

324 Hanover Street  
Portsmouth, NH 03801  
April 15, 2025

City of Portsmouth Planning Board  
1 Junkins Avenue, 3rd Floor  
Portsmouth NH 03801

Re: Proposed development at 332 Hanover Street, Portsmouth

Dear Planning Board Members:

We are writing as direct abutters to 332 Hanover Street. Our home is at 324 Hanover Street. We wish to register our objection to the proposed construction on that site, and the requests for a Conditional Use Permit.

We have met with the owners about their prior proposals. Following those discussions, the owners' proposal in December 2024 reduced the proposed building height to 26' 7". That height is much more in keeping with the character of the neighborhood. We wrote to the Board in favor of that December 2024 version.

As best we can make out, the most recent proposal increases the roof height to over 39' 11" from the sidewalk on Hanover Street. That height, along with the mansard roof and footprint of the total building, would be completely out of character with the neighborhood.

We believe that the proposed building does not meet the requirements of Section 10.243.21 of Portsmouth's Zoning Ordinance, in that the **"height and scale in relation to the site's surroundings"** does not **"complement or enhance the character of surrounding development"**. If one looks at our house, which was built in 1895, it's clear that the current house at 332 Hanover was built almost identically in shape and height to ours. The proposed new building would be much taller, and the mansard roof and footprint on the lot would increase the appearance of massiveness which is out of character with the neighborhood.

As you know, 332 Hanover is zoned as CD4-L1, a "character district". According to Article 5A in Portsmouth's Zoning Ordinance, the objective of character districts is to **"encourage development that is compatible with the established character of its surroundings and consistent with the City's goals for the preservation or enhancement of the area."** Several new buildings in the neighborhood have managed to meet that goal. We believe that any new construction should be held to these same worthwhile goals.

The proposed building also fails to meet conditions of Section 10.243.21, as it would not **"encourage the appropriate and orderly development and use of land and buildings in the surrounding area."** As you know, there are number of properties in this neighborhood likely to undergo development in the near future. We are concerned that approving this design could set bad precedents for future development in this character district.

Relative to our particular property, the proposed building could also negatively impact the value of our home. As a direct abutter, there would be just a few feet of separation between the buildings. The proposed plan also contains a deck which would be just outside of our second-floor windows.

This would be a significant reduction in privacy. The height and mass of the proposed project would dwarf our house, throwing it into shadow.

In addition to impacting our home's value, this shadow would also likely reduce the output of the solar panels on our roof. We are in support of Portsmouth's Clean Energy initiatives. John is a former member of the City of Portsmouth Sustainability Commission, and a contributor to the City's Climate Action Plan. In that spirit, we invested in solar panels, heat pumps, and an EV charger on our property. It seems reasonable to consider how a proposed building's height would impact existing, homeowner-funded clean energy initiatives.

Along these lines, the proposed project also appears to be in violation of two other Sections of the City Zoning ordinance;

- ***Section 10.243.24 The proposed structures, uses, or activities will not have significant adverse impacts on abutting and surrounding properties on account of traffic, noise, odors, vibrations, dust, fumes, hours of operation, and exterior lighting and glare.*** This ordinance does not specifically call out shadow, but we believe that excessive height of the building creates an unreasonable amount of shadow on our home. Before this project continues, we would request a shadow study at minimum, to address this issue.
- ***Section 10.243.26 The proposed use will not cause or contribute to a significant decline in property values of adjacent properties.*** We believe that the project as proposed will, in fact, significantly decline in the value of our home.

In summary, we request that the Board deny the request for a Conditional Use Permit on the existing design. If the owners would be willing to reduce the height to that of the proposal of December 2024, we believe that we could support that approach.

Many thanks again for your great service to the City of Portsmouth. We are available at your convenience for any questions.

All the best,

John Patrick Carty  
Laura Currier Carty

**From:** [Joseph Konopka](#)  
**To:** [Planning - Info - Shr](#)  
**Subject:** 332 Hanover Street Proposal  
**Date:** Tuesday, April 15, 2025 11:57:15 AM

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You don't often get email from joseph\_konopka@hotmail.com. [Learn why this is important](#)

Dear Members of the Planning Department,

I am pleased to learn that the owner of 332 Hanover Street is now proposing to make a single-family home as opposed to duplex or condos, as there is a shortage of single-family housing near the downtown area. The lack of single-family housing near the downtown area is a significant issue as it impacts the availability of residential options for families looking to live in a central location. Single-family homes provide stability and contribute to the community's overall well-being. Additionally, we have multiple new apartment buildings under construction within a block and I strongly feel a single-family home is necessary to retain the character of our neighborhood.

However, I have a concern about what exactly is meant by an "attached accessory dwelling unit." Given the previous proposals, I want to ensure that this is not an attempt by the owners to get around the neighbors' opposition to a duplex/condo/rental type property that was previously proposed.

I look forward to seeing how this new proposal will benefit our community.

Sincerely,  
Joseph Konopka  
53 Tanner Street  
Portsmouth, NH 02801

30 Parker Street  
Portsmouth, NH 03801

April 15, 2025

Planning Board  
City of Portsmouth  
1 Junkins Avenue, 3rd Floor  
Portsmouth NH 03801

Re: 332 Hanover Street Development

Dear Planning Board Members:

As abutters to the proposed development at 332 Hanover Street, we have concerns about the current design and the proposed Conditional Use Permit (CUP). While we are not against an ADU in principle, we believe this current design fails to meet the approval criteria for a CUP outlined in Section 10.243 of the Portsmouth [Zoning Ordinance](#). We are requesting that the height of this proposed building be reduced to 26 ft 7 inches (and therefore reducing the peak of the roof by three foot six inches from this proposed design). This would match the scale of the proposal to the Zoning Board of Adjustment's December meeting that we had been in support of (see page 23 of the ZBA December [application](#)). However, if this condition is not implemented, we believe this current design's CUP should not be approved for the following reasons:

- I. **It fails to meet conditions of city ordinance 10.243.21 since this design's "height and scale in relation to the site's surroundings" does not "complement or enhance the character of surrounding development"** This is out of character with the neighborhood, particularly its massing and proportions. This height is only 1 inch different from the original October 15, 2024 application that went to the ZBA and was denied (see more in bullet three). Islington Creek is part of the [Portsmouth National Historic District](#) (note that this district is separate and distinct from Portsmouth's Local Historic District.)
- II. **It also fails to meet conditions of city ordinance 10.243.21 since this design will not "encourage the appropriate and orderly development and use of land and buildings in the surrounding area."** This current design is contrary to public interest as it is out of character of our historic neighborhood and sets precedents for future development in the neighborhood. These precedents could create mal-incentives leading residences of the neighborhood to quit maintaining historic homes along Hanover Street and the surrounding area, and instead incentivize buying historic lots to demolish them.
- III. **Approving the CUP would undermine the Zoning Board of Adjustments October 15, 2024 decision to deny the variances for a design very similar to this proposed one.** This proposed design and the one presented in October are both 3 story, 29 ft+ tall Mansard roof homes that have two residences on the lot. The October proposed design



was 29 ft 4 in. in height (see page 81 of the Oct '24 [meeting packet](#)) and this current design is 29 ft 3in in height (see page 8 of the April '25 [application](#)) Per the ZBA [findings of fact](#), "the Board voted to deny the request because it fails to prove the proposal is not contrary to the public interest (10.233.21) and observes the spirit of the ordinance (10.233.22)" ***This design suffers from the same issues of height and scale relative to the surroundings that the ZBA found out of character and contrary to the public interest. The only design changes that were made for this new proposal were to ensure this project does not require variances (while not addressing the core reasons the ZBA denied the initial proposal).***

### **I. Failure to meet Section 10.243.21 - The "height and scale in relation to the site's surroundings" does not " complement or enhance the character of surrounding development"**

The 332 Hanover lot is zoned as CD4-L1, which ***is*** a character district. Per [Article 5A](#) in Portsmouth's Zoning Ordinance, the key purpose and intent of all character districts is to "encourage development that is compatible with the established character of its surroundings and consistent with the City's goals for the preservation or enhancement of the area." Allowing a structure this out of scale with the surrounding development does not meet the goals of its character district zoning, and it also does not meet the standards of Section 10.243.21.

The proposed structure is going to loom over other homes in the area, and the increased mass of an ADU with its parking exacerbates this effect. The proposed structure is currently three full floors with ceilings that appear to be 9-10 ft tall and a Mansard roof that allows no negative space the way a pitched roof does (see submitted applicant drawings in [drawing A6](#), page 15). **The effective height of this building becomes 39 feet 11 ½ inches from the sidewalk on Hanover to the peak of the roof.**



*Figure 1: Hanover Street, looking northeast from the intersection with Pearl Street; 349-351 Hanover Street is in the foreground. Source: Portsmouth Downtown National Historic District [website](#)*

**This design does not actually show how this home's height compares to the buildings next door to it on either side.** Comparing to other homes on Hanover Street, most have 8 ft ceilings on lower floors and often as short as 7 ft ceilings on top floors. Three story structures on Hanover (including the existing structure and the house in the adjacent lot) come to a height closer to 28 ½ feet to the peak of their roof, or 33 feet above the sidewalk on Hanover. These three story homes also often have pitched roofs that allow more light, air, and sightlines. The most direct comparison is the house right next door at 324 Hanover Street (a nearly identical form factor to the one being demolished), which is a full 6-7 feet shorter at the peak than the proposed design.

**All the properties in the proposal that are of comparable look and feel to this design are in more permissive zoning districts that allow commercial development and along major corridors like Islington Street, Hanover Street in Downtown, and Bridge Street (see Figure 2 below, pulled from the proposal).** The buildings on Hanover Street in Islington Creek do not look like this building (see Figure 1 above).



Figure 2: The only Mansard Roof buildings that are of comparable proportion to the proposed 332 Hanover application are in more permissive zoning districts that allow commercial development. Our home on Parker Street is several feet shorter.

We ourselves live in 30 Parker Street, the only Mansard roof home that is in the vicinity of this project (built circa 1875). Our ceilings are 9 feet on the first floor, 8 feet on the second floor, and 7 ½ feet on the third floor. **There is no historical precedent for a Mansard roof home with 9-10 ft ceilings on each floor, and building one would be out of character and out of proportion with the surrounding neighborhood.**

## II. Failure to meet Section 10.243.21 - This design will *not* “encourage the appropriate and orderly development and use of land and buildings in the surrounding area.”

One of our main concerns with a project out of proportion with surrounding properties being developed is the way the Planning Board and the Zoning Board of Adjustment use existing construction as precedent for approving future projects.

By granting this CUP for a building of this height, it sets a developmental precedent that could irrevocably change the historic character and cozy, quaint neighborhood feel of the surrounding

area. Introducing development with height out of proportion to the neighborhood would punish those who keep their historic homes and reward those who buy lots to demolish them and proceed to build structures that loom over their neighbors. We can see a future where multiple more projects are created that use these new heights as a precedent, and the neighborhood ends up with owners of any remaining historical homes having a far reduced experience on their property, including but not limited to:

- Less light and airflow
- Less of a neighborhood feel walking out your front door and strolling in the vicinity
- Views of Portsmouth's beauty blocked or demolished in the case of surrounding architecture, and
- Decreased privacy with other buildings looking down into their windows.

This will incentivize more and more owners to abandon their historic properties and the neighborhood (and the city) will lose one of the main reasons people want to move here in the first place.

### **III. Approving the CUP would undermine the Zoning Board of Adjustments October 15, 2024 decision to deny the variances for a design very similar to this proposed one**

This proposed design and the one presented in October are both 3 story, 29 ft+ tall Mansard roof homes that have two residences on the lot (see Figure 3 below). The October proposed design was 29 ft 4 in. in height (see page 81 of the Oct '24 [meeting packet](#)) and this current design is 29 ft 3in in height (see page 8 of the April '25 [application](#)). These heights are also shown in Figure 4 below.

As mentioned above, these variances were denied by the ZBA because “the Board voted to deny the request because it fails to prove the proposal is not contrary to the public interest (10.233.21) and observes the spirit of the ordinance (10.233.22)” (Source: [October 15, 2024 ZBA Findings of Fact](#))

***This design suffers from the same issues of height and scale relative to the surroundings that the ZBA found out of character and contrary to the public interest. The only design changes that were made for this new proposal were to ensure this project does not require variances (while not addressing the core reasons the ZBA denied the initial proposal).***

We are asking that the height of the building be reduced in a similar manner to the proposal made to the ZBA in December of 2024 that had the support of the neighborhood (See Figure 5).





Figure 3: A side-by-side comparison of the October ZBA design that had its variances denied and the current Planning Board CUP application

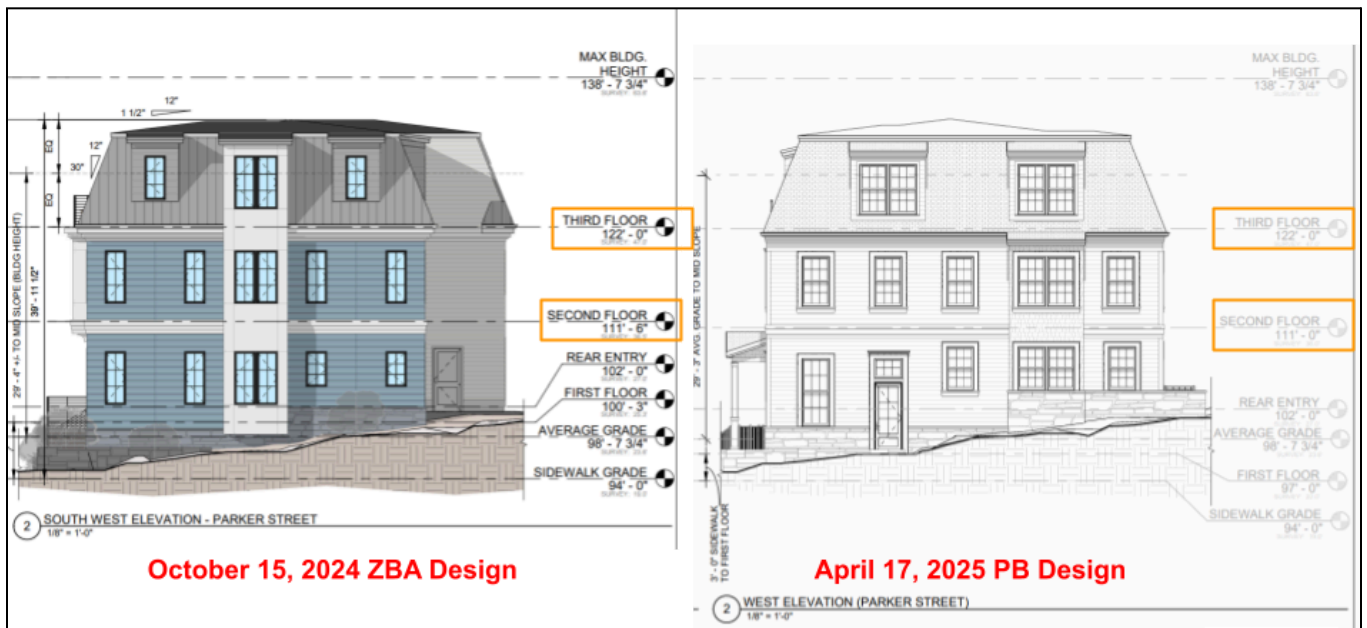


Figure 4: A side-by-side comparison of the view of the October ZBA design and Planning Board CUP design from Parker Street. Note that the third floor heights are the same and the second floor heights have a 6 inch difference. The October design was denied by the ZBA.

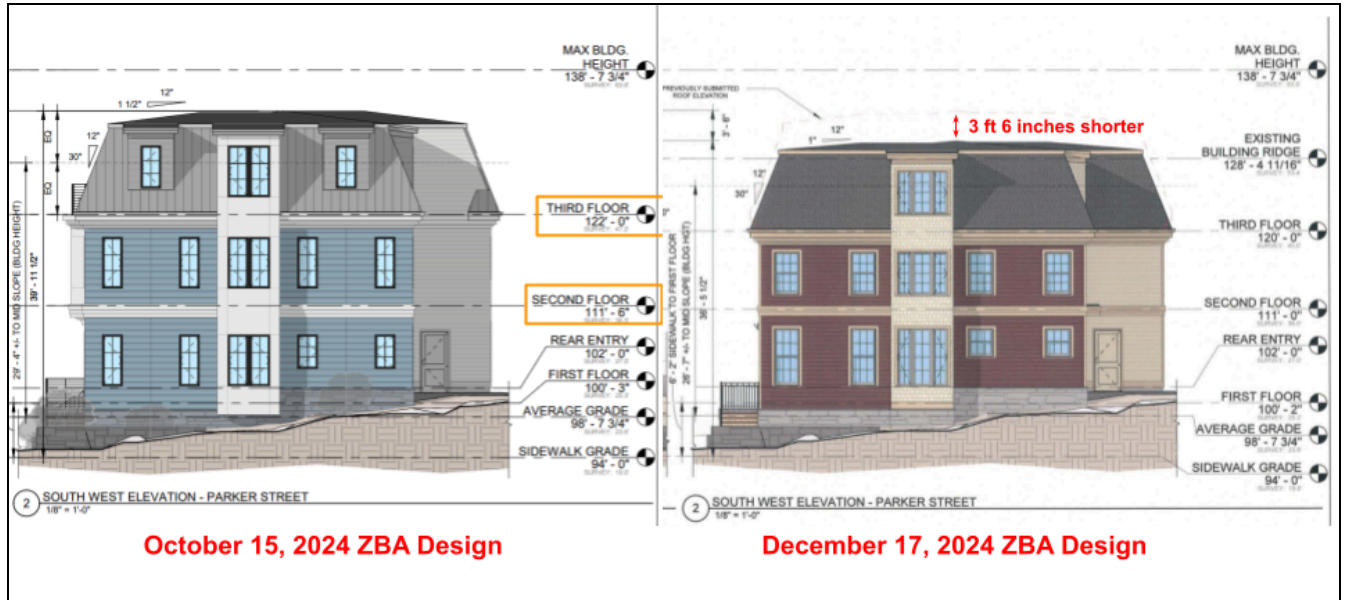


Figure 5: A side-by-side comparison showing the original proposed height (left) and the formerly proposed reduced height plan (right), which was 3 ft 6 inches shorter and was supported by several neighbors.

