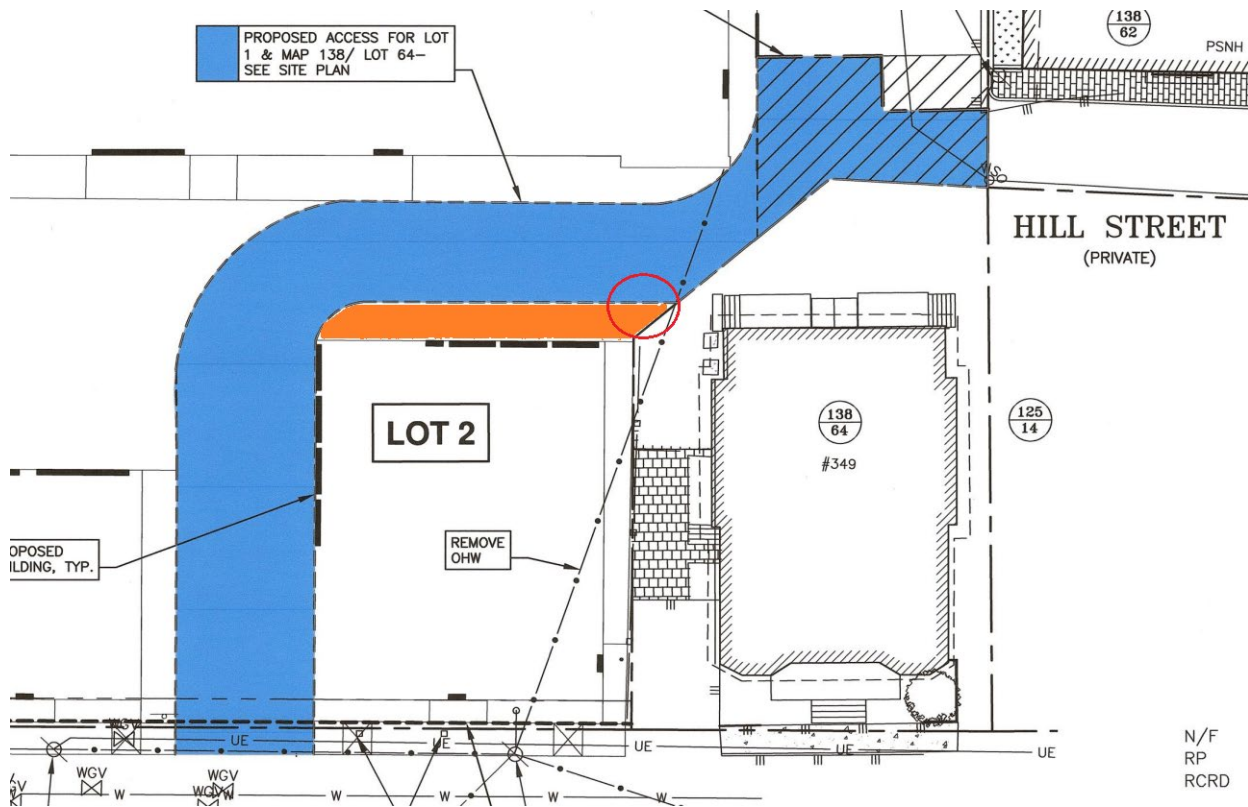


From: [Mark DeLorenzo](#)
To: [Kimberl Kienia](#)
Subject: 361 Hanover St. TAC meeting July 1st comments
Date: Monday, June 30, 2025 4:29:10 PM
Attachments: [image001.png](#)
Importance: High

Dear Technical Advisory Committee members,

Upon review of the latest design and submission by Hampshire Development Corp. (361 Hanover St.), there are some missing and altered elements that are in need of review and discussion.

1. As you are aware, and in possession of the Petition Attorney John Lyons filed on our behalf, along with other materials we have filed, an easement has been finally acknowledged by Hampshire Development Corp. This matter was scheduled for a Temporary Hearing last month for an emergency injunction related to their unwillingness to meet the terms of that easement. At that Hearing, while we were all at the Courthouse, & we reached agreement whereby 361 agreed not to block the Right of Way known as Hill Street, as shown on the Kimball Chase Plans, in any fashion. After signing that agreement, they continued to not honor it for three straight weeks, and only after the threat of holding them in contempt of violating that agreement, did they finally begin honoring it last week. All of that is background to this drawing on page 77 of their latest submission, showing a modified easement that does not work, and we do not accept, as it modifies what was previously agreed to in court. I have circled the area of concern in red below, and also show the modified area in orange that is now no longer included in their latest drawing.
2. At last month's TAC meeting, I spoke and brought up the concern that no traffic studies have been done which incorporate the Private Drive leading to Hill Street. That is obviously one of two paths into and out of the property, and this needs to be considered in any and all traffic studies as cars will make use of it. I personally have used this route for the past 15 years. Assuming that somehow all of the vehicles on this property will enter and exit ONLY via Hanover St. is folly. Please make sure you address this topic with them in the meeting tomorrow.



Sincerely,

Mark DeLorenzo

349 Hanover St. Apt. 1
Portsmouth, NH 03801

From: [Julienne Echavarri](#)
To: [Planning - Info - Shr](#)
Subject: Public Comment for TAC Meeting 7-1-25
Date: Monday, June 30, 2025 1:45:33 PM

To whom it may concern,

My name is Julienne Echavarri and I live at 34 Rock St, a direct abutter the 361 Hanover project. As I have mentioned in my previous emails, I am still very concerned with the location of the entrance to this development. The entrance to the development from Hanover will exponentially increase the traffic through my street, which is a small street. The increase in everyday traffic and delivery trucks, etc will lead to an increase in noise and air pollution and **adecrease in safety**. The increase in traffic will also lead to a **decrease in my home's property value**. In addition, the entrance through our neighborhood streets will promote street parking on our streets which are already low in parking, thus making the streets even more congested and less safe since the width of our streets are smaller than average.

I do not understand why this developer is being allowed to place the entrance to the development through our streets and neighborhood when **the zone to the development is a completely different zone to our neighborhood**. The development's entrance should be through foundry place which has the same zoning as the developer's lot. Our streets are small, large trucks don't fit through our streets. We have provided solutions to the developer, but he doesn't seem to care about the concerns of the direct abutters/neighbors that will be directly affected.

I would like this committee to actually acknowledge and take our concerns seriously and recognize that our concerns are legitimate. Please remember that the city needs to represent the neighbors not the developers.

Julienne Echavarri

From: [Dayl Soule](#)
To: [Kimberli Kienia](#)
Subject: 361 Hanover St.
Date: Monday, June 30, 2025 1:31:45 PM

You don't often get email from daylsoule@sbcglobal.net. [Learn why this is important](#)

Technical Advisory Committee
Re: TAC meeting July 1, 2025
361 Hanover St. Proposed Development
From: Dayl Soule, 349 Hanover St, #4

I'm an abutter to the proposed development at 316 Hanover St. I have several concerns, all which have been addressed by previous comments; however, I would like to reiterate concerns regarding traffic.

There has been no traffic analysis of Islington at Pearl St. Pearl St is, at best, a one lane street when all parking spaces are used - pretty much always - and Islington is a very busy street. I can see traffic backups when both turning into and out of Pearl St.

Hill St. is a private street primarily used by the residents. It has private, resident parking along one side, making it a narrow one way street. All of the proposed drawings for the development show unimpeded access to Hill St. and, in fact, show one guest parking spot that requires access via Hill St. The developer has expressed, verbally, that he doesn't want to use Hill St for access and egress in to the development - there have been no proposals presented that support this. It appears to be a moot point - out of sight, out of mind - with no consideration at all being presented.

