

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

*Members of the public also have the option to join the meeting over Zoom
(See below for more details)**

7:00 P.M.

August 22, 2023

AGENDA

I. NEW BUSINESS – PUBLIC HEARING

- A.** The request of **Islamic Society of the Seacoast Area ISSA (Owners)**, for property located at **686 Maplewood Avenue** whereas relief is needed to construct 6 single living unit structures which requires the following: 1) Variance from Section 10.520 to permit 10,462 square feet of lot area per dwelling unit where 15,000 if required; and 2) Variance from Section 10.513 to permit six (6) free standing buildings where only one (1) is permitted. Said property is located on Assessor Map 220 Lot 90 and lies within the Single Residence B (SRB) District (LU-23-57)
- B.** The request of **Karyn S. DeNicola Rev Trust, Karen DeNicola Trustee (Owner)**, for property located at **281 Cabot Street** whereas relief is needed for a variance from Section 10.521 to allow a) three (3) foot front yard where five (5) feet is required, b) three and a half (3.5) foot left side yard where ten (10) feet is required, and c) 36% building coverage where 35% is allowed. Said property is located on Assessor Map 144 Lot 20 and lies within the General Residence C (GRC) District. (LU-23-84)
- C.** The request of **Novocure Inc. (Owner)**, for property located at **64 Vaughan Street** whereas relief is needed to construct a penthouse which requires Variances from Sections 10.5A43.30 and 10.5A21.B (Map) to allow a maximum height of 47 feet where 42 is allowed. Said property is located on Assessor Map 126 Lot 1 and lies within the Character District 5 (CD5) and North End Incentive Overlay District. (LU-20-214)
- D.** The request of **Cynthia Austin Smith and Peter Smith (Owners)**, for property located at **9 Kent Street** whereas relief is needed to demolish the existing two (2) living unit structure and construct a one (1) living unit structure which requires a Variance from Section 10.521 to allow a) 5,000 square feet of lot area where 7,500 square feet are

required and b) 5,000 square feet of lot area per dwelling unit where 7,500 square feet are required. Said property is located on Assessor Map 113 Lot 42 and lies within the General Residence A (GRA) District. (LU-23-119)

- E. The request of **Caleb E. Ginsberg** and **Samantha L. Ginsberg (Owners)**, for property located at **303 Bartlett Street** whereas relief is needed to demolish the existing detached garage and construct an addition with attached garage which requires a Variance from Section 10.521 to allow a) seven (7) foot left yard where ten (10) feet is required, and b) two (2) foot right yard where ten (10) feet are required. Said property is located on Assessor Map 162 Lot 13 and lies within the General Residence A (GRA) District. (LU-23-120)

II. OTHER BUSINESS

III. ADJOURNMENT

**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_0wnwNfSKR9CHlps5JXDwMw



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

MEMORANDUM

TO: Zoning Board of Adjustment
FROM: Jillian Harris, AICP, Planner
DATE: August 16, 2023
RE: Zoning Board of Adjustment August 22, 2023

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

II. New Business

- A. 686 Maplewood Avenue
- B. 281 Cabot Street
- C. 64 Vaughan Street
- D. 9 Kent Street
- E. 303 Bartlett Street

II. NEW BUSINESS

- A.** The request of **Islamic Society of the Seacoast Area ISSA (Owners)**, for property located at **686 Maplewood Avenue** whereas relief is needed to construct 6 single living unit structures which requires the following: 1) Variance from Section 10.520 to permit 10,462 square feet of lot area per dwelling unit where 15,000 if required; and 2) Variance from Section 10.513 to permit six (6) free standing buildings where only one (1) is permitted. Said property is located on Assessor Map 220 Lot 90 and lies within the Single Residence B (SRB) District (LU-23-57)

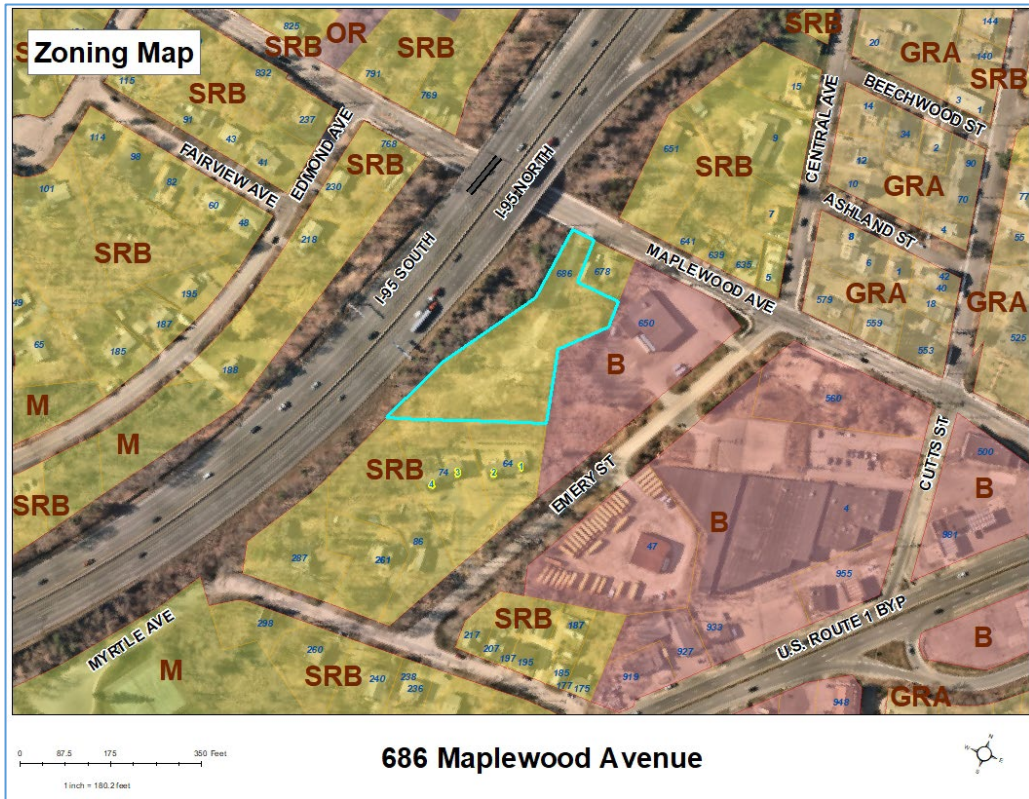
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use</u>	Vacant	6 Single-family detached dwelling units	Primarily residential
<u>Lot area (sq. ft.):</u>	62,776	62,776	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	N/A	10,462	15,000 min.
<u>Street Frontage (ft.):</u>	47	47	100 min.
<u>Lot depth (ft.):</u>	>200	>200	100 min.
<u>Front Yard (ft.):</u>	N/A	>60	30 min.
<u>Right Yard (ft.):</u>	N/A	>10	10 min.
<u>Left Yard (ft.):</u>	N/A	>10	10 min.
<u>Rear Yard (ft.):</u>	N/A	>30	30 min.
<u>Height (ft.):</u>	N/A	<35	35 max.
<u>Building Coverage (%)</u>	0	10.7	20 max.
<u>Open Space Coverage (%)</u>	100	65.3	40 min.
<u>Parking:</u>	N/A	16	9
<u>Estimated Age of Structure:</u>	N/A	Variance request(s) shown in red.	

Other Permits/Approvals Required

- Site Plan Approval – TAC and Planning Board
- Highway Noise Overlay Conditional Use Permit – Planning Board
- Building Permit

Neighborhood Context



Previous Board of Adjustment Actions

February 21, 2017 – The Board **granted** a special exception and a variance to allow the following:

- 1) a Special Exception from Section 10.440 to allow a religious place of assembly in a district where the use is only allowed by special exception.
- 2) a Variance from Section 10.521 to allow 47'± of continuous street frontage where 100' is required.

February 25, 2019 – The Board **granted** a 1-year extension of the variance and special exception, to expire on February 21, 2020.

April 7, 2020 – The Board **postponed** the request (*to the April 21, 2020 meeting*) for relief needed from the Zoning Ordinance to construct a 4,000± s.f. building to house a religious place of assembly which includes the following:

- 1) A Special Exception under Section 10.440, Use #3.11 to allow a religious place of assembly in a district where the use is only allowed by Special Exception; and
- 2) A Variance from Section 10.521 to allow 47'± of continuous street frontage where 100' is required.

April 21, 2020 – The Board voted to **grant** the variance and special criteria as presented.

May 16, 2023 – The Board considered the application for constructing four (4) duplexes and one (1) single living unit to create a total of nine (9) living units which requires the following: 1) Variance from Section 10.440, Use # 1.30 to permit four (4) two-family unit structures where they are not permitted, 2) Variance from Section 10.513 to permit five (5) free standing buildings with dwellings where not more than one is permitted, 3) Variance from Section 10.520 to allow a) 6,975 square feet of lot area per dwelling unit where 15,000 square feet is required; and b) 47 feet of frontage where 100 feet is required. The Board voted to **postpone** the petition to the May 23, 2023, meeting.

May 23, 2023 – The Board voted to **postpone** the May 16, 2023, petition to the June 21, 2023, meeting.

June 21, 2023 – The Board voted to 1) to **grant** the request for the 47-ft frontage variance (Item 3.b); and 2) to **deny** the request to construct four duplexes and one single living unit to create a total of nine living units which requires relief from Section 10.440 (use 1.30) to permit four two-family structures where they are not permitted, and Section 10.513 to permit five freestanding dwellings where not more than one is permitted, and Section 10.520 for 6,975 square feet of lot area per dwelling unit where 15,000 square feet is required.

Planning Department Comments

Fisher vs. Dover

The applicant was before the Board in June 2023 seeking relief for the construction of 5 total buildings on the existing vacant parcel, including four (4) two-unit structures and one (1) single-unit structure, for a total of 9 dwelling units. The Board denied the request because the purpose and intent of the SRB district was to have one freestanding dwelling unit on the property and not to have any two-family dwellings on the subject lot. The lot is big and the

relief would bring the lot area per dwelling unit down to 6,975 sf where 15,000 sf per dwelling unit was required. Also, because the applicant did not demonstrate the hardship and need to have a two-family dwelling or more than one freestanding dwelling per lot or for density relief.

The current application is a request for the construction of 6 single-family detached residential units on the existing vacant parcel. Staff feels this is a significant enough change that would not evoke Fisher v. Dover, but the Board may want to consider whether Fisher vs. Dover is applicable before this 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).

The parcel is located within the Highway Noise Overlay District (HNOD), making development subject to a Conditional Use Permit and additional site review requirements per section 10.670 of the [Zoning Ordinance](#).

If granted approval, staff recommends the following stipulation for consideration:

- 1. The design and location of the dwellings may change as a result of Planning Board review and approval.**

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.



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HAND DELIVERED

July 26, 2023

Phyllis Eldridge, Chair
Zoning Board of Adjustment
City of Portsmouth
1 Junkins Avenue
Portsmouth, NH 03801

RE: 686 Maplewood Avenue, Map 220, Lot 90
Chinburg Development, LLC

Dear Chair Eldridge and Board Members:

Enclosed please find new application materials for variance relief regarding the above referenced property. The new application has been prepared to address observations and comments provided by the Board at their June 21, 2023 meeting in which a previous application was denied. As this filing constitutes a re-application, the Applicant has conducted the necessary Fisher v. Dover analysis which is included in the narrative analysis for the project enclosed herewith.

We respectfully request that this matter be placed on the Board's August 15, 2023 agenda. In the meantime, if you have any questions or require additional information do not hesitate to contact me.

Very truly yours,
DONAHUE, TUCKER & CIANDELLA, PLLC

Justin L. Pasay
JLP/sac
Enclosures

cc: Chinburg Development, LLC
Ambit Engineering
CJ Architects
The Gove Group

DONAHUE, TUCKER & CIANDELLA, PLLC
16 Acadia Lane, P.O. Box 630, Exeter, NH 03833
111 Maplewood Avenue, Suite D, Portsmouth, NH 03801
Towle House, Unit 2, 164 NH Route 25, Meredith, NH 03253
83 Clinton Street, Concord, NH 03301

RETIRED
MICHAEL J. DONAHUE
CHARLES F. TUCKER
ROBERT D. CIANDELLA
NICHOLAS R. AESCHLIMAN

VARIANCE APPLICATION OF

Chinburg Development, LLC (the “Applicant”) for property located at 686 Maplewood Avenue, Portsmouth, NH 03801, which is further identified as City Assessor Map 220, Lot 90 (the “Property”). The Property is located within City’s Single Residence B District (the “SRB District”) and the Highway Noise Overlay District.

A. Introduction and Factual Context

i. **Development Team and Application Materials**

The Applicant’s development team consists of John Chagnon, PE, LLS, of Ambit Engineering, Inc. (“Ambit”), Carla Goodknight, AIA, NCARB of CJ Architects, and The Gove Group Real Estate, LLC (“Gove”). Included herewith are the following enclosures:

- Aerial Photograph, Zoning Map and Assessor Map 220. See Enclosure 1.
- Proposed Site Plan, Residential Development, 686 Maplewood Avenue, Portsmouth, New Hampshire, Permit Plans, from Ambit, dated July 2023, to include an Existing Conditions Plan on C1 (the “**Existing Conditions Plan**”), and a Variance Plan on C2 (the “**Variance Plan**”). See Enclosure 2.
- Floor Plans & Elevations, with renderings, from CJ Architects, dated 26 July 2023. See Enclosure 3.
- Landscaping and Screening Plan from Chinburg Development, LLC dated 25 July 2023 (the “Landscape and Screening Plan”). See Enclosure 4.
- Neighborhood Density Calculation and Map from Gove (the “**Density Calculation**”). See Enclosure 5.
- Trip Generation Memorandum from Ambit, dated 23 April 2023 (the “**Trip Generation Memo**”). See Enclosure 6.
- Property Value Impact Letter from Gove, dated July 2023. See Enclosure 7.
- Previous Variance Plan from Ambit. See Enclosure 8.
- Minutes of the Board of Adjustment Meeting June 21, 2023. See Enclosure 9.

ii. Fisher v. Dover, 120 N.H. 187 (1980) Analysis

As a foundational matter, the Applicant addresses the Fisher v. Dover doctrine which is rooted in the notion of administrative finality, and submits to the Board of Adjustment that it should consider this application because it is materially different than the application the Applicant formerly filed with Board of Adjustment in April of 2023. Further, the revised application addresses concerns expressed by the Board regarding the incorporation of two-family dwellings on the Property and the overall density of the former proposal.

In April of 2023, the Applicant filed a variance application with the Board of Adjustment to accommodate a multi-family condominium project on the property consisting of four (4) two-family dwellings and one (1) single family dwelling (one of which was proposed to be an affordable unit) with associated site improvements. See Enclosure 8. At its 21 June 2023 public meeting, the Board denied three (3) of the four variances requested by the Applicant. In so doing, and as depicted in that meeting’s minutes, several of the Board members stated that the

density (9 units) of the proposal was too great and expressed displeasure with the Applicant's proposal to incorporate two-family units within the SRB District. See Enclosure 9.

In New Hampshire, unless a Board of Adjustment application presents a "material change of circumstances affecting the merits of the application ... or the application is 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." See 15 Loughlin, New Hampshire Practice, Land Use Planning and Zoning, 4th Ed., § 21.20. The burden of proving a material change of circumstances is on the applicant. Id. Further, applicants who submit a new proposal in an effort to meet the municipality's concerns are generally not barred from doing so under Fisher v. Dover. See id. citing Bois v. Manchester, 113 N.H. 339 (1973) (subsequent petition was found to be sufficiently different; first petition was to change two-family dwelling into lodging house for 18 persons; subsequent application was to change two-family dwelling into residential use center for no more than 15 boys with a trained staff of three) and Morgenstern v. Town of Rye, 147 N.H. 558 (2002).

In this case, the Applicant's new proposal materially differs in nature and degree from the original proposal and constitutes a response to the observations and opinions of the Board of Adjustment at its 21 June 2023 hearing. More specifically, the new proposal does not contemplate any two-family dwellings and reduces the density of the proposal by a third (from 9 proposed units to 6 proposed units). The result of the new proposal is a density on the Property of 10,462 sf per unit, which is higher than the average density in the Immediate Neighborhood (7,361 sf per unit), higher than the average density in the Expanded Neighborhood 1 (7,995 sf per unit) and higher than the average density in the Expanded Neighborhood 2 (9,359 sf). See Enclosure 5.

Because the new proposal does not contemplate any two-family dwellings, and because the new proposal reduces by a third the proposed density on the Property, the new proposal is materially different than the original proposal and the Board of Adjustment ought to consider the merits of same.

iii. Property Description, Existing Conditions and Applicable Zoning Regulations

As depicted in **Enclosure 1**, at 62,776 sf (1.4411 acres) in size, the Property is unique due to its size, which is larger than all other SRB District Properties in the surrounding area, and its awkward configuration. See id.; **Enclosure 2**. More specifically, the Property enjoys only 47.31 ft of frontage. Id. The Property is bound to the north by Route 95, to the east by Maplewood Avenue, to the south by the property located at 650 Maplewood Avenue (City Assessor Map 220, Lot 88) which is located within the City's Business Zoning District and is improved by a wholesale/retail business use, and to the south by 64 and 74 Emery Street (City Assessor Map 220, Lots 87-2 and 87-3), both of which are improved with two-family duplexes. See Enclosures 1 and 2; See also pictures of Property filed with application. The Property is unimproved and largely cleared in the central portion of same, though there exists a mature vegetative buffer along the northern boundary and the majority of the western and southern boundaries as well. Id. A 100 ft easement (45 ft of which is located on the Property) to

accommodate a public electric utility and its overhead electrical wires, is located on the southern portion of the Property. See Enclosure 2, Existing Conditions Plan.

The Property is among the first lots situated to the west of the Business District Area along the Route 1 By-Pass to be zoned within the SRB District, the purpose of which is to “provide areas for single-family dwellings at low to medium densities (approximately 1 to 3 dwellings per acres) and appropriate accessory uses.” See Zoning Ordinance, Section 10.410. As such, the Property is uniquely situated as a transition between the more densely situated downtown area with its associated mixed uses, and less dense residential areas to the west. The grade and topography of the Property also presents unique circumstances, as depicted on the **Existing Conditions Plan.** See Enclosure 2. More specifically, the Property rises from a 40 ft elevation at the Maplewood Avenue level, to 60 feet at the back (south) portion of the Property before it slopes down to the surrounding properties.

The SRB District has the following dimensional requirements:

- Lot area: 15,000 sf
- Lot area per dwelling unit: 15,000 sf
- Continuance street frontage: 100 ft
- Depth: 100 ft
- Minimum front yard: 30 ft
- Minimum side yard: 10 ft
- Minimum rear yard: 30 ft
- Max Structure Height: 35 ft
- Max roof appurtenance: 8 ft
- Max Building Coverage: 20%
- Minimum open space: 40%

See Zoning Ordinance, Section 10.520.

iv. Revised Project Proposal

In light of the Board’s response to the original application, the Applicant has revised its proposal. The Applicant now proposes to develop the Property into a multi-family condominium consisting of six (6) single-family dwellings with associated site improvements (the “Project”). See Variance Plan. None of the proposed dwellings are proposed to be affordable in nature. Like the original proposal, the aesthetic of the Project will be traditional / colonial to complement the existing historic character of the City. See Enclosure 3. The proposed single-family dwellings will have a lower-level two-car garage, second floor kitchen, dining room, living room and office, and third floor master bedroom and bathroom, with two additional bedrooms and a bathroom. Id. See Enclosures 2, 3.

The Project will be served by a single driveway from Maplewood Avenue which will be complemented by a 5 ft sidewalk to facilitate pedestrian foot-traffic to/from the proposed dwelling units. The Project will comply with all setback requirements, building coverage

requirements and open space requirements. See Enclosure 2, Variance Plan. Further, the Project satisfies the off-street parking requirement of 9 spaces via the provision of 16 spaces. Id.

The Project proposes a robust landscaping and screening program as depicted on the Landscape and Screening Plan. See Enclosure 4. Collectively, the proposed landscaping plan will provide tasteful screening of the Property from abutting properties and Maplewood Avenue alike, and it will provide insulation barrier from the noise of Route 95.

Finally, the Project incorporates a 6,500 sf recreation area as depicted on the **Variance Plan**, which area will serve as an amenity to residents of the neighborhood. This area will provide green space, dog walking and additional passive recreational opportunities for residents.

v. **Requested Relief**

The Applicant requests the following variance relief to accommodate the Project:

- **One Dwelling Per Lot:** The Applicant requests variance relief from Article 5, Section 10.513 of the Zoning Ordinance to permit six (6) free-standing buildings with dwellings, as depicted on the plans, where no more than one free-standing dwelling is permitted in the SRB District.
- **Density Relief:** The Applicant requests variance relief from Article 5, Section 10.520 of the Zoning Ordinance to permit 10,462 sf of lot area per each of the six (6) dwelling units, where 15,000 sf of lot area per dwelling unit is required in the SRB District.
- By way of additional context, the Applicant conducted a density calculation of the immediate and expanded neighborhoods around the Property and determined the following foundational facts regarding density in this area of Portsmouth:
 - Of the 14 residential properties in the immediate neighborhood, which is located to the east of Route 95, four (4) include two-family dwellings, to include 64 and 74 Emery Street which are immediate abutters to the Project, and one (1), which abuts the Property to the east and is located at 678 Maplewood Avenue, includes a 3-unit multi-family dwelling. See Enclosure 5.
 - The average square footage of lot area per dwelling unit in the Immediate Neighborhood is 7,361 sf. Id.
 - As you head west on Maplewood Ave, the average square footage of lot area per dwelling unit in the Extended Neighborhood 1, on the southern side of Maplewood is 7,995 sf. Id.
 - The average square footage of lot area per dwelling unit in the Extended Neighborhood 2, on the northern side of Maplewood is 9,359 sf.

- The proposed square footage of lot area per dwelling unit in the Project is 10,462 sf, which is 3,101 sf (29%) more square footage per dwelling unit than the properties in the Immediate Neighborhood; 2,467 sf (24%) more square footage per dwelling unit than the properties in the Extended Neighborhood 1; and 1,103 sf (10%) more square footage per dwelling unit than the properties in the Extended Neighborhood 2. Id.
- **Frontage Relief:** The Applicant requests variance relief from Article 5, Section 10.520 of the Zoning Ordinance to permit development of the Project with 47.31 ft of frontage where 100 ft is required in the SRB District. (NOTE: This variance request is added in an abundance of caution. The Board granted a frontage variance with regard to the 9 – unit proposal previously presented to the Board and as such, this relief may not be required).

vi. Previous Proposals and Additional Permitting

In February of 2017, the Property received a Special Exception to construct a religious place of assembly (the Islamic Society of the Seacoast Area) and a variance from the above referenced frontage requirement. Thereafter, in April of 2019, the City’s Planning Board granted a corresponding Site Plan Review Application for the proposal, which was ultimately abandoned by the owner of the Property. Of note, and as detailed in Ambit’s Trip Generation Memo, the Mosque proposal contemplated considerably more traffic than this Project. See Enclosure 6.

Prior to that, we understand that a 28-unit multi-family proposal and a 6,000 sf warehouse proposal were unsuccessful in obtaining necessary entitlements to be developed.

As noted above, in June of 2023, the Applicant’s nine-unit proposal, which incorporated four (4) two-family dwellings, was denied by the Board of Adjustment.

To the extent that the Applicant receives the variance relief it seeks by this application, it will pursue Site Plan Review and a Highway Noise Overlay District Conditional Use Permit from the City’s Planning Board.

vii. Statutory Variance Criteria

Pursuant to Article 2, Section 10.233 of the City’s Zoning Ordinance and RSA 674:33, to obtain a variance in Portsmouth, an applicant must show that: (1) the variance will not be contrary to the public interest; (2) the spirit of the ordinance is observed; (3) substantial justice is done; (4) the values of surrounding properties are not diminished; and (5) literal enforcement of the provisions of the ordinance would result in an unnecessary hardship, where said term means that, owing to special conditions of the property that distinguish it from other properties in the area: no fair and substantial relationship exists 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 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. See RSA 674:33, I (b).

Because the Applicant's Project will be consistent with the essential character of the surrounding area, will not compromise the public health in any way, will provide substantial justice, will not compromise the property values of surrounding properties, and because there is no rational connection between the intent of the underlying ordinance provisions and their application to the Property under the unique circumstances of this case, as outlined below, we respectfully request that the requested variance be granted.

viii. Analysis

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

The New Hampshire Supreme Court has indicated that the requirement that a variance not be "contrary to the public interest" is coextensive and related to the requirement that a variance be consistent with the spirit of the ordinance. See Chester Rod & Gun Club v. Town of Chester, 152 N.H. 577, 580 (2005); Malachy Glen Associates, Inc. v. Town of Chichester, 155 N.H. 102, 105-06 (2007); and Farrar v. City of Keene, 158 N.H. 684, 691 (2009). A variance is contrary to the public interest only if it "unduly, and in a marked degree conflicts with the ordinance such that it violates the ordinance's basic zoning objectives." Chester Rod & Gun Club, 152 N.H. at 581; Farrar, 158 N.H. at 691. See also Harborside Associates, L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508, 514 (2011) ("[m]ere conflict with the terms of the ordinance is insufficient.") Moreover, these cases instruct boards of adjustment to make the determination as to whether a variance application "unduly" conflicts with the zoning objectives of the ordinance "to a marked degree" by analyzing whether granting the variance would "alter the essential character of the neighborhood" or "threaten the public health, safety or welfare" and to make that determination by examining, where possible, the language of the Zoning Ordinance. See supra.

The requested variances derive from Article 5, Sections 10.513 or 10.520 (the Table of Dimensional Standards – Residential and Mixed Residential Districts), all of which pertain, in this case, to the intended aesthetic of the SRB District. The specific purpose of the SRB District is to "provide areas for single-family dwellings at low to medium densities (approximately 1 to 3 dwellings per acre), and appropriate accessory uses." Zoning Ordinance, Article 4, Section 10.410. The general purpose of the Zoning Ordinance as a whole is to "promote the health, safety and the general welfare of Portsmouth and its region in accordance with the City of Portsmouth Master Plan" via the regulation of, among other things, the intensity of land use and the preservation and enhancement of the visual environment. Zoning Ordinance, Article 1, Section 10.121. To summarize, the objectives of the SRB District and the dimensional and use restrictions inherent to same which are implicated by this application, are to provide low to medium density and aesthetically consistent development in the area between downtown and the commercial Gateway Corridor along Woodbury Avenue.

Here, as a foundational point, the Applicant's proposal does not create any marked conflict with the underlying provisions of the Zoning Ordinance because, on the contrary, and

due to the Property's unique configuration, physical characteristics, and the existing built environment that surrounds the Property, the Project is consistent with the existing neighborhood and ultimately advances the purpose of the ordinance to provide low to medium density in a transitional area that generally has more density than that which is proposed. See Enclosure 5.

More specifically, the Project contemplates less density than the Immediate Neighborhood, Extended Neighborhood 1 and Extended Neighborhood 2. See Enclosures 1, 5. The proposed square footage of lot area per dwelling unit in the Project is 10,462 sf, which is 3,101 sf (29%) more square footage per dwelling unit than the properties in the Immediate Neighborhood; 2,467 sf (24%) more square footage per dwelling unit than the properties in the Extended Neighborhood 1; and 1,103 sf (10%) more square footage per dwelling unit than the properties in the Extended Neighborhood 2. Id. As such, the Project contemplates the perfect transitional compromise between the more densely settled downtown area, and the less dense SRB District area located to the west of the Property and proposes less traffic than previously approved proposals for the Property. See Enclosure 6. For these reasons, there is no "marked conflict" between the Project proposal, and the objectives of the zoning ordinances in question.

For the same reasons, the Project also plainly satisfies the case law requirements because the essential character of the neighborhood will not be affected for the reasons explained throughout this narrative. The density and multiple buildings per lot variances will not alter the essential character of the neighborhood because the Property the density all around the Property, to include the two-family and multi-family properties which abut the Property, are higher than what the Project proposes. See Enclosures 1 – 6.

As the Applicant's Project will be consistent with the intent of the SRB District and the general purposes of the Zoning Ordinance, and because the Project will not alter the essential character of the neighborhood or threaten the public health or safety, it would be reasonable and appropriate for the Board of Adjustment to conclude that granting the Applicant's variance requests will satisfy the public interest prong of the variance criteria.

2. The spirit of the Ordinance is observed.

As referenced above, the requested variances observe the spirit of the Zoning Ordinance and New Hampshire jurisprudence regarding the "public interest" prong of the variance criteria because the Applicant's Project will be consistent with the general and implied purposes of the Zoning Ordinance provisions at issue in this case. Further, the Project will not compromise the character of the neighborhood or threaten the public health, safety, or welfare. As the New Hampshire Supreme Court has indicated in both Chester Rod & Gun Club and in Malachy Glen, the requirement that the variance not be "contrary to the public interest" is coextensive and is related to the requirement that the variance be consistent with the spirit of the ordinance. See Chester Rod & Gun Club, 152 N.H. at 580. A variance is contrary to the spirit of the ordinance only if it "unduly, and in a marked degree conflicts with the ordinance such that it violates the ordinance's basic zoning objectives." Chester Rod & Gun Club, 152 N.H. at 581; Farrar, 158 N.H. at 691. As discussed above, the requested variances are consistent with the general spirit of the Ordinances in question and with the character of the surrounding neighborhood. As a result, for the reasons stated above, the Applicant respectfully asserts that it would be reasonable and

appropriate for the Board of Adjustment to conclude that the requested variance will observe the spirit of the Zoning Ordinance.

3. Substantial justice is done.

As noted in Malachy Glen, supra, “perhaps the only guiding rule [on this factor] is that any loss to the individual that is not outweighed by a gain to the general public is an injustice.” Malachy Glen, supra, citing 15 P. Loughlin, New Hampshire Practice, Land Use Planning and Zoning § 24.11, at 308 (2000) (quoting New Hampshire Office of State Planning, The Board of Adjustment in New Hampshire, A Handbook for Local Officials (1997)). In short, there must be some gain to the general public from denying the variance that outweighs the loss to the applicant from its denial.

In this case, the public does not gain anything by denying the requested variance. The Property has been the site of several development proposals, none of which have materialized. The Project contemplates the perfect transitional development between the downtown area and the SRB District to the west of the Property and proposes residential density which is less than the density of the surrounding area, all in an aesthetic which compliments the historic charm of the greater Portsmouth area. See Enclosures 1 – 3. The public benefits from a Project which will create housing, advance the essential character of the area and generate additional tax revenue.

On the contrary, if the variances are denied, the Project will not be developed and will not generate additional tax revenue. Further, the Applicant will not be able to reasonably use property it intends to purchase for a use which is consistent with the surrounding area and which will have a *de minimis* impact on the neighborhood.

Certainly, the Applicant will benefit from the variance, if granted, as they will facilitate the reasonable use of the Property in furtherance of the Applicant’s goals, which has been encouraged by the New Hampshire Supreme Court.

As the requested variances benefit the Applicant and do not detriment the public, there is no gain to the general public from denying the request that outweighs the loss to the Applicant from its denial, and this prong of the variance criteria is satisfied.

4. The proposal will not diminish surrounding property values.

Given the nature of the proposed conditions of the Property and the surrounding area, as discussed above and depicted in the Enclosures, the Applicant’s proposal will not diminish surrounding property values. The proposed residential development will be substantially consistent with the surrounding area (albeit less dense) and will otherwise be situated on a hill adjacent to Route 95. See Enclosure 7. The Applicant’s Project will obviously enhance the value of the Property, thereby enhancing the value of surrounding properties in turn. Certainly, there is no evidence in the record that could reasonably support the conclusion that the proposed Project will diminish surrounding property values. As the weight of the evidence supports the conclusion that the Project will not diminish the value of surrounding properties, it would be

reasonable for the Board of Adjustment to conclude that this prong of the variance criteria is satisfied.

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

a. Legal Standard

As set forth in the provisions of RSA 674:33, I, there are two options by which the Board of Adjustment can find that an unnecessary hardship exists:

(A) For purposes of this subparagraph, “unnecessary hardship” means that, owing to special conditions of the property that distinguish it from other properties in the area:

(i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and

(ii) The Proposed use is a reasonable one.

(the “First Hardship Test”)

or,

(B) If the criteria in subparagraph (A) are not established, 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 “Section Hardship Test”).

The Applicant respectfully reminds the Board of Adjustment that the mere fact that the Applicant is seeking a variance from the express provisions of the Zoning Ordinance is not a valid reason for denying the variance. See Malachy Glen Associates, Inc. v. Town of Chichester, 155 N.H. 102, 107 (2007); see also Harborside Associates, 162 N.H. at 2011 (“mere conflict with the terms of the ordinance is insufficient”).

b. Summary of Applicable Legal Standard

The first prong of the First Hardship Test requires the Board to determine whether there are special conditions on the underlying property which is the subject of a variance request. This requirement finds its origins in the Standard State Zoning Enabling Act of the 1920s “since it is the existence of those ‘special conditions’ which causes the application of the zoning ordinance to apply unfairly to a particular property, requiring that variance relief be available to prevent a taking.”¹ The Supreme Court has determined that the physical improvements on a property can constitute the “special conditions” which are the subject of the first prong of the First Hardship Test. Harborside, 162 N.H. at 518 (the size and scale of the buildings on the lot could be considered special conditions); Cf Farrar, 158, N.H. 689 (where variance sought to convert large,

¹ 15 Loughlin, New Hampshire Practice, Land Use Planning and Zoning, §24.20 (4th Ed.) citing The Standard State Zoning Enabling Act.

historical single use residence to mixed use of two residence and office space, size of residence was relevant to determining whether property was unique in its environment).

The second prong of the First Hardship Test analysis, pertaining to the relationship between the public purpose of the ordinance provision in question, and its application to the specific property in question, is the codified vestige of a New Hampshire Supreme Court case called Simplex Technologies, Inc. v. Town of Newington (“Simplex”).² To summarize, the Board’s obligation in this portion of its hardship analysis is to determine the purpose of the regulation from which relief is being sought and if there is no specific purpose identified in the regulation, then to consider the general-purpose statements of the ordinance as a whole, so that the Board may determine whether the purpose of said ordinance is advanced by applying it to the property in question.

The final prong of the First Hardship Test analysis is whether the proposed use is “reasonable.”

The Applicant respectfully reminds the Board of Adjustment of the New Hampshire Supreme Court’s substantive pivot in Simplex. The Simplex case constituted a “sharp change in the New Hampshire Supreme Court’s treatment of the unnecessary hardship requirement.” The Simplex Court noted that under the unnecessary hardship standard, as it had been developed by the Court up until that time, variances were very difficult to obtain unless the evidence established that the property owner could not use his or her property in any reasonable manner.”³ This standard is no longer the required standard in New Hampshire. The Applicant does not have an obligation to affirmatively prove that the underlying Property cannot be reasonably used without the requested variance modification. Rather, the critical question under the First Hardship Test is whether the purpose of the Zoning Ordinance is fairly and substantially advanced by applying it to the Applicant’s Property considering the Property’s unique setting and environment. This approach is consistent with the Supreme Court’s pivot away from the overly restrictive pre-Simplex hardship analysis “to be more considerate of the constitutional right to enjoy property”.⁴

The Second Hardship Test, which we will not focus on in this narrative, is satisfied by establishing that 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.

c. Analysis

The first prong of the First Hardship Test requires the Board to determine whether there are special conditions on the underlying Property which distinguish it from others in the area. Here, as discussed at length in Section A above, which is incorporated herewith by reference, the Property does have special conditions that distinguish it from others in the area to specifically include the fact that it is substantially larger than all other residential properties in the area

² 145 N.H. 727 (2001).

³ 15 Loughlin, 24.16.

⁴ Id. citing Simplex, 145 N.H. at 731.

within the SRB District, the Property's configuration which creates only 47.31 ft of frontage, the Property's existence immediately adjacent to Route 95, and the grade and topography of the Property which slopes up from Maplewood Avenue and makes the Property difficult to observe from Maplewood Avenue. Through these unique characteristics, the Property is uniquely situated to accommodate the proposed Project which will constitute the highest and best use for this parcel.

As there are special conditions of the Property, the first prong of the First Hardship Test is satisfied.

The second prong of the First Hardship Test pertains to the relationship between the public purpose of the ordinance provisions in question, and their application to the specific property in question. To summarize, the Board of Adjustment must determine whether the purpose of the underlying ordinances are advanced by applying them to the property in question.

Here, as discussed above, the requested variances derive from Article 5, Sections 10.513 or 10.520 (the Table of Dimensional Standards – Residential and Mixed Residential Districts), and they pertain to the intended aesthetic of the SRB District, which was designed to “provide areas for single-family dwellings at low to medium densities (approximately 1 to 3 dwellings per acre), and appropriate accessory uses.” Zoning Ordinance, Article 4, Section 10.410. Further, the general purpose of the Zoning Ordinance is to “promote the health, safety and the general welfare of Portsmouth and its region in accordance with the City of Portsmouth Master Plan” via the regulation of, among other things, the intensity of land use and the preservation and enhancement of the visual environment. Zoning Ordinance, Article 1, Section 10.121. To summarize, the objective of the SRB District and the dimensional and use restrictions inherent to same which are implicated by this application, are to provide low to medium density and aesthetically consistent development in the area between downtown and the commercial Gateway Corridor along Woodbury Avenue.

In this case, denying the variance will not advance the purposes of these ordinances because the opposite is true: granting the requested variances will facilitate development of the Property in a way that is consistent with the surrounding neighborhood, but which ultimately has less density than the surrounding area and which advances the core objectives of the SRB District and the general purposes of the Zoning Ordinance by enabling reasonable development of land in a manner that advances the aesthetic of the neighborhood and the zoning district. See Enclosures 1 – 5.

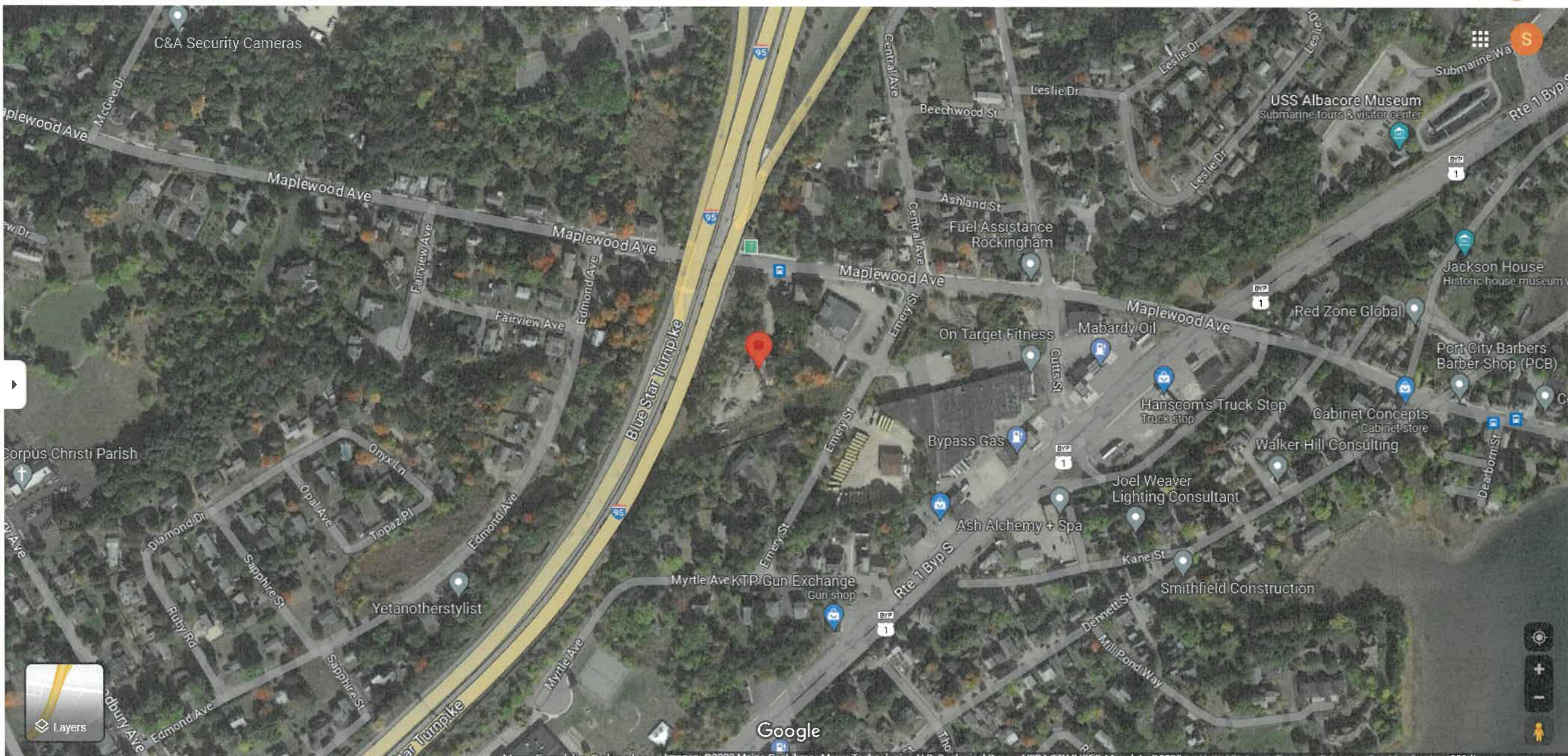
The Applicant's proposal would advance the general and implied purposes of the Zoning Ordinances in question for all the reasons detailed in this narrative and denying the requested variance would only serve to frustrate the same. As such, the second prong of the hardship criteria is satisfied in this case.

The final analysis under the First Hardship Test is to determine whether the proposed use is reasonable. Here, the proposed Project is reasonable because it constitutes residential development that is substantially similar (albeit development with less density) to the surrounding neighborhood. As explained above, the essential character of the neighborhood will remain the same. As such, the Applicant's proposal is reasonable.

On these facts, the Applicant respectfully submits that its variance request satisfies the final prong of the statutory variance criteria.

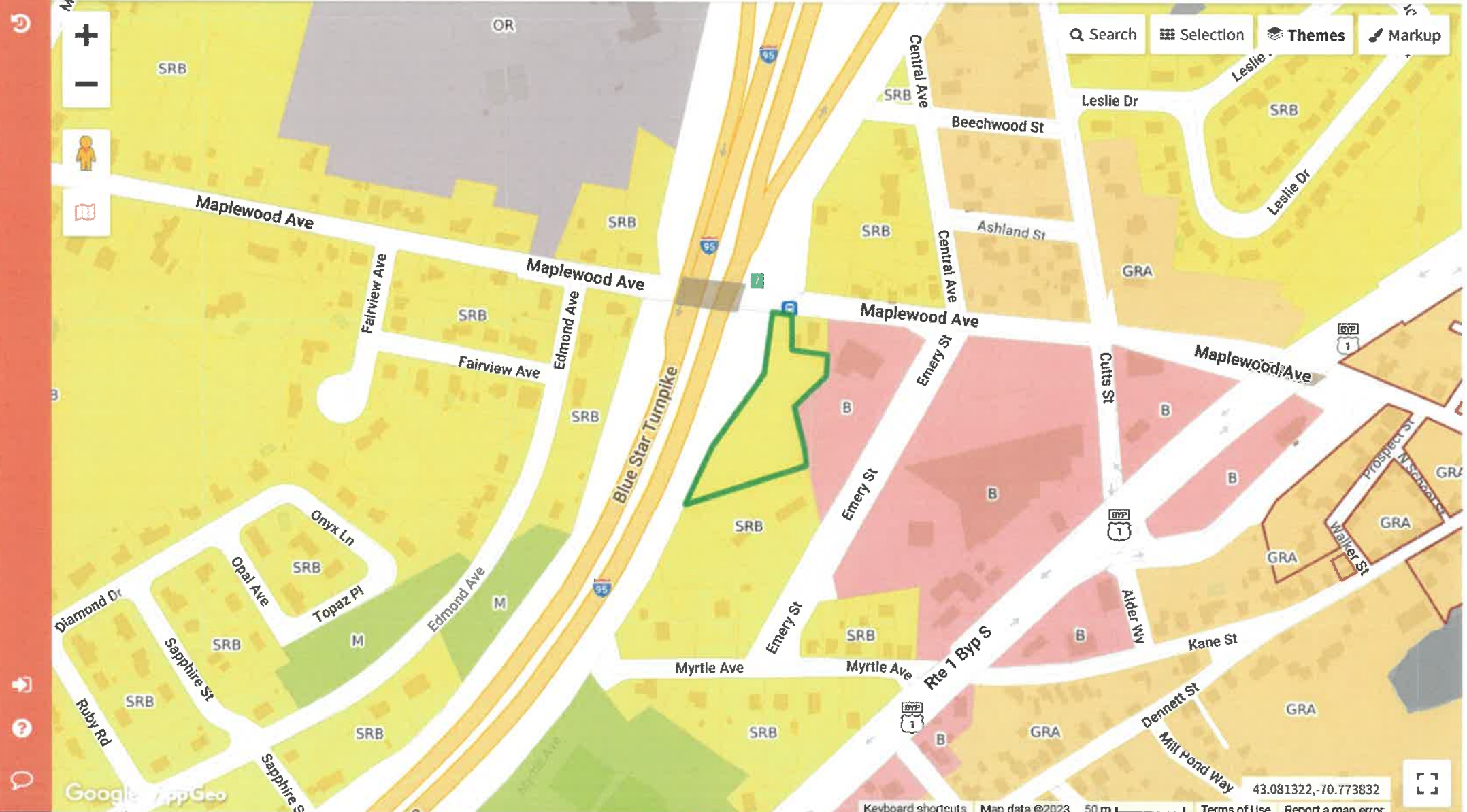
ix. Conclusion

The Applicant respectfully submits that they have satisfied the statutory variance criteria in this matter and its Application should be approved.



City of Portsmouth, NH
Property

Zoom To Share Print 686 maplewood



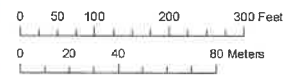
Themes

transparency

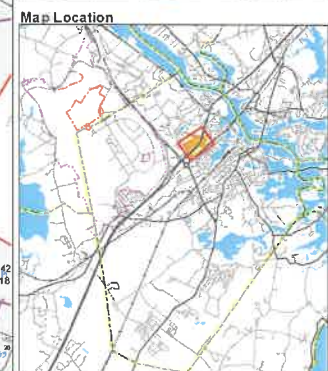
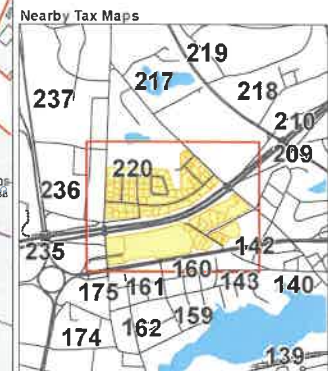
- Residential Districts**
 - R Rural
 - SRA Single Residence A
 - SRB Single Residence B
 - GRA General Residence A
 - GRB General Residence B
 - GRC General Residence C
 - GAMB Garden Apartment/Mobile Home Park
- Mixed Residential Districts**
 - MRC Mixed Residential Office
 - MRB Mixed Residential Business
 - G1 Gateway Corridor
 - G2 Gateway Center
- Business Districts**
 - GB General Business
 - B Business
 - WB Waterfront Business
- Industrial Districts**
 - OR Office Research
 - I Industrial
 - WI Waterfront Industrial
- Airport Districts**
 - AIR Airport
 - AI Airport Industrial
 - PI Pease Industrial
 - ABC Airport Business Commercial
- Conservation Districts**
 - M Municipal
 - NRP Natural Resource Protection
- Character Districts**
 - CD5 Character District 5
 - CD4 Character District 4
 - CD4W Character District 4-W
 - CD4-L1 Character District 4-L1
 - CD4-L2 Character District 4-L2



- Partial Legend**
 See the cover sheet for the complete legend.
- 7-5A Lot or lot-unit number
 - 2.56 ac Parcel area in acres (ac) or square feet (sf)
 - Address number
 - 235-137 Parcel number from a neighboring map
 - 8' Parcel line dimension
 - Street name
 - Parcel boundary
 - Parcel/ROW boundary
 - Water boundary
 - Structure (1984 data)
 - Parcel covered by this map
 - Parcel from a neighboring map (see other map for current status)



This map is for assessment purposes only. It is not intended for legal description or conveyance. Parcels are mapped as of April 1. Building footprints are 2006 data and may not represent current structures. Streets appearing on this map may be paper (unbuilt) streets. Lot numbers take precedence over address numbers. Address numbers shown on this map may not represent posted or legal addresses.



Portsmouth, New Hampshire
 2022
Tax Map 220

APPLICANT:
CHINBURG DEVELOPMENT, LLC
 3 PENSTOCK WAY
 NEWMARKET, NH 03857
 Tel. (603) 868-5995

OWNER:
ISLAMIC SOCIETY OF THE SEACOAST AREA
 42N DOVER POINT ROAD
 DOVER, NH 03820

CIVIL ENGINEER & LAND SURVEYOR:
AMBIT ENGINEERING, INC.
 A DIVISION OF HALEY WARD, INC.
 200 GRIFFIN ROAD, UNIT 3
 PORTSMOUTH, N.H. 03801
 Tel. (603) 430-9282
 Fax (603) 436-2315

ARCHITECT:
CJ ARCHITECTS
 233 VAUGHAN STREET, SUITE 101
 PORTSMOUTH, NH, 03801
 Tel. (603) 431-2808

LEGAL REPRESENTATION:
DONAHUE, TUCKER & CIANELLA, PLLC
 111 MAPLEWOOD AVE., SUITE D
 PORTSMOUTH, NH, 03801
 Tel. (603) 766-1686

PROPOSED SITE PLAN RESIDENTIAL DEVELOPMENT 686 MAPLEWOOD AVENUE PORTSMOUTH, NEW HAMPSHIRE PERMIT PLANS

REQUIRED PERMITS:
 PORTSMOUTH BOA: PENDING

LEGEND:

EXISTING	PROPOSED	
---	---	PROPERTY LINE
---	---	SETBACK
S	S	SEWER PIPE
SL	SL	SEWER LATERAL
G	G	GAS LINE
D	D	STORM DRAIN
W	W	WATER LINE
WS	WS	WATER SERVICE
UGE	UGE	UNDERGROUND ELECTRIC
OHW	OHW	OVERHEAD ELECTRIC/WIRES
---	UD	FOUNDATION DRAIN
100	100	EDGE OF PAVEMENT (EP)
97+3	98+0	CONTOUR
○	○	SPOT ELEVATION
○	○	UTILITY POLE
☀	☀	WALL MOUNTED EXTERIOR LIGHTS
☀	☀	TRANSFORMER ON CONCRETE PAD
⊕	⊕	ELECTRIC HANDHOLD
⊕	⊕	SHUT OFFS (WATER/GAS)
⊕	⊕	GATE VALVE
⊕	⊕	HYDRANT
⊕	⊕	CATCH BASIN
⊕	⊕	SEWER MANHOLE
⊕	⊕	DRAIN MANHOLE
⊕	⊕	TELEPHONE MANHOLE
⊕	⊕	PARKING SPACE COUNT
⊕	⊕	PARKING METER
LSA	LSA	LANDSCAPED AREA
TBD	TBD	TO BE DETERMINED
CI	CI	CAST IRON PIPE
COP	COP	COPPER PIPE
DI	DI	DUCTILE IRON PIPE
PVC	PVC	POLYVINYL CHLORIDE PIPE
RCP	RCP	REINFORCED CONCRETE PIPE
AC	AC	ASBESTOS CEMENT PIPE
VC	VC	VITRIFIED CLAY PIPE
EP	EP	EDGE OF PAVEMENT
EL	EL	ELEVATION
FF	FF	FINISHED FLOOR
INV	INV	INVERT
S	S	SLOPE FT/FT
TBM	TBM	TEMPORARY BENCH MARK
TYP	TYP	TYPICAL

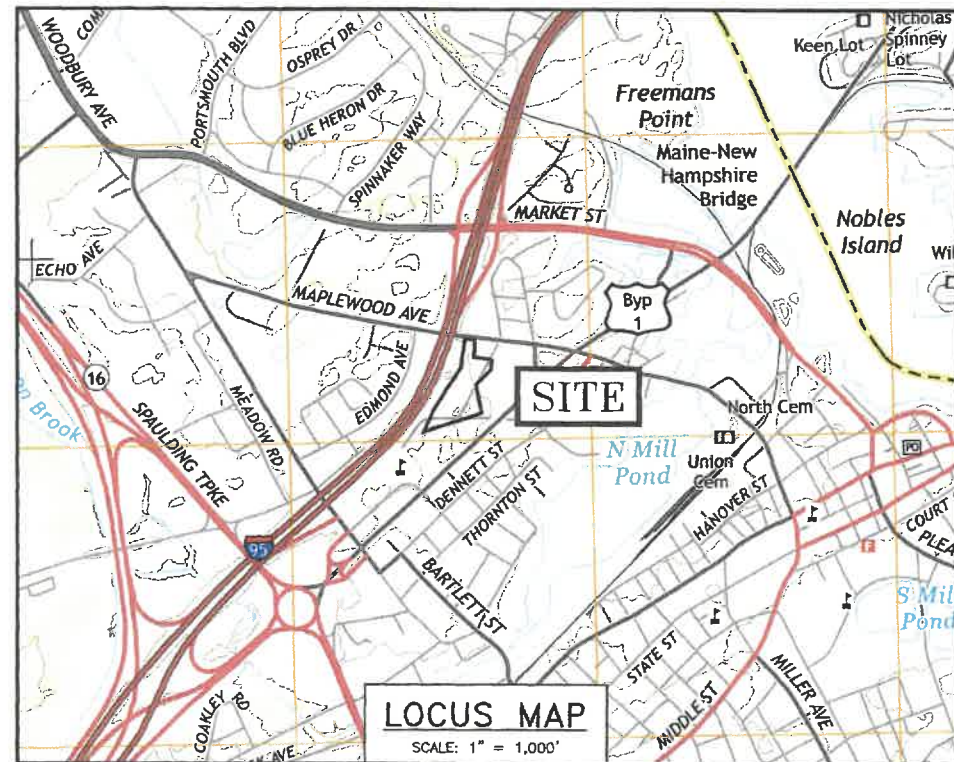


Legend

Character Districts
 1" = 1" Character-Based Zoning Area
 (Refer to Zoning Map Sheet 2 of 2
 Character Districts Regulating Plan)

Residential Districts
 R Single Residence A
 SRA Single Residence A
 SRA Single Residence B
 SRA Single Residence C
 SRA Single Residence D
 SRA Single Residence E
 SRA Single Residence F
 SRA Single Residence G
 SRA Single Residence H
 SRA Single Residence I
 SRA Single Residence J
 SRA Single Residence K
 SRA Single Residence L
 SRA Single Residence M
 SRA Single Residence N
 SRA Single Residence O
 SRA Single Residence P
 SRA Single Residence Q
 SRA Single Residence R
 SRA Single Residence S
 SRA Single Residence T
 SRA Single Residence U
 SRA Single Residence V
 SRA Single Residence W
 SRA Single Residence X
 SRA Single Residence Y
 SRA Single Residence Z

Mixed Residential Districts
 MRD Mixed Residential Office
 MRO Mixed Residential Office
 MRO Mixed Residential Office



INDEX OF SHEETS

DWG No.	Description
C1	EXISTING CONDITIONS PLAN
C2	VARIANCE SITE PLAN

UTILITY CONTACTS

ELECTRIC:
 EVERSOURCE
 1700 LAFAYETTE ROAD
 PORTSMOUTH, N.H. 03801
 Tel. (603) 436-7708, Ext. 555.5678
 ATTN: MICHAEL BUSBY, P.E. (MANAGER)

NATURAL GAS:
 UNIL
 325 WEST ROAD
 PORTSMOUTH, N.H. 03801
 Tel. (603) 294-5144
 ATTN: DAVE BEAULIEU

CABLE:
 COMCAST
 155 COMMERCE WAY
 PORTSMOUTH, N.H. 03801
 Tel. (603) 679-5695 (X1037)
 ATTN: MIKE COLLINS

SEWER & WATER:
 PORTSMOUTH DEPARTMENT OF PUBLIC WORKS
 680 PEVERLY HILL ROAD
 PORTSMOUTH, N.H. 03801
 Tel. (603) 766-1438 ATTN: JIM TOW

COMMUNICATIONS:
 FAIRPOINT COMMUNICATIONS
 JOE CONSIDINE
 1575 GREENLAND ROAD
 GREENLAND, N.H. 03840
 Tel. (603) 427-5525

**PROPOSED SITE PLAN
 RESIDENTIAL DEVELOPMENT
 686 MAPLEWOOD AVENUE
 PORTSMOUTH, N.H.**

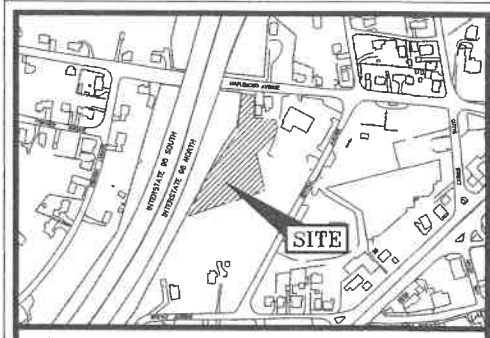


WWW.HALEYWARD.COM
 200 Griffin Road, Unit 3
 Portsmouth, NH 03801
 603.430.9282
 PLAN SET SUBMITTAL DATE: 24 JULY 2023

PORTSMOUTH APPROVAL CONDITIONS NOTE:
 ALL CONDITIONS ON THIS PLAN SET SHALL REMAIN IN EFFECT IN PERPETUITY PURSUANT TO THE REQUIREMENTS OF THE CITY OF PORTSMOUTH SITE PLAN REVIEW REGULATIONS.