#### IV. Conclusion

In closing, we ask the planning board to deny the request for a conditional use permit unless concessions are made on lowering the height of the structure in a manner similar to the proposal made in the December 17, 2024 ZBA meeting. If this were addressed, we would be able to support this project as we feel it would satisfy the conditions for approving a CUP and our concerns for future development in the neighborhood would be addressed. We are open to the idea of redeveloping the property in a way similar to the proposed plan, but not in a manner where the height of the building is far out of proportion with the surrounding architecture.

Thank you for your consideration and your service to the city.

Kathryn "Kate" Waldwick  
Bryn Waldwick

30 Parker Street  
Portsmouth, NH 03801

April 16, 2025

Planning Board  
Planning & Sustainability Department  
City of Portsmouth  
1 Junkins Avenue, 3rd Floor  
Portsmouth NH 03801

Re: 361 Hanover Street Development

Dear Planning Board Members:

As abutters to the proposed development at 361 Hanover Street, we want to highlight that this proposed plan does not meet the requirements of being a complete application due to many errors and outstanding, basic questions about Pedestrian Safety, Traffic, Parking, Trash Collection, and Fire Safety (discussed more in the appendix in Section I, page 4). While one could argue these are questions for the Technical Advisory Committee (TAC), our own TAC postponed reviewing this applicant's information on April 1, 2025 due to how many gaps and errors there were in the application. As parents of young children, traffic and safety are our top concern. We ask that the planning board not accept this application until these outstanding issues are addressed.

In addition to the outstanding information missing (including a traffic study that is for the actual proposed design and not riddled with errors), we believe from what we have seen in the most recent application that this design is inconsistent to public interest, will diminish property values and reduce quality of life for others living nearby in the neighborhood (discussed in Section I, page 8 in the appendix). It will create a development precedent that will ricochet through the neighborhood for years to come and will cause irreparable harm to the safety and character of our neighborhood. We do not believe this design meets the goals of its character district zoning.

We remain hopeful that thoughtful development can occur that does not jeopardize the safety and character of our neighborhood. However, the current design still has many outstanding questions and is incomplete. From what is there, it needs too much material change to meet the goals of a Character District and the North End Vision Plan's goals of being "respectful and sensitive to the surrounding context." As citizens, we have provided feedback in four separate ZBA letters, a letter to TAC, and we also offer conditions requested in our appendix (page X and page X). We believe this current design will do irreparable harm to the neighborhood safety and character, and we cannot endorse it as is. We welcome the opportunity to have our feedback meaningfully incorporated by the development team.

Thank you for your time and your service to the city and its residents.

Sincerely,

Kathryn "Kate" Waldwick  
Bryn Waldwick



# APPENDIX

## Table of Contents

- I. **Section I: Outstanding Traffic and Safety Issues** (page 4)
  - A. Pedestrian Safety (page 4)
  - B. Traffic (page 5)
  - C. Parking (page 6)
  - D. Other Safety and Legal Issues (page 6)
  - E. Conditions Requested (page 6)
- II. **Section II: Buildings are out of Character with the Neighborhood**  
(page 8)
  - A. Building D (page 8)
  - B. Building A (page 9)
  - C. Buildings B1 and B2 (page 13)
  - D. Conditions Requested (page 14)

## Section I: Outstanding Safety & Traffic Questions

We are parents of young children so traffic and safety are our top concern. This design continues to leverage Hanover Street and other quiet side streets as the main vehicular access to this development. It's notable that even though this lot is zoned as CD5, the streets the developer is planning to use to service this building (Hanover, Rock, Pearl, Parker) are NOT CD5 zoned - they are quiet residential side streets not designed to handle this type of volume. This lot had been zoned as CD-5 with the idea that it would be part of the downtown overlay district, and therefore use Foundry for vehicular access. Having a development of CD-5 proportions (it appears to be at least 40 units, upwards of 48) using quiet residential streets for vehicular access will irrevocably change the character of having quiet, safe streets to push strollers, ride bikes with our children, etc.

### Pedestrian Safety

- **Sight Lines**
  - **The sight lines for the entrance to and from Hanover are closer to the minimum required feet than desired number of feet ([page 91](#)):** Given that children frequently use these sidewalks to access the playground at Rock Street Park, we would like to see the sight lines exceed the desired distance, not be barely above minimum.
  - **There was no sight line analysis done for cars at the intersection Hanover and Rock for traffic coming from Sudbury.** This is currently a very visible intersection, but with the construction of the new buildings B1 and B2, this will become a very blind intersection. Already, cars blow through the stop signs at the end of Sudbury and where Rock Street meets Hanover when moving westbound.
- **Sidewalks**
  - **Sidewalks on this lot are currently too narrow to push a stroller or use a wheelchair / walker (given the telephone poles that block them).** We can personally attest to this given we have to walk in the road to push our stroller to the playground or when walking with one of our family members who uses a walker. How can people using wheelchairs and strollers safely use the sidewalks?
  - **Trash Collection for Buildings B1, B2, C, and D will exacerbate these issues and make the sidewalks unusable.** Per [page 5](#) of the application, "Solid Waste for Buildings B1, B2, C and D will be in unit collection with City of Portsmouth curbside pickup."
- **Nothing is mentioned in this application about any new safety measures for the neighborhood:** Given the much higher volume that will be using these roadways, will the streets be painted with lane dividers? Currently none of them have lane markers given they are quiet residential roads. Will Crosswalks be (re) painted, given how close this is to the park and playground?

## Traffic

- **Key Intersections are Not Analyzed:**
  - **Pearl St / Islington St intersection not accounted for ([Page 69](#)):** Given the traffic will be using this to go to and from the development to Islington, and Islington can be difficult to turn onto, this seems like an oversight
  - **Parker St not accounted for in the traffic study.** Assuming only usage of Pearl street to get to Islington seems incorrect. Anecdotally, people don't go all the way up to Bridge to get to Islington ([page 69](#)). Often, cars speed up Parker Street because Pearl Street can get backed up. This results in cars backing up on Parker Street waiting to turn onto Islington.
- **The Traffic Study also contains errors and questionable assumptions**
  - **The measured width of Rock Street is incorrect in the existing conditions.** From [page 66](#) of the packet, *"The one-way roadway segment is approximately 28-feet in width with on-street parking along one side"* In the one way portion between Islington and Hanover, it is much narrower than 28 feet wide.
  - **There are different numbers listed for vehicles per hour:** We have broken this out into a separate section below
  - **The Calculated number of required parking spots ([page 3](#)) assumes 40 units, but the applicant has listed between 40-48 units ([page 64](#)):** Which number of units were used for the traffic study?
  - **Existing Conditions measured in August 2024 may be artificially low due to the closure of Maplewood Avenue for Construction:** Maplewood is normally a key road to access Route 1, I-95, and the shops on Woodbury Ave. With Maplewood being closed, many in the neighborhood, including ourselves, did not use Hanover to exit the neighborhood and instead exited onto Islington to access Bartlett Street to go onward to Route 1, Woodbury, and I-95
  - **Assuming 30mph speed limit misrepresents the way traffic can move safely along these streets** (other parts of the study indicate traffic on average moves slower than this). If 30mph was used to calculate flow, this would lead to incorrect conclusions
- **Vehicles Per Hour (VPH) during peak**
  - **There are discrepancies in the packet of what the number of VPH during peak.** [Page 63](#) says 38 VPH during weekday morning and 41 in weekday evening, yet [page 70](#) says 54 VPH in the morning and 42 VPH in the evening. What are the correct numbers?
  - **The high VPH will change the walkability, safety, and character of the neighborhood.** If one assumes the higher VPH of 54 in the morning, that is a car every 66 seconds, or every minute. In the evening, 42 VPH will result in a car every less than every minute and a half (85.7 seconds). This would absolutely change the safety and walkability of this neighborhood. It would also lead to the neighborhood feeling very busy and no longer quiet and residential.

## Parking

- **No Parking Study was done.** Given how tight parking is in our neighborhood, this seems to be a glaring oversight. People already speed and circle the neighborhood desperately looking for a spot.
- **People who don't have deeded spots will park in the neighborhood since there is no pedestrian access from the Foundry Place Garage to the proposed development.** Given there could be up to 96 resident cars (2 cars per unit in a 48 unit development), along with guests and service providers, and only 71 spots, this will add dozens of cars to the neighborhood competing for parking
- **Parking on Rock Street by the Park Will Become Unavailable:** Currently people can use this parking to go to the park. It seems likely these spots will be heavily contested and likely to be permanently occupied with cars from these residences (as opposed to the more ephemeral/temporary short term parking as it is used now)
- **What happens to existing parking on Hanover Street between Rock and Pearl?** Currently there is street parking on Hanover between Rock and Pearl. Does this parking remain or go away? Given the tight configurations to turn from Pearl into this new development, this seemed like it could be removed, further exacerbating parking issues.

## Other Safety and Legal Issues

- **Trash Collection appears problematic:**
  - As mentioned above, Trash for buildings B1, B2, C, and D will block the sidewalks (again making it unusable for those using strollers) - see [page 5](#).
  - For Building A, it is not clear how the trash room is accessed. Will a trash truck fit in and out of the narrow entry from Hanover?
- **Fire Safety:**
  - Given the narrow entry from Hanover and the large retaining wall on Foundry, how does a firetruck get in there safely? Both to dog leg into the building, and inside tight courtyards. Especially to Building A.
- **Flooding and Snow:**
  - There is very limited greenspace in this lot. What are the plans for drainage and disposing of storm water?
  - How will snow be removed on this site?
- **This design leverages City Land that it does not actually have any legal access to:**
  - Drawings show access to building expansion ([page 99](#)) on land that is currently owned by the city. As of March 19, 2025, the applicant had not filed any proposal to the city to acquire access to this land
  - Landscaping shows trees on land along rock street that is also currently city owned

**Conditions Requested:** We would like to see reduced density (through reduced building height and number of units) that is more in line with the character of the neighborhood. We would like

to see a design that has at least two spots per unit and also uses Foundry Place for vehicular access. We would also like to see an accurate traffic study done for this design and the above issues addressed

## Section II: Buildings are out of Character with the Neighborhood

The 361 Hanover lot is zoned as CD5, which *is* a character district. Per [Article 5A](#) in Portsmouth's Zoning Ordinance, the key purpose and intent of all character districts is to "encourage development that is compatible with the established character of its surroundings and consistent with the City's goals for the preservation or enhancement of the area." This plan presented by the developer does not meet these goals. The heights and aesthetics of Buildings A, B, and D are actively hostile to the established character of the neighborhood.

*Please note that the renderings below were included in the applicant's [February 2025 ZBA application](#), but were not included in the planning board application*

### A. Building D

**Building D** will be a full story taller than any other building on Hanover Street. The developer is calling this three stories plus an attic. It appears there would be four floors of residential living, so calling this an attic feels disingenuous. Looking at the image on [page 17](#) speaks for itself of how much this would loom over everything else on Hanover Street. The only comparable building to this structure is all the way over in Portwalk place.



**Figure 1:** Building D (and even Buildings B & C) loom large over anything else on Hanover Street. The next comparable building is all the way over in Portwalk Place. Source: [Page 17](#)

## **B. Building A**

While the new renderings show it only being four stories, the application states that there will be between 40-48 units. Where those additional 8 units come from is actually not covered in any of the applicant's floor plans. Given the legally binding nature of an application, we have deep concerns over the lack of certainty on the number of units, as that will directly affect our light and green space. We cannot have a supportive viewpoint if we don't even know how many units there will be.

Building A is proposed to be comparable to the parking garage and other buildings along Foundry Place. This building is further from downtown and closer to two story residential homes and a public park than other buildings along Foundry, so it is confusing that the height would not offer a transition to the park, residential homes, and 1 story, CD5 zoned blacksmith shop.

The out of character nature of this building adversely affects the quality of the greenspace for all our neighbors in Islington Creek. Few homes in Islington Creek have yards, so Rock Street Park is the only green space many of us have. This structure would loom over the park blocking sky views, increase flooding in the park and surrounding streets, potentially create wind tunnels and diminish the open-air feeling the park provides so many of us. Also, from the park one is able to clearly see one of the most iconic buildings not just in Islington Creek, but all of Portsmouth: The Pearl. In Figure 3, one can imagine how much the sky and views would be blocked with a towering 4 story, 48.5 ft tall building there.





**Figure 2:** Current view from Rock Street Park. Note one can see the Pearl and residential homes.





**Figure 2:** One can imagine the irrevocable change to the neighborhood and quality of greenspace if a towering 48.5+ feet 4 story building were next to the park.





**Figure 4:** Another view showing how close the proposed 4-story Building A would be to residential homes and the loss of privacy. Even the proposed townhomes in Building B1 and B2 are significantly taller than the colonial houses across the street and would create a boxed in feel.

### **C. Buildings B1 & B2**

Buildings B1 & B2 lie along Rock Street which is mainly GRC zoned and has small, short colonial homes. Buildings B1 & B2 would be significantly taller, causing a loss of privacy (Figures 4, 5, 6).





**Figure 5:** Buildings B1 & B2 are significantly taller than the colonial homes across Rock & Hanover Streets. Source: [Page 14](#). Note that this rendering shows building B as one building instead of two, but the height has remained the same.



**Figure 6:** Building B1 & B2 are the same height as the building pictured above. It is significantly taller than the colonial homes from which it is across the street, creating a boxed in feeling. No other homes on Rock Street are anywhere near this tall. Source: [Page 18](#). Note that this rendering shows building B as one building instead of two, but the height has remained the same.

**Condition Requested:** We would like to see Building A provide a graceful transition from the four story heights of the other buildings on Foundry Place to the parks, residences, and one story industrial buildings. We would like to see the height to the peak of Building D not exceed the height of any existing residential building on Hanover Street (the current tallest residential building is 349 Hanover Street). Lastly, we would want to see a reduction in height of Buildings B1 & B2 to match the homes across the street.

James Beal  
286 Cabot St.  
Portsmouth, NH  
603-205-0949

Planning Board  
City of Portsmouth, NH  
1 Junkins Ave  
Portsmouth, NH 03801

Apr 12, 2025

Re: 361 Islington St / Good to Be Knead LLC

Dear Chairman/ members of the board

I am writing in regard to the property located at 316 Islington St, ( Old GETTY gas station) on Islington St. I am not sure which department approves final certificate of occupancy, but would ask that this letter & my concerns be delivered to that department prior to the CO being awarded.

There are several issues that have yet to be addressed by the business in regard to the Historic District commission which gave approval of the project based on the plans submitted on Sept 07,2022 and referenced here.

**There are 2 items of concern.**

- Roof top mechanical units housing exhaust fans, HVAC and other items were to be enclosed in a screened wall to protect the appearance from the North, East & West views. To date this has not been installed.
- A privacy fence to separate the residential buildings to the North side, along the property line. On the plans submitted & approved by the Historic District Commission,
- Page A5.0 Details of Fence,
- Page A8.0 Proposed East perspective showing fence behind carpark,
- Page A8.1 Proposed view from S.East & proposed view from East

I understand that there is a boundary issue with the property of 278 Cabot St, but would ask that the privacy fence be included as a stipulation of the CO. Due to the 3 foot grade difference in the 361 Islington st and the abutting properties, the light from any vehicles headlights using the back access will enter directly into the first floor windows at 5-6 feet in height of the properties to the north of the property.

