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

7:00 P.M. **October 27, 2026**

AGENDA

Members of the public also have the option to join this meeting over Zoom; a unique meeting ID and password will be provided once you register. To register, click on the link below or copy and paste this into your web browser:

https://us06web.zoom.us/webinar/register/WN_F_Owmtg_Te-q2MOYBu1I3A

I. OLD BUSINESS

A. Request for Rehearing – 28 Blossom Street

II. NEW BUSINESS

A. The request of **Emilyn Anne** and **Eben Kennedy (Owners)**, for property located at **1490 Islington Street** whereas relief is needed for construction of an addition and renovation of a single-family residence with an accessory dwelling unit to a two-family residence, which requires the following: 1) Variance from Section 10.440 to allow a two-family dwelling in the SRB District. Said property is located on Assessor Map 233 Lot 108 and lies within the Single Residence B (SRB) District. (LU-26-126)

B. The request of **Nathan Alger (Owner)**, for property located at **104 Thornton Street** whereas relief is needed to demolish an existing carport and deck and construct an addition; and to permit after-the-fact installation of a fence, which requires the following: 1) Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance; 2) Variance from Section 10.521 to a) allow a 4' rear yard setback where 20' is required, b) allow a 6’ secondary front yard setback where 15’ is required, c) to allow 44.5% building coverage where 25% is allowed; and 3) Variance from Section 10.515.13 to allow a fence exceeding 4' in height with a 0' front yard setback where 15' is required. Said property is located on Assessor Map 160 Lot 11 and lies within the General Residence A (GRA) District. (LU-26-120)

C. The request of **Schofield-Kanner Revocable Trust (Owners),** and **Cain Investments, LLC (Applicant)**, for property located at **0 Woodworth Avenue** whereas relief is needed to construct a new single-family residence on a vacant lot, which requires the following: 1) Variance from Section 10.521 to allow a) lot area of 3,440 SF where 15,000 SF is required, b) lot area per dwelling unit of 3,440 SF where 15,000 SF is required, c) 40 feet of contiguous street frontage where 100 feet is required, d) lot depth of 86 feet where 100 feet is required, e) a front yard setback of 17 feet where 30 feet is required, f) a rear yard setback of 10 feet where 30 feet is required, and g) a building coverage of 35% where 20% is allowed. Said property is located on Assessor Map 232 Lot 73 and lies within the Single Residence B (SRB) District. (LU-26-125)

D. The request of **Peters Family Trust (Owner)**, for property located at **54 Lincoln Avenue** whereas relief is needed to construct a second-floor accessory dwelling unit over an existing detached garage, which requires the following: 1) Variance from Section 10.521 to allow a) a rear yard setback of 10 feet where 20 feet is required; and b) building coverage of 29% where 25% is allowed. Said property is located on Assessor Map 111 Lot 21 and lies within the General Residence A (GRA) District. (LU-26-124)

E. The request of **Michael** and **Stephanie Febonio (Owners)**, for property located at **9 Sheafe Street** whereas relief is needed to construct an 8-foot fence which requires the following: 1) Variance from Section 10.515.13 to allow an 8-foot fence in the secondary front yard. Said property is located on Assessor Map 107 Lot 13 and lies within Character District 4 (CD4) and the Historic District. (LU-26-123)

F. The request of **325 Corporate Drive II LLC C/O The Kane Company (Owners)**, for property located at **325 Corporate Drive** whereas relief is needed to install two wall signs and monument signage, which requires the following: 1) Variance from Section 306.01(d) of the Pease Development Ordinance to allow signs to exceed the maximum aggregate area of two (2) square feet of sign area for each linear foot of street frontage up to a maximum of 200 square feet. Said property is located on Assessor Map 318 Lot 2 and lies within the Airport Business Commercial (ABC) District. (LU-26-122)

G. The request of **Rocket Too Trust (Owner)**, for property located at **10 Merrimac Street** whereas relief is needed to reconstruct a porte-cochere which requires the following: 1) Variance from Section 10.521 to allow a) a rear yard setback of 10 feet where 20 feet is required; and b) building coverage of 26% where 25% is allowed. Said property is located on Assessor Map 129 Lot 17 and lies within the General Residence A (GRA) District. (LU-26-128)

IV. ADJOURNMENT



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

MEMORANDUM

TO: Zoning Board of Adjustment
FROM: Jillian Harris, Principal Planner
DATE: October 21, 2026
RE: Zoning Board of Adjustment October 27, 2026

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

I. Old Business

A. 28 Blossom Street – Request for Rehearing

II. New Business

A. 1490 Islington Street
B. 104 Thornton Street
C. 0 Woodworth Avenue
D. 54 Lincoln Avenue
E. 9 Sheafe Street
F. 325 Corporate Drive
G. 10 Merrimac Street

I. OLD BUSINESS

A. **Request for Rehearing** - The request of **Kathleen B. and Kent A. Logan, Susan E. Lassen, Scott A. Lupkas, and Guy D. and Elizabeth R. Spiers (Appellants)**, for appeal of decision of administrative officials to classify the art studio attached to the side of the third dwelling unit as an R2 non-transient sleeping unit for property located at **28 Blossom Street**. Said property is located on Assessor Map 111 Lot 40 and lies within the General Residence B (GRB) and Historic Districts. (LU-26-114)

Planning Department Comments

At the September 15, 2026 Board of Adjustment meeting, the Board considered the request of **Kathleen B. and Kent A. Logan, Susan E. Lassen, Scott A. Lupkas, and Guy D. and Elizabeth R. Spiers (Appellants),** for appeal of decision of administrative officials to classify the art studio attached to the side of the third dwelling unit as an R2 non-transient sleeping unit for property located at **28 Blossom Street.**

The Board voted to **deny** the appeal because the physical changes requested by the Code Official would not convert the space into something other than an art studio and there is nothing in those physical changes that is incompatible with the use of an art studio.

A request for rehearing was filed within 30 days of the Board's decision. The decision to grant or deny a rehearing request must occur at a public meeting, but this is not a public hearing. The Board should evaluate the information provided in the request and make its decision based upon that document. The Board should grant the rehearing request if a majority of the Board is convinced that some error of procedure or law was committed during the original consideration of the case. The meeting materials can be referenced in September 15, 2026 meeting packet found at the following link: https://www.portsmouthnh.gov/planportsmouth/events/board-adjustment-21

STATE OF NEW HAMPSHIRE
CITY OF PORTSMOUTH
ZONING BOARD OF ADJUSTMENT

IN RE: Appeal from Determination Letter (July 23, 2026) and
Supplemental Determination Letter (August 6, 2026) of the
Chief Building Inspector, City of Portsmouth
Property: 28 Blossom Street, Portsmouth, NH 03801 (MBLU 0111/0040/0000)
Owners of Record: Burke-Zabarsky Revocable Trust; Hannah & Paul J. Burke, Trustees
ZBA Case No.: LU-26-114

APPELLANTS' MOTION FOR REHEARING

(Filed pursuant to RSA 677:2)

NOW COME Appellants Kathleen B. Logan and Kent A. Logan, Trustees of the Kathleen B. Logan Revocable Trust; Susan E. Lassen, Trustee of the Lassen Family Revocable Trust; Scott A. Lupkas; and Guy D. Spiers and Elizabeth R. Spiers, Trustees of the 3A Trust (collectively, "Appellants"), and, pursuant to RSA 677:2, respectfully move this Board for rehearing of its decision, by a vote of 5–2, denying Appellants' appeal of the Determination Letter dated July 23, 2026, and the Supplemental Determination Letter dated August 6, 2026, issued by the Chief Building Inspector of the City of Portsmouth. In support of this Motion, and specifying the grounds therefor as required by RSA 677:2, Appellants state as follows:

I. PROCEDURAL BACKGROUND AND TIMELINESS

1. On August 20, 2026, Appellants filed a Notice of Appeal and Statement of Grounds with this Board, appealing the Determination Letter and Supplemental Determination Letter described above.

2. On September 15, 2026, this Board held a hearing on Appellants' appeal and, by a vote of 5–2, denied the appeal.

3. At that hearing, the genesis and history of the City's enforcement action were placed squarely at issue by the Board itself. Planning Director Peter Britz initially testified that the City's Legal Department zoning code enforcement officer had never been involved in this matter. Inspector Wolph then clarified that Legal Enforcement Officer Jason Page and the Legal Department had, in fact, been "read in on everything." As set forth in Part II.C below, neither witness's testimony disclosed that Mr. Page had actual knowledge of the studio's occupancy well before the City's June 18, 2026 cease-and-desist letter issued. The newly discovered evidence described in Part II bears directly on the accuracy and completeness of the account the Board received on this point.

4. This Motion is filed within thirty (30) days after the Board's decision, as required by RSA 677:2, and is Appellants' complete statement of the grounds upon which rehearing is sought.

II. GROUNDS FOR REHEARING

A. The Certified Record Furnished by the City After the Board's Vote

5. On the morning of September 16, 2026 — the day after this Board's vote — the City of Portsmouth furnished Appellants with a certified record of documents (the "Certified Record") compiled by Chief Building Inspector Shanti Wolph and previously ordered produced in the related proceeding before the New Hampshire State Building Code Review Board, Docket No. 2026-4. The Certified Record was certified by Inspector Wolph on September 2, 2026, but was not furnished to Appellants until the day following this Board's vote on their appeal. A true and accurate copy of the Certified Record is attached hereto as Exhibit A and incorporated herein by reference.

6. Appellants did not have access to the Certified Record, and could not reasonably have obtained its contents through the exercise of due diligence, before this Board's September 15, 2026 vote. The Certified Record was compiled and produced solely because of the separate, concurrent proceeding before the State Building Code Review Board, and its contents were not otherwise available to Appellants or the public prior to its production.

7. The Certified Record accordingly constitutes newly discovered evidence within the meaning of RSA 677:2, which Appellants could not, with reasonable diligence, have discovered or presented at the hearing on their appeal.

B. The Newly Discovered Evidence Is Material to Grounds Already Raised Before This Board

The Certified Record is not merely cumulative. Several documents within it bear directly on the genesis of the City's enforcement action and on grounds Appellants raised in their original appeal:

8. July 10, 2026 email from Inspector Wolph to the International Code Council (Tab 7 of the Certified Record). In this contemporaneous communication — made before the Determination Letter issued and before any final decision had been reached — Inspector Wolph stated that the owners of 28 Blossom Street "do not reside on this property" and "live nearby at a separate residence and rent the three dwelling units." Inspector Wolph then wrote: "If the studio were clearly accessory to one of the dwelling units and used by the occupants of that unit, I do not believe there would be a significant issue. The challenge is that the studio does not appear to be accessory to any particular dwelling unit and is functioning as a stand-alone space... The question I am struggling with is whether the son's regular overnight use of the studio constitutes a code violation. During the day, he returns to his parents' residence, where he eats, showers, and does laundry. The studio is used primarily as a place for him to sleep at night." This contemporaneous statement, from the Building Inspector himself, directly corroborates the ground raised in Appellants' original appeal that the studio cannot lawfully be treated as an accessory use of 161 South Street.

9. June 30, 2026 letter from Hannah and Paul Burke to Inspector Wolph (Tab 5 of the Certified Record). In this letter, the property owners themselves wrote: "If the City denies us the right to have our son sleep in the studio, there will be no place for him to live." This admission, from the owners, confirms that the studio functions as Christopher Burke's actual residence rather than as incidental overflow space, and further corroborates Appellants' contention that the space operates in substance as an independent dwelling or sleeping unit.

10. July 14, 2026 email from Inspector Wolph to the Burkes (Tab 8 of the Certified Record). This email identifies Section 104.11 of the Building Code — the alternative-materials-and-methods provision, invoked expressly on the basis of "humanitarian considerations" — as the code path under consideration at that time. The Determination Letter ultimately issued on July 23, 2026 instead relies on Section 104.2.4, a different provision governing modifications for practical difficulties. This shift in the legal authority relied upon, over the course of two weeks and without any apparent intervening change in the facts, is material to Appellants' contention that the Determination reflects an outcome-driven search for regulatory authority rather than a natural application of the code.

11. June 22, 2026 letter from Inspector Wolph to the Burkes (Tab 4 of the Certified Record). In this letter, Inspector Wolph wrote: "The cease-and-desist letter was issued after I received information from a Portsmouth Police Officer indicating that your son had stated he was living in the structure." As Appellants stated in their original appeal, this police report was only the most recent development in a pattern of concern: Blossom Street neighbors, including Appellants, had repeatedly raised the same nonconforming residential use of the studio with City officials for approximately three years before the cease-and-desist letter issued. The genesis of this matter is accordingly broader than any single report, and, as set forth in Part II.C below, the completeness of this account bears directly on the testimony given to the Board at the September 15, 2026 hearing regarding the City's knowledge of and involvement in this matter.

12. July 29, 2026 inspection report (Tab 11 of the Certified Record). This is the first inspection of the studio reflected anywhere in the Certified Record. It occurred six days after the Determination Letter issued on July 23, 2026. Nothing in the Certified Record indicates that Inspector Wolph, or anyone from the City, physically inspected the studio at any point before the Determination Letter issued. A Determination that identifies specific life-safety conditions of approval — a shower, particular egress and detection requirements, and a described two-hour fire separation — before any inspection confirming the studio's actual physical condition had taken place is further evidence that the classification, and the conditions attached to it, were settled in advance and verified only after the fact.

13. August 13, 2026 inspection report (Tab 12 of the Certified Record). This report states that, as of that inspection, “a shower had not yet been installed,” notwithstanding that the July 23, 2026 Determination Letter made installation of a shower an express condition of the studio's continued use as an R2 non-transient sleeping unit. The report nonetheless concludes that “the studio is safe to use.” This document is material to Appellants' contention, raised in the related building-code appeal and relevant here, that the conditions of the Determination have not been verified or enforced before continued occupancy was permitted to proceed.

C. The Hearing Testimony Regarding the Legal Department's Knowledge and Involvement Was Incomplete

14. At the September 15, 2026 hearing, Planning Director Peter Britz initially testified that the City's Legal Department zoning code enforcement officer had never been involved in this matter. Inspector Wolph subsequently clarified, testifying that Legal Enforcement Officer Jason Page and the Legal Department had been “read in on everything.”

15. Neither witness disclosed to the Board that Mr. Page had actual knowledge of Christopher Burke's occupancy of the studio well before the City's June 18, 2026 cease-and-desist letter issued. Appellant Kathleen B. Logan documented her own direct communications with Mr. Page concerning this same occupancy on June 24, 2025, and again on May 27, 2026. Ms. Logan's reports to the City's Inspection and Police Departments regarding the occupancy of the studio date back to 2023, when, at various times, Christopher was subject to bail and protective orders barring him from both the 28 Blossom Street and 161 South Street properties.

16. This history was not before the Board at the September 15, 2026 hearing. It bears directly on the completeness and accuracy of the testimony the Board received regarding when and how the City became aware of the studio's occupancy, and on the weight the Board should give to the City's account of the genesis of this matter. Appellants are prepared to present this evidence, together with the Certified Record, on rehearing.

D. This Evidence Could Not Reasonably Have Been Obtained Before the Board's Decision

Appellants recognize that a motion for rehearing is not an occasion to introduce evidence that could, with reasonable diligence, have been obtained and presented at the original hearing. That is not the case here. The Certified Record was compiled by the City in response to a scheduling order issued by a different tribunal, in a separate proceeding, and was not requested by or available to Appellants through ordinary means before this Board's vote. The certification date of September 2, 2026, followed by production to Appellants only on September 16, 2026 — the morning after this Board's decision — reflects a gap in timing that was not within Appellants' control and that could not have been shortened through diligence on their part. And while Ms. Logan's own records of her communications with Mr. Page have long been in Appellants' possession, their significance did not become apparent as a ground for rehearing until the Legal Department's role and knowledge were placed in dispute by the testimony at the September 15, 2026 hearing itself — testimony Appellants could not have anticipated or addressed in advance.

E. The Board's Written Decision Does Not Address the Grounds of Appeal

The Board's written decision on Appellants' appeal, dated September 22, 2026, states in its entirety that the Board voted to deny the appeal because "the physical changes requested by the Code Official would not convert the space into something other than an art studio and there is nothing in those physical changes that is incompatible with the use of an art studio."

This stated rationale addresses only whether the physical modifications identified as conditions of approval in the Determination — installation of a shower, compliant egress, and smoke and carbon monoxide detection — are compatible with continued use of the space as an art studio. It does not address, and the written decision contains no discussion of, the grounds Appellants actually raised in their Notice of Appeal: that the Chief Building Inspector usurped this Board's exclusive zoning jurisdiction under RSA 674:33 and RSA 676:5; that the approved use is not a permitted use in the General Residence B zoning district; that the Determination effectively authorizes an unauthorized rooming, boarding, or co-living arrangement; that the studio cannot lawfully be treated as an accessory use of the separate, non-contiguous parcel at 161 South Street; and that the Determination fails to address density, parking, and Historic District Commission requirements triggered by the use.

A decision that evaluates only the physical compatibility of specific building modifications with an art studio, without addressing whether the occupancy those modifications are meant to support is a lawful use under the Zoning Ordinance, does not reflect consideration of the case Appellants actually presented. Appellants received this stated rationale for the first time with the Board's written decision on September 22, 2026, and could not have addressed this gap in the Board's reasoning any earlier. Rehearing is warranted so that the Board may consider, and render a decision that addresses, the zoning-use grounds Appellants actually raised, rather than the narrower physical-compatibility question the Determination itself did not present as the operative issue.

E. On the Merits, the Board's Decision Improperly Delegated the Meaning, Construction and Interpretation of the Zoning Ordinance to the Building Inspector and/or the City's Code Enforcement Department(s).

In denying the appeal, the Board improperly delegated the authority to interpret, construe and apply the City's Zoning Ordinance to the Building Inspector. Specifically, the Building Inspector reclassified the space as an "R2 non-transient sleeping unit" under the International Building Code and authorized its continued use for that purpose.

The Building Inspector's determination effectively executed an end-run around the plain meaning of the Zoning Ordinance, which distinguishes between "dwelling units" and "sleeping units", and does not permit "sleeping units" (or any other rooming, boarding or co-living use) in the GRB zoning district. The owners of the address in question have conceded that their adult son is living in the artists' studio on the property, which also includes a three-unit apartment building. The owners do not actually live on this property. Thus, this artist studio building is being used as a fully separate dwelling unit, which is not a permitted use in this location under the Portsmouth Zoning Ordinance. The Determination simply ignores the non-compliance of the use being made of the building with the Zoning Ordinance itself. The Board's September 15, 2026 decision, after hearing argument on these points, affirms that use notwithstanding the clear and obvious violation of the Zoning Ordinance. In so doing, the Board has improperly delegated its power to determine whether a use is compliant with the plain and ordinary terms of the Zoning Ordinance to the Building Inspector, or another administrative officer.

In addition, the Board's decision constitutes *ad hoc* rulemaking. The Board's decision ratifies a code enforcement determination of the Building Inspector that cannot be reconciled with the plain language of the Zoning Ordinance. The City Council deliberately chose not to extend rooming, boarding and co-living uses into GRB residential districts, confining them to districts such as the CD4 district. The Board's decision ratifying the Building Inspector's determination effectively rewrites the Zoning Ordinance without City Council or voter approval. In so doing, the Board is usurping the power to enact changes to the Zoning Ordinance from the proper legislative authority of the City of Portsmouth, the Planning Board, and the voters themselves.

Furthermore, the Board's decision appears to permit a use accessory to a primary residence on another lot altogether. The owners reside at 161 South Street, and the artist studio in question is located at 28 Blossom Street. The Building Inspector's decision, ratified expressly or implicitly by the Board on September 15, 2026, permits the linkage between a primary use and an accessory use on separately identified, assessed and taxed lots. This baffling decision is contrary to the Zoning Ordinance and undermines the City's zoning scheme altogether.

F. This Appeal Restates and Reincorporates Each of the Arguments Made In Its Appeal of August 20, 2026.

Attached hereto is the Appeal dated August 20, 2026. Because the Board failed to address any of the merits arguments contained therein, the Appellants expressly incorporate and restate each argument attached hereto lest there be any suggestion of failure to preserve any issue or argument made herein or therein.

III. THE BOARD SHOULD GRANT REHEARING

RSA 677:2 authorizes this Board to grant rehearing where, "in its opinion good reason therefor is stated in the motion." Good reason exists here. The newly discovered evidence, together with the incompleteness of the hearing testimony regarding the Legal Department's knowledge and involvement, bears directly on the credibility of the account of this matter's origin presented to the Board, on the accessory-use ground raised in Appellants' original appeal, and on whether the Determination reflects a consistent and good-faith application of the Building Code or a shifting search for regulatory cover — the latter underscored by a Determination that specified detailed life-safety conditions before any inspection of the studio had ever taken place. And apart from

that evidence, the Board's own written decision confirms that its stated rationale did not reach the zoning-use grounds Appellants actually raised. Fundamental fairness, and the interest of this Board in deciding this matter on a complete and accurate record and in addressing the grounds actually presented, favor rehearing so that this evidence and these grounds may be considered.

IV. RELIEF REQUESTED

WHEREFORE, Appellants respectfully request that the Board:

a. Grant rehearing of its September 15, 2026 decision denying Appellants' appeal, for consideration of all issues raised herein or therein;

b. Accept the Certified Record, attached as Exhibit A, as part of the record on rehearing;

c. Upon rehearing, reconsider and reverse its September 15, 2026 decision in light of the newly discovered evidence and the merits arguments raised in the Appeal; and

d. Grant such other and further relief as the Board deems just and proper.

Appellants further state that, should this Motion be denied in whole or in part, Appellants intend to preserve all rights of appeal available under RSA 677:4, and file this Motion, in the alternative, for the purpose of exhausting the prerequisite to any such appeal.

V. EXHIBITS

- Exhibit A — Certified Record, City of Portsmouth Building Department (certified September 2, 2026; produced to Appellants September 16, 2026)

CERTIFICATE OF SERVICE

Appellants hereby certify that a copy of this Motion has been filed with the Zoning Board of Adjustment, City of Portsmouth, and served upon the City of Portsmouth and all other parties of record, by the method(s) required by the Board's rules and RSA 677:2.

Respectfully submitted,

Kathleen B. Logan and Kent A. Logan, Trustees
Kathleen B. Logan Revocable Trust
21 Blossom Street
Portsmouth, NH 03801

Susan E. Lassen, Trustee
Lassen Family Revocable Trust
34 Blossom Street
Portsmouth, NH 03801

Scott A. Lupkas
33 Blossom Street
Portsmouth, NH 03801

Guy D. Spiers and Elizabeth R. Spiers, Trustees
3A Trust
241 South Street
Portsmouth, NH 03801

By their Attorneys,

ORR & RENO, P.A.

By: */s/ Jeremy D. Eggleton*

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STATE OF NEW HAMPSHIRE

CITY OF PORTSMOUTH

ZONING BOARD OF ADJUSTMENT

IN RE: Appeal from Determination Letter (July 23, 2026) and Supplemental Determination Letter (August 6, 2026) of the Chief Building Inspector, City of Portsmouth

Property: 28 Blossom Street, Portsmouth, NH 03801 (MBLU 0111/0040/0000)

Owners of Record: Burke-Zabarsky Revocable Trust; Hannah & Paul J. Burke, Trustees

NOTICE OF APPEAL AND STATEMENT OF GROUNDS

(Filed pursuant to RSA 674:33; RSA 676:5; and the Portsmouth Zoning Ordinance)

TO: The Zoning Board of Adjustment, City of Portsmouth, New Hampshire

The undersigned, Kathleen B. Logan and Kent A. Logan, Trustees of the Kathleen B. Logan Revocable Trust, of 21 Blossom Street; Susan E. Lassen, Trustee of the Lassen Family Revocable Trust, of 34 Blossom Street; Scott A. Lupkas, of 33 Blossom Street; and Guy D. Spiers and Elizabeth R. Spiers, Trustees of the 3A Trust, of 241 South Street, all of Portsmouth, New Hampshire (collectively, "Appellants"), being abutters within the meaning of RSA 676:5, I, and RSA 672:3, hereby appeal to this Board the determination of the Chief Building Inspector set forth in (1) the Determination Letter dated July 23, 2026, and (2) the Supplemental Determination Letter dated August 6, 2026 (together, the "Determination"), both concerning the property at 28 Blossom Street, Portsmouth, New Hampshire ("the Property"). This appeal is timely filed within thirty (30) days of both the Determination Letter and the Supplemental Determination Letter, as required by RSA 676:5, I.

I. STATEMENT OF STANDING

Appellants own and/or occupy property that abuts, or is within the notice radius of, 28 Blossom Street, and are directly and specially affected by the Determination, which authorizes continued and expanded residential occupancy of a structure historically used as an accessory artist's studio, with attendant impacts on neighborhood character, on-street parking, density, and life

safety in the General Residence B ("GRB") zoning district. Appellants therefore have standing to bring this appeal as abutters under RSA 676:5, I, and RSA 672:3, and as aggrieved parties within the meaning of RSA 674:33, I.

II. RELATIONSHIP TO CONCURRENT BUILDING CODE APPEAL

A separate appeal has also been filed with the New Hampshire Building Code Review Board addressing building-code classification questions under Section 113.1.1 of the New Hampshire State Building Code, including whether the Chief Building Inspector correctly applied the IBC definitions of "sleeping unit" and "dwelling unit" and properly invoked the Section 104.2.4 modification authority. That appeal does not raise, and is not intended to waive, any of the zoning grounds presented here.

III. STATEMENT OF FACTS

- 28 Blossom Street is improved with a two-family dwelling that received a variance in 1987 authorizing a third residential dwelling unit. A barn structure on the Property contains a former hennery converted decades ago into an artist's studio by Melvin and Joyce Zabarsky, the parents of current co-owner Hannah Burke.
- Following the deaths of Mr. and Mrs. Zabarsky in 2019, Hannah Burke acquired an interest in the Property and later conveyed it to the Burke-Zabarsky Revocable Trust, of which she and her husband, Paul Burke, are trustees.
- Beginning in 2023, the Burkes began housing their adult son, Christopher, in the studio. When not confined in jail or committed to a mental health facility, he has been regularly housed in the studio, including to the present day. Neighbors report that, to their knowledge, the studio was never previously used as "overflow space for family and friends," as the owners now represent.
- Blossom Street neighbors have, for approximately three years, repeatedly raised concerns with City officials regarding the nonconforming residential use of the studio and regarding an unpermitted shed constructed by Paul Burke on the southeast side of the barn — a structure that does not appear on the Property's tax card to this day.

- On July 23, 2026, without public notice, hearing, or an opportunity for abutters to be heard, the Chief Building Inspector issued the Determination Letter, classifying the studio as an "R2 non-transient sleeping unit" under the 2024 International Building Code, subject to listed conditions, and citing Section 104.2.4 of the New Hampshire State Building Code (the "modifications" provision) as partial authority.
- On August 6, 2026, the Chief Building Inspector issued a Supplemental Determination Letter purporting to clarify that the July 23 letter effected no zoning reclassification, while nonetheless confirming that the studio "may continue to be used as an R-2 non-transient sleeping unit" and that the Planning Director "concurs" in that conclusion.
- As of the date of this appeal, Christopher Burke continues to be housed in the studio notwithstanding that one or more conditions of the Determination — including installation of a shower and other life-safety items — remain unsatisfied, and notwithstanding that no certificate of occupancy has issued.

IV. GROUNDS FOR APPEAL

A. The Chief Building Inspector Exceeded His Authority and Usurped the Zoning Board's Exclusive Jurisdiction

Under RSA 674:33, I, the Zoning Board of Adjustment holds exclusive authority to grant variances and to hear and decide appeals of determinations that affect the application of the zoning ordinance. The Chief Building Inspector's Section 104.2.4 authority is confined to the State Building Code and permits modification only of building-code requirements upon a finding of "practical difficulties" that does not lessen health, life-safety, or structural protections — it is not, and cannot be, a source of zoning authority.

Although the Supplemental Determination Letter disclaims any zoning reclassification, its practical and stated effect is to authorize a fourth, functionally independent sleeping arrangement in a building previously approved for only three dwelling units, subject only to building-code conditions. A determination that changes what may occupy a structure and how it may be used is a zoning determination in substance, regardless of the label placed on it. By resolving this question administratively — without notice, hearing, or referral to this Board — the Building

Inspector reached a decision reserved exclusively to the Board's variance and appeal jurisdiction under RSA 674:33 and RSA 676:5.

B. The Approved Use Is Not a Permitted Use in the GRB Zoning District

The Portsmouth Zoning Ordinance, consistent with the 2024 IBC definitions relied upon in the Determination itself, distinguishes a "dwelling unit" (which must contain permanent facilities for living, sleeping, eating, cooking, and sanitation) from a "sleeping unit" (which by definition lacks independent cooking facilities). A room or structure that provides only sleeping accommodations without a kitchen, and that operates with its own separate exterior egress, falls within the Ordinance's definition of a rooming, boarding, or co-living use rather than an accessory or incidental use of a dwelling. Rooming and boarding uses of this kind are not permitted by right in the GRB district. The Determination authorizes precisely this configuration — a non-transient sleeping unit with its own egress, prohibited only from containing a kitchen — without any of the zoning relief such a use requires.

C. The Determination Effectively Converts the Approved Three-Unit Building Into an Unauthorized Rooming, Boarding, or Co-Living Arrangement Not Permitted Outside the Downtown District

The City Council's recently adopted Co-Living Zoning Amendment demonstrates that the City itself recognizes independent sleeping units of this type as a distinct land use requiring specific zoning authorization — including tailored parking ratios — and confines that use to higher-intensity mixed-use districts such as CD4. The Council's deliberate choice not to extend that use to low- and medium-density residential districts such as GRB confirms, by clear implication, that a co-living or rooming arrangement may not be piecemealed into an existing three-family structure in the GRB district through an administrative building-code determination. The Determination effectively grants by administrative letter what the Council itself has declined to authorize by ordinance in this district.

D. The Studio Cannot Lawfully Be Treated as an Accessory Use Tied to the Separate Parcel at 161 South Street

Both Determination Letters justify the arrangement, in part, on the premise that Christopher Burke's "primary residence" is 161 South Street — a separate, non-contiguous parcel owned by his parents — where he purportedly eats, bathes, and stores his belongings, while he sleeps at the

Property. An accessory use or structure must be incidental to, and located on the same lot as, the principal use it serves; it cannot be constituted by combining facilities on one lot with sleeping quarters on an entirely different, geographically separated lot under separate ownership and separate tax assessment. The Ordinance recognizes no such cross-lot accessory-use arrangement, and the Determination's reliance on activities occurring at 161 South Street to legitimize residential occupancy at 28 Blossom Street is not a cognizable basis for approval under the Ordinance.

The Determination compounds this defect by describing 161 South Street as being "in proximity" to the Property, as though geographic nearness could substitute for the same-lot requirement that defines an accessory use under the Ordinance. It cannot. 161 South Street and 28 Blossom Street are separate, distinctly deeded and separately assessed parcels, each with its own MBLU designation, and no lot-line consolidation, lot merger, or other action has combined them into a single zoning lot. Proximity between two parcels, however close, does not create the unity of lot required for one parcel's facilities to serve as the accessory support for a use located on another.

Nor is this defect merely academic. The Determination classifies the studio itself — not Christopher Burke personally, and not the current ownership arrangement — as an R2 non-transient sleeping unit, a classification that would run with 28 Blossom Street and remain in effect for any future owner or occupant regardless of any continuing connection to 161 South Street. Nothing in the Determination requires common ownership of the two parcels, requires the sleeping unit's occupant to have any relationship to 161 South Street, or provides for reconsideration if the two properties are ever conveyed separately. Should the Burkes sell 28 Blossom Street alone, sell 161 South Street alone, or sell the two properties to different purchasers — any of which they remain free to do at any time — the entire factual predicate for the Determination would disappear, yet the studio would continue to exist as an approved fourth sleeping unit, permanently detached from the very arrangement used to justify it. That the Determination's central premise cannot survive the ordinary, foreseeable alienation of either parcel confirms that it was never a proper accessory-use analysis in the first place, and illustrates why a permanent change in occupancy classification of this kind must be evaluated by this Board — which can consider the use on a durable, parcel-specific basis — rather than rest on an

administrative letter premised on a currently convenient but legally unenforceable arrangement between two separately alienable properties.

E. The Determination Fails to Address Density, Parking, and Historic District Requirements Triggered by the Use

Even if a sleeping unit of this kind were otherwise permissible, the Determination does not address, and the Building Inspector had no authority to waive, the following additional zoning and land-use requirements implicated by the proposed occupancy:

- Density: The GRB district imposes a minimum lot area per dwelling or sleeping unit. Adding a fourth independent living arrangement increases the intensity of use beyond what was approved by the 1987 variance and may require a dimensional variance.
- Parking: Off-street parking on Blossom Street is, and has long been, a documented problem. An additional independent sleeping unit triggers additional off-street parking requirements that the Property may be unable to satisfy without a parking variance.
- Historic District Commission review: The Property lies within Portsmouth's Historic District. Because the studio has its own separate exterior egress, any exterior modifications required to bring the space into compliance with the R-2 life-safety conditions in the Determination — egress doors, emergency escape openings, exterior lighting — require a Certificate of Approval from the Historic District Commission before such work may proceed.
- Unresolved nonconforming use and unpermitted construction: The Determination does not address the unpermitted shed attached to the barn, which does not appear on the Property's tax card, or the multi-year history of unresolved neighbor complaints regarding nonconforming use of the Property, both of which bear directly on whether any further intensification of use should be authorized.

V. RELIEF REQUESTED

For the foregoing reasons, Appellants respectfully request that the Board:

1. Accept jurisdiction over this appeal pursuant to RSA 674:33, I, and RSA 676:5;

2. Reverse and vacate the Determination Letter dated July 23, 2026, and the Supplemental Determination Letter dated August 6, 2026, in their entirety;

3. Declare that the proposed non-transient sleeping unit at 28 Blossom Street constitutes a change of use requiring, at a minimum, a Use Variance, a Dimensional Variance, and a Parking Variance from this Board before any such use may lawfully continue;

4. Direct that no certificate of occupancy or building permit issue for the studio unless and until the owners obtain all required approvals from this Board, the Historic District Commission, and the Planning Board, in that sequence; and

5. Grant such other and further relief as the Board deems just and proper, including referral of the unpermitted shed and ongoing nonconforming occupancy to the City's code enforcement office.

VI. EXHIBITS

- Exhibit A — Determination Letter, City of Portsmouth Building Department, dated July 23, 2026
- Exhibit B — Supplemental Determination Letter, City of Portsmouth Building Department, dated August 6, 2026

Respectfully submitted,

Kathleen B. Logan, Trustee

Kathleen B. Logan and Kent A. Logan, Trustees
Kathleen B. Logan Revocable Trust
21 Blossom Street
Portsmouth, NH 03801

Susan E. Lassen, Trustee
Lassen Family Revocable Trust
34 Blossom Street
Portsmouth, NH 03801

Scott A. Lupkas
33 Blossom Street
Portsmouth, NH 03801

Guy D. Spiers and Elizabeth R. Spiers, Trustees
3A Trust
241 South Street
Portsmouth, NH 03801

Date: 8-20-2026

Inspection Department
Shanti R. Wolph, Chief Building Inspector

July 23, 2026

To: Hannah and Paul Burke, 161 South St., Portsmouth, NH 03801
Subject: Official Determination Regarding Occupancy Classification
Property Address: 28 Blossom St., Portsmouth, NH MBlu: 0111/ 0040/ 0000/ /

Determination Letter

This letter serves as the official determination of the City of Portsmouth Building Department regarding the occupancy classification and permissible use of the structure/art studio (studio) attached to the end dwelling at 28 Blossom Street, Portsmouth, New Hampshire.

For context, the property is owned by Burke-Zabarsky REV TST and Burke Hannah & Paul J TTES. In 1987, the two-family dwelling located at 28 Blossom Street was granted a variance authorizing a third residential dwelling unit. The studio is attached to the side of the third dwelling unit, and, according to the owners, has historically been used as overflow space for family and friends for more than 50 years. The owners have represented that the studio has not been, and is not currently being, rented, but is instead being used as a safe, quiet space for the Burkes' cognitively impaired adult son. He spends time in the studio primarily in the evening. During the day, he is at his parents' house, where he eats his meals, washes his clothes, and stores his belongings.

The Building Department received a complaint from an abutter asserting that the studio was not being used lawfully because it was being used for sleeping. The complaint also raised safety concerns related to the current occupant. The Department reviewed the matter for purposes of determining whether the existing space may be classified and regulated as a sleeping unit without creating or authorizing a fourth dwelling unit on the property.

As part of this review, Shanti Wolph, Chief Building Inspector for the City of Portsmouth, consulted with Phil Grankowski of the International Code Council (ICC) regarding the appropriate occupancy classification for the existing space. The purpose of the consultation was to determine whether the space could be classified in a manner that permits sleeping while avoiding designation as a separate dwelling unit, which would require separate zoning review and approval.

Upon review, the Building Department determines that the studio may be classified as an **R2 non-transient sleeping unit**, rather than as a dwelling unit, provided that the conditions set forth below are satisfied. This classification recognizes the historical use of the structure as accessory

overflow space for family and friends and avoids authorizing permanent cooking facilities or any independent dwelling use.

While the studio may be able to satisfy the sleeping-unit requirements, it is attached to a rental property. The son's parents reside on a separate property, which is in proximity. Therefore, an alternative code path has also been considered.

Basis for Determination:

1) 2024 IBC:

A] SLEEPING UNIT. A single unit that provides rooms or spaces for one or more persons, includes permanent provisions for sleeping and can include provisions for living, eating and either sanitation or kitchen facilities but not both. Such rooms and spaces that are also part of a dwelling unit are not sleeping units.

Commentary to the above definition:

❖ *This definition is included to coordinate the Fair Housing Act guidelines with the code. The definition for "Sleeping unit" clarifies the differences between sleeping units and dwelling units. In addition, using the term "sleeping unit" for spaces where people sleep will replace a multitude of other terms (e.g., patient room, cell, guestroom) so that there is consistent application across occupancies. Some examples of sleeping units are hotel guest rooms; bedrooms in different types of congregate living facilities; patient sleeping rooms in hospitals, nursing homes or assisted living facilities; or housing cells in a jail. Another example would be a studio apartment with a kitchenette (i.e., countertop microwave, sink, refrigerator). Since the cooking arrangements are not the traditional permanent appliances (i.e., a range), this configuration would be considered a sleeping unit and not a dwelling unit. As defined in the code, a "Dwelling unit" must contain permanent facilities for living, sleeping, eating, cooking and sanitation.*

2) 104.2.4 of the NH State Building Code

In addition, I relied, in part, on the authority provided under 104.2.4 of the NH State Building Code, including amendments, which states as follows:

Modifications. Where there are practical difficulties involved in carrying out the provisions of this code, the building official shall have the authority to grant modifications for individual cases, upon application of the owner or the owner's authorized agent, provided that the building official shall first find that special individual reason makes the strict letter of this code impractical, the modification is in compliance with the intent and purpose of this code and that such modification does not lessen health, accessibility, life and fire safety or structural requirements. The details of action granting modifications shall be recorded and entered in the files of the department of building safety.

Commentary to the above code section:

❖ *The building official may amend or make exceptions to the code as needed where strict compliance is impractical. Only the building official has authority to grant modifications. Consideration of a particular difficulty is to be based on the application of the owner and a demonstration that the purpose of the code is accomplished. This section is not intended to permit setting aside or ignoring a code provision; rather, it is intended to provide acceptance of equivalent protection. Such modifications do not, however, extend to actions that are necessary to correct violations of the code. In other words, a code violation or the expense of correcting one cannot constitute a practical difficulty.*

Conditions of Approval:

- **Plumbing:** The studio currently contains a water closet and lavatory. A shower shall be installed to satisfy the hygiene requirements applicable to an R2 non-transient sleeping unit. Permanent cooking facilities shall not be installed or maintained in the studio.
- **Life Safety:** The studio shall have compliant means of egress and emergency escape and rescue openings. Smoke and carbon monoxide detectors shall be installed and maintained. The existing two-hour fire separation from the adjacent dwelling, established during a previous renovation, shall be maintained.
- **Building Systems:** The heating, electrical, and insulation systems shall be suitable for the approved use and shall comply with applicable code requirements.
- **Use Limitation:** The studio is approved only as an R2 non-transient sleeping unit and shall not be rented, leased, or otherwise used as an independent dwelling unit.
- **Cooking Facilities:** The studio shall not contain permanent cooking facilities, including a range or other equipment that would establish the space as a dwelling unit.

Conclusion:

Based on the foregoing, the Building Department determines that the studio may continue to be used as an R2 non-transient sleeping unit, provided that all conditions listed above are satisfied and maintained. This determination does not authorize the creation of a fourth dwelling unit, does not authorize rental occupancy of the studio, and does not waive any separate zoning, building, fire, life safety, health, or accessibility requirements that may apply. Any certificate of occupancy issued for the studio shall include a condition stating that the unit is approved for non-transient sleeping use only and shall not be rented or used as an independent dwelling unit.

Appeal Process:

SECTION 113 of the NH State Building Code, including amendments

Means of Appeals: *In order to hear and decide appeals of orders, decisions or determinations made by the building official relative to the application and interpretation of this code, the local jurisdiction is permitted to create a board of appeals per RSA 155-A:3. The board of appeals shall be appointed by the applicable governing authority and shall hold office at its pleasure. The board*

shall adopt rules of procedure for conducting its business and shall render all decisions and findings in writing to the appellant with a duplicate copy to the building official.

Currently, Portsmouth does not have a local board of appeals, therefore, the following applies.

113.1.1. Should the local jurisdiction elect not to create a board of appeals, the Building Code Review Board shall hear appeals of orders, decisions, or determinations made by the local building official relative to the application and interpretation of the state building code and state fire code as defined in RSA 155-A:1 per RSA 155-A:11-b.

113.2 Limitations on authority. An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this code do not fully apply or an equivalent or better form of construction is proposed. The board shall not have authority to waive requirements of this code.

Appeals of a local building official shall be filed within Thirty (30) days of the final determination. The Board typically meets monthly, at 10 a.m. on the second Friday of the month at 33 Hazen Drive, 2nd floor conference room in Concord, NH.

The State Building Code Review Board:

- **Physical Address**
  110 Smokey Bear Blvd. Concord, NH
- **Mailing Address**
  33 Hazen Drive. Concord, NH 03305
- **Phone**(603) 223-4231
- **Email** bldgcodebrd@dos.nh.gov

Thank you,

Shanti Wolph, Chief Building Inspector, City of Portsmouth

cc: Susan Morrell, City of Portsmouth City Attorney
Trevor P. McCourt, City of Portsmouth Deputy City Attorney
Jason Page, City of Portsmouth Legal Enforcement Officer

Inspection Department
Shanti R. Wolph, Chief Building Inspector

August 6, 2026

To: Hannah and Paul Burke, 161 South St., Portsmouth, NH 03801
Subject: Supplement to Official Determination Regarding Occupancy Classification.
Property Address: 28 Blossom St., Portsmouth, NH MBlu: 0111/ 0040/ 0000/ /

Supplemental Letter

This supplemental letter clarifies the City's prior correspondence regarding the occupancy classification of the existing art studio at 28 Blossom Street. The prior determination was not intended to limit, reclassify, or otherwise change the zoning status of the space. Rather, it identified how the space is currently being used from a building code and life-safety perspective. Because "sleeping unit" is a building code term and is not a separate zoning classification under the Portsmouth Zoning Ordinance, no zoning reclassification has occurred and no zoning variance is required.

Summary Highlights

- **Occupancy Determination:** The existing art studio attached to the three-family apartment building may continue to be used as an R-2 non-transient sleeping unit for building code purposes.
- **Safety Requirements:** Continued use is contingent upon the installation and maintenance of all life-safety items identified in the initial letter.
- **Prohibited Uses:** The studio may not be rented, leased, or used as an independent dwelling unit. Permanent cooking facilities, including ranges or similar equipment, are prohibited to prevent the space from being classified as a dwelling unit.
- **Zoning and Building Code:** From a zoning perspective, the space remains a preexisting residential art studio. The Portsmouth Zoning Ordinance does not prohibit periodic or nightly sleeping by the owner or occupant, provided the space is not used as an independent living unit.
- **Departmental Coordination:** Planning Director Peter Britz concurs with this interpretation and with the distinction between building code life-safety requirements and zoning classification.

Detailed Analysis

The "Sleeping Unit" Distinction: This clarification is based on the specific use of the studio by the owners' son. Although he may spend nights in the studio, his primary residence remains 161 South Street, where he bathes, eats meals, and keeps his personal belongings. The studio does not contain the facilities necessary to function as an independent dwelling unit, such as

permanent cooking or bathing facilities. However, because the space is used for sleeping, it is treated as a sleeping unit for building code purposes and must comply with applicable life-safety requirements.

Regulatory Rationale

- **Building Code Perspective:** The building code focuses on life safety. If a space is used for sleeping, even periodically, it must satisfy the applicable R-2 safety requirements, including detection and egress.
- **Zoning and Assessing Perspective:** I have been advised that the space has existed for more than 50 years and therefore, it will continue to be recognized, assessed, and treated as a residential art studio. The City's records from their prior Zoning Approval and Assessing records both show it as a barn/art studio.
- **Legal Safeguards:** Prohibiting permanent cooking facilities helps ensure that the space is not converted into an unauthorized fourth dwelling unit under both the Building Code and the Zoning Ordinance.

Thank you,

Shanti Wolph

Shanti Wolph, Chief Building Inspector, City of Portsmouth

Shanti Wolph on behalf of Peter Britz

Peter Britz, Director of Planning and Sustainability

cc: Karen Conard, City of Portsmouth City Manager
Susan Morrell, City of Portsmouth City Attorney
Trevor P. McCourt, City of Portsmouth Deputy City Attorney
Jason Page, City of Portsmouth Legal Enforcement Officer

INDEX OF RECORD+
FOR
CITY OF PORTSMOUTH INSPECTION DIRECTOR SHANTI WOLPH

NEW HAMPSHIRE STATE BUILDING CODE REVIEW BOARD
Docket No. 2026-4. Appeal by Kathleen B. Logan and Kent A. Logan; Susan E. Lassen; Scott A. Lupkas; Guy D. Spiers and Elizabeth R. Spiers, Appellants, of the City of Portsmouth Building Official in Matter #2026-4, 28 Blossom Street, Portsmouth, NH 03801

INDEX OF CERTIFIED RECORD

Tab	Document / Record Description	Record Page(s)
1	Certification Page	1
2	06/18/2026 — Cease and Desist Letter Sent from Inspections Director Shanti Wolph to Hannah and Paul Burke (The Burkes). The purpose of the letter was to ensure that the art studio was not being used as a dwelling unit.	2-3
3	06/19/2026 — Email from The Burkes Request for the appeal process.	4
4	06/22/2026 — Letter from Inspections Director Explanation of the appeal and next step process.	5-6
5	06/30/2026 — Email attachment from the Burkes This document explains why the appeal is requested and includes the Burkes' letter describing the studio's use over the past 50 years and most recently.	7-8
6	06/30/2026 — Email attachment from Inspections Director Acknowledgement of the most recent communication from the Burkes as well as providing some potential solutions. The letter included a request to meet at City Hall to discuss the different options.	9-10
7	07/10/2026 — Email from Inspections Director Email sent to the International Code Council requesting guidance on a code interpretation regarding the studio's use.	11-12

8	07/14/2026 — Email from Inspections Director Shanti Wolph The email informed the Burkes that a conversation had taken place with one of the ICC plan reviewers and included a meeting request.	13
9	07/23/2026 —Letter emailed to the Burkes The letter explained the code path as well as the requirements needed to allow the art studio to continue being used as described.	14–17
10	08/06/2026 — Supplemental Letter This letter provided clarification that the studio was not being re-classified but simply identified to provide a path for life safety requirements.	18-19
11	Inspection Results dated 07/29/2026 Initial inspection with the goal of ensuring certain life safety items were in place	20
12	Inspection Results dated 08/13/2026 Inspection to confirm that certain life safety items had been completed	21

I, Shanti Wolph, Inspections Director for the City of Portsmouth, New Hampshire, hereby certify as follows:

I have reviewed and compiled the materials maintained by the Inspections Department concerning the interpretation of the art studio located at 28 Blossom Street as an R-2 non-transient sleeping unit. To the best of my knowledge, the certified record includes all communications relevant to that interpretation and to my decision. The record does not include every email concerning 28 Blossom Street, because the request was limited to records relevant to my decision.

