission of the Chair and justification for it’.

Mr. Nies said he thought it would be more transparent if someone who recused themselves announced why. Mr. Rossi said members may recuse themselves due to a personal relationship with the applicant. Chair Eldridge said the usual reason was that the person who recused was an abutter. Ms. Harris said the member could state the reason if they wanted to.

Mr. Rossi asked if the Board should be required to keep a training record so they could signify whether they attended training. Ms. Harris said it was good practice for members to log that information for themselves. Mr. Rheume said training was encouraged but not required to be a BOA member, and he thought keeping a log would be a personal thing. It was further discussed.

*Mr. Rossi moved to **approve** the amended BOA rules and regulations, with the addition of the changes that were made. Mr. Rheume seconded. The motion **passed** unanimously, 6-0.*

Chair Eldridge noted that alternate Jody Record resigned from the Board and that two new alternates would have to be found.

V. ADJOURNMENT

The meeting adjourned at 8:42 p.m.

Submitted,

Joann Breault
BOA Meeting Minutes Taker

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

7:00 P.M.

May 27, 2025

MEMBERS PRESENT: Phyllis Eldridge, Chair; Beth Margeson, Vice-Chair; Members David Rheame; Thomas Rossi; Jeffrey Mattson; Thomas Nies

MEMBERS EXCUSED: Paul Mannle

ALSO PRESENT: Jillian Harris, Planning Department

Chair Eldridge called the meeting to order at 7:00 p.m.

I. OLD BUSINESS

- A.** The request of **Mezansky Family Revocable Trust (Owners)** for property located at **636 Lincoln Avenue** whereas relief is needed to demolish an existing detached garage and construct an addition to the primary structure which requires the following: 1) Variance from Section 10.521 to a) allow a 2 foot left side yard setback where 10 feet is required; b) allow a 12.5 foot rear yard setback where 20 feet is required; c) allow 39% building coverage where 25% is the maximum allowed; and 2) Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 148 Lot 17 and lies within the General Residence A (GRA) District. (LU-25-27)

Mr. Nies recused himself from the petition.

SPEAKING TO THE PETITION

[Timestamp 6:03] Designer Amy Dutton representing the owners was present and said they wanted to remove the dilapidated garage and build a single-floor addition. She reviewed the criteria and noted that a letter from an abutter approving the project was included in the packet.

[Timestamp 11:44] Mr. Rossi noted that Ms. Dutton said there were certain aspects of the code that forced the expansion of the footprint and lot coverage. Ms. Dutton referred to the 96 sf over existing and said she could not get in everything that the owner wanted. She said they were trying to stay as far off the rear property line as possible and reconfigured the stairs to get them away from the rear

property line. Mr. Rossi asked, relating to fitting in with the character of the adjacent properties, what the adjacent properties' percentage lot coverages were. Ms. Dutton said the abutter to the left had a legal double lot, and the other abutter's addition went farther back and that they had a garage. She said she did not know the exact lot coverage.

[Timestamp 13:48] Mr. Rheume asked if the property lines in the plot plan were based off a survey. Ms. Dutton said a survey was not done. She said the MapGeo was wrong but believed that the lot size was correct. She said the direct abutter to the backyard had a legal survey done and that there was a fence on the abutter's property that could pinpoint where that dimension was coming from. She said she dimensioned 22'10" from the back of the existing addition to the fence, and from her laser it went 25 ft to the fence. Mr. Rheume asked if Ms. Dutton therefore thought that the back property line was based off an adjoining property's survey. Ms. Dutton agreed. Mr. Rheume said the list of dimensions indicated that the existing garage had a 2-ft setback from that property line, but the drawing did not show the same dimension as the 2-ft setback to the side for the proposed new addition, and he asked where that number came from. Ms. Dutton said the line was angled and the garage was parallel to the house, so she based it off a site measure. She said she got two feet on one corner and 11 inches on another corner. Mr. Rheume said the closest dimensions would then probably be less than a foot. Ms. Dutton said she did not think that the fence was the property line. Mr. Rheume said the property was renovated in 2012 and asked Ms. Dutton if she knew what happened then. Ms. Dutton said that in 2012, someone would have gone to the Assessor's Office and would have photocopied the site plan. She said the building permit was submitted in 2012, and the garage was drawn at an angle and crossed over the property line, so she believed that the assessor took the City's site plan and that the property lines were skewed incorrectly. She said the property line went through the driveway diagonally on that plan but that it was actually straight. She said she looked at the map submitted in 2012 and found that it was off, so she was using the numbers given to her by the City a month ago. She said the assessor had told her that the number from the deed did not match what was submitted in 2012. She said she measured the entire footprint of the house and was confident in her calculations. Mr. Rheume asked if a portion of the home was torn down and replaced by a new section in 2012. Ms. Dutton agreed and it was further discussed.

[Timestamp 20:58] Vice-Chair Margeson asked if the driveway would be enough for two cars. Ms. Dutton agreed. Vice-Chair Margeson said she was concerned that the property was very tight and no survey had been done. She said there seemed to be a lot of variations as to what the property might really be and that she was uncomfortable approving it without a survey. Ms. Dutton said the left side abutter felt positive about it. She said the expense and time to get a survey done on a lot like that would feel like a hardship to the owners, and she did not think it would make a significant change. Vice-Chair Margeson said it was more about knowing exactly what the dimensions, footprint and boundaries were.

Chair Eldridge opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DISCUSSION OF THE BOARD

[Timestamp 25:58] Mr. Mattson suggested stipulating that if the variances are approved with the 2-ft setback and the property was then surveyed and it was not two feet, the applicant would have to comply. Mr. Rheume said he wasn't sure if a survey would find something from a variance standpoint that would make a difference to him. He said normally the Inspection Department required a survey when a foundation was put in, especially for a dimension that close, so a survey would have to be done and that survey could come back with discrepancies. He said a 2-ft setback was very close, but he was in favor of the variance requests because the structure was a modest one-story addition that improved the rear setback. He said it was an increase in overall dimensions for the amount of coverage on the property, and every percent counted, but it was a relatively modern addition. Mr. Rossi said the Board did not know at this time what the percent of lot coverage was and where the boundaries were. He said he was also concerned about the incremental number of small changes in the percentage of lot coverage, which will now have brought it into a state of substantial noncompliance. He said 39 percent was significantly different from the allowed lot coverage of 25 percent. He said if he had to vote on it now, it would be a nay vote. Chair Eldridge said she would vote in favor because the lot was a tiny one on that street, and the new addition would be an improvement from the garage and would be farther back from the lot line. She said denying the petition could set up a situation where the applicant could not return with the same proposal due to a Fisher v. Dover conflict.

DECISION OF THE BOARD

*Vice-Chair Margeson moved to **postpone** the petition pending submission of a surveyed plan to a meeting in the near future. Mr. Mattson seconded.*

It was further discussed and decided that a date for the applicant to return should be set.

*Vice-Chair Margeson **amended** her motion and moved to **postpone** the application to the June 17 meeting pending the submission of a surveyed plan. Mr. Mattson seconded.*

Mr. Rossi said he would reluctantly support the motion, noting that he was not sure that he would find the survey's additional information persuasive in reaching a decision.

*The motion **passed** unanimously, 5-0, with Mr. Nies recused.*

II. NEW BUSINESS

Mr. Nies returned to his voting seat.

- A. 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 lot 1 requires the following: 2) Variance from Section 10.521 to allow a) 10,664 sf of lot area where 15,000 sf is required; b) 10,664 sf of lot area per dwelling unit where 15,000 sf is required; and c) 75 feet of continuous street frontage where 100 feet is required. Proposed lot 2 requires the following: 3) Variance from Section 10.521 to allow a) 11,250 sf of lot area where 15,000 sf is required; b) 11,250 sf of lot area per dwelling unit where 15,000 sf 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-25-67)

SPEAKING TO THE PETITION

[Timestamp 35:35] Attorney Derek Durbin was present on behalf of the owner. He gave the Board a package of support letters that were given to the owner. He reviewed the petition, noting that the property was a huge lot for the area and had been in the same family since 1954 and then sold to the applicant's father. He said the property had a total of 408 sf of street frontage but only 161 of that was continuous on Farm Lane and there was an additional 247 sf of secondary frontage on Longmeadow Lane. He said the 1954 subdivision plan showed the original layout of the neighborhood and had three different lots then. He said the City involuntarily merged two lots at one time and the applicant acquired the other lot. He said the applicant wanted to subdivide the property into three distinct family home lots. He noted that a paper street was part of the applicant's property and extended four feet into her property, which he further discussed. He said the variance requests were relatively minor and that the lots would be the same size as most of the lots near it. He said they had a work session with the Technical Advisory Committee (TAC) to discuss the layout and had discussions with City Staff and the Department of Public Works.

[Timestamp 40:43] Vice-Chair Margeson asked for more information on the right-of-way situation. Attorney Durbin said the 10-ft dimension encompassed the new area of the proposed right-of-way. He showed the part on the diagram that was not part of the paper street area, and he said it was like a new area that would be dedicated to the City as a right-of-way. He said it would be 32 feet wide and the constructed portion would be 22 feet, with ten feet constituting the shoulder area. He said potential grading would also be done. Mr. Rheume said he was concerned about the term 'a proposed roadway easement to the City' and said it was not an easement because it would be a transfer to the City. Attorney Durbin said he believed that they settled on everything as being transferred to the City that was not part of the existing paper street, so if it was noted anywhere, it was a mistake and just a leftover notation. Vice-Chair Margeson asked if it was due to the conveyance to the City and was a fee simple. She said that drove a lot of the variance request for the existing lot and proposed lot. Attorney Durbin agreed. Mr. Nies said the submission stated that Lots 102 and 103 were merged voluntarily or involuntarily, but Attorney Durbin said in his presentation that it was involuntarily merged by the City. He asked if Attorney Durbin found evidence of anything. Attorney Durbin said they could not find evidence either way because the lots were historically described in different ways, and since the transfer, the lots were described as one. He said he could not certify that the lots were voluntarily or involuntarily merged.

[Timestamp 45:13] Attorney Durbin reviewed the criteria.

[Timestamp 50:57] Mr. Rheume said a lot of the presentation about the way the applicant was moving forward with the property did not relate to the memo in the packet. Attorney Durbin said the intent was to subdivide but that his client also wanted to preserve the rights she had. Mr. Rheume said the current application assumes that half of the paper street that might otherwise be something the applicant could claim would not be dealt with in the application. Attorney Durbin agreed and said it was just over 9,000 sf of land area considering the paper street and an additional 3,000 sf of additional right-of-way land that would be dedicated. Mr. Rheume said if the property was divided into two lots it would reduce the amount of relief down to one item. He also noted that the applicant's argument rested on the Belanger v. Nashua case in saying that there are so many other lots that look like the ones she wanted to create. He asked Attorney Durbin to elaborate further. Attorney Durbin said municipalities have an obligation to have their zoning reflect the current character of a neighborhood, and he further explained it. Mr. Rheume said the argument was that, other than the fact that the applicant was potentially deeding off a portion of the lots to make a right-of-way, the two new lots created would be equivalent to Lot 102 and Lot 103 of the original 1954 subdivision and could have looked like the lots in 1954. Attorney Durbin said they could be mirrored to look like that but the applicant was trying to respect the neighbors' fence and hedges and other things. Vice-Chair Margeson asked if there would be a driveway. Attorney Durbin agreed. Vice-Chair Margeson said Longmeadow Road was a paper street that the owner had rights to, and she asked if it was possible that the Planning Board might ask for it to be a public street if two lots were put there. Attorney Durbin agreed and said it would be all public street access, and that the new right-of-way area was out of respect to the neighbors. Mr. Nies asked Attorney Durbin if he was aware of any similar instances where there were changes made to slice up larger lots in the area that would be akin to what happened in the Belanger case. Attorney Durbin said he did not know if there had been a slicing up in that particular area, and it was further discussed. Mr. Nies said the zoning ordinance stated that when existing conditions don't match the ordinance, the ordinance is trying to promote compliance moving forward, not to expand nonconformities. He asked Attorney Durbin how he addressed elements of the zoning ordinance in this instance. Attorney Durbin said that was the purpose behind all zoning, particularly large areas in municipalities that remain undeveloped. He said in this case he believed the character of the neighborhood and the lots and how the subdivision was originally laid out superseded strictly applying the 15,000 sf lot area requirement.

Mr. Rossi asked if the nonconformance of the large lot currently having a single nonconformance in the front setback to the paper street was the only nonconformance. Attorney Durbin said it was not a nonconformance but there was a slight right side setback nonconformance with the existing house. Mr. Rossi asked what the hardship was that militates having three lots instead of two. Attorney Durbin said the character of the surrounding neighborhood was the most significant hardship and the fact that there were likely two involuntarily merged lots. He said the hardship relates to the goals of the ordinance and whether there's a fair and substantial relationship. He said no other property in the area had 408 sf of street frontage and that the density goals were met from that perspective. Mr. Rossi asked what drove the placement of the lot lines that divide the three lots from each other. Eric Weinrieb of Altus Engineering was present and said they maintained the 75-ft

frontage for the two rear lots, which was consistent with the neighborhood and was what drove the lot configuration. He said it then backed into creating the 28-ft condition for the existing home. It was noted for the record that on the Staff Memo, the lot area per dwelling unit proposed for the parent lot should read 15,997 instead of 19,730, and that the frontage on Lot 2 was more than 75 feet because it was curved.

Chair Eldridge opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION [Timestamp 1:09:13]

Peter Weeks of 18 Congress Street said he was familiar with the property and knew the person who owned it before the applicant did. He said the presentation that evening was probably a compromise that the Board should unanimously approve because Longmeadow Road has never been accepted as a city street. He said only the City Council could approve a city street, and it was never done.

SPEAKING IN OPPOSITION TO THE PETITION

Richard Palermo of 55 Meadow Road said he and his wife had lived there for 27 years and other neighbors had lived there much longer, and many of them agreed that the application was not in the best interest of the neighborhood. He submitted a petition signed by 31 residents of Farm Lane and Meadow Road who opposed the petition based on four reasons: the increase in noise, the impact to wildlife, negative precedents for more non-conforming properties, and the decrease in the values of surrounding properties. He described the four reasons in more detail.

Ryan Bursell of 71 Meadow Road said he agreed with Mr. Palermo and noted that the variance request was not a minor one but a major one that would be 33 percent larger. He said young families were already being priced out of Portsmouth and that building more expensive homes in the neighborhood would not help with that crisis.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Attorney Derek Durbin said the two people who spoke were not abutters and that what might happen farther up Longmeadow Lane was speculation. He said the photos submitted online as part of the public comment were photos looking into someone else's backyard. He said that even assuming they were looking into the applicant's back yard, nothing prevented the applicant from clearing the lot. He said there was no easement to preserve the wildlife corridor but the intent was not to clearcut the lots. He said his client could create a public street and pave it and that she could have more than one single-family home. He said the focus was on the zoning and that the intent behind the subdivision was not to create 15,000 sf lots and that many of the properties were well under 10,000 sf and did not have the required frontage. He said the density was different than what the ordinance called for and did not believe that there was any intent for the SRB zoning to stop anyone who had a large property from being able to subdivide into something that looks similar to

what it's surrounded by. He said the letters he handed out to the Board were from all the direct abutters who approved the project.

Eric Weinreib said that, in respect to the traffic impact, the construction of two new homes would generate about 10 vehicles per day per household, resulting in 20 vehicles a day on Farm Lane, and would not have a detrimental impact on the neighborhood.

Mr. Bursell said he meant the traffic in general and the fact that it was dangerous in that area.

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

DISCUSSION OF THE BOARD

[Timestamp 1:25:25] Mr. Rossi said it was important for the Board to clarify what was in their jurisdiction to consider and what was not. He said much of what was said in the public comments were reasonable statements, like impacts on the wildlife and noise, but it wasn't part of the zoning ordinance. He said the Board's jurisdiction was to make judgments on things that are in the purpose of the zoning ordinance. He said those were not mitigating factors that the Board was permitted to consider. He said he was always skeptical of historical analyses that stated that lots were divided in a certain way at a certain point in time and it was not the zoning anymore. He said there had to be some sense of the passage of time and how things change. He asked how long the Board would go back to the 1950 drawings. He said that what was considered the right lot size 70 years ago was not persuasive to him in making decisions about what should be considered the right lot size today, given today's zoning. He said one of the purposes of the zoning ordinance was to move areas into a different state than maybe they had traditionally been built to, and he thought that applied here. Mr. Mattson said it was an oversized lot that seemed reasonable to subdivide. He said the ordinance states that for the SRB zone, one to three dwellings per acre is the goal, so he thought that two or three lots seemed reasonable. He said the proposed three lots would not only be closer to the surrounding lots but also closer to the required 15,000 sf and if it was divided into bigger ones, they would be farther away from the 15,000 sf. He said the actual buildable area of the lots within the setback were quite large and could easily fit any normal sized single family home, so he had no problem with the three lots. Mr. Rossi said the potential for avoiding litigation over the paper road and who has rights to what was outside the Board's jurisdiction was not something for them to consider in making their decision. Mr. Nies said he struggled with the size of the lots. He said the setback issues were easily addressed once one got past the division of the lot into three. He said there was very little difference between a 20,000 sf lot being over and a 10,500 sf lot being under and that they were both roughly a third of a difference from the desired 15,000 sf. He struggled with the idea that it was in the spirit of the ordinance, and he thought it seemed to be going in the opposite direction by turning it into three lots, with two of them being nonconforming. He said he also struggled with the hardship criteria, but the spirit of the ordinance was the one that gave him the most trouble. Vice-Chair Margeson said she supported the application because the purpose of the ordinance was to regulate density on the lots. She said the lot was almost an acre and did have a hardship. She said the two substandard lots would not be out of character with the rest of the

neighborhood and the buildings and would still fit within the building envelope. In terms of regulating density, she said it would do that. She said the two proposed lots would be almost completely abutted by Marine Terminal land. She said it was a hardship because it was the SRB district and it was 15,000 sf, and the property was almost an acre. She said it was unfair to apply the zoning ordinance to the applicant's piece of property given that the density was pretty much met in terms of the two other buildings on it. She said she did not think it would create overcrowding. Mr. Rheume said he agreed with Mr. Nies and said the setbacks on the property were minor concerns and that it really came down to subdividing into three lots or subdividing it into two lots. He said he did not think that the Belanger case obligated the Board to say that the current zoning was somehow inappropriate. He said he agreed with the argument that the neighborhood overall developed the way it was envisioned back in 1954 except for Longmeadow Road. Mr. Rossi said Lot 236-68 made that idea harder to swallow because it was an abutting property and was not nonconforming. Chair Eldridge said Portsmouth was old, so the zoning often conflicted. She said whether the Board saw the 1950s plan or not, they could see how the neighborhood developed. She said it made it easy to accept the variance requests because the property would look like part of the neighborhood very soon. She said whatever went on in the lot next door had nothing to do with the hearing. It was further discussed. Mr. Rossi said he was in favor of the proposal.

DECISION OF THE BOARD [Timestamp 1:38:25]

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

- 1. The approval shall be contingent upon the Planning Board approval of the subdivision and City Council acceptance of fee simple ownership of the new right-of-area as proposed; and*
- 2. The subdivision layout may change as a result of TAC and Planning Board reviews if it does not increase the zoning relief required.*

Vice-Chair Margeson seconded.

Mr. Mattson reviewed the criteria and said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He said the goal was to have 1-3 dwellings per acre, and the proposal would result in three dwellings per acre and would be very similar to the density and character of the surrounding neighborhood. He said a few more houses would not threaten the public's health, safety and welfare. He said substantial justice would be done because the benefit to the applicant would not be outweighed by any harm to the public. He said the two new lots would be for two new single-family homes that would benefit the applicant due to the oversized lot. He said granting the variances would not diminish the values of surrounding properties because the two lots would be nicely shaped and have a large buildable area for appealing new construction homes that would fetch a premium. He said literal enforcement of the ordinance would result in unnecessary hardship. He said the special conditions of the property were its size, its location relative to the paper street, and the orientation of the lot depth relative to Farm Lane. He said the proposed use was a reasonable one by proposing two new single-family home lots in a single-family home neighborhood. Vice-Chair Margeson concurred and said the purpose of the

zoning provision was to regulate density, so that criterion was met. She said the hardship was that the lot is almost three times what is required for the SRB zoning district for both the lot area and the lot area per dwelling unit, and she thought it had special conditions that were different from the rest of the neighborhood.

*The motion **passed** by a vote of 5-1, with Mr. Nies voting in opposition.*

- B.** The request of **Giri Portsmouth 505 Inc (Owners)** for property located at **505 US Route 1 Bypass** whereas relief is needed to develop additional parking and an Electric Vehicle Charging Station which requires the following: 1) Variance from Section 10.5B83.10 for off-street parking spaces to be located between the principal building and a street or within any required perimeter buffer area; 2) Variance from Section 10.1113.20 for off-street parking spaces located in a front yard, or between a principal building and a street (including on a corner lot). Said property is located on Assessor Map 234 Lot 5 and lies within the Gateway Corridor (G1) District. (LU-25-66)

SPEAKING TO THE PETITION

[Timestamp 1:44:05] Rebecca Mauser-Hoye of Weston and Sampson Engineers was present on behalf of the owner. She reviewed the petition and said they were requesting eight EV charging spaces including one ADA space for four EV chargers that would be for hotel guests and the public. She said the location by the Portsmouth traffic circle would be a strategic one. She said a wetlands Conditional Use Permit would be submitted as well as an amended Site Plan Review application for the addition of five or more parking spaces. She said the parking spaces would be located between the hotel and Coakley Road and that there were currently other parking spaces. She discussed the buffer and pervious and impervious surfaces. She said the hotel was at a parking deficit, so they were proposing to add the eight EV spaces that would remove only one regular parking space and result in 64 spaces instead of 57. She reviewed the criteria.

[Timestamp 1:51:20] Mr. Rheume confirmed that each charger could handle two vehicles simultaneously. He said Ms. Mauser-Hoye's argument was that the chargers would be near the Portsmouth traffic circle and some highways and that cars would come in solely to charge their vehicles and not use the hotel, so the argument was that the hotel would use the parking as some overflow parking and not as part of their total numbers and would convert the space into a dedicated alternate accessory use. He said it would not be really parking for the hotel unless the guests had an EV car, but it was essentially an EV gas station that people would use and then leave. He asked how the additional spaces would benefit the hotel use vs. the accessory use being introduced. Ms. Mauser-Hoye said they were looking at it as an accessory use and as a benefit for the hotel users. Mr. Rheume said he was concerned about that aspect of the applicant's argument. He said the hardship was about what was different about the property compared to others in the area that said the ordinance did not need to strictly apply the front yard parking requirement to the property. Ms. Mauser-Hoye said there was already parking between the principal building and the street on both sides and it was close to the traffic circle, so it was easily accessible from the bypass. She said it

was a great location and would not change what was going on at the hotel already as far as parking. Vice-Chair Margeson asked why the applicant was requesting the variances and if there was a change of use being considered for the property going forward. Ms. Mauser-Hoye said the hotel owned multiple hotels in the area and wanted to add EV charging to them. She said it was a tight lot but a good location and would be a good benefit for the hotel users. Mr. Rheume asked if the applicant would go before the Planning Board for a Conditional Use Permit and site plan amendment. Ms. Mauser-Hoye agreed. Mr. Rheume said the EV spaces seemed to be dedicated to an accessory use and not the primary use. Ms. Harris said they could count toward the parking requirement and were not parsed out for the accessory use. Mr. Rheume said he did not think the ordinance stated that one parking space was needed for EV charger. Mr. Rossi said that one of the things the Board struggled with was how to meet the objectives of the Gateway zoning as far as promoting the development of walkable areas. He asked how someone would walk from the charging station to the restaurants across the street. Mr. Mattson said there was a signal crossing at Coakley Road and Cottage Street.

Chair Eldridge opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

John Chagnon of 200 Griffin Road said there was a need for EV chargers and that it would be in a great location and in the public interest. He said people with EVs visited his office and were faced with a choice of going either to the Seabrook Station charging area or going to Kennebunkport.

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

DECISION OF THE BOARD [Timestamp 2:01:16]

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

- 1. The required Conditional Use Permits shall be obtained.*

Mr. Rheume seconded.

Mr. Rossi said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He said the purpose of the Gateway zoning that was recently introduced to that area was to promote walkable spaces for pedestrian use, and he thought the application sort of forced that issue because people would walk to area businesses. He said he believed that it was consistent with the spirit of the ordinance. He said it would do substantial justice because the loss to the public would not be outweighed by any loss to the applicant if they were denied. He said he saw no loss to the public by granting the variance for that type of fairly low traffic volume use and thought it was reasonable and would not pose additional difficulties for the public. He said granting the variances would not diminish the values of surrounding properties, noting that the applicant pointed out that it was a commercial area and that type of a use was not inconsistent with what was

seen in the surrounding properties of car dealerships, hotels, and so on. He said literal enforcement of the provisions of the ordinance would result in an unnecessary hardship, noting that the special condition was the fact that the parcel was located in an area where it was possible to walk to other amenities. He said the Board had been struggling to find proposals that promoted that, and he thought the location of the lot made it uniquely suitable for access to the hotel and food service areas. He said it was a special condition that is consistent with the request for the variances. Mr. Rheume concurred. He said it was a new section of the ordinance that was added due to concerns about the lack of available EV charging stations and was intended for the type of situation that the applicant presented.

The motion passed unanimously, 6-0.

- C. The request of **Troy Allan & Colleen Elizabeth Blanchard (Owners)** for property located at **205 Broad Street** whereas relief is needed to demolish an existing screened porch and construct an addition with a first floor deck which requires the following: 1) Variance from Section 10.521 to a) allow a front yard setback of 7.5 feet where 15 feet is required; b) allow a rear yard setback of 10 feet where 20 feet is required; c) allow building coverage of 46% where 25% is allowed; and 2) Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 130 Lot 16 and lies within the General Residence A (GRA) District. (LU-25-68)

SPEAKING TO THE PETITION

[2:14:00] Attorney Tim Phoenix was present on behalf of the applicant, with project engineer John Chagnon and builder Jason Lajeunesse. Attorney Phoenix said he had a letter of approval from the rear abutter Christopher Wallace, which he read. He said they were the ones that would be most affected by the project. He said in 2021, the applicants got relief for an upward expansion and an enclosed porch that was within the existing footprint of the home. He said the lot was very small and had no parking. He reviewed the lot lines and dimensional standards and why the relief was needed. He reviewed the criteria and said they would be met.

[Timestamp 2:28:46] Mr. Rheume asked what the 15 sf deck on the plan referred to. Mr. Chagnon said there was some decking in the existing conditions that included a deck walkway and a second-story porch. Mr. Rheume asked if the 27 sf referred to the area over the basement office. Mr. Chagnon said it was not and explained that it could be the top of the stairs and the landing in front, which added up to 27 square feet. Mr. Rheume confirmed that the basement office was counted as part of the residence portion of the calculation. He said Attorney Phoenix stated that there was no current existing parking on the lot, but Mr. Rheume said there were no real sidewalks and there was a substantial setback from the property line from the street. He said there appeared to be a double curb cut, and the garage did not need a new curb cut. He asked if people had been parking in that area. Mr. Chagnon agreed and said the new garage would move the car out of the public right-of-way. Mr. Rheume said it looked like 205 Broad Street and 46 Spring Street were one lot at one

time and similar to the current Lot 17. He asked if that was subdivided at one time to create the tiny lot. Mr. Chagnon said it was probably true, noting that the development of the area went back to the late 1800s and lots were created that came off Broad Street and at some point, Spring Street was cut in or existing at the same time and that lot was further subdivided. Mr. Nies asked what the proposed lot coverage square footage was. Attorney Phoenix said it was 1,389 square feet. Vice-Chair Margeson asked if the walkway in the existing conditions plan was considered the deck in the previous plan. Mr. Chagnon said it looked larger than it was in the existing conditions, so he thought there was a section adjacent to the porch that was the deck. He said the deck walkway was part of the impervious surface coverage. Vice-Chair Margeson asked if it was part of the previous building lot coverage. Mr. Chagnon said he did not think so and that it spoke to the open space requirement. He said the minimum was only 30 percent, so the building coverage of 45 percent was not far from the 48 percent impervious but well below the open space allotment. Vice-Chair Margeson said she was curious about whether that walkway was included in the previous building coverage total of 35.5 percent. Attorney Phoenix said he looked at it as though the walkway is not a building and does not count as the building coverage.

Chair Eldridge opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

No one spoke.

SPEAKING IN OPOSITION TO THE PETITION

Mike Decristofaro of 208 Broad Street said he was opposed because the house lots in the neighborhood were all small and the houses were already very close. He said granting variances like the ones proposed would set a precedent for future homeowners who want to build beyond what the building code requires. He said he already had a wet basement and didn't think he could handle any more runoff. He said the Little Harbour School District was a quaint neighborhood and building expansions like the applicant proposed would change its character.

Melanie Sampson of 217 Broad Street said she directly abutted 205 Broad Street and shared a 50-ft fence. She said the applicant approached her and her husband to sign an approval for them to pursue a variance for their Phase 2 renovation and that she was shocked to learn that the first-floor porch would be replaced by an enclosed living space that was more than double the footprint. She said the proposed garage was immense, the deck's stairs would reach her property, and the French doors and oversized basement office with two AC condensers would face her property. She said the project would encroach on her family's privacy, block light, and adversely affect her property values.

Albert Sampson of 217 Broad Street said he and his wife had a direct view of all four levels of the southern façade and their property line was 21 feet away from the applicant's current structure. He said the applicant told them that they wanted a few feet of relief but the plan showed that the structure would be 9 feet longer and 19 inches wider than the existing porch and would be pushed

closer to the non-conforming eastern lot line. He said the project did not meet the criteria and that a basement office, a grilling deck, and a large garage were not hardships.

Boyd Morrison of 210 Broad Street said he lived across from the applicant and agreed with Mr. Decristofaro. He said the applicant was already approved for one variance relief project a few years ago, and now they had another round of hardship. He said the plan could be worked out better.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Attorney Phoenix said Mr. Decristofaro was concerned about runoff toward his property, but Mr. Chagnon confirmed that runoff did not go in that direction. He said the drip edges would catch and infiltrate rain water. He said it was a large percentage of coverage on a small lot but it still met the open space requirement. He said the hardship was not the deck, garage, or living space but was based on the size of the lot, which was very small. He said the construction was approved by the people most affected. He said the applicant thought it was a reasonable expansion, given the size of the lot, and that it met the requirements for a variance. He said they took the neighbors into consideration by proposing a one-car garage. As far as noise and light impacts, he said people could use their property the way they wanted to.

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

DECISION OF THE BOARD

[Timestamp 2:54:19] Mr. Rossi said at a certain point in time, looking at a noncompliant lot size and saying that it was a hardship that justified high lot percent coverage kind of lost its logical connection. He said the property was purchased knowing that it was a nonconforming lot size, and he thought it was unreasonable to think that the structure itself can be expanded to accommodate all the desires of the property owner on such a small lot. He said he did not think a tautomeric argument was good as a justification for hardship on that property for a variance.

Mr. Rheume said he was comfortable with the setbacks. He said the one on the Spring Street side was an existing setback and there was a lot of distance from the edge of the property to the edge of the streetway, and there was no sidewalk so it looked like the property belonged to the applicant. He said the other setback 10 feet to the rear was more of an encroachment, but the applicant showed that the actual additional structure heading in that direction was minimal. He said it was nominally one story tall but the lot's topography gave it extra height, which was why the applicant was using it to create a garage space. He said it wasn't a lot worse than what was there now and it would not change the existing situation in terms of light and air. He said the enclosed porch was on land being used for a purpose and the imposition wasn't too bad. He said it came down to the request for overall lot coverage. He said the applicant was clever to show the Board the side elevation and the fact that there wasn't a lot of new construction there, but they failed to show the rear elevation where everything passes the line of the house. He said there was a lot of addition there and the topography worked against it so that it was almost acting as a two-story addition. He said the

applicant took advantage of that with the basement office but in some sense, that was almost like a first story. He said if the applicant had a larger lot, they could potentially do this by right, but the lot was very small, so he felt that it was a lot of structure being added to the overall situation. He said the proposed garage was deep at 28 feet, which sort of created the foundation, but he asked if the imposition on the overall percentage of lot coverage was sufficiently justified by the criteria. He said that was the part he was struggling with and thought it was asking for a bit too much on that very small lot. Mr. Mattson agreed and said the open lot coverage was actually still met even though the building coverage was not. He said a good portion of what was proposed was in the small lot toward the center of the parcel. He said it was a small lot and resulted in a very large percent building coverage, which could be interpreted as a hardship but also as a reason why it would not work. Vice-Chair Margeson said she would not support the variance requests for the reasons expressed. She said it created an overbulking of the very small lot. She said if it were a 7500 sf area, the applicant would have more to work with, so it was even more important that it not go over the building coverage. She agreed with Mr. Rheame that not much could be done with the setbacks, but combined with the building coverage, the lot would look almost curb to curb and it failed the spirit and intent of the ordinance.

[Timestamp 3:02:20]

*Mr. Rossi moved to **deny** the variance requests for the petition as presented and advertised. Vice-Chair Margeson seconded.*

Mr. Rossi said that in order to deny the variance requests, the request must fail at least one criterion but does not need to fail on more than one. He said he did not believe that it met the hardship test, and he disagreed with the logic that a nonconforming lot was the hardship that promoted further nonconformance. Vice-Chair Margeson concurred. She said a fair and substantial relationship exists between the general public purpose of the ordinance and its specific application in this instance. She said it is directly applicable to the lot, given how small it is, and that she did not find that the lot had hardship resulting in the need to go up to 46 percent building coverage. She said it really failed on the spirit and intent prongs of the variance request. She said it was clear that the lot coverages and side setbacks really do regulate the movement of light, air, and the appearance of overbulking on the lot. She said the application absolutely failed on those two criteria. Mr. Rheame said he would support the motion because he thought that some level of relief was possible for the property, recognizing that it was already over the allowed percentage and there was some ability to get above what was required by the zoning ordinance. He said he thought it was just asking a bit much and that the applicant could accomplish most of their objectives with a smaller garage and a more modest first floor addition to be more in keeping with the spirit of the ordinance but still be something that could warrant some relief and not be subject to *Fisher v. Dover*.

*The motion **passed** by a vote of 4-2, with Mr. Mattson and Chair Eldridge voting in opposition.*

- D.** The request of **Wendy M Freedman (Owner)** for property located at **911 South Street #3** whereas relief is needed to demolish an existing deck and construct a 100 sf addition which

requires the following: 1) Variance from Section 10.521 to allow a side yard setback of 5 feet 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 132 Lot 19 C and lies within the General Residence A (GRA) District. (LU-25-59)

SPEAKING TO THE PETITION

[Timestamp 3:06:33] The owner Wendy Freedman was present to review the petition. She said she wanted to make the existing deck into a room that would serve her and her daughter in her tiny home that only had 760 sf of living space. She reviewed the criteria and noted that the only setback affected measured 150ft and would be 140 ft after the proposed addition.

[Timestamp 3:09:28] Mr. Rheume said the deck would be replaced by the new addition but the addition would go a bit farther. He asked if the second window closest to the neighboring property would be encompassed by the new addition. Ms. Freedman agreed and said it would shift over to the deck where there was currently five feet of space between the corner of the building and the beginning of the deck. She said there would then be two feet between the new addition and the edge of the building because she could not move the front door, so everything had to shift over. Mr. Rheume said French doors would be added to the new addition, and he asked what would be done to the deck. Ms. Freedman said the deck would be recreated as a way to enter the house. Mr. Rheume verified that the steps that were currently a few rocks would be made into a more compliant situation. He said when the original barn was converted into a living room previously, the Board stipulated that the northerly and westerly facades would not have any windows, which appeared to have occurred, but Ms. Freedman was proposing to add a window on the addition. He asked why Ms. Freedman wanted to add that window and why she felt it was in keeping with the spirit of what was approved a few years before. Ms. Freedman said she hadn't known that no windows were allowed on that side. She said a transom window would bring in more light due to the eastern side of the house being dark because it was mostly a stairway. Mr. Rheume ensured that the submitted document was the condo association's agreement to make the change to Ms. Freedman's unit.

Chair Eldridge opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD

[Timestamp 3:14:37] Mr. Rossi said he thought the transom window would be fine and would achieve the purpose of the original intent to respect the privacy of the neighbors.

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

Mr. Rossi said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He said there would be no public interest in preventing the small addition from occurring. He said substantial justice would be done because there would be no loss to the public by granting the variances, whereas there would be a loss to the owner in terms of her ability to enjoy some extra space within her living unit. He said granting the variances would not diminish the values of surrounding properties, noting that the other residents of the condo association signed a document of approval, which indicated that they felt there was no negative impact to the value of their units. He said literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. He said the purpose of the provisions in the ordinance, particularly the left yard setback, is to preserve light and space for the surrounding properties. He said the proposed structure was a very minor one and would not significantly infringe upon the light and space environment of the area. Mr. Mattson concurred and said that the hardship was the dwelling's location that was already fixed and the need for relief for the addition to the left side yard.

*The motion **passed** unanimously, 6-0.*

III. ADJOURNMENT

The meeting adjourned at 10:18 p.m.

Submitted,

Joann Breault
BOA Meeting Minutes Taker



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

MEMORANDUM

TO: Zoning Board of Adjustment
FROM: Jillian Harris, Principal Planner
DATE: June 11, 2025
RE: Zoning Board of Adjustment June 17, 2025

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

II. Old Business

- A. 92 Brewster Avenue
- B. 1980 Woodbury Avenue
- C. 636 Lincoln Avenue

III. New Business

- A. 70 Heritage Avenue
- B. 35 Boss Avenue
- C. 361 Miller Avenue
- D. 239 Broad Street
- E. 89 Brewery Lane

II. OLD BUSINESS

- A.** The request of **Harborside Property Management LLC (Owner)**, for property located at **92 Brewster Street** whereas relief is needed to demolish the existing structure and construct a single-family home with Accessory Dwelling Unit which requires the following: 1) Variance from Section 10.521 to allow a) 2,884 s.f. of lot area where 3,500 s.f. are required, b) 2,884 s.f of lot area per dwelling unit where 3,500 s.f. are required, c) 52.33 feet of continuous street frontage where 70 feet are required, d) 9.5 foot right side yard where 10 feet are required, and e) 10 foot rear yard where 20 feet are required. Said property is located on Assessor Map 138 Lot 54 and lies within the General Residence C GRC District. (LU-25-25)

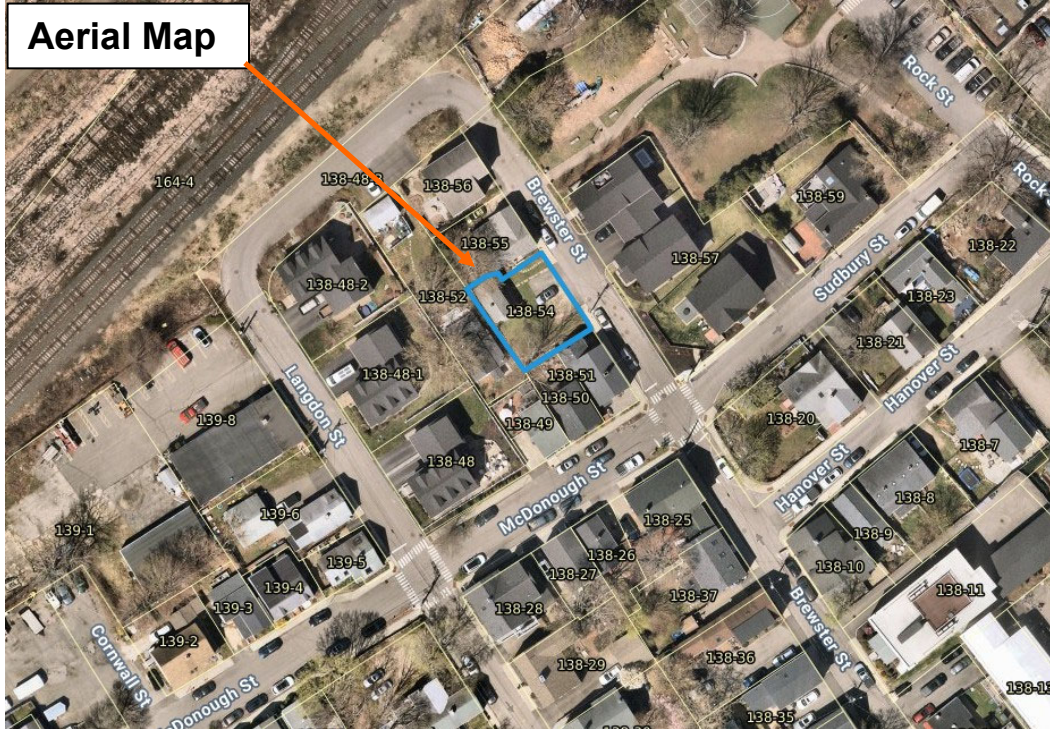
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family dwelling	Demolish and construct new SF dwelling with ADU	Primarily residential
<u>Lot area (sq. ft.):</u>	2,884	2,884	3,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	2,884	2,884	3,500 min.
<u>Street Frontage (ft.):</u>	52	52	70 min.
<u>Lot depth (ft.)</u>	51	51	50 min.
<u>Front Yard (ft.):</u>	31.5	1.4	1 min. (Sec. 10.516.10)
<u>Left Yard (ft.):</u>	32	10	10 min.
<u>Right Yard (ft.):</u>	2.7	9.5	10 min.
<u>Rear Yard (ft.):</u>	3	10	20 min.
<u>Height (ft.):</u>	<35	30	35 max.
<u>Building Coverage (%):</u>	14.7	32.9	35 max.
<u>Open Space Coverage (%):</u>	57	45.9	20 min.
<u>Parking</u>	3	3	3
<u>Estimated Age of Structure:</u>	1790	Variance request(s) shown in red.	

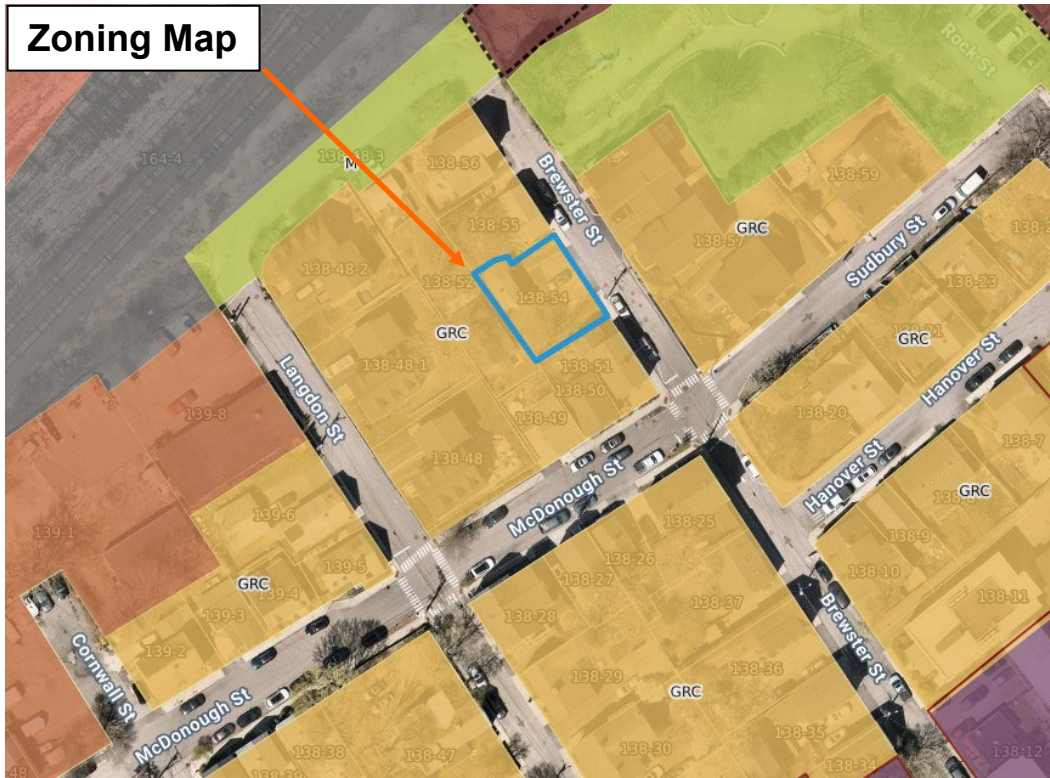
Other Permits/Approvals Required

- Building Permit
- ADU – Administrative Approval

Aerial Map



Zoning Map



Previous Board of Adjustment Actions

- **September 10, 1985** – A variance from Article II, Section 10-205 to convert an existing single family residence into a contractor's office in a residential district where neither business or professional offices are an allowed use; and, 2) a Special Exception as allowed in Article XII, Section 10-1201(1) (a) to permit two of the required three parking spaces to be located on another lot in common ownership and within 300' of the property line of the lot in question. Said property is shown on Assessor Plan U-38 as Lots 53 and 54 and lies within Apartment and Historic B districts. Application was **Withdrawn** by applicant.

Planning Department Comments

The applicant proposes to demolish the existing single-family residential structure and construct a new single-family home with an attached Accessory Dwelling Unit (ADU). Historic deeds indicate the property was once two parcels that have since been merged.

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.

HOEFLE, PHOENIX, GORMLEY & ROBERTS, PLLC

ATTORNEYS AT LAW

127 Parrott Avenue | Portsmouth, NH, 03801
Telephone: 603.436.0666 | Facsimile: 603.431.0879 | www.hpgrlaw.com

March 3, 2025

HAND DELIVERED

Stephanie Casella, Planner
Portsmouth City Hall
1 Junkins Avenue
Portsmouth, NH 03801

Re: Harborside Property Management, LLC
92 Brewster Street, Tax Map 138, Lot 54
General Residence C Zone

Dear Ms. Casella & Zoning Board Members:

On behalf of Harborside Property Management, LLC ("Harborside" or "Applicant"), enclosed please find the following in support of an application for zoning relief.

- Digital application package uploaded to Viewpoint.
- Owner's Authorization.
- 2/28/2025 – **REVISED** Memorandum and Exhibits in support of Variance Application.

We look forward to presenting this application to the Zoning Board at its March 18, 2025 meeting.

Very truly yours,



R. Timothy Phoenix
Monica F. Kieser

Enclosure

cc: George Hails
Ross Engineering, LLC
Art Form Architecture

DANIEL C. HOEFLE	ALEC L. MCEACHERN	PETER V. DOYLE	STEPHEN H. ROBERTS 2007-2023
R. TIMOTHY PHOENIX	KEVIN M. BAUM	MONICA F. KIESER	OF COUNSEL:
LAWRENCE B. GORMLEY	JACOB J.B. MARVELLEY	STEPHANIE J. JOHNSON	SAMUEL R. REID
R. PETER TAYLOR	GREGORY D. ROBBINS	KAREN W. OLIVER	JOHN AHLGREN

OWNER'S AUTHORIZATION

I, George Hails, manager of Harborside Property Management, L.L.C, Owner/Applicant of 92 Brewster Street, Tax Map 138/Lot 54, hereby authorize law firm Hoefle, Phoenix, Gormley & Roberts, PLLC to represent me before any and all City of Portsmouth Representatives, Boards and Commissions for permitting the project.

Respectfully submitted,

Harborside Property Management, L.L.C.

Date: 2/28/24 George Hails, Manager

A handwritten signature in black ink, appearing to read "George Hails", is written over a horizontal line.

MEMORANDUM

TO: Portsmouth Zoning Board of Adjustment (“ZBA”)
FROM: R. Timothy Phoenix, Esquire
Monica F. Kieser, Esquire
DATE: February 19, 2025 (revised 2/28/2025)
RE: Harborside Property Management, LLC
92 Brewster Street, Tax Map 138, Lot 54
General Residence C Zone

Dear Chair Eldredge and Zoning Board Members:

On behalf of Harborside Property Management, LLC through its Manager George Hails (“Hails”), we are pleased to submit this memorandum and attached exhibits in support of Hails’ request for zoning relief for consideration by the Zoning Board of Adjustment (“ZBA”) at its March 18, 2025 meeting.

I. EXHIBITS

- A. Deeds.
- B. Sanborn Fire Insurance Map 1920.
- C. Plan of 92 & 96 Brewster Street by John Durgin August, 1940.
- D. Plan Set – issued by Ross Engineering, LLC.
- E. Architectural Plan Set – Art Form Architecture.
- F. Site Photographs.
 - a. Satellite View
 - b. Street View
- G. Tax Map 138.

II. PROPERTY/PROJECT

92 Brewster Street is comprised of two historic lots since merged to a 2,884 square foot property with 52.33 feet of frontage with a curb cut width of 31.8 feet (“the Property”). The Property contains a truly tiny, dated, one-bedroom home occupying a footprint of 334 square feet plus a 90 square feet porch. The home is tucked into the northwest corner less than a foot from the north side lot line and 2.7 feet from the rear lot line, while the balance of the lot is used for parking. The south side of the Property is burdened by a 6 foot wide right-of-way favoring lot 52.

Hails plans to remove the nonconforming home in favor of a newly constructed single-family home with incorporated one-car garage and ADU (“the Project”). The Project sites the home in a more conforming location, respects the easement, shrinks the curb cut, and

accommodates three off-street parking spaces. The Project meets building coverage limits and provides more than twice the minimum required open space. Relief is nonetheless required from yard requirements and, because the existing home is removed, staff has opined that the Project also needs relief for lot area, frontage, and lot area/dwelling until requirement.

III. PURSUANT TO PORTSMOUTH ZONING ORDINANCE §10.311 AND §10.321, THE PROPOSED PROJECT REQUIRES NO VARIANCE FOR LOT SIZE & FRONTAGE

We disagree that relief from lot size and frontage should be required to reestablish a permitted single-family use on an existing lot with a single-family home.

Mary Caswell acquired an irregular shaped lot and building from the Mitrook family in 1949. The lot had 20 feet of frontage on Brewster Street. In 1964, Caswell then acquired a second lot with 37 feet of frontage on Brewster from Mary Herlihy. (**Exhibit E**). The two lots, combined totaling 2,884 square feet, have been conveyed together since 1964 and have been treated by the City as one parcel for decades.

PZO §10.311 provides:

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

At the outset, from its plain wording, this section establishes that if a lot is nonconforming, it is permissible as a building lot without a variance for the nonconforming lot size provided variances for the use or structure are obtained. To determine otherwise would render the underlined language “applicable requirements of this ordinance” meaningless, contrary to general principles of statutory interpretation. Here, the residential use pre-dates zoning and is not changing. Additionally, the Project proposed does seek the necessary relief from rear and side yard requirements to accommodate the proposed structure.

The above interpretation is further buttressed by §10.320 Nonconforming Buildings and Structures, specifically §10.321, which provides:

A lawful nonconforming building or structure may continue and be maintained or repaired, but may not be extended, reconstructed or enlarged unless such extension, reconstruction or enlargement conforms to all the regulations of the district in which it is located.

In the instant case, we have a presently nonconforming building which will be removed and reconstructed with a new building. The new home will more nearly conform with the Ordinance requirements and, with the requested relief for yard setbacks, meets §10.321.

Lastly, RSA 674:19 provides that

an ordinance....shall not apply to existing structures or to the existing use of any building. It shall apply to any alteration of a building for use for a purpose or in a manner which is substantially different from the use to which it was put before alteration.

Coupled with the language of §10.311 and §10.321 above, it is clear that a lot established with a residential use before zoning may continue to support structures as long as those structures comply with §10.321, receive a variance pursuant to section §10.311 and are not put to a substantially different use.

In an abundance of caution, Smith requests all variances below.¹

IV. RELIEF REQUIRED:

<u>Ordinance Section</u>	<u>Required</u>	<u>Existing</u>	<u>Proposed</u>
<u>PZO Table §10.521</u> <u>Dimensional Standards</u>			
• Lot Area	3,500 s.f.	2,884 s.f.	2,884 s.f.
• Frontage	70 ft.	52.33'	52.33'
• Lot Area/Dwelling Unit	3,500 s.f./dwelling unit	2,884 s.f./dwelling unit	2,884 s.f./dwelling unit ²
• Side Yard	10' side yard	0.9' overhang/2.7' wall	9.4'/9.7 overhang
• Rear Yard	20' rear yard	2.7' overhang/3.2' wall	9.3' overhang/10.3 wall

V. OTHER PERMITS REQUIRED

- Building Permit
- DPW Approval of driveway

¹ If the variance is granted, this argument will be withdrawn upon expiration of the 30 days appeal period.

² Accessory Dwelling Unit does not require additional relief from frontage, lot area, or lot area/dwelling unit than a single-family home in the same zone.

VI. VARIANCE REQUIREMENTS

- 1. The variances will not be contrary to the public interest.**
- 2. The spirit of the ordinance is observed.**

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

The Portsmouth Zoning Ordinance (PZO§10.121) was enacted for the general purpose of promoting the health, safety, and welfare in accordance with the Master plan by regulating:

1. The use of land, buildings and structures for business, industrial, residential and other purposes – The Project establishes a permitted use on an undersized lot of record.
2. The intensity of land use, including lot sizes, building coverage, building height and bulk, yards and open space – A substandard tiny home is replaced with a modern single-family home compliant with height and building coverage limits and affords double the minimum required open space.
3. The design of facilities for vehicular access, circulation, parking and loading – The Project provides three compliant parking spaces. One in the garage and two tandem spots next to the home.
4. The impacts on properties of outdoor lighting, noise, vibration, stormwater runoff and flooding – The uses proposed are permitted and compatible with the neighborhood. The Project does not undermine these purposes.
5. The preservation and enhancement of the visual environment – The Project replaces a dated home with a new code-compliant home similar to other redevelopment/improvement in the neighborhood.
6. The preservation of historic districts buildings and structures of historic or architectural interest – The Property and the existing structure to be removed is not in the historic district and is of no known historic or architectural interest.
7. The protection of natural resources, including groundwater, surface water, wetlands, wildlife habitat and air quality – The property will be served by municipal water and sewer. There are no wetlands in the area, accordingly these purposes are served by granting the variances.

Variances are required because the Property is small and narrow. The permitted single-family home proposed complies with building coverage and height restrictions while maintaining generous open space and improving the rear and north side yard setback. Relief is only required to establish the use on a nonconforming lot of record and to permit the home in the rear yard

setback and very slightly in the north side yard setback. Granting the variances on these facts does not “in a marked degree conflict with the ordinance such that it violates the ordinance’s basic zoning objectives.” Malachy Glen, supra, which also held:

One way to ascertain whether granting the variance would violate basic zoning objectives is to examine whether it would alter the essential character of the locality.... . Another approach to [determine] whether granting the variance violates basic zoning objectives is to examine whether granting the variance would threaten the public health, safety or welfare. (emphasis added)

The Project is compatible with the density of the other lots in the area and reestablishes the same single-family use on a nonconforming lot of record while beautifying the lot, improving side and rear yard setbacks and accommodating required parking. Accordingly, granting the addition will neither “alter the essential character of the locality nor threaten the public health, safety or welfare.”

3. Substantial justice will be done by granting the variance.

If “there is no benefit to the public that would outweigh the hardship to the applicant” this factor is satisfied. Harborside Associates, L.P. v. Parade Residence Hotel, L.L.C., 162 N.H. 508 (2011). That is, “any loss to the [applicant] that is not outweighed by a gain to the general public is an injustice.” Malachy Glen, supra at 109.

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

itself, but rather the right to possess, use, enjoy and dispose of it. Burrows v. City of Keene, 121 N.H. 590, 597 (1981). (emphasis added).

The Supreme Court has also held that zoning ordinances must be reasonable, not arbitrary and must rest upon some ground of difference having fair and substantial relation to the object of the regulation. Simplex Technologies, Inc. v. Town of Newington, 145 N.H. 727, 731 (2001); Chesterfield at 69.

Granting the requested variance allows for tasteful redevelopment of a dated, tiny, single-family home on an existing 2,884 square foot lot of record in a manner consistent with the lot sizes in the surrounding area. There is absolutely no harm to any neighbor or the general public from granting variances. It follows that there is no benefit to the public from denial. Conversely, Hails will be greatly harmed by denial as he will lose the opportunity to reasonably redevelop the Property with permitted use significantly improving existing conditions. Accordingly, there is no benefit to the public from granting the variance that outweighs the harm to the owner from denial.

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

The Project improves Property with a new code-compliant single-family home with incorporated ADU accommodating all required parking. The redevelopment is consistent with the density and yard setbacks of the surrounding area. Under these circumstances, granting variances will not diminish surrounding property values.

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

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

The Property is small, shallow, narrow, and encumbered by an access easement in favor of the rear abutter. The Property also exists in a densely developed area of the City with numerous other nonconforming lots developed with single family homes or duplexes located in rear or side yard setbacks. The Property's size, width, easement, and location among other densely developed residential parcels combine to create special conditions.

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

Density requirements and yard requirements exist to prevent overcrowding and to ensure adequate air, light, space, and separation between neighbors. The Project replaces a dated tiny home with a modern, permitted single-family home with ADU, accommodating required off

street parking. The density and yard setback relief required is consistent with the surrounding area. Accordingly, the purposes of these regulations are met and there is no reason to apply the strict density requirements of the zoning ordinance.

c. The proposed use is reasonable.

If the use is permitted, it is deemed reasonable. Vigeant v. Hudson, 151 N.H. 747 (2005). The Project proposes a modern single-family home with incorporated ADU and garage on a nonconforming lot of record while providing three off-street parking spaces. Accordingly, the use is reasonable.

VII. CONCLUSION

For all of the reasons stated, Hails respectfully requests that the Portsmouth Zoning Board of Adjustment grant the requested relief.

Respectfully submitted,
**George Hails &
Harborside Property Management, LLC**



By: R. Timothy Phoenix
Monica F. Kieser

Return to:



LCHIP	ROA477236	25.00
TRANSFER TAX	RO094070	5,985.00
RECORDING		14.00
SURCHARGE		2.00

EXHIBIT A

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS: That James S. Remick, as Successor Trustee of the Linette S. Remick Revocable Trust of 2000, u/d/t dated June 15, 2000, as amended, with a mailing address of 326 Brackett Road, Rye, New Hampshire 03870 and James S. Remick, as Trustee of the James S. Remick Revocable Trust of 2000, u/d/t dated June 15, 2000, as amended, with a mailing address of 326 Brackett Road, Rye, New Hampshire 03870, for consideration paid grants to Harborside Property Management, LLC, a New Hampshire limited liability company having a mailing address of 1636 Seabreeze Drive, Tarpon Springs, Florida 34689 with WARRANTY COVENANTS:

The land and building located at 92 Brewster Street, Portsmouth, New Hampshire shown as Parcel 1 and Parcel 2 on a plan of land entitled "Boundary Survey for 92 & 96 Brewster St., Portsmouth, NH 03801" drawn by Ross Engineering & Surveying, dated December 2, 2019, Scale: 1" = 10', recorded as Plan No. D-41920, on December 20, 2019, with the Rockingham County Registry of Deeds, (the "Plan") being more particularly described as follows:

Parcel 1

The land beginning at the northwesterly corner of Parcel 1 shown on the Plan, thence running N 73° 13' 02" E a distance of 13.00 feet to a point along the northerly boundary of Parcel 1; thence running S 85° 44' 58" W a distance of 8.60 feet to a point; thence running S 16° 46' 58" E a distance of 5.00 feet to a point; thence turning and running N 73° 12' 58" E a distance of 31.74 feet to a point at the northeasterly corner of Parcel 1; thence turning and running S 17° 40' 25" E a distance of 20.00 feet to a point at the southeasterly corner of Parcel 1; thence turning and running S 73° 19' 30" W a distance of 52.28 feet to a point at the southeasterly corner of Parcel 1; thence turning and running N 18° 31' 02" W a distance of 28.00 feet to the point of beginning. Parcel 1 containing 1,202 square feet according to the Plan.

Parcel 2

The land beginning at the southwesterly corner of Parcel 2 shown on the Plan; thence running N 73° 19' 30" E a distance of 51.76 to a point at the southeasterly corner of Parcel 2; thence turning and running N 17° 40' 25" W a distance of 32.33 feet to a point at the northeasterly corner of Parcel 2; thence turning and running S 73° 19' 30" W a distance of 52.28 feet to a point at the northwesterly corner of Parcel 2; thence turning and running S 18° 35' 52"

E a distance of 32.35 feet to the point of beginning. Parcel 2 containing 1,682 square feet according to the Plan.

Meaning and intending to describe and convey the portion of premises conveyed to Linette S. Remick, Trustee of the Linette S. Remick Revocable Trust of 2000 by Deed dated June 28, 2001, recorded with Rockingham County Registry of Deeds at Book 3610, Page 2895.

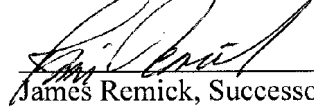
TRUSTEE'S CERTIFICATION:

I, James Remick, Successor Trustee of the Linette S. Remick Revocable Trust of 2000, created by Linette S. Remick, under trust agreement dated June 15, 2000, as amended and as Trustee of the James S. Remick Revocable Trust of 2000, created by James S. Remick, under trust agreement dated June 15, 2000 am the sole Trustee of said trust and have full and absolute power under said trust agreement to convey any interest in real estate and improvements thereon held in said trust and no purchaser or third party shall be bound to inquire whether the Trustee has said power or is properly exercising said power or to see to the application of any trust asset paid to the trustee for a conveyance thereof.

This is not homestead property.

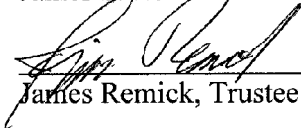
Executed this 30 day of December, 2019.

Linette S. Remick Revocable Trust of 2000



James Remick, Successor Trustee

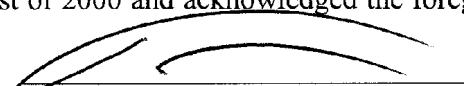
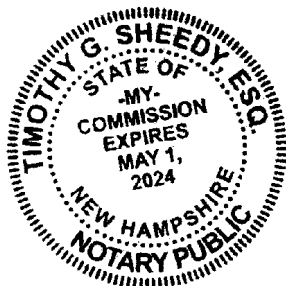
James S. Remick Revocable Trust of 2000



James Remick, Trustee

State of New Hampshire
County of Rockingham

Then personally appeared before me on this 30 day of December, 2019, the said James Remick, Successor Trustee of the Linette S. Remick Revocable Trust of 2000 and in his capacity as Trustee of the James S. Remick Revocable Trust of 2000 and acknowledged the foregoing to be his voluntary act and deed.


Notary Public

Commission expiration:

049844

QUITCLAIM DEED

I, Linette S. Remick of 326 Brackett Road, Rye, Rockingham County, New Hampshire for consideration paid, grant to Linette S. Remick, Trustee of the Linette S. Remick Revocable Trust of 2000, a revocable trust, of 326 Brackett Road, Rye, Rockingham County, New Hampshire

with Quitclaim Covenants

all my right, title and interest, being an undivided 90% interest, in the following described real estate in Portsmouth, County of Rockingham and State of New Hampshire and being more particularly bounded and described as follows:
Two parcels of land each situated in Portsmouth, County of Rockingham, and State of New Hampshire, bounded and described as follows:

Parcel 1: A certain lot or parcel of land, with the buildings thereon, lying, situated and being in the City of Portsmouth, in the County of Rockingham and the State of New Hampshire, on the westerly side of the public highway now known as Brewster Street, being now numbered 92 thereon, bounded and described as follows:

Beginning in the westerly sideline of said Brewster Street at land now or formerly of Mary Herlihy, and thence running by said Herlihy land S 67° 15' W, 50.2 feet, at land now or formerly of Frank Arric; thence turning and running by said Arric land N 24° 41' W, 28 feet to land now or formerly of the heirs of Kateny Mitrook; thence turning and running by said last named land N 67° 07' E, 13 feet; thence N 88° 09' E, 8.6 feet; thence S 22° 53' E, 5 feet; thence N 67° 07' E, 30 feet to said Brewster Street, thence turning and running S 22° 53' E by said Brewster Street, 20 feet to the point of beginning.

Parcel 2: A certain lot of land in Portsmouth, County of Rockingham, and State of New Hampshire, lying on the westerly side of Brewster Street, bounded and described as follows:

Easterly by said Brewster Street, 37 feet, 10 inches, more or less; northerly by land now or formerly of Mary E. Caswell, 50 feet, more or less; westerly by land now or formerly of Angelina Arric, 37 feet, 10 inches, more or less; southerly by a common passageway in common with the occupants of the lot next south of the same.

Being a portion of the same premises conveyed to the Grantor and James S. Remick by deed from Jonathan Kilroy dated July 17, 1985 recorded in Rockingham County Registry of Deeds Book 2558 Page 2349.

2001 JUL 11 AM 11:41

ROCKINGHAM COUNTY
REGISTRY OF DEEDS

Also being a portion of the same premises conveyed by James S. Remick to the Grantor by deed to be recorded herewith in Rockingham County Registry of Deeds.

The premises hereby conveyed are not homestead property.

Signed this 28th day of June, 2001.

Linette S. Remick
Linette S. Remick

State of New Hampshire
Rockingham, SS

June 28, 2001

Personally appeared the above named Linette S. Remick, known to me or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument and acknowledged that she executed the same for the purposes therein contained.

Polly A. [Signature]
Notary Public/Justice of the Peace
Conn. E.



#2558 P2349

KNOW ALL MEN BY THESE PRESENTS, That Jonathan Kilroy, sometimes also called Jonathon Kilroy, of 126 Atlantic Avenue, North Hampton, County of Rockingham and State of New Hampshire,

for consideration paid, grants to James S. Remick and Linette S. Remick, husband and wife, of 326 Brackett Road, Rye, County of Rockingham, New Hampshire, as joint tenants with right of survivorship.

with warranty covenants

Two parcels of land, each situated in Portsmouth, County of Rockingham, and State of New Hampshire, bounded and described as follows:

PARCEL 1: A certain lot or parcel of land, with the buildings thereon, lying, situated and being in the City of Portsmouth, in the County of Rockingham and the State of New Hampshire, on the westerly side of the public highway now known as Brewster Street, being now numbered 92 thereon, bounded and described as follows:

Beginning in the westerly sideline of said Brewster Street at land now or formerly of Mary Herlihy, and thence running by said Herlihy land S 67° 15' W, 50.2 feet, at land now or formerly of Frank Arric; thence turning and running by said Arric land N 24° 41' W, 28 feet to land now or formerly of the heirs of Kateny Mitrook; thence turning and running by said last named land N 67° 07' E, 13 feet; thence N 88° 09' E, 8.6 feet; thence S 22° 53' E, 5 feet; thence N 67° 07' E, 30 feet to said Brewster Street, thence turning and running S 22° 53' E by said Brewster Street, 20 feet to the point of beginning.