This development is entirely too dense, bringing too many people and their cars into the area. Traffic reports notwithstanding - parking spaces on Hanover and the surrounding residential streets are constantly full, with cars driving up and around looking for spaces. This proposal is going to add more cars and more visitors to an already congested area.

Traffic will be a nightmare, parking will be a nightmare, congestion will be a nightmare. This is an old, small, close-knit community; a small gem in Portsmouth. This proposed development in no way reflects the character and feel of this neighborhood.

Thank you for your consideration.
Dayl Soule
349 Hanover St. #4

30 Parker Street
Portsmouth, NH 03801

June 30, 2025

Technical Advisory Committee
City of Portsmouth
1 Junkins Avenue, 3rd Floor
Portsmouth NH 03801

Dear Technical Advisory Committee Members:

As abutters to the proposed development at 361 Hanover, we continue to have safety concerns with the packet submitted by the applicant. We are concerned about the reduction of parking spots in this new design. Drivers circling recklessly for parking is already an issue in our neighborhood, and this development will further exacerbate this issue. As parents of young children, we also want to flag the continued limited visibility coming in and out of the development. If Hanover street becomes the intended entry to this development, we would like to see automated safety barriers installed and warning lights, similar to developments downtown. Since this development is claiming to be part of downtown, it should be required to have the safety measures for pedestrians that other downtown buildings have.

While we want to acknowledge that the new entrance location across from Pearl Street is better than its prior location between Rock & Pearl, we still don't think it's a good location. Drivers will use Pearl Street as a straight away (we regularly see drivers blow the stop sign). As highlighted in various public comments throughout the process, we believe accessing this development via Foundry Place instead of Hanover St. would far better serve to respect and complement the existing pedestrian, parking, and traffic conditions in our neighborhood as well as allaying the majority of our safety concerns. However, this possibility has never been explored or addressed in any material way. Allowing this packet to be approved as-is would jeopardize the safety of our neighborhood and forever alter how we can use the public spaces of our neighborhood.

We remain hopeful that thoughtful development can occur that does not jeopardize the safety and character of our neighborhood. However, the current packet does not allay our safety concerns. As citizens, we have provided feedback in now three separate TAC letters, the April 17th Planning Board meeting, four separate ZBA letters and welcome the opportunity to have our feedback meaningfully incorporated by the development team. We believe this current design will do irreparable harm to the neighborhood safety, and we cannot endorse it as is.

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

Sincerely,
Kathryn "Kate" Waldwick
Bryn Waldwick

Meeting: TAC
Date July 1, 2025
RE: 361 Hanover St

Sight lines of 115’ seem unrealistic looking West. The driveway is 60’ east of Rock St plus 20’ for Rock St = 80 approaching from the West. Looking east it is about 65’ to the next property from the driveway, which will be blocked by parked cars putting pedestrians at risk. What will the sight lines be with 2 columnar kindred spirit oak trees (QKS) on each side of the driveway? See picture below.

Table 6
SIGHT DISTANCE MEASUREMENTS^a

Intersection/Sight Distance Measurement	Feet		
	Required Minimum (SSD)	Desirable (ISD) ^b	Measured
<i>Hanover Street at the Project Site Driveway</i>			
<i>Stopping Sight Distance:</i>			
Hanover Street approaching from the East	115	--	188
Hanover Street approaching from the West	115	--	281
<i>Intersection Sight Distance:</i>			
Looking to the East from the Project Driveway	115	195	146
Looking to the West from the Project Driveway	115	225	150

Project Access

Access to the Project site will be provided by way of a new driveway that will intersect the south side of Hanover Street approximately 60 feet east of Rock Street

How big do kindred spirit oak get?

Kindred Spirit® Oak will grow to be **about 30 feet tall at maturity, with a spread of 6 feet**. It has a low canopy with a typical clearance of 2 feet from the ground, and should not be planted underneath power lines.



Minimum open space needed (5% of 38528=1926.4). 57% of the required open space is 1104 sf of sidewalks which seems a bit high considering the definition of “open space”. The actual open spaces do have some plants proposed, which is much nicer than grass.

Open space

Land area vertically open to the sky, free of all **structures**, parking area/lots, **driveways** and other **uses** which preclude attractive **landscaping** in such area. **Open space** shall be predominantly pervious, may be landscaped with lawn, trees, shrubs or other planting, and may include walks and terraces. For the purposes of this definition, water areas are considered to constitute **open space**.

Parking:

It should be noted that the parking in buildings A and E is NOT stacked parking; it is tandem parking. Stacked would imply lifts will be used. Either usually ends up with one car parked on the street, especially in light of there being very limited easily accessible "guest" parking. "As required the stacked parking spaces, 12 in Building A and three in Building E, will be assigned to a specific unit within those Buildings"

Traffic Report:

Sight distances are still questionable (see first note). There are still errors in describing the existing conditions on local streets. This is a legal presentation. It could be more accurate. Table 2 shows existing conditions of: Average Weekly Trips of 510, 8 to 9AM 54 trips, 3:45 to 4:45 42 trips. Table 4 shows trips generated by the new development **will add:** 384 of Average weekly trips, AM- 38 trips and PM- 41 MORE trips. This means a total of about 800 trips will be happening along Hanover St weekly, 92 AM trips and 83 trips PM. It may not affect the LOS (level of service) on paper at the intersections but that is close to a 100% increase in trips every day on roads that can barely handle the current level of traffic. In the morning going from 54 trips to 92 trips and in the early evening going from 42 trips to 83 trips. This seems like a bit much for this very crowded area. There is still no traffic analysis of **how the intersection of Islington and Pearl St will be impacted by this development**. The information regarding Pearl St is interesting. Figure 4, 2024 shows 33 cars entering Pearl St. Figure 12 shows 60 cars entering Pearl St (again a 100% increase in volume) after the development is added. The Trip Distribution shows 86% coming in from Islington St. **One would think with these increases a Level of Service would have been assessed for this intersection!**

Again it may be best to consider having all those cars exit and enter via Foundry Place, which is where a development of this size should be traveling based on the zoning and the size of the existing streets. Instead of adding more traffic to a highly used area with 54 existing AM trips and 42 PM trips, considering the number of units in that area it seems like extremely high volumes for such a tight area to begin with!

Fire Truck turning:

The current design of the parking lot shows that a fire truck will have to back up and turn to get in and out of the development lot. This could easily be solved by adding a 24' wide driveway which opens to Rock St to Foundry Place. Close to 80 or more people will be living here. This is already a very dense neighborhood and adding 40 units on 0.88 acres will make it extremely dense. Rounding the corner of Building A could allow the fire truck access from Hill as well as Hanover St.

Thank you for taking the time to read the presented materials,
Elizabeth Bratter, 159 McDonough St, Property Owner

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.