Sincerely; James Beal / 2nd abutting property to the North



To: Planning Board, City of Portsmouth  
From: Fran Berman, owner, 349 Hanover Street #3  
Re: Plans for 361 Hanover Street  
Meeting date: April 17, 2025

I am the owner and resident of unit 3 at 349 Hanover Street (Hanover Place Condominium Association or HPCA). I am an immediate abutter to 361 Hanover Street, with views of the current property from almost all of my windows. I have been watching the evolution of the plans for 361 Hanover Street closely and have significant concerns about the impact of this project as proposed on traffic, safety, and emergency vehicle access. As currently designed, I believe that the project will negatively impact the value of my condo due to its impact on the light and privacy in my home. Building D, four stories in height, will block access to light in my second floor unit and the other units on the south side of our building. What is now a sunny home, with 7 south-facing windows, will become a dark space with a very limited view of the sky. The design of Building D will also lead to a significant reduction in privacy, as the north side of Building D includes 14 windows and 6 balconies directly facing our windows. When residents are sitting on these balconies, they will be looking directly into my home.

The scale and style of this project, and especially of Building D, does not fit with the character of our neighborhood along this part of Hanover Street, which is made up of two- and three-story residential buildings with flat or peaked roofs. The four-story Building D, with its mansard roof, will dwarf the buildings beside it, taking away from the charm and character of this part of Hanover Street.

The project will have a negative impact on safety in our neighborhood. Hanover St. is a narrow one-way street in front of my building, and pedestrians often walk in the street here due to snow and ice on the sidewalks, shrubs that overhang the narrow sidewalks, and trash receptacles left for pickup on the sidewalks. My deeded parking space alongside 349 Hanover Street requires that I turn into Hanover Street with very limited sight lines due to cars parked right up to the edge of my driveway. Additional foot and vehicular traffic from the new residents at 361 Hanover will further reduce safety under the current plan, both for pedestrians and drivers. If this plan goes forward, the city needs to reconfigure the parking spaces along Hanover Street so cars parked on Hanover St. do not block views as we exit our driveways.

Hill Street, which does not even show up on the traffic studies, is a two-way street that runs behind 349 Hanover and continues into the current parking lot at 361 Hanover St. It is a private way at this end of Hill Street, owned by the properties on either side of the street. Deeded parking spaces for the residents of 349 Hanover Street are located along the sides of our building and on Hill Street parallel to our building (see page 96 of the packet). A **right of way** included in our deeds ensures the residents of HPCA have vehicle access from Hill Street through the property at 361 Hanover to Hanover Street. The plans presented here do not acknowledge or address this right of way, which appears on the deeds of all of the residents of HPCA. The right of way is especially important to the HPCA residents whose deeded parking spaces are along Hill Street behind 349 Hanover or those whose driveways are accessed from Hill Street (see the image on page 96 of the packet). Furthermore, our owners' deeded parking spaces along Hill Street are not shown on any of the 361 Hanover maps, but they significantly reduce the turning radius and street width for any vehicles entering or exiting 361 Hanover from Hill Street. Even though the main access point for 361 Hanover is shown as Hanover Street in the plans presented here, a secondary access and egress is shown to/from Hill Street (see page 107 of the packet). Given the narrowness of that roadway, which is further limited by cars parked in our deed spaces along Hill Street to the west of our building, emergency vehicles (fire trucks, ambulances) and snow plows may well be unable to drive through to or from 361 Hanover when our vehicles are parked in their deeded spaces. I believe that this is a major design flaw in this plan and requires a redesign.

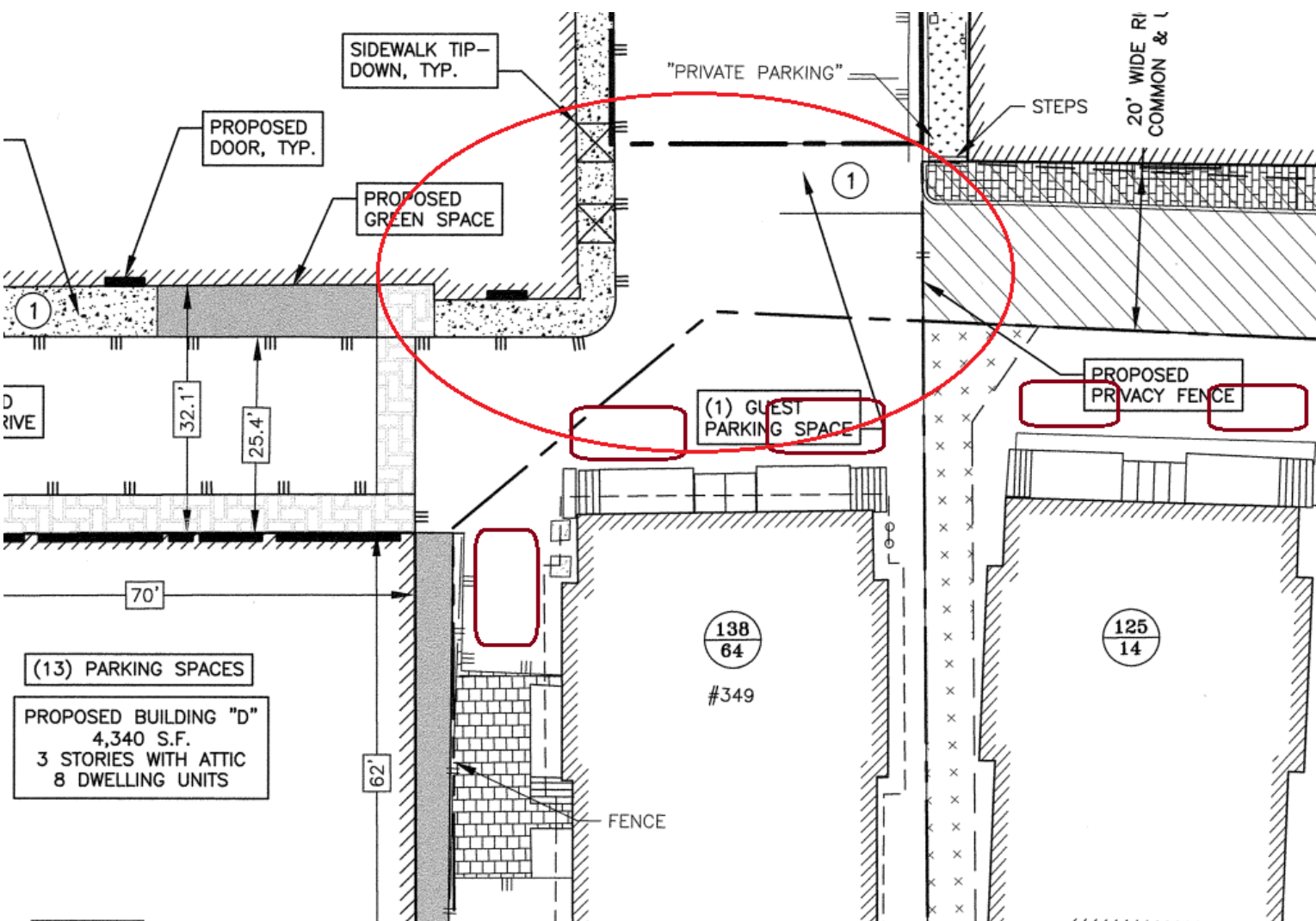
Thank you for your attention to these issues.

Fran Berman

349 Hanover St., #3



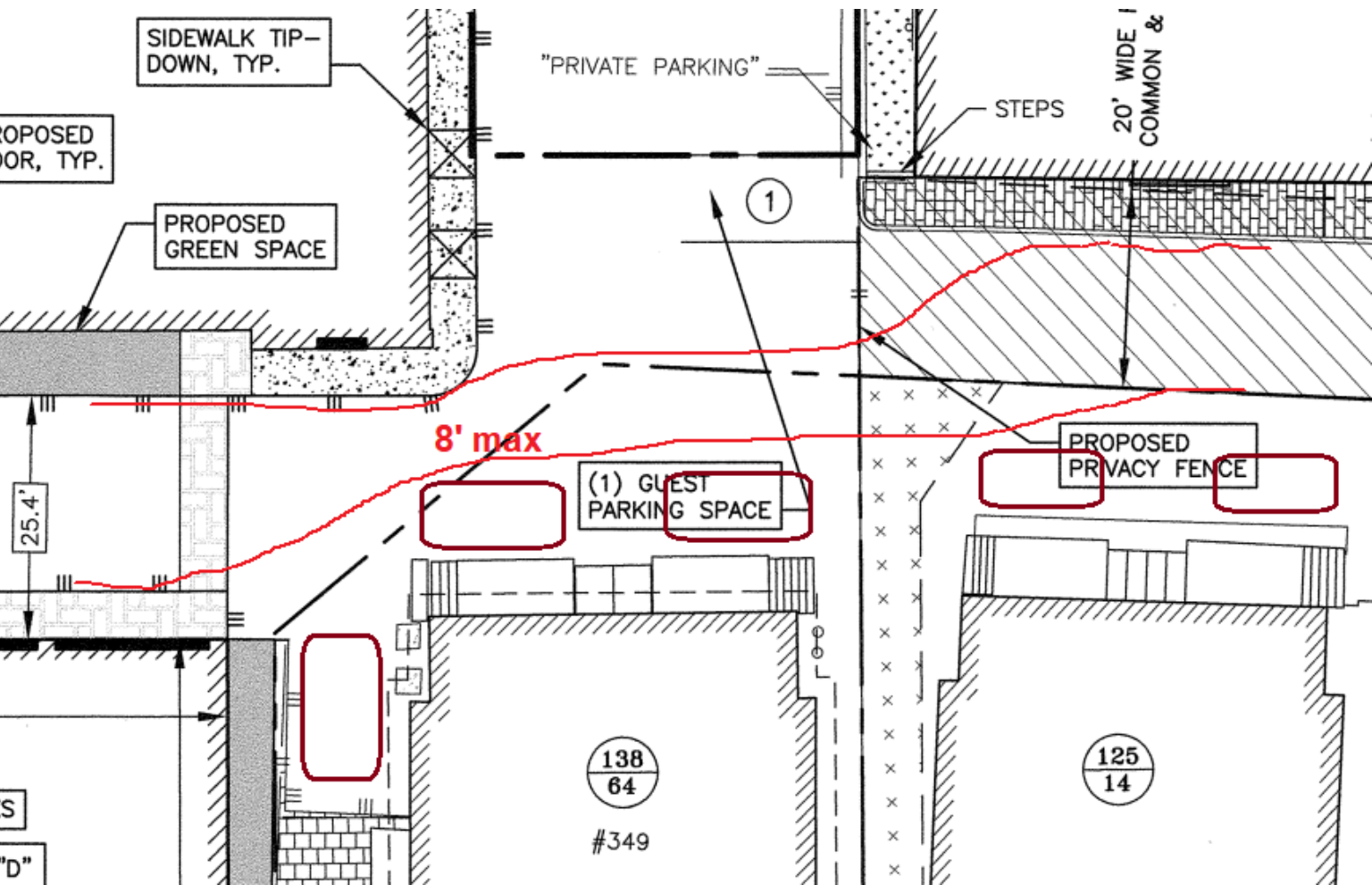
# 361 Hanover St. Traffic Safety and Access Concerns Between Hill St. & Hanover St.



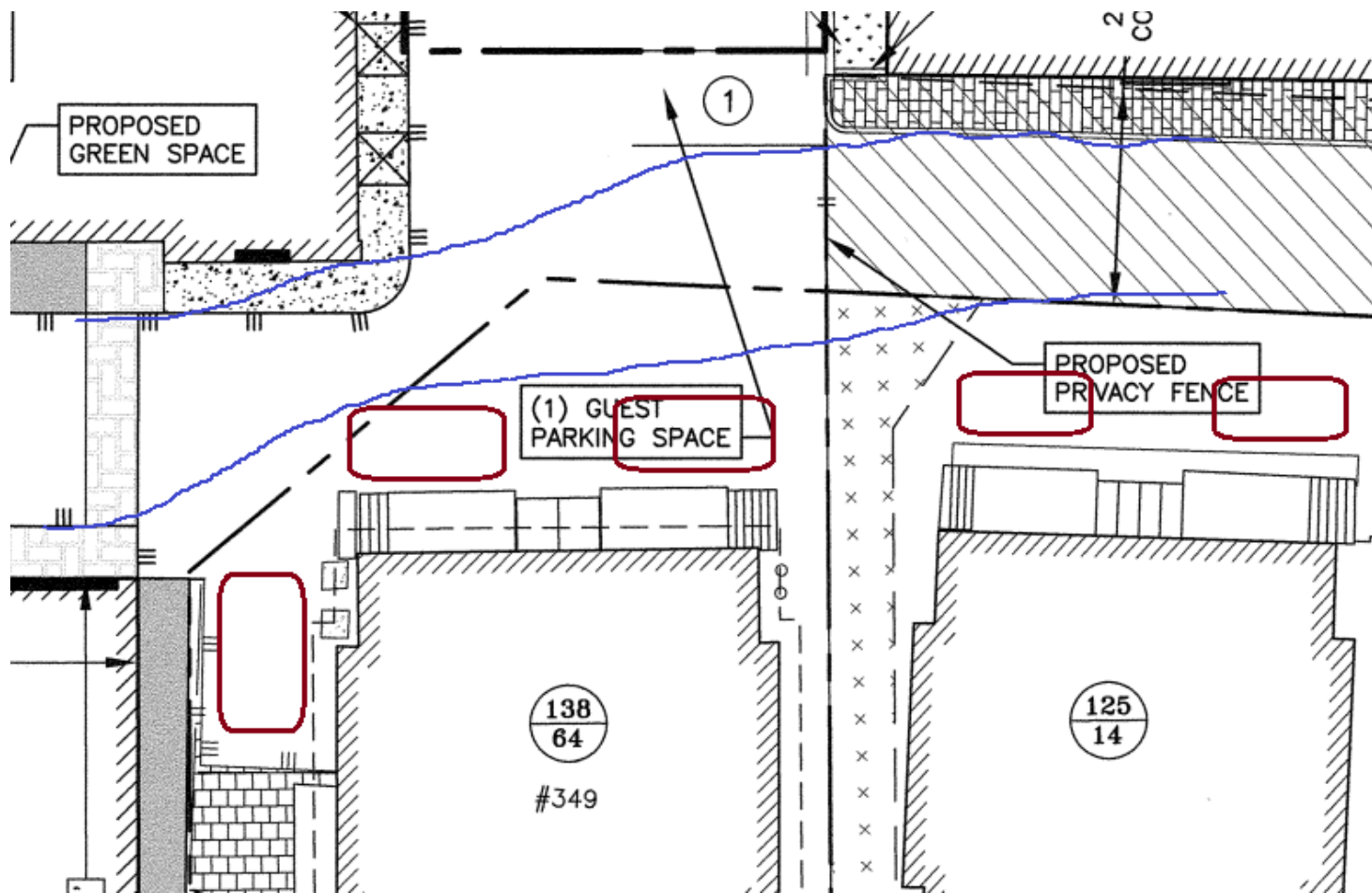
Dear Chairman Chellman & Planning Board Members,

The design as presented does not speak to items attached to the property- particularly the easements that exist for the abutting neighbors on Hanover St., through the 361 Hanover St. parking lot between Hill Street & Hanover St. That Blanket Access Easement, laid out in **Site Plan D-34716** provides for continuous unimpeded access easement through the 361 Hanover St. property. That easement is one-sided (no easement exists for the 361 Hanover St. Property through the properties to the North of them (349 Hanover St., 337/339 Hanover St., etc.). The use and opening to Hill St. is therefore only for the easement use of the neighboring properties, and not for the use of the future 361 Hanover St. residents/workers themselves. This must be understood and maintained. I would encourage discussion and design plans showing how this will be enforced. An electric gate perhaps, with access codes and/or remotes only given to the neighbors who have been granted the easement? Also, the area circled above needs to be fully open to allow for utility access as well as snow & trash removal by the city and the properties abutting.