For title reference see Deed of Russell Mitrook to Mary Elizabeth Caswell, dated July 8, 1949 and recorded in the Rockingham County Registry of Deeds at Book 1135, Page 38.

PARCEL 2: A certain lot of land in Portsmouth, County of Rockingham, and State of New Hampshire, lying on the westerly side of Brewster Street, bounded and described as follows:

Easterly by said Brewster Street, 37 feet, 10 inches, more or less; northerly by land now or formerly of Mary E. Caswell, 50 feet, more or less; westerly by land now or formerly of Angelina Arric, 37 feet, 10 inches, more or less; southerly by a common passageway in common with the occupants of the lot next south of the same.

For title reference see Deed of Mary Herlihy to Mary E. Caswell, dated May 21, 1964 and recorded in the Rockingham County Registry of Deeds at Book 1716, Page 189.

Meaning and intending to convey the same premises conveyed to the grantor herein by deed of Gail M. Seagren, dated April 18, 1985 and recorded in the Rockingham County Registry of Deeds at Book 2541, Page 1443.

This is not homestead property.

37990

AUG 16 3 50 PM '85

Rockingham County
Registry of Deeds

1044244
STATE OF NEW HAMPSHIRE
TAX ON TRANSFER
OF REAL PROPERTY
10000
AND FIVE
300.26
10000

Signed this 17th day of July, 1985

Jonathan Kilroy, sometimes also
called Jonathon Kilroy L.S.

July 17 A.D. 1955

Before me, Justice of the Peace - Notary Public

KNOW ALL MEN BY THESE PRESENTS, That Gail M. Seagren, of Campbell's Lane, New Castle, County of Rockingham, and State of New Hampshire

for consideration paid, grant s to Jonathon Kilroy, of 126 Atlantic Avenue, North Hampton, County of Rockingham, and State of New Hampshire,

with warranty covenants

Two parcels of land, each situated in Portsmouth, County of Rockingham, and State of New Hampshire, bounded and described as follows:

PARCEL 1: A certain lot or parcel of land, with the buildings thereon, lying, situate and being in the City of Portsmouth, in the County of Rockingham and the State of New Hampshire, on the westerly side of the public highway now known as Brewster Street, being now numbered 92 thereon, bounded and described as follows:

Beginning in the westerly sideline of said Brewster Street at land now or formerly of Mary Herlihy, and thence running by said Herlihy land S 67° 15' W, 50.2 feet, at land now or formerly of Frank Arric; thence turning and running by said Arric land N 24° 41' W, 28 feet to land now or formerly of the heirs of Kateny Mitrook; thence turning and running by said last named land N 67° 07' E, 13 feet; thence N 88° 09' E, 8.6 feet; thence S 22° 53' E, 5 feet; thence N 67° 07' E, 30 feet to said Brewster Street; thence turning and running S 22° 53' E, by said Brewster Street, 20 feet to the point of beginning.

For title reference see Deed of Russell Mitrook to Mary Elizabeth Caswell, dated July 8, 1949 and recorded in the Rockingham County Registry of Deeds at Book 1135, Page 38.

PARCEL 2: A certain lot of land in Portsmouth, County of Rockingham, and State of New Hampshire, lying on the westerly side of Brewster Street, bounded and described as follows:

Easterly by said Brewster Street, 37 feet, 10 inches, more or less; northerly by land now or formerly of Mary E. Caswell, 50 feet, more or less; westerly by land now or formerly of Angelina Arric, 37 feet, 10 inches, more or less; southerly by a common passageway in common with the occupants of the lot next south of the same.

For title reference see Deed of Mary Herlihy to Mary E. Caswell, dated May 21, 1964 and recorded in the Rockingham County Registry of Deeds at Book 1716, Page 189.

Meaning and intending to convey the same premises conveyed to the grantor herein by deed of Mary E. Caswell, dated May 25, 1978 and recorded in the Rockingham County Registry of Deeds at Book 2311, Page 1886.

This is not homestead property.

15014
Apr 18 1 19 PM '85
Rockingham County
Registry of Deeds

said grantee, husband, wife of said grantor, release to
all rights of homestead and other interests therein. BX2541 P1444

Signed this 18th day of April, 1985



Gail M. Seagren L.S.

L.S.

State of New Hampshire
ROCKINGHAM ss.

April 18, A.D. 1985

Personally appeared Gail M. Seagren

known to me, or satisfactorily proven, to be the person whose name is
subscribed to the foregoing instrument and acknowledged that s/he executed the same
for the purposes therein contained.

Before me,

John P. M. 1/
Justice of the Peace - Notary Public

13626
MAY 25 4:06 PM
REC'D ROCKINGHAM COUNTY
REGISTRY OF DEEDS

KNOW ALL MEN BY THESE PRESENTS, That I, MARY E. CASWELL of 92 Brewster Street,
Portsmouth, County of Rockingham and State of New Hampshire, A Single Woman,
2311-1886

for consideration paid, grant to GAIL M. SEAGREN of Campbell's Lane, New Castle,
County of Rockingham and State of New Hampshire,

with ~~warranty~~ covenants to the said Gail M. Seagren, the following described real
estate:

Two parcels of land, each situated in Portsmouth, County of Rockingham and
State of New Hampshire, bounded and described as follows:

PARCEL I: A certain lot or parcel of land, with the buildings thereon, lying, sit-
uate and being in the City of Portsmouth, in the County of Rockingham and the State
of New Hampshire, on the westerly side of the public highway now known as Brew-
ster Street, being now numbered 92 thereon, bounded and described as follows:

Beginning in the westerly sideline of said Brewster Street at land now or formerly
of Mary Herlihy, and thence running by said Herlihy land S 67°15'W, 50.2 feet to
land now or formerly of Frank Arric; thence turning and running by said Arric land
N 24°41'W, 28 feet to land now or formerly of the heirs of Kateny Mitrook; thence
turning and running by said last named land N 67°07'E, 13 feet; thence N 88°09'E,
8.6 feet; thence S 22°53'E, 5 feet; thence N 67°07'E, 30 feet to said Brewster Street;
thence turning and running S 22°53'E by said Brewster Street, 20 feet to the point of
beginning.

For title reference see Deed of Russell Mitrook to Mary Elizabeth Caswell, dated
July 8, 1949 and recorded in the Rockingham County Registry of Deeds at Book 1135,
Page 38.

PARCEL II: A certain lot of land in Portsmouth, County of Rockingham and State
of New Hampshire, lying on the westerly side of Brewster Street, bounded and de-
scribed as follows:

Easterly by said Brewster Street, 37 feet, 10 inches, more or less; northerly by
land now or formerly of Mary E. Caswell, 50 feet, more or less; westerly by land now
or formerly of Angelina Arric, 37 feet, 10 inches, more or less; southerly by a common
passageway in common with the occupants of the lot next south of the same.

For title reference see Deed of Mary Herlihy to Mary E. Caswell, dated May 21,
1964 and recorded in the Rockingham County Registry of Deeds at Book 1716, Page 189.



~~scribes and acknowledges the foregoing instrument and the contents thereof~~

Witness My hand and seal this 25th day of May, 1978

[Signature]

Mary E. Caswell
MARY E. CASWELL

L.S.

L.S.

State of New Hampshire

ROCKINGHAM ss.

May 25th D. 1978

Personally appeared Mary E. Caswell

known to me, or satisfactorily proven, to be the person whose name is
subscribed to the foregoing instrument and acknowledged that she executed the same
for the purposes therein contained.

Before me,

[Signature]

Know all Men by these Presents:

THAT I, Mary Herlihy a widow of Portsmouth, County of Rockingham,
State of New Hampshire
for consideration paid, grant to Mary E. Caswell, a widow of Portsmouth, County of
Rockingham, State of New Hampshire
with warranty covenants to the said Mary E. Caswell

A certain lot of land in said Portsmouth lying on the Westerly
side of Brewster Street bounded and described as follows:

Easterly by said Brewster Street thirty-seven feet ten inches,
more or less; northerly by land of Mary E. Caswell fifty feet, more
or less; westerly by land of Angelina Arric thirty-seven feet ten
inches, more or less; southerly by a common passageway in common
with the occupants of the lot next south of the same.

a portion of
Being the same premises conveyed to the grantor herein by
deed of Walter H. Page dated June 2, 1919, recorded in Rockingham
Registry of Deeds, Book 727, Page 415.



XX
XX

XX
XX

Witness my hand and seal this 21 day of May 1964

WITNESS:

J. Wholey

Mary Herlihy

STATE OF NEW HAMPSHIRE

COUNTY OF ROCKINGHAM, SS.

On this the 21st day of May, 1964, before me, John J. Wholey
the undersigned officer, personally appeared Mary Herlihy
known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instru-
ment and acknowledged that She executed the same for the purpose therein contained.

In witness whereof I herunto set my hand and official seal.

J. J. Wholey
Justice of the Peace.

REC'D & RECORDED MAY 22 1964 12:35 P.M.

Del.
J. J. Wholey
U.S. Rev.
STAMP
.55

1135-038

Consideration
less Than \$100.00
1135 038

Know all Men by these Presents,

That I, Russell Mitrook, of Portsmouth, in the County of Rockingham
and The State of New Hampshire

for and in consideration of the sum of One Dollar and other valuable considerations
to me in hand before the delivery hereof, well and truly paid by Mary Elizabeth Caswell, of Ports-
mouth, in the County of Rockingham and The State of New Hampshire

the receipt whereof I do hereby acknowledge, have granted, bargained, and sold, and by these presents do give, grant, bargain,
sell, alien, enfeof, convey, and confirm unto the said Mary Elizabeth Caswell and her

heirs and assigns, forever, a certain lot or parcel of
land, with the buildings thereon, lying, situate and being in the City
of Portsmouth, in the County of Rockingham and The State of New Hampshire,
on the Westerly side of the public highway now known as Brewster Street,
being now numbered ninety-two (92) thereon, bounded and described as
follows, viz:- Beginning in the Westerly side-line of said Brewster
Street at land now or formerly of Mary Herlihy and thence running by
said Herlihy land South 67 degrees, 15 minutes West fifty and two tenths
(50.2) feet to land now or formerly of Frank Arrie; thence turning and
running by said Arrie land North 24 degrees, 41 minutes West twenty-eight
(28) feet to land of the heirs of Kateny Metrook; thence turning and
running by said last named land North 67 degrees, 07 minutes East
thirteen (13) feet; thence North 88 degrees, 09 minutes East eight and
six tenths (8.6) feet; thence South 22 degrees, 53 minutes East five
(5) feet; thence North 67 degrees, 07 minutes East thirty (30) feet
to said Brewster Street; thence turning and running South 22 degrees,
53 minutes East by said Brewster Street twenty (20) feet to the point
of beginning.

Title of the said Russell Mitrook in the above described
premises is derived in part from his mother, Kateny Metrook, who acquired
the premises by deed of Harry Cohen, dated July 12, 1919, recorded in
Rockingham County Registry of Deeds, Book 733, Page 77; in part by deed
from Edgar A. Blanchard, Guardian of Alice Mitrook, Anthony Mitrook and
Andrew Mitrook, dated January 24, 1941, recorded in said Registry of
Deeds, Book 967, Page 138; and in part by deed of Marie Metrook, Ethel
Metrook Sutton, Annie Metrook Fortin and John Metrook dated December 9,
1940, recorded in said Registry of Deeds, Book 980, Page 123.

TO HAVE AND TO HOLD the afore-described premises, with all the privileges and appurtenances to the same belonging to her
the said Mary Elizabeth Caswell and her heirs and assigns to her
and their only proper use and benefit forever. And I the said Russell Mitrook
for myself and my heirs, executors and administrators, do hereby covenant, grant, and agree to and with the said
grantee and her heirs and assigns, that until the delivery hereof I am the lawful owner
of the said premises, and I am seized and possessed thereof in my own right in fee simple and have full power
and lawful authority to grant, and convey the same in manner aforesaid; that the said premises are free and clear from all and every
incumbrance whatsoever; and that I will and my heirs, executors, and administrators shall warrant and defend
the same to the said Mary Elizabeth Caswell and her heirs and assigns against the lawful
claims and demands of any person or persons whomsoever.

And I, Margaret G. Mitrook, wife of said Russell Mitrook in consideration
aforesaid, do hereby relinquish my right of dower in the before mentioned premises.

And we each of us do hereby release, discharge, and waive all such rights of exemption from attachment and levy or sale on execution, and such other rights
whatsoever in said premises and in each and every part thereof, as our Family Homestead, as are reserved or secured to us, or either of us, by Chapter 214 of the Public
Laws of New Hampshire, or by any amendments thereto.

IN WITNESS WHEREOF we have hereunto set our hand and seal this eighth
July in the year of our Lord, one thousand nine hundred and forty-nine.

Signed, sealed and delivered in presence of

Oliver W. Marvin

Russell Mitrook
Margaret Mitrook

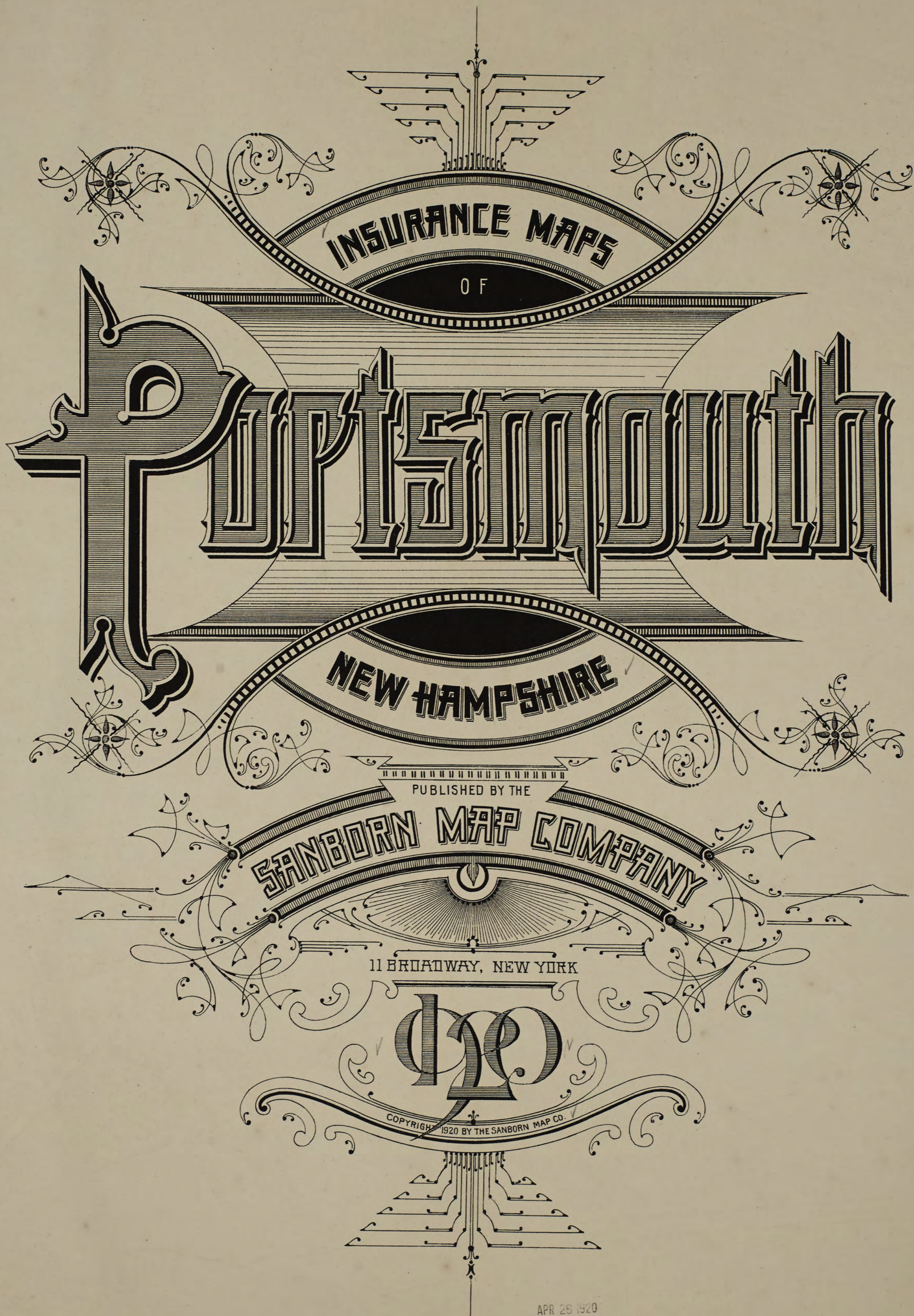


STATE OF NEW HAMPSHIRE
Rockingham, ss. July 8, A. D. 1949
Personally appeared the above named Russell Mitrook and Margaret G. Mitrook

and acknowledged the above instrument to be their voluntary act and deed.

Before me,
Oliver W. Marvin, Justice of the Peace.

My commission expires October 9, 1952.
Received and recorded July 11, 9 A.M., 1949.





Scale of Feet.

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Fire Insurance Map Collection
Geography and Map Division
Library of Congress

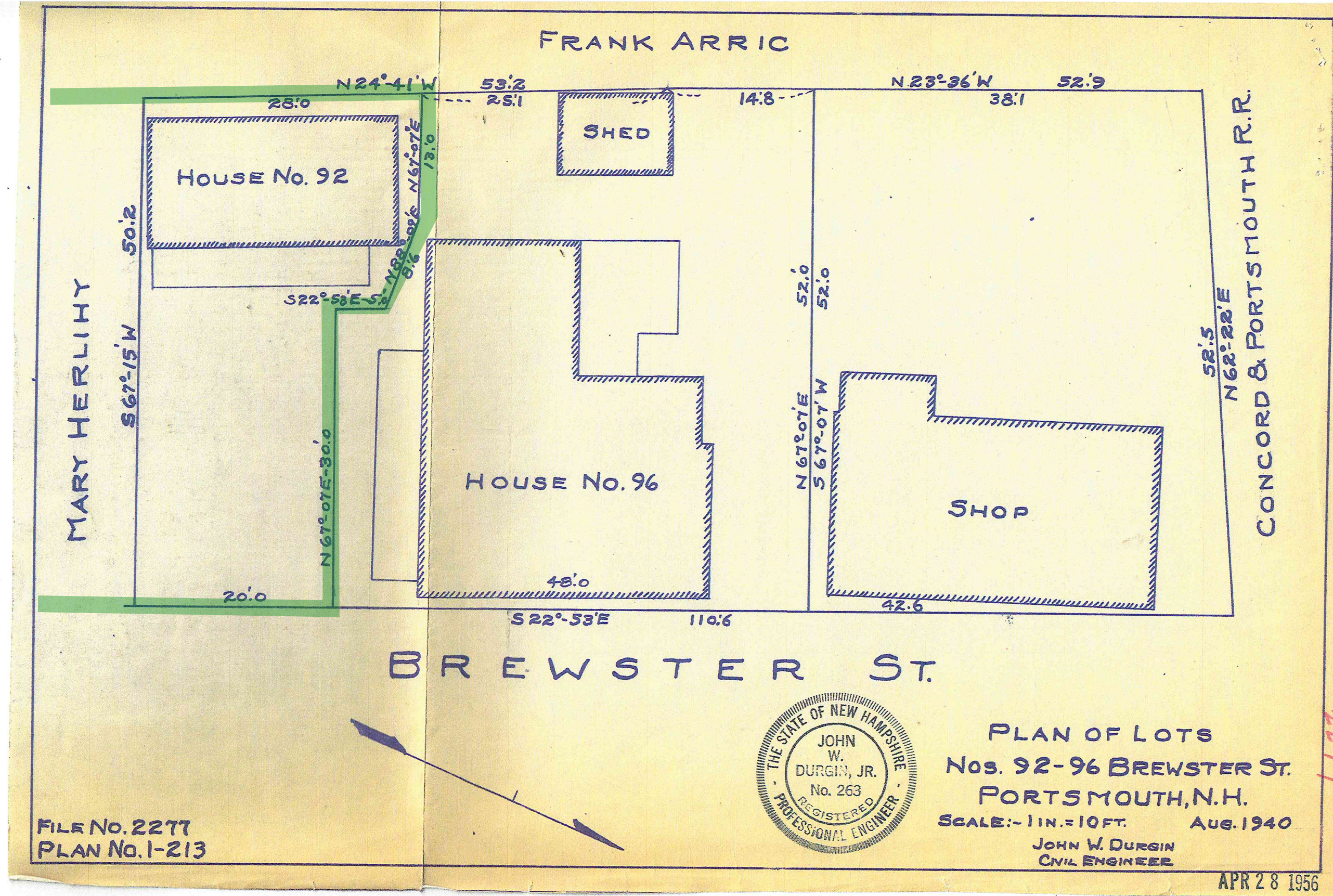
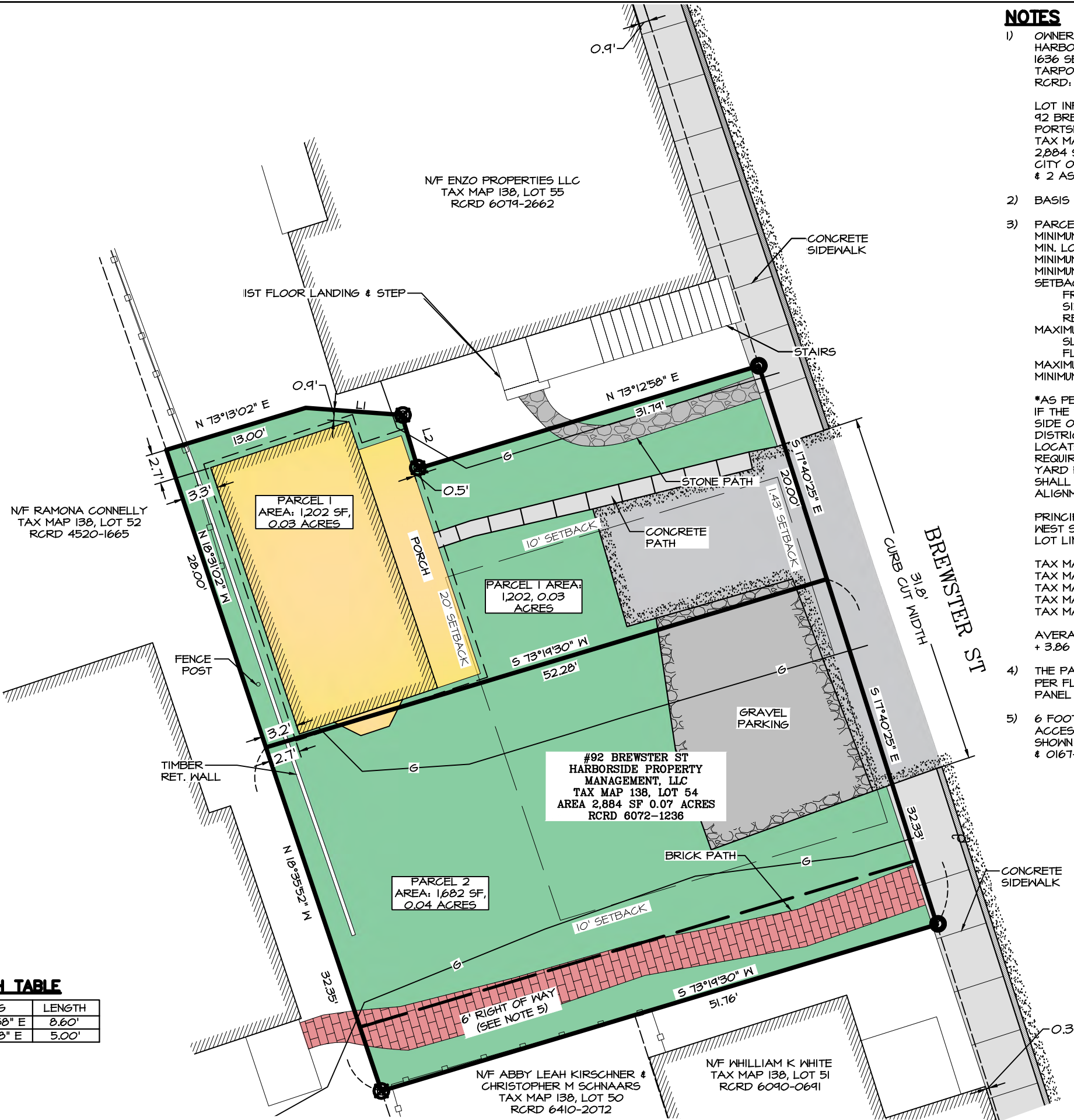


EXHIBIT C

SEE NOTE #2



LENGTH TABLE

	BEARING	LENGTH
L1	S 85°44'58" E	8.60'
L2	S 16°46'58" E	5.00'

NOTES

- OWNER OF RECORD:
HARBORSIDE PROPERTY MANAGEMENT, LLC
1636 SEABREEZE DR
TARPOON SPRINGS, FL 34689
RCRD: 6072-1236

LOT INFORMATION:
92 BREWSTER STREET
PORTSMOUTH, NH 03801
TAX MAP 138, LOT 54
2,884 SF 0.07 ACRES
CITY OF PORTSMOUTH TAX MAP SHOWS PARCELS 1 & 2 AS ONE LOT
- BASIS OF BEARING HELD FROM PLAN REFERENCE #4.
- PARCEL IS IN GENERAL RESIDENCE C ZONE (GRC)
MINIMUM LOT AREA.....3,500 SF
MIN. LOT AREA PER DWELLING UNIT.....3,500 SF
MINIMUM FRONTAGE.....10 FT
MINIMUM DEPTH.....50 FT
SETBACKS:
FRONT.....1.43 FT*
SIDE.....10 FT
REAR.....20 FT
MAXIMUM BUILDING HEIGHT:
SLOPED ROOF.....35 FT
FLAT ROOF.....30 FT
MAXIMUM BUILDING COVERAGE.....35%
MINIMUM OPEN SPACE.....20%

*AS PER PORTSMOUTH ZONING ORDINANCE 10.516.10 IF THE EXISTING PRINCIPAL BUILDINGS ON THE SAME SIDE OF THE SAME STREET, IN THE SAME ZONING DISTRICT, AND WITHIN 200 FEET OF A LOT ARE LOCATED CLOSER TO THE STREET THAN THE MINIMUM REQUIRED FRONT YARD, THEN THE REQUIRED FRONT YARD FOR THE PRINCIPAL BUILDING ON SUCH LOT SHALL BE THE AVERAGE OF THE EXISTING ALIGNMENTS OF ALL SUCH PRINCIPAL BUILDINGS.

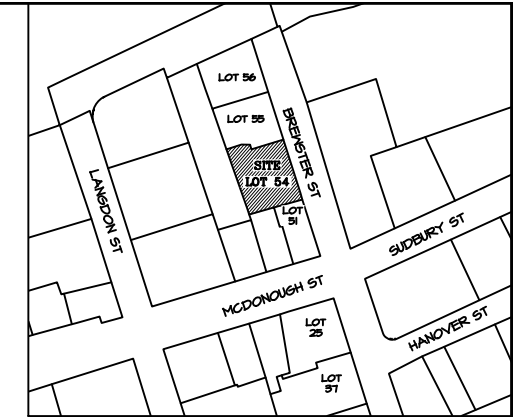
PRINCIPAL BUILDINGS WITHIN 200' OF LOT 54 ON WEST SIDE OF BREWSTER ST - DISTANCE TO FRONT LOT LINE

TAX MAP 138, LOT 56 - 1.86'
TAX MAP 138, LOT 55 - 0.90'
TAX MAP 138, LOT 51 - 0.30'
TAX MAP 138, LOT 25 - 0.24'
TAX MAP 138, LOT 37 - 3.86'

AVERAGE FRONT YARD = 1.86 + 0.90 + 0.30 + 0.24 + 3.86 / 5 = 1.43'
- THE PARCEL IS NOT WITHIN A FEMA FLOOD ZONE, AS PER FLOOD INSURANCE RATE MAP #33015C0259F, PANEL 259 OF 681, DATED JANUARY 29, 2021.
- 6 FOOT WIDE RIGHT OF WAY EXISTS TO ALLOW ACCESS TO LOT 52 FROM BREWSTER STREET. THIS IS SHOWN ON THE 1979 TAX MAP. SEE RCRD 0722-0190 & 0167-0433.

LEGEND

- DRILL HOLE FOUND
 - ⊙ REBAR WITH CAP FOUND
 - ⊙ RAILROAD SPIKE FOUND
 - 100x100 SPOT ELEVATION
 - FENCE
 - VERTICAL GRANITE CURB
 - GAS
 - GRAPHIC SCALE
- (IN FEET)
SCALE: 1" = 10'



LOCUS PLAN
N.T.S.

REFERENCE PLANS

- "PLAN OF LOTS NOS. 92-96 BREWSTER ST. PORTSMOUTH, N.H." BY JOHN W. DURGIN. DATED AUG. 1940. FILED NO. 2277, PLAN NO. 1-213
- "BOUNDARY SURVEY FOR CITY OF PORTSMOUTH" BY ROSS ENGINEERING, DATED SEP. 25, 2003. RCRD D-31009
- "EASEMENT PLAN TAX MAP 138 - LOT 48 JOHN L. AHLGREN TO THE CITY OF PORTSMOUTH" BY AMBIT ENGINEERING, INC. DATED MAY 7, 2013. RCRD 38725
- "SUBDIVISION PLAN TAX MAP 138 - LOT 48 FOR CHINBURG DEVELOPMENT, LLC ON LAND OF JOHN L. AHLGREN & BESSIE PALMISCIANO" BY AMBIT ENGINEERING, INC. DATED FEB. 26, 2016. RCRD 34552
- "LOT LINE RELOCATION AND EASEMENT PLAN TAX MAP 138 - LOTS 60 & 61," BY AMBIT ENGINEERING, INC. DATED MAY 2, 2017. RCRD 40491
- "BOUNDARY SURVEY FOR 92 & 96 BREWSTER ST. PORTSMOUTH, NH 03801" BY ROSS ENGINEERING LLC. DATED DEC 20, 2019. RCRD 41920

EXHIBIT D

7	3/3/2025	ZBA SUBMITTAL	
6	2/19/2025	ZBA SUBMITTAL	
5	1/31/2025	PRELIMINARY	
4	9/25/2024	PRELIMINARY	
ISS.	DATE	DESCRIPTION OF ISSUE	
SCALE 1" = 10'			
CHECKED A.ROSS			
DRAWN D.D.D.			
CHECKED			

ROSS ENGINEERING
Civil/Structural Engineering
& Surveying
909 Kingston St.
Portsmouth, NH 03801
(603) 433-7560

CLIENT
GEORGE HAILS
92 BREWSTER STREET.
PORTSMOUTH, NH 03801

TITLE EXISTING CONDITIONS PLAN		
92 BREWSTER ST PORTSMOUTH, NH 03801 TAX MAP 138, LOT 54		
JOB NUMBER 23-095	DWG. NO. 1 OF 2	ISSUE 6

NOTES

1) OWNERS OF RECORD:
HARBORSIDE PROPERTY MANAGEMENT, LLC
1636 SEABREEZE DR
TARPOON SPRINGS, FL 34689
RCRD: 6072-1236

LOT INFORMATION:
92 BREWSTER STREET
PORTSMOUTH, NH 03801
TAX MAP 138, LOT 54
2,884 SF, 0.07 ACRES
CITY OF PORTSMOUTH TAX MAP SHOWS
PARCELS 1 & 2 AS ONE LOT

2) PARCEL IS IN GENERAL RESIDENCE C ZONE (GRC)
MINIMUM LOT AREA.....3,500 SF
MIN. LOT AREA PER DWELLING UNIT.....3,500 SF
MINIMUM FRONTAGE.....70 FT
MINIMUM DEPTH.....50 FT
SETBACKS:
FRONT.....1.43 FT
SIDE.....10 FT
REAR.....20 FT
MAXIMUM BUILDING HEIGHT:
SLOPED ROOF.....35 FT
FLAT ROOF.....30 FT
MAXIMUM BUILDING COVERAGE.....35%
MINIMUM OPEN SPACE.....20%

3) COVERAGES
BUILDING COVERAGE
EXISTING
HOUSE.....334 SF
PORCH.....90 SF
COVERAGE 424 SF/2,884 SF = 14.7%

PROPOSED
HOUSE.....899 SF
PORCH.....49 SF
COVERAGE 948 SF/2,884 SF = 32.9%

OPEN SPACE
EXISTING
BUILDING COVERAGE.....424 SF
GRAVEL.....301 SF
ASPHALT.....245 SF
BRICK PATH.....178 SF
CONCRETE PATH.....44 SF
CONCRETE SIDEWALK.....11 SF
STONE PATH.....35 SF
TOTAL LOT COVERAGE 1,238 SF
OPEN SPACE 2,884 - 1,238 = 1,646 SF
OPEN SPACE 1,646 / 2,884 = 57.1%

PROPOSED
BUILDING COVERAGE.....948 SF
LANDING & STEPS < 18".....22 SF
BULKHEAD.....23 SF
ASPHALT.....382 SF
BRICK PATH.....178 SF
CONCRETE SIDEWALK.....8 SF
TOTAL LOT COVERAGE 1,561 SF
OPEN SPACE 2,884 - 1,561 = 1,323 SF
OPEN SPACE 1,323 / 2,884 = 45.9%

4) GRADE PLANE:
AS PER PORTSMOUTH ZONING ORDINANCE
GRADE PLANE IS DEFINED AS FOLLOWS: A
REFERENCE PLANE REPRESENTING THE
AVERAGE OF FINISHED GROUND LEVELS
ADJOINING THE BUILDING AT ALL EXTERIOR
WALLS. WHEN THE FINISHED GROUND LEVEL
SLOPES AWAY FROM EXTERIOR WALLS, THE
REFERENCE PLANE SHALL BE ESTABLISHED BY
THE LOWEST POINTS WITHIN THE AREA BETWEEN
THE BUILDING AND THE LOT LINE OR, WHEN THE
LOT LINE IS MORE THAN 6 FEET FROM THE
BUILDING, BETWEEN THE BUILDING AND A POINT
6 FEET FROM THE BUILDING.
THE GRADE PLANE WAS DETERMINED BY THE
AVERAGE ELEVATION OF POINTS BETWEEN THE
PERIMETER OF THE BUILDING AND 6' AWAY
FROM THE BUILDING. THE GRADE PLANE WAS
CALCULATED AS 93.69'.

GRADE PLANE = 93.69'

5) BUILDING HEIGHT:
BUILDING HEIGHT FOR A GAMBREL, HIP, OR
HIP-TOPPED MANSARD ROOF IS CALCULATED
AS THE VERTICAL MEASUREMENT FROM THE
GRADE PLANE TO THE MIDWAY POINT
BETWEEN THE LEVEL OF THE EAVES AND THE
HIGHEST POINT ON THE ROOF RIDGE AS PER
PORTSMOUTH ZONING ORDINANCE. THE LEVEL
OF THE EAVES IS PROPOSED TO BE 120.90'.
THE HIGHEST RIDGE IS 126.48'. THE MIDPOINT
IS 123.69'.

THE BUILDING HEIGHT OF THE BUILDING WAS
CALCULATED TO BE 30.00', USING A GRADE
PLANE OF 93.69' AND A MIDPOINT ROOF EL.
OF 123.69'.

BUILDING HEIGHT = 123.69' - 93.69' = 30.00'

6) PARKING
AS PER PORTSMOUTH ZONING ORDINANCE
10.1112.311 THE REQUIRED MINIMUM NUMBER OF
OFF-STREET PARKING SPACES FOR DWELLING
UNITS OVER 750 SF IN FLOOR AREA IS 1.3
SPACES.

AS PER PORTSMOUTH ZONING ORDINANCE
10.814.26 1 OFF-STREET PARKING SPACE
SHALL BE PROVIDED FOR AN ADU IN
ADDITION TO THE SPACES THAT ARE
REQUIRED FOR THE PRINCIPAL
SINGLE-FAMILY DWELLING.

REQUIRED PARKING = 1.3 SPACES (DWELLING)
+ 1 SPACE (ADU) = 2.3 = 3 SPACES REQUIRED

3 PARKING SPACES HAVE BEEN PROVIDED, 2
SPACES ON THE LEFT SIDE OF THE
PROPOSED HOUSE, AND ONE INSIDE THE
GARAGE.

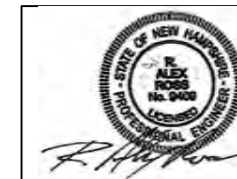
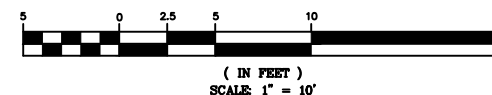
VARIANCE REQUESTED

ITEM	REQUIRED	EXISTING	PROPOSED
REAR PROPERTY LINE TO HOUSE	20 FT	3.2 FT	10.3 FT
REAR PROPERTY LINE TO OVERHANG	20 FT	2.7 FT	9.3 FT
RIGHT SIDE PROPERTY LINE TO OVERHANG	10 FT	0 FT	9.4 FT

LENGTH TABLE

	BEARING	LENGTH
L1	S 85°44'58" E	8.60'
L2	S 16°46'58" E	5.00'

GRAPHIC SCALE



7	3/3/2025	ZBA SUBMITTAL	
6	2/19/2025	ZBA SUBMITTAL	
5	1/31/2025	PRELIMINARY	
4	9/25/2024	PRELIMINARY	
ISS.	DATE	DESCRIPTION OF ISSUE	
CHECKED	A.ROSS		
DRAWN	D.D.D.		
CHECKED			

ROSS ENGINEERING
Civil/Structural Engineering
& Surveying
909 Islington St.
Portsmouth, NH 03801
(603) 433-7560

CLIENT
GEORGE HAILS
92 BREWSTER STREET.
PORTSMOUTH, NH 03801

TITLE

SITE PLAN

92 BREWSTER ST
PORTSMOUTH, NH 03801
TAX MAP 138, LOT 54

JOB NUMBER	DWG. NO.	ISSUE
23-095	2 OF 2	6

LEGEND

- DRILL HOLE FOUND
- ⊗ REBAR WITH CAP FOUND
- ⊙ RAILROAD SPIKE FOUND
- 100x00 SPOT ELEVATION
- FENCE
- VERTICAL GRANITE CURB
- GAS
- UTILITY POLE
- DRAINAGE FLOW PATH

N/F RAMONA CONNELLY
TAX MAP 138, LOT 52
RCRD 4520-1665

N/F ENZO PROPERTIES
LLC
TAX MAP 138, LOT 55
RCRD 6074-2662

#92 BREWSTER ST
HARBORSIDE PROPERTY
MANAGEMENT, LLC
TAX MAP 138, LOT 54
AREA 2,884 SF 0.07 ACRES
RCRD 6072-1236

N/F ABBY LEAH KIRSCHNER &
CHRISTOPHER M SCHNAARS
TAX MAP 138, LOT 51
RCRD 6090-0691

N/F TAMMY GEWEHR
TAX MAP 138, LOT 41
RCRD 5554-0471

Heloise

992.120.v2 GL

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603-431-9559



Dear Builders and Home Buyers,

In addition to our Terms and Conditions (the "Terms", available on ArtformHomePlans.com), please be aware of the following:

As defined in the Terms, this is a Design Drawing and may not yet have Construction Drawings (CDs) or the CDs may not reflect design changes. During the conversion of a Design Drawing to Construction Drawings, changes may be necessary including, but not limited to, dimensional changes or changes to the framing and structural supports.

We require that our designs be built substantially as shown in the Drawings. Markups agreed to by Builder and Home Buyer must still be approved by Artform, and may require additional changes, such as structural updates. While we attempt to accommodate requested changes where possible and reasonable, including considerations of design integrity, any and all changes to Drawings must be approved in writing by Artform. It is recommended that you have your Design Drawings updated by Artform prior to attaching any Drawing to any builder agreement. Artform shall not be responsible for the misuse of or unauthorized alterations to any of its Drawings.

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

We are not responsible for typographical errors. Home Buyer shall give thoughtful consideration to all drawings and documents provided to them and shall be solely responsible for ensuring that they understand features in the home that are important to them.

1/31/2025

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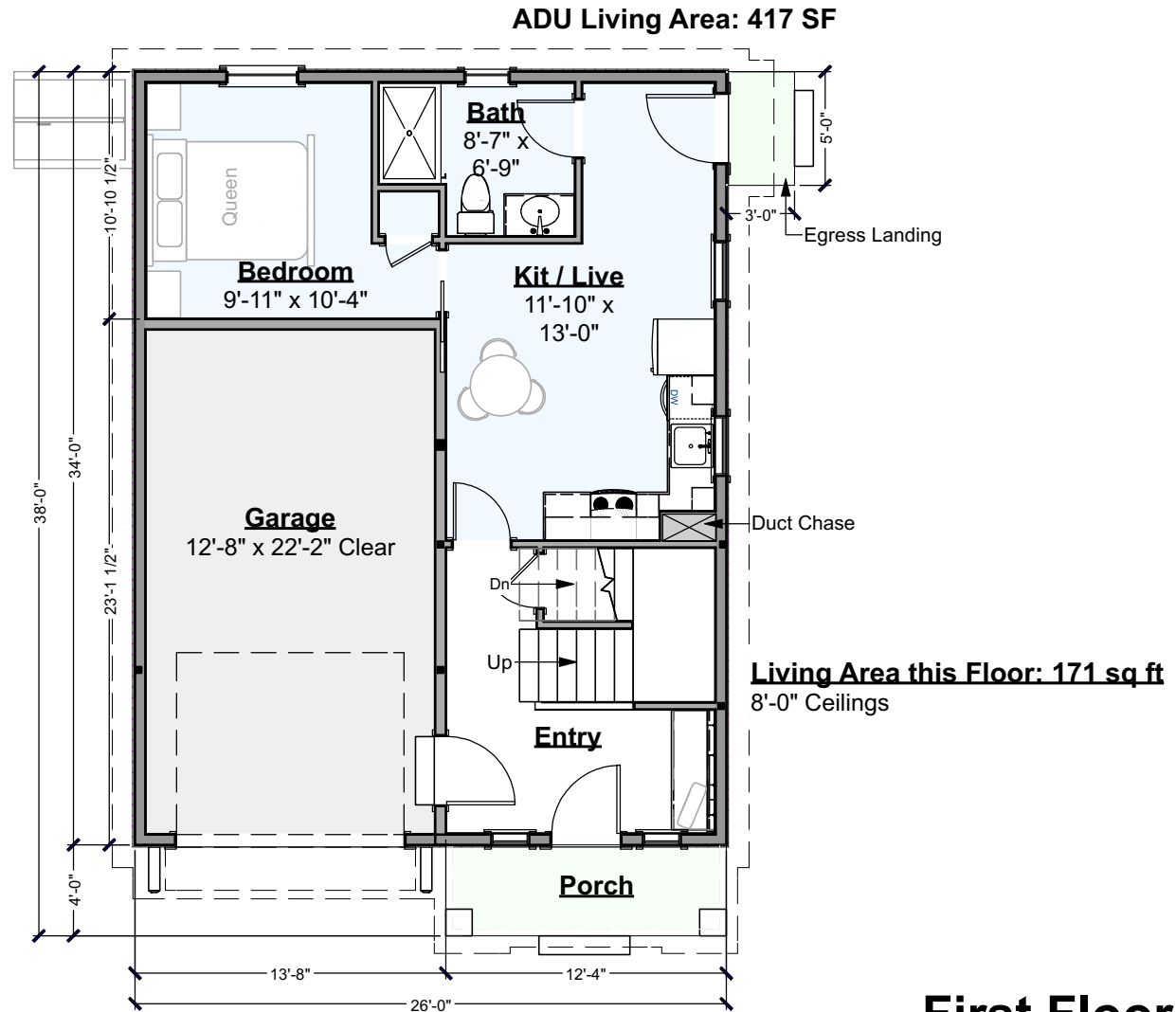
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First Floor Plan
Scale: 1/8" = 1'-0"

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Living Area this Floor: 899 sq ft

8'-6" Ceilings



Second Floor Plan

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

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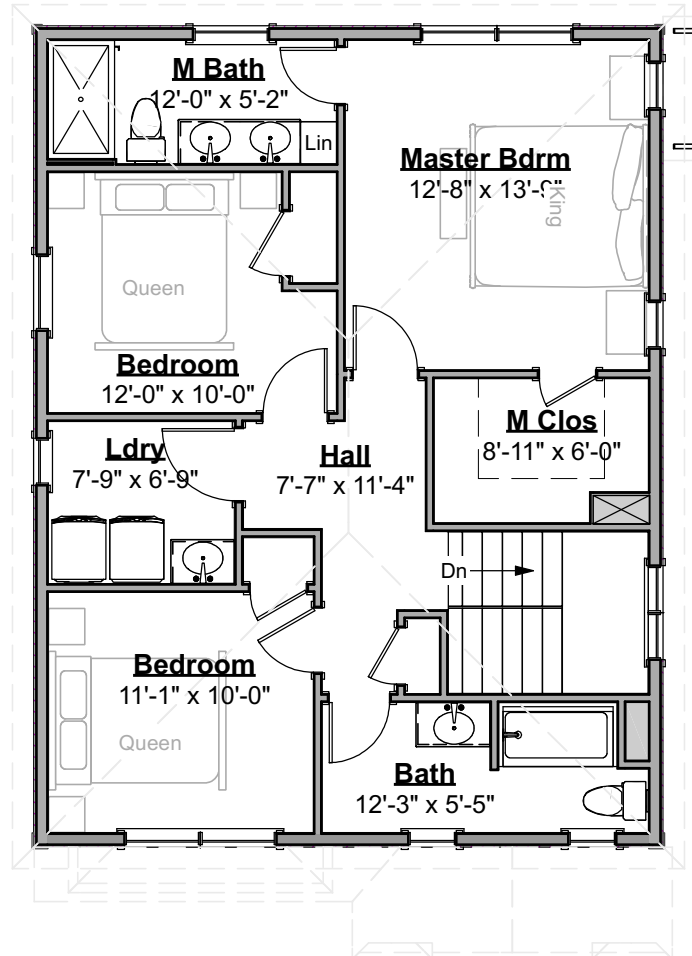
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Living Area this Floor: 884 sq ft

8'-0" Ceilings



Third Floor Plan

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

1/31/2025

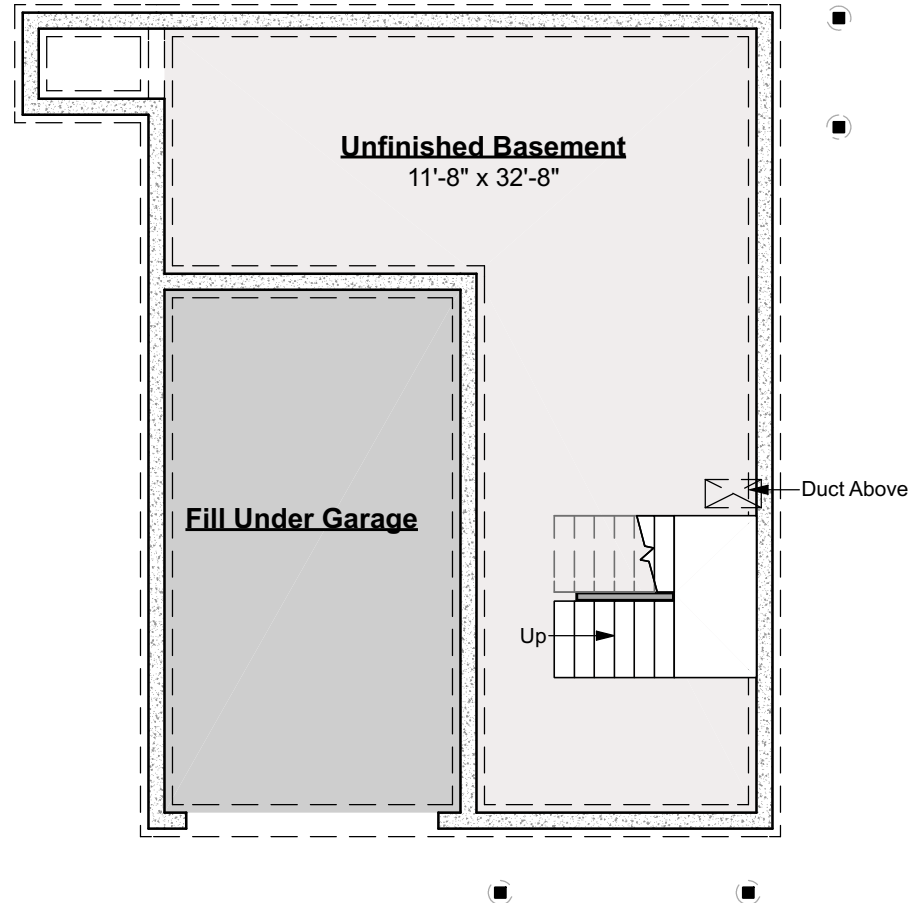
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603-431-9559



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

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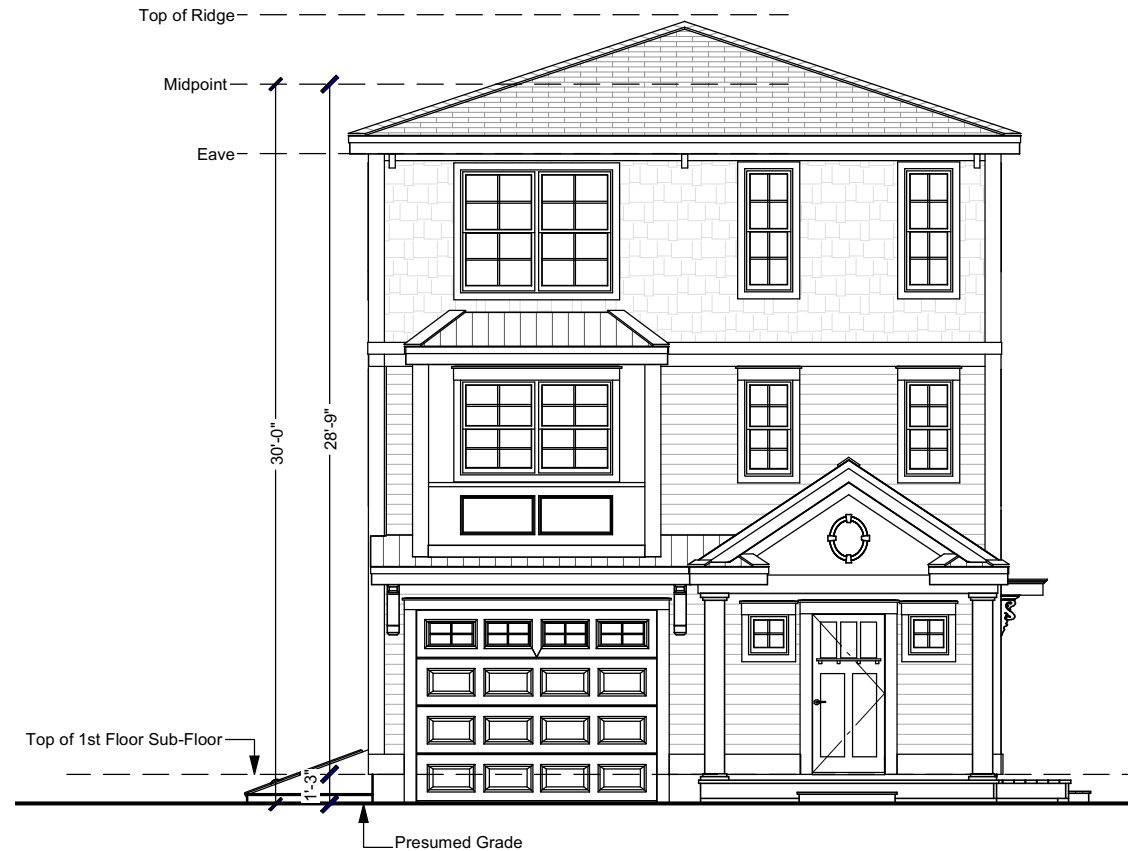
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Front Elevation
Scale: 1/8" = 1'-0"

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Right Elevation

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

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Rear Elevation

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

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

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Interior Views

CRS 992.120.v2 GL Heloise - 26x34

92 Brewster St



Imagery ©2025 Google, Imagery ©2025 Airbus, Maxar Technologies, Map data ©2025 50 ft

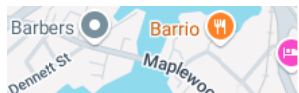
EXHIBIT F

Google Maps

85 Brewster St



Image capture: Nov 2024 © 2025 Google



II. OLD BUSINESS

B. 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) 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; 2) Variance from Section 10.5B34.60 to allow for a front setback from the lot line of 27 feet on Woodbury Avenue and 53.5 feet on Gosling Road where a maximum of 20 feet is required; 3) Variance from Section 10.5B83.10 to allow for parking spaces to be located between the principal building and the street; 4) Variance from Section 10.835.31 to allow outdoor service facilities to be located within 34.5 feet and 40.5 of a lot line where 50 feet is required. 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 10.843.33 to allow for pump islands to be located within 34.5 feet of the lot lines where 40 feet is required; 7) Variance from Section 10.1251.10 to allow for an aggregate sign area of 309 s.f. where a maximum of 223.5 s.f. is allowed; 8) Variance from Section 10.1251.20 to allow a 134 s.f. freestanding sign where a maximum of 100 s.f. is allowed; and 9) Variance from Section 10.1253.10 to allow for a freestanding sign at a height of 26.5 feet where a maximum of 20 feet is allowed. 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	Gas Station and Convenience Store* Site Redevelopment	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	53.5	0-20 max.
<u>Left Yard (ft.):</u>	>10	34.8	10 min.
<u>Rear Yard (ft.):</u>	13	37.5	15 min.
<u>Height (ft.):</u>	18.4	<40	40 max.
<u>Building Coverage (%):</u>	19.3	18.5	70 max.

<u>Building Footprint (SF):</u>	7,402	4,600	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	34.5 & 40.5	50	min.
<u>Pump Islands setback (ft.)</u>	23	34.5	40	min.
<u>Parking</u>	19	19**	12	min.
<u>Estimated Age of Structure:</u>	1995	Variance request(s) shown in red.		

*Special Exception for Convenience Goods 2 use 24 hours per day in the G1 District granted April 22, 2025.

** 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	84	200 max.
<u>Freestanding Sign (SF)</u>	N/A	134	100 max.
<u>Freestanding Sign Setback (ft.)</u>	N/A	11.2	10 min.
<u>Freestanding Sign Height (ft.)</u>	N/A	26.5	20 max.
<u>Canopy Sign (SF)</u>	N/A	16 (x 2)	20 max.
<u>Aggregate Sign area (SF)</u>	N/A	309	223.5 max. (1.5x bldg. frontage)
		Variance request(s) shown in red.	

Other Permits/Approvals Required

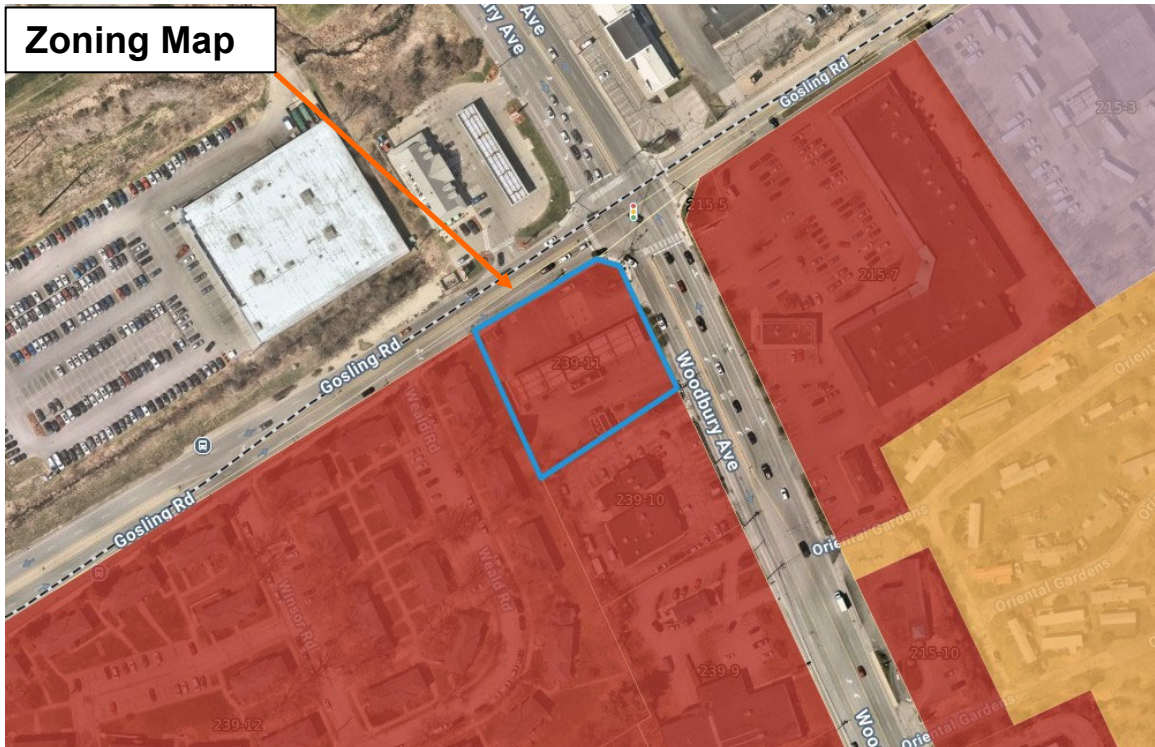
- TAC / Planning Board Site Plan Review
- Planning Board - Conditional Use Permit (Motor Vehicle Service Station and Drive-through Uses)
- Sign Permit

Neighborhood Context

Aerial Map



Zoning Map



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 Board granted a Special Exception for a Convenience Goods 2 use operating 24 hours per day at the April 22, 2025 meeting and postponed consideration of the Variances with the expectation that the applicant address significant concerns of the Board related to the variances associated with the drive-thru and either eliminate it or provide substantial justification as to why it would not impact the adjacent residential property; what could be done to mitigate the signage variances by either eliminating them or describing why they were critical to the property's operation of the gas stations use; and for the remaining variances, either eliminate them or provide a better explanation of why the objectives of the Gateway District could not be fully met if it remained as a gas station and Convenience Store 2 use.

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, 4,600 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.

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.



Christopher B. Drescher
Admitted in NH

May 21, 2025

City of Portsmouth
Board of Adjustment
1 Junkins Ave.
3rd Floor
Portsmouth, NH 03801

RE: Colbea Enterprises LLC: property located at 1980 Woodbury Ave. (LU-25-39)

Update ZBA on amendments to Site Plan

Dear Honorable Zoning Board of Adjustment ("ZBA"),

I write to you on behalf of our client, Colbea Enterprises, LLC, to provide some background as to the changes that we implemented to the proposed project in light of suggestions and concerns raised by the ZBA back on April 22, 2025, at our first meeting.

First, we address the concerns raised relative to the Drive-Thru by bringing the speaker box closer to building thereby increasing the distance between proposed speaker and abutting residences (*originally 38.7' from the lot line to 41.0' from the lot line*). Additionally, an eight (8) foot stockade fence, as well as plantings are being proposed to run along the westerly side of the Property to add additional buffering and screening in the interests of mitigating the noise for the abutters to the west

Second, we address issues raised with respect to the signage. Under the revised Plan, we are removing the monument sign along Gosling Road. We are reducing the overall signage on-site from 453.25 sf to 308.11 sf. The proposed pylon sign is relocated to match the existing pylon location and, in doing so, we no longer need a variance for 10-foot sign setback as the new location will be 11.2 feet from the lot line. We are also offering to include a "Welcome to Portsmouth" sign to be placed at the intersection. This would be within the right-of-way and Colbea would coordinate with the City to establish design.

Third, in order to demonstrate compliance with the Gateway District's mission statement, we are proposing an outdoor dining area next to the convenience store and another one along Gosling Road. The addition of sidewalks throughout the site to provide interconnectivity and

allow pedestrians to navigate between Gosling and Woodbury without going to the main intersection. We are Proposing stamped concrete sidewalks at pedestrian crossings to raise awareness for drivers. Finally, we are adding a bike rack on-site.

Fourth, we are providing a Landscape Plan in an effort to demonstrate how we will turn the site from primarily pavement with minimal landscaping to that of a greener site with many plantings.

Fifth, and final, we have conducted a Sound Study to demonstrate that the noise level of the proposed project will not only comply with the Portsmouth Zoning Ordinance but also demonstrate that the noise level from the Drive-Thru will not have a negative impact to the abutting property.

Should you need us to provide anything else please do not hesitate to ask.

Very Truly Yours,

CRONIN BISSON & ZALINSKY, P.C.

By: 

Christopher B. Drescher, Esq.
722 Chestnut Street
Manchester, NH 03104
(603)-624-4333
cdrescher@cbzlaw.com

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 34.8 feet and 40.8 feet from the applicable lot lines.

The variance is needed for two locations that are both marked on the “variance plan” by a “4” – one is located by the proposed menu board along the westerly side of the main building (40.8’/41.0’) and the other is located along the southerly side at the drive through window (34.8’).

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 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 outdoor service facilities (transaction windows, menu boards, speakers, etc.) to encroach into the required 50-foot setback and come within 34.8 feet and 40.8 feet at two locations from the applicable lot 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 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 quite 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.

Finally, the main building has been moved slightly more away from the lot to the west. Additionally, a tall stockade fence (8' tall), as well as some additional plantings have been added to further screen the abutting lots.

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 and, in this case, its outdoor services facilities. This is done for both aesthetics and life and safety.

Here, there is already some 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. The Applicant has also enhanced the lot line with tall fence and some plantings to further screen the westerly neighbors.

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 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 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 than the maximum area of 1.5’ per linear foot of the building frontage per establishment. Under the PZO, 223.50 square feet is allowed and the Applicant requests relief to allow for an aggregate sign area of 308.11 square feet. This request is down from an ask of 453.26 square feet that was previously requested in order to address some of the Honorable Board’s comments.

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 308.11 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 quite 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.

As stated above, the Applicant has reduced this request from 453.26 square feet to 308.11 square feet to minimize this request.

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.

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.

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.

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 than is allowed by the PZO.

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 quite 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 height and 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 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.

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.

May 30, 2025 - 11:50am
F:\MISC Projects\46077 - Woodbury Ave - Portsmouth\46077-16 Colbea Ent LLC - 1980 Woodbury Ave, Portsmouth, NH\Design\Exhibits\46077-16 Variance Plan.dwg

EASEMENTS & RESTRICTIONS:

COMMONWEALTH LAND TITLE INSURANCE COMPANY TITLE COMMITMENT FILE NO. 200LT0055-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-L0T11, 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.
 - E - ELECTRIC POLE SUPPORT POLE TRAVERSING THE EASTERLY BOUNDARY.
- 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 CORPORATIONS AS EVIDENCED BY A NOTICE OF LEASE DATED 2/25/1992 AND RECORDED IN VOLUME 2836, 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 3688, PAGE 1466. ALLIANCE ENERGY CORP. CONVERTED TO ALLIANCE ENERGY LLC AS EVIDENCED AT VOLUME 4929, PAGE 2060. (NOT PLOTTABLE)

ENCROACHMENTS:

- 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;

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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.

HORIZONTAL SCALE 1"=20'
20 10 0 20

REV	DATE	DESCRIPTION	DR	CK
1	4/28/2025	REVISED PER ZONING BOARD COMMENTS	JKC	CRR

NOTES

CURRENT ZONING IS GATEWAY CORRIDOR (G1) MIXED RESIDENTIAL DISTRICT. REQUIRED	PROPOSED
USE: SMALL COMMERCIAL BUILDING	
MIN. LOT SIZE:	1.1 AC.
MIN. LOT FRONTAGE:	50'
MIN. BUILDING SETBACKS:	
FRONT	0' MIN/20' MAX.1
SIDE	10'
REAR	15'
MAX. BUILDING HEIGHT:	27.4±'
MAX. BUILDING COVERAGE:	34.8±%
MIN. OPEN SPACE:	40.7'
	<40%
	18.8±%
	13.6±%

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

SPECIAL EXCEPTION

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

VARIANCES REQUIRED

- PZO 10.5B33.20 - ALL BUILDINGS MUST HAVE A FRONT LOT LINE BUILD OUT OF AT LEAST 75% FOR COMMERCIAL AND MIXED-USE BUILDING TYPES.
- PZO 10.5B34.60 - FRONT BUILDING SETBACK FROM LOT LINE: 0 FT MIN. TO 20 FT MAX.
- PZO 10.5B83.10 - REQUIRED OFF-STREET PARKING SPACES SHALL NOT BE LOCATED BETWEEN A PRINCIPAL BUILDING AND A STREET.
- 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.
- 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.
- PZO 10.843.33 - ALL PUMP ISLANDS SHALL BE SET BACK AT LEAST 40 FEET FROM ALL LOT LINES.
- PZO 10.1251.10 - THE MAXIMUM AGGREGATE SIGN AREA SHALL BE AS FOLLOWS: 1.5' PER LINEAR FOOT OF BUILDING FRONTAGE PER ESTABLISHMENT.
- PZO 10.1251.20 - THE MAXIMUM SIGN AREA FOR INDIVIDUAL FREESTANDING SIGNS SHALL BE 100 S.F.
- 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'.

VARIANCE TABLE

NUMBER (SEE ABOVE)	REQUIRED	EXISTING	REQUESTED AT APRIL MEETING	CURRENTLY REQUESTED
1	127.5' MIN	0'	0'	0'
2	20' MAX	10.4	27.4'	27.4
3	NO PARKING	YES	YES	YES
4	50' MIN	N/A	34.8' & 38.7'	34.8' & 40.8'
5	30' MIN	N/A	13.0'	13.0'
6	40' MIN	23.1'	34.7'	34.7'
7	223.50 S.F. (149'x1.5')	-	453.26 S.F.	308.11 S.F.
8	100 S.F. MAX	-	134 S.F.	134 S.F.
	20' MAX HEIGHT	-	26.25'	26.25'
9	10' MIN	-	3.4' FROM PL >10.1' FROM TRAVELWAY	11.2' (VARIANCE NO LONGER REQ.D.)