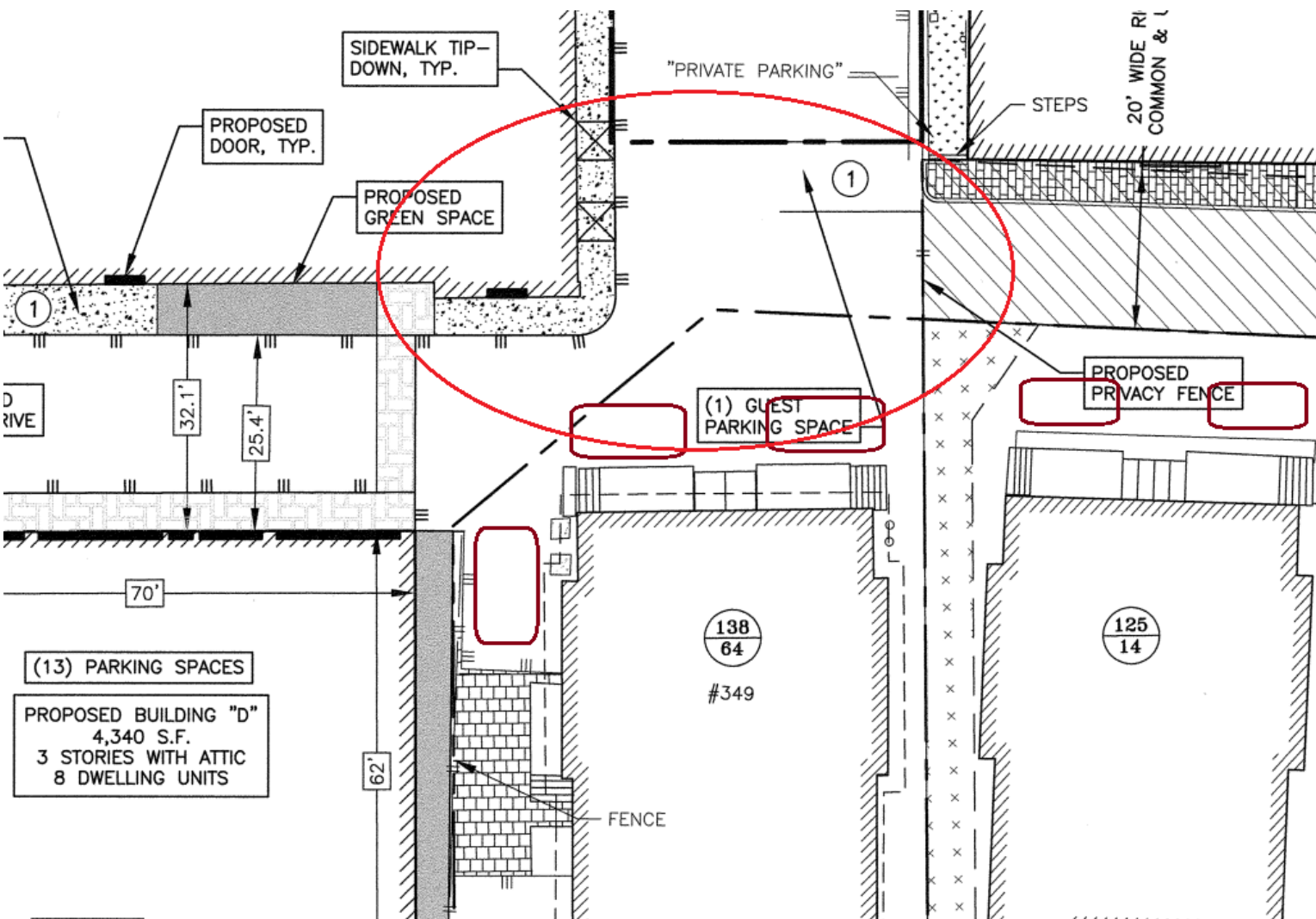
Hill Street, which does not even show up on the traffic studies, is a two-way street that runs behind 349 Hanover and continues into the current parking lot at 361 Hanover St. It is a private way at this end of Hill Street, owned by the properties on either side of the street. Deeded parking spaces for 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

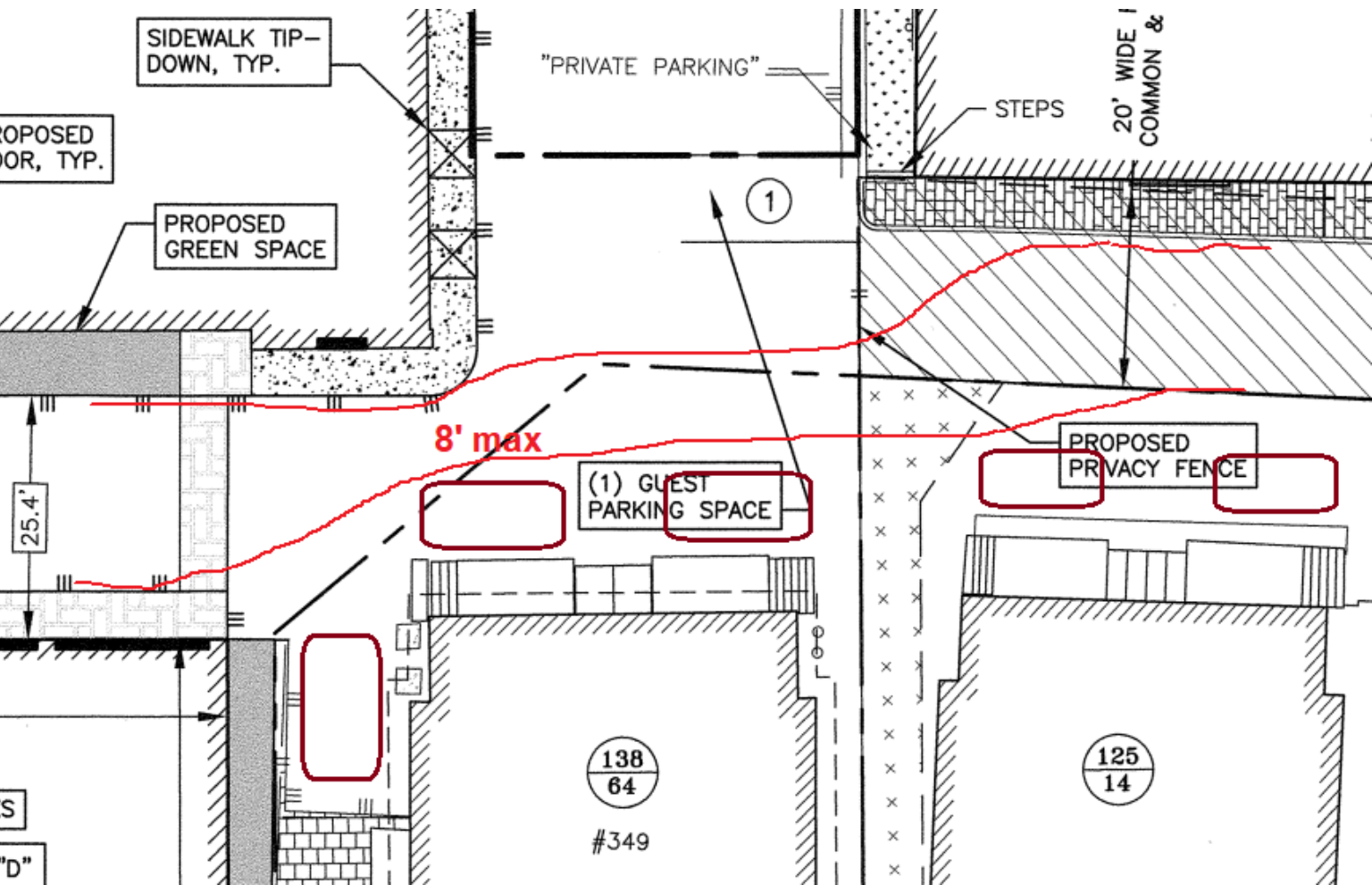
361 Hanover St. Traffic Safety and Access Concerns Between Hill St. & Hanover St.