## As Proposed



## MINIMUM Space Needed



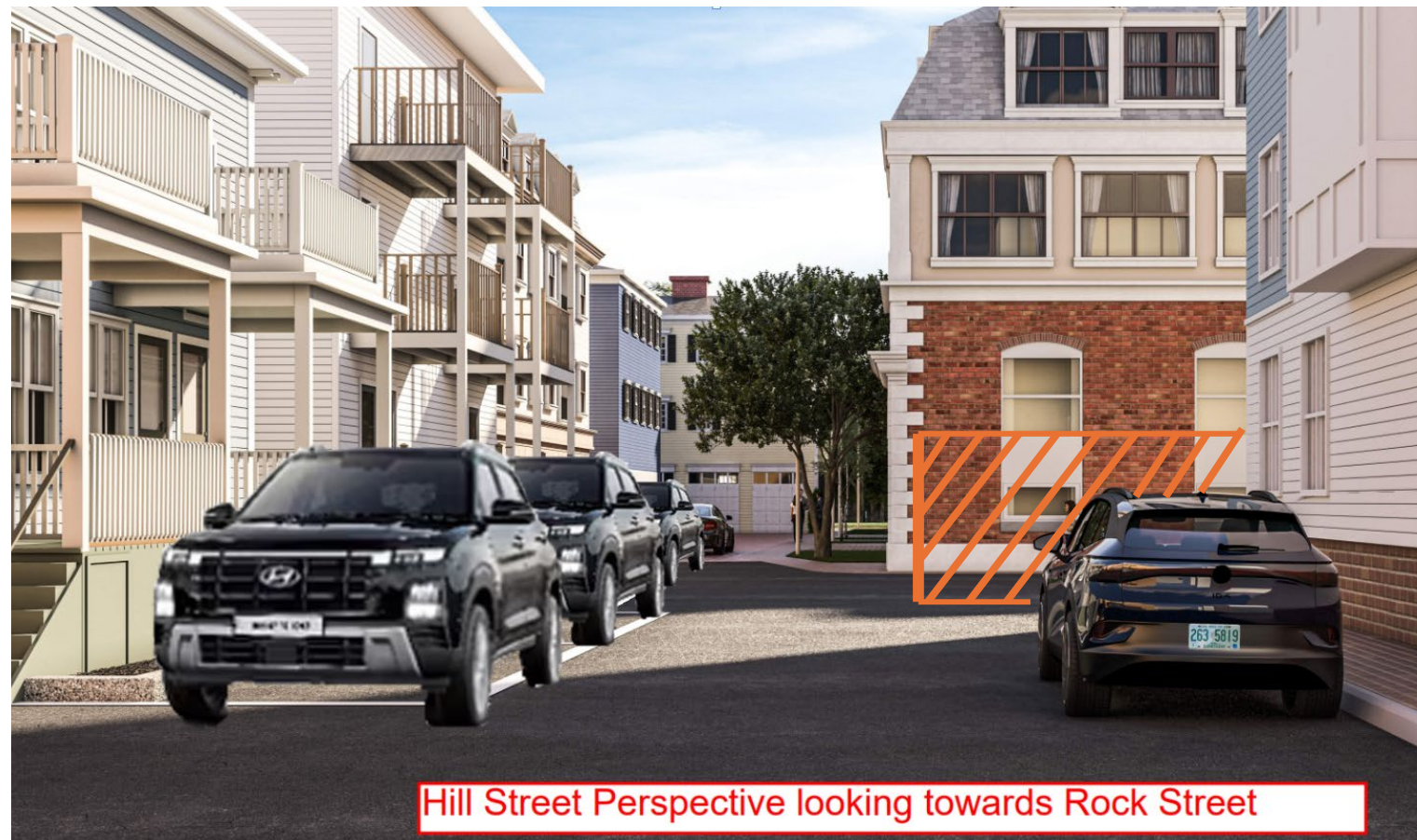


Hill Street as presented by the developer.



Hill Street Perspective looking towards Rock Street

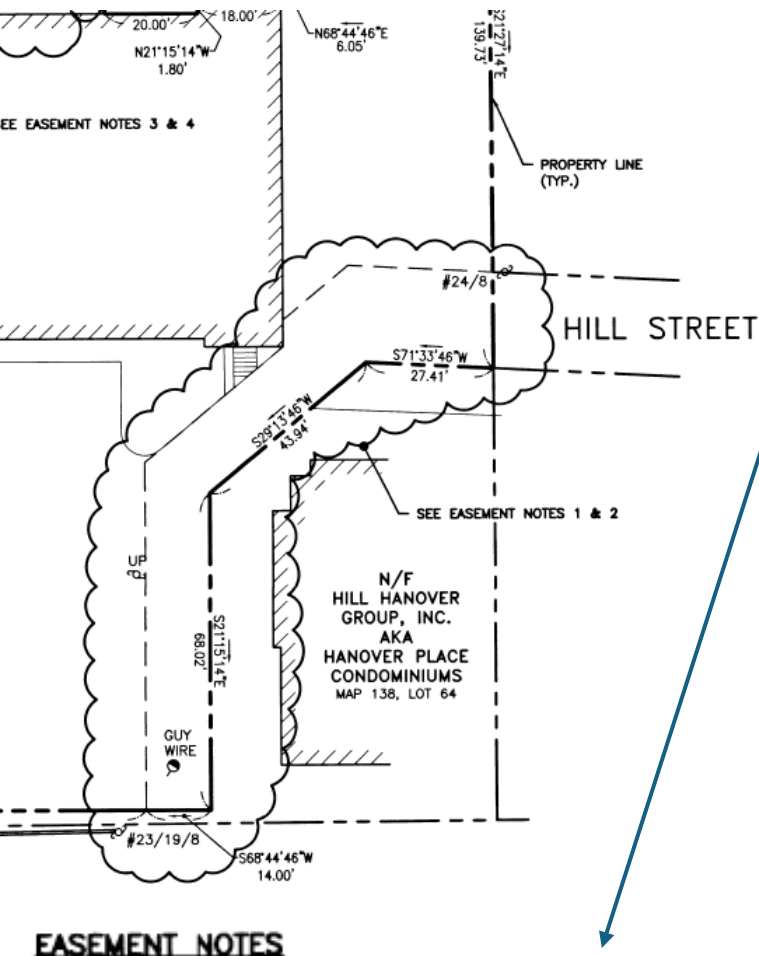
How it actually appears & would appear with the proposed Privacy Fence..



Hill Street Perspective looking towards Rock Street



# Amended Site Plan D-34716 - Dated May 3, 2007



- 1) RIGHT OF WAY EASEMENT REFERENCED AS "EXISTING 14' AND 20' ROW" ON A PLAN ENTITLED "KEARSARGE MILLS CONDOMINIUM PLANS," DATED APRIL 15, 1986, PREPARED BY KIMBALL CHASE COMPANY, INC., RECORDED AT D-14855, AND WHICH BENEFITS PROPERTY OWNED BY HILL-HANOVER GROUP, LLC, MAP 138, LOT 64 BY PROVIDING ACCESS FROM SUCH PROPERTY OVER THE PARKING AREA OF KEARSARGE MILL CONDOMINIUMS ASSOCIATION TO HANOVER STREET SHALL BE RELEASED BY HILL-HANOVER ST. FOR FURTHER REFERENCE SEE ALSO PLAN ENTITLED "SITE PLAN" DATED 2/24/85, APPROVED BY THE PORTSMOUTH SITE REVIEW COMMITTEE AS AMENDED, MARCH 20, 1986.
- 2) A BLANKET ACCESS EASEMENT SHALL BE GRANTED BY KEARSARGE MILL CONDOMINIUMS ASSOCIATION TO HILL HANOVER STREET TO ALLOW ACCESS FROM THE HILL-HANOVER GROUP, LLC PROPERTY OVER THE PARKING AREA OF KEARSARGE MILL CONDOMINIUM TO HANOVER STREET AND HILL STREET.
- 3) A PARKING LICENSE IS GRANTED BY THE CITY OF PORTSMOUTH TO BENEFIT KEARSARGE MILL CONDOMINIUMS ASSOCIATION TO ALLOW PARKING ON PROPERTY AS DEPICTED ON THIS PLAN AND NORTH OF UNIT A AS DEPICTED ON THE KEARSARGE MILLS CONDOMINIUM PLANS. COPIES OF THE PARKING LICENSE ARE AVAILABLE WITH THE RECORDS OF THE KEARSARGE MILL CONDOMINIUMS ASSOCIATION AND WITH THE RECORDS OF THE CITY OF PORTSMOUTH.
- 4) A BLANKET ACCESS EASEMENT IS GRANTED BY KEARSARGE MILL CONDOMINIUMS ASSOCIATION TO BENEFIT THE CITY OF PORTSMOUTH ON THE PORTION OF THE PARKING AREA OF KEARSARGE MILL CONDOMINIUMS ASSOCIATION WHICH LIES NORTH OF UNIT A AND SOUTHWESTERLY OF UNIT B AS SUCH UNITS ARE DEPICTED ON KEARSARGE MILL CONDOMINIUM PLANS. THE EASEMENT IS RECORDED AT THE ROCKINGHAM COUNTY REGISTRY OF DEEDS AS BOOK 4735, PAGE 2971. THE PURPOSE OF SAID EASEMENT IS TO ALLOW THE CITY OF PORTSMOUTH ACCESS OVER LAND OF KEARSARGE MILL CONDOMINIUMS ASSOCIATION TO MAINTAIN AND REPAIR A BUILDING OWNED BY THE CITY OF PORTSMOUTH AND WHICH IS IDENTIFIED AS "N/F CITY OF PORTSMOUTH" ON THE PLAN ENTITLED "KEARSARGE MILLS CONDOMINIUM PLANS" DATED APRIL 15, 1986, AS PREPARED BY KIMBALL CHASE COMPANY, INC. AND RECORDED AT THE ROCKINGHAM COUNTY REGISTRY OF DEEDS AS PLAN D-14855.

## PLAN REFERENCES

- 1) BOUNDARY INFORMATION BASED UPON PLAN ENTITLED "PERIMETER PLAN FOR SQUASH CLUB" AS PREPARED BY KIMBALL CHASE COMPANY INC., PORTSMOUTH, NH, DATED 07-08-85, SCALE 1" = 20'.
- 2) ADDITIONAL INFORMATION BASED UPON PLAN ENTITLED "KEARSARGE MILLS CONDOMINIUM PLANS," DATED APRIL 15, 1986, PREPARED BY KIMBALL CHASE COMPANY, INC., RECORDED AS D-14855 AT ROCKINGHAM COUNTY REGISTRY OF DEEDS.
- 3) ADDITIONAL INFORMATION BASED UPON PLAN ENTITLED "SITE PLAN - KEARSARGE MILL, PORTSMOUTH, NH" AS AS PREPARED BY JSA INC., PORTSMOUTH, NH, DATED 07-05-86, SCALE 1" = 20'.

## EASEMENT NOTES

- 1) RIGHT OF WAY EASEMENT REFERENCED AS "EXISTING 14' AND 20' ROW" ON A PLAN ENTITLED "KEARSARGE MILLS CONDOMINIUM PLANS," DATED APRIL 15, 1986, PREPARED BY KIMBALL CHASE COMPANY, INC., RECORDED AT D-14855, AND WHICH BENEFITS PROPERTY OWNED BY HILL-HANOVER GROUP, LLC, MAP 138, LOT 64 BY PROVIDING ACCESS FROM SUCH PROPERTY OVER THE PARKING AREA OF KEARSARGE MILL CONDOMINIUMS ASSOCIATION TO HANOVER STREET SHALL BE RELEASED BY HILL-HANOVER ST. FOR FURTHER REFERENCE SEE ALSO PLAN ENTITLED "SITE PLAN" DATED 2/24/85, APPROVED BY THE PORTSMOUTH SITE REVIEW COMMITTEE AS AMENDED, MARCH 20, 1986.
- 2) A BLANKET ACCESS EASEMENT SHALL BE GRANTED BY KEARSARGE MILL CONDOMINIUMS ASSOCIATION TO HILL HANOVER STREET TO ALLOW ACCESS FROM THE HILL-HANOVER GROUP, LLC PROPERTY OVER THE PARKING AREA OF KEARSARGE MILL CONDOMINIUM TO HANOVER STREET AND HILL STREET.

In 2007, the **Common Right of Way Easement** was released by 349 Hanover St. (HPCA) to Kearsarge Mill Condominiums Association in exchange for a **Blanket Access Easement** and a commitment to provide **Unimpeded Access** through the 361 Hanover St. Property from Hill St. → Hanover St.

**Blanket Access Easement** from Hill St. to Hanover St. that 349 Hanover St. has been promised as part of the agreement.

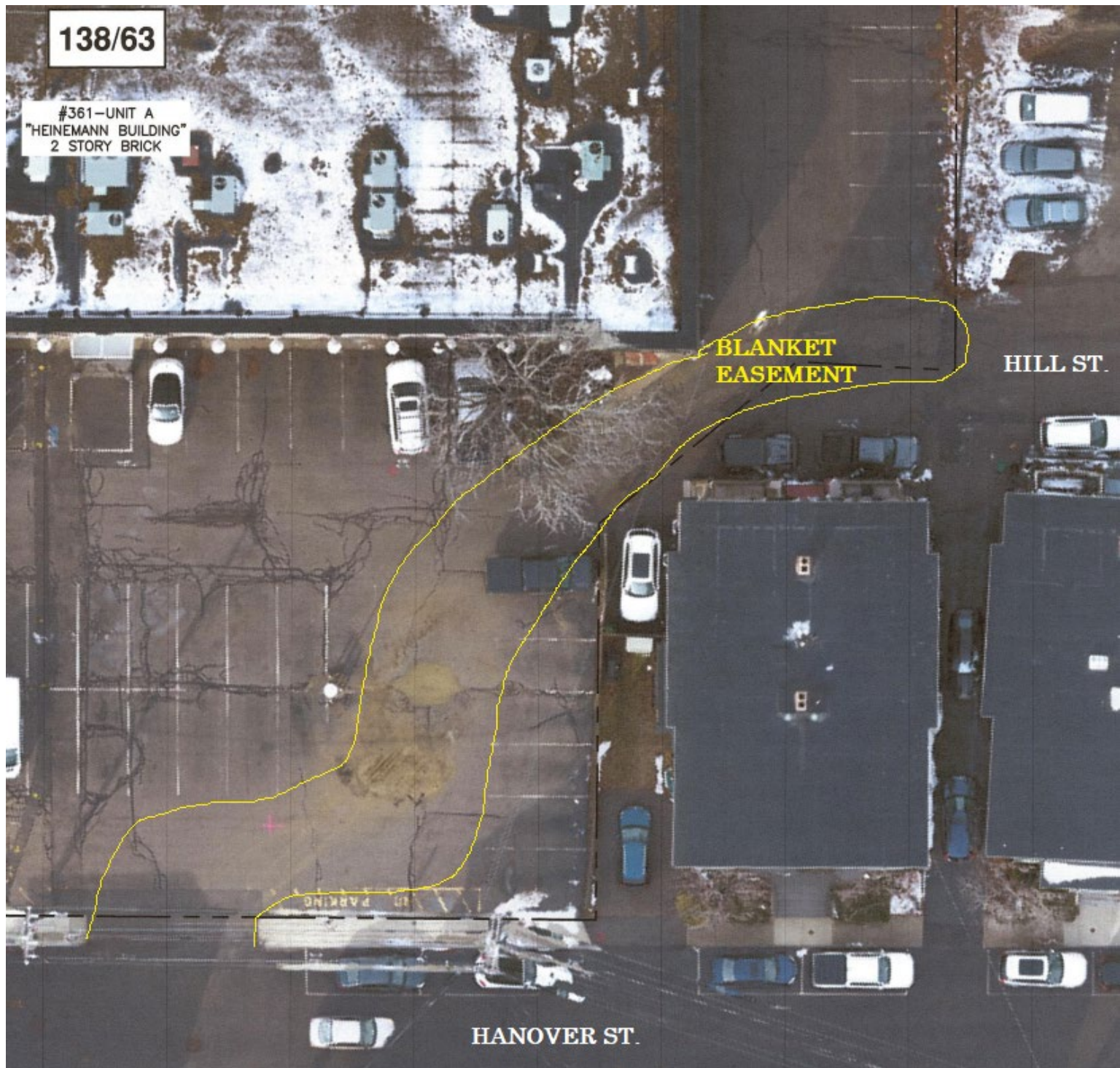
138/63

#361—UNIT A  
"HEINEMANN BUILDING"  
2 STORY BRICK

BLANKET  
EASEMENT

HILL ST.

HANOVER ST.





Prior to September 2024



— — — — — Property Line

— original proposed easement, which while still not acceptable, has been oddly missing from all recent design plans.