APPROVED BY THE PORTSMOUTH ZONING BOARD

CHAIRMAN _____ DATE _____



LOCATION MAP SCALE 1"=300'

LEGEND

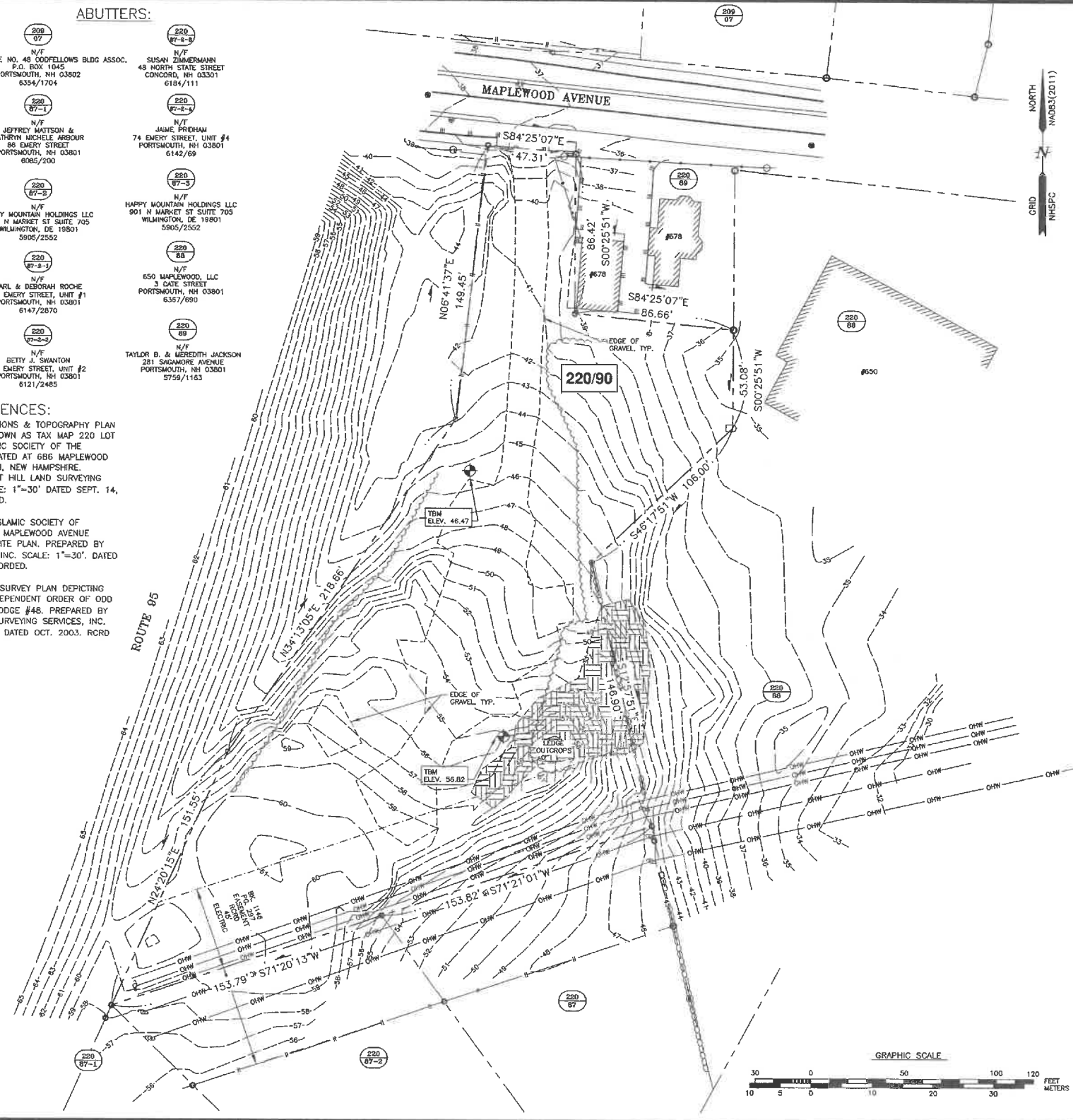
EXISTING	DESCRIPTION
124	MAP 124 / LOT 21
N/F	NOW OR FORMERLY
RP	RECORD OF PROBATE
RCRD	ROCKINGHAM COUNTY REGISTRY OF DEEDS
---	BOUNDARY LINE
---	SETBACK LINE
SPK FND	RAILROAD SPIKE FOUND
IR FND	IRON ROD FOUND
IP FND	IRON PIPE FOUND
DH FND	DRILL HOLE FOUND
BND w/ DH	BOUND w/ DRILL HOLE
FM	FORCE MAIN
S	SEWER LINE
G	GAS LINE
D	STORM DRAIN
W	POTABLE WATER LINE
---	UNDERGROUND ELECTRIC
---	OVERHEAD WIRES
100	CONTOUR LINE
97x3	SPOT ELEVATION
---	EDGE OF PAVEMENT
---	WOODS / TREE LINE
U/P	UTILITY POLE (w/ GUY) (w/ LIGHT)
*	LIGHT POLE
W	SHUTOFF/CURB STOP (WATER, GAS, SEWER)
V	GATE VALVE
H	HYDRANT
CB	CATCH BASIN
TM	TELEPHONE MANHOLE
SM	SEWER MANHOLE
DM	DRAIN MANHOLE
FF	FINISHED FLOOR
INV.	INVERT
TBM	TEMPORARY BENCHMARK
TYP.	TYPICAL

ABUTTERS:

200 07 N/F 050000 LODGE NO. 48 OODFELLOWS BLDG ASSOC. P.O. BOX 1045 PORTSMOUTH, NH 03802 6354/1704	220 87-8-3 N/F SUSAN ZIMMERMANN 48 NORTH STATE STREET CONCORD, NH 03301 6184/1111
220 87-1 N/F JEFFREY MATSON & KATHRYN NICHELE ARBOUR 86 EMERY STREET PORTSMOUTH, NH 03801 8085/2000	220 87-2 N/F JAMIE PREDHAM 74 EMERY STREET, UNIT #4 PORTSMOUTH, NH 03801 6142/69
220 87-5 N/F HAPPY MOUNTAIN HOLDINGS LLC 901 N MARKET ST SUITE 705 WILMINGTON, DE 19801 5905/2552	220 87-3 N/F HAPPY MOUNTAIN HOLDINGS LLC 901 N MARKET ST SUITE 705 WILMINGTON, DE 19801 5905/2552
220 87-3-1 N/F CARL & DEBORAH ROCHE 64 EMERY STREET, UNIT #1 PORTSMOUTH, NH 03801 6147/2870	220 88 N/F 650 MAPLEWOOD, LLC 3 GATE STREET PORTSMOUTH, NH 03801 6357/690
220 87-2-5 N/F BETTY J. SHANTON 64 EMERY STREET, UNIT #2 PORTSMOUTH, NH 03801 6121/2485	220 89 N/F TAYLOR B. & MEREDITH JACKSON 281 SAGAMORE AVENUE PORTSMOUTH, NH 03801 5759/1163

PLAN REFERENCES:

- EXISTING CONDITIONS & TOPOGRAPHY PLAN FOR VACANT LOT KNOWN AS TAX MAP 220 LOT 90 OWNED BY ISLAMIC SOCIETY OF THE SEACOAST AREA LOCATED AT 686 MAPLEWOOD AVENUE PORTSMOUTH, NEW HAMPSHIRE. PREPARED BY KNIGHT HILL LAND SURVEYING SERVICES, INC. SCALE: 1"=30' DATED SEPT. 14, 2017. NOT RECORDED.
- SITE PLAN FOR ISLAMIC SOCIETY OF SEACOAST AREA 686 MAPLEWOOD AVENUE PORTSMOUTH, N.H. SITE PLAN. PREPARED BY AMBIT ENGINEERING, INC. SCALE: 1"=30'. DATED MAY 2019. NOT RECORDED.
- LAND BOUNDARY SURVEY PLAN DEPICTING LAND OWNED BY INDEPENDENT ORDER OF OOD FELLOWS, OSCOOD LODGE #48. PREPARED BY KNIGHT HILL LAND SURVEYING SERVICES, INC. SCALE: 1" = 40 FT. DATED OCT. 2003. RCRD D-31278.



WWW.HALEYWARD.COM

- NOTES:**
- PARCEL IS SHOWN ON THE CITY OF PORTSMOUTH ASSESSOR'S MAP 220 AS LOT 90.
 - OWNERS OF RECORD:
ISLAMIC SOCIETY OF THE SEACOAST AREA
42N DOVER POINT ROAD
DOVER, NH 03820
5806/2816
 - APPLICANT:
CHINBURG DEVELOPMENT, LLC
3 PENSTOCK WAY
NEWMARKET, NH 03857
 - PARCEL IS NOT IN A SPECIAL FLOOD HAZARD AREA AS SHOWN ON FIRM PANEL 3301SC0259F. EFFECTIVE JANUARY 29, 2021.
 - EXISTING LOT AREA:
62,776 S.F.
1.4411 ACRES
 - PARCEL IS LOCATED IN SINGLE RESIDENCE B (SRB) DISTRICT.
 - DIMENSIONAL REQUIREMENTS:
MIN. LOT AREA: 15,000 S.F.
FRONTAGE: 100 FEET
SETBACKS: FRONT 30 FEET
SIDE 10 FEET
REAR 30 FEET
MAXIMUM STRUCTURE HEIGHT: 35 FEET
MAXIMUM BUILDING COVERAGE: 20%
MINIMUM OPEN SPACE: 40%
 - THE PURPOSE OF THIS PLAN IS TO SHOW THE EXISTING CONDITIONS ON ASSESSOR'S MAP 220 LOT 90 IN THE CITY OF PORTSMOUTH.
 - RCRD 5759/1160 PLACED A BURDEN ON TAX MAP 220 LOT 90. THE EASEMENT DESCRIBED IN RCRD 5759/1160 HAS BEEN EXTINGUISHED DUE TO THE REMOVAL OF THE DECKS AND THE NON-REPLACEMENT WITHIN THE SIX (6) MONTHS ALLOWED BY THE EASEMENT DEED.

**RESIDENTIAL DEVELOPMENT
CHINBURG DEVELOPMENT
686 MAPLEWOOD AVE.
PORTSMOUTH, N.H.**

NO.	ISSUED FOR COMMENT	DESCRIPTION	DATE
0	ISSUED FOR COMMENT		4/13/23

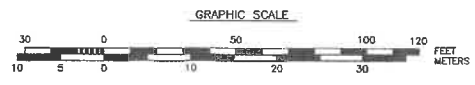
REVISIONS

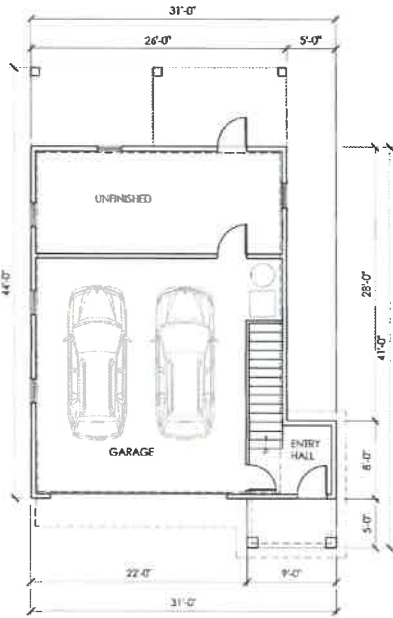
SCALE: 1"=30' FEBRUARY 2023

EXISTING CONDITIONS PLAN **C1**

"I CERTIFY THAT THIS PLAN WAS PREPARED UNDER MY DIRECT SUPERVISION, THAT IT IS THE RESULT OF A FIELD SURVEY BY THIS OFFICE AND HAS AN ACCURACY OF THE CLOSED TRAVERSE THAT EXCEEDS THE PRECISION OF 1:15,000."

John R. Chagnon
JOHN R. CHAGNON, LLS DATE 4-13-23





LOWER LEVEL PLAN
1/8" = 1'-0"



FIRST FLOOR PLAN
1/8" = 1'-0"



SECOND FLOOR PLAN
1/8" = 1'-0"



FRONT ELEVATION
1/8" = 1'-0"



RIGHT ELEVATION
1/8" = 1'-0"



BACK ELEVATION
1/8" = 1'-0"



LEFT ELEVATION
1/8" = 1'-0"

REVISIONS:

CHINBURG PROPERTIES, INC.
686 MAPLEWOOD AVENUE
PORTSMOUTH, NH



CJ ARCHITECTS
230 VAUGHAN STREET
SUITE 101
PORTSMOUTH, NH 03801
(603) 431-2908
www.cjarchitects.net

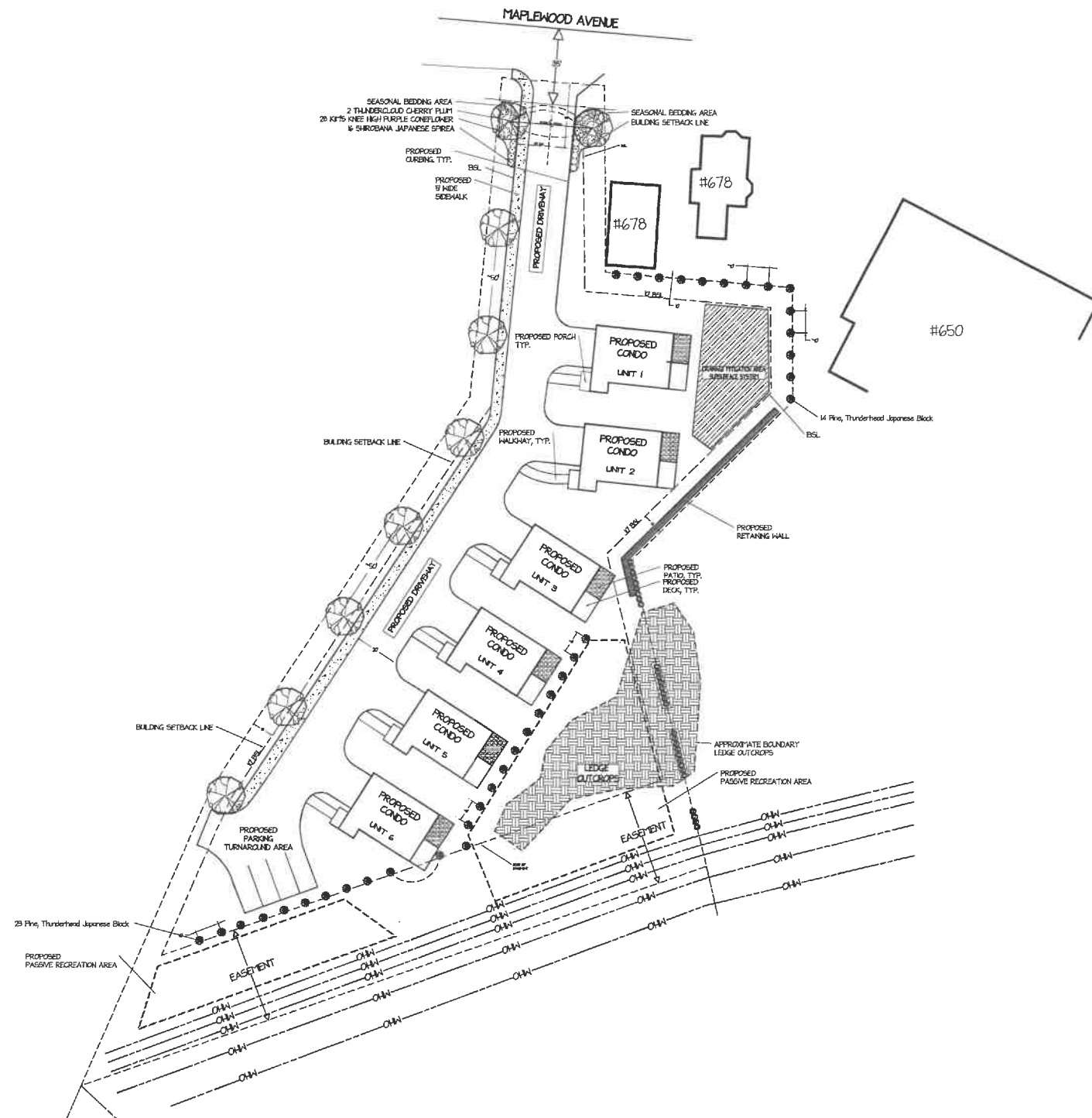
FLOOR
PLANS
&
ELEVATIONS

DATE:	07/26/23
DRAWN BY:	RDL
APPROVED BY:	C.J.G.
SCALE:	1/8" = 1'-0"
JOB NUMBER:	22303

A1

NOT FOR CONSTRUCTION

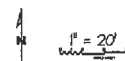
NOTES



CALL BEFORE YOU DIG



THUNDERHEAD BLACK PINE
HEIGHT: 10'-12'
WIDTH: 10'-12'



PLANT LEGEND

Qty	Botanical Name	Common Name	Remarks
Trees			
37	<i>Pinus thurbergiana</i> Thunderhead	Pine, Thunderhead Japanese Black	2" - 25" cal.
14	<i>Pinus thurbergiana</i> Thunderhead	THUNDERHEAD JAPANESE BLACK PINE	36" - 42"
5	<i>Platanus x acerifolia</i> Bloodgood	BLOODGOOD LONDON PLANETREE	2" - 25" cal.
2	<i>Prunus cerasifera</i> Thundercloud	THUNDERCLOUD CHERRY PLUM	2" - 25" cal.
Shrubs			
32	<i>Spiraea japonica</i> Shirobana	SHIROBANA JAPANESE SPIREA	#3
Perennials			
28	<i>Astilbe chinensis</i> Pumiid	PUMILA CHINESE ASTILBE	#1
28	<i>Echinacea purpurea</i> Kim's Knee High	KIM'S KNEE HIGH PURPLE CONEFLOWER	#1

NO.	DATE	DESCRIPTION
1	07.25.23	COMMENTS

686 MAPLEWOOD
CONCEPT PLAN
LANDSCAPE



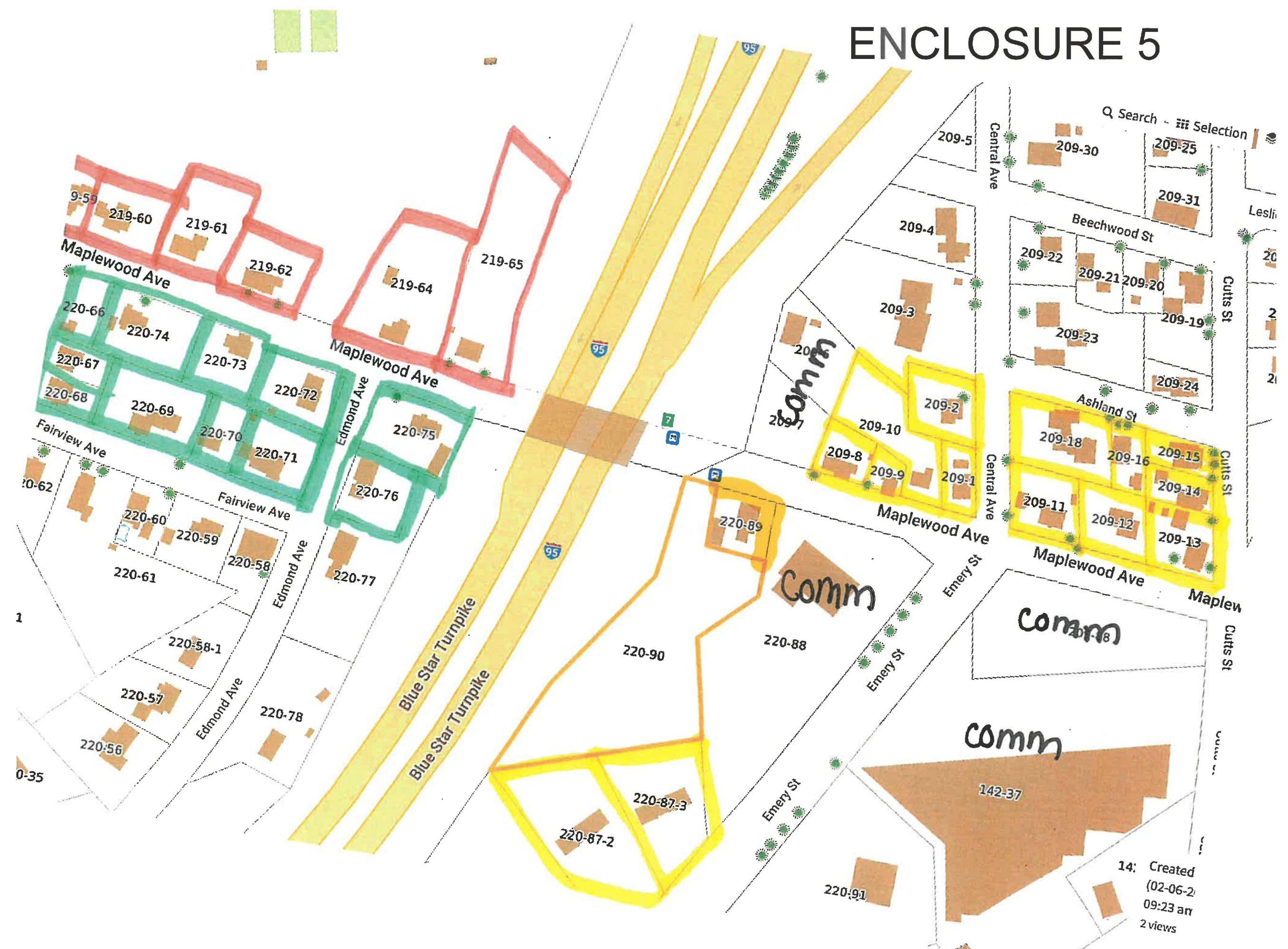
SCALE: 1" = 20'	PROJECT NO.
DRAWN BY: MIC	SHEET NO.
CHECKED BY: ES	DATE OF PLOT: 07.25.23
DATE OF PLOT:	

ENCLOSURE 5

Address	Map	Lot	Unit(s)	Lot Size		
Immediate Neighborhood						
553 Maplewood Ave		209	13	1	0.22	For Immediate Only
18 Cutts St		209	14	1	0.11	AVERAGE OF ABOVE
42 Cutts St		209	15	2	0.11	7361 Sq Ft per unit
1 Ashland St		209	16	1	0.11	0.168 acres per unit
8 Central Ave		209	18	2	0.33	
579 Maplewood Ave		209	11	1	0.22	
5 Central Ave		209	1	1	0.11	
7 Central Ave		209	2	1	0.22	
635 Maplewood		209	10	1	0.37	
639 Maplewood		209	9	1	0.06	
641 Maplewood		209	8	1	0.12	
678 Maplewood		220	89	3	0.17	
64 Emery Street		220 87-3		2	0.49	
74 Emery Street		220 87-2		2	0.74	
Expanded Neighborhood 1						
768 Maplewood Ave		220	75	1	0.29	For Immed & Exp 1
230 Edmond Ave		220	76	1	0.15	AVERAGE OF ABOVE
237 Edmond Ave		220	72	1	0.25	7,995 sq ft per unit
41 Fairview Ave		220	71	1	0.25	0.18 Acres per unit
832 Maplewood Ave		220	73	1	0.23	
43 Fairview Ave		220	70	1	0.14	
860 Maplewood Ave		220	74	1	0.3	
139 Fairview Ave		220	66	1	0.14	currently vacant prev 1
139 Fairview Ave		220	67	1	0.11	
115 Fairview Ave		220	68	1	0.11	
91 Fairview Ave		220	69	1	0.34	
Expanded Neighborhood 2						
769 Maplewood		219	65	1	0.73	For Immed, Exp 1&2
791 Maplewood		219	64	1	0.54	AVERAGE OF ABOVE
825 Maplewood		219	62	1	0.26	9,359 sq ft per unit
873 Maplewood		219	61	1	0.37	0.21 Acres per unit
897 Maplewood		219	60	1	0.25	
899 Maplewood		219	59	1	0.11	
				37	7.95	

Our proposed density is 6 units in 1.44 Acres
 10,462 Sq Ft per unit
 0.24 Acres Per Unit

ENCLOSURE 5



14: Created
(02-06-2002)
09:23 am
2 views



200 Griffin Road, Unit 3, Portsmouth, NH 03801
Phone (603) 430-9282 Fax 436-2315

27 July, 2023

**Trip Generation
Proposed Residential Development
686 Maplewood Avenue
Portsmouth, NH**

On behalf of Chinburg Development, LLC, we hereby submit this Trip Generation in support of the applicant's filing with the Portsmouth Zoning Board for a Variance, as allowed in the Portsmouth Zoning Ordinance. The Variance seeks to develop the property into 6 residential dwelling units. The site has been vacant for some time but previously approvals were granted to construct a Mosque, which had a proposed peak trip generation of 76 trips in the PM peak hour.

The base trip generation for the proposed 6-unit development is based on a review of the Institute of Transportation Engineers (ITE), *Trip Generation Manual*, 11th Edition. The land use code (LUC) that best resembles the proposed use is LUC 270 – Planned Unit Development. Using that description, the proposed use the site generates the following peak hour trips:

Weekday Morning Peak Hour: 4 Trips (23% entering; 77% exiting)
Weekday Evening Peak Hour: 5 Trips (64% entering; 36% exiting)

The applicant believes that the added trip generation from the site is not excessive, will not impact the adjacent street networks, and represents a significant decrease from the previous approval.

Please feel free to call if you have any questions or comments about this application.

Sincerely,

John R. Chagnon, PE
Ambit Engineering, Inc. – Haley Ward

Land Use: 270

Residential Planned Unit Development

Description

A residential planned unit development (PUD), for the purposes of trip generation, is defined as containing any combination of residential land uses. These developments might also contain supporting services such as limited retail and recreational facilities.

Additional Data

Caution—The description of a PUD is general in nature because these developments vary by density and type of dwelling. It is therefore recommended that when information on the number and type of dwellings is known, trip generation should be calculated on the basis of the known type of dwellings rather than on the basis of Land Use 270. Data for this land use are provided as general information and would be applicable only when the number of dwellings is known.

The sites were surveyed in the 1980s, and the 1990s, and the 2000s in Minnesota, South Dakota, and Virginia.

Source Numbers

111, 119, 165, 169, 357

Residential Planned Unit Development (270)

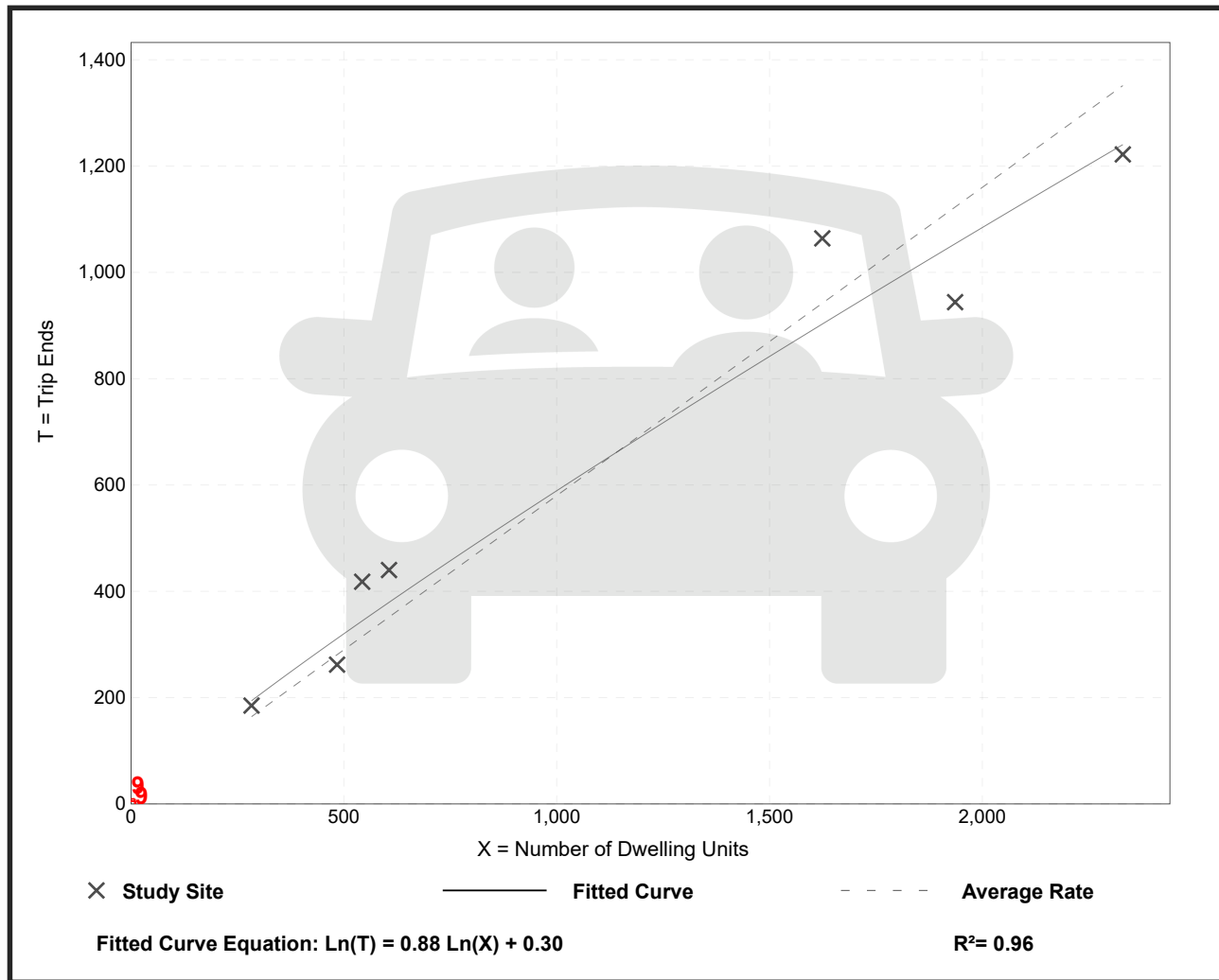
Vehicle Trip Ends vs: Dwelling Units
On a: Weekday,
AM Peak Hour of Generator

Setting/Location: General Urban/Suburban
 Number of Studies: 7
 Avg. Num. of Dwelling Units: 1115
 Directional Distribution: 23% entering, 77% exiting

Vehicle Trip Generation per Dwelling Unit

Average Rate	Range of Rates	Standard Deviation
0.58	0.49 - 0.77	0.10

Data Plot and Equation



Residential Planned Unit Development (270)

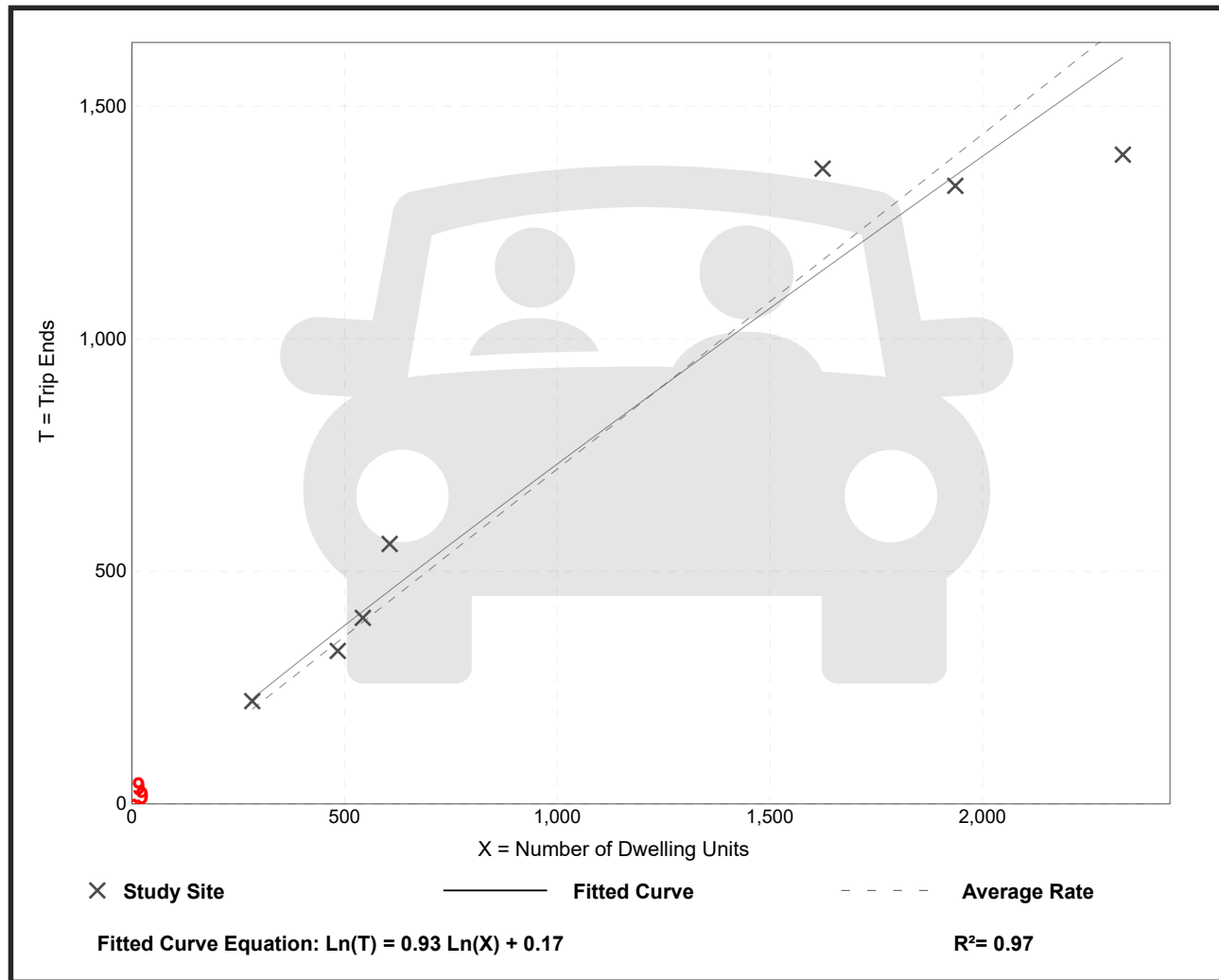
Vehicle Trip Ends vs: Dwelling Units
On a: Weekday,
PM Peak Hour of Generator

Setting/Location: General Urban/Suburban
 Number of Studies: 7
 Avg. Num. of Dwelling Units: 1115
 Directional Distribution: 64% entering, 36% exiting

Vehicle Trip Generation per Dwelling Unit

Average Rate	Range of Rates	Standard Deviation
0.72	0.60 - 0.92	0.11

Data Plot and Equation



July 2023

Members of the Portsmouth Zoning Board,

In regard to the impact this project will have on the surrounding property values it is our opinion that it will cause no decrease but will instead only increase the value of the surrounding properties.

In general, we have found that new construction lifts the values of surrounding properties by creating a desirable neighborhood setting. In many cases, the existing construction homes reap the benefits of new construction in their neighborhood as people invest in the existing home stock and update them continuing to raise values.

We think this would be especially true at this site which is walking distance to downtown and has a mix of existing construction and new construction. Specifically, this site is currently a cleared gravel lot that has been most recently used as a staging area for construction and is bounded by Interstate 95, a three-unit property, a large commercial lot with an industrial building and two newer duplexes. Transforming this vacant gravel lot into a residential development will blend with the surrounding properties and bring a more cohesive feel to the area.

Sincerely,



Colton Gove
Director of Land Development
The Gove Group Real Estate, LLC | Licensed in NH & ME
Cell: 603-686-3188
Office: 603-778-6400
Email: cgove@thegovegroup.com
70 Portsmouth Avenue, Stratham, NH 03885
www.thegovegroup.com

ENCLOSURE 8

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

7:00 P.M.

June 21, 2023

MEMBERS PRESENT: Phyllis Eldridge, Chair; Beth Margeson, Vice Chair; David Rheaume; Paul Mannle; Thomas Rossi; Jeffrey Mattson; ML Geffert, Alternate

MEMBERS EXCUSED: Jody Record, Alternate

ALSO PRESENT: Stefanie Casella, Planning Department; Jillian Harris, Planning Department

Chair Eldridge called the meeting to order at 7:03. She introduced City Staff Planner Jillian Harris, who will be assisting Ms. Casella moving forward. She briefly reviewed the items that would be heard at the June 27 meeting. She stated that Alternate Ms. Geffert would take a voting seat for all petitions and approvals.

I. APPROVAL OF MINUTES

A. Approval of the May 16, 2023 minutes.

*The May 16 minutes were **approved** as submitted by unanimous vote.*

B. Approval of the May 23, 2023 minutes.

*The May 23 minutes were **approved** as amended by unanimous vote.*

(The amendments were to reflect that the SRA zone should be the SRB zone on page 10, and Mr. Rossi's name was missing the 'l' in at the beginning of the minutes).

II. OLD BUSINESS

A. Request for 1-year extension - **420 Pleasant Street** (LU-21-126)

DECISION OF THE BOARD

*Mr. Rossi moved to **grant** the request for the 1-year extension, seconded by Mr. Mannle.*

Mr. Rheume said he would support the motion but cautioned that the pandemic was starting to run its course as an excuse for not getting a project done that had a building permit.

The motion passed by unanimous vote, 7-0.

- B. Request for rehearing on the appeal of 1 Raynes Avenue** - As ordered by the Superior Court on February 2, 2023, the Board will “determine, in the first instance, whether it has jurisdiction over the issues presented” by Duncan MacCallum (Attorney for the Appellants) in the January 14, 2022 appeal of the December 16, 2021 decision of the Planning Board for property located at **31 Raynes Avenue, 203 Maplewood Avenue, and 1 Raynes Avenue** which granted the following: a) site plan approval b) wetlands conditional use permit; and c) certain other, miscellaneous approvals, including an approval related to valet parking. Said properties are shown on Assessor Map 123 Lot 14, Map 123 Lot 13, Map 123 Lot 12, Map 123 Lot 10 and lie within the Character District 4 (CD4) District, Downtown Overlay District (DOD), Historic District, and the North End Incentive Overlay District. (LU-21-54)

DISCUSSION AND DECISION OF THE BOARD

Vice-Chair Margeson moved to deny the rehearing, seconded by Mr. Rossi.

Vice-Chair Margeson said she wasn't sure if the Board was allowed to do a motion for a rehearing on a remand from the Superior Court, but pursuant to Paragraphs 1 through 9 of the motion that related to Mr. Rheume's participation and the rehearing, she said it wasn't a matter that she thought was in the Board's purview to weigh in on. She said the ZBA was a board of statutory jurisdiction and the administrative code of the City and beyond the Board's jurisdiction. She said the issues raised in Paragraphs 11 through 13 as to the participation of Mr. Pezzullo was something dealt with in the remand from Superior Court and that she didn't find that the ZBA had jurisdiction over that matter as well. She said the rest of the appeal had to do with the parking that was a matter on the remand from the Superior Court but thought it wasn't well pleaded and didn't think it was appropriate to supplement the record at this time, given the limitations the Board was given when they first looked at it. Lastly, she said the issue of Paragraph 13 about the possible contamination of the site with hazardous waste was not something that was part of the remand from the Superior Court. Therefore, she said she did not find that the Board had any need to or were even allowed to hear the motion for rehearing. Mr. Rossi said he did not attend that meeting but familiarized himself with the facts of the matter and concurred with Vice-Chair Margeson's statements.

The motion passed by unanimous vote, 7-0.

- C. Request for Rehearing - 170 Aldrich Road (LU-23-47)**

DISCUSSION AND DECISION OF THE BOARD

Mr. Rheume said he wasn't at the meeting but watched the proceedings on the video. He said that, due to the communication issues with the applicant and his presentation, one of the key factors that seemed to turn the Board's opinion about the case was the presentation by the attorney for an abutter who presented a lot of information and the applicant didn't have an effective opportunity to rebut that opinion due to technical issues. He said the applicant was attending remotely and the testimony by the opposing attorney was an influential discussion and that the applicant would normally have an opportunity to come back during the 'to, for, or against' section to rebut the information from the opposing attorney but wasn't able to due to technical issues. He said it made sense to rehear the case out of fairness. Ms. Geffert said the Board should encourage the applicant to be present in person for the rehearing. Mr. Mattson said he normally wouldn't take granting a rehearing lightly but thought the situation with the remote technical difficulties was unique. Chair Eldridge noted that the Board had questions for the applicant that they were not able to get answers to due to the technical difficulties. Ms. Casella said the applicant is always encouraged to participate in any way that they can, but in the past there had not been technical issues, so moving forward she thought presentations from a virtual source should be reconsidered.

*Mr. Mattson moved to **grant** the rehearing, with the **stipulation** that the applicant be required to attend in person. The motion was seconded by Mr. Rheume. The motion passed by a vote of 6-1, with Mr. Rossi voting in opposition.*

Mr. Rossi and Mr. Rheume recused themselves from the following request.

D. Request for Rehearing - 635 Sagamore Avenue (LU-22-209)

DECISION OF THE BOARD

*Vice-Chair Margeson moved to **grant** the rehearing.*

She said the process of the Board was perhaps not the cleanest that it could have been, but the reliance on Walker v. City of Manchester in terms of finding the abutting properties nonconforming was misplaced. She said Sagamore Court was property zoned General Apartment Mobile Home, and although the Tidewatch Condominiums was in the SRA zone, it was a planned unit development because it was over 10 acres.

No one seconded the motion.

*Mr. Mattson moved to **deny** the rehearing, seconded by Mr. Mannle.*

Mr. Mattson said Vice-Chair Margeson made an interesting point but that he hadn't received any extra information regarding Walker v. City of Manchester, so he was not convinced to change his previous position of not granting the rehearing. Mr. Mannle said he thought there were a few confusing parts of trying to single the parcel out and that it was unrelated to Tidewatch Condominiums. He said Tidewatch was a new development with ten acres, and if the applicant's parcel was 10.2 acres, the Board would be dealing with the same thing. He said it was in the SRA

zone and the zoning request was for a living unit. He said it could have been a duplex or triplex. He said if the applicant had a petition for two buildings with garages that were two units each and copied the same style and floorplan as Tidewatch, the Board would be doing this again. He said the original decision to deny was proper and that he would support the motion. Ms. Geffert said she appreciated the observation by Vice-Chair Margeson of the Walker v. City of Manchester case but thought the Board was looking at the character of the area on each side of Sagamore Avenue and the character of the current use, which was a dilapidated industrial nonconformance, so honoring the zoning ordinance took on a broader perspective based on the current nonconforming use. She thought the Board correctly assessed the four-unit residential development following the spirit of the ordinance and one of the things that swayed her was that the applicant changed it from five units to four to make it more in keeping with the surrounding area and lot coverages in the existing zoning. She said she understood how the Walker v. City of Manchester case could be interpreted but thought the applicant's parcel was a special one and its current nonconforming use made the Board's consideration different than the Walker case. Chair Eldridge said the request for rehearing relied on seeing the development as overly crowded when in fact each house was on about a half-acre and met all the setback requirements, and she felt that the Board judged it correctly.

The motion passed by a vote of 4-1, with Vice-Chair Margeson voting in opposition.

Mr. Rossi and Mr. Rheame returned to their voting seats. Mr. Mattson recused himself from the following petition.

- E. The request of **The Islamic Society of the Seacoast Area ISSA (Owner)**, and **Chinburg Development, LLC (Applicant)**, for property located at **686 Maplewood Avenue** whereas relief is needed to construct four (4) duplexes and one (1) single living unit to create a total of nine (9) living units which requires the following: 1) Variance from Section 10.440, Use # 1.30 to permit four (4) two-family unit structures where they are not permitted, 2) Variance from Section 10.513 to permit five (5) free standing buildings with dwellings where not more than one is permitted, 3) Variance from Section 10.520 to allow a) 6,975 square feet of lot area per dwelling unit where 15,000 square feet is required; and b) 47 feet of frontage where 100 feet is required. Said property is located on Assessor Map 220 Lot 90 and lies within the Single Residence B (SRB) District and the Highway Noise Overlay District. (LU-23-57)

SPEAKING TO THE PETITION

[Timestamp 33:05] Attorney Justin Pasay was present on behalf of the applicant, with project engineer John Chagnon, architect Carl Goodnight, and realtor Colton Gove of the Gove Group. Attorney Pasay briefly reviewed the application and seven exhibits. He said nine condominium units were proposed, with one affordable unit, and he described what the units would look like.

[Timestamp 38:35] Mr. Chagnon reviewed the site plan and said they would meet with the Technical Advisory Committee (TAC) to review landscaping, utilities, and other features.

In response to Mr. Rossi's questions, Mr. Chagnon said the parking area at the back of the lot encroached into the easement and would be paved. He said it would require a joint use agreement with Public Service that would be part of future approvals.

[Timestamp 45:03] Attorney Pasay reviewed the criteria and said they would be met. In response to Mr. Rheume's questions, Attorney Pasay said the development would be a multi-family condominium one, and each of the units would be for sale and the owners would be part of the condo association. He said the timeframe and the proposed affordable unit were issues addressed at the site plan review. He said they hadn't designed which unit would be the affordable one but if the variance was granted, they would put a more formal proposal together regarding the specific nature of the affordable unit and reference the Statute with the Planning Board. It was further discussed.

Attorney Pasay said the recreation area was stated as an amenity to the neighborhood residents but would only be utilized by the owners for the condominiums. Mr. Rheume said that was something different than stating that it would be open to the neighborhood residents. Mr. Rheume referred to the square foot per dwelling units. He said if the units were reduced to eight, the calculation would be 7,847 sf per dwelling unit, which would be around 7,995 sf per unit. He said it was also a bit above the 7,500 sf per dwelling unit for the GRA district. He said the closest other residential area was all GRA, which would be at 7,500 square feet. He asked why the ninth unit was needed and what the negative impacts would be if the Board felt that eight units were more appropriate. Attorney Pasay said the proposal had already gone from 10 units to nine, and one of the units would be affordable. Mr. Gove said they could get rid of the affordable unit and the 7,800 square feet but figured that the affordable unit was more important to everyone. Mr. Mannle said the development would be in character with the rest of the neighborhood. Attorney Pasay said four units out of 14 in the immediate vicinity were multi-family or two-family units. Mr. Mannle said the chart stated that there were five multi-family units, and out of those six extra units, he asked how many were 2,100 square feet. Attorney Pasay said he didn't have that information. Mr. Mannle asked why the applicant would compare it with an ADU or an apartment that was 400 square feet and say it was the same. Attorney Pasay said they were comparing the number of units to the size of the lots and suggesting that their proposal with nine units was roughly equivalent to the density.

Mr. Rossi said the density calculations were perplexing to him, like having multiple units per structure v. one unit per structure, or two v. three and so on. He said how it would change if it were looked at in terms of the number of structures on the property as opposed to the number of units. He said he didn't see anything in the immediate area with that dense of an allocation or use of multiple structures on a similar-sized property. Attorney Pasay said it went to the uniqueness of the property, a 1.44 acre parcel that had an odd configuration. He said when the available upland on the property was contracted and the ability to develop it made economic sense against the idea of proposing a subdivision road and making lot sizes that were consistent, it became a question of feasibility and viability, and the result was a condo proposal. He said it was a novel approach to developing the property that avoided tons of impervious surface in the form of a big road that the City wants to accept and also avoided a subdivision process. He said they focused on the dwelling unit per lot area calculation because it was the most reasonable approach to comparing the density of the properties. Mr. Rossi said when seeking variances from both the number of dwelling units per

building and the number of square feet per dwelling unit, it got a bit hard to compare on an apples-to-apples basis with surrounding properties.

Vice-Chair Margeson commented that the most problematic part of the application was the two-family dwelling units, which were not allowed in the SRB zone, and the five freestanding buildings and the density relief. She said the parcel was about 1-1/2 acres, and an argument could be made that the applicant might have a hardship due to the small frontage from the street for putting three single-family dwellings on the property. Attorney Pasay said the basis and the law behind the hardship analysis went to whether there were unique circumstances of the property and whether or not applying the specific ordinance in question to the property due to the unique circumstances accomplished the goal of the ordinance. He said they had an ordinance that prohibited on some level multiple buildings and prohibited two-family dwellings. In that context, he said the question was whether or not applying the ordinance accomplished the prohibition on those types of uses in the zoning ordinance, and he said the answer had to be no. He said there were duplexes that surrounded the property and the purpose of the ordinance was not being satisfied by applying it to the property. He said the same applied to the density analysis, which he further explained. [Timestamp 1:05:58]

Vice-Chair Margeson said the property was subdivided and enough street frontage would be needed to access all three of the dwellings. She asked for further explanation about subdividing the property even with the 47-ft front line. Attorney Pasay said at some level, there needed to be a private road proposal or a condo development or relief to accommodate a city road so that the lots interior to the property had frontage in a manner consistent with the zoning ordinance. He said it would require a lot of relief. Mr. Chagnon said the existing lot was oddly shaped and if it were properly configured in a way that could be subdivided, it would be an equivalent area of property to a similar block. He said there were eight or nine units in that block and by today's standards, it couldn't be subdivided in the same way but by past standards it would have worked out to nine lots.

Ms. Geffert asked the applicant to address the noise overlay by creating dense housing units so close to a highway and to also address parking on the lot. Attorney Pasay said the design accounted for the fact that there would have to be additional design criteria and standards met. Mr. Chagnon said the driveways were at least 20 feet from the curb line, so each unit would have a garage space and room to park a car outside. He said other spaces could be dedicated for additional parking if TAC felt that there should be more.

Chair Eldridge opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke, and Chair Eldridge closed the public hearing.

DISCUSSION AND DECISION OF THE BOARD

Mr. Rheume said it came down to an SRB lot and whether a single residence was an appropriate use for the lot. He said the board previously on two occasions said no and agreed that a single residence use was not a proper use for the property. He said the Board generally didn't want

duplexes in an SRA district, but in that case the property was remote and not visible to most people, so he found that it was less of an issue. He said the property was in some ways misplaced in the SRB district because it was surrounded by businesses or other duplexes and was more akin to the GRA zone. He said he felt more comfortable putting the parcel into that envelope. He said the issue he most struggled with was the density issue. [Timestamp 1:19:50] Mr. Mannle said he thought nine units were too much for the lot. He noted that the applicant said they could get rid of the affordable unit if they lost a unit, and he said it didn't work that way. Mr. Rossi said he didn't place much value on the affordable unit because it was a difficult location for residential use and he couldn't see the units commanding a premium in the market.

Vice-Chair Margeson said she would not support the application because the request was turning the lot into something more like the GRA, GRB, and GRC zones, and that was moderate to high density. She said the GRA and GRB zones were not really contiguous to the lot but were more contiguous to the SRB lot across the street. She said in terms of the previous variances and special exceptions granted for the lot, the places of religious assembly are allowed by special exception for the SRB zone and the variance was for the 47 feet of street frontage. She said if the applicant didn't get it, they would not be able to build on the lot. She said she didn't think the applicant demonstrated hardship for the two-family dwellings and the amount of dwellings on the lot. She said she could probably find a hardship, given the street frontage and the size of the lot, for three single-family dwellings but couldn't find it for the two-family dwelling relief and the density relief. She said it was a large lot that could probably get three lots for the SRB calculation, which would bring it down to below what was allowed under the GRA, GRB or GRC zones. For those reasons, she said she could not support it but could support the frontage relief because if that was denied, the applicant would not be able to build. Mr. Rossi said he concurred in general. Chair Eldridge said it was a great project and if the rules were followed, it would be an exceptionally large lot for one home, but she couldn't see the hardship. She said the uniqueness of the property wasn't really driving the way that the applicant proposed to use it.

*Mr. Mannle moved to **grant** only the variance for the 47-ft variance (Item 3.b). Vice-Chair Margeson seconded.*

Mr. Mannle said approving the 47-ft variance request would not be contrary to the public interest because the frontage was big enough for cars but not big enough for zoning. He said it was an access point for a 1-1/2 acre lot. He said it would observe the spirit of the ordinance and substantial justice would be done because access to the property was needed. He said it would not diminish the values of surrounding properties because they would not be affected. He said literal enforcement of the provisions of the ordinance would result in an unnecessary hardship, noting that the lot's hardship was having the remnants of subdivisions that took effect when Route 95 was built. He said the original size of the lot went across the street and further down. He said the parcel was one huge one at the time and got cut up, and the sliver with 47 feet of frontage was left over. He said not granting the variance for it would result in a hardship. Vice-Chair Margeson said the special conditions of the property is that it has just 47 feet of street frontage, so owing to those special conditions, it can't be reasonably used and there is no fair and substantial relationship between the purposes of the zoning ordinance and its application to the property.

The motion passed by unanimous vote, 6-0, with Mr. Mattson recused.

Vice-Chair Margeson moved to deny the request to construct four duplexes and one single living unit to create a total of nine living units which requires relief from Section 10.440 (use 1.30) to permit four two-family structures where they are not permitted, and Section 10.513 to permit five freestanding dwellings where not more than one is permitted, and Section 10.520 for 6,975 square feet of lot area per dwelling unit where 15,000 square feet is required. Mr. Mannle seconded the motion.

Vice-Chair Margeson said the two-family dwelling relief, the one dwelling per lot relief, and the density relief were contrary to the public interest and the spirit of the ordinance. She said the purpose and intent of the SRB district was to have one freestanding dwelling unit on the property and not to have any two-family dwellings on the subject lot. As far as the density relief request, she said the lot was big and the relief would bring the lot size down to 6,975 sf where 15,000 sf per dwelling unit was required, which was also directly contrary to the purpose and intent of the SRB district that required 15,000 sf of lot. She said the application failed the hardship test because the applicant did not demonstrate hardship for having a two-family dwelling unit and more than one dwelling unit per lot for the density relief. Mr. Mannle concurred and had nothing to add.

The motion passed by unanimous vote, 6-0, with Mr. Mattson recused.

Mr. Mattson returned to his voting seat.

III. NEW BUSINESS

- A. The request of **Charles Silva Jr and Margaret Moran (Owners)**, for property located at **434 Marcy Street** whereas relief is needed to construct an addition to the rear of the existing structure, remove the existing shed, and construct a new shed which requires the following: 1) Variance from Section 10.521 to allow: a) 8 foot left yard setback where 10 feet is required; and b) 43% building coverage where 30% is allowed. 2) 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. 3) Variance from Section 10.573.20 to allow a) 1 foot rear yard where 11 feet is required; and b) 1 foot right side yard where 11 feet is required. Said property is located on Assessor Map 102 Lot 41 and lies within the General Residence B (GRB) and Historic District. (LU-23-53)

SPEAKING TO THE PETITION

Architect Anne Whitney was present on behalf of the applicant. She said the three immediate abutters were in support of the project. She reviewed the petition and the criteria. In response to Mr. Rheume's questions, Ms. Whitney said the residents at 28 South Street had a 6-ft fence toward the back of the applicant's property that went down to around four feet. She said the existing shed became the fence on that side. She said the applicant would fill in that fence to keep it at the 6-ft

height and that the abutter agreed. She said the new shed would be about 11 feet tall and have a small gable roof that would stick up above the fence a bit, so the neighbors would see some siding and some roof. She said the ordinance's maximum for a fence was six feet.

Chair Eldridge opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke, and Chair Eldridge closed the public hearing.

DECISION OF THE BOARD

*Mr. Mattson moved to **grant** the variances for the petition, seconded by Mr. Mannle.*

Mr. Mattson said granting the variances would not be contrary to the public interest because the proposed use was not in conflict with the explicit and implicit purposes of the ordinance and would not alter the essential character of the neighborhood, threaten public health, safety or welfare or otherwise injure public rights. He said it would observe the spirit of the ordinance because it was a small and modest addition that would be minimally visible from the street and entirely within the character of the neighborhood. He noted that it would also be going before the Historic District Commission. He said granting the variances would do substantial justice because the benefit to the applicant would not be outweighed by any harm to the public or other individuals. He said it wouldn't really be visible from the street, and the improvements to the property would benefit the applicant and do no harm to others. He said granting the variance would not diminish the values of surrounding properties, noting that there was no suggestion that this would be the case. He said literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. He said the property had special conditions that distinguished it from others in the area, and owing to those special conditions, a fair and substantial relationship does not exist between the general public purposes of the ordinance's provision and the specific application of that provision to the property. He said it was a reasonable proposed use of the single family residence on a small, undersized lot that was half the size of what was permitted in the already dense zone. He said the purpose of preserving air, light and privacy would be preserved with the very modest change to the structure. Mr. Mannle concurred. He said the property was in the south end, where nothing conformed. He said the request was small except for the shed, but the existing shed would be gotten rid of, which was a tradeoff that didn't bother him. Vice-Chair Margeson said she would not support the motion. She said the proposed shed brought the right and rear setbacks way out of conformance and thought a smaller shed could have been put in the existing footprint.

*The motion **passed** by a vote of 6-1, with Vice-Chair Margeson voting in opposition.*

- B.** The request of **David Hugh Mason** and **Lisa Ann Mason (Owners)**, for property located at **239 Cass Street** whereas relief is needed to demolish a single story addition on the rear of the primary structure, construct a two (2) story rear addition to the primary structure, and demolish and enlarge existing garage which requires the following: Variance from Section 10.521 to allow: a) 1 foot right yard where 10 is

required for the primary structure; b) 3 foot left yard where 10 is required for the accessory structure; c) 4 foot rear yard where 20 is required for the accessory structure; d) 37% building coverage where 30% is allowed on the lot. Said property is located on Assessor Map 147 Lot 4 and lies within the General Residence C (GRC) District. (LU-23-69)

SPEAKING TO THE PETITION

Project designer Amy Dutton was present on behalf of the applicant and reviewed the petition and the criteria. [Timestamp 2:03:50]

Mr. Rheume said the proposal was to get a full two stories in the descending topography as opposed to continuing the 1-1/2 story roofline. He said the request was for a lot more than what currently existed and asked if the applicant contemplated continuing the 1-1-2 story roofline and using some selective dormering, particularly on the side away from the neighbor. Ms. Dutton said they had 3'9" knee walls so they would have to do an addition and then dormer it. She said they were trying to not hit the 50 percent rule and impact the existing structure the least amount as possible. She explained that if they were to take 50 percent or more, they would have to comply with the building code 100 percent. She said they proposed about 30 percent, which meant that they would not have to take everything up to the current 2008 building code. She said they could improve the staircase but didn't have to bring it all the way up to a full code staircase. Mr. Rheume asked why the proposed more substantial structure would be less impactful than a 1-1/2 story roofline. Mr. Dutton said they couldn't get the living square footage out of the existing house. She said if the dormered out the existing house, they'd touch that roof and not gain anything. She said there was the issue of hitting the code in the bathroom. Mr. Rheume said the floor plan indicated that the bathroom would be swapped over from the 1-ft setback side to the driveway side and a new bath would be added, which he thought was a decent size in that new extension, but there was the compromise of what the applicant wanted v. what was fair to the neighbors in terms of the new structure being built one foot from the property line.

Mr. Mattson said the only variance the applicant would need would be for the right yard setback if they weren't changing the garage. Ms. Dutton said the existing garage sat one foot and two feet from the property lines and it would still be nonconforming. Mr. Mattson said it would be the expansion of a nonconforming structure. Ms. Dutton said the house didn't comply. Mr. Mattson asked Ms. Dutton to clarify how a 1-ft setback would be gained. Ms. Dutton said they would just be straightening out the foundation. The setback relief requests were further discussed. Vice-Chair Margeson said she shared Mr. Rheume's concerns about the addition on the back, noting that other homes on the street would not have that addition on the back. She said she was concerned about the character of the neighborhood, given the extension on the back, but wasn't sure if there was any basis in the application for that concern. Ms. Geffert confirmed that the applicant would experience a hardship if they weren't able to take the addition up to the proposed height.

Chair Eldridge opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke, and Chair Eldridge closed the public hearing.

DECISION OF THE BOARD

*Mr. Rossi moved to **grant** the variances for the petition as presented and advertised, seconded by Ms. Geffert.*

Mr. Rossi referred to Sections 10.233.21 and .22 of the ordinance and said granting the variances would observe the spirit of the ordinance and there would be no loss to the public interest by allowing an extension to the rear of the home. Referring to Section 10.233.23, he said granting the variances would do substantial justice because there would be no loss to the community or the town in general that would outweigh the loss to the applicant if the variances were to be denied. Referring to Section 10.233.24, he said granting the variances would not diminish the values of surrounding properties. He noted that the abutters were notified and had the opportunity to express any concerns as to massing and the impact on their properties but didn't. Referring to Section 10.233.25 of the ordinance, he said the existing conditions of the lot are the 1-ft clearance to the right side lot line for the primary structure, so any change to the structure to bring it up to contemporary standards for livability would require a variance, which was a special condition of the property. He said it already existed with essentially a zero lot line clearance that would be increased to one foot and would bring it closer into compliance. He said the same was true for the variances related to the garage and the setback, noting that they were either within the requirements or decreased the amount of noncompliance. He said the current location of the garage was a special condition that allows the new garage to be less noncompliant than the current condition.. Ms. Geffert concurred.

Mr. Rheume said he would not support the motion. He agreed that the existing 1-1/2 story was one foot off, and the addition on the back bowed out a bit and the applicant was correcting that, but he thought going up a whole story on a 1-1/2 story house wasn't warranted. He said the spirit of the ordinance was to prevent the imposition of light and air on abutters' properties. He said he was fine with the garage but thought the one-foot property line asked for was more than necessary to meet the fundamental objectives of having a larger house. Mr. Mannle agreed but thought the garage was the problem because it was driving three out of 4 variance requests. He said the request was to demolish the garage and have a clean slate. He said the applicant was only going down by a foot for a bigger garage and that he would want to see something more conforming with the zoning. Chair Eldridge said she would support the motion because the fact that the garage would be taller would keep its windows from looking into the neighbors' windows, and the view of the garage from the street would be the same.

*The motion **passed** by a vote of 5-2, with Vice-Chair Margeson and Mr. Rheume voting in opposition.*

- C. The request of **Danielle Okula, Dennis Okula, and Irinia Okula (Owners)**, for property located at **2 Sewall Road** whereas relief is needed to install a 6 foot fence where along the front of the property which requires a Variance from Section 10.515.13 to allow a 6 foot fence where 4 feet is allowed. Said property is located on

Assessor Map 170 Lot 22 and lies within the Single Residence B (SRB) District.
(LU-23-71)

SPEAKING TO THE PETITION

The applicant was not present.

DECISION OF THE BOARD

*Mr. Rossi moved to **postpone** the petition to the July meeting, seconded by Mr. Mannle. The motion passed by unanimous vote, 7-0.*

IV. OTHER BUSINESS

There was no other business.

V. ADJOURNMENT

The meeting adjourned at 9:28 p.m.