I certify that the foregoing is true and accurate to the best of my knowledge and is based on the records maintained by the Inspections Department.

Dated: 9/2, 2026

Shanti Wolph
Inspections Director
City of Portsmouth, New Hampshire

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM

On this 2nd day of September, 2026, before me personally appeared Shanti Wolph, known to me or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument, and acknowledged that she executed the same for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal.

Notary Public/Justice of the Peace
My Commission Expires: March 27, 2029

SALLY A. KELLAR
STATE OF
-MY-
COMMISSION
EXPIRES
MARCH 27, 2029
NEW HAMPSHIRE
JUSTICE OF THE PEACE

City of Portsmouth

Inspection Department
Shanti R. Wolph, Chief Building Inspector

Cease and Desist

June 18, 2026

To: Hannah and Paul Burke, 161 South St., Portsmouth, NH 03801
Subject: Improper Occupancy
Property Address: 28 Blossom St., Portsmouth, NH MBlu: 0111/0040/0000/

Dear Mr. and Mrs. Burke,

It has been brought to our attention that a building on the property you own at 28 Blossom St. in Portsmouth, NH, is being occupied as a dwelling unit or sleeping unit. This building has not been approved for use as a dwelling unit or sleeping unit.

You are in violation of the State of New Hampshire Building Code, specifically:

2021 IBC
[A] 111.1 Change of occupancy.
A building or structure shall not be used or occupied in whole or in part, and a change of occupancy of a building or structure or portion thereof shall not be made, until the building official has issued a certificate of occupancy therefore as provided herein. Issuance of a certificate of occupancy shall not be construed as an approval of a violation of the provisions of this code or of other ordinances of the jurisdiction. Certificates presuming to give authority to violate or cancel the provisions of this code or other ordinances of the jurisdiction shall not be valid.

To avoid immediate fines and legal action, the following is recommended:

Option 1: No later than July 2, 2026, confirm that the building is not being used as a dwelling unit or sleeping unit. This confirmation will require an inspection by a City official.

OR

Option 2: In addition to complying with Option 1, apply for a building permit to convert the building to a dwelling unit. This conversion would likely require a variance due to the nonconforming use of multiple dwellings on a single parcel. Once the building permit has

been approved, an additional deadline will be established for bringing the building into compliance.

Starting on the date of this notice, the City will assess a **statutory penalty of $275 per day** for each day this code violation remains unresolved. If you remedy this violation in accordance with the timeline set forth in Option 1 or Option 2, the City will waive this statutory penalty. If you fail to remedy this serious code violation within the applicable timeline, you shall be responsible for payment of the full penalty, and the City reserves the right to bring an action in a court of competent jurisdiction to enforce this penalty. Nothing in this letter shall be read to waive the City's right to assess any other penalty or fine or to take further legal action it may identify as applicable in the future.

Respectfully,

Shanti Wolph, Chief Building Inspector, City of Portsmouth

cc: Susan Morrell, City of Portsmouth City Attorney
Trevor P. McCourt, City of Portsmouth Deputy City Attorney
Jason Page, City of Portsmouth Zoning Officer

Outlook

Webform submission from: Building Code Board of Appeals > Body Blocks

From City of Portsmouth <webmaster@portsmouthnh.gov>
Date Fri 6/19/2026 8:51 AM
To Shanti R. Wolph <srwolph@portsmouthnh.gov>

Submitted on Fri, 06/19/2026 - 08:51

Submitted by: Anonymous

Submitted values are:

Name
Paul and Hannah Burke

Email
classicbd@comcast.net

Subject
Appeal assumed code violation

Message
We are requesting an appeal to a Cease and Desist Order we received, based on a complaint by a malicious neighbor. The decision was based on one sided, biased information to cause harm to our family. We have the right to address the facts in this complex situation. Please advise to our next course of action.

bcc-email
srwolph@portsmouthnh.gov

City of Portsmouth

Inspection Department
Shanti R. Wolph, Chief Building Inspector

June 22, 2026

To: Hannah and Paul Burke, 161 South St., Portsmouth, NH 03801
VIA Email (classicbd@comcast.net)
Subject: Improper Occupancy
Property Address: 28 Blossom St., Portsmouth, NH MBlu: 0111/0040/0000/

Dear Mr. and Mrs. Burke,

Thank you for your prompt response regarding the cease-and-desist letter concerning the alleged improper occupancy of the structure located at 28 Blossom Street in Portsmouth, New Hampshire.

I understand that you are seeking information regarding the appeal process and the next steps available. At this point, there are two primary ways to proceed:

1. You may demonstrate that the structure is not being occupied. If you wish to pursue this option, I am available to meet you at the property and conduct a brief walkthrough to confirm the current condition and use of the structure.
2. You may file an appeal of the administrative decision. The matter will be heard by the Portsmouth Building Code Board of Appeals. In filing any appeal, it is important that you clearly identify the specific issue being appealed. For example, please specify whether you are contesting my interpretation or application of the building code, or whether you are asserting that the structure is not, in fact, being occupied. The cease-and-desist letter was issued after I received information from a Portsmouth Police Officer indicating that your son had stated he was living in the structure.

Please advise how you would like to proceed. If you would like to schedule a walkthrough, please provide several available dates and times. If you intend to file an appeal, please identify the specific decision or determination you are appealing

Respectfully,

Shanti Wolph, Chief Building Inspector, City of Portsmouth

cc: Susan Morrell, City of Portsmouth City Attorney
Trevor P. McCourt, City of Portsmouth Deputy City Attorney
Jason Page, City of Portsmouth Legal Enforcement Officer

6/30/2026

Dear Mr. Wolph,

I assume you have received the email that we sent regarding the studio space. We would like to file an appeal based on the fact that the space has been used in the same manner for over five decades. Furthermore our son has a disability. We are aware that a neighbor across the street from the property was able to get a variance for construction, based on the fact that her husband was disabled.

We also find it hard to believe that a police officer reported a code violation. The Portsmouth Police Department have been nothing but supportive and compassionate towards us, our son and his challenges.

We are available to meet Wednesday or Thursday.

Paul and Hannah Burke

The "Studio"
28 Blossom Street
Portsmouth, NH

Dear Mr. Wolph,

I wanted to clarify the use of this space. For the over fifty years the studio has been used in the same manner. It was originally my Dad's art studio, with storage for his art, a sitting area and a half bath in the attic area. It was also a space for family to stay when in transition. Today it lives on as a multi use creative space, with a small shop, a writing area, a drafting/art studio with a sitting area. There is no bedroom, kitchen or shower. It also stores my parents art. It has been a sanctuary many times for family members and friends.

Most recently our son, who has a medical condition, has been utilizing the space when he is not at our home, which is just around the corner. He has his meals, showers and has all of his clothing at our house. Due to his condition it is important that he have his own quiet space at times. There are nights that he sleeps in the studio, as many others have. We last utilized it ourselves when we were caretaking my Dad shortly before his passing. It is NOT an apartment and rent has never been received for the space. If the City denies us the right to have our son sleep in the studio, there will be no place for him to live. Perhaps none of you have been in the agonizing position of finding a safe place for a loved one who has mental health challenges. NH has nothing! Believe me, I have searched far and wide for options. This arrangement allows for us to have oversight and support our son.

Furthermore, we pay $37,000.00 to the City for our property taxes! This is an enormous amount of our income and if the taxes continue to go up in this outrageous way, we will need to look at contingency plans.

Not every situation fits into the same box. It is not appropriate to take away the rights we have utilized within this space for over fifty years.

If we need a variance at this point, we will go through the steps to do so. Unfortunate that in a world where there are so many struggles, that this somehow gets on the list. No harm towards anyone, and a salvation for us and our son.

Sincerely,

Hannah and Paul Burke

City of Portsmouth

Inspection Department
Shanti R. Wolph, Chief Building Inspector

June 30, 2026

To: Hannah and Paul Burke, 161 South St., Portsmouth, NH 03801
Subject: Improper Occupancy
Property Address: 28 Blossom St., Portsmouth, NH MBlu: 0111/0040/0000/

Dear Mr. and Mrs. Burke,

Thank you for your most recent response. I appreciate your willingness to discuss this further, and I agree that it would be helpful to meet in person to review the available options and the applicable code and zoning requirements together.

For context, a sleeping unit as defined in section 202 of the NH State Building Code (the Building Code) is not permitted on a property unless it is contained within one of the occupancy classifications described in section 310.3 and table 2902.1 of the Building Code. For example, a hotel, motel, dormitory, etc,

Under Section 111.1, and Chapter 12 of the Building Code, the structure must meet the applicable requirements for a dwelling unit, including access to toilet, shower, and cooking facilities, as well as heat, light, ventilation, and other life-safety requirements.

An appeal of an administrative decision is generally available when a party believes that the Building Inspector has incorrectly interpreted or applied the applicable building code provisions. If you would like to appeal my decision, you can file that with the State Building Code Board of Review in Concord, NH.

If you are inclined to add the additional facilities needed for overnight occupancy, you would be creating a fourth dwelling unit on the property and you would need to apply for a variance to the Zoning Board of Adjustment, and possibly seek other zoning relief. Please note, that approval of a variance is discretionary and cannot be guaranteed. That said, if you would like to explore that option, City staff can help explain the application process and identify the materials that would be needed for submission.

Please let me know which days next week you are available to meet at City Hall. I would be glad to discuss the applicable requirements, answer questions, and review potential next steps with you.

Respectfully,

Shanti Wolph, Chief Building Inspector, City of Portsmouth

cc: Susan Morrell, City of Portsmouth City Attorney
Trevor P. McCourt, City of Portsmouth Deputy City Attorney
Jason Page, City of Portsmouth Legal EnforcementOfficer

Outlook

ICCTO-7725 Is this occupancy allowed?

From Jira Service Management Widget <jira@icc-ts.atlassian.net>
Date Fri 7/10/2026 12:50 PM
To Shanti R. Wolph <srwolph@portsmouthnh.gov>

Reply above this line.

Thank you for your code opinion request. Your request will be assigned to a member of the International Code Council's Technical Services team, who will follow-up to provide an answer or request additional information as soon as possible. You may reply to this email to add comments to your request.

Question Subject: Is this occupancy allowed?

Question Details: The property contains a two-family dwelling, with the first and second floors functioning as separate dwelling units. Attached to the side of the building is a former carriage house that has been converted into a dwelling unit. Attached to the carriage house is an additional structure identified as a "studio."

The property is currently recognized as a three-family building (Group R-2) with an attached studio, which the owner describes as a "relaxing space." The owner states that the studio has been used for more than 50 years as overflow space for guests when family and friends visit.

It is important to note that the owners do not reside on this property. They live nearby at a separate residence and rent the three dwelling units. Recently, the City received a complaint from an abutter alleging that someone was living in the studio. After speaking with the property owners, I learned that their son, who has a developmental disability, occasionally sleeps in the studio. According to the parents, he requires this separate space at night to help him remain calm and grounded.

The studio contains a toilet, sink, heat, emergency egress, smoke detectors, and other life-safety features. However, it does not contain a shower or cooking facilities. As such, it would not appear to meet the definition of a dwelling unit, though it may more closely resemble a sleeping unit.

The owners are understandably distressed by the situation, and I find myself in the difficult position of balancing their circumstances with my responsibility to administer and enforce the code. If the studio were clearly accessory to one of the dwelling units and used by the occupants of that unit, I do not believe there would be a significant issue. The challenge is that the studio does not appear to be accessory to any particular dwelling unit and is functioning as a stand-alone space.

The question I am struggling with is whether the son's regular overnight use of the studio constitutes a code violation. During the day, he returns to his parents' residence, where he eats, showers, and does laundry. The studio is used primarily as a place for him to sleep at night.

This is the code path that I had identified: Aa sleeping unit as defined in section 202 of the NH State Building Code (the Building Code) is not permitted on a property unless it is contained within one of the occupancy classifications described in section 310.3 and table 2902.1 of the Building Code. For example, a hotel, motel, dormitory, etc,

Under Section 111.1, and Chapter 12 of the Building Code, the structure must meet the applicable requirements for a dwelling unit, including access to toilet, shower, and cooking facilities, as well as heat, light, ventilation, and other life-safety requirements.

This is shared with srwolph@portsmouthnh.gov.

Outlook

28 Blossom- Follow-Up Regarding Art Studio and Meeting Request

From Shanti R. Wolph <srwolph@portsmouthnh.gov>
Date Tue 7/14/2026 2:53 PM
To Hannah Burke <classicbd@comcast.net>
Cc Susan G. Morrell <sgmorrell@portsmouthnh.gov>; Jason C. Page <jcpage@portsmouthnh.gov>; Abigail K. Cargile <akcargile@portsmouthnh.gov>

Good afternoon Mr. and Mrs. Burke,

As promised, I contacted one of the plan reviewers at the International Code Council (ICC), the organization that develops the model codes adopted by New Hampshire as part of the State Building Code.

After reviewing the configuration and current use of the art studio, the reviewer concluded that, with the addition of a shower, the space could qualify as an **R-2 non-transient sleeping unit**. This would allow the existing use of the studio to continue while also providing an overnight accommodation option for your son.

Section 104.11 of the building code provides an alternative approval path that allows the Building Official to approve alternative materials, designs, and methods of construction. In this case, it would provide a mechanism for approval based on humanitarian considerations and practical application, provided that the necessary life-safety features are in place.

To pursue this option, a licensed plumber would need to apply for a plumbing permit, and a building permit would also be required for the installation of a code-compliant shower. In addition, we would need to verify the presence of adequate heat, operational smoke and carbon monoxide alarms, and compliant means of egress.

In my opinion, this approach would not require a variance, as it would essentially formalize and bring into compliance an existing use of the space.

Would you be available on **Wednesday, July 22, at 2:00 p.m.** to meet with us in the Legal Department? The purpose of the meeting would be to finalize any remaining details and answer any questions you may have.

Thank you,

Shanti Wolph
Inspections Director/Chief Building Inspector
City of Portsmouth
(603)610-7261

City Hall Hours: Monday, 8:00 a.m. – 6:00 p.m.; Tuesday – Thursday, 8:00 a.m. – 4:30 p.m.; and Friday, 8:00 a.m. – 1:00 p.m.
(NOTE: If a holiday falls on a Monday, City Hall will be open until 6:00 p.m. on Tuesday)

The information in this message may be legally privileged and confidential. It is intended only for the use of the named individual. If you receive this communication in error, please notify me and delete the communication

Inspection Department
Shanti R. Wolph, Chief Building Inspector

July 23, 2026

To: Hannah and Paul Burke, 161 South St., Portsmouth, NH 03801
Subject: Official Determination Regarding Occupancy Classification
Property Address: 28 Blossom St., Portsmouth, NH MBlu: 0111/ 0040/ 0000/ /

Determination Letter

This letter serves as the official determination of the City of Portsmouth Building Department regarding the occupancy classification and permissible use of the structure/art studio (studio) attached to the end dwelling at 28 Blossom Street, Portsmouth, New Hampshire.

For context, the property is owned by Burke-Zabarsky REV TST and Burke Hannah & Paul J TTES. In 1987, the two-family dwelling located at 28 Blossom Street was granted a variance authorizing a third residential dwelling unit. The studio is attached to the side of the third dwelling unit, and, according to the owners, has historically been used as overflow space for family and friends for more than 50 years. The owners have represented that the studio has not been, and is not currently being, rented, but is instead being used as a safe, quiet space for the Burkes' cognitively impaired adult son. He spends time in the studio primarily in the evening. During the day, he is at his parents' house, where he eats his meals, washes his clothes, and stores his belongings.

The Building Department received a complaint from an abutter asserting that the studio was not being used lawfully because it was being used for sleeping. The complaint also raised safety concerns related to the current occupant. The Department reviewed the matter for purposes of determining whether the existing space may be classified and regulated as a sleeping unit without creating or authorizing a fourth dwelling unit on the property.

As part of this review, Shanti Wolph, Chief Building Inspector for the City of Portsmouth, consulted with Phil Grankowski of the International Code Council (ICC) regarding the appropriate occupancy classification for the existing space. The purpose of the consultation was to determine whether the space could be classified in a manner that permits sleeping while avoiding designation as a separate dwelling unit, which would require separate zoning review and approval.

Upon review, the Building Department determines that the studio may be classified as an **R2 non-transient sleeping unit**, rather than as a dwelling unit, provided that the conditions set forth below are satisfied. This classification recognizes the historical use of the structure as accessory

overflow space for family and friends and avoids authorizing permanent cooking facilities or any independent dwelling use.

While the studio may be able to satisfy the sleeping-unit requirements, it is attached to a rental property. The son's parents reside on a separate property, which is in proximity. Therefore, an alternative code path has also been considered.

Basis for Determination:

1) 2024 IBC. Section 202 Definitions:

A] SLEEPING UNIT. A single unit that provides rooms or spaces for one or more persons, includes permanent provisions for sleeping and can include provisions for living, eating and either sanitation or kitchen facilities but not both. Such rooms and spaces that are also part of a dwelling unit are not sleeping units.

Commentary to the above definition:

❖ *This definition is included to coordinate the Fair Housing Act guidelines with the code. The definition for "Sleeping unit" clarifies the differences between sleeping units and dwelling units. In addition, using the term "sleeping unit" for spaces where people sleep will replace a multitude of other terms (e.g., patient room, cell, guestroom) so that there is consistent application across occupancies. Some examples of sleeping units are hotel guest rooms; bedrooms in different types of congregate living facilities; patient sleeping rooms in hospitals, nursing homes or assisted living facilities; or housing cells in a jail. Another example would be a studio apartment with a kitchenette (i.e., countertop microwave, sink, refrigerator). Since the cooking arrangements are not the traditional permanent appliances (i.e., a range), this configuration would be considered a sleeping unit and not a dwelling unit. As defined in the code, a "Dwelling unit" must contain permanent facilities for living, sleeping, eating, cooking and sanitation.*

2) 104.2.4 of the NH State Building Code

In addition, I relied, in part, on the authority provided under 104.2.4 of the NH State Building Code, including amendments, which states as follows:

Modifications. Where there are practical difficulties involved in carrying out the provisions of this code, the building official shall have the authority to grant modifications for individual cases, upon application of the owner or the owner's authorized agent, provided that the building official shall first find that special individual reason makes the strict letter of this code impractical, the modification is in compliance with the intent and purpose of this code and that such modification does not lessen health, accessibility, life and fire safety or structural requirements. The details of action granting modifications shall be recorded and entered in the files of the department of building safety.

Commentary to the above code section:

❖ *The building official may amend or make exceptions to the code as needed where strict compliance is impractical. Only the building official has authority to grant modifications. Consideration of a particular difficulty is to be based on the application of the owner and a demonstration that the purpose of the code is accomplished. This section is not intended to permit setting aside or ignoring a code provision; rather, it is intended to provide acceptance of equivalent protection. Such modifications do not, however, extend to actions that are necessary to correct violations of the code. In other words, a code violation or the expense of correcting one cannot constitute a practical difficulty.*

Conditions of Approval:

- **Plumbing:** The studio currently contains a water closet and lavatory. A shower shall be installed to satisfy the hygiene requirements applicable to an R2 non-transient sleeping unit. Permanent cooking facilities shall not be installed or maintained in the studio.
- **Life Safety:** The studio shall have compliant means of egress and emergency escape and rescue openings. Smoke and carbon monoxide detectors shall be installed and maintained. The existing two-hour fire separation from the adjacent dwelling, established during a previous renovation, shall be maintained.
- **Building Systems:** The heating, electrical, and insulation systems shall be suitable for the approved use and shall comply with applicable code requirements.
- **Use Limitation:** The studio is approved only as an R2 non-transient sleeping unit and shall not be rented, leased, or otherwise used as an independent dwelling unit.
- **Cooking Facilities:** The studio shall not contain permanent cooking facilities, including a range or other equipment that would establish the space as a dwelling unit.

Conclusion:

Based on the foregoing, the Building Department determines that the studio may continue to be used as an R2 non-transient sleeping unit, provided that all conditions listed above are satisfied and maintained. This determination does not authorize the creation of a fourth dwelling unit, does not authorize rental occupancy of the studio, and does not waive any separate zoning, building, fire, life safety, health, or accessibility requirements that may apply. Any certificate of occupancy issued for the studio shall include a condition stating that the unit is approved for non-transient sleeping use only and shall not be rented or used as an independent dwelling unit.

Appeal Process:

SECTION 113 of the NH State Building Code, including amendments

Means of Appeals: *In order to hear and decide appeals of orders, decisions or determinations made by the building official relative to the application and interpretation of this code, the local jurisdiction is permitted to create a board of appeals per RSA 155-A:3. The board of appeals shall be appointed by the applicable governing authority and shall hold office at its pleasure. The board*

shall adopt rules of procedure for conducting its business and shall render all decisions and findings in writing to the appellant with a duplicate copy to the building official.

Currently, Portsmouth does not have a local board of appeals, therefore, the following applies.

113.1.1. Should the local jurisdiction elect not to create a board of appeals, the Building Code Review Board shall hear appeals of orders, decisions, or determinations made by the local building official relative to the application and interpretation of the state building code and state fire code as defined in RSA 155-A:1 per RSA 155-A:11-b.

113.2 Limitations on authority. An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this code do not fully apply or an equivalent or better form of construction is proposed. The board shall not have authority to waive requirements of this code.

Appeals of a local building official shall be filed within Thirty (30) days of the final determination. The Board typically meets monthly, at 10 a.m. on the second Friday of the month at 33 Hazen Drive, 2nd floor conference room in Concord, NH.

The State Building Code Review Board:

- **Physical Address**
  110 Smokey Bear Blvd. Concord, NH
- **Mailing Address**
  33 Hazen Drive. Concord, NH 03305
- **Phone**(603) 223-4231
- **Email** bldgcodebrd@dos.nh.gov

Thank you,

Shanti Wolph

Shanti Wolph, Chief Building Inspector, City of Portsmouth

cc: Susan Morrell, City of Portsmouth City Attorney
Trevor P. McCourt, City of Portsmouth Deputy City Attorney
Jason Page, City of Portsmouth Legal Enforcement Officer

Inspection Department
Shanti R. Wolph, Chief Building Inspector

August 6, 2026

To: Hannah and Paul Burke, 161 South St., Portsmouth, NH 03801
Subject: Supplement to Official Determination Regarding Occupancy Classification.
Property Address: 28 Blossom St., Portsmouth, NH MBlu: 0111/ 0040/ 0000/ /

Supplemental Letter

This supplemental letter clarifies the City's prior correspondence regarding the occupancy classification of the existing art studio at 28 Blossom Street. The prior determination was not intended to limit, reclassify, or otherwise change the zoning status of the space. Rather, it identified how the space is currently being used from a building code and life-safety perspective. Because "sleeping unit" is a building code term and is not a separate zoning classification under the Portsmouth Zoning Ordinance, no zoning reclassification has occurred and no zoning variance is required.

Summary Highlights

- **Occupancy Determination:** The existing art studio attached to the three-family apartment building may continue to be used as an R-2 non-transient sleeping unit for building code purposes.
- **Safety Requirements:** Continued use is contingent upon the installation and maintenance of all life-safety items identified in the initial letter.
- **Prohibited Uses:** The studio may not be rented, leased, or used as an independent dwelling unit. Permanent cooking facilities, including ranges or similar equipment, are prohibited to prevent the space from being classified as a dwelling unit.
- **Zoning and Building Code:** From a zoning perspective, the space remains a preexisting residential art studio. The Portsmouth Zoning Ordinance does not prohibit periodic or nightly sleeping by the owner or occupant, provided the space is not used as an independent living unit.
- **Departmental Coordination:** Planning Director Peter Britz concurs with this interpretation and with the distinction between building code life-safety requirements and zoning classification.

Detailed Analysis

The "Sleeping Unit" Distinction: This clarification is based on the specific use of the studio by the owners' son. Although he may spend nights in the studio, his primary residence remains 161 South Street, where he bathes, eats meals, and keeps his personal belongings. The studio does not contain the facilities necessary to function as an independent dwelling unit, such as

permanent cooking or bathing facilities. However, because the space is used for sleeping, it is treated as a sleeping unit for building code purposes and must comply with applicable life-safety requirements.

Regulatory Rationale

- **Building Code Perspective:** The building code focuses on life safety. If a space is used for sleeping, even periodically, it must satisfy the applicable R-2 safety requirements, including detection and egress.
- **Zoning and Assessing Perspective:** I have been advised that the space has existed for more than 50 years and therefore, it will continue to be recognized, assessed, and treated as a residential art studio. The City's records from their prior Zoning Approval and Assessing records both show it as a barn/art studio.
- **Legal Safeguards:** Prohibiting permanent cooking facilities helps ensure that the space is not converted into an unauthorized fourth dwelling unit under both the Building Code and the Zoning Ordinance.

Thank you,

Shanti Wolph, Chief Building Inspector, City of Portsmouth

Shanti Wolph on behalf of Peter Britz

Peter Britz, Director of Planning and Sustainability

cc: Karen Conard, City of Portsmouth City Manager
Susan Morrell, City of Portsmouth City Attorney
Trevor P. McCourt, City of Portsmouth Deputy City Attorney
Jason Page, City of Portsmouth Legal Enforcement Officer

Inspection Department
Shanti R. Wolph, Chief Building Inspector

July 29, 2026

To: Hannah and Paul Burke, 161 South St., Portsmouth, NH 03801
Subject: Inspection to Determine the Condition of the Studio
Property Address: 28 Blossom St., Portsmouth, NH MBlu: 0111/ 0040/ 0000/ /

Inspection Description
The site visit at the Art Studio of Hannah and Paul Burke served as a follow-up inspection to verify the conversion of an overflow/workshop space into an R-2 non-transient sleeping area. The inspection focused on life safety requirements and the installation of a new shower facility.

Inspection Findings & Requirements
The space was evaluated for habitability and code compliance. The following items were identified as necessary for the space to be considered complete:

- **Life Safety:** Installation of interconnected smoke and carbon monoxide detectors on every level of the structure.
- **Sanitation:** Installation of a shower (minimum 30x30 inches, though 36x36 was recommended for comfort) to complement the existing toilet and hand sink.
- **Finishing:** Sheetrock/drywall needs to be completed around the new shower area and the exposed insulation foam insulation needs to be covered with thermal ignition barrier.

The inspection is currently subject to a 30-day window regarding potential appeals or objections from third parties

Inspection Department
Shanti R. Wolph, Chief Building Inspector

August 13, 2026

To: Hannah and Paul Burke, 161 South St., Portsmouth, NH 03801
Subject: Studio Life Safety Inspection
Property Address: 28 Blossom St., Portsmouth, NH MBlu: 0111/ 0040/ 0000/ /

Inspection Findings & Requirements

1. Interconnected smoke/carbon monoxide detectors had been installed.
2. A thermal barrier had been installed over the exposed foam insulation.
3. A shower had not yet been installed.

Conclusion: The studio is safe to use.

To: CITY OF PORTSMOUTH
ZONING BOARD OF ADJUSTMENT

IN RE: Appeal from Determination Letter (July 23, 2026) and Supplemental Determination Letter (August 6, 2026) of the Chief Building Inspector, City of Portsmouth
Property: 28 Blossom Street, Portsmouth, NH 03801 (MBLU 0111/0040/0000)
Owners of Record: Burke-Zabarsky Revocable Trust; Hannah & Paul J. Burke, Trustees
ZBA Case No.: LU-26-114

Letter of Authorization for Representation by Counsel

Dear City of Portsmouth Board of Adjustment:

We, Kathleen B. Logan and Kent A. Logan, Trustees, Kathleen B. Logan Revocable Trust; Susan E. Lassen, Trustee, Lassen Family Revocable Trust; Scott A. Lupkas; and Guy D. Spiers and Elizabeth R. Spiers, Trustees, 3A Trust, hereby authorize Orr & Reno, P.A. (Jeremy D. Eggleton, Esq.) to represent us for the purposes of the above-referenced Appeal from Determination Letter (July 23, 2026) and Supplemental Determination Letter (August 6, 2026) of the Chief Building Inspector, City of Portsmouth, including appearing on our behalf at any requisite hearings of the Board.

Thank you in advance for your consideration of this matter.

Scott Lupkas — 10.14.2026
Signature — *Date*

Kathleen B Logan — 10/14/26
Signature — *Date*

Susan Lassen — 10.14.26
Signature — *Date*

Guy D. Spiers Elizabeth R. Spiers — 10/14/2026
Signature — *Date*

II. NEW BUSINESS

A. The request of **Emilyn Anne** and **Eben Kennedy (Owners)**, for property located at **1490 Islington Street** whereas relief is needed for construction of an addition and renovation of a single-family residence with an accessory dwelling unit to a two-family residence, which requires the following: 1) Variance from Section 10.440 to allow a two-family dwelling in the SRB District. Said property is located on Assessor Map 233 Lot 108 and lies within the Single Residence B (SRB) District. (LU-26-126)

Existing & Proposed Conditions

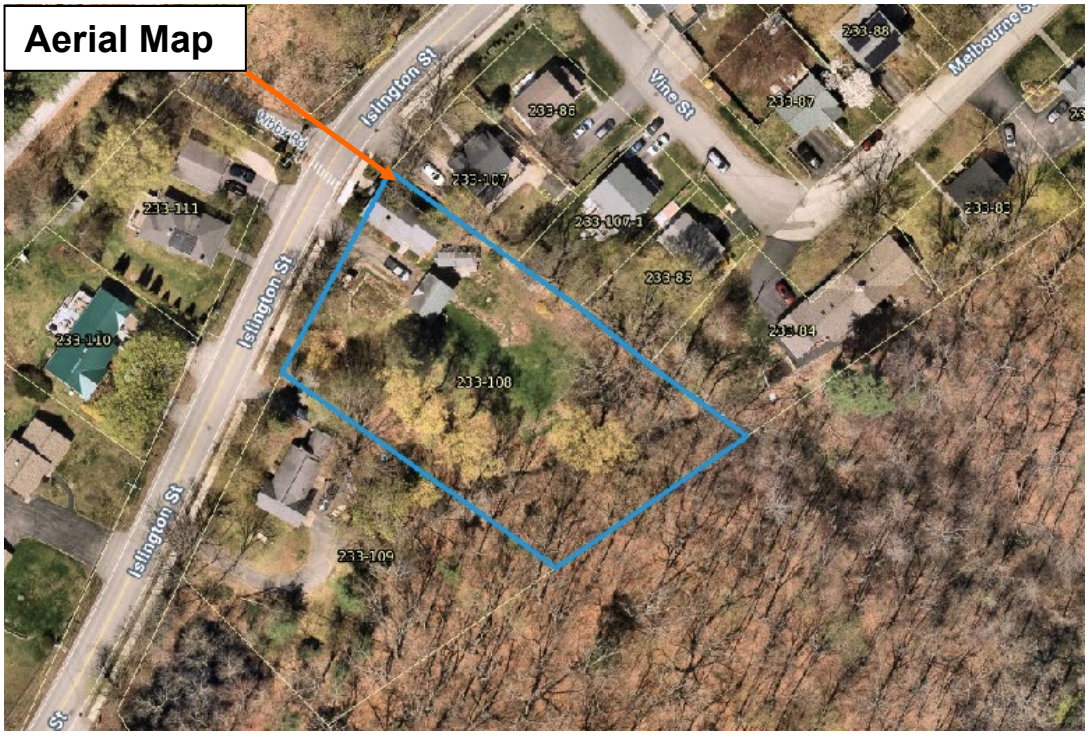
	Existing	Proposed	Permitted / Required
Land Use:	Single-family with an ADU	Two-family residence with addition	Primarily Residential
Lot area (sq. ft.):	36,590	36,590	15,000 min.
Lot Area per Dwelling Unit (sq. ft.):	36,590	18,295	15,000 min.
Frontage (ft.):	145	145	100 min.
Depth (ft.):	248	248	100 min.
Front Yard (ft.):	5	5	30 min.
Right Side Yard (ft.):	Barn: 79 House: 114	Barn: 79 House: 114	10 min.
Left Side Yard (ft.):	12	12	10 min.
Rear Yard (ft.):	176	151	30 min.
Building Coverage (%):	4	5	20 max.
Open Space Coverage (%):	>40	>40	40 min.
Height (ft.):	30	30	35 max.
Parking	6	6	1
Estimated Age of Structure:	1893	Variance request(s) shown in red.	

Other Permits/Approvals Required

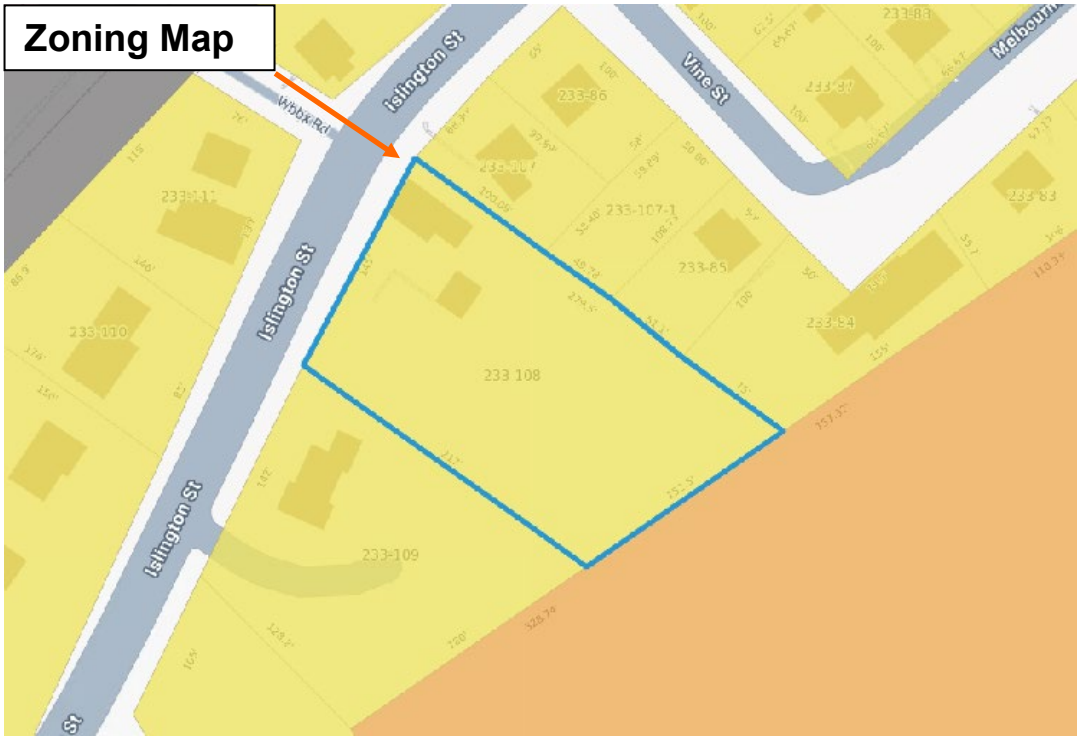
- Building Permit

Neighborhood Context

Aerial Map



Zoning Map



Previous Board of Adjustment Actions

- **July 18, 2017 -** A Variance from Section 10.521 to allow a 5' front yard setback for an existing structure where 30' is required. The Board voted to **grant** the request as presented and advertised.

Planning Department Comments

The applicant proposes constructing a one-story addition to the rear of the home and to convert the use from a single-family with an attached ADU to a two-family residence. The previous property owner received approval for an ADU on the first floor and the primary unit to be on the second floor. The proposed first floor unit will not comply with the 750 SF size requirement for an ADU with the proposed addition and therefore the applicant proposes to convert the use to a two-family and to occupy the first-floor unit.

Variance Review Criteria

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

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

10.235 Certain Representations Deemed Conditions

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

CITY OF PORTSMOUTH ZONING BOARD OF ADJUSTMENT
Statement in Support of Variance Request
Property: 1490 Islington Street, Portsmouth, New Hampshire
Applicant/Owner: Emilyn Kennedy

Members of the Board of Adjustment:

My name is Emilyn Kennedy, and I am the new owner and resident of 1490 Islington Street. I am an Army veteran and a first-time homeowner. As someone in my early 30s, I never thought I would be able to purchase a home in Portsmouth, but I feel incredibly fortunate to be able to now call the city home.

1490 Islington Street is in the Single Residence B (SRB) zone, Tax Map #233, Lot #108. The property is approximately 36,590 square feet (0.84 acres) and contains a two-story, wood framed dwelling built in 1893, with two exterior porches, and an existing detached barn.

I am respectfully requesting a use variance to allow the property to be re-zoned to a two-family dwelling within the SRB zoning district.

The purpose of this request is not to substantially change the existing residential use, density, or character of the property. Rather, I am seeking to resolve an unusual situation created by the existing configuration and permitting history of the house and to build a modest addition that will provide a functional bedroom for the first-floor owner-occupied unit.

Background and Existing Conditions

Prior to my ownership as of June of this year, the previous owner received a permit for and undertook substantial work to configure the house as a single-family residence with an accessory dwelling unit (ADU). The second floor was renovated as a complete two-bedroom residential rental unit, including its own new kitchen and bathroom. The home's existing front entry hall and front door (facing Islington Street) provide access to the second-floor unit, while the first-floor residence has its own entrance from the side porch facing the driveway.

Although the physical layout of the property was designed with the second-floor functioning as the rental unit, the prior permit identified the **first floor** as the ADU. My understanding is that this designation was made because the first floor living area could satisfy the applicable ADU size limitation of 750 sq ft, while the completed second-floor unit exceeded it, at 827 sq ft when including the front entry.

The permit was never formally closed by the prior owner. When I purchased the property and began working with the City to resolve and close the outstanding permit, this discrepancy became apparent.

The difficulty is that the first-floor unit, as presently configured, does not have a practical, private bedroom. The room previously intended to serve as the first-floor bedroom is the front living room featuring a bay window immediately adjacent to Islington Street. Directly outside its window is a city-installed pedestrian crossing signal located on my property. Due to the busyness of the crosswalk which provides entrance to the NH Rail Trail, the signal produces an audible sound throughout the day and night, making the front room nonfunctional as a bedroom.

I, therefore, am looking to construct a modest, one-story addition at the rear of the house containing a bedroom, bathroom, and closet. I will continue to occupy the first-floor unit as my primary residence, while the existing second-floor unit would remain a residential rental unit.

The addition would solve the functional problem with the first-floor residence, but it would also increase its square footage such that the property could no longer satisfy the dimensional requirements necessary to characterize one of the two units as an ADU. For that reason, I am requesting a variance to allow the property to be classified and used as a two-family dwelling.

I respectfully submit that the proposed use satisfies each of the five criteria required for a variance.

1. Granting the Variance Would Not Be Contrary to the Public Interest

Granting this variance would not alter the essential character of the neighborhood or threaten the public health, safety, or welfare.

The property would remain residential in appearance and use. There would continue to be only two dwelling units on the property, the same number of residential living spaces included in the previously approved single-family-plus-ADU configuration. The variance would not introduce a commercial use, multifamily building, or substantially greater residential density.

The property is also unusually well-suited from a dimensional standpoint to accommodate two dwelling units. The lot comprises approximately 36,590 square feet. At the SRB dimensional standard of 15,000 square feet of lot area per dwelling unit, this property exceeds the two-family requirement by approximately 6,590 square feet.

The property also contains six existing off-street parking spaces, providing ample space for the parking needs associated with two residential units, without creating additional demand for on-street parking.

The proposed one-story addition would be located at the rear of the existing house and would allow the property to continue functioning as a low-density residential property. The addition meets all setback criteria,12’ from left side (north) property line where 10’ is required, 114’ from the right side (south) property line where 10’ is required, and 151’ from the rear property line where 30’ is required. The addition is architecturally consistent with the rest of the house and is modest in size at 387 sq ft. All surrounding and abutting neighbors are aware of the proposed addition and none, including the directly abutting neighbors to the north, have expressed that they do not have an objection to the project.

2. Granting the Variance Would Observe the Spirit of the Ordinance

The requested variance is consistent with the underlying purposes of the City's residential zoning regulations: maintaining appropriate residential density, protecting neighborhood character, providing adequate lot area and parking, and ensuring safe and functional residential development.

Although a two-family dwelling is not a permitted use in the SRB district, the circumstances of this property are unusual. The house has already been configured to contain two independent residential living areas through a previously approved permit. The requested variance does not seek to significantly intensify the use of the property. Instead, it would allow the two existing residential living areas to be classified in a manner consistent with their actual physical configuration while allowing a modest addition necessary to provide the owner-occupied first floor with a functional bedroom.

The size of the existing second-floor unit further demonstrates that this is a modest request rather than an attempt to circumvent the purpose of the City's ADU regulations. The second-floor rental contains approximately 827 square feet of living area, only 77 square feet above the 750-square-foot ADU standard applicable and well below the maximum 950 square feet permitted for an ADU under current New Hampshire state law.

Furthermore, the property exceeds the SRB lot-area-per-dwelling-unit standard that would dimensionally accommodate two dwelling units. The proposed use therefore does not attempt to place two units on an undersized lot or create a level of density inconsistent with the dimensional standards applicable to the district. The purposes of the ordinance are to prevent overcrowding, protect light, air, privacy, maintain the character, and ensure open space – we find all of which are furthered by this project.

The proposal maintains the low-density residential nature of the property while allowing the existing house to be used safely, practically, and efficiently.

3. Granting the Variance Would Do Substantial Justice

The substantial justice criterion asks the Board to weigh the loss to the individual if the variance is denied against any corresponding gain to the public. As expressed, “Any loss to the individual which is not outweighed by a gain to the public is an injustice.”

In this case, denial of the variance would impose a substantial, identifiable loss to the property owner, while providing little, if any, corresponding benefit to the public.

Without the variance, the first-floor unit would be forced to rely upon a room that is not reasonably functional as a bedroom or would lose the ability to maintain the property's existing two-unit residential arrangement because neither unit would fall within the applicable ADU size limitation.

The requested variance provides a straightforward resolution: the property would remain occupied by the owner on the first floor with one rental dwelling on the second floor, but the two residential spaces would be treated as separate dwelling units rather than requiring one to satisfy the dimensional definition of an ADU. In practical terms, therefore, denying the variance would not reduce the number of residential living areas currently templated for the property, alleviate a parking problem, prevent excessive density, or protect the neighborhood from a new or incompatible use.

By contrast, it is difficult to identify a corresponding public benefit that would result from denial.

The distinction created by the addition is largely one of legal classification rather than actual neighborhood impact. Before the addition, the property could contain two residential units because one could qualify as an ADU. After the addition, the property would still contain the same two residential units. Furthermore, even with the addition, the property remains a three-bedroom property, as it was when originally used as a single-family home. The bedrooms are now split between two units, with a two-bedroom unit and a one-bedroom unit.

The loss to the applicant from strict enforcement is therefore concrete and substantial, while the public gain from requiring strict compliance in this circumstance is minimal or nonexistent. Denying the variance would impose a significant burden on the reasonable use of this property without achieving a corresponding public benefit

4. Granting the Variance Would Not Diminish Surrounding Property Values

There is no reason to expect that the proposed variance would diminish surrounding property values.

The property would remain residential and owner-occupied. The one-story addition at the rear of the existing home is architecturally consistent, does not involve the construction of a separate dwelling building, and meets all setback requirements. The property already contains the physical improvements necessary to accommodate the second-floor residential unit, including a kitchen, bathroom, bedrooms, and separate access arrangement. The property's large lot and existing off-street parking further limit the potential for impacts to neighboring properties. All surrounding and abutting neighbors have been made aware of the proposed addition and have indicated that they do not object to the project.

The proposed addition will be designed as an appropriate extension of the existing residence and is a part of continued investment in, and improvement of, the property, which will maintain, and improve, the residential quality of the property and therefore the surrounding neighborhood.

5. Literal Enforcement Would Result in Unnecessary Hardship Due to Special Conditions of the Property

This property presents special conditions that distinguish it from other properties in the area and makes literal enforcement of the use restriction unnecessarily burdensome in this circumstance.

First, the property has an unusual existing configuration resulting from its prior permitted conversion. The house already contains two independent residential living areas, with the second floor configured as a complete two-bedroom rental unit, despite the first floor having been identified as the ADU for purposes of the prior permit.

Second, the existing first-floor configuration does not provide a reasonably functional bedroom. The room that was intended to serve that purpose faces Islington Street and has a city-installed pedestrian crossing signal directly outside its window on the property. The signal's ongoing audible operation, together with the room's immediate proximity to the highly trafficked Islington Street, creates a condition particular to this property that materially affects the reasonable use of that room as sleeping space.

Third, the property itself is one of the largest in the neighborhood and is substantially large enough to accommodate two dwelling units under the dimensional standards applicable to the SRB district.

These conditions distinguish this request from a general desire to convert a single-family house into a higher-density investment property. I am proposing to live in the first-floor unit as my primary residence and rent out the second-floor unit, providing further housing availability in the city. The property already contains a second residential unit, and the number of dwelling units would remain at two. The variance is necessary because creating a functional bedroom for the owner-occupied unit through the proposed rear addition would make the existing ADU classification unworkable based on unit size.

Under these circumstances, there is not a fair and substantial relationship between the general purpose served by prohibiting two-family dwellings in the SRB district and applying that prohibition rigidly to this property. The purposes of controlling density and protecting neighborhood character are substantially addressed here by the size of the lot, the existing two-unit residential configuration, the available off-street parking, the continued owner occupancy, and the modest nature of the proposed addition.

The proposed two-family use is therefore a reasonable use of this particular property, and literal enforcement of the prohibition would create an unnecessary hardship arising from the property's unique physical and existing conditions.

Conclusion

This request is ultimately a limited one. I am seeking permission to make a modest rear addition that will provide a functional and private bedroom for my owner-occupied first-floor residence while retaining the existing second-floor rental unit. Because that addition prevents either unit from fitting within the applicable ADU size limitation, a two-family use variance provides the most logical way to resolve the property's unusual existing circumstances.

For these reasons, I respectfully submit that the requested variance is not contrary to the public interest, observes the spirit of the Ordinance, does substantial justice, will not diminish surrounding property values, and is warranted because literal enforcement of the Ordinance would result in unnecessary hardship due to the special conditions of this property.

I respectfully request that the Board grant the variance to permit the property at 1490 Islington Street to be used as a two-family dwelling.

Thank you for your consideration.

