

COLBY T. GAMESTER

Attorney At Law

154 Maplewood Avenue
Portsmouth, New Hampshire 03801

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

July 29, 2026

HAND DELIVERED & VIA EMAIL

Portsmouth City Council
Attn: Deaglan McEachern, Mayor
c/o Portsmouth City Clerk
1 Junkins Avenue
Portsmouth, NH 03801
cityclerk@portsmouthnh.gov

Re: 0 Elm Street (Tax Map 210, Lot 15)
Request pursuant to RSA 674:41, I(d)
Access via private drive

Dear Mayor McEachern and Members of the City Council:

I represent Stephanie Crepeau ("Client") who is currently under contract to purchase real property located at 0 Elm Street, also known as Lot 15 on City of Portsmouth Tax Map 210 (the "Property"). Enclosed herewith is a Landowner Letter of Authorization executed by the current owner of the Property, Andrew Wolcott.

Please accept this letter to the City Council requesting that it authorize the issuance of a building permit for the construction of a single-family home at and on the Property pursuant to RSA 674:41, I(d). We respectfully request that this letter and matter be placed on the City Council's agenda for its regularly scheduled meeting on August 3, 2026.

The Property is located at the corner of two (2) paper streets: Elm Street and Forrest Street. Elm Street has never been constructed. A portion of Forrest Street has been improved (initially as a gravel driveway and now paved), but upon information and reasonable belief this improvement was not performed by the City; rather, it was constructed, and has been maintained, by the owner(s) and predecessors-in-interest of the improved lot situated at 1 Forrest Street, the corner of Forrest Street and Cutts Avenue. Enclosed herewith as Exhibit A is an aerial tax map image showing where the Property is located, as well as depicting the existing private drive within the right-of-way of Forrest Street.

This neighborhood and subdivision of land was first created in 1902 with the recording of the Buckminster Plan at the Rockingham County Registry of Deeds as Plan 270. In 1919, the Buckminster Plan was revised and recorded at the Registry as Plan 245. In both plans, the Property is identified as the "subject lot." See Exhibits B and C enclosed herewith.

It is clear that the paper streets shown on those plans were dedicated to the City and the public at large as rights-of-way; however, only a portion of this subdivision was built out prior to the construction of the interstate highway system that severed the neighborhood.

For further reference regarding Forrest Street, also enclosed is a 1988 subdivision plan prepared for David Hodgdon (Plan D-18913) which depicts the extent of the then-existing gravel driveway within the Forrest Street right-of-way; as noted above that driveway is now paved. Enclosed herewith as Exhibit D is the Hodgdon Plan.

The Property is a preexisting nonconforming lot of record. Other surrounding property owners of single-family homes on Cutts Avenue own the majority land abutting the Property on the paper streets. The City itself owns two nearby lots, as well. The City Legal Department and this office have been investigating the current legal status of Elm Street and Forrest Street, which is often not straightforward in light of the various events over the years, as well as the applicable case law and the statutory framework that vary at times since 1902 which govern paper streets, their dedication, and any express or implied acceptance by the City thereof.

My Client desires to construct a single-family home on the Property. In order to do so, she will require variance relief from the Zoning Board of Adjustment, as well as conditional use permits from the Planning Board for development within the Highway Noise Overlay District and for potential wetland buffer impacts.

My Client has not yet authorized her surveyor and engineer to proceed with extensive field work and research because the associated cost is not insignificant, and the status of the paper streets has been our primary focus to date. Rather than pursuing a final determination of whether the City retains, or has released, rights in these paper streets, we believe the most efficient path forward (so that this proposal may proceed to the City's land use boards) is through the process set forth in RSA 674:41, I(d), which is enclosed herewith in its entirety as Exhibit E.