Respectfully submitted,

Joann Breault
BOA Recording Secretary

APPLICANT:
CHINBURG DEVELOPMENT, LLC
 3 PENSTOCK WAY
 NEWMARKET, NH 03857
 Tel. (603) 868-5995

OWNER:
**ISLAMIC SOCIETY OF
 THE SEACOAST AREA**
 42N DOVER POINT ROAD
 DOVER, NH 03820

CIVIL ENGINEER & LAND SURVEYOR:
AMBIT ENGINEERING, INC.
 A DIVISION OF HALEY WARD, INC.
 200 GRIFFIN ROAD, UNIT 3
 PORTSMOUTH, N.H. 03801
 Tel. (603) 430-9282
 Fax (603) 436-2315

ARCHITECT:
CJ ARCHITECTS
 233 VAUGHAN STREET, SUITE 101
 PORTSMOUTH, NH, 03801
 Tel. (603) 431-2808

LEGAL REPRESENTATION:
DONAHUE, TUCKER & CIANELLA, PLLC
 111 MAPLEWOOD AVE., SUITE D
 PORTSMOUTH, NH, 03801
 Tel. (603) 766-1686



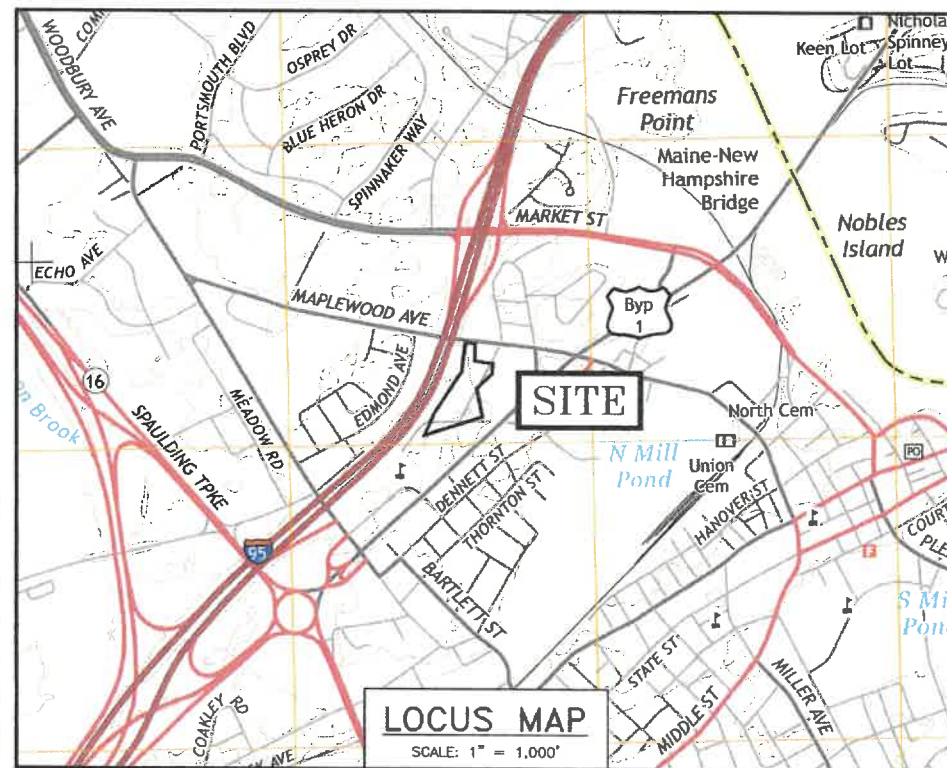
Legend

Character Districts:
 - Character-Retained Zoning Area (Refer to Zoning Map Sheet 2 of 2 Character Districts Programming Plan)

Residential Districts:
 - R1 Rural
 - SRA Single Residence A
 - SRS Single Residence S
 - CRA General Residence A
 - CRB General Residence B
 - CRC General Residence C
 - CAWH Garden Apartment/Mobile Home Park

Mixed Residential Districts:
 - MRO Mixed Residential Office
 - MRR Mixed Residential Business

PROPOSED SITE PLAN RESIDENTIAL DEVELOPMENT 686 MAPLEWOOD AVENUE PORTSMOUTH, NEW HAMPSHIRE PERMIT PLANS



REQUIRED PERMITS:
 PORTSMOUTH BOA: PENDING

Enclosure 9

LEGEND:

EXISTING	PROPOSED	
---	---	PROPERTY LINE
-S-	-S-	SETBACK
-SL-	-SL-	SEWER PIPE
-G-	-G-	SEWER LATERAL
-D-	-D-	GAS LINE
-W-	-W-	STORM DRAIN
-WS-	-WS-	WATER LINE
-UZE-	-UZE-	WATER SERVICE
-CHW-	-CHW-	UNDERGROUND ELECTRIC
	-UD-	OVERHEAD ELECTRIC/WIRES
		FOUNDATION DRAIN
-100-	-100-	EDGE OF PAVEMENT (EP)
-97+3-	-96+0-	CONTOUR
		SPOT ELEVATION
		UTILITY POLE
		WALL MOUNTED EXTERIOR LIGHTS
		TRANSFORMER ON CONCRETE PAD
		ELECTRIC HANDHOLD
		SHUT OFFS (WATER/GAS)
		GATE VALVE
		HYDRANT
		CATCH BASIN
		SEWER MANHOLE
		DRAIN MANHOLE
		TELEPHONE MANHOLE
		PARKING SPACE COUNT
		PARKING METER
		LANDSCAPED AREA
TBD	TBD	TO BE DETERMINED
CI	CI	CAST IRON PIPE
COP	COP	COPPER PIPE
DI	DI	DUCTILE IRON PIPE
PVC	PVC	POLYVINYL CHLORIDE PIPE
ROP	ROP	REINFORCED CONCRETE PIPE
AC	AC	ASBESTOS CEMENT PIPE
VC	VC	VITRIFIED CLAY PIPE
EP	EP	EDGE OF PAVEMENT
EL	EL	ELEVATION
FF	FF	FINISHED FLOOR
INV	INV	INVERT
S =	S =	SI OFF FT/FT
TBM	TBM	TEMPORARY BENCH MARK
TYP	TYP	TYPICAL



INDEX OF SHEETS

DWG No.	Description
C1	EXISTING CONDITIONS PLAN
C2	VARIANCE SITE PLAN

UTILITY CONTACTS

ELECTRIC:
 EVERSOURCE
 1700 LAFAYETTE ROAD
 PORTSMOUTH, N.H. 03801
 Tel. (603) 436-7708, Ext. 555.5678
 ATTN: MICHAEL BUSBY, P.E. (MANAGER)

NATURAL GAS:
 UNITIL
 325 WEST ROAD
 PORTSMOUTH, N.H. 03801
 Tel. (603) 294-5144
 ATTN: DAVE BEAULIEU

CABLE:
 COMCAST
 155 COMMERCE WAY
 PORTSMOUTH, N.H. 03801
 Tel. (603) 679-5695 (X1037)
 ATTN: MIKE COLLINS

SEWER & WATER:
 PORTSMOUTH DEPARTMENT OF PUBLIC WORKS
 680 PEVERLY HILL ROAD
 PORTSMOUTH, N.H. 03801
 Tel. (603) 766-1438 ATTN: JIM TOW

COMMUNICATIONS:
 FAIRPOINT COMMUNICATIONS
 JOE CONSIDINE
 1575 GREENLAND ROAD
 GREENLAND, N.H. 03840
 Tel. (603) 427-5525

PORTSMOUTH APPROVAL CONDITIONS NOTE:
 ALL CONDITIONS ON THIS PLAN SET SHALL REMAIN IN EFFECT IN PERPETUITY PURSUANT TO THE REQUIREMENTS OF THE CITY OF PORTSMOUTH SITE PLAN REVIEW REGULATIONS.

APPROVED BY THE PORTSMOUTH ZONING BOARD

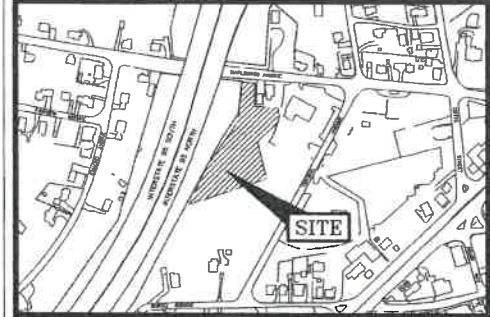
CHAIRMAN _____ DATE _____

**PROPOSED SITE PLAN
 RESIDENTIAL DEVELOPMENT
 686 MAPLEWOOD AVENUE
 PORTSMOUTH, N.H.**



WWW.HALEYWARD.COM

PLAN SET SUBMITTAL DATE: 20 APRIL 2023



LOCATION MAP SCALE 1"=300'

LEGEND

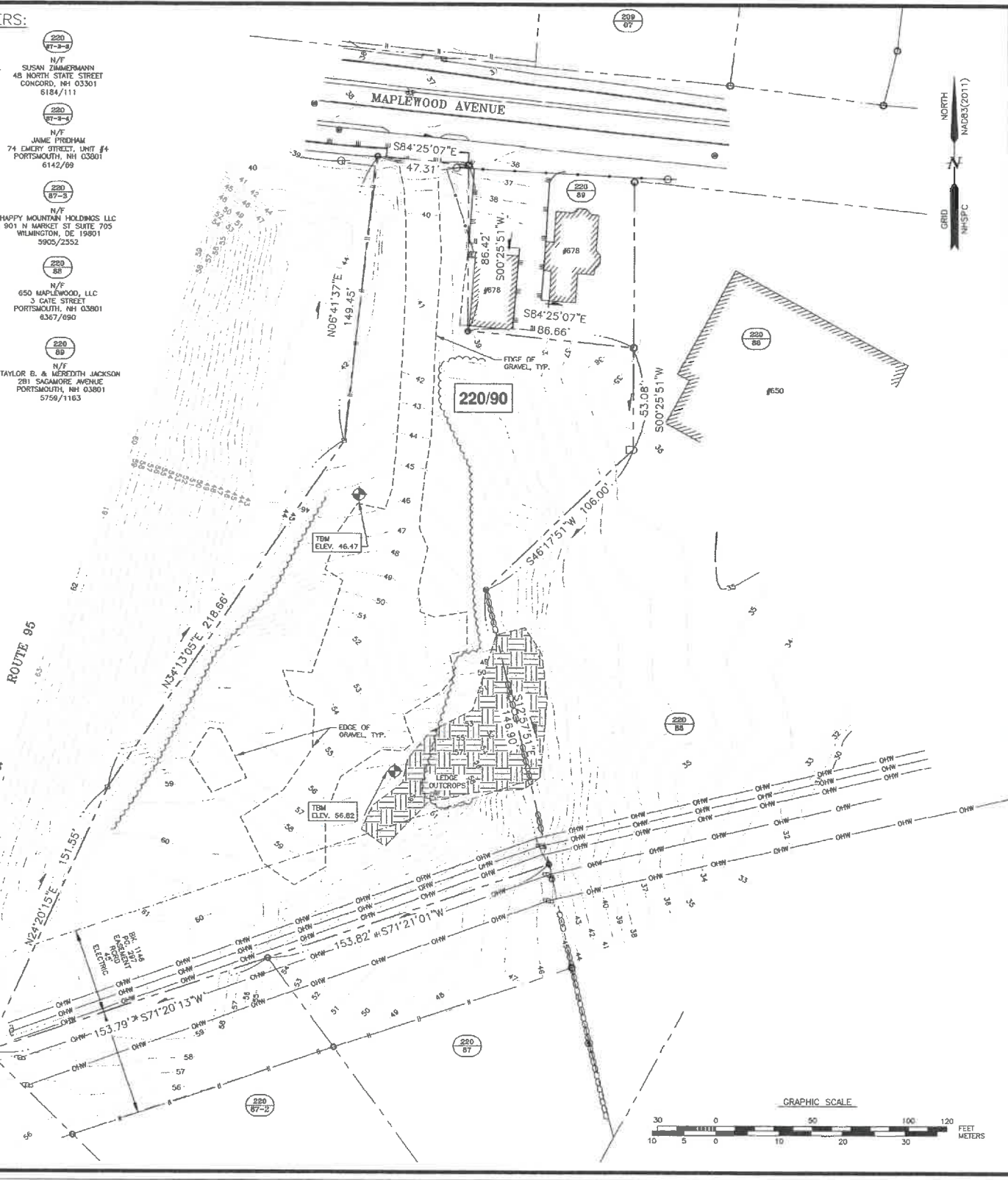
EXISTING	DESCRIPTION
124/21	MAP 124 / LOT 21
N/F	NOW OR FORMERLY
RP	RECORD OF PROBATE
RCRD	ROCKINGHAM COUNTY REGISTRY OF DEEDS
---	BOUNDARY LINE
---	SETBACK LINE
□ RR SPK FND	RAILROAD SPIKE FOUND
○ IR FND	IRON ROD FOUND
○ IP FND	IRON PIPE FOUND
○ DH FND	DRILL HOLE FOUND
□ END w/ DH	BOUND w/ DRILL HOLE
FM	FORCE MAIN
S	SEWER LINE
G	GAS LINE
D	STORM DRAIN
W	POTABLE WATER LINE
---	UNDERGROUND ELECTRIC
---	OVERHEAD WIRES
100	CONTOUR LINE
97.3	SPOT ELEVATION
---	EDGE OF PAVEMENT
---	WOODS / TREE LINE
○	UTILITY POLE (w/ CLM) (w/ LIGHT)
*	LIGHT POLE
○	SHUTOFF/CURB STOP (WATER, GAS, SEWER)
○	GATE VALVE
HYD.	HYDRANT
CB	CATCH BASIN
○	TELEPHONE MANHOLE
○	SEWER MANHOLE
○	DRAIN MANHOLE
FF	FINISHED FLOOR
INV.	INVERT
TM	TEMPORARY BENCHMARK
TYP.	TYPICAL

ABUTTERS:

220 07 N/F OSGOOD LODGE NO. 48 ODD FELLOWS BLDG ASSOC. P.O. BOX 1045 PORTSMOUTH, NH 03802 6354/1704	220 08 N/F SUSAN ZIMMERMANN 48 NORTH STATE STREET CONCORD, NH 03301 6184/111
220 09 N/F JEFFREY MATSON & KATHRYN MICHELLE ANDOUR 88 EMERY STREET PORTSMOUTH, NH 03801 6055/200	220 10 N/F JANE FRIEDMAN 74 EMERY STREET, UNIT #4 PORTSMOUTH, NH 03801 6142/09
220 11 N/F HAPPY MOUNTAIN HOLDINGS LLC 901 N MARKET ST SUITE 705 WILMINGTON, DE 19801 5905/2552	220 12 N/F HAPPY MOUNTAIN HOLDINGS LLC 901 N MARKET ST SUITE 705 WILMINGTON, DE 19801 5905/2552
220 13 N/F CARL & DEBORAH ROCHE 64 EMERY STREET, UNIT #1 PORTSMOUTH, NH 03801 6147/2870	220 14 N/F 650 MAPLEWOOD, LLC 3 DATE STREET PORTSMOUTH, NH 03801 6367/690
220 15 N/F BETTY J. SWANSON 64 EMERY STREET, UNIT #2 PORTSMOUTH, NH 03801 6121/2485	220 16 N/F TAYLOR E. & MEREDITH JACKSON 281 SAGAMORE AVENUE PORTSMOUTH, NH 03801 5759/1163

PLAN REFERENCES:

- 1) EXISTING CONDITIONS & TOPOGRAPHY PLAN FOR VACANT LOT KNOWN AS TAX MAP 220 LOT 90 OWNED BY ISLAMIC SOCIETY OF THE SEACOAST AREA LOCATED AT 686 MAPLEWOOD AVENUE, PORTSMOUTH, NEW HAMPSHIRE. PREPARED BY KNIGHT HILL LAND SURVEYING SERVICES, INC. SCALE: 1"=30' DATED SEPT. 14, 2017. NOT RECORDED.
- 2) SITE PLAN FOR ISLAMIC SOCIETY OF SEACOAST AREA 686 MAPLEWOOD AVENUE PORTSMOUTH, N.H. SITE PLAN. PREPARED BY AMBIT ENGINEERING, INC. SCALE: 1"=30'. DATED MAY 2019. NOT RECORDED.
- 3) LAND BOUNDARY SURVEY PLAN DEPICTING LAND OWNED BY INDEPENDENT ORDER OF ODD FELLOWS, OSGOOD LODGE #48. PREPARED BY KNIGHT HILL LAND SURVEYING SERVICES, INC. SCALE: 1" = 40 FT. DATED OCT. 2003. RCRD D-31278.



"I CERTIFY THAT THIS PLAN WAS PREPARED UNDER MY DIRECT SUPERVISION, THAT IT IS THE RESULT OF A FIELD SURVEY BY THIS OFFICE AND HAS AN ACCURACY OF THE CLOSED TRAVERSE THAT EXCEEDS THE PRECISION OF 1:15,000."

John R. Chagnon 4.20.23
JOHN R. CHAGNON, LLS DATE

AMBIT ENGINEERING, INC.
A DIVISION OF HALEY WARD, INC.

200 Griffin Road, Unit 3
Portsmouth, NH 03801
603-430-9982

WWW.HALEYWARD.COM

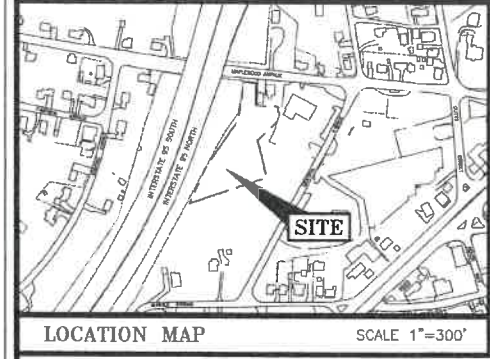
- NOTES:**
- 1) PARCEL IS SHOWN ON THE CITY OF PORTSMOUTH ASSESSOR'S MAP 220 AS LOT 90.
 - 2) OWNERS OF RECORD:
ISLAMIC SOCIETY OF THE SEACOAST AREA
42N DOVER POINT ROAD
DOVER, NH 03820
5806/2816
- APPLICANT:
CHINBURG DEVELOPMENT, LLC
3 PENSTOCK WAY
NEWMARKET, NH 03857
- 3) PARCEL IS NOT IN A SPECIAL FLOOD HAZARD AREA AS SHOWN ON FIRM PANEL 33015C0259F, EFFECTIVE JANUARY 29, 2021.
 - 4) EXISTING LOT AREA:
62,776 S.F.
1.4411 ACRES
 - 5) PARCEL IS LOCATED IN SINGLE RESIDENCE B (SRB) DISTRICT.
- DIMENSIONAL REQUIREMENTS:**
- | | |
|----------------------------|---------------|
| MIN. LOT AREA: | 15,000 S.F. |
| FRONTAGE: | 100 FEET |
| SETBACKS: | FRONT 30 FEET |
| | SIDE 10 FEET |
| | REAR 30 FEET |
| MAXIMUM STRUCTURE HEIGHT: | 35 FEET |
| MAXIMUM BUILDING COVERAGE: | 20% |
| MINIMUM OPEN SPACE: | 40% |
- 7) THE PURPOSE OF THIS PLAN IS TO SHOW THE EXISTING CONDITIONS ON ASSESSOR'S MAP 220 LOT 90 IN THE CITY OF PORTSMOUTH.
 - 8) RCRD 5759/1160 PLACED A BURDEN ON TAX MAP 220 LOT 90. THE EASEMENT DESCRIBED IN RCRD 5759/1160 HAS BEEN EXTINGUISHED DUE TO THE REMOVAL OF THE DECKS AND THE NON-REPLACEMENT WITHIN THE SIX (6) MONTHS ALLOWED BY THE EASEMENT DEED.

**RESIDENTIAL DEVELOPMENT
CHINBURG DEVELOPMENT
686 MAPLEWOOD AVE.
PORTSMOUTH, N.H.**

NO.	DESCRIPTION	DATE
1	ISSUED FOR APPROVAL	4/20/23
0	ISSUED FOR COMMENT	4/13/23

SCALE: 1"=30' FEBRUARY 2023

EXISTING CONDITIONS PLAN **C1**



LEGEND:

N/F	NEW OR FORMERLY
RP	RECORD OF PRODATE
RCRD	ROCKINGHAM COUNTY REGISTRY OF DEEDS
11	MAP 11 / LOT 21
○	IRON ROD/IRON PIPE FOUND
---	APPROXIMATE BOUNDARY
100	CONTOUR
97.3	SPOT ELEVATION
---	EDGE OF PAVEMENT (EP)
---	WYFYS / TRFSE LINE
EL	ELEVATION
FF	FINISHED FLOOR
HW	HEIGHT
TBM	TEMPORARY BENCHMARK
TYP	TYPICAL
LSA	LANDSCAPED AREA
①	PARKING SPACE

IMPERVIOUS SURFACE AREAS (TO PROPERTY LINE)

STRUCTURE	PRE-CONSTRUCTION IMPERVIOUS (S.F.)	POST-CONSTRUCTION IMPERVIOUS (S.F.)
MAIN STRUCTURES	0	6,480
DECKS	0	864
COVERED PORCHES	0	360
PAVEMENT	0	11,625
SIDEWALKS	0	2,157
LEDGE	3,291	3,291
GRAVEL	17,995	0
CURBING	0	178
RETAINING WALL	0	211
TOTAL	16,290	25,166
LOT SIZE	62,776	62,776
% LOT COVERAGE	25.9%	40.1%

PROPOSED BUILDING COVERAGE: 7,704 S.F./62,776 S.F. = 12.3%
 PROPOSED OPEN SPACE: 37,999 S.F./62,776 S.F. = 60.5%
 BUILDING HEIGHT TO CONFORM TO ORDINANCE.

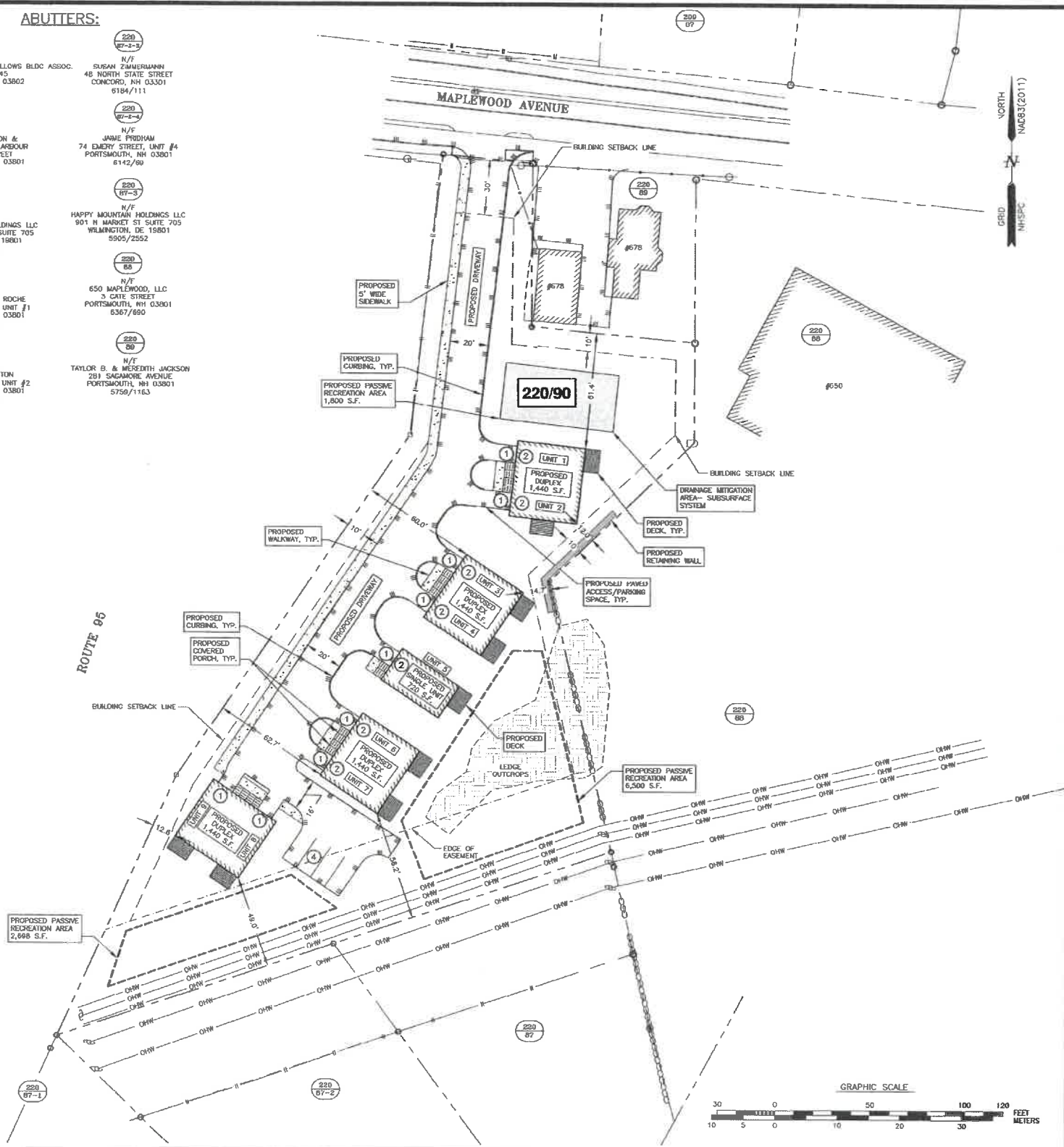
- VARIANCE APPLICATION:**
- ARTICLE #5, SECTION 10.520 TO PERMIT FRONTAGE OF 47.31 FEET WHERE 100 FEET IS REQUIRED.
 - ARTICLE #4, SECTION 10.440-1.30 TO PERMIT 2 FAMILY DWELLINGS WHERE ONLY SINGLE FAMILY ARE ALLOWED.
 - ARTICLE #5, SECTION 10.520 TO PERMIT 6,975 S.F. OF LOT AREA PER DWELLING UNIT WHERE 15,000 S.F. OF LOT AREA PER DWELLING UNIT IS REQUIRED.
 - ARTICLE #5, SECTION 10.513 TO PERMIT 5 FREE STANDING BUILDINGS WITH DWELLINGS WHERE NO MORE THAN ONE FREE STANDING DWELLING IS PERMITTED.

"I CERTIFY THAT THIS PLAN WAS PREPARED UNDER MY DIRECT SUPERVISION, THAT IT IS THE RESULT OF A FIELD SURVEY BY THIS OFFICE AND HAS AN ACCURACY OF THE CLOSED TRAVERSE THAT EXCEEDS THE PRECISION OF 1:15,000."

John R. Chagnon 4-20-23
 JOHN R. CHAGNON, LLS DATE



- ABUTTERS:**
- 220 07 N/F OSWOOD LODGE NO. 48 OSWELLOWS BLDG ASSOC. P.O. BOX 1045 PORTSMOUTH, NH 03802 6354/1704
 - 220 07-1 N/F JEFFREY MATTHEW & KATHRYN MICHELE ARBOUR 86 EMERY STREET PORTSMOUTH, NH 03801 6065/200
 - 220 07-2 N/F HAPPY MOUNTAIN HOLDINGS LLC 901 N MARKET ST SUITE 705 WILMINGTON, DE 19801 5905/2552
 - 220 07-3 N/F CARL & DEBRAH ROCHE 64 EMERY STREET, UNIT #1 PORTSMOUTH, NH 03801 6147/2870
 - 220 07-4 N/F BETTY J. SWANTON 84 EMERY STREET, UNIT #2 PORTSMOUTH, NH 03801 6121/2485
 - 220 07-5 N/F SUSAN ZIMMERMANN 48 NORTH STATE STREET CONCORD, NH 03301 6184/1111
 - 220 07-6 N/F JANE FROHAM 74 EMERY STREET, UNIT #4 PORTSMOUTH, NH 03801 6142/69
 - 220 07-7 N/F HAPPY MOUNTAIN HOLDINGS LLC 901 N MARKET ST SUITE 705 WILMINGTON, DE 19801 5905/2552
 - 220 08 N/F 650 MAPLEWOOD, LLC 3 CAPE STREET PORTSMOUTH, NH 03801 6367/680
 - 220 08 N/F TAYLOR B. & WENDITH JACKSON 281 SAGAMORE AVENUE PORTSMOUTH, NH 03801 5759/1163



WWW.HALEYWARD.COM
 200 GIFFIN ROAD, SUITE 3
 PORTSMOUTH, NH 03801
 603.430.7802

- NOTES:**
- PARCEL IS SHOWN ON THE CITY OF PORTSMOUTH ASSESSOR'S MAP 220 AS LOT 90.
 - OWNERS OF RECORD: ISLAMIC SOCIETY OF THE SEACOAST AREA 42N DOVER POINT ROAD DOVER, NH 03820 5806/2816
 APPLICANT: CHINBURG DEVELOPMENT, LLC 3 PENSTOCK WAY NEWMARKET, NH 03857
 - PARCEL IS NOT IN A SPECIAL FLOOD HAZARD AREA AS SHOWN ON FIRM PANEL 33015C0259F. EFFECTIVE JANUARY 29, 2021.
 - EXISTING LOT AREA: 62,776 S.F. 1.4411 ACRES
 - PARCEL IS LOCATED IN SINGLE RESIDENCE B (SRB) DISTRICT.
- DIMENSIONAL REQUIREMENTS:**
- | | |
|----------------------------|-------------|
| MIN. LOT AREA: | 15,000 S.F. |
| FRONTAGE: | 100 FEET |
| SETBACKS: FRONT | 30 FEET |
| SIDE | 10 FEET |
| REAR | 30 FEET |
| MAXIMUM STRUCTURE HEIGHT: | 35 FEET |
| MAXIMUM BUILDING COVERAGE: | 20% |
| MINIMUM OPEN SPACE: | 40% |
- THE PURPOSE OF THIS PLAN IS TO SHOW THE PROPOSED DEVELOPMENT ON ASSESSOR'S MAP 220 LOT 90 IN THE CITY OF PORTSMOUTH.
 - VERTICAL DATUM IS NAVD83. BASES OF VERTICAL DATUM IS RETAINMENT RTM GPS OBSERVATIONS.
 - BUILDINGS FROM PLANS BY GJ ARCHITECTS DATED 3-27-23.
 - PARKING CALCULATION:
 REQUIRED: 1.3 PER UNIT
 9 UNITS X 1.3 = 12 SPACES
 GUEST REQUIRED: 1 PER 5 UNITS = 2 SPACES
 TOTAL SPACES REQUIRED = 14
 PROVIDED PARKING: 20 SPACES

**RESIDENTIAL DEVELOPMENT
 CHINBURG DEVELOPMENT
 686 MAPLEWOOD AVE.
 PORTSMOUTH, N.H.**

NO.	DESCRIPTION	DATE
1	ISSUED FOR APPROVAL	4/20/23
0	ISSUED FOR COMMENT	4/13/23



SCALE: 1"=30' FEBRUARY 2023

VARIANCE SITE PLAN **C2**

Portsmouth ZBA Application
686 Maplewood Avenue
Proposed Site Development

SITE PHOTOGRAPHS

Site Photograph #1

February 2023



Site Photograph #2

February 2023



Site Photograph #3

February 2023



Site Photograph #4

February 2023



Site Photograph #5

February 2023



Site Photograph #6

February 2023



Site Photograph #7

February 2023



Site Photograph #8

February 2023



II. NEW BUSINESS

B. The request of **Karyn S. DeNicola Rev Trust, Karen DeNicola Trustee (Owner)**, for property located at **281 Cabot Street** whereas relief is needed for a variance from Section 10.521 to allow a) three (3) foot front yard where five (5) feet is required, b) three and a half (3.5) foot left side yard where ten (10) feet is required, and c) 36% building coverage where 35% is allowed . Said property is located on Assessor Map 144 Lot 20 and lies within the General Residence C (GRC) District. (LU-23-84)

Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single Family Dwelling	Raze and Reconstruct	Primarily residential
<u>Lot area (sq. ft.):</u>	3,864	3,864	3,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	3,864	3,864	3,500 min.
<u>Street Frontage (ft.):</u>	49.5	49.5	70 min.
<u>Lot depth (ft.)</u>	77.5	77.5	50 min.
<u>Front Yard (ft.):</u>	1.8	3	5 min.
<u>Left Yard (ft.):</u>	0	3.5	10 min.
<u>Right Yard (ft.):</u>	2	10	10 min.
<u>Rear Yard (ft.):</u>	5.3	20.7	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%)</u>	36	36	35 max.
<u>Open Space Coverage (%)</u>	>20	>20	20 min.
<u>Parking</u>	3	3	2
<u>Estimated Age of Structure:</u>	1870	Variance request(s) shown in red.	

Other Permits/Approvals Required

- Building Permit

- b) a 5' south side yard setback where 10' is required;
- c) a 3.5' north side yard setback where 10' is required; and
- d) a 43% building coverage where 35% is allowed.

Planning Department Comments

Fisher vs. Dover

The applicant was before the Board in June 2023 seeking relief to demolish the existing single-family dwelling and detached garage and to reconstruct a new dwelling with an attached garage in its place. The newly constructed dwelling was proposed within the front, left and right-side setbacks and with an increase in total building coverage from 36% to 43% where 35% is the maximum. The Board denied the request because the spirit and intent of the Ordinance was to prevent overcrowding and the request for 43 percent building coverage where 35 percent is permitted did not meet the criteria. Additionally, the applicant did not establish that there was an unnecessary hardship for the building coverage and all the requested setbacks.

The application before the Board proposes to demolish the existing single-family dwelling and detached garage and to reconstruct a new dwelling with an attached garage in its place. The new design reconfigures the structure on the lot and seeks relief for its location within the front and left side setback and with a total building coverage of 36% where 35% is the maximum. The Board may want to consider whether Fisher vs. Dover is applicable before this 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).

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.



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CHRISTOPHER D. HAWKINS
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WILLIAM K. WARREN
BRIANA L. MATUSZKO

HAND DELIVERED

July 26, 2023

Phyllis Eldridge, Chair
Zoning Board of Adjustment
City of Portsmouth
1 Junkins Avenue
Portsmouth, NH 03801

RE: 281 Cabot Street, Map 144, Lot 20
Karyn S. DeNicola Revocable Trust

Dear Chair Eldridge and Board Members:

Enclosed please find new application and materials for variance relief regarding the above referenced property. This new application has been prepared to respond to observations from the Board of Adjustment and incorporate the comments provided by the Board at their June 27, 2023 meeting in which a previous application was denied. As this application is a re-application the Applicant addresses the necessary Fisher v. Dover analysis in the narrative included herewith.

We respectfully request that this matter be placed on the Board's August 15, 2023 agenda. In the meantime, if you have any questions or require additional information do not hesitate to contact me.

Very truly yours,
DONAHUE, TUCKER & CIANDELLA, PLLC

Justin L. Pasay
JLP/sac
Enclosures
cc: Karyn DeNicola
John Chagnon
CJ Architects

DONAHUE, TUCKER & CIANDELLA, PLLC
16 Acadia Lane, P.O. Box 630, Exeter, NH 03833
111 Maplewood Avenue, Suite D, Portsmouth, NH 03801
Towle House, Unit 2, 164 NH Route 25, Meredith, NH 03253
83 Clinton Street, Concord, NH 03301

VARIANCE APPLICATION OF

Karyn S. DeNicola, Trustee of the Karyn S. DeNicola Revocable Trust (the “Applicant”) for property located at 281 Cabot Street, Portsmouth, NH 03801, which is further identified as City Assessor Map 144, Lot 20 (the “Property”). The Property is located within City’s General Residence C Zoning District (the “GRC District”).

A. Introduction and Factual Context

i. **Development Team and Application Materials**

The Applicant’s development team consists of John Chagnon, PE, LLS, of Ambit Engineering, Inc. (“Ambit”) and Carla Goodknight, AIA, NCARB of CJ Architects. Included herewith are the following enclosures:

- Aerial Photograph, Zoning Map and Assessor Map 144. See Enclosure 1.
- Tax Card. See Enclosure 2.
- DeNicola Residence, 281 Cabot Street, Portsmouth, N.H. plan set from Ambit, dated 24 May 2023 and revised on 24 July 2023, to include an Existing Conditions & Demolition Plan on C1 (the “**Existing Conditions Plan**”), a Variance Plan on C2 (the “**Variance Plan**”), and an Erosion Control and Notes & Details on D1. See Enclosure 3.
- DeNicola Residence renderings and elevations from CJ Architects Duplex dated 15 July 2023 to include Floor Plans & Elevations on sheet A1 and Existing & Proposed Views on sheet A2 (the “**Architectural Plans**”). See Enclosure 4.
- Existing Conditions Photographs. See Enclosure 5.
- Originally Proposed Floor Plans & Elevations. See Enclosure 6.
- Minutes of the Board of Adjustment Meeting June 27, 2023. See Enclosure 7.

ii. **Fisher v. Dover, 120 N.H. 187 (1980) Analysis**

As a foundational matter, the Applicant addresses the Fisher v. Dover doctrine which is rooted in the notion of administrative finality, and submits to the Board of Adjustment that it should consider this application because it is materially different than the application the Applicant formerly filed with Board of Adjustment in May of 2023. Further, the revised application addresses concerns expressed by the Board regarding the massing and building coverage of the proposed single-family dwelling, as well as the design for the same.

In May of 2023, the Applicant filed a variance application with the Board of Adjustment proposing to raze and remove the existing single-family dwelling and garage/shed on the Property and replace the same with a new single-family dwelling and attached garage. The new dwelling was proposed to have a garage, kitchen, dining area, living room and master bedroom on the first floor and three bedrooms and 1.5 bathrooms on the second floor. See Enclosure 6. Though the net result of the Applicant’s previous proposal would have been a property which was generally more dimensionally conforming with the Zoning Ordinance’s requirements than the existing conditions (front and side setbacks were proposed to be more conforming than the existing conditions), the previous proposal contemplated an increase of building coverage from 1,408 sf (existing) to 1,665 sf (proposed), an increase of 257 sf (approximately 7%). See Id.

At its 27 June 2023 public meeting, the Board denied the variances requested by the Applicant. In so doing, and as depicted in that meeting's minutes, several of the Board members expressed concerns regarding the additional building coverage proposed by the previous project and with the architectural inconsistencies of the proposal when contrast against the character of the other New Englanders on Cabot Street, to specifically include the lack of a front door on the front façade and steps to the sidewalk. See Enclosure 7.

In New Hampshire, unless a Board of Adjustment application presents a “material change of circumstances affecting the merits of the application ... or the application is 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.” See 15 Loughlin, New Hampshire Practice, Land Use Planning and Zoning, 4th Ed., § 21.20. The burden of proving a material change of circumstances is on the applicant. Id. Further, applicants who submit a new proposal in an effort to meet the municipality's concerns are generally not barred from doing so under Fisher v. Dover. See id. citing Bois v. Manchester, 113 N.H. 339 (1973) (subsequent petition was found to be sufficiently different; first petition was to change two-family dwelling into lodging house for 18 persons; subsequent application was to change two-family dwelling into residential use center for no more than 15 boys with a trained staff of three) and Morgenstern v. Town of Rye, 147 N.H. 558 (2002).

In this case, the Applicant's new proposal materially differs in nature and degree from the original proposal and constitutes a response to the observations and opinions of the Board of Adjustment at its 27 June 2023 hearing. More specifically, to address the concerns raised by the Board of Adjustment regarding massing, the Applicant's proposal no longer requires relief from the side yard setback (right) and the proposed building coverage has been reduced to 1,406 sf which is below the building coverage of the existing conditions which is 1,408 sf. The result is that instead of a proposal contemplating a roughly 7% increase of building coverage on the Property, the new proposal contemplates a 2 sf reduction of building coverage, though the same 36% ratio applies. Further, to address the observations raised by several Board members, the design of the proposed single-family dwelling now incorporates a front door with steps leading to the sidewalk on the front façade, which is in-keeping with other New Englander style single-family dwellings on the east side of Cabot Steet. See Enclosure 4.

Because the new proposal no longer requires side setback (right) relief and contemplates building coverage which is less than that of the existing conditions on the Property, and because the Applicant has otherwise addressed concerns raised by the Board regarding the design of the proposed single-family dwelling to make it more consistent with other single-family dwellings on the east side of Cabot Street, said proposal is materially different than the original proposal and the Board of Adjustment ought to consider the merits of same.

iii. Property Description, Existing Conditions, Character of Neighborhood and Applicable Zoning Regulations

The Property is situated within the GRC District, which was established to “provide for single-family, two-family and multifamily dwellings, with appropriate accessory uses, at moderate to high densities (ranging from approximately 5 to 12 dwelling units per acres),

together with appropriate accessory uses and limited services.” Zoning Ordinance, Section 10.410.

The Property is located at the southern side of Cabot Street closer to Islington Street than Cabot Street’s intersection with McDonough Street. See Enclosures 1, 3. At 3,864 sf in size (0.089 acres) the Property is smaller than the average lot size of the neighborhood, which the Applicant defines here as the properties on either side of Cabot Street between Islington Street and McDonough Street. More specifically, the Property is roughly equivalent in size to its neighbors on the eastern side of Cabot Street to the north to include 287 Cabot Street (0.07 acres), 295 Cabot Street (0.07 acres), 303 Cabot Street (0.07 acres) and 311 Cabot Street (0.05 acres), as well as the property on the western side of Cabot Street located at 312 Cabot Street (0.09 acres), but smaller than the abutting property to the south at 323 Islington Street (0.12 acres) and the remaining properties on the western side of Cabot Street south of McDonough Street to include 361 Islington Street (0.35 acres), 278 Cabot Street (0.14 acres), 286 Cabot Street (0.14 acres), 304 Cabot Street (assessing data is not clear but the property appears to be approximately 0.14 acres in size) and 312 Cabot Street.¹ See Enclosure 1. The average lot size in this area, as defined above, is 0.12 acres.

The land use composition of the existing neighborhood is largely residential and consistent with the purpose of the GRC District, as mentioned above. Most properties appear to have a single-family residential use per the City’s assessing data, though the Property at 304 Cabot Street appears to be a four-unit multi-family condominium, the property at 286 Cabot Street appears to be a three-family multi-family use, and the property at 278 Cabot Street is assessed as boarding house. To the south of the Property and situated along Islington Street are the properties identified as 323 Islington Street, which is an office building, and 361 Islington Street, which is the former Getty gas station. Both of these properties are located within the City’s CD4 Zoning District which was established to “promote the development of walkable, mixed-use, human-scaled places by providing standards for building form and placement and related elements of development.” Zoning Ordinance, Article 4, Section 10.410.

Importantly, the Property is unique because the northern section of the commercial property located to the south of the Property (323 Islington Street) is unimproved by any structures, as that area accommodates a driveway. The Property is also unique as to frontage. Specifically, though the Property only has 49.86 ft of frontage, it has more frontage than the other single-family dwellings in the neighborhood based on the data contained on the City’s GIS Map which depicts that 287 Cabot Street has approximately 37 ft of frontage, 295 Cabot Street has approximately 37 ft of frontage, 303 Cabot Street has approximately 38.7 ft of frontage, 311 Cabot Street has approximately 37 ft of frontage, and 312 Cabot Street, on the west side of the street, appears to have 39.5 ft of frontage.

The Property is currently improved with a 2 ½ story wood frame single family dwelling and detached one (1) story garage/shed. See Enclosures 1 – 5. Pursuant to the City’s assessing data, the existing dwelling has two (2) bedrooms, 1,301 sf of living area, and was constructed on or about 1870. See Enclosure 2. The improvements on the Property are in poor condition.

¹ With the exception of the Property at 281 Cabot Street which is the subject of this application, the lot size information was gleaned from the City’s online GIS map.

More specifically, the single-family dwelling, kitchen ell and detached garage/shed have been neglected. The dwelling has significant foundation issues, sagging floors, rotten windows and siding and what appears to be an under-framed and leaking roof. See Enclosure 5.

The Property is currently non-conforming with the GRC District’s dimensional requirements in the following ways:

- 1) **Frontage:** The Property has 49.86 ft of frontage where 70 ft of frontage is required in the GRC District.
- 2) **Side Yard Setback (right):** The existing garage/shed is located 2.1 ft from the southern (right side) boundary where the GRC District has a 10 ft side setback requirement.
- 3) **Side Yard Setback (left):** The existing single-family dwelling is located, at its closest, 0.2 ft from the northern (left side) boundary where the GRC District has a 10 ft side setback requirement.
- 4) **Rear Yard Setback:** The existing garage/shed is located 5.3 ft from the rear boundary where 20 ft is required in the GRC District.
- 5) **Front Yard Setback:** The front steps to the existing dwelling encroach over the Property line into the City’s sidewalk. Further, the existing single-family dwelling is located 1.8 ft from the front yard boundary where the GRC District has a 5 ft front yard setback.
- 6) **Existing Building Coverage:** The existing building coverage² is 36% where the maximum building coverage permitted in the GRC District is 35%.

The GRC District has the following dimensional requirements:

- Lot area: 3,500 sf
- Lot area per dwelling unit: 3,000 sf
- Continuance street frontage: 70 ft
- Depth: 50 ft
- Minimum front yard: 5 ft
- Minimum side yard: 10 ft
- Minimum rear yard: 20 ft
- Max Structure Height: 35 ft
- Max roof appurtenance: 8 ft
- Max Building Coverage: 35%
- Minimum open space: 20%

See Zoning Ordinance, Article 5, Section 10.520.

² “Building Coverage” is defined by Article 15 of the Zoning Ordinance as “[t]he aggregate horizontal area or percentage (depending on the context) of a lot or development site covered by buildings and structures on the lot, excluding gutters, cornices and eaves projecting not more than 30 inches from a vertical wall, and structures less than 18 inches above ground level (such as decks and patios); balconies, bay windows or awnings projecting not more than 2 feet from a vertical wall, not exceeding 4 feet in width, and cumulatively not exceeding 50% of the width of the building face; fences; and mechanical system (i.e., HVAC, power generator, etc.) that is less than 36 inches above the ground level with a mounting pad not exceeding 10 square feet). “Structure” is defined as [a]ny production or piece of work, artificially built up or composed of parts and joined together in some definite manner. Structures include, but are not limited to, buildings, fences over 4 feet in height, signs, and swimming pools.”

iv. Project Proposal

The Applicant proposes to raze and remove the existing single-family dwelling and garage/shed on the Property and replace the same with a new single-family dwelling and attached garage. See **Enclosures 3, 4**. As depicted in **Enclosure 4**, the new single-family dwelling will have a single car garage, kitchen, dining area, living room and den on the first floor with a bathroom. See **Enclosure 4**. The master bedroom and bathroom have been relocated to the second floor which will also accommodate two additional bedrooms and a bathroom. Id.

The net result of the Project will be a property which is more dimensionally conforming with the Zoning Ordinance’s dimensional requirements than the existing conditions, to include building coverage (1,408 sf existing, 1,406 sf proposed), and further, the total impervious surface area of the Property will decrease significantly by 9.5% (a reduction from 58.5% existing to 49.1% proposed). See **Enclosures 3, 4**. The Project will beautify the Property in a manner that is consistent with surrounding properties, particularly with regard to building massing, which will align with similar adjacent buildings along the street scape and which will be generally consistent with the existing buildings’ shape, size and fenestration, and the new proposal incorporates a front door with steps to the sidewalk like the other single family dwellings along Cable Street. See **Enclosure 4**.

More specifically, the below table outlines the existing non-conformities as contrasted against the proposed conditions in all relevant contexts. The green highlight depicts improved conformity with the Zoning Ordinance’s dimensional requirements.

<u>Dimensional Requirement Category</u>	<u>Requirement</u>	<u>Existing</u>	<u>Proposed</u>	<u>Net Result</u>
Front Yard Setback	5 ft	0.0 ft / 1.8 ft	3.1 ft	More conforming by 3.1 ft
*Side Yard Setback (Right)	10 ft	2.1 ft	10.0 ft	More conforming by 7.9 ft and totally conforming to Ordinance
Side Yard Setback (Left)	10 ft	0.2 ft	3.8 ft	#More conforming by 3.6 ft
*Rear Yard Setback	20 ft	5.3 ft	20.7 ft	More conforming by 15.4 ft and totally conforming with Ordinance

Building Coverage	35%	1,408 sf (36%)	1,406 sf (36%)	More conforming by 2 sf though still calculated as 36%. ³
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* Indicates dimensional condition which is totally conforming with the Zoning Ordinance.

With regard to the side yard setback (left), and as noted below, two different variances are requested to include a request to site the proposed dwelling 3.8 ft from the boundary line where 10 ft is required and where 0.2 ft exist, and a request to site the proposed mechanical systems for the proposed dwelling 7.2 ft from the boundary where 10 ft is required.

See Enclosure 3.

v. Requested Relief⁴

The Applicant requests the following variance relief to accommodate the Project:

- **Front Yard Setback Relief:** The Applicant requests variance relief from Article 5, Section 10.520 of the Zoning Ordinance to permit a front yard setback of 3.1 ft where 5 ft is required by the Zoning Ordinance, and where the existing conditions encroach beyond the front yard boundary.
- **Side Yard Setback (Left) Relief:** The Applicant requests variance relief from Article 5, Section 10.520 of the Zoning Ordinance to permit a side yard setback (left) of 3.8 ft where 10 ft is required by the Zoning Ordinance where the existing single-family dwelling is located 0.2 feet from the side yard (left) boundary.
- **Side Yard Setback (Left) for Mechanical Systems:** The Applicant requests variance relief from Article 5, Section 10.515.14 to permit mechanical systems 7.2 ft from the property line where 10 ft. is required.
- **Building Coverage:** The Applicant requests variance relief from Article 5, Section 10.520 to permit a lot with building coverage of 1,406 sf (36%) where 35% is the maximum allowed by the Zoning Ordinance and where the Property currently has 1,408 sf (36%) of building coverage.

vi. Statutory Variance Criteria

Pursuant to Article 2, Section 10.233 of the City’s Zoning Ordinance and RSA 674:33, to obtain a variance in Portsmouth, an applicant must show that: (1) the variance will not be contrary to the public interest; (2) the spirit of the ordinance is observed; (3) substantial justice is

³ Further, the total impervious surface lot coverage on the Property will decrease be 9.5%. See Enclosure 3.

⁴ The Applicant previously established with the City that no frontage relief is required under the terms of the Zoning Ordinance.

done; (4) the values of surrounding properties are not diminished; and (5) literal enforcement of the provisions of the ordinance would result in an unnecessary hardship, where said term means that, owing to special conditions of the property that distinguish it from other properties in the area: no fair and substantial relationship exists 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 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. See RSA 674:33, I (b).

Because the Applicant's Project will be consistent with the essential character of the surrounding area, will not compromise the public health in any way, will provide substantial justice, will not compromise the property values of surrounding properties, and because there is no rational connection between the intent of the underlying ordinance provisions and their application to the Property under the unique circumstances of this case, as outlined below, we respectfully request that the requested variance be granted.

B. Analysis

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

The New Hampshire Supreme Court has indicated that the requirement that a variance not be "contrary to the public interest" is coextensive and related to the requirement that a variance be consistent with the spirit of the ordinance. See Chester Rod & Gun Club v. Town of Chester, 152 N.H. 577, 580 (2005); Malachy Glen Associates, Inc. v. Town of Chichester, 155 N.H. 102, 105-06 (2007); and Farrar v. City of Keene, 158 N.H. 684, 691 (2009). A variance is contrary to the public interest only if it "unduly, and in a marked degree conflicts with the ordinance such that it violates the ordinance's basic zoning objectives." Chester Rod & Gun Club, 152 N.H. at 581; Farrar, 158 N.H. at 691. See also Harborside Associates, L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508, 514 (2011) ("[m]ere conflict with the terms of the ordinance is insufficient.") Moreover, these cases instruct boards of adjustment to make the determination as to whether a variance application "unduly" conflicts with the zoning objectives of the ordinance "to a marked degree" by analyzing whether granting the variance would "alter the essential character of the neighborhood" or "threaten the public health, safety or welfare" and to make that determination by examining, where possible, the language of the Zoning Ordinance. See supra.

As indicated above, the requested variances derive from Article 5, Section 10.520 (the Table of Dimensional Standards – Residential and Mixed Residential Districts), which pertains, in this case, to the intended aesthetic of the GRC District. Importantly, in this context, the dimensional components which are the basis for the variance requests constitute an improvement over existing conditions. See Enclosures 3, 4, 5. Specifically, there will no longer be any encroachment into the side yard (right) and rear yard setbacks, the side yard (left) setback encroachment will be improved by 3.6 ft, the front yard setback will be improved by 3.1 ft, and the building coverage will be reduced by 2 sf. Further, the impervious surface coverage of the lot will decrease by 9.5% with the new proposal. Id.

As noted above, the specific purpose of the GRC District is to “provide for single-family, two-family and multifamily dwellings, with appropriate accessory uses, at moderate to high densities (ranging from approximately 5 to 12 dwelling units per acres), together with appropriate accessory uses and limited services.” Zoning Ordinance, Article 4, Section 10.410. The general purpose of the Zoning Ordinance as a whole, is to “promote the health, safety and the general welfare of Portsmouth and its region in accordance with the City of Portsmouth Master Plan” via the regulation of, among other things, the intensity of land use and the preservation and enhancement of the visual environment. Zoning Ordinance, Article 1, Section 10.121. To summarize, the objectives of the GRC District and the dimensional and use restrictions inherent to same which are implicated by this application, are to facilitate residential development that is aesthetically consistent in the zoning district.

Here, as a foundational point, the Applicant’s proposal does not create any marked conflict with the underlying provisions of the Zoning Ordinance because, on the contrary, and due to the existing built environment of the Property and the surrounding properties, the Project is consistent with the existing neighborhood and ultimately advances the purpose of the ordinance to provide residential density which is aesthetically consistent with the underlying district.

More specifically, the Project proposes a new single-family dwelling and attached garage, which use is consistent with the purpose of the GRC District, and which will be more conforming with the Zoning Ordinance’s dimensional requirements in the GRC District in all respects than the existing conditions. See Enclosure 3. Further, the aesthetic, massing and fenestration of the new dwelling was specifically designed to be consistent with the surrounding neighborhood so to preserve the essence of the existing street view looking north on Cabot Street. See Enclosure 4. In this context, a front door with steps down to the sidewalk have been added to the design. Id. In this sense, the Project contemplates the tasteful redevelopment of the Property in a manner consistent with its surrounds. For these reasons, there is no “marked conflict” between the Project proposal, and the objectives of the Zoning Ordinances in question.

With more specific regard to the building coverage issue, the Applicant’s team analyzed the City’s assessing data to establish approximate building coverage calculations for the eight (8) other properties in the GRC District between Islington Street and McDonough Street, as well as 28 Rockingham Street which is directly behind the Property, which have been calculated as follows:

Cabot Street Lot Coverages:								
7/26/2023								
Address:	Lot Dimensions:	Lot GSF:	Acres:	Footprint from Tax Card (GSF):	Add for 12" overhang			Notes:
278 Cabot Street	50' x 120'	6,000	0.14	1,509	168	1,677	28.0%	
286 Cabot Street	50' x 121.8'/126'	6,063	0.14	1,691	184	1,875	30.9%	
287 Cabot Street	37' x 77'	2,849	0.07	920	128	1,048	36.8%	Same side of Street as 281 Cabot
295 Cabot Street	37' x 77'	2,849	0.07	932	144	1,076	37.8%	Same side of Street as 281 Cabot
303 Cabot Street	38.7'/26.5' x 77'/76.6'	2,956	0.07	704	116	820	27.7%	Same side of Street as 281 Cabot
304 Cabot Street	57'/60.85' x 101'/102'	5,761		2,912	216	3,128	54.3%	Condominium
311 Cabot Street	37'/39' x 57'	2,195	0.05	534	112	646	29.4%	Same side of Street as 281 Cabot
312 Cabot Street	38'/39.5' x 100'	3,897	0.09	808	118	926	23.8%	
28 Rockaway Street	50' x 77.5'/78.9'	3,875	0.09	1,358	Incl	1,358	35.0%	
*Data Collected from Portsmouth GIS and Tax Cards								

Based on this data, the average building coverage on the lots in this area is 33.7%. Importantly, however, the three lots closest to the Property, those being 287 Cabot Street (immediately adjacent to the north), and 295 Cabot Street (immediately adjacent to 287 Cabot Street to the north) have higher estimated building coverage than both the existing and proposed conditions on the Property, and 28 Rockingham Street, which includes a house design which is not consistent with the aesthetic along Cabot Street, has an estimated 35% building coverage. Foundationally, the Applicant’s proposal constitutes a 2 sf reduction of the building coverage on the lot and will ultimately yield a property which is consistent with the history of the neighborhood and with those properties which are closest to it, particularly when you consider that the Property is smaller than the average property in the area but has more frontage than other single family properties.

For the same reasons discussed above, the Project also plainly satisfies the case law requirements because the essential character of the neighborhood will not be affected for the reasons explained throughout this narrative. The dimensional relief requested from Article 5, Section 10.520 will not alter the essential character of the neighborhood because the Property will be more conforming as to front yard setback, side yard (north and south) setback, rear setback, and building coverage, even though the building coverage ratio will remain the same. See Enclosures 3 and 4. Further, the Property will have 9.5% less impervious surface coverage than what exists today. Id.

Ultimately, the Applicant’s Project will be consistent with the intent of the GRC District and the general purposes of the Zoning Ordinance, and because the Project will not alter the essential character of the neighborhood or threaten the public health or safety, it would be reasonable and appropriate for the Board of Adjustment to conclude that granting the Applicant’s variance requests will satisfy the public interest prong of the variance criteria.

2. The spirit of the Ordinance is observed.

As referenced above, the requested variances observe the spirit of the Zoning Ordinance and New Hampshire jurisprudence regarding the “public interest” prong of the variance criteria because the Applicant’s Project will be consistent with the general and implied purposes of the

Zoning Ordinance provisions at issue in this case. Further, the Project will not compromise the character of the neighborhood or threaten the public health, safety, or welfare. As the New Hampshire Supreme Court has indicated in both Chester Rod & Gun Club and in Malachy Glen, the requirement that the variance not be “contrary to the public interest” is coextensive and is related to the requirement that the variance be consistent with the spirit of the ordinance. See Chester Rod & Gun Club, 152 N.H. at 580. A variance is contrary to the spirit of the ordinance only if it “unduly, and in a marked degree conflicts with the ordinance such that it violates the ordinance’s basic zoning objectives.” Chester Rod & Gun Club, 152 N.H. at 581; Farrar, 158 N.H. at 691. As discussed above, the requested variances are consistent with the general spirit of the Ordinances in question. As a result, for the reasons stated above, the Applicant respectfully asserts that it would be reasonable and appropriate for the Board of Adjustment to conclude that the requested variance will observe the spirit of the Zoning Ordinance.

3. Substantial justice is done.

As noted in Malachy Glen, *supra*, “perhaps the only guiding rule [on this factor] is that any loss to the individual that is not outweighed by a gain to the general public is an injustice.” Malachy Glen, *supra*, citing 15 P. Loughlin, New Hampshire Practice, Land Use Planning and Zoning § 24.11, at 308 (2000) (quoting New Hampshire Office of State Planning, The Board of Adjustment in New Hampshire, A Handbook for Local Officials (1997)). In short, there must be some gain to the general public from denying the variance that outweighs the loss to the applicant from its denial.

In this case, the public does not gain anything by denying the requested variances. In its current improved conditions, the Property is in significant need for redevelopment and at bottom, this proposal artfully and beautifully proposes to accomplish same. The Project will accomplish this redevelopment in an aesthetic which is consistent with the existing structure on the Property and which compliments the charm of the neighborhood and of the greater Portsmouth area to specifically include the new addition of a front door on the front façade with corresponding steps to the sidewalk. In this sense, the public benefits from the Project because it will conservatively advance essential character of the area, make a lot which is more conforming with the dimensional requirements of the Zoning Ordinance than what exists today, and will generate additional tax revenue.

On the contrary, if the variances are denied, it will be difficult to redevelop the Property and the public will not benefit from anticipated increases in tax revenue. Further, the Applicant will not be able to reasonably use Property for a use which is totally consistent with the existing use, the surrounding area, and purposes of the GRC District.

Certainly, the Applicant will benefit from the variances, if granted, as they will facilitate the reasonable use of the Property in furtherance of the Applicant’s goals.

As the requested variances benefit the Applicant and do not detriment the public, there is no gain to the general public from denying the request that outweighs the loss to the Applicant from its denial, and this prong of the variance criteria is satisfied.

4. The proposal will not diminish surrounding property values.

Given the nature of the existing and proposed conditions of the Property and the surrounding area, as discussed above and depicted in the enclosures, the Applicant's proposal will not diminish surrounding property values. The proposed residential redevelopment will be substantially consistent with the existing structures on the Property and the surrounding area to specifically include the addition of a front door with steps to the sidewalk. See Enclosure 4. The Applicant's Project will obviously enhance the value of the Property, thereby likely enhancing the value of surrounding properties in turn, all while totally resolving existing nonconformities as to side yard setback (right) and rear yard setback, and while making more conforming the front yard setback, side yard setback (left) and building coverage. Further, the Project will reduce the impervious surface area on the lot by 9.5%. See Enclosure 3. The lot's open space will remain compliant. Certainly, there is no evidence in the record that could reasonably support the conclusion that the proposed Project will diminish surrounding property values. As the weight of the evidence supports the conclusion that the Project will not diminish the value of surrounding properties, it would be reasonable for the Board of Adjustment to conclude that this prong of the variance criteria is satisfied.

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

a. Legal Standard

As set forth in the provisions of RSA 674:33, I, there are two options by which the Board of Adjustment can find that an unnecessary hardship exists:

- (A) For purposes of this subparagraph, "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area:
 - (i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and
 - (ii) The Proposed use is a reasonable one.

(the "First Hardship Test")

or,

- (B) If the criteria in subparagraph (A) are not established, 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 "Section Hardship Test").

The Applicant respectfully reminds the Board of Adjustment that the mere fact that the Applicant is seeking a variance from the express provisions of the Zoning Ordinance is not a valid reason for denying the variance. See Malachy Glen Associates, Inc. v. Town of Chichester,

155 N.H. 102, 107 (2007); see also Harborside Associates, 162 N.H. at 2011 (“mere conflict with the terms of the ordinance is insufficient”).

b. Summary of Applicable Legal Standard

The first prong of the First Hardship Test requires the Board to determine whether there are special conditions on the underlying property which is the subject of a variance request. This requirement finds its origins in the Standard State Zoning Enabling Act of the 1920s “since it is the existence of those ‘special conditions’ which causes the application of the zoning ordinance to apply unfairly to a particular property, requiring that variance relief be available to prevent a taking.”⁵ The Supreme Court has determined that the physical improvements on a property can constitute the “special conditions” which are the subject of the first prong of the First Hardship Test. Harborside, 162 N.H. at 518 (the size and scale of the buildings on the lot could be considered special conditions); *Cf* Farrar, 158, N.H. 689 (where variance sought to convert large, historical single use residence to mixed use of two residence and office space, size of residence was relevant to determining whether property was unique in its environment).

The second prong of the First Hardship Test analysis, pertaining to the relationship between the public purpose of the ordinance provision in question, and its application to the specific property in question, is the codified vestige of a New Hampshire Supreme Court case called Simplex Technologies, Inc. v. Town of Newington (“Simplex”).⁶ To summarize, the Board’s obligation in this portion of its hardship analysis is to determine the purpose of the regulation from which relief is being sought and if there is no specific purpose identified in the regulation, then to consider the general-purpose statements of the ordinance as a whole, so that the Board may determine whether the purpose of said ordinance is advanced by applying it to the property in question.

The final prong of the First Hardship Test analysis is whether the proposed use is “reasonable.”

The Applicant respectfully reminds the Board of Adjustment of the New Hampshire Supreme Court’s substantive pivot in Simplex. The Simplex case constituted a “sharp change in the New Hampshire Supreme Court’s treatment of the unnecessary hardship requirement.” The Simplex Court noted that under the unnecessary hardship standard, as it had been developed by the Court up until that time, variances were very difficult to obtain unless the evidence established that the property owner could not use his or her property in any reasonable manner.”⁷ This standard is no longer the required standard in New Hampshire. The Applicant does not have an obligation to affirmatively prove that the underlying Property cannot be reasonably used without the requested variance modification. Rather, the critical question under the First Hardship Test is whether the purpose of the Zoning Ordinance is fairly and substantially advanced by applying it to the Applicant’s Property considering the Property’s unique setting and environment. This approach is consistent with the Supreme Court’s pivot away from the

⁵ 15 Loughlin, New Hampshire Practice, Land Use Planning and Zoning, §24.20 (4th Ed.) citing The Standard State Zoning Enabling Act.