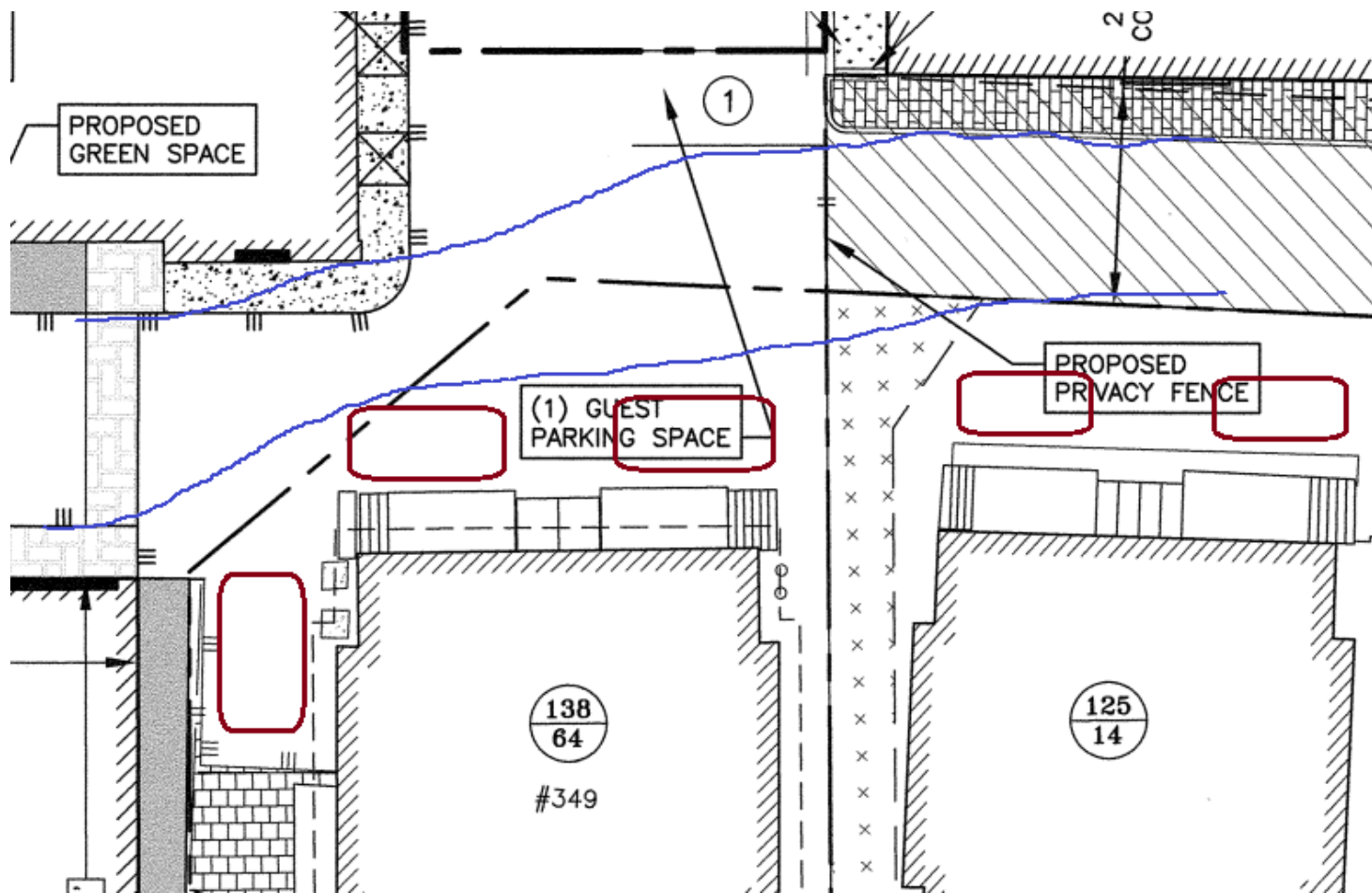
Dear Chairman Chellman & Planning Board Members,

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

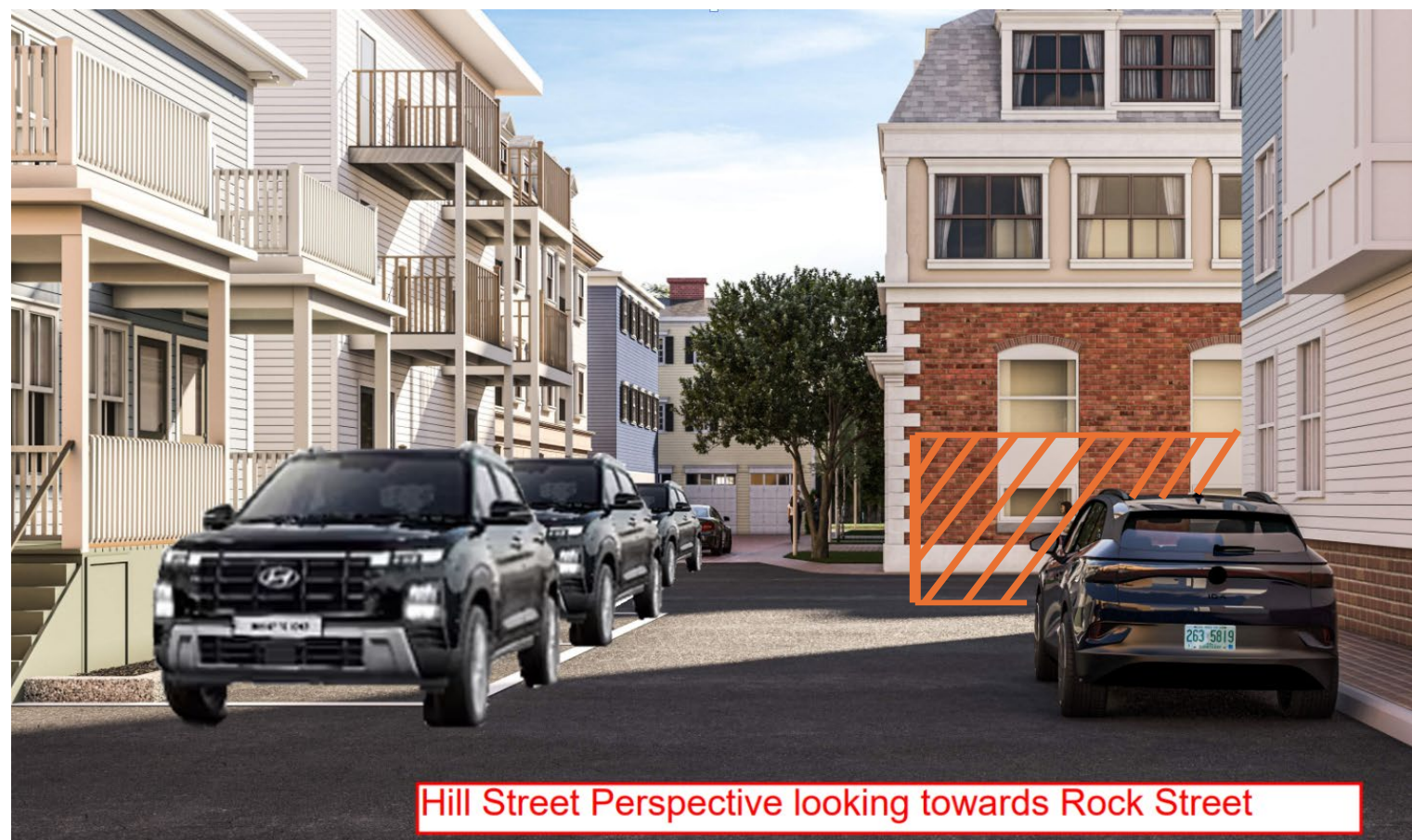


Hill Street as presented by the developer.



