

PORPSMOUTH ZONING BOARD OF ADJUSTMENT

Rehearing Request of

Ben & Andrea St. Jean (54 Humphreys Court)  
Braden & Robyn Ferrari (44 Humphreys Court)  
Bob & Laura Gunning (43 Humphreys Court)  
Mike & Zoe Daboul (53 Humphreys Court)  
Tim & Kim Sullivan (63 Humphreys Court)  
Jamie & Amy Baker (75 Humphreys Court)  
(collectively, the “**Appellants**”)

**REQUEST FOR REHEARING PURSUANT TO RSA 677:2**

Appellants respectfully request a rehearing of the ZBA’s December 16, 2025 decision to grant the administrative appeal filed by the Robert M. Snover Revocable Trust (“**Snover**”) regarding the lot size determination of the Snover property located at 58 Humphreys Court. On December 16, 2025, the ZBA concluded that the land area beneath the travelled portion of the corner of Humphreys Court may be included in the calculation of the Snovers’ lot area. We respectfully disagree with that conclusion.

A ZBA should grant a rehearing if the applicant “can demonstrate that the board committed technical error or that there is new evidence that was not available at the time of the first hearing.” See 15 New Hampshire Practice: Land Use Planning and Zoning, §21.18. For the reasons set forth below, the Appellants respectfully submit that good cause exists for granting this rehearing request.

1. The ZBA Incorrectly Relied on the Metes and Bounds Description in the Snovers’ Deed to Determine the Front Lot Line for Zoning Purposes.

The Board concluded that because the Snovers’ deed defines the property by metes and bounds, those metes and bounds constitute the lot lines, and any area within those lines is includable in the calculation of “lot area.” The Appellants respectfully disagree with this conclusion because although the historic property lines as described in a deed may well establish what the owners hold fee title to, they do not establish lot lines for zoning purposes.

Each lot in the GRB District must have a minimum lot area of 5,000 square feet. See Zoning Ordinance §10.521. “Lot area” is defined as: “The total horizontal area included within the property lines.” Id. §10.1530. Although “property lines” are undefined, the equivalent term, “lot line,” is:

**Lot line:** A property line bounding a lot.

Id. This definition cannot be viewed in isolation, however. Within it, there are three subsections that define the front, side and rear lot lines. Relevant to this matter is the definition of front lot line:

**Lot Line, Front:** “A boundary of lot that separates the lot from a public place...”

**Public Place:** “A streetway, park, pedestrian alleyway or community space that provides public access.”

Id. In its deliberations, the ZBA reviewed the definition of “lot line,” and focused on its reference to a “lot.” The Board then reviewed the definition of a “lot”:

**Lot:** A single parcel of land in the same ownership throughout as shown or defined on a recorded instrument or defined by metes and bounds and having its principal frontage on a street or on such other means of access as may be determined in accordance with the provisions of law to be adequate as a condition of the issuance of a building permit for building on such land.

Id. Based on this definition, the Board concluded that the metes and bounds description in the deed establishes the lot lines for zoning purposes. However, this conclusion was misplaced because it ignores the Ordinance’s definition of a “front lot line,” particularly as it is used in reference to the key term at issue, “lot area.” Pursuant to that definition, the front lot line is the boundary that separates the lot from a public place. There seemed to be no dispute at the December 16 hearing that the rounded corner of Humphreys Court is a public place. The Snovers’ own survey indicates as much referring to it as a “travelled way.” See Exhibit A hereto. Accordingly, that rounded corner provides the boundary by which lot area must be calculated.

The distinction between a lot’s legal boundaries (metes and bounds), and the lot lines for zoning purposes, is consistent with the general presumption throughout the State that landowners own fee title to the centerline of the street. See A Hard Road to Travel, New Hampshire Law of Local Highways, Streets and Trails, p. 19 (2022) (citing Makepeace v. Worden, 1 N.H. 16 (1816)):

The presumption against public ownership under roads is so strong that even when a landowner’s deed has a metes-and-bounds description that does not include the highway (or that recites the nearest highway boundary line as the lot’s boundary line), it is still held to convey title to the center of the highway.

Id. (citing Copp v. Neal, 7 N.H. 275 (1834)). In these cases, the legal or deeded property boundary may be the centerline of the road; however, that centerline is never used for zoning purposes, such as to establish front yard setbacks, lot area, or density calculations.