SITE DEVELOPMENT PLANS

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')

SCALE: 1"=20' (22"X34")

MARCH 19, 2025

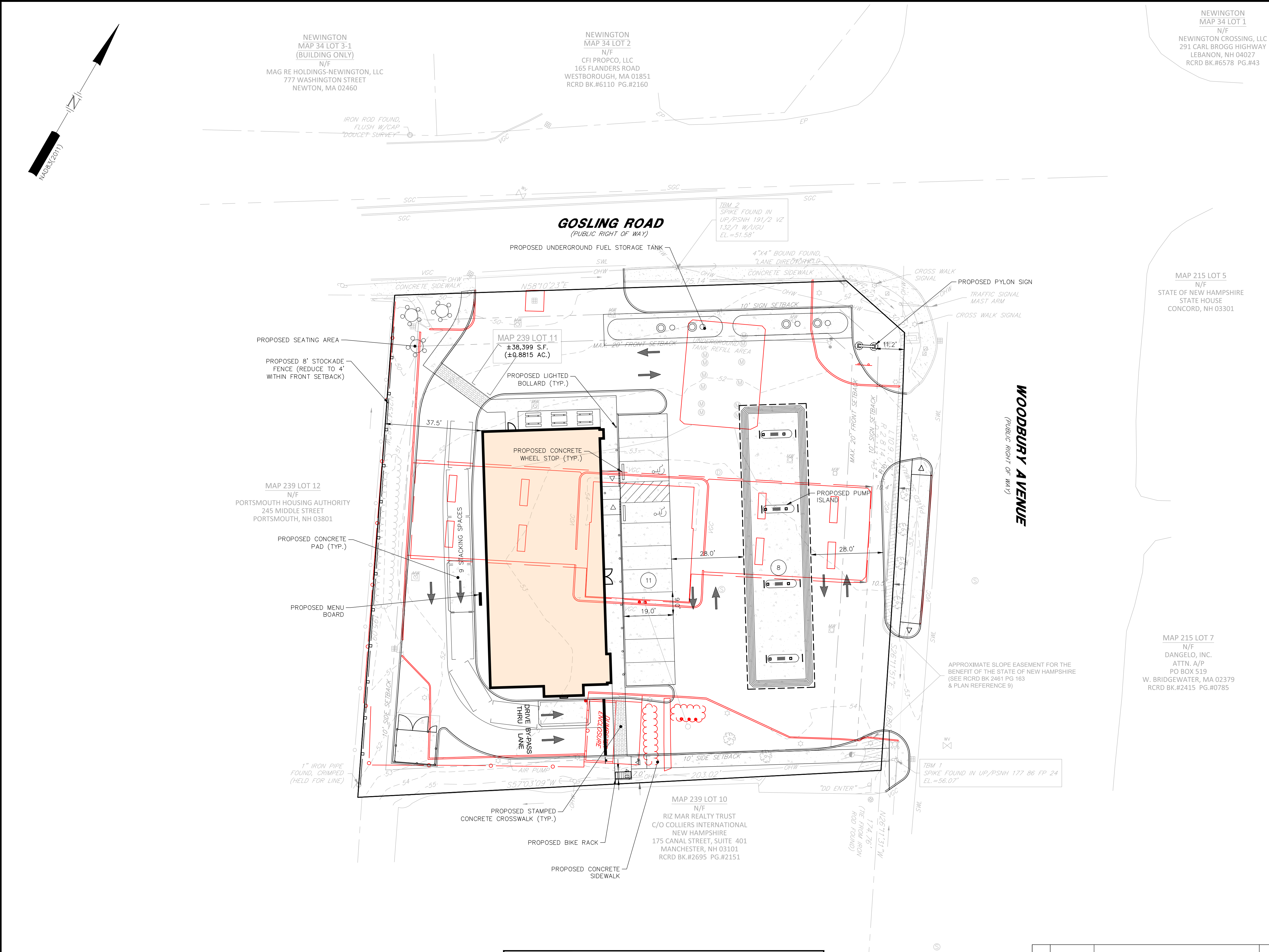
Seacoast Division



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Structural Engineers
Traffic Engineers
Land Surveyors
Landscape Architects
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Fax (603) 431-0910
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FILE	46077.16	DR	JKC	FB	-	C-01
REV	DATE	DESCRIPTION	DR	CK		



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1	4/28/2025			REVISED PER ZONING BOARD COMMENTS			JKC	CF	
REV	DATE			DESCRIPTION			DR	C	

SITE DEVELOPMENT PLANS

TAX MAP 239 LOT 11
OVERLAY PLAN
PROPOSED GAS STATION & CONVENIENCE STORE
1980 WOODBURY AVENUE
PORTSMOUTH, NEW HAMPSHIRE
OWNED BY
COLBEA ENTERPRISES, LLC

1"=40' (11"x17")
SCALE: 1"=20' (22"x34") **MARCH 19, 2025**

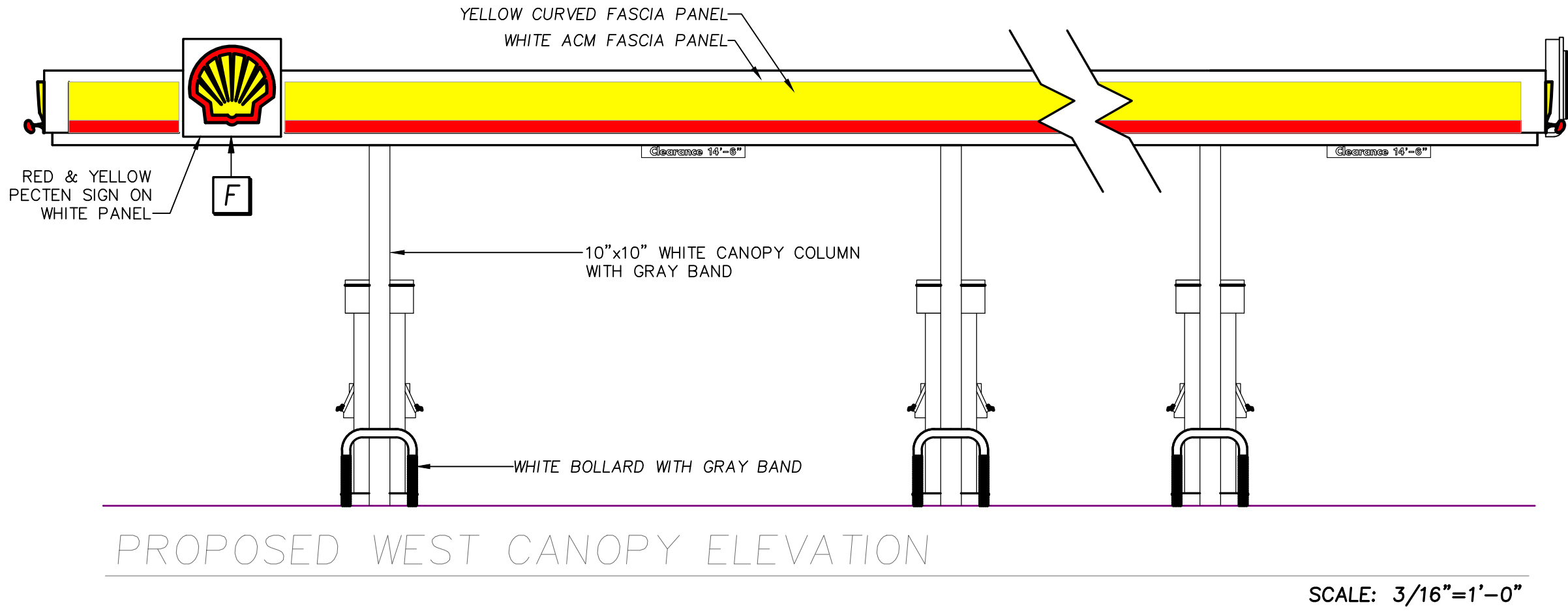
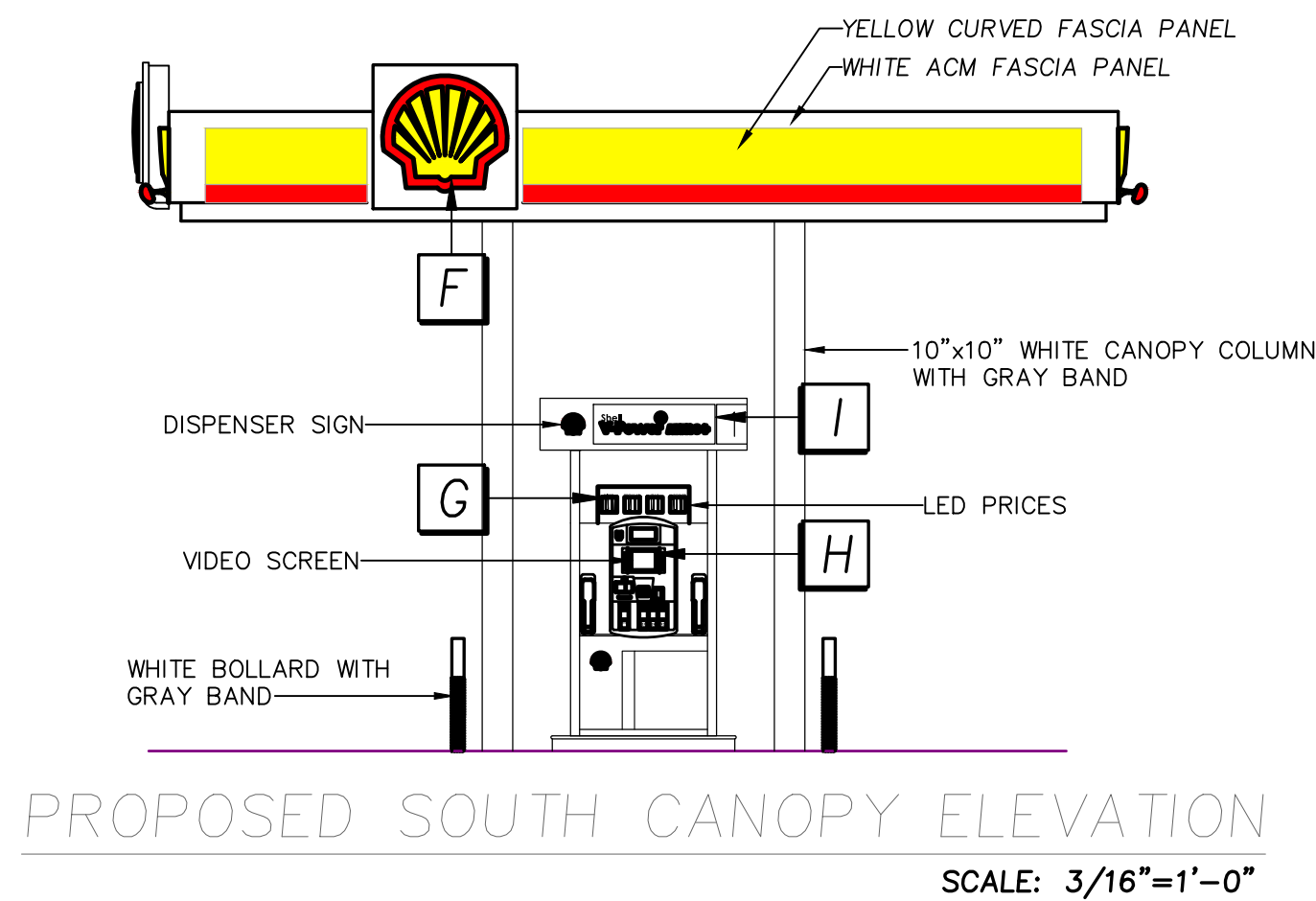
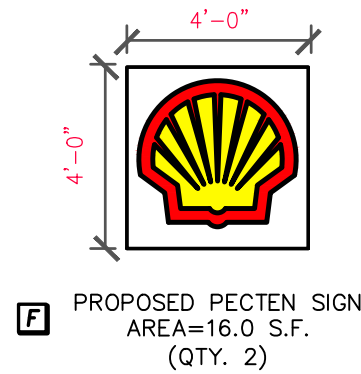
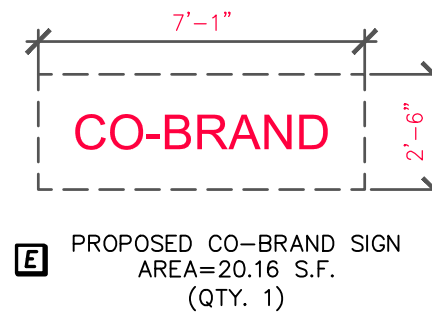
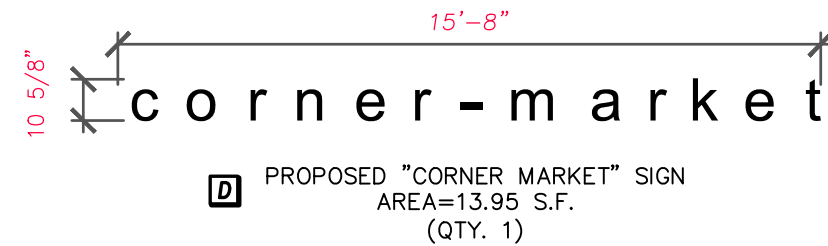
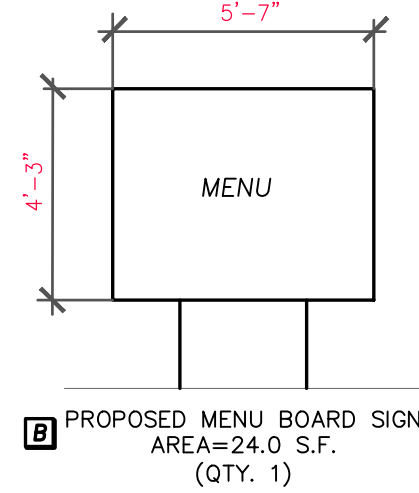
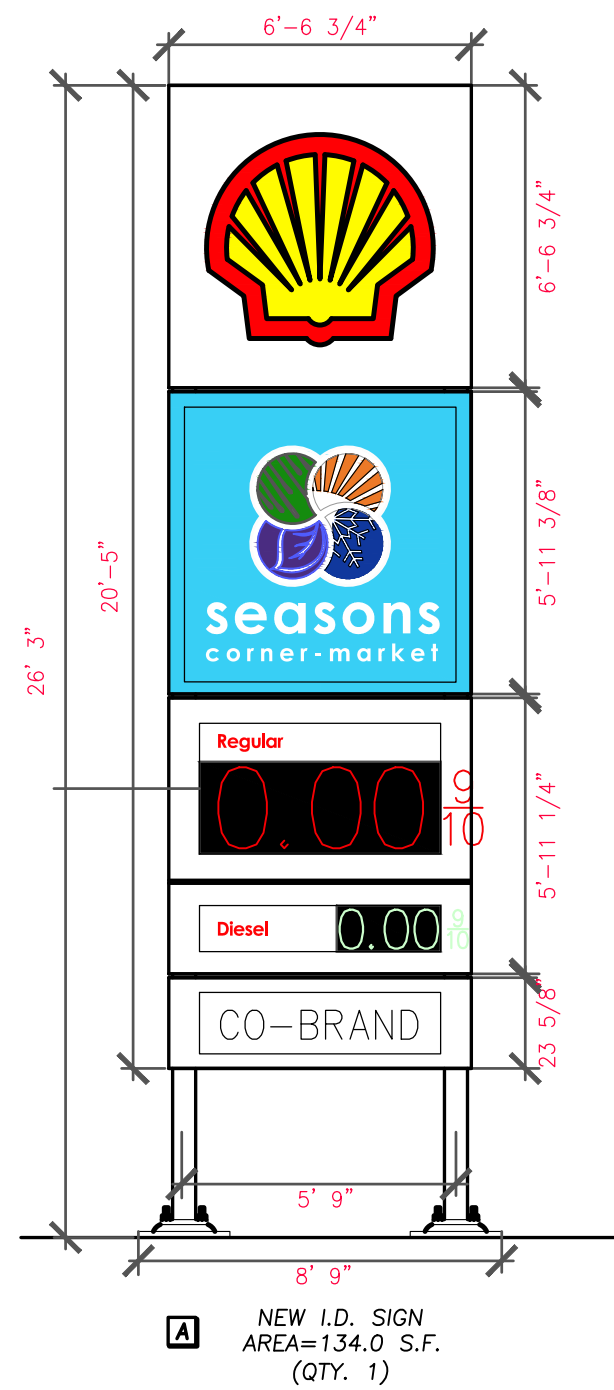


- Civil Engineers
- Structural Engineers
- Traffic Engineers
- Land Surveyors
- Landscape Architects
- Scientists

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FILE	46077.16	DR	JKC	FB	-	C-02
		CK	CRR	CADFILE	46077-16 VARIANCE PLAN	

May 30, 2025 - 11:50am
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PROPOSED SIGN SCHEDULE								
MARK	DESCRIPTION	SIZE	AREA (SF)	QUAN.	SIZE (SF)	ILLUMINATION	REMARKS	TYPE
FREESTANDING SIGNS								
A	I.D. SIGN	6'-6 3/4" X 20'-5"	134.0	1	134.0	INT	NEW	GROUND
TOTAL FREESTANDING SIGNAGE: 134 S.F., 26' 3" TALL (TOTAL PERMITTED - 100 S.F., MAX OF 20' TALL)								
B	MENU BOARD SIGN	3'-11 3/8" X 7'-2 3/8"	24.0	1	24.0	INT	NEW	GROUND
TOTAL MENU BOARD SIGNAGE: 24.0 S.F.								
WALL SIGNS								
C	"SEASONS" SIGN	24' X 3'-6"	84	1	84	INT	NEW	WALL
D	"CORNER MARKET" SIGN	15'-8" X 0'-10 3/8"	13.95	1	13.95	NON	NEW	WALL
E	CO-BRAND SIGN	7'-1" X 2'-6"	20.16	1	20.16	INT	NEW	WALL
TOTAL WALL SIGNAGE: 118.11 S.F. (TOTAL PERMITTED - 200 S.F.)								
DIRECTIONAL AND MISCELLANEOUS SIGNS								
F	CANOPY SIGN	4'-0" X 4'-0"	16.0	2	32.0	INT	NEW	WALL
TOTAL DIRECTIONAL AND MISCELLANEOUS SIGNAGE: 32.0 S.F.								
TOTAL SIGNAGE: 308.11 S.F. (453.26 S.F. ON PREVIOUS PLAN)								



TAX MAP 239 LOT 11

SIGN PLAN

PROPOSED GAS STATION & CONVENIENCE STORE

1980 WOODBURY AVENUE

PORTSMOUTH, NEW HAMPSHIRE

OWNED BY

COLBEA ENTERPRISES, LLC

SCALE: NTS

MARCH 19, 2025

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1	4/28/2025	REVISED PER ZONING BOARD COMMENTS	JKC	CRR
REV	DATE	DESCRIPTION	DR	CK

Seacoast Division

TFM

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Structural Engineers

Traffic Engineers

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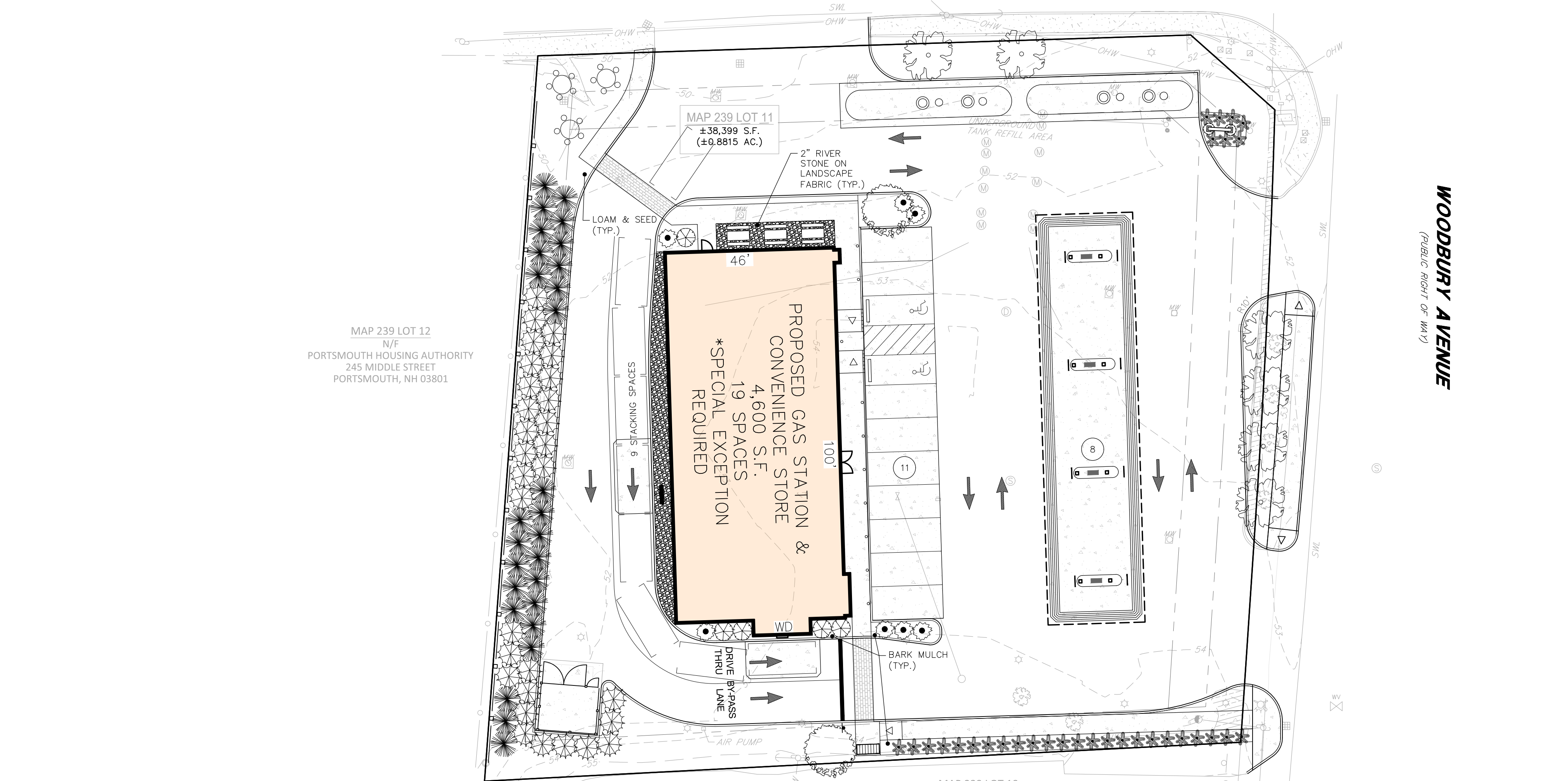
DR JKJ FB




CK CRR CADFILE

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46077-16_SIGN

C-03



SYMBOL	QTY	BOTANICAL NAME COMMON NAME	SIZE	REMARKS	MATURE HEIGHT/ SPREAD	GROWTH HABIT
	6	ACER RUBRUM 'BOWHALL' BOWHALL RED MAPLE	2" TO 2 1/2" CAL.	B&B	40' TO 60' 10' TO 15'	UPRIGHT
	2	AMELANCHIER X GRANDIFLORA 'ROBIN HILL' ROBIN HILL SERVICEBERRY	2" TO 2 1/2" CAL.	B&B	15' TO 20' 10' TO 15'	UPRIGHT
	7	JUNIPERUS HORIZONTALIS 'BAR HARBOR' BAR HARBOR JUNIPER	1 GAL.	CONT.	6" TO 12" TO 8"	GROUNDCOVER
	27	JUNIPERUS VIRGINIANA 'MANHATTAN BLUE' MANHATTAN BLUE EASTERN RED CEDAR	5' TO 6'	B&B	10' TO 15' 6' TO 8'	PYRAMIDAL
	31	PANICUM VIRGATUM 'SHENANDOAH' SHENANDOAH SWITCH GRASS	1 GAL.	CONT.	3' TO 4' 3' TO 4'	CLUMPING
	5	PHYSOCARPUS O. 'TINY WINE GOLD' TINY WINE GOLD NINEBARK	3 GAL.	CONT.	4' TO 5' 4' TO 5'	MOUNDED
	30	THUJA OCCIDENTALIS 'TECHNY' MISSION ARBORVITAE	5' TO 6'	B&B	10' TO 15' 6' TO 8'	PYRAMIDAL

(SEE DETAILS FOR ADDITIONAL NOTES)

1. THE CONTRACTOR SHALL COMPLY WITH ALL APPLICABLE RULES, REGULATIONS, LAWS, AND ORDINANCES HAVING JURISDICTION OVER THIS PROJECT SITE.
2. PRIOR TO CONSTRUCTION, THE CONTRACTOR SHALL BE RESPONSIBLE FOR LOCATING ALL UNDERGROUND UTILITIES AND NOTIFY OWNER'S REPRESENTATIVE OF CONFLICTS.
3. THE LANDSCAPE CONTRACTOR SHALL BE RESPONSIBLE FOR VERIFYING ALL QUANTITIES SHOWN ON PLANS BEFORE PRICING THE WORK. ANY DIFFERENCE IN QUANTITIES SHALL BE BROUGHT TO THE ATTENTION OF THE LANDSCAPE ARCHITECT FOR CLARIFICATION. LANDSCAPE QUANTITIES SHOWN ON THE PLAN SHALL SUPERCEDE QUANTITIES LISTED IN LANDSCAPE LEGEND.
4. THE CONTRACTOR SHALL CONTACT THE LANDSCAPE ARCHITECT PRIOR TO STARTING WORK AND VERIFY THAT THE PLANS IN THE CONTRACTOR'S POSSESSION ARE THE MOST CURRENT PLANS AVAILABLE AND ARE THE APPROVED PLAN SET FOR USE IN CONSTRUCTION.
5. ALL PLANT MATERIALS INSTALLED SHALL MEET OR EXCEED THE SPECIFICATIONS OF THE AMERICAN NURSERY AND LANDSCAPE ASSOCIATION (ANLA) [FORMERLY THE AMERICAN ASSOCIATION OF NURSERMEN] IN THE AMERICAN STANDARD FOR NURSERY STOCK (AS AMENDED) [ANSI Z60.1-1996].
6. ALL PLANTS SHALL BE FIRST CLASS AND SHALL BE REPRESENTATIVE OF THEIR NORMAL SPECIES AND/OR VARIETIES. ALL PLANTS MUST HAVE GOOD, HEALTHY, WELL-FORMED UPPER GROWTH AND A LARGE, FIBEROUS, COMPACT ROOT SYSTEM.
7. ALL PLANTS SHALL BE FREE FROM DISEASE AND INSECT PESTS AND SHALL COMPLY WITH ALL APPLICABLE STATE AND FEDERAL LAWS PERTAINING TO PLANT DISEASES AND INFESTATIONS.
8. ALL TREES SHALL BE BALLED AND BURLAPPED (B & B) UNLESS OTHERWISE NOTED OR APPROVED BY LANDSCAPE ARCHITECT.
9. ALL LANDSCAPED AREAS INCLUDING LAWNS SHALL BE PROVIDED WITH UNDERGROUND IRRIGATION. SEE IRRIGATION NOTES.
10. IF APPLICABLE, THE CONTRACTOR SHALL HAVE ALL FALL TRANSPLANTED HAZARD PLANTS DUG IN THE SPRING AND STORED FOR FALL PLANTING.
11. ALL INVASIVE PLANT SPECIES FROM THE "NEW HAMPSHIRE PROHIBITED INVASIVE PLANT SPECIES LIST", TO BE REMOVED SHALL BE DONE SO IN ACCORDANCE WITH THE "INVASIVE SPECIES ACT, HB 1258-FN."

1. THE LANDSCAPE CONTRACTOR SHALL GUARANTEE ALL LANDSCAPE WORK FOR A PERIOD OF ONE YEAR, BEGINNING AT THE START OF THE MAINTENANCE PERIOD.

1. THE IRRIGATION SYSTEM SHALL BE DESIGNED BY AN APPROVED IRRIGATION DESIGN/BUILD CONTRACTOR ACCEPTABLE TO THE OWNERS REPRESENTATIVE.
2. THE CONTRACTOR IS RESPONSIBLE FOR SUBMITTING THE IRRIGATION SYSTEM DESIGN AND SHOP DRAWINGS TO THE OWNER 30 DAYS PRIOR TO THE START OF CONSTRUCTION.
3. THE CONTRACTOR SHALL VERIFY LOCATIONS OF ALL EXISTING AND PROPOSED UTILITIES AND NOTIFY THE OWNER'S REPRESENTATIVE OF CONFLICTS.
4. THE IRRIGATION CONTRACTOR IS RESPONSIBLE FOR A COMPLETE AND OPERABLE IRRIGATION SYSTEM AND SHALL FOLLOW ALL APPLICABLE CODES.
5. REFER TO ARCHITECTURAL PLANS FOR LOCATION OF THE IRRIGATION SYSTEM'S BUILDING CONNECTION AND CONTROLS.
6. FOLLOW ALL MANUFACTURER'S INSTRUCTIONS AND PRODUCT SPECIFICATIONS FOR INSTALLATION.

TAX MAP 239 LOT 11

1"=40' (11"x17")
SCALE: 1"=20' (22"x34") **MARCH 19, 2023**

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HORIZONTAL SCALE 1"=20'



A horizontal scale bar with alternating black and white segments. The segments are labeled 20, 10, 0, and 20 from left to right, indicating distances in feet.

[illegible]



MAG RE HOLDINGS-NEWINGTON, LLC
777 WASHINGTON STREET
NEWTON, MA 02460

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

(± 0.8815 AC.)

2 RIVER
STONE ON
LANDSCAPE
FABRIC (TYP.)

LOAM & SEED
(TYP.)








PROPOSED GAS STATION
CONVENIENCE STORE
4,600 S.F.
19 SPACES
*SPECIAL EXCEPTION
REQUIRED

DRIVE BY-PASS
THRU LANE

BARK MULCH
(TYP.)

WOODBURY AVENUE
(PUBLIC RIGHT OF WAY)

MAP LANDSCAPE LEGEND

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LANDSCAPE NOTES
(SEE DETAILS FOR ADDITIONAL NOTES)

GENERAL

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6. ALL PLANTS SHALL BE FIRST CLASS AND SHALL BE REPRESENTATIVE OF THEIR NORMAL SPECIES AND/OR VARIETIES. ALL PLANTS MUST HAVE GOOD, HEALTHY, WELL-FORMED UPPER GROWTH AND A LARGE, FIBEROUS, COMPACT ROOT SYSTEM.
7. ALL PLANTS SHALL BE FREE FROM DISEASE AND INSECT PESTS AND SHALL COMPLY WITH ALL APPLICABLE STATE AND FEDERAL LAWS PERTAINING TO PLANT DISEASES AND INFESTATIONS.
8. ALL TREES SHALL BE BALLED AND BURLAPPED (B & B) UNLESS OTHERWISE NOTED OR APPROVED BY LANDSCAPE ARCHITECT.
9. ALL LANDSCAPED AREAS INCLUDING LAWNS SHALL BE PROVIDED WITH UNDERGROUND IRRIGATION. SEE IRRIGATION NOTES.
10. IF APPLICABLE, THE CONTRACTOR SHALL HAVE ALL FALL TRANSPLANTING HAZARD PLANTS DUG IN THE SPRING AND STORED FOR FALL PLANTING.
11. ALL INVASIVE PLANT SPECIES FROM THE "NEW HAMPSHIRE PROHIBITED INVASIVE PLANT SPECIES LIST", TO BE REMOVED SHALL BE DONE SO IN ACCORDANCE WITH THE "INVASIVE SPECIES ACT, HB 1258-FN."

GUARANTEE

1. THE LANDSCAPE CONTRACTOR SHALL GUARANTEE ALL LANDSCAPE WORK FOR A PERIOD OF ONE YEAR, BEGINNING AT THE START OF THE MAINTENANCE PERIOD.

IRRIGATION NOTES

1. THE IRRIGATION SYSTEM SHALL BE DESIGNED BY AN APPROVED IRRIGATION DESIGN/BUILD CONTRACTOR ACCEPTABLE TO THE OWNER'S REPRESENTATIVE.
2. THE CONTRACTOR IS RESPONSIBLE FOR SUBMITTING THE IRRIGATION SYSTEM DESIGN AND SHOP DRAWINGS TO THE OWNER 30 DAYS PRIOR TO THE START OF CONSTRUCTION.
3. THE CONTRACTOR SHALL VERIFY LOCATIONS OF ALL EXISTING AND PROPOSED UTILITIES AND NOTIFY THE OWNER'S REPRESENTATIVE OF CONFLICTS.
4. THE IRRIGATION CONTRACTOR IS RESPONSIBLE FOR A COMPLETE AND OPERABLE IRRIGATION SYSTEM AND SHALL FOLLOW ALL APPLICABLE CODES.
5. REFER TO ARCHITECTURAL PLANS FOR LOCATION OF THE IRRIGATION SYSTEM'S BUILDING CONNECTION AND CONTROLS.
6. FOLLOW ALL MANUFACTURER'S INSTRUCTIONS AND PRODUCT SPECIFICATIONS FOR INSTALLATION.

MAP 215 LOT 7
N/F
DANGELO, INC.
ATTN. A/P
PO BOX 519
W. BRIDGEWATER, MA
RCRD BK #2415 PG.#

SITE DEVELOPMENT PLANS

TAX MAP 239 LOT 11

LANDSCAPE PLAN

PROPOSED GAS STATION & CONVENIENCE STORE

1980 WOODBURY AVENUE

**1999 WOODBURY AVENUE
PORTSMOUTH, NEW HAMPSHIRE**

OWNED BY

COLBEA ENTERPRISES, LLC

1"=40' (11"x17")

SCALE: 1"=20' (22"X34')



- 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.tfmorgan.com

F I L	46077.16
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DR	JKC	FB
CK	GRB	GABE

15	46073 16 JAN
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WIDECARE PLAN

C-04

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CONTACT DIO SAFE 72 BUSINESS
HOURS PRIOR TO CONSTRUCTION

HORIZONTAL SCALE 1"=20'



A horizontal scale bar with a black background and white markings. The markings are labeled 20, 10, 0, and 20 from left to right. The bar is divided into segments by white lines.

[illegible]

CORNER MARKET CAFÉ

WARM ME UP: SANDWICHES

BLT	5.99
BLT with Bacon	6.99
BLT with Avocado	6.99
BLT with Cheese	6.99
BLT with Mayo	6.99
BLT with Mustard	6.99
BLT with Pickles	6.99
BLT with Salsa	6.99
BLT with Toppings	6.99
BLT with Sauce	6.99
BLT with Seasoning	6.99
BLT with Spices	6.99
BLT with Herbs	6.99
BLT with Fruits	6.99
BLT with Vegetables	6.99
BLT with Grains	6.99
BLT with Legumes	6.99
BLT with Nuts	6.99
BLT with Seeds	6.99
BLT with Oils	6.99
BLT with Vinegars	6.99
BLT with Condiments	6.99
BLT with Preservatives	6.99
BLT with Additives	6.99
BLT with Flavorings	6.99
BLT with Colorings	6.99
BLT with Fragrances	6.99
BLT with Preservatives	6.99
BLT with Additives	6.99
BLT with Flavorings	6.99
BLT with Colorings	6.99
BLT with Fragrances	6.99

COOL ME DOWN: SMOOTHIES & BREAD

Smoothie	5.99
Smoothie with Fruit	6.99
Smoothie with Vegetables	6.99
Smoothie with Grains	6.99
Smoothie with Legumes	6.99
Smoothie with Nuts	6.99
Smoothie with Seeds	6.99
Smoothie with Oils	6.99
Smoothie with Vinegars	6.99
Smoothie with Condiments	6.99
Smoothie with Preservatives	6.99
Smoothie with Additives	6.99
Smoothie with Flavorings	6.99
Smoothie with Colorings	6.99
Smoothie with Fragrances	6.99
Smoothie with Preservatives	6.99
Smoothie with Additives	6.99
Smoothie with Flavorings	6.99
Smoothie with Colorings	6.99
Smoothie with Fragrances	6.99

SMOOTHIES & PROTEIN DRINKS

Smoothie	5.99
Smoothie with Fruit	6.99
Smoothie with Vegetables	6.99
Smoothie with Grains	6.99
Smoothie with Legumes	6.99
Smoothie with Nuts	6.99
Smoothie with Seeds	6.99
Smoothie with Oils	6.99
Smoothie with Vinegars	6.99
Smoothie with Condiments	6.99
Smoothie with Preservatives	6.99
Smoothie with Additives	6.99
Smoothie with Flavorings	6.99
Smoothie with Colorings	6.99
Smoothie with Fragrances	6.99
Smoothie with Preservatives	6.99
Smoothie with Additives	6.99
Smoothie with Flavorings	6.99
Smoothie with Colorings	6.99
Smoothie with Fragrances	6.99

QUALITY COFFEE & SMOOTHIES
FRESHLY MADE FOOD

FRESH COFFEE,
GREAT FOOD,
CLOSE TO HOME.



CORNER MARKET

QUALITY COFFEE

FRESHLY MADE SANDWICHES

JUICE & SMOOTHIES

BAGGED ICE

ICE











May 16, 2025

Mr. Michael Gazdacko
Director of Construction
Colbea Enterprises, LLC
695 George Washington Highway
Lincoln, Rhode Island 02865

RE: Sound Study - Environmental Review Letter
Proposed Seasons Corner Market
1980 Woodbury Avenue, Portsmouth, NH

Dear Mr. Gazdacko:

Tg2 Solutions Inc. was retained by Colbea Enterprises, L.L.C./Seasons Corner Market ("Colbea/Seasons") to provide a review of sound related to the proposed development of a Seasons Corner Market facility at the above-referenced property. The scope of the sound review was twofold:

- Establish data related to the existing sound levels at the current facility (a Mobil-branded gasoline station/kiosk store) during the day and evening; and,
- Compare the existing sound levels at the current facility to those of a recently constructed Seasons Corner Market with a drive through coffee/window in the rear of the property.

The goal of the study is to compare the sound levels of an operating Seasons Corner Market with a drive through window and provide an estimation of the effect of a similar development in Portsmouth with respect to the baseline current sound levels.

This letter report provides a summary of the data collected from both locations and compares that data to the sound study data for proposed development in Portsmouth to evaluate the potential impact of sound along the property boundaries. Since approximately 2021, Tg2 has been retained by Colbea/Seasons to complete various sound surveys of existing and/or recently constructed facilities. These data have been presented to various local agencies as part of development permitting and/or post-construction occupancy permitting. The data collected in Scituate, RI is part of a previous study from 2021, whereas the data collected in Portsmouth, NH was collected on Monday May 12, 2025.

Sound Study - 34 Hartford Avenue, Scituate, RI

Tg2 performed a sound study in March 2021 at a Colbea facility with a drive-through located at 34 Hartford Avenue, Scituate, Rhode Island. The facility is located along US Route 6 and the building layout is a similar to the proposed layout for the property at 1980 Woodbury Avenue. A photograph of the property in Scituate is displayed in the photo below.





The sound study in Scituate was designed to document the following:

- General background sound conditions at study locations, primarily related to traffic-related sound and background sound levels; and,
- Sound carry distance from drive through window coffee shop ordering/pickup speaker systems.

For the sound study, the means and procedures of the data collection included positioning a calibrated tripod-mounted sound meter at the front (along Route 6) and rear (behind the station building near the drive-through), documenting sound readings over a set period of time.

Table 1 - Front/Rear Ambient Sound Readings - Scituate, RI

Location	Time	Average Sound Reading (dB)	Maximum Sound Reading (dB)
Front (North)	Mid-Day	76.2	81.5
Front (North)	Evening	52.1	58.1
Rear (South)	Mid-Day	49.9	52.8
Rear (South)	Evening	47.5	51.0

The difference between the average reading from the front of the property off the road and the average reading from the rear of the property is 26.3 dB for the mid-day reading, which is a 34% reduction in of sound from the front to the rear. The difference for the front and rear of the

property for the evening reading is 4.6 dB, which is a 9% reduction in of sound from the front to the rear. Separately, Tg2 collected sound readings during drive through operations measuring the sound carry (detectable above 1 decibel - dB) from the drive through window speaker system and associated automobile idling at the drive through. Results of the sound carry measurement documented detectable sound (1 decibel above background) during drive through operations extending to a distance of 52 feet from the drive through lane/ordering window.

Table 2 – Detectable Sound Carry – Scituate, RI (>1dB)

Location	Drive Through Speaker (Max Distance, ft)
34 Hartford Ave, Scituate, RI	52'

Ft – Distance in feet

Sound Study – 1980 Woodbury Avenue, Portsmouth, NH

On May 12, 2025, a sound study was completed at 1980 Woodbury Avenue, Portsmouth, NH at approximately 3:30 PM and 9:00 PM. The location at 1980 Woodbury Avenue is an active Mobil branded gasoline station with a kiosk store situated in the middle of the canopy and four double sided dispensers on both sides of the convenience store building.

The sound study was completed by Mr. Daniel Belair, a Project Scientist for Tg2. The study was completed using a Svantek Class 1 Sound Level Meter SV 917A. Prior to the study, the sound meter was calibrated with a 120 decibel (dB) calibration sound generator. The study was designed to measure the following at the following locations.

- Ambient sound levels over an hour at approximately mid-day and evening by the front and rear of the property; and,
- Maximum sound levels at the same time frame.

The study was completed by mounting the decibel meter on a tripod at an approximate height of four feet above grade and recording sound readings during that time period. Weather at the time of the study was clear skies with no precipitation and light wind. The study was designed to determine the degree of ambient sound at each location. Specifically, the study was designed to determine the approximate impact of sound to nearby residential receptors. The nearest receptor to the property is the Portsmouth Housing Authority (PHA) located adjacent to the property at 245 Middle Street. The PHA home is situated 37 feet from the property boundary with the Mobil station, approximately 65 feet from the proposed drive through lane, and approximately 75 feet from the speaker/menu board of the proposed drive through. See the attached **Figure 1** for the proposed facility layout. Sound readings are provided in **Table 3**, below.

Table 3 - Front/Rear Ambient Sound Readings - Portsmouth, NH

Location	Time	Average Sound Reading (dB)	Maximum Sound Reading (dB)
Front off Woodbury Ave	Mid-Day	72.9	74.9
Front off Woodbury Ave	Evening	65.4	67.8
Rear	Mid-Day	58.7	59.6
Rear	Evening	56.4	57.1

The difference between the average reading from the front of the property off of Woodbury Avenue and the average reading from the rear of the property is 14.2 dB for the mid-day reading, which is a 19% reduction in of sound from the front to the rear. The difference for the front and rear of the property for the evening reading is 4.6 dB, which is a 13% reduction in of sound from the front to the rear.

Conclusions and Discussion

This sound study was completed in order to document ambient sound levels at the property, to provide an evaluation of sound emanating from the proposed drive-through window at 1980 Woodbury Avenue and evaluate those as they relate to the proximity to nearby residential receptors. The following offers findings from this study:

- The primary source of sound at the Portsmouth location, like most gasoline station facilities, is related to traffic noise from the street. The sound fades with distance from the main street. Tg2 has found in completing studies at many facilities in RI, MA and NH, traffic count and traffic speed combined are the main drivers of sound at gasoline convenience store facilities, with higher speeds on the main road directly resulting in higher sound levels.
- Operational noise at gasoline convenience stores is typically minor and includes vehicles, customers, and speaker systems for drive through windows.
- The placement of a building and size/shape of a building have a pronounced effect on the mitigation of roadway sound extending from the primary street. Larger buildings with pitched roofs provide higher sound attenuation from the front to the rear of the facility than smaller, flat roofed buildings.
- The detectable sound carry from the proposed drive through speaker system in Portsmouth has a maximum expected carry distance of 52' as documented by the readings completed in Scituate, RI. The proposed drive through is approximately 65' from the nearest residential receptor home (the PHA house). Based on these data, the sound generated from the drive through speaker system is unlikely to be detectable at the nearest residence under normal atmospheric conditions similar to those during the two studies (clear skies, light wind, moderate humidity).

- Tg2 has noted that the size and shape of buildings between the main sound source (the road) and receptors behind proposed gasoline stations/convenience stores is the size and shape of the building. The existing facility in Portsmouth is a flat-roofed kiosk store located central to the property under the canopy measuring 1,800 square feet. The proposed building for the Seasons Corner Market is a 4,600 square foot building with a pitched, shingled roof. Presently, the sound reduction from the front of the property to the rear is approximately 16% based on distance and sound blocking from the existing structures. The analogous property in Scituate, RI shows a more than doubling of sound attenuation from the front to the rear of 34%. It can be expected that the construction of the proposed Seasons Corner Market will have the effect of significantly reducing the sound levels at the PHA housing compared to the existing store as it represents a larger and more effective sound barrier to roadway noise than the existing structure.

Furthering sound reduction can be achievable with the installation of fencing and plantings between the proposed facility and the PHA housing. While Tg2 does not presently have data sets that provide a quantitative reduction in sound with the placement of fencing/plantings at analogous gasoline station/convenience stores, published data document that fencing typically reduces sound levels by 6-10 dB. Published data from additional scientific studies notes that planting of broadleaf trees or evergreen shrubs can reduce sound by an additional 5dB.

In summary, it is Tg2's opinion that the proposed development with a larger store and pitched roof will have the effect of reducing sound levels from Woodbury Ave to the PHA housing in the rear. The proposed drive through window/speaker/vehicle operations are not expected to be detected at a distance beyond 52 feet based on analogous site data. As the PHA housing is located 65 feet from the proposed drive through, it is Tg2's opinion that sound from the drive through operation will not affect the residents at the PHA housing behind the proposed development. Finally, the applicant's proposal for fencing and plantings is expected to further reduce sounds to the PHA housing. It is therefore Tg2's opinion that this proposed development will in fact have a net reduction in sound affecting the PHA housing than the current existing site conditions.

Sincerely,



Eric D. Simpson, P.G., LSP
Owner

Attachments:
Figure 1
Field Notes - May 12, 2025 Sound Study - Portsmouth, NH

May 15, 2025 - 1:42pm
\\TFM-BEDFORDA\Projects\Civil-Survey\MSC Projects\46077 - Woodbury Ave - Portsmouth, NH\Design\Exhibits\46077-16 Variance Plan.dwg

EASEMENTS & RESTRICTIONS:

- COMMONWEALTH LAND TITLE INSURANCE COMPANY TITLE COMMITMENT FILE NO. 200LT0055-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-L0T11, 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.
 - E - ELECTRIC POLE SUPPORT POLE TRAVERSING THE EASTERLY BOUNDARY.
- 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 CORPORATIONS AS EVIDENCED BY A NOTICE OF LEASE DATED 2/25/1992 AND RECORDED IN VOLUME 2836, 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 3688, PAGE 1466. ALLIANCE ENERGY CORP. CONVERTED TO ALLIANCE ENERGY LLC AS EVIDENCED AT VOLUME 4929, PAGE 2060. (NOT PLOTTABLE)

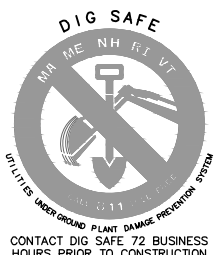
ENCROACHMENTS:

- 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;

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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.

HORIZONTAL SCALE 1"=20'
20 10 0 20

PROGRESS
PRINT
date: 5.15.2025

REV	DATE	DESCRIPTION	DR	CK
1	4/28/2025	REVISED PER ZONING BOARD COMMENTS	JKC	CRR

NOTES

CURRENT ZONING IS GATEWAY CORRIDOR (G1) MIXED RESIDENTIAL DISTRICT. REQUIRED	PROPOSED
USE: SMALL COMMERCIAL BUILDING	
MIN. LOT SIZE:	1.1 AC.
MIN. LOT FRONTAGE:	50'
MIN. BUILDING SETBACKS:	
FRONT	0' MIN/20' MAX.'
SIDE	10'
REAR	15'
MAX. BUILDING HEIGHT:	40'
MAX. BUILDING COVERAGE:	70%
MIN. OPEN SPACE:	10%
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	

SPECIAL EXCEPTION

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

VARIANCES REQUIRED

- PZO 10.5B33.20 - ALL BUILDINGS MUST HAVE A FRONT LOT LINE BUILD OUT OF AT LEAST 75% FOR COMMERCIAL AND MIXED-USE BUILDING TYPES.
- PZO 10.5B34.60 - FRONT BUILDING SETBACK FROM LOT LINE: 0 FT MIN. TO 20 FT MAX.
- PZO 10.5B83.10 - REQUIRED OFF-STREET PARKING SPACES SHALL NOT BE LOCATED BETWEEN A PRINCIPAL BUILDING AND A STREET.
- 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.
- 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.
- PZO 10.843.33 - ALL PUMP ISLANDS SHALL BE SET BACK AT LEAST 40 FEET FROM ALL LOT LINES.
- PZO 10.1251.10 - THE MAXIMUM AGGREGATE SIGN AREA SHALL BE AS FOLLOWS: 1.5' PER LINEAR FOOT OF BUILDING FRONTAGE PER ESTABLISHMENT.
- PZO 10.1251.20 - THE MAXIMUM SIGN AREA FOR INDIVIDUAL FREESTANDING SIGNS SHALL BE 100 S.F.
- 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'.

VARIANCE TABLE

NUMBER (SEE ABOVE)	REQUIRED	EXISTING	ORIGINALLY PROPOSED	CURRENTLY PROPOSED
1	127.5' MIN	0'	0'	0'
2	20' MAX	10.4	27.4'	27.4
3	NO PARKING	YES	YES	YES
4	50' MIN	N/A	34.8' & 38.7'	34.8' & 40.8'
5	30' MIN	N/A	11.2'	11.2'
6	40' MIN	23.1'	34.7'	34.7'
7	223.50 S.F. (149'x1.5')	-	453.26 S.F.	308.11 S.F.
8	100 S.F. MAX	-	134 S.F.	134 S.F.
9	20' MAX HEIGHT	-	26.25'	26.25'
	10' MIN	-	3.4' FROM PL >10.1' FROM TRAVELWAY	11.2' (VARIANCE NO LONGER REQD.)

SITE DEVELOPMENT PLANS

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')

SCALE: 1"=20' (22"x34')

MARCH 19, 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

FILE	46077.16	DR	JKC	FB	-	C-01
REV	DATE	DESCRIPTION	DR	CK		



Field Notes	
Date: 5/12/2025	
Project #:	Project Manager:
Weather: Sunny/ 70 Degrees F	Signature: 
Facility	
1980 Woodbury Avenue Portsmouth NH	

Position	Employee	Start Time	End Time	Total Hours
Project Scientist	Dan Belair	12:00 PM	12:00 AM	12

Comments
-- No notes found --

VEHICLES/MACHINES/EQUIPMENT	QTY	Comments
Field Vehicle	1	2023 Toyota Tacoma
Svantek 971	2	
SUPPLIES/MATERIALS	QTY	Comments

Field Screening Data Table

Inspector Name: Dan Belair

Date: 5/12/2025

Facility: 1980 Woodbury Avenue Portsmouth NH

Sample Location	Time	Decibels	Svantek ID
Rear(DT)	3:30	57.1	Day_DT
	3:40	59.6	
	3:50	58.8	
	4:00	58.7	
	4:10	58.9	
	4:20	59.0	
	4:30	59.0	
Front/Street	3:50	72.3	Day_ST
	4:00	70.3	
	4:10	74.9	
	4:20	73.9	
	4:30	73.1	
	4:40	73.1	
	4:50	72.6	

Field Screening Data Table

Inspector Name: Dan Belair

Date: 5/12/2025

Facility: 1980 Woodbury Avenue Portsmouth NH

Field Notes

04:36 PM - Svantek ID for data extraction: Day_DT refers to daytime sound level readings recorded at the proposed drive thru location in the rear of proposed building. Recording equipment faces Woodbury Ave. Day_ST refers to daytime sound level readings recorded at the "Street" location facing Woodbury Avenue. To conduct study, two sound level meters (Svantek 971) were tripod mounted approximately 4 FT above finished grade, facing Woodbury Avenue. Decibel readings (dB) were recorded every 10 minutes.

Field Screening Data Table

Inspector Name: Dan Belair

Date: 5/12/2025

Facility: 1980 Woodbury Avenue Portsmouth NH

Photo Logs

1980 Woodbury Avenue Portsmouth NH-Rear (Drive Through)



1980 Woodbury Avenue Portsmouth NH-Rear (Drive Through)



Field Screening Data Table

Inspector Name: Dan Belair

Date: 5/12/2025

Facility: 1980 Woodbury Avenue Portsmouth NH

Photo Logs

1980 Woodbury Avenue Portsmouth NH-Front/ Street



1980 Woodbury Avenue Portsmouth NH-Front/Street



Field Screening Data Table

Inspector Name: Dan Belair

Date: 5/12/2025

Facility: 1980 Woodbury Avenue Portsmouth NH

Sample Location	Time	Decibels	Svantek ID
Rear (DT)	9:00 PM	55.3	NI_DT
	9:10 PM	56.5	
	9:20 PM	57.1	
	9:30 PM	56.5	
	9:40 PM	56.6	
	9:50 PM	56.4	
	10:00 PM	56.3	
Front/Street	9:00 PM	67.8	NI_ST
	9:10 PM	65.8	
	9:20 PM	65.7	
	9:30 PM	65.2	
	9:40 PM	65.0	
	9:50 PM	64.7	
	10:00 PM	65.3	

Field Screening Data Table

Inspector Name: Dan Belair

Date: 5/12/2025

Facility: 1980 Woodbury Avenue Portsmouth NH

Field Notes

09:34 PM - SvanTek ID for data extraction: NI_DT refers to nighttime drive thru sound level readings recorded at the proposed drive thru location in the rear of the proposed building location. Recording equipment faces Woodbury Avenue. NI_ST refers to nighttime sound level readings recorded at the "street location" facing Woodbury Avenue. To conduct sound level study (nighttime) two sound level meters (SvanTek 971) were tripod mounted approximately 4FT above finished grade facing Woodbury Avenue. Decibel readings (dB) were recorded every 10 minutes.

Field Screening Data Table

Inspector Name: Dan Belair

Date: 5/12/2025

Facility: 1980 Woodbury Avenue Portsmouth NH

Photo Logs

1980 Woodbury Avenue Portsmouth NH-Front/Street(Nighttime)



1980 Woodbury Avenue Portsmouth NH-Front/Street (Nighttime)



Field Screening Data Table

Inspector Name: Dan Belair

Date: 5/12/2025

Facility: 1980 Woodbury Avenue Portsmouth NH

Photo Logs

1980 Woodbury Avenue Portsmouth NH-Rear (Drive thru night)



1980 Woodbury Avenue Portsmouth NH-Rear (Drive thru night)



II. OLD BUSINESS

C. REQUEST TO WITHDRAW The request of **Mezansky Family Revocable Trust (Owners)**, for property located at **636 Lincoln Avenue** whereas relief is needed to demolish an existing detached garage and to construct an addition which requires the following: 1) Variance from Section 10.521 to a) allow a 2 foot left side yard setback where 10 feet is required; b) allow a 16 foot rear yard setback where 20 feet is required; c) allow 39% building coverage where 25% is the maximum allowed; and 2) Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 148 Lot 17 and lies within the General Residence A (GRA) District. (LU-25-27) **REQUEST TO WITHDRAW**

Planning Department Comments

At the May 27, 2025 meeting, the Board postponed the request to the June 17th meeting pending the submission of a surveyed plan. The applicant has indicated they will be submitting a request for the Board to consider suspending the rules to allow the applicant to withdraw the application.

III. NEW BUSINESS

- A.** The request of **Life Storage LP C/O Sovran Self Storage (Owner)**, for property located at **70 Heritage Avenue** whereas relief is needed for after-the-fact installation of mini-storage units which requires the following: 1) Variance from Section 10.531 to allow a 2-foot rear setback where 50 feet is required; and 2) Variance from Section 10.330 to allow the expansion of a nonconforming use where it is not permitted. Said property is located on Assessor Map 285 Lot 11-B and lies within the Industrial (I) District. (LU-25-36)

Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Commercial, mini-storage, Warehouse	After-the-fact mini-storage units*	Primarily Industrial Uses
<u>Lot area (acres):</u>	7.44	7.44	2 min.
<u>Street Frontage (ft.):</u>	>200	>200	200 min.
<u>Lot Depth (ft.):</u>	>200	>200	200 max.
<u>Primary Front Yard (ft.):</u>	70	70	70 max.
<u>Left Yard (ft.):</u>	49.9	49.9	50 min.
<u>Right Yard (ft.):</u>	50.4	50.4	50 min.
<u>Rear Yard (ft.):</u>	68.5	2	50 min.
<u>Building Coverage (%)</u>	<50	<50	50 max.
<u>Open Space Coverage (%)</u>	~20	~20	20 min.
<u>Estimated Age of Structure</u>		Variance request(s) shown in red.	

*Expansion of a non-conforming use

Other Permits/Approvals Required

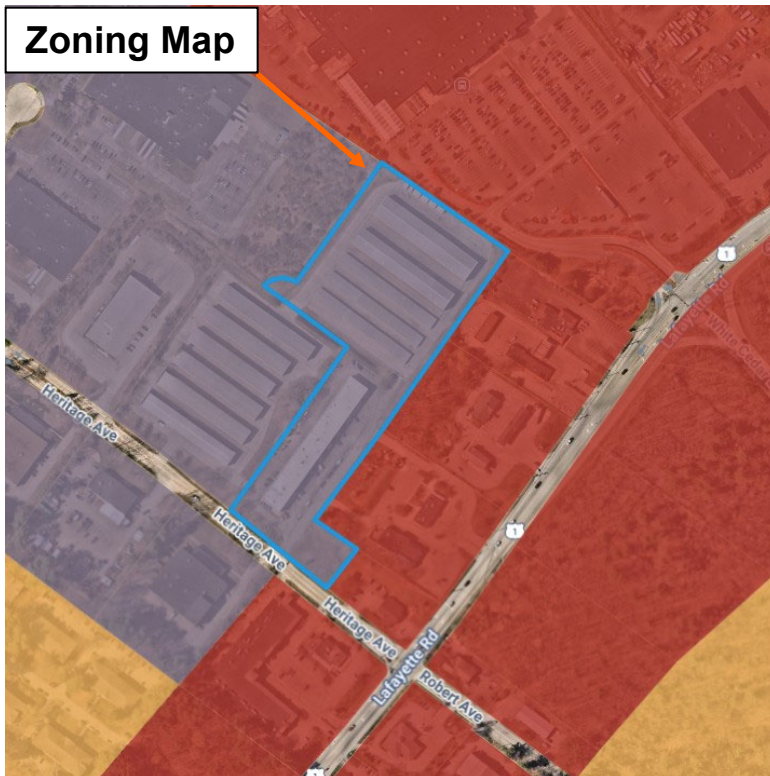
- TAC / Planning Board Amended Site Plan Review

Neighborhood Context

Aerial Map



Zoning Map



Previous Board of Adjustment Actions

- **July 22 1986** – 1) a Variance from Article II, Section 10-206 to permit the construction of a structure (approximately 280' x 30') for use as a mini-storage facility in a business district where warehouses are not an allowed use; and 2) a Variance from Article II, Section 10-206 (23)(d) to permit a residential unit to be constructed for use by the Manager in this structure. The Board voted to **deny** the request as presented and advertised.
- **October 20, 1987** – 1) A Variance from Article III, Section 10-301 (10) and NH RSA 674: 40-41 to allow the subdivision of an existing 7.3 acre lot resulting in Lot B having no access on an accepted public street or an approved private street; and 2) a Variance from Article III, Section 10-302 (Table 5) to allow the creation of said lot with no continuous frontage where minimum continuous frontage of 200' is required. The Board voted to **deny** the request as presented and advertised, because it is a conforming lot that has frontage; it has access; and other buildings can be built on the lot and therefore no hardship.
- **January 5, 1988** – A Variance from Article II, Section 10-207 to allow 7200 s.f. of an industrial structure to be used for warehousing, retail sales and display space in a district where retail sales are not an allowed use. The Board voted to **grant** the request with the following condition:
 - 1) With the understanding that no more than 550 square feet to be used for retail space.
- **March 15, 1988** – A Variance from Article II, Section 10-207 to allow a 6000 s.f. with an additional 400 s.f. mezzanine of an industrial building to be used for retail sales in a district where retail sales are not allowed. The Board voted to **deny** the request as presented and advised. The Board felt that the Variance goes with the land and it is up to the property owner to show a hardship that the space cannot be leased out for industrial use. They feel that a reasonable use can be made of this land in an Industrial Zone and that all criteria for granting the Variance had not been met.
- **May 17, 1988** - A Variance from Article II, Section 10-207 to allow a 6000 s.f. of an existing industrial structure and 400 s.f. of a mezzanine area to be used for retail sales in a district where retail sales are not allowed. The Board voted to **grant** the request with the following **condition**:
 - 1) That the retail sales area be limited to 1920 s.f. (30%) of the total 6400 s.f. gross area to be leased by the applicant.
- **July 17, 1990** - An action is submitted to Appeal an Administrative Decision by the Building Inspector in the interpretation of Article I, Section 10-102 and Article II, Section 10-207 for the occupancy of Dantran, Inc. in a unit at the storage facility for use as a workshop to service and perform light maintenance on it's own trucks. The Board voted to **uphold** the Building Inspectors decision. Notwithstanding the above, if the Appeal of the Administrative Decision is denied, then, the following request is hereby made: a Special Exception as allowed by Article II, Section 10-207 (8) to permit the repair and maintenance of heavy vehicles including large straight trucks and tractor trailers. The Board voted to **grant** the request as presented with the following conditions:
 - 1) That the hours of operation be from 8:00 a.m. to 5:00 p.m;
 - 2) That there be no outside storage;
 - 3) That the property be used for Dantran trucks only (owned or leased); and
 - 4) That the business be located in a 50' x 50' area as indicated on the plan which has been signed and dated by Attorney Mark Beliveau, the Attorney for Magnolia Corporation.

- **August 24, 1993** – An Appeal of an Administrative Decision in the interpretation of Article II, Section 10-207 to allow use of 2,000± s.f. of space within an Industrial district for a coin-operated laundry. The Board voted to **uphold** the Building Inspectors decision. Notwithstanding the above, if the Appeal from Article II, Section 10-207 is denied, then, the following request is hereby made: a Variance from Article II, Section 10-207, is requested to allow a coin-operated Laundromat (retail store) to occupy approximately 2,000 s.f. of structure, in a district where a retail use is not allowed. The Board voted to **grant** the request as presented and advertised.
- **August 24, 1993** – A Variance from Article II, Section 10-207 for 12 months temporary use of 3,600± s.f. of building space (units 4, 5 & 6) within an Industrial district by a non-profit organization for the purpose of teaching gymnastics to students under 13 years of age. The Board voted to **grant** the request as presented with the following **condition**:
 - 1) That the temporary use of the building space be effective September 1, 1993 until September 1, 1994.
- **September 20, 1994** – A request for an Extension of Time for an additional one year period. The Board voted to **grant** the extension of time for one year effective September 20, 1994 until September 21, 1995.
- **August 15, 1995** - A request for an Extension of Time. The Board voted to **grant** the extension of time for an additional one year.
- **November 21, 1995** – An Appeal of an Administrative Decision in the interpretation of Article II, Section 10-207(3) to allow the operation of a design center and showroom for the display and sale of doors, windows and cabinets and for the computer layout of kitchens and baths in Unit 13. The Board voted to **uphold** the Building Inspector's decision. Notwithstanding the above, if the Appeal of an Administrative Decision is denied, then a Variance from Article II, Section 10-207(3) is requested to allow the operation of a design center and showroom for the display and sale of doors, windows and cabinets and for the computer layout of kitchens and baths in Unit 13. The Board voted to **grant** the request as presented and advertised.
- **September 17, 1996** - A request for an Extension of Time for the Seacoast Family YMCA. The Board voted to **grant** the extension of time for an additional one year period effective September 17, 1996 until September 18, 1997.
- **August 19, 1997** - A request for an Extension of Time. The Board voted to **grant** the extension of time for an additional one year to expire September 30, 1997.
- **September 15, 1998** - A request for an Extension of Time for the Seacoast Family YMCA. The Board voted to **grant** the extension of time for an additional one year to expire September 30, 1999.
- **October 19, 1999** - A request for an Extension of Time for the Seacoast Family YMCA. **Withdrawn** by applicant.
- **April 18, 2000** – A Variance from Article II, Section 10-209 to allow the conversion of an existing 50' x 300' building from general industrial warehouse use to a mini storage facility in a district where such use is not allowed. The Board voted to **grant** the request as presented and advertised.

- **March 20, 2001** – A Variance from Article II, Section 10-209 to allow the conversion of a 60' x 300' building from general industrial warehouse use to a mini storage facility in a district where such use is not allowed. The Board voted to **grant** the request as presented and advertised.
- **May 20, 2008** – A Variance from Article II, Section 10-209 was requested to allow the sale of sporting goods (primarily lacrosse equipment) and lacrosse and circuit training in a district where such uses are not allowed. The Board voted to **grant** the request as presented and advertised.
- **October 21, 2008** – A Variance from Article II, Section 10-209 was requested to convert a 7,200 sf portion of an existing building into two levels (14,400 sf total area) of self storage in a district where such use is not allowed. The Board voted to **deny** the request as it does not meet the criteria necessary to grant a variance. There is nothing inherent in the land presenting a hardship and the zoning restriction does not interfere with a reasonable use of the property.
- **April 19, 2011** – To allow Motor Vehicle Repair/automotive glass replacement as a special exception use, which requires the following: Special Exception under Section 10.440, Use #11.20, to permit Motor Vehicle Repair in the Industrial district. The Board voted to **grant** the request as presented and advertised.
- **February 26, 2013** – Outdoor retail use with pool display and outdoor storage area, 4' x 8' sign installed on the fence surrounding the pool display area, and outdoor storage which requires the following: 1) a Variance from Section 10.440 and Section 10.434.40 to allow the outdoor display and outdoor retail sale of pools and related materials. 2) A Variance from Section 10.531 to allow a front yard setback of 36'± where 70' is required. 3) A Variance from Section 10.531 to allow 17%± open space where 20% is required. 4) The Variance(s) necessary to allow a 32 s.f. sign to be erected on a fence. 5) A Special Exception under Section 10.440, Use #20.61 to allow the outdoor storage of pool related materials. The Board voted to **grant** the request as presented, with the following conditions:
 - 1) That the distance from the front property line on Heritage Avenue to the pools in the display area will be no less than 50'.
 - 2) That the area of the proposed sign be erected on the fence will be no greater than 18 s.f.
- **April 23, 2013** – Tanning booth in existing laundromat facility, which requires the following: 1) a Variance from Section 10.440, Use #7.20 to allow a use that is not permitted in this district. 2) A Variance from Section 10.331 to allow a lawful nonconforming use to be extended, enlarged or changed in a manner that is not in conformity with the Zoning Ordinance. The Board voted to **grant** the request as presented and advertised.