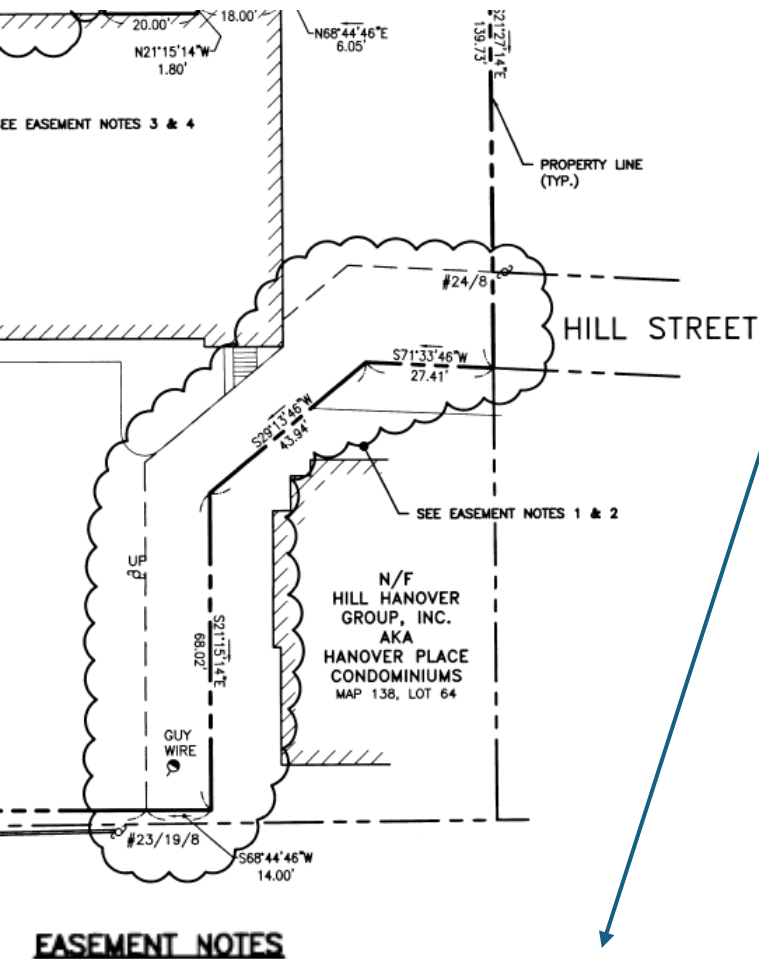
Hill Street Perspective looking towards Rock Street

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.

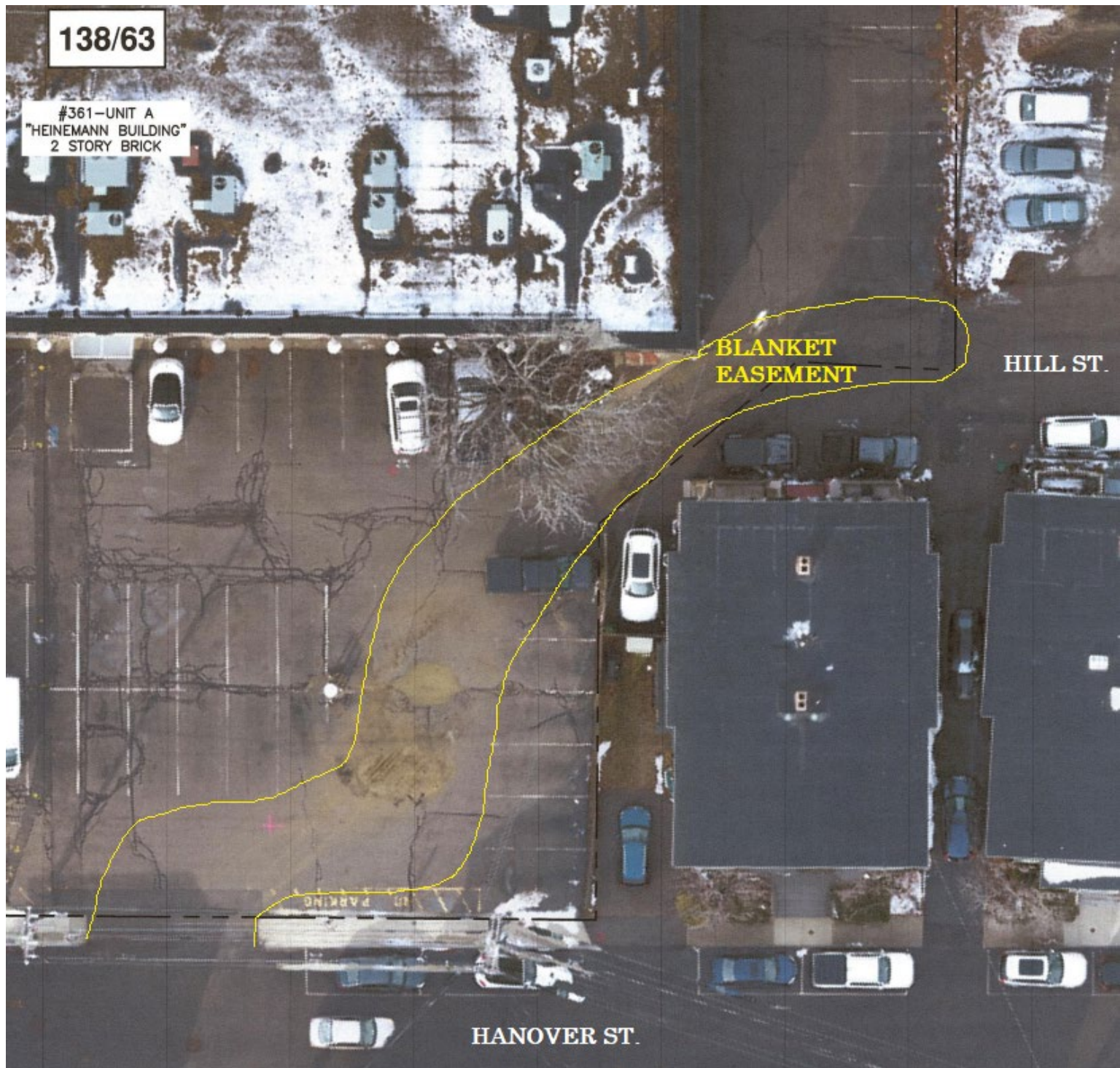
138/63

#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.