Minimum turn radius needed for safe travel/access

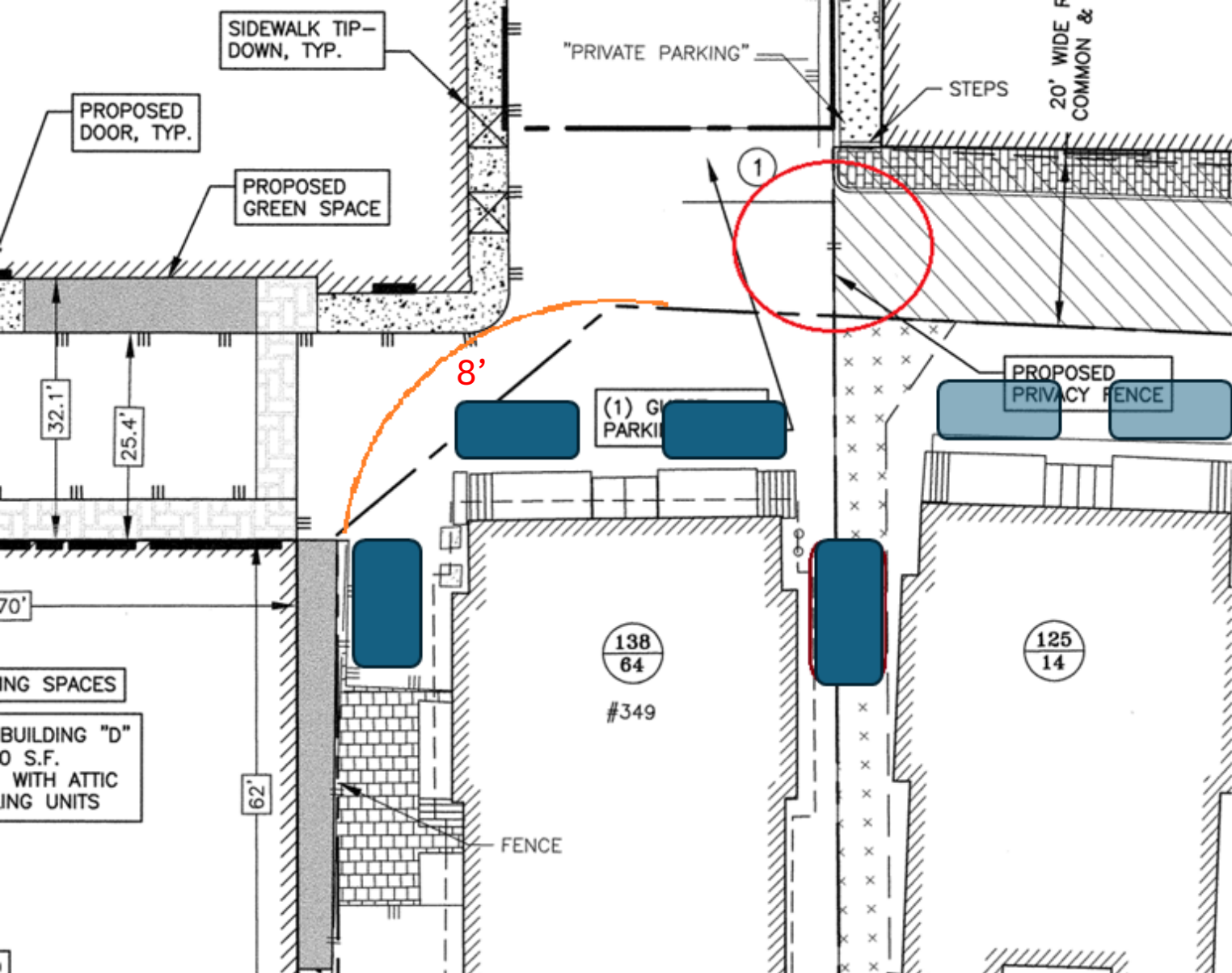




Concrete parking bollards were installed by the owners of 361 Hanover St. in September of 2024 to prevent access to and through the 361 Hanover St. parking lot.

Current owner of 361 Hanover has been in direct violation since September of 2024 of the Easement agreement between 361 Hanover St. and 349 Hanover St., where they are required to provide an “**unimpeded blanket easement**” and have not done so.



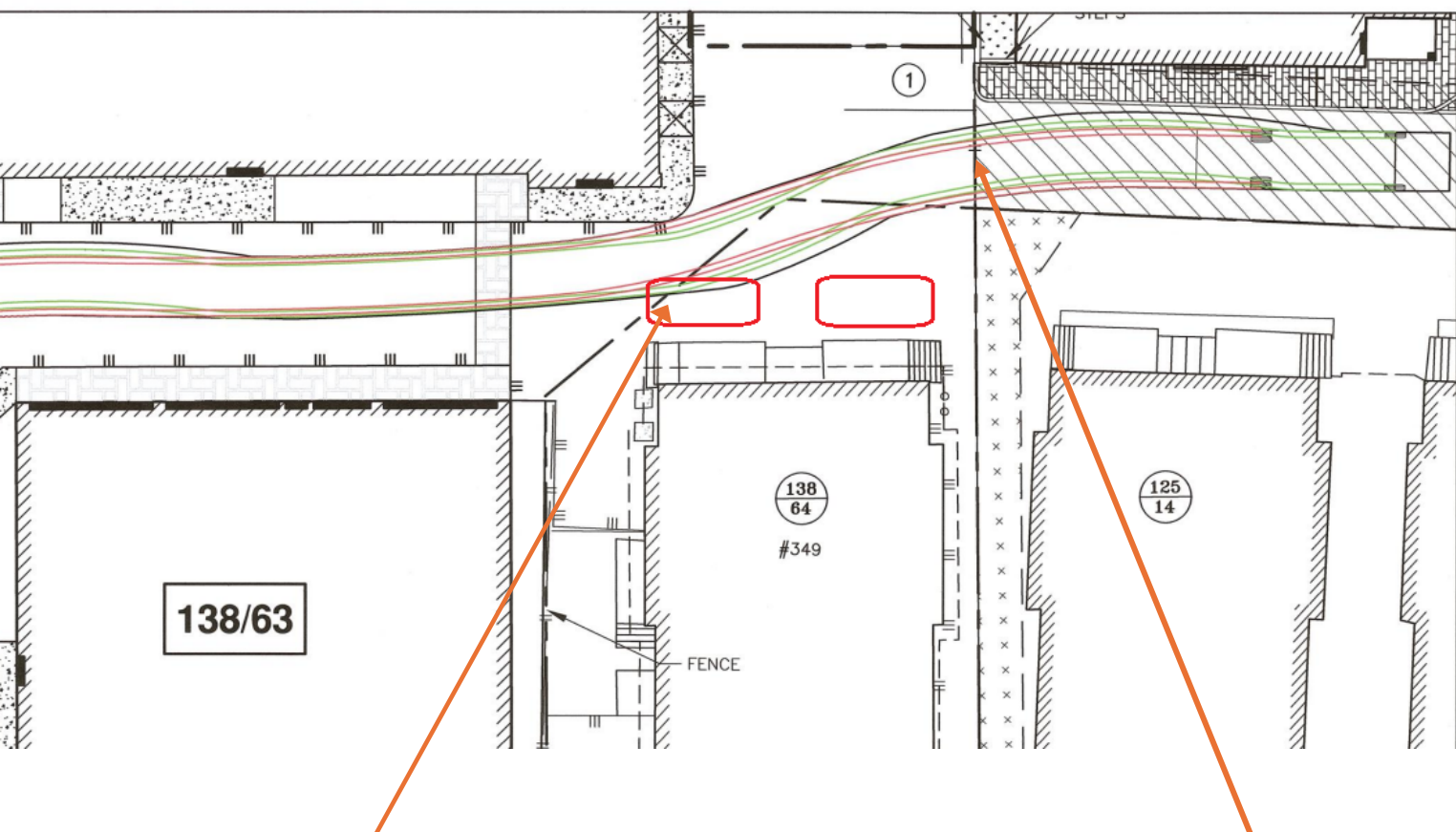


**Table of Off-Street Parking Dimensions**

<b>A</b> Angle of Parking (degrees)	<b>B</b> Width of Parking Space	<b>C</b> Depth of Parking Space	<b>D</b> Width of Maneuvering Aisle *	
			1-way traffic	2-way traffic
0°	8.5'	20'	14'	24'
45°	8.5'	19'	16'	24'
60°	8.5'	19'	18'	24'
90°	8.5'	19'	24'	24'

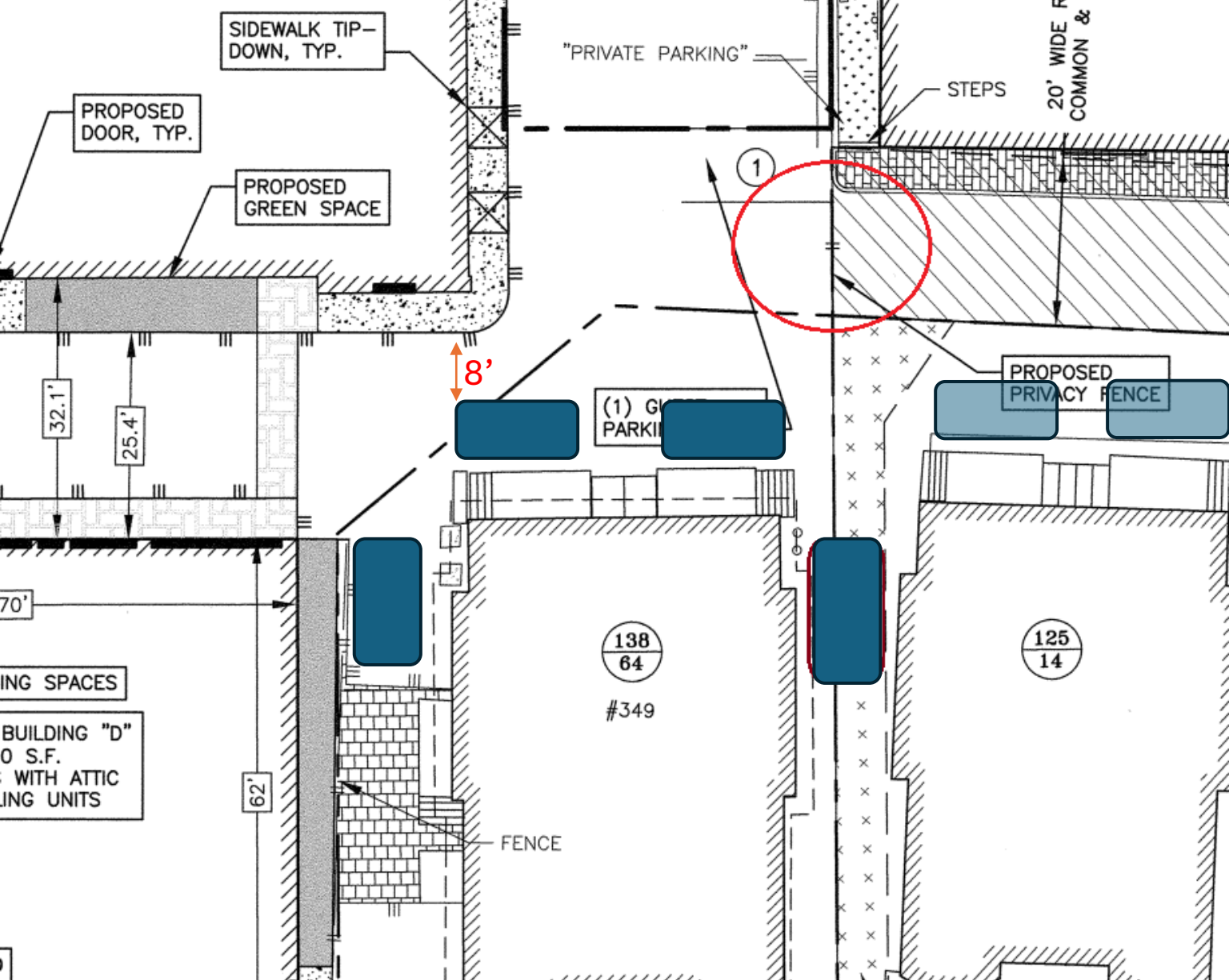
\* The minimum width of a **maneuvering aisle** shall be 22 feet for (a) an aisle for 2-way traffic providing access to fewer than 7 parking spaces, or (b) an aisle in a parking structure for 2-way traffic, or (c) an aisle in a parking structure for 1-way traffic with 90-degree parking.





In the Turning study, p. 107, the truck has just struck one of the vehicles parked in their deeded space.

It has also just driven through the Proposed Privacy Fence.



Because of the items presented, combined with the existing Blanket Easement, the traffic of Hill Street, and the deeded parking spaces that restrict the actual area from what has been presented so far (in error) by the developer, we feel this design showing a build-out from the building A and a proposed privacy fence is not viable and needs to be removed to meet turning and traffic requirements, and allow for utility vehicle traffic and access.

8' is not nearly enough room to make a 90-degree parking turn, as we know first-hand from the past 7 months of near accidents, not to mention zoning requirements of a 22' minimum width of a maneuvering aisle.

**The design as presented will not provide nearly enough space to allow safe travel, parking, utility vehicle access, and snow & trash removal.**

Thank you for your consideration of these points.

Sincerely,

Mark DeLorenzo  
349 Hanover St. Apt. 1  
Portsmouth, NH

**From:** [Geri Gaeta](#)  
**To:** [Planning - Info - Shr](#)  
**Subject:** Public Comment on 361 Hanover  
**Date:** Wednesday, April 16, 2025 3:32:53 PM

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You don't often get email from [geri.gaeta@gmail.com](mailto:geri.gaeta@gmail.com). [Learn why this is important](#)

I am writing in regards to 361 Hanover. I live in the Islington Creek neighborhood and we have two small children who are walking past this site to access downtown or to play at the Rock street playground nearly every day. The idea that ALL of the traffic in this development will dump out onto Hanover street is frankly ridiculous. Not only can the streets not handle this amount of traffic, but every other residential development on Foundry Place diverts traffic to Foundry Place, which is a City Core Street, as was intended by the NEIO. Why should this development be different? They have existing access to Foundry Place, which they are subdividing off. The developer has stated that the city owns a small piece of land that would prevent him from having a parking garage empty out onto Foundry Place but I am aware the city is investigating if this can be resolved. This property is zoned under the North End Incentive Overlay District (which the developer has cited to support the proposed development in previous meetings) and the intent of this ordinance is to make Foundry Place the main thoroughfare to downtown. We should be enforcing this for 361 Hanover.

In addition to traffic issues, the renderings currently show the building coming right to the sidewalk, providing zero visibility to pedestrian traffic on Hanover which is a major safety hazard and should be addressed.

Lastly, the community space is poorly detailed and seems questionable as to if this meets the intent of providing a community space to the town. It looks more like a road with some benches and doesn't seem like an appealing place to walk to town compared to the current sidewalks that exist on either side of the development. I would love for the town to encourage a bit more detail around this proposal at a minimum.

Thank you-  
Geri Gaeta  
91 Langdon St

**From:** [MV](#)  
**To:** [Planning - Info - Shr](#)  
**Subject:** Feedback on 361 Hanover Steam Factory project for Apr 17 Planning Board meeting  
**Date:** Wednesday, April 16, 2025 12:12:39 PM

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Planning Board  
City of Portsmouth  
1 Junkins Ave. Portsmouth NH 03801

Regarding 361 Hanover Steam Factory LLC Design Review

Dear Members

I am a direct abutting neighbor to the 361 Hanover Steam Factory project. After reviewing the plans submitted by the group, I must register my disapproval on several points.

- 1) The Hanover Place Condo Association at 349 Hanover Street has a legally recorded access easement agreement with the property to allow access through the property from Hill Street to Hanover Street, which is not being honored and there is no indication on the 361 Hanover Steam Factory site plan how this easement would be honored.
- 2) There is no indication on the site plan how access from 361 Hanover to Hill Street (private street) would be controlled. Hill Street is a tiny street that cannot handle increased traffic from 361 Hanover.
- 3) The massive size and height of Building D does not fit with the character of the neighborhood. At more than 45 feet tall it is taller than any other building in the neighborhood of residential homes and small apartment buildings. Its "3 stories" are really four stories including the "attic" story.
- 4) The site plan doesn't account for two deeded parking spaces behind 349 Hanover St, and doesn't allow for a third property owner to safely access her deeded parking space/driveway. The fire truck access plan doesn't account for these deeded parking spaces - there is not enough clearance on Hill Street.
- 5) A "proposed privacy fence" indicated on the site plan is located directly behind a fourth property owner's deeded parking space/driveway at 349 Hanover St and doesn't provide enough space to safely access.

Thank you.

Regards,

Mark Vangel

Property owner, 349 Hanover Street Apartment 5

**From:** [Marcie Vaughan](#)  
**To:** [planning@cityofportsmouth.gov](mailto:planning@cityofportsmouth.gov); [Planning - Info - Shr](#)  
**Subject:** public comment 31 Hanover  
**Date:** Wednesday, April 16, 2025 5:01:40 PM

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You don't often get email from [mvaughan@anselm.edu](mailto:mvaughan@anselm.edu). [Learn why this is important](#)

Dear Planning Board:

I live at 407 Hanover Street and I am a direct abutter to the project at 361 Hanover.

This Board lacks adequate information about the existing conditions, and the project, to approve design review. As one example, the parking study fails to evaluate the intersection of Sudbury and Rock Street. This omission means that this Board lacks information about the foreseeable risk of a dangerous accident at this intersection.

Sudbury Street is a one-way street with traffic flowing towards Rock Street. The intersection of Sudbury and Rock has a stop sign. The Rock Street Park is located to the left of that intersection; drivers who pass through the intersection and turn left enter the Rock Street parking lot, with approximately 11 very coveted parking spaces.

My home abuts Sudbury Street on the right. A driver turning right onto Rock Street at the stop sign turns directly in front of our driveway.

The intersection at Rock and Sudbury is already extremely hazardous. Our neighbors stop at the stop sign, but people traveling through our neighborhood looking for parking regularly treat it as "stopoptional." On a daily basis, drivers blow through the stop sign as they take a sharp right hand turn from Sudbury to Rock, pulling directly in front of our driveway.

I'm frankly stunned that the developer failed to evaluate this intersection. With the dramatic increase in traffic from new residents; the high likelihood that their visitors will be looking for parking; the location of the Rock Street parking lot; the location of the heavily used Rock Street park; and the location of my driveway, there is a foreseeable risk that this will be the site of an accident that could injure or kill a small child, an elderly person, or me.

My husband and I will raise additional concerns about the inadequacy of this application at the meeting.