Planning Department Comments

The subject property is an industrial property that contains one commercial building, three one-story mini-storage buildings, and two large industrial warehouse buildings. In January 2025 it came to the attention of Planning staff that the property owner had installed several mini-storage units in the rear of the property without the benefit of approvals and permits. The applicant submitted an after-the-fact building permit application in February 2025 and was notified that the storage unit structures would require land use approvals to be placed in the rear yard and for the expansion of a nonconforming use.

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.

HOEFLE, PHOENIX, GORMLEY & ROBERTS, PLLC

ATTORNEYS AT LAW

127 Parrott Avenue | Portsmouth, NH, 03801

Telephone: 603.436.0666 | Facsimile: 603.431.0879 | www.hpgrlaw.com

May 19, 2025

HAND DELIVERED

Stefanie Casella, Principal Planner
Portsmouth City Hall
1 Junkins Avenue
Portsmouth, NH 03801

Re: Life Storage, LP
70 Heritage Avenue
Tax Map 285/Lot 11-B
Industrial ("I") Zone

Dear Ms. Casella, Chair Eldridge & Zoning Board Members:

On behalf of LP Storage, LP, enclosed please find the following in support of a request for zoning relief:

- See Viewpoint Land Use LU-25-26 Application Package uploaded today.
- Owner Authorization.
- 5/19/2025 – Memorandum and exhibits in support of Zoning Relief

We look forward to presenting this application to the Zoning Board at its June 17, 2025 meeting.

Very truly yours,



Kevin M. Baum, Esq.

Encl.

cc: Life Storage, LP

DANIEL C. HOEFLE

ALEC L. MCEACHERN

PETER V. DOYLE

STEPHEN H. ROBERTS In Memoriam

R. TIMOTHY PHOENIX

KEVIN M. BAUM

MONICA F. KIESER

OF COUNSEL:

LAWRENCE B. GORMLEY

JACOB J.B. MARVELLEY

CHRISTOPHER P. MULLIGAN

SAMUEL R. REID

R. PETER TAYLOR

GREGORY D. ROBBINS

KAREN W. OLIVER

JOHN AHLGREN

AUTHORIZATION

The undersigned authorized representative of Life Storage, LP Space Storage of 110 Haverhill Road, Amesbury, Massachusetts, 01913, owner of property located at 70 Heritage Avenue, Portsmouth, New Hampshire, Tax Map 285, Lot 11B (“the Property”). Hereby authorize Hoefle, Phoenix, Gormley & Roberts, PLLC to file documents and appear before the Portsmouth Zoning Board of Adjustment, Planning Board, Conservation Commission and/or Technical Advisory Committee in all matters relating to applications for the Property.

Life Storage, LP

Dated:

By:

Brian Leavitt

Brian Leavitt

Duly authorized

MEMORANDUM

TO: Portsmouth Zoning Board of Adjustment (“ZBA”)
FROM: Kevin M. Baum, Esquire
DATE: May 19, 2025
Re: Applicant: Life Storage, LP
Property: 70 Heritage Road
Tax Map 285, Lot 11B
Industrial (“I”) Zoning District

Dear Chair Eldridge and Zoning Board Members:

On behalf of Life Storage, LP (“Life Storage”), we are pleased to submit this Memorandum and exhibits in support a variance for limited dimensional relief to permit a multi-family residential development site on the above-referenced property (the “Property”).

I. EXHIBITS

- A. Site Plan – Holden Engineering.
- B. Structure Plans.
- C. City GIS Map – showing the property and surrounding area zones.
- D. Site Photographs.
 - Satellite
 - Street View
- E. Tax Map 285.

II. PROPERTY/PROJECT

70 Heritage Avenue is an approximately 7.44-acre parcel located in the Industrial Zone, directly abutting the Walmart Parking Lot in the Gateway 1 (“G1”) District (“the Property”). The Property contains one commercial building, three one-story mini-storage buildings, and two large industrial warehouse buildings. **(Exhibit A)**. An abutting parcel, 100 Heritage Avenue also contains storage units owned by Life Storage, LP, but is not the subject of this application. The storage use at 70 Heritage Avenue largely predates the current zoning ordinance, with conversion to storage space permitted in the past (2001) and outdoor storage of pool items (2013).

Life Storage, LP has installed a collection of portable mini-units on the parcel at the rear of the Property. **(Exhibit A)**. The mini-storage units are 20 feet long by 10 feet wide, and approximately 8.5 feet tall. **(Exhibit B)**. The mini-units are located on a paved area close to the rear lot line, which abuts the Walmart parking lot/access drive and Gateway District 1. The

mini-units cannot be placed any farther from the rear lot line as it would impede the turning radius behind and around the existing rear storage building. While the mini-units are readily disassembled and removable, the City Planning Department has determined they are permanent structures subject to the applicable setback requirements. Accordingly, Life Storage, LP seeks after-the-fact relief to allow the mini-units to remain within the rear yard setback (“the Project”).

II. RELIEF REQUIRED

Portsmouth Zoning Ordinance §10.440 – to permit expansion of the nonconforming storage unit use where the use is not permitted.

Portsmouth Zoning Ordinance §10.530 – to permit the placement of mini-storage units 2-4 feet from the rear lot line where 50 feet is required.

III. VARIANCE REQUIREMENTS

1. The variances will not be contrary to the public interest.
2. The spirit of the ordinance is observed.

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

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

- The use of land, buildings and structures for business, industrial, residential and other purposes – The Project adds portable mini-storage units, slightly expanding the self-storage facility use where the use has long existed.
- The intensity of land use, including lot sizes, building coverage, building height and bulk, yards and open space – The mini-units are placed over paved area, so there is no change to open space and building coverage is far below the 50% limit.
- The design of facilities for vehicular access, circulation, parking and loading – The vehicular access and circulation will not change because the mini-units are located over 45 feet from the closest large storage building.

- The impacts on properties of outdoor lighting, noise, vibration, stormwater runoff and flooding – The Property is currently used as a storage facility. The addition of a handful of mini-units will not negatively affect these factors compared to existing conditions.
- The preservation and enhancement of the visual environment – The Property and mini-units are located in the Industrial Zone separated from the Walmart parking lot/access drive by a row of trees. The mini-units will not be seen from Heritage Avenue.
- The preservation of historic districts, and buildings and structures of historic or architectural interest – Not applicable.
- The protection of natural resources, including groundwater, surface water, wetlands, wildlife habitat and air quality – The Project is in the Industrial Zone abutting the Gateway 1 District. The area is intensely developed, and the proposed mini-units are not located close to any natural resource.

Based upon the foregoing, none of the variances “in a marked degree conflict with the ordinance such that they violate the ordinance’s basic zoning objectives.” Malachy Glen, supra, which also held:

One way to ascertain whether granting the variance would violate basic zoning objectives is to examine whether it would alter the essential character of the locality.... Another approach to [determine] whether granting the variance violates basic zoning objectives is to examine whether granting the variance would threaten the public health, safety or welfare. (emphasis added)

The Property is located on Heritage Road near the Lafayette Road (Route 1) intersection and is surrounded by commercial properties. The slight expansion of the storage use resulting from the addition of the mini-units will not alter the intensely commercial area. The placement of the mini-units closer to the rear lot line also maintains sufficient access lane and turning radius around the rear of the existing storage building on the site. The mini-units are sited at the rear of the Property, screened from the Walmart parking lot/access drive by trees. It is unlikely that any structures will be located on that portion of the Walmart lot in the foreseeable future. Even in the event of future development of the Walmart parking lot, that property is located in the G1 District, which permits limited and in some cases no side yard setbacks. Accordingly, granting each requested variance will neither “alter the essential character of the locality,” nor “threaten the public health, safety or welfare.”

3. Substantial justice will be done by granting the variances.

If “there is no benefit to the public that would outweigh the hardship to the applicant” this factor is satisfied. Harborside Associates, L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508 (2011). That is, “any loss to the [applicant] that is not outweighed by a gain to the general public is an injustice.” Malachy Glen, supra at 109.

Life Storage is constitutionally entitled to the use of the lot as they see fit, subject to the effect upon the expansion restrictions and rear yard requirements. “The right to use and enjoy one's property is a fundamental right protected by both the State and Federal Constitutions.” N.H. CONST. pt. I, arts. 2, 12; U.S. CONST. amends. V, XIV; Town of Chesterfield v. Brooks, 126 N.H. 64 (1985) at 68. Part I, Article 12 of the New Hampshire Constitution provides in part that “no part of a man's property shall be taken from him, or applied to public uses, without his own consent, or that of the representative body of the people.” Thus, our State Constitutional protections limit the police power of the State and its municipalities in their regulation of the use of property. L. Grossman & Sons, Inc. v. Town of Gilford, 118 N.H. 480, 482 (1978). “Property” in the constitutional sense has been interpreted to mean not the tangible property itself, *but rather the right to possess, use, enjoy and dispose of it*. Burrows v. City of Keene, 121 N.H. 590, 597 (1981). (emphasis added).

The Supreme Court has also held that zoning ordinances must be reasonable, not arbitrary and must rest upon some ground of difference having fair and substantial relation to the object of the regulation. Simplex Technologies, Inc. v. Town of Newington, 145 N.H. 727, 731 (2001); Chesterfield at 69.

The Property currently supports a self-storage facility in the Industrial zone, abutting the Gateway 1 District and intensive commercial uses. The mini-units are low profile structures placed on pavement. There is no increase in impervious surface, and the units will not be seen from Heritage Avenue nor noticed behind the trees bordering the Walmart parking lot/access drive. Accordingly, there is no harm to the public from permitting the slight expansion for structures in the rear yard setback; however, Life Storage will be harmed by denial of the variances as they will be unable to accommodate demand for services from its long existing business. For these reasons, substantial justice will be done by granting the variances.

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

As noted, the Project slightly expands the existing self-storage use by adding a collection of portable mini-storage units at the rear of the lot, which abuts the Walmart parking lot/access drive. This area is already developed with extensive commercial and industrial units. The units are low profile, behind a tree border, and will not draw any attention. In light of these factors, granting the requested variance will not diminish surrounding property values.

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

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

Although the Property is quite large, the lot is relatively long and irregularly shaped with an oversized rear yard abutting a commercial access drive. Storage use already exists through grandfathering and prior zoning relief. The structures are located immediately adjacent to the G1 District, which permits limited to no structure setbacks. These factors combine to create special conditions.

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

Use regulations/expansion restrictions exist to keep similar uses together and to prevent conflicts among incompatible uses. Yard setbacks exist to promote air, light, and space for stormwater treatment. They also exist to maintain sightlines for pedestrians and motorists. The slight expansion of the longstanding nonconforming use fits the commercial area. The mini-units are only 8.5 feet tall and screened by a row of trees so neighbors' access to air and light remains unchanged. There will be no increase in impervious surface, so stormwater volume and drainage patterns will not be negatively affected. Additionally, while the mini-units are close to the rear lot line abutting the Walmart parking lot/access drive, there is no entry or exit from the Property to the access drive and therefore no risk of decreased visibility. Additionally, the Property abuts the G1 Zone which allows limited setbacks. For all these reasons, there is no fair and substantial relationship between the general public purposes of these PZO provisions and their specific application to the Property.

c. The proposed use is reasonable.

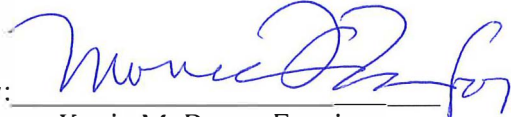
While self-storage is not a permitted use in the Industrial Zone, this self-storage facility has long existed and is a fixture in the neighborhood. The slight expansion in an underutilized

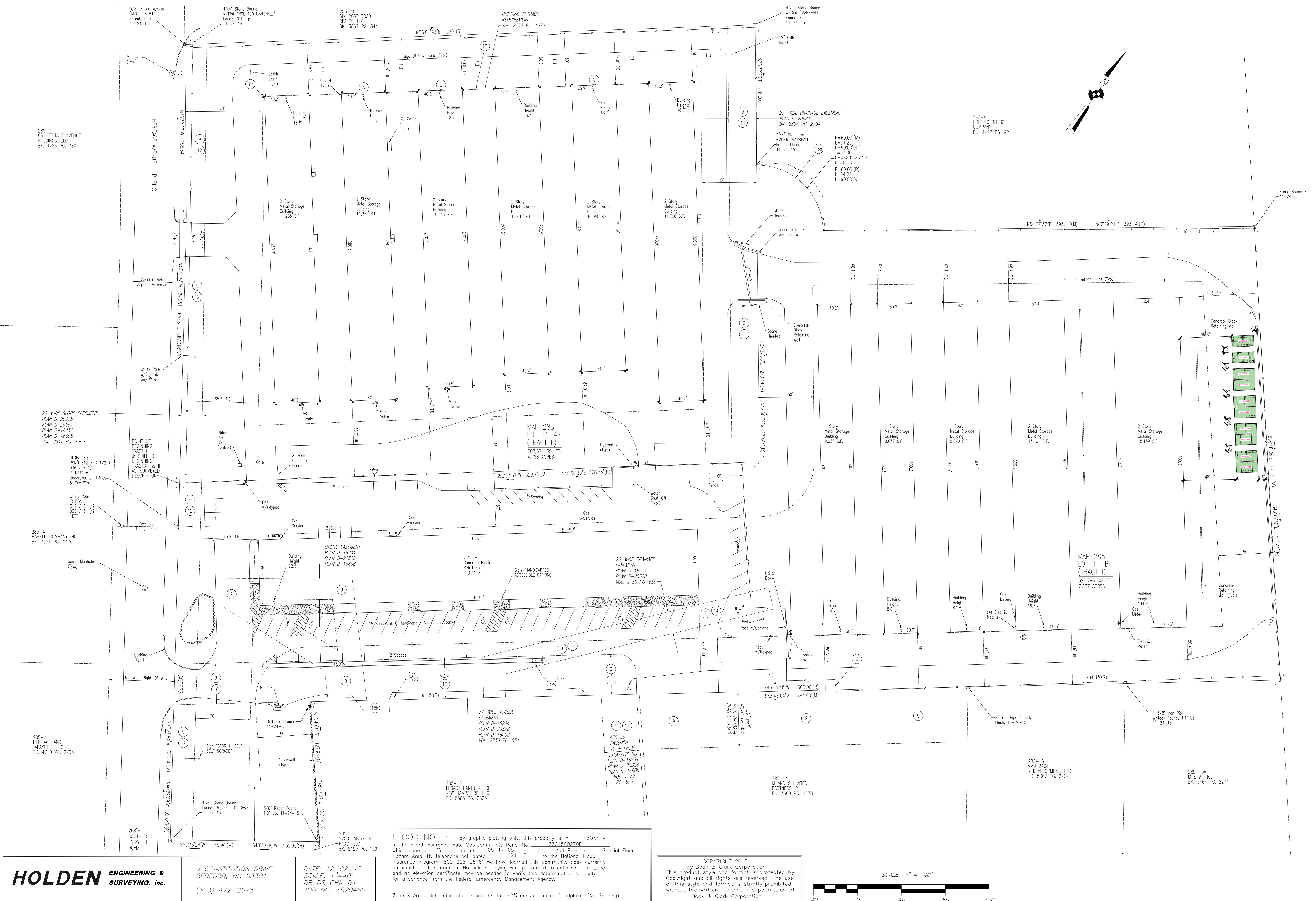
area along a commercial access drive and in accordance with both the intent of the PZO. The proposed placement of the mini-units will result in no noticeable impact to the nearest abutting property and will result in little to no visual impact. Accordingly, the use is reasonable, and denial will result in an unnecessary hardship to Life Storage.

IV. CONCLUSION

For all the reasons stated, Life Storage respectfully requests that the Portsmouth Zoning Board of Adjustment grant the submitted variance requests. We look forward to presenting this application on June 17, 2025.

Respectfully submitted,
LIFE STORAGE, LP

By: 
Kevin M. Baum, Esquire



HOLDEN ENGINEERING & SURVEYING, inc.

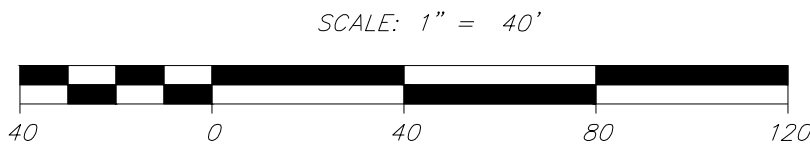
9 CONSTITUTION DRIVE
BEDFORD, NH 03301
(603) 472-2078

DATE: 12-02-15
SCALE: 1"=40'
DR DS CHK DJ
JOB NO. 1520460

FLOOD NOTE: By graphic plotting only, this property is in ZONE X of the Flood Insurance Rate Map, Community Panel No. 33015C02270E, which bears an effective date of 05-17-05, and is Not Partially in a Special Flood Hazard Area. By telephone call dated 11-24-15, to the National Flood Insurance Program (800-358-9616) we have learned this community does currently participate in the program. No field surveying was performed to determine this zone and an elevation certificate may be needed to verify this determination or apply for a variance from the Federal Emergency Management Agency.

Zone X Areas determined to be outside the 0.2% annual chance floodplain. (No Shading)

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MASS UNITS MIX DATA

UNIT	C.C. DOWN OUT	C.C. DOWN IN	C.C. DOWN IN	C.C. DOWN IN	UP IN	C.C. UP IN	UP IN	TOTAL	% of UNITS	NET SQ.FT.
5x5	16	0	0	0	0	0	0	16	42	400
5x10	12	0	0	0	0	0	0	12	32	600
10x10	10	0	0	0	0	0	0	10	26	1,000
	38	0	0	0	0	0	0	38	100	2,000

NET RENTABLE 2,000
AVG. UNIT SIZE 53
20X10 MASS UNIT (QTY).....10 (Standard Building)

NOTES: FIELD VERIFY DIMENSIONS PRIOR TO INSTALLATION. ANY UTILITY MAINTENANCE EASEMENTS TO BE VERIFIED W/ LOCAL UTILITY COMPANY AS NEEDED. DRAWINGS ARE FOR REFERENCE AND MUST NOT BE USED AS FINAL CONSTRUCTION DOCUMENT.

ExtraSpace Storage®

EXTRA SPACE STORAGE, Inc.
2795 E COTTONWOOD PARKWAY, SUITE 400,
SALT LAKE CITY, UTAH 84121

PROJECT CONTACT

NAME: Robert Agneta
PHONE: (781) 5891230
EMAIL: bagneta@extraspace.com

CONTACT ADDRESS

EXTRA SPACE STORAGE, Inc.,
CORPORATE OFFICE
2795 E. COTTONWOOD PKWY,
SUITE 300,
SALT LAKE CITY, UT 84121

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PROJECT NAME

ESS SITE #3416

PROJECT LOCATION

EXTRA SPACE STORAGE #3416
70 Heritage Ave
Portsmouth, NH 03801

DATE

02-24-2025

EXHIBIT A

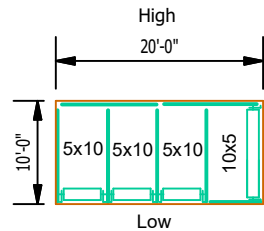
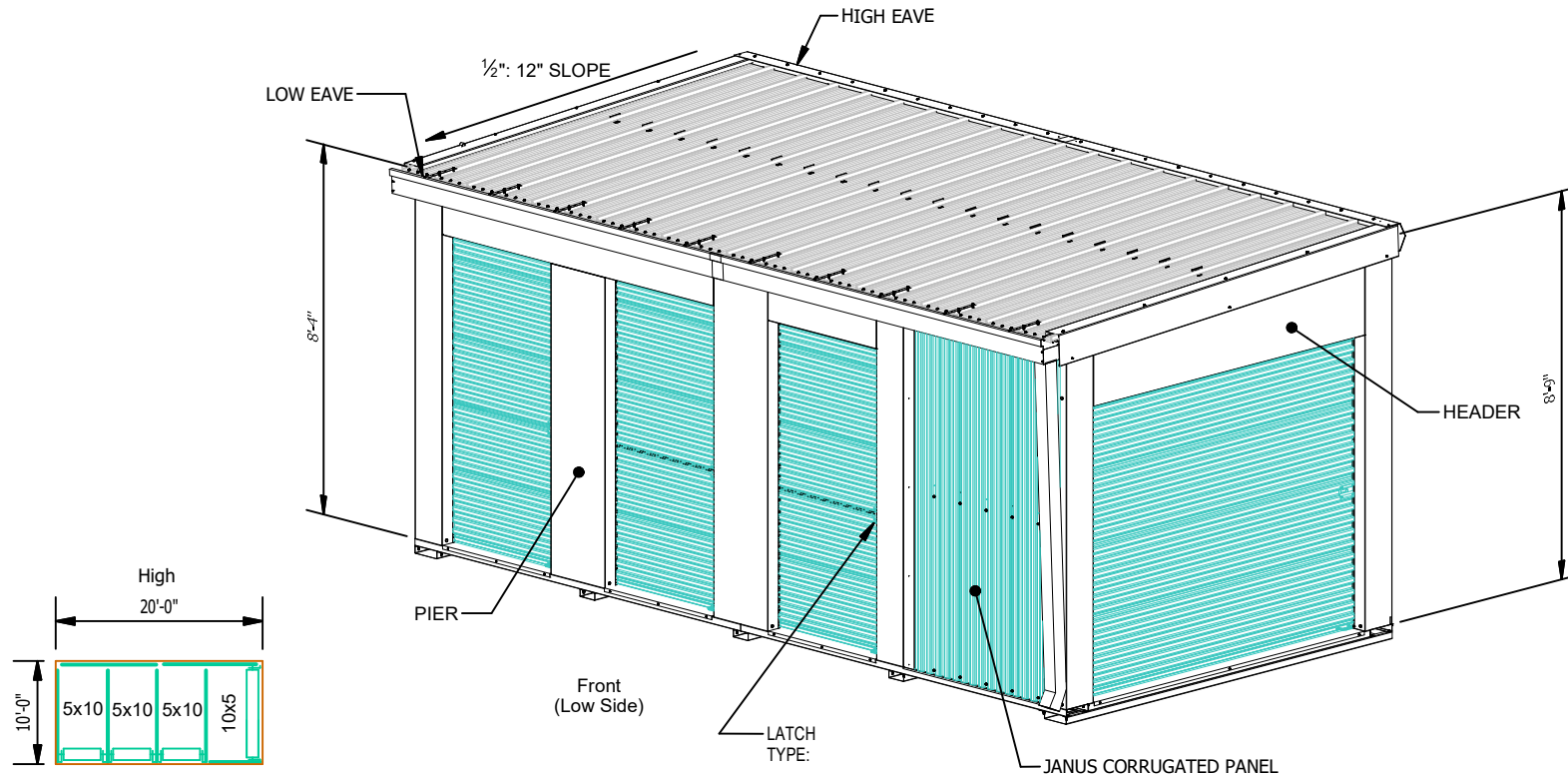
SHEET TITLE

**MASS UNITS
CONVADD PLAN**

SHEET NUMBER

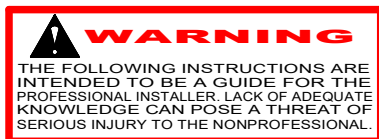
A-01

MASS PORTABLE BUILDING COMPONENT



ONE UNIT CONFIGURATION
(3) 5X10 & (1) 10x5
UNIT ENTRY

BUILDING LOADS PER IBC 2012, 2015, 2018	
ROOF LIVE LOAD	20PSF
ROOF SNOW LOAD	30PSF
FLOOR LOAD (Equally distributed)	125PSF
DESIGN WIND SPEED	115mph



Janus International Corporation

134 East Luke Road Temple, GA. 30179 770.562.2850 Janusintl.com

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20X10 MASS PORTABLE BUILDING

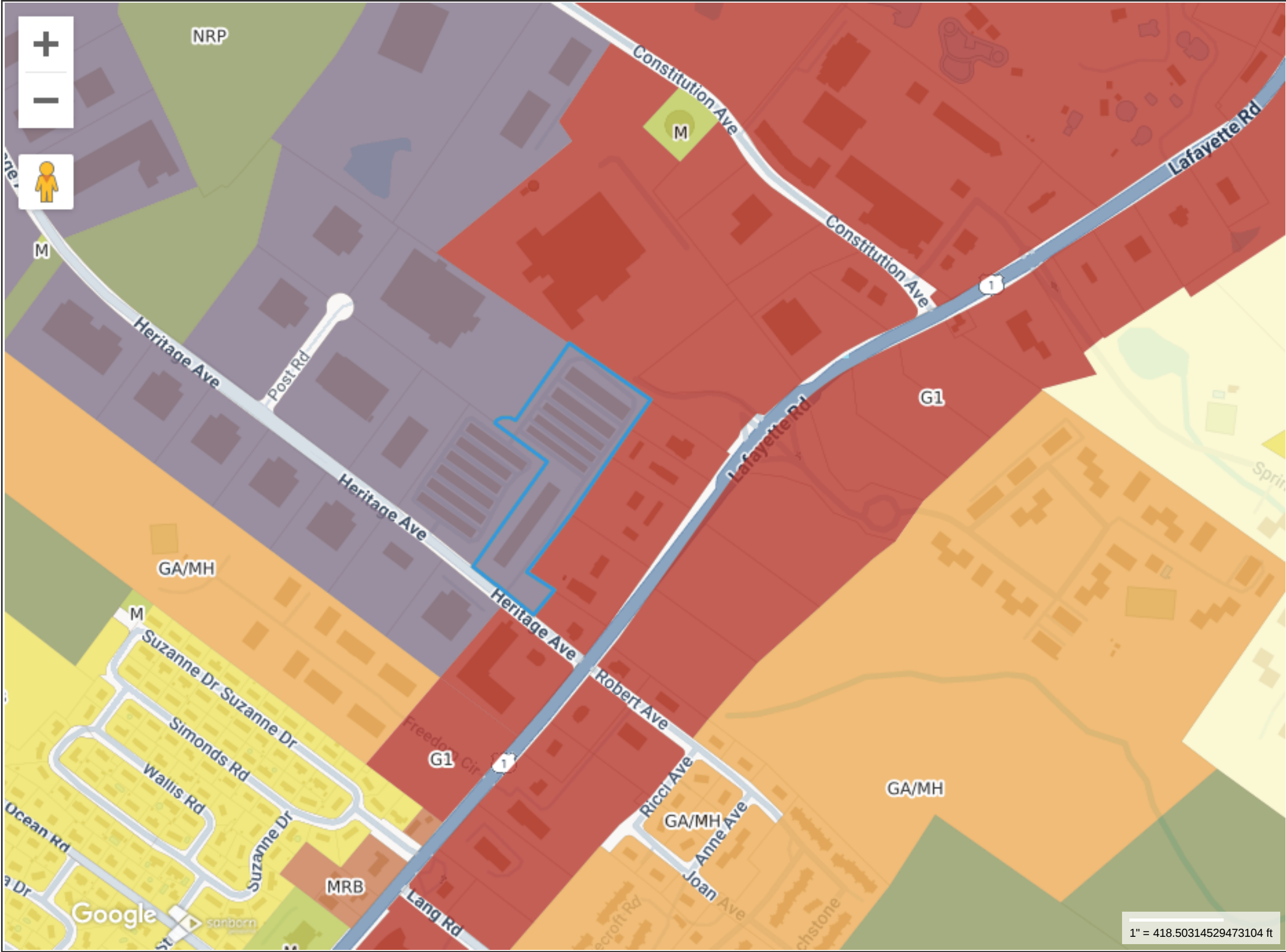
NOTE: WHEN ORDERING REPLACEMENT PARTS SPECIFY PART NUMBER & DESCRIPTION [DO NOT USE MARK NUMBER]

- Step 1) Getting Started
PICK A LARGE CLEAR AND LEVEL AREA TO UNPACK YOUR PARTS. USE CARE AS YOU UNPACK, AS TO NOT TO SCRATCH OR DENT THE PRE FINISHED ITEMS.
- 2) Safety First
USE CAUTION WHEN LIFTING, MOVING OR ASSEMBLING THE METAL PARTS & PANELS AS THEIR EDGES CAN BE SHARP. MECHANICS GLOVES ARE RECOMMENDED. READ ALL THE INSTRUCTIONS PRIOR TO STARTING ANY WORK.
- 3) Tools Required
C-CLAMPS OR WELDERS VISE GRIPS, DRILL WITH BITS, CARPENTERS SQUARE, LINE UP TOOL, MAGNETIC 4' LEVEL, SCREW DRIVERS, SCREW GUN W/HEX BITS, SHEET METAL SNIPS, TAPE MEASURE, UTILITY KNIFE, WRENCHES, VISE GRIPS, CIRCULAR SAW, SOCKETS AND RATCHET.
- 4) Inventory Your Parts
UNPACK THE PARTS AT THIS TIME. REFER TO THE PARTS LIST FOR THE COMPLETE COMPONENT INVENTORY; NOTE ANY SHORTAGES.

SCALE: 1:50	PART NUMBER	MANUFACTURED or PURCHASED MANUFACTURED	REVISION DATE:
DATE: 2/5/2024	DESCRIPTION 20x10 Mass LEF W-(3) door front & (1) 10x5 door RS		
DRAWN BY: STID M.	DRAWING FILE NUMBER: A		
CHECKED BY: TARIK A.			NUMBER OF SHEETS 1 OF 27

EXHIBIT B

70 Heritage in Context



Property Information
Property ID 0285-0011-000B
Location 70 HERITAGE AVE
Owner LIFE STORAGE LP



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

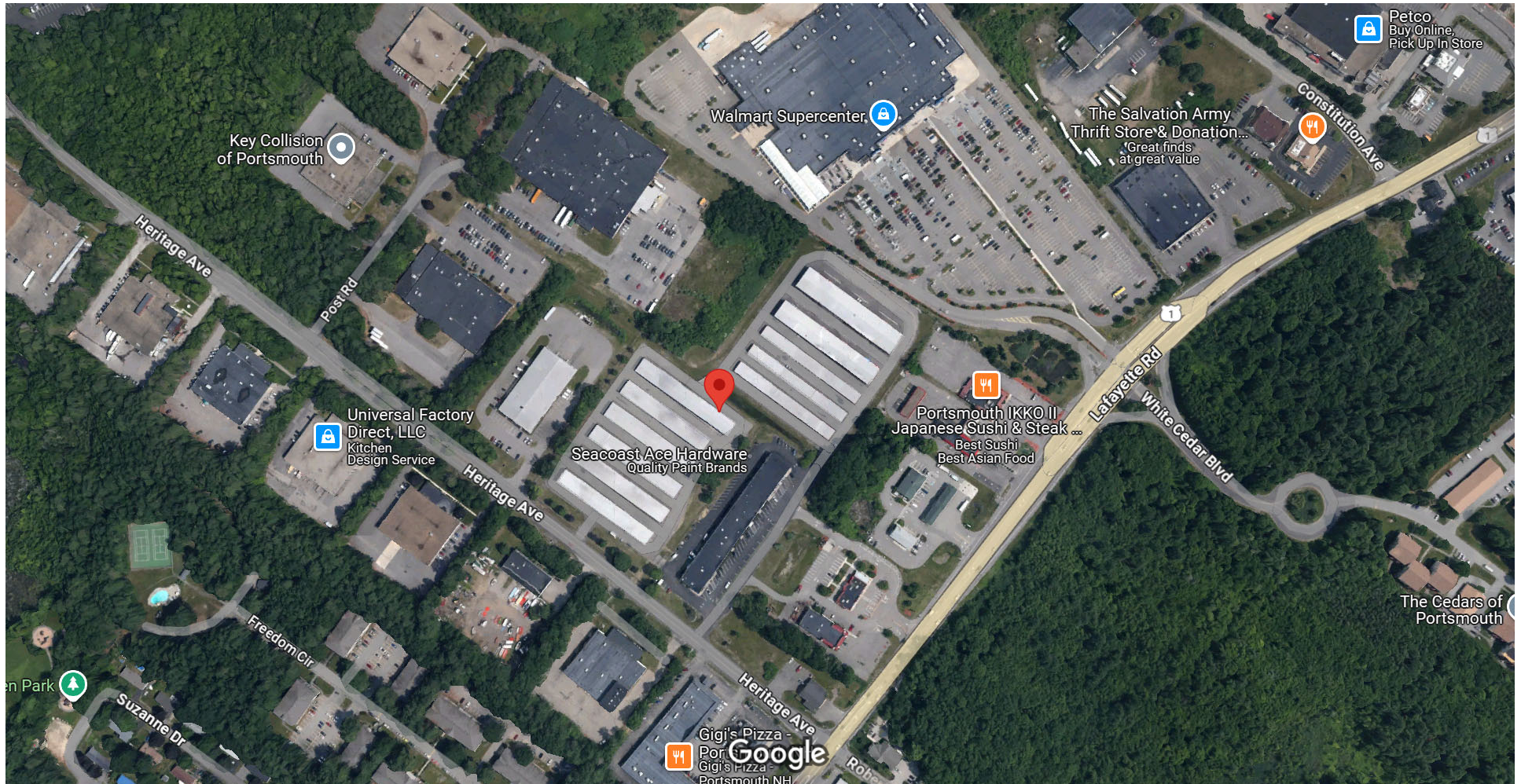
City of Portsmouth, NH makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.

Geometry updated 09/26/2024

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

EXHIBIT C

70 Heritage Ave



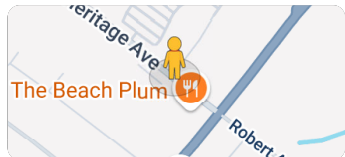
Imagery ©2025 Google, Imagery ©2025 Airbus, CNES / Airbus, Maxar Technologies, USDA/FPAC/GEO, Map data ©2025 200 ft

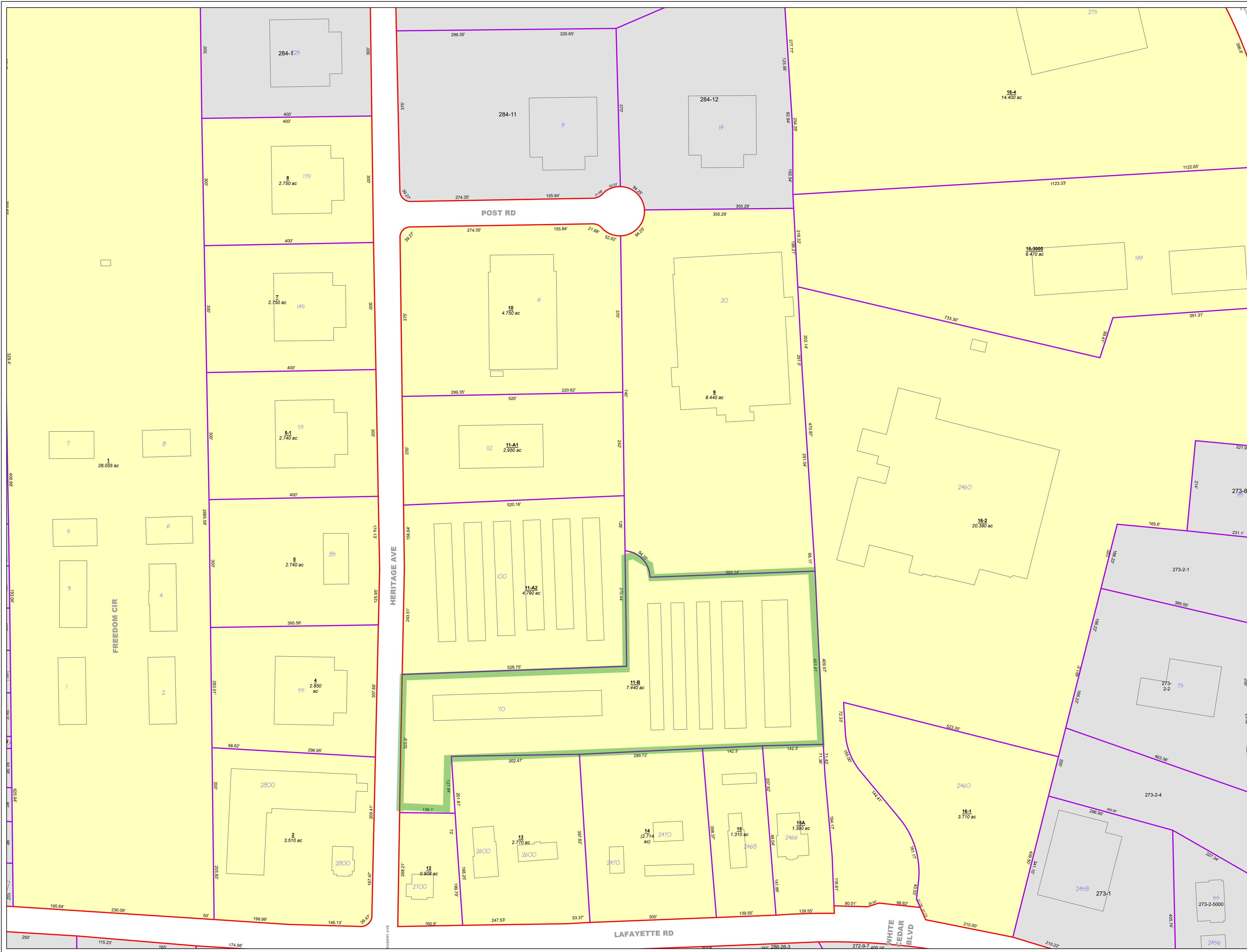
EXHIBIT D

Portsmouth, New Hampshire



Image capture: Nov 2024 © 2025 Google

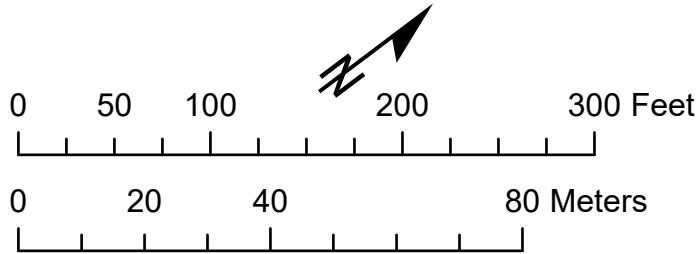




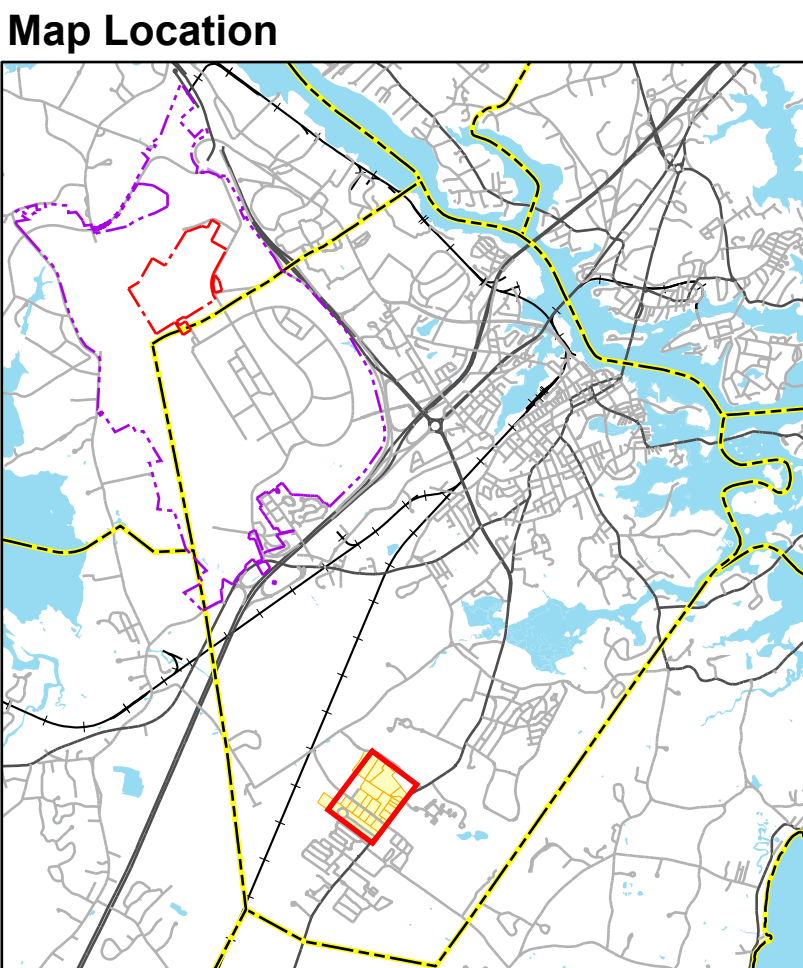
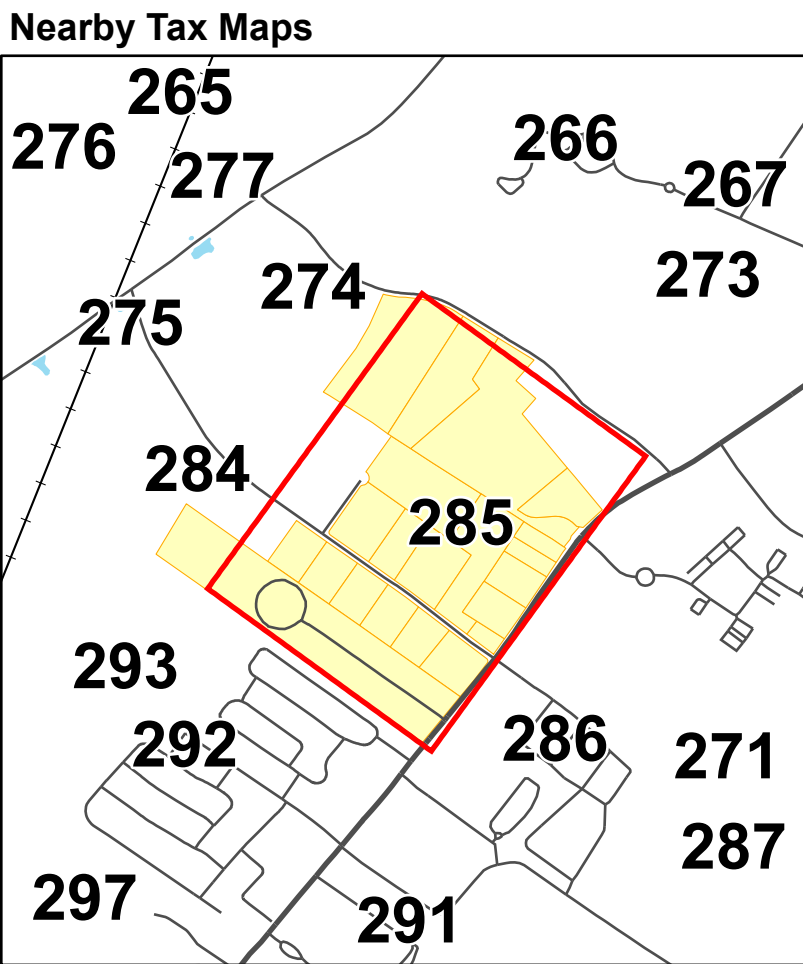
Partial Legend
See the cover sheet for the complete legend.

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

EXHIBIT E



This map is for assessment purposes only. It is not intended for legal description or conveyance. Parcels are mapped as of April 1. Building footprints are 2006 data and may not represent current structures. Streets appearing on this map may be paper (unbuilt) streets. Lot numbers take precedence over address numbers. Address numbers shown on this map may not represent posted or legal addresses.



III. NEW BUSINESS

B. The request of **Suzanne S. Dargie (Owner)**, for property located at **35 Boss Avenue** whereas relief is needed to construct a two-story addition to the existing single-family home which requires the following: 1) Variance from Section 10.521 to a) allow a 8.5 foot right side yard where 10 feet is required and b) 22.5% building coverage where a maximum of 20% is permitted. Said property is located on Assessor Map 152 Lot 42 and lies within the Single Residence B (SRB) District. (LU-25-72)

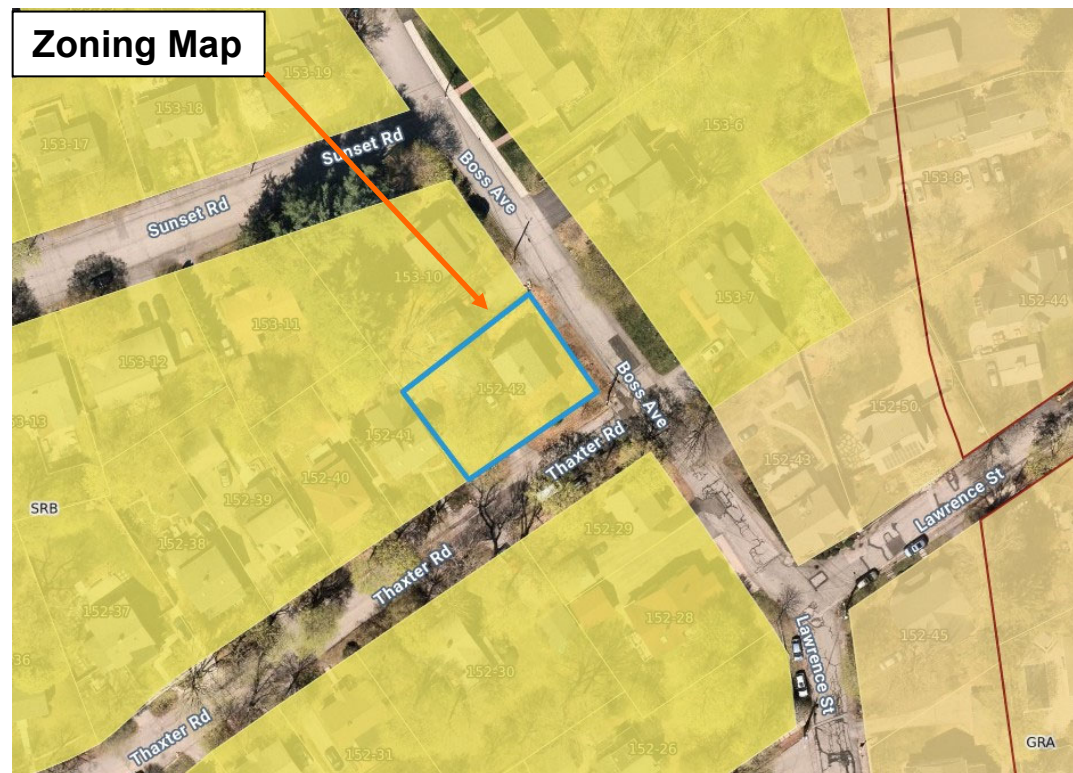
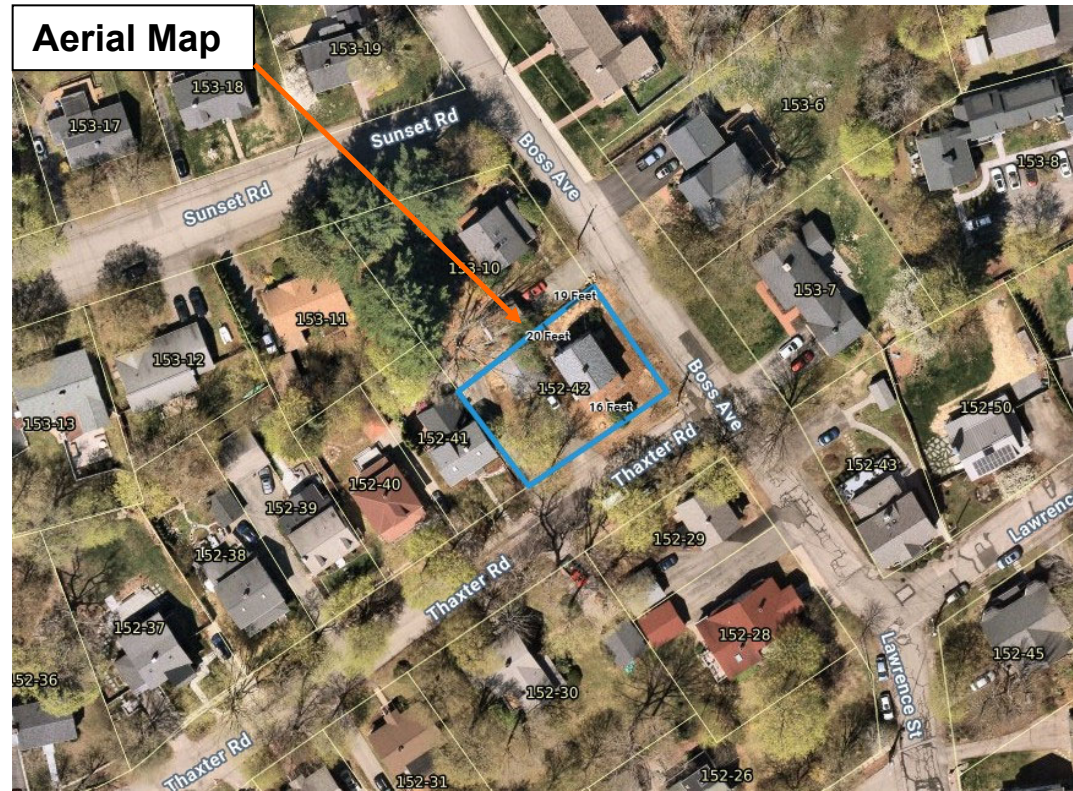
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family	Addition to Primary Structure	Primarily Residential
<u>Lot area (sq. ft.):</u>	6,969	6,969	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	6,969	6,969	15,000 min.
<u>Lot depth (ft.):</u>	85.4	85.4	100 min.
<u>Street Frontage (ft.):</u>	174.5	174.5	100 min.
<u>Front Yard (ft.) (Boss Ave):</u>	16	15	9.5 min. (Sec.10.516.10)
<u>Secondary Front Yard (ft.) (Thaxter Rd):</u>	16	16	30 min.
<u>Right Side Yard (ft.):</u>	Primary Structure: 20	Addition: 8.5	10 min.
<u>Rear Yard (ft.):</u>	Primary Structure: >30	Addition: >30	30 min.
<u>Building Coverage (%):</u>	19.6	22.5	20 max.
<u>Open Space Coverage (%):</u>	61.9	60.5	40 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Parking</u>	>2	>2	2
<u>Estimated Age of Structure:</u>	1937	Variance request(s) shown in red.	

Other Permits/Approvals Required

- Building Permit

Neighborhood Context



Previous Board of Adjustment Actions

- No previous BOA history.

Planning Department Comments

The applicant is proposing to construct a two-story side addition to the primary structure with two bathrooms. The proposed addition requires relief for right side yard setback and building coverage greater than the maximum allowed.

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.

Variance Request for 35 Boss Ave, Portsmouth NH

Proposed Project: Construction of a two-story side addition with two bathrooms

Required Side Setback: 10 feet

Proposed Setback: 9 feet

Required Maximum Lot Coverage: 20%

Proposed Lot Coverage: 22%

Variance Requested:

- 1-foot relief from the side yard setback requirement
 - 2% increase in allowable lot coverage
-

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

The proposed addition maintains the residential character of the neighborhood and will be consistent with the existing structure and surrounding homes. A 1-foot reduction in the side setback and a 2% increase in lot coverage will not negatively affect the appearance, safety, or use of adjacent properties. The design respects the scale and spacing of neighboring homes and will not impair the intent of the ordinance. There is no anticipated impact on traffic, light, air, or privacy.

10.233.22 – The spirit of the Ordinance will be observed

The spirit of the ordinance is to maintain appropriate spacing and density to preserve neighborhood character, ensure safety, and prevent overcrowding. The proposed addition aligns with these goals by maintaining a compatible scale and design with the surrounding properties. The modest increases in both side setback and lot coverage are balanced by a well-considered layout and high-quality construction. The additional lot coverage remains minor and is used to improve functional living space without overdeveloping the lot.

10.233.23 – Substantial justice will be done

Granting the variances will allow the homeowners to modernize their home with two much-needed bathrooms, improving the daily livability of a house that currently has only one. Denial of the request would result in a disproportionate hardship to the homeowner compared to any perceived benefit to the public. The requested variances are minor, reasonable, and do not adversely affect the surrounding neighborhood, thus substantial justice is done by granting relief.

10.233.24 – The values of surrounding properties will not be diminished

The proposed improvements will be completed with high-quality materials and workmanship, enhancing the aesthetics and functionality of the existing home. The scale of the addition is

consistent with neighboring homes, and there is no evidence to suggest it would diminish nearby property values. On the contrary, such upgrades can increase curb appeal and property value, potentially benefiting the surrounding area.

10.233.25 – Literal enforcement of the Ordinance would result in unnecessary hardship

Strict adherence to the 10-foot side setback and 20% lot coverage requirement would substantially limit the size and functionality of the proposed addition. Due to the lot's shape and the existing home's placement, these restrictions would prevent the homeowners from making reasonable and proportional improvements. The hardship is not self-created but arises from the property's existing constraints. Allowing a 1-foot setback reduction and 2% increase in lot coverage enables a modest and practical addition that meets the family's needs while remaining in harmony with the neighborhood.

David and Suzanne Dargie
35 Boss Ave.
Portsmouth NH 03801
suzanne.dargie@gmail.com
207-671-0674

Date: 05/13/25

To:
City of Portsmouth
Zoning Board of Adjustment
1 Junkins Ave Unit 1
Portsmouth NH, 03801

Subject: Authorization to Represent Homeowner at Zoning Board Meeting


To Whom It May Concern,

I, Suzanne Dargie, owner of the property located at 35 Boss Ave, hereby authorize **Persson Construction LLC** and its representatives to act on my behalf in matters related to the zoning variance application for a proposed addition at the above-mentioned property.

This authorization includes the right to submit applications, attend zoning board meetings, present plans and supporting documentation, and respond to questions or requests from the Zoning Board of Adjustment regarding this project.

Please allow Persson Construction to serve as our representative for all purposes related to this application and hearing process.

Signature:



Date: May 13, 2025

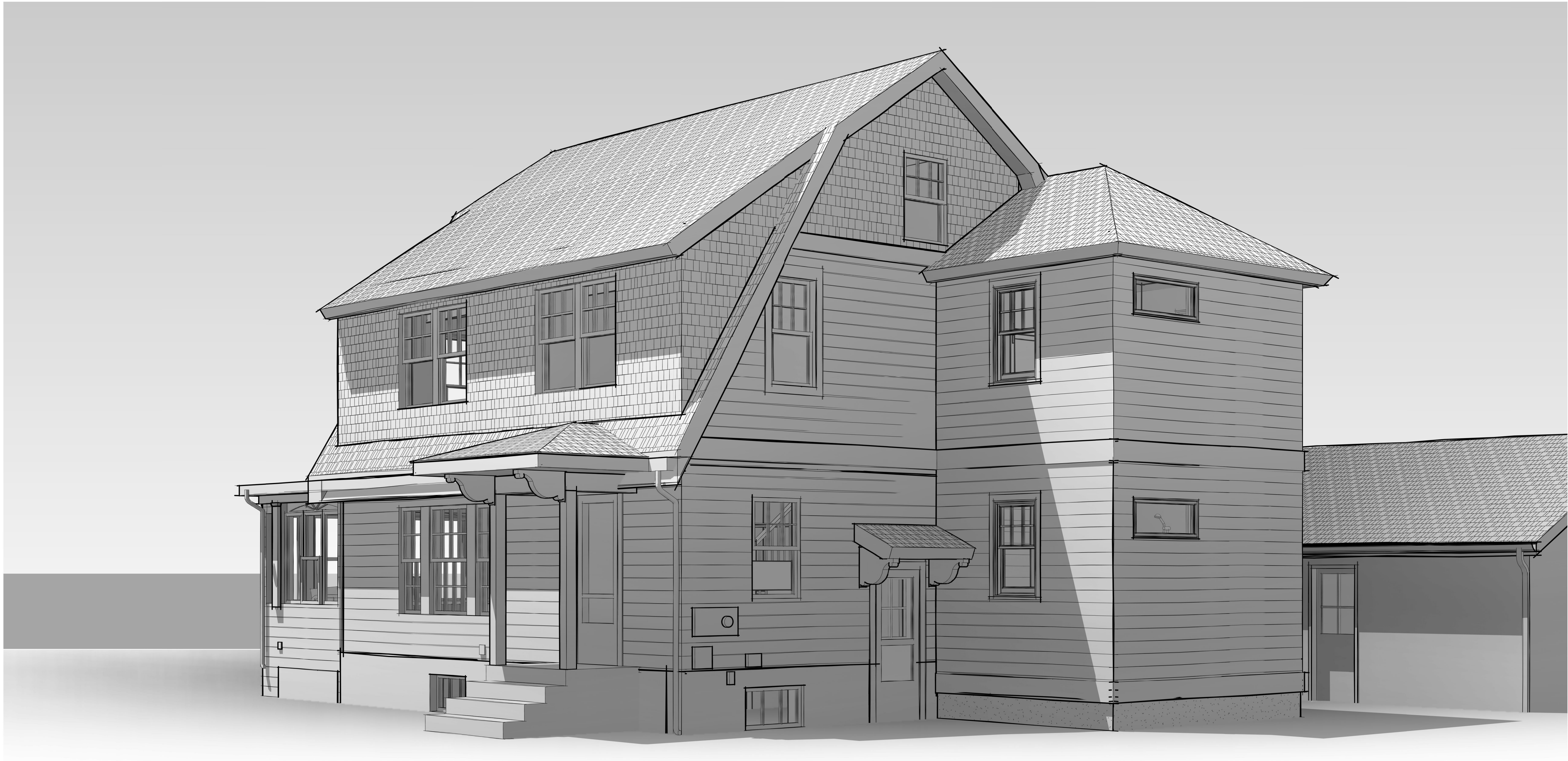
35 Boss Ave. Portsmouth, NH



www.willowandsagedesign.com
860-716-3902

DARGIE

35 Boss Ave. Portsmouth, NH



NORTHEAST PERSPECTIVE

ABBREVIATIONS

ADJ.	ADJUSTABLE	G.F.I.	GROUND FAULT	PTD	PAINTED
A.F.F.	ABOVE FINISH FLOOR		INTERRUPTER	R.E.	REFERENCE ELEVATION
ALUM.	ALUMINUM	G.W.B.	GYPSUM WALL BOARD	REQ'D	REQUIRED
@	AT	HORIZ	HORIZONTAL	RND	ROUND
BD	BOARD	ICCF	INSULATED CONCRETE	R.O.	ROUGH OPENING
B.I.	BUILT-IN		FORMS	S.D.L.	SIMULATED DIVIDED LITE
CCSF	CLOSED CELL SPRAY	INSUL	INSULATION	S.L.	SIDE LITE
	FOAM INSULATION	INT	INTERIOR	SQ	SQUARE
C.L.	CENTER LINE	L.V.L.	LAMINATED VENEER	T&G	TONGUE AND GROOVE
CONC	CONCRETE		LUMBER	T.J.I.	TRUSS JOIST INSTITUTE
CONST	CONSTRUCTION	MAX	MAXIMUM	T.T.W.	TO THE WEATHER
DEG	DEGREE	MIL.	MILLIMETER	TYP	TYPICAL
DIA	DIAMETER	MM	MILLIMETER	U.N.O.	UNLESS NOTED OTHERWISE
EQ	EQUAL	MFGR	MANUFACTURER	VERT	VERTICAL
E.S.	EACH SIDE	MIN	MINIMUM	W	WITH
EXT	EXTERIOR	O.N.	ON CENTER	W.I.	WALK-IN
F.C.	FIBER CEMENT	P.X.	PULL-DOWN		
FDN	FOUNDATION	PERF	PERFORATED		
FIN	FINISH	PL	PLATE		
FT	FOOT	P.S.I.	POUNDS PER		
GALV	GALVANIZED		SQUARE INCH		
G.B.	GLASS BLOCK	P.T.	PRESSURE TREATED		

CONCEPTUAL DESIGN-V2
4/25/25

DRAWING INDEX

NUMBER	SHEET NAME	DISCIPLINE
A0	COVER SHEET	ARCHITECTURAL
A1	FOUNDATION PLAN	ARCHITECTURAL
A2	FIRST FLOOR PLAN	ARCHITECTURAL
A3	SECOND FLOOR PLAN	ARCHITECTURAL
A4	THIRD FLOOR PLAN	ARCHITECTURAL
A5	ROOF PLAN	ARCHITECTURAL
A6	ELEVATIONS	ARCHITECTURAL
A7	BUILDING SECTIONS	ARCHITECTURAL

CONCEPTUAL DESIGN - NOT FOR CONSTRUCTION

Scale: 1/4" = 1'-0"
Date: 4/25/25
Project Number: 2025-36

REVISIONS		
NO.	DESCRIPTION	DATE

CONCEPTUAL
DESIGN-V2
COVER SHEET

A0

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REVISIONS		
NO.	DESCRIPTION	DATE

CONCEPTUAL
DESIGN-V2

FOUNDATION
PLAN

A1

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

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LIABILITY/DISCLAIMER

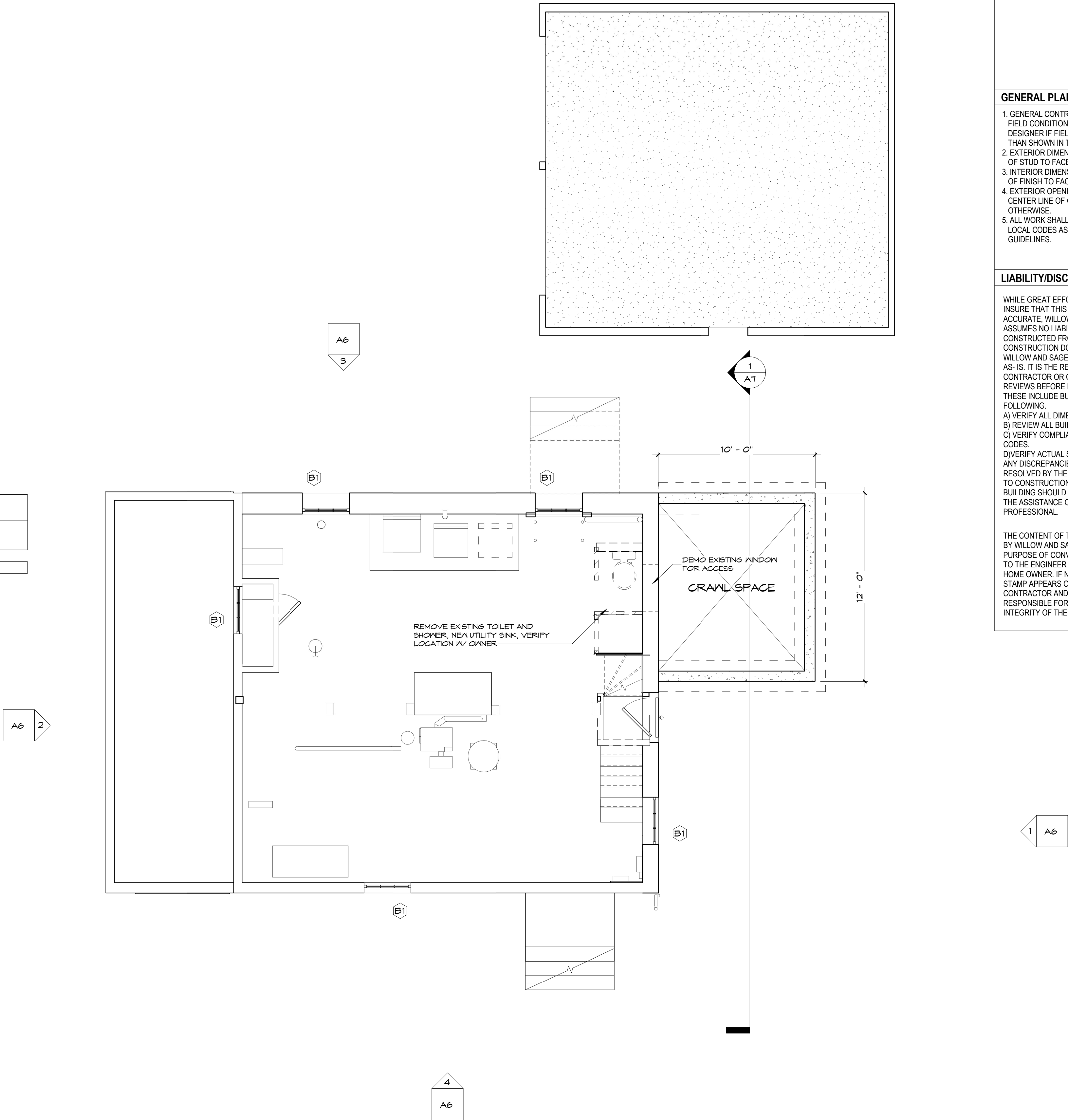
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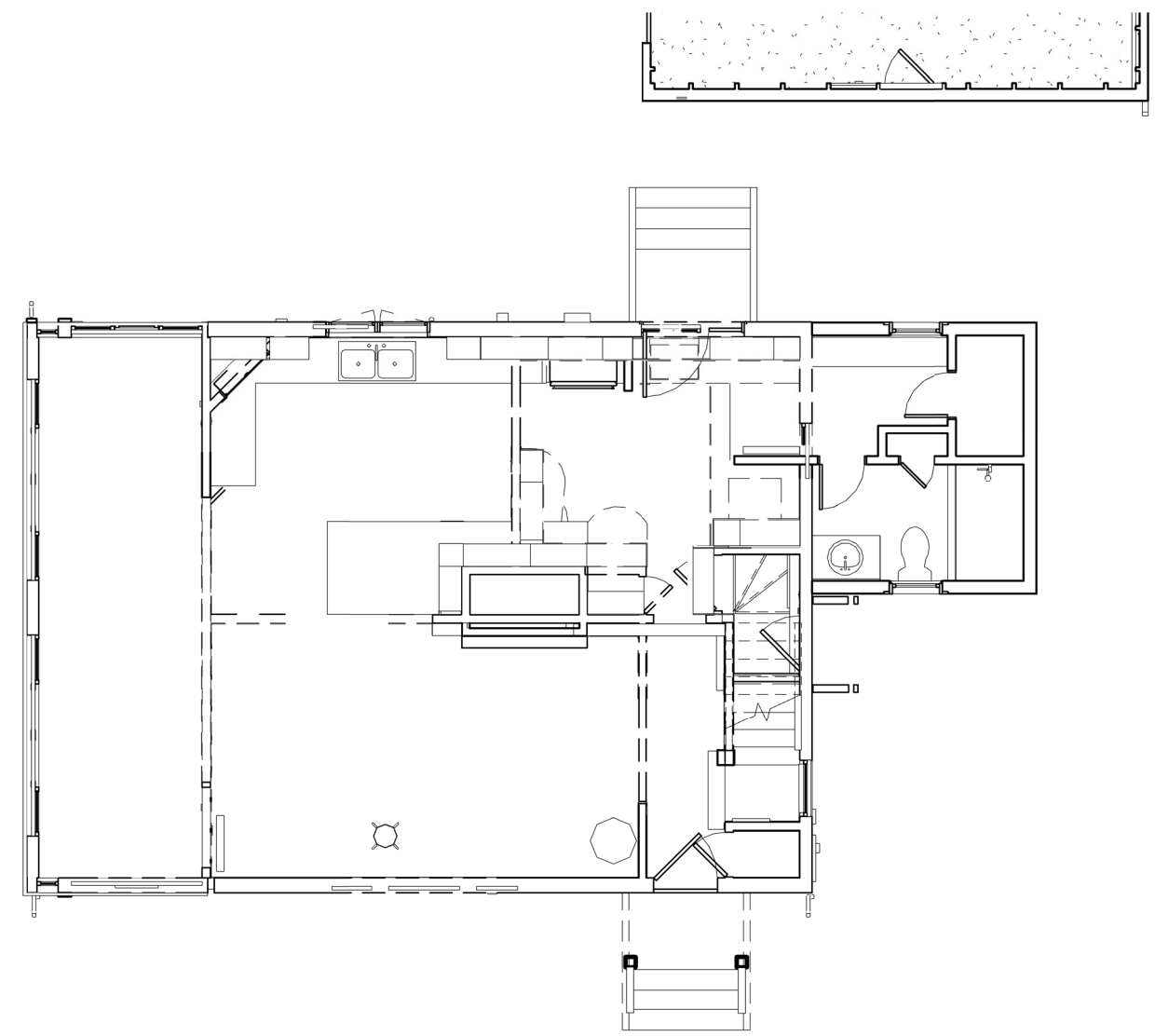
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BASEMENT REPLACEMENT WINDOW SCHEDULE