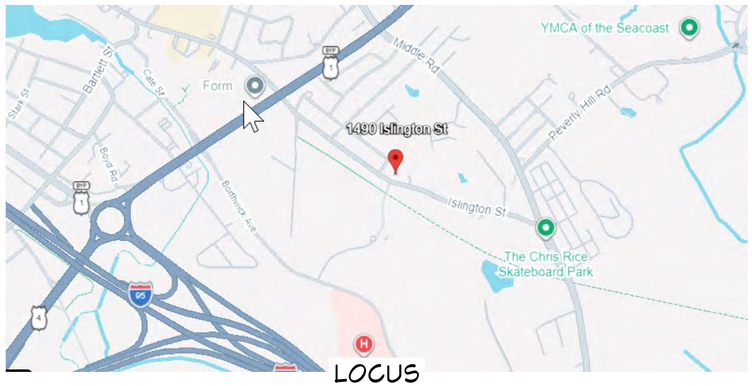
Emilyn Kennedy
Owner, 1490 Islington Street

Enclosures:

- New Construction Plans
- Existing Plans/Layout
    - Second Floor (Proposed Rental Unit)
    - First Floor (original ADU)
- Current Photos
    - Exterior Views
    - Second Floor Renovations
    - First Floor “Bedroom”
    - Site/Setback Views

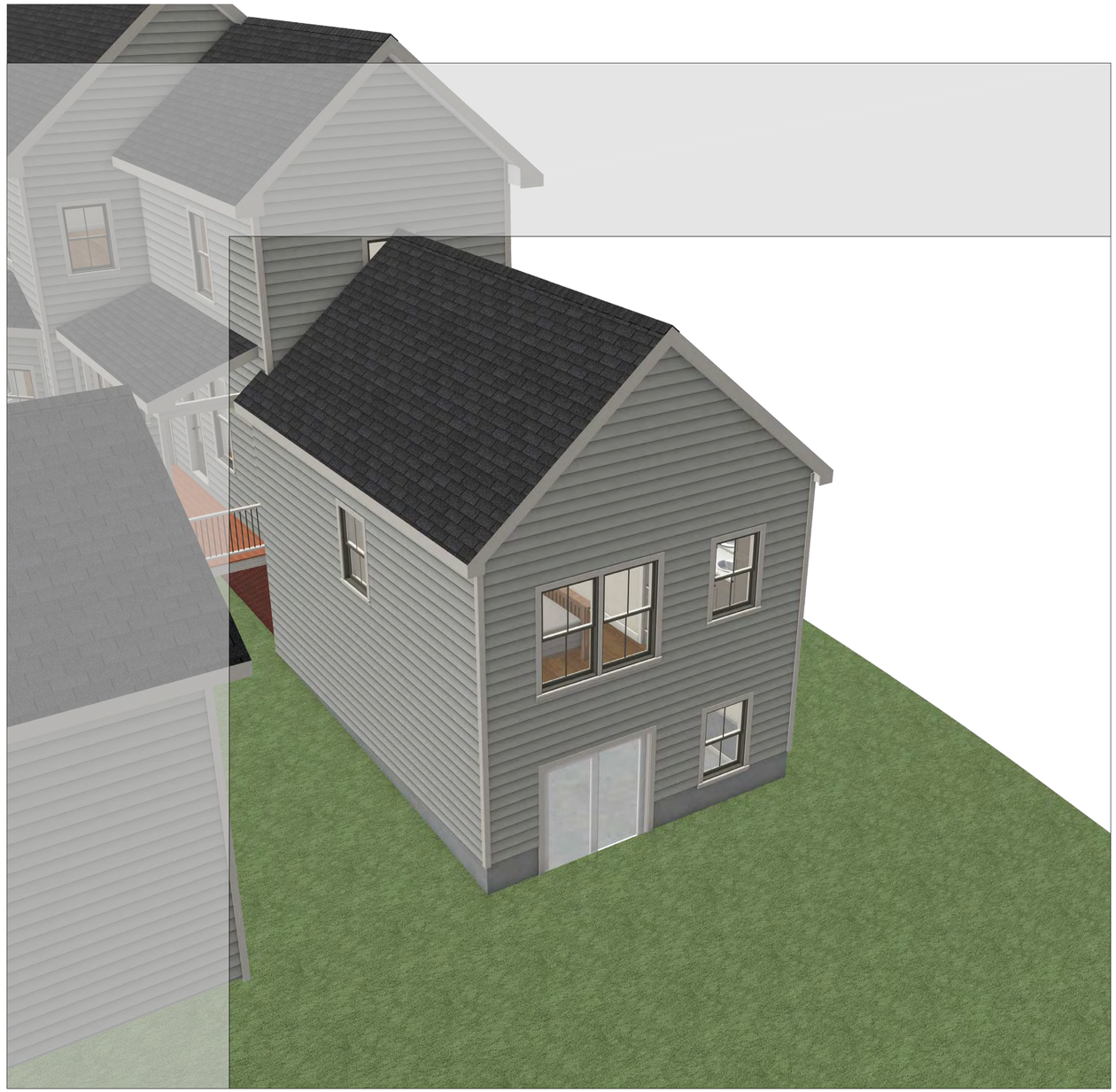


1490 ISLINGTON ST
PORTSMOUTH, NH



LOCUS

PROJECT NARRATIVE: Create single story gable addition. 1 bedroom, 1 bath, pantry, two closets and laundry closet. Storage in basement



REAR EDITION

PERMIT SET

BUSTED ASSOCIATES
Construction & Design
603-431-1557

REVISION TABLE

NUMBER	DATE	REVISED BY	DESCRIPTION

EMILYN KENNEDY
1490 ISLINGTON ST
PORTSMOUTH, NH
03801

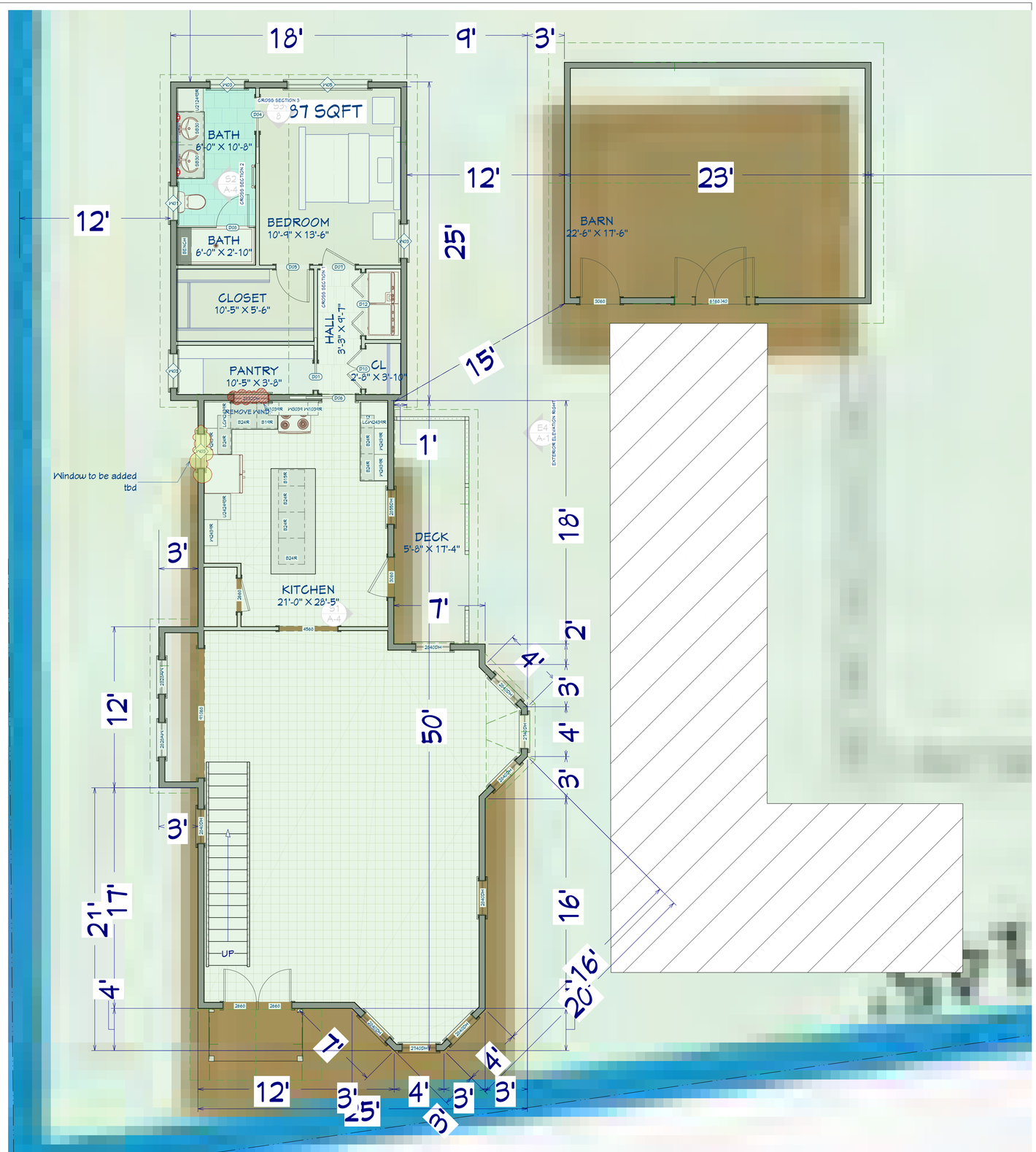
Project Overview

DATE: 9/22/2026

SCALE: LABELED

SHEET: P-1





BRANSTED ASSOCIATES
Construction & Design
603-431-1567

REVISION TABLE

NUMBER	DATE	REVISED BY	DESCRIPTION

EMILYN KENNEDY
1490 ISLINGTON ST
PORTSMOUTH, NH
03801

PLOT PLAN

DATE:
9/22/2026

SCALE:
LABELED

SHEET:
P-2

PERMIT SET



E4 EXTERIOR ELEVATION RIGHT
1/4 IN = 1 FT



E3 EXTERIOR ELEVATION BACK
1/4 IN = 1 FT



E2 EXTERIOR ELEVATION LEFT
1/4 IN = 1 FT

PERMIT SET

BRIDGED ASSOCIATES
Construction & Design
603-433-1507

REVISION TABLE

NUMBER	DATE	REVISED BY	DESCRIPTION

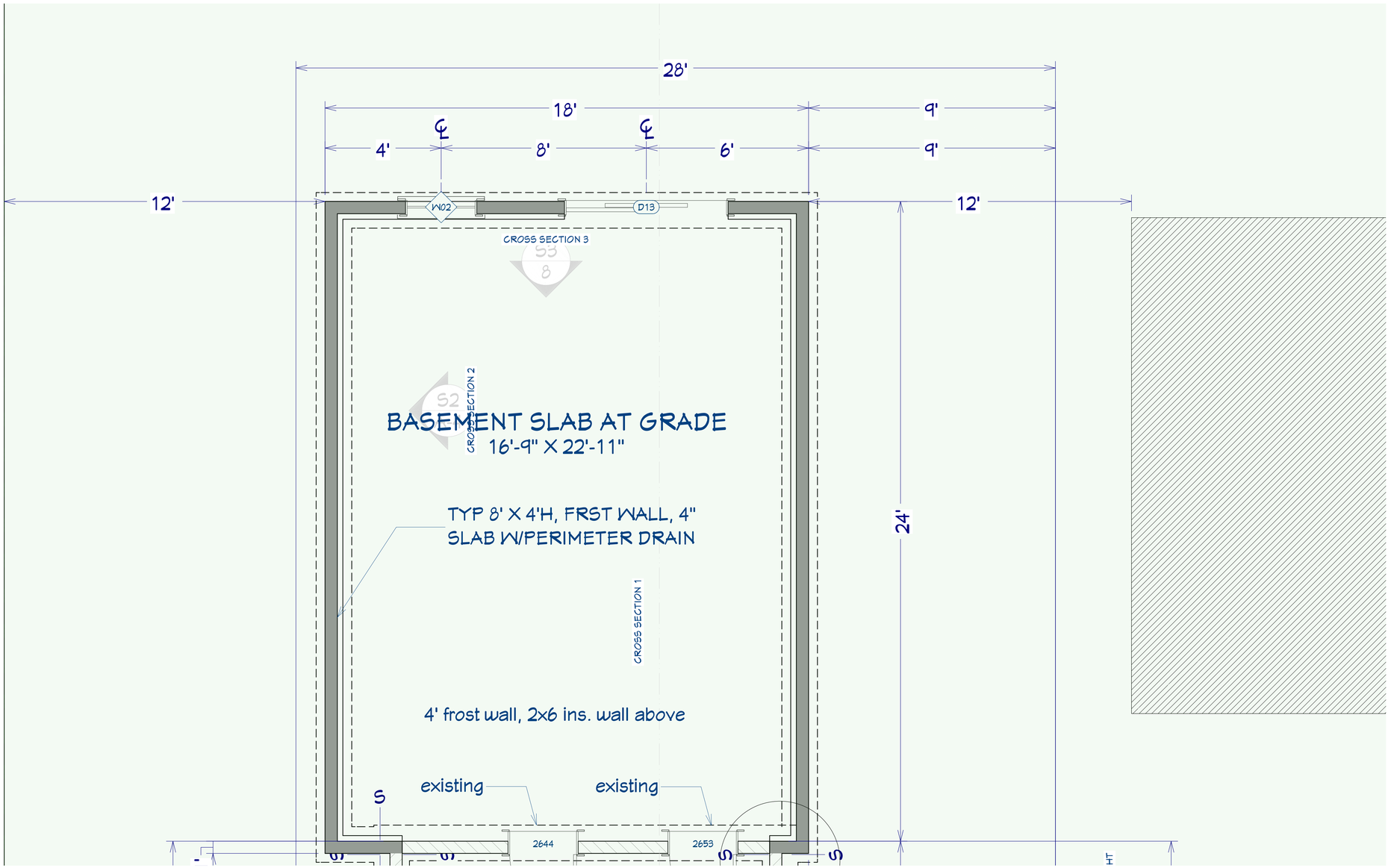
EMILYN KENNEDY
1490 ISLINGTON ST
PORTSMOUTH, NH
03801

ELEVATIONS

DATE:
9/22/2026

SCALE:
LABELED

SHEET:
A-1



FOUNDATION
1/2 IN = 1 FT

PERMIT SET

Winsted Associates
Construction & Design
603-431-1552

REVISION TABLE

NUMBER	DATE	REVISED BY	DESCRIPTION

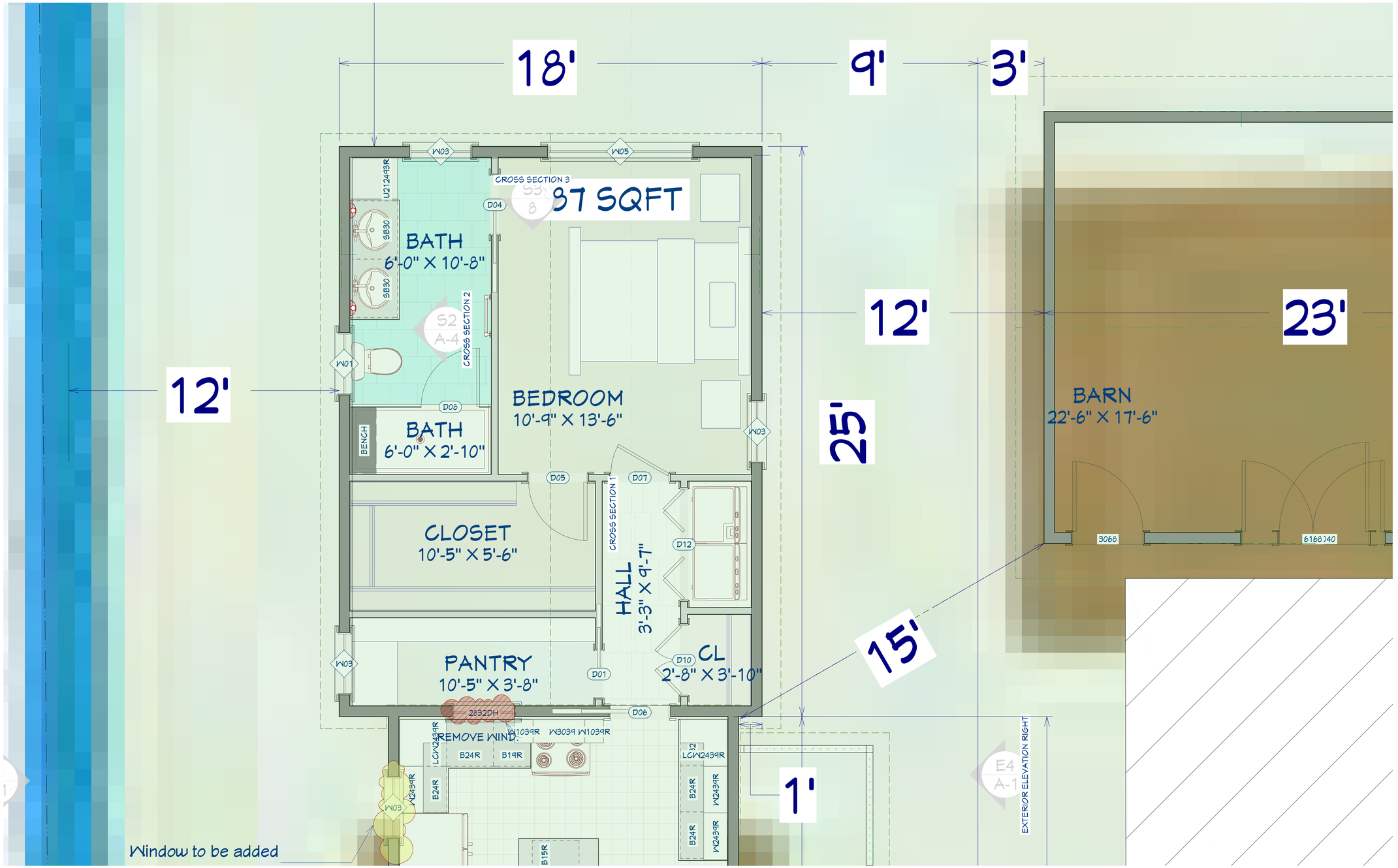
EMILYN KENNEDY
1490 ISLINGTON ST
PORTSMOUTH, NH
03801

FOUNDATION

DATE:
9/22/2026

SCALE:
LABELED

SHEET:
A-2



1ST FLOOR
1/2 IN = 1 FT

PERMIT SET

REVISION TABLE

NUMBER	DATE	REVISED BY	DESCRIPTION

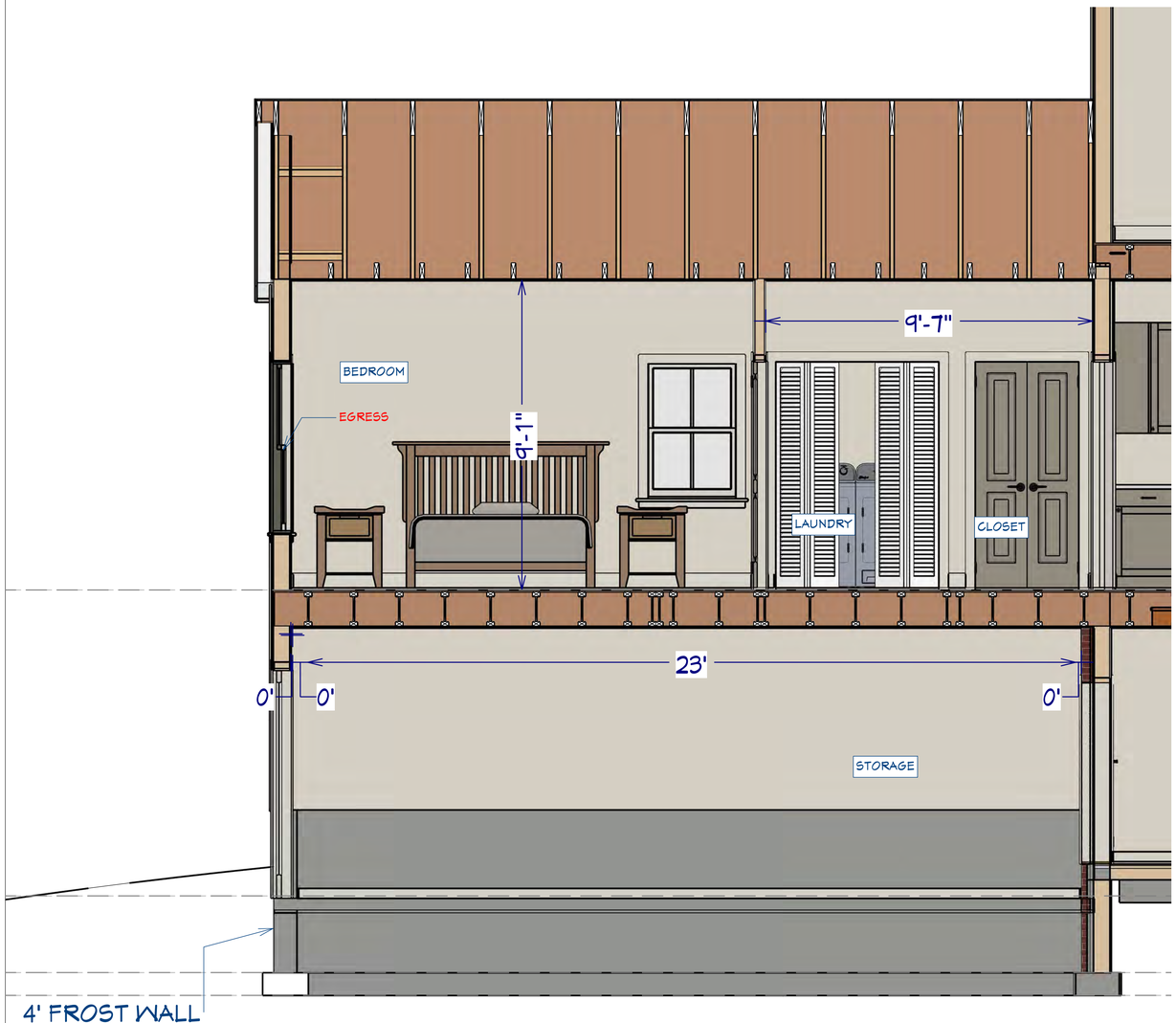
EMILYN KENNEDY
1490 ISLINGTON ST
PORTSMOUTH, NH
03801

FIRST FLOOR

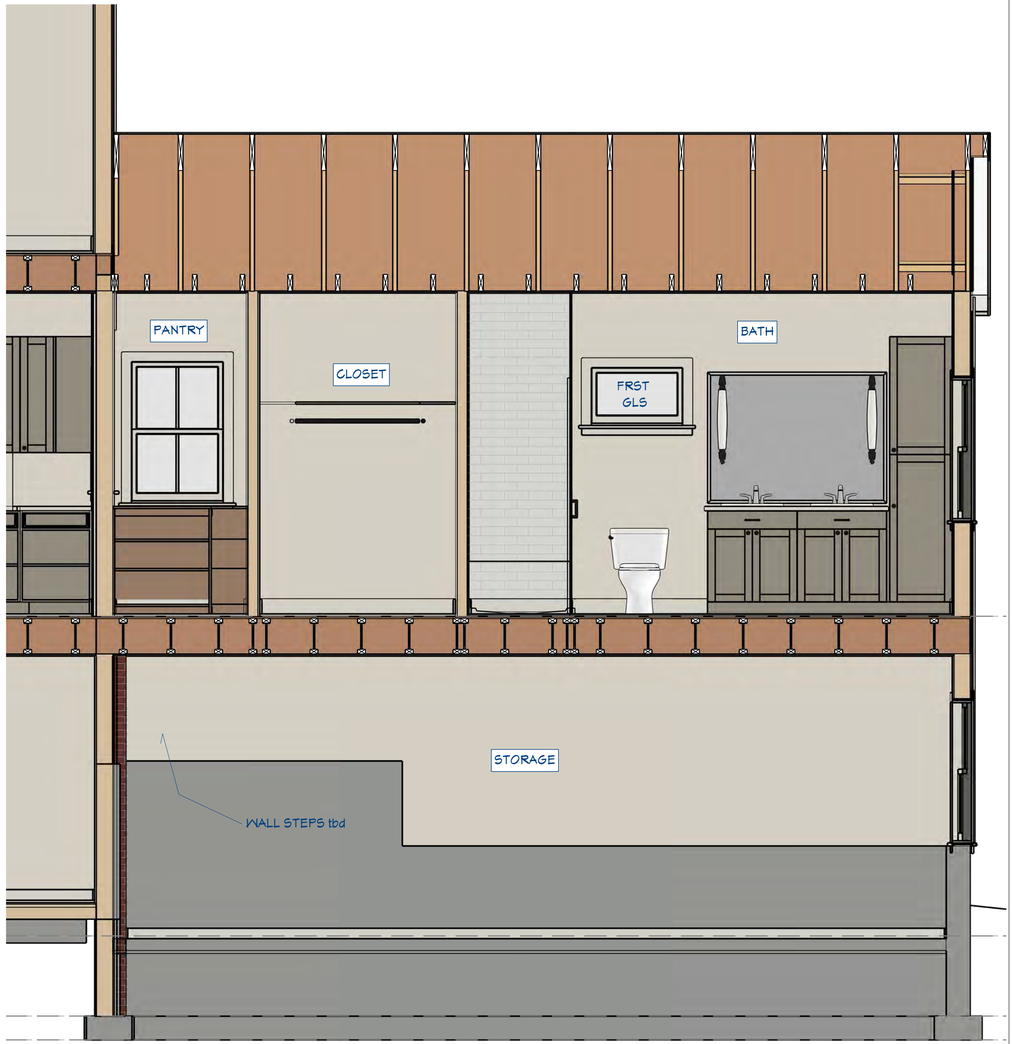
DATE: 9/22/2026

SCALE: LABELED

SHEET: A-3



S1 CROSS SECTION 1
1/2 IN = 1 FT



S2 CROSS SECTION 2
1/2 IN = 1 FT

Winsted Associates
Construction & Design
603-431-1557

REVISION TABLE

NUMBER	DATE	REVISED BY	DESCRIPTION

EMILYN KENNEDY
1490 ISLINGTON ST
PORTSMOUTH, NH
03801

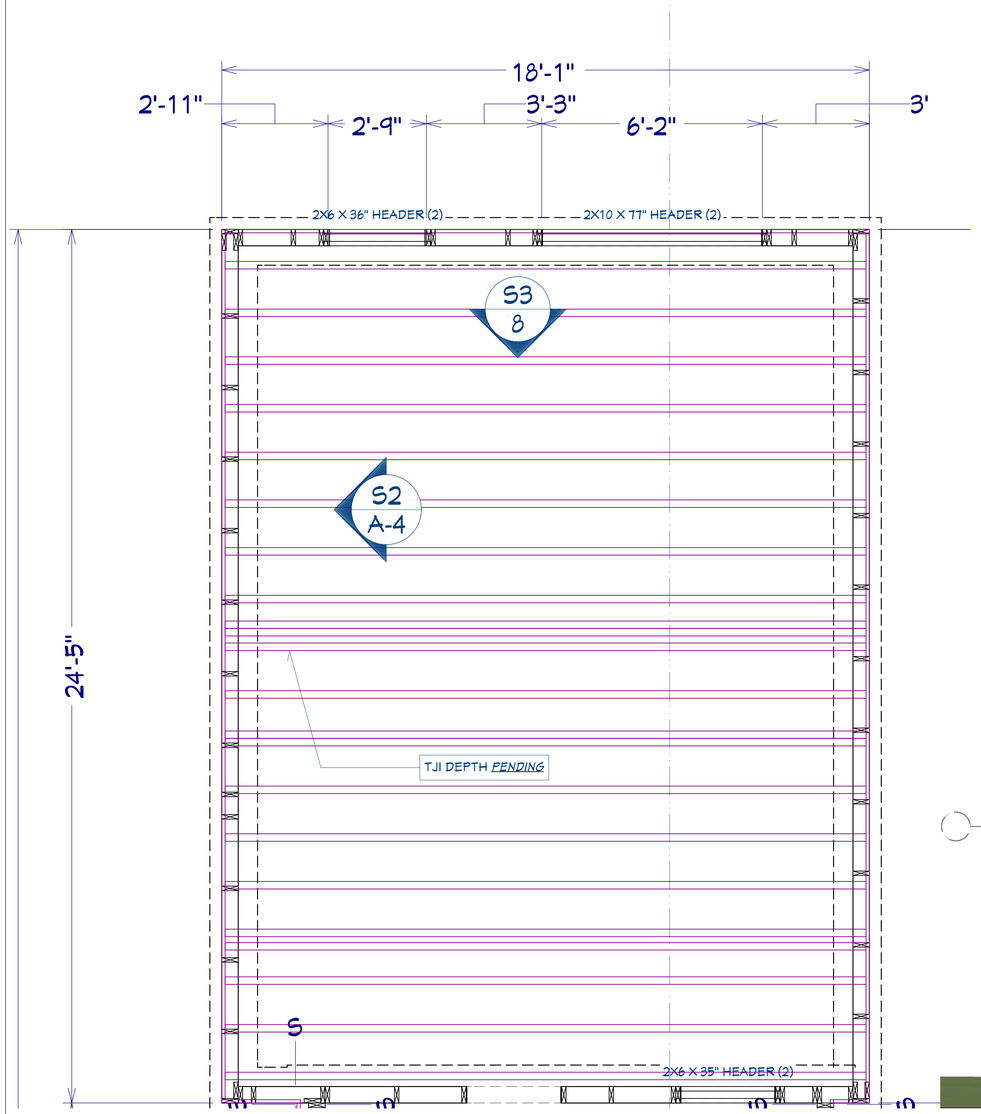
SECTION VIEWS INTERIOR

DATE: 9/22/2026

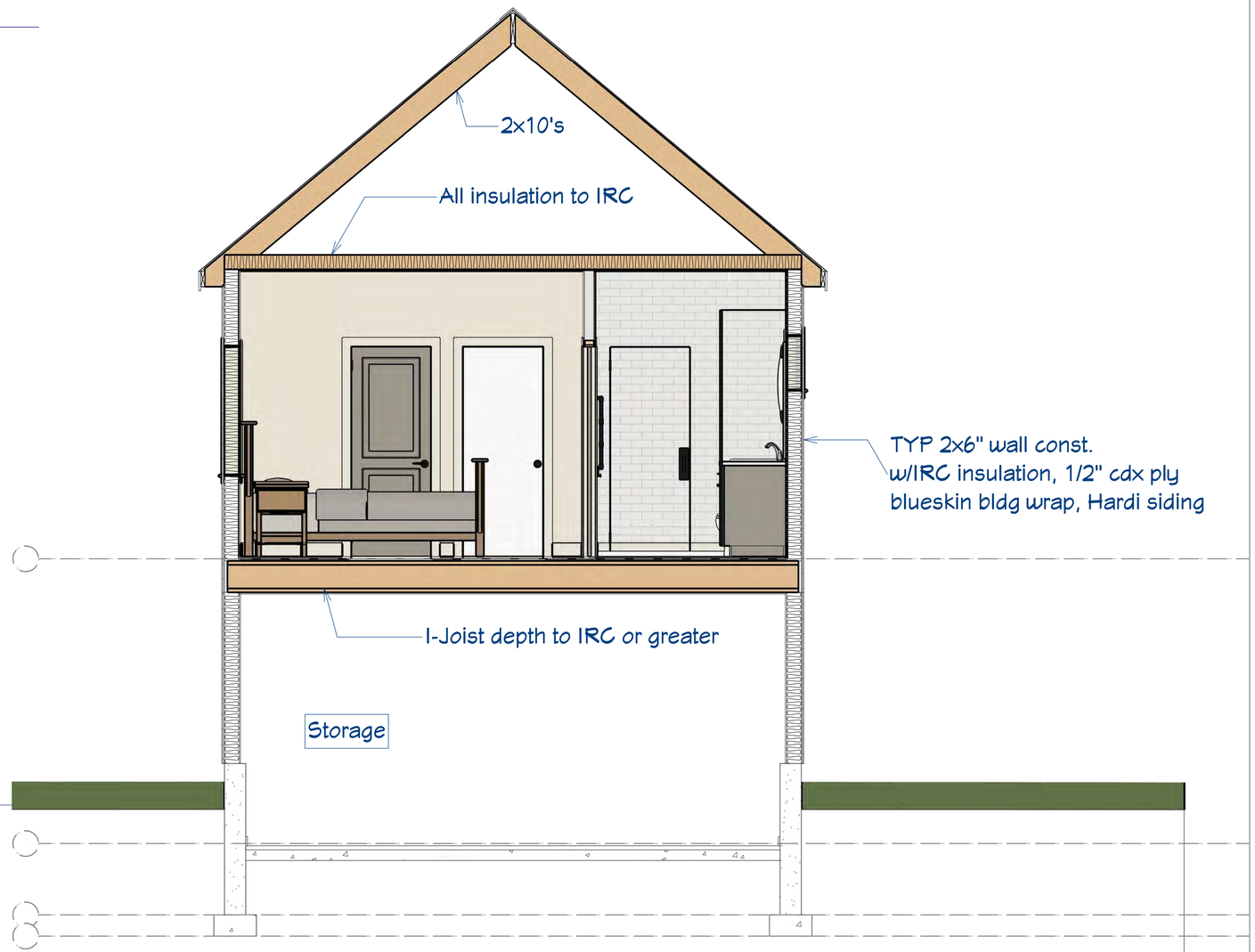
SCALE: LABELED

SHEET: A-4

PERMIT SET



FRAMING, FLOOR PLAN VIEW 1/2" = 1'



S3 CROSS SECTION 3
1/2 IN = 1 FT

Bolsted Associates
Construction & Design
603-431-1552

REVISION TABLE

NUMBER	DATE	REVISED BY	DESCRIPTION

EMILYN KENNEDY
1490 ISLINGTON ST
PORTSMOUTH, NH
03801

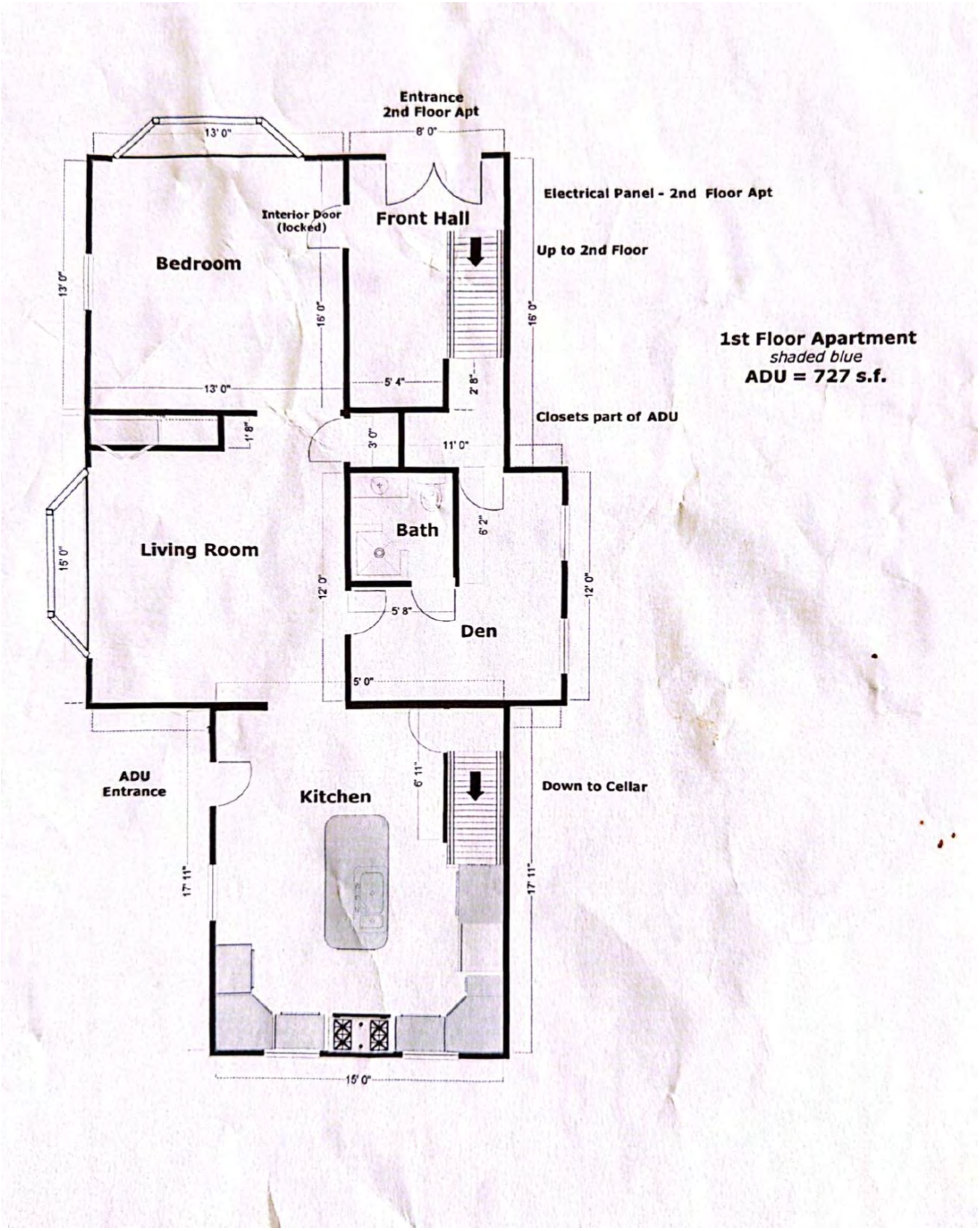
DATE: 9/22/2026

SCALE: LABELED

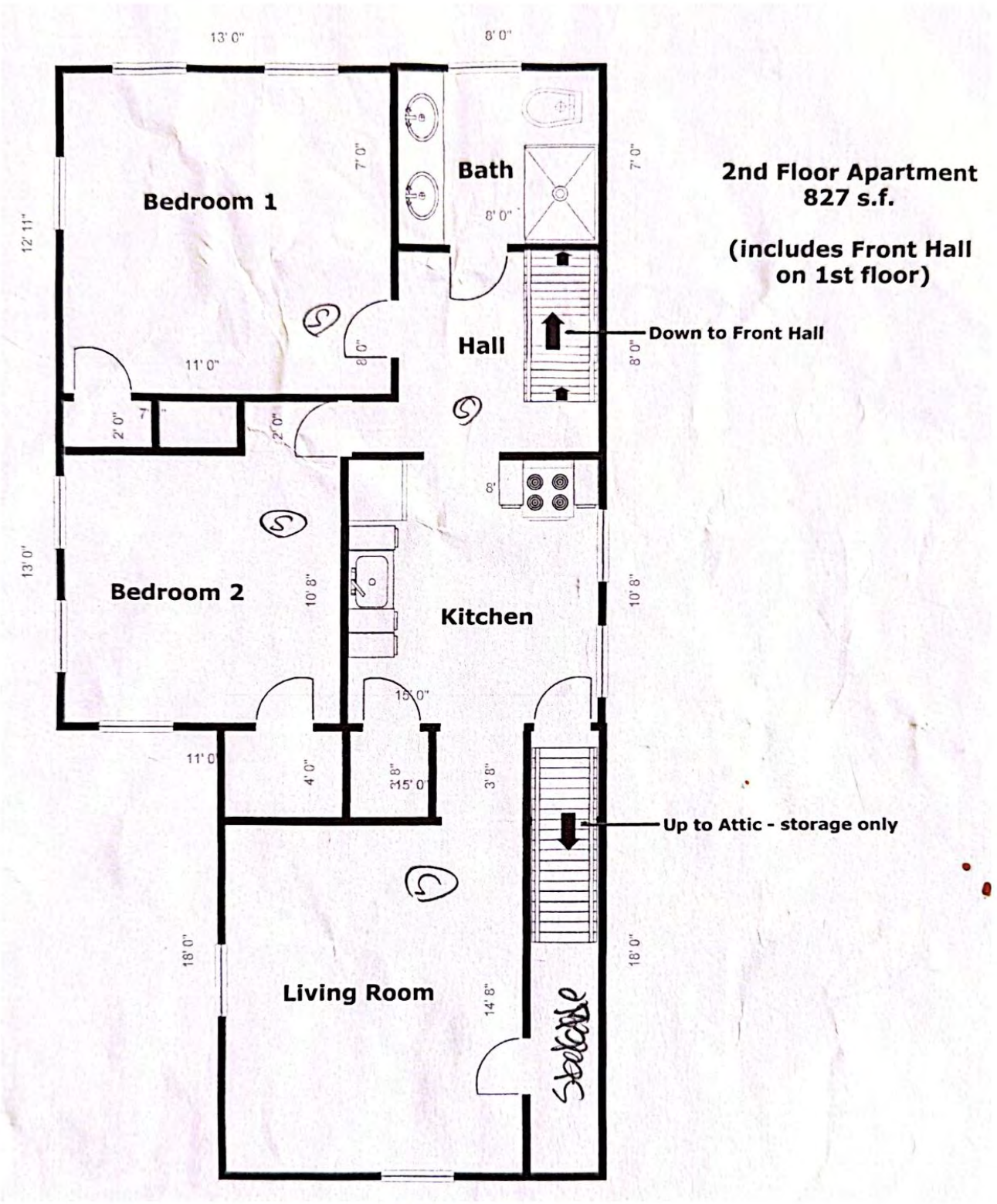
SHEET:

PERMIT SET

Existing Plans/Layout from Previous Owner – Current Layout
First Floor (Original ADU) Layout



Second Floor Layout - Current
(Proposed Rental Unit)



Current Photos
Front of House with City-Installed Crossing Sign






PUSH
BUTTON TO
TURN ON
WARNING
LIGHTS

Rear of House – Proposed Addition Location





View from Current Rear Wall of House



Left (North) Side Property Boundary
View from Rear of Property



Left (North) Boundary of Property
View from Islington Street



Right (South) Side of House – Driveway with 6 Parking Spaces



Current Photos of Upstairs Rental Unit

Front Entry (First Floor)



Upstairs Hall/Entry



New Kitchen





Bedroom 1 (facing Islington Street)



Bedroom 2



New Bathroom



Living Room



Current First Floor “Bedroom” facing Islington Street









II. NEW BUSINESS

B. The request of **Nathan Alger (Owner)**, for property located at **104 Thornton Street** whereas relief is needed to demolish an existing carport and deck and construct an addition; and to permit after-the-fact installation of a fence, which requires the following: 1) Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance; 2) Variance from Section 10.521 to a) allow a 4' rear yard setback where 20' is required, b) allow a 6' secondary front yard setback where 15' is required, c) to allow 44.5% building coverage where 25% is allowed; and 3) Variance from Section 10.515.13 to allow a fence exceeding 4' in height with a 0' front yard setback where 15' is required. Said property is located on Assessor Map 160 Lot 11 and lies within the General Residence A (GRA) District. (LU-26-120)

Existing & Proposed Conditions

	Existing	Proposed	Permitted / Required
Land Use:	Single-Family Residential	*Demo carport and deck and construct addition. Permit after-the-fact fence installation.	Primarily Residential
Lot area (sq. ft.):	3,181	3,181	7,500 min.
Lot Area per Dwelling Unit (sq. ft.):	3,181	3,181	7,500 min.
Frontage (ft.):	112	112	100 min.
Depth (ft.):	59.5	59.5	70 min.
Front Yard (ft.):	3	3	15 min.
Secondary Front Yard (ft.):	5.5	6	15 min.
Left Side Yard (ft.):	20	12	10 min.
Rear Yard (ft.):	5.5	4	20 min.
Building Coverage (%):	41.8	44.5	25 max.
Open Space Coverage (%):	63.9	56.2	30 min.
Height (ft.):	<35	<35	35 max.
Estimated Age of Structure:	1920	Variance request(s) shown in red.	

Other Permits/Approvals Required

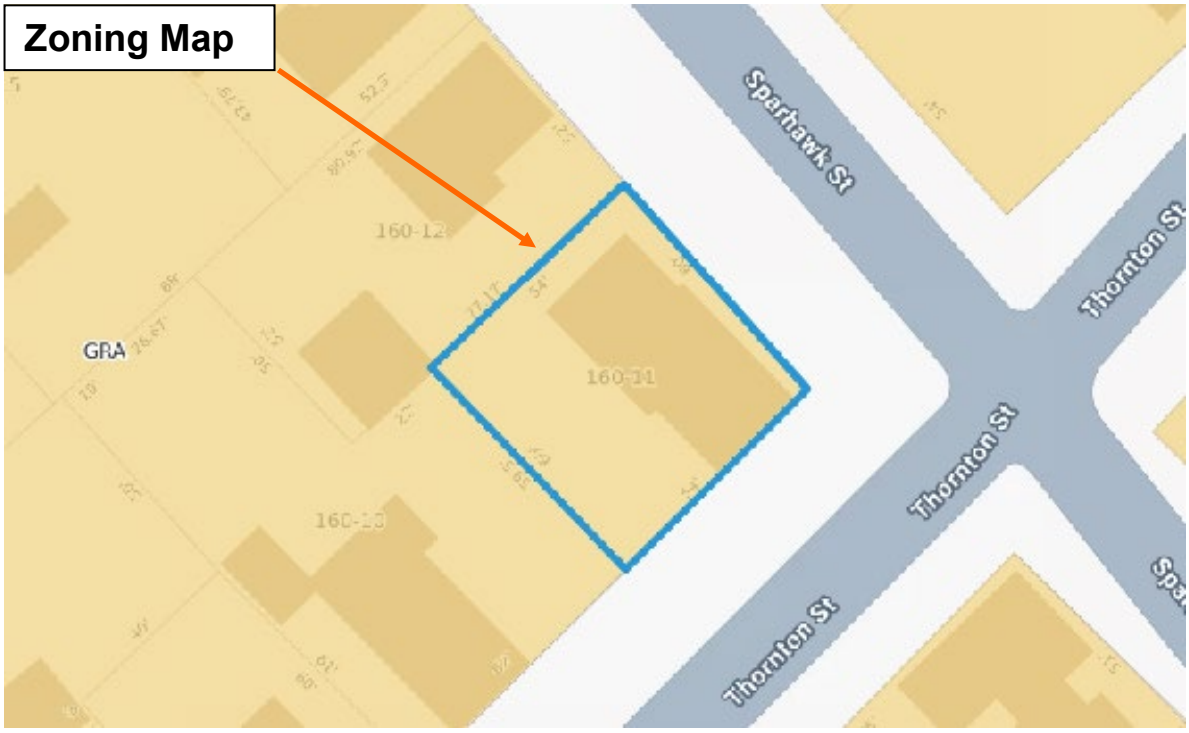
- Building Permit

Neighborhood Context

Aerial Map



Zoning Map



Previous Board of Adjustment Actions

- **July 25, 1967 –** Construct a patio whose roof would be on posts located 7'7" from rear lot line. The Board voted to **grant** the request as presented and advertised.

Planning Department Comments

The applicant is proposing to demo the existing carport and to construct a one-car garage with living space above. In addition, the applicant proposes to demo the existing deck and replace it with a two-story addition.

The applicant is also seeking after-the-fact relief for the existing fence in the primary front yard of the property. The fence was installed in 2022 under a misunderstanding of the permitting requirements with the City.

Variance Review Criteria

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

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

10.235 Certain Representations Deemed Conditions

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

.

DURBIN LAW

Derek R. Durbin, Esq.
603.287.4764
derek@durbinlawoffices.com

BY: VIEWPOINT & HAND DELIVERY

September 20, 2026

City of Portsmouth
Attn: Stefanie Casella, Planner
Zoning Board of Adjustment
1 Junkins Avenue
Portsmouth, NH 03801

RE: Variance Application of Nathan Alger
104 Thornton Street, Tax Map 160, Lot 11

Dear Stefanie,

Please find a copy of the following materials relative to the above referenced variance application filed through Viewpoint for the property at 104 Thornton Street.

1) Landowner Letter of Authorization
2) Narrative to Variance Application with Exhibits
3) Site Plan
4) Architectural Plans
5) Photographs of Property

A copy of the above application materials is being delivered to the Planning Department. Should you have any questions or concerns regarding the enclosed application materials, do not hesitate to contact me at your convenience.

Sincerely,

Derek R. Durbin, Esq.

LANDOWNER LETTER OF AUTHORIZATION

Nathan Alger, record owner of property located at **104 Thornton Street, Portsmouth, NH**, identified on **Tax Map 160, Lot 11** (the "Property"), hereby authorizes **Durbin Law Offices PLLC,** to file any building, zoning, planning or other municipal permit applications with the City of Portsmouth relative to the Property and to appear before its land use boards. This Letter of Authorization shall be valid until expressly revoked in writing.

Nathan Alger

NARRATIVE
VARIANCE APPLICATION

104 Thornton Street
Tax Map 160, Lot 11

Nathan Alger
Owner/Applicant

INTRODUCTION

The property at 104 Thornton Street is a 3,181 square feet corner lot located in the General Residence A ("GRA") Zoning District (the "Property"). It has frontage on both Thornton and Sparhawk Streets. The Property has a single-family home with an attached carport on it that the Applicant, Nathan Alger, resides in with his fiancé and son. The existing home is quite small by modern living standards. It consists of 1247 square feet of finished living space and has two (2) bedrooms and one (1) bathroom. The carport, which is at the rear of the house and is accessed by a driveway on Sparhawk Street, was constructed by one of the former owners in 1967 and has fallen into significant disrepair. Similarly, the deck attached to the left side of the house is in poor condition and is not safe to congregate on. In its existing condition, the Property is non-conforming with respect to the **rear yard setback** and **building coverage**.

The Applicant would like to demolish the attached carport, which encroaches into the rear yard setback, and replace it with a one-car garage that has a bedroom and bathroom above it. In addition, the Applicant would like to demolish the deck and replace it with a two-story addition that includes a sunroom on the first floor and a small amount of living space above it. The proposed improvements and reconfiguration of the second floor will give the home a more functional floor plan that includes a much-needed third bedroom and second bathroom.

To accommodate the proposed improvements, there will be a slight increase in two (2) existing non-conformities of the Property (rear yard and coverage). To create a one-car garage of minimal width, the rear yard setback would be decreased from 5.7' to 4.4'. Building coverage would also increase from 41.8% to 44.2%, which equates to **77 square feet of additional building footprint**. By way of comparison, the building footprint of the existing carport is 367. square feet. The footprint of the proposed garage addition is 375 square feet. The building footprint of the existing deck is 173 square feet. The building footprint of the proposed sunroom addition is 242 square feet. To partially offset the increase in non-conformity, the secondary front yard setback will be slightly improved from 5.6' to 6.0 with the replacement of the carport with the garage addition.