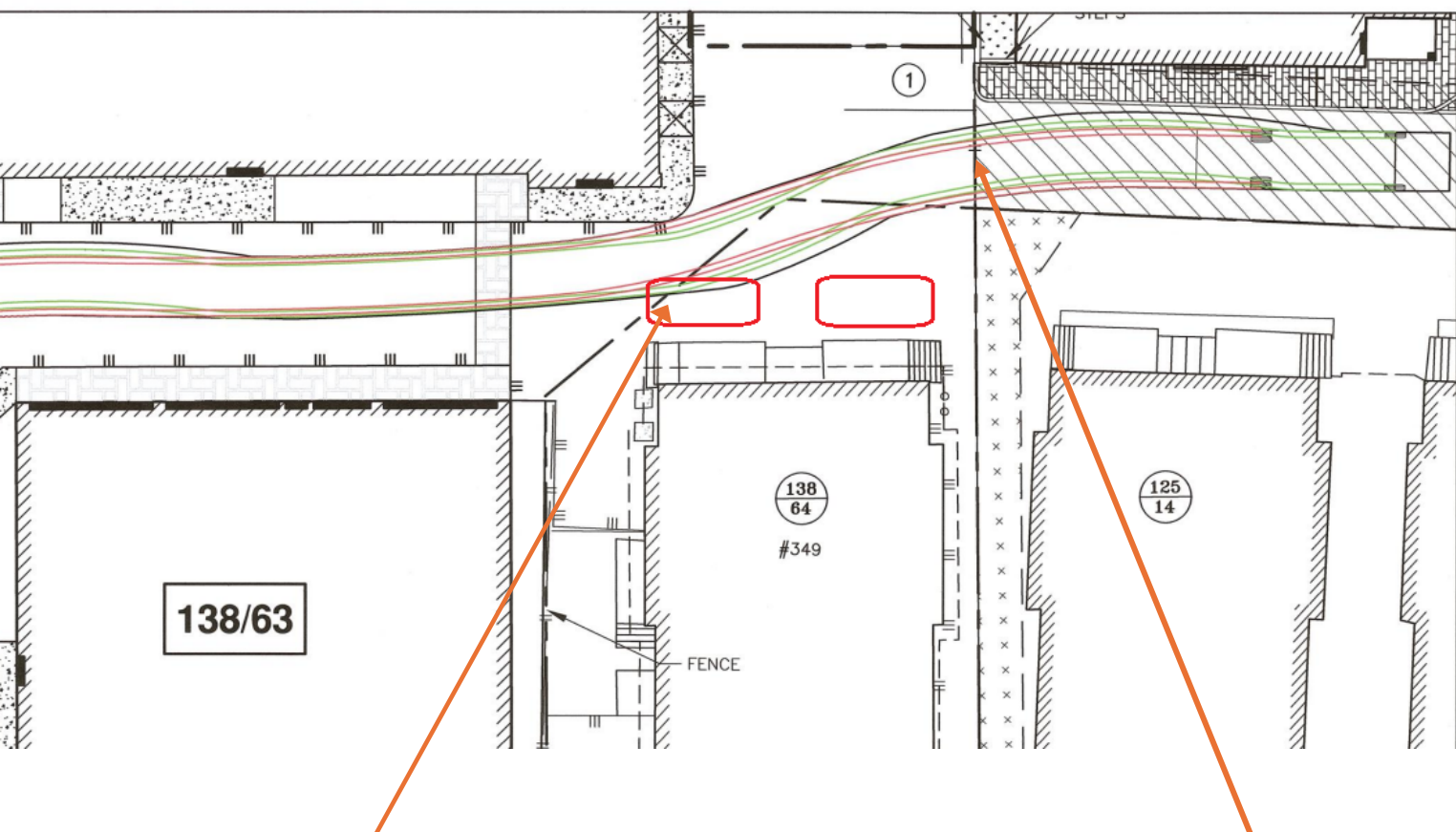
Minimum turn radius needed for safe travel/access



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.

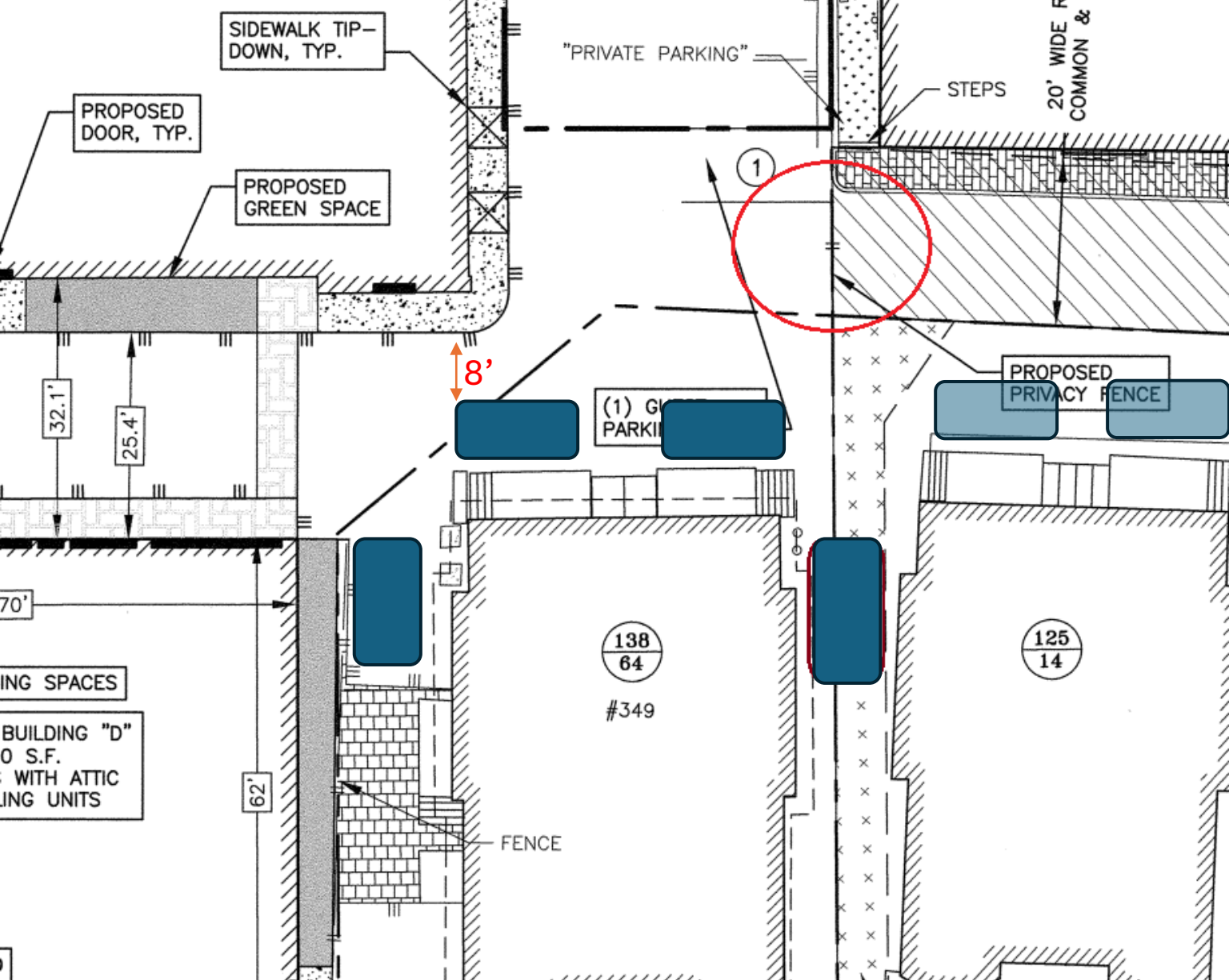
Current owner of 361 Hanover has been in direct violation since September of 2024 of the Easement agreement between 361 Hanover St. and 349 Hanover St., where they are required to provide an “**unimpeded blanket easement**” and have not done so.

* 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

You don't often get email from 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

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; [Planning - Info - Shr](#)
Subject: public comment 31 Hanover
Date: Wednesday, April 16, 2025 5:01:40 PM

You don't often get email from 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

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
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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
3rd 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.

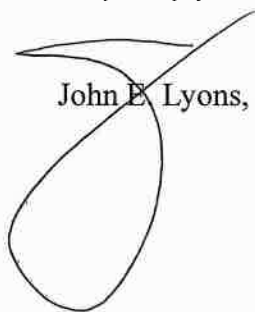
Finally, under no circumstances should any development proposed by 361 provide for access and egress from the 361 property over and along the Hill Street Right of Way as it runs behind the Hill-Hanover and HPCA properties. 361 has no right, title, or interest in this private Right of Way known as Hill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

JEL/dhb

cc: Susan G. Morrell, Esq. – sgmorrell@portsmouthnh.gov, smorrell@portsmouthnh.gov
Peter Britz – plbritz@portsmouthnh.gov
Peter Stith – pmstith@portsmouthnh.gov
Kimberly Kienia - kkienia@portsmouthnh.gov
Trevor McCourt – tmccourt@portsmouthnh.gov
John K. Bosen, Esq. - 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.
Bar No. 1535
One New Hampshire Avenue
Suite 235
Portsmouth, NH 03801
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.