RSA 674:41, I(d) provides that a building permit may be issued for a lot accessed by a private road where:

- (1) the local governing body, after review and comment by the planning board, or after establishing that the private road identifies and complies with policy adopted by the governing body of the municipality, has voted to authorize the issuance of building permits for the erection of buildings on said private road or portion thereof;
- (2) the municipality neither assumes responsibility for maintenance of said private roads nor liability for any damages resulting from the use thereof; and
- (3) prior to the issuance of a building permit, the applicant produces evidence that notice of the limits of municipal responsibility and liability has been recorded in the county registry of deeds for the lot.

Preliminary discussions with the Department of Public Works indicate that the DPW is amenable to treating access as a shared private driveway (rather than a full City street) until such time as future surrounding development *may* warrant formalization of a public way. The City would not maintain or plow the driveway, and trash collection would occur on Cutts Avenue. Municipal sewer service would be available via a private sewer line pump discharging to the existing sewer main on Cutts Avenue. The Fire Department's requirements for emergency vehicle access can be met through standard asphalt driveway construction and while also ensuring appropriate ingress and egress.¹

Pursuant to RSA 674:41, I(d), the City Council must first refer this request to the Planning Board for review and comment before it may authorize the issuance of a building permit. We respectfully request that the City Council refer this matter to the Planning Board to be addressed at its next regularly scheduled meeting on August 20, 2026.

Should the City Council ultimately authorize the issuance of a building permit under RSA 674:41, I(d), such authorization would of course be conditioned upon the Property obtaining any and all necessary land-use approvals from the Zoning Board of Adjustment and the Planning Board.

I am available to discuss this matter with the Council, the Planning Board, or City staff at any time. If my presence is requested or needed at the Council's August 3rd meeting, then I will have to appear via zoom as I will be out of town the week of August 3rd.

Thank you for your time and consideration of this request.

Kindest Regards,


Colby T. Gamester, Esq.

Enclosures

Cc: file
Karen Conard, City Manager
Trevor McCourt, Esq., Legal Department
Peter Rice, Department of Public Works
Chief McQuillen, Fire Department
Peter Britz, Planning Department
Stephanie Crepeau
(all via email)

¹ My Client and I have done a fair amount of research and consultation with various City Departments regarding the Property and surrounding area. We understand that with more formal plans and proposals, these Departments would, if necessary, have the opportunity to provide further comment, conditions, and limitations, if necessary and applicable.

LANDOWNER LETTER OF AUTHORIZATION

I, the Undersigned, Andrew Wolcott, the record owner of real property located at off Elm Street, Portsmouth, New Hampshire 03801, identified on Portsmouth Tax Map 210 as Lot 15 (the "Property"), hereby authorize Gamester Law Office, and its attorneys and representatives, to file any document with the City of Portsmouth (the "City"), communicate and correspond with City staff and officials, and submit applications with and appear before the City Council and the City's land use boards all regarding the Property. This Letter of Authorization shall be valid until expressly revoked in writing.



Andrew Wolcott

7/28/26

Date

**Property Information**

Property ID 0210-0015-0000
Location ELM ST
Owner WOLCOTT ANDREW

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

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

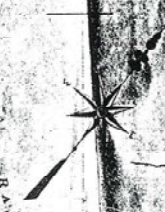
Geometry updated 03/06/2026

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

2 of 2
00270 00270

PLAN OF
BUCKMINSTER
PORTSMOUTH, N.H.
1902

Scale 1" = 100'



WHITE MOUNTAIN PAPER CO.