TYPE	COUNT	MANUFACTURER	SIZE	R.O. WIDTH	R.O. HEIGHT	COMMENTS
B1	5	Marvin Windows and Doors	3'-0" X 1'-8"			Hopper Type; Site Measure



① FOUNDATION PLAN
1/4" = 1'-0"



2 FIRST FLOOR-demo
1/8" = 1'-0"

FIRST FLOOR WINDOW SCHEDULE							
TYPE	COUNT	MANUFACTURER	MODEL	HEAD HEIGHT	R.O. WIDTH	R.O. HEIGHT	COMMENTS
A	1	Marvin Windows and Doors	ELCA2939	6' - 0"	4' - 9"	3' - 3 5/8"	
B	2	Marvin Windows and Doors	ELDH3048	6' - 8"	2' - 6 1/4"	4' - 0"	
C	1	Marvin Windows and Doors	ELAVN4919	6' - 8"	4' - 1"	1' - 7 5/8"	

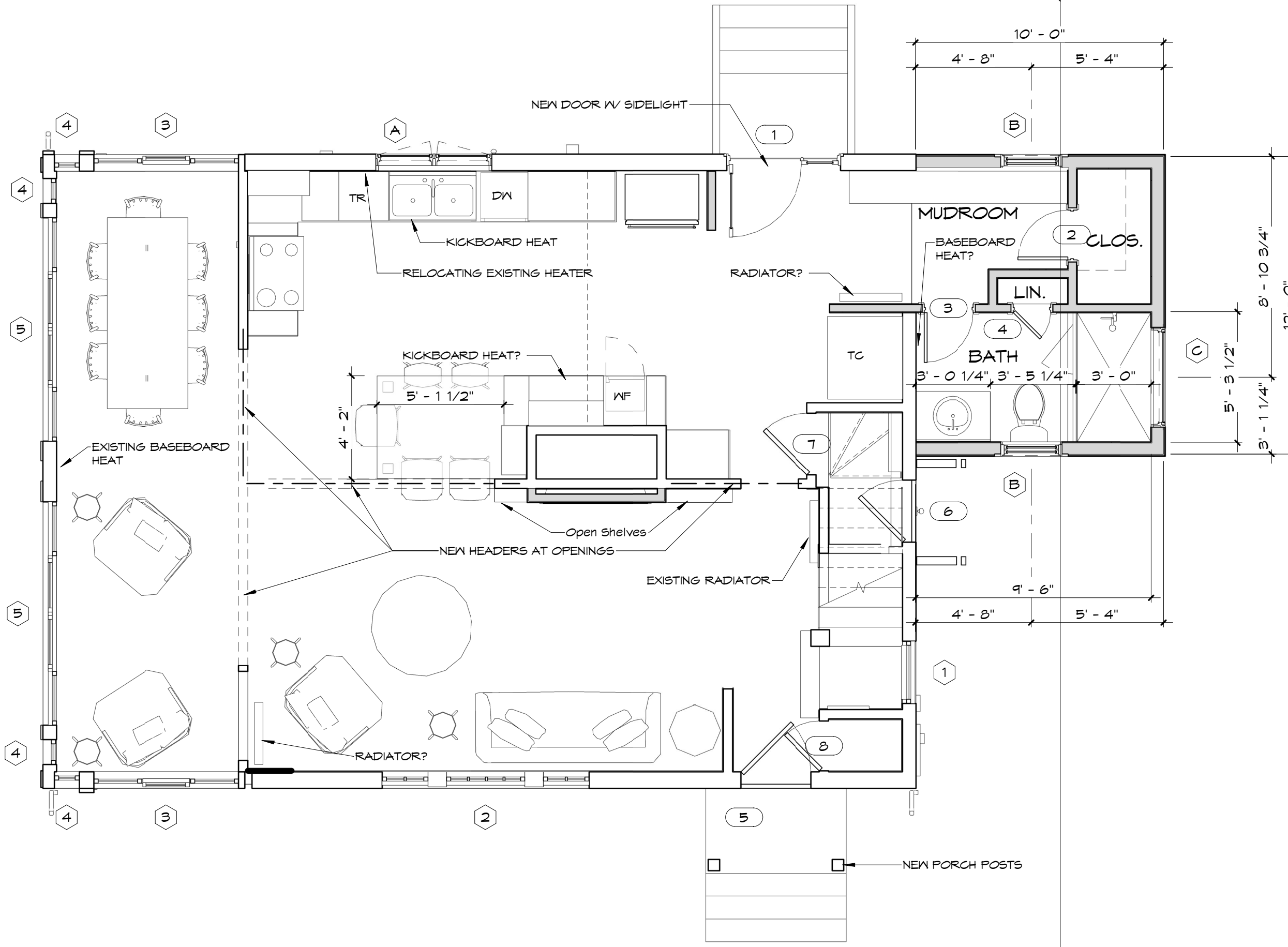
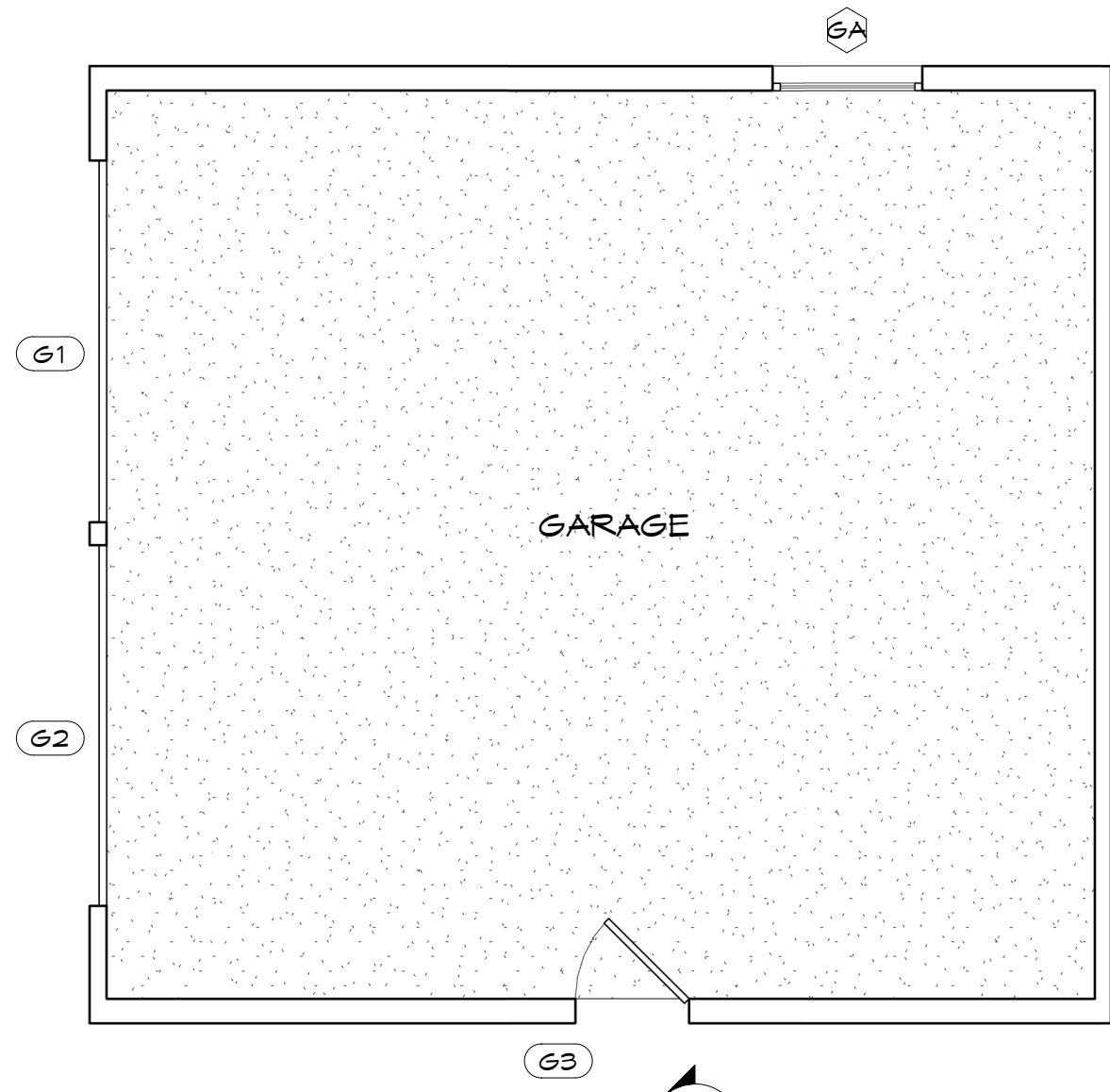
FIRST FLOOR REPLACEMENT WINDOW SCHEDULE					
TYPE	COUNT	MANUFACTURER	MODEL	SIZE	COMMENTS
1	1	Marvin Windows and Doors	Elevate Series Replacement	2'-6" X 4'-0"	Site measure
2	1	Marvin Windows and Doors	Elevate Series Replacement	8'-4" X 4'-10"	Site measure
3	2	Marvin Windows and Doors	Elevate Series Replacement	5'-10" X 4'-6"	Site measure
4	4	Marvin Windows and Doors	Elevate Series Replacement	<varies>	Site measure
5	2	Marvin Windows and Doors	Elevate Series Replacement	9'-0" X 4'-6"	Site measure

FIRST FLOOR DOOR SCHEDULE							
MAR K	MANUFACTURER	SIZE	THICKNES S	HEAD HEIGHT	R.O. WIDTH	R.O. HEIGHT	COMMENTS
1	Marvin Windows and Doors	UIFDE54668	1 3/4"	6' - 10"	4' - 8 1/16"	6' - 10 1/2"	5480 FR DOOR

FIRST FLOOR REPLACEMENT DOOR SCHEDULE						
MAR K	MANUFACTURER	SIZE	THICKNESS	R.O. WIDTH	R.O. HEIGHT	COMMENTS
5	TBD	2'-10" X 6'-10"	2"	3' - 0"	6' - 11"	Therma-true door; TBD
6	TBD	2'-6" X 6'-6"	2"	2' - 8"	6' - 7"	
7	TBD	2'-6" X 6'-6"	2"			
8	TBD	2'-0" X 6'-6"	2"			

GARAGE REPLACEMENT WINDOW SCHEDULE					
TYPE	COUNT	MANUFACTURER	MODEL	SIZE	COMMENTS
G1	1	Marvin Windows and Doors	Elevate Series Replacement	3'-4" X 4'-10"	Site measure

GARAGE REPLACEMENT DOOR SCHEDULE						
MARK	MANUFACTURER	SIZE	THICKNESS	R.O. WIDTH	R.O. HEIGHT	COMMENTS
G1	TBD	8'-0" X 6'-10"	2"			TBD
G2	TBD	8'-0" X 6'-10"	2"			TBD
G3	TBD	2'-6" X 6'-8"	1 3/4"	2' - 8"	6' - 9"	THERMA-TRUE TO MATCH NEW FRONT DOOR



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

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35 Boss Ave. Portsmouth, NH

Scale: As indicated
Date: 4/25/25
Project Number: 2025-36

REVISIONS		
NO.	DESCRIPTION	DATE

CONCEPTUAL
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FIRST FLOOR
PLAN

A2

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REVISIONS		
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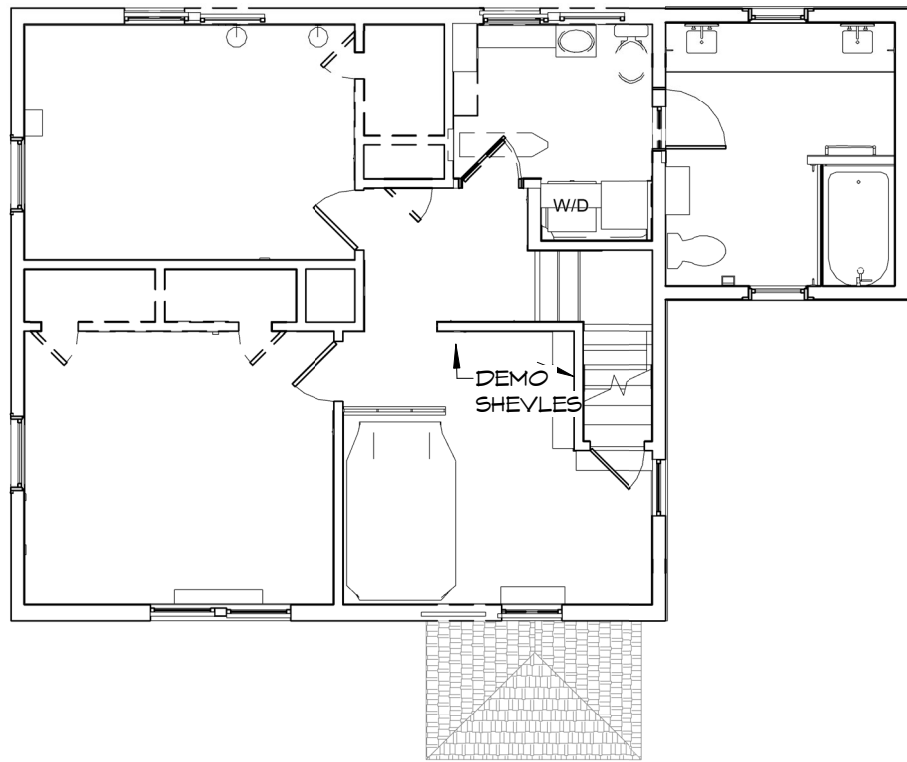
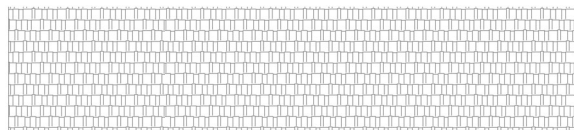
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2 SECOND FLOOR-DEMO
1/8" = 1'-0"

SECOND FLOOR WINDOW SCHEDULE

TYPE	COUNT	MANUFACTURER	MODEL	HEAD HEIGHT	R.O. WIDTH	R.O. HEIGHT	COMMENTS
B	2	Marvin Windows and Doors	ELDH304B	6' - 8"	2' - 6 1/4"	4' - 0"	
C	1	Marvin Windows and Doors	ELAWN4919	6' - 8"	4' - 1"	1' - 7 5/8"	

SECOND FLOOR REPLACEMENT WINDOW SCHEDULE

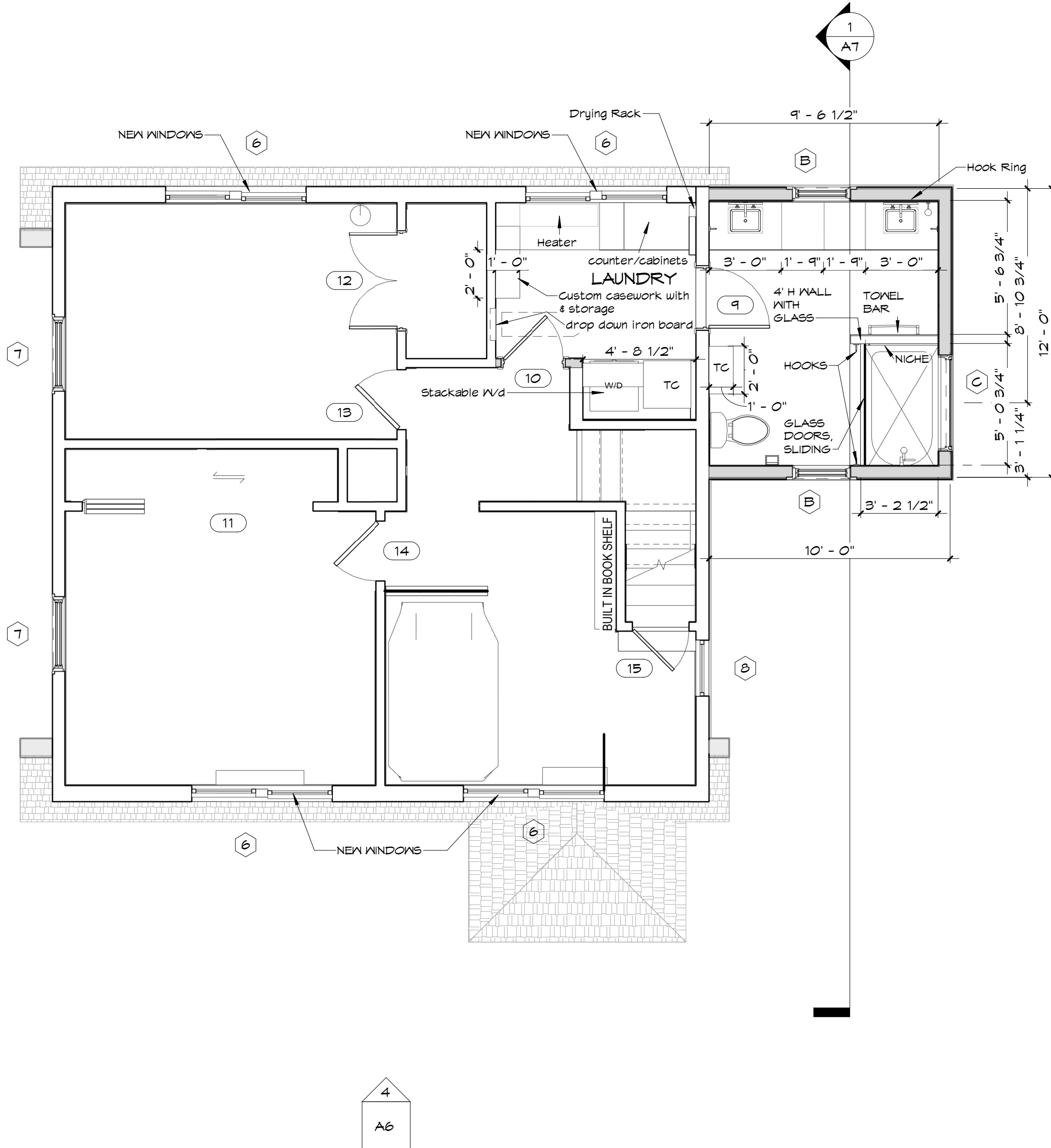
TYPE	COUNT	MANUFACTURER	MODEL	SIZE	COMMENTS
6	3	Marvin Windows and Doors	Elevate Series Replacement	5'-10" X 4'-4"	Site measure
7	2	Marvin Windows and Doors	Elevate Series Replacement	ELDH3664	Site measure; Egress
8	1	Marvin Windows and Doors	Elevate Series Replacement	2'-4" X 4'-4"	Site measure

SECOND FLOOR DOOR SCHEDULE

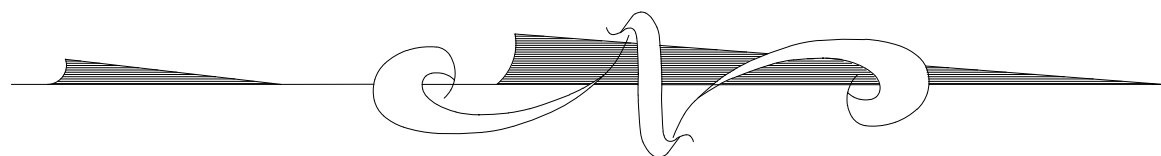
MAR K	MANUFACTURER	SIZE	THICKNESS	HEAD HEIGHT	R.O. WIDTH	R.O. HEIGHT	COMMENTS
9	TBD	30" x 80"	1 3/8"	6' - 8"	2' - 8"	6' - 9"	
10	TBD	30" x 80"	1 3/8"	6' - 8"	2' - 8"	6' - 9"	
11	TBD	111"x 94 3/8"	2 1/4"	7' - 10 3/8"	1"	2' - 6 7/8"	Folding door

SECOND FLOOR REPLACEMENT DOOR SCHEDULE

MAR K	MANUFACTURER	SIZE	THICKNESS	HEAD HEIGHT	R.O. WIDTH	R.O. HEIGHT	COMMENTS
12	TBD	48" x 84"	1 3/8"	7' - 0"	4' - 2"	7' - 2"	PREHUNG INTERIOR
13	TBD	2'-6" X 6'-6"	1 3/4"	6' - 6"			
14	TBD	2'-6" X 6'-6"	1 3/8"	6' - 6"			
15	TBD	2'-4" X 6'-6"	1 3/8"	7' - 4"			



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

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2. EXTERIOR DIMENSION 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

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Scale: As indicated
Date: 4/25/25
Project Number: 2025-36

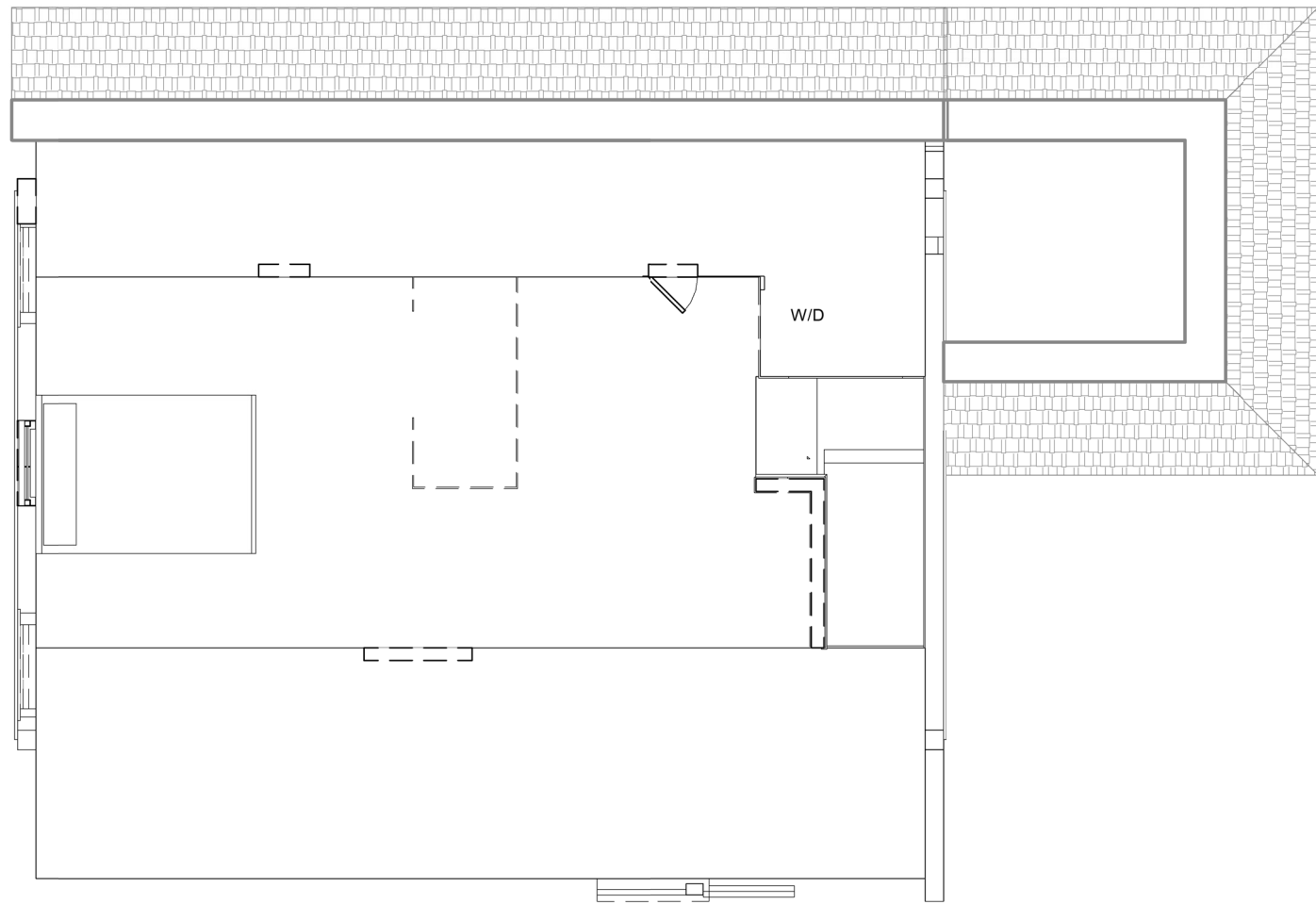
REVISIONS

NO.	DESCRIPTION	DATE
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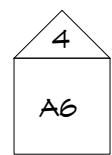
CONCEPTUAL
DESIGN-V2

THIRD FLOOR
PLAN

A4

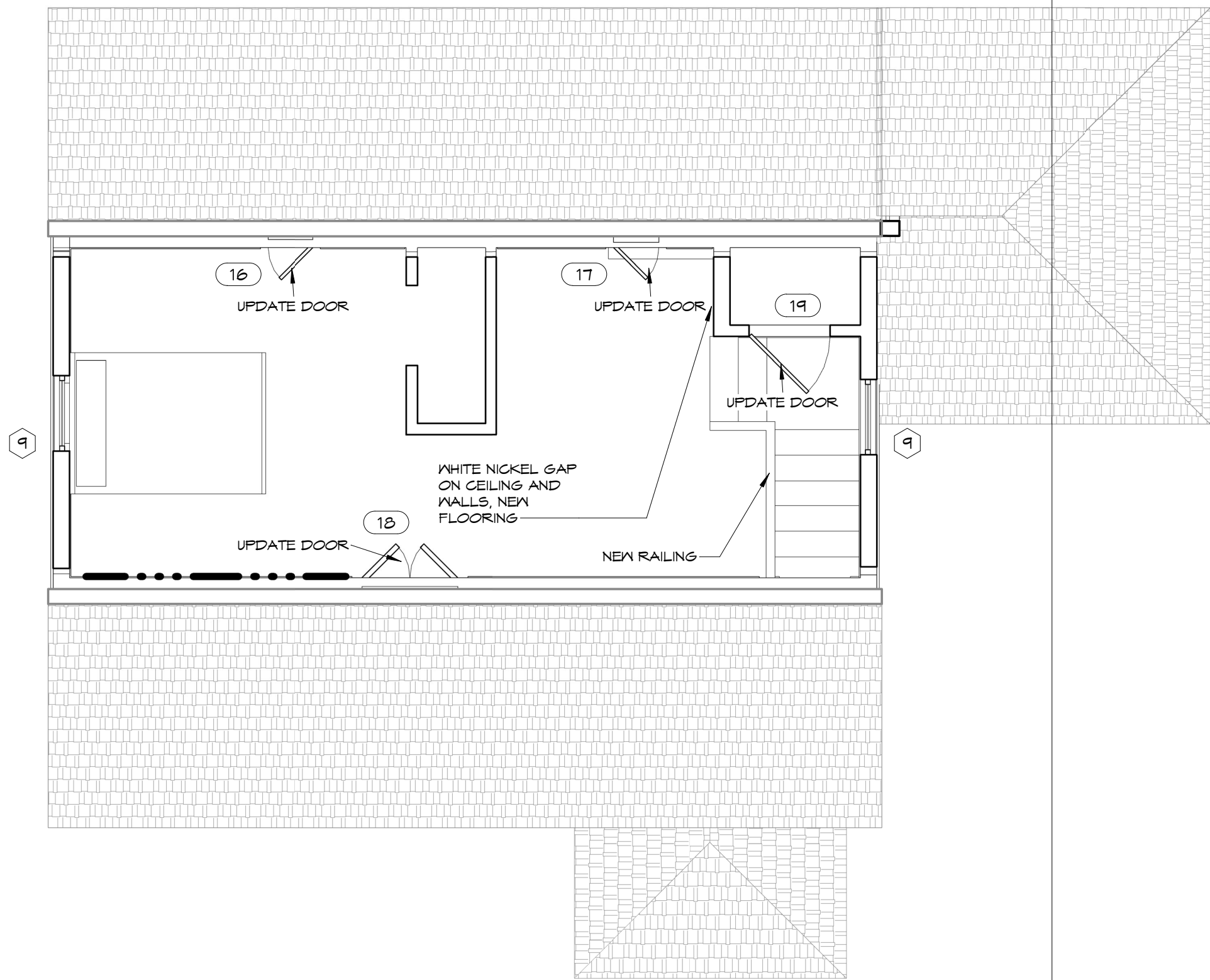


2 THIRD FLOOR- DEMO
3/16" = 1'-0"

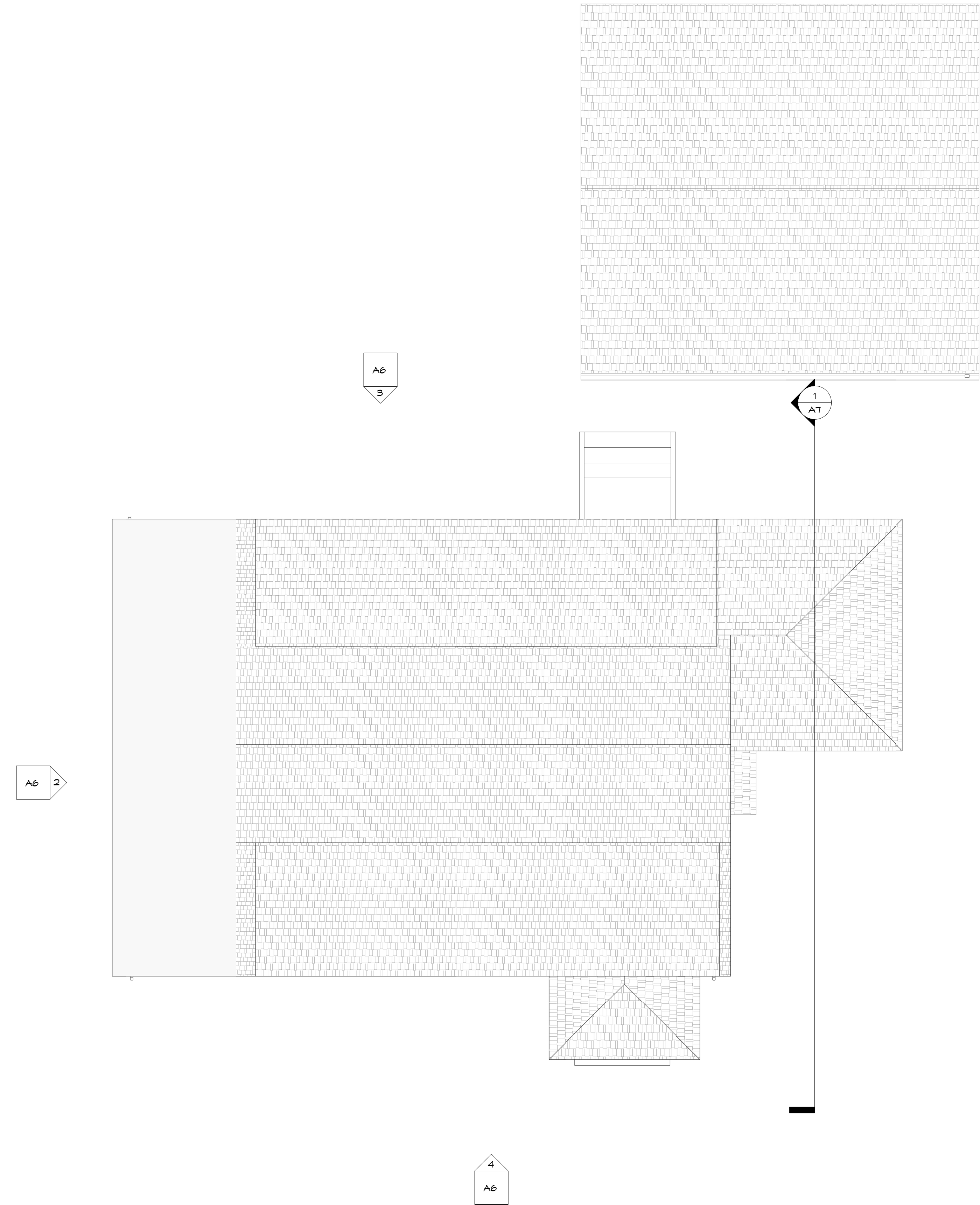
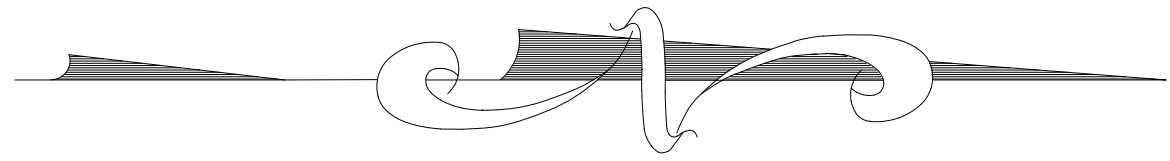


THIRD FLOOR REPLACEMENT WINDOW SCHEDULE					
TYPE	COUNT	MANUFACTURER	MODEL	SIZE	COMMENTS
9	2	Marvin Windows and Doors	Elevate Series Replacement	2'-6" X 3'-8"	Site measure

THIRD FLOOR REPLACEMENT DOOR SCHEDULE						
MARK	MANUFACTURER	SIZE	THICKNESS	R.O. WIDTH	R.O. HEIGHT	COMMENTS
16	TBD	1'-6" X 3'-4"	1 3/8"			
17	TBD	1'-6" X 3'-4"	1 3/8"			
18	TBD	3'-2" X 3'-4"	1 3/8"			
19	TBD	2'-8" X 4'-6"	1 3/8"			



1 THIRD FLOOR
1/4" = 1'-0"



① **ROOF**
1/4" = 1'-0"

GENERAL UNIT RCP NOTES

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www.willowandsagedesign.com
860-716-3902

35 Boss Ave. Portsmouth, NH

Scale: 1/4" = 1'-0"
Date: 4/25/25
Project Number: 2025-36

REVISIONS		
NO.	DESCRIPTION	DATE

**CONCEPTUAL
DESIGN-V2**
ROOF PLAN

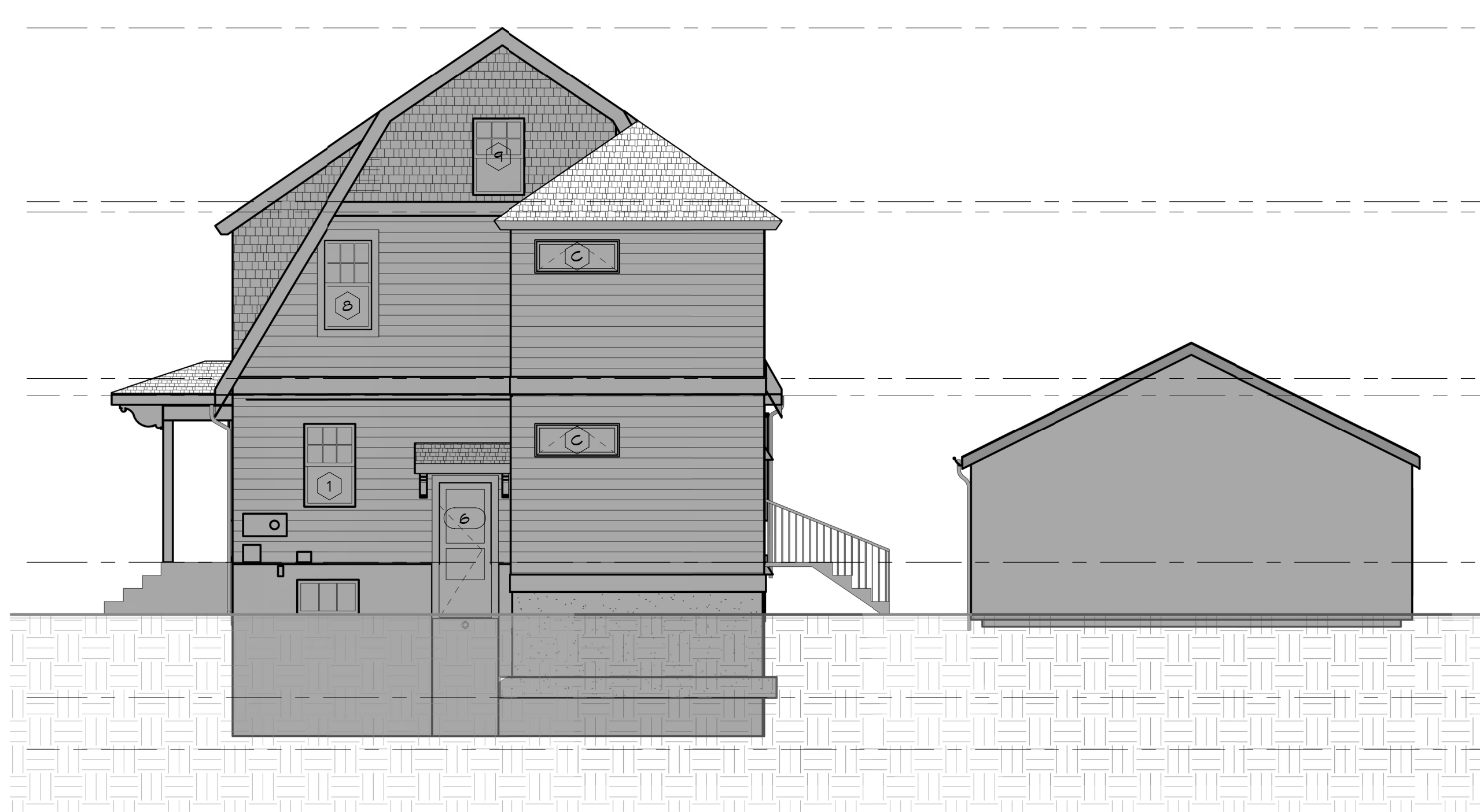
A5

CONCEPTUAL DESIGN - NOT FOR CONSTRUCTION

COPYRIGHT © 2021

REVISIONS		
NO.	DESCRIPTION	DATE

CONCEPTUAL
DESIGN-V2
ELEVATIONS



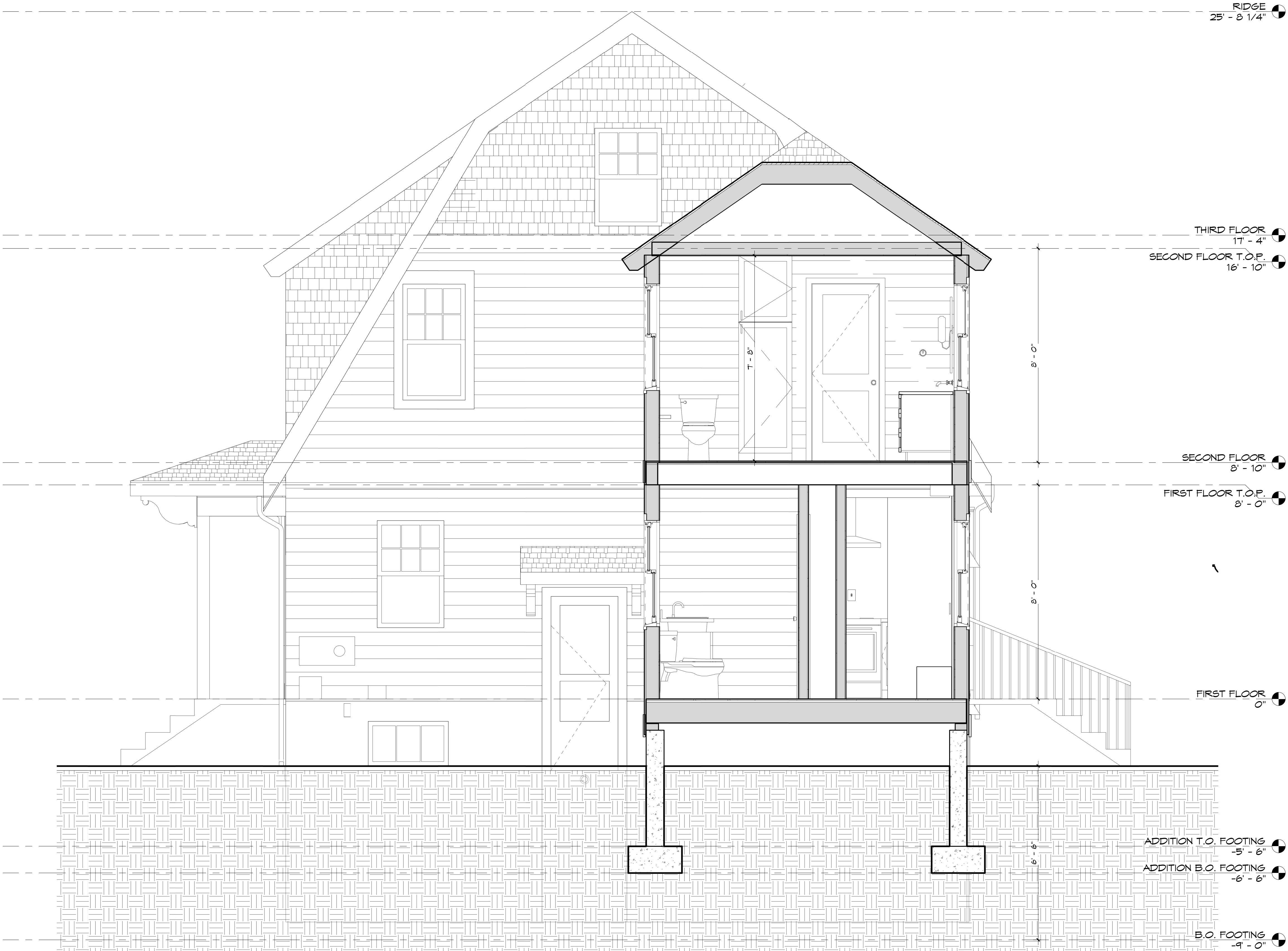
① NORTH ELEVATION
3/16" = 1'-0"

③ WEST ELEVATION
3/16" = 1'-0"



④ EAST ELEVATION
3/16" = 1'-0"

② SOUTH ELEVATION
3/16" = 1'-0"



① CROSS SECTION @ ADDITION
1/2" = 1'-0"

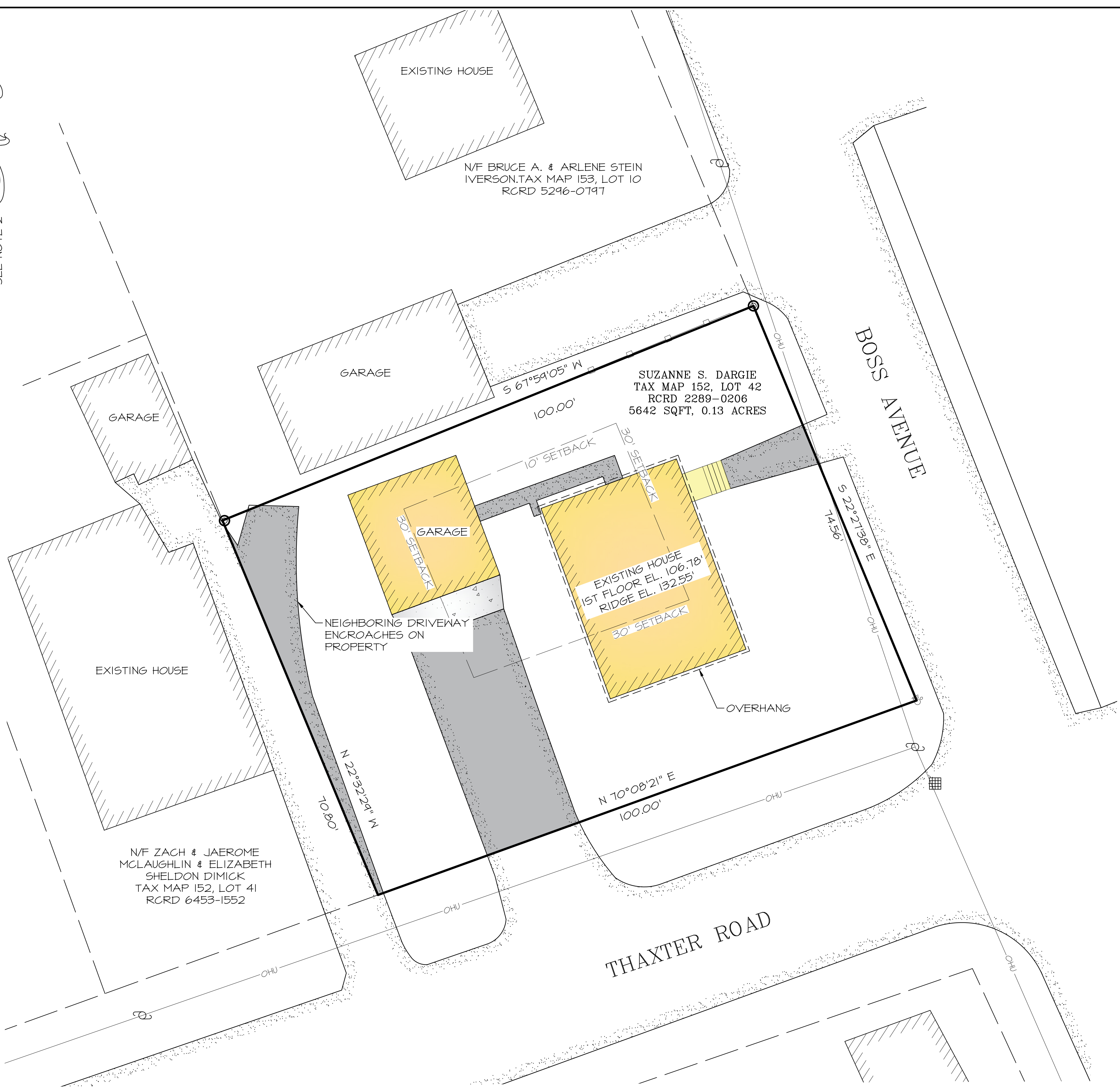
Scale: 1/2" = 1'-0"
Date: 4/25/25
Project Number: 2025-36

REVISIONS		
NO.	DESCRIPTION	DATE

CONCEPTUAL
DESIGN-V2

BUILDING
SECTIONS

SEE NOTE 2



NOTES

- 1) OWNER OF RECORD:
DAVID DARGIE
TAX MAP 152, LOT 42
35 BOSS AVE
PORTSMOUTH, NH 03801
RCRD: 2289-0206
AREA: 6,969 SF, 0.16 ACRES
- 2) BASIS OF BEARING HELD FROM PLAN REFERENCE #1.
- 3) PARCEL IS IN SINGLE RESIDENCE B DISTRICT (SRB):
MINIMUM LOT AREA.....15,000 SF
MIN. LOT AREA PER DWELLING UNIT.....15,000 SF
MINIMUM FRONTAGE.....100 FT
MINIMUM DEPTH.....100 FT
SETBACKS:
FRONT.....30 FT
SIDE.....10 FT
REAR.....30 FT
MAXIMUM BUILDING HEIGHT:
SLOPED ROOF.....35 FT
FLAT ROOF.....30 FT
MAXIMUM BUILDING COVERAGE.....20%
MINIMUM OPEN SPACE.....40%
- 4) BUILDING COVERAGE
HOUSE.....892 SF
GARAGE.....447 SF
STAIRS > 18".....28 SF
TOTAL.....1,367 SF
BUILDING COVERAGE = 1367/6969 = 19.6%
- OPEN SPACE
BUILDING COVERAGE.....1,367 SF
STAIRS & LANDINGS < 18".....9 SF
ASPHALT.....863 SF
NEIGHBOR'S DRIVEWAY.....306 SF
CONCRETE APRON.....109 SF
LOT COVERAGE.....2,654 SF
OPEN SPACE = 6969 - 2654 = 4315
OPEN SPACE = 4315 / 6969 = 61.9%
- 5) THE PARCEL IS NOT WITHIN A FEMA FLOOD ZONE, AS PER FLOOD INSURANCE RATE MAP #33015C0259F, PANEL 259 OF 681, DATED JANUARY 29, 2021. VERTICAL DATUM IS NAVD 1988.

REFERENCE PLANS

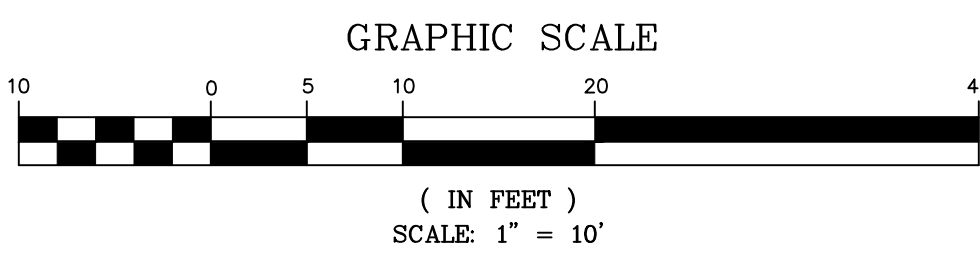
- 1) "PLAN OF PROPOSED ADDITION TAX MAP 152 LOT 37 FOR MARCIO GOLDANI VON MUHLEN & VIRGINIA FRETAS VON MUHLEN" BY BOUDREAU LAND SURVEYING, LLC. DATED JULY 22, 2022. NOT RECORDED.
- 2) "MORTGAGE INSPECTION SURVEY, TAX MAP 152 LOT 41, FOR FIRST EASTERN MORTGAGE CO." BY BAY STATE SURVEYING ASSOCIATES, DATED JUNE 24, 1983. RECORDED 2926-2828



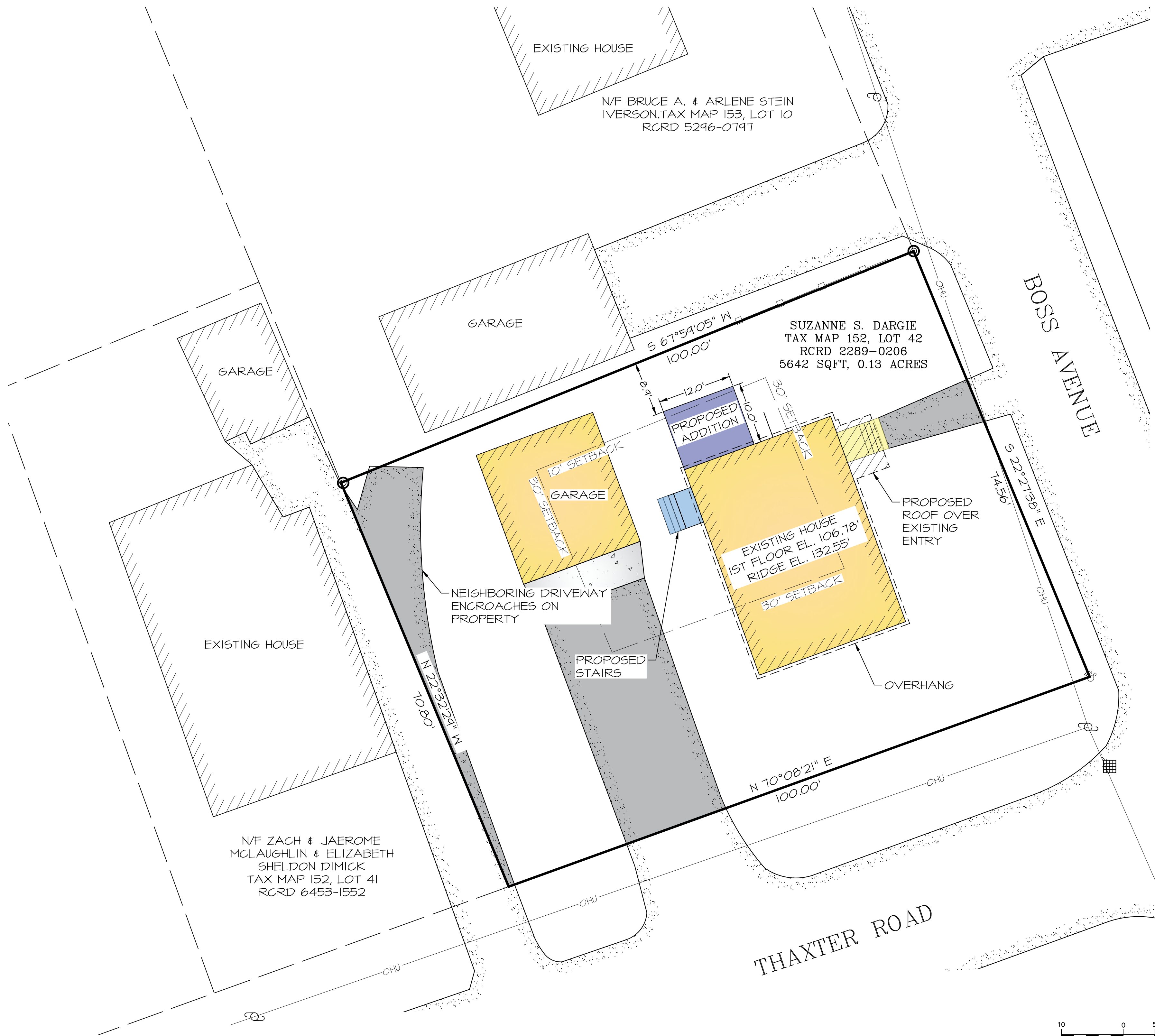
LOCUS PLAN
N.T.S.

LEGEND

- ⊙ MONUMENT FOUND
⊕ UTILITY POLE
— OHU — OVERHEAD UTILITIES
— □ — WOODEN FENCE
⊞ CATCH BASIN
⊕ WATER SHUT-OFF



1	5/9/2025	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 DAVID DARGIE, 35 BOSS AVE PORTSMOUTH, NH 03801			
TITLE EXISTING CONDITIONS PLAN 35 BOSS AVE PORTSMOUTH, NH 03801 TAX MAP 152, LOT 42			
JOB NUMBER	DWG. NO.	ISSUE	
25-025	1 OF 1	1	

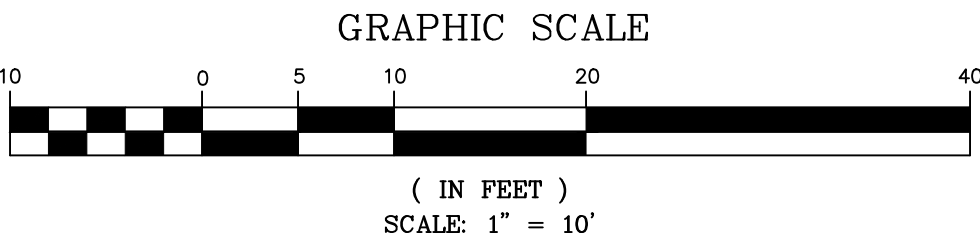


NOTES

- 1) OWNER OF RECORD:
DAVID DARGIE
TAX MAP 152, LOT 42
35 BOSS AVE
PORTSMOUTH, NH 03801
RCRD: 2289-0206
AREA: 6,969 SF, 0.16 ACRES
- 2) PARCEL IS IN SINGLE RESIDENCE B DISTRICT (SRB):
MINIMUM LOT AREA.....15,000 SF
MIN. LOT AREA PER DWELLING UNIT.....15,000 SF
MINIMUM FRONTAGE.....100 FT
MINIMUM DEPTH.....100 FT
SETBACKS:
FRONT.....30 FT
SIDE.....10 FT
REAR.....30 FT
MAXIMUM BUILDING HEIGHT:
SLOPED ROOF.....35 FT
FLAT ROOF.....30 FT
MAXIMUM BUILDING COVERAGE.....20%
MINIMUM OPEN SPACE.....40%
- 3) COVERAGES
BUILDING COVERAGE
EXISTING BUILDING COVERAGE
HOUSE.....892 SF
GARAGE.....447 SF
STAIRS > 18".....28 SF
TOTAL.....1,367 SF
BUILDING COVERAGE = 1367/6969 = 19.6%
- PROPOSED BUILDING COVERAGE
HOUSE.....892 SF
ADDITION.....120 SF
GARAGE.....447 SF
OVERHANG > 30".....55 SF
STAIRS > 18"*.....24 SF
TOTAL.....1,538 SF
BUILDING COVERAGE = 1538/6969 = 22.1%
- OPEN SPACE
EXISTING OPEN SPACE
BUILDING COVERAGE.....1,367 SF
STAIRS & LANDINGS < 18".....9 SF
ASPHALT.....863 SF
NEIGHBOR'S DRIVEWAY.....306 SF
CONCRETE APRON.....109 SF
LOT COVERAGE.....2,654 SF
OPEN SPACE = 6969 - 2654 = 4315
OPEN SPACE = 4315 / 6969 = 61.9%
- PROPOSED OPEN SPACE
BUILDING COVERAGE.....1,538 SF
STAIRS & LANDINGS < 18"*.....16 SF
ASPHALT.....782 SF
NEIGHBOR'S DRIVEWAY.....306 SF
CONCRETE APRON.....109 SF
LOT COVERAGE.....2,751 SF
OPEN SPACE = 6969 - 2751 = 4218
OPEN SPACE = 4218 / 6969 = 60.5%
- *THE EXISTING LANDING AND STAIRS BENEATH THE PROPOSED ROOF OVER THE EXISTING ENTRY HAVE NOT BEEN INCLUDED IN THE PROPOSED COVERAGE CALCULATIONS.
- 5) THE PARCEL IS NOT WITHIN A FEMA FLOOD ZONE, AS PER FLOOD INSURANCE RATE MAP #33015C0259F, PANEL 259 OF 681, DATED JANUARY 29, 2021. VERTICAL DATUM IS NAVD 1988.

LEGEND

- MONUMENT FOUND
UTILITY POLE
OVERHEAD UTILITIES
WOODEN FENCE
CATCH BASIN
WATER SHUT-OFF



1	5/9/2025	PRELIMINARY	
ISS.	DATE	DESCRIPTION OF ISSUE	
SCALE	1" = 10'		
CHECKED	A.ROSS		
DRAWN	D.D.D.		
ROSS ENGINEERING, LLC Civil/Structural Engineering & Surveying 909 Islington St. Portsmouth, NH 03801 (603) 433-7560			
CLIENT DAVID DARGIE, 35 BOSS AVE PORTSMOUTH, NH 03801			
TITLE SITE PLAN 35 BOSS AVE PORTSMOUTH, NH 03801 TAX MAP 152, LOT 42			
JOB NUMBER	DWG. NO.	ISSUE	
25-025	2 OF 1	1	



VIEW From Boss Ave





VIEW From Thaxter Road



VIEW From Boss Ave.

III. NEW BUSINESS

- C. The request of **Port Hunter LLC (Owner)**, for property located at **361 Miller Avenue** whereas relief is needed to demolish the existing detached garage and construct a new detached garage which requires the following: 1) Variance from Section 10.521 to allow a building coverage of 26% where a maximum of 25% is permitted; 2) Variance from Section 10.573.20 to a) allow an accessory building with a 10.5 foot rear setback where 20 feet is required; and b) a 6 foot left side yard setback where 10 feet is required. Said property is located on Assessor Map 131 Lot 33 and lies within the General Residence A (GRA) District. (LU-25-76)

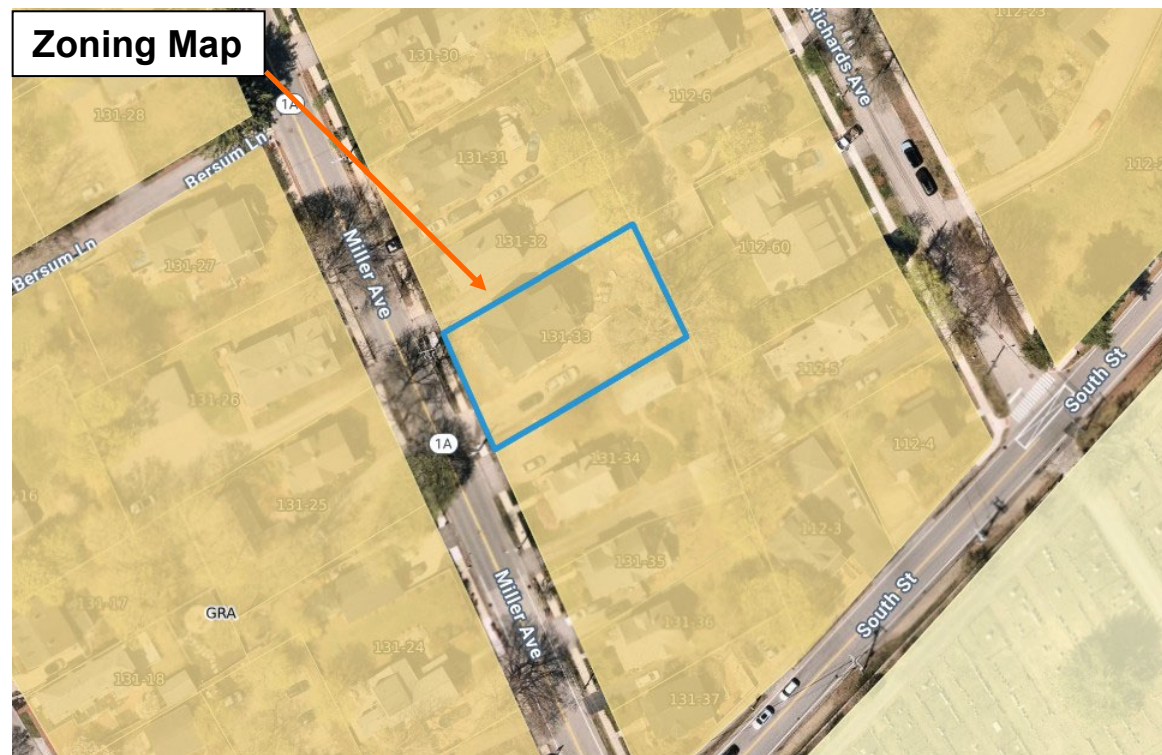
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	6-unit Multi-family	Demo existing detached garage and construct new detached garage in new location	Primarily Residential
<u>Lot area (sq. ft.):</u>	9,921	9,921	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	1,653.5	1,653.5	7,500 min.
<u>Lot depth (ft.):</u>	131.5	131.5	100 min.
<u>Street Frontage (ft.):</u>	75.8	75.8	70 min.
<u>Front Yard (ft.):</u>	>15	>15	15 min.
<u>Right Side Yard (ft.):</u>	Garage: 4	Garage: >10	10 min.
<u>Left Side Yard (ft.):</u>	Garage: >10	Garage: 6	10 min.
<u>Rear Yard (ft.):</u>	Garage: 21	Garage: 10.5	20 min.
<u>Building Coverage (%):</u>	23.9	26	25 max.
<u>Open Space Coverage (%):</u>	39.5	34.6	30 min.
<u>Height (ft.):</u>	Garage: <35	Garage: 22	35 max.
<u>Parking</u>	8	9	8
<u>Estimated Age of Structure:</u>	1880	Variance request(s) shown in red.	

Other Permits/Approvals Required

- TAC / PB Amended Site Plan Approval
- Building Permit

Neighborhood Context



Previous Board of Adjustment Actions

- No previous BOA history.

Planning Department Comments

The applicant is proposing to demolish the existing dilapidated one-story detached garage on the property and to construct a new 24' x 24', two-story, two-car garage in the northeasterly corner of the property. The relocation of the new garage is proposed to improve the conditions of a large 210-year-old silver maple tree located directly behind the existing detached garage. The proposed garage requires relief for left side yard setback, rear yard setback and building coverage greater than the maximum allowed.

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.

COLBY T. GAMESTER

Attorney At Law

144 Washington Street
Portsmouth, New Hampshire 03801

(603)-427-0000
colby@gamesterlaw.com

May 21, 2025

SUBMITTED VIA VIEWPOINT & HAND DELIVERED

City of Portsmouth
Zoning Board of Adjustment
Attn: Phyllis Eldridge, Chairwoman
1 Junkins Avenue
Portsmouth, NH 03801

**Re: Variance Application of Port Hunter, LLC
361 Miller Avenue, Portsmouth, NH (Tax Map 131, Lot 33)**

Dear Chairwoman Eldridge:

My office represents Port Hunter, LLC, the owner of property located at 361 Miller Avenue. Enclosed herewith are the following materials for submission to the Zoning Board of Adjustment for consideration at the next regularly scheduled meeting:

1. Landowner Letter of Authorization
2. Narrative to Variance Application
3. Exhibit A - Existing Conditions Plan
4. Exhibit B - Photographs
5. Exhibit C - Letter from Northeast Shade Tree
6. Exhibit D - Certification from New Hampshire Big Tree Program
7. Exhibit E - Site Plan
8. Exhibit F - Architectural Renderings

Should there be any questions, comments or concerns regarding the enclosed application and materials then please do not hesitate to contact me.