Marcie Vaughan



**From:** [Julienne Echavarri](#)  
**To:** [Planning - Info - Shr](#)  
**Subject:** Concerned Neighbor about 361 Hanover  
**Date:** Monday, April 14, 2025 5:20:12 PM

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My name is Julienne Echavarri and I live at 34 Rock St. I am a direct abutter for this development, which means I will be directly affected by the increased in traffic, noise and air pollution and density that will be caused by the new development. I am not against development and I agree that housing in this lot is better than a parking lot; however, I do not agree with the placement of the main car entrance to the development.

The main entrance is between Rock St. (my street) and Pearl St. This will lead to an exponential increase in traffic through my street, which will lead to an increase in noise and air pollution and overall will decrease the safety off our small streets and likely decrease my property value. For this reason, the most important question I want to ask this committee is the following: why did the developer have to seek a variance for the first floor use due to the difference in zoning between the lot and our neighborhood, but does not have to also request a variance for the main car entrance to the development since the zoning for the development is not the same zoning to the streets that they will be using for entry? Our neighborhood streets are too small for the increase in traffic and the emergency vehicles like ambulances and fire trucks.

Finally, based on previous plans, it does not seem like the development will have enough parking for the amount of apartments and residents, not to mention visitors. This will decrease the amount of street parking available for current residents on our own streets, especially since the city decided to abandon permit parking, and the increase congestion also makes the streets even smaller.

Julienne Echavarri



JOHN E. LYONS, JR.  
ATTORNEY AT LAW  
E-MAIL: JLYONS@LYONSLAW.NET  
  
ONE NEW HAMPSHIRE AVENUE  
SUITE 235  
PORTSMOUTH, NH 03801  
  
TELEPHONE: 603.431.5144  
FAX: 603.431.5181  
WEBSITE: WWW.LYONSLAW.NET

ANTJE S. BOURDAGES  
PARALEGAL  
E-MAIL: ABOURDAGES@LYONSLAW.NET

April 16, 2025

**SENT VIA EMAIL**

Rick Chellman, Chair  
Portsmouth Planning Board  
City of Portsmouth  
1 Junkins Avenue  
3<sup>rd</sup> Floor  
Portsmouth, NH 03801

**RE: 361 Hanover Steam Factory LLC for property located at 361 Hanover Street**

I represent Hill-Hanover Group, LLC ("Hill-Hanover") and Hanover Place Condominium Association ("HPCA"), who are providing you with this letter in opposition to the above referenced matter, which is scheduled for hearing tomorrow evening, April 17, 2025.

361 Hanover Steam Factory LLC ("361") owns and seeks to develop Unit # A of the Kearsarge Mill Condominium ("KM"). Please see the attached Exhibit A, on which the KM property is outlined in blue and identified as Tax Map 138, Lot 63. My client HPCA's property is identified as Map 138, Lot 64, and my client Hill-Hanover's property is identified as Tax Map 125, Lot 14. All properties front Hanover Street. Please note the private Right of Way known as "Hill Street" that runs behind my clients' properties into and through the KM property.

It should be noted that Hill-Hanover took Title to the three buildings shown as 125-14, and the HPCA property shown as 138-64 through a single Deed which makes note of the Hill Street Right of Way. It was Hill-Hanover that subsequently converted 138-64 into the HPCA.

The Condominium Site Plan prepared when HPCA was created shows the Hill Street Right of Way running behind the Hill-Hanover and HPCA properties, entering onto the KM property, and then running along the easterly side of the KM parking lot, to Hanover Street. See the attached Exhibit B.

Next, I attach an Access Agreement as Exhibit C. The Access Agreement is between KM and HPCA. In the Access Agreement, KM acknowledges the existence of the Hill Street Right of Way and confirms that KM agrees to provide unimpeded access and egress from Hanover Street to the Hill Street Right of Way. In exchange for providing unimpeded access and egress to HPCA, HPCA agreed KM could relocate the Easement on the KM property.

Subsequently, following the Access Agreement, an Amended Site Plan was prepared for KM by Kimball Chase which reconfirmed the location of the Easement. KM further agreed in Note # 2 on the Amended Site Plan to provide a blanket access easement over the "Hill-Hanover Group LLC property over the parking area of Kearsarge Mill Condominium to Hanover Street and Hill Street." See the attached Exhibit D.

Unfortunately, KM and 361, as Owner of Unit # A, have breached the Access Agreement and blocked Hill-Hanover and HPCA from having access to the Right of Way as it crosses the KM property. See the photographs attached as Exhibit E whereby 361 employees and agents have parked vehicles and placed roadblocks in such a fashion as to prevent Hill-Hanover and HPCA from having access to the Hill Street Right of Way. Although 361 and KM have been respectfully asked to remove all items blocking the Right of Way, they have refused to do so.

361 has now filed the Revised Site Redevelopment Plan attached as Exhibit F. This Plan specifically makes note that a fence will be installed to completely block the access of Hill-Hanover and HPCA to the Hill Street Right of Way as it enters the KM parking lot. This Plan also shows that Building # D will be constructed directly over the Hill Street Right of Way.

Based on all the above, Hill-Hanover and HPCA on this date have filed a Petition with the Rockingham County Superior Court (See Docket No. 218-2025-CV-00488) in order to enforce all its Easement rights. Please see the attached. It should be noted that in the Petition, HPCA seeks to rescind that portion of the Access Agreement that allows KM and 361 to relocate the Easement because KM and 361 have failed to comply with the Access Agreement by blocking all access to the Hill Street Right of Way.

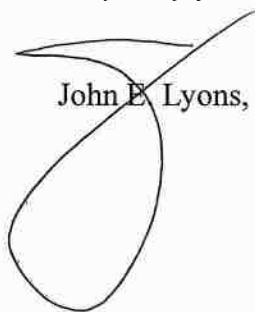
Finally, under no circumstances should any development proposed by 361 provide for access and egress from the 361 property over and along the Hill Street Right of Way as it runs behind the Hill-Hanover and HPCA properties. 361 has no right, title, or interest in this private Right of Way known as Hill Street that belongs to Hill-Hanover and HPCA.

Based on all the above, Hill-Hanover and HPCA respectfully request the City of Portsmouth Planning Board to deny the Application as currently proposed by 361 as to the property located at 361 Hanover Street.

Thank you for your kind consideration.

Very truly yours,

John E. Lyons, Jr., Esq.

A handwritten signature in black ink, consisting of a large, stylized 'J' followed by 'E. Lyons, Jr.'.

JEL/dhb

cc: Susan G. Morrell, Esq. – [sgmorrell@portsmouthnh.gov](mailto:sgmorrell@portsmouthnh.gov), [smorrell@portsmouthnh.gov](mailto:smorrell@portsmouthnh.gov)  
Peter Britz – [plbritz@portsmouthnh.gov](mailto:plbritz@portsmouthnh.gov)  
Peter Stith – [pmstith@portsmouthnh.gov](mailto:pmstith@portsmouthnh.gov)  
Kimberly Kienia - [kkienia@portsmouthnh.gov](mailto:kkienia@portsmouthnh.gov)  
Trevor McCourt – [tmccourt@portsmouthnh.gov](mailto:tmccourt@portsmouthnh.gov)  
John K. Bosen, Esq. - [jbosen@dtclawyers.com](mailto:jbosen@dtclawyers.com)

THE STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS.

SUPERIOR COURT

CASE NO: 218-2025-CV-00488

HILL-HANOVER GROUP LLC, and  
HANOVER PLACE CONDOMINIUM ASSOCIATION

v.

HAMPSHIRE DEVELOPMENT CORPORATION,  
361 HANOVER STEAM FACTORY LLC,  
KEARSARGE MILL UNIT OWNERS ASSOCIATION, and  
STEVEN T. ROY AND DAVID B. ADAMS,  
AS CO-TRUSTEES OF THE POWER HOUSE REALTY TRUST

**PETITION FOR PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF,  
DECLARATORY JUDGMENT, QUIET TITLE, BREACH OF CONTRACT/RESCISSION,  
BREACH OF CONTRACT/DAMAGES AND SPECIFIC PERFORMANCE, ANTICIPATORY  
BREACH OF CONTRACT, BREACH OF COVENANT OF GOOD FAITH AND FAIR  
DEALING, PROMISSORY ESTOPPEL, FRAUDULENT MISREPRESENTATION,  
NEGLIGENT MISREPRESENTATION, ADVERSE POSSESSION, AND ATTORNEY FEES**  
(Bench Trial Requested)

NOW COME the Plaintiffs, Hill-Hanover Group LLC (“Hill-Hanover”) and Hanover Place Condominium Association (“HPCA”) by and through their attorney, Lyons Law Offices, P.A., who hereby file this Petition as follows:

**I. PARTIES**

1. Hill-Hanover is a New Hampshire limited liability company with a principal business address of 126 Daniel Street, Suite 100, Portsmouth, NH 03801.
2. HPCA is a condominium organized and existing on the laws of the State of New Hampshire with an address of 349 Hanover Street, Portsmouth, NH 03801.
3. Defendant, Hampshire Development Corporation (“Hampshire”) is a New Hampshire corporation with a principal business address of 41 Industrial Drive, Unit 20, Exeter, NH, 03833.



4. Defendant, 361 Hanover Steam Factory LLC (“361”) is a New Hampshire limited liability company with a principal business address of 361 Hanover Street, Unit A, Portsmouth, NH 03801.
5. Defendant, Kearsarge Mill Unit Owners Association (“KM”) is a New Hampshire condominium association with an address of 361 Hanover Street, Portsmouth, NH 03801.
6. Defendants, Steven T. Roy and David B. Adams, as Co-Trustees of the Power House Realty Trust (the “Trust”) are located in New Hampshire with an address of 361 Hanover Street, Unit B, Portsmouth, NH 03801.

## **II. JURISDICTION AND VENUE**

7. The Court has subject matter jurisdiction pursuant to RSA 491:22, 491:7, and 498:1.
8. The Court also has subject matter jurisdiction in that the real estate in question is located in the City of Portsmouth, County of Rockingham, and State of New Hampshire, and all of the relevant Parties listed above have their principal location in the County of Rockingham and State of New Hampshire.
9. Venue is proper as the real property in dispute is located in the City of Portsmouth, County of Rockingham, and State of New Hampshire.

## **III. FACTS**

10. The allegations set out in the preceding paragraphs are restated and incorporated herein by reference.
11. Hill-Hanover took Title to 317-319, 327-329, 337-339, and 349 Hanover Street, Portsmouth, New Hampshire (the “Property”), by Warranty Deed from Gerald and Lorraine Taube (“Taube”), dated September 1, 2004, and recorded in the Rockingham County Registry of Deeds in Book 4356, Page 0010 (the “Warranty Deed”).

12. The Taube family owned the Property since 1958.
13. The Property abuts Hanover Street in the front and the private Right of Way for the benefit of the Property known as Hill Street in the back (“Hill Street”).
14. The private Right of Way known as Hill Street is referenced in the Warranty Deed to Hill-Hanover.
15. The private Right of Way, known as Hill Street, runs from Bridge Street to and through the eastside of the KM parking lot to Hanover Street.
16. The Property also has a legal right, title, and interest in Hill Street by adverse possession as the Property has used Hill Street as a Right of Way in an open, continuous, exclusive, adverse, and notorious fashion since it was owned for well over 20 years and since it was owned by Taube beginning in 1958.
17. KM was created by Declaration dated April 26, 1986, and recorded in the Rockingham County Registry of Deeds in Book 2596, Page 1585. Said Declaration was restated on August 27, 2021, and recorded in Book 6324, Page 1171.
18. As set out above, the private Right of Way, known as Hill Street, has been used by the Hill-Hanover Property in a continuous fashion before KM was created on April 26, 1986.
19. On January 13, 2006, Hill-Hanover converted the Property located at 349 Hanover Street, Portsmouth, NH 03801 into the HPCA by Declaration, recorded in the Rockingham County Registry of Deeds in Book 4687, Page 0016.
20. The KM Property is outlined in blue on the City of Portsmouth Tax Map, attached as **Exhibit A** and is further identified as Map 138, Lot 63. The KM Property is further identified as Map 138, Lot 64. The remaining three parcels still held by Hill-Hanover are identified as Map 125, Lot 14 on **Exhibit A**. Hanover Street is then shown running in front of all the relevant properties. The private Right of Way, known as Hill Street, is shown running from Bridge Street, behind the Hill-Hanover Property, behind the HPCA Property, through and to the KM parking lot.

21. The Condominium Site Plan for HPCA is attached as **Exhibit B**, and was recorded on December 12, 2005, in the Rockingham County Registry of Deeds as Plan # D-33379. **Exhibit B** specifically shows the location, width, and dimensions of the private Right of Way, known as Hill Street, as it enters the KM Property and runs along the east side of the KM parking lot to Hanover Street.
22. On March 23, 2007, KM entered into an Access Easement Agreement and Release of Right of Way (the “Access Agreement”) with HPCA which is recorded in the Rockingham County Registry of Deeds in Book 4798, Page 0712 and is attached hereto as **Exhibit C**, which grants HPCA, “General access easement through the Kearsarge Mill Property” to Hanover Street. The Access Agreement further provides KM must provide “Unimpeded access and egress” to HPCA across the Easement as located on the KM Property. KM did retain the right to relocate the Easement on its Property as long as unimpeded access to HPCA always remained open. Finally, the Access Agreement obligated KM to maintain the Easement at its own cost, provided the HPCA access Easement “shall at all times remain reasonably open” to allow for vehicle access to the HPCA Property.
23. KM did not enter into any similar access agreement with Hill-Hanover nor has Hill-Hanover at any time ever released or agreed to relocate its easement rights across the KM Property.
24. The Amended Site Plan for KM, dated May 5, 2007, and recorded in the Rockingham County Registry of Deeds as Plan # D-34716 (the “Amended Site Plan”) also sets out, confirms, creates, and grants the Hill Street Right of Way to Hill-Hanover (and now HPCA). See attached **Exhibit D**.
25. The location of the Right of Way as shown on the HPCA Site Plan attached as **Exhibit B**, and the KM Site Plan attached as **Exhibit D**, are essentially identical.
26. Additionally, the Amended Site Plan in “Easement Note # 2” specifically provides that, “A blanket access easement shall be granted by Kearsarge Mill Condominium Association to

Hill-Hanover Street to allow access from the Hill-Hanover Group Property over the parking area of Kearsarge Mill Condominium to Hanover Street and Hill Street.”

27. In New Hampshire, an Easement may be created and granted through a recorded Plan which shows the location of the Easement and which provides notice to all Parties involved, in addition to a deed, use, necessity and adverse possession.
28. 361, by Condominium Warranty Deed, dated November 9, 2021, recorded in the Rockingham County Registry of Deeds in Book 6352, Page 2959, took Title to Unit # A at KM.
29. Unit # A has a 90.5 percent (90.5%) interest in the Common Area of KM.
30. The Trust by Warranty Deed, dated January 30, 1997, and recorded in the Rockingham County Registry of Deeds in Book 3212, Page 2794, took Title to Unit # B of the KM, along with a 9.50 percent (9.50%) interest in the Common Area of KM.
31. Hampshire, as Applicant on behalf of 361 as Owner, is seeking to develop Unit # A at KM by renovating an existing mill building and constructing three (3) new multi-family residential buildings which include a Rowhouse, Duplex, and an Apartment Building, and has accordingly sought relief from the City of Portsmouth’s Zoning Board of Adjustment regarding a number of Variances.
32. Both the Subdivision Plan and the Site Development Plan submitted by Hampshire on behalf of 361 as part of its Zoning Board of Adjustment Application (the “Application”) to the City of Portsmouth depict the private Right of Way known as Hill Street.
33. More significantly in the Application, Hampshire and 361 specifically admit the Right of Way known as Hill Street exists as a private way.
34. Steve Wilson, the Principal of Hampshire and 361, directly and through his representatives/agents has made claim before the Technical Advisory Committee, and Zoning Board of Adjustment, for the City of Portsmouth, that 361 has the right to use the private Right of Way known as Hill Street.

35. Neither Hampshire, 361, KM, nor the Trust have any right, title, or interest in the Hill Street Right of Way either by Deed, Plan, or through adverse possession.
36. Hampshire and 361 on their own behalf, and on behalf of KM and the Trust, have intentionally blocked HPCA and Hill-Hanover from having access to that portion of the private Right of Way that crosses the KM parking lot by placing commercial trucks, employee vehicles, and traffic barriers within the private Right of Way, known as Hill Street. Hampshire, 361, and KM have also been asked on multiple occasions to remove their vehicles and barriers from blocking the Hill Street Right of Way but have ignored and refused to comply with those requests. See the attached **Exhibit E**.
37. Additionally, in its Application to the Portsmouth Planning Board and Zoning Board of Adjustment, Hampshire and 361 propose to build an apartment building, identified as Building # D, directly over and blocking the Hill Street Right of Way as it crosses the KM parking lot. See the attached **Exhibit F**.
38. As set out in **Exhibit F**, Hampshire and 361 also propose to install a fence at the exact location where the private Right of Way known as Hill Street enters the KM Property and thereby blocks all access to the Hill Street Right of Way as it crosses the KM Property.
39. The actions and threatened actions by Hampshire, 361, KM, and the Trust, as set out above, have improperly interfered with the rights of HPCA and Hill-Hanover to use the Hill Street Right of Way as it crosses the KM Property and will suffer irreparable harm should Hampshire, 361, KM, and the Trust be permitted to carry out their Plans as stated above.