SUBJECT LOT



EXHIBIT C

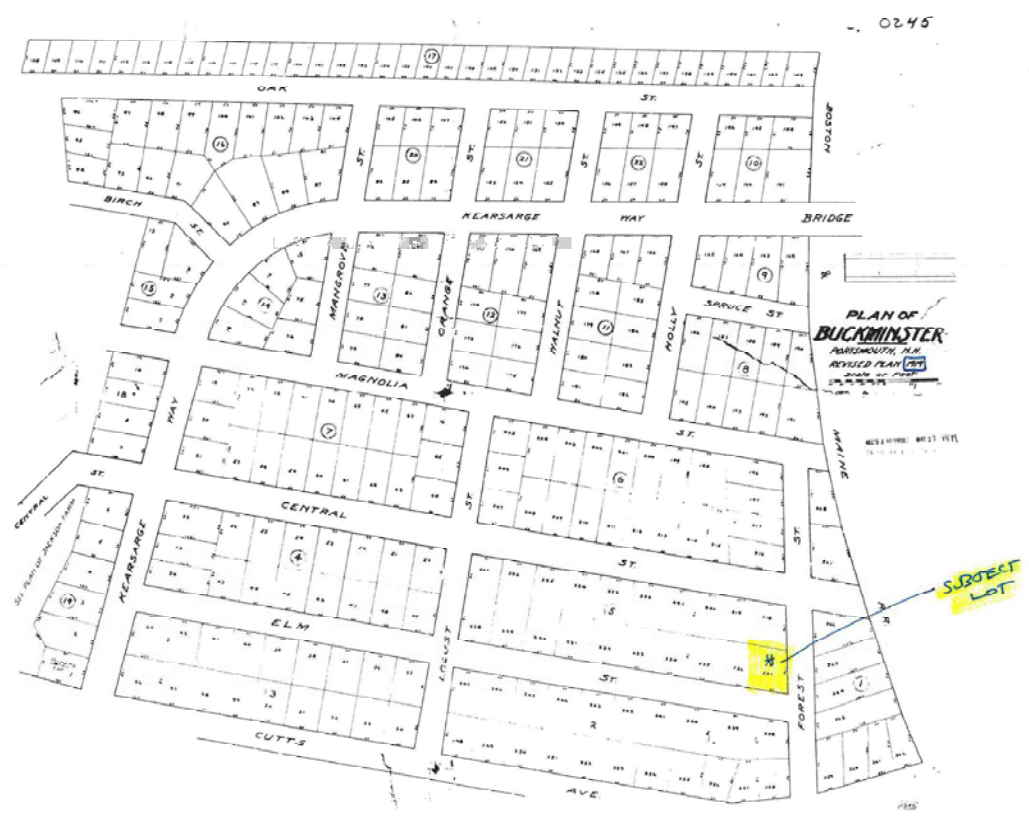
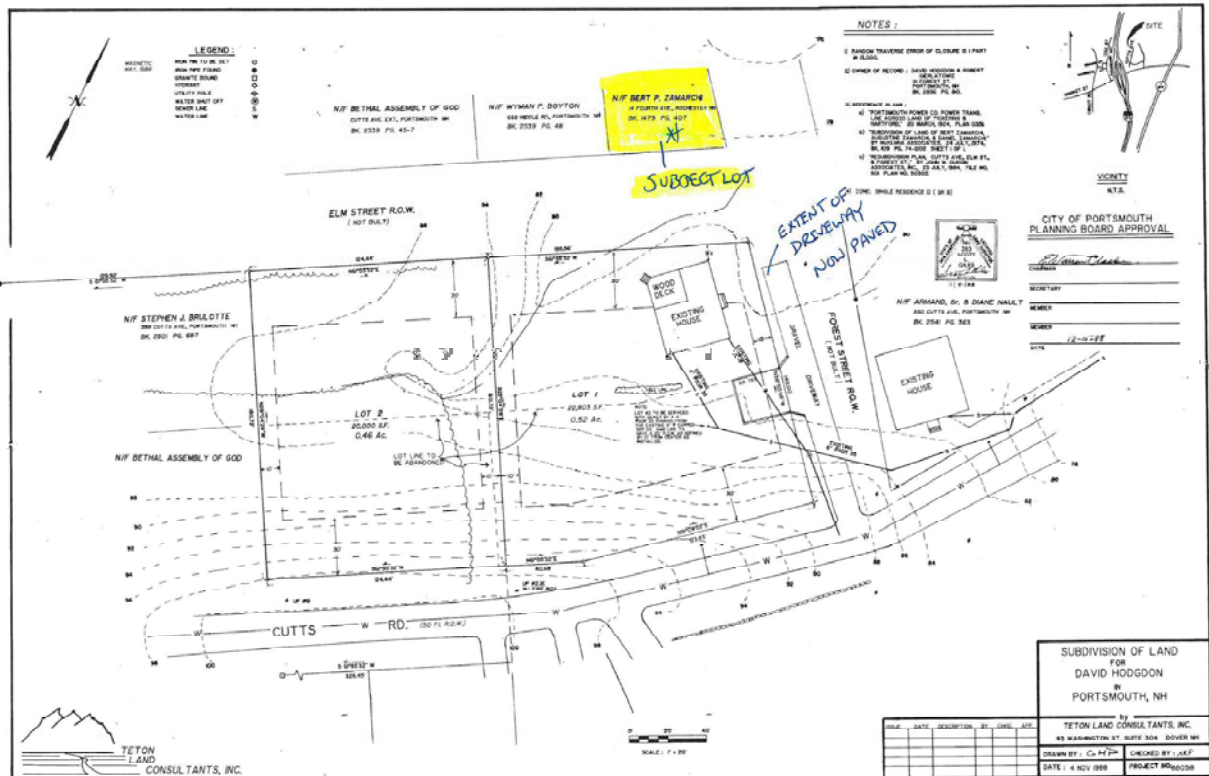