Kindest Regards,


Colby T. Gamester, Esq.

Enclosures

Cc: file; Clients; Ross Engineering LLC; Tuscher Design Group (via email only)

LANDOWNER LETTER OF AUTHORIZATION

I, the Undersigned, Elizabeth Pesce, as a member of Port Huner, LLC, the record owner of real property located at 361 Miller Avenue, Portsmouth, New Hampshire 03801, identified on Portsmouth Tax Map 131 as Lot 33 (the "Property"), hereby authorize Gamester Law Office, and its attorneys and representatives, Ross Engineering, LLC, and its representatives, and Tuscher Design Group, and its representatives, to file any document with the City of Portsmouth (the "City"), communicate and correspond with City staff and officials, and submit applications with and appear before the City's land use boards all regarding the Property. This Letter of Authorization shall be valid until expressly revoked in writing.


Elizabeth Pesce, Member


Date

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

Owner and Applicant

Port Hunter, LLC
56 Piscataqua Street
New Castle, NH 03854

For Property Located At:

361 Miller Avenue
Portsmouth, NH 03801

Introduction and Relevant Historical Information

Port Hunter, LLC (“Owner”) is the owner of real property located at 361 Miller Avenue, identified on Portsmouth Tax Map 131 as Lot 33 (the “Property”). The Property is located in the General Residence A (“GRA”) zoning district, is 0.23 acres, or 9,921 square feet, and contains one (1) residential multi-family dwelling structure, containing six (6) dwelling units, a two-car garage, and no other structures, creating a footprint of approximately 2,387 square feet, or approximately 23.90% building coverage. The Property has 75.86 feet of frontage solely on Miller Avenue.

The Property contains four (4) preexisting nonconformities: 1) frontage of 75.86 feet where 100 feet is required, 2) six (6) dwelling units with each requiring a minimum lot area of 7,500 square feet, 3) along its northern boundary an approximate 5-6 foot side yard setback where 10 feet required, and 4) along its southern boundary an approximate 4-5 foot side yard setback where 10 feet is required

These existing conditions can be seen on a plan entitled “Existing Conditions Plan, 361 Miller Ave., Portsmouth, NH 03801, Tax Map 131, Lot 33” drawn by Ross Engineering, LLC, dated May 10, 2024, which is enclosed herewith as **Exhibit A**.

The Property was created by the recording of a plan of land of Emery, Boynton and Griffin, made by C.E. Scruton, C.E., October, 1898, and was, from that plan, Lot No. 2 and the northerly half of Lot No. 1. The aforementioned plan is not available online through the Rockingham County Registry of Deeds.

According to the City’s assessing records the dwelling structure was constructed in 1880. It is unknown when the existing two-car garage was constructed, but given its construction it is believe to have been built in the 1950’s of 1960’s. The main structure was originally a duplex and after conversation with a gentlemen who grew up in one of the sides of the duplex, the Owner learned that it was most likely converted to six dwellings in the 1950’s. There are no planning

files for the Property in the Planning Department and the file in the Inspection Department has records beginning only in 1980 which indicate six units.

The Owner, namely Elizabeth, Tim and Jameson Pesce, the underlying members of the Port Hunter, LLC, purchased the Property in June 2021. Not longer after their purchase, they undertook an extensive interior and exterior renovation of the structure and all six units so as to update all features of the structure and units, including bringing all aspects of the building into current building code compliance.

The aforementioned 20.5' x 20.5' two-car garage has been in disrepair for quite some time, The Property has, and, moreover, generally can, vastly benefit from a garage for parking and storage purposes; however, in its current condition the garage is not safe for storage, let alone parking. Not only is the wood frame and structure in disrepair but the concrete slab upon which it sits is failing, which is most likely a primary contributor to the issues with the wood frame and overall structure. The necessary repairs to reconstruct or rebuild in place would entail excavation and concrete work. Enclosed herewith as **Exhibit B-1** is a picture of the existing garage.

In addition to the structures onsite, the Property contains a fair amount of old, deteriorating macadam that has been used as a driveway and parking area, as well as a substantial amount of macadam that covers a majority of the backyard which was partially visible and partially covered with dirt, loam and vegetative growth from over the years. The macadam in the back yard results in severe drainage issues and standing water after rain events affecting the Property and its abutters. Enclosed herewith as **Exhibit B-2** pictures of the driveway, backyard and the macadam.

The Property is also home to an enormous and magnificent silver maple tree directly behind the existing garage in the southeast corner of the Property. The Owners knew even before their purchase that a primary goal of theirs would not only be to keep the tree, but to make sure that it is as healthy as it can be well into the future. With this in mind, as well as with their desire to reconstruct the garage, the Owners consulted with several landscape professionals and arborists about the health of the tree.

The Owner primarily dealt with Northeast Shade Tree LLC, and enclosed herewith as **Exhibit C** is a letter from David Steadman of Northeast Shade Tree LLC indicating that the tree is approximately 210 years old and with the recommendation to not perform any sort of major construction or excavation that would be required to rebuild the garage in its current location. The age of the tree is most likely older than 210 years given its difficult living conditions.

The Owner also received certification of the tree through the New Hampshire Big Tree Program. The Certification, attached as **Exhibit D**, indicates that the silver maple is 90 feet tall, has an average crown spread of 88 feet, a circumference of 210 feet, and is one of the largest trees in Rockingham County. Big trees, as stated in the accompanying letter from Carolyn Enz Page of the New Hampshire Big Tree Program, provides essential benefits to our climate, water, wildlife and people, and great care should be taken to keep it safe and healthy. The Owner was informed

that the tree is the oldest silver maple on record in Portsmouth, and the third oldest silver maple on record in Rockingham County.

Also enclosed herewith as **Exhibit B-3** are pictures of the garage and tree and the proximity of each to one another. The more than likely culprit of the deteriorating concrete slab of the existing garage is the growth of the tree and its root system.

This background is what leads us to the reasons why the Owner submitted this variance application.

In addition to completely renovating the six dwelling units, the Owner desires to make the other portions of the Property work better, look better, and to protect the tree. The Owner would like to perform the following work:

1. Remove the existing garage and concrete slab and create a bed of crushed stone around the base of the tree.
2. Remove the existing macadam leading into and in the backyard.
3. Regrade the backyard.
4. Add new pervious pavement for better drainage and for the health of the tree.
5. Add a stormwater catch basin in the backyard that would remove additional stormwater runoff to the City's stormwater line in Miller Avenue.¹
6. Create more usable open space.
7. And relocate the garage with the construction of a new 24' x 24', two-story, two car garage in the northeasterly corner of the Property.

The ability to perform all this work would:

- A. Protect the tree and ultimately make it healthier and stronger.
- B. Improve drainage on and for the Property and abutting properties.
- C. Improve snow management and removal.
- D. Improve parking and traffic management.
- E. Provide for indoor parking.
- F. Provide for additional storage space.
- G. Provide for more usable open space.

These proposed conditions can be seen on a plan entitled "Site Plan, 361 Miller Ave., Portsmouth, NH 03801, Tax Map 131, Lot 33" drawn by Ross Engineering, LLC, dated May 21, 2025, which is enclosed herewith as **Exhibit E**.

¹ It is unclear at this time if the Owner will 1) install pervious pavement for the entire driveway or just in the rear yard, or 2) install the stormwater catch basin, or 3) perform both.

Also enclosed herewith as **Exhibit F** are the architectural renderings, elevations and floor plans of the proposed garage drawn by Brayden Tuscher of Tuscher Design Group, as well as **Exhibit B-5** showing the current photographs of where the proposed garage will be located.

Zoning Relief Requested

In summary, the Owner would like to demolish the existing garage, relocate and construct a new 24' x 24', two story, two car garage in the northeasterly corner of the Property and, as such, seek the following variances from the Zoning Ordinance:

1. A variance from Article 10.521-Table of Dimensional Standards in the GRA Zoning District to allow a maximum Building Coverage of 25.6% as proposed, where a Building Coverage of 23.9% currently exists, and where a maximum Building Coverage of 25% is required.
2. A variance from Article 10.573.20 to allow an accessory building to be set back from any lot line at least the height of the building or the applicable yard requirement, whichever is less (20 feet), within the rear yard setback where 20 feet is required and 10.7 feet is proposed.
3. A variance from Article 10.573.20 to allow an accessory building to be set back from any lot line at least the height of the building or the applicable yard requirement, whichever is less (10 feet), within the side yard setback where 10 feet is required and 6.0 feet is proposed.

Variance Criteria

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

“There are two methods of ascertaining whether granting a variance would violate an ordinance’s basic zoning objectives: 1) examining whether granting the variance would alter the essential character of the neighborhood or, in the alternative, 2) examining whether granting the variance would threaten the public health, safety, or welfare.” *Harborside Assoc. v. Parade Residence Hotel*, 162 N.H. 508, 514 (2011).

The zoning relief requested herein will not alter the essential character of the neighborhood, nor will it create any negative impact to the public health, safety, or welfare.

First and foremost, the Property currently has a two-car garage which has been onsite for many years. Second, the Property exists in a residential neighborhood, which contains single family homes and multi family dwelling structures, the majority of which contain garages. Simply relocating and constructing a new garage in the proposed location will not alter the essential character of the neighborhood; rather, it will continue a feature of the Property which helps create and speaks to the essential character of the neighborhood.

Given the condition of the existing garage and the current visibility of the same from neighbors and pedestrian and vehicular traffic, the ability of the Owner to essentially “tuck away” the garage will also improve site lines for abutters across the street and directly behind the Property, exposing more of the surrounding area, open space, and the tree. The streetscape will be enhanced by the removal of the existing garage and construction of the new garage in the proposed location.

The construction of a new garage enables the Owner to design an accessory structure that not only looks and functions better but is also architecturally consistent with the dwelling structure, which benefits the neighboring properties that will see the garage as seen in the architectural renderings.

Finally, the purpose of setbacks and building coverage regulations is to create uniform lots, when possible, create uniform building envelopes, and to prevent overcrowding on lots that could affect surrounding properties by disturbing abutters’ light, air and space.

The Property, and its neighboring properties on either side, are already nonconforming with respect to its side yard setbacks, so the idea of proposing a new garage in the setbacks is not foreign to this Property nor its abutters. The existing garage currently abuts another nonconforming accessory structure located on the property to the right, and its proposed location will abut an accessory structure on the property to the left which previously received zoning relief.

The increase in the footprint of the proposed garage increases building coverage by 1.7%, which results in a minor overage of 0.6% of the maximum allowed building coverage standard. The existence of the proposed garage, though in the setbacks and increasing the building coverage, still speaks to and preserves the interests that the Zoning Ordinance seeks to protect, and as described in more detail below, will not disturb the light, air and space for abutters.

B. Substantial justice will be done by granting the variance relief.

Any loss to the individual that is not outweighed by a gain to the general public is an injustice. *New Hampshire Office of State Planning, The Board of Adjustment in New Hampshire, A Handbook for Local Officials* (1997); *Malachy Glen Assoc. Inc v. Town of Chichester*, 155 N.H. 102 (2007).

In this instance, the loss to the Owner is clear if the variance relief sought is denied. The Owner would be forced to either protect the tree at all costs and eliminate the garage from the Property, thus affecting parking and storage benefits, or reconstruct the garage in its existing location which would incredibly threaten the health to the point of killing it, negatively impact parking and traffic flow, and negatively impact snow removal and management.

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

Granting the requested relief will not diminish the value of surrounding properties. As previously stated, many properties in the surrounding area benefit from accessory structures, and many surrounding properties also contain non-conformities related to setbacks and building coverage. The location of the existing garage in its current condition is an eyesore for anyone who can see it. The proposed location of the new garage will abut an existing garage on the neighboring property to the left thus creating a pocket, sort of speak, of accessory structures. And, as previously mentioned, the design of the garage will be architecturally consistent with the main dwelling structure and, as such, will be more pleasant to look at than the existing garage. Similarly, the removal of the existing garage will create better site lines for the abutters and expose more of the new open space and the tree.

Moreover, in conjunction with this proposed project, the Owners desire to regrade the driveway and backyard and perform additional work that will alleviate and mitigate the current drainage issues the Property and the abutters experience.

It is reasonable to state that the proposed improvements would have more of a positive, as opposed to negative, impact on surrounding property values.

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

1. There are special conditions that distinguish the Property from surrounding properties.

The Property has special conditions that distinguish it from surrounding properties. The most obvious special condition is the 200+ year old tree that is in need of special care and protection. Reconstructing the garage in its current location, specifically the excavation and foundation/slab work, would significantly and negatively impact the tree. This can easily be seen in the photographs enclosed herewith showing that the garage is not only close to the tree, but it will soon be bumping up to the trunk of the tree. Similarly, even if there was a way to repair the garage without addressing the issues with its concrete slab, then the tree and its root system will only continue to grow, thus impacting the foundation even more over time, which would then, in turn, further impact the frame and structure of the garage.

Even if the tree concerns could be mitigated, reconstructing the garage in its current location creates, or maintains, a pinch point between the garage and primary structure that prevents use of the backyard for parking needs. As previously mentioned, the Property has maintained six residential units for quite some time, but the parking has not been uniform, and often tenants would

utilize stacked parking. By relocating the garage, the pinch point is eliminated and the backyard can be incorporated into a formal parking scheme.

Finally, given the way the property was developed over the years, the grade of the backyard and the amount of macadam created drainage issues which is evidence by the photographs provided. Allowing the Owners to relocate the garage enables them to approach the entire Property in a more wholistic manner by addressing parking and storage needs with the new garage itself, addressing parking and traffic flow, addressing drainage concerns for the Property and abutters, addressing the need and desire for usable open space, and, finally, addressing the health and longevity of the tree.

2. There is no fair and substantial relationship between the general purposes of the ordinance and their specific application to the Property.

The Property was created by the recording of a plan of land from 1898 and the Owner has every reason to believe that the Property has maintained its original structure since its construction in 1880 according to the City's records. The Property was created and the main structure was constructed prior to the City's first enactment of any zoning regulation and, therefore, certainly predates any of the current dimensional requirements of the GRA District; and the Property has hosted six dwelling units since, approximately, the 1950s.

As previously stated, the purpose of setbacks and building coverage, as well as other dimensional standards, is to create uniform lots, when possible, create uniform building envelopes, and to prevent overcrowding on lots that could affect surrounding properties. In this instance, the Property currently encroaches into the left side yard setback and the proposed location of new garage would encroach no farther into the setback than the main structure already does. This new encroachment would abut the neighboring property's garage which is even closer to the shared lot line.

Though the proposed garage is creating a new encroachment into the rear yard setback, it is being done so with taste and respect. The proposed location is not on top of the shared lot line, and the design of the garage is consistent with the architecture of the main structure. Given the size of the Property and the main structure, as well as the location of the tree, the Owner is severely limited as to where a new accessory structure could be located. The location is therefore a reasonable location and is consistent with the objectives and spirit of the Zoning Ordinance by not further frustrating the interests of direct abutters which the Zoning Ordinance seeks to protect. Strictly applying the current zoning standards to the Property that pre-date the adoption of any, including current, zoning standards is impractical in relation to the requested relief.

3. The Proposed Use is Reasonable.

The Property is in the GRA District and is used as a multi-family residence and this use will remain the same. Accessory structures, such as garages, are typical and customary with all

types of residential properties. The Applicant is requesting relief in order to demolish the existing garage and construct a garage in a new location with a design that is consistent with the current architecture of the main structure.

Proposed Stipulations

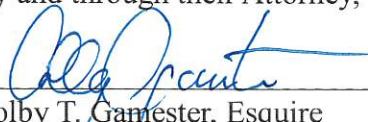
None at this time.

Finally, the Owner has met with the directly affected abutters to the left and the rear and can state that they have received favorable support from the Steinbergs at 353 Miller Avenue, the Steins at 470 Richards Avenue, and from the condominiums located at 452 Richards Avenue.

In conclusion, the Owner has demonstrated that its application meets the five (5) criteria for each of the variances ought and respectfully requests that the Board approves this application.

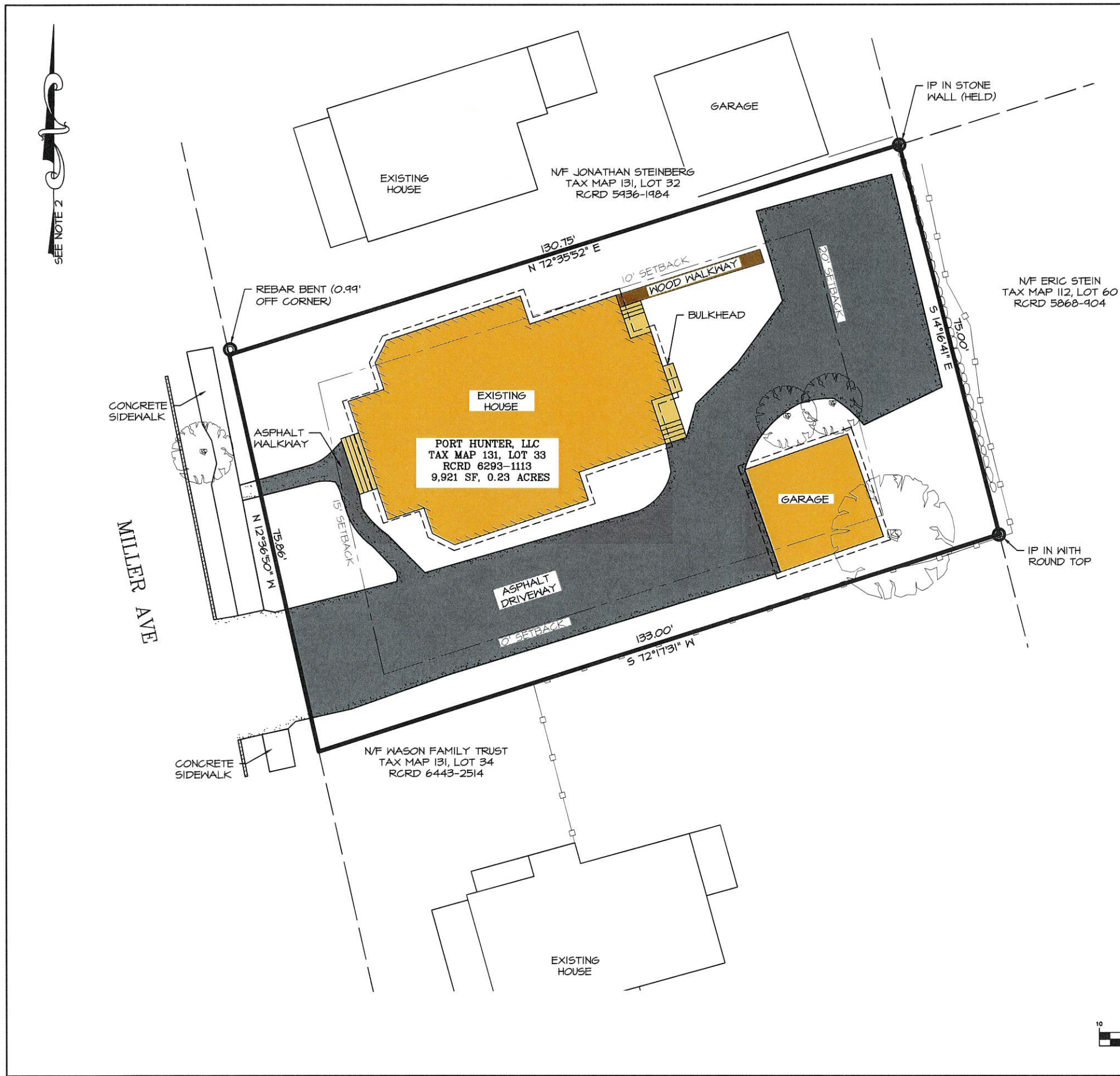
Dated: May 21, 2025

Respectfully submitted,
PORT HUNTER, LLC
By and through their Attorney,



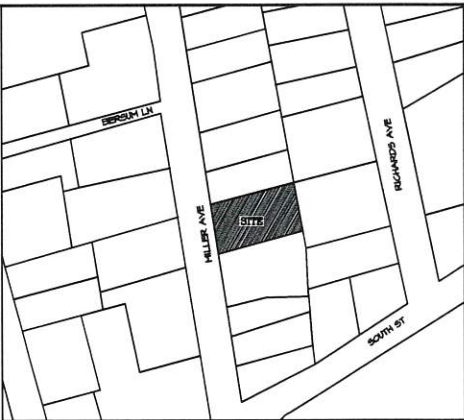
Colby T. Gamester, Esquire
144 Washington Street
Portsmouth, NH 03801
603-427-0000, colby@gamesterlaw.com

EXHIBIT A



LEGEND

- MONUMENT FOUND
- WOODEN FENCE
- VERTICAL GRANITE CURB
- STONE WALL



LOCUS PLAN
N.T.S.

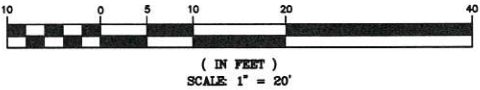
NOTES

- OWNER OF RECORD:
PORT HUNTER, LLC
TAX MAP 131, LOT 33
361 MILLER AVE
PORTSMOUTH, NH 03801
RCRD: 6293-1113
AREA: 9,921 SF, 0.23 ACRES
- BASIS OF BEARING HELD FROM PLAN REFERENCE #1.
- 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%
- THE PARCEL IS NOT WITHIN A FEMA FLOOD ZONE, AS PER FLOOD INSURANCE RATE MAP #33015C0254F, PANEL 259 OF 681, DATED JANUARY 29, 2021. VERTICAL DATUM IS NAVD 1988.

REFERENCE PLANS

- "PLAN SHOWING PROPERTY OF EMERY BOYNTON & GAIFFIN, PORTSMOUTH NH" DATED OCTOBER 1898 BY L.E. SCRUTON. RCRD 00125.
- "PLAN OF LOTS IN PORTSMOUTH NEW HAMPSHIRE FOR M.J. GRIFFIN" BY W.N.A. GROVER. DATED MARCH 31, 1914. RCRD 062.
- "STANDARD PROPERTY SURVEY, TAX MAP 112 LOT 6, PROPERTY OF THE MCAULIFFE FAMILY REVOCABLE TRUST OF 2011, 452 & 460 RICHARDS AVENUE PORTSMOUTH, NEW HAMPSHIRE COUNTY OF ROCKINGHAM" BY MSC CIVIL ENGINEERS & LAND SURVEYORS, INC. DATED SEPTEMBER 14, 2012. NOT RECORDED.
- "THE CONDOMINIUMS AT LINCOLN HILL MANOR SITE PLAN 352&354 MILLER AVE" FOR WILLIAM H HOAGLAND & LEAH A ORTON, KENNETH & BEVERLY BELLEVUE & KAREN M DRISCOLL" BY ROSS ENGINEERING. DATED MARCH 26, 2018 RCRD D-40723.

GRAPHIC SCALE



3	5/21/2025	ZBA SUBMITTAL
2	5/10/2024	FOR REVIEW
ISS.	DATE	DESCRIPTION OF ISSUE
SCALE	1" = 20'	
CHECKED	A.ROSS	
DRAWN	D.D.D.	

ROSS ENGINEERING, LLC
Civil/Structural Engineering
& Surveying
909 Islington St.
Portsmouth, NH 03801
(603) 433-7560

CLIENT:
ELIZABETH PESCE
361 MILLER AVE
PORTSMOUTH, NH 03801

TITLE

EXISTING CONDITIONS
PLAN

361 MILLER AVE
PORTSMOUTH, NH 03801
TAX MAP 131, LOT 33

JOB NUMBER	DWG. NO.	ISSUE
23-035	1 OF 2	3

Exhibit B-1
Existing Garage



Exhibit B-2
Driveway, Backyard, Macadam
Generally

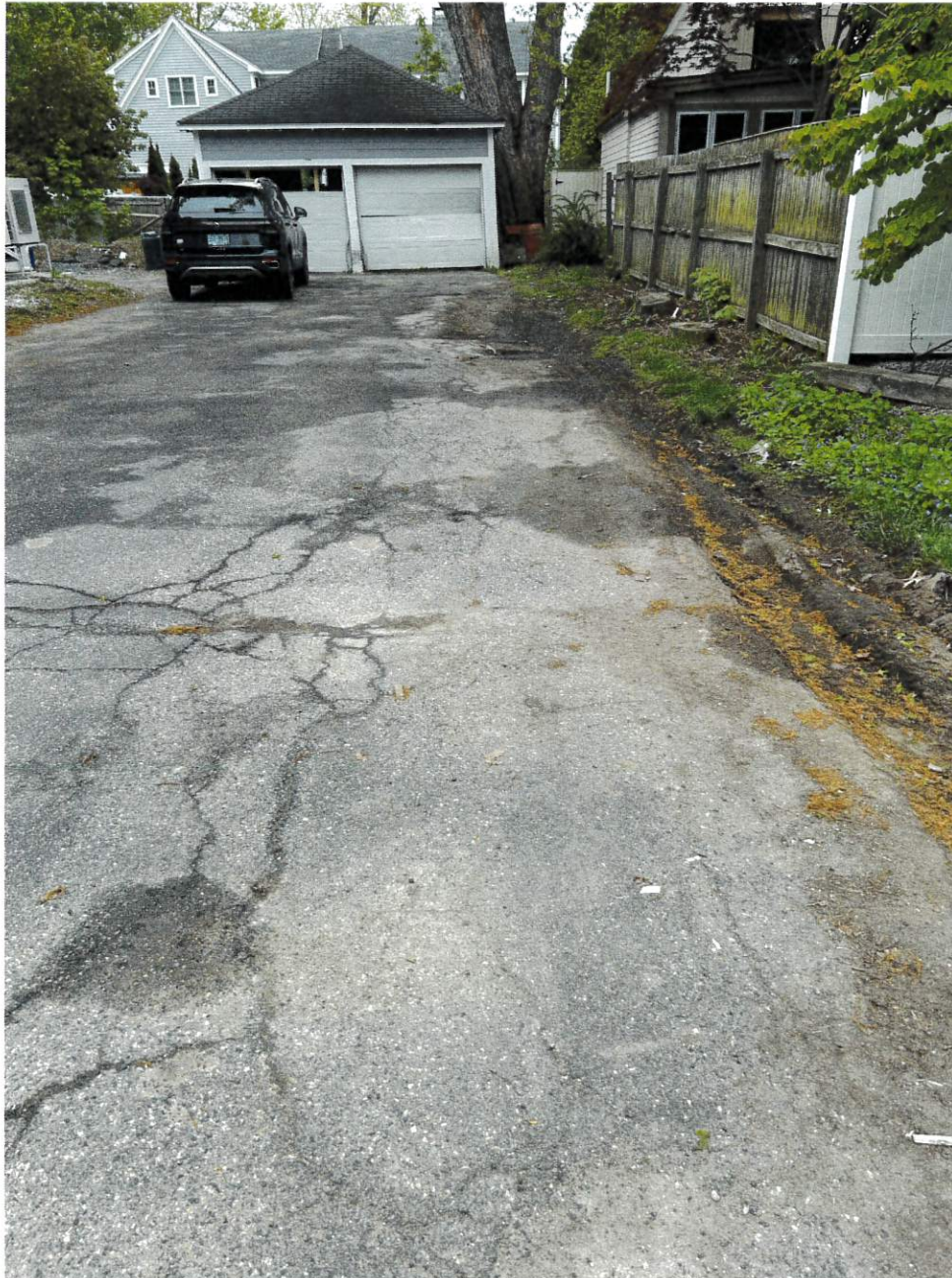


Exhibit B-2
Driveway, Backyard, Macadam
Generally



Exhibit B-2
Driveway, Backyard, Macadam
Generally



Exhibit B-3
Proximity of Garage and Tree



Exhibit B-3
Proximity of Garage and Tree



Exhibit B-3
Proximity of Garage and Tree



Exhibit B-4
Pinch point



Exhibit B-5
Location of
Proposed Garage



Exhibit B-5

Location of Proposed Garage



P.O. Box 4434
Portsmouth, N.H.
03802



EXHIBIT C

David Steadman
ISA Certified Arborist
603-436-4804

Northeast Shade Tree LLC

Elizabeth Pesce
361 Miller Ave
Portsmouth NH 03801

Hi Elizabeth,

It is my professional opinion that measures should be taken to protect the root system of your mature, approximately 210 year old, Silver maple that is located adjacent to the existing garage. Care should be taken to not disrupt or damage the existing root system while removing the structure.

Due to the age and significance of this tree, I do not recommend any sort of major construction or excavation that would be required to rebuild the garage in its current placement. Because the tree has adapted to its environment over the years, any potential damage to the root system may cause a disruption in its ability to uptake necessary water and nutrients, and therefore cause irreversible stress and decline. The safest solution to preserve and protect this ancient tree, would be to remove the garage and reconstruct it as far away from the tree's canopy as possible.

Please feel free to contact me if you have any questions.

Kind regards,

David Steadman
Northeast Shade Tree
603-436-4804



EXHIBIT D

The Sponsors of the
New Hampshire Register of Big Trees
Proudly present this certificate of appreciation to:

Timothy & Elizabeth Pesce

As steward of the following impressive Big Tree, as of this date, one of the
largest reported specimens of its species growing in your county.

Acer saccharinum

Scientific Name

90 feet

Height

88 feet

Average Crown Spread

322

Total Points



Silver Maple

Common Name

210 feet

Circumference

Portsmouth/Rockingham

Town & County

October 4, 2024

Date

Mary Lero Davis

Natural Resources Field Specialist
Urban Forestry
UNH Cooperative Extension

Sponsored by:
UNH Cooperative Extension
Society for the Protection of NH Forests
NH Division of Forests and Lands

John C. Wallace

NH Big Tree Program Coordinator



DIVISION OF
FORESTS AND LANDS



University of
New Hampshire
Cooperative Extension

New Hampshire Big Tree Program

UNH Cooperative Extension
Mary Tebo Davis
603-629-9494 ext 140
<http://cenfo.unh.edu>

Division of Forests & Lands
AJ Dupere
603-431-6774
aj.dupere@dnr.state.nh.us

NH Big Tree State Coordinator
John Wallace
603-969-2688
crawford@mv.fairpoint.net

County Coordinators:

Belknap - Michael Callaghan
dairnac3t@yaho.com

Carroll - Kamal Nath
kamalendunath@yahoo.com
Wendy Scribner
wendy.scribner@unh.edu

Cheshire - Larry Michalov
larrymich@hotmail.com
Norman Spicher
npspicher@gmail.com

Coos - Sam Stoddard
ssoddard3@gmail.com
Dave Govatski
david.govatski@gmail.com

Grafton - Brian Beaty
brian.beaty@dartmouth.edu

Hillsborough - Anne Krantz
annekrantz@comcast.net

Merrimack - Linda Meserve
Linda.meserve@yahoo.com

Rockingham - Kevin Martin
kevinmartin16@comcast.net

Strafford - Charles Tatham
ctatham@hotmail.com

Sullivan - Dode Gladders
dode.gladders@unh.edu

Elizabeth & Timothy Pesce
PO Box 332
56 Piscataqua Street
New Castle, NH 03854

January 15, 2025

Dear Mr. & Mrs. Pesce,

Congratulations for being the steward of a **very significant Silver Maple**, one of the largest in Rockingham County. Your tree was measured by Kekvin Martin for the NH Big Tree Program. It has the number 1309 in the state database.

As stewards of this fine specimen, we ask you to take good care of it by keeping it safe and healthy. For tree care information, please call your Cooperative Extension County Forester or find an arborist in your area by going to <http://extension.unh.edu/Forests-Trees>.

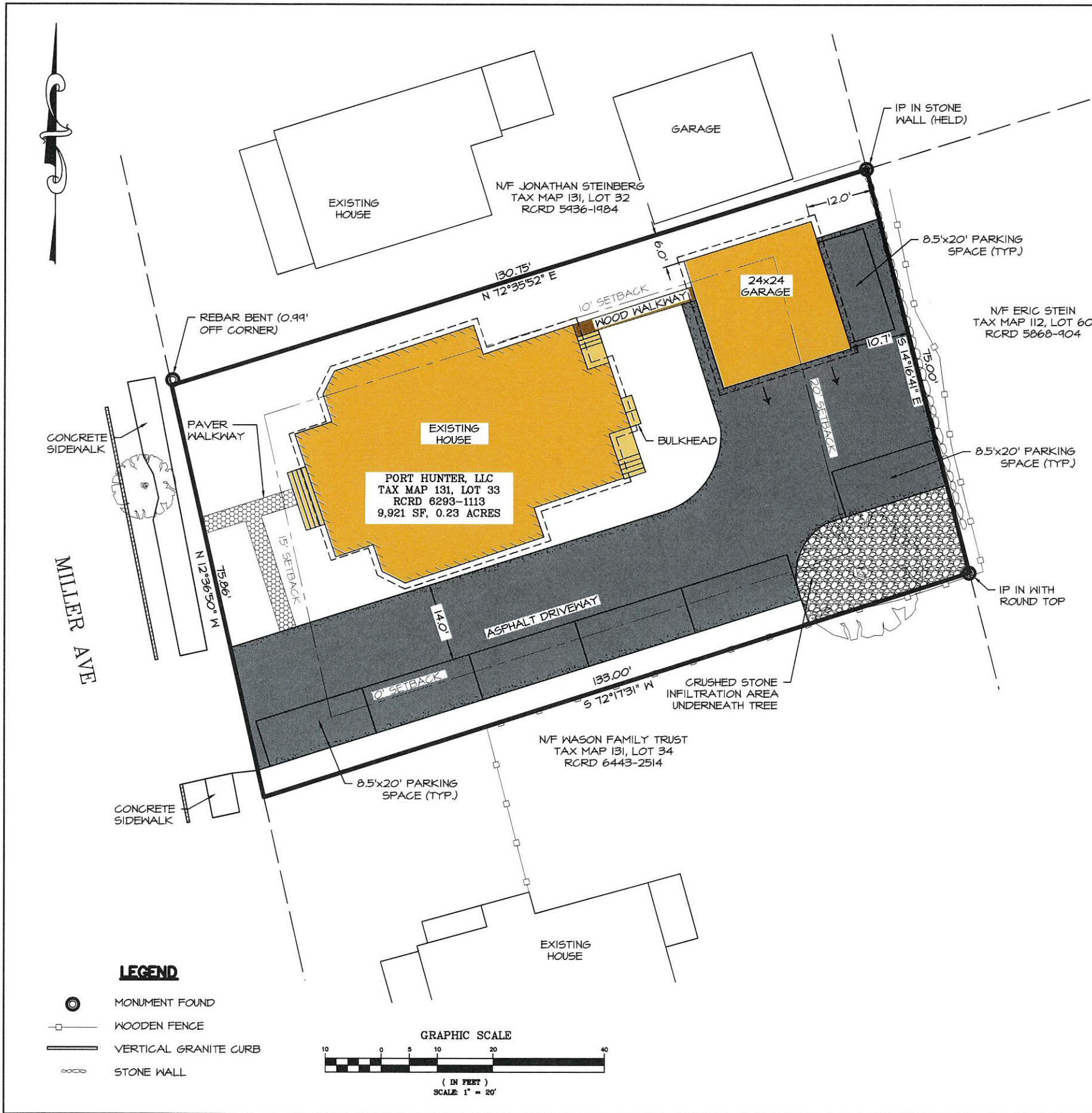
Big Tree Program representatives may remeasure the tree periodically. Please keep us informed if something happens to your tree. If the ownership of the property should change, please inform the new owners of their role as stewards of this impressive tree and have them identify themselves to a member of the Big Tree Team. Thank you.

We hope that you will continue to be on the lookout for other Big Trees in your town, in the county and around the state. For more information on the New Hampshire Big Tree Program, you can go to www.nhbigtrees.org. Information on the national program is available at www.americanforests.org.

The mission of the New Hampshire Big Tree Program is to locate and document the largest specimens of each tree species in the state and by doing so call attention to the essential benefits of trees to our climate, water, wildlife and people. We believe all trees are champions for our environment.

Sincerely,

Carolyn Enz Page
Secretary
carolynenzpage@gmail.com

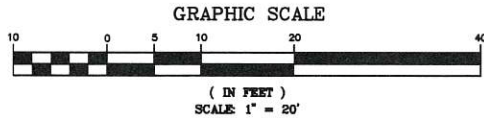


NOTES

- 1) OWNER OF RECORD:
PORT HUNTER LLC
361 MILLER AVE
PORTSMOUTH, NH 03801
RCRD: 6293-1113
AREA: 9,921 SF, 0.23 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) COVERAGES:
BUILDING COVERAGE
EXISTING BUILDING COVERAGE
HOUSE.....1,883 SF
DECKS & STAIRS >18".....65 SF
BULKHEAD.....11 SF
GARAGE.....412 SF
EXISTING STRUCTURE 2,371 SF
BUILDING COVERAGE 2,371 / 9,921 = 23.9%
- PROPOSED BUILDING COVERAGE
HOUSE.....1,883 SF
DECKS & STAIRS >18".....65 SF
BULKHEAD.....11 SF
GARAGE.....576 SF
PROPOSED STRUCTURE 2,535 SF
BUILDING COVERAGE 2,535 / 9,921 = 25.6%
- OPEN SPACE
EXISTING OPEN SPACE
BUILDING COVERAGE.....2,371 SF
OVERHANG.....160 SF*
STAIRS <18".....32 SF
ASPHALT.....3,371 SF
WOOD WALKWAY.....70 SF
TOTAL LOT COVERAGE 6,004 SF
EXISTING OPEN SPACE = 9,921 - 6,004 = 3,917 SF
EXISTING OPEN SPACE = 3,917 / 9,921 = 39.5%
- PROPOSED OPEN SPACE
BUILDING COVERAGE.....2,535 SF
OVERHANG.....132 SF*
STAIRS <18".....32 SF
ASPHALT.....3,618 SF
PAVER WALKWAY.....115 SF
WOOD WALKWAY.....54 SF
TOTAL LOT COVERAGE 6,486 SF
PROPOSED OPEN SPACE = 9,921 - 6,486 = 3,435 SF
PROPOSED OPEN SPACE = 3,435 / 9,921 = 34.6%
- *OVERHANG SHOWN IS THE ROOF OVERHANG THAT IS ABOVE PERVIOUS SURFACES. OVERHANG THAT IS OVER AN IMPERVIOUS SURFACE HAS NOT BEEN INCLUDED, SO AS TO NOT DOUBLE COUNT IMPERVIOUS AREAS.
- 4) PARKING REQUIRED AS PER 10.1112.30
-DWELLING UNIT FLOOR AREA > 750 SF = 1.3 SPACES PER UNIT
-DWELLING UNIT FLOOR AREA 500-750 SF = 1.0 SPACE PER UNIT
-A LOT CONTAINING MORE THAN 4 DWELLING UNITS SHALL PROVIDE ONE VISITOR PARKING SPACE FOR EVERY 5 DWELLING UNITS.
-OFFICE SPACE = 1 SPACE PER 350 SF GFA
2 DWELLING UNITS >750 SF = 1.3 X 2 = 2.6 SPACES
4 DWELLING UNITS 500-750 SF = 1.0 X 4 = 4 SPACES
>4 DWELLING UNITS - 1 VISITOR SPACE
OFFICE SPACE <350 GFA = 1 SPACE
TOTAL SPACES REQUIRED = 8.6 SPACES = 9 SPACES
- 5) PARKING PROVIDED
7 PARKING SPOTS HAVE BEEN PROVIDED IN THE PROPOSED ASPHALT DRIVEWAY. 2 SPACES WILL BE PROVIDED IN THE PROPOSED GARAGE. 9 TOTAL SPACES HAVE BEEN PROVIDED.

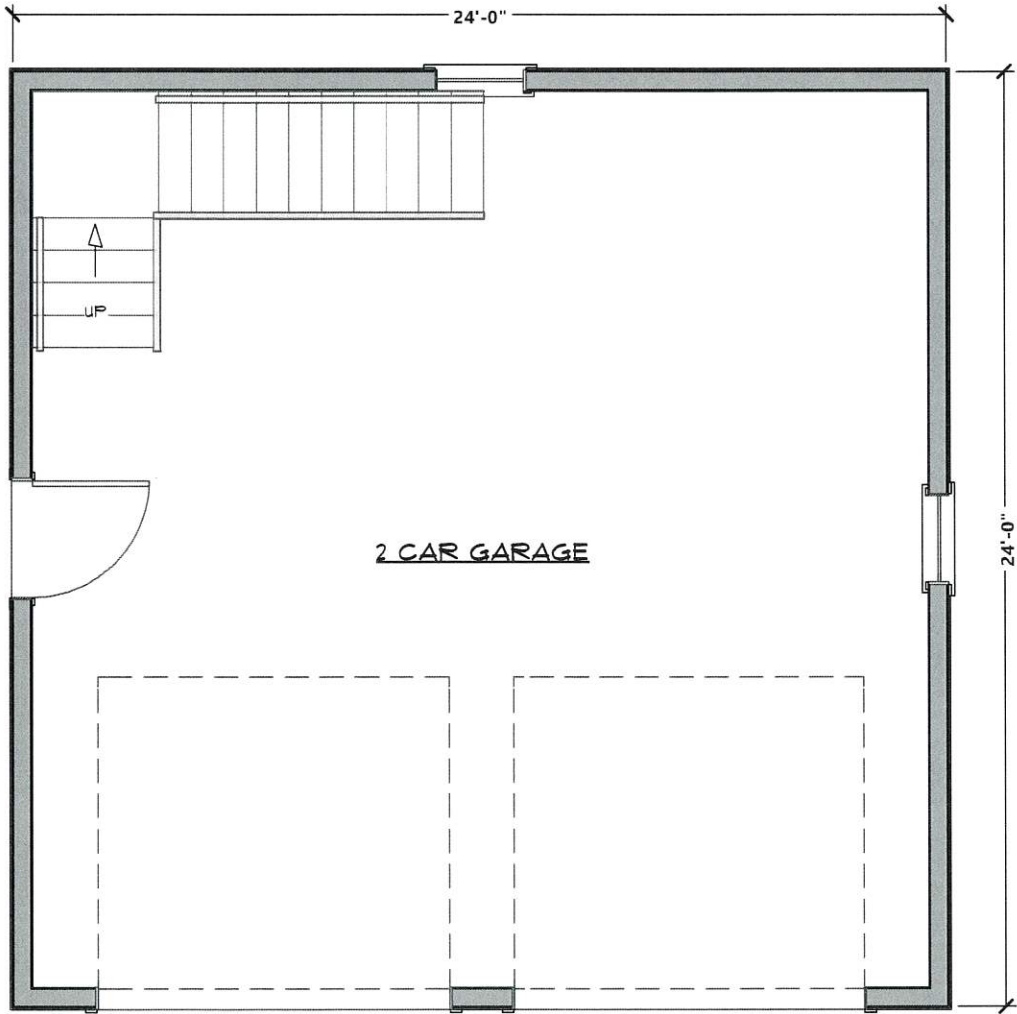
LEGEND

- MONUMENT FOUND
WOODEN FENCE
VERTICAL GRANITE CURB
STONE WALL

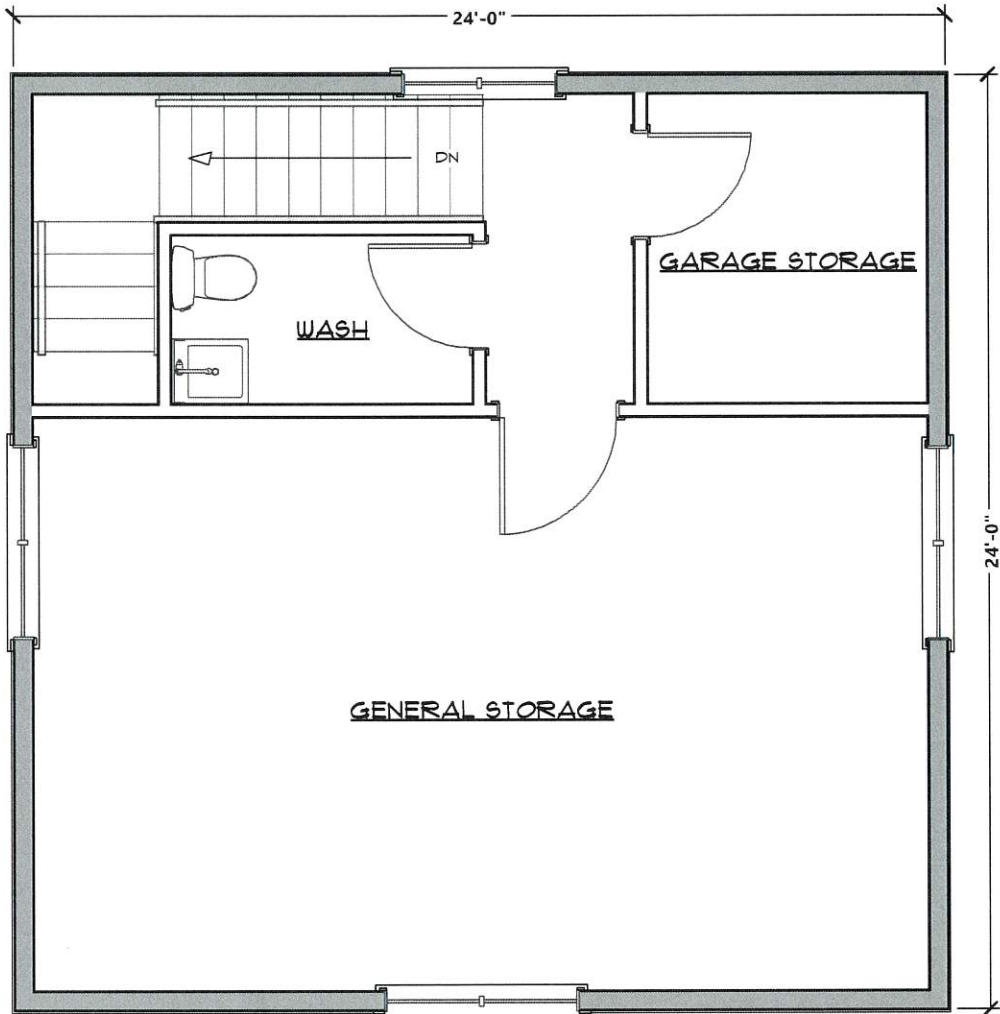


3	5/21/2025	ZBA SUBMITTAL	
2	5/10/2024	FOR REVIEW	
ISS:	DATE	DESCRIPTION OF ISSUE	
SCALE	1" = 20'		
CHECKED	A.ROSS		
DRAWN	D.D.D.		
ROSS ENGINEERING, LLC			
Civil/Structural Engineering & Surveying			
909 Islington St. Portsmouth, NH 03801 (603) 433-7560			
CLIENT ELIZABETH PESCE 361 MILLER AVE PORTSMOUTH, NH 03801			
TITLE SITE PLAN			
361 MILLER AVE PORTSMOUTH, NH 03801 TAX MAP 131, LOT 33			
JOB NUMBER	DWG. NO.	ISSUE	
23-035	2 OF 2	3	

EXHIBIT F



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



2) SECOND FLOOR PLAN
1/4" = 1'-0"

PROJECT STATUS: SCHEMATIC

REVISION SCHEDULE

DATE: 05/19/2024
SCALE: 1/4" = 1'-0"
SHEET NUMBER:

PROJECT INFO:

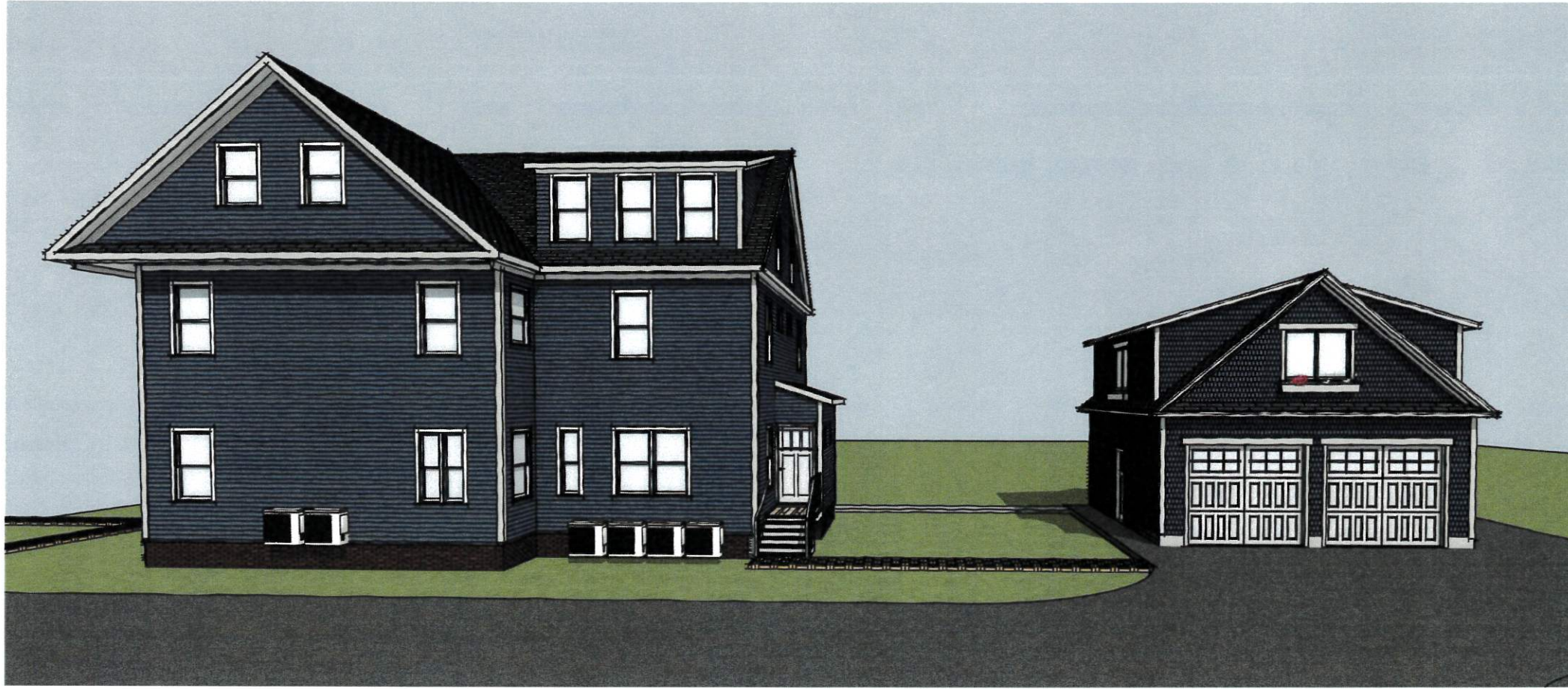
PROJECT TITLE:

VAKOTA
architecture, pllc
41 East 11th St. 11th Floor
New York, New York 11225
212.655.9875

PORT HUNTER, LLC
GARAGE
361 MILLER AVE
PORTSMOUTH, NEW HAMPSHIRE

PROPOSED
FLOOR PLANS

A2



VAKOTA
architecture, pllc
41 East 11th St. 11th Floor
New York, New York 11225
212.655.9875

PROJECT INFO.

**PORT HUNTER, LLC
GARAGE**

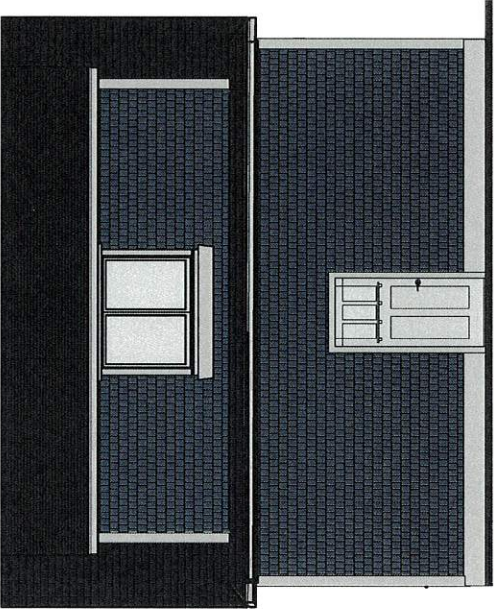
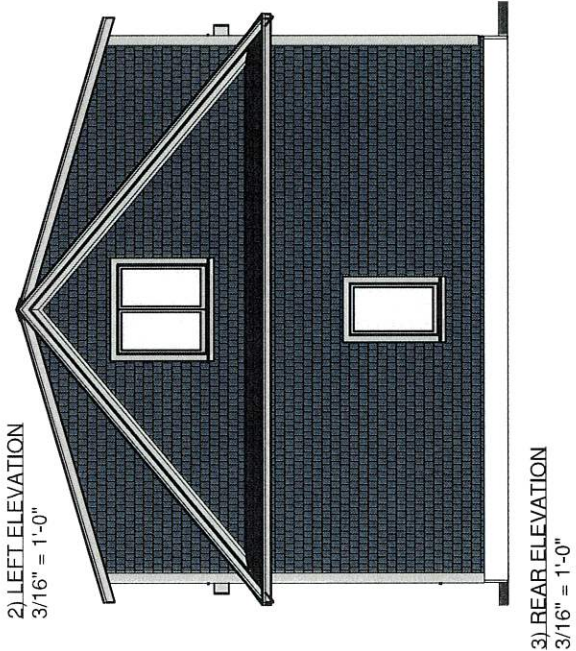
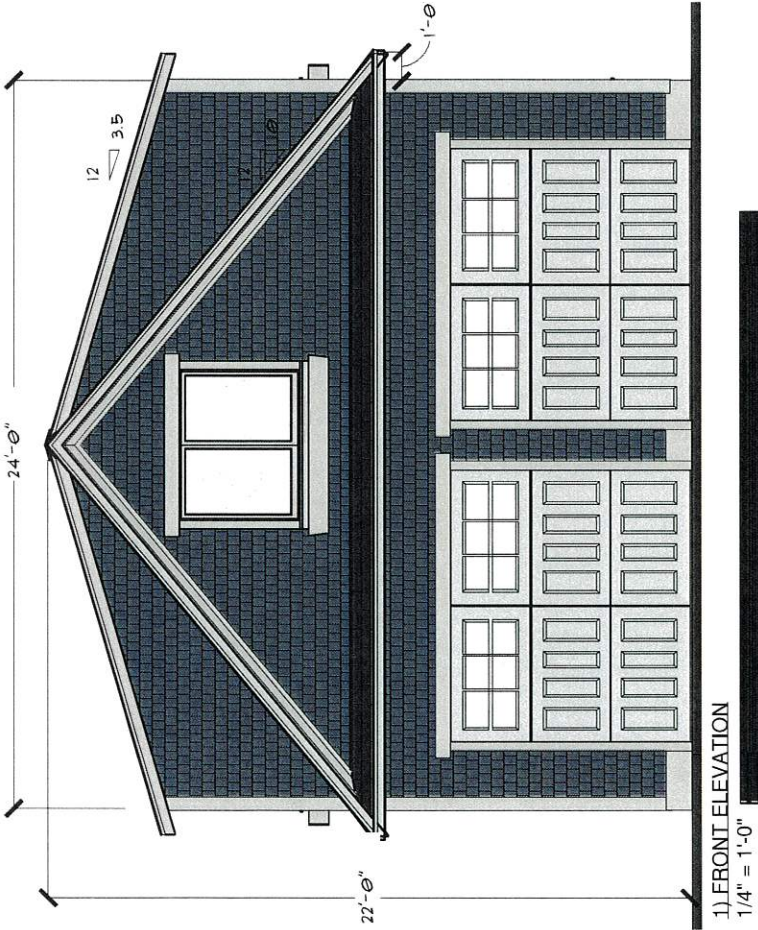
361 MILLER AVE
PORTSMOUTH, NEW HAMPSHIRE

PROPOSED PERSPECTIVE

[illegible]

DATE: 05/19/2024
SCALE: NTS
SHEET NUMBER:

A3



DATE: 07/20/2024
DRAWN BY: J. HUNTER
CHECKED BY: J. HUNTER
SHEET NUMBER: 1

PROJECT STATUS: SCHEMATIC

REVISIONS: NONE

DESCRIPTION: WALL

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

SHEET TITLE: PROPOSED ELEVATIONS

PROJECT INFO:

PORT HUNTER, LLC
361 MILLER AVE
PORTSMOUTH, NEW HAMPSHIRE

VAKOTA
architecture, pllc
41 East 11th St, 11th Floor
New York, New York 11225
212.655.9875

A4

III. NEW BUSINESS

D. The request of **Maureen A Rousseau and Daniel A Indoe (Owner)**, for property located at **239 Broad Street** whereas relief is needed to remove an existing detached accessory structure and to construct an addition to the primary structure which requires the following: 1) Variance from Section 10.521 to allow a secondary front yard setback of 6 feet where 15 feet is required. Said property is located on Assessor Map 131 Lot 15 and lies within the General Residence A (GRA) District. (LU-25-75)

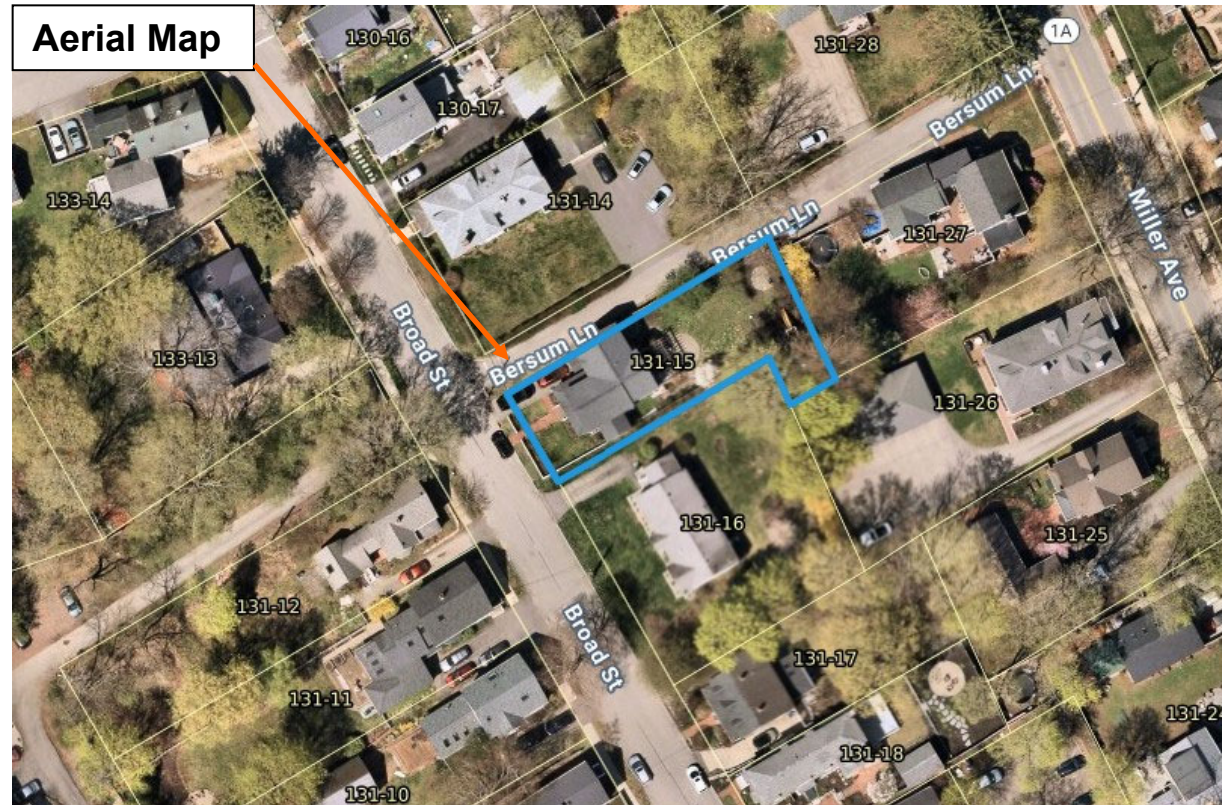
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family	Demo detached accessory structure and construct addition to Primary Structure	Primarily Residential
<u>Lot area (sq. ft.):</u>	7,454	7,454	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	7,454	7,454	7,500 min.
<u>Lot depth (ft.):</u>	143	143	100 min.
<u>Street Frontage (ft.):</u>	193	193	70 min.
<u>Front Yard (Broad St) (ft.):</u>	>15	>15	15 min.
<u>Secondary Front Yard (Bersum Ln) (ft.):</u>	2.5	Primary: 2.5 Addition: 6	15 min.
<u>Right Side Yard (ft.):</u>	Primary: 0	Primary: 0	10 min.
<u>Rear Yard (ft.):</u>	Primary: >20	Primary/Addition: >20	20 min.
<u>Building Coverage (%):</u>	23.9	24.6	25 max.
<u>Open Space Coverage (%):</u>	71.9	71.9	30 min.
<u>Parking</u>	2	2	2
<u>Estimated Age of Structure:</u>	1937	Variance request(s) shown in red.	

Other Permits/Approvals Required

- Building Permit

Neighborhood Context



Previous Board of Adjustment Actions

- **March 19, 2003** – Variances from Article III, Section 10-302 (A) and Article IV, Section 10-401 (A)(2)(c) were requested to allow: a) a 17' x 22'4" two story addition with a basement with a 7" left side yard where 10' is the minimum required, b) a 3'6" x 9'6" rear deck with a 6'± left side yard where 10' is the minimum required, c) a 3'6" x 9' front deck with a 3' x 6' cantilevered second floor addition above the deck with a 6'± left side yard where 10' is the minimum required, and d) an irregular shaped 199.5 sf two story addition with a basement with a 9'3" right side yard where 10' is the minimum required. The Board voted to **deny** the request as presented and advertised. It was felt that the zoning restrictions that apply to your property are reasonable and that the public interest would be better served if the addition was brought in further from the property line. It would be contrary to the public interest to have a building 7" from the property line.
- **June 17, 2003** – A Variance to allow a 15' x 22' two story addition with a 2' 6" left side yard where 10' was the minimum required. The Board voted to **grant** the request as presented and advertised.

Planning Department Comments

The applicant is proposing to remove an existing detached accessory structure and to construct an addition to the front entrance of the primary structure. The proposed addition requires relief for secondary front yard setback.

Variance Review Criteria

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

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

10.235 Certain Representations Deemed Conditions

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

Dan and Maureen Indoe
239 Broad Street
Portsmouth, NH 03801

Application for Variance

The proposed project at 239 Broad Street is materially small but very impactful to our family. Our home does not currently have a garage, nor a space inside to accommodate outdoor items (e.g. shovels, boots, sports equipment, etc.), which has proven difficult as an active family in the community during New England's changing seasons. Many of these items end up getting kept outside on our existing farmer's porch and we feel that at times we have created an eye-sore for the neighborhood because of it. With that said, we live in a non-conforming house on a non-conforming lot and are attempting to create a mud room for our house without exceeding 25% lot coverage. Therefore, any viable remaining space on our property to create a mud room would require a lot variance. After analyzing several options, we thought this would be the best option with the least amount of impact to the existing house, lot and aesthetics. We would accomplish this by pouring a single footing, not a foundation.

We are proposing to close-in approximately half of our wrap around farmer's porch and add 35 sq/ft of living space, with an exterior stair, to create this mud room. The existing left side of our house is 2'-6" from our lot line, which also happens to be Bersum Ln. It appears from the GeoMap that a portion of our lot actually encompasses part of Bersum Ln. The proposed 35 sq/ft addition would be 6'-5" from our lot line. As you will see in the photos included in our application, there is an existing detached structure in the driveway. This structure was there when we purchased the house, and does not seem to be on any documentation with the town. We would be removing that structure in full to make room for our proposed mudroom.

Bersum Ln. is a small, two lane road that's primary function is for driveway access for three of our neighbors. Bersum Ln. has no addresses of its own.

We do not feel in any way that this addition, nor variance, will be contrary to public interest. We would remain under the 25% lot coverage stipulation, which we feel is extremely important in our downtown neighborhood and would observe all other requirements set forth by the town. Without this variance we will not be able to enhance our house with a mud room that we desperately need, especially with two small children.

Thank you for your consideration in this matter.

Dan and Maureen Indoe

Dan and Maureen Indoe
239 Broad Street
Portsmouth, NH 03801

Application for Variance

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

1. 10.233.20 In order to authorize a variance, the Board must find that the variance meets all of the following criteria:
2. 10.233.21 The variance will not be contrary to the public interest;
 - The variance will be according to public interest and will enhance the aesthetics of the neighborhood.
3. 10.233.22 The spirit of the Ordinance will be observed;
 - We live on a non-conforming lot and the additional square footage will not infringe on our lot lines any more than our current home. The proposed work will stay within 25% lot coverage.
4. 10.233.23 Substantial justice will be done;
 - The proposed work would not go against public interest and rather, would improve our home's presence in the neighborhood.
5. 10.233.24 The values of surrounding properties will not be diminished;
 - The proposed addition will only enhance the neighborhood and increase property value.
6. 10.233.25 Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship.
 - Our home does not have a garage or internal space for outdoor items (e.g. boots, shovels, sports equipment, etc.) and we currently have to store in our living room or on the existing farmer's porch. This is unsightly for our neighbors and leaves our items exposed to the elements of New England seasons. The only existing space to illuminate this hardship would require a variance. A mud room would eliminate this hardship. We are trying to accomplish this with the least amount of disturbance to the neighborhood and the existing structure.

The proposed project at 239 Broad Street is materially small but very impactful to our family. Our home does not currently have a garage, nor a space inside to accommodate outdoor items (e.g. shovels, boots, sports equipment, etc.), which has proven difficult as an active family in the community during New England's changing seasons. Many of these items end up getting kept outside on our existing farmer's porch and we feel that at times we have created an eye-sore for the neighborhood because of it. With that said, we live in a non-conforming house on a non-conforming lot and are attempting to create a mud room for our house without exceeding 25% lot coverage. Therefore, any viable remaining space on our property to create a mud room would require a lot variance. After analyzing several options, we thought this would be the best option

with the least amount of impact to the existing house, lot and aesthetics. We would accomplish this by pouring a single footing, not a foundation.

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Bersum Ln. is a small, two lane road that's primary function is for driveway access for three of our neighbors. Bersum Ln. has no addresses of its own.

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Thank you for your consideration in this matter.