⁶ 145 N.H. 727 (2001).

⁷ 15 Loughlin, 24.16.

overly restrictive pre-Simplex hardship analysis “to be more considerate of the constitutional right to enjoy property”.⁸

The Second Hardship Test, which we will not focus on in this narrative, is satisfied by establishing that 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.

c. Analysis

The first prong of the First Hardship Test requires the Board to determine whether there are special conditions on the underlying Property which distinguish it from others in the area. Here, as discussed at length in Section A above, which is incorporated herewith by reference, the Property does have special conditions that distinguish it from others in the area to specifically include its smaller than average size when contrasted against the other properties along Cabot Street, its location adjacent to the CD4 District, the Property’s larger than average frontage when contrast against other single-family properties in the neighborhood, the Property’s ability to accommodate the proposed redevelopment in a way that is more conforming dimensionally than the existing conditions and that resolves the existing side yard setback (right) and rear yard setback nonconformities, and the Property’s location proximate to 323 Islington Street, the rear of which is unimproved but for a driveway. Through these unique characteristics, the Property is uniquely situated to accommodate the proposed Project which will constitute the highest and best use for this parcel.

As there are special conditions of the Property, the first prong of the First Hardship Test is satisfied.

The second prong of the First Hardship Test pertains to the relationship between the public purpose of the ordinance provisions in question, and their application to the specific property in question. To summarize, the Board of Adjustment must determine whether the purpose of the underlying ordinances are advanced by applying them to the property in question.

Here, as discussed above, the requested variances derive from Article 5’s Table of Dimensional Standards – Residential and Mixed Residential Districts, and they pertain to the intended aesthetic of the GRC District, which was designed to “provide for single-family, two-family and multifamily dwellings, with appropriate accessory uses, at moderate to high densities (ranging from approximately 5 to 12 dwelling units per acres), together with appropriate accessory uses and limited services.” Zoning Ordinance, Section 10.410. Further, the general purpose of the Zoning Ordinance is to “promote the health, safety and the general welfare of Portsmouth and its region in accordance with the City of Portsmouth Master Plan” via the regulation of, among other things, the intensity of land use and the preservation and enhancement of the visual environment. Zoning Ordinance, Article 1, Section 10.121. To summarize, the objective of the GRC District and the dimensional restrictions inherent to same which are implicated by this application, are to facilitate residential development in an aesthetically consistent manner within the district.

⁸ Id. citing Simplex, 145 N.H. at 731.

In this case, denying the variance will not advance the purposes of these ordinances because the opposite is true: granting the requested variances will facilitate the redevelopment of the Property in a way that is more conforming as to Article 5's dimensional requirements than the existing conditions. Further, impervious surface area on the lot will be reduced by 9.5%. Further, because of the Property's unique frontage and proximity to unimproved areas of 323 Islington Street, the building coverage proposal, which will constitute a 2 sf reduction from existing conditions, but which will nevertheless exceed the 35% maximum building coverage requirement, is reasonable, particularly when you consider the improvements to the site vis-à-vis front, side and rear yard setbacks.

The Applicant's proposal would advance the general and implied purposes of the Zoning Ordinances in question for all the reasons detailed in this narrative and denying the requested variance would only serve to frustrate the same. As such, the second prong of the hardship criteria is satisfied in this case.

The final analysis under the First Hardship Test is to determine whether the proposed use is reasonable. Here, the proposed Project is reasonable because it constitutes the redevelopment of a single-family use to accommodate an improved single-family use in a manner consistent with the essential character of the neighborhood. As such, the Applicant's proposal is reasonable.

On these facts, the Applicant respectfully submits that its variance requests satisfy the final prong of the statutory variance criteria.

C. Conclusion

The Applicant respectfully submits that they have satisfied the statutory variance criteria in this matter and its Application should be approved.

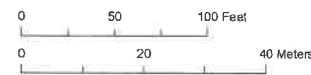
Enclosure 1



Imagery ©2023 Maine GeoLibrary, Maxar Technologies, U.S. Geological Survey, Map data ©2023 50 ft



- Partial Legend**
 See the cover sheet for the complete legend.
- 7-5A Lot or lot-unit number
 - 2.56 ac Parcel area in acres (ac) or square feet (sf)
 - 23 Address number
 - 233-137 Parcel number from a neighboring map
 - 60' Parcel line dimension
- SIMS AVE**
 Street name
- Parcel boundary
 - Parcel ROW boundary
 - Water boundary
 - Structure (1994 data)
 - Parcel covered by this map
 - Parcel from a neighboring map (see other map for current status)



This map is for assessment purposes only. It is not intended for legal description or conveyance. Parcels are mapped as of April 1. Building footprints are 2006 data and may not represent current structures. Streets appearing on this map may be paper (unbuilt) streets. Lot numbers take precedence over address numbers. Address numbers shown on this map may not represent posted or legal addresses.



Portsmouth, New Hampshire
 2022
Tax Map 144

281 CABOT ST

Location 281 CABOT ST

Mblu 0144/ 0020/ 0000/ /

Acct# 34347

Owner DENICOLA KARYN S REV TRUST

PBN

Assessment \$397,700

Appraisal \$397,700

PID 34347

Building Count 1

Current Value

Appraisal			
Valuation Year	Improvements	Land	Total
2022	\$126,200	\$271,500	\$397,700
Assessment			
Valuation Year	Improvements	Land	Total
2022	\$126,200	\$271,500	\$397,700

Owner of Record

Owner DENICOLA KARYN S REV TRUST
Co-Owner DENICOLA KARYN S TRUSTEE
Address 198 ISLINGTON ST UNIT 4
 PORTSMOUTH, NH 03801

Sale Price \$480,000
Certificate
Book & Page 6461/1119
Sale Date 01/04/2023
Instrument

Ownership History

Ownership History					
Owner	Sale Price	Certificate	Book & Page	Instrument	Sale Date
DENICOLA KARYN S REV TRUST	\$480,000		6461/1119		01/04/2023
GEIGER JOSEPH M JR	\$0		PROBATE/		09/26/2002
SOPHIE J GEIGER	\$0		1844/0046		11/18/1966
GEIGER JOSEPH M JR	\$0		1729/0270		08/14/1964

Building Information

Building 1 : Section 1

Year Built: 1870
Living Area: 1,301
Replacement Cost: \$231,154
Building Percent Good: 54
Replacement Cost Less Depreciation: \$124,800

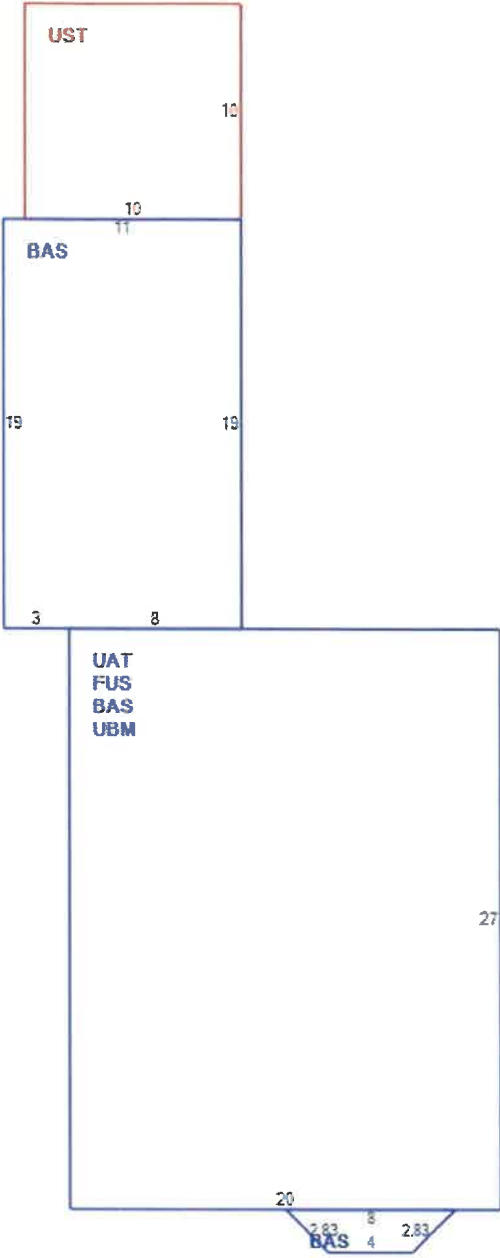
Building Attributes	
Field	Description
Style:	Conventional
Model	Residential
Grade:	C+
Stories:	2
Occupancy	1
Exterior Wall 1	Asbest Shingle
Exterior Wall 2	
Roof Structure:	Gable/Hip
Roof Cover	Asph/F Gls/Cmp
Interior Wall 1	Plastered
Interior Wall 2	
Interior Flr 1	Pine/Soft Wood
Interior Flr 2	Carpet
Heat Fuel	Oil
Heat Type:	Hot Water
AC Type:	None
Total Bedrooms:	2 Bedrooms
Total Bthrms:	2
Total Half Baths:	0
Total Xtra Fixtrs:	0
Total Rooms:	6
Bath Style:	Avg Quality
Kitchen Style:	Avg Quality
Kitchen Gr	
WB Fireplaces	0
Extra Openings	0
Metal Fireplaces	0
Extra Openings 2	0
Bsmt Garage	

Building Photo



(<https://images.vgsi.com/photos2/PortsmouthNHPhotos/00\01196\35.jpg>)

Building Layout



(ParcelSketch.ashx?pid=34347&bid=34347)

Building Sub-Areas (sq ft)			Legend
Code	Description	Gross Area	Living Area
BAS	First Floor	761	761
FUS	Upper Story, Finished	540	540
UAT	Attic	540	0
UBM	Basement, Unfinished	540	0
UST	Utility, Storage, Unfinished	100	0
		2,481	1,301

Extra Features

Extra Features	<u>Legend</u>
No Data for Extra Features	

Land

Land Use

Use Code 1010
Description SINGLE FAM MDL-01
Zone GRC
Neighborhood 105
Alt Land Appr No
Category

Land Line Valuation

Size (Acres) 0.09
Frontage
Depth
Assessed Value \$271,500
Appraised Value \$271,500

Outbuildings

Outbuildings						<u>Legend</u>
Code	Description	Sub Code	Sub Description	Size	Value	Bldg #
FGR3	GARAGE-POOR			288.00 S.F.	\$1,400	1

Valuation History

Appraisal			
Valuation Year	Improvements	Land	Total
2021	\$126,200	\$271,500	\$397,700
2020	\$126,200	\$271,500	\$397,700
2019	\$126,200	\$271,500	\$397,700

Assessment			
Valuation Year	Improvements	Land	Total
2021	\$126,200	\$271,500	\$397,700
2020	\$126,200	\$271,500	\$397,700
2019	\$126,200	\$271,500	\$397,700

PROPOSED SITE PLAN

RESIDENTIAL STRUCTURE REPLACEMENT

281 CABOT STREET

PORTSMOUTH, NEW HAMPSHIRE

PERMIT PLANS

REQUIRED PERMITS:
PORTSMOUTH BOA: PENDING

Enclosure 3

OWNER & APPLICANT:

KARYN DENICOLA TRUST
198 ISLINGTON STREET, APARTMENT #4
PORTSMOUTH, NH 03801
Tel. (856) 630-9911

CIVIL ENGINEER & LAND SURVEYOR:

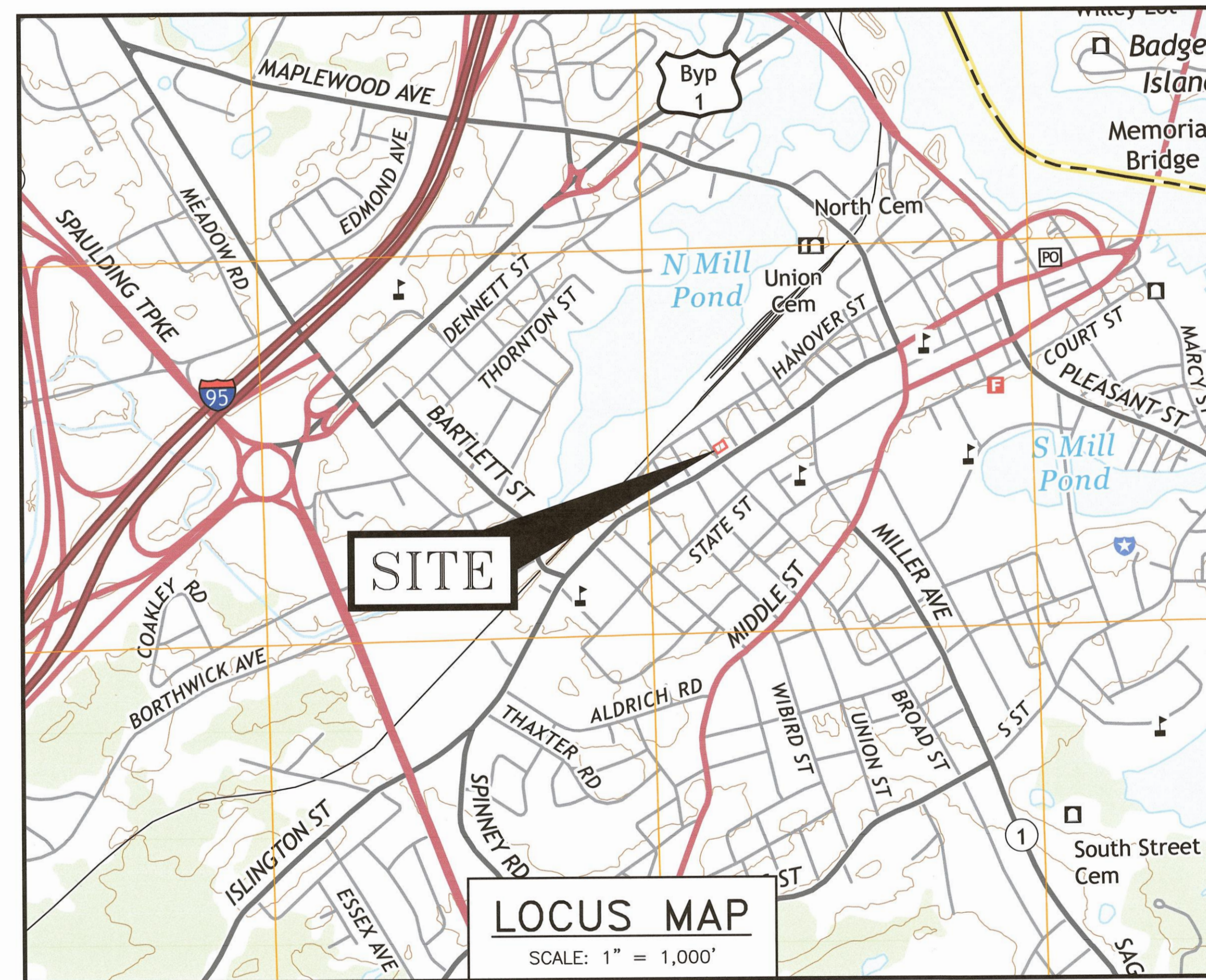
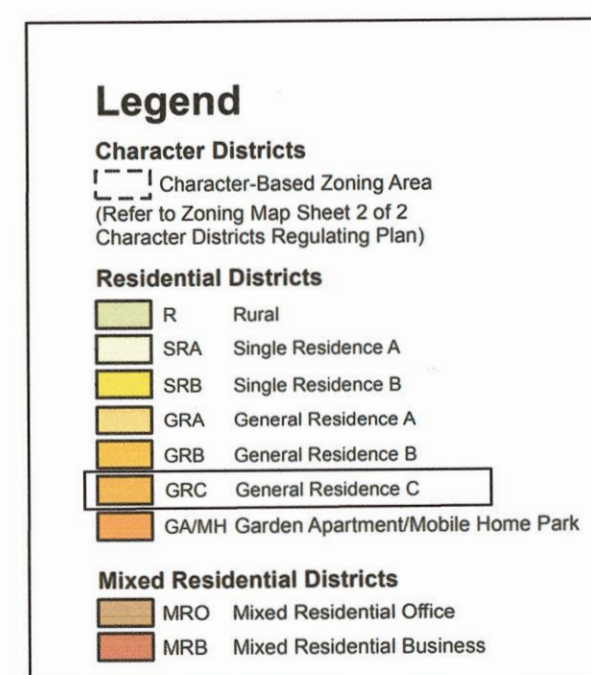
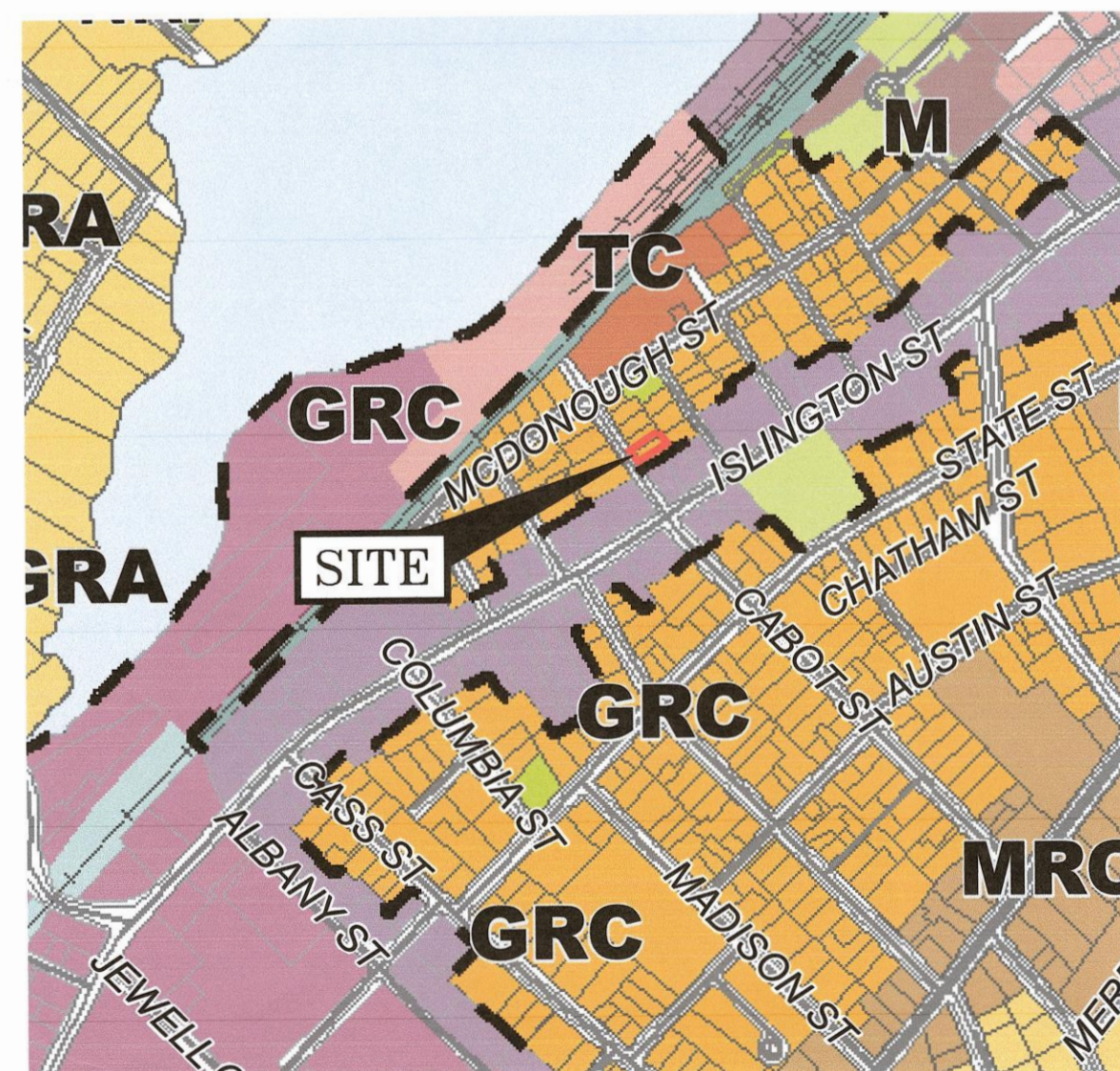
AMBIT ENGINEERING, INC.
A DIVISION OF HALEY WARD, INC.
200 GRIFFIN ROAD, UNIT 3
PORTSMOUTH, N.H. 03801
Tel. (603) 430-9282
Fax (603) 436-2315

ARCHITECT:

CJ ARCHITECTS
233 VAUGHAN STREET, SUITE 101
PORTSMOUTH, NH, 03801
Tel. (603) 431-2808

LEGAL REPRESENTATION:

DONAHUE, TUCKER & CIANELLA, PLLC
111 MAPLEWOOD AVE., SUITE D
PORTSMOUTH, NH, 03801
Tel. (603) 766-1686



LEGEND:

EXISTING	PROPOSED	
---	---	PROPERTY LINE
---	---	SETBACK
S	S	SEWER PIPE
SL	SL	SEWER LATERAL
G	G	GAS LINE
D	D	STORM DRAIN
W	W	WATER LINE
WS	WS	WATER SERVICE
UGE	UGE	UNDERGROUND ELECTRIC
OHW	OHW	OVERHEAD ELECTRIC/WIRES
---	---	FOUNDATION DRAIN
---	---	EDGE OF PAVEMENT (EP)
100	100	CONTOUR
97x3	98x0	SPOT ELEVATION
○	○	UTILITY POLE
☀	☀	WALL MOUNTED EXTERIOR LIGHTS
☀	☀	TRANSFORMER ON CONCRETE PAD
☀	☀	ELECTRIC HANDHOLD
☀	☀	SHUT OFFS (WATER/GAS)
☀	☀	GATE VALVE
☀	☀	HYDRANT
☀	☀	CATCH BASIN
☀	☀	SEWER MANHOLE
☀	☀	DRAIN MANHOLE
☀	☀	TELEPHONE MANHOLE
☀	☀	PARKING SPACE COUNT
☀	☀	PARKING METER
☀	☀	LANDSCAPED AREA
TBD	TBD	TO BE DETERMINED
CI	CI	CAST IRON PIPE
COP	COP	COPPER PIPE
DI	DI	DUCTILE IRON PIPE
PVC	PVC	POLYVINYL CHLORIDE PIPE
RCP	RCP	REINFORCED CONCRETE PIPE
AC	AC	ASBESTOS CEMENT PIPE
VC	VC	VITRIFIED CLAY PIPE
EP	EP	EDGE OF PAVEMENT
EL	EL	ELEVATION
FF	FF	FINISHED FLOOR
INV	INV	INVERT
S =	S =	SLOPE FT/FT
TBM	TBM	TEMPORARY BENCH MARK
TYP	TYP	TYPICAL



INDEX OF SHEETS

DWG. No.	Description
C1	EXISTING CONDITIONS & DEMOLITION PLAN
C2	VARIANCE PLAN

UTILITY CONTACTS

ELECTRIC:
EVERSOURCE
1700 LAFAYETTE ROAD
PORTSMOUTH, N.H. 03801
Tel. (603) 436-7708, Ext. 555.5678
ATTN: MICHAEL BUSBY, P.E. (MANAGER)

NATURAL GAS:
UNITIL
325 WEST ROAD
PORTSMOUTH, N.H. 03801
Tel. (603) 294-5144
ATTN: DAVE BEAULIEU

CABLE:
COMCAST
155 COMMERCE WAY
PORTSMOUTH, N.H. 03801
Tel. (603) 679-5695 (X1037)
ATTN: MIKE COLLINS

SEWER & WATER:
PORTSMOUTH DEPARTMENT OF PUBLIC WORKS
680 PEVERLY HILL ROAD
PORTSMOUTH, N.H. 03801
Tel. (603) 766-1438 ATTN: JIM TOW

COMMUNICATIONS:
FAIRPOINT COMMUNICATIONS
JOE CONSIDINE
1575 GREENLAND ROAD
GREENLAND, N.H. 03840
Tel. (603) 427-5525

PROPOSED SITE PLAN
RESIDENTIAL STRUCTURE REPLACEMENT
281 CABOT STREET
PORTSMOUTH, N.H.



WWW.HALEYWARD.COM

REV 8-3-23

PLAN SET SUBMITTAL DATE: 24 JULY 2023

200 Griffin Road, Unit 3
Portsmouth, NH 03801
603.430.9282

APPROVED BY THE PORTSMOUTH ZONING BOARD

CHAIRMAN _____ DATE _____



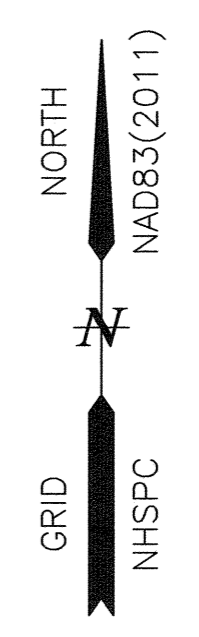
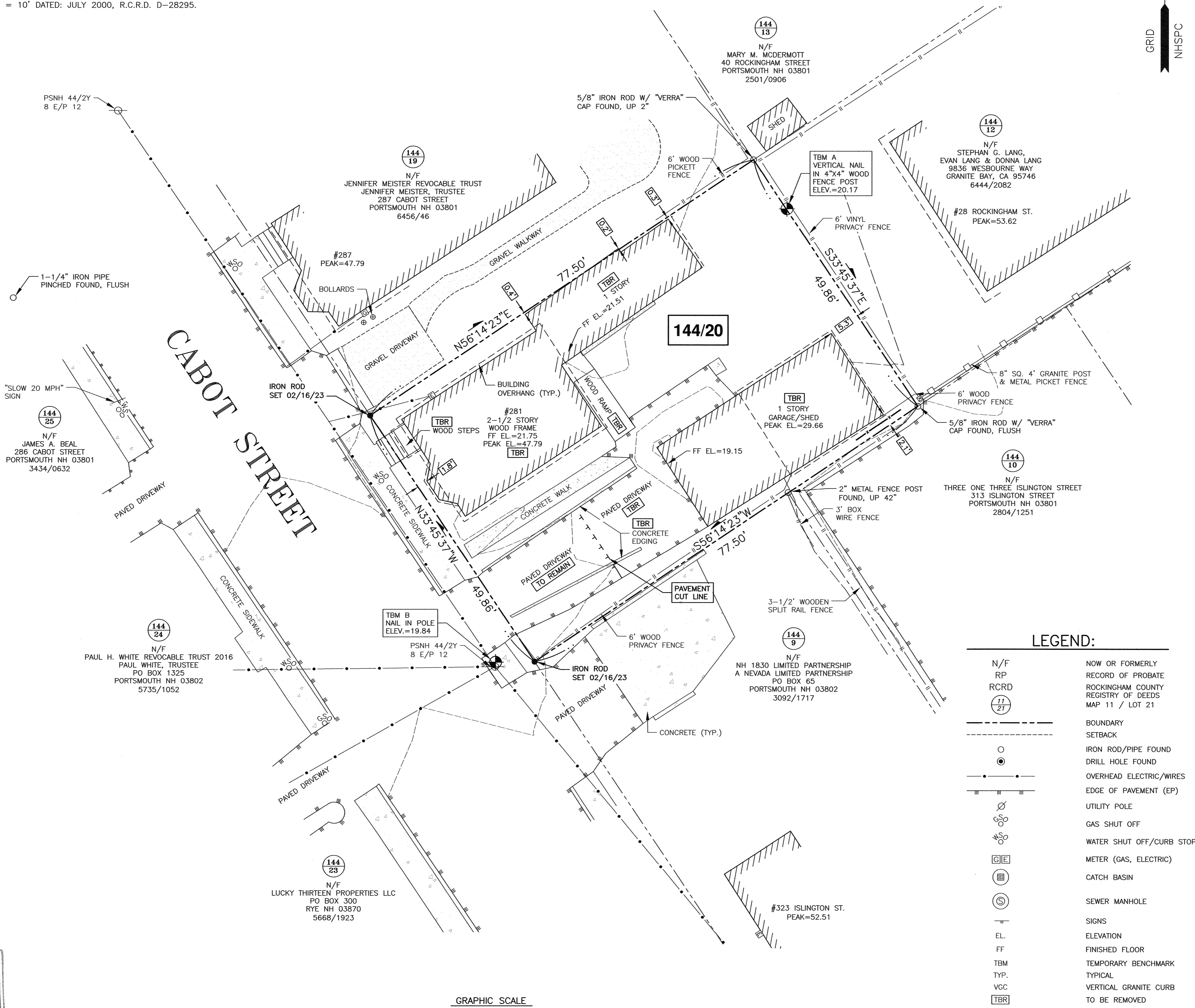
LOCATION MAP SCALE: 1"=200'

DEMOLITION NOTES

- A) THE LOCATIONS OF UNDERGROUND UTILITIES ARE APPROXIMATE AND THE LOCATIONS ARE NOT GUARANTEED BY THE OWNER OR THE DESIGNER. IT IS THE CONTRACTORS' RESPONSIBILITY TO LOCATE UTILITIES AND ANTICIPATE CONFLICTS. CONTRACTOR SHALL REPAIR EXISTING UTILITIES DAMAGED BY THEIR WORK AND RELOCATE EXISTING UTILITIES THAT ARE REQUIRED TO BE RELOCATED PRIOR TO COMMENCING ANY WORK IN THE IMPACTED AREA OF THE PROJECT.
- B) ALL MATERIALS SCHEDULED TO BE REMOVED SHALL BECOME THE PROPERTY OF THE CONTRACTORS UNLESS OTHERWISE SPECIFIED. THE CONTRACTOR SHALL DISPOSE OF ALL MATERIALS OFF-SITE IN ACCORDANCE WITH ALL FEDERAL, STATE, AND LOCAL REGULATIONS, ORDINANCES AND CODES. THE CONTRACTOR SHALL COORDINATE REMOVAL, RELOCATION, DISPOSAL, OR SALVAGE OF UTILITIES WITH THE OWNER AND APPROPRIATE UTILITY COMPANY.
- C) ANY EXISTING WORK OR PROPERTY DAMAGED OR DISRUPTED BY CONSTRUCTION/ DEMOLITION ACTIVITIES SHALL BE REPLACED OR REPAIRED TO THE ORIGINAL EXISTING CONDITIONS BY THE CONTRACTOR AT NO ADDITIONAL COST TO THE OWNER.
- D) THE CONTRACTOR SHALL VERIFY LOCATION OF ALL EXISTING UTILITIES AND CALL DIG SAFE AT LEAST 72 HOURS PRIOR TO THE COMMENCEMENT OF ANY DEMOLITION/CONSTRUCTION ACTIVITIES.
- E) SAWCUT AND REMOVE PAVEMENT ONE FOOT OFF PROPOSED EDGE OF PAVEMENT TRENCH IN AREAS WHERE PAVEMENT IS TO BE REMOVED.
- F) IT IS THE CONTRACTOR'S RESPONSIBILITY TO FAMILIARIZE THEMSELVES WITH THE CONDITIONS OF ALL THE PERMIT APPROVALS.
- G) THE CONTRACTOR SHALL OBTAIN AND PAY FOR ADDITIONAL CONSTRUCTION PERMITS, NOTICES AND FEES NECESSARY TO COMPLETE THE WORK AND ARRANGE FOR AND PAY FOR ANY INSPECTIONS AND APPROVALS FROM THE AUTHORITIES HAVING JURISDICTION. THE CONTRACTOR SHALL BE RESPONSIBLE FOR ANY ADDITIONAL AND OFF-SITE DISPOSAL OF MATERIALS REQUIRED TO COMPLETE THE WORK.
- H) THE CONTRACTOR SHALL REMOVE AND DISPOSE OF ALL EXISTING STRUCTURES, CONCRETE, UTILITIES, VEGETATION, PAVEMENT, AND CONTAMINATED SOIL WITHIN THE WORK LIMITS SHOWN UNLESS SPECIFICALLY IDENTIFIED TO REMAIN. ANY EXISTING DOMESTIC / IRRIGATION SERVICE WELLS IN THE PROJECT AREA IDENTIFIED DURING THE CONSTRUCTION AND NOT CALLED OUT ON THE PLANS SHALL BE BROUGHT TO THE ATTENTION OF THE OWNER AND ENGINEER FOR POTENTIAL CAPPING / RE-USE.
- I) ALL WORK WITHIN THE CITY OF PORTSMOUTH RIGHT OF WAY SHALL BE COORDINATED WITH THE CITY OF PORTSMOUTH DEPARTMENT OF PUBLIC WORKS (DPW).
- J) REMOVE TREES AND BRUSH AS REQUIRED FOR COMPLETION OF WORK. CONTRACTOR SHALL GRUB AND REMOVE ALL SLUMPS WITHIN LIMITS OF WORK AND DISPOSE OF OFF-SITE IN ACCORDANCE WITH FEDERAL, STATE, AND LOCAL LAWS AND REGULATIONS.
- K) CONTRACTOR SHALL PROTECT ALL PROPERTY MONUMENTATION THROUGHOUT DEMOLITION AND CONSTRUCTION OPERATIONS. SHOULD ANY MONUMENTATION BE DISTURBED, THE CONTRACTOR SHALL EMPLOY A NH LICENSED LAND SURVEYOR TO REPLACE THEM.
- L) THE CONTRACTOR SHALL PAY ALL COSTS NECESSARY FOR TEMPORARY PARTITIONING, BARRICADING, FENCING, SECURITY AND SAFETY DEVICES REQUIRED FOR THE MAINTENANCE OF A CLEAN AND SAFE CONSTRUCTION SITE.
- M) ANY CONTAMINATED MATERIAL REMOVED DURING THE COURSE OF THE WORK WILL REQUIRE HANDLING IN ACCORDANCE WITH NHDES REGULATIONS. CONTRACTOR SHALL HAVE A HEALTH AND SAFETY PLAN IN PLACE, AND COMPLY WITH ALL APPLICABLE PERMITS, APPROVALS, AUTHORIZATIONS, AND REGULATIONS

PLAN REFERENCES:

- 1) EASEMENT PLAN OF LAND IN PORTSMOUTH, NH PREPARED FOR GETTY REALTY CORP., SCALE: 1"=20', DATED: 4/20/04, PREPARED BY HANCOCK ASSOCIATES, R.C.R.D. PLAN C-31604
- 2) PLAN OF ROCK FIELD IN THE TOWN OF PORTSMOUTH, SCALE: 40 FEET TO 1 INCH, DATED: 1815, PREPARED BY BENJAMIN AKERMAN, R.C.R.D. PLAN# 00562
- 3) CONDOMINIUM SITE PLAN GASLIGHT CONDOMINIUM MAP U44 - LOT 26 FOR STEVE KELM & ERIC BESSEMER, 304 CABOT STREET PORTSMOUTH, N.H., COUNTY OF ROCKINGHAM, SCALE: 1" = 10' DATED: JULY 2000, R.C.R.D. D-28295.



AMBIT ENGINEERING, INC.
A DIVISION OF HALEY WARD, INC.

200 Griffin Road, Unit 3
Portsmouth, NH 03801
603.430.9282

WWW.HALEYWARD.COM

- NOTES:**
- 1) PARCEL IS SHOWN ON THE CITY OF PORTSMOUTH ASSESSOR'S MAP 144 AS LOT 20.
 - 2) OWNERS OF RECORD:
KARYN S. DENICOLA REVOCABLE TRUST OF 2015
KARYN S. DENICOLA TRUSTEE
198 ISLINGTON STREET, APT. 4
PORTSMOUTH, NH 03801
6461/1119
 - 3) PARCEL IS NOT IN A SPECIAL FLOOD HAZARD AREA AS SHOWN ON FIRM PANEL 33015C0259F. EFFECTIVE 1/29/2021.
 - 4) EXISTING LOT AREA:
3,864 S.F.
0.0887 ACRES
 - 5) PARCEL IS LOCATED IN THE GENERAL RESIDENCE C (GRC) DISTRICT.
 - 6) DIMENSIONAL REQUIREMENTS:
MIN. LOT AREA: 3,500 S.F.
FRONTAGE: 70 FEET
SETBACKS: FRONT 5 FEET
SIDE 10 FEET
REAR 20 FEET

MAXIMUM STRUCTURE HEIGHT: 35 FEET
MAXIMUM BUILDING COVERAGE: 35%
MINIMUM OPEN SPACE: 20%
 - 7) THE PURPOSE OF THIS PLAN IS TO SHOW THE EXISTING CONDITIONS & PLANNED DEMOLITION ON ASSESSOR'S MAP 144, LOT 20 IN THE CITY OF PORTSMOUTH.
 - 8) VERTICAL DATUM IS NAVD88. BASIS OF VERTICAL DATUM IS REDUNDANT RTN GNSS OBSERVATIONS.
 - 9) ALL EXISTING BUILDINGS WILL BE REMOVED FROM THE PROPERTY.

**DENICOLA RESIDENCE
281 CABOT STREET
PORTSMOUTH, N.H.**

NO.	DESCRIPTION	DATE
2	ISSUED FOR PERMITS	5/24/23
1	MONUMENTS SET	2/16/23
0	ISSUED FOR COMMENT	2/16/23

REVISIONS

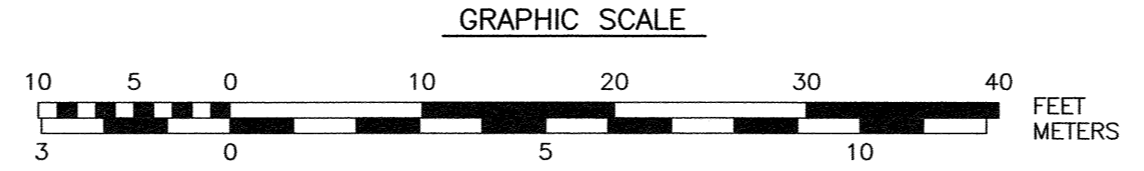
SCALE: 1" = 10' JANUARY 2023

EXISTING CONDITIONS & DEMOLITION PLAN **C1**

"I CERTIFY THAT THIS PLAN WAS PREPARED UNDER MY DIRECT SUPERVISION, THAT IT IS THE RESULT OF A FIELD SURVEY BY THIS OFFICE AND HAS AN ACCURACY OF THE CLOSED TRAVERSE THAT EXCEEDS THE PRECISION OF 1:15,000."

[Signature] 5.24.23

JOHN R. CHAGNON, LLS #738 DATE



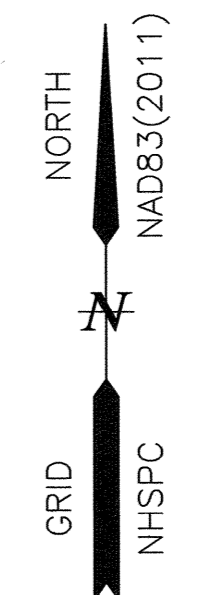
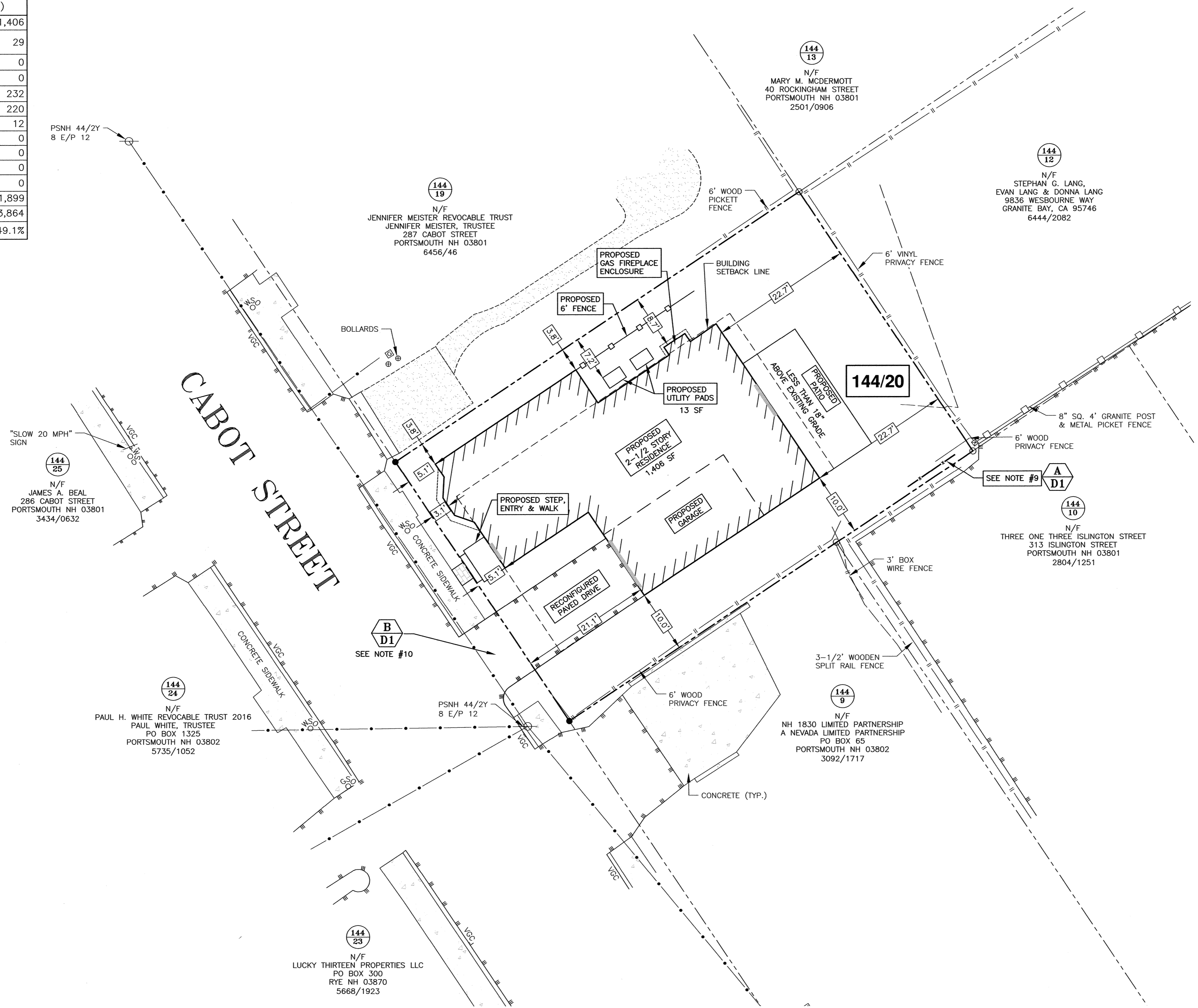
**IMPERVIOUS SURFACE AREAS
(TO PROPERTY LINES)**

STRUCTURE	PRE-CONSTRUCTION IMPERVIOUS (S.F.)	POST-CONSTRUCTION IMPERVIOUS (S.F.)
MAIN STRUCTURES	846	1,406
STAIRS/LANDING/RAMP	90	29
GARAGE/SHED	562	0
CONCRETE SURFACES	117	0
PAVED DRIVEWAY	644	232
PATIO	0	220
UTILITY PADS	0	12
	0	0
	0	0
	0	0
	0	0
TOTAL	2,259	1,899
LOT SIZE	3,864	3,864
% LOT COVERAGE	58.5%	49.1%

EXISTING BUILDING COVERAGE: 1,408 S.F./3,864 S.F. = 36%
 PROPOSED BUILDING COVERAGE: 1,406 S.F./3,864 S.F. = 36%
 PROPOSED OPEN SPACE: 1965 S.F./3,864 S.F. = 51%
 BUILDING HEIGHT TO CONFORM TO ORDINANCE.

VARIANCE APPLICATION:

- ARTICLE #5, SECTION 10.520 TO PERMIT A FRONT SETBACK OF 3.1 FEET WHERE 5 FEET IS REQUIRED.
- ARTICLE #5, SECTION 10.520 TO PERMIT A LEFT SETBACK OF 3.8 FEET WHERE 10 FEET IS REQUIRED.
- ARTICLE #5, SECTION 10.520 TO PERMIT BUILDING COVERAGE OF 36% WHERE 35% IS THE MAXIMUM ALLOWED.
- ARTICLE #5, SECTION 10.515.14 TO PERMIT THE LEFT SETBACK OF 7.2 FEET TO A MECHANICAL SYSETM WHERE 10 FEET IS REQUIRED.



- NOTES:**
- PARCEL IS SHOWN ON THE CITY OF PORTSMOUTH ASSESSOR'S MAP 144 AS LOT 20.
 - OWNERS OF RECORD:
 KARYN S. DENICOLA REVOCABLE TRUST OF 2015
 KARYN S. DENICOLA TRUSTEE
 198 ISLINGTON STREET, APT. 4
 PORTSMOUTH, NH 03801
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 - PARCEL IS NOT IN A SPECIAL FLOOD HAZARD AREA AS SHOWN ON FIRM PANEL 33015C0259F. EFFECTIVE 1/29/2021.
 - EXISTING LOT AREA:
 3,864 S.F.
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 - PARCEL IS LOCATED IN THE GENERAL RESIDENCE C (GRC) DISTRICT.
 - DIMENSIONAL REQUIREMENTS:
 MIN. LOT AREA: 3,500 S.F.
 FRONTAGE: 70 FEET
 SETBACKS: FRONT 5 FEET
 SIDE 10 FEET
 REAR 20 FEET
 MAXIMUM STRUCTURE HEIGHT: 35 FEET
 MAXIMUM BUILDING COVERAGE: 35%
 MINIMUM OPEN SPACE: 20%
 - THE PURPOSE OF THIS PLAN IS TO SHOW THE PROPOSED SITE IMPROVEMENTS ON ASSESSOR'S MAP 144, LOT 20 IN THE CITY OF PORTSMOUTH.
 - VERTICAL DATUM IS NAVD88. BASIS OF VERTICAL DATUM IS REDUNDANT RTN GNSS OBSERVATIONS.
 - INSTALL SILT SOXX AT SITE BOUNDARY PRIOR TO CONSTRUCTION.
 - INSTALL FODS TRACK OUT SYSTEM DURING FOUNDATION CONSTRUCTION.

**DENICOLA RESIDENCE
 281 CABOT STREET
 PORTSMOUTH, N.H.**

NO.	DESCRIPTION	DATE
3	VARIANCE REQUEST	8/2/23
2	REVISED LAYOUT	7/24/23
1	ISSUED FOR PERMITS	5/24/23
0	ISSUED FOR COMMENT	5/8/23

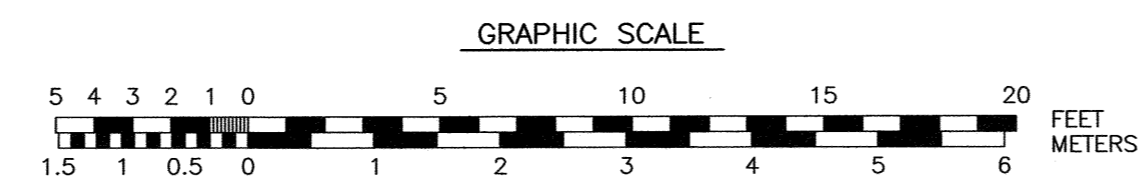
REVISIONS

SCALE: 1" = 10' MAY 2023

VARIANCE PLAN C2

APPROVED BY THE PORTSMOUTH BOARD OF ADJUSTMENT

SIGNATURE _____ DATE _____



EROSION CONTROL NOTES

CONSTRUCTION SEQUENCE

DO NOT BEGIN CONSTRUCTION UNTIL ALL LOCAL, STATE AND FEDERAL PERMITS HAVE BEEN APPLIED FOR AND RECEIVED.

INSTALL INLET PROTECTION AND PERIMETER CONTROLS, I.E., SILT FENCING OR SILT/SOXX AROUND THE LIMITS OF DISTURBANCE AND CATCH BASIN FILTER BEFORE ANY EARTH MOVING OPERATIONS.

CUT AND GRUB ALL TREES, SHRUBS, SAPLINGS, BRUSH, VINES AND REMOVE OTHER DEBRIS AND RUBBISH AS REQUIRED.

REMOVE EXISTING SITE FEATURES TO BE REMOVED.

CONSTRUCT SITE IMPROVEMENTS.

REMOVE TRAPPED SEDIMENTS FROM COLLECTION DEVICES AS APPROPRIATE, AND THEN REMOVE TEMPORARY EROSION CONTROL MEASURES UPON COMPLETION OF FINAL STABILIZATION OF THE SITE.

PROJECT DESCRIPTION

THE PROJECT CONSISTS OF A BUILDING REPLACEMENT WITH ASSOCIATED UTILITIES, GRADING, AND SITE IMPROVEMENTS.

THE TOTAL AREA TO BE DISTURBED IS APPROXIMATELY 3,800 S.F.

BASED ON SITE OBSERVATIONS AND TEST PITS THE SOILS ON SITE CONSIST OF URBAN LAND-CANTON COMPLEX, 3 TO 15% SLOPE WHICH ARE WELL DRAINED SOILS WITH A HYDROLOGIC SOIL GROUP RATING OF A.

GENERAL CONSTRUCTION NOTES

THE EROSION CONTROL PROCEDURES SHALL CONFORM TO SECTION 645 OF THE "STANDARD SPECIFICATION FOR ROAD AND BRIDGE CONSTRUCTION" OF THE NHDOT, AND "STORM WATER MANAGEMENT AND EROSION AND SEDIMENT CONTROL HANDBOOK FOR URBAN AND DEVELOPING AREAS IN NEW HAMPSHIRE". THE PROJECT IS TO BE MANAGED IN A MANNER THAT MEETS THE REQUIREMENTS AND INTENT OF RSA 430:53 AND CHAPTER AGR 3800 RELATIVE TO INVASIVE SPECIES.

DURING CONSTRUCTION AND THEREAFTER, EROSION CONTROL MEASURES ARE TO BE IMPLEMENTED AS NOTED, THE SMALLEST PRACTICAL AREA OF LAND SHOULD BE EXPOSED AT ANY ONE TIME DURING DEVELOPMENT. NO DISTURBED AREA SHALL BE LEFT UNSTABILIZED FOR MORE THAN 45 DAYS.

ANY DISTURBED AREAS WHICH ARE TO BE LEFT TEMPORARILY, AND WHICH WILL BE REGRADED LATER DURING CONSTRUCTION SHALL BE MACHINE HAY MULCHED AND SEEDED WITH RYE GRASS TO PREVENT EROSION.

THE PROJECT IS TO BE MANAGED IN A MANNER THAT MEETS THE REQUIREMENTS AND INTENT OF RSA 430:53 AND CHAPTER AGR 3800 RELATIVE TO INVASIVE SPECIES.

DUST CONTROL: DUST CONTROL MEASURES SHALL INCLUDE BUT ARE NOT LIMITED TO SPRINKLING WATER ON EXPOSED AREAS, COVERING LOADED DUMP TRUCKS LEAVING THE SITE, AND TEMPORARY MULCHING.

DUST CONTROL MEASURES SHALL BE UTILIZED SO AS TO PREVENT THE MIGRATION OF DUST FROM THE SITE TO ADJACENT AREAS.

IF TEMPORARY STABILIZATION PRACTICES, SUCH AS TEMPORARY VEGETATION AND MULCHING, DO NOT ADEQUATELY REDUCE DUST GENERATION, APPLICATION OF WATER OR CALCIUM CHLORIDE SHALL BE APPLIED IN ACCORDANCE WITH BEST MANAGEMENT PRACTICES.

SILT/SOXX SHALL BE PERIODICALLY INSPECTED DURING THE LIFE OF THE PROJECT AND AFTER EACH STORM. ALL DAMAGED SILT/SOXX SHALL BE REPAIRED. SEDIMENT DEPOSITS SHALL PERIODICALLY BE REMOVED AND DISPOSED IN A SECURED LOCATION.

ALL FILLS SHALL BE PLACED AND COMPACTED TO REDUCE EROSION, SLIPPAGE, SETTLEMENT, SUBSIDENCE OR OTHER RELATED PROBLEMS.

ALL NON-STRUCTURAL, SITE-FILL SHALL BE PLACED AND COMPACTED TO 90% MODIFIED PROCTOR DENSITY IN LAYERS NOT EXCEEDING 18 INCHES IN THICKNESS UNLESS OTHERWISE NOTED.

FROZEN MATERIAL OR SOFT, MUCKY OR HIGHLY COMPRESSIBLE MATERIAL, TRASH, WOODY DEBRIS, LEAVES, BRUSH OR ANY DELETERIOUS MATTER SHALL NOT BE INCORPORATED INTO FILLS.

FILL MATERIAL SHALL NOT BE PLACED ON FROZEN FOUNDATION SUBGRADE.

DURING CONSTRUCTION AND UNTIL ALL DEVELOPED AREAS ARE FULLY STABILIZED, ALL EROSION CONTROL MEASURES SHALL BE INSPECTED WEEKLY AND AFTER EACH ONE HALF INCH OF RAINFALL.

THE CONTRACTOR SHALL MODIFY OR ADD EROSION CONTROL MEASURES AS NECESSARY TO ACCOMMODATE PROJECT CONSTRUCTION.

ALL ROADWAYS AND PARKING AREAS SHALL BE STABILIZED WITHIN 72 HOURS OF ACHIEVING FINISHED GRADE. ALL CUT AND FILL SLOPES SHALL BE SEEDED/LOADED WITHIN 72 HOURS OF ACHIEVING FINISHED GRADE.

AN AREA SHALL BE CONSIDERED STABLE IF ONE OF THE FOLLOWING HAS OCCURRED:

- BASE COURSE GRAVELS HAVE BEEN INSTALLED ON AREAS TO BE PAVED
 - A MINIMUM OF 85% VEGETATED GROWTH HAS BEEN ESTABLISHED
 - A MINIMUM OF 3 INCHES OF NON-EROSIVE MATERIAL SUCH AS STONE OR RIPRAP HAS BEEN INSTALLED
 - EROSION CONTROL BLANKETS HAVE BEEN INSTALLED.
- IN AREAS TO BE PAVED, "STABLE" MEANS THAT BASE COURSE GRAVELS MEETING THE REQUIREMENTS OF NHDOT STANDARD FOR ROAD AND BRIDGE CONSTRUCTION, 2016, ITEM 304.2 HAVE BEEN INSTALLED.

STABILIZATION SHALL BE INITIATED ON ALL LOAM STOCKPILES, AND DISTURBED AREAS, WHERE CONSTRUCTION ACTIVITY SHALL NOT OCCUR FOR MORE THAN TWENTY-ONE (21) CALENDAR DAYS BY THE FOURTEENTH (14TH) DAY AFTER CONSTRUCTION ACTIVITY HAS PERMANENTLY OR TEMPORARILY CEASED IN THAT AREA.

STABILIZATION MEASURES TO BE USED INCLUDE:

- TEMPORARY SEEDING;
- MULCHING.

1. ALL AREAS SHALL BE STABILIZED WITHIN 45 DAYS OF INITIAL DISTURBANCE.
2. WHEN CONSTRUCTION ACTIVITY PERMANENTLY OR TEMPORARILY CEASES WITHIN 100 FEET OF NEARBY SURFACE WATERS OR DELINEATED WETLANDS, THE AREA SHALL BE STABILIZED WITHIN SEVEN (7) DAYS OR PRIOR TO A RAIN EVENT. ONCE CONSTRUCTION ACTIVITY CEASES PERMANENTLY IN THESE AREAS, SILT/SOXX, MULCH BERMS, HAY BALE BARRIERS AND ANY EARTH/DIKES SHALL BE REMOVED ONCE PERMANENT MEASURES ARE ESTABLISHED.
3. DURING CONSTRUCTION, RUNOFF WILL BE DIVERTED AROUND THE SITE WITH EARTH DIKES, PIPING OR STABILIZED CHANNELS WHERE POSSIBLE. SHEET RUNOFF FROM THE SITE WILL BE FILTERED THROUGH SILT/SOXX, MULCH BERMS, HAY BALE BARRIERS, OR SILT SOCKS. ALL STORM DRAIN BASIN INLETS SHALL BE PROVIDED WITH FLARED END SECTIONS AND TRASH RACKS. THE SITE SHALL BE STABILIZED FOR THE WINTER BY OCTOBER 15.

MAINTENANCE AND PROTECTION

THE SILT/SOXX BARRIER SHALL BE CHECKED AFTER EACH RAINFALL AND AT LEAST DAILY DURING PROLONGED RAINFALL.

SILT/SOXX SHALL BE REMOVED ONCE SITE IS STABILIZED, AND DISTURBED AREAS RESULTING FROM SILT/SOXX REMOVAL SHALL BE PERMANENTLY SEEDED.

THE CATCH BASIN INLET BASKET SHALL BE INSPECTED WITHIN 24 HOURS AFTER EACH RAINFALL OR DAILY DURING EXTENDED PERIODS OF PRECIPITATION. REPAIRS SHALL BE MADE IMMEDIATELY, AS NECESSARY, TO PREVENT PARTICLES FROM REACHING THE DRAINAGE SYSTEM AND/OR CAUSING SURFACE FLOODING.

SEDIMENT DEPOSITS SHALL BE REMOVED AFTER EACH STORM EVENT, OR MORE OFTEN IF THE FABRIC BECOMES CLOGGED.

WINTER NOTES

ALL PROPOSED VEGETATED AREAS THAT DO NOT EXHIBIT A MINIMUM OF 85% VEGETATED GROWTH BY OCTOBER 15, OR WHICH ARE DISTURBED AFTER OCTOBER 15, SHALL BE STABILIZED BY SEEDING AND INSTALLING EROSION CONTROL BLANKETS ON SLOPES GREATER THAN 3:1, AND SEEDING AND PLACING 3 TO 4 TONS OF MULCH PER ACRE, SECURED WITH ANCHORED NETTING, ELSEWHERE, THE INSTALLATION OF EROSION CONTROL BLANKETS OR MULCH AND NETTING SHALL NOT OCCUR OVER ACCUMULATED SNOW OR ON FROZEN GROUND AND SHALL BE COMPLETED IN ADVANCE OF THAW OR SPRING MELT EVENTS.

ALL DITCHES OR SWALES WHICH DO NOT EXHIBIT A MINIMUM OF 85 PERCENT VEGETATIVE GROWTH BY OCTOBER 15, OR WHICH ARE DISTURBED AFTER OCTOBER 15, SHALL BE STABILIZED TEMPORARILY WITH STONE OR EROSION CONTROL BLANKETS APPROPRIATE FOR THE DESIGN FLOW CONDITIONS;

AFTER OCTOBER 15, INCOMPLETE DRIVEWAY SURFACES, WHERE WORK HAS STOPPED FOR THE WINTER SEASON, SHALL BE PROTECTED WITH A MINIMUM OF 3 INCHES OF CRUSHED GRAVEL PER NHDOT ITEM 304.3, OR IF CONSTRUCTION IS TO CONTINUE THROUGH THE WINTER SEASON BE CLEARED OF ANY ACCUMULATED SNOW AFTER EACH STORM EVENT;

STOCKPILES

1. LOCATE STOCKPILES A MINIMUM OF 50 FEET AWAY FROM CATCH BASINS, SWALES, AND CULVERTS.
2. ALL STOCKPILES SHOULD BE SURROUNDED WITH TEMPORARY EROSION CONTROL MEASURES PRIOR TO THE ONSET OF PRECIPITATION.
3. PERIMETER BARRIERS SHOULD BE MAINTAINED AT ALL TIMES, AND ADJUSTED AS NEEDED TO ACCOMMODATE THE DELIVERY AND REMOVAL OF MATERIALS FROM THE STOCKPILE. THE INTEGRITY OF THE BARRIER SHOULD BE INSPECTED AT THE END OF EACH WORKING DAY.
4. PROTECT ALL STOCKPILES FROM STORMWATER RUN-OFF USING TEMPORARY EROSION CONTROL MEASURES SUCH AS BERMS, SILT SOCK, OR OTHER APPROVED PRACTICE TO PREVENT MIGRATION OF MATERIAL BEYOND THE IMMEDIATE CONFINES OF THE STOCKPILES.

CONCRETE WASHOUT AREA

THE FOLLOWING ARE THE ONLY NON-STORMWATER DISCHARGES ALLOWED. ALL OTHER NON-STORMWATER DISCHARGES ARE PROHIBITED ON SITE:

1. THE CONCRETE DELIVERY TRUCKS SHALL, WHENEVER POSSIBLE, USE WASHOUT FACILITIES AT THEIR OWN PLANT OR DISPATCH FACILITY;
2. IF IT IS NECESSARY, SITE CONTRACTOR SHALL DESIGNATE SPECIFIC WASHOUT AREAS AND DESIGN FACILITIES TO HANDLE ANTICIPATED WASHOUT WATER;
3. CONTRACTOR SHALL LOCATE WASHOUT AREAS AT LEAST 150 FEET AWAY FROM STORM DRAINS, SWALES AND SURFACE WATERS OR DELINEATED WETLANDS;
4. INSPECT WASHOUT FACILITIES DAILY TO DETECT LEAKS OR TEARS AND TO IDENTIFY WHEN MATERIALS NEED TO BE REMOVED.