EXHIBIT D

Dec 27 10:57 AM '88

Dec 27 5:11:10 PM 42215



D-18913

TITLE LXIV PLANNING AND ZONING

CHAPTER 674 LOCAL LAND USE PLANNING AND REGULATORY POWERS

Regulation of Subdivision of Land

Section 674:41

674:41 Erection of Buildings on Streets; Appeals. –

I. From and after the time when a planning board shall expressly have been granted the authority to approve or disapprove plats by a municipality, as described in RSA 674:35, no building shall be erected on any lot within any part of the municipality nor shall a building permit be issued for the erection of a building unless the street giving access to the lot upon which such building is proposed to be placed:

- (a) Shall have been accepted or opened as, or shall otherwise have received the legal status of, a class V or better highway prior to that time; or
- (b) Corresponds in its location and lines with:
 - (1) A street shown on the official map; or
 - (2) A street on a subdivision plat approved by the planning board; or
 - (3) A street on a street plat made by and adopted by the planning board; or
 - (4) A street located and accepted by the local legislative body of the municipality, after submission to the planning board, and, in case of the planning board's disapproval, by the favorable vote required in RSA 674:40; or

[Paragraph I(c) effective until July 1, 2026; see also paragraph I(c) set out below.]

(c) Is a class VI highway, provided that:

- (1) The local governing body after review and comment by the planning board has voted to authorize the issuance of building permits for the erection of buildings on said class VI highway or a portion thereof; and
- (2) The municipality neither assumes responsibility for maintenance of said class VI highway nor liability for any damages resulting from the use thereof; and
- (3) Prior to the issuance of a building permit, the applicant shall produce evidence that notice of the limits of municipal responsibility and liability has been recorded in the county registry of deeds; or

[Paragraph I(c) effective July 1, 2026; see also paragraph I(c) set out above.]

(c) Is a class VI highway, provided that the applicant:

- (1) Signs a liability waiver acknowledging that the:
 - (A) Municipality shall not maintain the highway nor provide any services to any lot accessible by the highway;
 - (B) Municipality shall not accept any responsibility for losses or damages caused by a lack of services; and
 - (C) Responsibility for such services falls solely on the applicant; and
- (2) Prior to the issuance of a building permit, produces evidence that this waiver has been recorded in the county register of deeds; and
- (3) Prior to the issuance of a building permit, proves the lot and any buildings thereon are insurable; or
- (d) Is a private road, provided that:
 - (1) The local governing body, after review and comment by the planning board, or after establishing that the private road identifies and complies with policy adopted by the governing body of the municipality, has voted to authorize the issuance of building permits for the erection of buildings on said private road or portion thereof; and
 - (2) The municipality neither assumes responsibility for maintenance of said private roads nor liability for any damages resulting from the use thereof; and
 - (3) Prior to the issuance of a building permit, the applicant shall produce evidence that notice of the limits of municipal responsibility and liability has been recorded in the county registry of deeds for the lot for which the building permit is sought; or
- (e) Is an existing street constructed prior to the effective date of this subparagraph and is shown on a subdivision plat that was approved by the local governing body or zoning board of adjustment before the municipality authorized the planning board to approve or disapprove subdivision plats in accordance with RSA 674:35, if one or more buildings have been erected on other lots on the same street.