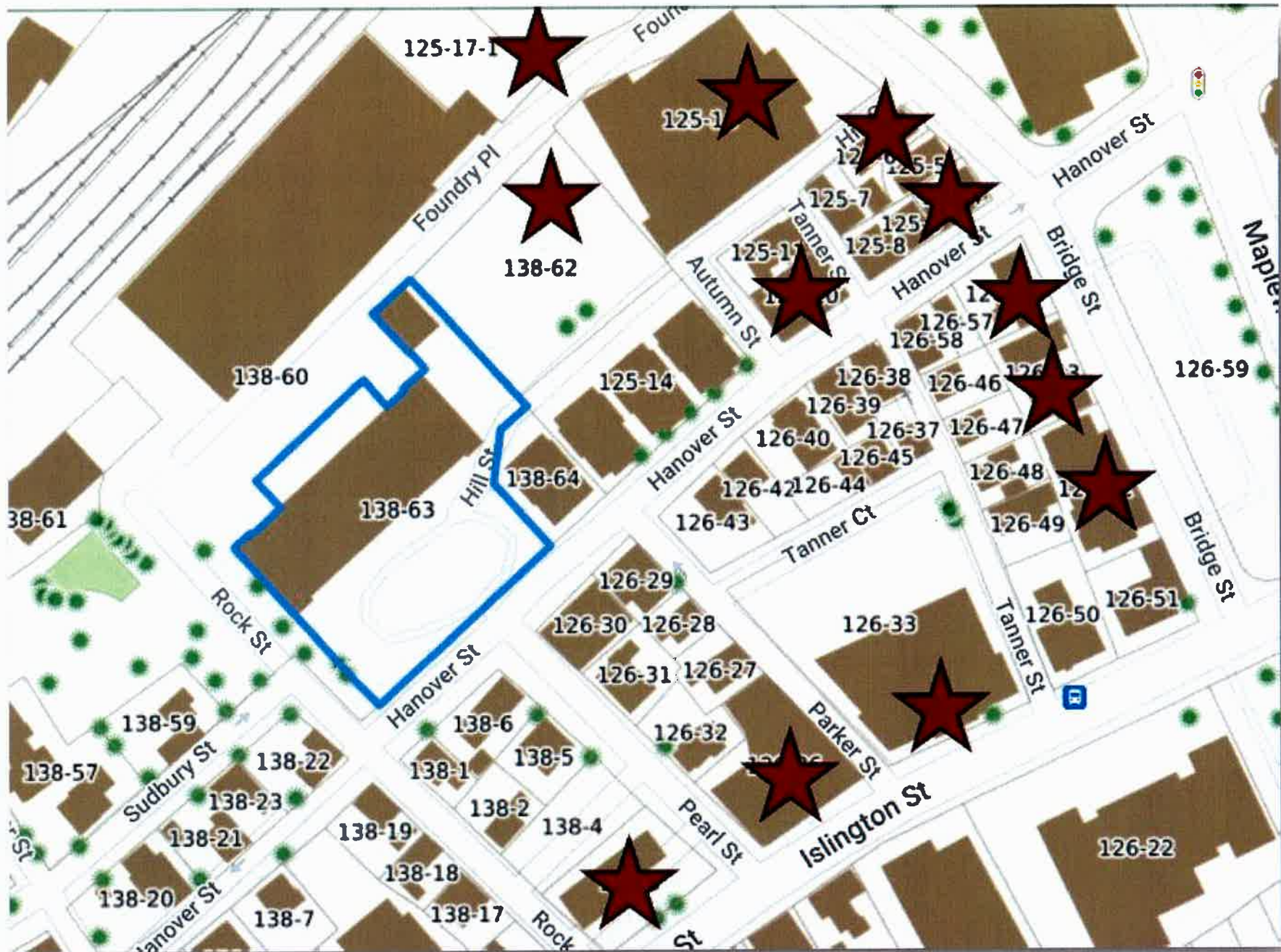
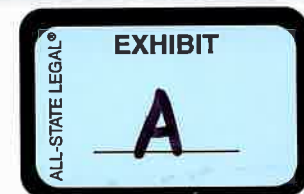
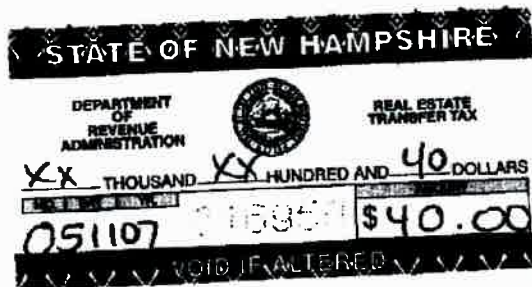


Figure 7 –Properties with Existing Ground-Floor Commercial Uses





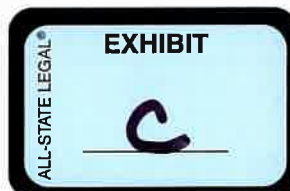


ACCESS EASEMENT AGREEMENT AND RELEASE OF RIGHT OF WAY

THIS AGREEMENT entered into this 23rd 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.

Law Ham
Witness

**KEARSARGE MILL UNIT OWNERS
ASSOCIATION**

By: [Signature]

Its: President
Duly Authorized

William J. Farland
Witness

**HANOVER PLACE CONDOMINIUM
ASSOCIATION**

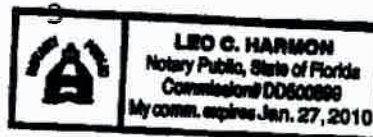
By: Sebastian M. Singer

Its: PRESIDENT
Duly Authorized

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM, ss.

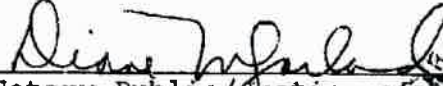
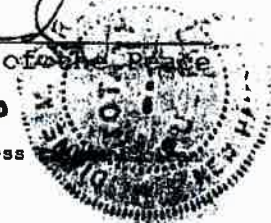
On this 23 day of March, 2007, before me personally appeared JAMES H. SOMES JR. President of Kearsarge Mill Unit Owners Association, known to me, or satisfactorily proven, to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he/she executed the same as his/her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

Law Ham
Notary Public/Justice of the Peace



STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM, ss.