ALLOWABLE NON-STORMWATER DISCHARGES

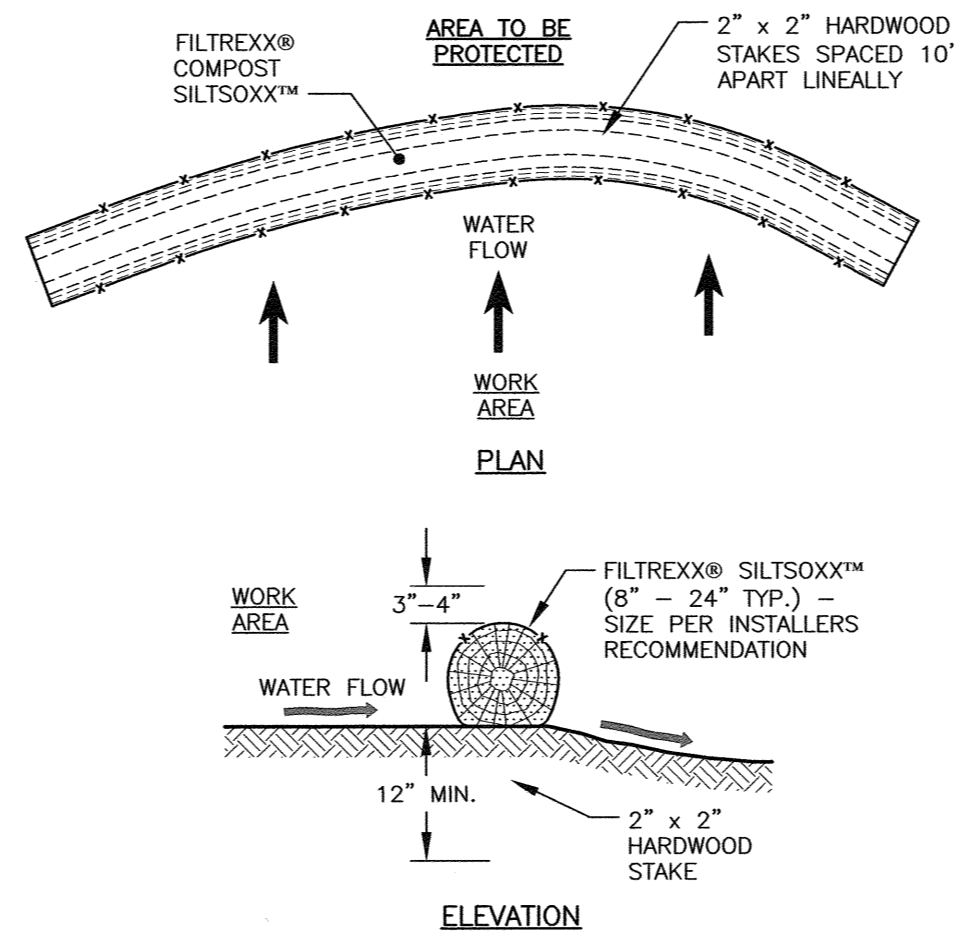
1. FIRE-FIGHTING ACTIVITIES;
2. FIRE HYDRANT FLUSHING;
3. WATERS USED TO WASH VEHICLES WHERE DETERGENTS ARE NOT USED;
4. WATER USED TO CONTROL DUST;
5. POTABLE WATER INCLUDING UNCONTAMINATED WATER LINE FLUSHING;
6. ROUTINE EXTERNAL BUILDING WASH DOWN WHERE DETERGENTS ARE NOT USED;
7. PAVEMENT WASH WATERS WHERE DETERGENTS ARE NOT USED;
8. UNCONTAMINATED AIR CONDITIONING/COMPRESSOR CONDENSATION;
9. UNCONTAMINATED GROUND WATER OR SPRING WATER;
10. FOUNDATION OR FOOTING DRAINS WHICH ARE UNCONTAMINATED;
11. UNCONTAMINATED EXCAVATION DEWATERING;
12. LANDSCAPE IRRIGATION.

WASTE DISPOSAL

1. WASTE MATERIAL
 - ALL WASTE MATERIALS SHALL BE COLLECTED AND STORED IN SECURELY LIDDED RECEPTACLES; ALL TRASH AND CONSTRUCTION DEBRIS FROM THE SITE SHALL BE DEPOSITED IN A DUMPSTER;
 - NO CONSTRUCTION WASTE MATERIALS SHALL BE BURIED ON SITE;
 - ALL PERSONNEL SHALL BE INSTRUCTED REGARDING THE CORRECT PROCEDURE FOR WASTE DISPOSAL BY THE SUPERINTENDENT.
2. HAZARDOUS WASTE
 - ALL HAZARDOUS WASTE MATERIALS SHALL BE DISPOSED OF IN THE MANNER SPECIFIED BY LOCAL OR STATE REGULATION OR BY THE MANUFACTURER;
 - SITE PERSONNEL SHALL BE INSTRUCTED IN THESE PRACTICES BY THE SUPERINTENDENT.
3. SANITARY WASTE
 - ALL SANITARY WASTE SHALL BE COLLECTED FROM THE PORTABLE UNITS A MINIMUM OF ONCE PER WEEK BY A LICENSED SANITARY WASTE MANAGEMENT CONTRACTOR.

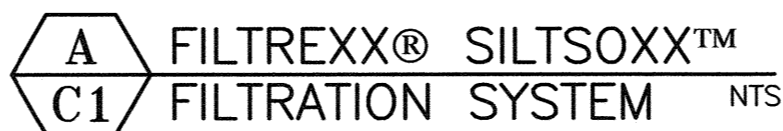
BLASTING NOTES

1. CONTRACTOR SHALL CONTACT THE NHDES AND/OR LOCAL JURISDICTION PRIOR TO COMMENCING ANY BLASTING ACTIVITIES.
2. FOR ANY PROJECT FOR WHICH BLASTING OF BEDROCK IS ANTICIPATED, THE APPLICANT SHALL SUBMIT A BLASTING PLAN THAT IDENTIFIES:
 - WHERE THE BLASTING ACTIVITIES ARE ANTICIPATED TO OCCUR;
 - THE ESTIMATED QUANTITY OF BLAST ROCK IN CUBIC YARDS; AND
 - SITE-SPECIFIC BLASTING BEST MANAGEMENT PRACTICES.



NOTES:

1. ALL MATERIAL TO MEET FILTREXX SPECIFICATIONS.
2. FILTREXX SYSTEM SHALL BE INSTALLED BY A CERTIFIED FILTREXX INSTALLER.
3. THE CONTRACTOR SHALL MAINTAIN THE COMPOST FILTRATION SYSTEM IN A FUNCTIONAL CONDITION AT ALL TIMES. IT WILL BE ROUTINELY INSPECTED AND REPAIRED WHEN REQUIRED.
4. SILT/SOXX DEPICTED IS FOR MINIMUM SLOPES, GREATER SLOPES MAY REQUIRE ADDITIONAL PLACEMENTS.
5. THE COMPOST FILTER MATERIAL WILL BE DISPersed ON SITE WHEN NO LONGER REQUIRED, AS DETERMINED BY THE ENGINEER.



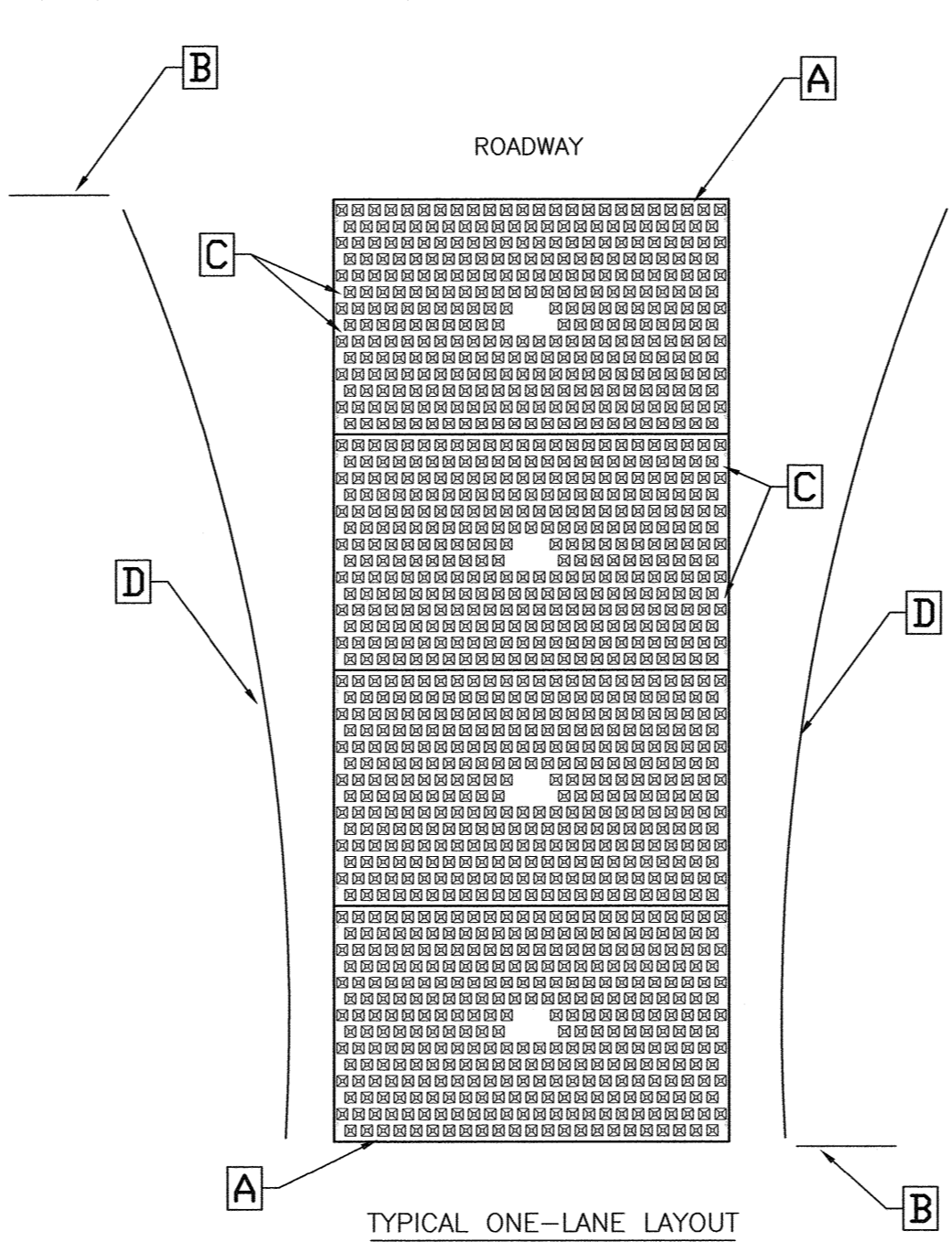
FODS TRACKOUT CONTROL SYSTEM

INSTALLATION:

THE PURPOSE AND DESIGN OF THE FODS TRACKOUT CONTROL SYSTEM IS TO EFFECTIVELY REMOVE MOST SEDIMENT FROM VEHICLE TIRES AS THEY EXIT A DISTURBED LAND AREA ONTO A PAVED STREET. THIS MANUAL IS A PLATFORM FROM WHICH TO INSTALL A FODS TRACKOUT CONTROL SYSTEM. (NOTE: THIS IS NOT A ONE SIZE FITS ALL GUIDE.) THE INSTALLATION MAY NEED TO BE MODIFIED TO MEET THE EXISTING CONDITIONS, EXPECTATIONS, OR DEMANDS OF A PARTICULAR SITE. THIS IS A GUIDELINE. ULTIMATELY THE FODS TRACKOUT CONTROL SYSTEM SHOULD BE INSTALLED SAFELY WITH PROPER ANCHORING AND SIGNS PLACED AT THE ENTRANCE AND EXIT TO CAUTION USERS AND OTHERS.

KEY NOTES:

- A. FODS TRACKOUT CONTROL SYSTEM MAT.
- B. FODS SAFETY SIGN.
- C. ANCHOR POINT.
- D. SILT OR ORANGE CONSTRUCTION FENCE.



INSTALLATION:

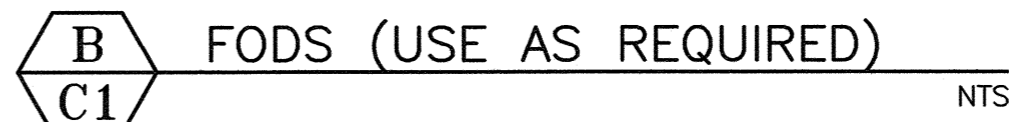
1. THE SITE WHERE THE FODS TRACKOUT CONTROL SYSTEM IS TO BE PLACED SHOULD CORRESPOND TO BEST MANAGEMENT PRACTICES AS MUCH AS POSSIBLE. THE SITE WHERE FODS TRACKOUT CONTROL SYSTEM IS PLACED SHOULD ALSO MEET OR EXCEED THE LOCAL JURISDICTION OR STORM WATER POLLUTION PREVENTION PLAN (SWPPP) REQUIREMENTS.
2. CALL FOR UTILITY LOCATES 3 BUSINESS DAYS IN ADVANCE OF THE FODS TRACKOUT CONTROL SYSTEM INSTALLATION FOR THE MARKING OF UNDERGROUND UTILITIES. CALL THE UTILITY NOTIFICATION CENTER AT 811.
3. ONCE THE SITE IS ESTABLISHED WHERE FODS TRACKOUT CONTROL SYSTEM IS TO BE PLACED, ANY EXCESSIVE UNEVEN TERRAIN SHOULD BE LEVELED OUT OR REMOVED SUCH AS LARGE ROCKS, LANDSCAPING MATERIALS, OR SUDDEN ABRUPT CHANGES IN ELEVATION.
4. THE INDIVIDUAL MATS CAN START TO BE PLACED INTO POSITION. THE FIRST MAT SHOULD BE PLACED NEXT TO THE CLOSEST POINT OF EGRESS. THIS WILL ENSURE THAT THE VEHICLE WILL EXIT STRAIGHT FROM THE SITE ONTO THE PAVED SURFACE.
5. AFTER THE FIRST MAT IS PLACED DOWN IN THE PROPER LOCATION, MATS SHOULD BE ANCHORED TO PREVENT THE POTENTIAL MOVEMENT WHILE THE ADJOINING MATS ARE INSTALLED. ANCHORS SHOULD BE PLACED AT EVERY ANCHOR POINT (IF FEASIBLE) TO HELP MAINTAIN THE MAT IN ITS CURRENT POSITION.
6. AFTER THE FIRST MAT IS ANCHORED IN ITS PROPER PLACE, AN H BRACKET SHOULD BE PLACED AT THE END OF THE FIRST MAT BEFORE ANOTHER MAT IS PLACED ADJACENT TO THE FIRST MAT.
7. ONCE THE SECOND MAT IS PLACED ADJACENT TO THE FIRST MAT, MAKE SURE THE H BRACKET IS CORRECTLY SITUATED BETWEEN THE TWO MATS, AND SLIDE MATS TOGETHER.
8. THE CONNECTOR STRAPS SHOULD BE INSTALLED TO CONNECT THE TWO MATS TOGETHER.
9. UPON PLACEMENT OF EACH NEW MAT IN THE SYSTEM, THAT MAT SHOULD BE ANCHORED AT EVERY ANCHOR POINT TO HELP STABILIZE THE MAT AND ENSURE THE SYSTEM IS CONTINUOUS WITH NO GAPS IN BETWEEN THE MATS.
10. SUCCESSIVE MATS CAN THEN BE PLACED TO CREATE THE FODS TRACKOUT CONTROL SYSTEM REPEATING THE ABOVE STEPS.

USE AND MAINTENANCE

1. VEHICLES SHOULD TRAVEL DOWN THE LENGTH OF THE TRACKOUT CONTROL SYSTEM AND NOT CUT ACROSS THE MATS.
2. DRIVERS SHOULD TURN THE WHEEL OF THEIR VEHICLES SUCH THAT THE VEHICLE WILL MAKE A SHALLOW S-TURN ROUTE DOWN THE LENGTH OF THE FODS TRACKOUT CONTROL SYSTEM.
3. MATS SHOULD BE CLEANED ONCE THE VOIDS BETWEEN THE PYRAMIDS BECOME FULL OF SEDIMENT. TYPICALLY THIS WILL NEED TO BE PERFORMED WITHIN TWO WEEKS AFTER A STORM EVENT. BRUSHING IS THE PREFERRED METHOD OF CLEANING, EITHER MANUALLY OR MECHANICALLY.
4. THE USE OF ICE MELT, ROCK SALT, SNOW MELT DE-ICER, ETC. SHOULD BE UTILIZED AS NECESSARY DURING THE WINTER MONTHS AND AFTER A SNOW EVENT TO PREVENT ICE BUILDUP.

REMOVAL

1. REMOVAL OF FODS TRACKOUT CONTROL SYSTEM IS REVERSE ORDER OF INSTALLATION.
2. STARTING WITH THE LAST MAT, THE MAT THAT IS PLACED AT THE INNERMOST POINT OF THE SITE OR THE MAT FURTHEST FROM THE EXIT OR PAVED SURFACE SHOULD BE REMOVED FIRST.
3. THE ANCHORS SHOULD BE REMOVED.
4. THE CONNECTOR STRAPS SHOULD BE UNBOLTED AT ALL LOCATIONS IN THE FODS TRACKOUT CONTROL SYSTEM.
5. STARTING WITH THE LAST MAT IN THE SYSTEM, EACH SUCCESSIVE MAT SHOULD THEN BE MOVED AND STACKED FOR LOADING BY FORKLIFT OR EXCAVATOR ONTO A TRUCK FOR REMOVAL FROM THE SITE.



NOTES:

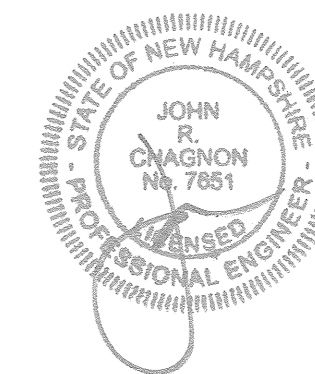
- 1) THE CONTRACTOR SHALL NOTIFY DIG SAFE AT 1-888-DIG-SAFE (1-888-344-7233) AT LEAST 72 HOURS PRIOR TO COMMENCING ANY EXCAVATION ON PUBLIC OR PRIVATE PROPERTY.
- 2) UNDERGROUND UTILITY LOCATIONS ARE BASED UPON BEST AVAILABLE EVIDENCE AND ARE NOT FIELD VERIFIED. LOCATING AND PROTECTING ANY ABOVEGROUND OR UNDERGROUND UTILITIES IS THE SOLE RESPONSIBILITY OF THE CONTRACTOR AND/OR THE OWNER. UTILITY CONFLICTS SHOULD BE REPORTED AT ONCE TO THE DESIGN ENGINEER.
- 3) CONTRACTOR SHALL INSTALL AND MAINTAIN EROSION CONTROL MEASURES IN ACCORDANCE WITH THE "NEW HAMPSHIRE STORMWATER MANUAL, VOLUME 3, EROSION AND SEDIMENT CONTROLS DURING CONSTRUCTION. (NHDES DECEMBER 2008).

DENICOLA RESIDENCE

281 CABOT STREET

PORTSMOUTH, N.H.

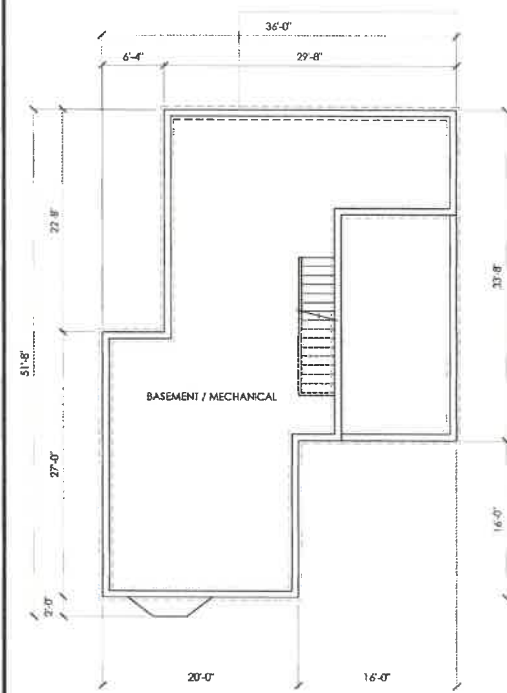
NO.	DESCRIPTION	DATE
1	REVISED NOTES	5/24/23
0	ISSUED FOR COMMENT	5/8/23
REVISIONS		



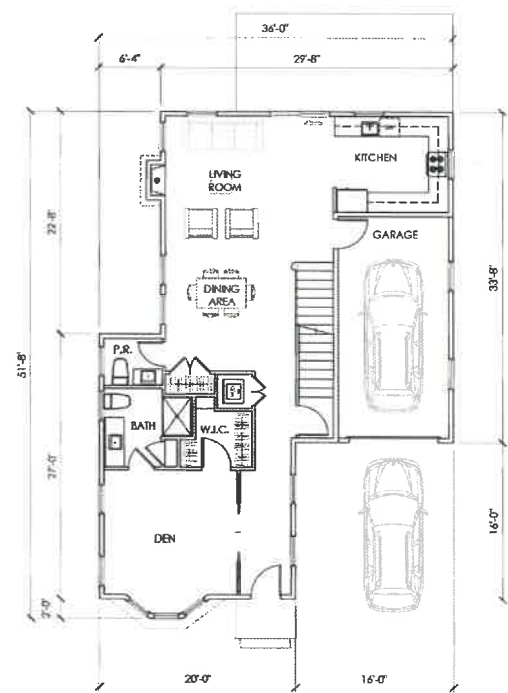
SCALE: 1" = 10' MAY 2023

EROSION CONTROL NOTES & DETAILS

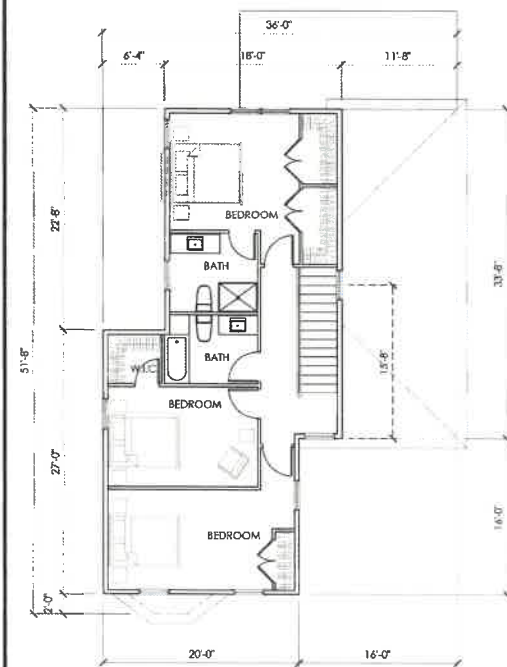
D1



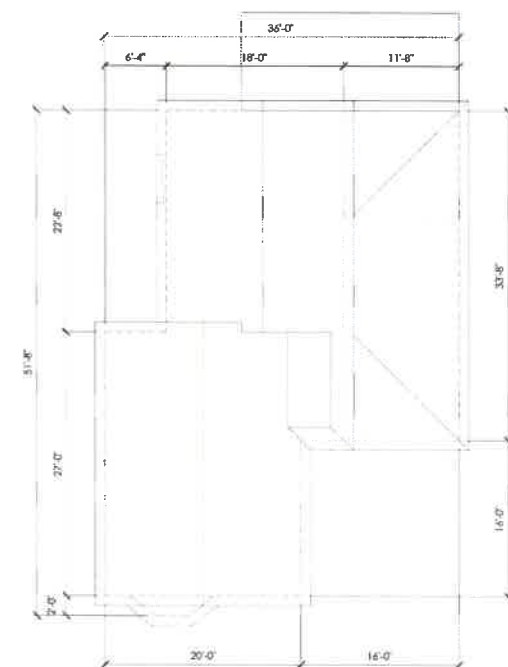
1 LOWER LEVEL PLAN
1/8" = 1'-0"



2 FIRST FLOOR PLAN
1/8" = 1'-0"



3 SECOND FLOOR PLAN
1/8" = 1'-0"



4 ROOF PLAN
1/8" = 1'-0"



PROPOSED VIEW



FRONT ELEVATION
1/8" = 1'-0"



RIGHT ELEVATION
1/8" = 1'-0"



BACK ELEVATION
1/8" = 1'-0"



LEFT ELEVATION
1/8" = 1'-0"

NOT FOR CONSTRUCTION

REVISIONS:

DENICOLA RESIDENCE
281 CABOT STREET
PORTSMOUTH, NH



CJ ARCHITECTS
233 VAUGHAN STREET
SUITE 101
PORTSMOUTH, NH 03801
(603) 431-2800
www.cjarchitects.net

FLOOR PLANS
&
ELEVATIONS

DATE:	08/15/23
DRAWN BY:	PDM
APPROVED BY:	C.J.G.
SCALE:	1/8" = 1'-0"
JOB NUMBER:	22303

A1



EXISTING VIEW OF CABOT STREET



PROPOSED VIEW OF CABOT STREET

REVISIONS

DENICOLA RESIDENCE
 281 CABOT STREET
 PORTSMOUTH, NH



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 233 VAUGHAN STREET
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www.cjarchitects.net

EXISTING &
 PROPOSED
 VIEWS

DATE:	08/15/23
DRAWN BY:	PDM
APPROVED BY:	CJG
SCALE:	-
JOB NUMBER:	22303

A2







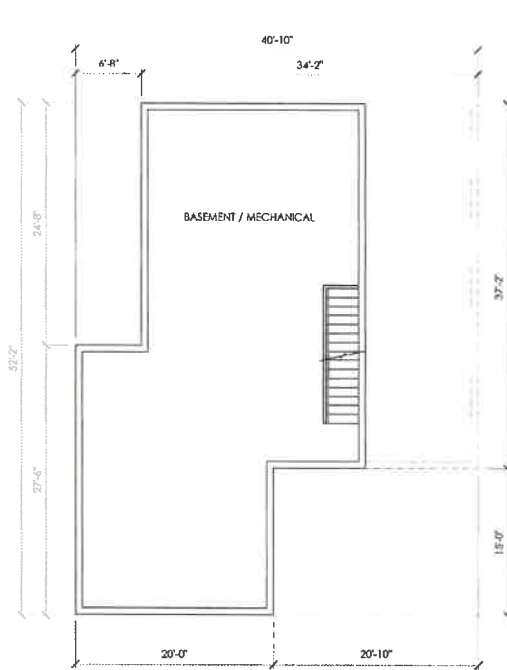




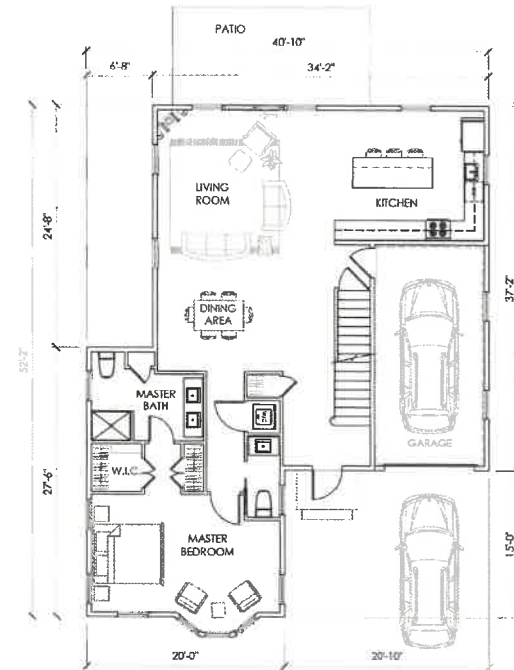








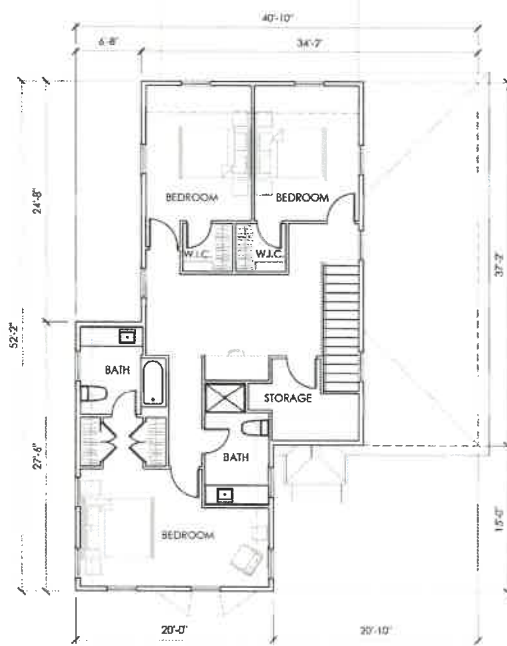
LOWER LEVEL FLOOR PLAN
1/8"=1'-0"



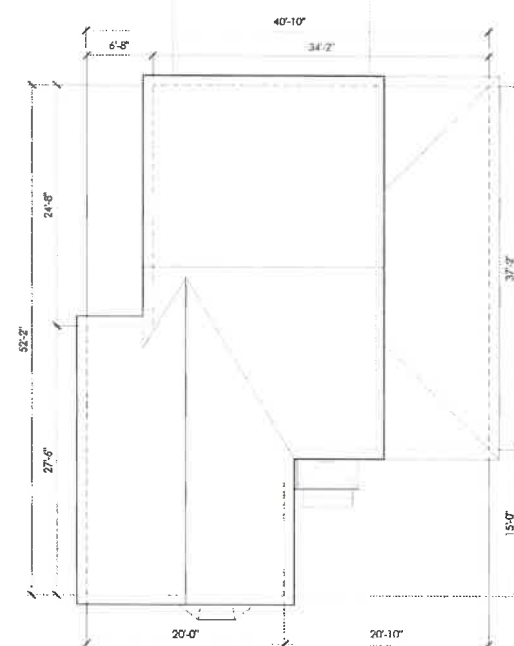
FIRST FLOOR PLAN
1/8"=1'-0"



PROPOSED VIEW



SECOND FLOOR PLAN
1/8"=1'-0"



ROOF PLAN
1/8"=1'-0"



FRONT ELEVATION
1/8"=1'-0"



RIGHT ELEVATION
1/8"=1'-0"



BACK ELEVATION
1/8"=1'-0"



LEFT ELEVATION
1/8"=1'-0"

NOT FOR CONSTRUCTION

REVISIONS:

DENICOLA RESIDENCE
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PORTSMOUTH, NH



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FLOOR PLANS
&
ELEVATIONS

DATE:	6/21/23
DRAWN BY:	PDM
APPROVED BY:	C.J.G.
SCALE:	1/8" = 1'-0"
JOB NUMBER:	22303

A1

REVISIONS:



EXISTING VIEW OF CABOT STREET



PROPOSED VIEW OF CABOT STREET

DENICOLA RESIDENCE
 281 CABOT STREET
 PORTSMOUTH, NH



CJ ARCHITECTS

233 VAUGHAN STREET
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EXISTING &
 PROPOSED
 VIEWS

DATE: 6/21/23
 DRAWN BY: PDM
 APPROVED BY: C.JG
 SCALE: 1/8" = 1'-0"
 JOB NUMBER: 22303

A2

ENCLOSURE 7

**MINUTES OF THE
BOARD OF ADJUSTMENT MEETING
CONFERENCE ROOM A
MUNICIPAL COMPLEX, 1 JUNKINS AVENUE
PORTSMOUTH, NEW HAMPSHIRE**

7:00 P.M.

June 27, 2023

MEMBERS PRESENT: Phyllis Eldridge, Chair; Beth Margeson, Vice Chair; David Rheume; Paul Mannle; Jeffrey Mattson; Jody Record, Alternate

MEMBERS EXCUSED: ML Geffert, Alternate; Thomas Rossi

ALSO PRESENT: Jillian Harris, Planning Department

Chair Eldridge called the meeting to order at 7:00 p.m. Alternate Ms. Record took a voting seat for the evening.

I. NEW BUSINESS

- A.** The request of **JJCM Realty LLC and Topnotch Properties (Owners)** for property located at **232 South Street** whereas relief is needed to construct a 12' x 20' garage which requires the following: 1) A Variance from Section 10.521 to a) permit a building coverage of 26% where 20% is permitted, and b) permit a side setback of 1.5 feet where 10 feet is required; and 2) A Variance from Section 10.571 to permit an accessory structure in the front yard. Said property is located on Assessor Map 111 Lot 2 and lies within the Single Residence B (SRB) and Historic District. (LU-23-80)

SPEAKING TO THE PETITION

The applicant/owner Gary Beaulieu of Bedford NH was present with realtor broker Matt Beaulieu and reviewed the petition. He said the garage would be the same color, texture, trim and roof pitch of the existing house. He reviewed the criteria and said they would be met.

In response to Vice Chair Margeson's questions, Mr. Beaulieu said the back part of the lot was owned in common between the two units. He said he could not push the garage back so that it was equal with the neighbor's because the neighbors went to the Conservation Commission to get their office/garage and that it would ruin the backyard. He said the wetlands weren't on the property and the back of the decks were about three feet over the wetland setback, which was why they got relief from the Conservation Commission. He said they were just outside of the buffer.

Mr. Rheume asked who owned each of the units. Mr. Beaulieu said he did, as the developer and condo association. Mr. Rheume asked what piece of water the applicant was within 100 feet of.

Mr. Beaulieu said it was a Type B soil and that the stakes in his yard were put in by the City. Mr. Rheume asked why the applicant didn't ask for the variance relief back in 2021 when he was granted a variance to expand his building coverage to 23 percent. Mr. Beaulieu said he assumed it was a done design from a young developer who was going bankrupt, so he ran with what was approved. He said the garage proposal was due to public sentiment. Mr. Rheume asked why the other condo wasn't getting a garage and when he would return for that. Mr. Beaulieu said he probably wouldn't because it would be a zero lot line. He said he didn't feel it was practical and would crowd the neighbor. Mr. Rheume asked what objection the Historic District Commission (HDC) had to the historical architecture. Mr. Beaulieu said the HDC wanted a final draft of what would be done with the driveway and that he would return to the HDC for the garage door approval. Mr. Rheume asked about the accessory structure in the front yard. Mr. Beaulieu said he met with the Planning Department and they took the common frontage distance of the surrounding homes. Ms. Harris said it was for the accessory structure located within the front yard and not necessarily the setback. Mr. Rheume said the applicant claimed that most of the neighbors had garages and asked if the applicant had a list of the properties he identified. Mr. Beaulieu said there were garages on both sides of him and across the street and but that he didn't have specific locations for the others in the neighborhood.

Realtor broker Matt Beaulieu said the garage component was crucial, noting that the neighbors had the same setback requirements and some had recent garages.

Chair Eldridge opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

No one spoke.

SPEAKING IN OPPOSITION TO THE PETITION

Christina Logan and Michael Graf of 220 South Street said were the most affected abutters. Mr. Graf said the adjacent building was Ms. Logan's studio. He said the applicant's location was too close to the street and to his property line. He said he talked to the applicant about moving the building back but the applicant said he didn't want to go to the Conservation Commission for relief. He said he told the applicant there was a precedent because he and Ms. Logan had gotten relief. He said the applicant just wanted to do what they could to sell it. He clarified that there weren't that many garages in the neighborhood, but the ones that were couldn't be seen from South Street.

Laurie Kennedy of 244 South Street said she went before three land boards for her 2-car garage and that it could not be seen from the road. She said the applicant was very close to the lot line and if they sold it as two units, there wasn't enough room for two cars. Chair Eldridge asked Ms. Kennedy if she shared a driveway with the applicant. Ms. Kennedy said she had to get a variance for her 1-1/2' driveway. Mr. Rheume verified that there was an agreement recorded at the Registry of Deeds that indicated Ms. Kennedy had a 1-1/2 ft right-of-way.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Realtor Matt Beaulieu said they were getting a lot of interest in the property and most people wanted a garage. He said he had done a lot of projects in Portsmouth.

No one else spoke, and Chair Eldridge closed the public hearing.

DISCUSSION OF THE BOARD

Mr. Mattson said it was odd that there was only one garage proposed but felt that it wasn't something he couldn't get on board with. He noted, however, that the applicant had already been before the Board the past few years. He said he was on the fence about whether there was an actual hardship. Vice-Chair Margeson said she was conflicted also, noting that a garage is an appropriate and allowed use for a residential building, but she took the comments about the desire not to go before the Conservation Commission seriously. She said bringing a building completely out of the wetlands buffer was also a good thing. She said she had concerns about the applicant coming back two years later and the lot on Unit 2. Mr. Rheume said the applicant was asking for a modest 12'x20' garage but were adding in the additional relief because it was in the front yard, which he understood. He said he was conflicted about the allowable space standpoint that drove the garage and thought 1-1/2 feet was very tight. He said the hardship was more of an economic one. He said the properties around the applicant had variations of garages but that he found very few garages in the overall neighborhood. He said he understood the economic desire but thought the garage was too close to the property line and wasn't enough to meet the criteria. Chair Eldridge said she could not approve the project. She said she understood that the lots were narrow and it was hard not to build too close to a lot line in the south end, but she thought the applicant's statement of not wanting to go before the Conservation Commission wasn't really a hardship. She said that relief should be sought there before asking the Board for relief.

DECISION OF THE BOARD

Mr. Rheume moved to deny the petition, seconded by Mr. Mannle.

Mr. Rheume said the applicant had to meet all the variance criteria and that it failed two. He said it was contrary to the public interest due to the garage and its location and that the applicant provided no evidence specific to other properties that his proposal would have a similar look and feel. He said the positioning of the garage requires additional relief from the front yard requirement, which could be alleviated by repositioning it on the lot. He said the applicant brought up some economic hardships associated with the property. He said it was just part of living in the south end and he didn't hear anything related to unique characteristics of the property. He said it sounded like the applicant's property was in the 100-ft buffer and there was a potential leniency that other neighbors had gotten in the past and were able to build in another location. He said moving it would provide further setback from the property and eliminate the need for the front yard variance request.

Mr. Mannle concurred. He said he didn't see the hardship and that there was no obligation to get a garage. He said he found it odd that it was a two-family property and the proposal was only for a single-car garage, and he suspected that the applicant would be back.

The motion passed unanimously, 6-0.

- B.** The request of **Sarnia Properties Inc. C/O CP Management Inc. (Owners)**, for property located at **933 US Route 1 BYP** whereas a Special Exception is needed to allow a health club greater than 2,000 square feet GFA which requires the following: 1) Special Exception from Section 10.440, Use #4.42 to allow a health club where the use is permitted by Special Exception. Said property is located on Assessor Map 142 Lot 37 and lies within the Business and Highway Noise Overlay District. (LU-23-76)

SPEAKING TO THE PETITION

Attorney John Bosen was present on behalf of the applicant, with the owner of the Vanguard Health Club Craig Annis. Attorney Bosen said the plan was to relocate the Raines Avenue gym. He reviewed the petition and the reasons why a special exception was needed.

Mr. Rheume asked what portion of the building the applicant would use. Mr. Annis pointed it out on the plan and said it would have a shared loading dock. Mr. Rheume asked if the mezzanine, steel gate and one floor were part of the application. Mr. Annis said they were but would be cut off at some point and would just be a warehouse space to sub out. Mr. Rheume said the applicant was applying for a parking Conditional Use Permit (CUP) and asked what the parking situation and the status with the Planning Board was. Attorney Bosen said 83 spots were available and the ordinance required 114, so they had a favorable meeting with the Technical Advisory Commission (TAC) and thought they would receive approval from the Planning Board in July. He said there was more than adequate parking, noting that the busiest times the gym was used were between 4 and 7 a.m. Mr. Rheume asked what the entry points to Unit 5 were. Mr. Annis said it was off Emery Street and that most of the clientele would be entering on that side. Mr. Rheume asked what drove the 114 parking spaces and who the other current building tenants were. Attorney Bosen said there were three office spaces, storage and warehouse space, and a small gym.

Chair Eldridge opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke, and Chair Eldridge closed the public hearing.

DECISION OF THE BOARD

*Mr. Mattson moved to **grant** the special exception, seconded by Ms. Record.*

Mr. Mattson said the standards as provided by the ordinance for the particular use of the health club were permitted by special exception. He said granting the special exception would pose no hazard to the public or adjacent properties on account of potential fire, explosion, or release of toxic materials because that wasn't a concern for a health club and there would be no external changes. He said it would pose no detriment to property values in the vicinity or change to the essential characteristics of any area, including residential neighborhoods and businesses or industrial districts on account of the location and scale of buildings and other structures, parking area, accessways, gas, dust, noise, pollution, and so on. He said it would not be a problem because there would be no external changes. He said it would not create a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity because it would be in a location that would have almost twice the parking than the previous location and would have off-peak hours for traffic. He also noted that TAC approved it. He said it would pose no excessive demand on municipal services including but not limited to water, sewer, waste disposal, police and fire protection, schools and so on because that should not be a problem for a health club, which was allowed by special exception. He said it would pose no increase of stormwater on adjacent properties or streets because there were no external changes. Ms. Record concurred and had nothing to add.

Mr. Rheume said he would support the motion because the applicant made a good argument that their parking needs were out of synchronicity with the other needs for the other uses within the building, and that heavy traffic and parking needs would be outside the times that those other users would be looking for the same types of capabilities.

The motion passed unanimously, 6-0.

- C.** The request of **Ashley J Brown and Lisa F Brown Living Trust (Owners)**, for property located at **176 Orchard Street** whereas relief is needed to construct an addition and deck to the rear of the existing structure and rebuild the existing rear staircase which requires the following: 1) Variance from Section 10.521 to allow 27% building coverage where 25% is allowed. 2) 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. Said property is located on Assessor Map 149 Lot 41 and lies within the General Residence A (GRA) District. (LU-23-82)

SPEAKING TO THE PETITION

Attorney John Bosen was present on behalf of the applicant, with the owners/applicants Ashley and Lisa Brown. He reviewed the petition and criteria. [Timestamp 1:03:19]

Mr. Rheume said there was a discrepancy on the dimensional table, with a current condition of 24 feet for both the front yard and the right yard. Ms. Harris said it was a typo for the rear yard.

Chair Eldridge opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke, and Chair Eldridge closed the public hearing.

DECISION OF THE BOARD

*Mr. Rheaume moved to **grant** the variances for the petition as presented and advertised, seconded by Mr. Mattson.*

Mr. Rheaume said what was asked for was additional space on the property that was modest and that most people walking by would not notice. He said granting the variances would not be contrary to the public interest because the only thing asked for was the relief from the total building coverage, 27 percent when 25 percent is the maximum allowed. He said it would be essentially invisible on the inside of the property and would sort of expand off an existing porch area and would not change any of the neighborhood's characteristics. He said granting the variances would observe the spirit of the ordinance because the applicant's property line went to a certain point but there was a lot of extra property that would appear to be part of the property to a passerby on Orchard Street that was much greater than the two percent the applicant was going over. He said substantial justice would be done because the public would not have an interest that would outweigh the applicant's desire to add some living space. He said it would not diminish the values of surrounding properties because it was a modest addition toward the interior of the property and met all the setbacks and would add value to the applicant's property as well as others. He said the hardship was that the current property's unique aspect was that it was a corner lot with some additional City-owned land that had the look and feel of being part of the applicant's property, which negated any of the concerns that it would be an unreasonable use for the property. Mr. Mattson concurred and said there would be no threat posed to the public's health, safety, or welfare or to public rights.

The motion passed unanimously, 6-0.

- D.** The request of **Point of View Condominium (Owner)**, for property located at **57 Salter Street #1** whereas relief is needed to relocate the existing residential structure landward of the highwater mark which requires the following: 1) Variance from Section 10.211 and Section 10.531 to allow the following: a) a 2' front yard where 30' is required, b) a 2' side yard where 30' is required; 2) Variance from Section 10.321 to allow a lawful nonconforming structure to be extended, reconstructed or enlarged without conforming to the requirements of the ordinance; 3) Variance from Section 10.516.40 to allow a heating vent to project 1' into the required side yard. Said property is located on Assessor Map 102 Lot 32-1 and lies within the Waterfront Business (WB) and Historic District. (LU-23-83)

SPEAKING TO THE PETITION

Attorney James Steinkrauss was present on behalf of the applicant, joined by the applicants, project engineer Eric Weinrieb, and landscape architect Terence Parker. He asked for an additional five minutes for his presentation.

Mr. Rheaume moved to suspend the rules and allow the applicant 20 minutes for his presentation, seconded by Mr. Mannle. The motion passed unanimously, 6-0.

Attorney Steinkrauss reviewed the petition and criteria. [Timestamp 1:16:33]

Vice-Chair Margeson said the 2018 variances were to allow for a single family dwelling, yet there were two units in the building. Attorney Steinkrauss said there was just one unit in the building but two units in the condo. On the parcel itself, he said there were two buildings and that Unit 2 was a single-family residence. He said his client's condo would also be a single-family residence.

Mr. Rheaume said the same relief for the duplex units was before the Board at the last meeting. Mr. Weinrieb said they weren't involved in the original design and permitting but did the removal of the 87 feet over the water on the dwelling unit. He noted that there were detached condo structures on a single lot forming two residential units and the building was cantilevered on a concrete slab over the water. He said they would pick up the building and relocate it and remove the existing foundation and the concrete over the water. He said the retaining wall under the building on the south side was deteriorating so they proposed to have a vertical element between the building and the water and then do a foundation for the building behind it, which he further explained. He said they would raise it up a few feet higher to make it FEMA compliant. He said the unit dwelling area would stay the same but the structure would change, so the condo documentation would have to be updated.

Mr. Rheaume said the building was now at a higher elevation than it was before and would have steps and so and asked if that was included in the total coverage calculation. Mr. Weinrieb agreed. Mr. Rheaume said the applicant stated that they had a 2-ft setback from the water side but there was a deck that covered that, and that deck would be more than 18 inches above what the previous grade of the property would have been. Mr. Weinrieb said it was the existing wharf and they would cut off a portion of it and recreate it, so the elevation wouldn't change. Mr. Rheaume asked if the setback would be two feet or zero feet. Mr. Weinrieb said the two feet would be the building and then there was the gap of the retaining wall because they could not connect the wharf to the building. Ms. Harris said what was changing was the building and moving back to a 2-ft setback. Mr. Rheaume said all the structure was higher than what was there previously and noted that the Board denied a similar petition a few weeks back. It was further discussed. [Timestamp 1:41:50]

Mr. Rheaume said the applicant was asking the Board to reaffirm its 2018 decision and asked what the applicant was looking for and why they thought the relief granted back in 2018 was in jeopardy. Attorney Steinkrauss said they were asking for the prior variances to be reaffirmed to the extent that it was necessary. Mr. Rheaume asked what encroached within one foot into the front yard. Mr. Weinrieb said it was the mechanical vent and explained it further [Timestamp 1:57:00]. Mr. Rheaume said the variance cited did not apply to the Waterfront Business District and asked how the Board could approve it. Ms. Harris said the Staff Memo commented that the section cited is not applicable in the Waterfront Business District, so the City Staff didn't think it was needed. It was further discussed. [Timestamp 2:00:40].

Chair Eldridge opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

No one spoke.

SPEAKING IN OPPOSITION TO THE PETITION

Marcia MacCormack of 53 Salter Street said she was not notified that the building would be converted into condos and thought it wasn't appropriate for the area. She said the applicant expanded the parking area so that she was literally on top of a parking lot now and they were moving the house forward. She said the condition of the seawall was dangerous and she didn't understand why the City gave a building permit for the project.

Susan MacDougall of 39 Pray Street said she lost count of all the variances granted for the property starting in 1990. She said that the Board, by granting all those variances, changed the Waterfront Business District code *de facto* and set a precedent for her side of the road. She said the parking would be impacted if the building were moved back and the condo agreement would be changed, but there was no indication from the other owners that it would be acceptable. She said she was concerned about the 18 inches. She said the proposal was contrary to the public interest.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Attorney Steinkrauss said they were not aware of their obligation to notify neighbors of a conversion of a property, especially two units of a condo. He said the condo abutter did submit a letter of support. He said the variance was specific to the property and met the criteria.

Mr. Weinrieb said the building was getting higher and they weren't asking for a height variance and weren't impacting the parking. He said there was very little waterfront business left except for the Sanders Lobster Pound.

No one else spoke, and Chair Eldridge closed the public hearing.

DISCUSSION OF THE BOARD

Vice-Chair Margeson said the situation was complicated but she would support the application because it was about the front and right yard setbacks and the right yard setback was going from a negative 5.6' to 2', making it a more conforming use. She said the property had special conditions because it was over the water. Mr. Mannle said it was nice to go from a negative to a positive, but because the building was being moved, he'd like the setbacks to be less nonconforming. Mr. Mattson said he was inclined to support the project because, by the nature of it being in the Waterfront Business District, the setbacks were odd in terms of trying to meet the 30' setbacks in the front, left, and right yards, particularly for that size of lot. He said if a property was going to be moved and get a fresh start, it would be good to have it become more conforming. He noted that the DES criteria was triggering all of it in the first place.

Mr. Rheume said he was on board in 2018 when the original set of variances was approved. He said he empathized with the abutters about how much change was going on. He discussed how zoning originated [Timestamp 2:14:23] and said the Board didn't believe they were setting a precedent. He said they took the hardship criteria seriously, especially in the Waterfront Business District. He said the applicant got a building permit in 2018 and it took a long time to exercise that permit due to things out of their control. He said the parking concern wasn't really an issue. He said the open space coverage would slightly increase from what it was before, noting that over half of the lot was considered open space and the applicant by right could cover another 30 percent of it. He said the setbacks seemed like a lot of relief but wasn't. He said the property was essentially on a peninsula and would have no impact on the light and air of surrounding neighbors. He said the deck wasn't a real issue and hoped that additional relief would not be required.

DECISION OF THE BOARD

*Mr. Rheume moved to **grant** the variances for the application as presented and advertised, with the following condition:*

- 1. The 1-ft encroachment by an exhaust vent would be recognized by the Board.*

Vice-Chair Margeson seconded the motion.

Mr. Rheume referred to his comments and said granting the variances would not be contrary to the public interest, noting that it had already been approved as a second dwelling unit in 2018, so they were talking about the net difference to the public of the building being over the water versus it being drawn slightly back from the water. He said it would essentially be the same building but would be raised and still within the allowed building coverage. He said it would not disrupt the nature of the neighborhood. He said the spirit of the ordinance would be observed because light and air requirements would be met. He said granting the variances would do substantial justice, noting that it was a balancing test and some concerns were addressed in 2018 and were not before the Board that night. He said the applicant would still have the full use of the property as was granted in 2018 and have the same size of structure. He said granting the variances would not diminish the values of surrounding properties because the structure would be moved a distance that would not impact them. He said the hardships were that the applicant was previously granted relief to make two dwelling units and ran into some legal issues that were identified late in the process, which required the applicant to move the structure back onto the land. He said the property was at the end of a narrow and short street. He said the use in the Waterfront Business District was decided upon in 2018 but some of the dimensions weren't fully applicable to the property. He said that, due to its location and nature of being surrounded by water on both sides, it was a reasonable use.

Vice-Chair Margeson concurred and had nothing to add.

*The vote **passed** by a vote of 5-1, with Mr. Mannle voting in opposition.*

- E. The request of **Eric J. Gregg Revocable Trust (Owner)**, for property located at **112 Mechanic Street** whereas relief is needed to install a mechanical unit to the side of the primary structure which requires the following: 1) Variance from Section 10.515.14 to allow a 2' rear setback where 10 feet is required. Said property is located on Assessor Map 103 Lot 25 and lies within the General Residence B (GRB) and Historic District. (LU-23-73)

SPEAKING TO THE PETITION

The applicant/owner Eric Gregg was present to review the petition. He noted that he was seeking a 6' setback, not a 2' setback. He reviewed the criteria and said they would be met.

Chair Eldridge opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke, and Chair Eldridge closed the public hearing.

DECISION OF THE BOARD

*Mr. Mattson moved to **grant** the variance for the petition as approved and presented, with the following **condition**:*

- 1. The mechanical unit shall be located to the side of the primary structure and shall be six feet from the rear property line, as indicated in the applicant's submission materials.*

Mr. Mannle seconded the motion.

(Note: the original motion was amended after Mr. Rheume's suggestion that it include the condition noting the 6' v. 2' setback discrepancy).

Mr. Mattson said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance because the proposed use would not conflict with the implicit or explicit purposes of the ordinance and would not alter the essential characteristics of the neighborhood, threaten the public's health, safety, or welfare, or otherwise injure public rights. He said the mini split condenser would do substantial justice because it would benefit the applicant and do no harm to the public. He said granting the variance would not diminish the values of surrounding properties because it was a small ask and the proposed lattice work would make it blend in without hindering the air flow, and the lot was very small so there wasn't any other suitable location to put the condenser in. He said literal enforcement of the provisions of the ordinance would result in unnecessary hardship because the property had special conditions that distinguished it from others in the area, and owing to those special conditions, a fair and substantial relationship does not exist between the general public purposes of the ordinance's provision and the specific application of that provision to the property. He said the proposed use was a reasonable one and the unique conditions of the property was that it was an extremely small size and the nonconforming

location of the structure on the property left no other viable alternatives for improving the HVAC system. Mr. Mannle concurred and had nothing to add.

The motion passed unanimously, 6-0.

- F. The request of **Karyn S. Denicola Revocable Trust (Owner)**, for property located at **281 Cabot Street** whereas relief is needed to demolish the existing single-family dwelling and detached one-story garage/shed and construct a new single family dwelling with attached garage which requires the following: 1) Variance from Section 10.521 to allow a) 3' front yard setback where 5' is required; b) a 5' south side yard setback where 10' is required; c) a 3.5' north side yard setback where 10' is required; and d) a 43% building coverage where 35% is allowed. Said property is located on Assessor Map 144 Lot 20 and lies within the General Residence C (GRC) District. (LU-23-84)

SPEAKING TO THE PETITION

Attorney Justin Pasay was present on behalf of the applicant, with project engineer John Chagnon and Geoff Spitzer, developer for Chinburg Properties. Attorney Pasay said the Staff Memo indicated that the applicant did not need relief from the additional building coverage. He said they also did not apply for a frontage variance because the zoning ordinance allowed for a lot to be considered conforming as to frontage if certain conditions existed. He said Mr. Chagnon filed a supplemental letter to the Board stating that the property, as of March 1966, had the existing amount of frontage and satisfied the criteria because it was not owned in common with the other properties. Ms. Harris clarified that the relief for 43 percent building coverage was still needed. She said it was the request from Section 10.321 to permit the construction of a single-family dwelling on the property, which is more nonconforming for building coverage, that the Staff did not believe was needed. Attorney Pasay reviewed the petition and criteria. [Timestamp 2:46:33]

Vice-Chair Margeson said the applicant referred to the undeveloped lots on Islington Street and said the applicant's lot had a special condition. She said 28 Rockingham was improved and there was nothing preventing the backs of those buildings from being developed. She said she was struggling to find how that wasn't going to happen and why it was a special condition of the applicant's property. Attorney Pasay said the proximity to those properties is what made it unique. He said there were narrow properties further north on Cabot Street with single-family residences that filled up most of the lots. He said the applicant's property had a larger frontage of 50 feet on the eastern side of Cabot Street and the existing built condition of the garage, which was relevant because for decades the appearance of that property had been a single-family house with a garage offset to the right. He said there was also the proximity with the larger massing and scaling of the properties on Islington Street because now that area is used as a driveway and access to the building, and if they tried to develop more of that area, additional relief would be required.

Vice-Chair Margeson said the General Residence C District has the most building coverage outside of the MRO/MRB zone within the City because they're the smallest lots, 3,500 square feet, but the applicant was asking for something even more, three percent more than what's allowed throughout

the entire City for lot coverage. Attorney Pasay said it came down to the reasonableness analysis. Vice-Chair Margeson asked how that wasn't a marked conflict with the ordinance, given that the MRO/MRB zone is less than the three percent. Attorney Pasay said it pertained to the first and second criteria and whether the proposal would alter the essential characteristics of the neighborhood. He said the applicant laid out that analysis but the neighborhood has lots that are quite small and filled up with single-family residences, especially on the eastern side. He said there was a boarding house across the street and a multi-family going toward McDonough Street. He said they were taking a detached garage concept and attaching it to the main building, which alone made it more consistent with the neighborhood. He said it was in the public's interest that they were reducing encroachments in the setback.

Vice-Chair Margeson said the proposed residence was different on Cabot Street and was out of character with the other New Englanders on that street. In terms of setbacks, she said if the building were demolished, there would be plenty of room within the building envelope and the applicant would probably not need relief. She asked why the structure couldn't be reduced and built within the building envelope. Attorney Pasay said the goal was to maintain the property with a garage. He said the building wasn't in the Historic District and they could do a front door on the front façade as a condition of approval. He said what they were proposing for 2,500 sf of living area was consistent with what was just built at 28 Rockingham directly behind the property. Vice-Chair Margeson said the zoning ordinance protected buildings of historic or architectural interest and that the building was an 1870s structure in a line of New Englanders, which concerned her.

Mr. Mannle asked if the applicant considered rehabbing the house and getting rid of the garage. Mr. Spitzer said there were structural issues. Mr. Mannle said those were problems found during the building inspection when the house was sold in January, yet the applicant still bought the house. Mr. Spitzer said they did so with the intent that they would request a variance. He said the floor plan of the first floor and coverage spoke to an age in place option of having a master bedroom suite on the first floor. Mr. Rheume said the applicant did a good job for the streetscape but said a letter received from a nearby property owner raised a good point about the doorscape seen in all the gabled New Englanders up and down the street. He said putting a door in the first-floor master bedroom would be odd. Attorney Pasay said they could make it a condition of approval that a faux door be built to make the house more aesthetically consistent with the other homes.

Chair Eldridge opened the public hearing.

SPEAKING IN FAVOR OF OR IN OPPOSITION TO THE PETITION

No one spoke.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Elizabeth Bratter of 159 McDonough Street and 342 Cabot Street said the garage was just a carport when she moved to that neighborhood. She said the building was missing the front door and steps, which was key to the neighborhood's character.

No one else spoke, and Chair Eldridge closed the public hearing.

DISCUSSION OF THE BOARD

Vice-Chair Margeson said she would not support the application because the addition would not prevent overcrowding of the property and she didn't find that the property had any special conditions. She said the undeveloped property on Islington Street was not a condition of the applicant's property and thought the applicant's property was bigger than what was allowed in the zone. She said the applicant was going against the highest building coverage in the ordinance, which was 40 percent. She said she didn't believe that a stipulation could be made about the front door because it would make exterior structural changes to the building and drive some of the interior changes, so it would be a different application. Mr. Mattson said he didn't understand why the applicant couldn't build the house within the envelope, given that the lot is bigger than required and regular-shaped one, but he said he had no problem with the rest of the application. Mr. Mannle said he couldn't support it. He said the applicant knew the condition the house was in when they bought it and should have taken a right of first refusal to see if the house could be fixed before they bought the property. He said the demolition of the house would be a clean slate, so he would expect the setbacks to be as close to conforming as possible. Mr. Rheume said the Board had little control over a building's demolition and thought the house would be a difficult rehab. He said some relief was appropriate to give the property the feel that the neighborhood had but thought the Board didn't want the house to be set back much further and said the applicant was also allowing more room for building maintenance. He said the light and air for the neighbor would also be improved. He said his concern was the total building coverage and that the applicant was asking for a little too much house for the lot without enough justification. He said the door was also an issue because making it a condition that it be a front door would change the design and the front setback.

DECISION OF THE BOARD

Vice-Chair Margeson moved to deny the application as presented and advertised, seconded by Mr. Mannle.

Vice-Chair Margeson referred to her previous comments. She said the spirit and intent of the ordinance was to prevent overcrowding and the applicant was asking for 43 percent building coverage where the maximum coverage allowed was 35 percent. She said she did not think that the light and air issues on Islington Street cured this defect. She said the lot was larger than required by zoning and 43 percent would fill up that lot even more. She said the property was tight already. She said she didn't find that the property had an unnecessary hardship for the building coverage and all the requested setbacks, and she didn't think the empty parking lot on the other lots really helped the applicant in terms of a hardship. She said she could understand why the applicant wanted to do what they proposed but didn't feel that there was a hardship driving the variance request. Mr. Mannle concurred. He said the lot was a good-sized one and could have a good-sized house on it, and he didn't see the necessity or the hardship for all the setback relief, especially the building coverage relief, because the applicant was starting with a clean slate. Chair Eldridge said she was torn because the relief for the side lots was very narrow and the coverage was increased. She said a front door would continue the rhythm and without it but it wasn't something the Board could do just as

an add-on. Mr. Rheume said he would support the motion, noting that a more convincing argument from the applicant would have been to present the Board with the building coverage of all the surrounding buildings. He agreed that the door would require further building design.

The motion passed by a vote of 4-2, with Ms. Record and Chair Eldridge voting in opposition.

At this point in the meeting, Mr. Mannle moved to go past 10:00, seconded by Vice-Chair Margeson. The motion passed unanimously, 6-0.

Mr. Rheume recused himself from the following petition and left the meeting.

- G.** The request of **Sureya M Ennabe Revocable Living Trust (Owner)**, for property located at **800 Lafayette Road** whereas relief is needed to increase the height of the existing sign which requires the following: 1) Variance from Section 10.1281 to alter a nonconforming sign without bringing it into conformity; and 2) Variance from Section 10.1253.10 to increase the height to 20 feet and 1 inch where 20 feet is allowed. Said property is located on Assessor Map 244 lot 5 and lies within the Gateway Corridor (G1) District and Sign District 5. (LU-23-66)

SPEAKING TO THE PETITION

Peter March, the sign designer from NH Signs, was present on behalf of the applicant and reviewed the petition. He said the sign was permitted to be 20 feet high and had been consistently hit by cars in the last year. He said they wanted to raise the sign's bottom to 14'1" to prevent that. He reviewed the criteria and noted that the special conditions was that gas stations needed price signs and there was no other suitable place for the sign, and leaving it at its present height would subject motorists to unnecessary danger. He said the new sign would be the same as the old sign.