II. Whenever the enforcement of the provisions of this section would entail practical difficulty or unnecessary hardship, and when the circumstances of the case do not require the building, structure or part thereof to be related to existing or proposed streets, the applicant for such permit may appeal from the decision of the administrative officer having charge of the issuance of permits to the zoning board of adjustment in any municipality which has adopted zoning regulations in accordance with RSA 674, or, in municipalities in which no board of adjustment exists, to the local legislative body, or to a board of appeals, whichever is appropriate, in accordance with RSA 674:14 and 674:15, including the requirement for a public hearing. In a municipality which does not require building permits, direct application may be made to the zoning board of adjustment, or the local legislative body, or the board of appeals for permission to erect the building. In passing on such appeal or application, the board of adjustment, local legislative body, or board of appeals may make any reasonable exception and

shall have the power to authorize or issue a permit, subject to such conditions as it may impose, if the issuance of the permit or erection of the building would not tend to distort the official map or increase the difficulty of carrying out the master plan upon which it is based, and if erection of the building or issuance of the permit will not cause hardship to future purchasers or undue financial impact on the municipality. Any such decision made in this connection by a board of adjustment, local legislative body, or by a board of appeals pursuant to this section and RSA 674:14 and 674:15 shall be in writing, together with the reasons for the decision, and shall be subject to review in the manner described in RSA 677.

II-a. Municipalities may except any lot, including island lots for islands served exclusively by boats, from the requirements of paragraphs I and II by an affirmative vote of the local legislative body pursuant to RSA 675, first submitted to the planning board for its approval and:

(a) If approved by the board, approved by a majority of those present and voting at a regular or special meeting of the local legislative body; or

(b) If disapproved by the planning board, approved by not less than 2/3 of those present and voting at a regular or special meeting of the local legislative body.

III. This section shall supersede any less stringent local ordinance, code or regulation, and no existing lot or tract of land shall be exempted from the provisions of this section except in accordance with the procedures expressly set forth in this section. For purposes of paragraph I, "the street giving access to the lot" means a street or way abutting the lot and upon which the lot has frontage. It does not include a street from which the sole access to the lot is via a private easement or right-of-way, unless such easement or right-of-way also meets the criteria set forth in subparagraphs I(a), (b), (c), (d), or (e).

IV. In addition to the requirements for the erection of buildings in paragraph I and notwithstanding the exceptions provided in paragraph II, the planning board for a county in which there are located unincorporated towns or unorganized places shall require every building which is erected on leased land located within an unincorporated town or unorganized place to have a building permit. A building permit shall be required under this paragraph regardless of the proximity of the building to any street or highway. The county shall, by resolution, authorize the planning board to issue building permits under this paragraph.

Source. 1983, 447:1. 1988, 131:2, 3. 1989, 266:20. 1995, 291:10. 1998, 344:6. 2002, 270:1, 5. 2004, 154:1, 2. 2005, 226:1, 2, eff. Sept. 3, 2005. 2025, 175:1, eff. Sept. 13, 2025; 256:1, eff. July 1, 2026.