2. The ZBA Incorrectly Concluded That the Rounded Corner of Humphreys Court is Excludable From Lot Area Only if it Constitutes a “Street”.

The ZBA concluded that the rounded corner of Humphreys Court is part of the lot area because it does not meet the definition of a “street” under the Zoning Ordinance. Respectfully, the Appellants disagree with that conclusion.

As referenced above, Section 10.1530 of the Zoning Ordinance provides the following definitions:

**Lot Line, Front:** “A boundary of lot that separates the lot from a public place...”

**Public Place:** “A streetway, park, pedestrian alleyway or community space that provides public access.”

Accordingly, the rounded corner need not be a “street” to be excluded from the lot area. It must only be a “public place.” The definition of a “public place” in the Ordinance includes “streetways,” and other community spaces that provide public access. The term “streetway” is undefined in the Ordinance, and under traditional rules of statutory construction (which apply to interpretation of zoning ordinances), that term is presumed to have a different meaning than the term “street.” See Appeal of New Hampshire Dep’t of Env’t Servs., 176 N.H. 379, 391–92 (2023) (“When the legislature uses two different words, it generally means two different things”). Accordingly, the corner of Humphreys Court need not meet the Ordinance’s definition of a “street” to establish the location of the front lot line. All of Humphreys Court, including the corner at issue, provides public access. On the ground, the corner at issue is indistinguishable from the remainder of the street and has contained City infrastructure and been paved, maintained and plowed since at least 1960 and likely well before. Therefore, even if the rounded corner is not a “street,” it nonetheless constitutes a “streetway” and/or “public place,” undeniably providing “public access,” and thereby defines the front lot line of the property for zoning purposes.

3. The ZBA Incorrectly Concluded that the Rounded Corner of Humphreys Court is not a Street.

Even if the ZBA were correct that only accepted City streets are excludable from lot area calculations, it erred in concluding that the rounded corner of Humphreys Court is not a public street. The Zoning Ordinance defines a “street” as follows:

**Street:** A thoroughfare or roadway which is either (a) formally accepted by the City, or (b) shown on a subdivision plan approved by the Planning Board and constructed to City subdivision specifications or for which surety has been posted to guarantee construction of all improvements required by the Planning Board.

See Zoning Ordinance §10.1530. The ZBA determined that the rounded corner of Humphreys Court is not a “street” because it has not been formally accepted by the City. Respectfully, this determination was in error.

[A]cceptance [of a public street] may be by express acts that include adopting an offer of dedication by ordinance or formal resolution, or implied by acts such as opening up or improving a street, repairing it, removing snow from it, or assigning police patrols to it.

Hersh v. Plonski, 156 N.H. 511, 516 (2007). Here, the Appellants provided a 1937 Plan (attached hereto as Exhibit B) depicting the rounded corner of the street, with a notation on it that the area for the curve was to be dedicated or conveyed to the City. The plan is signed by a civil engineer who is believed to have been a City employee at that time. The City has exercised exclusive control over the subject area and paved, plowed and maintained the entirety of Humphreys Court, including the corner at issue, for many decades. Mr. Whitehouse's living children each confirmed that the paved curve existed when they started construction on their house in 1960. Such conduct evidences acceptance of the public street under Hersh v. Plonski.

Furthermore, it is very common for public streets to exist even without a formal record of acceptance:

The most important streets in many municipalities may have no written records showing how they became public highways. Nobody doubts that they are highways, but nobody knows of any actual layout, or acceptance, or even in which decade or century to start searching for records. Although the status of each highway is dependent on the facts and circumstances in each case, many of these roads probably qualify as public highways under the legal theory of prescription—actual use for travel for at least 20 years prior to 1968.

See A Hard Road to Travel, New Hampshire Law of Local Highways, Streets and Trails, p. 19 (2022) (citing RSA 229:1). This is common in Portsmouth as well, including such locations as Congress Street and New Castle Avenue. Here, even if the longstanding public use and City maintenance of the corner were insufficient to constitute formal acceptance, the corner still constitutes a public street by virtue of prescription. Therefore, the ZBA erred by concluding the corner is not a public street.