In addition the variances above, the Applicant is seeking an after-the-fact variance for the existing fence in the primary front yard of the Property. The issue was recently flagged by the Planning Department staff that reviewed his plans for the Property. The fence was installed in 2022 following consultation with the Inspections Department, who informed him that a fence exceeding 4' in height was permitted on the Property, which is true if the fence is not located within a required front yard setback. Because the fence is greater than 4' in height and is within the front yard setback, it requires a variance from Section 10.515.13 of the Zoning Ordinance (the "Ordinance"). As such, the Applicant is seeking after-the-fact variance relief for the fence.

ZONING RELIEF SUMMARY

The Applicant seeks the following variance approvals from the Board:

Section 10.321

To allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance (vertical expansion).

Section 10.521

(a) To allow a 4.4' (+/-) rear yard setback where 20' is required and 5.7' exists.
(b) To allow a 6.0' (+/-) secondary front yard setback where 15' is required and 5.6' exists.
(c) To allow 44.2% (+/-) building coverage where 25% is allowed and 41.8% exists.

Section 10.515.13

To allow a fence exceeding 4' in height with a 0' front yard setback where 15' is required and 0' exists.

VARIANCE CRITERIA

Granting the variances will not be contrary to the spirit and intent of the Zoning Ordinance or the public interest.

In the case of Chester Rod & Gun Club, Inc. v. Town of Chester, the Court noted that since the provisions of all ordinances represent a declaration of public interest, any variance will, in some measure, be contrary to the ordinance, but to be contrary to the public interest or injurious to public rights of others, "the variance must 'unduly, and in a marked degree' conflict with the ordinance such that it violates the ordinance's 'basic zoning objectives." "Id. The Court observed that "[t]here are two methods of ascertaining whether granting a variance would violate an ordinance's basic zoning objectives: (1) examining whether granting the variance would alter the essential character of the neighborhood or, in the alternative; and (2) examining whether granting the variance would threaten the public health, safety, or welfare." Id.

Proposed Addition(s)

Building coverage and setback restrictions are intended to prevent the overcrowding of structures on land and to preserve the light, air and space of abutting properties. The increase in building coverage (77 sf.) is negligible and will not overcrowd the Property. The 1.3' decrease in the rear setback will not have a negative impact upon the light, air and space of the abutting property at 30 Sparhawk Street (TM 160-12). The owner of that property has indicated that she supports the application. **Exhibit A**. This will be partially offset by the improvement in the secondary front yard setback. The proposed garage addition will be parallel to and line up with the driveway that runs along the left (southerly) side of that property. The driveway acts as a natural buffer between the homes on the two properties. The existing home at 30 Sparhawk Street sits along the opposite boundary of that property and thus is not impacted by the additional setback encroachment. Most of the Christian Shore's neighborhood, particularly the block that the Applicant's Property lies within, is characterized by smaller, non-conforming lots that exceed the 25% building coverage threshold and have one or more structures that encroach into the yard setbacks, which is demonstrated by the assessing map and related property cards. **Exhibit B**.

Existing Fence

It appears that Section 10.515.13 of the Ordinance was primarily intended to preserve existing streetscapes and neighborhood aesthetics by prohibiting tall fences in front yards to avoid landowners "walling" off and creating a fortress-like effect with their properties. In addition, it is intended to maintain vehicular sight lines.

Corner lots, like the Applicant's Property, present a unique situation. The Thornton Street side of the Property acts as a side yard rather than a front yard, as the primary entrance to the home is off Sparhawk Street, not Thornton Street. The Applicant does not have a fence along the Sparhawk Street side of the Property. The fence does not even run along the entire length of the Thornton Street boundary. Instead, it extends off the Thornton Street side of the home to the corner of the Property and acts as a privacy buffer to the Applicant's backyard. It does not negatively alter the streetscape or neighborhood aesthetics. To the contrary, there are examples of similar "front yard" fences that can be found throughout the neighborhood, even on the non-corner lots. Moreover, the fence does not create any sight line or public safety concerns, as it is setback at least 10' from the edge of the paved portion of Thornton Street.

Granting the variances will have no tangible impact upon abutting properties or the neighborhood. Accordingly, it will not alter the essential character of the neighborhood or otherwise threaten the public, health, safety or welfare of its residents. There is no threat to public health, safety or welfare implicated by the variances being requested.

Substantial Justice will be done in granting the variances.

To determine whether substantial justice is done, the Board must balance the equities between the rights of a private landowner and the public interest in deciding whether to grant or deny a variance request. The "only guiding rule is that any loss to the individual that is not outweighed by a gain to the general public is an injustice." New Hampshire Office of State Planning, The Board of Adjustment in New Hampshire, A Handbook for Local Officials (1997); *Malachy Glen Assocs., Inc. v. Town of Chichester*, 155 N.H. 102 (2007).

It would represent a loss to the Applicant for the Board to deny the variances necessary to modestly expand the existing home to create a third bedroom, second bathroom and an enclosed one-car garage. The proposed additions to the home will be constructed almost entirely within the footprint of already existing structures. The increase in non-conformity is minimal and will not have any tangible impact upon abutting properties or the surrounding neighborhood. In the present instance, the loss to the Applicant in denying the variances clearly outweighs any gain to be realized by the public.

Surrounding property values will not be diminished by granting the variances.

The neighborhood is characterized by undersized lots with many structures sitting directly on or close to boundary lines. The additions are tastefully designed and will be in keeping with the character of homes and structures on surrounding properties. The renovation will add a small amount of living space and update the exterior with a fresh, attractive appearance that gives the Property better curbside appeal than exists. The fence does nothing other than create aesthetic curbside appeal for the Property. Therefore, granting the variances should only preserve or enhance surrounding property values.

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

Proposed Additions

The Property has special conditions that distinguish it from surrounding properties. It is also one of the smallest lots in the neighborhood at approximately 0.7 acres. **Exhibit C**. The average size of the sixteen (16) properties immediately surrounding it is .11 acres (4,792 sf.). It has less than 43% of the total area needed for a conforming lot in the GRA Zoning District. In addition, it is a corner lot with two separate 15' front yards as opposed to one 15' front yard and two 10' side yards. These factors combine to severely limit the buildable area of the Property in comparison with surrounding properties. The Property is already non-conforming with respect to building coverage (41.8%) and the rear yard setback (5.7'), conditions which will remain should the variances be denied. With respect to the rear yard setback, the Property benefits from the neighboring property's (TM 160-12) side yard and driveway acting as a natural buffer between homes on each property. The proposed increase in non-conformity is minor and does not deviate from the general purposes of the building coverage and setback restrictions, which are intended to manage building density (crowding) and separation. The Applicant will also be bringing the Property into slightly greater compliance with the 15' secondary front yard setback requirement.

Existing Fence

With respect to the existing fence, the Ordinance does not contemplate "corner lot" situations like the Applicant's where there are two (2) front yards. The Ordinance merely seeks to prevent landowners from walling off their property on all sides. This creates a unique condition with the Applicant's property, as the existing home is accessed from Sparhawk Street even though it has a Thornton Street address. The Thornton Street side of the Property, where the fence runs along a portion of the boundary, is the functional equivalent to a "side yard". There is no fence along the Sparhawk side of the Property. The Property is not walled off and maintains the prevailing neighborhood aesthetic.

In addition to seeking to protect against the "fortressing effect", the Ordinance seeks to maintain unobstructed sight lines for passing vehicles. In the present case, the fence extends off the left side of the existing home and is set back at least 10'+ from the edge of the paved portion of the ROW. It does not create any visual obstruction apart from the home itself. In the end, the objectives that Section 10.515.13 of the Ordinance is trying to achieve are met relative to the Applicant's Property.

Owing to the special conditions of the Property, there is no fair and substantial relationship between the general purposes of the Ordinance provisions and their specific application to the Property.

Finally, the proposed use of the Property is reasonable. The Property will continue to be used for single-family residential purposes, consistent with the permitted uses within the GRA Zoning District.

CONCLUSION

The Applicant thanks the Board for its time and consideration of the application and respectfully requests approval of the variances being requested.

Respectfully Submitted,

Nathan Alger, Owner/Applicant

September 18, 2026
(revised 10-6-26)

By: 

Derek R. Durbin, Esq.
DURBIN LAW OFFICES PLLC
154 Maplewood Avenue
Portsmouth, NH 03801
(603)-287-4764
derek@durbinlawoffices.com

DURBIN LAW

EXHIBIT A

Derek Durbin <derek@durbinlawoffices.com>

104 thorton st

1 message

melissa hudlin <mhbluewaters@gmail.com> Mon, Oct 5, 2026 at 8:32 PM
To: derek@durbinlawoffices.com

Hi Derek,

I am Nathan's abutting neighbor on 30 Sparhawk st
He and I met the other day. Based on what he showed me/described etc... I don't see any issues. And as I understand it, he is not extending the overall height of the home just adding additions. Nathan has done a great job improving the home and adding value to the neighborhood!

If you have any questions, please reach out.

Thank you
Missie Hudlin
415-518-5489

EXHIBIT B



MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT

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

Geometry updated 09/15/2026

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

EXHIBIT C

Address	Tax Lot	Size (AC)	
104 Thornton Street	160-11	0.07	3181
30 Sparkhawk Street	160-12	0.09	3920
26 Sparkhawk Street	160-13	0.07	3049
406 Dennett Street	160-14	0.07	3049
120 Thornton Street	160-10	0.13	5663
130 Thornton Street	160-09	0.06	2614
140 Thornton Street	160-8	0.07	3049
29 Burkitt Street	160-19	0.11	4792
21 Burkitt Street	160-18	0.07	3049
436 Dennett Street	160-17	0.17	7405
88 Thornton Street	160-7	0.25	10890
29 Sparkhawk Street	160-6	0.11	4792
25 Sparkhawk Street	160-5	0.16	6970
384 Dennett Street	160-4	0.13	5663
105 Thornton Street	159-18	0.09	3920
133 Thornton Street	159-19	0.17	7405
139 Thornton Street	159-20	0.08	3485

104 THORNTON STREET

PORTSMOUTH, NH

SITE DATA:

PROJECT LOCATION: TAX MAP 160, LOT 11
104 THORNTON STREET
PORTSMOUTH, NEW HAMPSHIRE

SITE ZONING DISTRICT: RESIDENTIAL DISTRICT, GENERAL RESIDENCE A (GRA)

ALLOWED USES ON SITE: SINGLE FAMILY DWELLING

DEVELOPMENT STANDARDS

DIMENSIONAL REQUIREMENTS:	REQUIRED (GRA)	EXISTING (GRA)	PROPOSED(GRA)
MINIMUM LOT AREA:	7,500 SF	±3,181 SF	±3,181 SF
MINIMUM LOT FRONTAGE:	100 FT	112.32 FT	112.32 FT
MINIMUM LOT DEPTH:	70 FT	59.5 FT	59.5 FT
MINIMUM FRONT SETBACK:	15 FT	3.0 FT	3.0 FT
MINIMUM SIDE SETBACK:	10 FT	20.3 FT	12.2 FT
MINIMUM REAR SETBACK:	20 FT	5.7 FT	4.4 FT(1)
MAXIMUM BUILDING HEIGHT:	35 FT	23.7 FT	24.3 FT
MINIMUM OPEN SPACE:	30%	63.9%	56.2%
MAXIMUM BUILDING COVERAGE:	25%	41.8%(2)	44.2%(3)

NOTES:

(1) - ZONING RELIEF REQUIRED FOR A REDUCTION IN REAR YARD SETBACK PER SECTION 10.521.
(2) - THE EXISTING DECK IS GREATER THAN 18" ABOVE THE GROUND FLOOR THEREFORE IS INCLUDED IN THE BUILDING FOOTPRINT PER SECTION 10.1530.
(3) - ZONING RELIEF REQUIRED FOR AN INCREASE IN BUILDING COVERAGE PER SECTION 10.521.

MELISSA A. HUDLIN REVOCABLE TRUST
MELISSA A. HUDLIN TRUSTEE
256 WIBIRD ST
PORTSMOUTH, NH 03801
RCRD BK.#6567 PG.#2087

MAP 160 LOT 10
N/F
E & S. MCDERMOTT REVOCABLE TRUST
& S. MCDERMOTT REVOCABLE TRUSTEES
120 THORNTON ST
PORTSMOUTH, NH 03801
RCRD BK.#6536 PG.#231

MAP 160 LOT 11
3,181 S.F.
(0.07 ACRES)

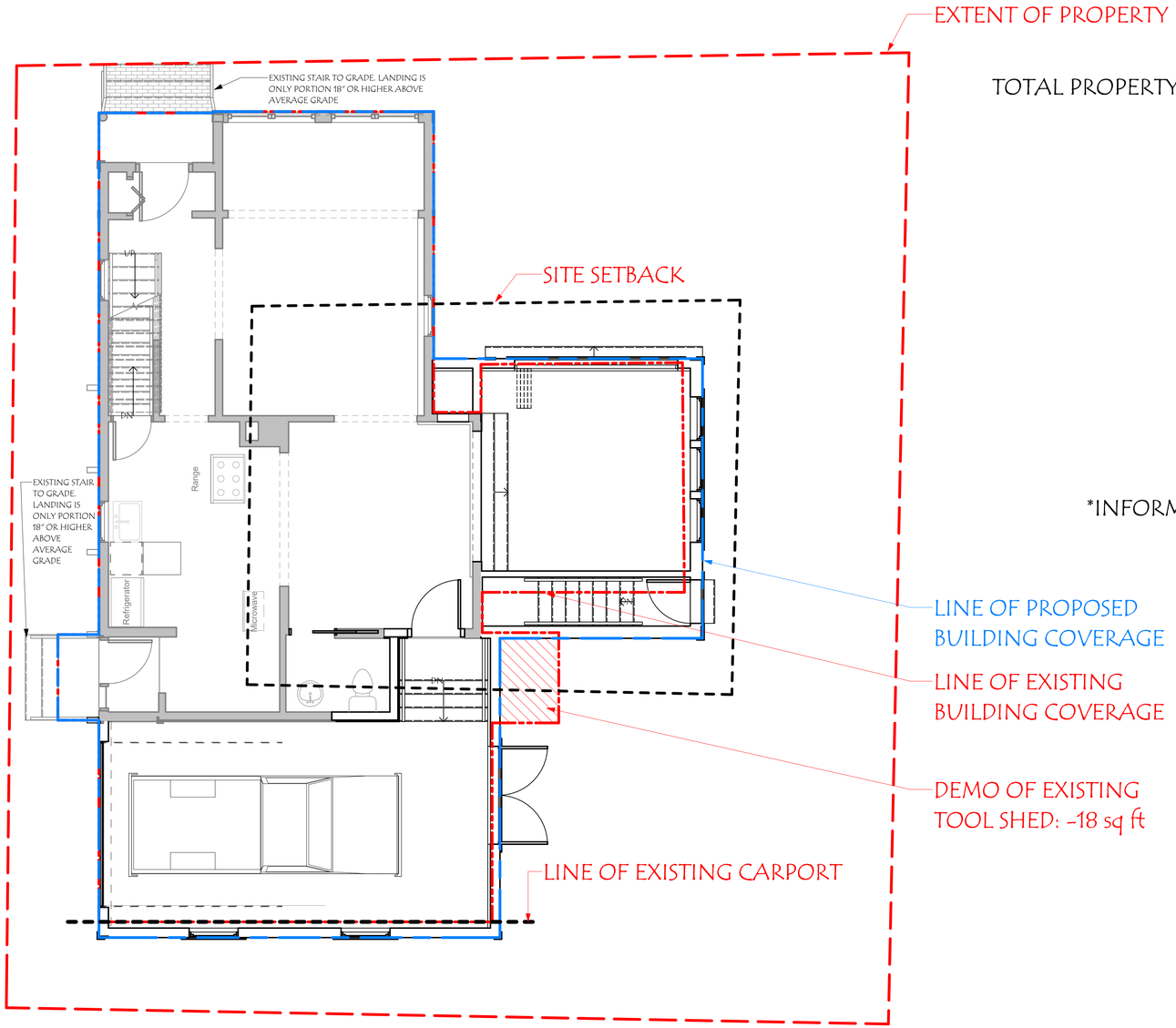
SHED
PICKET FENCE
3/4" IRON ROD FOUND, FLUSH, (LOOSE)
3/4" IRON ROD FOUND, DOWN 2"
TBM 'A'
MAGS IN U-POLE NETCO 2
W/ METAL GUARD
EL.=20.22'
ROOF OVERHANG
BRICK RETAINING WALL
WOODEN STOCKADE FENCE
PROPOSED GARAGE ADDITION
PROPOSED SUNROOM ADDITION
EXISTING BUILDING #104
20' REAR SETBACK
10' SIDE SETBACK
15' FRONT SETBACK
15' FRONT SETBACK
EXISTING PROPERTY LINE
BH = 23.7'
GREG
ROOF OVERHANG
CONC. BLOCK RETAINING WALL
WINDOW WELL
GRAVEL
FF ON THRESHOLD = 21.5'
1-1/2" CONC. FILLED IRON PIPE FOUND, UNDER FENCE
GATE
DRAIN
LANDSCAPE STONEWALL
NO NUMBER
"STOP"
"20 MPH"
SPARHAWK STREET
(PUBLIC RIGHT OF WAY)
4.4'
5.7'
4.1'
6.0'
5.6'
1.7'
12.2'
5.3'
3.1'
0.1'
27"
20"
18"
24"
3

OCTOBER 5, 2026 R5089-0475_C-DSGN.dwg

CONCEPTUAL SITE PLAN

SCALE IN FEET
0 2.5 5 80

Tighe & Bond
177 Corporate Drive
Portsmouth, NH 03801
T 603.433.8818



TOTAL PROPERTY SQUARE FOOTAGE per TIGHE + BOND CIVIL ENGINEERS: 3181 sq ft

EXISTING BUILDING COVERAGE: 1331 sq ft (41.8% of lot)
PROPOSED BUILDING COVERAGE: 1408 sq ft (44.2% of lot)
(+77 sq ft, 2.4% of lot)

EXISTING SIDE DECK FOOTPRINT: 173 sq ft
PROPOSED SIDE ADDITION FOOTPRINT: 242 sq ft
(+69 sq ft)

EXISTING CARPORT FOOTPRINT:367 sq ft
PROPOSED GARAGE ADDITION FOOTPRINT: 375 sq ft
(+8 sq ft)

*INFORMATION PROVIDED IS APPROXIMATE AND FOR REFERENCE ONLY.
VERIFY WITH CIVIL ENGINEER*

RED FOX ARCHITECTS
104 Congress Street, STE 201
Portsmouth, NH 03801
PH: 603.441.2485

ALGER RESIDENCE

104 THORNTON ST. PORTSMOUTH, NH

NOT FOR CONSTRUCTION

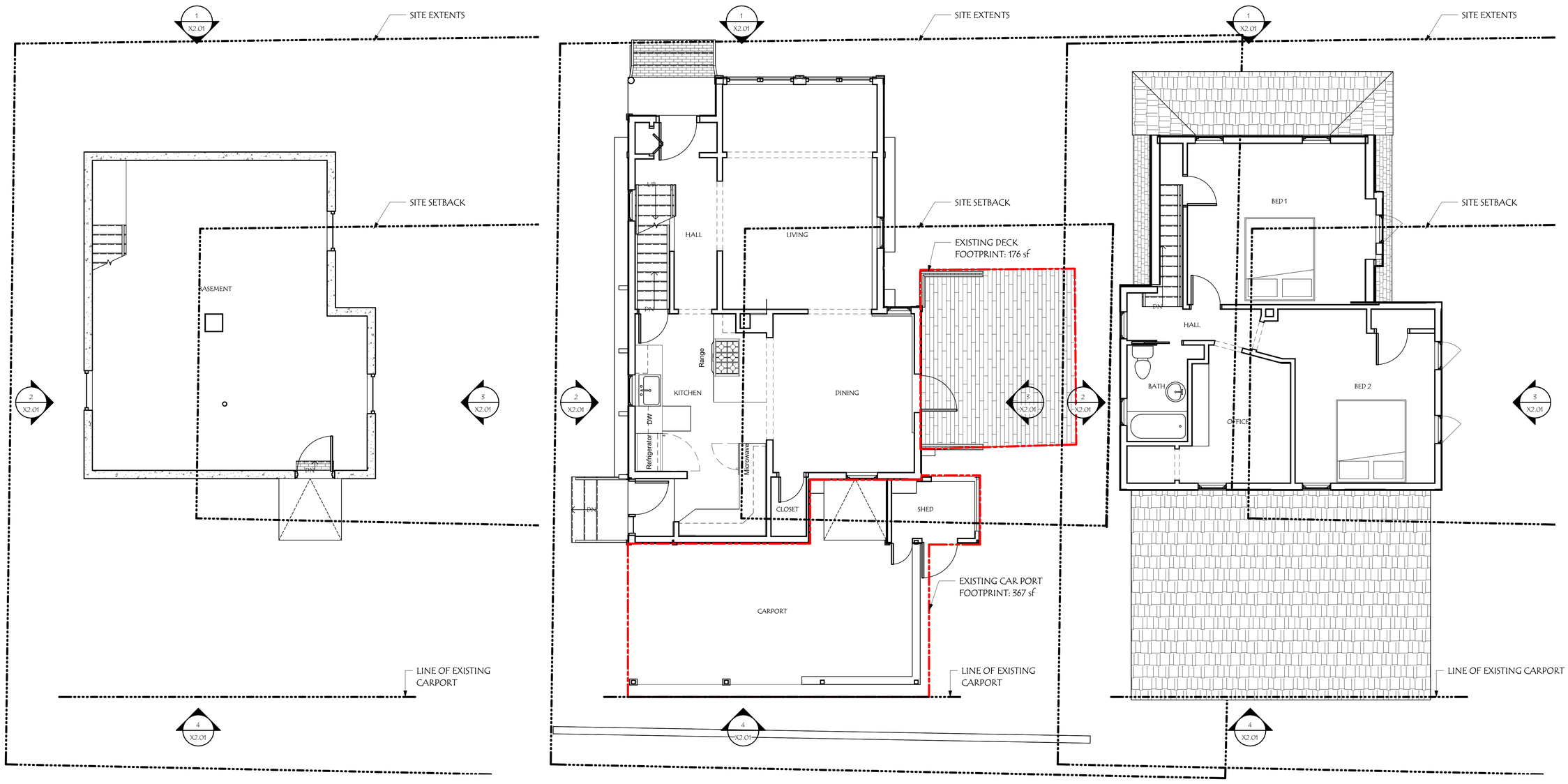
Revisions:
Description Date

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Drawn By: CW
Checked By: RH
Project No.: 26005
EXISTING CONDITIONS
Date: 9/22/2026

Title: PROPOSED SITE PLAN

A1.00

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9/22/2026 4:09:00 PM



2 EX. LEVEL 0 PLAN

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

1 EX. LEVEL 1 PLAN

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

3 EX. LEVEL 2 PLAN

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

EXISTING FINISHED SQUARE FOOTAGE: 692 sq ft

EXISTING FINISHED SQUARE FOOTAGE: 555 sq ft

TOTAL EXISTING FINISHED SQUARE FOOTAGE:1247 sq ft

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ALGER RESIDENCE

104 THORNTON ST. PORTSMOUTH, NH

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Revisions:
Description Date

Scale: 1/4" = 1'-0"
Drawn By: CW
Checked By: RH
Project No.: 26005
EXISTING CONDITIONS
Date: 9/22/2026

Title: EXISTING PLANS

X1.01

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9/22/2026 4:09:01 PM



1 EX. THORNTON ST ELEVATION

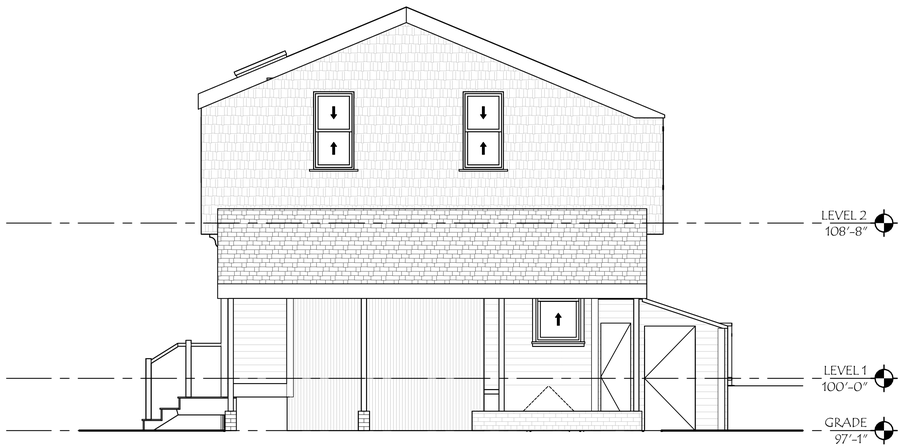
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*CARPORT HEIGHT MEASURED FROM EXISTING AVERAGE GRADE PLANE OF 19.6' BELOW FINISHED FLOOR OF FIRST LEVEL MEASURED AT 21.5' PER TIGHE AND BOND CIVIL ENGINEERS

2 EX. SPARHAWK ST ELEVATION

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



4 EX. CARPORT ELEVATION

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



3 EX. SIDEYARD ELEVATION

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

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ALGER RESIDENCE

104 THORNTON ST. PORTSMOUTH, NH

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Revisions:
Description Date

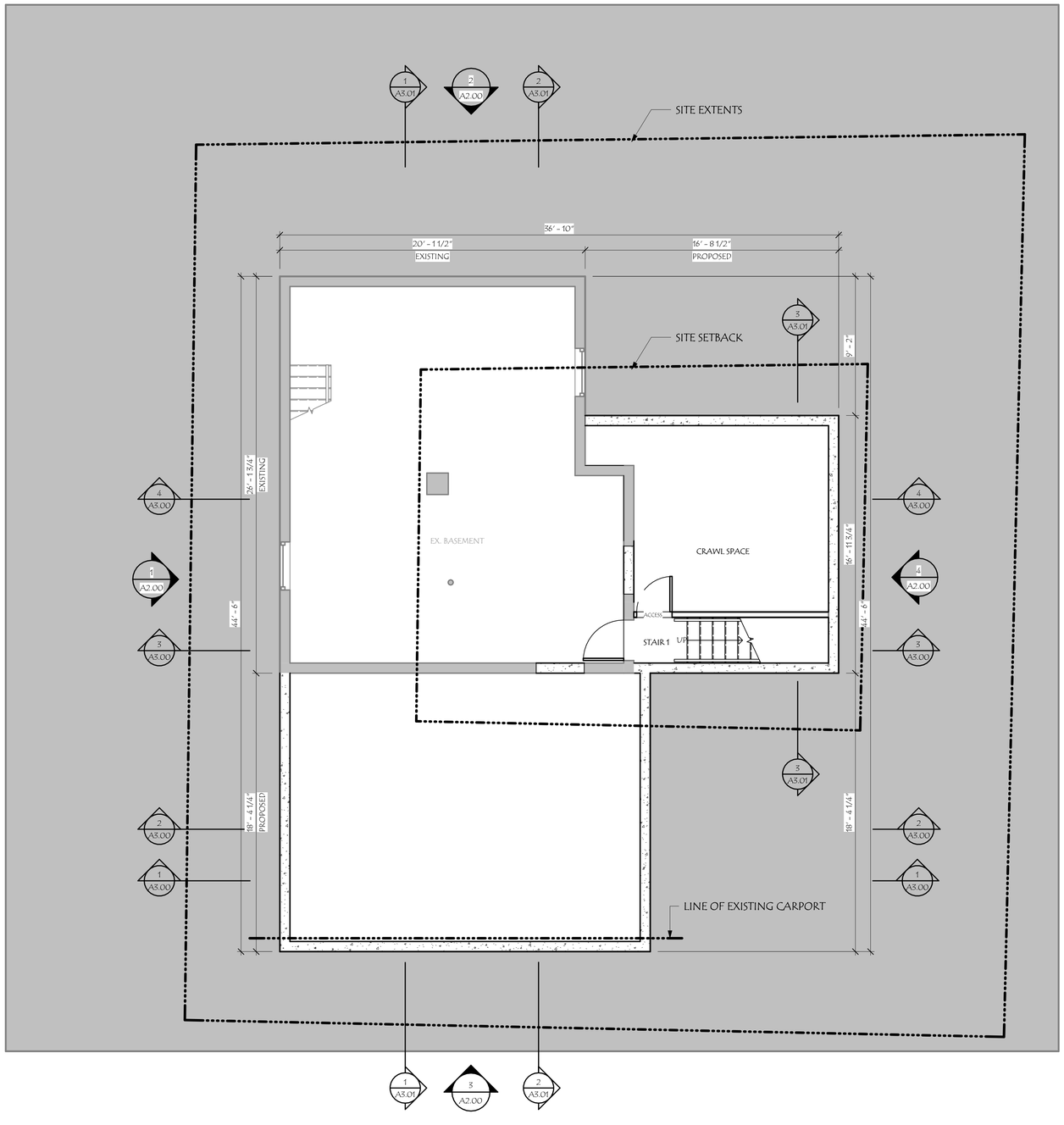
Scale: 1/4" = 1'-0"
Drawn By: CW
Checked By: RH
Project No.: 26005
EXISTING CONDITIONS
Date: 9/22/2026

Title: EXISTING ELEVATIONS

X2.01

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9/22/2026 4:09:08 PM



1 LEVEL 0

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

EXISTING LEVEL 0 FINISHED SQUARE FOOTAGE: 505 sq ft
PROPOSED ADDITIONAL LEVEL 0 FINISHED SQUARE FOOTAGE: 40 sq ft
TOTAL LEVEL 0 PROPOSED SQUARE FOOTAGE: 545 sq ft

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ALGER RESIDENCE

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Revisions:
Description Date

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Checked By: RH
Project No.: 26005
EXISTING CONDITIONS
Date: 9/22/2026

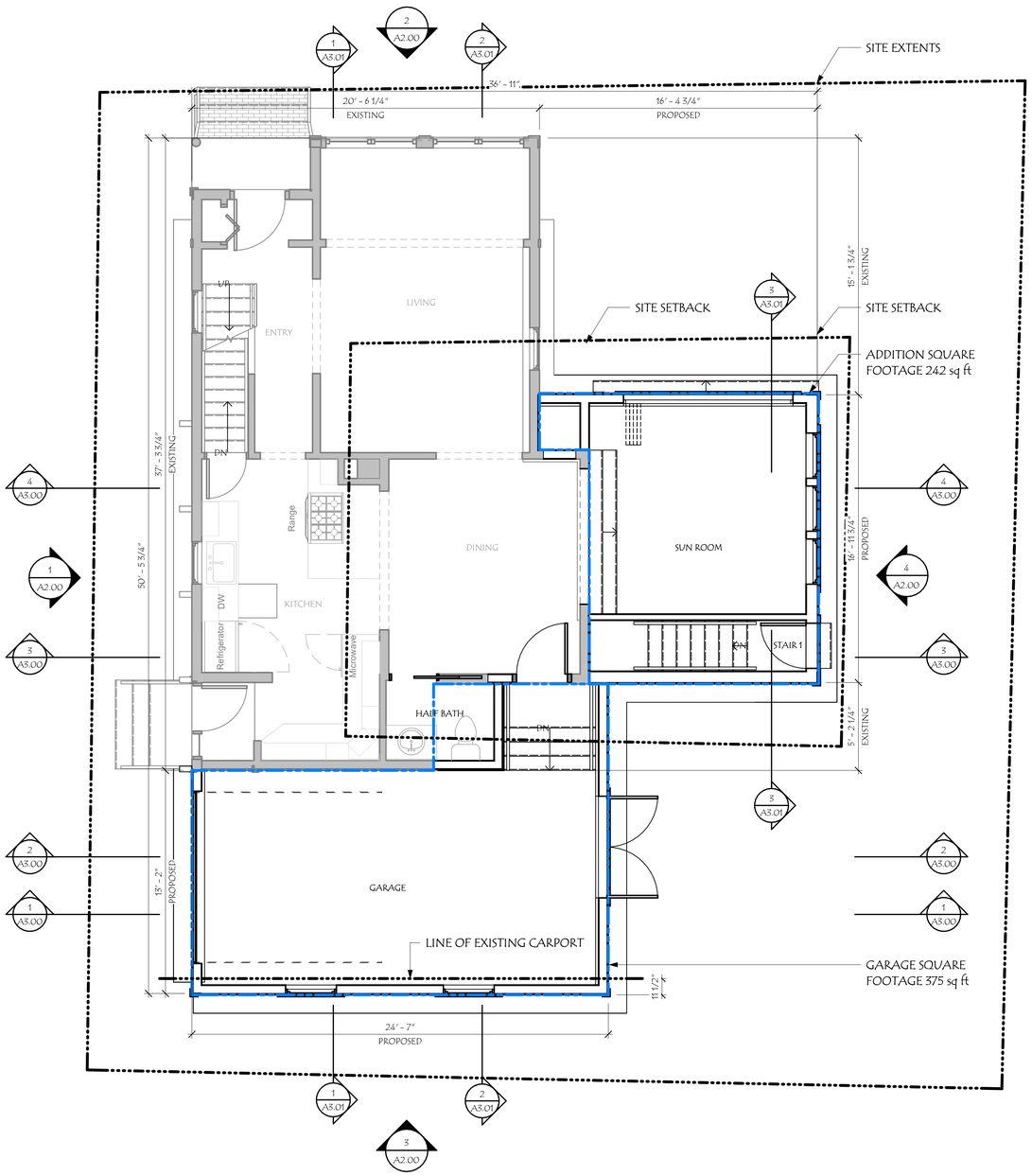
Title: OVERALL LEVEL 0 PLAN

A1.01

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9/22/2026 4:09:04 PM

EXISTING LEVEL 1 FINISHED SQUARE FOOTAGE: 692 sq ft
PROPOSED ADDITIONAL LEVEL 1 FINISHED SQUARE FOOTAGE: 198 sq ft
TOTAL PROPOSED SQUARE FOOTAGE: 890 sq ft



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

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Revisions:
Description Date

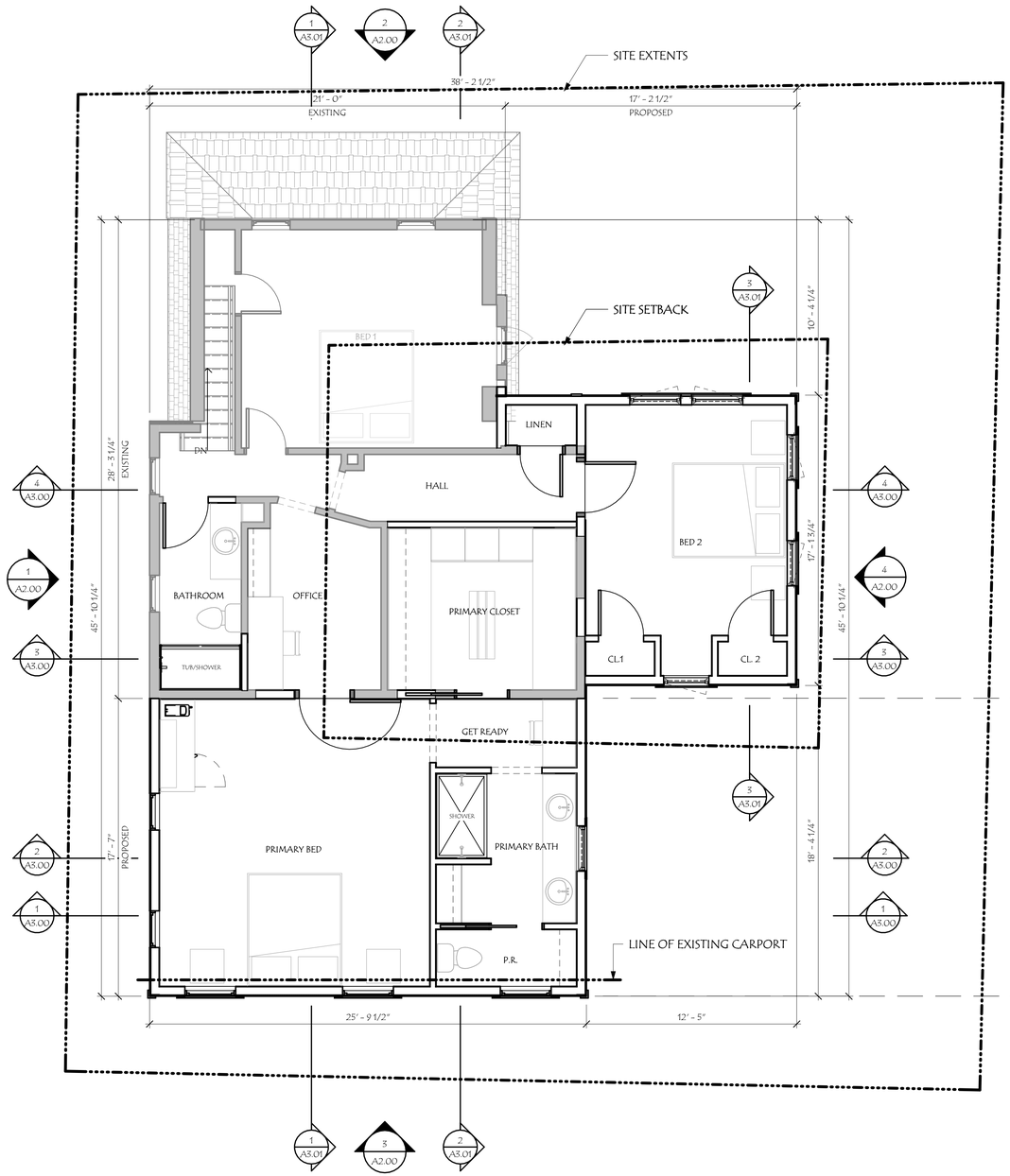
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Checked By: RH
Project No.: 26005
EXISTING CONDITIONS
Date: 9/22/2026

Title: OVERALL LEVEL 1 FLOOR PLAN

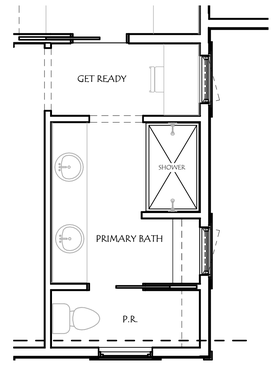
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9/22/2026 4:09:04 PM

EXISTING LEVEL 2 FINISHED SQUARE FOOTAGE: 555 sq ft
PROPOSED ADDITIONAL LEVEL 2 FINISHED SQUARE FOOTAGE: 654 sq ft
TOTAL LEVEL 2 PROPOSED SQUARE FOOTAGE: 1209 sq ft



1 LEVEL 2 - OPTION 1
SCALE: 1/4" = 1'-0"



2 BATH OPTION 2
SCALE: 1/4" = 1'-0"

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ALGER RESIDENCE
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Revisions:
Description Date

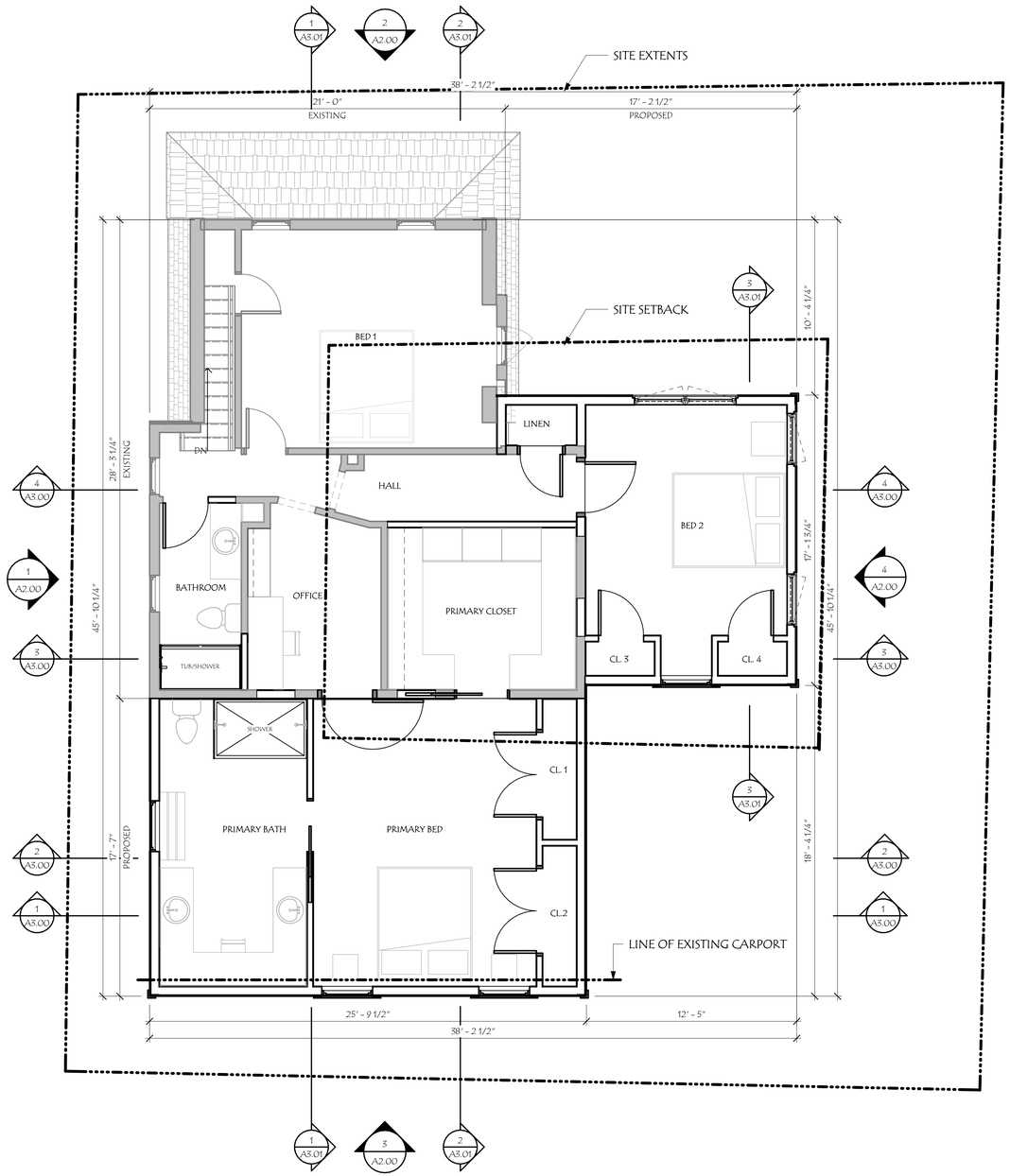
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Drawn By: CW
Checked By: RH
Project No.: 26005
EXISTING CONDITIONS
Date: 9/22/2026

Title: OVERALL LEVEL 2 FLOOR PLAN OPT 1

A1.03a

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9/22/2026 4:09:05 PM

EXISTING LEVEL 2 FINISHED SQUARE FOOTAGE: 555 sq ft
PROPOSED ADDITIONAL LEVEL 2 FINISHED SQUARE FOOTAGE: 654 sq ft
TOTAL LEVEL 2 PROPOSED SQUARE FOOTAGE: 1209 sq ft



1 LEVEL 2 - OPTION 2
SCALE: 1/4" = 1'-0"

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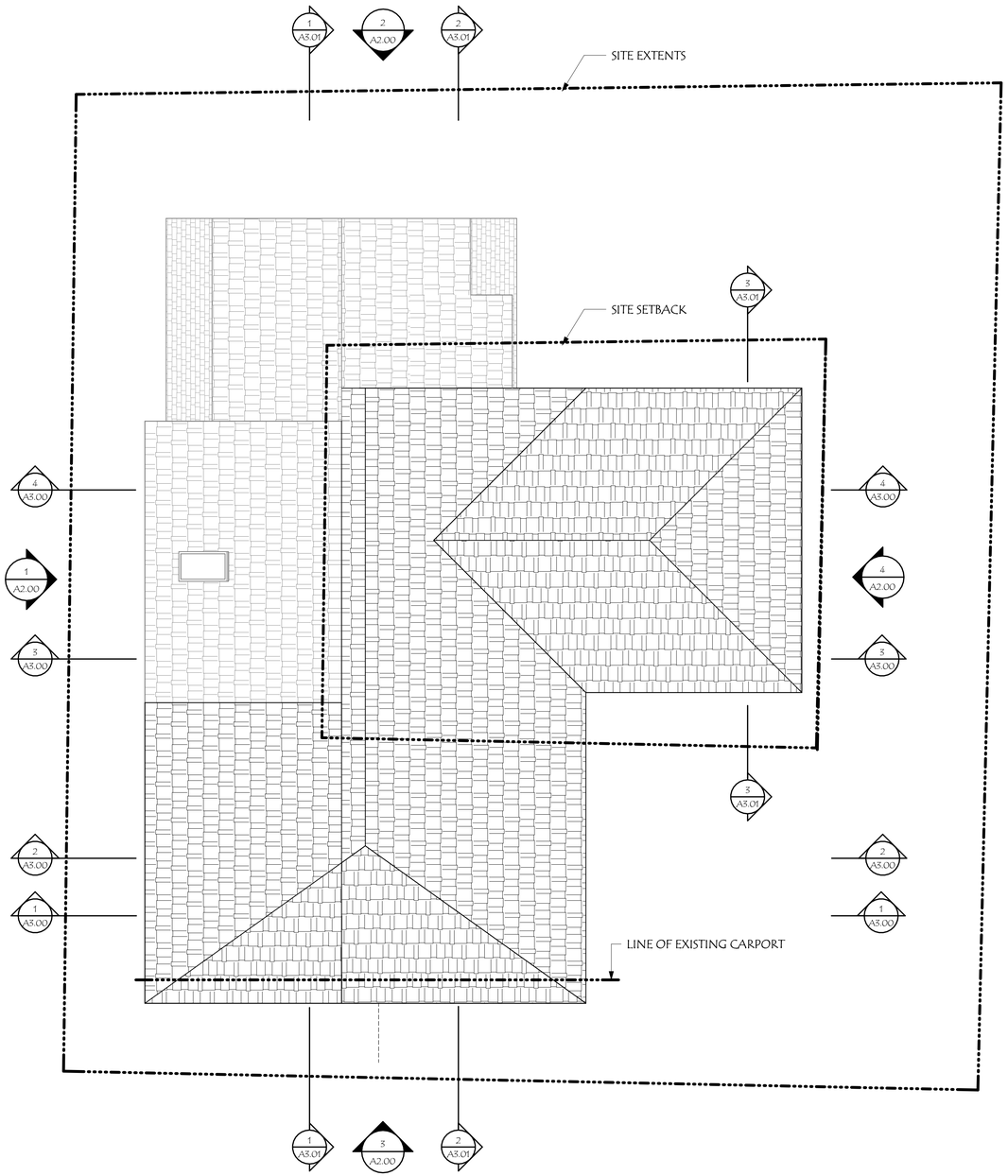
Revisions:
Description Date

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Checked By: RH
Project No.: 26005
Date: 9/22/2026

Title: OVERALL LEVEL 2 FLOOR PLAN OPT 2

A1.03b

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9/22/2026 4:09:06 PM



1 TOP PLATE

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

EXISTING LEVEL 1 FINISHED SQUARE FOOTAGE: 692 sq ft
PROPOSED ADDITIONAL LEVEL 1 FINISHED SQUARE FOOTAGE: 198 sq ft
TOTAL FINISHED PROPOSED SQUARE FOOTAGE: 890 sq ft

EXISTING LEVEL 2 FINISHED SQUARE FOOTAGE: 555 sq ft
PROPOSED ADDITIONAL LEVEL 2 FINISHED SQUARE FOOTAGE: 654 sq ft
TOTAL LEVEL 2 PROPOSED FINISHED SQUARE FOOTAGE: 1209 sq ft

TOTAL EXISTING FINISHED SQUARE FOOTAGE: 1247 sq ft
TOTAL PROPOSED FINISHED SQUARE FOOTAGE: 2099 sq ft

*Finished square footage is mesasured to inside face of stud and includes sq ft of interior partition walls
Garage and basement are excluded from finished square footage but is included in overall footprint*

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ALGER RESIDENCE

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Revisions:
Description Date

Scale: 1/4" = 1'-0"
Drawn By: CW
Checked By: RH
Project No.: 26005
EXISTING CONDITIONS
Date: 9/22/2026

Title: OVERALL ROOF PLAN

A1.04

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9/22/2026 4:09:06 PM

OPTION ONE SHOWN FOR ALL ELEVATIONS





*GARAGE HEIGHT MEASURED FROM EXISTING AVERAGE GRADE PLANE OF 19.6' BELOW FINISHED FLOOR OF FIRST LEVEL MEASURED AT 21.5' PER TIGHE AND BOND CIVIL ENGINEERS