Trevor P. McCourt
Deputy City Attorney

CITY OF PORTSMOUTH

Legal Department
Municipal Complex
1 Junkins Avenue
Portsmouth, New Hampshire 03801
tmccourt@portsmouthnh.gov
(603) 610-7234

Date: September 11, 2026

To: Peter Stith, Planning Manager

From: Trevor P. McCourt, Deputy City Attorney

Re: RSA 674:41, I(d) review and comment – 0 Elm Street (Tax Map 210, Lot 15);
Crepeau/Wolcott Request (Attorney Gamester letter dated July 29, 2026)

I. Introduction.

Attorney Colby Gamester, on behalf of Stephanie Crepeau (who is under contract to purchase the property) and its record owner, Andrew Wolcott, has asked the City Council to authorize the issuance of a building permit for a single-family home on Lot 15 (0 Elm Street, Tax Map 210) under RSA 674:41, I(d), on the theory that the lot is or would be served by a private road over the Forrest Street paper right-of-way. Because RSA 674:41, I(d)(1) requires the Council to obtain the Planning Board's review and comment before it may authorize building permits on a private road, the Council has referred the request to the Board. This memorandum is provided to assist the Board in that review: it explains what RSA 674:41 requires, applies it to the facts now before the City, identifies the limits of the Council's authority under the statute, and sets out the options I would recommend the Board transmit to the Council.

II. Statutory Framework

RSA 674:41, I bars issuance of a building permit on any parcel unless the parcel is on a street. This statute provides for issuance of building permits on streets that are not maintained by the municipality, such as Class VI roads and private roads. The basic purpose of this statute is “to ensure that a dwelling can be reached by the fire department, police department, and other agencies charged with the responsibilities of protecting the public peace, safety, and welfare. That purpose is defeated if the purported access route is not suitable for travel.” Loughlin, P., New Hampshire Practice, Land Use Planning and Zoning, Ch. 29.19, see Sanderson v. Town of Candia, 146 N.N. 598 (2001).

III. Factual Background

0 Elm Street is at the corner of two purported paper streets, Elm Street and Forrest Street. Forrest Street and Elm Street are paper streets shown on 1902 and 1919 subdivision plans entitled the Buckminster plans. The City's records confirm that Forrest Street was never accepted or used as a public way, and therefore the underlying fee likely resides with the abutters. No road has been constructed to connect 0 Elm Street to a public right of way. The improved (now paved) portion of Forrest Street serves as a driveway for 1 Forrest Street and does not reach the subject lot; what the applicant proposes is to build a new driveway. There is thus no constructed access to 0 Elm Street today. DPW reports a steep grade at the proposed access location, which may or may not be appropriate for a public road. The Fire Department advises that a drive exceeding 200 feet requires a 12-foot minimum width (16 feet recommended). Neither Department has issued a final recommendation without a plan depicting the proposed driveway. 0 Elm Street is also undersized and may require at least one variance and a conditional use permit due to its location within the Highway Noise Overlay District. Approximately nine other parcels in the Buckminster subdivision are similarly situated, without constructed access, and the City owns two nearby lots.

IV. Options for the Planning Board

There are two basic options for the Planning Board at this stage. The first would be to recommend denial, and the second would be to recommend approval with an exception from the statutory rule. The first could lead to an appeal to the Zoning Board of Adjustment, which can approve applications with conditions, and the second would require a public hearing at the City Council.

A. Paragraph II — ZBA exception (applicant-initiated; conditions allowed).

If the building inspector — the “administrative officer having charge of the issuance of permits,” not the Council — denies a permit for lack of qualifying access, the applicant may appeal to the Zoning Board of Adjustment. The ZBA may grant a “reasonable exception” for “practical difficulty or unnecessary hardship” and may issue the permit subject to such conditions as it imposes, if doing so would not distort the official map, increase the difficulty of the master plan, cause hardship to future purchasers, or impose undue financial impact on the City.

B. Paragraph II-a — legislative exception (Council vote; Board gatekeeps; no conditions).

The Council may except the lot from the requirements of paragraphs I and II by an affirmative vote, first submitted to the Planning Board for its approval: if the Board approves, a majority of the Council suffices; if the Board disapproves, a two-thirds vote is required. The vote is taken with a noticed public hearing so it is handled with the formality of a legislative enactment, not an ordinary permit vote.

V. Recommended Options.

Because there is no existing road servicing 0 Elm Street the Board's review and comment realistically takes one of two forms:

A. Recommend denial under paragraph I.

B. Recommend the City Council approve with an exception under paragraph II-a.