Mr. Mattson asked if the change was triggered by the sign being hit recently. Mr. March said the sign was hit in the winter and was repaired but it was always being hit.

Chair Eldridge opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke, and Chair Eldridge closed the public hearing.

DECISION OF THE BOARD

Mr. Mattson moved to grant the variances for the petition as presented, seconded by Mr. Mannle.

Mr. Mattson said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He said the proposed use must not conflict with the implicit or explicit purposes of the ordinance and not alter the essential characteristics of the neighborhood nor threaten the public's health, safety, and welfare or otherwise injure public rights. He said the new

sign would look the same and have the same use as the existing sign and would improve the public's health, safety, and welfare. He said substantial justice would be done because the benefit to the applicant would not be outweighed by any harm to the public or other individuals. He said it would not diminish the values of surrounding properties, noting that there was no reason to believe that the small modification to the sign would do so. He said literal enforcement of the provisions of the ordinance would result in unnecessary hardship because the property has special conditions that distinguish it from other properties in the area, and owing to those special conditions, a fair and substantial relationship does not exist between the general public purpose of the ordinance's provision and the special application of that provision to the property, and the proposed use is a reasonable one. He said the proposed use would stay the same and was a reasonable use. He said the unique conditions of the property is that the small island area where the sign is located is one of the few places to locate it, and a sign was a critical feature for a gas station because it stated gas prices. He said those were unique conditions to the property compared to the surrounding ones. Mr. Mannle concurred and said it was a perfect example of what should have been an administrative approval because it was a one-inch difference.

The motion passed unanimously, 5-0, with Mr. Rheaume recused.

II. OTHER BUSINESS

There was no other business.

III. ADJOURNMENT

The meeting adjourned at 10:45 p.m.

Respectfully submitted,

Joann Breault
BOA Recording Secretary

II. NEW BUSINESS

- C. The request of **Novocure Inc. (Owner)**, for property located at **64 Vaughan Street** whereas relief is needed to construct a penthouse which requires Variances from Sections 10.5A43.30 and 10.5A21.B (Map) to allow a maximum height of 47 feet where 42 is allowed. Said property is located on Assessor Map 126 Lot 1 and lies within the Character District 5 (CD5) and North End Incentive Overlay District. (LU-20-214)

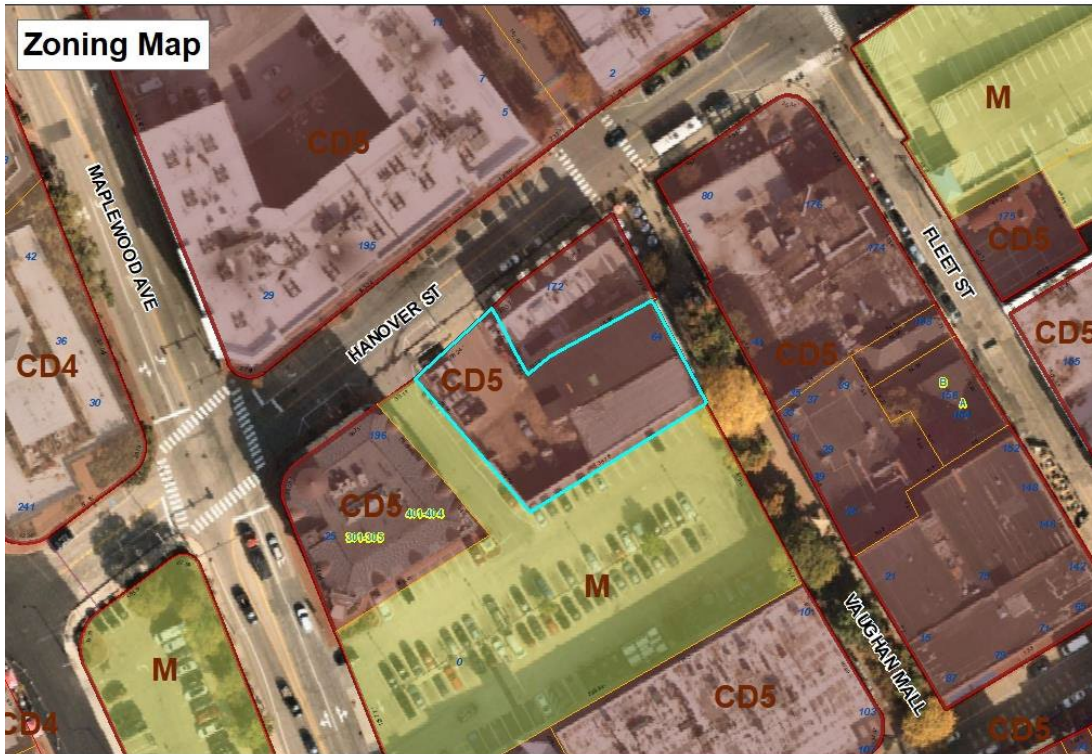
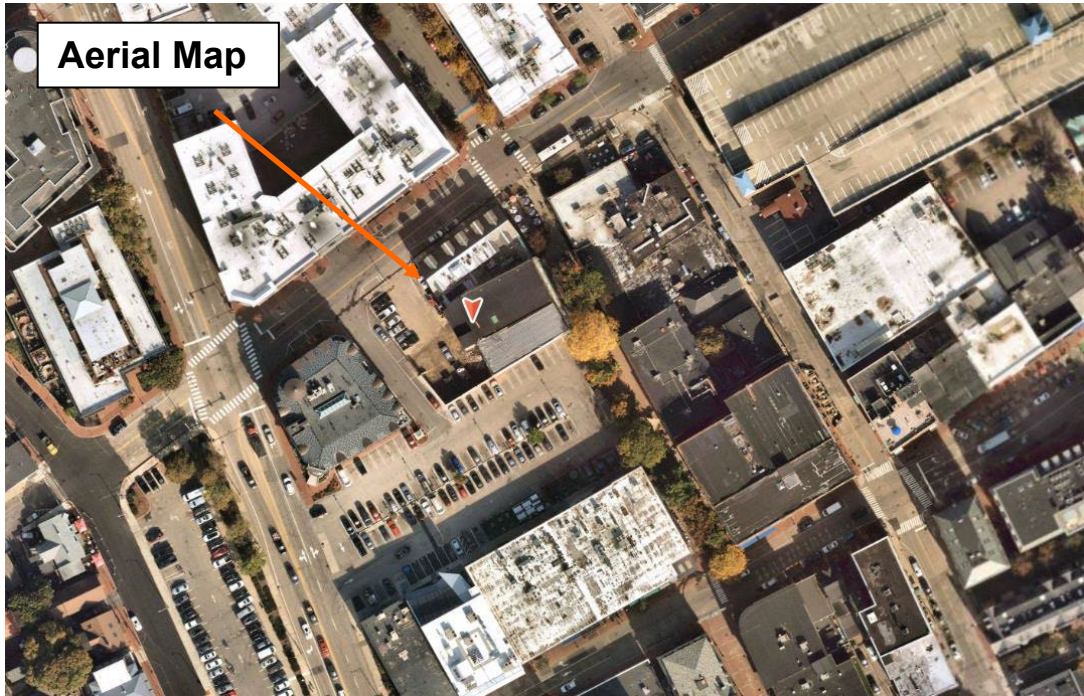
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Professional Office	Penthouse	Primarily Mixed use
<u>Lot area (sq. ft.):</u>	13,964	13,964	NR min.
<u>Penthouse setback. (ft.):</u>	NA	20.6 >15	20' from edge – adj. public place 15' from edge – all others min.
<u>Height (ft.):</u>	40	47	42 max.
<u>Building Coverage (%):</u>	89	89	95 max.
<u>Open Space Coverage (%):</u>	5	5	5 min.
<u>Parking</u>	20	20	No requirement
<u>Estimated Age of Structure:</u>	2022	Variance request(s) shown in red.	

Other Permits/Approvals Required

- Historic District Commission
- Planning Board/TAC – Amended Site Plan
- Building Permit

Neighborhood Context



0 35 70 140 Feet
1 inch = 68.2 feet

64 Vaughan Street



Previous Board of Adjustment Actions

October 4, 1977 – The Board **granted** the following:

To construct a storage and loading addition to the existing building with a single story, where two stories are required for new construction in the Central Business District.

March 23, 2021 – The Board **denied** the following:

Request for an addition of a fourth story as part of redevelopment of the existing structure which requires 1) A Variance from Section 10.5A41.100 to allow a secondary front yard of 50.2 feet where 5 feet is the maximum. 2) A Variance from Section 10.5A41.100 to allow a building height of 52.5 feet and four stories where 40 feet and three stories is the maximum allowed.

April 26, 2022 – The Board considered your application for addition of a rooftop penthouse requiring: 1) A Variance from Section 10.5A43.30 and Map 10.5A21B to allow a building height of 51'6" where 42' is the maximum allowed for a penthouse. 2) A Variance from Section 10.1530 to allow a penthouse with a 9.5' setback from the edge of the roof where 15 feet is required. The Board voted to **postpone** to the May 17, 2022, meeting.

May 17, 2022 – The Board voted to **deny** the April 26, 2022, petition.

Planning Department Comments

Fisher vs. Dover

The applicant was before the Board in May of 2022 seeking relief for a penthouse to be setback 9.5' from the edge of the roof where 15 feet is required and for a height of 51.5' where 42' is the maximum allowed for a penthouse. Since that time the Zoning Ordinance has been amended to include updated definitions of **penthouse** and **building height** (see Section 10.1530). Per the updated definitions, when measuring building height the upper reference point for a penthouse is the elevation midway between the level of the eaves, or floor in the case of a penthouse, and highest point of the roof.

Building height

The greatest vertical measurement between the lower and upper reference points as defined below. This measurement shall be the **building height** for the purposes of the Ordinance.

- (b) The upper reference point shall be any of the following:
 - (1) For a flat or **flat-topped mansard roof**, the highest point of the roof surface;
 - (2) For a gambrel, hip, **hip-topped mansard roof**, or **penthouse**, the elevation midway between the level of the eaves, or floor in the case of a **penthouse**, and highest point of the roof. For this purpose, the "level of the eaves" shall mean the highest level where the plane of the roof intersects the plane of the outside wall on a side containing the eaves, but at no time shall this level be lower than the floor level of the uppermost **story** or **attic**

Penthouse

A habitable space within the uppermost portion of a **building** above the **cornice** which is set back at least 20 feet from all edges of the roof adjoining a **public place** and at least 15 feet from all other edges. The total floor area of the **penthouse** shall not exceed 50% of the area of the **story** below and the height of the **penthouse** shall not exceed 10 feet above the story below the flat roof or 14 feet for a gable, hip or **hip-topped mansard** roof surface. Except for elevator or stairwell access allowed under Section 10.517, no other roof appurtenance shall exceed the maximum allowed height of a **penthouse**. For internal courtyards at least 40 feet from a **street** or vehicular right-of-way or easement, the **penthouse** shall be setback at least 8 feet from the edge of the roof of the **story** below. (See also: **building height**.)

The applicant is seeking to add a penthouse that would result in a height of 47' where 42' is the maximum allowed. They have also redesigned the penthouse to meet the required setbacks. Staff feels the updated design and the relevant Zoning Ordinance changes are significant enough that it would not evoke Fisher v. Dover, but the Board may want to consider whether it is applicable 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).

If granted approval, staff recommends the following stipulation for consideration:

- 1. The design of the penthouse may change as a result of Planning Board and Historic District Commission review and approval.**

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

64 VAUGHAN STREET, PORTSMOUTH, NEW HAMPSHIRE

Tax Map 126 Lot 1

NOVOCURE, INC.

APPLICANT'S NARRATIVE

THE APPLICANT

Novocure Inc., acquired the property at 64 Vaughan Street, formerly the home of Cabot Furniture, in December 2021. Novocure is a global oncology company striving to extend survival in some of the most aggressive forms of cancer through the development and commercialization of its innovative therapy, Tumor Treating Fields. Novocure's commercialized products are approved in certain countries for the treatment of adult patients with glioblastoma, malignant pleural mesothelioma and pleural mesothelioma. Novocure has ongoing or completed clinical trials investigating Tumor Treating Fields in brain metastases, gastric cancer, glioblastoma, liver cancer, non-small cell lung cancer, pancreatic cancer and ovarian cancer. Novocure has begun renovations of the historic property to house its North American Flagship operations. Novocure intends to occupy the entire building, which will be used for executive offices and a training and development center where doctors and other health care professionals will be introduced to Novocure's products and technologies. Novocure expects 200 to 250 employees to be based at this facility.

THE PROPERTY

The lot is irregularly shaped, with approximately 75' of frontage on the pedestrian Vaughan Mall and 68' of frontage on Hanover Street and it abuts the rear alley connecting Hanover Street to the Worth Parking Lot. The existing structure dominates the site and is built up to or very close to the lot lines on Vaughan Mall and the Worth Lot. The property was previously approved for a mixed-use renovation including the addition of approximately 2,480 square feet of building footprint in 2021. The building addition brings the structure forward to approximately 5 feet from its Hanover Street frontage.

Built in the late 19th century as a 3-story brick and heavy timber structure with a flat roof and full basement, the main building was originally owned and occupied by the Margeson Bros. Furniture Co. Early in the 20th century, the building was more than doubled in size with an addition constructed of essentially the same materials and form on the Worth Lot side. A single

story “modern” block addition with a shed roof was added mid-century toward the rear facing Hanover Street which was used as a loading dock for shipping and receiving.

The previously approved redevelopment of the property ameliorates several adverse conditions on the site. Substandard utility and mechanical systems including water, sewer, drainage, HVAC and fire protection all will be upgraded to meet modern standards. Pedestrian connectivity around the building to Vaughan Mall from Maplewood Avenue, Hanover Street or the rest of downtown to the West, South and East will be enhanced via improvements to the building façade and to the Worth Lot. Underground parking will be constructed, where none exists, and none is required for this office use in the Downtown Overlay District. The redevelopment revives and restores this historic structure and integrates it into the surrounding community. As noted, the design was enthusiastically approved by the Historic District Commission.

As presently approved, the building has a rooftop structure housing building appurtenances (elevator overrun) of 14’-0’ in height above the flat roof. Adjacent to that structure is an approved outdoor, open-air terrace of approximately 2,158 square feet. Novocure seeks approval to cover the majority of this space with a glass penthouse.

THE PRIOR APPLICATION

Novocure did appear before this Board on May 17, 2022, and was denied a 11’6” height variance for a rooftop penthouse. Since then, the definition of a penthouse contained in Chapter 10, Article 15, Section 10.1530 has changed. Specifically, under Section 10.1530 (b) (2) a penthouse is now treated like a sloped roof where the height is measured between the floor and the midpoint to the top of the roof. Accordingly, only 7 feet of height relief is now required above the 40 foot roof. Also, the rooftop building has changed to include legal appurtenances shown on the plans submitted herewith, and the plans have changed thereby resulting in a materially different application. Specifically, the changes are as follows:

- a. Ordinance changed resulting in the need for a materially less height relief.
- b. Reduced penthouse setbacks.
- c. Reduced penthouse footprint.
- d. Modified rooftop design to include pitched roof and glass.
- e. Rooftop now invisible to abutters residing at 25 Maplewood Avenue.
- f. Project has support from abutters.
- g. Positive feedback from HDC work session.
- h. Applicant willing to consider as a condition of approval that there be no further development on the roof with the exception of reasonably necessary rooftop appurtenances for mechanical, etc.

THE PROPOSED PROJECT

Novocure’s intended use of the property will be professional office, which use is permitted by right. The building will host a daily influx of professionals that may at times exceed 300

people, including employees and visitors. Given Novocure's unique mission and its intention to convene visiting medical professionals, scientists and other partners for training, seminars and conferences, it desires to construct dedicated assembly space to accommodate such use. The convening space will not be dedicated to any type of permanent office space for Novocure employees. The convening space will provide employees and guests access to outdoor space where there is no other such space available on or near the property.

The approved open-air rooftop terrace on top the main, historic structure is the logical location to locate such a convening space with outdoor access. The already approved roof appurtenance structure (elevator overrun) is 14' (at its peak) above the allowed 40' building height. Because it is a Hip-topped Mansard form, its "height" is calculated to the midpoint which is well below the 10'-0" allowed for a roof appurtenance. We are proposing that the new penthouse be the same height at its peak as shown on the submitted plans. The penthouse will add approximately 2158 square feet of functional space, along with an outdoor patio and seating also shown on the plans. The proposed structure is designed to shield the necessary rooftop mechanical units.

. It should be noted that, even with the additional proposed height, the building will be shorter than many of its recently renovated or constructed neighbors. The buildings across Hanover Street are 5-6 stories and 45'-70' tall. The neighboring mixed-use building at 25 Maplewood has a tower, skylight and mechanical appurtenances all of which are higher than what is proposed. Jimmy's Jazz Club across the Worth Lot is higher. Rooftop appurtenances on the building itself are permitted to a height of ten feet. Accordingly, the massing and scale of the proposed addition will not be out of place and will not in any manner dominate its surroundings. In fact, due to the siting of the proposed addition recessed from the building's edge, there are few ground-level locations where it will be visible at all. In any event, the project, if approved by this Board, will also require final approval from the HDC.

In addition to the Historic District, the property is in the CD-5 zone and the Downtown Overlay District.

The project as proposed requires a variance from Section 10.5A43.30 to permit the following:

- building height of 47 feet where 40 feet is the maximum allowed.

VARIANCE CRITERIA

The Applicant believes that this project meets the criteria necessary for granting the requested variances.

Granting the requested variances will not be contrary to the spirit and intent of the ordinance nor will it be contrary to the public interest. The "public interest" and "spirit and intent" requirements are considered together pursuant to Malachy Glen Associates v. Chichester, 152 NH 102 (2007). The test for whether or not granting a variance would be contrary to the public interest or contrary to the spirit and intent of the ordinance is whether or not the variance

being granted would substantially alter the characteristics of the neighborhood or threaten the health, safety and welfare of the public.

In this case, were the variances to be granted, there would be no change in the essential characteristics of the neighborhood, nor would any public health, safety or welfare be threatened. The property is a very visible "cornerstone" of downtown where similar heights are not uncommon. The health, safety and welfare of the public will not be negatively impacted in any fashion, as the approved rooftop open-air terrace will be converted to all-season covered space that will allow Novocure's employees and guests an outdoor space in which to congregate, each lunch, etc.

The essentially urban character of the neighborhood will not be altered in any fashion by this project, nor will the health, safety or welfare of the public be threatened by granting the relief requested, as what is proposed is entirely consistent with the mass and scale of neighboring buildings. The project must obtain further approval from the HDC so the interest of the public will be more than adequately protected.

Substantial justice would be done by granting the variances. Whether or not substantial justice will be done by granting a variance requires the Board to conduct a balancing test. If the hardship upon the owner/applicant outweighs any benefit to the general public in denying the variance, then substantial justice would be done by granting the variance. It is substantially just to allow a property owner the reasonable use of his or her property. The proposed added height will in no way detract from any neighboring properties, many of which are taller than what is proposed. The proposed penthouse adds functionality to the space where an approved outdoor terrace would exist. The proposed penthouse will be similar in height with the roof appurtenance structure and will help shield rooftop mechanicals and provide much needed outdoor space.

In this case, there is no benefit to the public in denying the variances that is not outweighed by the hardship upon the owner.

The values of surrounding properties will not be diminished by granting the variances. The proposed penthouse addition is not visible from most ground level locations near the site. The surrounding properties and those in the vicinity have similar or taller heights than proposed here. The penthouse will sit entirely within the footprint of the existing building. The roof appurtenance structure (elevator overrun) will shield the penthouse from the residential neighbors at 25 Maplewood Avenue.

The values of the surrounding properties will not be negatively affected in any way.

There are special conditions associated with the property which prevent the proper enjoyment of the property under the strict terms of the zoning ordinance and thus constitute unnecessary hardship. The main building is an historic structure dating back to the late 19th century. The property has frontage on two rights of way, Vaughan Mall and Hanover Street, and

borders the Worth Lot which does not meet the definition of a “street” under the ordinance, but has many of the same characteristics of one – i.e., regular vehicular circulation throughout the site. There is no open, outdoor space on site in which the applicant’s employees and guests can congregate, eat lunch, etc. The building’s use as entirely office with no ground floor retail or other use is unusual in this vicinity. This is an irregular, L-shaped lot with a similar L-shaped building.

The use is a reasonable use. The proposed use is accessory to the office use which is permitted in this zone.

There is no fair and substantial relationship between the purpose of the ordinance as it is applied to this particular property. The additional height requested is necessary to create functional space that adds to the environment. The additional height will not in any manner dominate or be out of scale with any of the neighboring properties. There is no fair and substantial relationship between the purposes of the height requirements and their application to this property.

As noted above, the proposed penthouse is not visible from almost all ground level locations, and certainly not in the area where relief is necessary.

I. Conclusion.

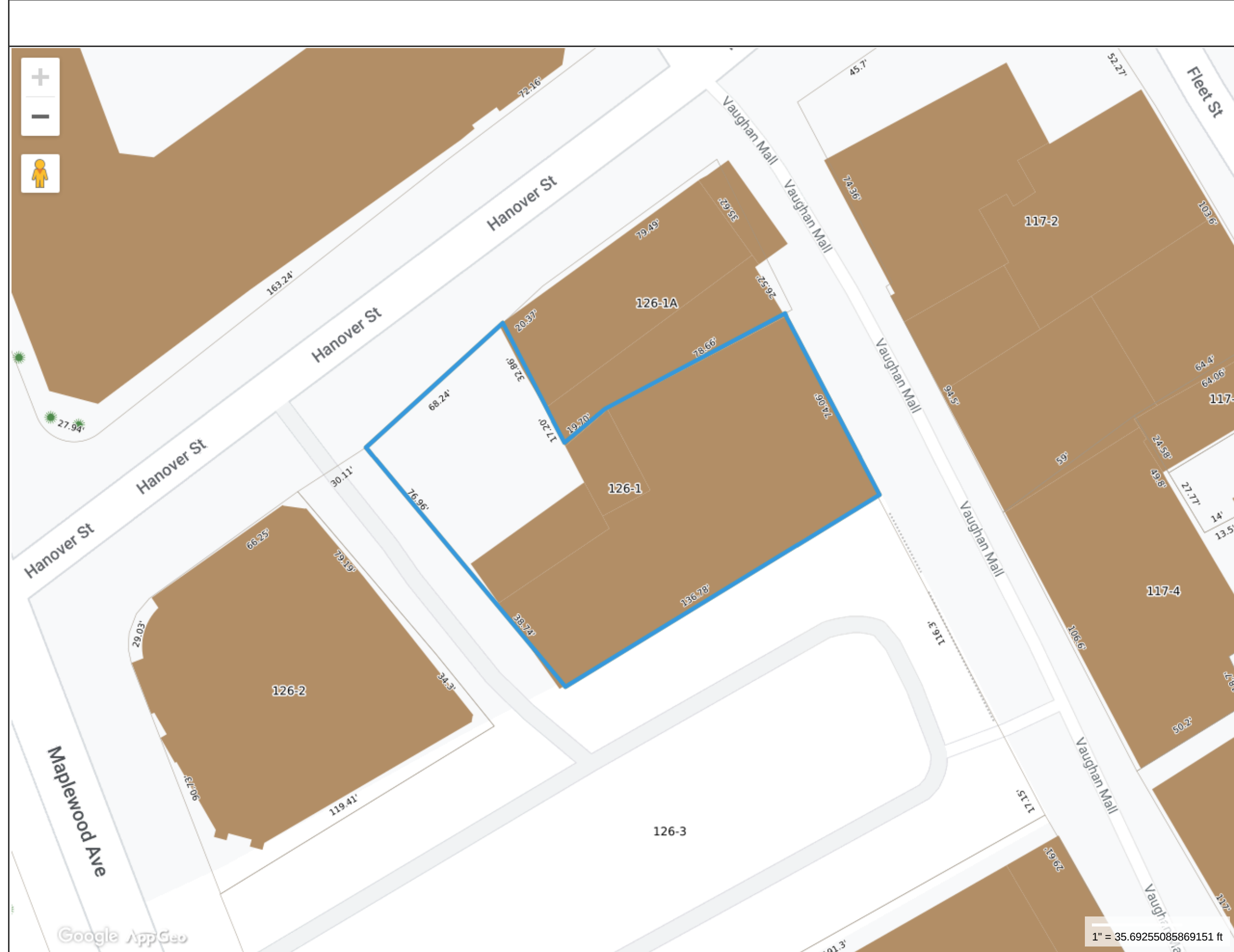
For the foregoing reasons, the applicant respectfully requests the Board grant the variances as requested and advertised.

Respectfully submitted,

DATE: July 25, 2023

John K. Bosen

John K. Bosen, Esquire



Property Information
Property ID 0126-0001-0000
Location 64 VAUGHAN ST
Owner 64 VAUGHAN MALL LLC



**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 3/9/2022
 Data updated 3/9/2022

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



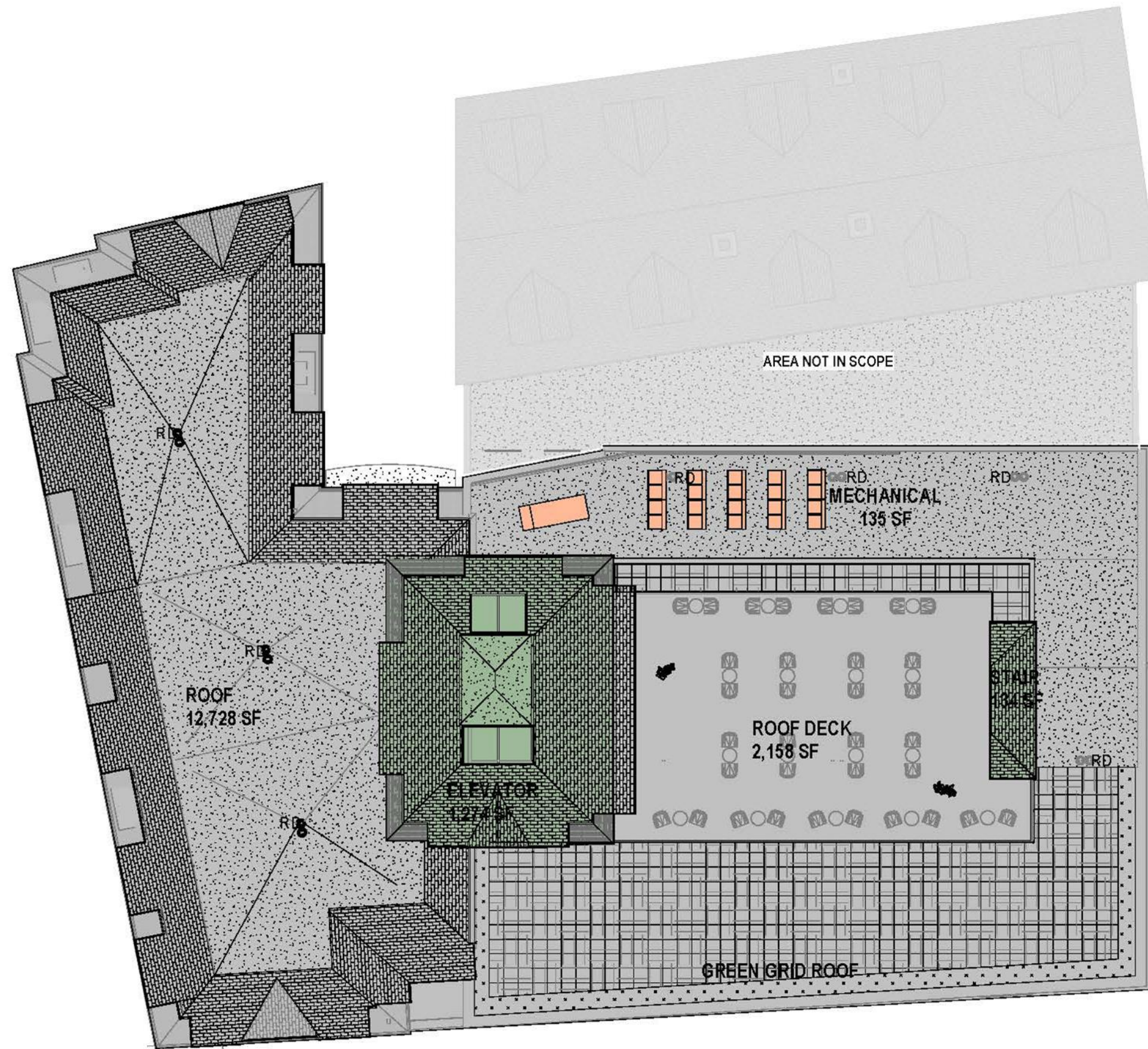
BOA-1

AERIAL VIEW

Novocure Flagship at 64 Vaughan Mall

JSA

7/24/23



Roof Appurtenance Calc

Elevator	1,274 SF
Stair	134 SF
Mech	135 SF
Total	1,543 SF
1,543 / 12,728 = 12%	

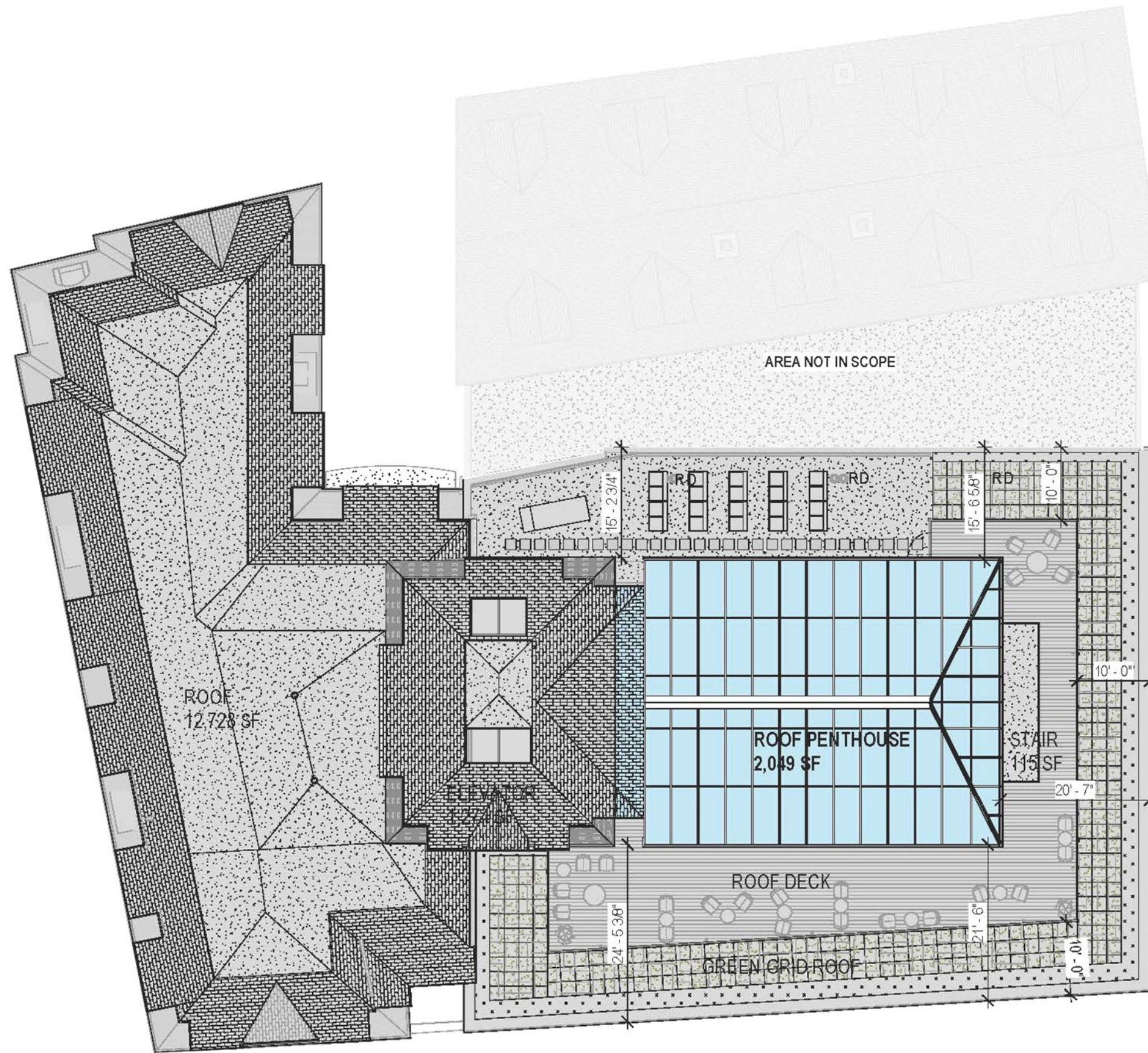
BOA-2

APPROVED ROOF PLAN

Novocure Flagship at 64 Vaughan Mall



7/24/23



Proposed Penthouse Calc

Penthouse 2,049 SF
 2,049/12,728 = 16%

BOA-3

PROPOSED PENTHOUSE
 Novocure Flagship at 64 Vaughan Mall



7/24/23



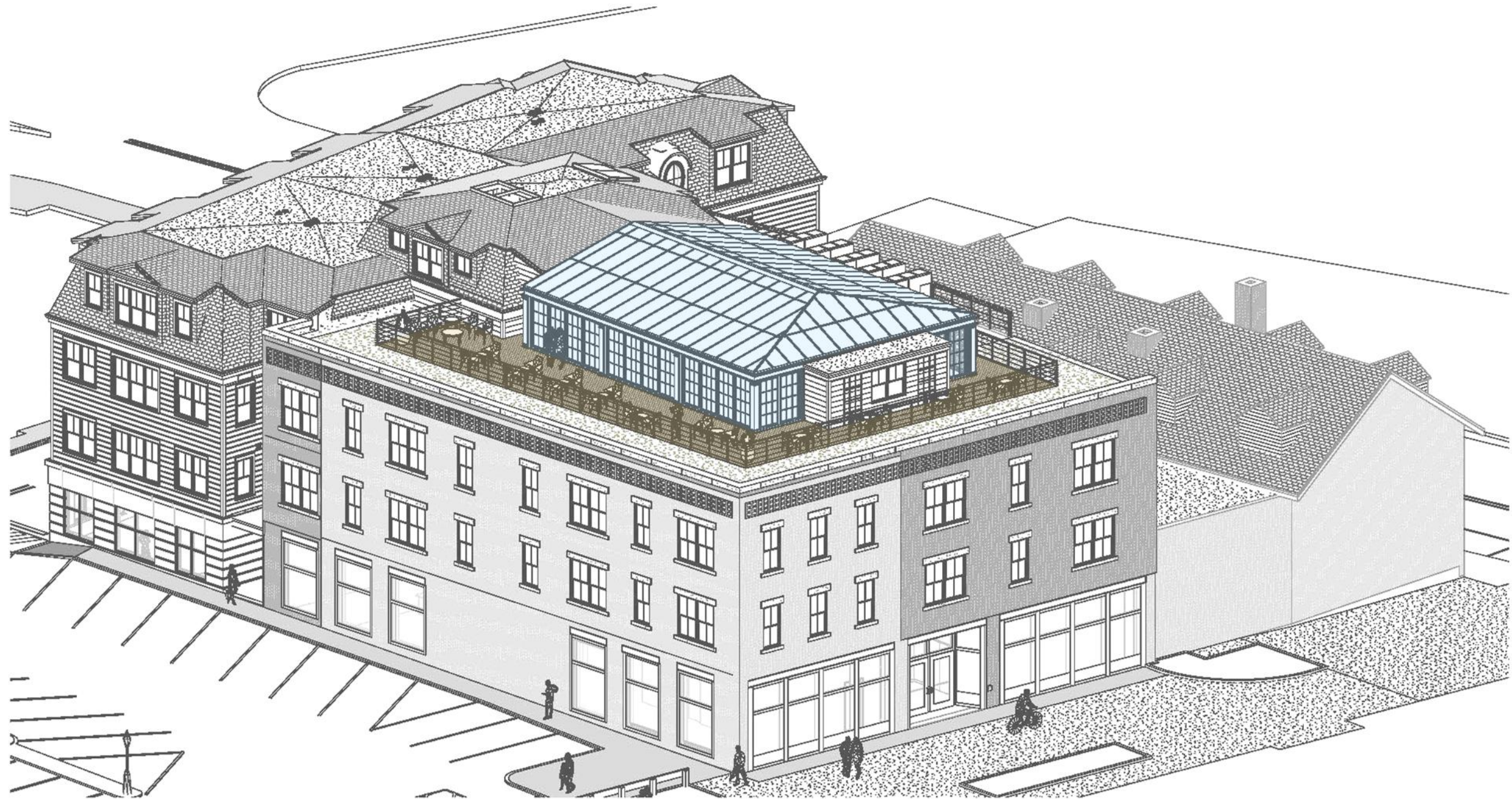
BOA-4a

APPROVED ROOF DECK

Novocure Flagship at 64 Vaughan Mall

JSA

7/24/23



BOA-4b

PROPOSED PENTHOUSE

Novocure Flagship at 64 Vaughan Mall

JSA

7/24/23



BOA-5

WORTH LOT VIEW 1
Novocure Flagship at 64 Vaughan Mall



7/24/23



BOA-6

WORTH LOT VIEW 2
Novocure Flagship at 64 Vaughan Mall



7/24/23



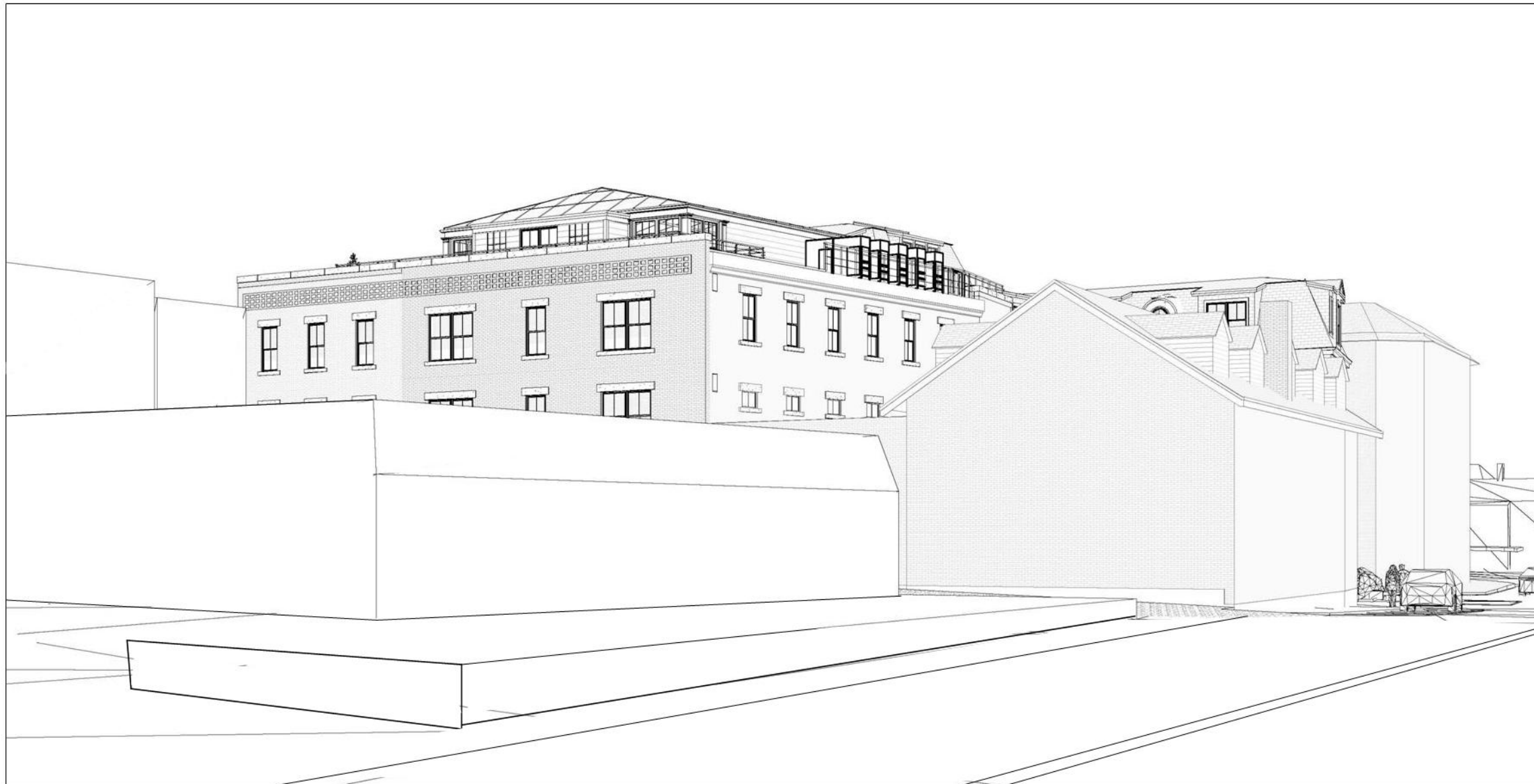
BOA-7

BRIDGE STREET VIEW

Novocure Flagship at 64 Vaughan Mall

JSA

7/24/23

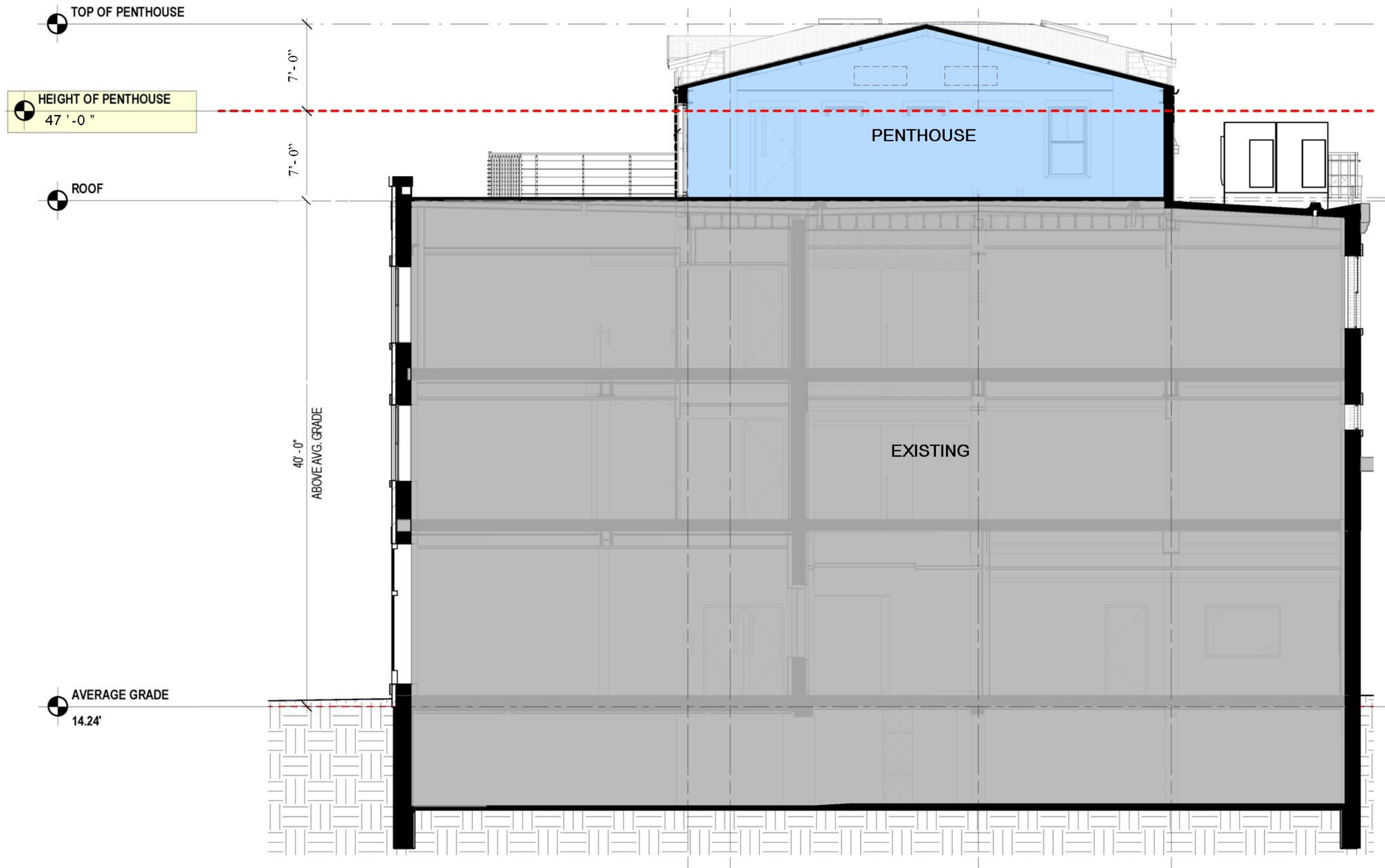


BOA-8

HANOVER STREET VIEW
Novocure Flagship at 64 Vaughan Mall



7/24/23



BOA-9a

BUILDING SECTION

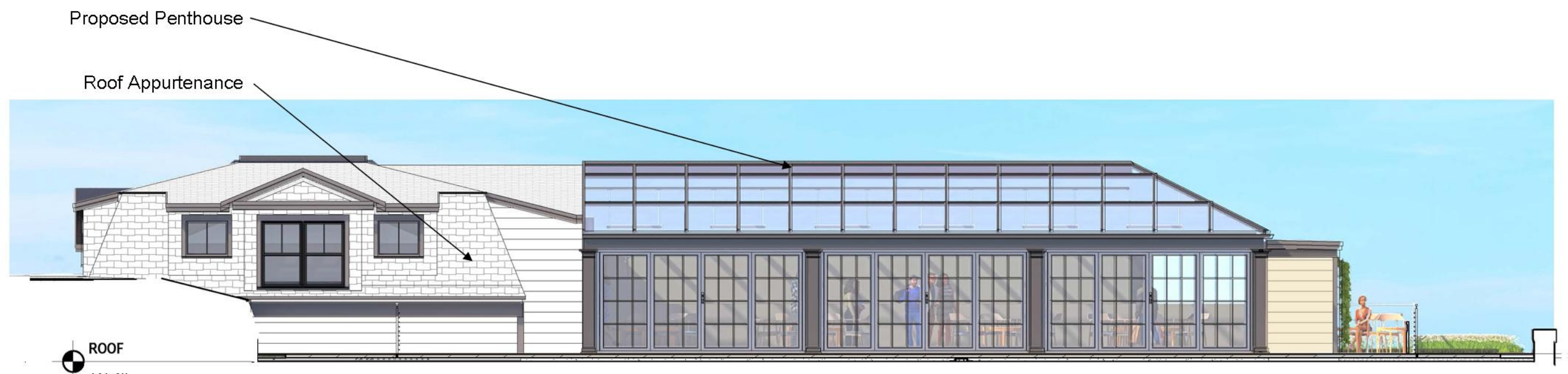
Novocure Flagship at 64 Vaughan Mall



7/24/23



East Elevation



South Elevation

BOA-9b

ELEVATIONS

Novocure Flagship at 64 Vaughan Mall



7/24/23



BOA-10

AERIAL VIEW – Evening
Novocure Flagship at 64 Vaughan Mall



7/24/23

July 21, 2023

To: The City of Portsmouth, Zoning Board of Adjustment

We are writing this letter of support for the approval of the Novacure Pavilion Enclosure for 64 Vaughan Mall. We ask that you approve the Pavilion Enclosure in place of the previously approved rooftop deck. The Pavilion enclosure Novacure is requesting will provide year round usage for their visiting doctors, scientists, patients, guests and professionals. In addition to year-round usage, another advantage to enclosing the approved deck is the reduction of noise and lighting for the abutting properties. Novacure has assured the 25 Maplewood Owners and other abutters that if the deck enclosure is approved by the BOA, no further requests for rooftop development or utilization will take place; please make this agreement part of the approved record.

One further benefit to approving this new design is for the way it visually ties the two very different buildings together, making the Novacure North American Flagship Building more aesthetically attractive. As direct abutters to this property, we have been watching this project very closely and support this new design.

As all of the above are of significant benefit to Novocure, the abutting buildings, and the City of Portsmouth, we request the Zoning Board of Adjustment approve Novocure's Variance Application for the enclosed rooftop pavilion.

Respectfully submitted,

John and Alison Griffin
25 Maplewood Ave #403
Portsmouth, NH 03801

July 24, 2023

City of Portsmouth - Zoning Board of Adjustment Office

1 Junkins Ave.

Portsmouth, NH 03801

Dear Sir/Madam,

We are writing this letter of support for the approval of the Novocure Pavilion Enclosure at 64 Vaughan Mall in Portsmouth, NH. It is expected that the new Pavilion enclosure being requested as a replacement for the previous rooftop deck will provide year round usage and reduce any noise and lighting to the abutting properties. In addition, it is our view that Novocure's pending variance application seeking approval of the enclosure with a glass roof on the existing rooftop deck will increase the overall value of the neighboring properties and continue to build on the uniqueness of that section of downtown Portsmouth.

In the spirit of maintaining downtown Portsmouth's look, feel and connectivity, the new design brings the buildings together in a much more cohesive manner. Novocure has assured the 25 Maplewood Owners and other abutters that if the deck enclosure is approved by the Board of Adjustment, no further requests for rooftop development or utilization will take place; please make this agreement part of the approved record.

Regards,

Chris and Rita Sadler

25 Maplewood Avenue Unit #305

John Bosen

From: Slattery Sr, Wayne <wslattery@baystatefinancial.com>
Sent: Sunday, July 23, 2023 3:25 PM
To: John Bosen
Subject: Fwd: Novacures Variance Application

Sent from my iPad

Begin forwarded message:

From: "Slattery Sr, Wayne" <wslattery@baystatefinancial.com>
Date: July 23, 2023 at 7:18:24 AM EDT
To: jbosen@bossenandassociates.com
Cc: John Griffin <jagriffinstraws@gmail.com>
Subject: **Novacures Variance Application**

Atty Bossen

As Abutters to Novacure, this email is to show complete support for Novacures Variance application to approve a roof pavilion "Penthouse" at 64 Vaughan Mall for the following reasons:

Novacure will have a beautiful rooftop outdoor space for year round use for visiting medical scientists, partners for training and conferences. In addition this space may be used by local Portsmouth organizations like the Boys and Girls clubs and the like.

As an abutter the enclosure will eliminate ambient noise and lighting that will naturally accompany an open air space. This will increase the value of the neighboring properties which already have the upscale Jimmy's Jazz Club.

Also the Pavilion will not be visible from the 3rd and 4th floors of 25 Maplewood Ave because of the already approved elevator shaft and stairwells which block that view. If the deck enclosure is approved, Novacure has agreed to move the cafeteria from the 4th floor of our side of the building to the Vaughan Mall side and put a conference room in its place.

All of the above are significant benefits to the Residential and commercial owners of 25 Maplewood Ave.

Sincerely

Wayne F Slattery
Paula M Slattery
25 Maplewood Ave. unit 301
Portsmouth , NH

Sent from my iPad

John Bosen

From: Anita Paul <ampaul240@gmail.com>
Sent: Thursday, July 20, 2023 5:19 PM
To: John Bosen
Subject: Support of Novocure

July 20, 2023

The City of Portsmouth
Zoning Board of Adjustments

This letter is written in support of Novocures variance application to approve a roof pavilion “penthouse” at 64 Vaughn Mall.

Architecturally the building adds a pleasant view for surrounding neighbors while melding into the historic skyline.

As one of the owners of 25 Maplewood Ave condominiums, the enclosure of the pavilion will help to eliminate noise and lighting vs. an open air deck. Being a direct abutter, this change will improve the value and use of the building for Novocure but the value of neighboring properties in the immediate vicinity.

We are in full support of approving the variance for Novocure.

Peter & Anita Paul
25 Maplewood Avenue
Suite 404
Portsmouth NH

25 Maplewood Avenue
Unit 303
Portsmouth, NH. 03801

July 20, 2023

City of Portsmouth New Hampshire
Zoning Board of Adjustment
Portsmouth City Hall
1 Junkins Avenue
Portsmouth, New Hampshire 03801

RE: 64 Vaughan Mall: Abutter's Support of NOVOCURE'S Project as Designed and Forecasted to include its Enclosed Rooftop Pavilion

Dear Ms. Phyllis Eldridge, Chair, City of Portsmouth, NH. Zoning Board of Adjustment and Members of the Board:

Our Historic City is fortunate that Mr. William F. Doyle, Executive Chairman of Novocure Inc., chose Portsmouth as the location for Novocure's new United States Headquarters. Mr. Doyle's vision for the 64 Vaughan Mall structure thoughtfully considers the historic aspects of the building's internal and external facades while reconciling the need to bring this building into the 21st Century. When complete, this stellar building will exemplify the standards Mr. Doyle demands for his United States Headquarters.

I am a Direct Abutter to this project. My Unit, #303, in the 25 Maplewood Provident Condominium Association building spans the length of the third floor on the north side of the structure. It parallels the length of the south side of the third floor of the Novocure building.

As a medical professional, Combat Flight Nurse and Vietnam Veteran, I recognize the necessity of having a welcoming space in every medical-related facility for medical professionals, patients, guests, and ancillary staff to gather for conferences, training, scientific discussions, or merely to relax.

The enclosed pavilion the development team has proposed for Novocure's roof does this. The pavilion will provide a year-round venue for use that executives have said may be offered in off hours for civilian use. It will improve the value of surrounding city structures by providing a reduction in ambient noise and bright lighting.

In closing, Mr. Doyle has agreed that if the Enclosed Pavilion is approved by the City of Portsmouth's Zoning Board of Adjustment, he will authorize the cafeteria in his building to be moved to the north side facing the Vaughan Mall. In its place he will create a conference room. He has also agreed that no other area of the roof will be utilized for any purpose except maintenance.

This Declaration will be a MATTER OF RECORD included in NOVOCURE'S VARIANCE REQUEST to the City of Portsmouth, New Hampshire's Zoning Board of Adjustment.

Respectfully submitted,
Donna L. de Wildt
Captain Donna L. de Wildt-Olden
BSN; RN; MPA/NSA; IBC.
VietNam / Desert Shield Desert Storm Veteran



The City of Portsmouth, New Hampshire
1000 State Street, 3rd Floor
Portsmouth, NH 03801

July 19, 2023

To: The City of Portsmouth, Zoning Board of Adjustment;

This letter is submitted in support of Novocure's Variance Application to approve the enclosure with a glass roof of the existing rooftop deck at 64 Vaughn Mall, Novocure's North America Flagship Building.

The deck enclosure requested and referred to as the Pavilion, will provide a year-round venue for Novocure, add to the improvement of Vaughn Mall, and increase the overall value of the neighboring properties.

As a representative for The Residences at Portwalk Place, we would like to express our full support for the proposed roof top enclosure. We believe it will make a significant visual enhancement and help reduce any potential noise disturbances.

Thank you for your consideration.

Very Respectfully,

Matthew Albert
Sr. Property Manager
The Residences at Portwalk Place
603-436-9926
malbert@winco.com



John Bosen

From: art.anker@gmail.com
Sent: Friday, July 14, 2023 4:03 PM
To: John Bosen
Subject: Support for Novocure's Variance Application, Roof Pavillion Penthouse, 64 Vaughn Mall

TO: The City of Portsmouth, Zoning Board of Adjustment

This letter is submitted in support of Novocure's Variance Application to approve an enclosed roof pavilion penthouse at 64 Vaughn Mall, Novocure's North American Flagship Building.

The benefits of the proposed pavilion include the following:

- To provide year round space for visiting medical professionals, scientists, and other partners for training, seminars and conferences
- To provide employees and guests access to outdoor space where there is no other such space available on the property
- To provide space on occasion to local Portsmouth organizations for weekend meetings and/or conferences
- Add to improvement of Vaughn Mall
- Increase the overall value of the neighboring properties

Enclosing the roof pavilion penthouse will eliminate ambient noise and lighting particularly at night.

As an abutting neighbor to Novocure at 64 Vaughn Mall, we request the Zoning Board of Adjustment to approve Novocure's Variance Application for the enclosed roof pavilion penthouse at 64 Vaughn Mall.

Respectfully,
Mary and Arthur Anker
Owners, Unit 304, The Provident Condominiums
25 Maplewood Ave., Portsmouth, NH 03801

John Bosen

From: George B. Heckler, Jr <gbheckler47@gmail.com>
Sent: Thursday, July 13, 2023 11:09 AM
To: John Bosen
Subject: Support for Novocure's Variance Application, Rooftop Deck Enclosure, 64 Vaughn

To:
The City of Portsmouth, Zoning Board of Adjustment

This letter is submitted in support of Novocure's Variance Application to approve the enclosure with a glass roof of the existing rooftop deck at 64 Vaughn Mall, Novocure's North America Flagship Building. The deck enclosure requested and referred to as the Pavilion, will provide a year round venue for Novocure, add to the improvement of Vaughn Mall, and increase the overall value of the neighboring properties. I respectfully suggest that the advantages of Novocure's deck enclosure may be fairly summarized as follows:

(1) Novocure

Will have a beautiful, unique rooftop outdoor space for year round use by visiting medical professionals, scientists, and partners for training and conferences. Novocure has confirmed that the Pavilion will not be utilized as any type of permanent office space for its employees. In addition to providing a one-of-a-kind venue for its guests and employees, Novocure's Associate Director of North America Facilities, Dean Smith, has advise that this space may also be made available to local Portsmouth organizations for weekend meetings, conferences.

(2) Abutting Neighbors

The enclosure of the rooftop deck will eliminate ambient noise and lighting that will naturally accompany an open air deck during the Spring, Summer and Fall seasons, particularly at night. The deck enclosure will not only improve the value and usage of Novocure's building but, also, the value of the neighboring properties which already have the upscale, new Jimmy's Jazz Club and 25 Maplewood Condominium building in the immediate vicinity. The Vaughn Mall will also benefit from Novocure's presence, which will be further enhanced by the enclosure of the rooftop deck.

(3)The Provident Condominiums/25 Maplewood In addition to the benefits of the enclosure of the rooftop deck as set forth above, this structure/Pavilion will not interfere with the view from the Condominiums as it will be blocked by the already approved elevator shaft and stairwells.

From a review of the plans and based upon its location on the Novocure roof, the enclosed deck/Pavilion will not be an intrusion but, rather, an attractive addition from any viewing vantage point along Vaughn Mall or the Worth Parking Lot. Novocure has also assured The Provident Condominiums that if the deck enclosure is permitted, Novocure will agree, as part of the BOA's approval, that there will be no further requests for rooftop development or utilization other than routine maintenance, so that this representation/agreement is made part of the approval record.

As all of the above are of significant benefit to Novocure, Abutting Neighbors, to include The Provident Condominiums/25 Maplewood, and the City of Portsmouth/Vaughn Mall, I request that the Board of Adjustment approve Novocure's Variance Application for the enclosure of its rooftop deck—Pavilion.

Respectfully submitted,
Barry Heckler
Owner, Unit 302, The Provident Condominiums
25 Maplewood Ave, Portsmouth, NH 03801
President, Board of Directors, The Provident Condominiums HOA



July 17, 2023

City of Portsmouth
Zoning Board of Adjustment Office
1 Junkins Ave.
Portsmouth, NH 03801

Dear Sir/Madam,

The Executive Management of BankProv request that this letter be submitted in support of Novocure's Variance Application to approve the enclosure with a glass roof of the existing rooftop deck at 64 Vaughn Mall (Novacure's North America Flagship building). It is the opinion of management that the deck enclosure -- referred to as the "Pavilion" will increase the overall value of the neighboring properties.

It is understood that Novocure will use the space for year-round use by visiting medical professionals, scientists, and partners for training and conferences. They have also committed to allowing this space to be available to local Portsmouth organizations for weekend meetings/conferences.

We believe the rooftop deck will improve value and usage of Novacure's building as well as the value of neighboring properties. The Pavilion will provide an attractive addition from any vantage point along the Vaughn Mall/Worth parking lot areas.

Novacure has also assured members of the Board of The Provident Condominiums that there will be no further requests for rooftop development or utilization other than routine maintenance, so this representation/agreement is made part of the approval record.

As the representative for BankProv, I request that the Board of Adjustment approve Novocure's Variance Application for the enclosure of its rooftop deck (Pavilion).

Sincerely,

A handwritten signature in cursive script that reads "Carol Houle".

Carol Houle
Co-CEO
BankProv

II. NEW BUSINESS

- D. The request of **Cynthia Austin Smith and Peter Smith (Owners)**, for property located at **9 Kent Street** whereas relief is needed to demolish the existing two (2) living unit structure and construct a one (1) living unit structure which requires a Variance from Section 10.521 to allow a) 5,000 square feet of lot area where 7,500 square feet are required and b) 5,000 square feet of lot area per dwelling unit where 7,500 square feet are required. Said property is located on Assessor Map 113 Lot 42 and lies within the General Residence A (GRA) District. (LU-23-119)

Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Two-family	Demo structure and construct new single unit	Primarily residential
<u>Lot area (sq. ft.):</u>	5,000	5,000	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	5,000	5,000	7,500 min.
<u>Street Frontage (ft.):</u>	50'+	50' +	100 min.
<u>Lot depth (ft.)</u>	100	100	70 min.
<u>Primary Front Yard (ft.):</u>	7	11	10 (using front yard averaging) min.
<u>Secondary Front Yard (ft.):</u>	16	16	13 (using front yard averaging) min.
<u>Right Yard (ft.):</u>	0.5	12	10 min.
<u>Rear Yard (ft.):</u>	6	>20	20 min.
<u>Height (ft.):</u>	<35	34.5	35 max.
<u>Building Coverage (%):</u>	35	25	25 max.
<u>Open Space Coverage (%):</u>	63.5	42	30 min.
<u>Parking</u>	0	2 (2 car garage)	2
<u>Estimated Age of Structure:</u>	1900	Variance request(s) shown in red.	