2 THORNTON ST ELEVATION

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



1 SPARKHAWK ST ELEVATION

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



3 CARPORT ELEVATION

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

4 SIDEYARD ELEVATION

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

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Revisions:
Description Date

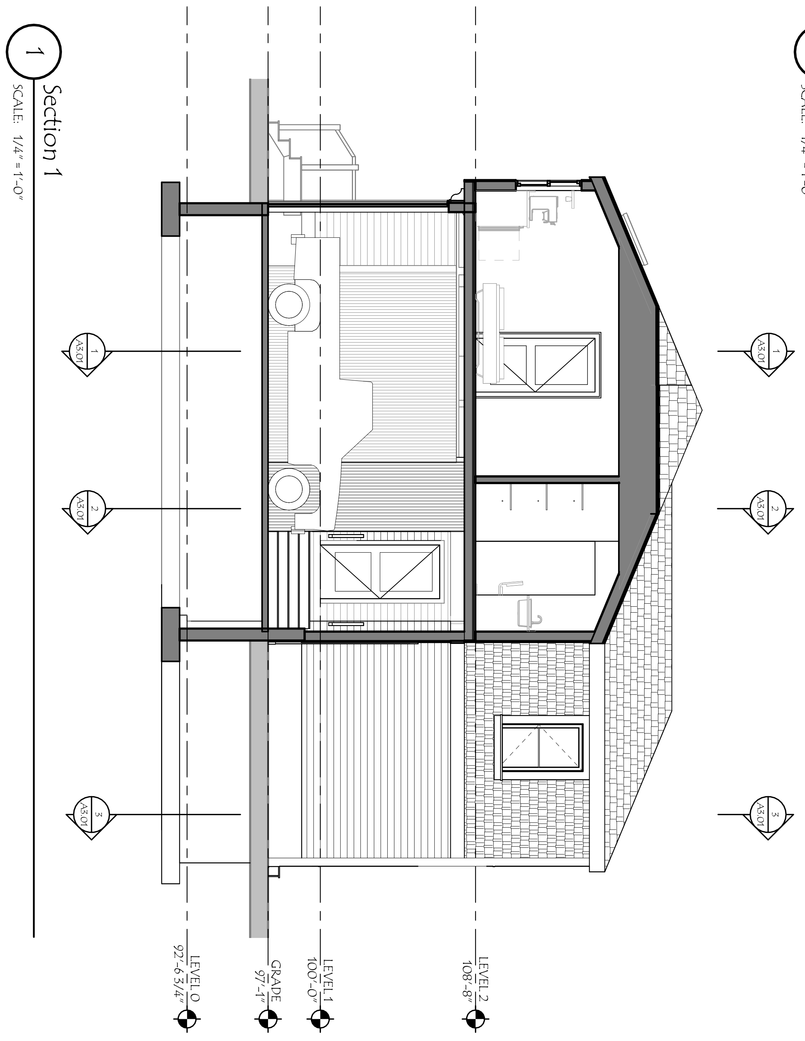
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Drawn By: CW
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Project No.: 26005
EXISTING CONDITIONS
Date: 9/22/2026

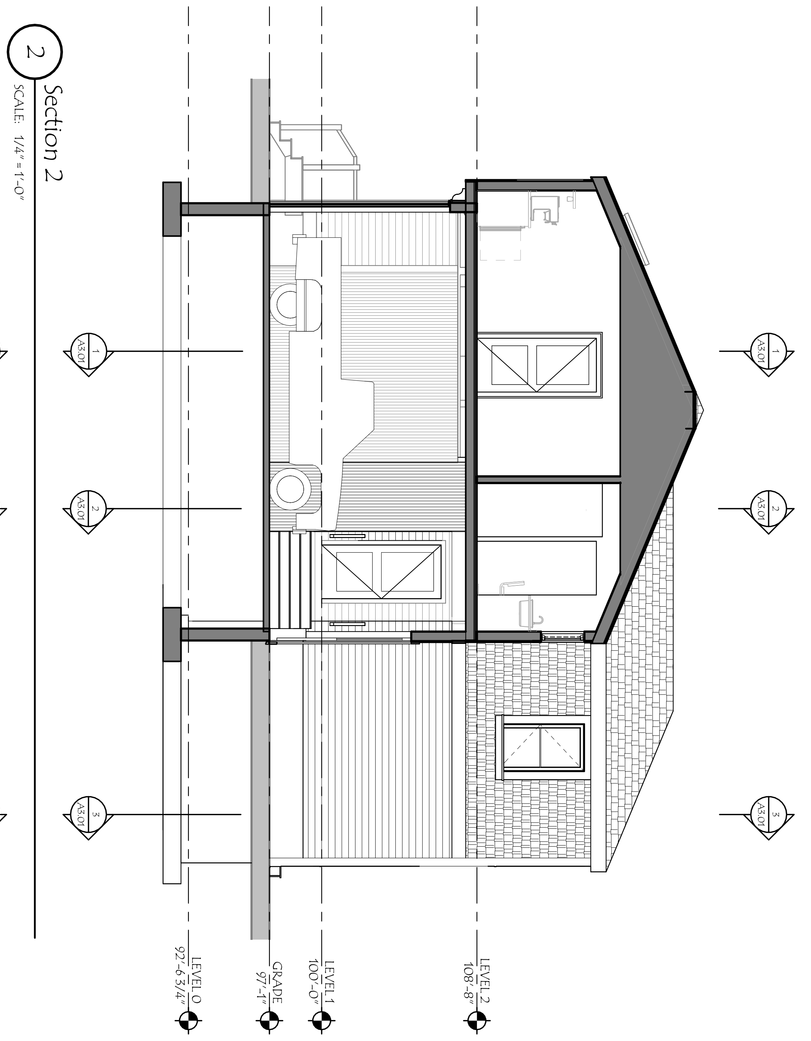
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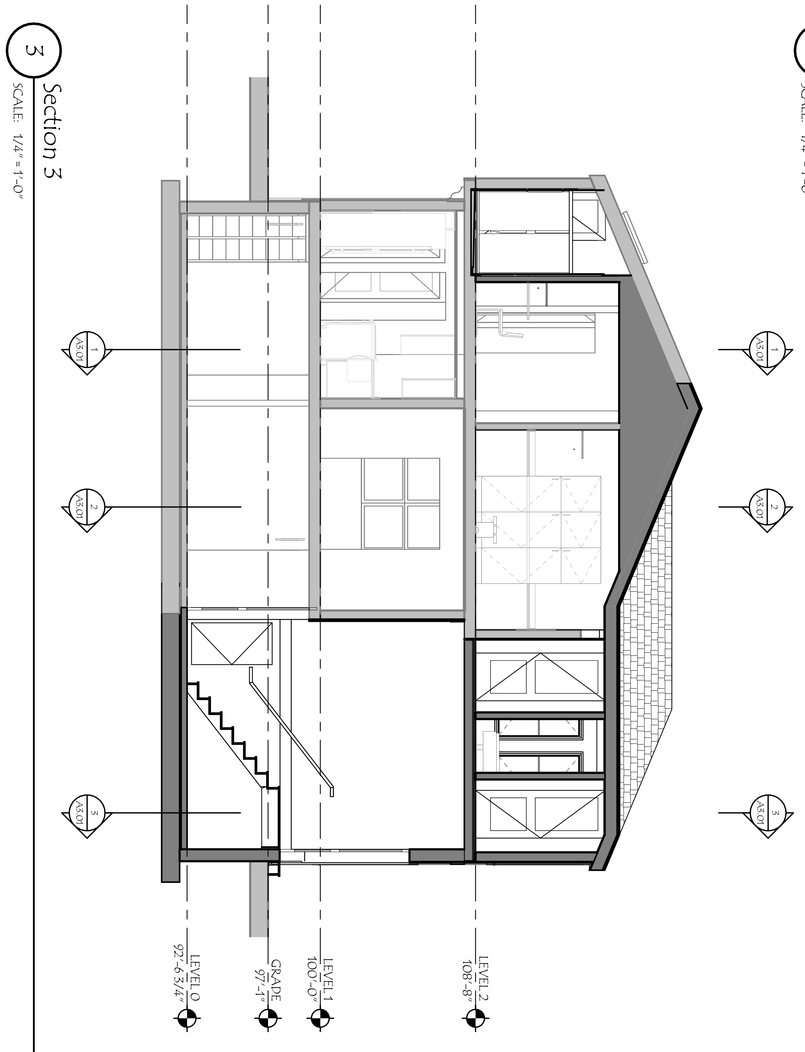
A2.00

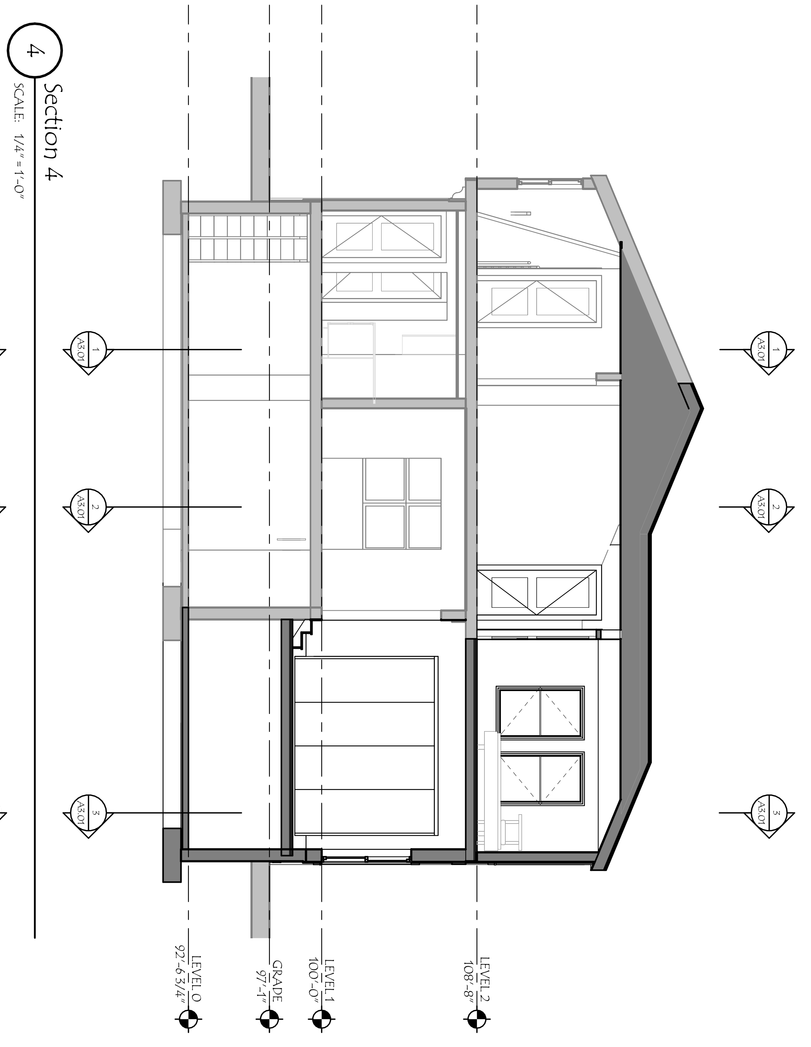
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Title:
BUILDING CROSS SECTIONS

A3.00

Scale:	1/4" = 1'-0"
Drawn By:	CW
Checked By:	RH
Project No.:	26005
EXISTING CONDITIONS	
Date:	9/22/2026

Revisions:
Description Date

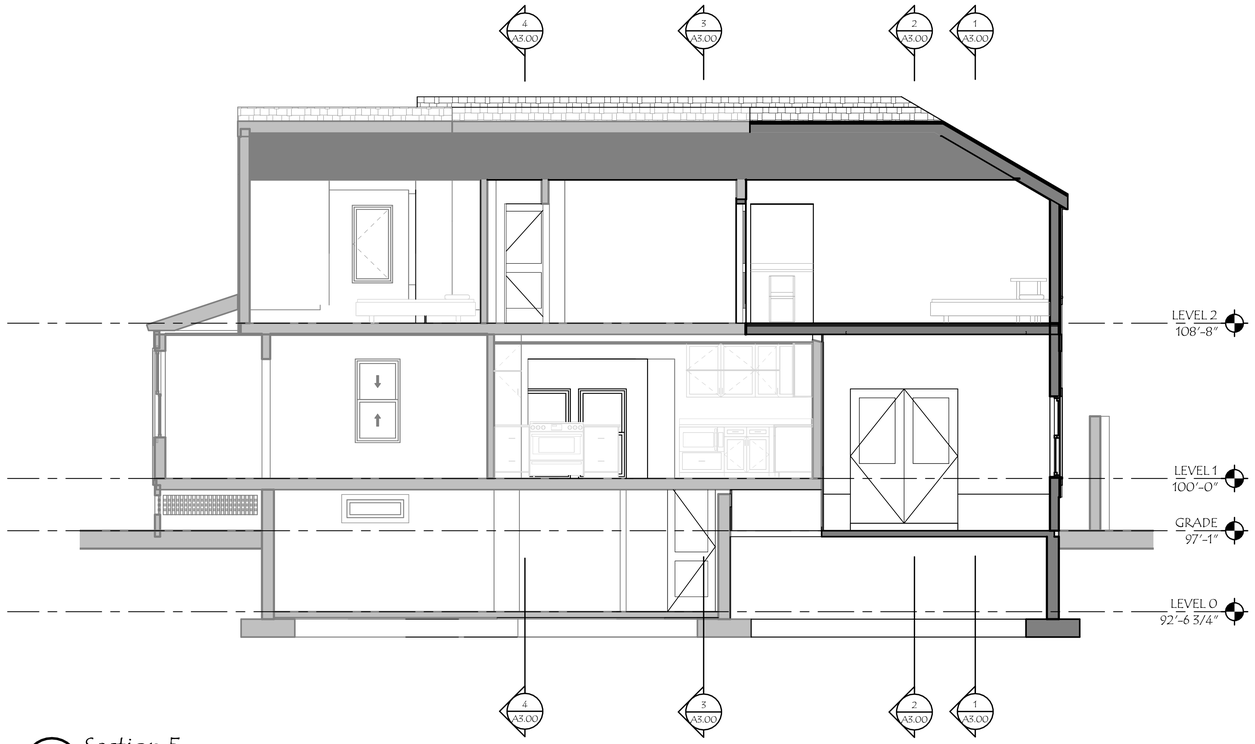
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ALGER RESIDENCE

104 THORNTON ST. PORTSMOUTH, NH

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Portsmouth, NH 03801
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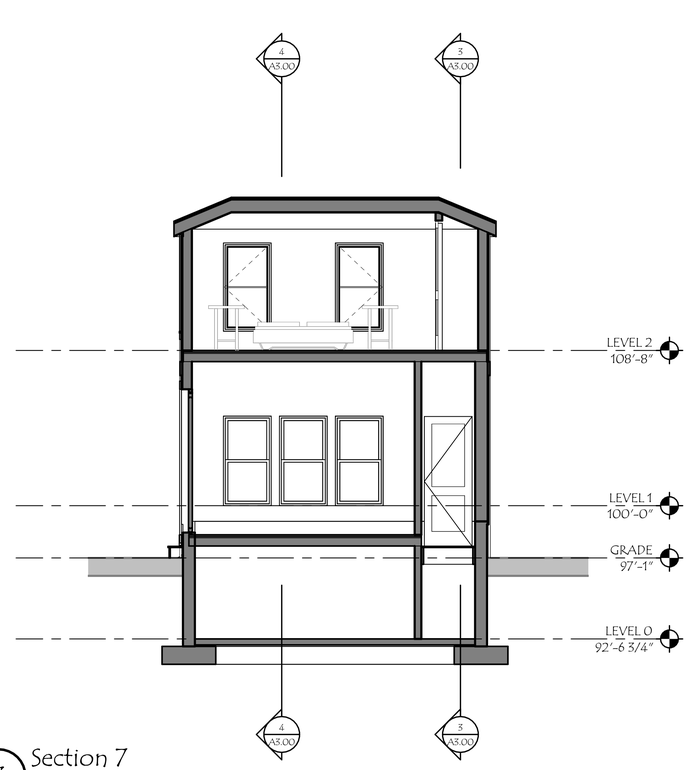
1 Section 5

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



2 Section 6

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



3 Section 7

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

BUILDING SECTION GENERAL NOTES

1. .

RED FOX ARCHITECTS
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Portsmouth, NH 03801
PH: 603.441.2485

ALGER RESIDENCE

104 THORNTON ST. PORTSMOUTH, NH

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Revisions:
Description Date

Scale: As indicated
Drawn By: CW
Checked By: RH
Project No.: 26005
EXISTING CONDITIONS
Date: 9/22/2026

Title: BUILDING LONGITUDINAL SECTIONS

A3.01

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9/22/2026 4:09:12 PM



Overhead View (Rear Elevation)



Overhead View (Sparhawk Street Elevation)



Front Elevation (Thornton Street)



Side Yard Elevation*

***Photo shows former fence in primary front yard (pre-2022)**



Side Yard Elevation



Carport (Sparhawk Street)



Carport “Structural” Supports



Abutting Driveway Adjacent to Carport (TM 160-12)
30 Sparhawk Street

II. NEW BUSINESS

C. The request of **Schofield-Kanner Revocable Trust (Owners),** and **Cain Investments, LLC (Applicant)**, for property located at **0 Woodworth Avenue** whereas relief is needed to construct a new single-family residence on a vacant lot, which requires the following: 1) Variance from Section 10.521 to allow a) lot area of 3,440 SF where 15,000 SF is required, b) lot area per dwelling unit of 3,440 SF where 15,000 SF is required, c) 40 feet of contiguous street frontage where 100 feet is required, d) lot depth of 86 feet where 100 feet is required, e) a front yard setback of 17 feet where 30 feet is required, f) a rear yard setback of 10 feet where 30 feet is required, and g) a building coverage of 35% where 20% is allowed. Said property is located on Assessor Map 232 Lot 73 and lies within the Single Residence B (SRB) District. (LU-26-125)

Existing & Proposed Conditions

	Existing	Proposed	Permitted / Required
Land Use:	Vacant lot	Single-family	Primarily Residential
Lot area (sq. ft.):	3,440	3,440	15,000 min.
Lot Area per Dwelling Unit (sq. ft.):	3,440	3,440	15,000 min.
Frontage (ft.):	40	40	100 min.
Depth (ft.):	86	86	100 min.
Front Yard (ft.):	N/A	17	30 min.
Right Side Yard (ft.):	N/A	10	10 min.
Left Side Yard (ft.):	N/A	10	10 min.
Rear Yard (ft.):	N/A	8*	30 min.
Building Coverage (%):	N/A	35	20 max.
Open Space Coverage (%):	100	61	40 min.
Height (ft.):	N/A	<35	35 max.
Parking	0	1	1
Estimated Age of Structure:	N/A	Variance request(s) shown in red.	

*Legal notice included the applicant's request for a 10' rear setback in submittal materials. Applicant updated the application after the deadline to include a request for an 8' rear setback.

Other Permits/Approvals Required

- Building Permit

Neighborhood Context

Aerial Map



Zoning Map



Previous Board of Adjustment Actions
No previous history found.

Planning Department Comments

The property is currently a vacant lot of record shown on the 1902 subdivision plan for "Prospect Park" as lot 73. The applicant proposes to construct a single-family home on the lot and is seeking relief for dimensional requirements in the SRB District.

Fisher vs. Dover
The applicant cites a variance application filed in 2009 by a different applicant involving the subject property and an adjacent lot that were under common ownership. The narrative outlines that the applicant sought to merge the two properties and re-subdivide them into two new lots of different configurations. One of the proposed lots needed a variance for lot area while the other required variances for lot area, depth and frontage. The applicant notes that the Board voted to deny the variances on the basis of the "public interest" and "unnecessary hardship" criteria had not been met because the subdivision proposal would result in two non-conforming lots.

Staff cannot locate any files in regard to this application, though the Board can consider whether it is appropriate to evoke Fisher vs Dover before the application is considered.

"When a material change of circumstances affecting the merits of the applications has not occurred or the application is not for a use that materially differs in nature and degree from its predecessor, the board of adjustment may not lawfully reach the merits of the petition. If it were otherwise, there would be no finality to proceedings before the board of adjustment, the integrity of the zoning plan would be threatened, and an undue burden would be placed on property owners seeking to uphold the zoning plan." Fisher v. Dover, 120 N.H. 187, (1980).

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

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

10.235 Certain Representations Deemed Conditions

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

DURBIN LAW

Derek R. Durbin, Esq.
603.287.4764
derek@durbinlawoffices.com

BY: VIEWPOINT & HAND DELIVERY

September 23, 2026

City of Portsmouth
Attn: Stefanie Casella, Planner
Zoning Board of Adjustment
1 Junkins Avenue
Portsmouth, NH 03801

RE: Variance Application of Cain Investments, LLC
0 Woodworth Ave, Tax Map 232, Lot 73

Dear Stefanie,

Please find a copy of the following materials relative to the above referenced variance application for the property at 0 Woodworth Avenue, Tax Map 232, Lot 73.

1) Landowner Letter of Authorization
2) Narrative to Variance Application
3) Site Plan
4) Architectural Plans
5) Photographs of Property

A copy of the above application materials is being delivered to the Planning Department. Should you have any questions or concerns regarding the enclosed application materials, do not hesitate to contact me at your convenience.

Sincerely,

Derek R. Durbin, Esq.

dotloop signature verification: dtlp.us/s1oD-m09Y-P4F9

LANDOWNER LETTER OF AUTHORIZATION

David L Schofield and Nancy E Kanner, Trustees of the Schofield-Kanner Revocable Trust of 2025, record owners of property located off of **Woodworth Avenue, Portsmouth, NH**, identified on **Tax Map 232, Lot 73** (the "Property"), hereby authorizes **Durbin Law Offices PLLC and Cain Investments, LLC,** to file any building, zoning, planning or other municipal permit applications with the City of Portsmouth relative to the Property and to appear before its land use boards. This Letter of Authorization shall be valid until expressly revoked in writing.

David Schofield

dotloop verified
09/16/26 6:23 PM EEST
XDPM-T186-C8J6-ZDSQ

David L. Schofield, Trustee

Nancy Kanner

dotloop verified
09/16/26 6:26 PM EEST
D01H-1GY6-X0BG-NRQN

Nancy E. Kanner, Trustee

CITY OF PORTSMOUTH
VARIANCE APPLICATION NARRATIVE

0 Woodworth Avenue
Tax Map 232, Lot 73

Cain Investments, LLC
(Applicant)

David L Schofield and Nancy E Kanner,
Trustees of the Schofield-Kanner Revocable Trust of 2025
(Owners)

INTRODUCTION

History

The property at 0 Woodworth Avenue, identified on Tax Map 232 as Lot 73 is a 3440 square feet corner lot located in the Single Residence B ("SRB") Zoning District (the "Property"). It is a vacant lot of record shown as Lot 73 on a 1902 subdivision plan for "Prospect Park". **Exhibit A**. Prospect Park is otherwise known as one of Portsmouth's "trolley stop" subdivisions that was created during the advancement of motorized transportation that allowed homes to be developed farther from the town center.

Most of the lots were 40' x 80' or 40' x 86', sized to accommodate standardized homes; homes that could be purchased from the Sears and Roebuck catalogues (i.e. "Craftsman Homes"). The classic grid layout provided homebuyers with their "little slice of heaven". By 1903, the lots in Prospect Park were selling like "hot cakes" as evidenced by the Portsmouth Herald. **Exhibit B**. However, as the nation prepared for and entered war, the economy declined and many of the Prospect Park lots were acquired by the City through tax collector deed. **Exhibit C**. Many lots were subsequently combined or partially merged with other lots to accommodate larger yards and homes, as the desires of homeowners evolved. Prospect Park was developed over a long period of time, and its complexion and character have changed significantly over the past century plus. There are still several *developed* lots in the immediate vicinity of the Property that remain in their original dimensions and are of similar size, including but not limited to: TM 232-59, 232-70, 232-74 and 243-41. **Exhibit D**.

Current Plans

The Applicant, Cain Investments, LLC, would like to construct a single-family home on the Property using a floor plan specifically designed to accommodate a smaller, narrower lot, while providing modern amenities and features that most homeowners demand in today's market. The lot itself is non-conforming with respect to area, frontage, and depth. Because the lot is so small and narrow in width (40'), it has a small building envelope (520 sf.). In addition, it has only 22.9% of the area required for a conforming lot (15,000 sf.) in the SRB Zoning District. Because the Property is significantly undersized and non-conforming in multiple respects, it cannot be reasonably developed without several variances from Section 10.521 of the Portsmouth Zoning Ordinance (the "Ordinance"). The Applicant has made a conscious effort to put forward a plan for the Property that is the most unobtrusive to abutting properties.

Prior Zoning Application (2009)

A variance application was previously filed in 2009 by a different Applicant involving the subject Property and an adjacent lot that were under common ownership. The Applicant sought to merge the two properties and re-subdivide them into two new lots of different configurations. One of the proposed lots needed a variance for lot area while the other required variances for lot area, depth and frontage. The Board voted to deny the variances on the basis that the "public interest" and "unnecessary hardship" criteria had not been met because the subdivision proposal would result in two non-conforming lots.

If any question arises as to whether the Board may consider the current application based on the precedence set forth by *Fisher v. City of Dover* (120 N.H. 187, 1980), the answer is "yes". To satisfy the test set forth by the Court in *Fisher v. City of Dover,* any new application must *differ materially in nature and degree* from the prior application or there must be a *material change of circumstances* for the Board to consider the new application.

With the current application, the Board is only being asked to consider the variances necessary to construct a single-family home on a lawfully existing non-conforming lot of record. The Applicant is not seeking to merge or subdivide property or otherwise create new non-conforming lots that do not already exist. The building coverage and setback variances applied for are the only variances being sought that do not related to existing "grandfathered" non-conformities of the Property. The test set forth by *Fisher v. City of Dover* is clearly satisfied with the current application. Therefore, it is proper for the Board to address the merits of the application.

ZONING RELIEF SUMMARY

The Applicant seeks the following variances from Section 10.521 of the Portsmouth Zoning Ordinance (the "Ordinance"):

(a) To allow a lot area of 3,440 square feet where 15,000 square is required.*
(b) To allow a lot area per dwelling unit of 3,440 square feet where 15,000 square feet is required.
(c) To allow 40' of continuous street frontage where 100' is required.*
(d) To allow a lot depth of 86' where 100' is required.*
(e) To allow a 17' (+/-) from yard setback where 30' is required.
(f) To allow an 8' (+/-) rear yard setback where 30' is required.**
(g) To allow 34.6% (+/-) building coverage where 20% is allowed.***

VARIANCE CRITERIA

Granting the variances will not be contrary to the spirit and intent of the Ordinance or the public interest.

In the case of *Chester Rod & Gun Club, Inc. v. Town of Chester*, the Court observed that the requirements that a variance not be "contrary to the public interest" or "injure the public rights of others" are coextensive and are related to the requirement that the variance be consistent with the spirit of the ordinance. 152 N.H. 577 (2005). The Court noted that since the provisions of all ordinances represent a declaration of public interest, any variance will, in some measure, be contrary to the ordinance, but to be contrary to the public interest or injurious to public rights of others, "the variance must 'unduly, and in a marked degree' conflict with the ordinance such that it violates the ordinance's 'basic zoning objectives." "*Id. "*Mere conflict with the terms of the zoning ordinance is insufficient to constitute a violation of the ordinance's basic zoning objectives." *Harborside Assoc v. Parade Residence Hotel,* 162 N.H. 508, 514 (2011). "There are two methods of ascertaining whether granting a variance would violate an ordinance's basic zoning objectives: (1) examining whether granting the variance would alter the essential character of the neighborhood or, in the alternative; and (2) examining whether granting the variance would threaten the public health, safety, or welfare." Id.

The area formerly known as "Prospect Park" predominantly consists of single-family home lots that do not meet the 15,000 square foot requirement. Many, if not all the lots in the immediate surrounding area that are of similar or equal size to the Property and are not encumbered by wetlands, including TM 232-59, 232-70, 232-74 and 243-41, all exceed the 20% building coverage requirement applicable to the SRB Zoning District. These lots also appear to have structures that encroach into one or more of the building setbacks.

---

* The Property is a non-conforming lot of record, so the existing conditions of the property (i.e. lot area, frontage and depth) should not required variance relief, but the Applicant has applied for the relief out of an abundance of caution given the Planning Department's past history of requiring this relief for similarly situated lots.

** The rear yard setback is measured to the portion of the proposed bulkhead exceeding 18" above grade. The house is setback an additional 2' from the rear property boundary (10').

***Building coverage counts the proposed bulkhead, which adds an additional 0.3% to total coverage. Otherwise, coverage is 34.3%.

The primary purposes behind the Ordinance provisions, when viewed together, are to ensure that adequate light, air and space exist between buildings on abutting properties and to protect against the overcrowding or "over-densification" of land. In the present case, the proposed single-family home would have a considerable setback to the nearest structures on the abutting properties. The nearest abutting home to the left, right or rear of the Property, which is not even on an abutting property (TM 232-74), would be at least 60-70' away at its closest distance. The other homes would be even further away. The home will primarily be surrounded by open space. Approving the variances being requested will not alter the essential character of the neighborhood, which consists of varying sized lots with single-family homes of different designs and sizes, nor will it threaten public health, safety and welfare. The addition of a single-family residence to the neighborhood will have no negative impact on traffic or municipal services, which are the most relevant considerations in this context.

Substantial Justice will be done by granting the variances.

Any loss to the individual that is not outweighed by a gain to the general public is an injustice. *New Hampshire Office of State Planning, The Board of Adjustment in New Hampshire, A Handbook for Local Officials* (1997); *Malachy Glen Assocs., Inc. v. Town of Chichester,* 155 N.H. 102 (2007). The Property is a lot of record that was created in 1902 for the express purpose of having a single-family home built upon it. The adoption of zoning in Portsmouth, specifically current SRB zoning standards, has rendered the Property non-conforming and constrained it in such a way that it is not practical or economically feasible to construct a marketable single-family home on it without the variances that are being sought by the Applicant. Denial of the variances would likely foreclose on the possibility of a single-family home ever being constructed on the Property, which would represent a significant loss to the landowner. This loss outweighs any perceived gain to the public by denying the variances.

Surrounding property values will not be diminished by granting the variances.

The Board may rely upon its own knowledge and expertise in Portsmouth real estate to conclude that granting the variances necessary to allow the construction of a new tastefully designed single family home on the Property will not have a negative impact upon surrounding property values. In fact, it is more likely to increase the values of surrounding properties rather than detract from them. As noted above, the proposed home will be setback a considerable distance from the homes on surrounding properties.

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

RSA 674:33, I(b)(1) Unnecessary Hardship Test (Special Conditions / Fair and Substantial Relationship)

The Property has special conditions which distinguish it from surrounding properties. When Prospect Park was established in 1902, it was primarily comprised of smaller 3,200 – 3,440 square foot lots. Modern zoning standards did not exist. The adoption of current SRB Zoning rendered the vast majority of lots within Prospect Park non-conforming, even those that had been merged post-1902. Notwithstanding, these lots were always intended to have single-family home constructed on them and were created for that express purpose. Only a handful of lots have remained in their original configuration from 1902, including the subject Property, but several of these lots cannot be developed because they are encumbered by wetlands. The Property remains one of the smallest, narrowest, unencumbered, undeveloped lots in this area of Portsmouth. As noted above, it has only 22.9% of the area required for a conforming lot in the SRB Zoning District and is only 40' wide and 86' deep. The lot itself cannot be developed without allowing variances for lot area, frontage and depth. In addition, it has an extremely limited building envelope (520 sf.) once the SRB setback standards are applied to it. The Property cannot accommodate a reasonably sized single-family home (500-700 sf. per person) with modern amenities and features without requiring building coverage and setback relief. Thus, owing to these special conditions of the Property, there is no fair and substantial relationship between the general purpose of the ordinance provisions and their specific application to the Property.

Finally, the proposed use is reasonable. The Property will be used for single-family residential purposes, a use which is permitted by right and encouraged by SRB zoning.

RSA 674:33, I(b)(2) Unnecessary Hardship Test (Strict Conformance)

In the event that the Board finds that hardship criteria above has not been established, RSA 674:33, I(b)(2) provides that "an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it." The Applicant incorporates its statements and arguments above and avers that the Property cannot be used in strict conformance with the Ordinance and the variances that have been sought are necessary to make reasonable use of it.

CONCLUSION

In conclusion, the Applicant has demonstrated that its application meets the five (5) criteria for granting the variances requested and respectfully requests the Board's approval.

Respectfully Submitted,

Dated: September 23, 2026

Derek R. Durbin, Esq.
Durbin Law Offices, PLLC
154 Maplewood Avenue
Portsmouth, NH 03801
(603)-287-4764
derek@durbinlawoffices.com

EXHIBIT A

Prospect Park Plan of 4/17/1902 – Plan #00113 (RCRD)

EXHIBIT B

Portsmouth Herald Article of June 10, 1903

EXHIBIT C

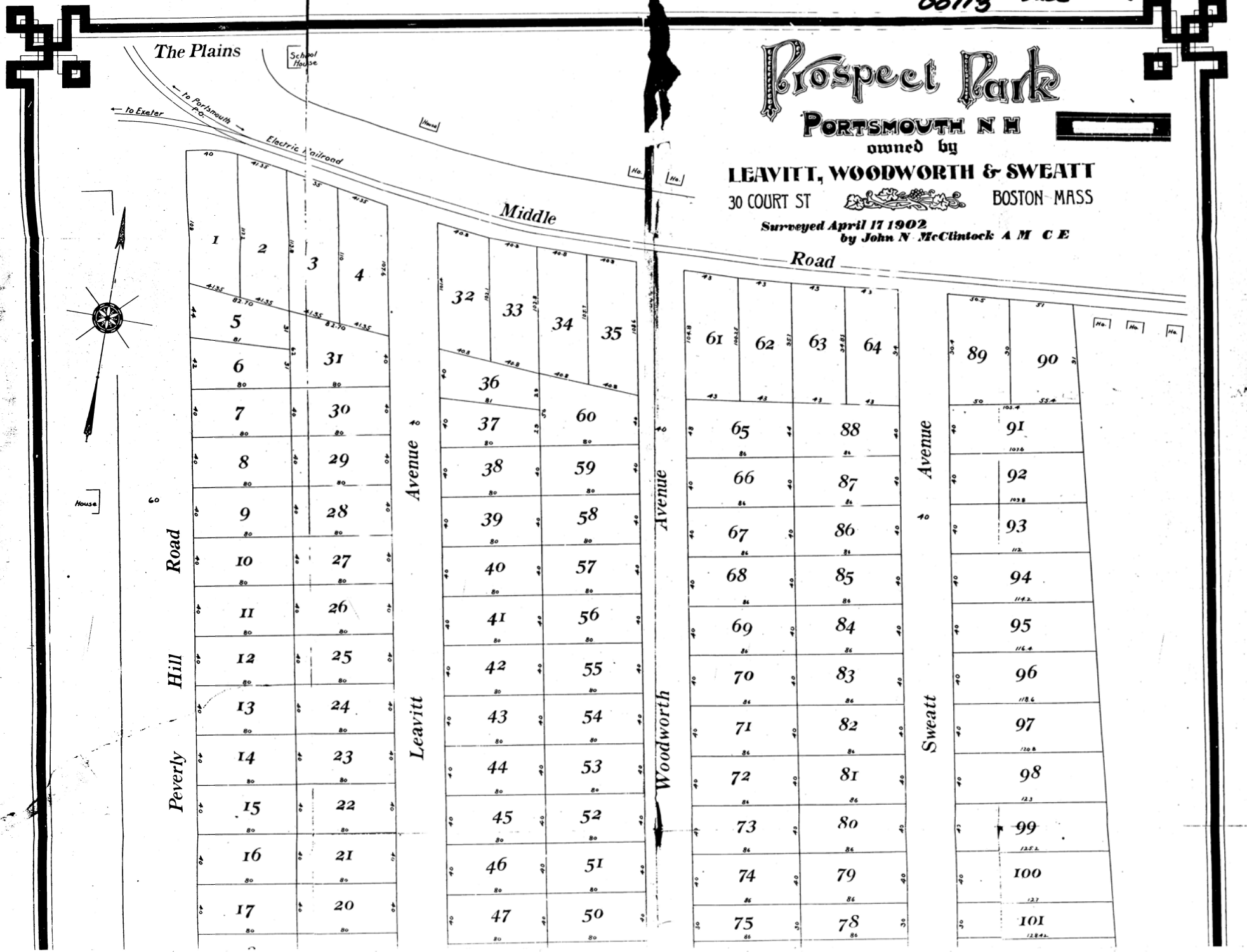
Portsmouth Herald Article of May 9, 1918

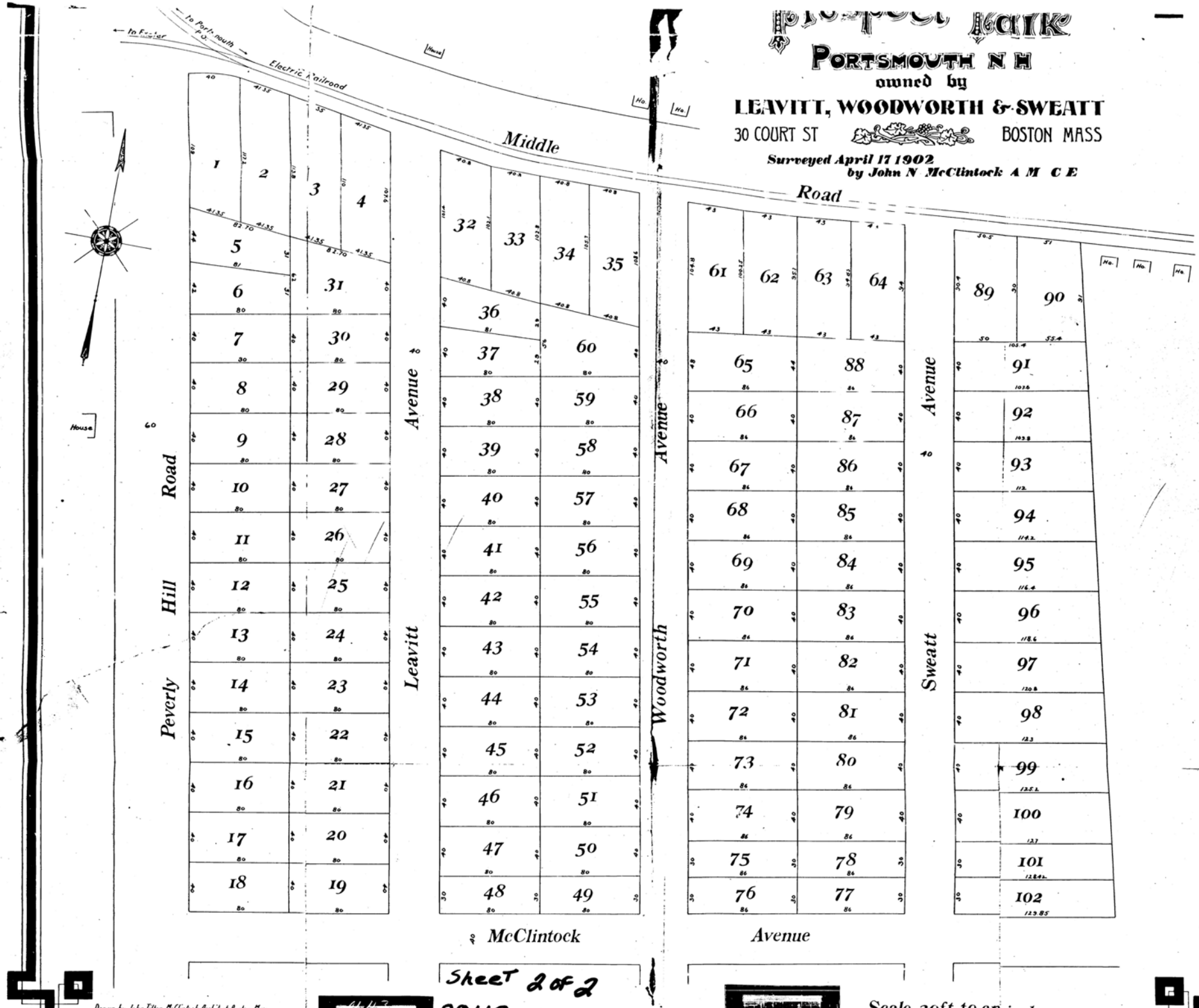
EXHIBIT D

GIS/Tax Map Sheet

EXHIBIT A

00113 Sheet 1 of 2 00113




Portsmouth Park
PORTSMOUTH N H
owned by
LEAVITT, WOODWORTH & SWEATT
30 COURT ST BOSTON MASS
Surveyed April 17 1902
by John N McClintock A M C E
← To Exeter
→ To Ports-mouth
Electric Railroad
Middle
Road
Hill
Peverly
Road
Leavitt
Avenue
Woodworth
Avenue
Sweatt
Avenue
McClintock
Avenue
House
Sheet 2 of 2
00113
Drawn by John Tilton McClintock Architect Boston Mass.
Scale, 30ft. to an inch.

Newspapers.com
https://www.newspapers.com/image/56998366

The Portsmouth Herald (Portsmouth, New Hampshire) · Wed, Jun 10, 1903 · Page 8
Printed on Jan 29, 2017

EXHIBIT
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The new law also provides for a regular inspection of the cows and the premises and a test of the milk at Concord.

SOLD THEM ALL.

House Lots At Prospect Park Annex Go Like Hot Cakes.

All of the house lots at Prospect Park annex, on Middel Road, have been sold. In all, one hundred and eight lots were disposed of, averaging in price from twenty-five dollars to two hundred each. Manager Cloran, who had charge of the sales, had ten assistants. They have been in this city for two weeks.

The lots are quite near the city and many of the purchasers will begin to erect homes at once.

Others, who bought lots more for speculation than anything else, will wait a while.

FOUR MORE LICENSES.

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MEA

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The Portsmouth Herald (Portsmouth, New Hampshire) · Thu, May 9, 1918 · Page 8
Printed on Jan 29, 2017

EXHIBIT
tabbies
C

AUCTION
OF
Real Estate

(Taken for Taxes)

Wednesday, May 15, 1918

At 11 O'Clock A. M.

13 LOTS OF LAND IN PROSPECT PARK

Single lots, double lots and one block of five lots.

The property will be sold to the highest bidder absolutely without reserve. Good opportunity to own your own land and plant a war garden.

By Order of City of Portsmouth.

BUTLER & MARSHALL

AUCTIONEERS.

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EXHIBIT D



Property Information

Property ID	0232-0073-0000
Location	WOODWORTH AVE
Owner	SCHOFIELD KANNER REV TRUST

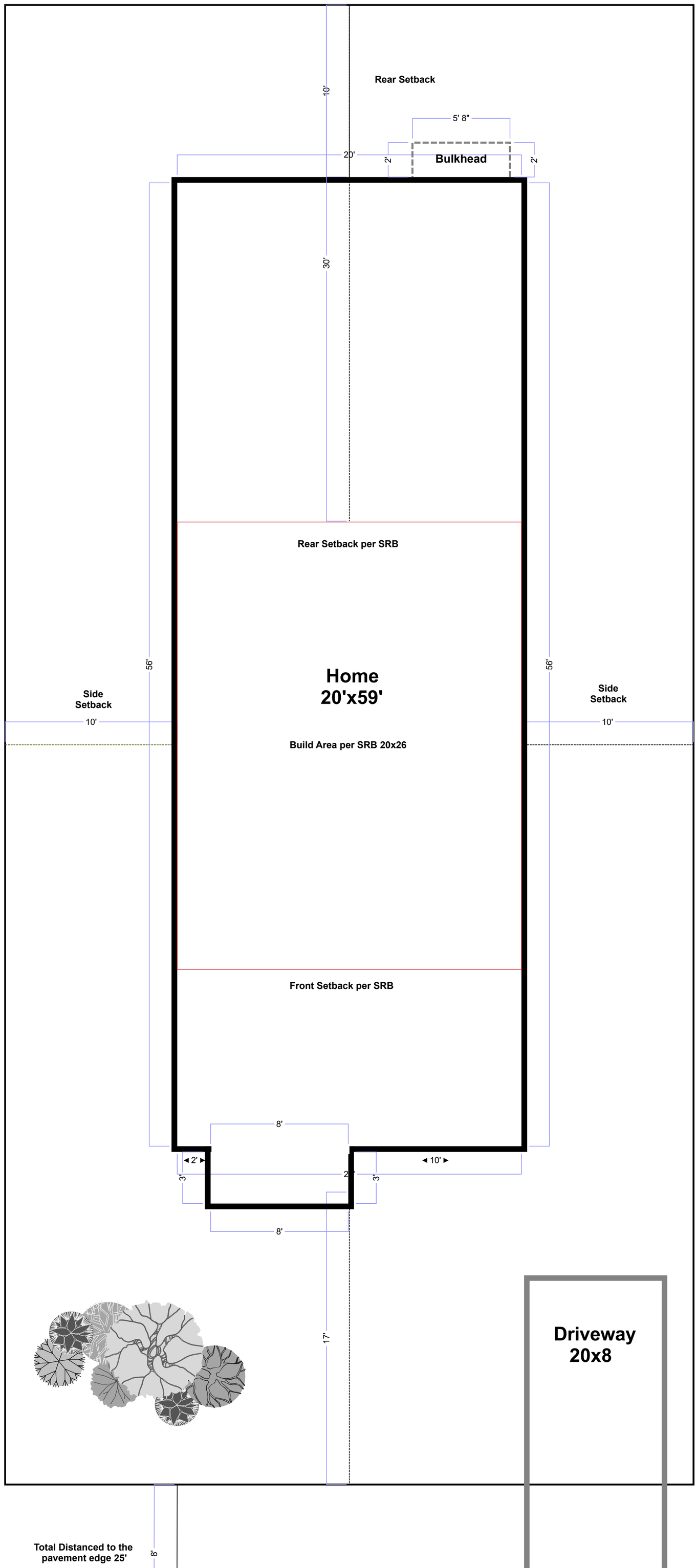
MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT

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.