Dan and Maureen Indoe

239 Broad Street, Portsmouth NH 03801

Tax Map 131, Lot 15

0.17 Acres, 7454 Sq/Ft

Existing Sq/Ft Coverage

Living Area	1295 Sq/ft	17.37%
Rear Deck	200 Sq/ft	2.68%
Covered Front Farmers Porch	204.23 Sq/ft	2.74%
Play House	83 Sq/ft	1.11%

1782.23 Sq/ft

23.91% Existing Lot Coverage

Proposed Addition	<u>50.69 Sq/ft</u>	0.68%
-------------------	--------------------	-------

1832.92 Sq/ft

24.59% Proposed Lot Coverage

References

Pg. 2/3 Existing

Pg. 2/3 Existing

Pg. 2/3 Existing

Site Plan 2008 & New

Pg. 1-3 Proposed

Existing Structure (Non Documented) 31.11 Sq/ft

TO BE REMOVED

You will see in photo's of existing)

Photo's of Existing

NF CHARLES & BESSIE BREWSTER
TAX MAP 131, LOT 14
RCRD 3354-2754

REBAR
FOUND

BERSUM LANE

IRON PIPE
FOUND

TAX MAP 131, LOT 15
7454 S.F., 0.17 Acres
NF BETH & MARC GRIFFIN
RCRD 3750-2953

House

574°-51'-37"W
115.83'

LOT LINE
TO BE
ABANDONED

NF BENJAMIN & ROSE SLOME
TAX MAP 131, LOT 16
RCRD 1809-527

N74°-28'-12"W
25.19'

IRON PIPE
FOUND

IRON PIPE
TO BE SET

OPEN
STOCKADE
FENCE

TAX MAP
11057
NF MARY
RCRD 411

CHAIN LINK
FENCE

NEW LOT
LINE

IRON PIPE
FOUND

IRON PIPE
FOUND

IRON PIPE
TO BE SET

NF PAUL H. AVID & JANE P AL
TAX MAP 131, LOT 26-03
RCRD 4446-0033

NF PAUL H. AVID & JANE P AL
TAX MAP 131, LOT 26-02
RCRD 4390-0478

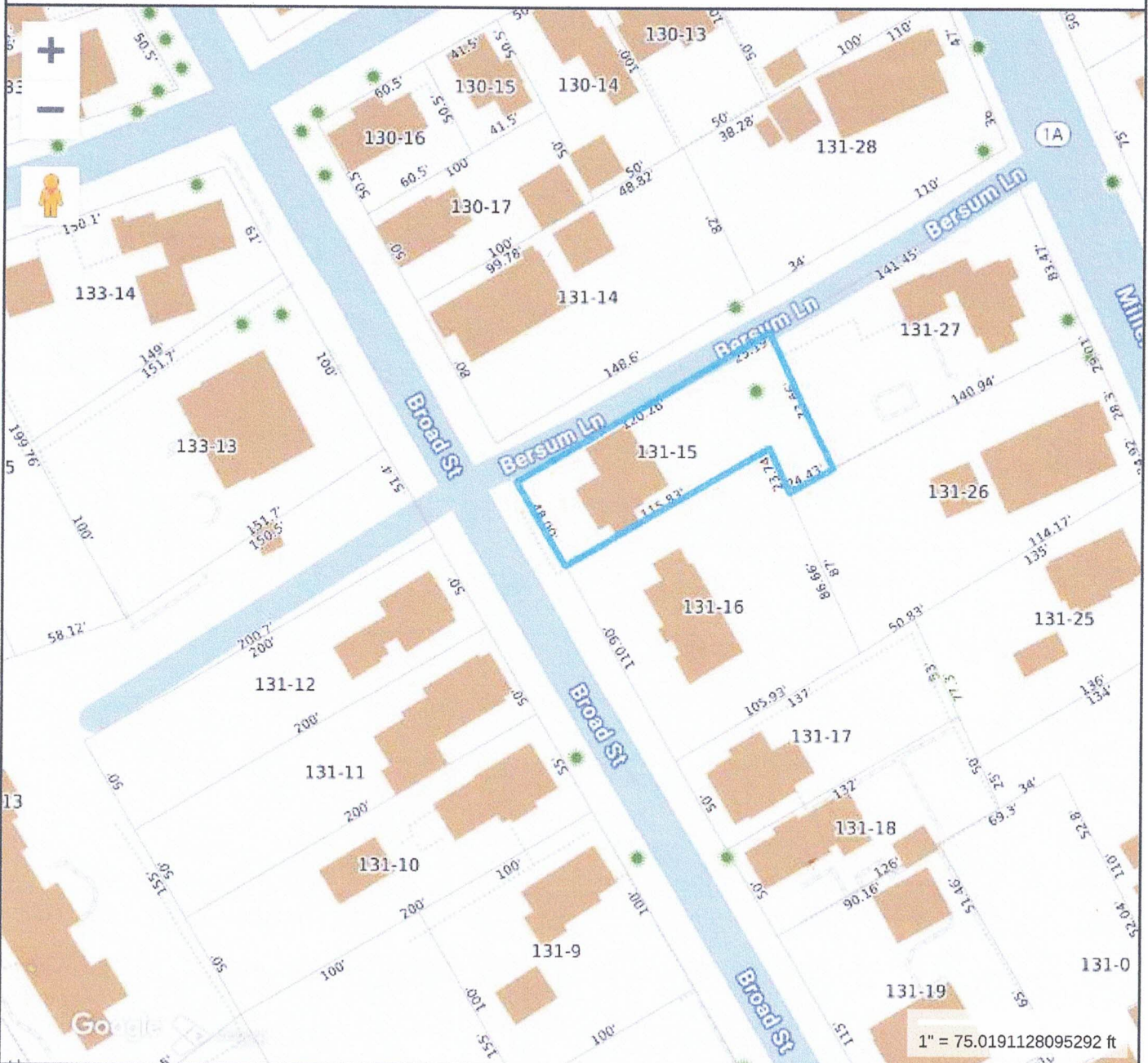
NF OLIVER & WENDY HEINE
TAX MAP 131, LOT 26-01
RCRD 4312-0727

RECEIVED
APR 10 2008

TIME:

Details

Property		Ownership		Valuation	
Location	239 BROAD ST	Owner	ROUSSEAU MAUREEN A INDOE	Total	\$1,397,900
Map-Lot	0131-0015-0000		DANIEL A	Last Sale	\$830,000 on 2017-01-13
Vision Account Number	33822	Address	239 BROAD ST, PORTSMOUTH, NH	Deed Date	2017-01-13
			03801	Book/Page	5790/2396
Land		Zoning			
Parcel Area (AC)	0.17	Zoning			
			GRA		



Property Information

Property ID 0131-0015-0000
 Location 239 BROAD ST
 Owner ROUSSEAU MAUREEN A



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.



Search



Advanced Search

Download Results

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Showing 1-1 results. Scroll to see more.



239 BROAD ST
ROUSSEAU MAUREEN A
0131-0015-0000

0.17 Acres
7454 sq/ft

Existing Sq/Ft Coverage

Living Area

1295 Sq/ft

Lot Coverage

17.37%

Rear Deck

200 Sq/ft

2.68%

Covered Front Farmers Porch

204.23 Sq/ft

2.74%

Play House

83 Sq/ft

1.11%

1782.23 Sq/ft 23.91% Existing Lot Coverage

130-17

Existing Set Back's

Zoom To

Share

Print

239 broad

x



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239 BROAD ST
ROUSSEAU MAUREEN A
0131-0015-0000

Existing Sq/Ft Coverage

Living Area

1295 Sq/ft

Lot Coverage

17.37%

Rear Deck

200 Sq/ft

2.68%

Covered Front Farmers Porch

204.23 Sq/ft

2.74%

Play House

83 Sq/ft

1.11%

1782.23 Sq/ft **23.91% Existing Lot Coverage**

Google

(https://www.google.com/maps/@43.066866,-70.759384,20z?hl=en-US)
Map data © 2025

Map data © 2025

Proposed

130-17

100'
99.78'

131-14

148.6'

Bersum Ln

120.26'

0.17 Acres
7454 Sq/Ft

131-15

Rear Deck

115.83'



Search



Advanced Search

Download Results

More

Showing 1-1 results. Scroll to see more.



239 BROAD ST

ROUSSEAU MAUREEN A

0131-0015-0000

Existing Sq/Ft Coverage

Living Area

1295 Sq/ft

17.37%

Rear Deck

200 Sq/ft

2.68%

Covered Front Farmers Porch

204.23 Sq/ft

2.74%

Play House

83 Sq/ft

1.11%

1782.23 Sq/ft

23.91% Existing Lot Coverage

Proposed Addition

50.69 Sq/ft

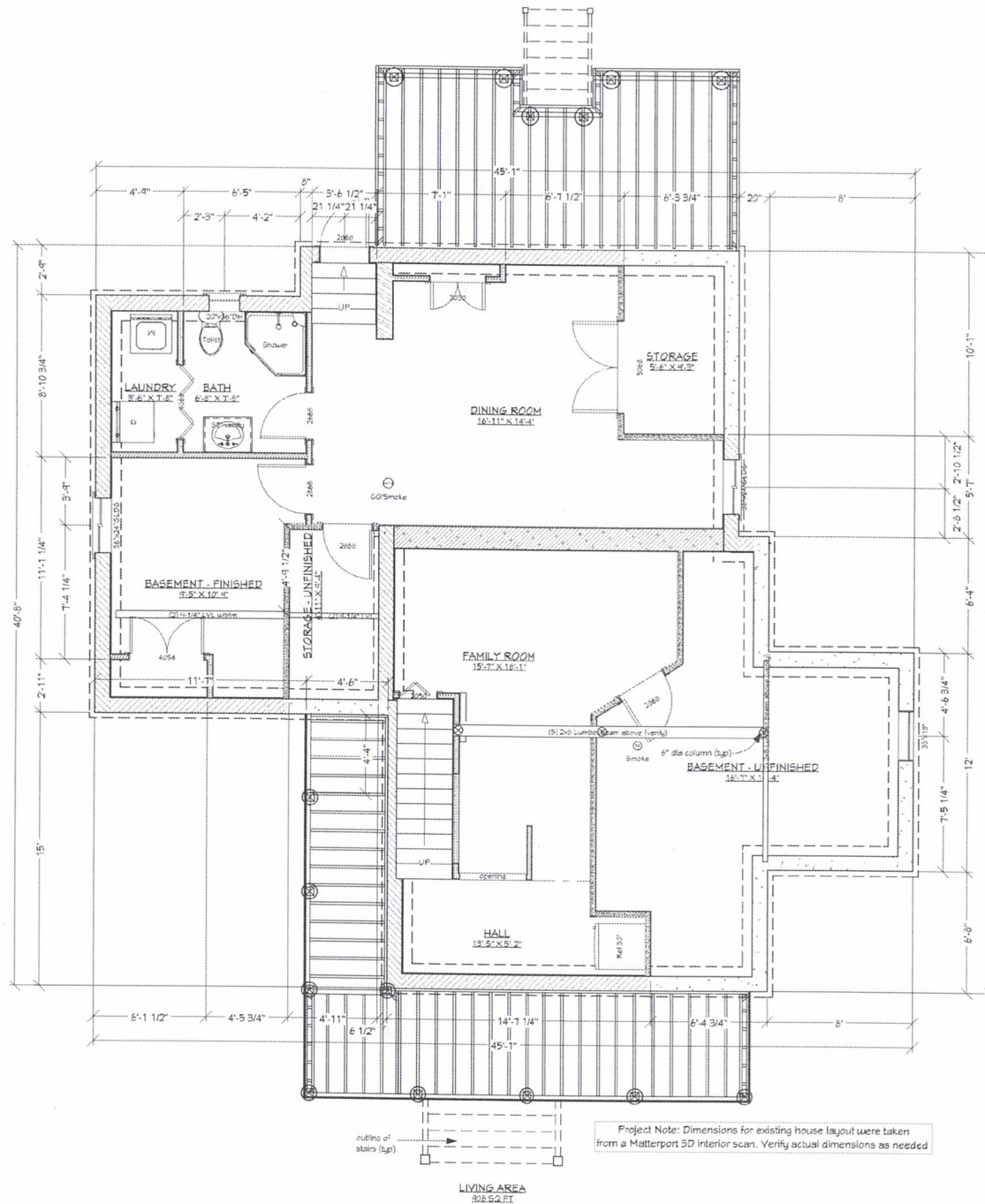
0.68%

1832.92 Sq/ft

24.59% Proposed Lot Coverage

131-16

119.97'



Lower Level Floor Plan
'Existing'

Indoe Residence
Addition & Remodel
239 Broad St - Portsmouth, NH

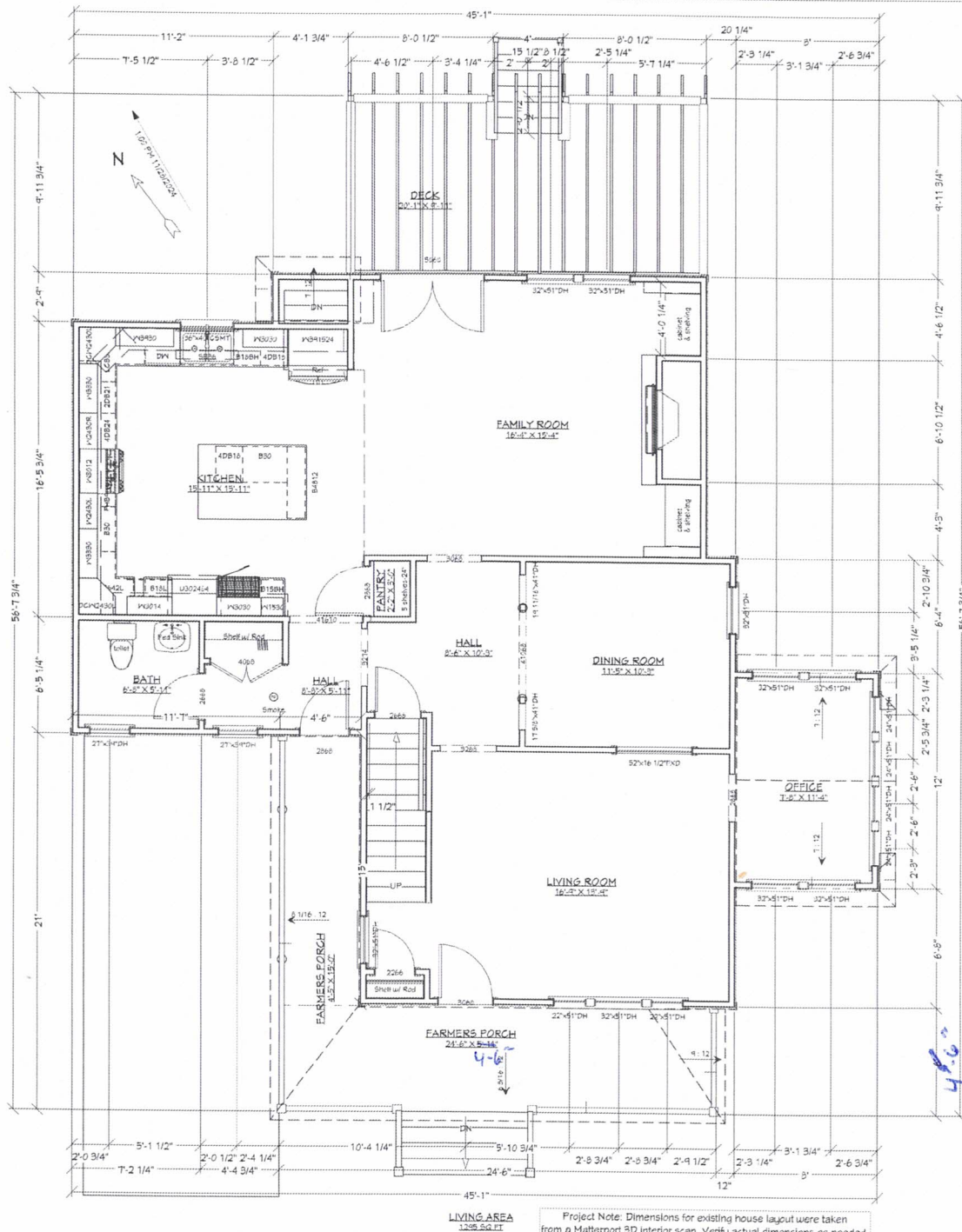
Chapman Design Service
Uxbridge, MA
774-287-6557

DATE:
9/17/2024

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

SHEET:
1/3

Chapman Design Service
 Plans drawn for additions, decks, houses, garages, and more.
 Keith Chapman
 (774) 287-6557
 kchapman652@gmail.com
 Serving residential contractors and their clients since 2013.
 www.chapmandesignservice.com

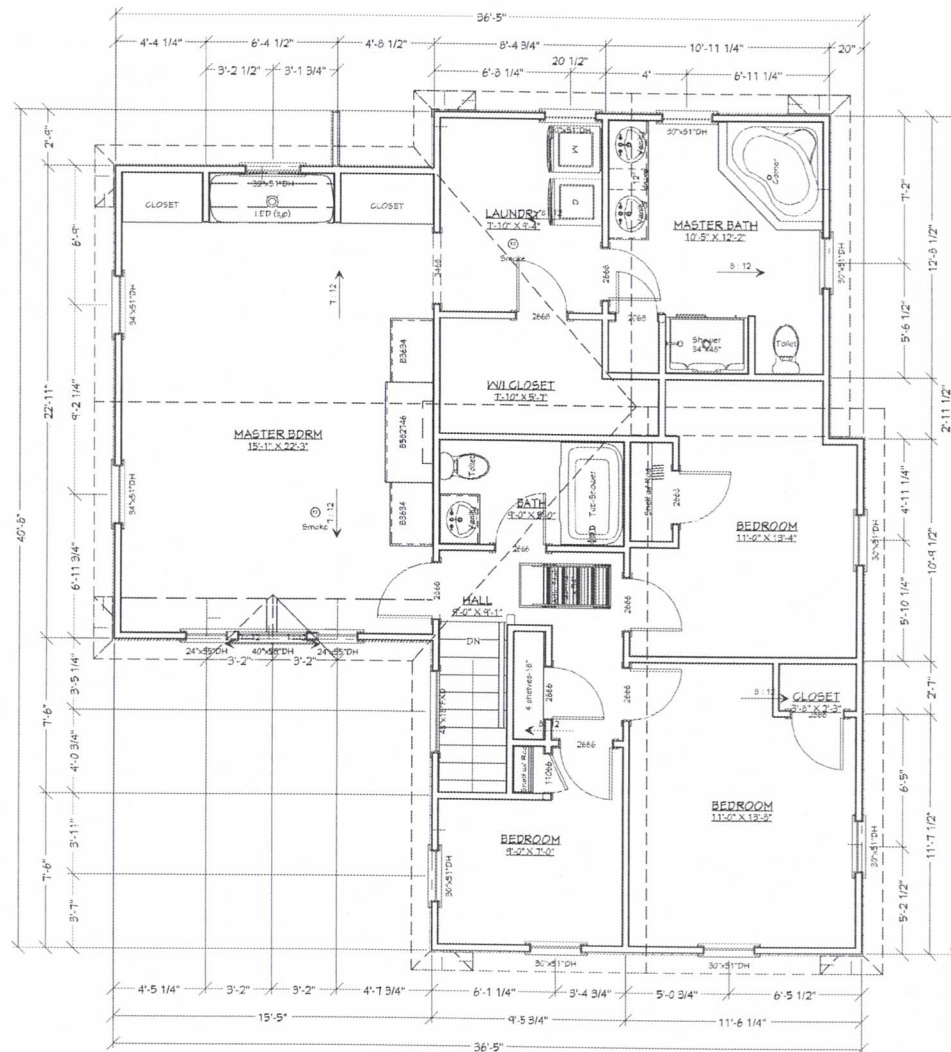


LIVING AREA
1296 SQ. FT.

Project Note: Dimensions for existing house layout were taken from a Matterport 3D interior scan. Verify actual dimensions as needed.

Chapman Design Service
Plans drawn for additions, decks, houses, garages, and more.
Keith Chapman
(774) 267-6557
kchapman952@gmail.com
Serving residential contractors and their clients since 2013.
www.chapmandesignservice.com

SHEET: 2/3	
SCALE: 1/4" = 1'-0"	DATE: 9/17/2024
PROJECT: Indoe Residence Addition & Remodel 234 Broad St - Portsmouth, NH	
NO.	DESCRIPTION
BY	DATE
1st Floor Plan 'Existing'	



LIVING AREA
1151 SQ. FT.

Project Note: Dimensions for existing house layout were taken from a Matterport 3D Interior scan. Verify actual dimensions as needed

Chapman Design Service
Plans drawn for additions, decks, houses, garages, and more.
Keith Chapman
(774) 287-6557
kchapman552@gmail.com
Serving residential contractors and their clients since 2012.
www.chapmandesignservice.com

NO.	DESCRIPTION	BY	DATE

2nd Floor Plan
'Existing'

Indoor Residence
Addition & Remodel
239 Broad St - Portsmouth, NH

Chapman Design Service
Uxbridge, MA
774-287-6557

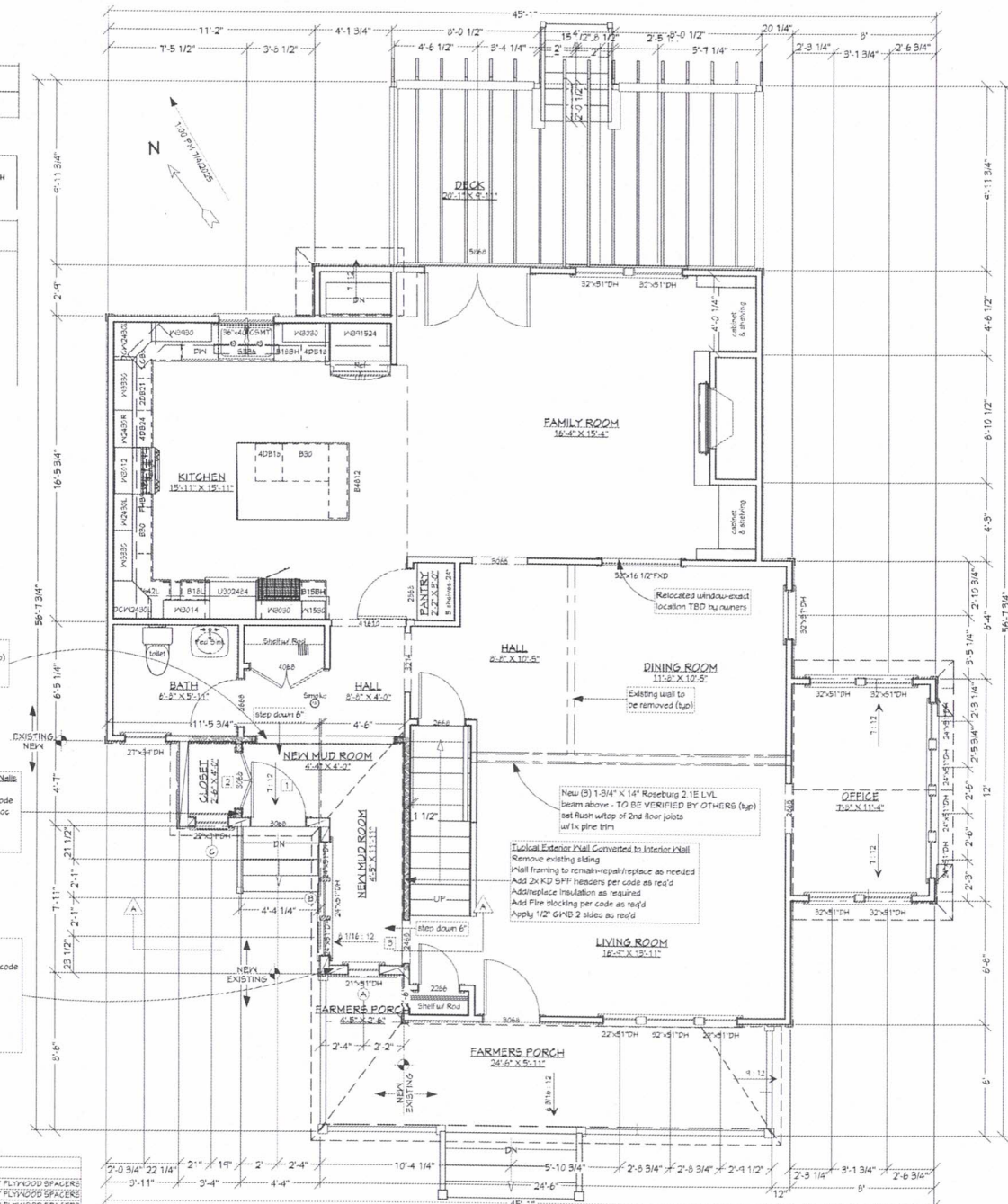
DATE:	9/17/2024
SCALE:	1/4" = 1'-0"
SHEET:	3/3

CS-WSP Continuously sheathed wood structural panel	1/4"		Exterior sheathing per Table R602.3(3) Interior sheathing per Table R602.3(1) or R602.3(2)	6" edges 12" field Varies by fastener
--	------	--	---	--

TABLE R602.10.5
MINIMUM LENGTH OF BRACED WALL PANELS

METHOD (See Table R602.10.4)		MINIMUM LENGTH* (inches)					CONTRIBUTING LENGTH (inches)
		Wall Height					
		8 feet	9 feet	10 feet	11 feet	12 feet	
CS-WSP, CS-SFR	Adjacent clear opening height (inches)						
	≤ 64	24	27	30	33	36	
	68	26	27	30	33	36	
	72	27	27	30	33	36	
	76	30	29	30	33	36	
	80	32	30	30	33	36	
	84	35	32	32	33	36	
	88	38	35	33	33	36	
	92	43	37	35	33	36	
	96	48	41	38	36	36	
	100	----	44	40	38	38	

= CS-WSP WIND BRACING



WINDOW & DOOR SCHEDULE

MARK	QTY	DESCRIPTION	HEADER HEIGHTS PER FLOOR ABOVE SUBFLOOR **	MATCH EXISTING	ROUGH OPENING	NOTES	EXTERIOR HEADERS
A	1	21" X 51" DH WINDOW, 4/1 LITE		VERIFY K/M/R			(3) 2X KD SFF PN1/2" PLYWOOD SPACERS
B	1	24" X 51" DH WINDOW, 4/1 LITE		VERIFY K/M/R			(3) 2X KD SFF PN1/2" PLYWOOD SPACERS
C	1	22" X 36" DH WINDOW, 4/1 LITE		VERIFY K/M/R			(3) 2X KD SFF PN1/2" PLYWOOD SPACERS
D	1	30 X 60 INSULATED ENTRY DOOR - STYLE TRD		VERIFY K/M/R			(3) 2X KD SFF PN1/2" PLYWOOD SPACERS
E	1	30 X 60 ENL MLD INTERIOR DOUBLE DOOR		VERIFY K/M/R	TIGHT FIT JEWEL CATCHES APPLIED		
F	1	24 X 60 CASED OPENING TO REPLACE WINDOW		CONFIRM ON SITE			

** ALL OTHER WINDOWS & DOORS SHOWN ARE EXISTING AND ARE TO REMAIN

NO.	DESCRIPTION	BY	DATE

1st Floor Plan
Window/Door Schedule
"Proposed"

Indoe Residence
Addition & Remodel
239 Broad St. - Portsmouth, NH

Chapman Design Service
Uxbridge, MA
774-287-6557

DATE:

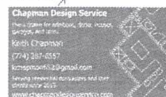
1/12/2025

SCALE:

1/4" = 1'-0"

SHEET:

1/4

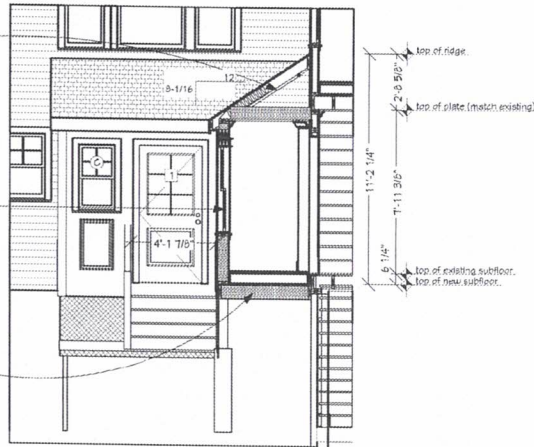


New Roof & Ceiling Construction
 Ridge vent w/shingle cap (typ)
 30 year Architectural asphalt roof shingles to match existing (typ)
 Flashing as required (typ)
 Ice & water shield - 2 courses
 5" galvanized drip edge
 5/8" ZIP sheathing w/upte
 2x6 KD SFF Edge & valley rafters
 2x6 KD SFF rafters @ 16" oc
 Simpson H2.5A hurricane ties at each rafter
 2x6 KD SFF ceiling joists @ 16" oc
 Simpson LUS2BZ joist hangers as req'd
 R50 spray foam insulation in joist bays per code
 1x3 strapping
 1/2" GVRB

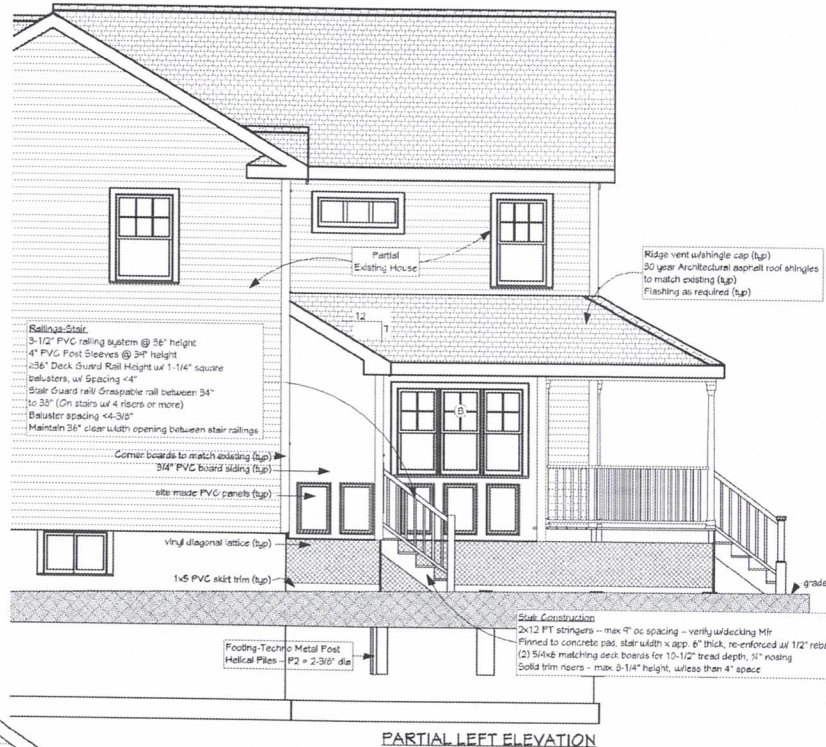
Typical New Exterior Wall Construction
 (2) 2x6 KD SFF top plate
 2x KD SFF window & door headers per code
 2x6 KD SFF studs @ 16" oc
 Fire blocking per code
 2x6 KD SFF sill
 R50 spray foam insulation
 1/2" GVRB
 7/16" ZIP sheathing w/upte
 3/4" PVC board siding

New 1st Floor Construction
 3/4" T&G floor sheathing w/adhesive per mfr's specs
 R30 spray foam insulation in all joist bays per code
 1 New Footing-Techno Metal Post Helical Piles - P2 = 2-3/8" dia
 Post anchors-Galvanized Steel U-brackets
 w/ (4) 3/16" x 2-3/4" ORC-R55 (coated structural screws)
 6x6 FT post, notched 3" to accept (2) 2x6 FT beam - fastened
 w/ (3) FastenMaster T-TimberLOC screws per mfr's specs
 (2) 2x6 FT beam, fastened @ 8" oc staggered
 w/ 5/16" x 2-3/4" ORC-R55 (coated structural screws)
 2x6 FT joists @ 12" oc, attached to drop beam
 w/ Simpson H2.5A hurricane ties
 Simpson LUS2BZ joist hangers as req'd
 Insect screen applied over joists
 1/2" FT plywood applied under joists

Framing Determination from the 2015 IRC & International Residential Code® for One- and Two-Family Dwellings
 Girders/headers spans based on TABLE R602.3(1) & TABLE R602.3(2) & TABLE R602.3(3)
 Floor joists based on TABLE R502.3.1(2) = 40 psf live/20 psf dead load
 Ceiling joists based on TABLE R502.4(1)
 Roof rafters based on TABLE R602.5.1(6) Ground snow load = 50 psf 20 psf dead load, ceiling attached to rafters, L/240
 ALL ENGINEERED & TRUSS MATERIAL (IF REQUIRED OR USED) IS TO BE VERIFIED & DESIGNED
 BY QUALIFIED OTHERS. SIZES SHOWN/LISTED ARE ESTIMATED ONLY



SECTION A-A



PARTIAL LEFT ELEVATION



FRONT ELEVATION

Front & Left Elevations
 Section A-A
 'Proposed'

Indoe Residence
 Addition & Remodel
 239 Broad St - Portsmouth, NH

Chapman Design Service
 Uxbridge, MA
 774-267-6557

DATE:
 1/12/2025
 SCALE:
 1/4" = 1'-0"
 SHEET:

3/4

Chapman Design Service
 100 State St, Uxbridge, MA 01568
 774-267-6557
 www.chapmandesignservice.com

TABLE R507.5
DECK JOIST SPANS FOR COMMON LUMBER SPECIES* (ft. - in.)

SPECIES*	SIZE	SPACING OF DECK JOISTS WITH NO CANTILEVER* (inches)			SPACING OF DECK JOISTS WITH CANTILEVERS* (inches)		
		12	16	24	12	16	24
Southern pine	2 x 6	9-11	9-0	7-7	6-8	6-8	6-8
	2 x 8	13-1	11-10	9-8	10-1	10-1	9-8
	2 x 10	16-2	14-0	11-5	14-6	14-0	11-5
	2 x 12	18-0	16-6	13-6	18-0	16-6	13-6

TABLE R507.6
DECK BEAM SPAN LENGTHS* (ft. - in.)

SPECIES*	SIZE*	DECK JOIST SPAN LESS THAN OR EQUAL TO: (feet)						
		6	8	10	12	14	16	18
Southern pine	2 - 2 x 6	6-11	5-11	5-4	4-10	4-6	4-3	4-0
	2 - 2 x 8	8-9	7-7	6-9	6-2	5-9	5-4	5-0
	2 - 2 x 10	10-4	9-0	8-0	7-4	6-9	6-4	6-0
	2 - 2 x 12	12-2	10-7	9-5	8-7	8-0	7-6	7-0
	3 - 2 x 6	8-2	7-5	6-8	6-1	5-8	5-3	5-0
	3 - 2 x 8	10-10	9-6	8-6	7-9	7-2	6-8	6-4
	3 - 2 x 10	13-0	11-3	10-0	9-2	8-6	7-11	7-6
	3 - 2 x 12	15-3	13-3	11-10	10-9	10-0	9-4	8-10

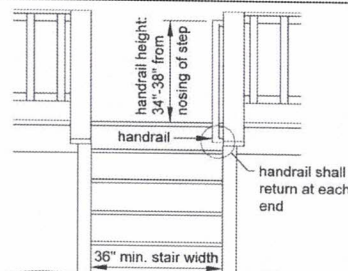
Design for
Code Acceptance



Prescriptive Residential Wood
Deck Construction Guide

Copyright © 2015 American Wood Council

Figure 33. Miscellaneous Stair Requirements.



NOTE:
THIS DETAIL IS APPLICABLE
WHERE FLOOR JOISTS ARE
PARALLEL TO DECK JOISTS.

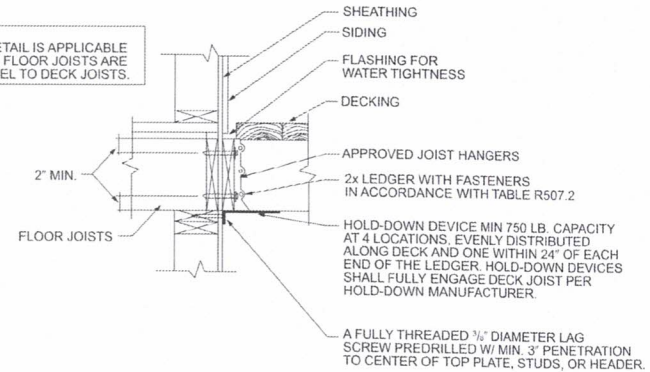
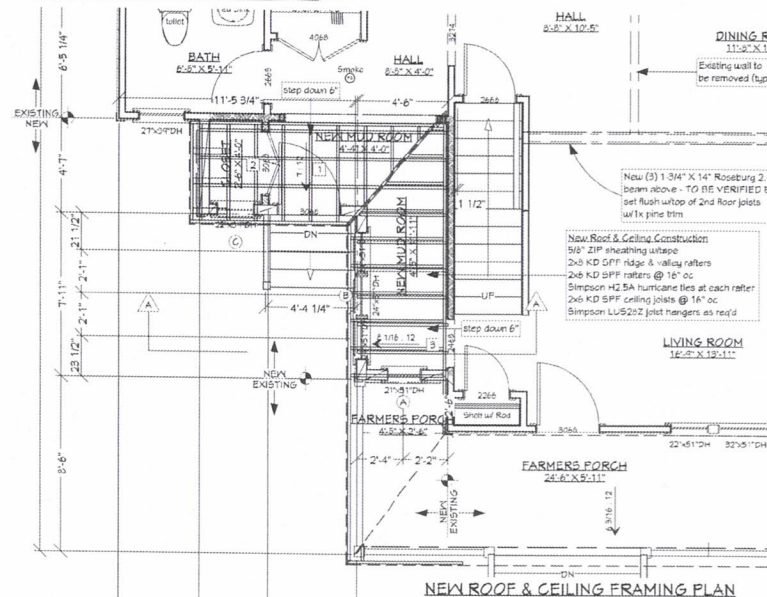


FIGURE R507.2.3(2)
DECK ATTACHMENT FOR LATERAL LOADS

TABLE R507.8
DECK POST HEIGHT*

DECK POST SIZE	MAXIMUM HEIGHT*
4 x 4	8'
4 x 6	8'
6 x 6	14'



New Roof & Ceiling
Framing Plan
IRC 2015 Deck Details
"Proposed"

Indoor Residence
Addition & Remodel
239 Broad St - Portsmouth, NH

Chapman Design Service
Uxbridge, MA
774-287-6557

DATE:
1/12/2025
SCALE:
1/4" = 1'-0"
SHEET:
4/4

Front of House



Front of House



Structure
to be removed
(Free Standing, Non Documented
w/ Town, Existing when we
Purchased Property)





Remade



Left Side
of House

Bersum Ln





Neighbors
to
Left

Bersum Ln

Right
Front



Right Rear



Left Rear



III. NEW BUSINESS

- E. The request of **Greengard Center for Autism (Owner)**, for property located at **89 Brewery Lane** whereas relief is needed for a change of use from an assisted living home with 5 residents to an assisted living center with 6 residents which requires the following: 1) Variance from Section 10.440, Use #2.11 for an assisted living center where it is not permitted. Said property is located on Assessor Map 146 Lot 26 and lies within the Character District 4-L2 (CD4-L2). (LU-25-77)

Existing & Proposed Conditions

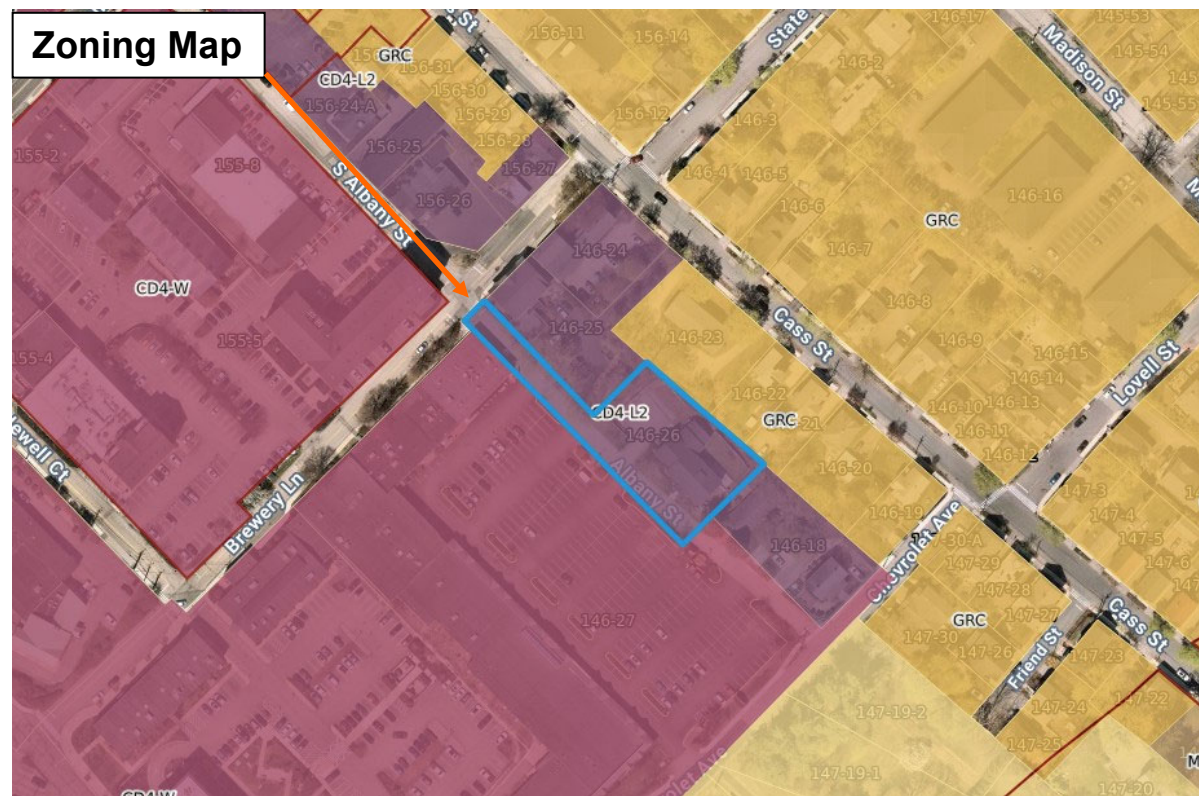
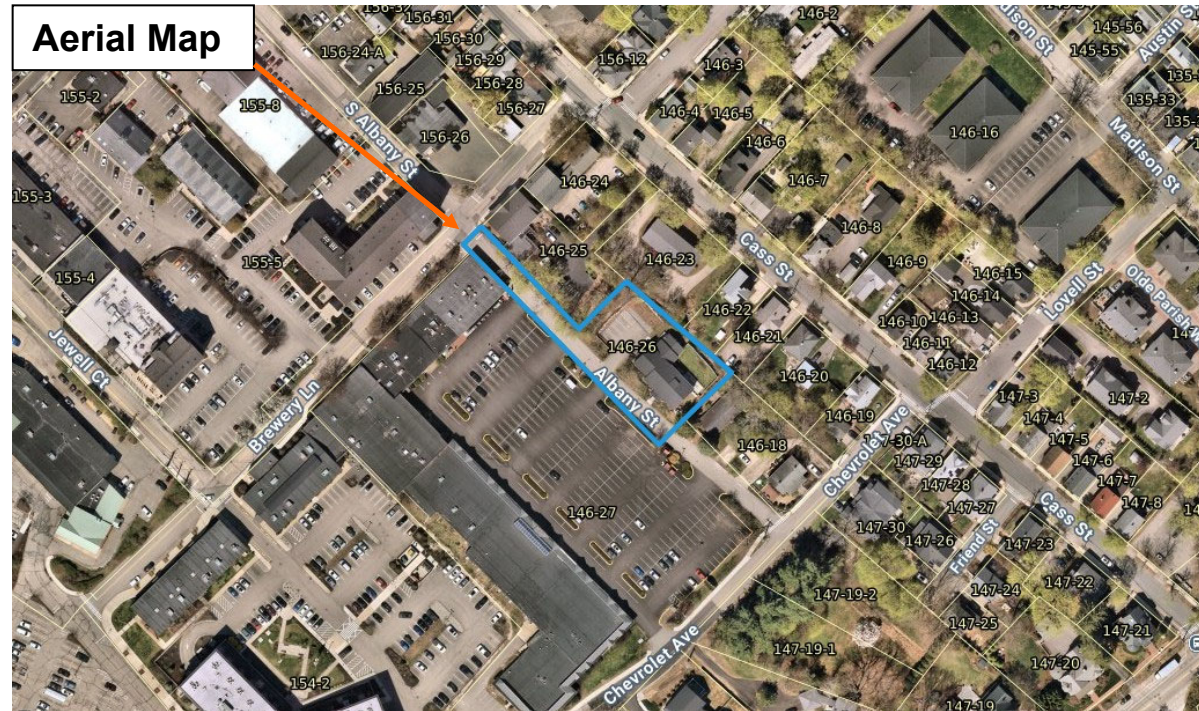
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Assisted Living Home	Assisted Living Center*	Primarily Mixed Use
<u>Lot area (sq. ft.):</u>	25,466	25,466	3,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	25,466	4,244	3,000 min.
<u>Parking</u>	4	4	4
		Variance request shown in red.	

*Conversion of staff suite to assisted living unit changes the use from an assisted living home (5 or fewer residents) to an assisted living center (6 or more residents)

Other Permits/Approvals Required

- Building / Tenant fit-up Permit

Neighborhood Context



Previous Board of Adjustment Actions

- **August 18, 2015** – Remove existing structure and construct 2-story assisted living home with a 3,450 sq. Ft. footprint which requires the following: 1) A Special Exception from Section 10.440 to allow an assisted living home. 2) A Variance from Section 10.512 to allow 30' of street frontage where a minimum of 100' is required. The Board voted to **grant** the request as presented and advertised.
- **July 18, 2017** - A one-year extension of the variance and special exception granted at the August 18, 2015 meeting of the Board. The Board voted to **grant** a one-year extension through August 18, 2018.
- **April 17, 2018** – Replace the existing structure with a Colonial style assisted living home which requires the following: 1) Variances from Section 10.5A41.10A to allow the following: a) a principal front yard of 76'± where 15' is the maximum allowed; b) a right side yard of 37'± where a 5' minimum to 20' maximum is required; c) a front lot line buildout of 50%± where 60% minimum to 80% maximum is required; d) a minimum ground story height of 10' where 11' is required; e) 13%± façade glazing where 20% minimum to 40% maximum is required; f) a building footprint of 3,146 s.f. where 2,500 s.f. is required; and 2) a Variance from Section 10.5A44.31 to allow off-street parking spaces to be located less than 20' behind the façade of a principal building. The Board voted to **grant** as presented and advertised.

Planning Department Comments

The property received land use approvals in 2018 to construct an assisted living home with 5 resident units and a live-in caretaker. In addition to the live-in caretaker's unit, a staff suite was provided on the second floor. The applicant is proposing to convert the existing staff suite to a sixth assisted living unit. The change from 5 to 6 units changes the use from an assisted living home (five or fewer residents) to an assisted living center (six or more residents) and requires relief as an assisted living center is not an allowed use in the CD4-L2 District. The applicant is not proposing any exterior changes to the property and existing parking meets the required 4 spaces for the 6 assisted living units and 1 caretaker's unit (0.5 spaces / unit + 1 space for caretaker).

The site plan approval included the following outstanding condition of approval:

1. "The provision of an easement or ROW to the City for the portion of the road and/or future sidewalk on the parcel to connect to the public portion of Albany Street shall be reviewed and approved by the Planning and Legal Department and approved by the City Council."

Should the Board decide to grant the requested variance, staff recommends that it is conditioned upon finalization of the outstanding condition of site plan approval noted above.

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.

HOEFLE, PHOENIX, GORMLEY & ROBERTS, PLLC
ATTORNEYS AT LAW

127 Parrott Avenue | Portsmouth, NH, 03801
Telephone: 603.436.0666 | Facsimile: 603.431.0879 | www.hpgrlaw.com

May 21, 2025

HAND DELIVERED

Stefanie Casella, Planner
Portsmouth Zoning Board of Adjustment
One Junkins Avenue
Portsmouth NH 03801

Re: Greengard Center for Autism
89 Brewery Lane/Tax Map 146, Lot 26, CD4-L2 District

Dear Ms. Casella, Chair Eldridge, and Zoning Board Members:

On behalf of the Greengard Center for Autism and her non-profit, Greengard Residence, we are pleased to submit this Application for Variances permitting conversion of staff space to accommodate a sixth resident:

- 5/21/2025 Viewpoint Submission
- Owner Authorization
- 5/21/2025 Memorandum of Law and Exhibits in Support of the Variance Request.

We look forward to presenting this application at the June 17, 2025 Zoning Board Meeting.

Very truly yours,



R. Timothy Phoenix
Monica F. Kieser

Enclosures

cc: Greengard Center for Autism
TF Moran
Destefano|Maugel

DANIEL C. HOEFLE	ALEC L. MCEACHERN	PETER V. DOYLE	STEPHEN H. ROBERTS In Memoriam
R. TIMOTHY PHOENIX	KEVIN M. BAUM	MONICA F. KIESER	OF COUNSEL:
LAWRENCE B. GORMLEY	JACOB J.B. MARVELLEY	CHRISTOPHER P. MULLIGAN	SAMUEL R. REID
R. PETER TAYLOR	GREGORY D. ROBBINS	KAREN W. OLIVER	JOHN AHLGREN

Monica Kieser

From: brfrankel8@aol.com
Sent: Tuesday, January 21, 2025 5:40 PM
To: Monica Kieser
Subject: Authorization

Categories: Smokeball

Hi Monica,

Here is the authorization. You will notice that I have changed from Executive Director to President of Board. We hired an Executive Director.

I authorize Hoefle, Phoenix, Gormley & Roberts, PLLC to execute all applications before Portsmouth Land Use Boards and to take any and all actions necessary throughout the application and permitting process, including but not limited to attendance and presentation at public hearings regarding the property at 89 Brewery Lane, Tax Map-Lot- 146-26.

GREENGARD CENTER FOR AUTISM

Barbara Frankel, Founder & President of Board

MEMORANDUM

To: Portsmouth Zoning Board of Adjustment (“ZBA”)
From: R. Timothy Phoenix, Esq.
Monica F. Kieser, Esq.
Date: May 21, 2025
Re: Greengard Center for Autism
Project Location: 89 Brewery Lane
Tax Map 146, Lot 26 – CD4-L2 District

Dear Chair Eldridge and Zoning Board Members:

On behalf of the Greengard Center for Autism (“Greengard”), we are pleased to submit this Memorandum and attached exhibits in support of zoning relief to permit the conversion of staff space to support a sixth autistic adult resident.

I. EXHIBITS

- A. Plan Set – by TFMoran – for reference only, no change.
 - 2/26/18 Site Plan
 - 1/8/2020 Grading and Drainage Plan
- B. 2018 Architectural Plans – by Destefano Architects – for reference only.
- C. Site Photographs.
- D. 89 Brewery Lane in Context.
- E. Tax Map 146.

II. PROPERTY/PROJECT HISTORY

Eighty-nine Brewery Lane is a 25,466 square foot lot with a colonial-style home constructed in 2020 as an assisted living home for five autistic adults and a live-in caretaker (“the Property”). The ZBA approved the assisted living home in 2015 and 2018. **(Exhibit A-C)**. In addition to the live-in caretaker, Greengard’s original plan provided for an upstairs staff suite. **(Exhibit B, second story floor plan)**. In practice, Greengard has found it unnecessary to have another staff suite on the second floor and would like to convert this space for use by a sixth autistic adult (“the Project”). **The Project requires no site changes, building changes, or additional parking.** The sole modification is to change the designation of the second story “staff office” by the elevator to a “suite” for a sixth resident. The Project requires relief because the increase from five residents to six residents changes the use from an assisted living *home* (five or fewer residents) to an assisted living *center* (six or more residents) as those terms are defined in the Ordinance.

The Property is located in the CD 4-L2 district in a transition area between the CD-4W

(Malt House Exchange, Plaza 800) and the GRC (Cass Street) and GRA (Chevrolet Avenue) residential districts (Exhibit D). The area surrounding the Property includes mixed single, multi-family and condominium residences on Cass Street and Chevrolet Avenue, and the mostly commercial activities of the abutting Albany Street/Brewery Lane businesses, Plaza 800, and the Malt House exchange where Greengard operates its day program.

III. RELIEF REQUIRED

- A. **PZO § 10.440.2.11 to permit a sixth resident where doing so changes the use to an assisted living center where such use is not permitted.**

IV. VARIANCE CRITERIA

1. **The variances will not be contrary to the public interest.**
2. **The spirit of the ordinance is observed.**

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

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

- The use of land, buildings and structures for business, industrial, residential and other purposes. The existing assisted living home was permitted by special exception in 2015 and 2018, constructed in 2020 and now supports five residents. The addition of a sixth resident in the existing home requires no interior or exterior modifications to the home or parking.
- The intensity of land use, including lot sizes, building coverage, building height and bulk, yards and open space. There will be no expansion to the existing building and therefore no change to any existing dimensions. The addition of a sixth resident does not meaningfully increase the intensity of the use.
- The design of the facilities for vehicular access, circulation, parking and loading. The addition of a sixth resident does not require any change to the number of parking spaces, so existing features will remain the same.
- The impacts on properties of outdoor lighting, noise, vibration, storm water runoff on flooding. The Project proposes no change to the building and simply reclassifies staff

space to accommodate a sixth resident. Accordingly, there is no change compared to existing conditions.

- The preservation and enhancement of the visual environment. The existing colonial home is a welcome addition to the neighborhood and will remain unchanged.
- The preservation of historic districts, and building and structures of historic or architectural interest. This location is not in the historic district.
- The protection of natural resources, including groundwater, service water, wetland, wildlife habitat and air quality. The building and site will not be changed in any way and the addition of a sixth resident will not meaningfully increase demand for city services.

Given the lack of physical changes to the building and site and the minimal change in use through addition of a sixth resident, the requested relief does not “in a marked degree conflict with the ordinance such that [it] violates the ordinance’s basic zoning objectives.” Malachy Glen, *supra*, which also held:

One way to ascertain whether granting the variance would violate basic zoning objectives is to examine whether it would alter the essential character of the locality. . . . Another approach to [determine] whether granting the variance violates basic zoning objectives is to examine whether granting the variance would threaten the public health, safety or welfare. (emphasis added)

The construction of the colonial home vastly improved over the dated ranch and provides a transition from the intensive commercial uses and the adjacent GRC Zone and fits in well. The Project will not alter the site or building and will therefore preserve the essential character of the locality. The addition of one additional resident will not threaten the public health, safety, or welfare.

3. Substantial justice will be done by granting the variance.

If “there is no benefit to the public that would outweigh the hardship to the applicant, this factor is satisfied.” Harborside Associates, L.P. v. Parade Residence Hotel, L.L.C., 162 N.H. 508 (2011). That is, “any loss to the [applicant] that is not outweighed by a gain to the general public is an injustice.” Malachy Glen, *supra* at 109.

Greengard is constitutionally entitled to the use of the lot as they see fit, subject to the effect of an additional resident on the use regulations. “The right to use and enjoy one's property is a fundamental right protected by both the State and Federal Constitutions.” N.H. CONST. pt. I, arts. 2, 12; U.S. CONST. amends. V, XIV; Town of Chesterfield v. Brooks, 126 N.H. 64 (1985) at 68. Part I, Article 12 of the New Hampshire Constitution provides in part that “no part of a man's property shall be taken from him, or applied to public uses, without his own consent,

or that of the representative body of the people.” Thus, our State Constitutional protections limit the police power of the State and its municipalities in their regulation of the use of property. L. Grossman & Sons, Inc. v. Town of Gilford, 118 N.H. 480, 482 (1978). “Property” in the constitutional sense has been interpreted to mean not the tangible property itself, *but rather the right to possess, use, enjoy and dispose of it*. Burrows v. City of Keene, 121 N.H. 590, 597 (1981). (emphasis added).

The Supreme Court has also held that zoning ordinances must be reasonable, not arbitrary and must rest upon some ground of difference having fair and substantial relation to the object of the regulation. Simplex Technologies, Inc. v. Town of Newington, 145 N.H. 727, 731 (2001); Chesterfield at 69.

As noted above, the existing colonial structure was purpose built to house autistic adults with services and a live-in caretaker. An additional residential staff suite on the second floor is not needed for staff and would be better suited to meet the demand for assisted living environments suitable for autistic adults. Given no harm to the public, Greengard and the community will be greatly harmed by denial of an additional resident where one can be accommodated with no change to the site or building. For these reasons, substantial justice will be done by granting each variance while a substantial injustice will be done by denying any of them.

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

The tasteful addition of the colonial home in place of a dated ranch was a significant improvement to the neighborhood and acts as a smooth transition from the commercial uses at the Malt House Exchange to the adjacent residences on Albany/Brewery Lane and the GRC Zone. The CD4-L2 district permits a number of uses including multi-family up to eight units, professional office space, and – by special exception – a residential care facility for *more* than five residents, which is more intensive than adding a sixth resident to Greengard. Given the improvements to the Property, the existing use transitional area and the lack of any noticeable impact, granting the variance will not diminish surrounding property values.

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

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

The Property is located in a transitional area abutted by intensive commercial uses

including a large parking lot serving Malt House Exchange as well as multi-family homes and condominiums. The existing assisted living home in a brand-new and aesthetically pleasing colonial home that fits in well with the neighborhood. Its current use includes a designated second floor staff unit that is not needed while the demand for quality assisted living environment autistic adults continues to increase. These factors combine to create special conditions.

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

Use restrictions exist to keep similar uses together, avoid uses that conflict, and to provide a transition between zones. The existing assisted living home accommodates five residents and an upstairs staff suite. The Project reclassifies that suite to accommodate a sixth resident with no changes to the site or building. While the Project technically results in a change of use to an assisted living *center*, the addition of a sixth resident is not noticeable and is less intensive than some uses permitted by right by special exception. As an example, a multi-family accommodating eight units is permitted and a residential care facility for more than six residents is permitted by special exception. Both would be more intensive than the simple addition of a sixth resident who can reside in the existing upstairs staff suite. For these reasons, there is no fair and substantial reason to apply the strict requirements of the ordinance.

- c. The proposed use is reasonable.

The existing use permitted by special exception accommodates five residents. A sixth resident can reside in an underutilized staff suite with no other changes to the building or site. For all of the reasons cited, the proposed use, and the granting of a variance is reasonable.

V. CONCLUSION

For all of the reasons herein stated, Greengard respectfully requests that the Portsmouth Zoning Board of Adjustment grant the submitted variance request.

Respectfully submitted,

GREENGARD CENTER FOR AUTISM

By: 

R. Timothy Phoenix

Monica F. Kieser

EROSION CONTROL NOTES

- SEE GENERAL EROSION CONTROL NOTES ON THE EROSION CONTROL DETAIL SHEET.
- INSTALL SILT BARRIER ALONG THE PERIMETER OF THE AREA TO BE DISTURBED AS FIRST ORDER OF WORK.
- DUST CONTROL SHALL BE MAINTAINED THROUGHOUT THE CONSTRUCTION PERIOD. IT SHALL BE ACCOMPLISHED BY THE UNIFORM APPLICATION OF CALCIUM CHLORIDE AT THE RATE OF 1-1/2 POUNDS PER SQUARE YARD BY MEANS OF A LIME SPREADER OR OTHER APPROVED METHOD. WATER MAY ALSO BE USED FOR DUST CONTROL, AND APPLIED BY SPRINKLING WITH WATER TRUCK DISTRIBUTORS, AS REQUIRED.
- SILT PROTECTION MEASURES SHALL BE INSTALLED IN ACCORDANCE WITH THE DETAILS CONTAINED IN THIS PLAN SET.
- CONSTRUCT JUTE MATTING ON ALL SLOPES STEEPER THAN 3:1. DISTURBED AREAS SLOPING TOWARDS WETLANDS AND ALL LOCATIONS SHOWN ON PLAN.
- INSPECT EROSION CONTROL MEASURES WEEKLY AND AFTER EACH RAIN STORM OF 0.10 INCH OR GREATER. REPAIR/MODIFY SILT BARRIER AS NECESSARY TO MAXIMIZE FILTER EFFICIENCY. REMOVE SEDIMENT WHEN SEDIMENT IS 1/3 THE STRUCTURE HEIGHT.
- PROVIDE SILT BARRIERS AT THE BASE OF CUT AND FILL SLOPES UNTIL COMPLETION OF THE PROJECT OR UNTIL VEGETATION BECOMES ESTABLISHED ON SLOPES. EROSION PROTECTION BELOW FILL SLOPES SHALL BE PLACED IMMEDIATELY AFTER CLEARING, PRIOR TO EMBANKMENT CONSTRUCTION.
- ALL DISTURBED AREAS SHALL BE REVEGETATED AS QUICKLY AS POSSIBLE. ALL CUT AND FILL SLOPES SHALL BE SEEDED WITHIN 72 HOURS AFTER GRADING.
- ALL EXCAVATIONS SHALL BE THOROUGHLY SECURED ON A DAILY BASIS BY THE CONTRACTOR AT THE COMPLETION OF CONSTRUCTION OPERATIONS IN THE IMMEDIATE AREA AND PRIOR TO ANY PREDICTED SIGNIFICANT RAIN EVENT
- AN AREA SHALL BE CONSIDERED STABLE IF ONE OF THE FOLLOWING HAS OCCURRED:
A. BASE COURSE GRAVELS ARE INSTALLED IN AREAS TO BE PAVED
B. A MINIMUM OF 85% VEGETATED GROWTH HAS BEEN ESTABLISHED
C. A MINIMUM OF 3" OF NON-EROSIVE MATERIAL SUCH AS STONE OR RIP RAP HAS BEEN INSTALLED
D. EROSION CONTROL BLANKETS HAVE BEEN PROPERLY INSTALLED
- ALL CATCH BASINS, MANHOLES, AND DRAIN LINES SHALL BE THOROUGHLY CLEANED OF ALL SEDIMENT AND DEBRIS AFTER ALL AREAS HAVE BEEN STABILIZED.
- CONTRACTOR IS RESPONSIBLE FOR MAINTAINING SLOPE STABILITY DURING CONSTRUCTION.
- THE EROSION CONTROL PRACTICES SHOWN ON THESE PLANS ARE ILLUSTRATIVE ONLY AND SHALL BE SUPPLEMENTED BY THE SITE CONTRACTOR AS NEEDED.