#### **IV. CAUSES OF ACTION**

##### **COUNT I –**

##### **PETITION FOR PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF**

40. The allegations of the preceding paragraphs are incorporated herein by reference.



41. A preliminary injunction is a provisional remedy that preserves the status quo pending final determination of the case on the merits. DuPont v Nashua Police Dep't, 167 NH 429 (2015).
42. An injunction should be issued when there is immediate danger of irreparable harm to the party seeking injunctive relief and there is no adequate remedy at law and the party seeking injunction is likely to succeed on the merits. ATV Watch v NH Dep't of Resources & Econ. Dev., 155 NH 434 (2007).
43. In order to maintain the status quo pending a final determination on the merits, the Court should issue a preliminary injunction barring Hampshire, 361, KM, and the Trust from placing any items within the Hill Street Right of Way, blocking the use of Hill Street Right of Way, using the Hill Street Right of Way, and impeding the rights of HPCA and Hill-Hanover to use same.
44. HPCA and Hill-Hanover have a reasonable likelihood of success on the merits as the Hill Street Right of Way is established by deed and depicted on the HPCA Site Plan, the KM Amended Site Plan, referenced in the Hill-Hanover Warranty Deed, confirmed in the Access Agreement, and further established by adverse possession.
45. HPCA and Hill-Hanover face immediate danger of irreparable harm with no adequate remedy of law unless immediate preliminary injunctive relief is issued as to the rights of HPCA and Hill-Hanover have in the Hill Street Right of Way.
46. HPCA and Hill-Hanover will continue to face immediate danger of irreparable harm with no adequate remedy of law if Hampshire, 361, KM, and the Trust continue their current course of conduct and block access to the Hill Street Right of Way as it crosses into the KM Property, and follows through with the threatened development of the KM Property by constructing an apartment building on top of the Easement and block access by the installation of a fence.

47. The Court should therefore not only grant preliminary injunctive relief but after Trial, grant permanent injunctive relief, enjoin Hampshire, 361, KM, and the Trust from placing any impediments in the Hill Street Right of Way or restrict the rights HPCA and Hill-Hanover to have unrestricted access for ingress and egress across the KM Property from Hanover Street to Hill Street Right of Way.

**COUNT II -  
PETITION FOR DECLARATORY JUDGEMENT**

48. The allegations set out in the preceding paragraphs are restated and incorporated herein by reference.
49. Based on the Plans, Deeds, and Access Agreement, HPCA and Hill-Hanover have the undeniable right to use and maintain the Hill Street Right of Way and Hampshire, 361, KM, and the Trust have no legal right to interfere in any way with same.
50. The Court should, therefore, issue Declaratory Judgment affirming the terms and conditions, and the rights of HPCA and Hill-Hanover, as to the Right of Way known as Hill Street as it crosses the KM Property.
51. Hill-Hanover respectfully prays this Honorable Court declare the Hill Street Right of Way is an easement appurtenant for the benefit of HPCA and Hill-Hanover, by which the Hill-Hanover and HPCA Properties are the dominant estate and the Hampshire, 361, KM, and the Trust Property is the servient estate, which is burdened by the easement, and further declare that the easement appurtenant for the benefit of both Hill-Hanover and HPCA.

**COUNT III –  
PETITION TO QUIET TITLE**

52. The allegations set out in the preceding paragraphs are restated and incorporated herein by reference.
53. By virtue of the foregoing facts, HPCA and Hill-Hanover are entitled to a judicial declaration, quieting title and finding that HPCA and Hill-Hanover have the right, title, and

interest in the Right of Way known as Hill Street as it exists running from Bridge Street over and through the Hampshire, 361, KM, and the Trust Property, to Hanover Street.

54. By virtue of the foregoing facts, HPCA and Hill-Hanover are entitled to a judicial declaration, quieting title and finding that Hampshire, 361, KM, and the Trust have no right to interfere with the right, title, or interest of HPCA and Hill-Hanover in the Hill Street Right of Way.

**COUNT IV –  
BREACH OF CONTRACT/RECISSION**

55. All of the allegations contained in the previous paragraphs are incorporated as if fully stated herein.
56. KM, 361, and the Trust have breached the contractual obligations as set out in the Access Agreement including but not limited to:
- a. Blocking HPCA's access and use of the Hill Street Right of Way; and
  - b. Failure to maintain the Hill Street Right of Way.
57. As a result of the actions and breach by KM, 361, and the Trust, there has been a complete lack of consideration as to the Access Agreement.
58. HPCA therefore requests this Honorable Court to rescind the Access Agreement and put the Parties back in the position they were in before they entered into the Access Agreement.
59. If the Court were to grant rescission, the Parties can return to the status quo and there will be no undue hardship to KM, 361, and the Trust.

**COUNT V –  
BREACH OF CONTRACT/DAMAGES AND SPECIFIC PERFORMANCE**

60. All of the allegations contained in the previous paragraphs are incorporated as if fully stated herein.
61. KM, 361, and the Trust have breached the contractual obligations as set out in the Access Agreement including but not limited to:
- c. Blocking HPCA's access and use of the Hill Street Right of Way; and

d. Failure to maintain the Hill Street Right of Way.

62. As a direct and proximate result of the actions by KM, 361, and the Trust, as set out above, HPCA has suffered damages and other losses, as set out above, along with the right to recover attorney fees and costs, all of which sums are within the minimum and maximum jurisdictional limitations of this Honorable Court.
63. The actions of KM, 361, and the Trust were wanton, malicious, or in bad faith, and HPCA has been forced to seek judicial assistance to secure a clearly defined and established right, and, therefore, HPCA is entitled to an award of attorney fees and costs as this Honorable Court may deem just and equitable.

**COUNT VI –  
ANTICIPATORY BREACH OF CONTRACT**

64. All of the allegations contained in the previous paragraphs are incorporated as if fully stated herein.
65. HPCA entered into a contract with KM and thereby 361 and the Trust, whereby HPCA was to have unimpeded access and egress through the Hill Street Right of Way located on the KM property.
66. Based on the Plans submitted by 361 to the City of Portsmouth Planning and Zoning Boards, 361 has represented that they will install a fence completely blocking access to the Hill Street Right of Way and have failed to provide an alternate Right of Way through the KM parking lot contrary to the Access Agreement.
67. KM, 361, and the Trust have, through their actions insinuated, that they do not intend to honor their promise to HPCA.
68. KM, 361, and the Trust have behaved in a way that indicated they will not honor their promise to HPCA.
69. Upon information and belief, KM, 361, and the Trust have no intention of honoring their promise to HPCA.

70. An anticipatory breach occurs when a promising party repudiates its obligations either through words or by voluntarily disabling itself from performing those duties before the time for performance. *LeTarte v. West Side Dev., LLC*, 151 N.H. 291, 294 (2004) (citations omitted).
71. When a repudiation of a promise occurs, the non-breaching party may treat the repudiation as an immediate breach and maintain an action at once for damages. *Id.*
72. The threatened actions by KM, 361, and the Trust, as set out in the Plans submitted to the Portsmouth Planning and Zoning Boards, demonstrate an immediate breach of the Access Agreement and brings this action for damages.
73. HPCA is entitled to recover all of its losses, including all and appropriate other related damages, plus attorney fees and costs.
74. The actions of KM, 361, and the Trust were wanton, malicious, or in bad faith, and HPCA has been forced to seek judicial assistance to secure a clearly defined and established right, and, therefore, HPCA is entitled to an award of attorney fees and costs as this Honorable Court may deem just and equitable.

**COUNT VII –  
BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING**

75. All of the allegations contained in the previous paragraphs are incorporated as if fully stated herein.
76. KM, 361, and the Trust have an obligation to comply with the terms and conditions of the Access Agreement and to act in conformance therewith.
77. KM, 361, and the Trust have breached their obligations and covenants of good faith and fair dealing, as set out above.
78. KM, 361, and the Trust's actions are wanton, malicious, and/or in bad faith, and HPCA is entitled to enhanced damages and attorney fees.

**COUNT VIII –  
PROMISSORY ESTOPPEL**

79. All of the allegations contained in the previous paragraphs are incorporated as if fully stated herein.
80. HPCA relied upon the promises made by KM, 361, and the Trust, as set out in the Access Agreement.
81. Relying upon the promises made by KM, 361, and the Trust, HPCA set out to act on its rights of access as set out in the Access Agreement, all in reliance on the promises contained therein.
82. The promises in the Access Agreement are binding on KM, 361, and the Trust.
83. KM, 361, and the Trust's actions are wanton, malicious, and/or in bad faith, and HPCA is entitled to enhanced damages and attorney fees.

**COUNT IX –  
FRAUDULENT MISREPRESENTATION**

84. All of the allegations contained in the previous paragraphs are incorporated as if fully stated herein.
85. KM, 361, and the Trust knowingly and intentionally misrepresented important facts, as set out above.
86. HPCA relied upon KM, 361, and the Trust's misrepresentations.
87. HPCA honestly believed the misrepresentations made by KM, 361, and the Trust and justifiably relied on them.
88. KM, 361, and the Trust's actions were in bad faith and were done for the purpose of persuading HPCA to enter into the Access Agreement.
89. The law obligates all parties to act in good faith.
90. The actions of KM, 361, and the Trust were wanton, malicious and in bad faith, and HPCA has been forced to seek judicial assistance to secure a clear and defined established right



and, therefore, HPCA is entitled to an award of attorney fees and costs as this Honorable Court may deem just and equitable.

91. As a direct and proximate result of KM, 361, and the Trust's actions as set out above, HPCA has suffered damages and other losses, all of which sums are within the minimum and maximum jurisdictional limitations of this Honorable Court, along with HPCA's right to be put in the same position it would have been if KM, 361, and the Trust had fully fulfilled its promises under the Access Agreement, and to recover foreseeable consequential damages and lost profits.

**COUNT X –  
NEGLIGENT MISREPRESENTATION**

92. All of the allegations contained in the previous paragraphs are incorporated as if fully stated herein.
93. KM, 361, and the Trust negligently misrepresented the facts related to the Access Agreement.
94. The negligent misrepresentations by KM, 361, and the Trust were made for the purpose of inducing and enticing HPCA to enter into the Access Agreement.
95. The negligent misrepresentations by KM, 361, and the Trust were made with respect to facts that are material to all the Counts herein.
96. The negligent misrepresentations by KM, 361, and the Trust were not true.
97. HPCA justifiably relied on the negligent misrepresentations made by KM, 361, and the Trust.
98. The fraudulent misrepresentations by KM, 361, and the Trust were wanton, malicious and in bad faith, and HPCA has been forced to seek judicial assistance to secure a clearly defined and established right and, therefore, HPCA is entitled to an award of attorney fees and costs.

99. As a direct and proximate result of KM, 361, and the Trust's negligent misrepresentations, HPCA has suffered damages as set out herein.

**COUNT XI –  
ADVERSE POSSESSION**

100. The allegations set out in the preceding paragraphs are restated and incorporated herein by reference.
101. Hill-Hanover and HPCA have a claimed right to use the Right of Way known as Hill Street as Hill-Hanover, HPCA, and their Predecessors-in-Title, have openly, continuously, exclusively, adversely, and notoriously used the Hill Street Right of Way, over and through the KM Property for a period of greater than 20 years.
102. Hill-Hanover and HPCA's claimed ownership over the Hill Street Right of Way through adverse possession is established by the fact that Hill-Hanover, HPCA, and their Predecessors-in-Title, have used the Hill Street Right of Way over and through the KM Property for a continuous period of well in excess of 20 years and in an exclusive and uninterrupted fashion. *O'Hearne v. McClammer*, 163 NH, 430, 435 (2012).
103. Hill-Hanover and HPCA's exclusive use of the Hill Street Right of Way has been open and visible so that Hampshire, 361, KM, and the Trust, and their Predecessors-in-Title had or should have had notice of Hill-Hanover and HPCA's right to claim the Hill Street Right of Way by adverse possession.
104. Hill-Hanover and HPCA respectfully pray that this Honorable Court issue an Order for Adverse Possession and find that Hill-Hanover and HPCA have the right to use the Hill Street Right of Way in an open and continuous fashion and Hampshire, 361, KM, and the Trust have no right to interfere with same, and that as a result of Hampshire, 361, KM, and the Trust's most recent wanton and malicious actions, Hill-Hanover and HPCA are entitled to recovery their attorney fees and costs.

**COUNT XII –  
ATTORNEY FEES**

105. The allegations set out in the preceding paragraphs are restated and incorporated herein by reference.
106. Hill-Hanover and HPCA should not have been forced to engage in litigation in order to seek judicial assistance to secure a clearly defined and established right.
107. Hampshire, 361, KM, and the Trust have no basis to interfere with Hill-Hanover and HPCA's rights in the Hill Street Right of Way.
108. Hampshire, 361, KM, and the Trust's actions show a callous disregard for the rights of Hill-Hanover and HPCA.
109. Hampshire, 361, KM, and the Trust's actions have resulted in a needless drain upon the resources of the judicial system and Hill-Hanover and HPCA.
110. Hampshire, 361, KM, and the Trust's actions are wanton and malicious.
111. Based on the above, Hill-Hanover and HPCA should be awarded their attorney fees and costs in accordance with *Harkeem v. Adams*, 117 NH 687 (1977); *Funtown USA, Inc. v. Town of Conway*, 127 NH 312 (1985).

**V. RELIEF REQUESTED**

**WHEREFORE**, Hill-Hanover and HPCA respectfully pray that this Honorable Court:

- A. Schedule a Preliminary Hearing on, and grant, the Plaintiffs' request for preliminary injunctive relief;
- B. Grant the claim for permanent injunctive relief;
- C. Grant the claim for declaratory judgement;
- D. Grant the claim for quiet title;
- E. Grant the claim for breach of contract/rescission;
- F. Grant the claim for breach of contract/damages and specific performance;
- G. Grant the claim for anticipatory breach of contract;

- H. Grant the claim for breach of covenant of good faith and fair dealing;
- I. Grant the claim for promissory estoppel;
- J. Grant the claim for fraudulent misrepresentation;
- K. Grant the claim for negligent misrepresentation;
- L. Grant the claim for adverse possession;
- M. Award Hill-Hanover and HPCA their attorney fees and costs; and
- N. Award Hill-Hanover and HPCA all other relief as may be deemed just and equitable.

Respectfully submitted,

HILL-HANOVER GROUP LLC

By and through their attorney,

LYONS LAW OFFICES, P.A

Date: April 16, 2025

/s/John E. Lyons, Jr.

John E. Lyons, Jr., Esq.  
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One New Hampshire Avenue  
Suite 235  
Portsmouth, NH 03801  
[jlyons@lyonslaw.net](mailto:jlyons@lyonslaw.net)  
(603) 431-5144

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Petition was this day forwarded to all Parties of record through the Court's Electronic Filing System (ECF).

/s/John E. Lyons, Jr., Esq.

John E. Lyons, Jr.