Lot Plan
Woodworth Ave
Tax Map 232 Lot 73



Lot Data

Lot Size 40x86

Lot Area 3,440 SQ FT

Home Size 20x59

Home Area 1,191 SQ FT

Coverage 34.6%

SRB Setbacks

Front	30 FEET
Rear	30 FEET
Side	10 FEET
Height	35 FEET

Heidi
911.500 KL

Artform Home Plans
603-431-9559

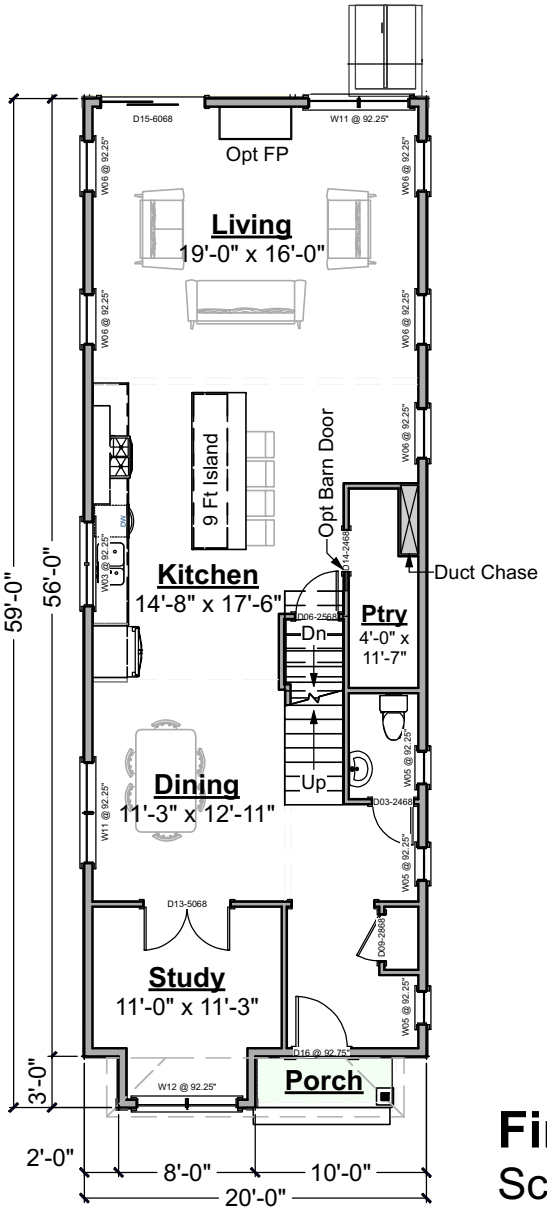


Heidi

911.500 KL

Artform Home Plans
603-431-9559

Living Area this Floor: 1144 sq ft
9'-0" Ceiling Heights



First Floor Plan

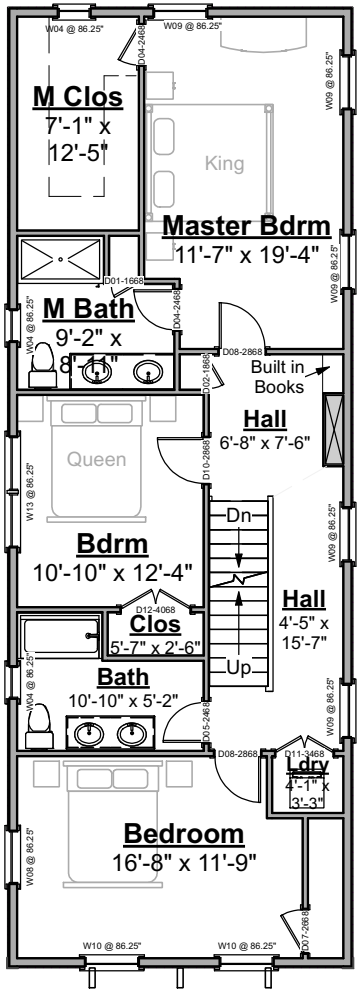
Scale: 3/32" = 1'-0"

Heidi

911.500 KL

Artform Home Plans
603-431-9559

Living Area this Floor: 1120 sq ft
8'-0" Ceiling Heights



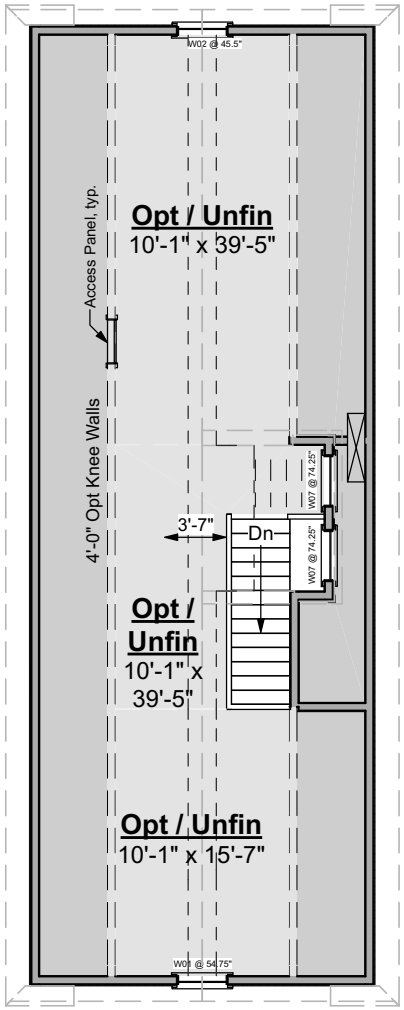
Second Floor Plan

Scale: 3/32" = 1'-0"

Heidi

911.500 KL

Artform Home Plans
603-431-9559



Opt Living Area this Floor: 589 sq ft

8'-0" Ceiling Heights

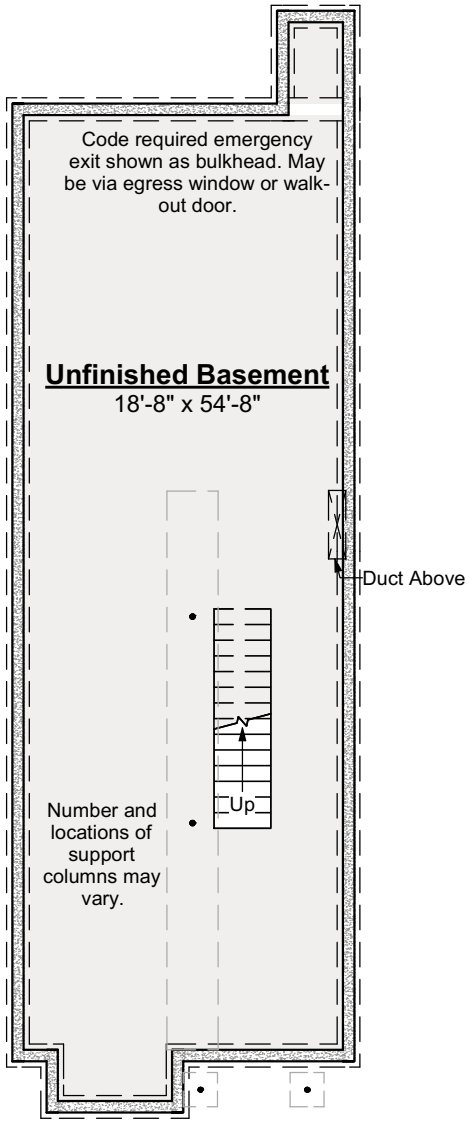
Third Floor Plan

Scale: 3/32" = 1'-0"

Heidi

911.500 KL

Artform Home Plans
603-431-9559



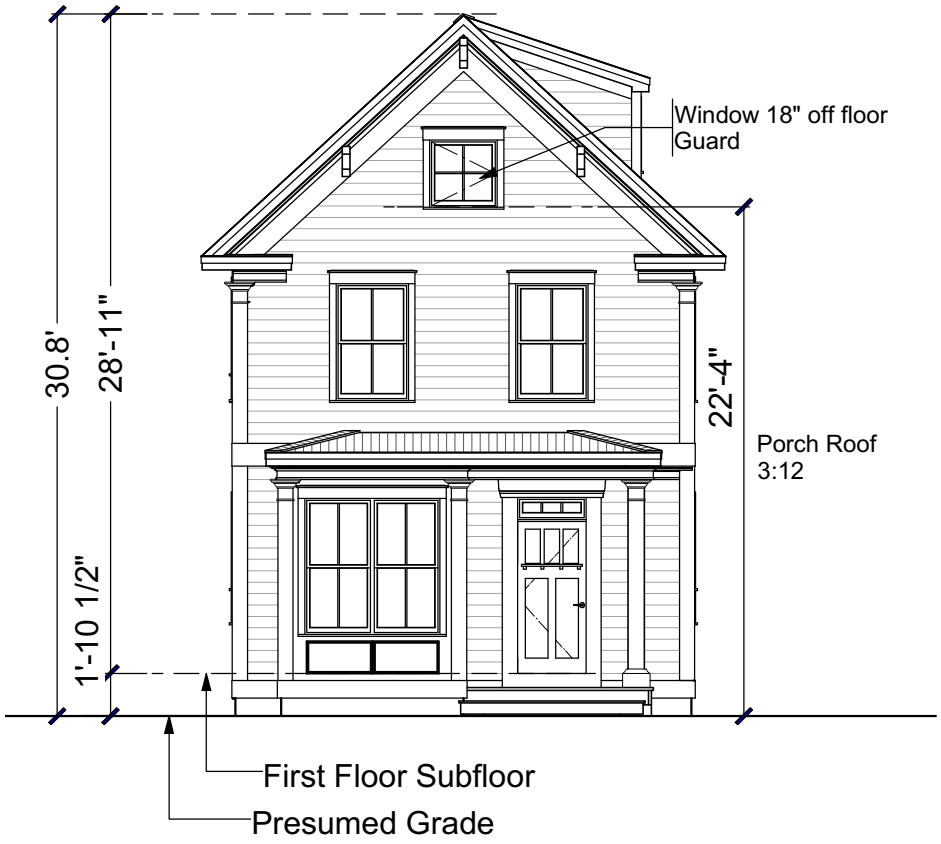
Foundation Plan

Scale: 3/32" = 1'-0"

Heidi

911.500 KL

Artform Home Plans
603-431-9559



Front Elevation

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

Heidi

911.500 KL

Artform Home Plans
603-431-9559



Right Elevation

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

Heidi

911.500 KL

Artform Home Plans
603-431-9559



Rear Elevation

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

Heidi

911.500 KL

Artform Home Plans
603-431-9559



Left Elevation

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



Front Elevation Right



Front Elevation Left



Rear Elevation (from Swett Ave)

II. NEW BUSINESS

D. The request of **Peters Family Trust (Owner)**, for property located at **54 Lincoln Avenue** whereas relief is needed to construct a second-floor accessory dwelling unit over an existing detached garage, which requires the following: 1) Variance from Section 10.521 to allow a) a rear yard setback of 10 feet where 20 feet is required; and b) building coverage of 29% where 25% is allowed. Said property is located on Assessor Map 111 Lot 21 and lies within the General Residence A (GRA) District. (LU-26-124)

Existing & Proposed Conditions

	Existing	Proposed	Permitted / Required
Land Use:	Single-Family Residential	Construct second-story detached ADU over existing garage	Primarily Residential
Lot area (sq. ft.):	5,663	5,663	7,500 min.
Lot Area per Dwelling Unit (sq. ft.):	5,663	5,663	7,500 min.
Front Yard (ft.):	Garage: >15	DADU: >15	15 min.
Right Yard (ft.):	>10	>10	15 min.
Left Side Yard (ft.):	13	13	10 min.
Rear Yard (ft.):	14	10	20 min.
Building Coverage (%):	27	29	25 max.
Open Space Coverage (%):	44.9	43.5	30 min.
Height (ft.):	<35	<35	35 max.
Estimated Age of Structure:	1910	Variance request(s) shown in red.	

Other Permits/Approvals Required

- Building Permit

Neighborhood Context





Previous Board of Adjustment Actions

- **February 3, 2015 –** Construct a 7’ x 14’ rear addition and a 6’ x 8’8” front addition with stairs. Add dormers and construct a 20’ x 22’ garage. 1) Variance from Section 10.521 to allow a lawful nonconforming structure to be extended, reconstructed or structurally altered without conforming to the requirements of the Ordinance. 2) A Variance from Section 10.521 to allow the following: a) a front yard setback of 12’2” where 15’ is required; b) a right side yard setback of 2’10” where 10’ is required; c) 26.3% building coverage where 25% is the maximum allowed. The Board voted to **grant** the request as presented and advertised.

Planning Department Comments

The applicant proposes to construct a 443 SF detached ADU as a second story addition to the existing detached garage. The construction will include a rear stairwell for access. The proposal requires rear setback and building coverage relief for the addition.

Variance Review Criteria

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

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

10.235 Certain Representations Deemed Conditions

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

PROJECT NARRATIVE

54 Lincoln Avenue, Portsmouth, New Hampshire

The Applicant proposes to construct a second floor over the existing two-car garage located at 54 Lincoln Avenue in Portsmouth, New Hampshire. The proposed second floor will provide an Accessory Dwelling Unit (ADU) for the homeowners, creating additional residential living space while making efficient use of an existing structure.

The project has been designed to work within the existing conditions of the property and to maintain the established residential character of the neighborhood. The proposed addition will be constructed vertically above the existing garage and will not expand the garage's footprint toward the rear property line, with the exception of the stairs and egress required by code.

The proposed ADU will function as an accessory use to the primary residence and will remain residential in character. The addition will be designed to complement the existing home and garage through appropriate architectural scale, proportions, materials, and detailing. The intent is to create a cohesive improvement that fits comfortably within the existing neighborhood.

The Applicant is requesting a variance from the applicable rear setback requirement to allow the vertical expansion of the existing garage within the rear setback. The requested relief is limited to the vertical expansion, and code required stairs a egress deck. The structure does not extend further than the ac condensing units that are currently in that location.

The project provides an opportunity to add residential living space without constructing a new detached building or substantially increasing the developed area of the property. The proposed ADU will provide a practical and efficient use of the property while preserving the existing residential use and character of the site.

The proposed improvements will be designed and constructed in accordance with applicable building, life-safety, and other regulatory requirements. The Applicant believes the project represents a reasonable and appropriate improvement to 54 Lincoln Avenue that is compatible with the surrounding neighborhood and will not adversely affect neighboring properties or the public interest.

The requested variance will allow the property to be reasonably utilized while preserving the intent of the City's zoning regulations and maintaining the character and quality of the surrounding residential neighborhood.

10.233.21

The Variance Will Not Be Contrary to the Public Interest

The requested variance will not be contrary to the public interest because the proposed project is a limited vertical expansion of an existing two-car garage at 54 Lincoln Avenue. The Applicant is not proposing to expand the existing garage footprint farther into the required rear setback. Rather, the proposed second floor will be constructed directly above the existing garage, allowing the property to accommodate an Accessory Dwelling Unit (ADU). The only addition to the rear would be for the required egress for code compliance.

The proposed use will remain residential in nature and will be consistent with the established residential character of the property and surrounding neighborhood. The project will provide additional residential living space while making efficient use of an existing structure, rather than requiring the construction of a new detached building or an expansion of the existing footprint.

The granting of the variance will not adversely affect the public health, safety, or welfare. The proposed improvements will be subject to all applicable building, life-safety, and zoning requirements, except for the specific rear setback relief requested.

The requested variance is therefore limited in scope and will allow the property to be improved and used in a manner that is compatible with its residential surroundings. The relief requested does not undermine the purpose of the rear setback requirement, as the existing footprint within the setback will only be expanded to accommodate the code required egress.

For these reasons, granting the requested variance will not be contrary to the public interest.

10.233.22

The Spirit of the Ordinance Will Be Observed

The spirit of the Zoning Ordinance will be observed by granting the requested variance because the proposed project maintains the fundamental purpose of the rear setback requirement while allowing a reasonable and appropriate improvement to the property.

The existing two-car garage is already located within the required rear setback. The Applicant is not proposing to enlarge the garage footprint or extend the structure farther toward the rear property line. Instead, the proposed second floor will be constructed vertically over the existing garage footprint to create an Accessory Dwelling Unit (ADU). The only encroachment is the code required egress and that does not extend any further than the existing AC condensing units.

The rear setback is intended, in part, to provide separation between structures and property lines, preserve open space, and minimize impacts on neighboring properties. Those objectives will continue to be maintained.

The proposed ADU will remain residential in character and will be integrated into the existing residential use of the property. The project represents an efficient use of an existing structure rather than introducing a new structure or expanding the property's developed footprint.

The requested variance is therefore limited to allowing the vertical expansion of an existing structure while preserving the existing setback relationship. Granting the variance will allow the property to be reasonably utilized without defeating or substantially diminishing the underlying purposes of the Ordinance.

10.233.23

3. Substantial Justice Will Be Done

Substantial justice will be done by granting the requested variance to allow a vertical expansion of the existing two-car garage at 54 Lincoln Avenue to create an Accessory Dwelling Unit (ADU) for the homeowners.

The proposed project is a vertical expansion of an existing structure. The existing two-car garage is already located within the required rear setback, and the Applicant is not proposing to further extend the garage footprint toward the rear property line. Instead, the proposed living space will be constructed above the existing garage footprint. The only further encroachment is for the required egress which will allow for the ADU to have a private entrance.

The requested relief provides a reasonable opportunity to make use of an existing structure while minimizing the physical impact on the property and surrounding neighborhood. The project allows additional residential space to be created without constructing a new detached structure or increasing the existing garage footprint.

The proposed ADU will remain residential in character and will be accessory to the primary residence. Its use will be consistent with the residential character of the neighborhood and will provide additional housing within an existing residential property.

Granting the variance will not provide a benefit to the Applicant that is outweighed by any corresponding detriment to the public or neighboring properties. The proposed work will not move the structure any closer to the rear property line, and the additional floor area will be located directly above an existing structure. The project can therefore accommodate the proposed residential use while maintaining the existing relationship of the garage to the rear property line. Even the stairs and deck for required egress will not go any further than the existing AC condensing units.

Conversely, denial of the variance would prevent the homeowners from making reasonable use of the existing garage structure for additional residential space, despite the fact that the proposed improvement does not increase the garage's existing footprint.

The benefit to the homeowners from being able to utilize the existing garage and provide an ADU is substantial, while the public benefit from requiring the existing garage to remain limited to one story within its current footprint would be minimal. There is no identifiable public benefit that would outweigh the hardship resulting from denial of the requested relief.

For these reasons, granting the variance would provide a reasonable balance between the purposes of the Zoning Ordinance and the reasonable use of the property. The requested variance is limited to the vertical expansion of an existing structure and does not increase the existing encroachment into the rear setback. Accordingly, substantial justice will be done by granting the variance.

10.233.24 **The Values of Surrounding Properties Will Not Be Diminished**

The values of surrounding properties will not be diminished by granting the requested variance. The proposed second-floor addition will create an Accessory Dwelling Unit that is consistent with the residential character and established use of 54 Lincoln Avenue and the surrounding neighborhood.

The addition will be designed to complement the existing home and garage, with appropriate architectural detailing, materials, scale, and proportions. The improvements will enhance the overall appearance, functionality, and usability of the property while maintaining a residential character compatible with neighboring homes.

The proposed ADU will not introduce a commercial use or an incompatible activity that would adversely affect neighboring properties. It will provide additional residential living space within an established residential property and will be subject to applicable building and safety requirements.

The project represents a thoughtful improvement to the property and is not expected to adversely affect the use, enjoyment, or marketability of surrounding properties. The quality and character of the proposed improvements should contribute positively to the property and the neighborhood as a whole.

10.233.25

Literal Enforcement of the Provisions of the Ordinance Would Result in an Unnecessary Hardship

Literal enforcement of the rear setback provisions would result in an unnecessary hardship because of the existing configuration of the property and the location of the two-car garage at 54 Lincoln Avenue.

The existing garage is a permanent and established structure that occupies a portion of the property within the required rear setback. Strict enforcement of the setback requirement would prevent the reasonable vertical utilization of this existing structure and effectively limit the property owner's ability to make productive use of the space above the garage.

The proposed project is specifically designed to work within the existing conditions of the property. Rather than expanding the garage outward or creating a new detached

structure, the Applicant proposes to utilize the space above the existing garage for an Accessory Dwelling Unit. This approach provides additional residential space while making efficient use of the property's existing development.

The hardship is therefore related to the physical characteristics and existing configuration of the property, rather than the personal circumstances or preferences of the Applicant. Without the requested variance, the property would be unnecessarily restricted from a reasonable use of an existing structure that can otherwise accommodate additional residential space.

The requested relief is limited in scope and will allow the property to be reasonably utilized while maintaining the residential character of the neighborhood and minimizing impacts on surrounding properties.

For these reasons, literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship, and the requested variance provides a reasonable means of allowing the property to be used in a manner consistent with its residential character.

PETERS ADU

54 LINCOLN AVE, PORTSMOUTH, NH

PROPERTY INFORMATION

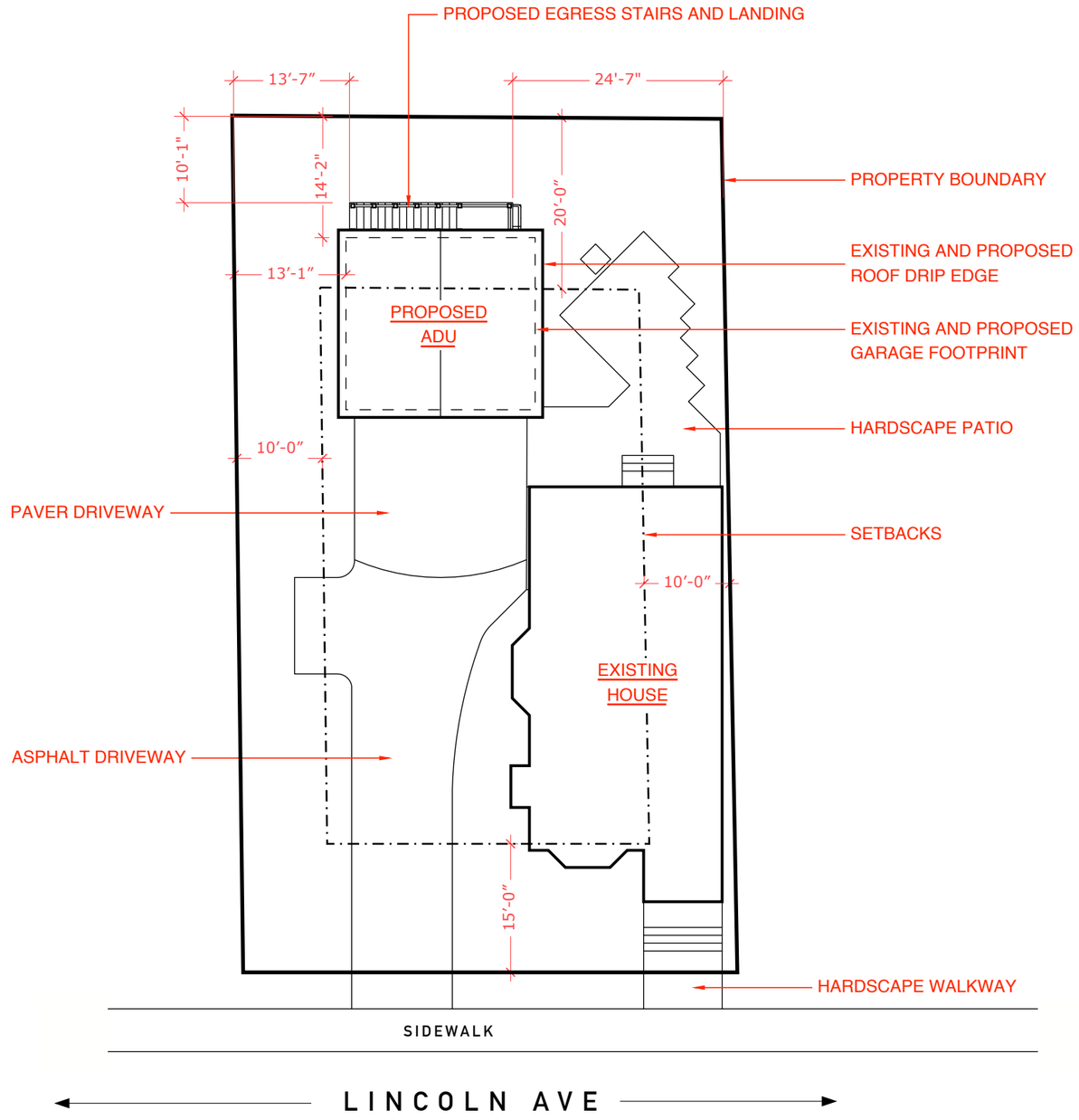
MAP/LOT/ID:	111-21
ZONING DISTRICT:	GRA
LOT SIZE:	5,663 SF (0.13 ACRES)
SETBACKS:	
FRONT	15 FT
REAR	20 FT
SIDE	10 FT
MAX BUILDING COVERAGE:	25%
MIN OPEN SPACE:	30%
EXISTING BUILDING COVERAGE:	27.2% (1,541 SF)
PROPOSED BUILDING COVERAGE:	28.9% (1,635 SF)
EXISTING OPEN SPACE: [5,663 - 3,120 = 2,543]	44.9% (2,543 SF)
PROPOSED OPEN SPACE: [5,663 - 3197 = 2,466]	43.5% (2,466 SF)

DRAWING LIST

01	COVER, SITE PLAN
02	BUILDING COVERAGE
03	EXISTING CONDITIONS / PROPOSED
04	FLOOR PLANS
05	ELEVATIONS
06	ELEVATIONS

PROJECT SUMMARY

SECOND FLOOR ADDITION TO EXISTING GARAGE TO ACCOMMODATE NEW ACCESSORY DWELLING UNIT.



1 SITE PLAN
SCALE 1/16" = 1'-0"

RDW
REFLECTIVEDESIGNWORKS.COM
YORK, ME | 207-977-4286

PROJECT

PETERS ADU

LOCATION
54 LINCOLN AVE
PORTSMOUTH, NH

NORTH

SHEET
11 X17

PHASE
PERMITTING

DATE
09 OCT 2026

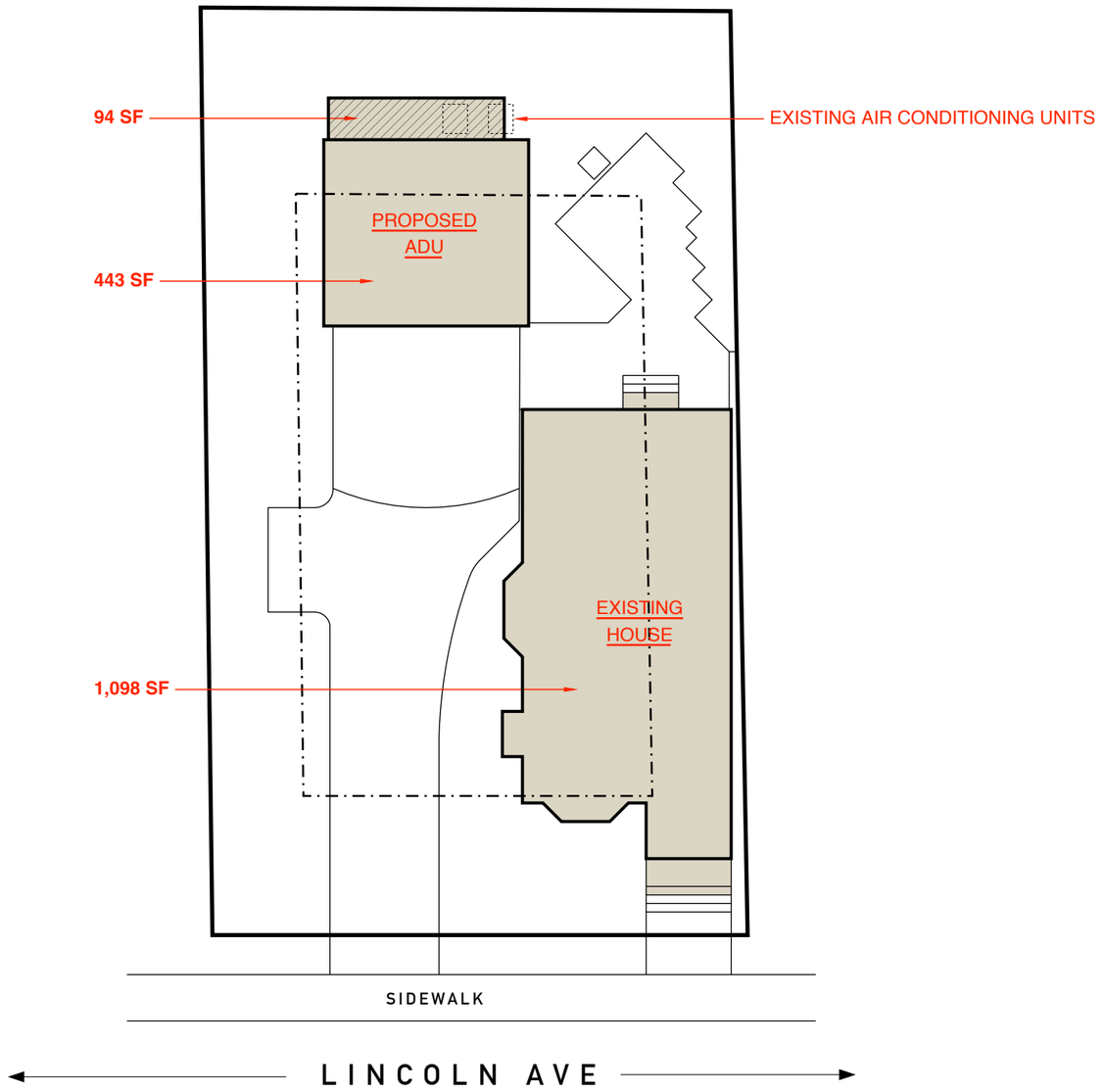
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EXISTING BUILDING COVERAGE

EXISTING HOUSE, EXTERIOR LANDINGS, EXTERIOR STEPS ABOVE 18”	1,098 SF
EXISTING GARAGE	443 SF
TOTAL	1,541 SF

PROPOSED BUILDING COVERAGE

EXISTING HOUSE, EXTERIOR LANDINGS, EXTERIOR STEPS ABOVE 18”	1,098 SF
EXISTING GARAGE	443 SF
PROPOSED STAIRS AND DECK	94 SF
TOTAL	1,635 SF



1 LOT COVERAGE
SCALE 1/16" = 1'-0"

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YORK, ME | 207-977-4286

PROJECT
PETERS ADU

LOCATION
54 LINCOLN AVE
PORTSMOUTH, NH

NORTH

SHEET
11 X17

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DATE
09 OCT 2026

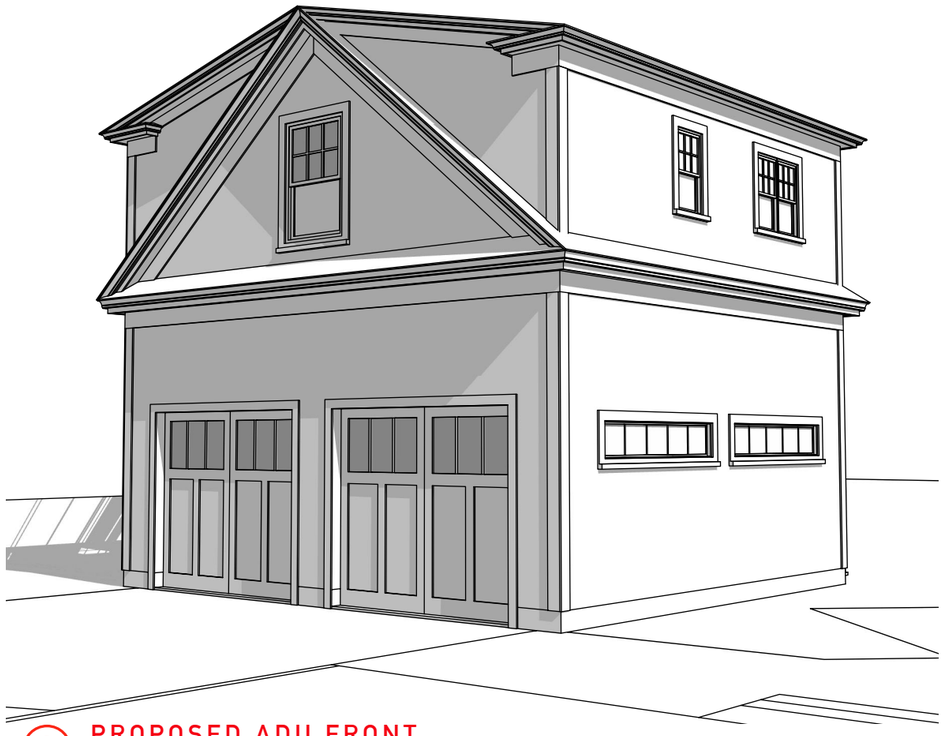
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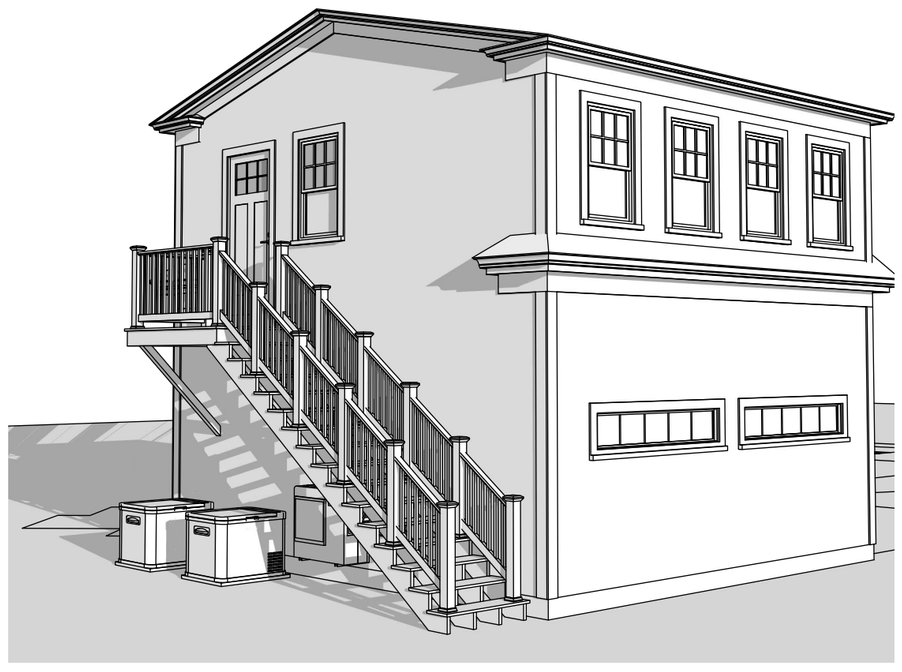
1 EXISTING HOUSE AND GARAGE



2 EXISTING GARAGE



3 PROPOSED ADU FRONT



4 PROPOSED ADU REAR

RDW

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PROJECT

PETERS ADU

LOCATION
54 LINCOLN AVE
PORTSMOUTH, NH

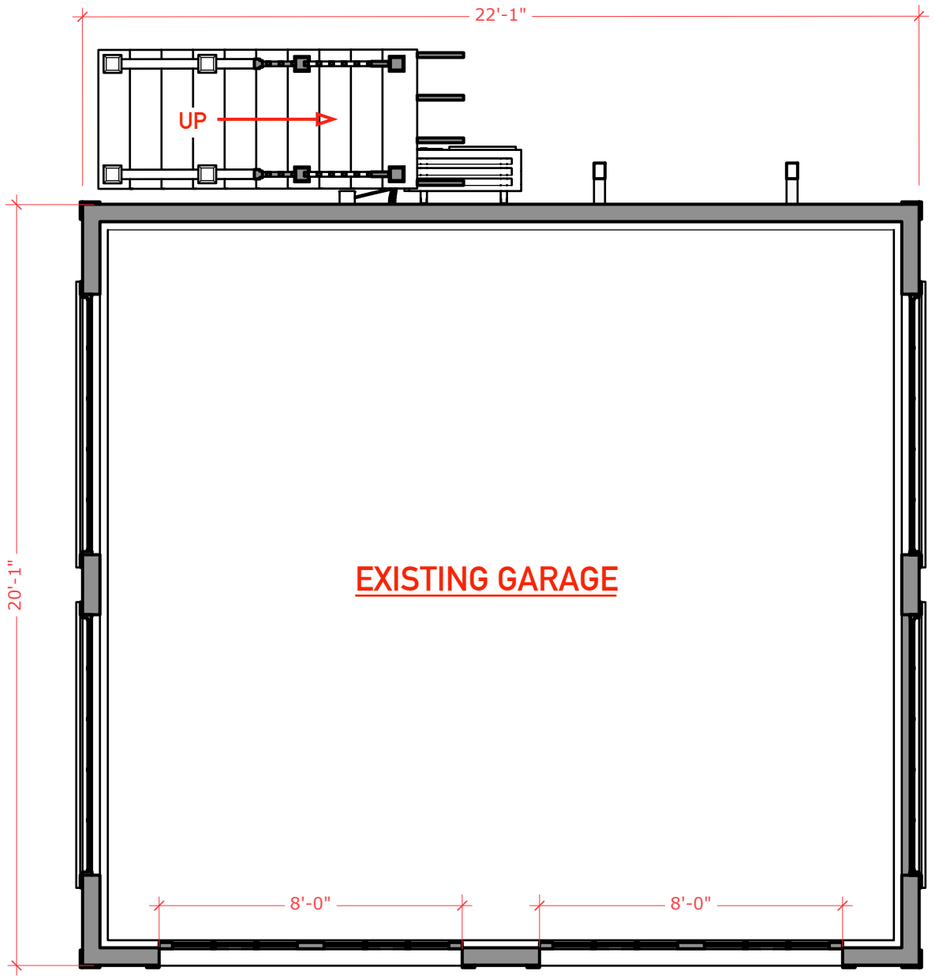
NORTH

SHEET
11 X17

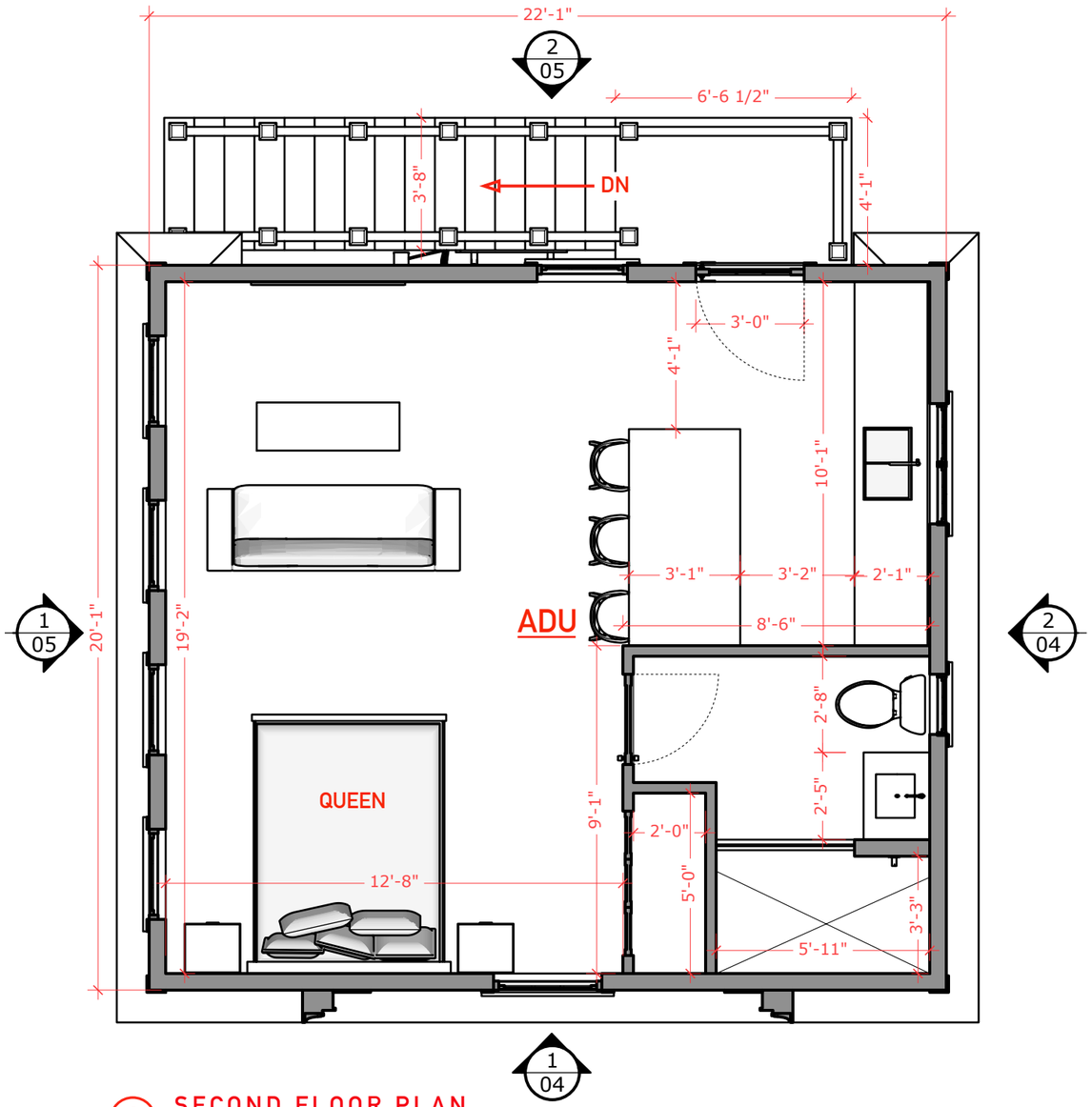
PHASE
PERMITTING

DATE
09 OCT 2026

PAGE
03



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



1 SECOND FLOOR PLAN
SCALE 1/4" = 1'-0"

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PROJECT

PETERS ADU

LOCATION
54 LINCOLN AVE
PORTSMOUTH, NH

NORTH

SHEET
11 X17

PHASE
PERMITTING

DATE
09 OCT 2026

PAGE
04



1 NORTHWEST ELEVATION
SCALE 1/4" = 1'-0"



2 SOUTHWEST ELEVATION
SCALE 1/4" = 1'-0"

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PROJECT

PETERS ADU

LOCATION
54 LINCOLN AVE
PORTSMOUTH, NH

NORTH

SHEET
11 X17

PHASE
PERMITTING

DATE
09 OCT 2026

PAGE
05



1 SOUTHWEST ELEVATION
SCALE 1/4" = 1'-0"



2 SOUTHEAST ELEVATION
SCALE 1/4" = 1'-0"

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PROJECT

PETERS ADU

LOCATION
54 LINCOLN AVE
PORTSMOUTH, NH

NORTH

SHEET
11 X17

PHASE
PERMITTING

DATE
09 OCT 2026

PAGE
06

II. NEW BUSINESS

E. The request of Michael and Stephanie Febonio (Owners), for property located at **9 Sheafe Street** whereas relief is needed to construct an 8-foot fence which requires the following: 1) Variance from Section 10.515.13 to allow an 8-foot fence in the secondary front yard. Said property is located on Assessor Map 107 Lot 13 and lies within Character District 4 (CD4) and the Historic District. (LU-26-123)

Existing & Proposed Conditions

	Existing	Proposed	Permitted / Required	
Land Use:	SF Residence	8-foot fence*	Mixed Use	
Front Yard (Sheafe) ft:	0	0	15	max.
Secondary Front Yard (Custom House Ln) ft:	0	0*	12	max.
Side Yard (ft.):	0	0	5-20	max.
Rear Yard (ft.):	N/A	N/A	5 (lot line) 10 (alley centerline)	min. min.
Open Space (%):	25	25	25	min.
Estimated Age of Structure:	1817	Variance request(s) shown in red.		

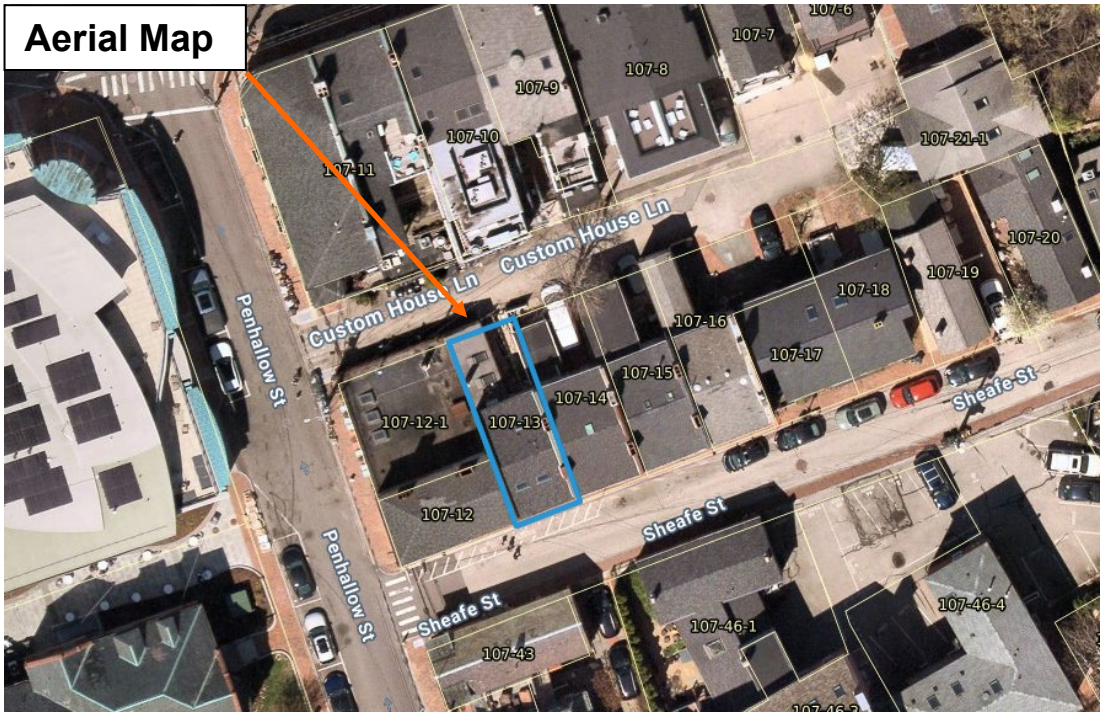
* Variance from Section 10.515.13 to allow an 8-foot fence in the secondary front yard.

Other Permits/Approvals Required

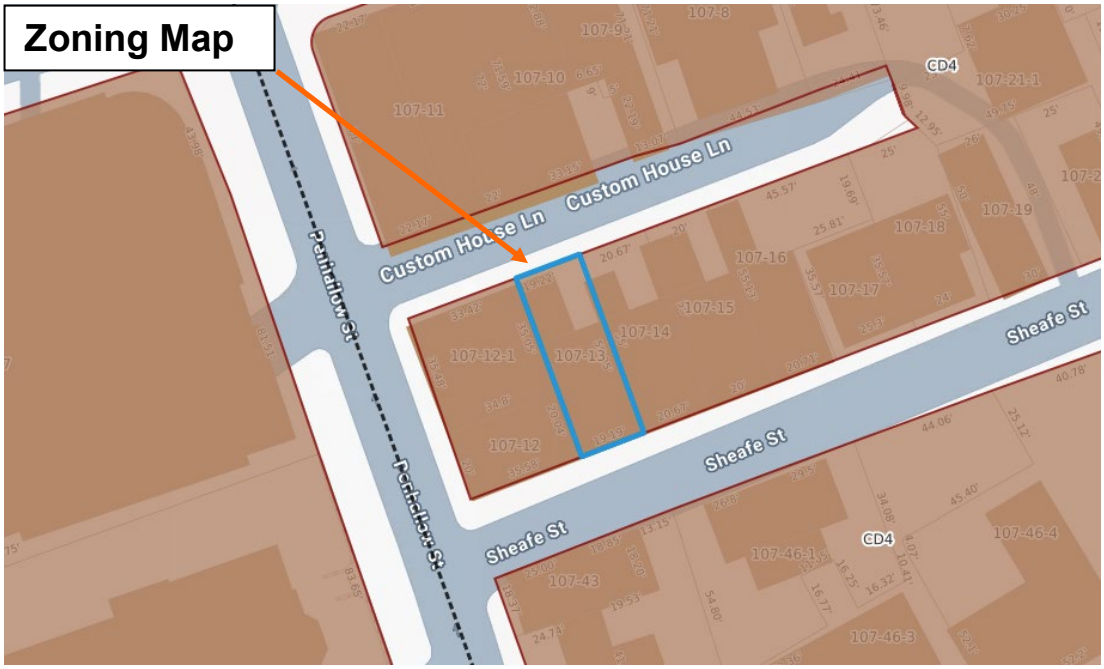
- Historic District Commission Admin Approval granted 9/9/26
- Building Permit

Neighborhood Context

Aerial Map



Zoning Map



Previous Board of Adjustment Actions

No previous BOA history found.

Planning Department Comments

The applicant proposes to install an 8-foot privacy fence to the rear of the structure abutting Custom House Lane. The property is a through-lot with frontage on both Sheafe Street and Custom House Lane and therefore the application requires relief for a fence taller than 4' in the front yard.

Variance Review Criteria

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

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

10.235 Certain Representations Deemed Conditions

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

STEPHANIE AND MICHAEL FEBONIO
9 SHEAFE ST.
VARIANCE REQUEST FOR BACKYARD FENCE

SUBMISSION FOR MEETING ON OCTOBER 20,2026

AGENDA

1. Project Narrative
   - Request
2. Yard Dimensions, History and Pictures
3. Portsmouth NH GIS Parcel Viewer /Lot 107-13
4. Unnecessary Hardship – Special Conditions of the Property
5. Analysis Criteria and Responses
   - 10.233.21 – The variance will not be contrary to the public interest
   - 10.233.22 – The spirit of the Ordinance will be observed
   - 10.233.23 – Substantial justice will be done
   - 10.233.24 – The values of surrounding properties will not be diminished
   - 10.233.25 – Literal enforcement of the Ordinance would result in an unnecessary hardship

PROJECT NARRATIVE

Request:

Approval of a variance to install an 8-foot privacy fence along the rear and side lot lines abutting Custom House Lane.

YARD DIMENSIONS, HISTORY AND PICTURES

- Yard is 8’8” x 24’
- The 24’ side of yard was bordered by a building in the back of 11 Sheafe St. which was recently torn down. This structure acted as a boundary for the side lot line of the backyard of 9 Sheafe St. The 8’8” side of the yard has a 6’x 8’8in wrought iron fence that was damaged when the back building at 11 Sheafe St. was torn down. Picture A.
- Picture B shows how my yard looks today after my neighbor’s demolition.
  - My side yard is completely exposed.
  - The wrought-iron fencing is damaged and being held up by 2x4’s.
  - The gate no longer opens.