#### 4. The ZBA's Decision Directly Conflicts with New Hampshire Supreme Court Precedent and Carries Broad, Untenable Consequences.

Including the land area beneath the travelled portion of Humphreys Court in the lot area calculation conflicts with general zoning principles and New Hampshire common law. It has broad, untenable consequences for how other properties throughout the City will be treated for future development.

New Hampshire common law is clear that land underlying roads may not be included in lot area calculations. See Mudge v. Precinct of Haverhill Corner, 133 N.H. 881, 887 (1991). In Mudge, a landowner sought to expand a mobile housing park. Id. at 883. One issue was whether the proposed expansion complied with the zoning density restrictions (number of units per acre). Id. The landowner argued that the lot area should be calculated to include the rights of way within the park. Id. However, the Court disagreed:

With respect to Condodemetraky's claim concerning inclusion of the surface area of the rights-of-way in determining density, we adopt what we find to be the better-

reasoned position. “In computing the size of lots, land contained in streets, public or private, which give access to the lot is excluded.””

Mudge, 133 N.H. at 887 (quoting 3 Rathkopf's The Law of Zoning and Planning § 34.04 (4th ed. 1990)). In reaching this conclusion, the Court quoted one of the most respected national treatises on land use law, reflecting that this is a general legal principle across jurisdictions.

As noted above, many streets throughout the State lack a record of formal acceptance by a municipality. City Planning and Legal staff confirmed at the December 16 hearing that the same is true in Portsmouth, notably Congress Street and New Castle Avenue. If the ZBA’s rationale in this case were applied throughout the City, the consequences would be widespread and unintended. All landowners in the City would be entitled to include the land area up to the centerline of the street in their calculation of lot area where there is no formal record of acceptance of the street. This renders the Zoning Ordinance density (and setback) requirements illusory by including an active public thoroughfare in a private lot area calculation.

While we appreciate the ZBA’s thoughtful consideration at the December 16 hearing of all applications regarding this project, we respectfully believe that it committed technical error by misinterpreting the definition of lot area and including the portion of Humphreys Court in the land area calculation for 58 Humphreys Court. Accordingly, we respectfully request that a rehearing be granted in accordance with RSA 677:2.

Respectfully submitted,

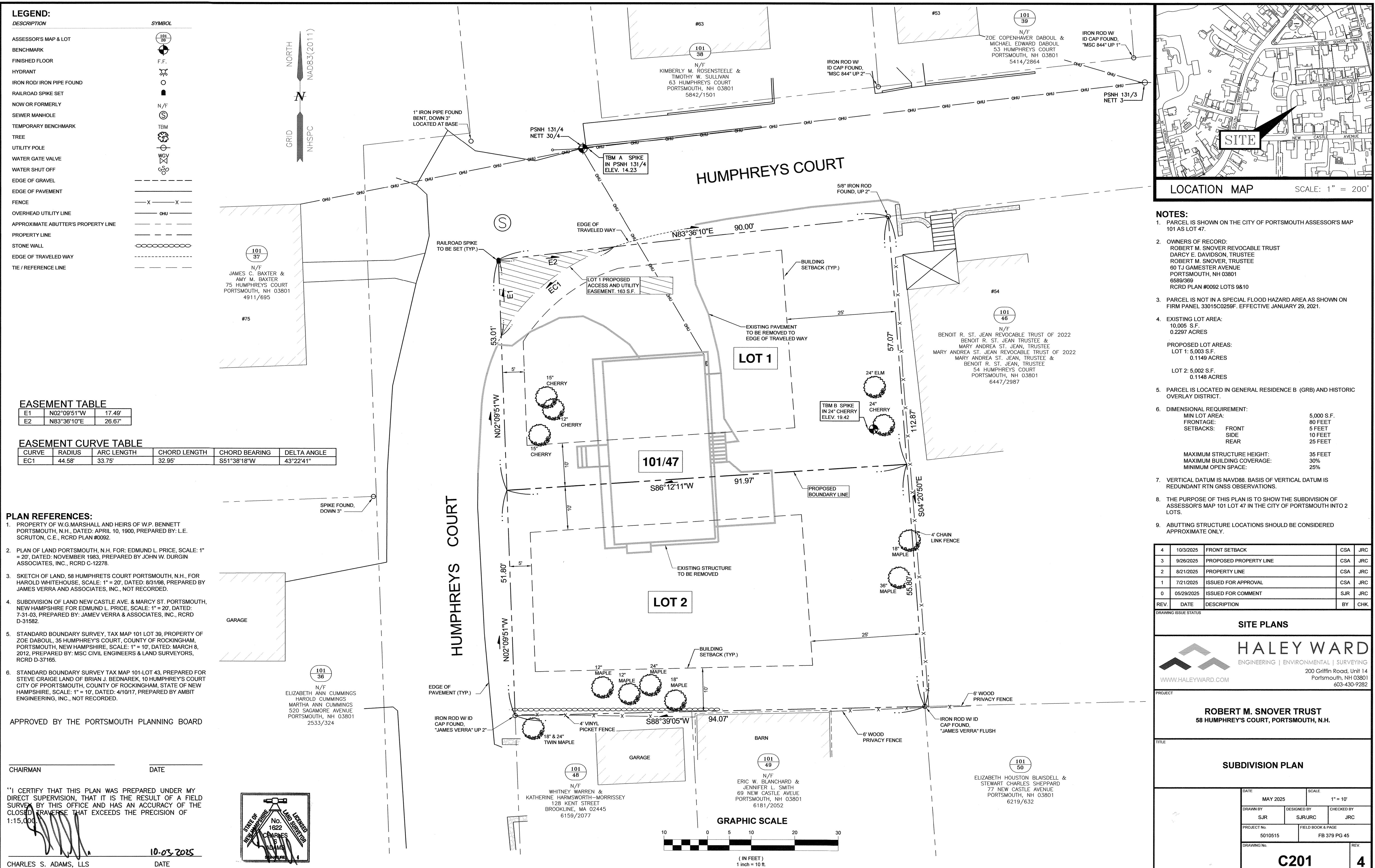
Ben & Andrea St. Jean  
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Tim & Kim Sullivan  
Jamie & Amy Baker