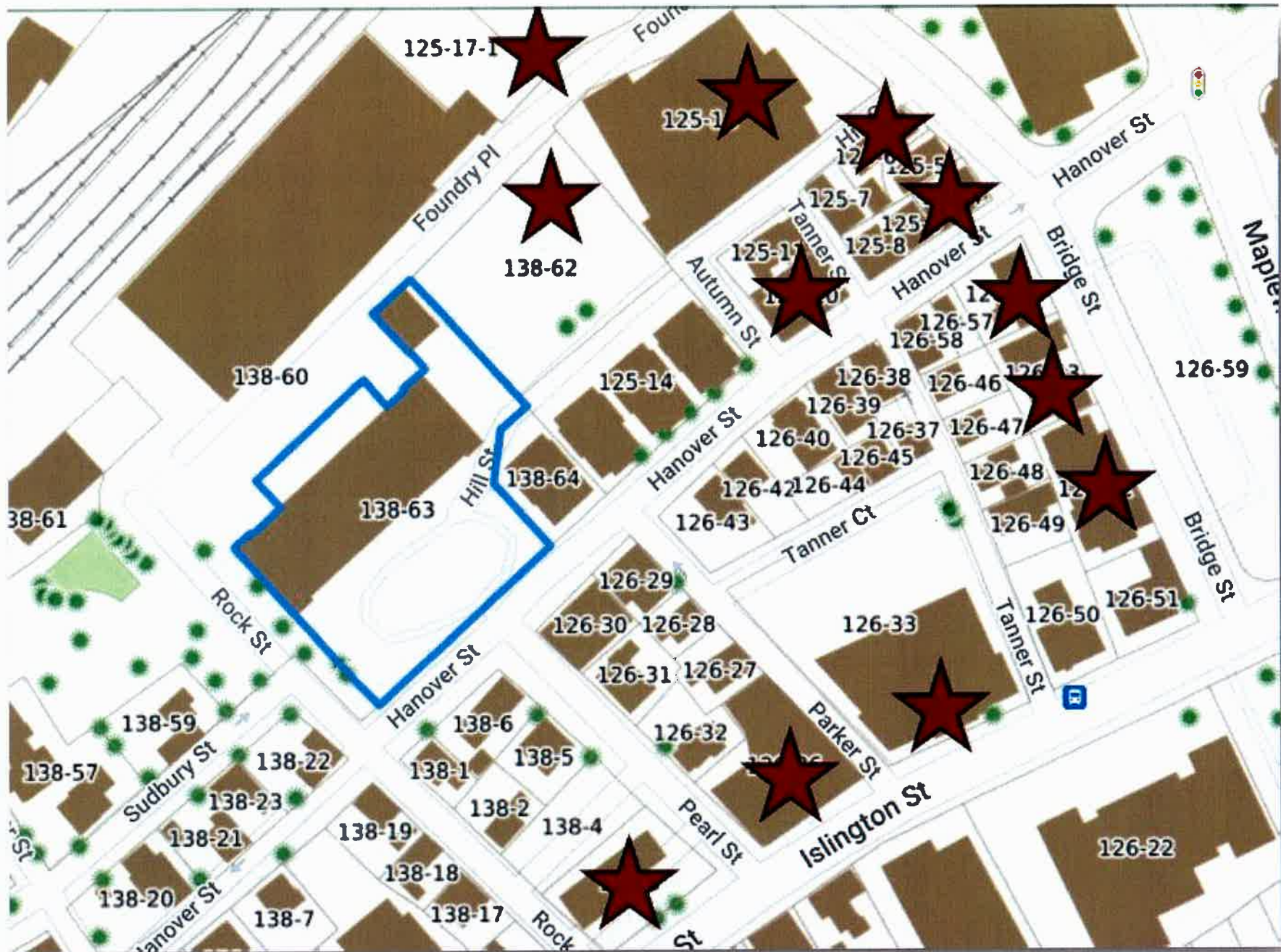
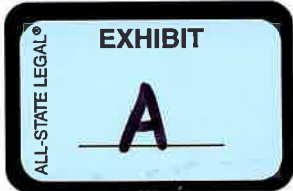
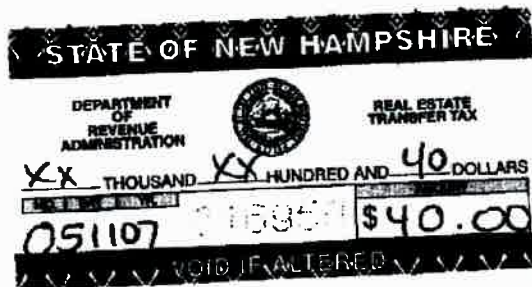


Figure 7 –Properties with Existing Ground-Floor Commercial Uses







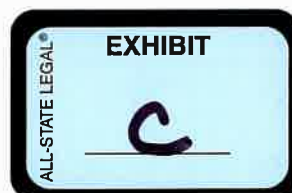


**ACCESS EASEMENT AGREEMENT AND RELEASE OF RIGHT OF WAY**

**THIS AGREEMENT** entered into this 23<sup>rd</sup> day of MARCH, 2007, by and between **KEARSARGE MILL UNIT OWNERS ASSOCIATION**, a New Hampshire non-profit corporation, with a mailing address of 154 Maplewood Avenue, Portsmouth, New Hampshire 03801 (hereinafter "**KM**") and **HANOVER PLACE CONDOMINIUM ASSOCIATION**, duly organized and existing under the laws of the State of New Hampshire, with a mailing address of 349 Hanover Street, Portsmouth, New Hampshire 03801 (hereinafter referred to as "**HP**"), for the mutual consideration herein contained;

1. The unit owners of **KM** own property located at 361 Hanover Street, Portsmouth, County of Rockingham and State of New Hampshire and described in the deed recorded at Book 2535, Page 539 at the Rockingham County Registry of Deeds (the "**KM** Property"). The original Declarants are Mayfair Realty Trust and Cambridgeport Trust and the Declaration and Bylaws are recorded at the Rockingham County Registry of Deeds at Book 2596, Page 1585 and Book 2596, Page 1600, respectively, and were recorded on April 17, 1986. A plan entitled "Kearsarge Mills Condominium Plans" prepared by Kimball Chase Company, Inc. was recorded at the Rockingham County Registry of Deeds as D-14855 on April 17, 1986 (hereinafter the "Plan").

2. The unit owners of **HP** own property located at 349 Hanover Street, Portsmouth, County of Rockingham and State of New Hampshire and described as Parcel 2 in the deed recorded at Book 4356, Page 10 at the Rockingham County Registry of Deeds (the "**HP** Property"). Such property has been declared as a condominium. The Declarant is Hill-Hanover Group, LLC and the Declaration and Bylaws were recorded on January 13, 2006 at the Rockingham County Registry of Deeds at Book 4607, Page 16 and Book 4607, Page 30, respectively. The Condominium Site Plan entitled "Condominium Site Plan for Hanover Place Condominium,



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ROCKINGHAM COUNTY  
REGISTRY OF DEEDS

349 Hanover Street, County of Rockingham, Portsmouth, NH" was recorded at the Rockingham County Registry of Deeds as D-33379 on December 22, 2005.

3. That the Plan depicts a parking area and a 14' and 20' right of way identified as "Existing 14' and 20' right of way) (hereinafter "Existing Right of Way") over the KM Property between Hanover Street and Hill Street to benefit the HP Property. That such Existing Right of Way is also reflected on the plan entitled "Kearsarge Mill Condominiums, Amended Site Plan", prepared by Kimball Chase Company, Inc. recorded at the Rockingham County Registry of Deeds as Plan No. D-34716 (hereinafter "Amended Site Plan").

4. The unit owners of HP desire to access the HP Property across the front parking lot area of KM Property.

5. That the parties hereby agree that a general access easement through the KM Property identified on the Plan shall be provided for the benefit of HP, the condominium unit owners, their guests and business invitees to provide vehicular access to the HP Property from Hanover Street and Hill Street. The purpose of this Agreement is to provide a general right of access to HP from Hanover Street and Hill Street across the front parking lot area of KM Property. HP agrees that the only obligation which KM has under this Agreement is to provide unimpeded access and egress to the HP Property across the KM Property. HP further agrees KM shall retain complete control over deciding the location of such access and the manner in which it is provided. It is expressly agreed by the parties that KM may, subject to applicable land use regulations of the City of Portsmouth, build within the existing parking area, and that as long as KM continues to provide unimpeded access to the HP Property, that the terms of this Agreement shall be satisfied.

6. That in consideration for the above-referenced easement, HP hereby releases all right, title and interest in and to the Existing Right of Way as shown on Plan D-14855 or otherwise shown on Plan D-33379 and as granted to HP in Book 4356, Page 10 to KM.

8. KM shall be responsible for the maintenance of the parking area as it deems appropriate at its own cost; provided however it shall at all times remain reasonably open to HP to allow for vehicular access to the HP Property.



9. HP acknowledges that this easement is in common with KM, the underlying fee owner of the property subject to the easement, who may utilize the area of the easement for any purpose not prohibited herein or by the land use regulations of the City of Portsmouth applicable to the KM Property.

10. That authorization was granted for KM to execute this Agreement by a vote of the Association taken on May 16, 2006.

11. That authorization was granted by HP to execute this Agreement.

IN WITNESS WHEREOF, the parties have entered into this Agreement on the date and year first above written.

Gar Ham  
Witness

**KEARSARGE MILL UNIT OWNERS  
ASSOCIATION**

By: [Signature]

Its: President  
Duly Authorized

William J. Garland  
Witness

**HANOVER PLACE CONDOMINIUM  
ASSOCIATION**

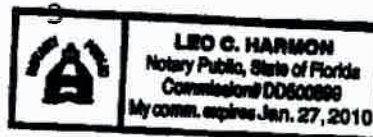
By: Sebastian M. Singer

Its: PRESIDENT  
Duly Authorized

STATE OF NEW HAMPSHIRE  
COUNTY OF ROCKINGHAM, ss.

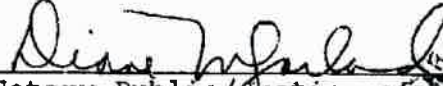
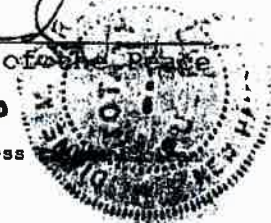
On this 23 day of March, 2007, before me personally appeared JAMES H. SOMES JR. President of Kearsarge Mill Unit Owners Association, known to me, or satisfactorily proven, to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he/she executed the same as his/her free act and deed for the purposes therein contained on behalf of the condominium association.

Gar Ham  
Notary Public/Justice of the Peace



STATE OF NEW HAMPSHIRE  
COUNTY OF ROCKINGHAM, ss.

On this 11<sup>th</sup> day of Dec, 2006, before me personally appeared Elizabeth M. Singer, president of Hanover Place Condominium Association, known to me, or satisfactorily proven, to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he/she executed the same as his/her free act and deed for the purposes therein contained on behalf of the condominium association..

  
Notary Public/Justice of the Peace  
DIANE M. GARLAND, Notary Public  
My Commission Expires February 8, 2010  


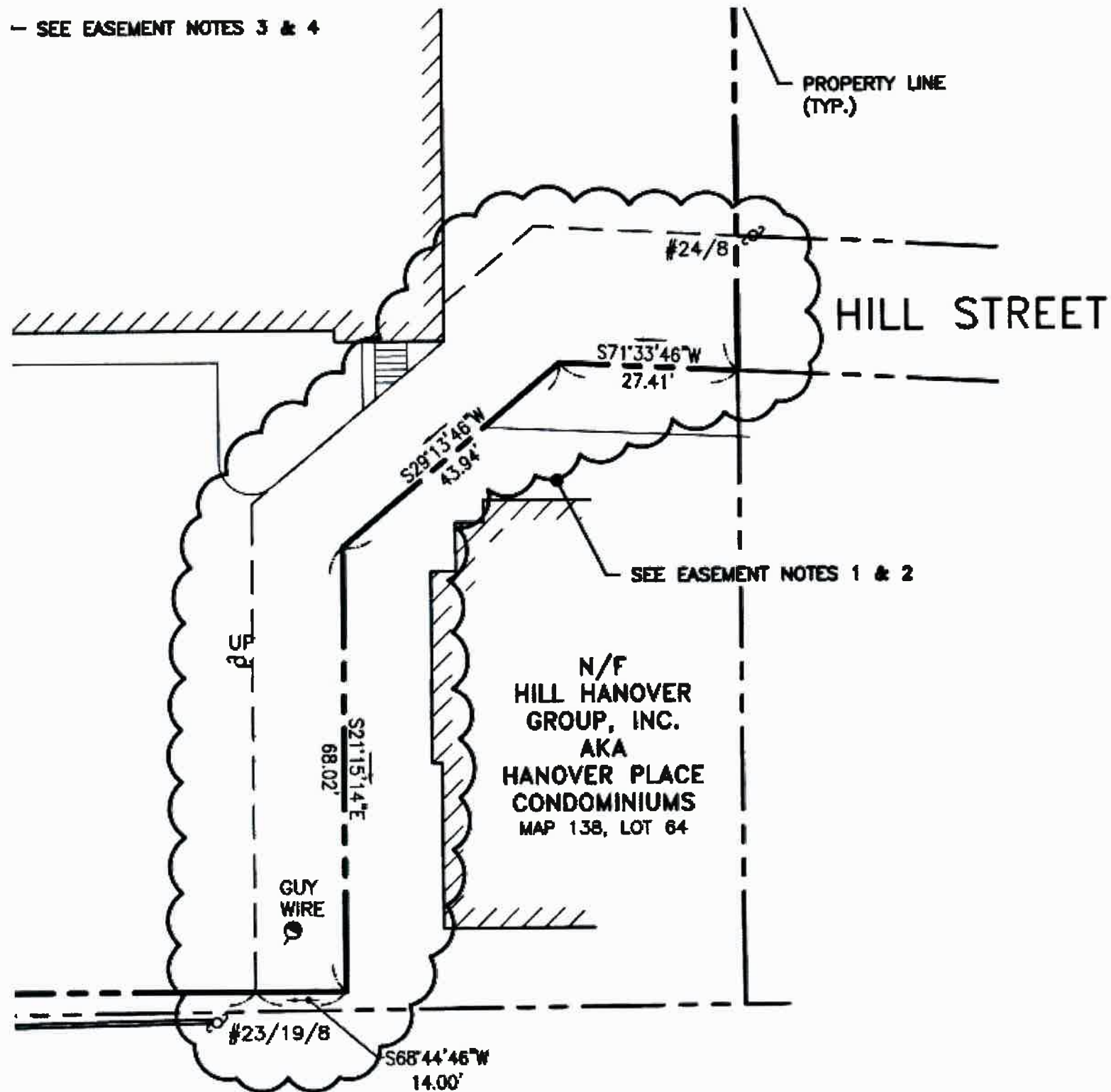
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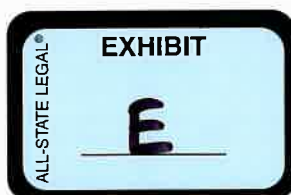
**EXHIBIT**

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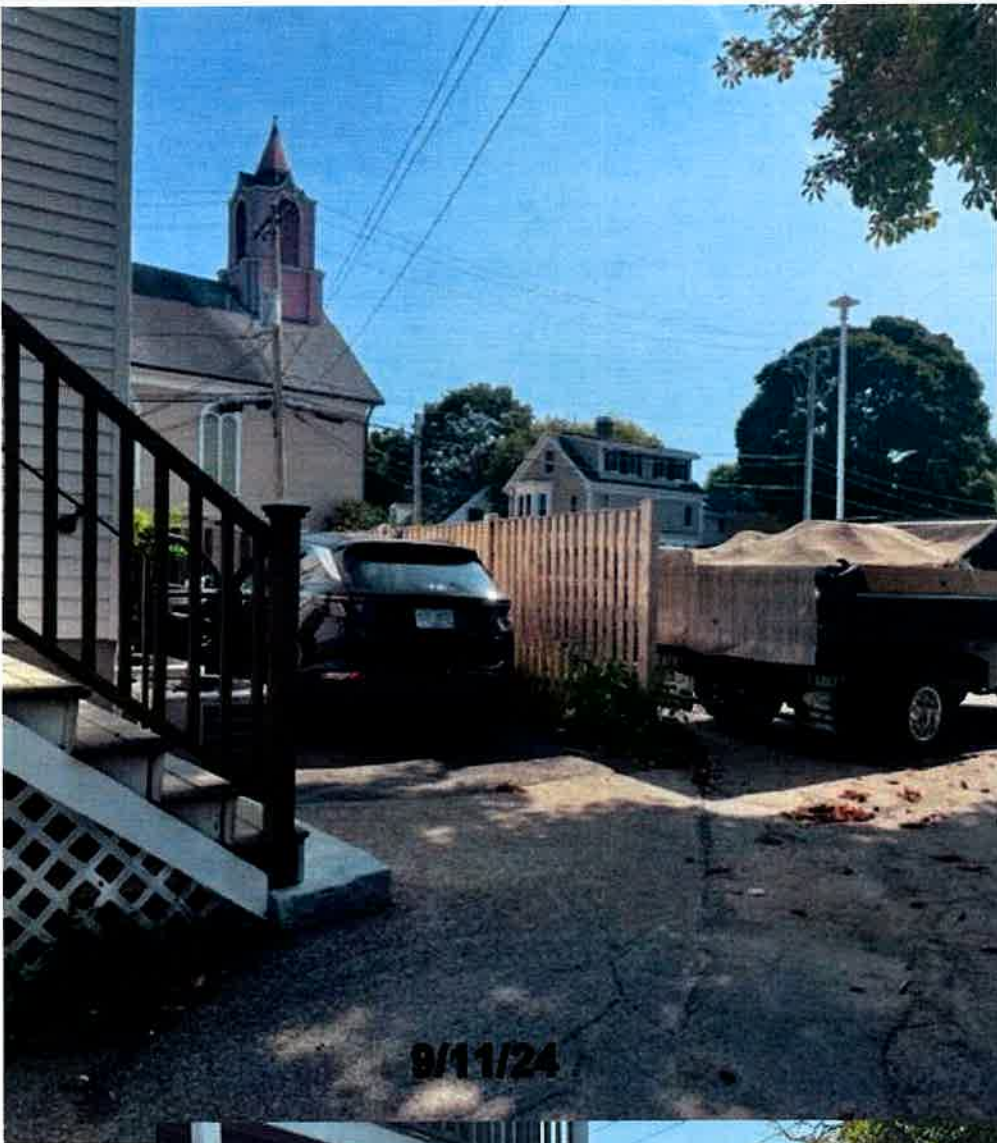
— SEE EASEMENT NOTES 3 & 4











Vehicles belonging to employees of 361 Hanover St., completely blocking access to HPCA property in violation of the Blanket Access Easement.













[illegible]

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CHAI RIZAN

DATE \_\_\_\_\_

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