GRADING NOTES

- ALL DISTURBED AREAS NOT TO BE PAVED OR OTHERWISE TREATED SHALL RECEIVE 6" LOAM, SEED, FERTILIZER AND MULCH.
- DENSITY REQUIREMENTS:
MINIMUM DENSITY* LOCATION
95% BELOW PAVED OR CONCRETE AREAS
95% TRENCH BEDDING MATERIAL AND SAND BLANKET BACKFILL
90% BELOW LOAM AND SEED AREAS

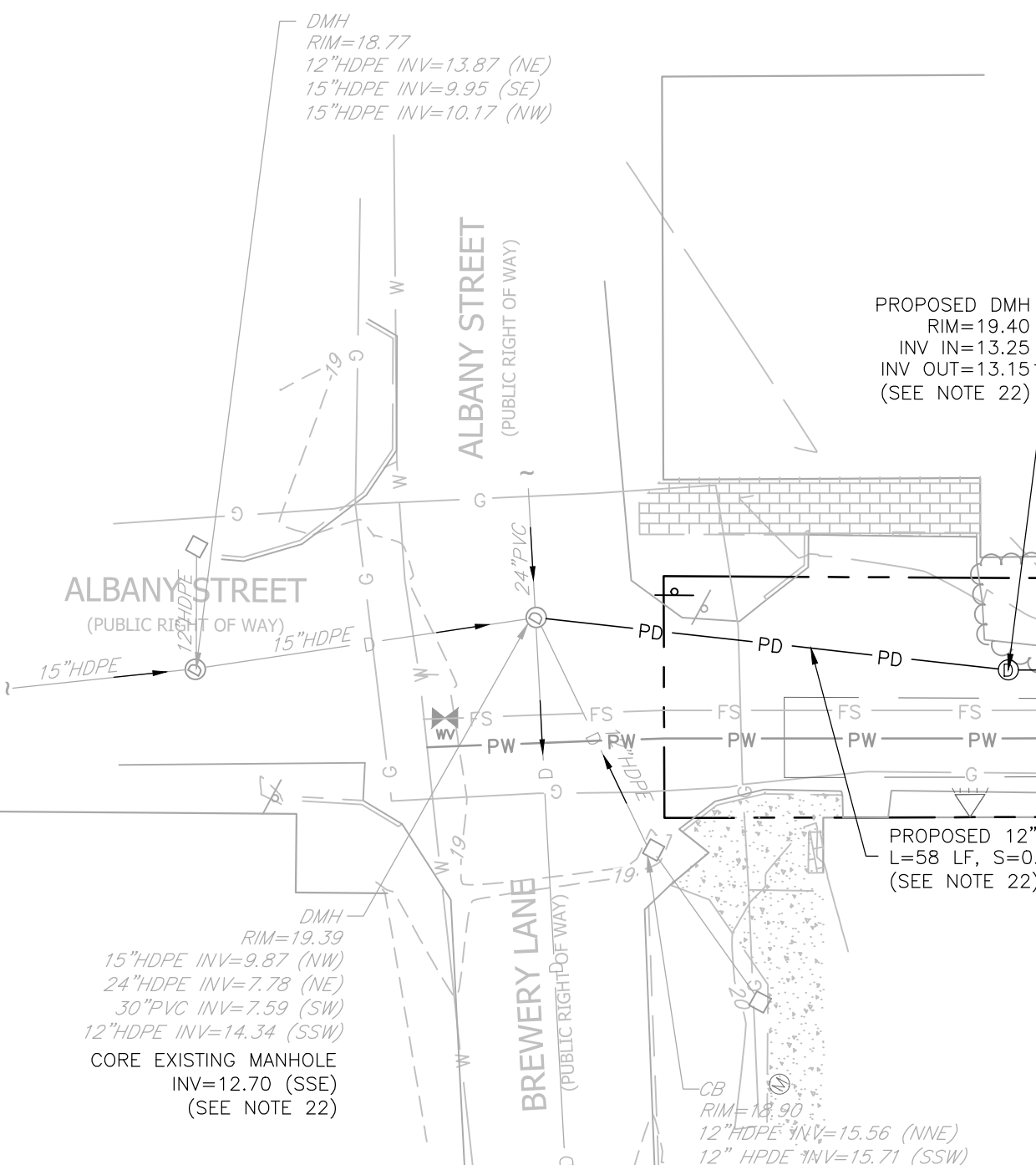
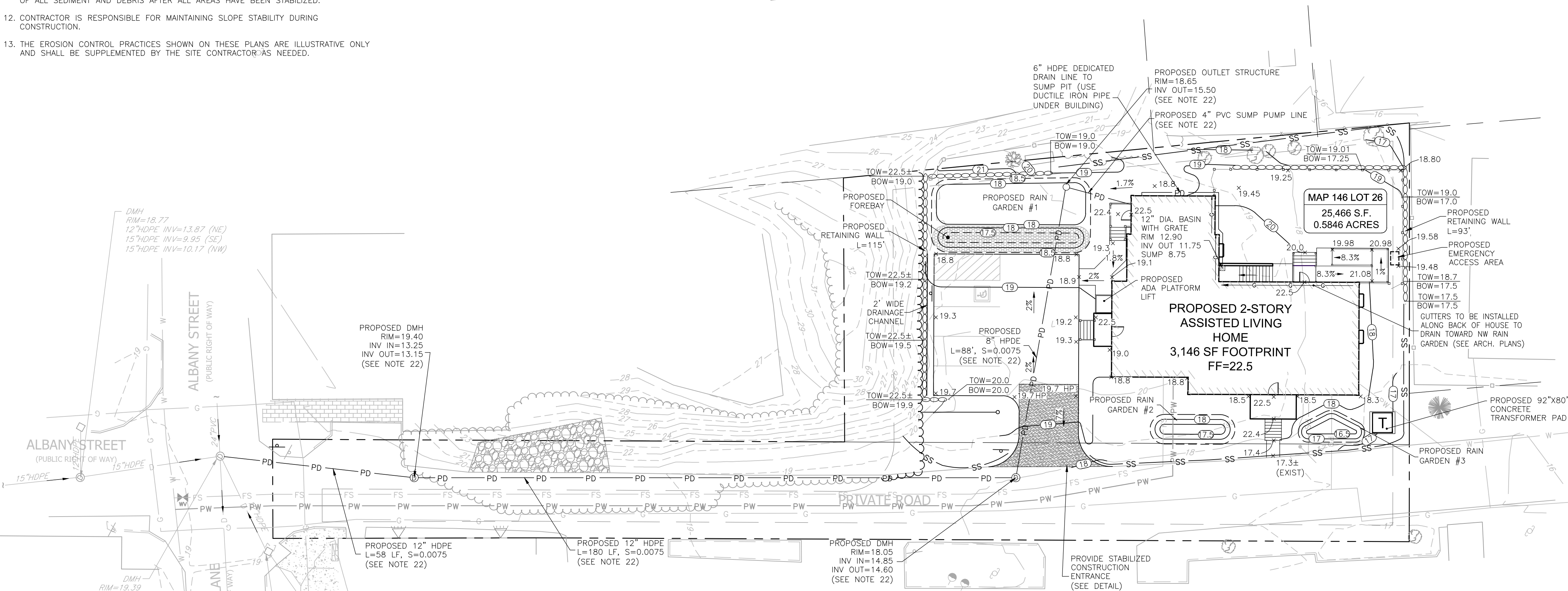
*ALL PERCENTAGES OF COMPACTION SHALL BE OF THE MAXIMUM DRY DENSITY AT THE OPTIMUM MOISTURE CONTENT AS DETERMINED AND CONTROLLED IN ACCORDANCE WITH ASTM D-1557, METHOD C. FIELD DENSITY TESTS SHALL BE MADE IN ACCORDANCE WITH ASTM D-1556 OR ASTM D-6938.
- SEE EXISTING FEATURES PLAN FOR BENCHMARK INFORMATION. VERIFY TBM ELEVATIONS PRIOR TO CONSTRUCTION.
- THE SITE SHALL BE GRADED SO ALL FINISHED PAVEMENT HAS POSITIVE DRAINAGE AND SHALL NOT POND WATER DEEPER THEN 1/4 INCH FOR A PERIOD OF MORE THEN 15 MINUTES AFTER FLOODING.
- CONTRACTOR IS RESPONSIBLE FOR MAINTAINING SLOPE STABILITY DURING CONSTRUCTION.
- NO FILL SHALL BE PLACED IN ANY WETLAND AREA.
- ALL ELEVATIONS SHOWN AT CURB ARE TO THE BOTTOM OF CURB UNLESS OTHERWISE NOTED. CURBS HAVE A 6" REVEAL UNLESS OTHERWISE NOTED.
- COORDINATE WITH ARCHITECTURAL PLANS FOR DETAILED GRADING AT BUILDING, AND SIZE AND LOCATION OF ALL BUILDING SERVICES.
- LIMITS OF WORK ARE SHOWN AS APPROXIMATE. THE CONTRACTOR SHALL COORDINATE ALL WORK TO PROVIDE SMOOTH TRANSITIONS. THIS INCLUDES GRADING, PAVEMENT, CURBING, SIDEWALKS AND ALIGNMENTS.
- IT SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR TO CHECK THE ACCURACY OF THE TOPOGRAPHY AND REPORT ANY DISCREPANCIES TO THE ENGINEER PRIOR TO ANY EARTHWORK BEING PERFORMED ON THE SITE. NO CLAIM FOR EXTRA WORK WILL BE CONSIDERED FOR PAYMENT AFTER EARTHWORK HAS COMMENCED.

DRAINAGE NOTES

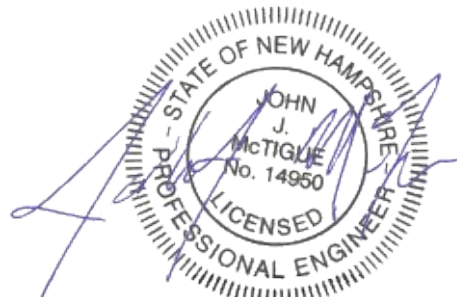
- ALL STORM DRAIN LINES SHALL BE HIGH DENSITY POLYETHYLENE (HANCOR "HIQ", ADS "N-12", OR APPROVED EQUAL) UNLESS OTHERWISE NOTED FOR ROOF DRAINS & CANOPY LEADERS.
- ALL CATCH BASINS, MANHOLES, AND DRAIN LINES SHALL BE THOROUGHLY CLEANED OF ALL SEDIMENT AND DEBRIS AFTER ALL AREAS HAVE BEEN STABILIZED.
- ALL MATERIALS AND CONSTRUCTION SHALL CONFORM WITH APPLICABLE CITY/TOWN, COUNTY, AND STATE CODES.
- LENGTH OF PIPE IS PROVIDED FOR CONVENIENCE ONLY. ACTUAL PIPE LENGTH SHALL BE DETERMINED IN THE FIELD.
- COORDINATE ROOF AND CANOPY DRAINS WITH BUILDING PLANS.
- ALL PROPOSED MANHOLES, CATCH BASINS AND OTHER STORMWATER STRUCTURES SHALL BE SUBJECT TO REVIEW AND APPROVAL UNDER SUBMITTAL REQUIREMENTS.
- WHERE EXISTING MANHOLES AND CATCH BASINS ARE TO BE RETROFITTED TO ACCEPT NEW PIPES, CONTRACTOR SHALL MAKE ALL NEW PENETRATIONS WITH CONCRETE CORE. THE CONNECTION BETWEEN THE STRUCTURE AND PIPE SHALL BE MADE WATERTIGHT WITH NON-SHRINK GROUT. CONTRACTOR SHALL VERIFY SIZE OF STRUCTURE AND INVERT ELEVATIONS PRIOR TO COMPLETING WORK AND REPORT ANY DISCREPANCIES TO ENGINEER.
- ROAD AND DRAINAGE CONSTRUCTION SHALL CONFORM TO THE TYPICAL SECTIONS AND DETAILS SHOWN ON THE PLANS, AND SHALL MEET LOCAL STANDARDS AND THE REQUIREMENTS OF THE LATEST NHDOT STANDARD SPECIFICATIONS FOR ROADS AND BRIDGE CONSTRUCTION AND THE NHDOT STANDARD STRUCTURE DRAWINGS UNLESS OTHERWISE NOTED.
- STORM DRAINAGE SYSTEM SHALL BE CONSTRUCTED TO LINE AND GRADE AS SHOWN ON THE PLANS. CONSTRUCTION METHODS SHALL CONFORM TO NHDOT STANDARD SPECIFICATIONS, SECTION 603. CATCH BASINS AND DRAIN MANHOLES SHALL CONFORM TO SECTION 604. ALL CATCH BASIN GRATES SHALL BE TYPE B AND CONFORM TO NHDOT STANDARDS AND SPECIFICATIONS UNLESS OTHERWISE NOTED.
- RAIN GARDENS ARE BEING USED AS LOW IMPACT DEVELOPMENT DESIGN.
- THE PROPOSED DEVELOPMENT IS NOT WITHIN THE WELLHEAD PROTECTION OR AQUIFER PROTECTION AREAS.

CONSTRUCTION SEQUENCE

- TO MINIMIZE EROSION AND SEDIMENTATION DUE TO CONSTRUCTION, CONSTRUCTION SHALL FOLLOW THIS GENERAL CONSTRUCTION SEQUENCE. MODIFICATIONS TO THE SEQUENCE NECESSARY DUE TO THE CONTRACTOR'S SCHEDULE SHALL INCLUDE APPROPRIATE TEMPORARY AND PERMANENT EROSION AND SEDIMENTATION CONTROL MEASURES.
- THE CONTRACTOR SHALL SCHEDULE WORK SUCH THAT ANY CONSTRUCTION AREA IS STABILIZED WITHIN 45 DAYS OF INITIAL DISTURBANCE EXCEPT AS NOTED BELOW.
- THE PROJECT SHALL BE MANAGED SO THAT IT MEETS THE REQUIREMENTS AND INTENT OF RSA 430:53 AND CHAPTER ARG 3800 RELATIVE TO INVASIVE SPECIES.
- NOTIFY EASEMENT OWNERS PRIOR TO COMMENCEMENT OF WORK.
 - INSTALL ALL PERIMETER EROSION PROTECTION MEASURES AS INDICATED ON THE PLANS PRIOR TO THE COMMENCEMENT OF CONSTRUCTION.
 - PONDS AND SWALES SHALL BE INSTALLED.
 - DURING CONSTRUCTION EVERY EFFORT SHALL BE MADE TO MANAGE SURFACE RUNOFF QUALITY.
 - DAILY, OR AS REQUIRED, CONSTRUCT TEMPORARY BERMS, DRAINS, DITCHES, SILT BARRIERS, SEDIMENT TRAPS, ETC.. MULCH AND SEED AS REQUIRED (TEMPORARY SEED MIXTURE OF WINTER RYE APPLIED AT A RATE OF 2.5 LBS/1000 SF SHALL BE USED).
 - CONDUCT MAJOR EARTHWORK, INCLUDING CLEARING AND GRUBBING, WITHIN THE LIMITS OF WORK. ALL CUT AND FILL SLOPES SHALL BE SEEDED WITHIN 72 HOURS AFTER GRADING.
 - ALL STRIPPED TOPSOIL AND OTHER EARTH MATERIALS SHALL BE STOCKPILED OUTSIDE THE IMMEDIATE WORK AND WETLAND AREAS. A SILT BARRIER SHALL BE CONSTRUCTED AROUND THESE PILES IN A MANNER TO PROVIDE ACCESS AND AVOID SEDIMENT OUTSIDE OF THE WORK AREA.
 - CONSTRUCT BUILDING PAD AND COMMENCE NEW BUILDING CONSTRUCTION.
 - CONSTRUCT TEMPORARY CULVERTS AND DIVERSIONS AS REQUIRED.
 - BEGIN PERMANENT AND TEMPORARY INSTALLATION OF SEED AND MULCH.
 - PERFORM EARTHWORK NECESSARY TO ESTABLISH ROUGH GRADING AROUND PARKING FIELDS AND ACCESS DRIVES. MANAGE EXPOSED SOIL SURFACES TO AVOID TRANSPORTING SEDIMENTS INTO WETLANDS. PARKING LOTS SHALL BE STABILIZED WITHIN 72 HOURS OF ACHIEVING FINISHED GRADE.
 - INSTALL SUBSURFACE UTILITIES (WATER, SEWER, GAS, ELECTRIC, COMMUNICATIONS, DRAINAGE, DRAINAGE FACILITIES, ETC.).
 - CONSTRUCT PROPOSED ROADWAY, RAIN GARDENS AND DRAINAGE SWALES. ALL DITCHES, SWALES, AND RAIN GARDENS SHALL BE FULLY STABILIZED PRIOR TO DIRECTING FLOW TO THEM.
 - COMPLETE BUILDING AND ALL OFF-SITE IMPROVEMENTS.
 - COMPLETE SEEDING AND MULCHING. SEED TO BE APPLIED WITH BROADCAST SPREADER OR BY HYDRO-SEEDING, THEN ROLLED, RAKED OR DRAGGED TO ASSURE SEED/SOIL CONTACT.
 - REMOVE TEMPORARY EROSION CONTROL MEASURES AFTER SEEDED AREAS HAVE BECOME FIRMLY ESTABLISHED AND SITE IMPROVEMENTS ARE COMPLETE.
 - DURING THE COURSE OF THE WORK AND UPON COMPLETION, THE CONTRACTOR SHALL REMOVE ALL SEDIMENT DEPOSITS, EITHER ON OR OFF SITE, INCLUDING CATCH BASINS AND SUMPS, DRAIN PIPES AND DITCHES, CURB LINES, ALONG SILT BARRIERS, ETC. RESULTING FROM SOIL AND/OR CONSTRUCTION OPERATIONS.
 - SEE WINTER CONSTRUCTION SEQUENCE FOR WORK CONDUCTED AFTER OCTOBER 15TH.
 - DO NOT DISCHARGE SEDIMENT-LADEN WATERS FROM CONSTRUCTION ACTIVITIES (RUNOFF, WATER FROM EXCAVATIONS) TO THE RAIN GARDEN BASINS.
 - AFTER THE BASIN IS EXCAVATED TO THE FINAL DESIGN ELEVATION, THE FLOOR SHOULD BE DEEPLY TILLED WITH A ROTARY TILLER OR DISC HARROW TO RESTORE INFILTRATION RATES, FOLLOWED BY A PASS WITH A LEVELING DRAG.
 - DO NOT PLACE INFILTRATION SYSTEMS INTO SERVICE UNTIL THE CONTRIBUTING AREAS HAVE BEEN FULLY STABILIZED.
 - THE ENTIRE UNDERGROUND DRAINAGE SYSTEM FROM THE POTENTIAL SUMP PUMP, OUTLET STRUCTURE, 2 DRAIN MANHOLES, CONNECTION TO THE EXISTING MANHOLE, AND ALL ASSOCIATED DRAIN LINES SHALL BE REVIEWED IN THE FIELD WITH THE DESIGN ENGINEER AND DPW AT THE TIME OF CONSTRUCTION TO DETERMINE IF THE UNDERGROUND DRAINAGE SYSTEM IS REQUIRED.



LEGEND			
DMH	DRAIN MANHOLE		EXISTING UTILITY POLE
L	LENGTH		EXISTING GUY WIRE
SF	SQUARE FEET		EXISTING SIGN
TOW	TOP OF WALL		PROPOSED SIGN
BOW	BOTTOM OF WALL		PROPOSED SPOT GRADE
	ACCESSIBLE PARKING		PROPOSED SILT SOCK
TYP	TYPICAL		EXISTING CONTOUR
VBC	VERTICAL BITUMINOUS CURB		PROPOSED CONTOUR
VGC	VERTICAL GRANITE CURB		PROPERTY LINE
MRB_ZONE	MIXED RESIDENTIAL BUSINESS DISTRICT		PROPOSED FIRE SERVICE
B_ZONE	BUSINESS DISTRICT		PROPOSED WATER LINE
	EXISTING SEWER MANHOLE		PROPOSED DRAIN LINE
	EXISTING DRAIN MANHOLE		EXISTING GAS LINE
	EXISTING MANHOLE		PROPOSED ELECTRIC & COMMUNICATIONS LINE
	EXISTING GAS VALVE		PROPOSED SEWER LINE
	EXISTING WATER VALVE		PROPOSED GAS LINE
	EXISTING HYDRANT		EXISTING EDGE OF CANOPY
	EXISTING WATER SHUTOFF		PROPOSED EDGE OF CANOPY
	EXISTING CATCH BASIN		



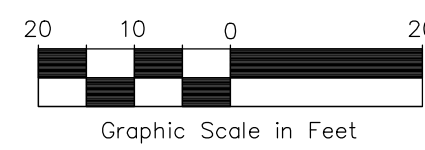
APPROVED BY THE PORTSMOUTH PLANNING BOARD

ON _____

CHAIRMAN: _____ AND

SECRETARY: _____

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TAX MAP 146 LOT 26
GRADING, DRAINAGE & EROSION CONTROL PLAN
GREENGARD RESIDENCE
89 BREWERY LANE
PORTSMOUTH, NEW HAMPSHIRE

OWNED BY
BARBARA R. FRANKEL

SCALE: 1"=20' (22X34)
1"=40' (11X17)

MAY 8, 2018

Civil Engineers
Structural Engineers
Traffic Engineers
Land Surveyors
Landscape Architects
Scientists

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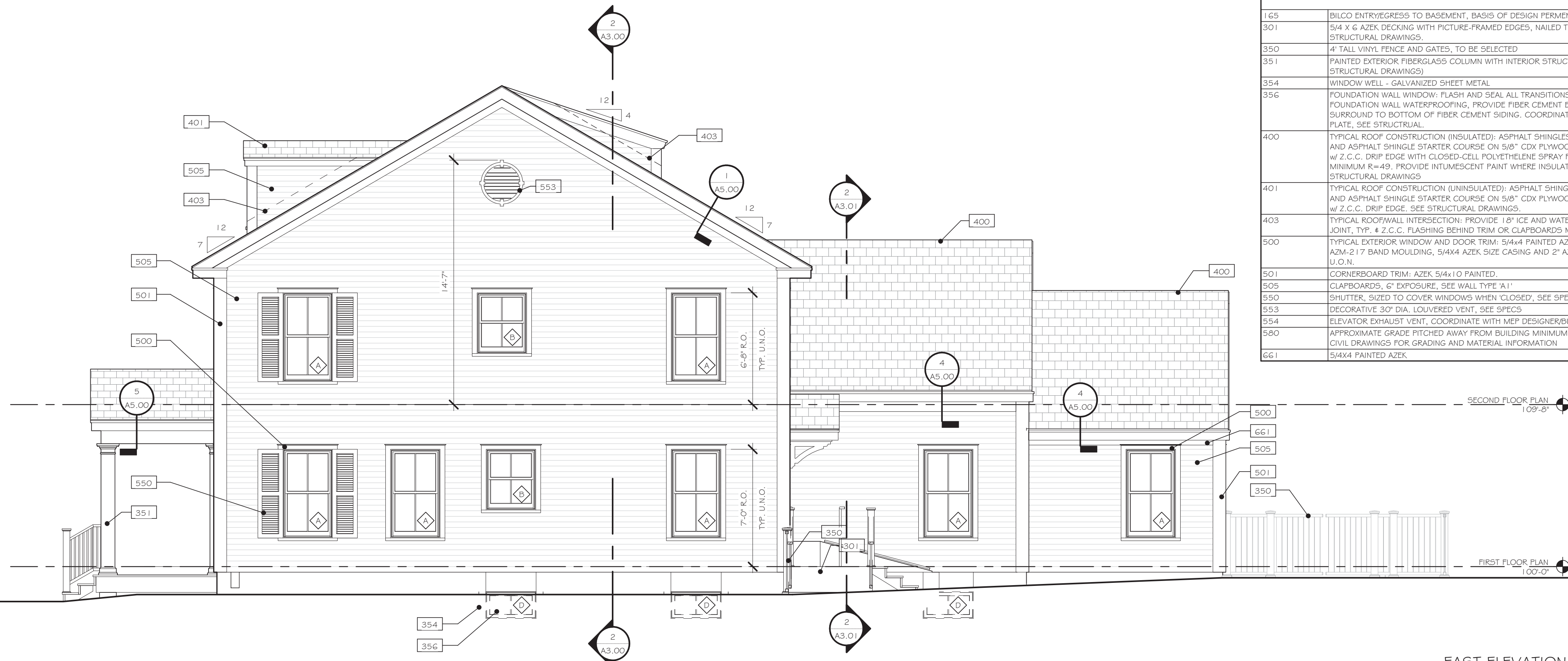
DR JRW
CK JPL

FB
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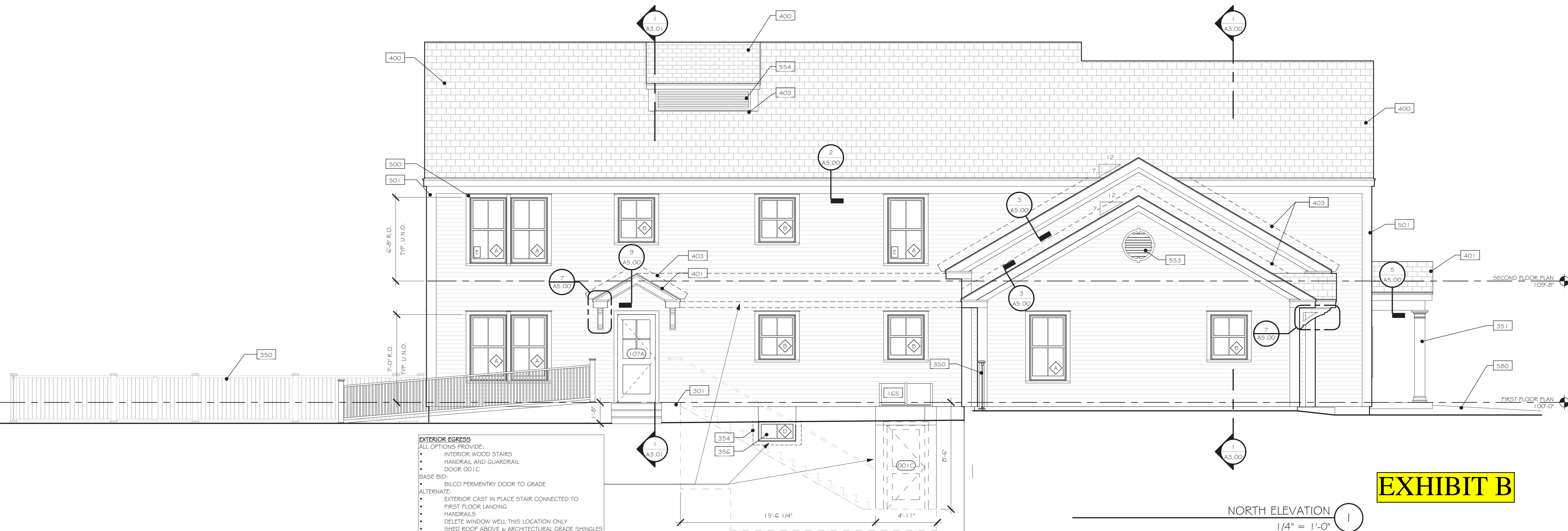
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C-4

5	1/03/2020	Revise per FF change	RCK	JJM
4	08/01/18	No revisions this sheet.	JRW	JPL
3	07/10/18	Revised per regulatory comments.	JRW	JPL
2	06/19/18	Revised per regulatory comments.	JRW	JPL
1	05/21/18	Revised per regulatory comments.	JRW	JPL
REV.	DATE	DESCRIPTION	DR	CK



EAST ELEVATION 2
1/4" = 1'-0"



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

EXTERIOR EGRESS
ALL OPTIONS PROVIDE:
• INTERIOR WOOD STAIRS
• HANDRAIL AND GUARDRAIL
• DOOR 001 C
BASE BID:
• BILCO PERMENTRY DOOR TO GRADE
ALTERNATE:
• EXTERIOR CAST IN PLACE STAIR CONNECTED TO FIRST FLOOR LANDING
• HANDRAILS
• DELETE WINDOW WELL THIS LOCATION ONLY
• SHED ROOF ABOVE W ARCHITECTURAL GRADE SHINGLES

EXHIBIT B

KEYNOTE LEGEND	
165	BILCO ENTRYEGRESS TO BASEMENT, BASIS OF DESIGN PERMENTRY TYPE F
301	5/4 X 6 AZEK DECKING WITH PICTURE-FRAMED EDGES, NAILED TO STRUCTURE. REFER TO STRUCTURAL DRAWINGS.
350	4" TALL VINYL FENCE AND GATES, TO BE SELECTED
351	PAINTED EXTERIOR FIBERGLASS COLUMN WITH INTERIOR STRUCTURAL POST (SEE SPECS AND STRUCTURAL DRAWINGS)
354	WINDOW WELL - GALVANIZED SHEET METAL
356	FOUNDATION WALL WINDOW: FLASH AND SEAL ALL TRANSITIONS TO MAINTAIN CONTINUITY OF FOUNDATION WALL WATERPROOFING, PROVIDE FIBER CEMENT EXTERIOR TRIM WINDOW SURROUND TO BOTTOM OF FIBER CEMENT SIDING. COORDINATE HEAD HEIGHT WITH SILL PLATE, SEE STRUCTRIAL.
400	TYPICAL ROOF CONSTRUCTION (INSULATED): ASPHALT SHINGLES ON ICE AND WATER SHIELD AND ASPHALT SHINGLE STARTER COURSE ON 5/8" CDX PLYWOOD SHEATHING ON STRUCTURE w/ 2" C.C. DRIP EDGE WITH CLOSED-CELL POLYETHYLENE SPRAY FOAM INSULATION TO ACHIEVE MINIMUM R=49. PROVIDE INTUMESCENT PAINT WHERE INSULATION IS EXPOSED IN ATTIC. SEE STRUCTURAL DRAWINGS
401	TYPICAL ROOF CONSTRUCTION (UNINSULATED): ASPHALT SHINGLES ON ICE AND WATER SHIELD AND ASPHALT SHINGLE STARTER COURSE ON 5/8" CDX PLYWOOD SHEATHING ON STRUCTURE w/ 2" C.C. DRIP EDGE. SEE STRUCTURAL DRAWINGS.
403	TYPICAL ROOFWALL INTERSECTION: PROVIDE 1/8" ICE AND WATER SHIELD BOTH SIDES OF JOINT, TYP. # 2" C.C. FLASHING BEHIND TRIM OR CLAPBOARDS MIN. 8" VERTICALLY.
500	TYPICAL EXTERIOR WINDOW AND DOOR TRIM: 5/4x4 PAINTED AZEK HEAD CASING WITH AZM-217 BAND MOULDING, 5/4x4 AZEK SIZE CASING AND 2" AZEK HISTORIC SILL WITH DRIP, U.O.N.
501	CORNERBOARD TRIM: AZEK 5/4x10 PAINTED
505	CLAPBOARDS, 6" EXPOSURE, SEE WALL TYPE 'A1'
550	SHUTTER, SIZED TO COVER WINDOWS WHEN 'CLOSED', SEE SPECS. TYP. WHERE SHOWN
553	DECORATIVE 30" DIA. LOUVERED VENT, SEE SPECS
554	ELEVATOR EXHAUST VENT, COORDINATE WITH MEP DESIGNER/BUILDER
580	APPROXIMATE GRADE PITCHED AWAY FROM BUILDING MINIMUM 1/4"FT FOR 3' MINIMUM - SEE CIVIL DRAWINGS FOR GRADING AND MATERIAL INFORMATION
661	5/4X4 PAINTED AZEK

GENERAL CONSTRUCTION NOTES	
1.	REFER TO AO.01 FOR WALL TYPE ASSEMBLIES
2.	ALL EXTERIOR WALLS TO BE TYPE 'A1', U.O.N.
3.	ALL INTERIOR WALLS TO BE TYPE 'B1', U.O.N.
4.	REFER TO APPROVED CIVIL DRAWINGS FOR LOCATION, PROPOSED SITEWORK & EXTERIOR GRADE ELEVATIONS.
5.	ELEVATIONS NOTED ARE ARCHITECTURAL AND PROVIDED FOR RELATIVE DIMENSIONINGS. COORDINATE WITH CIVIL ENGINEER.
6.	REFER TO STRUCTURAL DRAWINGS FOR FOUNDATION, SLAB, FRAMING INFORMATION, PLATE HEIGHTS, CONNECTIONS AND DETAILS.
7.	DIMENSIONS ARE AS FOLLOWS UNLESS NOTED OTHERWISE: NOTIFY ARCHITECT WITH ANY DISCREPANCIES OR TO REQUEST CLARIFICATION: a. TO FACE OF FRAMING/ FOUNDATION AT EXTERIOR AND INTERIOR. b. TO CENTERLINE OF COLUMNS, DOORS AND WINDOWS c. TO TOP OF UL ASSEMBLY FINISHED FLOOR. d. TO TOP OF SUBFLOOR AT SLAB CONDITIONS e. TO BOTTOM OF FINISHED CEILING f. TO OUTSIDE FACE OF FRAMING FOR FLOORS BELOW g. TO DRIP EDGE FOR ROOF LINES
8.	ALL WOOD ELEMENTS IMMEDIATELY ADJACENT TO MASONRY OR CONCRETE TO BE PROTECTED OR PRESSURE TREATED.
9.	PROVIDE BLOCKING AS REQUIRED FOR ALL ADA ITEMS: SHELVING, CABINERY, ACCESSORIES ETC.

Revisions:		
#	Description	Date

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NEW CONSTRUCTION FOR
GREENGARD RESIDENCE
89 BREWERY LANE, PORTSMOUTH,
NH

Title:
BUILDING
ELEVATIONS

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

Drawn By: DS, AM

Checked By: JM

Project No.: 201701

Date: JUNE 15, 2018

NOT FOR
CONSTRUCTION

A2.01

KEYNOTE LEGEND	
301	5/4 X 6 AZEK DECKING WITH PICTURE-FRAMED EDGES, NAILED TO STRUCTURE, REFER TO STRUCTURAL DRAWINGS.
303	DECK RAIL SYSTEM: AZEK RAIL SYSTEM. RAIL HEIGHT TO BE 3'-0" U.O.N., SEE SPECIFICATIONS
350	4" TALL VINYL FENCE AND GATES, TO BE SELECTED
351	PAINTED EXTERIOR FIBERGLASS COLUMN WITH INTERIOR STRUCTURAL POST (SEE SPECS AND STRUCTURAL DRAWINGS)
352	PAINTED EXTERIOR FIBERGLASS HALF-COLUMN (SEE SPECS)
354	WINDOW WELL - GALVANIZED SHEET METAL
400	TYPICAL ROOF CONSTRUCTION (INSULATED): ASPHALT SHINGLES ON ICE AND WATER SHIELD AND ASPHALT SHINGLE STARTER COURSE ON 5/8" CDX PLYWOOD SHEATHING ON STRUCTURE w/ 2" C.C. DRIP EDGE WITH CLOSED-CELL POLYETHYLENE SPRAY FOAM INSULATION TO ACHIEVE MINIMUM R=49. PROVIDE INTUMESCENT PAINT WHERE INSULATION IS EXPOSED IN ATTIC. SEE STRUCTURAL DRAWINGS
401	TYPICAL ROOF CONSTRUCTION (UNINSULATED): ASPHALT SHINGLES ON ICE AND WATER SHIELD AND ASPHALT SHINGLE STARTER COURSE ON 5/8" CDX PLYWOOD SHEATHING ON STRUCTURE w/ 2" C.C. DRIP EDGE. SEE STRUCTURAL DRAWINGS.
403	TYPICAL ROOFWALL INTERSECTION: PROVIDE 1/8" ICE AND WATER SHIELD BOTH SIDES OF JOINT, TYP. # 2 C.C. FLASHING BEHIND TRIM OR CLAPBOARDS MIN. 8" VERTICALLY.

KEYNOTE LEGEND	
500	TYPICAL EXTERIOR WINDOW AND DOOR TRIM: 5/4x4 PAINTED AZEK HEAD CASING WITH AZM-217 BAND MOULDING, 5/4x4 AZEK SIZE CASING AND 2" AZEK HISTORIC SILL WITH DRIP, U.O.N.
501	CORNERBOARD TRIM: AZEK 5/4x10 PAINTED.
505	CLAPBOARDS, 6" EXPOSURE, SEE WALL TYPE 'A1'
550	SHUTTER, SIZED TO COVER WINDOWS WHEN 'CLOSED', SEE SPECS, TYP. WHERE SHOWN
551	HIGH DENSITY POLYURETHANE BRACKET (WHOLESALEMILLWORK) ON 5/4x8 AZEK BACKER BOARD. SEE SPECS AND DETAIL SHEET A5.00
553	DECORATIVE 30" DIA. LOUVERED VENT, SEE SPECS
555	DECORATIVE DORMERS - AZEK TRIMS OVER 2x4 FRAMING. DEDUCT ALTERNATE TO DELETE FROM SCOPE
556	ENTRY SIGNAGE, T.B.D. - COORDINATE WITH OWNER AND ARCHITECT
580	APPROXIMATE GRADE PITCHED AWAY FROM BUILDING MINIMUM 1/4"FT FOR 3' MINIMUM - SEE CIVIL DRAWINGS FOR GRADING AND MATERIAL INFORMATION
652	CONTINUOUS AZEK 2" HISTORIC SILL, PAINTED
653	1X2 PAINTED AZEK
654	1X4 PAINTED AZEK
655	1X6 PAINTED AZEK
660	3/4" PAINTED AZEK SCOTIA
661	5/4X4 PAINTED AZEK

Revisions:		
#	Description	Date

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NEW CONSTRUCTION FOR
GREENGARD RESIDENCE
89 BREWERY LANE, PORTSMOUTH,
NH

Title:
BUILDING ELEVATIONS

Scale: 1/4" = 1'-0"
Drawn By: DS, AM
Checked By: JM
Project No.: 201701
Date: JUNE 15, 2018

NOT FOR
CONSTRUCTION

A2.00

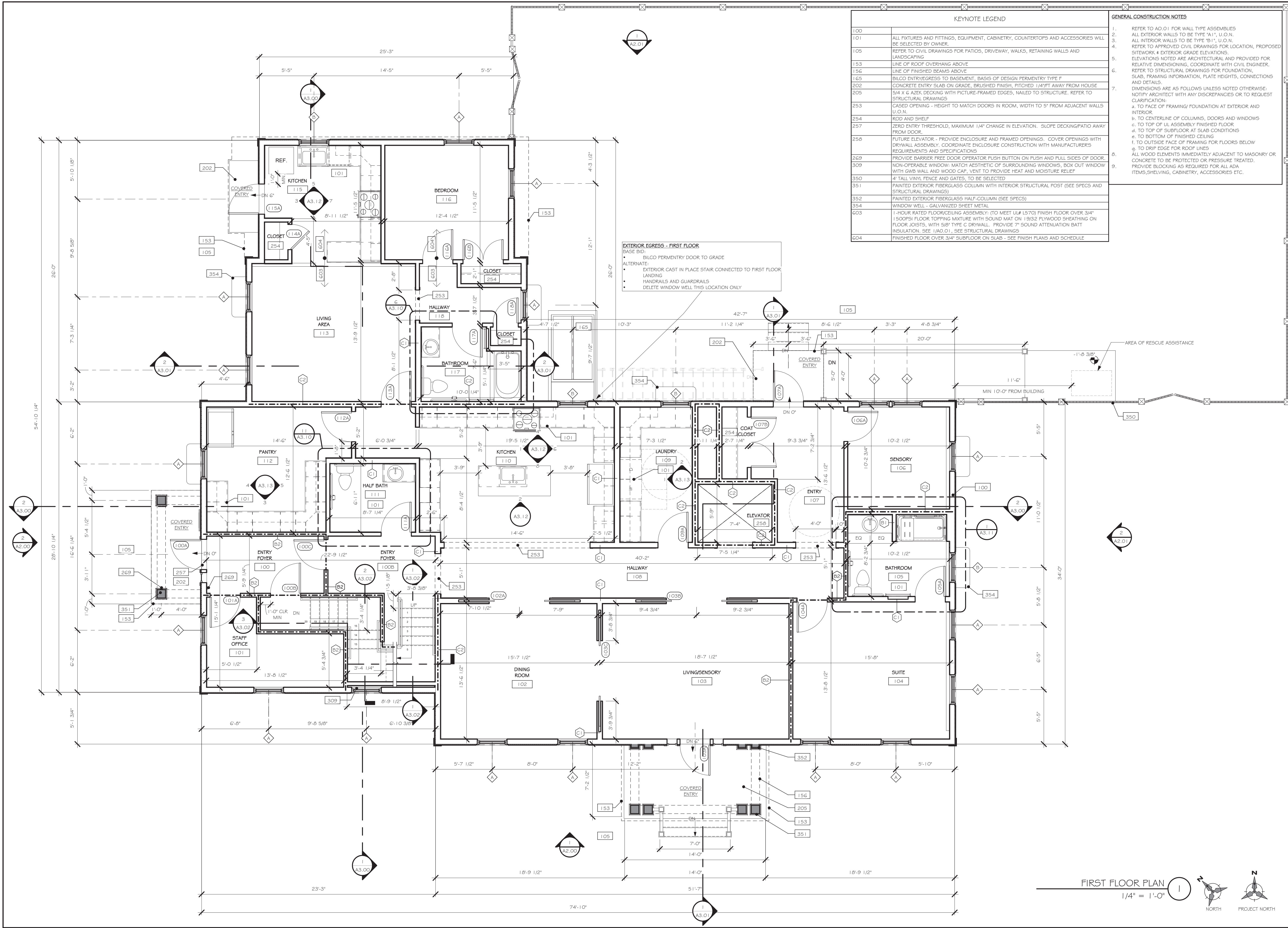


WEST ELEVATION 2
1/4" = 1'-0"

- GENERAL CONSTRUCTION NOTES**
- REFER TO A0.01 FOR WALL TYPE ASSEMBLIES
 - ALL EXTERIOR WALLS TO BE TYPE 'A1', U.O.N.
 - ALL INTERIOR WALLS TO BE TYPE 'B1', U.O.N.
 - REFER TO APPROVED CIVIL DRAWINGS FOR LOCATION, PROPOSED SITEWORK & EXTERIOR GRADE ELEVATIONS.
 - ELEVATIONS NOTED ARE ARCHITECTURAL AND PROVIDED FOR RELATIVE DIMENSIONINGS, COORDINATE WITH CIVIL ENGINEER.
 - REFER TO STRUCTURAL DRAWINGS FOR FOUNDATION, SLAB, FRAMING INFORMATION, PLATE HEIGHTS, CONNECTIONS AND DETAILS.
 - DIMENSIONS ARE AS FOLLOWS UNLESS NOTED OTHERWISE:
a. TO FACE OF FRAMING/ FOUNDATION AT EXTERIOR AND INTERIOR.
b. TO CENTERLINE OF COLUMNS, DOORS AND WINDOWS
c. TO TOP OF UL ASSEMBLY FINISHED FLOOR
d. TO TOP OF SUBFLOOR AT SLAB CONDITIONS
e. TO BOTTOM OF FINISHED CEILING
f. TO OUTSIDE FACE OF FRAMING FOR FLOORS BELOW
g. TO DRIP EDGE FOR ROOF LINES
8. ALL WOOD ELEMENTS IMMEDIATELY ADJACENT TO MASONRY OR CONCRETE TO BE PROTECTED OR PRESSURE TREATED.
9. PROVIDE BLOCKING AS REQUIRED FOR ALL ADA ITEMS: SHELVING, CABINETS, ACCESSORIES ETC.



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



KEYNOTE LEGEND	
100	
101	ALL FIXTURES AND FITTINGS, EQUIPMENT, CABINETS, COUNTERTOPS AND ACCESSORIES WILL BE SELECTED BY OWNER.
105	REFER TO CIVIL DRAWINGS FOR PATIOS, DRIVEWAYS, WALKS, RETAINING WALLS AND LANDSCAPING.
153	LINE OF ROOF OVERHANG ABOVE
156	LINE OF FINISHED BEAMS ABOVE
165	BILCO ENTRYEGRESS TO BASEMENT, BASIS OF DESIGN PERMENTRY TYPE 'F'
202	CONCRETE ENTRY SLAB ON GRADE, BRUSHED FINISH, PITCHED 1/4"FT AWAY FROM HOUSE
205	5/4 X 6 AZEK DECKING WITH PICTURE-FRAMED EDGES, NAILED TO STRUCTURE. REFER TO STRUCTURAL DRAWINGS
253	CASED OPENING - HEIGHT TO MATCH DOORS IN ROOM, WIDTH TO 5" FROM ADJACENT WALLS U.O.N.
254	ROD AND SHELF
257	ZERO ENTRY THRESHOLD, MAXIMUM 1/4" CHANGE IN ELEVATION. SLOPE DECKING/PATIO AWAY FROM DOOR.
258	FUTURE ELEVATOR - PROVIDE ENCLOSURE AND FRAMED OPENINGS. COVER OPENINGS WITH DRYWALL ASSEMBLY. COORDINATE ENCLOSURE CONSTRUCTION WITH MANUFACTURER'S REQUIREMENTS AND SPECIFICATIONS
269	PROVIDE BARRIER FREE DOOR OPERATOR PUSH BUTTON ON PUSH AND PULL SIDES OF DOOR.
309	NON-OPERABLE WINDOW: MATCH AESTHETIC OF SURROUNDING WINDOWS, BOX OUT WINDOW WITH GWS WALL AND WOOD CAP. VENT TO PROVIDE HEAT AND MOISTURE RELIEF
350	4" TALL VINYL FENCE AND GATES, TO BE SELECTED
351	PAINTED EXTERIOR FIBERGLASS COLUMN WITH INTERIOR STRUCTURAL POST (SEE SPECS AND STRUCTURAL DRAWINGS)
352	PAINTED EXTERIOR FIBERGLASS HALF-COLUMN (SEE SPECS)
354	WINDOW WELL - GALVANIZED SHEET METAL
603	1-HOUR RATED FLOOR/CEILING ASSEMBLY: (TO MEET UL# L570) FINISH FLOOR OVER 3/4" 1500PSI FLOOR TOPPING MIXTURE WITH SOUND MAT ON 19/32 PLYWOOD SHEATHING ON FLOOR JOISTS, WITH 5/8" TYPE C DRYWALL. PROVIDE 7" SOUND ATTENUATION BATT INSULATION. SEE 1/A0.01, SEE STRUCTURAL DRAWINGS
604	FINISHED FLOOR OVER 3/4" SUBFLOOR ON SLAB - SEE FINISH PLANS AND SCHEDULE

GENERAL CONSTRUCTION NOTES	
1.	REFER TO A0.01 FOR WALL TYPE ASSEMBLIES
2.	ALL EXTERIOR WALLS TO BE TYPE "A1", U.O.N.
3.	ALL INTERIOR WALLS TO BE TYPE "B1", U.O.N.
4.	REFER TO APPROVED CIVIL DRAWINGS FOR LOCATION, PROPOSED SITEWORK & EXTERIOR GRADE ELEVATIONS.
5.	ELEVATIONS NOTED ARE ARCHITECTURAL AND PROVIDED FOR RELATIVE DIMENSIONING, COORDINATE WITH CIVIL ENGINEER.
6.	REFER TO STRUCTURAL DRAWINGS FOR FOUNDATION, SLAB, FRAMING INFORMATION, PLATE HEIGHTS, CONNECTIONS AND DETAILS.
7.	DIMENSIONS ARE AS FOLLOWS UNLESS NOTED OTHERWISE. NOTIFY ARCHITECT WITH ANY DISCREPANCIES OR TO REQUEST CLARIFICATION: a. TO FACE OF FRAMING FOUNDATION AT EXTERIOR AND INTERIOR. b. TO CENTERLINE OF COLUMNS, DOORS AND WINDOWS c. TO TOP OF UL ASSEMBLY FINISHED FLOOR d. TO TOP OF SUBFLOOR AT SLAB CONDITIONS e. TO BOTTOM OF FINISHED CEILING f. TO OUTSIDE FACE OF FRAMING FOR FLOORS BELOW g. TO DRIP EDGE FOR ROOF LINES h. ALL WOOD ELEMENTS IMMEDIATELY ADJACENT TO MASONRY OR CONCRETE TO BE PROTECTED OR PRESSURE TREATED. i. PROVIDE BLOCKING AS REQUIRED FOR ALL ADA ITEMS, SHELVING, CABINETS, ACCESSORIES ETC.
8.	
9.	

EXTERIOR EGRESS - FIRST FLOOR
BASE BID:
• BILCO PERMENTRY DOOR TO GRADE
ALTERNATE:
• EXTERIOR CAST IN PLACE STAIR CONNECTED TO FIRST FLOOR LANDING
• HANDRAILS AND GUARDRAILS
• DELETE WINDOW WELL THIS LOCATION ONLY

Revisions:
Description Date

DIA

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NEW CONSTRUCTION FOR
GREENGARD RESIDENCE
89 BREWERY LANE, PORTSMOUTH,
NH

Title:
FIRST FLOOR PLAN

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

Drawn By: D5, AM

Checked By: JM


Project No.: 201701

Date: JUNE 15, 2018

NOT FOR
CONSTRUCTION

A1.01

GENERAL CONSTRUCTION NOTES	
1.	REFER TO AO 01 FOR WALL TYPE ASSEMBLIES
2.	ALL EXTERIOR WALLS TO BE TYPE "A1," U.O.N.
3.	ALL INTERIOR WALLS TO BE TYPE "A1," U.O.N.
4.	REFER TO APPROVED CIVIL DRAWINGS FOR LOCATION, PROPOSED SITEWORK & EXTERIOR GRADE ELEVATIONS.
5.	ELEVATIONS NOTED ARE ARCHITECTURAL AND PROVIDED FOR RELATIVE DIMENSIONING. COORDINATE WITH CIVIL ENGINEER.
6.	REFER TO STRUCTURAL DRAWINGS FOR FOUNDATION, SLAB, FRAMING INFORMATION, PLATE HEIGHTS, CONNECTIONS AND DETAILS.
7.	DISCREPANCIES ARE AS FOLLOWS UNLESS NOTED OTHERWISE: NOTIFY ARCHITECT WITH ANY DISCREPANCIES OR TO REQUEST CLARIFICATION:
	a. TO FACE OF FRAMING FOUNDATION AT EXTERIOR AND INTERIOR
	b. TO CENTERLINE OF COLUMNS, DOORS AND WINDOWS
	c. TO TOP OF UL ASSEMBLY FINISHED FLOOR
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	e. TO BOTTOM OF FINISHED FLOOR
	f. TO OUTSIDE FACE OF FRAMING FOR FLOORS BELOW
	g. TO DRIP EDGE FOR ROOF LINES
8.	ALL WOOD ELEMENTS IMMEDIATELY ADJACENT TO MASONRY OR CONCRETE TO BE PROTECTED OR PRESSURE TREATED.
9.	PROVIDE BLOCKING AS REQUIRED FOR ALL ADA ITEMS, SHELVING, CABINETS, ACCESSORIES ETC.

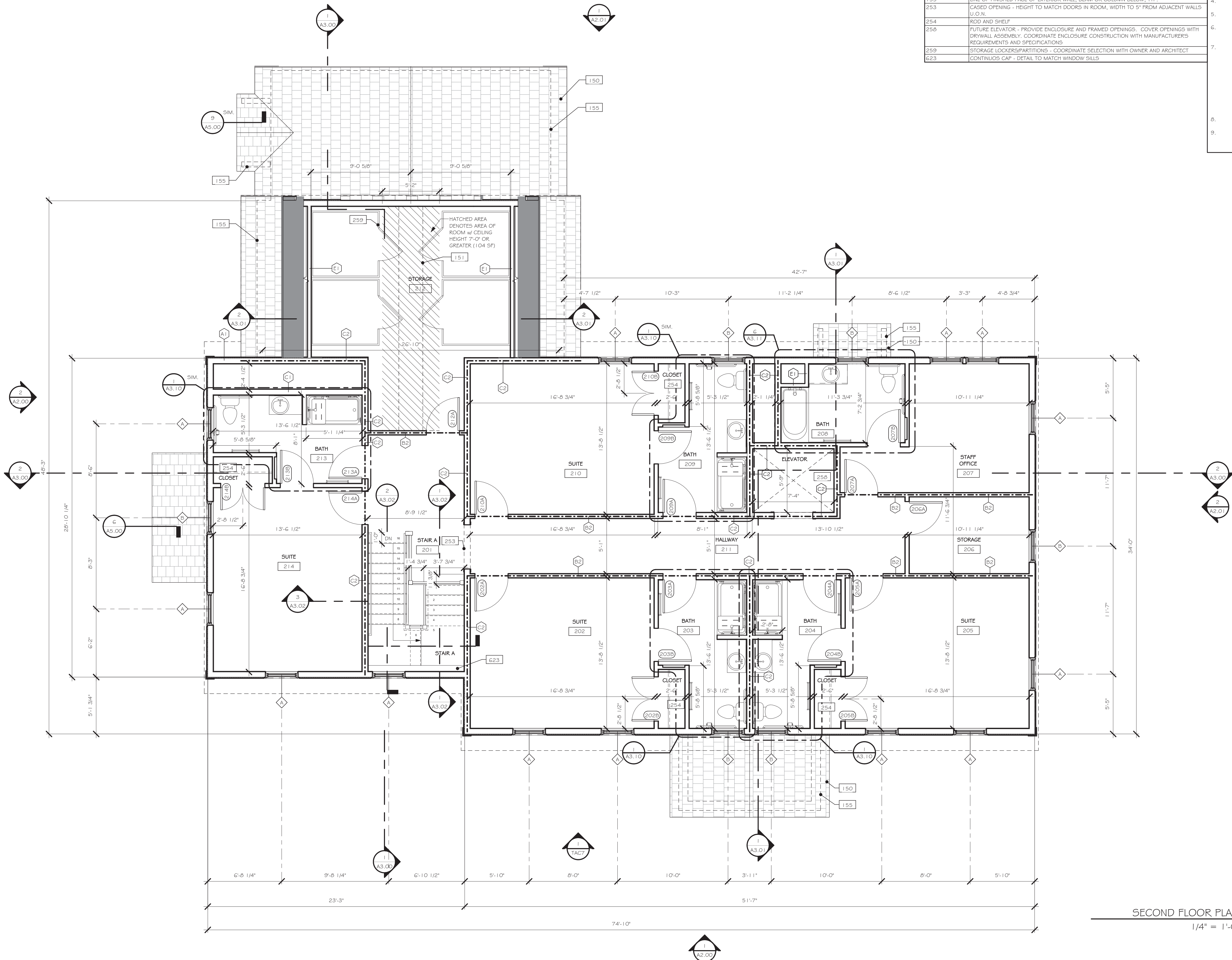
Revisions:		
#	Description	Date
<div style="text-align: center;">  <p>D/A DE STEFANO ARCHITECTS</p> <p>23 High Street Portsmouth NH, 03801 PH: 603.431.8701 FAX: 603.422.8707 www.destefanoarchitects.com</p> </div>		

NEW CONSTRUCTION FOR
GREENGARD RESIDENCE
89 BREWERY LANE, PORTSMOUTH,
NH

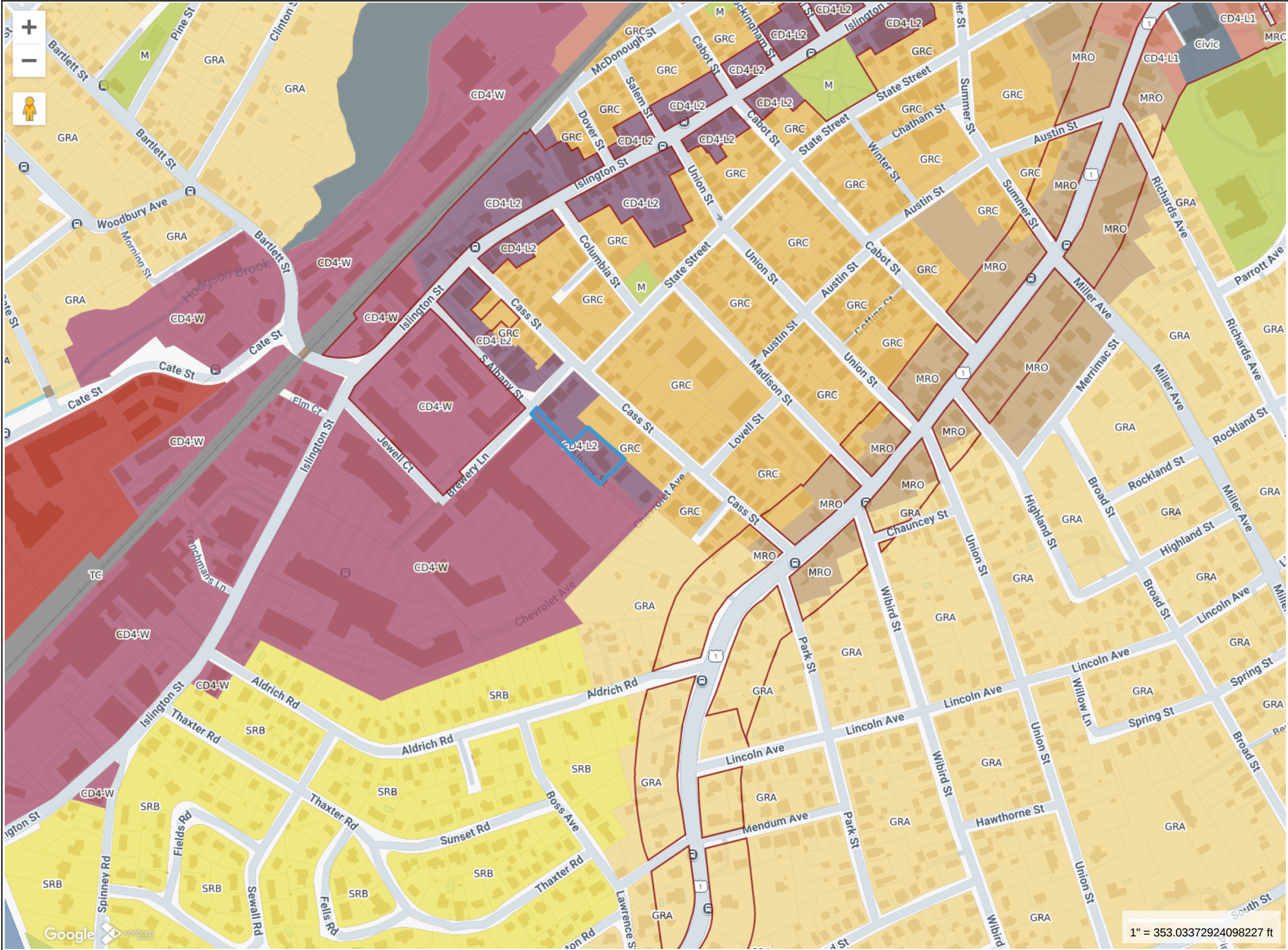
Title: SECOND FLOOR PLAN	
Scale:	1/4" = 1'-0"
Drawn By:	DS, AM
Checked By:	JM
Project No.:	201701
Date:	JUNE 15, 2018

NOT FOR
CONSTRUCTION

A1.02



89 Brewery Lane in Context



Property Information	
Property ID	0146-0026-0000
Location	89 BREWERY LN
Owner	GREENGARD CENTER FOR AUTISM



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.

EXHIBIT D

Map Theme Legends

Zoning

Residential Districts

R

Rural

SRA

Single Residence A

SRB

Single Residence B

GRA

General Residence A

GRB

General Residence B

GRC

General Residence C

GA/MH

Garden Apartment/Mobile Home Park

Mixed Residential Districts

MRO

Mixed Residential Office

MRB

Mixed Residential Business

G1

Gateway Corridor

G2

Gateway Center

Business Districts

GB

General Business

B

Business

WB

Waterfront Business

Industrial Districts

OR

Office Research

I

Industrial

WI

Waterfront Industrial

Airport Districts

AIR

Airport

AI

Airport Industrial

PI

Pease Industrial

ABC

Airport Business Commercial

Conservation Districts

M

Municipal

NRP

Natural Resource Protection

Character Districts

CD5

Character District 5

CD4

Character District 4

CD4W

Character District 4-W

CD4-L1

Character District 4-L1

CD4-L2

Character District 4-L2

Civic District

Civic District

Municipal District

Municipal District

Overlay Districts

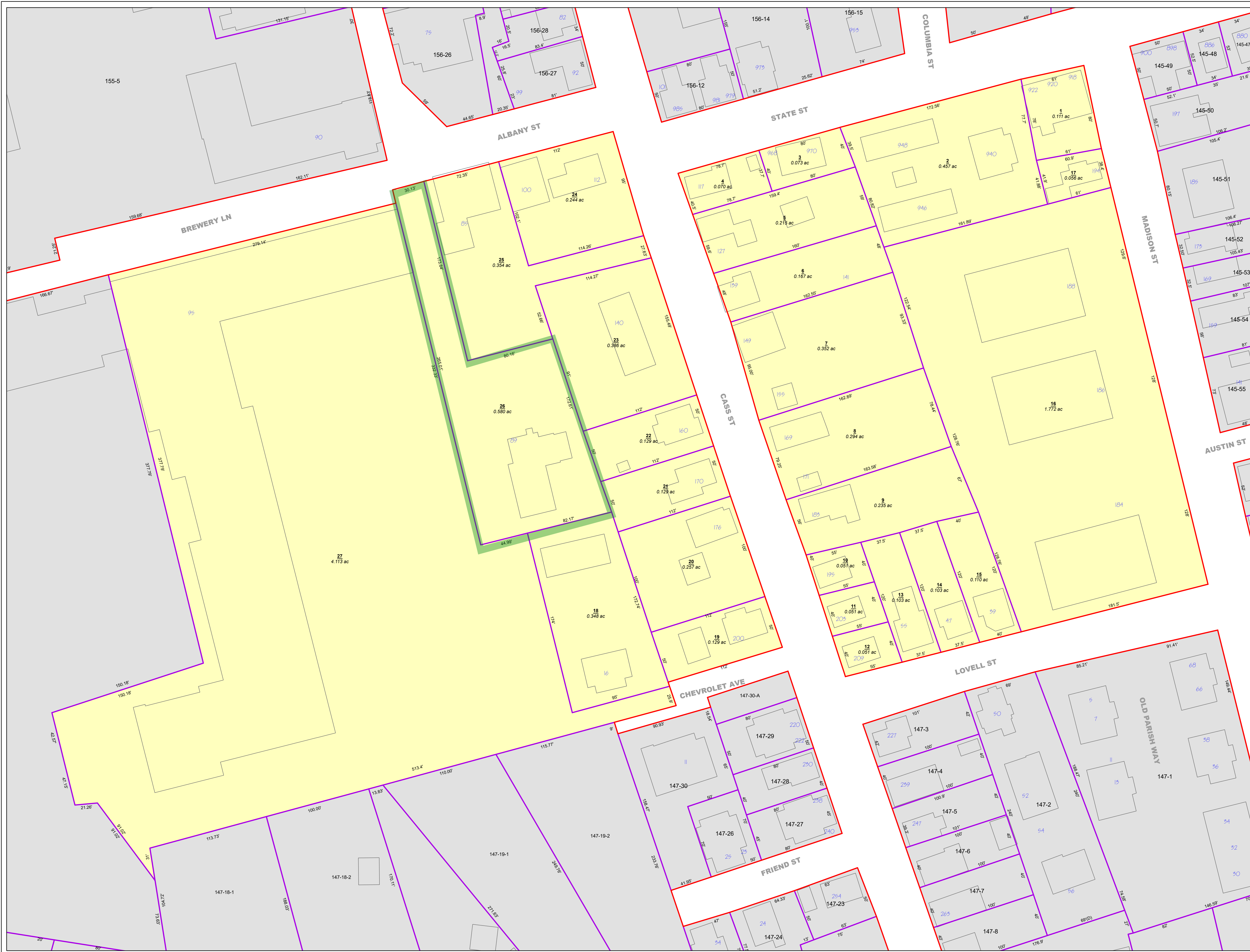
OLOD

Osprey Landing Overlay District

Downtown Overlay District

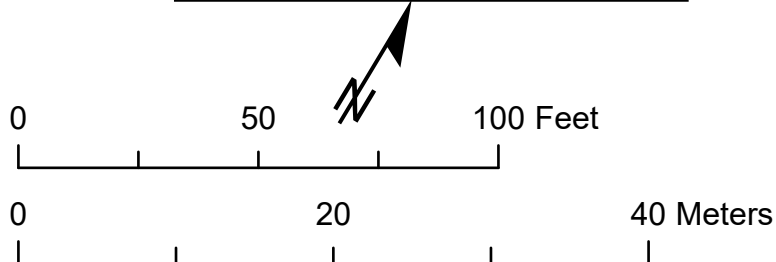
Historic District

City of Portsmouth



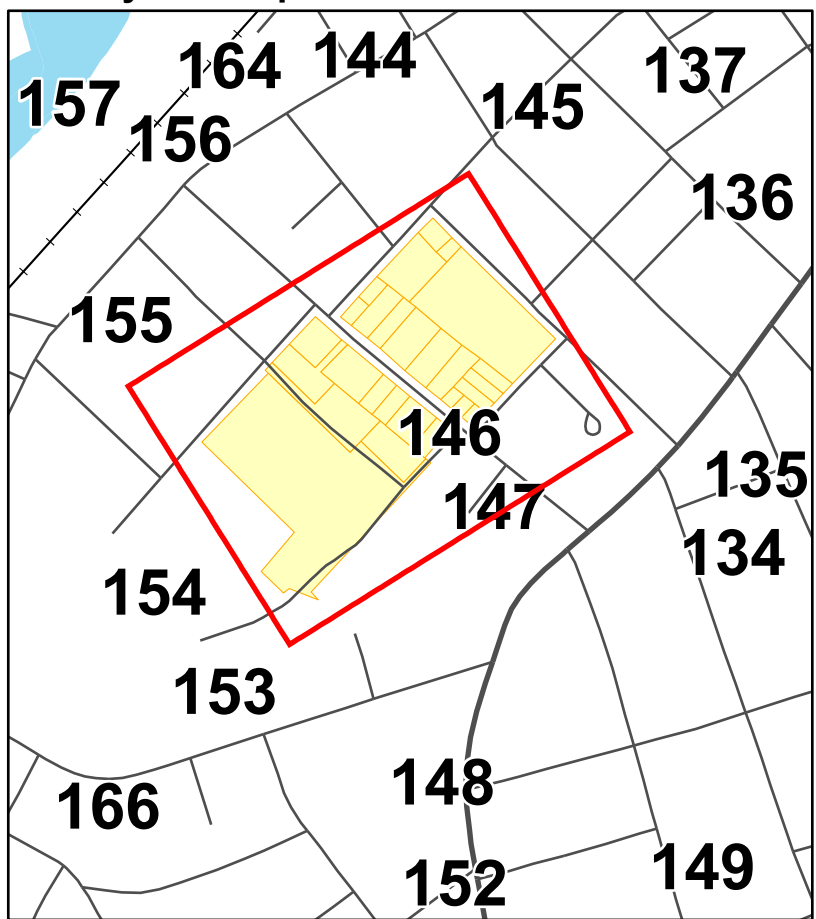
- Partial Legend**
See the cover sheet for the complete legend.
- 7-5A** Lot or lot-unit number
 - 2.56 ac** Parcel area in acres (ac) or square feet (sf)
 - Address number**
 - 233-137** Parcel number from a neighboring map
 - 68'** Parcel line dimension
 - Street name**
 - SIMS AVE**
 - Parcel/Parcel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

EXHIBIT E

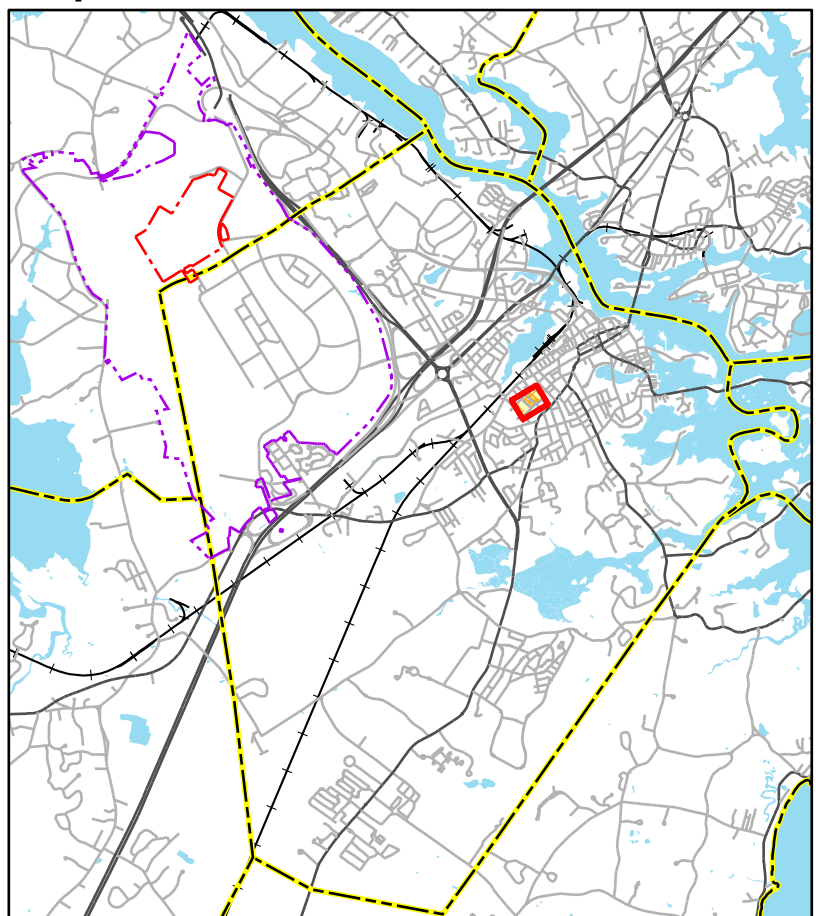


This map is for assessment purposes only. It is not intended for legal description or conveyance. Parcels are mapped as of April 1. Building footprints are 2006 data and may not represent current structures. Streets appearing on this map may be paper (unbuilt) streets. Lot numbers take precedence over address numbers. Address numbers shown on this map may not represent posted or legal addresses.

Nearby Tax Maps



Map Location



Portsmouth, New Hampshire
2024

Tax Map 146