By their Attorneys,

ORR & RENO, P.A.

Date: January 14, 2026

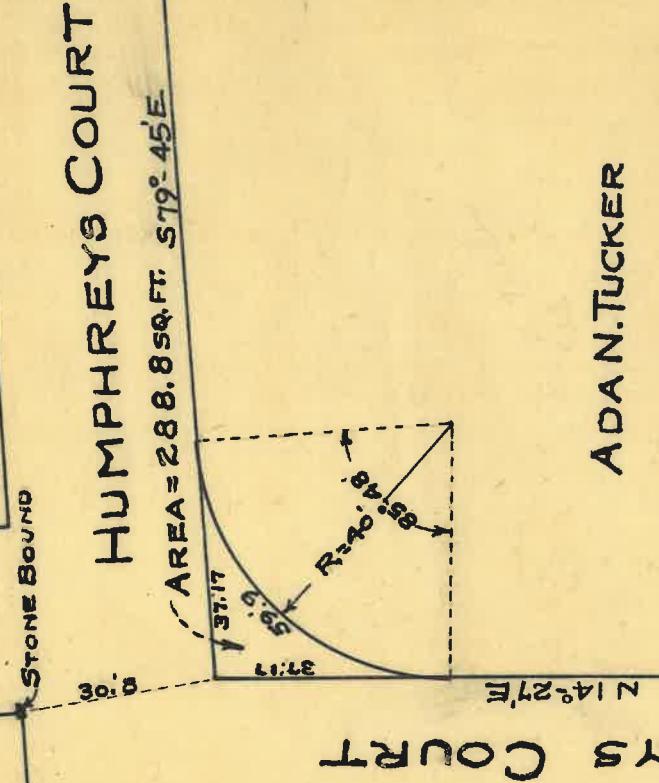
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CITY - HAVEN SCHOOL

ADA N. TUCKER

JAMES P. LEE



HUMPHREYS COURT

ADA N. TUCKER

MARY M. WOODS

ADA N. TUCKER

W.M. & RUTH J. ATWELL

LAND IN PORTSMOUTH, N.H.

ADA N. TUCKER

TO CITY OF PORTSMOUTH, N.H.

SCALE: - 1 INCH = 30 FEET

JULY 1937

*John W. Drue*  
CIVIL ENGINEER

FILE NO. 1987-0