Other Permits/Approvals Required

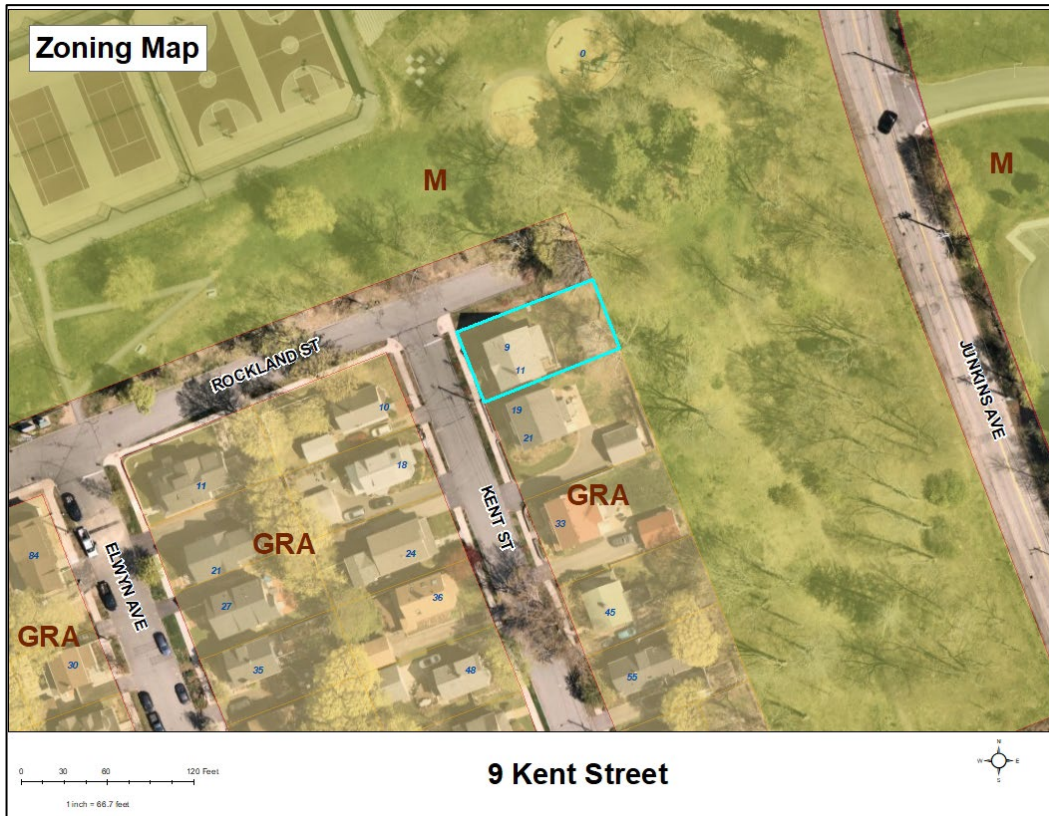
- Building Permit

Neighborhood Context

Aerial Map



Zoning Map



Previous Board of Adjustment Actions

July 19, 1988 – Relief from Zoning Ordinance including: Variance from Article III, Section 10-302 are requested: a) construction of 4' x 20' rear egress stairs from the second floor to rear yard with 33% building lot coverage in a district where the maximum building lot coverage allowed is 20% and b) construction of said stairs with a 2 ½' right yard where a 10' side yard is the minimum in this district. The Board voted to **grant** the request as advertised.

March 29, 2023 – The Board considered the application for demolishing the existing two-family and constructing a single-family dwelling which requires the following: 1) Variances from Section 10.521 to allow a) a lot area and lot area per dwelling of 5,000 square feet where 7,500 square feet is required for each; b) 53% building coverage where 25% is the maximum allowed; c) a 4.5 foot rear yard where 20' is required; d) a 0.5 foot side yard where 10 feet is required; e) a 0 foot front yard where 11 feet is allowed under Section 10.516.10; and f) a 9.5 foot secondary front yard where 13 feet is allowed under Section 10.516.10. 2) A Variance from Section 10.515.14 to allow a 1.5 foot setback for a mechanical unit where 10 feet is required. The Board voted to **postpone** to the April 18, 2023, meeting.

April 18, 2023 - The Board voted to **postpone** the March 29, 2023, petition to the May 16, 2023, meeting.

May 16, 2023 – The Board voted to **deny** the March 29, 2023, request.

Planning Department Comments

Fisher vs. Dover

The applicant was before the Board in May of 2023 seeking relief from multiple dimensional standards to demolish the existing structure, construct a single living unit, and add new backyard features. The Board denied the request for relief at that time citing that it was brand new construction and the applicant could build a new structure in full compliance or require less relief than requested. The new design reconfigures the structure on the lot, meeting all dimensional requirements except for lot area and lot area per dwelling unit, for which they are seeking relief. Staff feels this is a significant enough change that would not evoke Fisher v. Dover, but the Board may want to consider whether it is applicable 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).

For this project, the complete demolition of the existing structure creates a vacant lot and will require relief for the non-conforming dimensions of the lot. See Section 10.311 copied below for reference.

10.311 *Any lot that has less than the minimum lot area or street frontage required by this Ordinance shall be considered to be nonconforming, and no use or structure shall be established on such lot unless the Board of Adjustment has granted a variance from the applicable requirements of this Ordinance.*

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

 - (c) *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.

HOEFLE, PHOENIX, GORMLEY & ROBERTS, PLLC

ATTORNEYS AT LAW

127 Parrott Avenue | Portsmouth, NH, 03801
Telephone: 603.436.0666 | Facsimile: 603.431.0879 | www.hpgrlaw.com

July 26, 2023

HAND DELIVERED

Peter Stith, Principal Planner
Portsmouth City Hall
1 Junkins Avenue
Portsmouth, NH 03801

Re: Peter Smith & Cynthia Austin Smith, Owners/Applicants
9 Kent Street
Tax Map 113/Lot 42

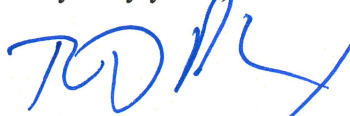
Dear Mr. Stith & Zoning Board Members:

On behalf of Peter Smith and Cynthia Austin Smith, Owners/Applicants, enclosed please find the following in support of a request for zoning relief:

- Digital Application submitted via Viewpoint earlier today.
- Owner Authorization.
- 7/26/23 – Memorandum and exhibits in support of variance application.

We look forward to presenting this application to the Zoning Board at its August 15, 2023 meeting.

Very truly yours,



R. Timothy Phoenix
Monica F. Kieser

Encl.

cc: Peter Smith & Cynthia Austin Smith
John Chagnon, Ambit Engineering, Inc. (email)
Jennifer Ramsey, Somma Studios (email)
Robbi Woodburn, Woodburn & Associates (email)

DANIEL C. HOEFLE

R. PETER TAYLOR

GREGORY D. ROBBINS

STEPHANIE J. JOHNSON

R. TIMOTHY PHOENIX

ALEC L. MCEACHERN

PETER V. DOYLE

OF COUNSEL:

LAWRENCE B. GORMLEY

KEVIN M. BAUM

MONICA F. KIESER

SAMUEL R. REID

STEPHEN H. ROBERTS

JACOB J.B. MARVELLEY

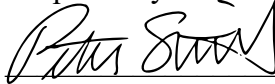
DUNCAN A. EDGAR

JOHN AHLGREN

OWNER'S AUTHORIZATION

We, Peter Smith and Cynthia Austin Smith, Owners/Applicants of 9 Kent Street, Tax Map 113/Lot 42, hereby authorize law firm Hoefle, Phoenix, Gormley & Roberts, PLLC to represent us before any and all City of Portsmouth Representatives, Boards and Commissions for permitting the project.

Respectfully submitted,



Peter Smith

Date:



Cynthia Austin Smith

Date:

MEMORANDUM

TO: Portsmouth Zoning Board of Adjustment (“ZBA”)
FROM: R. Timothy Phoenix, Esquire
Monica F. Kieser, Esquire
DATE: July 26, 2023
RE: Owners/Applicants: Peter Smith & Cynthia Austin Smith
Property: 9 Kent Street
Tax Map 113, Lot 42
General Residence A District

Dear Chair Eldridge and Members of the Zoning Board of Adjustment (“ZBA”):

On behalf of Owners/Applicants Peter Smith & Cynthia Austin Smith (“Smith”), we are pleased to submit this Memorandum and exhibits in support of a requested variance from the Portsmouth Zoning Ordinance (“PZO” or “Ordinance”).

I. EXHIBITS

- A. Plan Set – Ambit Engineering,
 - Cover Page
 - Standard Boundary & Topographic Survey
 - C1 Demo Plan
 - C2-Variance Plan
- B. 7/26/23 Architectural Plan Set - Somma Studios
 - Elevations
 - Floor plans
- C. 3/23 Proposed Variance Plan, Notice of Decision (Denial) issued on 5/16/2023, 5/16/2023 Meeting Minutes.
- D. Site Photographs.
 - Satellite Views
 - Kent Street & Rockland Street Views
- E. Tax Map 113.
- F. Subdivision/Ownership History
 - 1899 Subdivision Plan
 - Deed changes 1903-Present.

II. PROPERTY

9 Kent Street is a 5,000 s.f. (50 ft. x100 ft.) corner lot (Rockland Street) in the General Residence A (“GRA”) District containing a side-by-side duplex (1,075 s.f.), deck and porch (together 315 s.f.), and one car garage (296 s.f.) to the rear of the lot, with no driveway or off street parking (the “Property”). The garage is in the rear yard setback but is not accessible for off-street parking due to the significant slope between Rockland Street and its location. (**Exhibit**

A). The existing home, AC unit, and garage is in the right side yard setback within inches of the common right side property line. A portion of the existing front deck is slightly within the front yard setback. Smiths intend to remove the existing duplex and construct a new single-family home with an incorporated garage accessed from Rockland Street (the “7/26 Project”). See Section VI, *infra*. The Project decreases existing density and complies with yard setback, coverage, and open space requirements, but because the existing duplex is razed and a new home constructed, Planning and Legal Staff have advised that relief is required because the lot fails to comply with today’s lot area and lot area/dwelling requirements. We respectfully disagree.

III. PURSUANT TO PORTSMOUTH ZONING ORDINANCE §10.310, NONCONFORMING LOTS, THE PROPOSED PROJECT REQUIRES NO VARIANCE FROM MINIMUM LOT SIZE

The 5000 ft.² lot has existed since at least 1899. (Exhibit F). PZO §10.311 provides:

Any lot that has less than the minimum lot area... required by this ordinance shall be considered to be nonconforming and no use or structure shall be established on such lot unless the Board of Adjustment has granted a variance from the applicable requirements of this ordinance. (Emphasis added)

At the outset, from its plain wording, this section establishes that if a lot is nonconforming, it is permissible as a building lot without a variance for the nonconforming lot size as long as any required variances are obtained with respect to any use or proposed structure (The residential use was established in the early 1900’s and is not changing). To determine otherwise would render the underlined language above meaningless. The ordinance section would instead merely need to read to the effect that “any lot that has less than the minimum lot area required by this ordinance shall require a variance from the lot size in order to establish any change of use or structure upon said nonconforming lot.”

The above interpretation is further buttressed by section 10.320 Nonconforming Buildings and Structures Section 10.321 provides:

A lawful nonconforming building or structure may continue and be maintained or repaired, but may not be extended, reconstructed or enlarged unless such extension, reconstruction or enlargement conforms to all the regulations of the district in which it is located.

In the instant case, we have a presently nonconforming building which will be removed and reconstructed with a new building. The new building and all other improvements fully

comply with the Ordinance and decrease the density. Accordingly, the Project conforms with §10.321. Coupled with the language of §10.311 above, it is clear that the intent is to allow a lot that has existed and its present configuration long before zoning, to be permitted with structures as long as those structures comply with §10.321, or receive a variance pursuant to section §10.311. In an abundance of caution, Smith requests the variance below.¹

IV. MARCH 1, 2023 PROPOSED PROJECT

Pursuant to a March 1, 2023 application for variances submitted to the Portsmouth Zoning Board (the "3/23 Proposal" **Exhibit C**), Smith proposed to raze the existing two-family home in favor of a contemporary take on a single-family New Englander (1,353 s.f.) with a lower level garage accessed from Rockland, front/rear porches, and a pervious outdoor living area surrounded by a landscape wall with landscaping and screening.

Prior to appearing before the Zoning Board of Adjustment ("ZBA") on May 16, 2023, Smiths' team reviewed the 3/23 Proposal on two occasions with City Staff. At Staff's suggestion, Smiths' Engineer appeared at a work session with the Technical Advisory Committee ("TAC") to discuss the curb cut on Rockland Street, and other aspects of the redevelopment proposal. In addition, Landscape Architect Robbi Woodburn met with the City's Trees and Greenery Committee to review landscaping elements. Site, architectural, and landscaping plan sets were adjusted based upon these meetings.

City Staff determined that dimensional relief was required for lot area, lot size/dwelling unit density, building coverage, and elements within the principal front yard on Kent Street, secondary front yard on the Rockland Street side, and rear yard setbacks. As a result of meetings with city staff, TAC and the Trees and Greenery Committee, Smith through its legal and professional representatives submitted a request for the following zoning relief from 5 separate sections of the zoning ordinance (17 separate specific requests) considered by the ZBA on May 16, 2023:

¹ If the variance is granted, this argument will be withdrawn upon expiration of the 30 days appeal period.

V. RELIEF REQUESTED FOR MARCH 23, 2023 “INITIAL” PROJECT

<u>Variance Section/Requirement</u>	<u>Existing</u>	<u>Proposed</u>
<u>PZO §10.520/Table §10.521:</u> <u>Dimensional Standards</u> 7,500 s.f. Lot area 7,500 s.f. Lot area/dwelling unit	5,000 s.f. 2,500 s.f./dwelling	No change to lot size 5,000 s.f./dwelling (improved)
<u>PZO §10.520/Table §10.521:</u> <u>Dimensional Standards</u> 10’ Front Yard Kent St. 13’ Front Yard Rockland St.	Kent: 7.5’ (steps) 9.2’ (front deck) 17.3’ (house) Rockland: 15.7’ (house)	Kent: 0’ (landscape wall) 6.5’ (steps) 9.3’ (porch) 14.3’ (house) Rockland: 1.0’ (landscape wall) 12.5’ (steps) 9.7’ (overhang) 15.3’ (house)
<u>PZO §10.520/Table §10.521:</u> <u>Dimensional Standards</u> <u>10’ Side Yard</u>	0.7’ (house) 1.7’ (garage)	0.6’ (house) 0.5’ (landscape wall/ pergola) 1.5’ (AC unit) 11.5’ (pool equipment pad)
<u>PZO §10.520/Table §10.521:</u> <u>Dimensional Standards</u> <u>20’ Rear Yard</u>	5.6’ (garage)	4.5’ (landscape wall) 4.5’ (6 ft. privacy fence/pool) 10.3’ (pool equipment pad)
<u>PZO §10.520/Table §10.521:</u> <u>Dimensional Standards</u> <u>25% Building Coverage</u>	35%	53% (includes pervious patio 18” above grade)

The 3/23 Proposal for the above zoning relief pursuant to the was denied by the ZBA at its hearing on May 16, 2023 (**Exhibit C**).

VI. JULY 26, 2023 PROPOSED PROJECT

In response to the comments and concerns expressed by the ZBA in consideration of and denial of the 3/23 Proposal (see **Exhibit C**), Smith and their design team completely redesigned the redevelopment. The only items not changing from the previous relief are the change from a two-family duplex to a single-family home, and the 5000 s.f. lot area, which cannot be changed. As a result of the design changes:

- i) No front yard setback relief is required or requested from Kent Street (wall, steps, porch, house)
- ii) No front yard setback relief is required or requested from Rockland Street (wall, steps, overhang, house)
- iii) No right side setback relief is requested or required (house, wall, Pergola, AC unit, pool equipment pad)
- iv) No rear yard setback relief is requested or required (wall, privacy fence, plunge pool, pool equipment pad)
- v) No building coverage relief is requested or required(3/23 proposal provided for building coverage to be 53%, due in large part to a proposed pervious patio more than 18 inches above existing grade. The present proposal complies with the 25% building coverage limit).²

The instant 7/23 Proposal was reviewed with Planning Staff to confirm that, except as follows, the instant 7/23 Proposal is zoning compliant.

VII. RELIEF REQUESTED FOR 7/23 PROPOSAL

<u>Variance Section/Requirement</u>	<u>Existing</u>	<u>Proposed</u>	<u>Comment</u>
<u>PZO §10.520/Table §10.521: Dimensional Standards</u>			
7,500 s.f. Lot area	5,000 s.f.	5,000 s.f.	<ul style="list-style-type: none"> • Prior nonconforming lot – cannot be changed • Significant improvement
7,500 s.f. Lot area/dwelling unit	2,500 s.f./dwelling	5,000 s.f./dwelling	

VII. ADDITIONAL PERMITS REQUIRED

- Demolition Permit
- Driveway Permit
- Building Permit

VIII. FISHER V. DOVER ANALYSIS

In Fisher v. City of Dover, 120 NH 187(1980), the New Hampshire Supreme Court held that once an applicant makes a request to the ZBA and is denied, the ZBA may hear a subsequent variance request only upon a finding of “a material change in circumstances” or unless it “materially differs in nature and degree from its predecessor”. The court based its decision on concerns that absent a material change in circumstances or a material difference, there would be no finality to ZBA proceedings, thus threatening “the integrity of the zoning plan” Id. However,

² See 3/23 zoning request chart, supra, p.4.

the limitation is not to be technically and narrowly imposed. Fisher citing Bois v. City of Manchester, 113 NH 339, 341(19 73).

In cases subsequent to Fisher, the Supreme Court clarified that this restriction does not apply to a subsequent application explicitly or implicitly invited by the ZBA and modified to address its concerns. Hill-Grant Living Trust v. Kearsarge Lighting Precinct; 159 NH and 529,536 (2009) (citing Morgenstern v. Town of Rye, 147 NH 558 (2002)). The instant 7/23 Proposal before the ZBA reduces the applicable variance requirements for which relief is sought from five separate zoning ordinance sections to one³ (lot size/lot size per dwelling unit which cannot be changed or avoided), and reduces the various locations on the lot/home requiring relief from 17 to one. The instant Proposal also addresses the concern of the ZBA with the 3/23 denial proposal. (See **Exhibit C.**)

Without question, the requirements of Fisher v. Dover and its progeny for a material change in circumstances, materially different application addressing previous concern is here met.

IX. VARIANCE REQUIREMENTS

- 1. The variances will not be contrary to the public interest.**
- 2. The spirit of the ordinance is observed.**

The first step in the ZBA's analysis is to determine whether granting a variance is not contrary to the public interest and is consistent with the spirit and intent of the ordinance, considered together pursuant to Malachy Glen Associates, Inc. v. Town of Chichester, 155 N.H. 102 (2007) and its progeny. Upon examination, it must be determined whether granting a variance "would unduly and to a marked degree conflict with the ordinance such that it violates the ordinance's basic zoning objectives." Id. "Mere conflict with the zoning ordinance is not enough." *Id.*

The purpose of the Portsmouth Zoning Ordinance as set forth in PZO §10.121 is "to promote the health, safety and the general welfare of Portsmouth and its region in accordance with the City of Portsmouth Master Plan... [by] regulating":

³ We consider this to be one variance since it is relating to only one section of the ordinance, and because the lot size per dwelling unit is significantly improved creating a less nonconforming building/use. If the requested relief is considered two separate requests than the reduction is to 2 requests for relief.

1. The use of land, buildings and structures for business, industrial, residential and other purposes – The proposal requests variance for lot size/lot size per dwelling unit for a single-family home on a 5000 s.f. lot where 7500 s.f. is required. The lot, size, which is consistent with many other lots in the area (see **Exhibit E**) is a prior nonconforming condition that cannot be changed. The proposal improves lot size per dwelling unit, doubling from 2500 s.f. (2 units) to 5000 s.f. (1) unit). As it proposes a permitted single-family home where a duplex presently exists and requires no dimensional relief while the existing structures significantly violate setbacks (**Exhibit D**), the redevelopment is more conforming compared to existing conditions.
2. The intensity of land use, including lot sizes, building coverage, building height and bulk, yards and open space – A duplex dwelling will be reduced to a single-family dwelling, thus will be less intensive, including for parking, than presently exists. Additionally, the project relocates the right side of the existing home, inches from to the common lot line to a compliant setback, a marked improvement.
3. The design of facilities for vehicular access, circulation, parking and loading Off-street underground garage parking spaces will be provided where none now exist. Vehicular access, circulation, parking and loading are therefore improved.
4. The impacts on properties of outdoor lighting, noise, vibration, stormwater runoff and flooding – Stormwater will be managed on-site and improved given the increased yard setbacks on this lot, similarly sized to others in the neighborhood. (**Exhibits E, F**) Lighting noise and vibration will be no different than any other single family home in the neighborhood, likely less so than from the use of the nearby sport courts.
5. The preservation and enhancement of the visual environment – The proposed dimensionally compliant home, aesthetically pleasing low ($\leq 18''$) walls and landscaping preserve and enhance the existing visual environment.
6. The preservation of historic districts, and buildings and structures of historic or architectural interest – The Property is not in the Historic District.
7. The protection of natural resources, including groundwater, surface water, wetlands, wildlife habitat and air quality – Redevelopment of the Property has no adverse impact compared to existing conditions.

Based upon the foregoing, the variances do not “in a marked degree conflict with the ordinance such that they violate the ordinance’s basic zoning objectives.” Malachy Glen, supra, which also held:

One way to ascertain whether granting the variance would violate basic zoning objectives is to examine whether it would alter the essential character of the locality.... Another approach to [determine] whether granting the variance violates basic zoning objectives is to examine whether granting the variance would threaten the public health, safety or welfare. (emphasis added)

The intent of the GRA District is to provide single-family, two-family, or multi-family homes in moderate to high densities (5-12 units/acre) with appropriate accessory uses. One home on a 5000 s.f. lot translates to a purpose-compliant 8.8 units per acre (**Exhibits E, F**). *Id.* The Property is located in a thickly settled area of the City with many lots of the same or similar dimension. The tasteful single-family home decreases density, provides on-site parking, and improves dimensional nonconformance. Accordingly, granting the single variance for lot size which cannot be met and is consistent with lot sizes in the neighborhood will neither “alter the essential character of the locality,” which is significantly single-family nor “threaten the public health, safety or welfare”. As the proposed home will serve a single family and be fully code compliant, the variance for lot size improves, thus does not in any way negatively affect existing conditions.

3. Granting the variance will not diminish surrounding property values.

The instant 7/23 proposal replaces an aging duplex and garage significantly violating right side and rear setbacks and no on-site parking with a tastefully designed code-compliant and dimensional-compliant single-family home and related improvements requiring only the lot size/lot size per dwelling unit variance, a situation that cannot be remedied. Off-street parking will be improved by the inclusion of the two-car garage beneath. The proposed project reduces existing nonconformities including dimensional compliance and density improvement from 2500 s.f. (duplex) to 5000 s.f. (single family home). These factors, clearly demonstrate that the many improvements proposed, now requiring only a variance from the lot size/lot size per dwelling unit of 5000 s.f. where 7500 s.f. is required, will not diminish surrounding property values.

4. Denial of the variances results in an unnecessary hardship.

- a. Special conditions distinguish the property/project from others in the area.

The Property is small and narrow, with its northeasterly corner sloping toward South Mill Playground. The lot is 5000 s.f. where 7500 s.f. is required, with no driveway or access for off-

street parking. Because there is no way to make the lot, thus the Project, comply with the GRA lot size requirement, special conditions exist.

- b. No fair and substantial relationship exists between the general public purposes of the ordinance and its specific application in this instance.

Lot area and density limits, exist in order to: prevent overburdening/overcrowding of the land; permit areas for stormwater management; and allow for adequate light, air and sightlines. With the exception of the required lot size/lot size per dwelling unit, the Project is entirely dimensionally compliant, improves existing conditions, and importantly relocates the proposed home at a compliant distance from the right side line, presently only inches away. Density is improved compared to existing conditions by replacing the existing duplex with a single-family home in an improved location on a lot, consistent with the lot sizes in the neighborhood. The outdoor living space is screened by a wall and vegetation. The Project's building coverage and open space compliance ensure no increase in stormwater runoff. Accordingly, there is no fair and substantial relationship between the general public purposes of the PZO and its specific application to require a 7500 s.f. lot where a permitted 5000 s.f. lot was originally created, the lot/size is consistent with other lots in the area, and compliance is impossible.

- c. The proposed use is reasonable.

If the use is permitted, it is deemed reasonable. Vigeant v. Hudson, 151 N.H. 747 (2005). Residential uses are permitted in the GRA Zone. The Project decreases density while dimensionally improving existing conditions. Accordingly, the proposed use is reasonable and denial of the requested variance would create an unnecessary hardship.

5. Substantial justice will be done by granting the variance.

If "there is no benefit to the public that would outweigh the hardship to the applicant" this factor is satisfied. Harborside Associates, L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508 (2011). That is, "any loss to the [applicant] that is not outweighed by a gain to the general public is an injustice." Malachy Glen, supra at 109.

Smith is constitutionally entitled to the use of the lot as they see fit; including redevelopment for a permitted single-family home with an incorporated garage, fully zoning compliant except for lot size, which cannot be changed. "The right to use and enjoy one's property is a fundamental right protected by both the State and Federal Constitutions." N.H. CONST. pt. I, arts. 2, 12; U.S. CONST. amends. V, XIV; Town of Chesterfield v. Brooks, 126

N.H. 64 (1985) at 68. Part I, Article 12 of the New Hampshire Constitution provides in part that “no part of a man's property shall be taken from him, or applied to public uses, without his own consent, or that of the representative body of the people.” Thus, our State Constitutional protections limit the police power of the State and its municipalities in their regulation of the use of property. L. Grossman & Sons, Inc. v. Town of Gilford, 118 N.H. 480, 482 (1978).

“Property” in the constitutional sense has been interpreted to mean not the tangible property itself, but rather the right to possess, use, enjoy and dispose of it. Burrows v. City of Keene, 121 N.H. 590, 597 (1981). (emphasis added). The Supreme Court has held that zoning ordinances must be reasonable, not arbitrary and must rest upon some ground of difference having fair and substantial relation to the object of the regulation. Simplex Technologies, Inc. v. Town of Newington, 145 N.H. 727, 731 (2001); Chesterfield at 69.

Granting the requested variance allows for tasteful and otherwise zoning-compliant redevelopment of an existing 5000 ft.² lot of record in a manner consistent with the lot sizes in the surrounding area. There is absolutely no harm to any neighbor or the general public from granting the lot size variance. It follows that there is no benefit to the public from denial. Conversely, Smith will be greatly harmed by denial as they will lose the opportunity to reasonably redevelop the Property with a dimensionally compliant proposal significantly improving existing conditions, requesting only relief for a condition (lot size) that cannot under any circumstances be met.

Accordingly, there is no benefit to the public from granting the variance that outweighs the harm to the owner from denial.

X. CONCLUSION

For all the reasons stated, Peter and Cynthia Smith respectfully request that the Portsmouth Zoning Board of Adjustment the requested lot size/lot size per dwelling unit variance.

Respectfully submitted,
Peter Smith & Cynthia Austin Smith

By:



R. Timothy Phoenix, Esquire
Monica F. Kieser, Esquire

STRUCTURE REPLACEMENT SMITH RESIDENCE 9 - 11 KENT STREET, PORTSMOUTH, NEW HAMPSHIRE PERMIT PLANS

OWNER & APPLICANT:
CYNTHIA AUSTIN SMITH &
PETER SMITH
9 KENT STREET
PORTSMOUTH, NH 03801
(617) 803-2109

CIVIL ENGINEER & LAND SURVEYOR:

AMBIT ENGINEERING, INC.
200 GRIFFIN ROAD, UNIT 3
PORTSMOUTH, N.H. 03801
TEL. (603) 430-9282
FAX (603) 436-2315

ATTORNEY:

HOEFLE, PHOENIX, GORMLEY &
ROBERTS, PLLC
127 PARROTT AVENUE
PORTSMOUTH, NH 03801
TEL. (603) 436-0666
FAX (603) 431-0879

LANDSCAPE ARCHITECT:

WOODBURN & COMPANY LANDSCAPE
ARCHITECTURE, LLC
103 KENT PLACE
NEWMARKET, N.H. 03857
TEL. (603) 659-5949
FAX (603) 659-5939

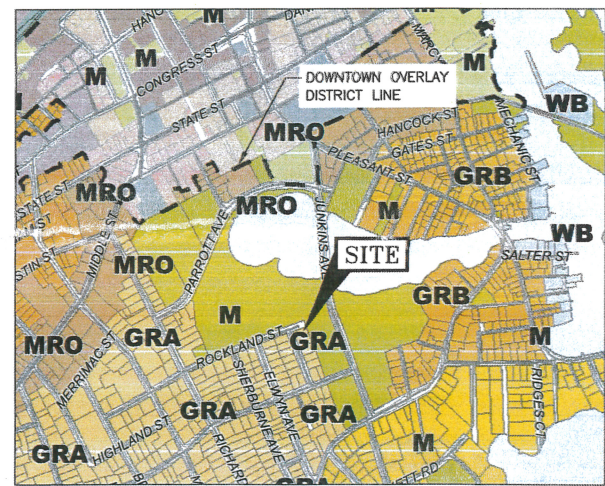
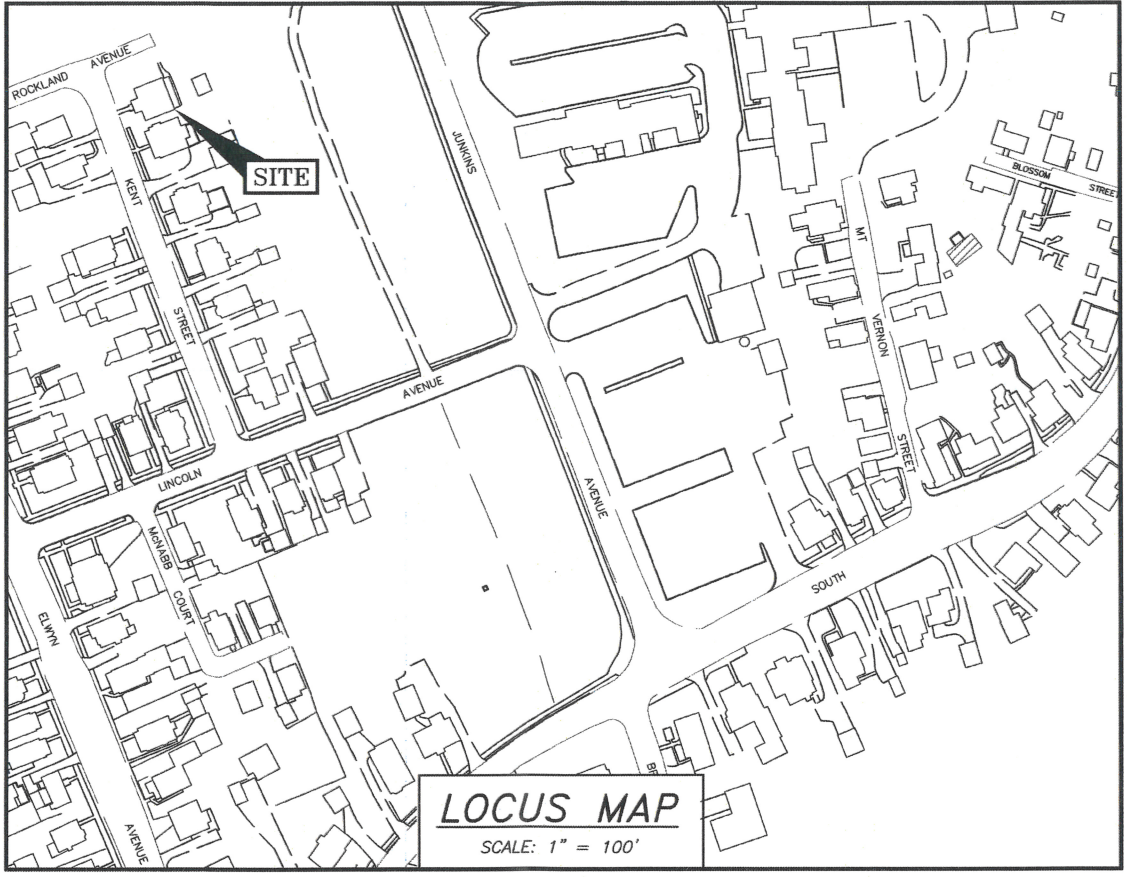
ARCHITECT:

SOMMA STUDIOS
30 MAPLEWOOD AVENUE
PORTSMOUTH NH 03801
TEL. (617) 766-3760
FAX (617) 766-3761

PERMIT LIST:
PORTSMOUTH ZONING BOARD: PENDING
PORTSMOUTH DRIVEWAY PERMIT: PENDING
PORTSMOUTH TREES AND GREENERY: PENDING

LEGEND:

EXISTING	PROPOSED	
---	---	PROPERTY LINE
---	---	SETBACK
S	S	SEWER PIPE
SL	SL	SEWER LATERAL
G	G	GAS LINE
D	D	STORM DRAIN
W	W	WATER LINE
WS	WS	WATER SERVICE
UGE	UGE	UNDERGROUND ELECTRIC
OHW	OHW	OVERHEAD ELECTRIC/WIRES
---	---	FOUNDATION DRAIN
---	---	EDGE OF PAVEMENT (EP)
100	100	CONTOUR
97x3	98x0	SPOT ELEVATION
○	○	UTILITY POLE
⊙	⊙	WALL MOUNTED EXTERIOR LIGHTS
⊙	⊙	TRANSFORMER ON CONCRETE PAD
⊙	⊙	ELECTRIC HANDHOLD
⊙	⊙	SHUT OFFS (WATER/GAS)
⊙	⊙	GATE VALVE
⊙	⊙	HYDRANT
⊙	⊙	CATCH BASIN
⊙	⊙	SEWER MANHOLE
⊙	⊙	DRAIN MANHOLE
⊙	⊙	TELEPHONE MANHOLE
⊙	⊙	PARKING SPACE COUNT
⊙	⊙	PARKING METER
LSA	LSA	LANDSCAPED AREA
TBD	TBD	TO BE DETERMINED
CI	CI	CAST IRON PIPE
COP	COP	COPPER PIPE
DI	DI	DUCTILE IRON PIPE
PVC	PVC	POLYVINYL CHLORIDE PIPE
RCP	RCP	REINFORCED CONCRETE PIPE
AC	AC	ASBESTOS CEMENT PIPE
VC	VC	VITRIFIED CLAY PIPE
EP	EP	EDGE OF PAVEMENT
EL	EL	ELEVATION
FF	FF	FINISHED FLOOR
INV	INV	INVERT
S =	S =	SLOPE FT/FT
TBM	TBM	TEMPORARY BENCH MARK
TYP	TYP	TYPICAL



Legend

Character Districts
 [---] Character-Based Zoning Area
 (Refer to Zoning Map Sheet 2 of 2
 Character Districts Regulating Plan)

Residential Districts

- R Rural
- SRA Single Residence A
- SRB Single Residence B
- GRA General Residence A
- GRB General Residence B
- GRC General Residence C
- GAMH Garden Apartment/Mobile Home Park

INDEX OF SHEETS

DWG No.	Description
-	STANDARD BOUNDARY AND TOPOGRAPHIC SURVEY
C1	DEMO PLAN
C2	VARIANCE PLAN

UTILITY CONTACTS

ELECTRIC:
EVERSOURCE
1700 LAFAYETTE ROAD
PORTSMOUTH, N.H. 03801
Tel. (603) 436-7708, Ext. 555.5678
ATTN: MICHAEL BUSBY, P.E. (MANAGER)

NATURAL GAS:
UNITIL
325 WEST ROAD
PORTSMOUTH, N.H. 03801
Tel. (603) 294-5144
ATTN: DAVE BEAULIEU

CABLE:
COMCAST
155 COMMERCE WAY
PORTSMOUTH, N.H. 03801
Tel. (603) 679-5695 (X1037)
ATTN: MIKE COLLINS

SEWER & WATER:
PORTSMOUTH DEPARTMENT OF PUBLIC WORKS
680 PEVERLY HILL ROAD
PORTSMOUTH, N.H. 03801
Tel. (603) 427-1530
ATTN: JIM TOW

COMMUNICATIONS:
FAIRPOINT COMMUNICATIONS
JOE CONSIDINE
1575 GREENLAND ROAD
GREENLAND, N.H. 03840
Tel. (603) 427-5525

**STRUCTURE REPLACEMENT
SMITH RESIDENCE
9 - 11 KENT STREET
PORTSMOUTH, N.H.**

AMBIT ENGINEERING, INC.
Civil Engineers & Land Surveyors
200 Griffin Road - Unit 3
Portsmouth, N.H. 03801-7114
Tel (603) 430-9282
Fax (603) 436-2315

PLAN SET SUBMITTAL DATE: 19 JULY 2023

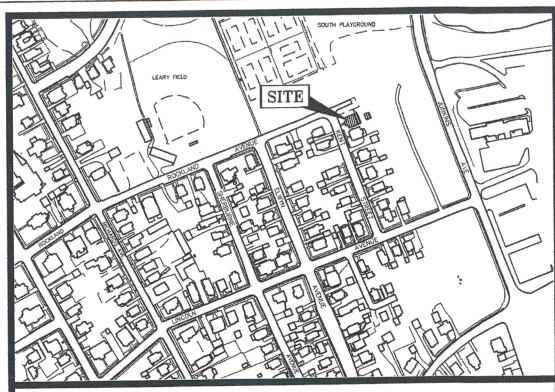


AMBIT ENGINEERING, INC.
Civil Engineers & Land Surveyors
200 Griffin Road - Unit 3
Portsmouth, N.H. 03801-7114
Tel (603) 430-9282
Fax (603) 436-2315

NOTES:

- 1) PARCEL IS SHOWN ON THE CITY OF PORTSMOUTH ASSESSOR'S MAP 113 AS LOT 42.
- 2) OWNERS OF RECORD:
CYNTHIA AUSTIN SMITH &
PETER SMITH
9 KENT STREET
PORTSMOUTH, NH 03801
6358/448
PLAN# 00176
- 3) PARCEL IS NOT IN A FLOOD HAZARD ZONE AS SHOWN ON FIRM PANEL 33015C0259F, DATED 1/29/2021.
- 4) EXISTING LOT AREA:
5,000 S.F.
0.1148 ACRES
- 5) PARCEL IS LOCATED IN THE GENERAL RESIDENCE A (GRA) DISTRICT.
- 6) DIMENSIONAL REQUIREMENTS:
MIN. LOT AREA: 7,500 S.F.
FRONTAGE: 100 FEET
SETBACKS:
FRONT: 15 FEET
SIDE: 10 FEET
REAR: 20 FEET

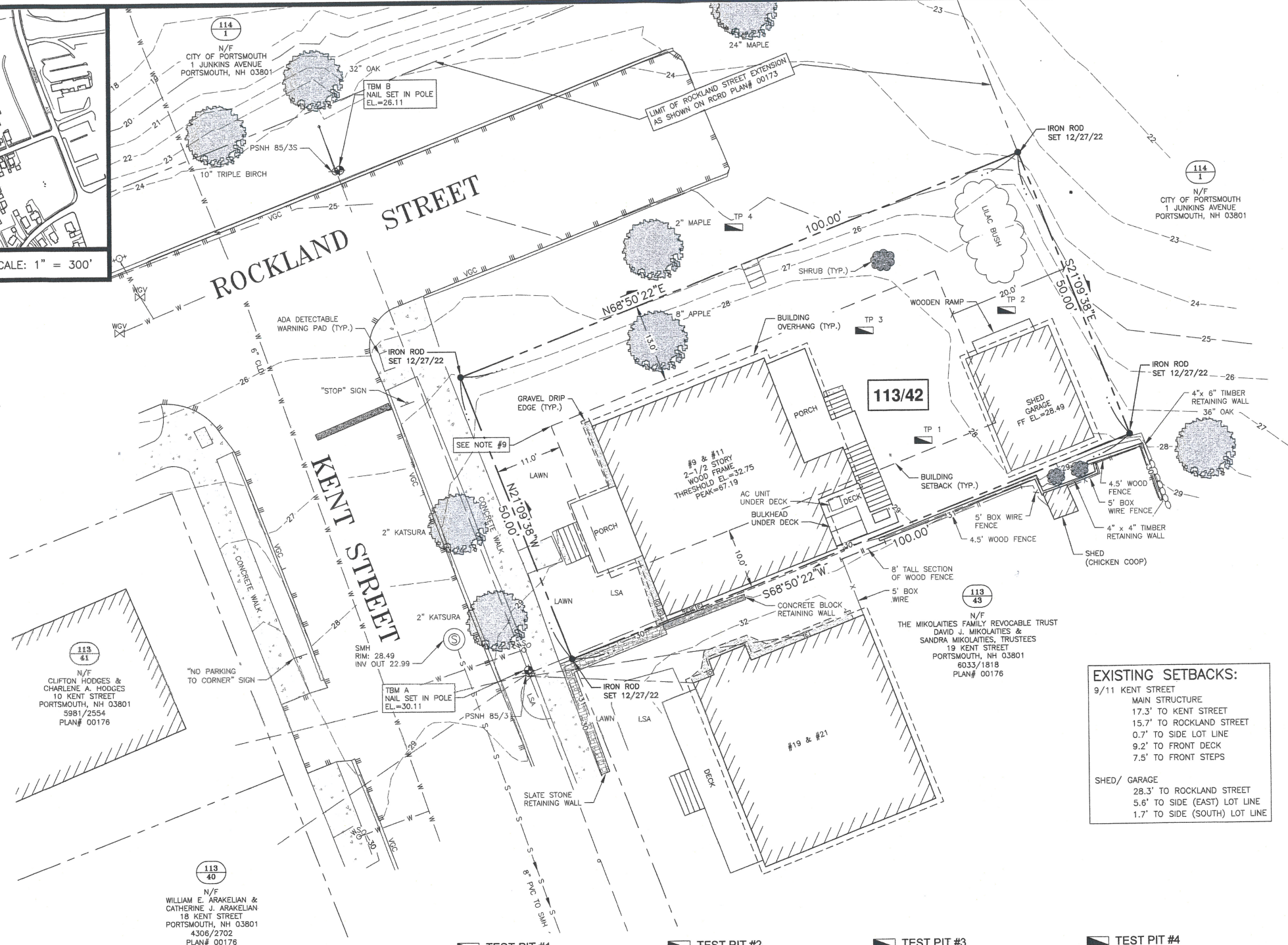
MAXIMUM STRUCTURE HEIGHT: 35 FEET
MAXIMUM BUILDING COVERAGE: 25%
MINIMUM OPEN SPACE: 30%
- 7) THE PURPOSE OF THIS PLAN IS TO SHOW THE RESULTS OF A STANDARD BOUNDARY AND TOPOGRAPHIC SURVEY OF ASSESSOR'S MAP 113, LOT 42 IN THE CITY OF PORTSMOUTH.
- 8) VERTICAL DATUM IS NAVD83. BASIS OF VERTICAL DATUM IS REDUNDANT RTN GNSS OBSERVATIONS.
- 9) IN ACCORDANCE WITH THE PORTSMOUTH ZONING ORDINANCE, ARTICLE 5, SECTION 10.516 FRONT YARD EXCEPTION FOR EXISTING ALIGNMENTS: THE AVERAGE FRONT SETBACK FOR LOT 113/42 ON KENT STREET IS 10' AND AVERAGE FRONT SETBACK ON ROCKLAND STREET IS 13'. MEASUREMENT TO STRUCTURES 18" ABOVE GRADE.



LOCATION MAP SCALE: 1" = 300'

LEGEND:

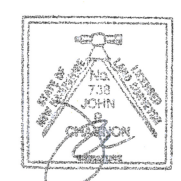
- N/F NOW OR FORMERLY
- RP RECORD OF PROBATE
- RCRD ROCKINGHAM COUNTY
- REGISTRY OF DEEDS
- MAP 11 / LOT 21
- BOUNDARY
- SETBACK
- RAILROAD SPIKE FOUND/SET
- IRON ROD/ PIPE FOUND
- DRILL HOLE FOUND/SET
- S SEWER LINE
- G GAS LINE
- D STORM DRAIN
- W WATER LINE
- OVERHEAD ELECTRIC/WIRES
- CONTOUR
- 100 SPOT ELEVATION
- 97x.3 EDGE OF PAVEMENT (EP)
- WOODS / TREE LINE
- UTILITY POLE (w/ GUY)
- GAS SHUT OFF
- WATER SHUT OFF/CURB STOP
- GATE VALVE
- HYDRANT
- METER (GAS, WATER, ELECTRIC)
- SEWER MANHOLE
- SIGNS
- ELEVATION
- FF FINISHED FLOOR
- TBM TEMPORARY BENCHMARK
- TYP. TYPICAL
- VGC VERTICAL GRANITE CURB
- CCB CAPE COD BERM
- LSA LANDSCAPED AREA



EXISTING SETBACKS:
9/11 KENT STREET
MAIN STRUCTURE
17.3' TO KENT STREET
15.7' TO ROCKLAND STREET
0.7' TO SIDE LOT LINE
9.2' TO FRONT DECK
7.5' TO FRONT STEPS

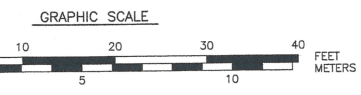
SHED/ GARAGE
28.3' TO ROCKLAND STREET
5.6' TO SIDE (EAST) LOT LINE
1.7' TO SIDE (SOUTH) LOT LINE

PLAN REFERENCES:
1) PLAN OF A LOT OF LAND OWNED BY ALFRED L. ELWYN PORTSMOUTH N.H. COMPILED FROM A SURVEY MADE 1899 BY A.C. HOYT C.E. RCRD PLAN# 00176.
2) STANDARD BOUNDARY SURVEY TAX MAP 113 - LOT 45 OWNER: MICHAEL T. ROCHE & SUSAN L. JAVUREK, PROPERTY LOCATED AT 45 KENT STREET, CITY OF PORTSMOUTH, COUNTY OF ROCKINGHAM, STATE OF NEW HAMPSHIRE, SCALE: 1" = 10', DATED: MAY 2002, NOT RECORDED



"I CERTIFY THAT THIS PLAN WAS PREPARED UNDER MY DIRECT SUPERVISION, THAT IT IS THE RESULT OF A FIELD SURVEY BY THIS OFFICE AND HAS AN ACCURACY OF THE CLOSED TRAVERSE THAT EXCEEDS THE PRECISION OF 1:15,000."

JOHN R. CHAGNON, LLS #738 DATE 2-7-23



TEST PIT #1
Date: 11/3/22
Logged by: STEVEN D. RIKER
ESHW: 34"
Observed Water: NONE
Restrictive layer: NONE
REFUSAL: NONE TO 66"
Percolation rate: 10 min./inch

DEPTH	DESCRIPTION
0" - 8"	10 YR 3/2 FINE SANDY LOAM, GRANULAR, FRIABLE
0" - 21"	10 YR 4/3 FINE SANDY LOAM, GRANULAR, FRIABLE
21" - 34"	ASH LAYER
34" - 53"	10 YR 3/4 FINE SANDY LOAM, GRANULAR, FRIABLE
53" - 61"	10 YR 4/6 FINE SANDY LOAM, GRANULAR, FRIABLE
61" - 66"	2.5 YR 5/4 FINE SANDY LOAM, GRANULAR, FRIABLE

TEST PIT #2
Date: 11/3/22
Logged by: STEVEN D. RIKER
ESHW: 57"
Observed Water: NONE
Restrictive layer: NONE
REFUSAL: NONE TO 75"
Percolation rate: 10 min./inch

DEPTH	DESCRIPTION
0" - 6"	10 YR 3/3 FINE SANDY LOAM, GRANULAR, FRIABLE
6" - 26"	10 YR 4/3 FINE SANDY LOAM, GRANULAR, FRIABLE
26" - 57"	ASH LAYER
57" - 75"	10 YR 5/4 FINE SANDY LOAM, GRANULAR, FRIABLE

TEST PIT #3
Date: 11/3/22
Logged by: STEVEN D. RIKER
ESHW: 55"
Observed Water: NONE
Restrictive layer: NONE
REFUSAL: NONE TO 75"
Percolation rate: 10 min./inch

DEPTH	DESCRIPTION
0" - 37"	10 YR 3/3 FINE SANDY LOAM, GRANULAR, FRIABLE
37" - 55"	ASH LAYER
55" - 75"	10 YR 5/4 FINE SANDY LOAM, GRANULAR, FRIABLE

TEST PIT #4
Date: 11/3/22
Logged by: STEVEN D. RIKER
ESHW: 56"
Observed Water: NONE
Restrictive layer: PAN AT 56"
REFUSAL: NONE TO 56"
Percolation rate: 10 min./inch

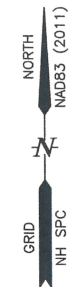
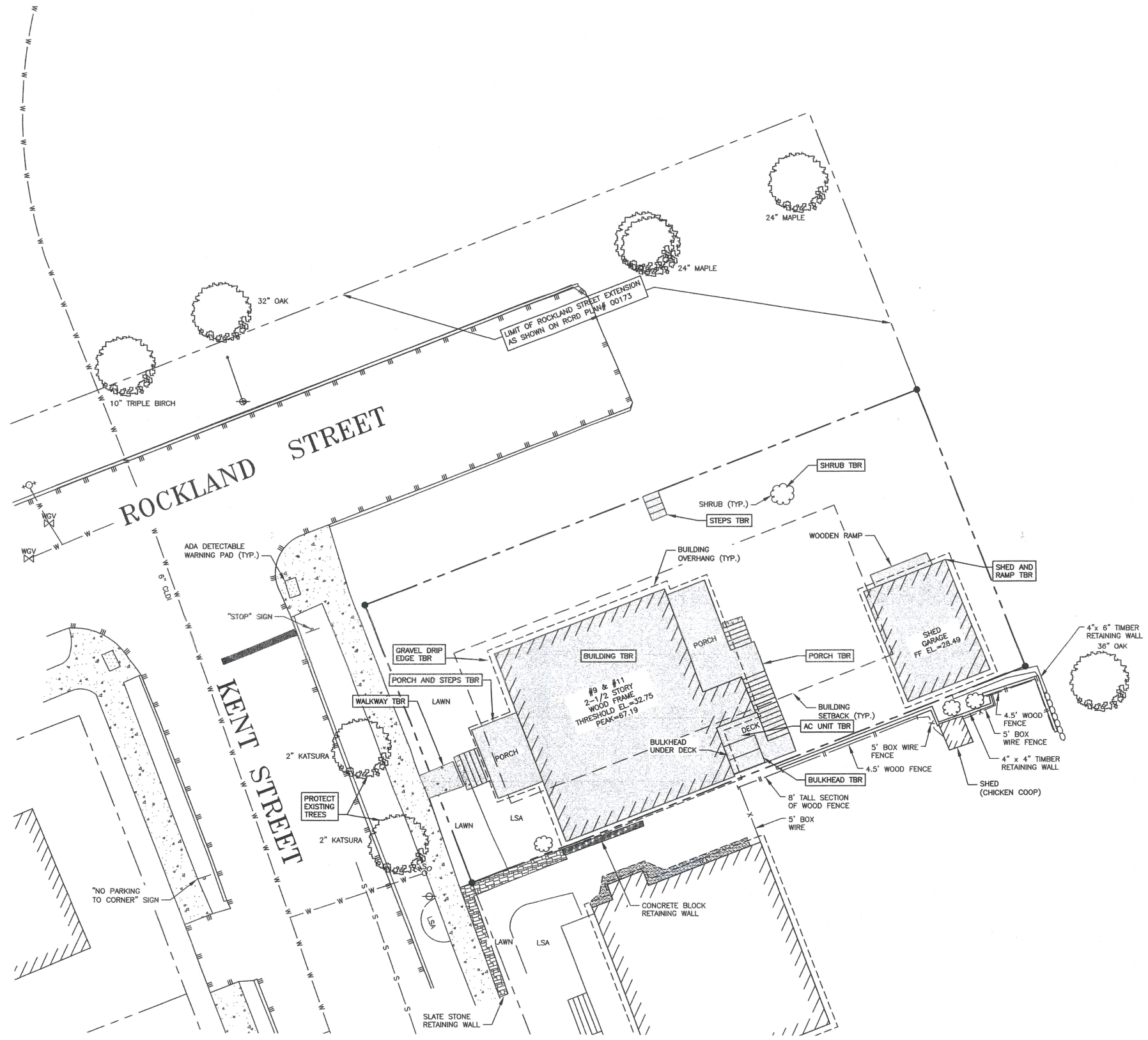
DEPTH	DESCRIPTION
0" - 5"	10 YR 4/3 FINE SANDY LOAM, GRANULAR, FRIABLE
5" - 18"	ASH LAYER
18" - 27"	10 YR 4/4 FINE SANDY LOAM, GRANULAR, FRIABLE
27" - 56"	2.5 YR 4/4 FINE SANDY LOAM, GRANULAR, FRIABLE
56" - 71"	2.5 YR 4/3 FINE SANDY LOAM, GRANULAR, FRIABLE

NO.	DESCRIPTION	DATE
3	ISSUED FOR APPROVAL	2/7/23
2	MONUMENTS SET	12/27/22
1	TEST PIT INFORMATION	11/10/22
0	ISSUED FOR COMMENT	7/13/22

STANDARD BOUNDARY & TOPOGRAPHIC SURVEY
TAX MAP 113 - LOT 42
OWNER:
CYNTHIA AUSTIN SMITH & PETER SMITH
9-11 KENT STREET
CITY OF PORTSMOUTH
COUNTY OF ROCKINGHAM
STATE OF NEW HAMPSHIRE

DEMOLITION NOTES

- A) THE LOCATIONS OF UNDERGROUND UTILITIES ARE APPROXIMATE AND THE LOCATIONS ARE NOT GUARANTEED BY THE OWNER OR THE DESIGNER. IT IS THE CONTRACTORS' RESPONSIBILITY TO LOCATE UTILITIES AND ANTICIPATE CONFLICTS. CONTRACTOR SHALL REPAIR EXISTING UTILITIES DAMAGED BY THEIR WORK AND RELOCATE EXISTING UTILITIES THAT ARE REQUIRED TO BE RELOCATED PRIOR TO COMMENCING ANY WORK IN THE IMPACTED AREA OF THE PROJECT.
- B) ALL MATERIALS SCHEDULED TO BE REMOVED SHALL BECOME THE PROPERTY OF THE CONTRACTORS UNLESS OTHERWISE SPECIFIED. THE CONTRACTOR SHALL DISPOSE OF ALL MATERIALS OFF-SITE IN ACCORDANCE WITH ALL FEDERAL, STATE, AND LOCAL REGULATIONS, ORDINANCES AND CODES. THE CONTRACTOR SHALL COORDINATE REMOVAL, RELOCATION, DISPOSAL, OR SALVAGE OF UTILITIES WITH THE OWNER AND APPROPRIATE UTILITY COMPANY.
- C) ANY EXISTING WORK OR PROPERTY DAMAGED OR DISRUPTED BY CONSTRUCTION/ DEMOLITION ACTIVITIES SHALL BE REPLACED OR REPAIRED TO THE ORIGINAL EXISTING CONDITIONS BY THE CONTRACTOR AT NO ADDITIONAL COST TO THE OWNER.
- D) THE CONTRACTOR SHALL VERIFY LOCATION OF ALL EXISTING UTILITIES AND CALL DIG SAFE AT LEAST 72 HOURS PRIOR TO THE COMMENCEMENT OF ANY DEMOLITION/CONSTRUCTION ACTIVITIES.
- E) SAWCUT AND REMOVE PAVEMENT ONE FOOT OFF PROPOSED EDGE OF PAVEMENT TRENCH IN AREAS WHERE PAVEMENT IS TO BE REMOVED.
- F) IT IS THE CONTRACTOR'S RESPONSIBILITY TO FAMILIARIZE THEMSELVES WITH THE CONDITIONS OF ALL THE PERMIT APPROVALS.
- G) THE CONTRACTOR SHALL OBTAIN AND PAY FOR ADDITIONAL CONSTRUCTION PERMITS, NOTICES AND FEES NECESSARY TO COMPLETE THE WORK AND ARRANGE FOR AND PAY FOR ANY INSPECTIONS AND APPROVALS FROM THE AUTHORITIES HAVING JURISDICTION. THE CONTRACTOR SHALL BE RESPONSIBLE FOR ANY ADDITIONAL AND OFF-SITE DISPOSAL OF MATERIALS REQUIRED TO COMPLETE THE WORK.
- H) THE CONTRACTOR SHALL REMOVE AND DISPOSE OF ALL EXISTING STRUCTURES, CONCRETE, UTILITIES, VEGETATION, PAVEMENT, AND CONTAMINATED SOIL WITHIN THE WORK LIMITS SHOWN UNLESS SPECIFICALLY IDENTIFIED TO REMAIN. ANY EXISTING DOMESTIC / IRRIGATION SERVICE WELLS IN THE PROJECT AREA IDENTIFIED DURING THE CONSTRUCTION AND NOT CALLED OUT ON THE PLANS SHALL BE BROUGHT TO THE ATTENTION OF THE OWNER AND ENGINEER FOR PROPER CAPPING / RE-USE.
- I) ALL WORK WITHIN THE CITY OF PORTSMOUTH RIGHT OF WAY SHALL BE COORDINATED WITH THE CITY OF PORTSMOUTH DEPARTMENT OF PUBLIC WORKS (DPW).
- J) REMOVE TREES AND BRUSH AS REQUIRED FOR COMPLETION OF WORK. CONTRACTOR SHALL GRUB AND REMOVE ALL SLUMPS WITHIN LIMITS OF WORK AND DISPOSE OF OFF-SITE IN ACCORDANCE WITH FEDERAL, STATE, AND LOCAL LAWS AND REGULATIONS.
- K) CONTRACTOR SHALL PROTECT ALL PROPERTY MONUMENTATION THROUGHOUT DEMOLITION AND CONSTRUCTION OPERATIONS. SHOULD ANY MONUMENTATION BE DISTURBED, THE CONTRACTOR SHALL EMPLOY A NH LICENSED LAND SURVEYOR TO REPLACE THEM.
- L) PROVIDE INLET PROTECTION BARRIERS AT ALL CATCH BASINS WITHIN CONSTRUCTION LIMITS AND MAINTAIN FOR THE DURATION OF THE PROJECT. INLET PROTECTION BARRIERS SHALL BE HIGH FLOW SILT SACK BY ACF ENVIRONMENTAL OR APPROVED EQUAL. INSPECT BARRIERS WEEKLY AND AFTER EACH RAIN OF 0.25 INCHES OR GREATER. CONTRACTOR SHALL COMPLETE A MAINTENANCE INSPECTION REPORT AFTER EACH INSPECTION. SEDIMENT DEPOSITS SHALL BE REMOVED AFTER EACH STORM EVENT OR MORE OFTEN IF WARRANTED OR FABRIC BECOMES CLOGGED. EROSION CONTROL MEASURES SHALL BE INSTALLED PRIOR TO THE START OF ANY CLEARING OR DEMOLITION ACTIVITIES.
- M) THE CONTRACTOR SHALL PAY ALL COSTS NECESSARY FOR TEMPORARY PARTITIONING, BARRICADING, FENCING, SECURITY AND SAFETY DEVICES REQUIRED FOR THE MAINTENANCE OF A CLEAN AND SAFE CONSTRUCTION SITE.
- N) ANY CONTAMINATED MATERIAL REMOVED DURING THE COURSE OF THE WORK WILL REQUIRE HANDLING IN ACCORDANCE WITH NHDES REGULATIONS. CONTRACTOR SHALL HAVE A HEALTH AND SAFETY PLAN IN PLACE, AND COMPLY WITH ALL APPLICABLE PERMITS, APPROVALS, AUTHORIZATIONS, AND REGULATIONS.



NOTES:

- 1) THE CONTRACTOR SHALL NOTIFY DIG SAFE AT 1-888-DIG-SAFE (1-888-344-7233) AT LEAST 72 HOURS PRIOR TO COMMENCING ANY EXCAVATION ON PUBLIC OR PRIVATE PROPERTY WITHIN 100 FEET OF UNDERGROUND UTILITIES. THE EXCAVATOR IS RESPONSIBLE TO MAINTAIN MARKS. DIG SAFE TICKETS EXPIRE IN THIRTY DAYS.
- 2) UNDERGROUND UTILITY LOCATIONS ARE BASED UPON BEST AVAILABLE EVIDENCE AND ARE NOT FIELD VERIFIED. LOCATING AND PROTECTING ANY ABOVEGROUND OR UNDERGROUND UTILITIES IS THE SOLE RESPONSIBILITY OF THE CONTRACTOR AND/OR THE OWNER. UTILITY CONFLICTS SHOULD BE REPORTED AT ONCE TO THE DESIGN ENGINEER.
- 3) CONTRACTOR SHALL INSTALL AND MAINTAIN EROSION CONTROL MEASURES IN ACCORDANCE WITH THE "NEW HAMPSHIRE STORMWATER MANUAL, VOLUME 3, EROSION AND SEDIMENT CONTROLS DURING CONSTRUCTION. (NHDES DECEMBER 2008).