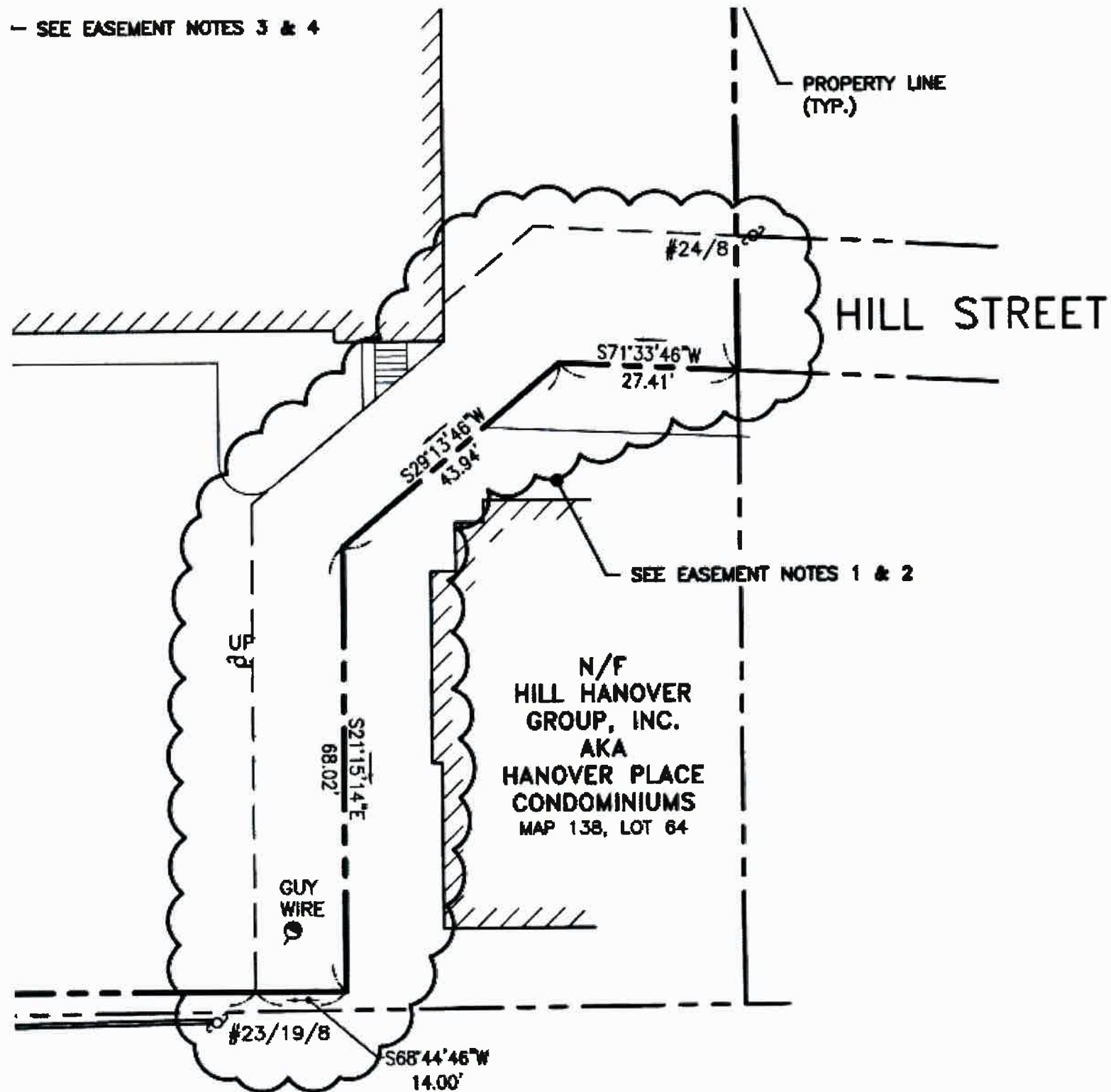
On this 11th day of Dec, 2006, before me personally appeared Elizabeth M. Singer, president of Hanover Place Condominium Association, known to me, or satisfactorily proven, to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he/she executed the same as his/her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

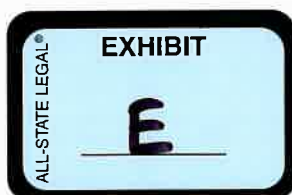

Notary Public/Justice of the Peace
DIANE M. GARLAND, Notary Public
My Commission Expires February 8, 2010


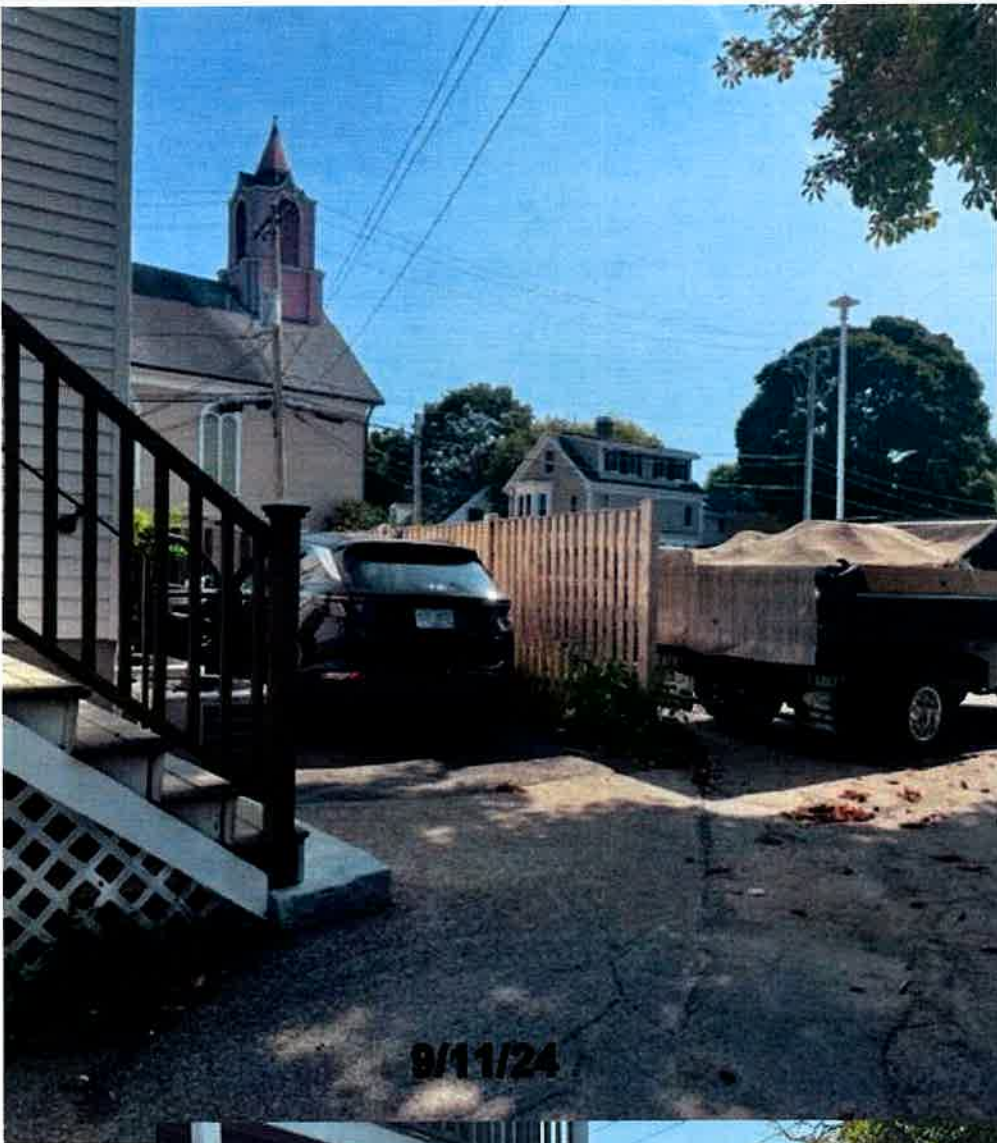
P:\Kearsarge Mill Unit Owners Assoc\Hill Hanover Group, LLC\Hanover Place Access
071006.rtf



— 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.







QWILMAN

DATE _____

F

ALL-STATE LEGAL®



0	ISSUED FOR COMMENT	03/14/25
NO.	DESCRIPTION	DATE
REVISIONS		



JANUARY 2024

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