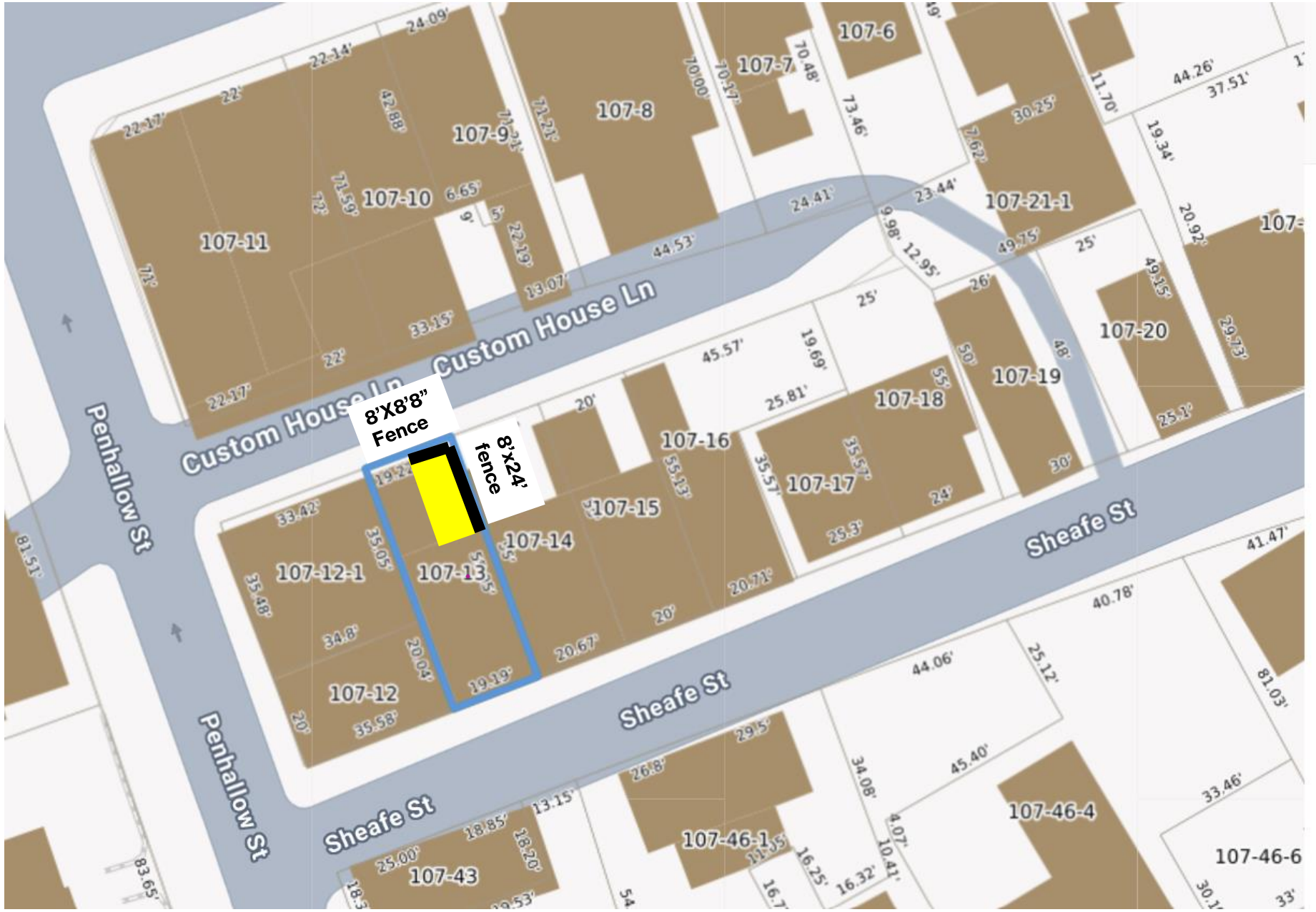




GIS PARCEL VIEWER
LOT 107-13

- **Fence Placement**
  - Front lot line 8’x8’8”
  - Side lot line 8’x24”

Backyard - 9 Sheafe St.



UNNECESSARY HARDSHIP – SPECIAL CONDITIONS OF THE PROPERTY

I. The area behind the building does not meet the functional or legal definition of a “street” under Portsmouth’s ordinance framework. Portsmouth classifies streets as public ways intended for vehicular travel and circulation, forming part of the city’s transportation network. In contrast, the rear alley is a dead-end service corridor used for trash storage, linen pickup, deliveries, and staff access. It does not support public vehicular movement, does not provide through-access, and does not function as a transportation route for the public. Because it is not a public way designed or used for travel, it cannot be considered a street and therefore cannot create a secondary front yard under the zoning ordinance.

II. The rear alley functions exclusively as a commercial service area and does not serve any transportation purpose for the public. It is used for restaurant trash barrels, dirty linen pickup, vendor deliveries, and staff access, and it terminates in a dead end with no through-traffic or circulation. The alley’s physical design, limited access, and commercial utility use demonstrate that it is not intended for vehicular travel or public movement. Because it operates solely as a service corridor rather than a transportation route, it does not meet the functional criteria of a street or public way under the zoning ordinance, and therefore cannot impose a secondary front yard classification on the abutting property.

III. In the past, trash has blown into my yard, and I have found drug paraphernalia and vomit on my property. These conditions present legitimate health and safety concerns that a 4-foot fence cannot mitigate. Additionally, people coming from nearby bars and restaurants have attempted to pet or feed my dogs over the existing fence, creating safety risks for both the public and the animals. One of my dogs is 120 lbs and capable of jumping a 4-foot fence, which further increases the risk of unwanted interactions. An 8-foot fence will prevent these interactions, reduce the likelihood of injury or conflict, and create a necessary buffer between a residential property and intensive commercial operations. The fence will not obstruct public access or interfere with any municipal function.

ANALYSIS CRITERIA AND RESPONSES:
10.233.21 – THE VARIANCE WILL NOT BE CONTRARY TO THE PUBLIC INTEREST

The proposed fence supports the public interest by improving the visual quality and safety of the shared alley environment. It will create a more attractive and orderly boundary between private residential space and the service corridor, reducing opportunities for unwanted interaction between pedestrians and my dogs. The fence will also provide a consistent, well-maintained appearance that complements nearby properties and enhances the overall character of the area. By defining private and service spaces more clearly, the project contributes to a safer, cleaner, and more visually cohesive neighborhood setting.

ANALYSIS CRITERIA AND RESPONSES:
10.233.22 – THE SPIRIT OF THE ORDINANCE WILL BE OBSERVED

The spirit of the Ordinance is to maintain visibility in true front yards while allowing greater height in side and rear yards for privacy and screening. My home's only true front yard is on Sheafe Street. My backyard has no access to Sheafe Street; I must walk through my house to reach it. Custom House Lane should not be classified as a street – it is a one-car-width commercial service alley used for waste storage and deliveries. Because it does not meet the physical or functional definition of a street, it cannot create a secondary front yard.

The fence is therefore located in side and rear yards, where the Ordinance already permits fences up to 8 feet. Given the commercial intensity surrounding my property – including trash barrels, drug paraphernalia, vomit, and late-night foot traffic – an 8-foot fence is consistent with the Ordinance's intent. It provides necessary screening without creating any adverse impact on the streetscape.

ANALYSIS CRITERIA AND RESPONSES:
10.233.23 – SUBSTANTIAL JUSTICE WILL BE DONE

Granting the variance results in substantial justice because the benefit to the applicant greatly outweighs any potential harm to the public. Without the variance, my residential property remains exposed to trash, drug paraphernalia, vomit, and frequent interactions from intoxicated individuals approaching or attempting to feed my dogs. These are not conditions typical of a residential neighborhood.

Granting the variance imposes no burden on the public or neighboring properties. It simply allows me to reasonably protect my home, pets, and family from ongoing commercial impacts. Denying the variance would result in a significant injustice by forcing a residential property to endure conditions created by surrounding commercial uses.

ANALYSIS CRITERIA AND RESPONSES:
10.233.24 – THE VALUES OF SURROUNDING PROPERTIES WILL NOT BE DIMINISHED

A well-maintained 8-foot fence will improve the appearance and functionality of the area by screening trash barrels, loading activity, and back-of-house operations from view. This enhances the environment for both residential and commercial neighbors.

The neighboring property at 11 Sheafe Street is constructing a garage on its rear lot along Custom House Lane. A privacy fence along this shared boundary will not negatively affect that project. The commercial establishments across the alley already operate in a service-alley environment where privacy fencing is common and expected.

By creating a more orderly and visually consistent boundary and preventing public interaction with my dogs, the fence will contribute positively to the appearance and desirability of surrounding properties.

ANALYSIS CRITERIA AND RESPONSES:
10.233.25 – LITERAL ENFORCEMENT OF THE ORDINANCE WOULD RESULT IN AN UNNECESSARY HARDSHIP

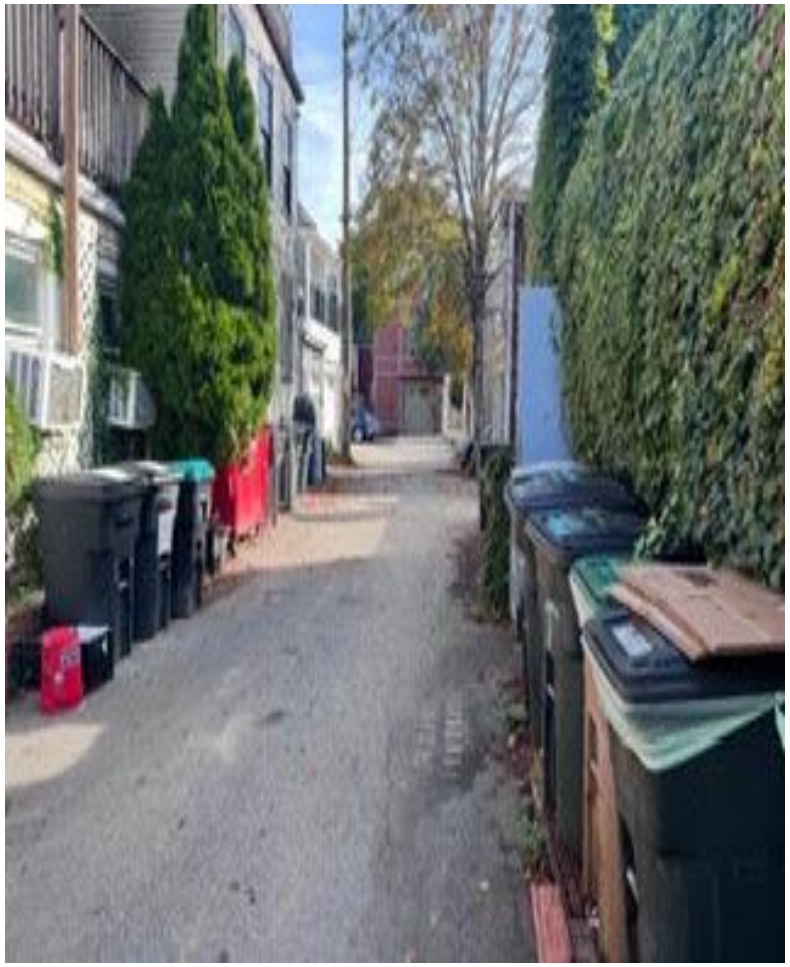
Literal enforcement of the 4-foot height limit creates an unnecessary hardship because my property is uniquely impacted by surrounding commercial uses. Unlike typical residential lots, my backyard abuts a one-car-width service corridor used for restaurant trash barrels, dirty linens, deliveries, and staff entrances. Although the City classifies it as a street, its physical layout and use pattern function as a rear service alley with no public pedestrian circulation and no outlet. My backyard has no access to Sheafe Street; I must walk through my row house to reach it. I share a party wall with Ceres Bakery, and the neighbors across the alley are Massimo's, The Press Room, and Kafe Vonsolin, which increases exposure to commercial activity.

A 4-foot fence is insufficient to protect my property from these impacts. It does not prevent people from reaching over to pet or feed my dogs, nor does it prevent my 120-lb dog from jumping over it. These conditions create legitimate safety, sanitation, and liability concerns that are not shared by the general public.

The hardship arises from the property's location and surrounding commercial activity – not from personal preference. An 8-foot fence is the minimum height necessary to provide reasonable privacy, safety, and protection in this unique environment. The fence will not alter the neighborhood's character, as it will be consistent with the existing pattern of rear-lot structures, garage access, and service-area functions along the alley.

ADDITIONAL PICTURES OF CUSTOM HOUSE LANE TRASH







PROPOSED FENCING STYLE APPROVED BY HDC

- Traditional Board Cedar Fencing
- 8’ Tall Privacy Fence
- If looking from Custom House Lane the gate will be installed on the width of the backyard to the left of the garage.





II. NEW BUSINESS

F. The request of **325 Corporate Drive II LLC C/O The Kane Company (Owners)**, for property located at **325 Corporate Drive** whereas relief is needed to install two wall signs and monument signage, which requires the following: 1) Variance from Section 306.01(d) of the Pease Development Ordinance to allow signs to exceed the maximum aggregate area of two (2) square feet of sign area for each linear foot of street frontage up to a maximum of 200 square feet. Said property is located on Assessor Map 318 Lot 2 and lies within the Airport Business Commercial (ABC) District. (LU-26-122)

Existing & Proposed Conditions

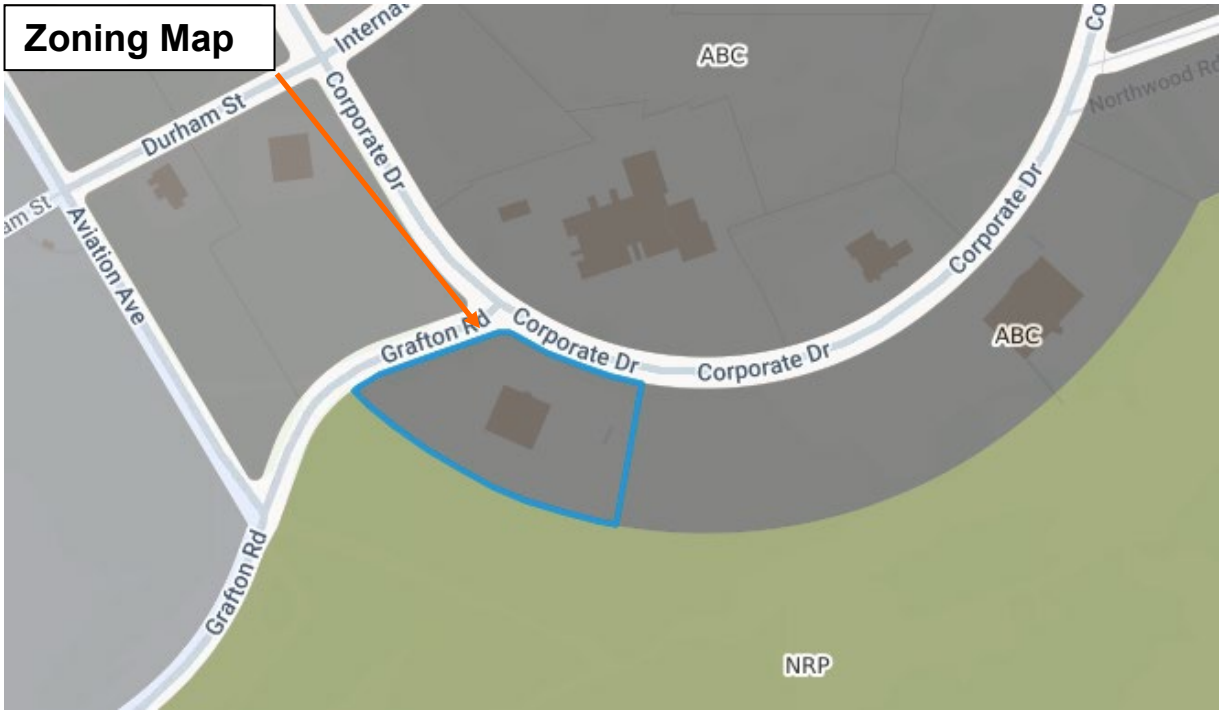
	Existing	Proposed	Permitted / Required
Land Use:	Commercial	Install 2 new wall signs and monument signage	Mixed Use
Aggregate Sign Area (sq. ft)	102.52	293.52	200 max.
Estimated Age of Structure:	2000	Variance request(s) shown in red.	

Other Permits/Approvals Required

- Sign Permit

Neighborhood Context





Previous Board of Adjustment Actions

- **October 17, 2000** – to allow two loading docks where ten loading docks are required. The Board voted to **recommend approval** as presented and advertised.

Planning Department Comments

The application was before the Pease Development Authority (PDA) Board meeting on August 18, 2026 and the PDA Board voted to support the applicant's request to move forward to seek a variance.

The PDA has its own land use and zoning regulations and is exempt from the City's regulations ordinance. For certain parcels in Pease, variance requests are sent to the City for a recommendation from the BOA. A motion to approve or deny will be a recommendation and the recommendation will become an approval by the PDA Board after 14 days unless the applicant or PDA Board member requests a hearing (see Part 317.03(f) below).

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

317.03 Zoning Variances Referred to Local Municipalities for Administration

(a) For parcels located within the Industrial Zone, Business and Commercial Zone, Natural Resource Protection Zone or portions of the Airport Industrial Zone not acquired by the Pease Development Authority pursuant to Section 13(g) of the Surplus Property Act, requests for a variance from the provisions of this zoning rule shall be referred to the zoning board of adjustment for the municipality in which the parcel is situated for administration in accordance with the provisions of this section.

(b) Applications for a variance for parcels referred to in Subsection (a) shall be filed with the Pease Development Authority Building Inspector on forms prescribed by the Board and referred to the applicable zoning board of adjustment.

(c) The zoning board of adjustment to which the application for a variance has been referred shall, in its review of the request, apply the substantive provisions of this Chapter.

(d) Recommendations to the Board regarding requests for a zoning variance shall be made by the applicable zoning board of adjustment within sixty (60) days of referral. Notice of the recommendation shall be provided to the applicant and the Board within 48 hours of the decision.

(e) The recommendation of the applicable zoning board of adjustment shall be forwarded to the Board along with a written report detailing the reasons for any recommendation for denial or approval with conditions.

(f) A recommendation of the applicable zoning board of adjustment shall be deemed a final decision of the Board upon the expiration of fourteen (14) days from the date of notice, unless the applicant/developer or a member of the Board requests a hearing by the Board.

(g) Where a hearing has been requested, the Board shall conduct a hearing and render a final decision on the variance request within thirty (30) days.

(h) At the discretion of the Board the time period for rendering a final decision may be extended an additional thirty (30) days, or such additional time as may be consented to by the applicant.

(i) The Board may approve, conditionally approve or deny the application notwithstanding the recommendation of the applicable zoning board of adjustment. In the case of denial of any application by the Board or where the Board elects not to follow the recommendation of the applicable zoning board of adjustment, the ground(s) for such action shall be stated in writing.

Review Criteria

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

PART 317. VARIANCES FROM ZONING PROVISIONS

317.01 General Provisions

58

(a) Requests for a variance from the provisions of this zoning rule shall be filed with the Pease Development Authority Building Inspector on forms prescribed by the Board.

(b) Applications for zoning variance approval shall set forth the specific provision of the rule or regulation involved and reasons why a variance should be granted.

(c) A variance shall not be approved or recommended for approval unless it is in harmony with the general purpose and intent of these regulations and meets the following criteria:

(1) No adverse effect or diminution in values of surrounding properties would be suffered.

(2) Granting the variance would be of benefit to the public interest.

(3) Denial of the variance would result in unnecessary hardship to the person seeking it.

(4) Granting the variance would be substantial justice.

(5) The proposed use would not be contrary to the spirit of this zoning rule.

(d) Reasonable conditions necessary to meet one or more of the standards in subsection (c) above may be attached to approval of a variance.

325 Corporate Drive Sign Variance Statement

Applicant: 325 Corporate Drive II, LLC
Property Address: 325 Corporate Drive, Portsmouth, NH 03801
Zoning District: Airport Business Commercial
Assessor's Map/Lot: 0318-0002-0000

Relief Requested

The Applicant requests a variance from the 200-square-foot maximum aggregate sign area in Section 306.01(d) of the Pease Development Authority zoning rule to permit the exterior building signage shown on the proposed sign plan for this multi-tenant commercial property. Section 306.01(d) allows two square feet of sign area for each linear foot of street frontage, subject to a maximum aggregate area of 200 square feet. This statement supplies the reasons for relief under Part 317.01(b) and addresses each criterion in Part 317.01(c).

The property has a large building footprint, extensive linear frontage, deep setbacks from the main roadway, and multiple distinct business tenants requiring exterior identification. The proposed plan provides coordinated, architecturally integrated signage intended to remain legible from the public right-of-way without creating visual clutter. The Applicant reports that the proposed sign plan has been approved by the PDA; this application requests the separate variance from the aggregate sign-area limit.

1 No adverse effect or diminution in surrounding property values

Part 317.01(c)(1): "No adverse effect or diminution in values of surrounding properties would be suffered."

The proposed signs will be professionally fabricated and coordinated with the building's existing architecture. Their scale and placement respond to the building's substantial frontage and commercial setting. The request concerns identification of businesses within the existing building and does not change the property's use. An orderly signage plan will preserve the appearance and character of the surrounding commercial area. For these reasons, the Applicant submits that the proposed signage would cause no adverse effect on surrounding properties or diminution in their values.

2 Benefit to the public interest

Part 317.01(c)(2): "Granting the variance would be of benefit to the public interest."

Granting the variance would improve the public's ability to identify and locate individual businesses within a large, deeply setback, multi-tenant building. Legible tenant identification would assist visitors, customers, and delivery drivers in finding their destinations and reduce confusion when approaching the property. A coordinated sign plan would provide this wayfinding benefit while maintaining an orderly commercial appearance. These benefits extend beyond the Applicant and its tenants to members of the public using the property.

3 Unnecessary hardship

Part 317.01(c)(3): "Denial of the variance would result in unnecessary hardship to the person seeking it."

The hardship arises from the combination of the building's extensive frontage, deep roadway setbacks, and multiple separate tenants. Dividing a total allowance of 200 square feet among those tenants would constrain the size and legibility of individual signs, particularly when viewed from the roadway across the setbacks. Literal enforcement would therefore impair practical identification of the businesses occupying this particular building. The requested relief addresses these site and building conditions through a coordinated sign plan. The Applicant submits that denying that relief would impose an unnecessary hardship without a corresponding improvement in the orderly appearance or safe identification of the property.

4 Substantial justice

Part 317.01(c)(4): "Granting the variance would be substantial justice."

Granting the variance would allow the Applicant to provide usable exterior identification for the building's tenants in a manner proportionate to the building and its setting. Denial would burden the Applicant and tenants by requiring the shared sign allowance to be divided into areas that limit effective identification. That burden is not offset by an identified benefit to surrounding properties or the public where the signs remain coordinated and architecturally integrated. Allowing the proposed signage would fairly balance the Applicant's need to identify the building's occupants with the public's interest in an orderly commercial environment.

5 Consistency with the spirit of the zoning rule

Part 317.01(c)(5): "The proposed use would not be contrary to the spirit of this zoning rule."

The proposed signage supports the existing commercial use by providing clear business identification within a unified design. Professionally designed signs integrated with the building can provide legibility while avoiding visual clutter and distraction. The requested area relief is consistent with the general purpose and intent of the zoning regulations because it accommodates the physical characteristics of this property while retaining orderly signage appropriate to its commercial setting.

PEASE
INTERNATIONAL
DEVELOPMENT
AUTHORITY

55 International Drive Portsmouth, NH 03801

October 2, 2026

The Kane Company
Attn: Titus Cramer
210 Commerce Way
Portsmouth, NH 03801

VIA EMAIL: tcramer@kane.com

Re: 325 Corporate Drive Signage and Variance

Dear Titus:

The Pease Development Authority Board of Directors at its meeting on August 18, 2026, in accordance with PDA Land Use Controls Part 306, voted to approve of the proposed new signage for 325 Corporate Drive subject to obtaining a recommendation for approval for a variance from the City of Portsmouth ZBA for exceeding the allowable square footage of signage on site (Part 306.01(d)).

Sincerely,

Michael R. Mates, P.E.
Director of Engineering

N:\ENGINEER\Board Approval Letters\325 Corporate Dr Signs and Variance.docx

WRITTEN STATEMENT IN SUPPORT OF A VARIANCE APPLICATION
Applicant: 325 Corporate Drive II, LLC
Property Address: 325 Corporate Drive, Portsmouth, NH 03801
Zoning District: Airport Business Commercial
Assessor's Map/Lot: 0318-0002-0000
Relief Requested: Relief from Pease Development Authority Sign Regulations Part 306.1 to permit a total aggregate exterior building signage area exceeding 200 square feet for a multi-tenant commercial building.

INTRODUCTION

The Applicant respectfully requests a variance to allow exterior building signage in excess of 200 square feet at the subject property. The property is a large, multi-tenant commercial building. Due to the high number of distinct business tenants requiring equitable exterior identification and visibility from the public right-of-way, strict compliance with the 200 sq. ft. maximum cap imposes a distinct disadvantage. The proposed signage layout ensures that applicable building occupants can successfully establish their tenant identity without creating visual clutter. The proposed sign plan has been approved by the Pease Development Authority.

RESPONSES TO THE FIVE VARIANCE CRITERIA

1. The variance will not be contrary to the public interest.

The variance is consistent with the public interest because the proposed signage size scales proportionally with the massive physical footprint and substantial frontage of the building. The signage is designed to assist, rather than distract, the public by providing clear, legible identification of the businesses operating within the facility. It does not threaten public health, safety, or welfare, nor does it alter the essential character of the locality or endanger pedestrian or vehicular safety.

2. The spirit of the ordinance is observed.

The primary purpose of Part 306 is to prevent hazardous or distracting displays while maintaining the commercial character of Pease's districts. This request observes that spirit by proposing professionally designed, architecturally integrated signs that avoid chaotic layout clusters. By expanding the allowable square footage, each tenant is granted an appropriate, legible window of visibility. This achieves an orderly, premium aesthetic that aligns with the city's standard of maintaining high-quality commercial environments.

3. Substantial justice is done.

Granting this variance achieves substantial justice because it resolves a major operational restriction for the property. Denying the request would result in an unfair loss to the applicant and the building's tenants, who would be forced to split an inadequate amount of square footage—rendering individual brand logos virtually unreadable. There is no balancing benefit to the general public in enforcing a strict size restriction that harms the visibility and economic viability of local businesses in a commercial business district.

4. The values of surrounding properties will not be diminished.

The proposed exterior signage will be professionally fabricated and modern, complementing the building's existing architecture. By enhancing the professional look of the development and preventing awkward, downscaled tenant logos, the surrounding commercial corridor's standard of quality is preserved. Clear identification of corporate and local tenants will promote healthy economic activity, which positively influences surrounding property values.

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

- **Special Conditions of the Property:** The subject property is uniquely distinguished from others in the zone due to its configuration as a multi-tenant commercial center featuring extensive linear building frontage and deep setbacks from the main roadway.
- **No Reasonable Relationship & Unnecessary Hardship:** A strict literal application of a standard 200 sq. ft. cap does not account for a high density of separate commercial entities operating under one roof. Dividing 200 square feet among multiple tenants creates an artificial restriction that denies standard corporate identity to individual businesses. Therefore, no reasonable relationship exists between the general public purpose of the sign cap and its literal enforcement on this specific multi-tenant asset. The proposed variance represents a reasonable use that remedies this unique structural hardship.

Docusign Envelope ID: 60632E68-D5B1-8A43-836A-DB8158FF0A00

325 Corporate Drive II, LLC
210 Commerce Way, Suite 300
Portsmouth, NH 03801

September 21, 2026

Portsmouth Planning Department
1 Junkins Ave, 3rd Floor
Portsmouth, NH 03801

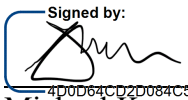
RE: Landowner Authorization
325 Corporate Drive, Portsmouth, NH ("Premises")

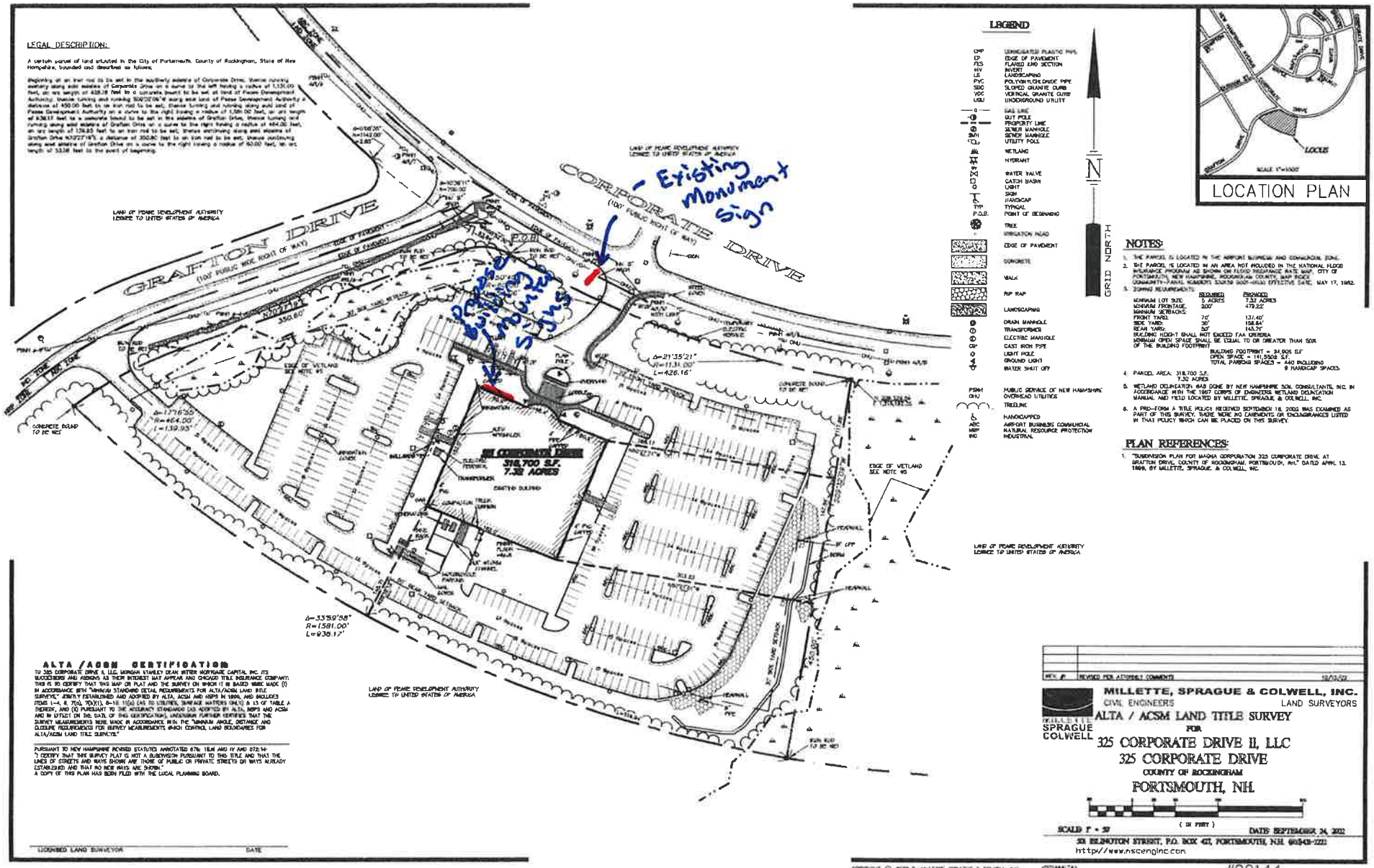
To whom it may concern:

325 Corporate Drive II, LLC, on behalf of itself and as fee owner of the Premises authorizes and consents to Titus Cramer, as VP, Asset Manager, for the Premises to execute any and all documents required or desired in connection with the Signage Zoning Variance for the Premises.

Sincerely,

325 Corporate Drive II, LLC,
a New Hampshire limited liability company

Signed by:

4D0D64CD2D084C5...
Michael Kane, Manager


LEGAL DESCRIPTION:
A certain parcel of land situated in the City of Portsmouth, County of Rockingham, State of New Hampshire, bounded and described as follows:
CORPORATE DRIVE
(100' PUBLIC WIDE RIGHT OF WAY)
GRAFTON DRIVE
(100' PUBLIC WIDE RIGHT OF WAY)
LAND OF PEASE DEVELOPMENT AUTHORITY LEASED TO UNITED STATES OF AMERICA
- Existing Monument Sign
Proposed Building Mounted Signs
318,700 S.F.
7.32 ACRES
EDGE OF WETLAND SEE NOTE #5
CONCRETE BOUND TO BE SET
Δ=33°59'58"
R=1581.00'
L=938.17'
Δ=21°35'21"
R=1131.00'
L=426.16'
Δ=17°16'55"
R=464.00'
L=139.95'
350.80'
N20°27'18"E
LEGEND
EDGE OF PAVEMENT
CONCRETE
WALK
RIP RAP
LANDSCAPING
DRAIN MANHOLE
TRANSFORMER
ELECTRIC MANHOLE
CAST IRON PIPE
LIGHT POLE
GROUND LIGHT
WATER SHUT OFF
PUBLIC SERVICE OF NEW HAMPSHIRE
OVERHEAD UTILITIES
TREELINE
HANDICAPPED
AIRPORT BUSINESS COMMERCIAL
NATURAL RESOURCE PROTECTION
INDUSTRIAL
GRID NORTH
LOCUS
LOCATION PLAN
NOTES:
1. THE PARCEL IS LOCATED IN THE AIRPORT BUSINESS AND COMMERCIAL ZONE.
2. THE PARCEL IS LOCATED IN AN AREA NOT INCLUDED IN THE NATIONAL FLOOD INSURANCE PROGRAM AS SHOWN ON FLOOD INSURANCE RATE MAP, CITY OF PORTSMOUTH, NEW HAMPSHIRE, ROCKINGHAM COUNTY, MAP INDEX COMMUNITY-PANEL NUMBERS 330070 0007 0006 EFFECTIVE DATE: MAY 17, 1982.
3. ZONING REQUIREMENTS:
REQUIRED / PROVIDED
MINIMUM LOT SIZE: 5 ACRES / 7.32 ACRES
MINIMUM FRONTAGE: 200' / 479.25'
MINIMUM SETBACKS:
FRONT YARD: 75' / 131.40'
SIDE YARD: 30' / 156.84'
REAR YARD: 50' / 145.79'
BUILDING HEIGHT SHALL NOT EXCEED FAA CRITERIA
MINIMUM OPEN SPACE SHALL BE EQUAL TO OR GREATER THAN 50% OF THE BUILDING FOOTPRINT
BUILDING FOOTPRINT = 34,905 S.F.
OPEN SPACE = 141,5508 S.F.
TOTAL PARKING SPACES = 440 INCLUDING 9 HANDICAP SPACES.
4. PARCEL AREA: 318,700 S.F. 7.32 ACRES
5. WETLAND DELINEATION WAS DONE BY NEW HAMPSHIRE SOIL CONSULTANTS, INC. IN ACCORDANCE WITH THE 1987 CORPS OF ENGINEERS WETLAND DELINEATION MANUAL AND FIELD LOCATED BY MILLETTE, SPRAGUE & COLWELL, INC.
6. A PRO-FORMA TITLE POLICY RECEIVED SEPTEMBER 18, 2002 WAS EXAMINED AS PART OF THIS SURVEY. THERE WERE NO EASEMENTS OR ENCUMBRANCES LISTED IN THAT POLICY WHICH CAN BE PLACED ON THIS SURVEY.
PLAN REFERENCES:
1. "SUBDIVISION PLAN FOR MAGNA CORPORATION 325 CORPORATE DRIVE AT GRAFTON DRIVE, COUNTY OF ROCKINGHAM, PORTSMOUTH, NH," DATED APRIL 13, 1988, BY MILLETTE, SPRAGUE, & COLWELL, INC.
ALTA / ACSM CERTIFICATION
TO 325 CORPORATE DRIVE II, LLC, MORGAN STANLEY DEAN WITTER MORTGAGE CAPITAL INC. ITS SUCCESSORS AND ASSIGNS AS THEIR INTEREST MAY APPEAR AND CHICAGO TITLE INSURANCE COMPANY:
THIS IS TO CERTIFY THAT THIS MAP OR PLAT AND THE SURVEY ON WHICH IT IS BASED WERE MADE (1) IN ACCORDANCE WITH "MINIMUM STANDARD DETAIL REQUIREMENTS FOR ALTA/ACSM LAND TITLE SURVEYS," JOINTLY ESTABLISHED AND ADOPTED BY ALTA, ACSM AND NSPS IN 1999, AND INCLUDES ITEMS 1-4, 8, 7(a), 7(b)(1), 8-10, 11(a) (AS TO UTILITIES, SURFACE MATTERS ONLY) & 13 OF TABLE A THEREOF, AND (2) PURSUANT TO THE ACCURACY STANDARDS (AS ADOPTED BY ALTA, NSPS AND ACSM AND IN EFFECT ON THE DATE OF THIS CERTIFICATION), UNDERSIGN FURTHER CERTIFIES THAT THE SURVEY MEASUREMENTS WERE MADE IN ACCORDANCE WITH THE "UNKNOWN ANGLE, DISTANCE AND CLOSURE REQUIREMENTS FOR SURVEY MEASUREMENTS WHICH CONTROL LAND BOUNDARIES FOR ALTA/ACSM LAND TITLE SURVEYS."
PURSUANT TO NEW HAMPSHIRE REVISED STATUTES ANNOTATED 676: 18,III AND IV AND 672:14-7 I CERTIFY THAT THIS SURVEY PLAT IS NOT A SUBDIVISION PURSUANT TO THIS TITLE AND THAT THE LINES OF STREETS AND WAYS SHOWN ARE THOSE OF PUBLIC OR PRIVATE STREETS OR WAYS ALREADY ESTABLISHED AND THAT NO NEW WAYS ARE SHOWN."
A COPY OF THIS PLAN HAS BEEN FILED WITH THE LOCAL PLANNING BOARD.
LICENSED LAND SURVEYOR
DATE
REV. # REVISED PER ATTORNEY COMMENTS 10/31/02
MILLETTE, SPRAGUE & COLWELL, INC.
CIVIL ENGINEERS LAND SURVEYORS
ESTABLISHED SPRAGUE COLWELL
ALTA / ACSM LAND TITLE SURVEY
FOR
325 CORPORATE DRIVE II, LLC
325 CORPORATE DRIVE
COUNTY OF ROCKINGHAM
PORTSMOUTH, NH
SCALE 1" = 50' (IN FEET)
DATE SEPTEMBER 24, 2002
333 ISLINGTON STREET, P.O. BOX 421, PORTSMOUTH, NH 03802-0221
http://www.nscengine.com
COPYRIGHT © 2002 By MILLETTE, SPRAGUE & COLWELL, INC. (02144ALTA)
#02144

325 Corporate Drive – Existing Conditions Pictures

Monument Approaching from North



Monument Sign Approaching from South



Monument Sign and Building Corporate Drive Entrance



Front of Building

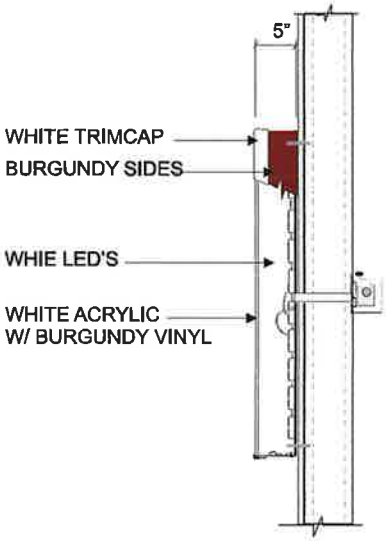




PROPOSED NEW SIGN - SCALE 3/32"=1'-0"



NEW SET OF CHANNEL LETTERS - N.T.S.



SIDE VIEW - N.T.S.



ILLUMINATED CHANNEL LETTERS
- 5" DEEP ILLUMINATED CHANNEL LETTERS W/WHITE ACRYLIC FACES
- WHITE LED ILLUMINATED WITH 120V POWER SUPPLY

OPTION #2

BATTEN BROS. Sign Advertising
893 MAIN STREET, WAKEFIELD, MA 01880
(781) 245-4600

Project: Needham Bank
Salesman: Rich
Designer: Ronald
Scale: 1/4"=1'-0"
Date: 5/13/26
Sketch #: 3/9/23
File Name: NB_325 Corporate Dr.cdr

Location: 325 Corporate Dr., Portsmouth NH

Job Description: Exterior Sign

Revised

Customer Approval:

This sign is intended to be installed in accordance with the requirements of Article 600 of the National Electrical Code. The location of the disconnect switch after installation shall comply with Article 600.6 (A) (1) of the National Electrical Code.

Note: This is an original copyrighted drawing created by and owned by Batten Bros, Inc. It is submitted for your personal use in connection with a project being planned for you by Batten Bros, Inc. It is not to be shown to anyone outside your organization nor is it to be used, reproduced, copied, or exhibited in any fashion.



NEW "NEEDHAM BANK" LOGOS



TWO VINYL LOGOS
- TRANSLUCENT BURGUNDY VINYL LOGOS

BATTEN BROS. Sign Advertising
893 MAIN STREET, WAKEFIELD, MA 01880
(781) 245-4600

Project: Needham Bank
Salesman: Rich
Designer: Ronald
Scale: 1 1/2"=1'-0"
Date: 5/13/26
Sketch #: 3/9/23

Location: 325 Corporate Dr., Portsmouth NH
File Name: NB_325 Corporate Dr.cdr

Revised

Job Description: Two Pylon Logos

Customer Approval:

This sign is intended to be installed in accordance with the requirements of Article 600 of the National Electrical Code. The location of the disconnect switch after installation shall comply with Article 600.6 (A) (1) of the National Electrical Code.

Notice: This is an original copyrighted drawing created by and owned by Batten Bros., Inc. It is submitted for your personal use in connection with a project being planned for you by Batten Bros., Inc. It is not to be shown to anyone outside your organization, nor is it to be used, reproduced, copied, or exhibited in any fashion.

Titus Cramer

From: Mike Mates <M.Mates@peasedev.org>
Sent: Wednesday, August 19, 2026 1:11 PM
To: Titus Cramer
Subject: RE: 325 Corporate Signage Submission

OUTSIDE EMAIL

Hello Titus,

The Board of Directors approved your signage request at yesterday's meeting. The next step is to get approval from the City of Portsmouth ZBA. Please submit a draft application to PDA for review and comment prior to submitting to the City.

Please let me know if you have any questions.

Thanks,
Mike

From: Mike Mates
Sent: Monday, August 17, 2026 9:29 AM
To: 'Titus Cramer' <tcramer@kane.co>
Subject: RE: 325 Corporate Signage Submission

Hello Titus,

We're all set for tomorrow's meeting.

Best,
Mike

From: Titus Cramer <tcramer@kane.co>
Sent: Monday, August 17, 2026 8:55 AM
To: Mike Mates <M.Mates@peasedev.org>
Subject: RE: 325 Corporate Signage Submission

EXTERNAL: Do not open attachments or click on links unless you recognize and trust the sender.

Good morning,

I am just confirming that you do not have any further questions on the sign request ahead of the meeting tomorrow.

Thank you,

TITUS CRAMER
VP, Asset Management
THE KANE COMPANY

603-430-4000
tcramer@kane.co
www.kane.co
210 Commerce Way, Suite 300
Portsmouth, NH 03801



210 Commerce Way, Suite 300
Portsmouth, NH 03801

From: Mike Mates <M.Mates@peasedev.org>
Sent: Friday, July 17, 2026 1:01 PM
To: Titus Cramer <tcramer@kane.co>
Subject: RE: 325 Corporate Signage Submission

OUTSIDE EMAIL

Hello Titus,

This matter will need to go to the PDA Board of Directors for concept approval. The next meeting is on August 18, and we should be able to get this on the agenda. If they approve, the next step is to apply to the City of Portsmouth ZBA for a variance to allow signage greater than 200 square feet.

Please let me know if you would like to move forward.

Best regards,
Mike

From: Titus Cramer <tcramer@kane.co>
Sent: Wednesday, July 15, 2026 12:06 PM
To: Mike Mates <M.Mates@peasedev.org>
Subject: 325 Corporate Signage Submission

EXTERNAL: Do not open attachments or click on links unless you recognize and trust the sender.

Good afternoon Mike,

We have two tenants at 325 Corporate Drive that are requesting exterior building signage, Albany International and Needham Bank. I have attached the proposed signage rendering with dimensions.

With the existing monument signage the two buildings signs will exceed the 200SF of exterior signage allowed by the PDA. The following is the total area of the proposed inclusive of the existing monument signage and the new proposed building signage. The monument sign total assumes that both sides of the sign factor into to the total allowable area as it is a double sided monument sign.

325 Corporate Signage Request	

	SF
Existing Monument	102.52
Albany Building	56
Needham Building	135
Total	**293.52**

I would like to request a variance for the additional exterior signage and approval for the prosed signage. Please advise if anything further is needed.

Thank you,

TITUS CRAMER
VP, Asset Management
THE KANE COMPANY
603-430-4000
tcramer@kane.co
www.kane.co
210 Commerce Way, Suite 300
Portsmouth, NH 03801

210 Commerce Way, Suite 300
Portsmouth, NH 03801

II. NEW BUSINESS

G. The request of **Rocket Too Trust (Owner)**, for property located at **10 Merrimac Street** whereas relief is needed to reconstruct a porte-cochere which requires the following: 1) Variance from Section 10.521 to allow a) a rear yard setback of 10 feet where 20 feet is required; and b) building coverage of 26% where 25% is allowed. Said property is located on Assessor Map 129 Lot 17 and lies within the General Residence A (GRA) District. (LU-26-128)

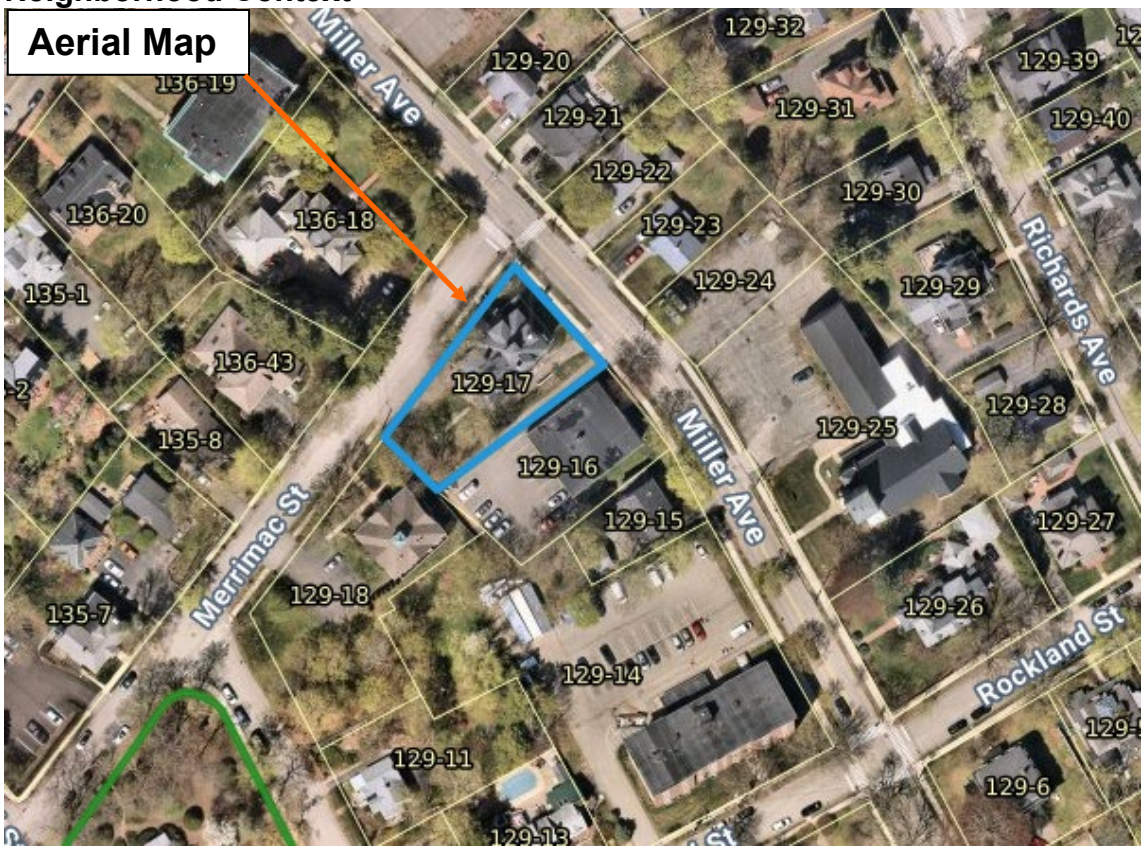
Existing & Proposed Conditions

	Existing	Proposed	Permitted / Required
Land Use:	Multi-Family Residential	Reconstruct port-cochere	Primarily Residential
Lot area (sq. ft.):	12,412	12,412	7,500 min.
Lot Area per Dwelling Unit (sq. ft.):	1,551.5	1,551.5	7,500 min.
Front Yard (ft.):	4.5	4.5	15 min.
Secondary Front Yard (ft):	12.3	12.3	15 min.
Right Yard (ft.):	>10	>10	15 min.
Rear Yard (ft.):	22	10	20 min.
Building Coverage (%):	24	26	25 max.
Open Space Coverage (%):	51	51	30 min.
Height (ft.):	<35	<35	35 max.
Estimated Age of Structure:	1890	Variance request(s) shown in red.	

Other Permits/Approvals Required

- Building Permit

Neighborhood Context





Previous Board of Adjustment Actions

No previous BOA history found.

Planning Department Comments

The applicant proposes to reconstruct the port-cochere that was demolished by the previous property owner. The reconstruction of a non-conforming structure requires relief for rear yard setback and building coverage on the lot.

Variance Review Criteria
This application must meet all five of the statutory tests for a **variance** (see Section 10.233 of the Zoning Ordinance):
1. Granting the variance would not be contrary to the public interest.
2. Granting the variance would observe the spirit of the Ordinance.
3. Granting the variance would do substantial justice.
4. Granting the variance would not diminish the values of surrounding properties.
5. The "unnecessary hardship" test:
(a) The property has special conditions that distinguish it from other properties in the area.
AND
(b) Owing to these special conditions, a fair and substantial relationship does not exist between the general public purposes of the Ordinance provision and the specific application of that provision to the property; and the proposed use is a reasonable one.
OR
Owing to these special conditions, the property cannot be reasonably used in strict conformance with the Ordinance, and a variance is therefore necessary to enable a reasonable use of it.

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

Application Submission Package Requirements:

1. Project narrative - introduction of your project, what it is, and why this particular property and location of your project is important.

We are applying to the Planning Board to allow a variance so that we can restore the porte-couchere at our house. The property at 10 Merrimac Street, also known as the Montgomery Eldridge Estate is a prominent historic home at the corner of Miller and Merrimac. We purchased the property in August, 2025 and subsequently learned from Code Enforcement that the porte-couchere was improperly (partially) removed**.** The porte-couchere is integral to this historic property and has been included in our plans submitted to the National Park Service to have the property entered into the National Historic Register.

We are submitting this application without prejudice as we do not concede that a variance is necessary. We further contend the renovation meets the criteria for a variance should one be required.

2. Analysis Criteria and Responses - an application cannot be approved unless the 5 criteria have been met.

Variance Analysis Criteria (from section 10.223 of the Zoning Ordinance:

10.233.20 In order to authorize a variance, the Board must find that the variance meets all of the following criteria:

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

The approval of this variance is actually in the public interest as it will substantially contribute to the restoration of a historically important building in Portsmouth. This project restores the property to its original integrity and restores continuity to the remaining granite footings, stairs and egress point. The prior existence of this feature is well documented (see photographs below) and the intent of the project is restorative.

10.233.22 The spirit of the Ordinance will be observed;

This proposal observes the spirit of the ordinance and in restoring what should never have been removed, respecting regulatory goals. There is no plan to extend the footprint or increase area coverage.

10.233.23 Substantial justice will be done;

Substantial justice is clearly done as the project restores the structure and preserves the original plans that have been intact for more than a century before the structure was (improperly) removed.

10.233.24 The values of surrounding properties will not be diminished; and

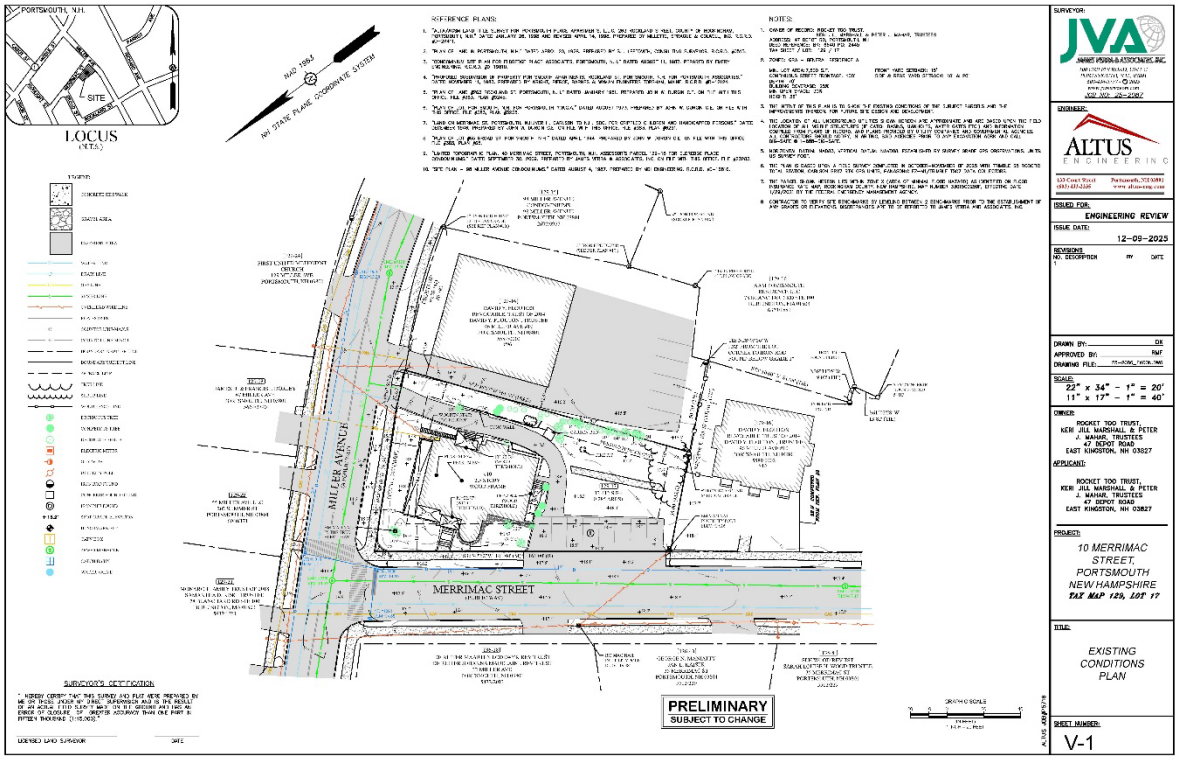
To the contrary restoration of a historically significant property will enhance the value of surrounding properties

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

Denial of this variance would jeopardize our application to the National Park Service to enter the property into the National Historic Register. Financial hardship would result from the inability to obtain the associated federal tax credits. In addition, literal enforcement of the ordinance is not appropriate in thi instance given the proposed project will correct the wrongs of the prior owner and restore the property to its prior, original intended integrity.

3. Site layout - hand drawing or map from map geo that shows how the building is oriented relative to its surrounding area and indicate where all relevant site features are (i.e. wetlands, existing mechanical units, proposed generator site...).

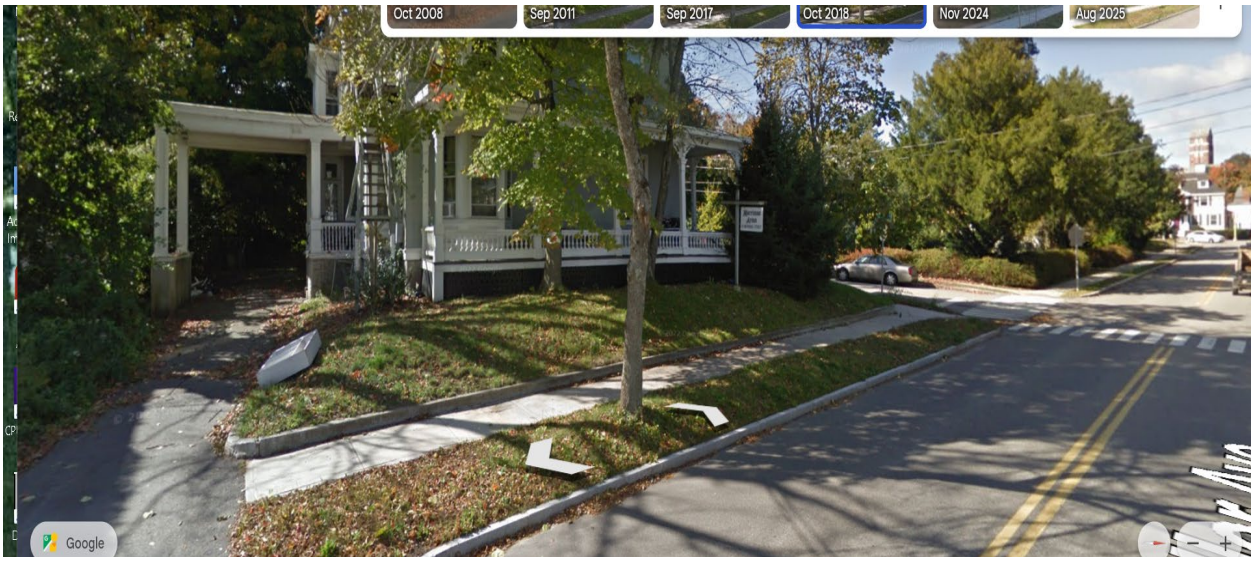
See attached survey. The granite footings from the porte-cochere are labelled in the survey as “concrete wall”.



4. Site Photos - to give the Board and members of the public context as to what the property looks like and what is surrounding it. Feel free to add any addition site photos that may help the Board get a feel for your property.



Photo courtesy of NH Historical society

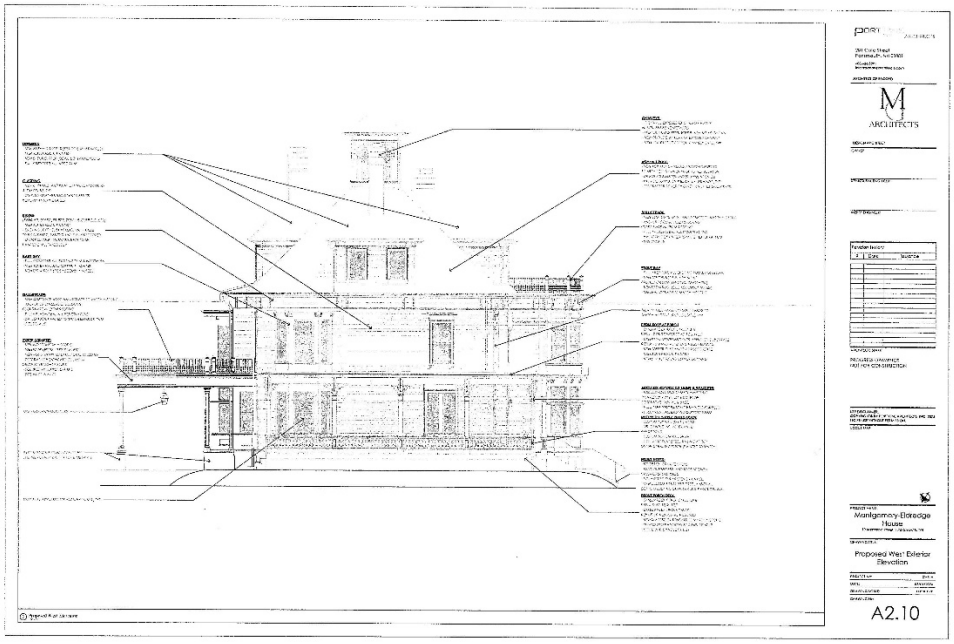


Property as it existed in October 2018 (Source: Google Earth)



Current view from Miller St. showing the footings for the porte-cochere.

5. Building elevations and floor plans of the proposed project or relevant details for the structure proposed.

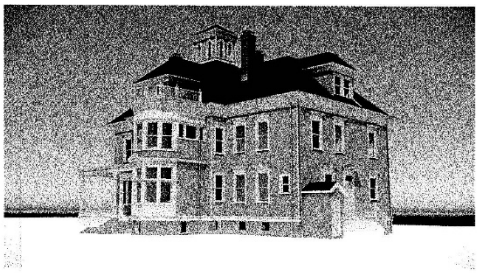


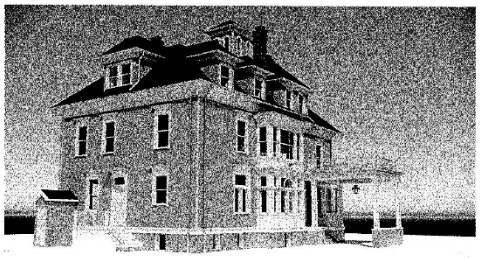
Montgomery-Belredge House

Proposed West Exterior Elevation

A2.10









PORT CITY ARCHITECTS
201 Cate Street
Portsmouth, NH 03801

M ARCHITECTS

Revision History

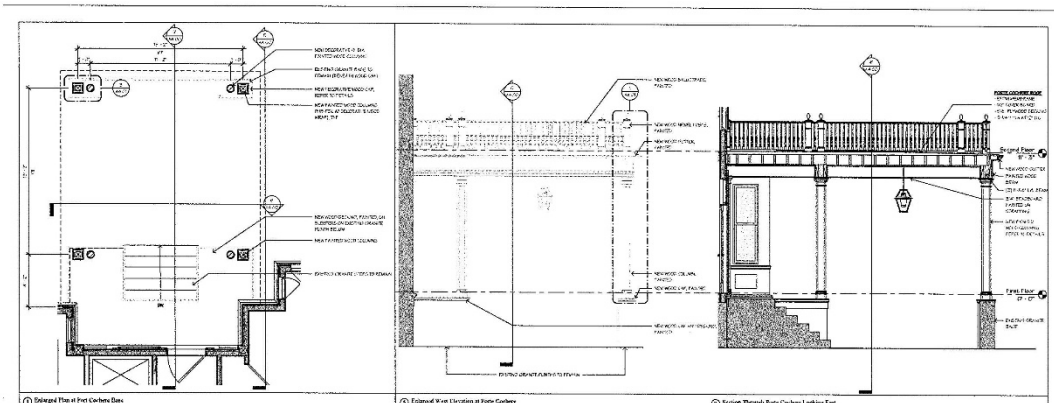
#	Date	Issuance

PROGRESS DRAWINGS
NOT FOR CONSTRUCTION

Montgomery-Eldredge House

3D VIEWS

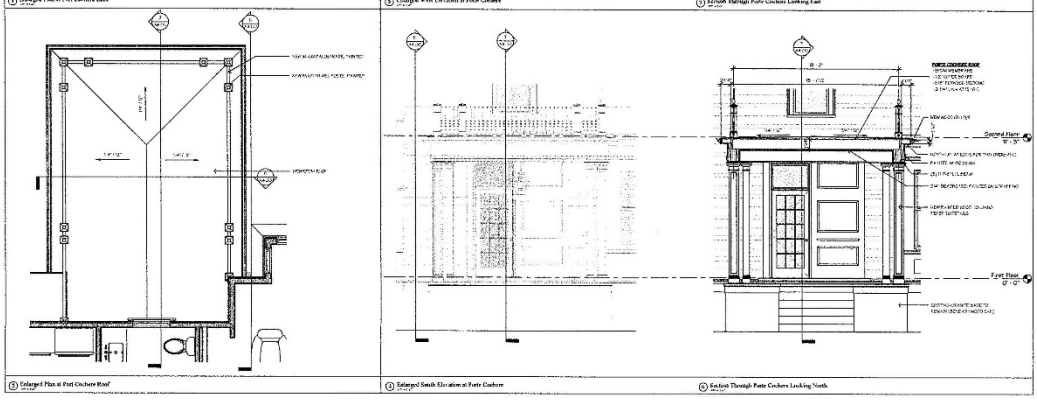
A9.00



1 Enlarged Plan at Port Cochere Base

5 Enlarged West Elevation at Porte Cochere

7 Section Through Porte Cochere Looking East



3 Enlarged Plan at Port Cochere Roof

4 Enlarged South Elevation at Porte Cochere

6 Section Through Porte Cochere Looking North

PORTSMOUTH ARCHITECTURAL STUDIO

159 Islington Street
Portsmouth, NH 03801
603.433.8891

OWNER:

DIRECTOR OF ENGINEERING:

MEP/FP ENGINEER:

GENERAL CONTRACTOR:

SUB-CONTRACTOR:

Revision History

#	Date	Issuance

ARCHITECT'S STAMP

PROGRESS DRAWINGS
NOT FOR CONSTRUCTION

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LOCUS MAP

PROJECT NAME:
Montgomery-Eldredge House
10 Manning Street | Portsmouth, NH

DRAWING TITLE:
Enlarged Plans, Elevations, and Sections at the Porte Cochere

PROJECT NO: 124-14
DATE: 04/01/2024
DRAWING SCALE: 3/8" = 1'-0"
DRAWING NO:

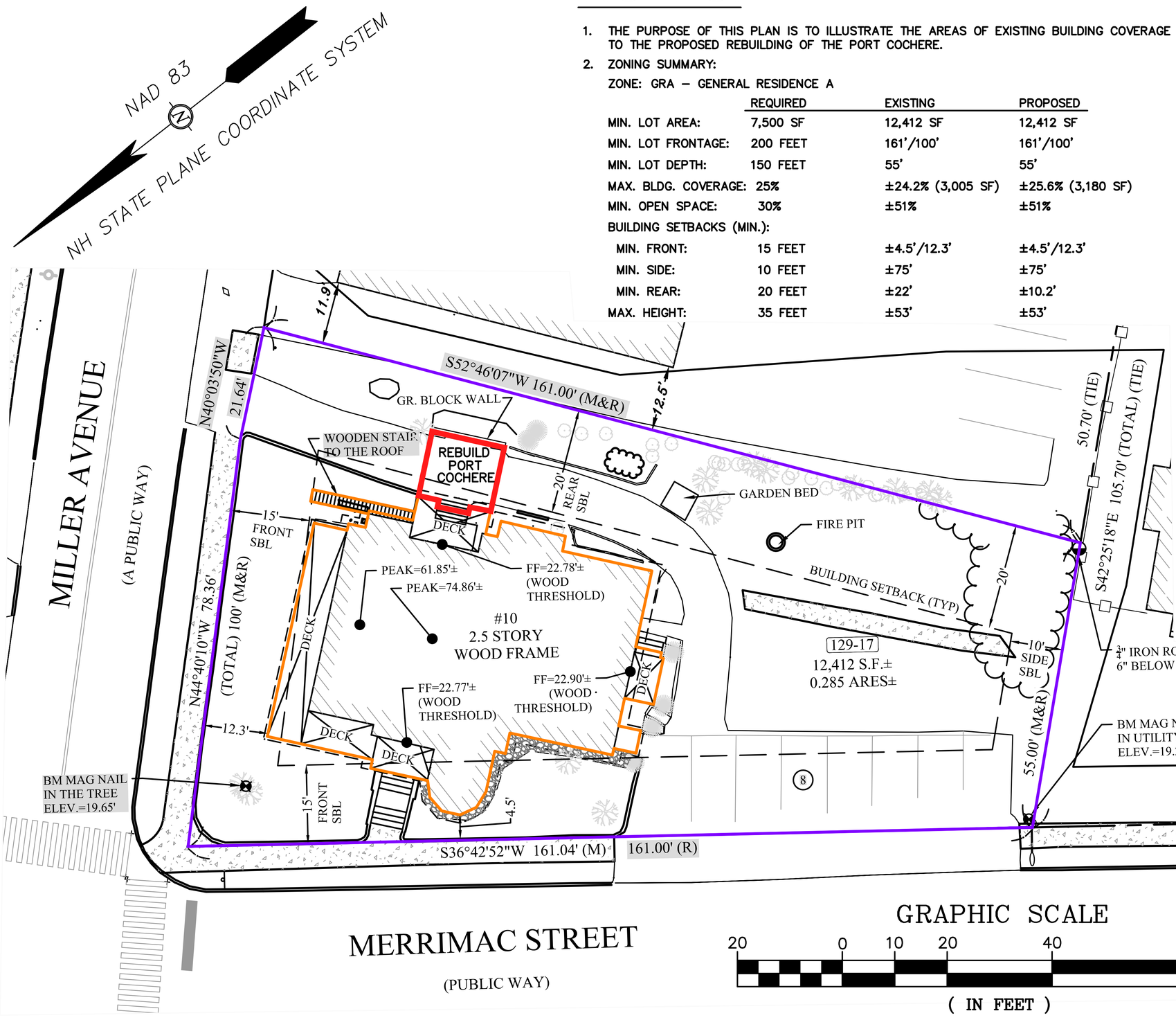
A4.00

NOTES:

1. THE PURPOSE OF THIS PLAN IS TO ILLUSTRATE THE AREAS OF EXISTING BUILDING COVERAGE & OPEN SPACE FOR THE PARCEL IN RELATION TO THE PROPOSED REBUILDING OF THE PORT COCHERE.
2. ZONING SUMMARY:

ZONE: GRA – GENERAL RESIDENCE A

	REQUIRED	EXISTING	PROPOSED
MIN. LOT AREA:	7,500 SF	12,412 SF	12,412 SF
MIN. LOT FRONTAGE:	200 FEET	161'/100'	161'/100'
MIN. LOT DEPTH:	150 FEET	55'	55'
MAX. BLDG. COVERAGE:	25%	±24.2% (3,005 SF)	±25.6% (3,180 SF)
MIN. OPEN SPACE:	30%	±51%	±51%
BUILDING SETBACKS (MIN.):			
MIN. FRONT:	15 FEET	±4.5'/12.3'	±4.5'/12.3'
MIN. SIDE:	10 FEET	±75'	±75'
MIN. REAR:	20 FEET	±22'	±10.2'
MAX. HEIGHT:	35 FEET	±53'	±53'



ALTUS ENGINEERING
133 Court Street Portsmouth, NH 03801
(603) 433-2335 www.altus-eng.com

NOT FOR CONSTRUCTION

ISSUED FOR:
BOARD OF ADJUSTMENT

ISSUE DATE:
OCTOBER 5, 2026

REVISIONS

NO.	DESCRIPTION	BY	DATE
0	DISCUSSION	EDW	09/02/26
1	CORRECT REAR SETBACK	EDW	10/05/26

DRAWN BY: RLH
APPROVED BY: EDW
DRAWING FILE: 5716.DWG

SCALE:
11" x 17" – 1" = 20'

OWNER:
ROCKET TOO TRUST
KERI JILL MARSHALL & PETER MAHAR, TRUSTEES
47 DEPOT ROAD
EAST KINGSTON, NH 03870

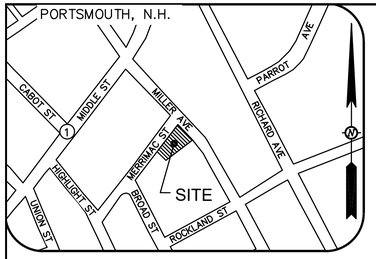
APPLICANT:
ROCKET TOO TRUST
KERI JILL MARSHALL & PETER MAHAR, TRUSTEES
47 DEPOT ROAD
EAST KINGSTON, NH 03870

PROJECT:
10 MERRIMAC STREET
PORTSMOUTH, NH
TAX MAP 129, LOT 17

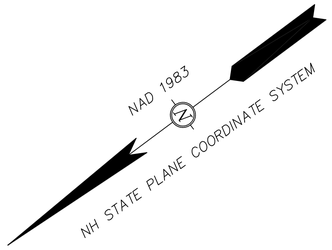
TITLE:
BOARD OF ADJUSTMENT SITE PLAN

SHEET NUMBER:
1 OF 1

P5716



LOCUS
(N.T.S.)



REFERENCE PLANS:

1. "ALTA/ACSM LAND TITLE SURVEY FOR PORTSMOUTH PLACE APARTMENTS, L.L.C. 263 ROCKLAND STREET, COUNTY OF ROCKINGHAM, PORTSMOUTH, N.H." DATED JANUARY 26, 1998 AND REVISED APRIL 14, 1998. PREPARED BY MILLETTE, SPRAGUE & COLWELL, INC. R.C.R.D. #D–26411.
2. "PLAN OF LAND IN PORTSMOUTH, N.H." DATED APROL 20, 1928. PREPARED BY S.L. LEFTOVITH, CONSULTING SURVEYOR. R.C.R.D. #0515.
3. "CONDOMINIUM SITE PLAN FOR ELDREDGE PLACE ASSOCIATES, PORTSMOUTH, N.H." DATED AUGUST 11, 1987. PEPARED BY EMERY ENGINEERING. R.C.R.D. #D–19810.
4. "PROPOSED SUBDIVISION OF PROPERTY PORTSMOUTH APARTMENTS, ROCKLAND ST. PORTSMOUTH. N.H. FOR PORTSMOUTH ASSOCIATES." DATED NOVEMBER 11, 1983. PREPARED BY WRIGHT, PIERCE, BARNES & WYMAN ENGINEERS TOPSHAM, MAINE. R.C.R.D. #D–12124.
5. "PLAN OF LAND #263 ROCKLAND ST. PORTSMOUTH, N.H." DATED JANUARY 1951. PREPARED JOHN W. DURGIN C.E. ON FILE WITH THIS OFFICE. FILE #383, PLAN #9245.
6. "PLAN OF LOT. PORTSMOUTH, N.H. FOR PORTSMOUTH Y.W.C.A." DATED AUGUST 1973. PREPARED BY JOHN W. DURGIN C.E. ON FILE WITH THIS OFFICE. FILE #383, PLAN #3235.
7. "LAND ON MERRIMAC ST. PORTSMOUTH, N.H.IVER H. CARLSON TO N.H. SOC. FOR CRIPPLED CHILDREN AND HANDICAPPED PERSONS." DATED DECEMBER 1946. PREPARED BY JOHN W. DURGIN C.E. ON FILE WITH THIS OFFICE. FILE #383, PLAN #6291.
8. "PLAN OF LOT #65 BROAD ST. PORTSMOUTH. N.H." DATED APRIL 1944. PREPARED BY JOHN W. DURGIN C.E. ON FILE WITH THIS OFFICE. FILE #383, PLAN #65.
9. "LIMITED TOPOGRAPHIC PLAN. 40 MERRIMAC STREET, PORTSMOUTH, N.H. ASSESSOR'S PARCEL 129–18 FOR ELDREDGE PLACE CONDOMINIUMS." DATED SEPTEMBER 30, 2009. PREPARED BY JAMES VERRA & ASSOCIATES, INC. ON FILE WITH THIS OFFICE. FILE #23283.
10. "SITE PLAN – 98 MILLER AVENUE CONDOMINIUMS." DATED AUGUST 4, 1987. PREPARED BY MBI ENGINEERING. R.C.R.D. #D–16816.

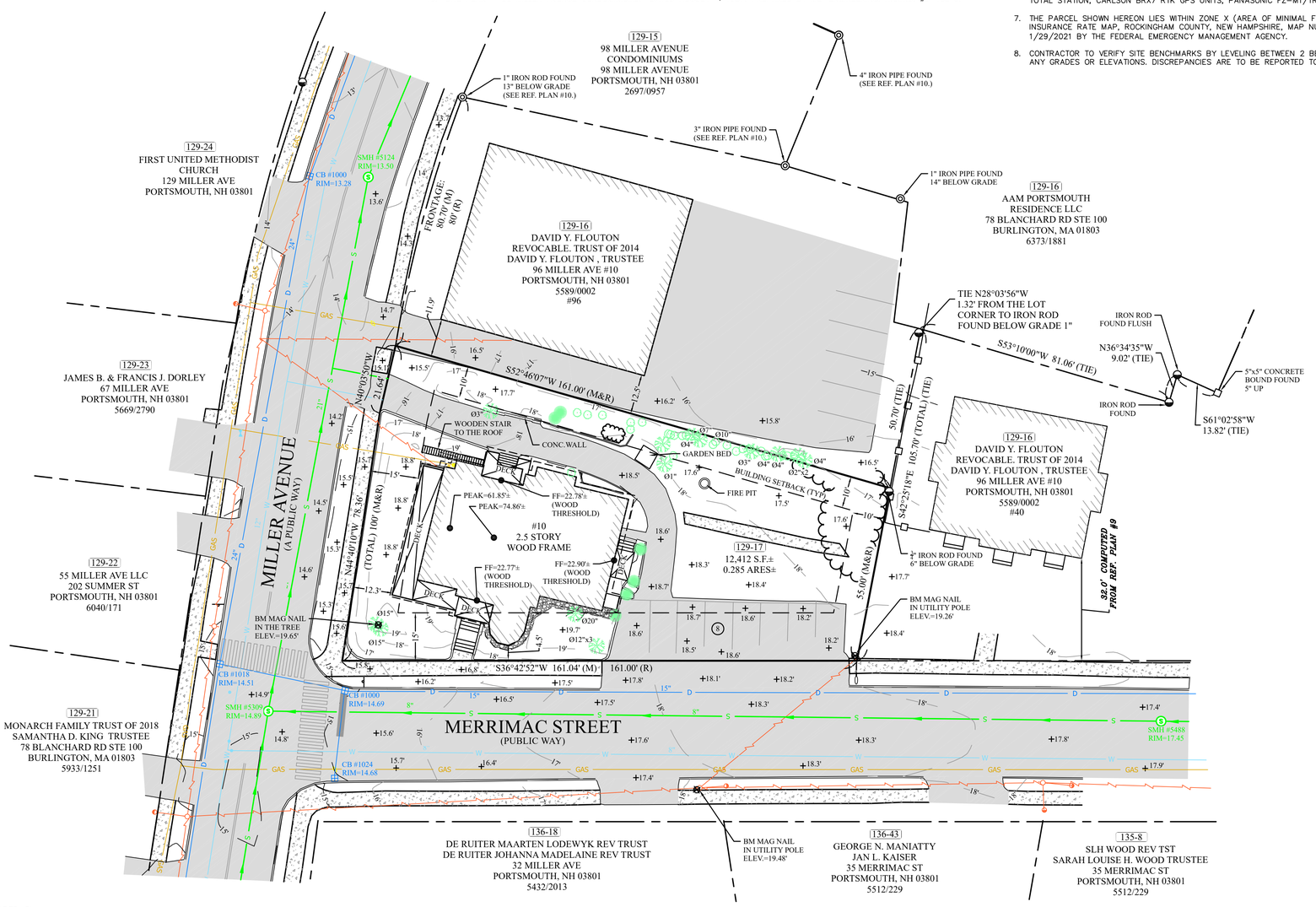
NOTES:

1. OWNER OF RECORD: ROCKET TOO TRUST,
   KERI JILL MARSHALL & PETER J. MAHAR, TRUSTEES
   ADDRESS: 47 DEPOT RD, PORTSMOUTH, NH
   DEED REFERENCE: BK: 6640 PG: 2445
   TAX SHEET / LOT: 129 / 17
2. ZONED: GRA – GENERAL RESIDENCE A

   MIN. LOT AREA: 7,500 S.F. — FRONT YARD SETBACK: 15'
   CONTINUOUS STREET FRONTAGE: 100' — SIDE & REAR YARD SETBACK: 10' & 20'
   DEPTH: 70'
   BUILDING COVERAGE: 25%
   MIN OPEN SPACE: 30%
   HEIGHT: 35'
3. THE INTENT OF THIS PLAN IS TO SHOW THE EXISTING CONDITIONS OF THE SUBJECT PARCELS AND THE IMPROVEMENTS THEREON. FOR FUTURE SITE DESIGN AND DEVELOPMENT.
4. THE LOCATION OF ALL UNDERGROUND UTILITIES SHOWN HEREON ARE APPROXIMATE AND ARE BASED UPON THE FIELD LOCATION OF ALL VISIBLE STRUCTURES (IE CATCH BASINS, MANHOLES, WATER GATES ETC.) AND INFORMATION COMPILED FROM PLANS OF RECORD, AND PLANS PROVIDED BY UTILITY COMPANIES AND GOVERNMENTAL AGENCIES. ALL CONTRACTORS SHOULD NOTIFY, IN WRITING, SAID AGENCIES PRIOR TO ANY EXCAVATION WORK AND CALL DIG–SAFE @ 1–888–DIG–SAFE.
5. HORIZONTAL DATUM: NAD83, VERTICAL DATUM: NAVD88. ESTABLISHED BY SURVEY GRADE GPS OBSERVATIONS. UNITS: US SURVEY FOOT.
6. THE PLAN IS BASED UPON A FIELD SURVEY COMPLETED IN OCTOBER–NOVEMBER OF 2025 WITH TRIMBLE S5 ROBOTIC TOTAL STATION, CARLSON BRX7 RTK GPS UNITS, PANASONIC FZ–M1/TRIMBLE TSC7 DATA COLLECTORS.
7. THE PARCEL SHOWN HEREON LIES WITHIN ZONE X (AREA OF MINIMAL FLOOD HAZARD) AS IDENTIFIED ON FLOOD INSURANCE RATE MAP, ROCKINGHAM COUNTY, NEW HAMPSHIRE, MAP NUMBER 33015C0259F, EFFECTIVE DATE 1/29/2021 BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY.
8. CONTRACTOR TO VERIFY SITE BENCHMARKS BY LEVELING BETWEEN 2 BENCHMARKS PRIOR TO THE ESTABLISHMENT OF ANY GRADES OR ELEVATIONS. DISCREPANCIES ARE TO BE REPORTED TO JAMES VERRA AND ASSOCIATES, INC.

LEGEND

- CONCRETE SIDEWALK
- GRAVEL AREA
- PAVEMENT AREA
- WATER LINE
- DRAIN LINE
- GAS LINE
- SEWER LINE
- OVERHEAD WIRE LINE
- ROAD STRIPE
- COUNTOR LINE-MAJOR
- COUNTOR LINE-MINOR
- BOUNDARY ABUTTER LINE
- BOUNDARY SUBJECT LINE
- SETBACK LINE
- SHRUB LINE
- TREE LINE
- WOOD FENCE LINE
- DECIDUOUS TREE
- CONIFEROUS TREE
- DECIDUOUS SHRUB
- ELECTRIC METER
- GUY WIRE
- UTILILITY POLE
- IRON ROD FOUND
- CONCRETE BOUND FOUND
- IRON PIPE FOUND
- + 16.2' SPOT GRADE ELEVATION
- BENCHMARK SET
- CATV BOX
- SEWER MANHOLE
- CATCH BASIN
- WATER VALVE



PRELIMINARY
SUBJECT TO CHANGE

GRAPHIC SCALE
20 10 0 20 40
(IN FEET)
1 INCH = 20 FEET

SURVEYOR'S CERTIFICATION

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

LICENSED LAND SURVEYOR _____ DATE _____

ALTUS JOB#P5716

SURVEYOR:
JAMES VERRA & ASSOCIATES, INC.
100 GRIFFIN ROAD, UNIT C
PORTSMOUTH, N.H., 03801
603-436-3557 - © 2025
www.jvasurveyors.com
JOB NO: 25–2087

ENGINEER:
ALTUS ENGINEERING
133 Court Street Portsmouth, NH 03801
(603) 433-2335 www.altus-eng.com

ISSUED FOR:
ENGINEERING REVIEW

ISSUE DATE:
12–09–2025

REVISIONS

NO.	DESCRIPTION	BY	DATE
1			

DRAWN BY: DK
APPROVED BY: RMF
DRAWING FILE: 25–2086_EXCON.DWG

SCALE:
22" x 34" – 1" = 20'
11" x 17" – 1" = 40'

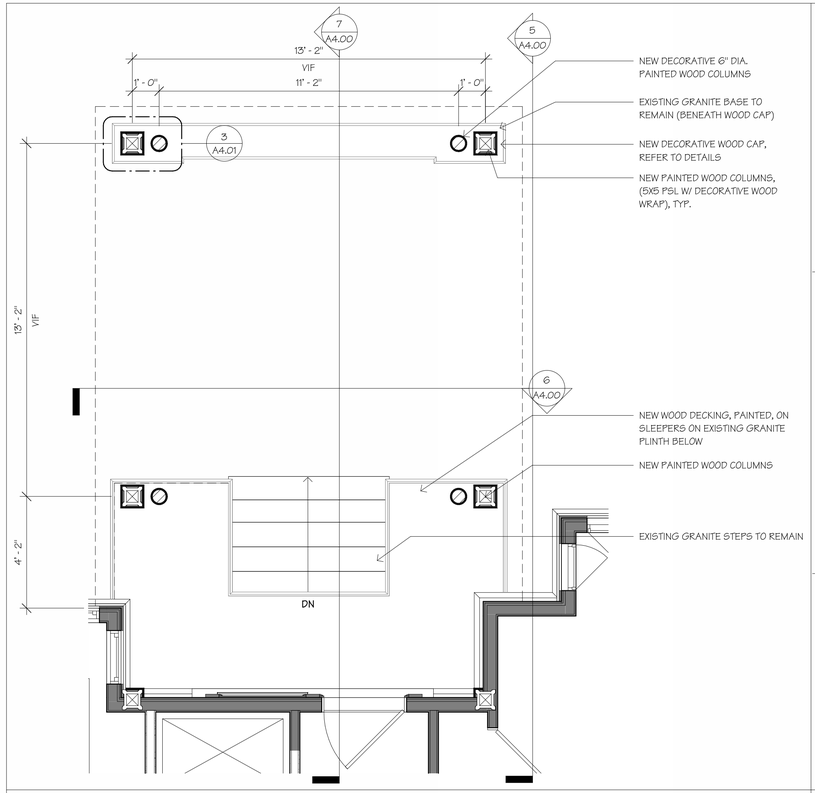
OWNER:
ROCKET TOO TRUST,
KERI JILL MARSHALL & PETER J. MAHAR, TRUSTEES
47 DEPOT ROAD
EAST KINGSTON, NH 03827

APPLICANT:
ROCKET TOO TRUST,
KERI JILL MARSHALL & PETER J. MAHAR, TRUSTEES
47 DEPOT ROAD
EAST KINGSTON, NH 03827

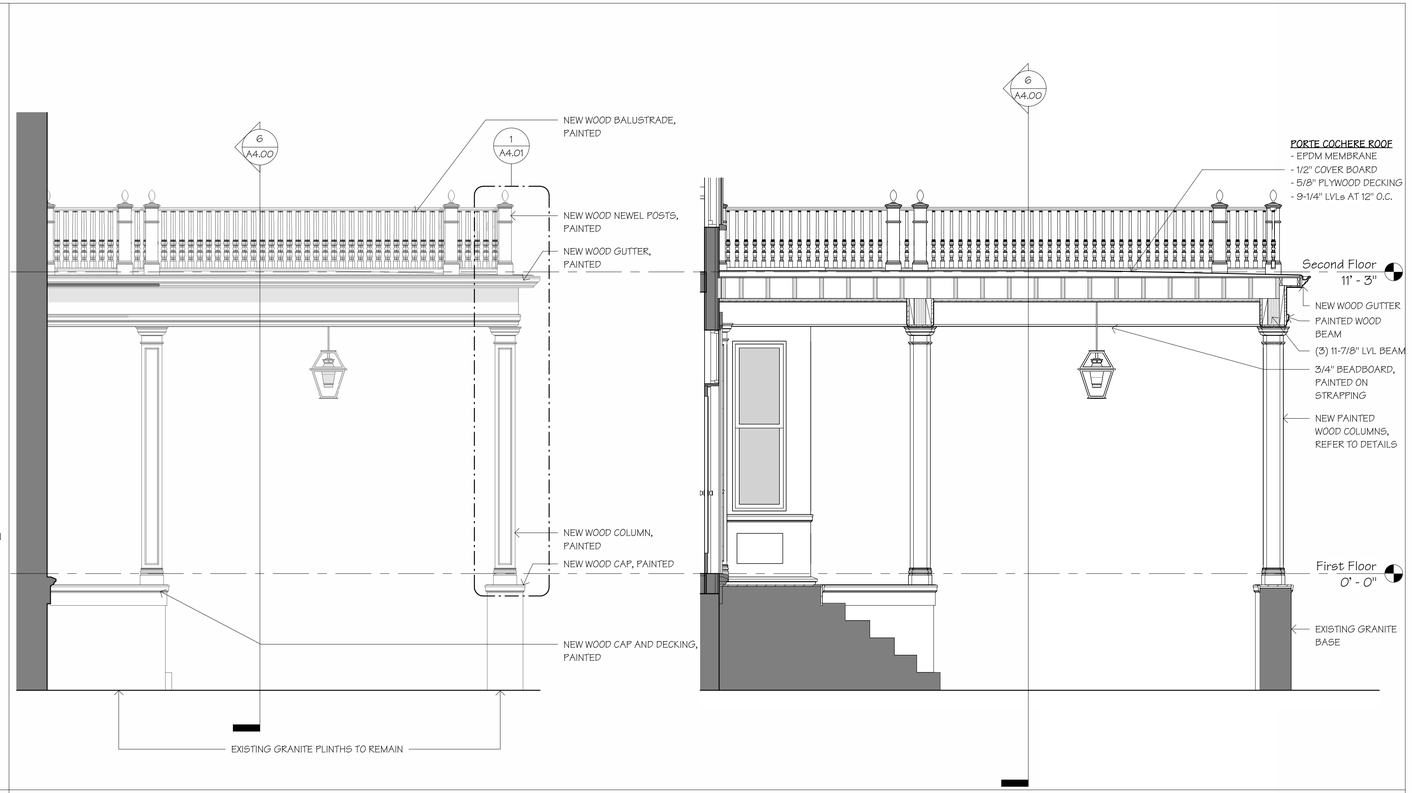
PROJECT:
10 MERRIMAC STREET, PORTSMOUTH NEW HAMPSHIRE
TAX MAP 129, LOT 17

TITLE:
EXISTING CONDITIONS PLAN

SHEET NUMBER:
V-1

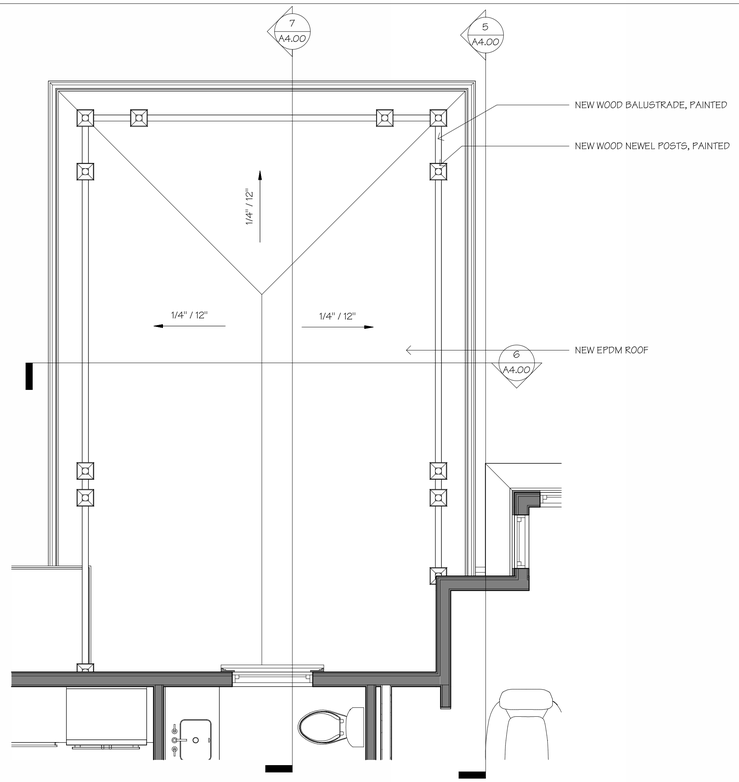


1 Enlarged Plan at Port Cochere Base
3/8" = 1'-0"

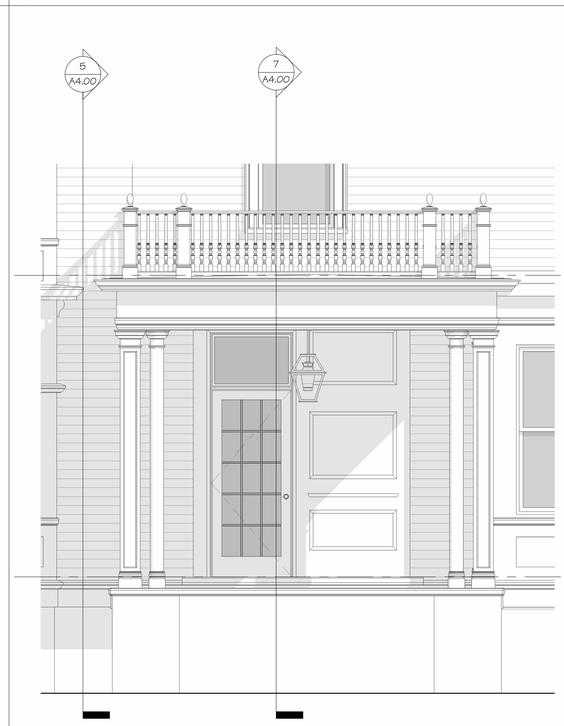


5 Enlarged West Elevation at Porte Cochere
3/8" = 1'-0"

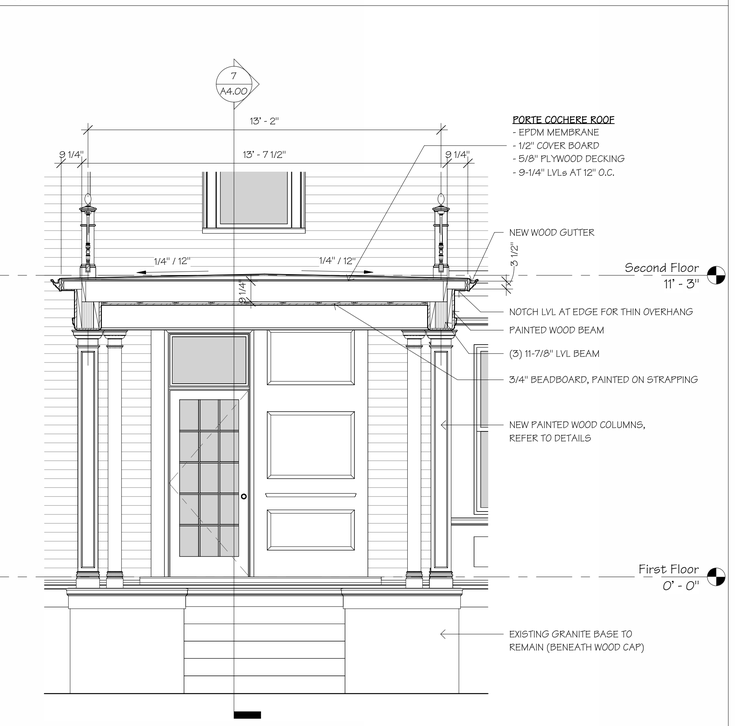
7 Section Through Porte Cochere Looking East
3/8" = 1'-0"



2 Enlarged Plan at Port Cochere Roof
3/8" = 1'-0"



4 Enlarged South Elevation at Porte Cochere
3/8" = 1'-0"



6 Section Through Porte Cochere Looking North
3/8" = 1'-0"

PORT ONE ARCHITECTS
959 Islington Street
Portsmouth, NH 03801
603.436.8891
info@portonearchitects.com

OWNER:

STRUCTURAL ENGINEER:

MEPFP ENGINEER:

SUB-CONTRACTOR:

SUB-CONTRACTOR:

Revision History

#	Date	Issuance

ARCHITECTS STAMP

PROGRESS DRAWINGS
NOT FOR CONSTRUCTION

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LOCUS MAP

PROJECT NAME:
Montgomery-Eldredge House
10 Merrimac Street | Portsmouth, NH

DRAWING TITLE:
Enlarged Plans, Elevations, and Sections at the Porte Cochere

PROJECT No:	25-116
DATE:	04/21/2026
DRAWING SCALE:	3/8" = 1'-0"
DRAWING No:	

A4.00