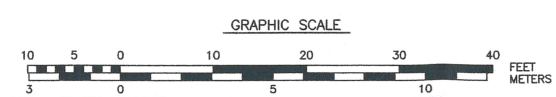
**SMITH RESIDENCE
9 KENT STREET
PORTSMOUTH, N.H.**

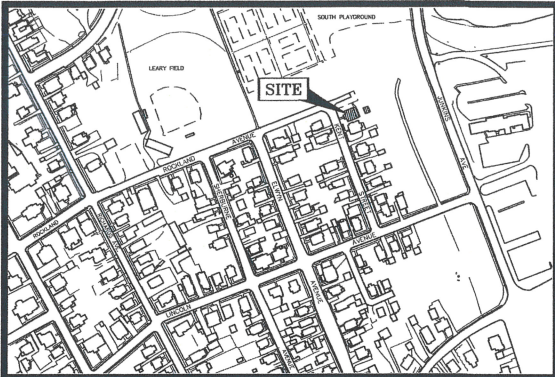
0	ISSUED FOR APPROVAL	7/19/23
NO.	DESCRIPTION	DATE
REVISIONS		



SCALE: 1" = 10' JULY 2023

DEMO PLAN **C1**





LOCATION MAP SCALE: 1" = 300'

PROPOSED SETBACKS:
 9 & 11 KENT STREET
 MAIN STRUCTURE
 14.0' TO KENT STREET
 16.0' TO ROCKLAND STREET
 12.0' TO SIDE (SOUTH) LOT LINE
 11.0' TO FRONT (KENT) STEPS

LANDSCAPE WALL:
 1.0' TO ROCKLAND STREET
 0' TO KENT STREET
 4.0' TO SIDE (AND REAR) LOT LINE

IMPERVIOUS SURFACE AREAS (TO PROPERTY LINE)		
STRUCTURE	PRE-CONSTRUCTION IMPERVIOUS (S.F.)	POST-CONSTRUCTION IMPERVIOUS (S.F.)
MAIN STRUCTURE	1,075	1,122
GARAGE/SHED	296	0
PORCHES/DECKS/PATIOS/SPA	315	741
STAIRS/RAMP/LANDINGS	111	178
CONCRETE/UTILITY PADS	27	36
DRIVEWAY	0	265
RETAINING WALLS	0	236
WINDOW WELL	0	4
WALKWAYS & SITTING AREA	0	306
TOTAL	1,824	2,888
LOT SIZE	5,000	5,000
% LOT COVERAGE	36.5%	57.8%

EXISTING BUILDING COVERAGE:

MAIN STRUCTURE	1,075 S.F.
GARAGE/SHED	296 S.F.
PORCH/DECKS	315 S.F.
STEPS OVER 18" AG	
FRONT PORCH STEPS	9 S.F.
BACK PORCH/DECK STEPS	52 S.F.
TOTAL	1,747 S.F.

BUILDING COVERAGE: 1,747/5000 = 35%

PROPOSED BUILDING COVERAGE:

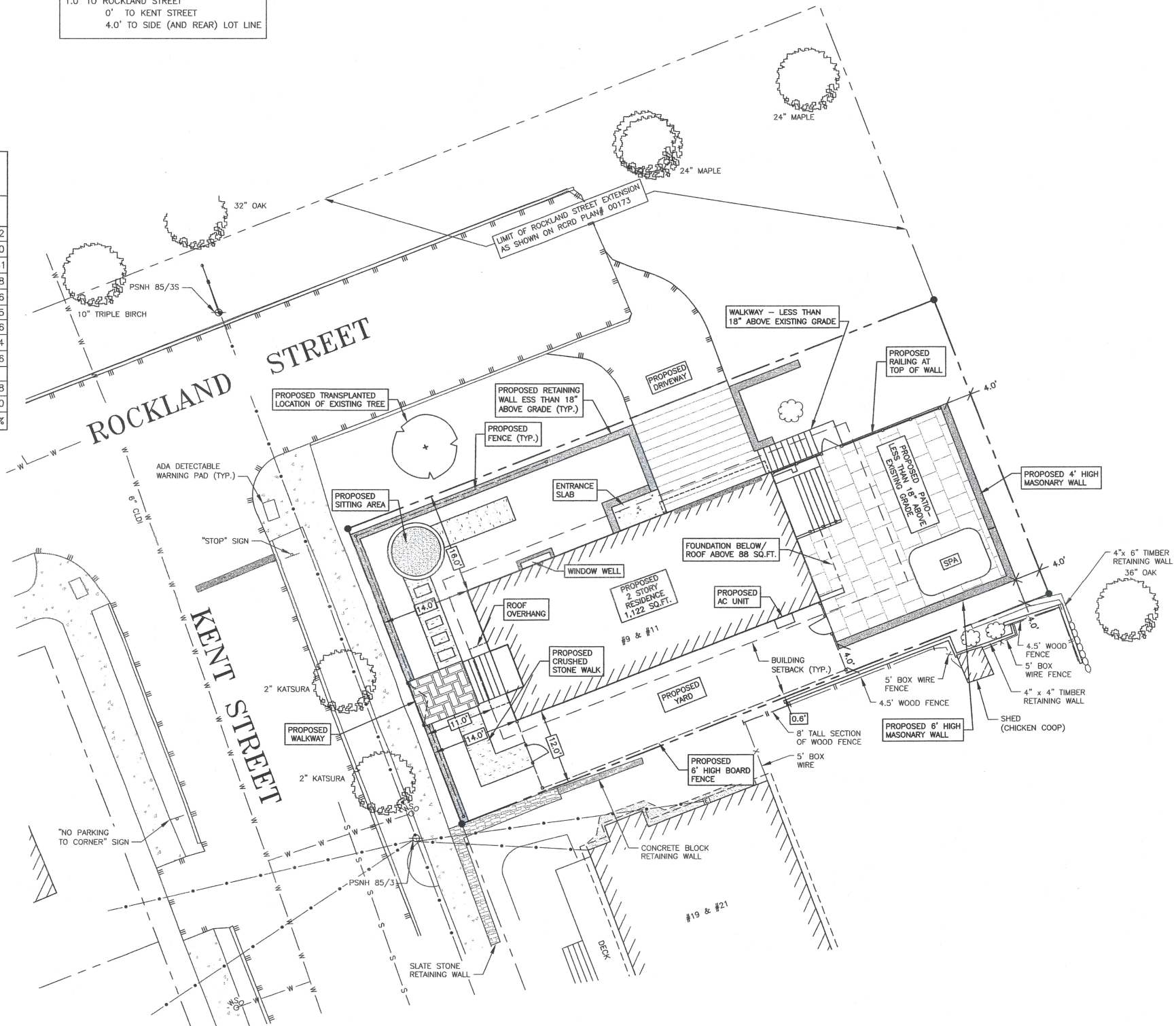
MAIN STRUCTURE	1,122 S.F.
STEPS OVER 18" AG	
FRONT STEPS	20 S.F.
STEPS ON PATIO	34 S.F.
FOUNDATION BELOW PATIO	88 S.F.
TOTAL	1,264 S.F.

BUILDING COVERAGE: 1,264/5000 = 25%

PROPOSED OPEN SPACE CALCULATION:

MAIN STRUCTURE	1,122 S.F.
PATIO	741 S.F.
STAIRS/STEPS	178 S.F.
CONCRETE PADS	36 S.F.
DRIVEWAY	265 S.F.
WINDOW WELL	4 S.F.
RETAINING WALLS	236 S.F.
WALKWAY	306 S.F.
TOTAL	2,888 S.F.

COVERAGE: 2,888/5000 = 58% COVERAGE
 100% - 58% = 42% OPEN SPACE



NOTES:

- 1) PARCEL IS SHOWN ON THE CITY OF PORTSMOUTH ASSESSOR'S MAP 113 AS LOT 42.
- 2) OWNERS OF RECORD:
 CYNTHIA AUSTIN SMITH &
 PETER SMITH
 9 KENT STREET
 PORTSMOUTH, NH 03801
 6358/448
 PLAN# 00176
- 3) PARCEL IS NOT IN A SPECIAL FLOOD HAZARD AREA AS SHOWN ON FIRM PANEL 33015C0259F, DATED 1/29/2021.
- 4) EXISTING LOT AREA:
 5,000 S.F.
 0.1148 ACRES
- 5) PARCEL IS LOCATED IN THE GENERAL RESIDENCE A (GRA) DISTRICT.
- 6) DIMENSIONAL REQUIREMENTS:
 MIN. LOT AREA: 7,500 S.F.
 FRONTAGE: 100 FEET
 SETBACKS:
 FRONT: 15 FEET
 SIDE: 10 FEET
 REAR: 20 FEET
 MAXIMUM STRUCTURE HEIGHT: 35 FEET
 MAXIMUM BUILDING COVERAGE: 25%
 MINIMUM OPEN SPACE: 30%
- 7) THE PURPOSE OF THIS PLAN IS TO SHOW THE PROPOSED STRUCTURE AND SITE IMPROVEMENTS ON ASSESSOR'S MAP 113, LOT 42 IN THE CITY OF PORTSMOUTH.
- 8) VERTICAL DATUM IS NAVD83. BASIS OF VERTICAL DATUM IS REDUNDANT RTN GNSS OBSERVATIONS.

**SMITH RESIDENCE
 9 KENT STREET
 PORTSMOUTH, N.H.**

NO.	DESCRIPTION	DATE
0	ISSUED FOR COMMENT	7/19/23
REVISIONS		

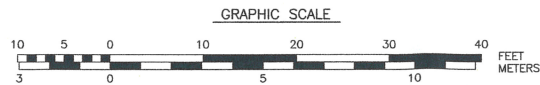
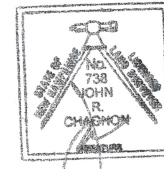
SCALE: 1" = 10' JULY 2023

VARIANCE PLAN

C2

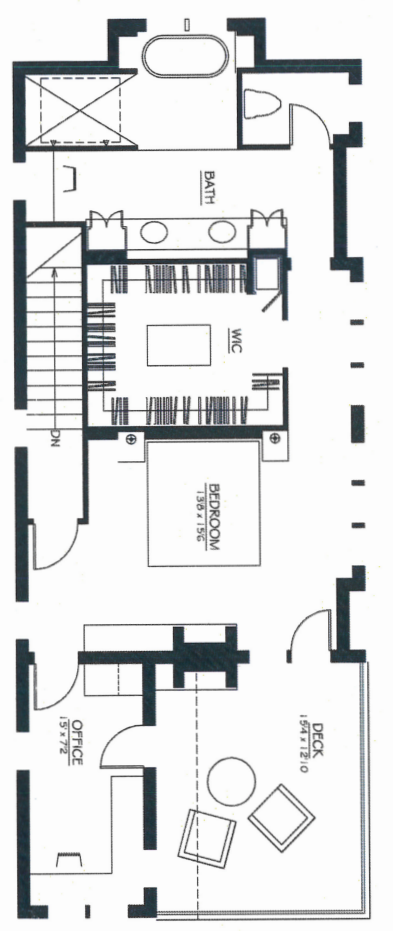
"I CERTIFY THAT THIS PLAN WAS PREPARED UNDER MY DIRECT SUPERVISION, THAT IT IS THE RESULT OF A FIELD SURVEY BY THIS OFFICE AND HAS AN ACCURACY OF THE CLOSED TRAVERSE THAT EXCEEDS THE PRECISION OF 1:15,000."

John R. Chagnon
 JOHN R. CHAGNON, LLS #738 DATE 7-19-23

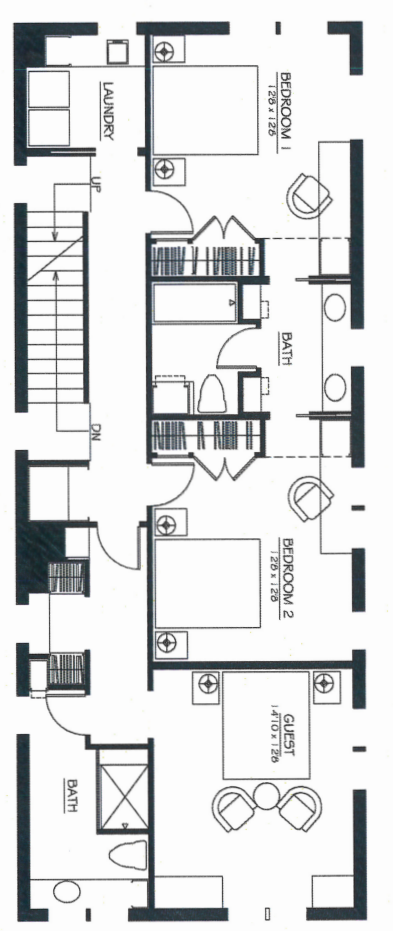


2023/07/19 10:58 AM 3000x1500 Plot Size: 11.00x17.00 Inches Plot Scale: 1"=10' Plot Title: VARIANCE PLAN 7/19/23 Job No: 230719-001 Job Name: 9 Kent Street Portsmouth, NH 03801

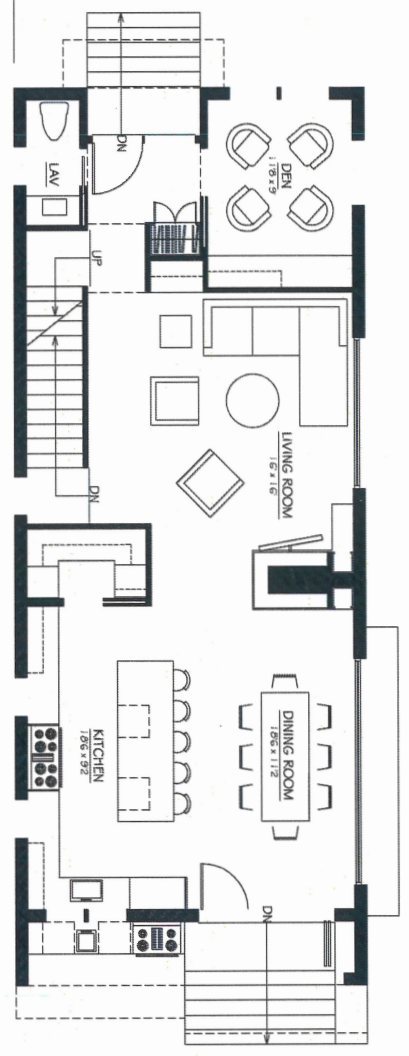
THIRD FLOOR



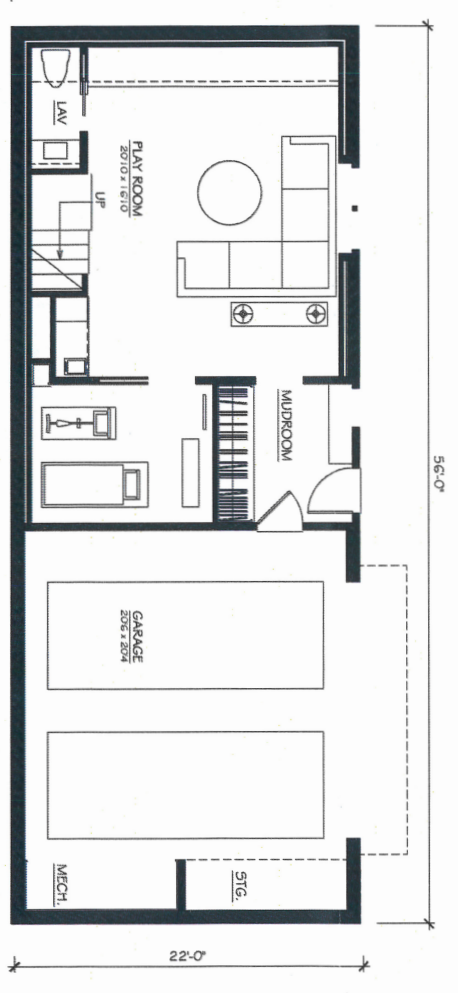
SECOND FLOOR



FIRST FLOOR



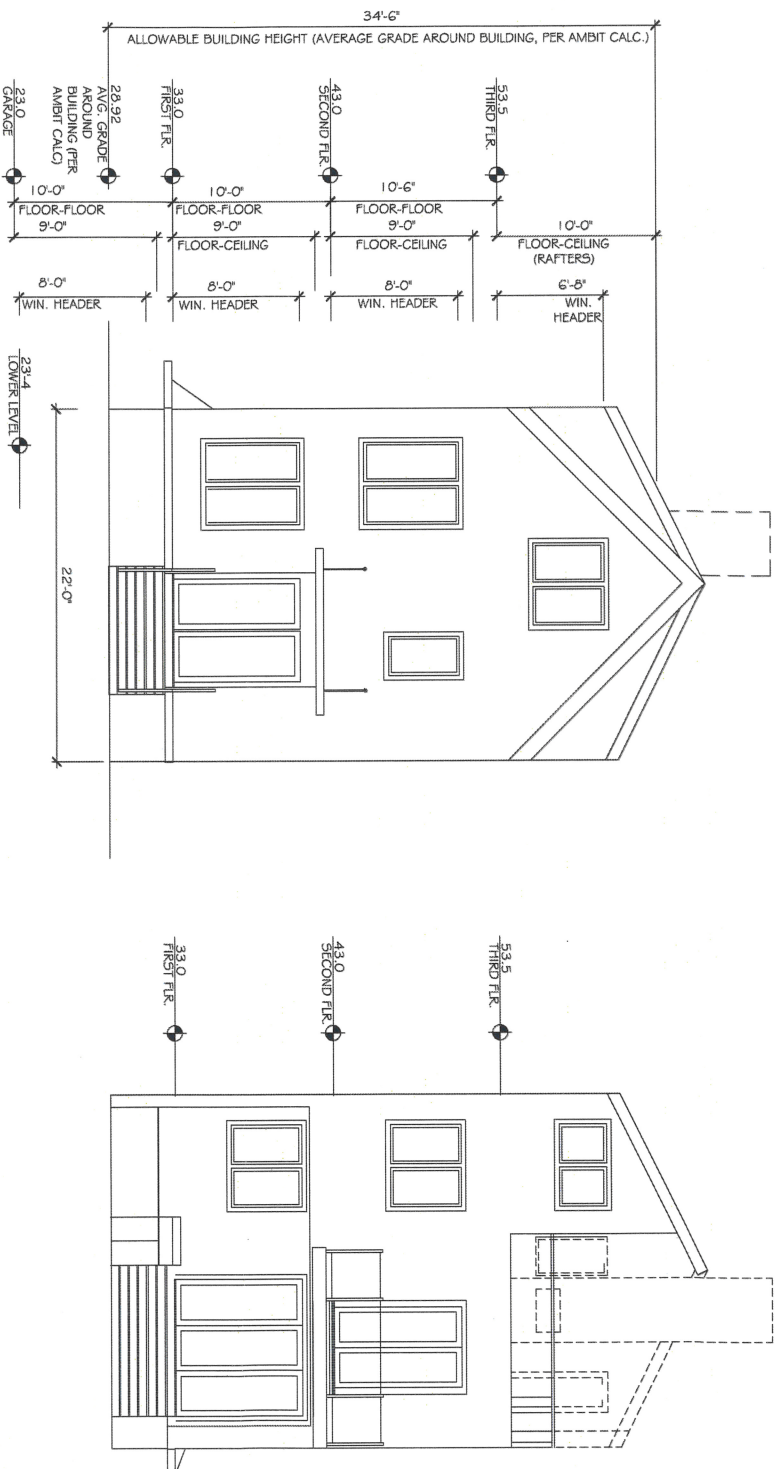
LOWER LEVEL



SMITH RESIDENCE (B)
9 KENT STREET, PORTSMOUTH, NH

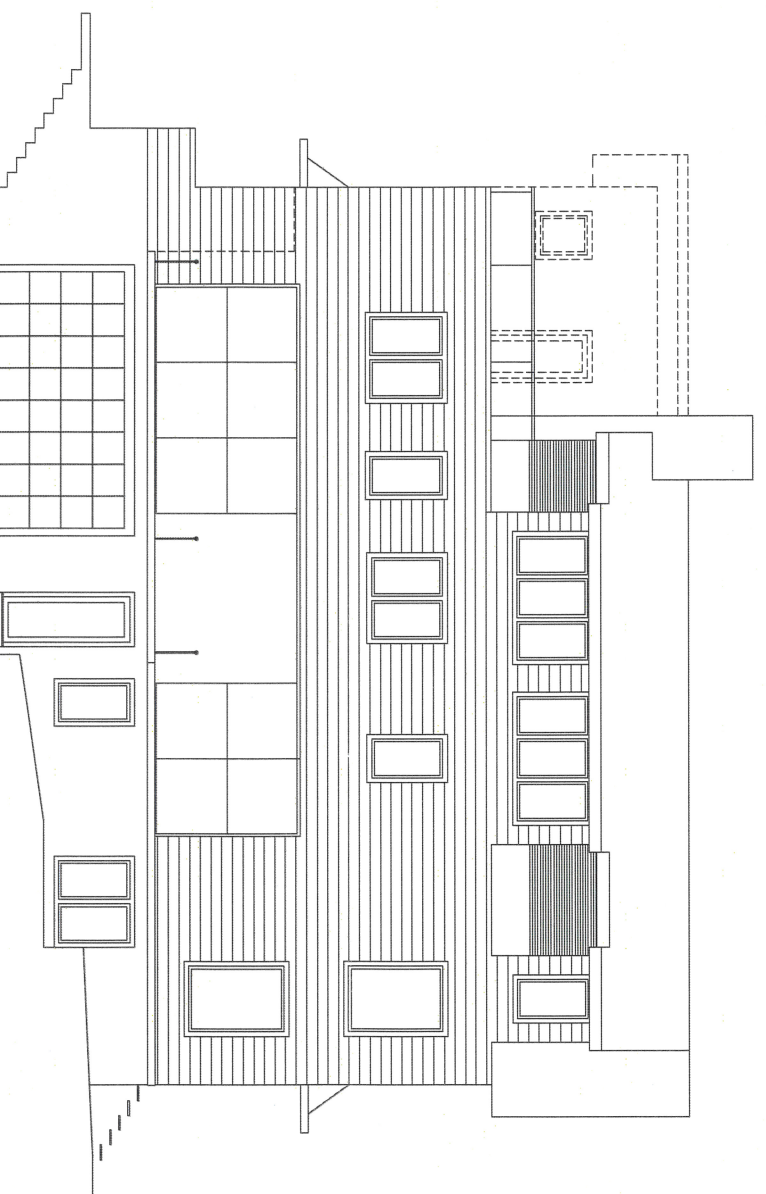
PROPOSED FLOOR PLANS
3/16" = 1'-0"

JULY 26, 2023
SOMMA STUDIOS

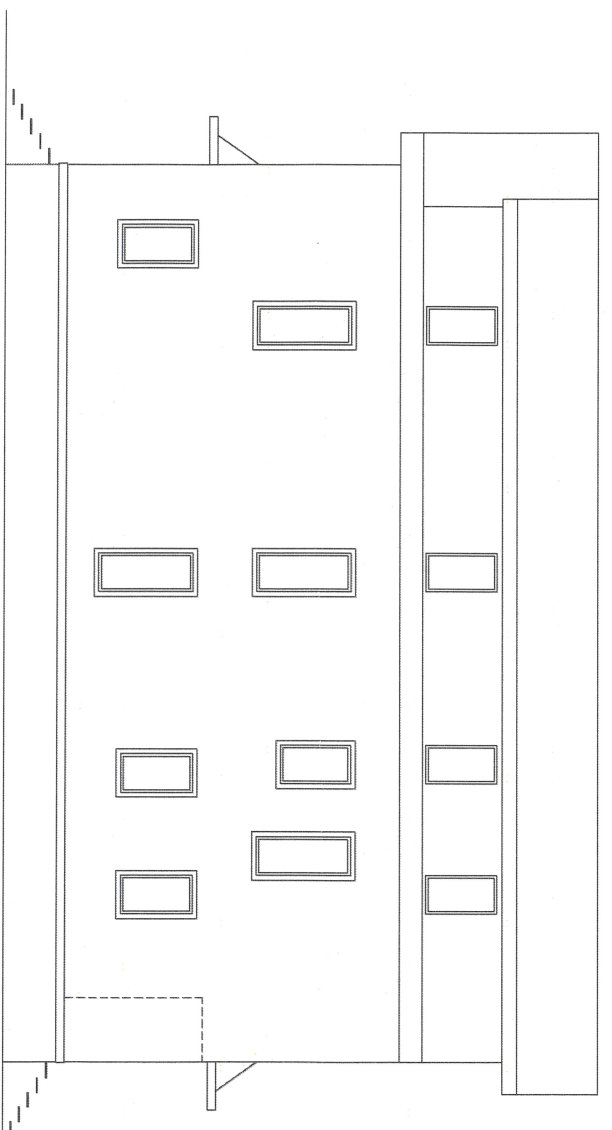


KENT STREET ELEVATION

BACK ELEVATION



ROCKLAND STREET ELEVATION

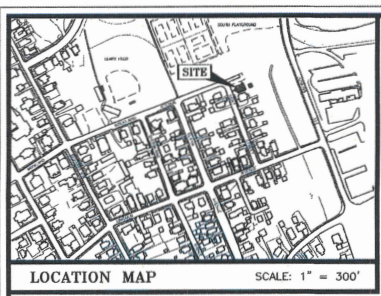


NEIGHBOR'S ELEVATION

SMITH RESIDENCE (B)
9 KENT STREET, PORTSMOUTH, NH

PROPOSED ELEVATIONS
3/16" = 1'-0"

JULY 26, 2023
SOMMA STUDIOS



PROPOSED SETBACKS:
 9' & 11' KENT STREET
 MAIN STRUCTURE
 14.3' TO KENT STREET
 9.7' TO ROCKLAND STREET
 0.6' TO SIDE (SOUTH) LOT LINE
 9.3' TO FRONT PORCH
 6.5' TO FRONT (KENT) STEPS
 12.5' TO SIDE (ROCKLAND) STEPS

LANDSCAPE WALL:
 1.0' TO ROCKLAND STREET
 0' TO KENT STREET
 4.5' TO SIDE (EAST) LOT LINE
 0.5' TO SIDE (SOUTH) LOT LINE

IMPERVIOUS SURFACE AREAS (TO PROPERTY LINE)

STRUCTURE	PRE-CONSTRUCTION IMPERVIOUS (S.F.)	POST-CONSTRUCTION IMPERVIOUS (S.F.)
MAIN STRUCTURE	1,075	1,353
GARAGE/SHED	296	0
PORCHES/DECKS	315	458
STAIRS/RAMP/LANDINGS	111	205
CONCRETE PADS	27	28
DRIVEWAY	0	297
POOL FRAME WALL	0	37
RETAINING WALLS	0	303
668 S.F. TERRACE	0	668
EXTENDED ROOF OVERHANG	0	66
TOTAL	1,824	3,415
LOT SIZE	5,000	5,000
% LOT COVERAGE	36.5%	68.3%

EXISTING BUILDING COVERAGE:

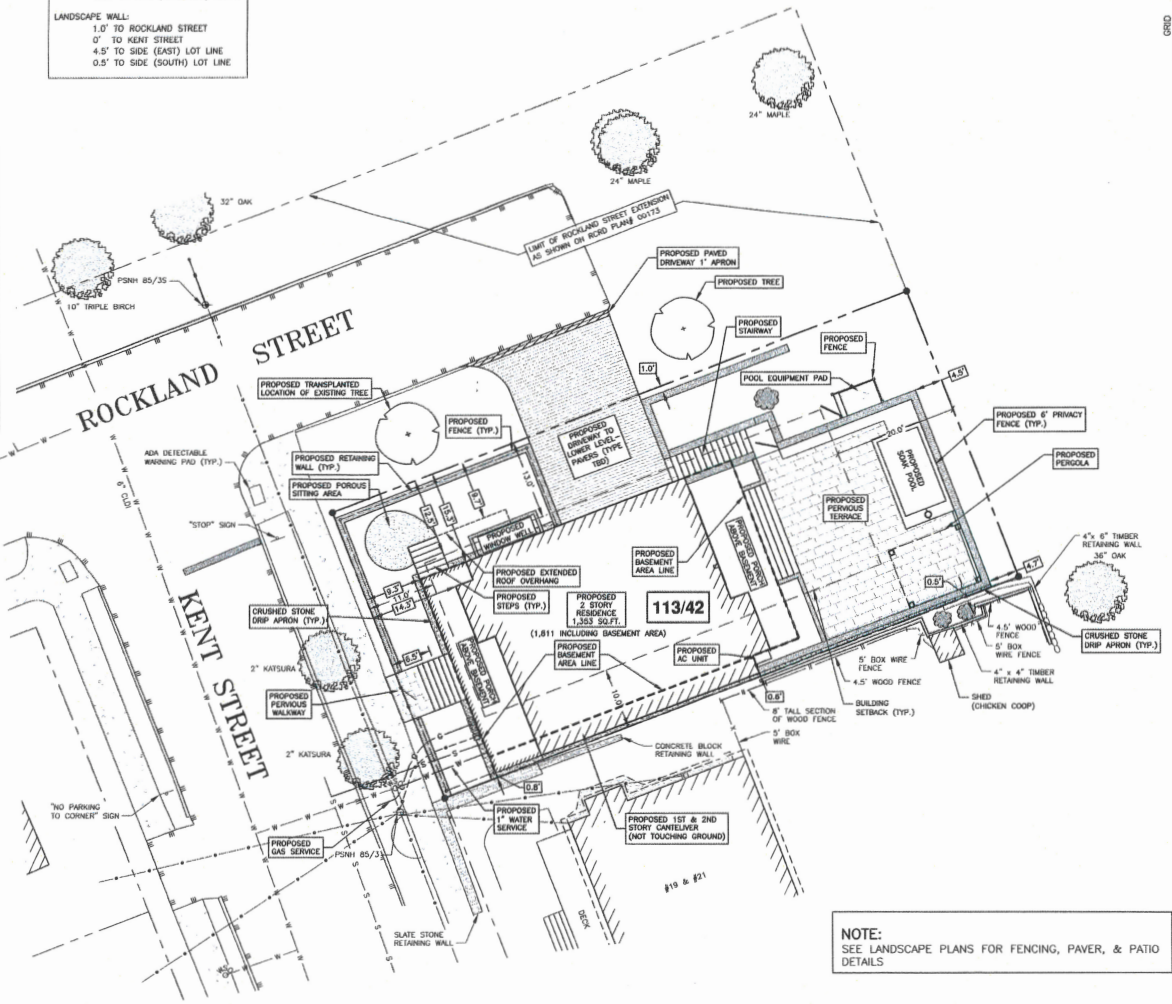
MAIN STRUCTURE	1,075 S.F.
GARAGE/SHED	296 S.F.
PORCH/DECKS	315 S.F.
STEPS OVER 18" AG	9 S.F.
FRONT PORCH STEPS	32 S.F.
BACK PORCH/DECK STEPS	1,747 S.F.
TOTAL	1,747/5000 = 35%

PROPOSED BUILDING COVERAGE:

MAIN STRUCTURE	1,353 S.F.
PORCH/PATIOS	458 S.F.
STEPS OVER 18" AG	22 S.F.
FRONT PORCH STEPS	13 S.F.
STEPS ON PATIO	82 S.F.
STAIRWAY	60 S.F.
PERVIOUS TERRACE AREA	668 S.F. (INCLUDING PERGOLA FRAME)
POOL EQUIPMENT AREA	24 S.F.
TOTAL	2,660 S.F.
BUILDING COVERAGE:	2,660/5000 = 53%

PROPOSED OPEN SPACE CALCULATION:

MAIN STRUCTURE	1,353 S.F.
PORCH'S	458 S.F.
STAIRS/STEPS	205 S.F.
CONCRETE PADS	28 S.F.
DRIVEWAY	297 S.F.
POOL FRAME WALL	37 S.F.
RETAINING WALLS	303 S.F.
PERVIOUS TERRACE AREA	668 S.F. (INCLUDING PERGOLA FRAME)
TOTAL	3,349 S.F.
COVERAGE:	3349/5000 = 67% COVERAGE
100% - 67% = 33% OPEN SPACE	



NOTE:
 SEE LANDSCAPE PLANS FOR FENCING, PAVER, & PATIO DETAILS



AMBIT ENGINEERING, INC.
 Civil Engineers & Land Surveyors
 200 Griffin Road - Unit 3
 Portsmouth, N.H. 03801-7114
 Tel (603) 439-8882 Fax (603) 439-2315

- NOTES:**
- 1) PARCEL IS SHOWN ON THE CITY OF PORTSMOUTH ASSESSOR'S MAP 113 42 LOT 42.
 - 2) OWNERS OF RECORD:
 CYNTHIA AUSTIN SMITH &
 PETER SMITH
 9 KENT STREET
 PORTSMOUTH, NH 03801
 6336/448
 PLAN# 00178
 - 3) PARCEL IS NOT IN A SPECIAL FLOOD HAZARD AREA AS SHOWN ON FIRM PANEL 3301500269F, DATED 1/29/2021.
 - 4) EXISTING LOT AREA:
 0,000 S.F.
 0.1148 ACRES
 - 5) PARCEL IS LOCATED IN THE GENERAL RESIDENCE A (GRA) DISTRICT.
 - 6) DIMENSIONAL REQUIREMENTS:
 MIN. LOT AREA: 7,500 S.F.
 FRONTAGE: 100 FEET
 SETBACKS: FRONT: 15 FEET
 SIDE: 10 FEET
 REAR: 20 FEET
 MAXIMUM STRUCTURE HEIGHT: 35 FEET
 MAXIMUM BUILDING COVERAGE: 25%
 MINIMUM OPEN SPACE: 30%
 - 7) THE PURPOSE OF THIS PLAN IS TO SHOW THE PROPOSED STRUCTURE AND SITE IMPROVEMENTS ON ASSESSOR'S MAP 113, LOT 42 IN THE CITY OF PORTSMOUTH.
 - 8) VERTICAL DATUM IS NAVD83. BASIS OF VERTICAL DATUM IS REDUNDANT RTN GNSS OBSERVATIONS.

**SMITH RESIDENCE
 9 KENT STREET
 PORTSMOUTH, N.H.**

NO.	DESCRIPTION	DATE
5	FOUNDATION	5/8/23
4	DRIVE APRON	3/1/23
3	ISSUED FOR APPROVAL	2/7/23
2	DENSITY CALCULATIONS	1/10/23
1	REVISED LAYOUT	12/28/22
0	ISSUED FOR COMMENT	12/22/22

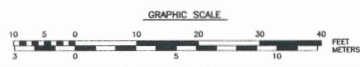


SCALE: 1" = 10' NOVEMBER 2022

SITE PLAN C2

"I CERTIFY THAT THIS PLAN WAS PREPARED UNDER MY DIRECT SUPERVISION, THAT IT IS THE RESULT OF A FIELD SURVEY BY THIS OFFICE AND HAS AN ACCURACY OF THE CLOSED TRAVERSE THAT EXCEEDS THE PRECISION OF 1:15,000."

JOHN R. CHAGNON, LLS #738 DATE: 5-8-23





Planning Department
1 Junkins Avenue
Portsmouth, New
Hampshire 03801
(603) 610-7216

ZONING BOARD OF ADJUSTMENT

May 23, 2023

Cynthia Austin & Peter Smith
206 Court Street
Portsmouth, New Hampshire 03801

RE: Board of Adjustment request for property located at 9 Kent Street (LU-23-28)

Dear Property Owners:

The Zoning Board of Adjustment, at its regularly scheduled meeting of **Tuesday, May 16, 2023**, considered your application for demolishing the existing two-family and constructing a single-family dwelling which requires the following: 1) Variances from Section 10.521 to allow a) a lot area and lot area per dwelling of 5,000 square feet where 7,500 square feet is required for each; b) 53% building coverage where 25% is the maximum allowed; c) a 4.5 foot rear yard where 20' is required; d) a 0.5 foot side yard where 10 feet is required; e) a 0 foot front yard where 11 feet is allowed under Section 10.516.10; and f) a 9.5 foot secondary front yard where 13 feet is allowed under Section 10.516.10. 2) A Variance from Section 10.515.14 to allow a 1.5 foot setback for a mechanical unit where 10 feet is required. Said property is shown on Assessor Map 113 Lot 42 and lies within the General Residence A (GRA) District. As a result of said consideration, the Board voted to

deny the request because the expansion of the non-conformities and proposed changes to the existing property do not meet the spirit of the ordinance, substantial justice is not done, and there is no hardship.

The Board's decision may be appealed up to thirty (30) days after the vote. Please contact the Planning Department for more details about the appeals process.

The minutes and audio recording of this meeting are available by contacting the Planning Department.

Very truly yours,

Phyllis Eldridge, Chair of the Zoning Board of Adjustment

cc:

John Chagnon, Ambit Engineering, Inc.
R. Timothy Phoenix, Hoefle Phoenix Gormley & Roberts, PLLC

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

7:00 P.M.

May 16, 2023

MEMBERS PRESENT: Phyllis Eldridge, Chair; Beth Margeson, Vice Chair; Paul Mannle; Thomas Rossi; David Rheume; Jeffrey Mattson; Jody Record, Alternate; ML Geffert, Alternate

MEMBERS EXCUSED: None.

ALSO PRESENT: Stefanie Casella, Planning Department

The meeting was called to order at 7:05 p.m.

*Mr. Rossi moved to take the postponed petitions out of order to vote on, seconded by Ms. Geffert. The motion **passed** unanimously, 7-0.*

Chair Eldridge read the postponed items into the record. The motions were made and passed as noted under each postponed petition.

I. APPROVAL OF MINUTES

A. Approval of the April 18, 2023 Minutes.

Ms. Geffert noted that on page 12, the 15 Lafayette Road petition, the property was not 40 acres and that the sentence should read: Attorney Pasay reviewed the petition and noted that the property currently had a single-family dwelling but that it had two public roads of frontage.

Under Discussion and Decision of the Board on page 13, Ms. Geffert asked that the phrase ‘comply with the lot’ be changed to ‘comply with the law’ so that the sentence reads as follows: Ms. Geffert said they didn’t need a condition stating that the applicant would comply with the law because the applicant had to.

Mr. Rheume asked that a change be made for purposes of clarification to the end of the first paragraph on page 13 under Discussion and Decision of the Board to read as follows: He said that a stipulation requiring this would unduly restrict future property owners, which could be a source of a possible lawsuit against the city.

different density and lot sizes. He said the properties on Sylvester Street were the appropriate comparators. It was further discussed. (Timestamp 2:24:53).

*The motion **passed** by a vote of 4-3, with Ms. Geffert, Mr. Rheaume, and Chair Eldridge voting in opposition.*

Alternate Ms. Record took a voting seat.

- C. The request of **Cynthia Austin Smith and Peter (Owners)**, for property located at **9 Kent Street** whereas relief is needed to demolish the existing two-family and construct a single-family dwelling which requires the following: 1) Variances from Section 10.521 to allow a) a lot area and lot area per dwelling of 5,000 square feet where 7,500 square feet is required for each; b) 53% building coverage where 25% is the maximum allowed; c) a 4.5 foot rear yard where 20' is required; d) a 0.5 foot side yard where 10 feet is required; e) a 0 foot front yard where 11 feet is allowed under Section 10.516.10; and f) a 9.5 foot secondary front yard where 13 feet is allowed under Section 10.516.10. 2) A Variance from Section 10.515.14 to allow a 1.5 foot setback for a mechanical unit where 10 feet is required. Said property is located on Assessor Map 113 Lot 42 and lies within the General Residence A (GRA) District. (LU-23-28)

SPEAKING TO THE PETITION

Attorney Tim Phoenix was present on behalf of the applicant with the owners, the project engineer John Chagnon, project designer Jennifer Ramsey, and landscape architect Robbie Woodburn. He reviewed the petition and said they wanted to replace the existing duplex with a single-family home and an underground garage. He said the existing building coverage was 35 percent and the proposed was 53 percent. He said the backyard would be raised by 24 inches and have pervious pavers for better drainage, which he said was included in the coverage but was sort of an artificial component. He said several issues drove the plan, including the driveway, pervious pavement, topography, and so on. Mr. Chagnon addressed the drainage issues.

Mr. Rossi asked if the right yard setback was due to the overhangs. Attorney Phoenix said it was due to the cantilever that was over by three feet. Mr. Rossi asked what the hardship of the property was that required a cantilever in the house and bringing it right up to the lot line. Attorney Phoenix said many houses in the area had small lots and were close to the lot line. Mr. Rossi asked how close the external walls in the structure would be to the neighboring property. Mr. Chagnon said the house was pulled to the south due to the desire to park at that basement level. He said in order to get the cars off the street and under the structure with enough clearance, they were forced to push the house in the same location as it is now. Mr. Rossi concluded that the current condition of the house's right side was about .7 feet from the lot line. Attorney Phoenix said the existing was .5 feet.

Mr. Rheaume said the applicant stated that the project proposes a permitted single-family home where a duplex is now, so redevelopment is more than conforming compared to existing conditions.

He said he was confused by that statement and asked how it would make it more nonconforming because two-family homes were permitted in the GRA zone. Attorney Phoenix said he misstated it and that he should have said that it was less density but fewer units. Mr. Rheaume said the packet stated that the project would replace an aging duplex but didn't mention any rotting and so on. He asked if there were similar concerns with the structure. Mr. Smith said he was one of the owners and that he wasn't qualified to say whether the house was ready to fall down. Mr. Rheaume referred to the proposed cantilever and asked what the gap would be between the ground and the first floor. Mr. Chagnon said the cantilever had more to do with the structurability of the replacement home and the existing foundation wall would be used as the sheet pile. Ms. Ramsey said the original foundation floor would not change.

Chair Eldridge opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

Dean Baltulonis of 159 Richards Avenue said his home was adjacent to the park and thought the project would be a nice upgrade to the backdrop of the park.

Jessica Kaiser (no address given) said the architectural elements showed modern components but pulled elements from the existing house and surrounding houses as well. She said the garage would sit underground and would not affect the mass.

Alex Greiner of 88 Lincoln Street said the project would be a great addition to the neighborhood.

SPEAKING IN OPPOSITION TO THE PETITION

Dave McGlass (no address given) said he was the abutter and thought the project would not meet the criteria. He said the stormwater impact would increase on his property and the metal roof oriented NS instead of EW would cause the snow to slide off onto their property. He said the overhang would go onto their property and the concrete foundation would be six inches from his property line. He said the stormwater treatment would require the owner to use his property. He said the front porch would be more forward than any other house on Kent Street and would impact the visual environment. He said there were no special conditions of the lot to create a hardship.

Bill Arakelian of 18 Kent Street said the existing property was structurally sound and did not present any undue hardships. He said the proposed design was inappropriate and there was no reason to drive all the setbacks further out of compliance.

Cliff Hodgson of 10 Kent Street said the setbacks would negatively affect the neighborhood and the size and appearance of the new home would alter the essential characteristics of the area. He said there was no hardship and that the owners seemed to think the rules didn't apply to them.

Jim Lee of 520 Sagamore Avenue said the project would alter the essential character of the neighborhood. He also noted that the board was always reluctant to grant a zero lot line.

Barbara Adams of 75 Kent Street said the project would double the size of the dwelling unit to 5,000 square feet and that a patio raised 24 inches with a special surface seemed like building coverage. She noted that the houses on Kent Street were all built in the 1900s and were traditional in size, shape and style, but the applicant wanted a larger 4-story modern California-style building with vertical siding and a metal roof and 300 feet of surrounding retaining cement walls. She said the building would be out of proportion and not compatible with the neighborhood and would alter the essential character of Kent Street. She said there was no hardship.

Matt Beebe of 81 Lincoln Avenue said there was no hardship and thought the design team should find a way to make the house more conforming and get it further away from the lot lines.

Sue Polidura of Middle Street said the proposed house was a very modern structure in a very old neighborhood and was more appropriate for a modern development.

Esther Kennedy of 41 Pickering Avenue read an excerpt from a note from Attorney Duncan MacCallum stating that it was difficult to draw the line between a person's property rights and the neighbor's property rights, but that was what zoning was and did and it required buildings to be a certain number of feet from the neighbor's boundaries for property air, light, and space between buildings. She said the applicant did not meet any of the criteria.

Petra Huda of 280 South Street said she couldn't fathom how the applicant would get all that 'stuff' into that spot. She said there was no hardship and that the petition should be denied.

Katherine Arakelian of 18 Kent Street said eight out of twelve houses on Kent Street were in opposition.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Attorney Phoenix said 53 percent was an artificial number because the house was 35 percent where 39 percent was the limit. He said the existing house was the same distance from the common lot line as the proposed house. He said stormwater and snow would be captured and the driveway and garage would free up street parking. He said the larger porch would not affect neighbors' views. He said the applicant was required to do a stormwater plan to document pre- and post-construction. He said the existing home was 2,700 square feet and the proposed home was 39,000 square feet.

Barbara Jenny of 81 Lincoln Avenue (via Zoom) said the project would affect her sense of light and view and also her view of the pond and park. She said she took issue with Attorney Phoenix using the term 'essentially' several times. She said measurements mattered.

No one else spoke, and Chair Eldridge closed the public hearing.

*At this point in the meeting, Mr. Mannle moved to **extend** the meeting beyond 10:00, seconded by Ms. Record. The motion **passed** unanimously.*

DISCUSSION OF THE BOARD

Mr. Rossi said he liked the design and thought the house would improve the area and didn't think it would be out of keeping with the character of the neighborhood. He said housing styles were different from property to property and people didn't build the way they did years ago. He said he didn't think it would be contrary to the spirit of the ordinance and saw no loss to the public or diminishment of surrounding property values. He said he did have difficulty with the hardship of the land forcing the need for the variances. He thought most of the variances, especially the lot line clearance on the right side, were driven by the desire to have a garage under the residence, which caused everything to be raised and necessitated more drains, retaining walls, and so on. He said he did not think the property offered a hardship that required a subterranean garage and the resulting placement of the house six inches from the right side property line, so on that basis, he could not support it. Vice-Chair Margeson said she would not support it and that she wasn't persuaded that there was a hardship of special conditions that made the property exempt from the ordinance's requirements. She said a particular concern was the elimination of the primary front yard setback from 7 feet to zero, which affected the streetscape. She said the building coverage was also a hard one because it wasn't essentially open space but a structure. She said open space had to be free of structures, and it significantly increased the building coverage and made the property more nonconforming. Mr. Rheume said he could not approve it. He said the applicant was asking for more relief than what was needed for the existing structure in every way. He said the city wasn't getting much from the applicant per the balancing test. He said the applicant's term 'as desired' drove a lot of what was being requested for relief. He said the applicant argued that the 53 percent coverage wasn't a real number but was all the stuff they wanted to create in the backyard, and that just because it was made up of earth and stone didn't make it less impactful. He thought it would be more impactful because the rolling hill topography on the back of the property that contributed to the park had a positive effect that could be negatively impacted. He said the underground garage would be right along the neighbor's wall, and the roof pitch being oriented into a front gable would be more impactful because all the rain and snow would come down on the neighbor's property. He said the project failed several criteria and did not support the balancing test.

DECISION OF THE BOARD

*Mr. Rheume moved to **deny** the petition, seconded by Mr. Mannle.*

Mr. Rheume said the application only had to fail one criterion, and he thought it failed a few. He said a lot of relief was being asked for and neighboring properties would be negatively affected from a light and air standpoint as well as a water runoff standpoint and complexity of design. He said the maintainability of that design would cause the neighbor future issues. He said the structure was in a prominent location and some of the things asked for would negatively impact some of what the public would look for in that location. As for the hardship, he said it was brand new construction and that the applicant could build a new structure in full compliance or require less relief than requested. He said all the characteristics he saw were negative hardships that made the request relief even more egregious. Mr. Mannle concurred. He said the applicant was asking for seven variances for brand new construction, and that two of them couldn't change but five of them could get better. He said it didn't make sense on new construction.

*The motion **passed** by unanimous vote, 7-0.*

9 Kent St



Portsmouth, New Hampshire
Google Street View
Sep 2011



Google

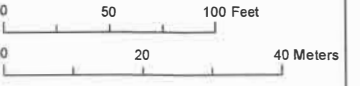
Image capture: Sep 2011 © 2023 Google



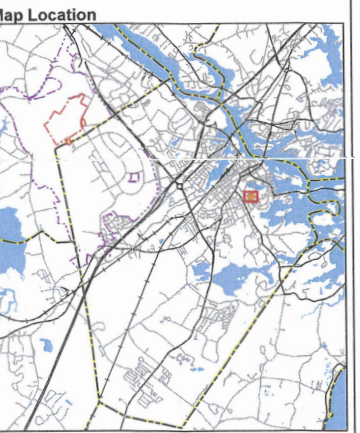
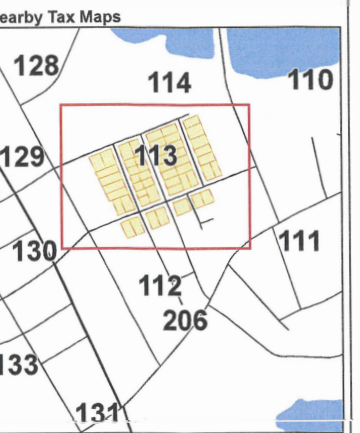


- Partial Legend**
 See the cover sheet for the complete legend.
- 7-5A Lot or lot-unit number
 - 2.56 ac Parcel area in acres (ac) or square feet (sf)
 - 25 Address number
 - 233-137 Parcel number from a neighboring map
 - 68 Parcel line dimension
 - SIMS AVE Street name
 - Parcel/Parcel boundary
 - Parcel/ROW boundary
 - Water boundary
 - Structure (1994 data)
 - Parcel covered by this map
 - Parcel from a neighboring map (see other map for current status)

EXHIBIT E



This map is for assessment purposes only. It is not intended for legal description or conveyance. Parcels are mapped as of April 1. Building footprints are 2006 data and may not represent current structures. Streets appearing on this map may be paper (unbuilt) streets. Lot numbers take precedence over address numbers. Address numbers shown on this map may not represent posted or legal addresses.



Portsmouth, New Hampshire
 2022
Tax Map 113



Know all Men by these Presents,

That I, J. Howard Grover of Portsmouth in the County of Rockingham and State of New Hampshire,

For and in consideration of the sum of one dollar to me in hand before the delivery hereof, well and truly paid by

John D. Dowd of said Portsmouth,

} Grover
to
Dowd

the receipt whereof I do hereby acknowledge, have given, granted, bargained and sold, and by these presents do give, grant, bargain, sell, alien, enfeoff, convey and confirm unto the said John D. Dowd, his heirs and assigns forever,

} Delivered to
J. W. Kelley
Notail.

A certain lot or parcel of land situate in said Portsmouth at the corner of Kent Street and Rockland Street Extension, being lot numbered sixty six (66) on a plan of land by W. B. Whitney, Aug. 1899, recorded in Rockingham Deeds, Lib. 567, Fol. 481, bounded and described as follows, viz: Westerly by Kent Street fifty feet; Northerly by Rockland Street Extension, one hundred feet; Easterly by Langdon Park, fifty feet, and Southerly by lot numbered sixty five (65) on said plan, one hundred feet.

This deed is upon the express condition and part consideration that said grantee, his heirs and assigns, shall not erect, nor cause nor permit to be erected on said granted premises, any building or structure other than dwelling houses, or buildings in the nature of dwelling houses and the necessary out-buildings therefor; nor any structure upon said granted premises within the distance of fifteen feet from the street lines thereof.

To have and to hold the said granted premises, with all the privileges and appurtenances to the same belonging to him the said Dowd and his heirs and assigns, to his and their only proper use and benefit forever. And I the said Grover for myself and my heirs, executors and administrators, do hereby covenant, grant and agree, to and with the said Dowd and his heirs and assigns, that until the delivery hereof I am the lawful owner of the said premises, and am seized and possessed hereof in my own right in fee simple; and have full power and lawful authority to grant and convey the same in manner aforesaid; that the said premises are free and clear from all and every incumbrance whatsoever; and that I and my heirs, executors and administrators, shall and will warrant and defend the same to the said Dowd

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and his heirs and assigns, against the lawful claims and demands of any person or persons whomsoever. And I, wife of the said J. Howard Grover in consideration of aforesaid, do hereby relinquish my right of dower in the before-mentioned premises.

And we and each of us do hereby release, discharge and waive all such rights of exemption from attachment and levy or sale on execution, and such other rights whatsoever in said premises, and in each and every part thereof, as our Family Homestead, as are reserved or secured to us, or either of us, by the Statute of the State of New Hampshire, passed July 4, 1851, entitled "an Act to exempt the Homestead of Families from attachment and levy or sale or execution," or by any other Statute or Statutes of said State.

In witness whereof, we have hereunto set our hands and seals this tenth day of July in the year of our Lord 1903.

SIGNED, SEALED, AND DELIVERED IN PRESENCE OF US:

John D. Kelley
Barion S. Miller

J. Howard Grover
Mary D. Grover

State of New Hampshire, Rockingham, ss.

PERSONALLY appeared the above-named J. Howard Grover and acknowledged the foregoing instrument to be his voluntary act and deed. Before me,

A. D. 1903.

John D. Kelley Justice of the Peace.

Received and recorded July 24, 1903. William Merrill Register.

Handwritten note in a circle: "Handwritten"

Know all Men by these Presents,

That I, Anna Woud Fagan of Portsmouth, in the county of Rockingham, State of New Hampshire.

for and in consideration of the sum of one dollar.

to me in hand, before the delivery hereof, well and truly paid by Oliver H. Woud, John F. Woud, and Lawrence W. Woud, all of Portsmouth aforesaid.

Fagan to Woud et al.

have remised, released and forever quitclaimed, and by these presents do remise, release and forever quitclaim unto the said Oliver H., John F. and Lawrence W. Woud their heirs and assigns forever all of my right, title and interest, which I now own as tenant in common with the said Oliver H., John F. and Lawrence W. Woud, in and unto a certain lot of land with the buildings thereon, situated on Kent Street, in said Portsmouth and bounded as follows, viz: westerly by Kent Street, fifty feet, northerly by Rockland Street, one hundred feet, easterly by Raymond Park, fifty feet, and southerly by land of Fred C. Young, one hundred feet. Said lot being the same as conveyed to my father the late John H. Woud by deed of J. Howard Groner and Mary H. Groner dated July 19, 1903, and recorded Rockingham Records Book 595, Page 435. Also said land is designated as lot number thirty three on plat number thirty one in the Tax Assessors records of the City of Portsmouth.

Delivered to Guy C. Corey

To have and to hold, the said premises, with all the privileges and appurtenances thereunto belonging to, the said grantee their heirs and assigns forever; and I do hereby covenant with the said grantee

that I will warrant and defend the said premises to them the said grantee their heirs and assigns, against the lawful claims and demands of any person or persons claiming by, from or under me.

And I, Albert A. Fagan husband of the said Anna Woud Fagan for the consideration aforesaid, do hereby release my right of dower in said premises.

And we, the said wife of said in consideration aforesaid, do hereby grant and release to said all the right, title, interest, claim or demand which we, or either of us, have in or to the above described premises, by virtue of an act of the Legislature of the State of New Hampshire, entitled "An Act to exempt the Homestead of families from attachment and levy or sale on execution", passed July 4, 1851.

And we and each of us do hereby release, discharge and waive all such rights of exemption from attachment and levy or sale on execution and such other rights whatsoever in said premises and in each and every part thereof, as our Family Homestead, as are reserved or secured to us, or either of us, by the Statute of the State of New Hampshire, passed July 4, 1851, entitled "An Act to exempt the Homestead of Families from attachment and levy or sale on execution, or by any other Statute or Statutes of said State or any act or amendment thereof in any of the Statute of said State."

In witness whereof I have hereunto set my hand and seal this 9th day of July in the year of our Lord, one thousand nine hundred and 1925

Signed, sealed and delivered in presence of us: Guy C. Corey Anna D. Fagan (S) Albert A. Fagan (S)

STATE OF NEW HAMPSHIRE, ROCKINGHAM, SS. July 9- A.D. 1925 Personally appeared the above named Anna Woud Fagan and Albert A. Fagan and acknowledged the foregoing instrument to be their voluntary act and deed.

BEFORE ME: Guy C. Corey (S) Notary Public Justice of the Peace

Received and Recorded July 12th - 7:30 AM 1925 J. A. Green Register.

Know all Men by these Presents,

THAT I, John F. Dowd of Portsmouth in the County of Rockingham and State of New Hampshire

Dowd
Dowd et al to } for and in consideration of the sum of One Dollar
to me in hand, before the delivery hereof, well and truly paid by Oliver H. and Laurence W. Dowd
of said Portsmouth

del. to } the receipt whereof I do hereby acknowledge, have given, granted, bargained and sold, and by these presents
Barth Mitchell } do give, grant, bargain, sell, alien, enfeoff, convey and confirm unto the said Oliver H. and Laurence W. Dowd, their heirs and assigns forever,

all of my right, title and interest, which I now own as tenant in common with the said Oliver H. and Laurence W. Dowd, in and unto a certain lot of land with the buildings thereon, situated on Kent Street, in said Portsmouth and bounded and described as follows: - Westerly by Kent Street, fifty feet, Northerly by Rockland Street, One Hundred Feet, Easterly by Langdon Park, fifty feet, and Southerly by land of Fred C. Young, One Hundred Feet. Said lot being the same as conveyed to my father, the late John H. Dowd by deed of J. Howard Grover and Mary H. Grover dated July 10, 1903 and recorded in Rockingham Records, Book 595, Page 435, and by deed of Anna Dowd Tagaw to Oliver H. and John F. and Laurence W. Dowd dated July 9, 1925 and recorded in Rockingham Records Book 786, Page 411.

Also conveying all furniture contained therein.

To have and to hold the said granted premises, with all the privileges and appurtenances to the same belonging, to them the said Oliver H. and Laurence W. Dowd and their heirs and assigns, to them and their only proper use and benefit forever. And I the said John F. Dowd and my heirs, executors and administrators, do hereby covenant, grant and agree, to and with the said Oliver H. and Laurence W. Dowd and their heirs and assigns, that until the delivery hereof I am the lawful owner of the said premises, and am seized thereof in my own right and fee simple; and have full power and lawful authority to grant and convey the same in manner aforesaid; that the said premises are free and clear from all and every incumbrance whatsoever; and that I and my heirs, executors and administrators, shall and will warrant and defend the same to the said Oliver H. and Laurence W. Dowd and their heirs and assigns, against the lawful claims and demands of any person or persons whomsoever.

And I, an unmarried wife of the said John F. Dowd in consideration aforesaid, do hereby release my right of dower in the above mentioned premises.

And we and each of us do hereby release, discharge and waive all such rights of exemption from attachment and levy or sale on execution and such other rights whatsoever in said premises and in each and every part thereof, as our Family Homestead, as are reserved or secured to us, or either of us, by the Statute of the State of New Hampshire, passed July 7, 1857, entitled "An Act to exempt the Homestead of Families from attachment and levy or sale on execution," or by any other Statute or Statutes of said State.

In Witness whereof I have hereunto set my hand and seal, this 15th day of July in the year of our Lord one thousand nine hundred and A. D. 1926.

SIGNED, SEALED AND DELIVERED IN PRESENCE OF US:

John F. Mitchell

John F. Dowd (S.)
(S.)

STATE OF NEW HAMPSHIRE, ROCKINGHAM, SS.

Personally appeared the above named John F. Dowd and acknowledged the foregoing instrument to be his voluntary act and deed.

A. D. 1926.

BEFORE ME,

John L. Mitchell

Justice of the Peace.

Received and recorded July 13 7:30 A.M. 1926.

John W. A. Green Register.

Know all Men by these Presents,

Book 0865 Page 0081

61.

THAT we, Lawrence W. Dowd of Portsmouth in the county of Rockingham and State of New Hampshire

for and in consideration of the sum of One Dollar to me in hand, before the delivery hereof well and truly paid by Oliver H. Dowd of said Portsmouth

Dowd
to
Dowd

the receipt whereof I do hereby acknowledge, have given, granted, bargained and sold, and by these presents do give, grant, bargain, sell, alien, enfeoff, convey and confirm unto the said Oliver H. Dowd and his heirs and assigns forever, all my right, title and interest in a certain lot of land with the buildings thereon situate in Kent Street in said Portsmouth and bounded and described as follows: West-erly by Kent Street fifty feet; Northerly by Rockland Street One Hundred feet; East-erly by Langdon Park fifty feet and Southerly by land of Fred C. Ypung, one hundred feet, my interest in the above described premises being one common and undivided half part thereof the said grantee being the owner of the other half part.

del. to
J. L. Mit-
chell

To have and to hold the said granted premises, with all the privileges and appurtenances to the same belonging, to him the said Oliver H. Dowd and his heirs and assigns, to his and their only proper use and benefit forever. And I the said Lawrence W. Dowd for myself and my heirs, executors and administrators, do hereby covenant, grant and agree, to and with the said Oliver H. Dowd and his heirs and assigns, that until the delivery hereof I am the lawful owner of the said premises, and am seized and possessed thereof in my own right and fee simple; and have full power and lawful authority to grant and convey the same in manner aforesaid; that the said premises are free and clear from all and every incumbrance whatsoever; and that I and my heirs, executors and administrators, shall and will warrant and defend the same to the said Oliver H. Dowd and his heirs and assigns, against the lawful claims and demands of any person or persons whomsoever.

And I, Elizabeth Dowd wife of the said Lawrence W. Dowd in consideration aforesaid, do hereby ~~relinquish~~ relinquish my right of dower in the above mentioned premises.

And we and each of us do hereby release, discharge and waive all such rights of exemption from attachment and levy or sale on execution and such other rights whatsoever in said premises and in each and every part thereof as our Family Homestead, so as reserved or secured to us, or either of us, by the Statute of the State of New Hampshire, passed July 4, 1851, entitled "An Act to exempt the Homestead of Families from attachment and levy or sale on execution," or by any other Statute or Statutes of said State.

In Witness whereof have hereunto set our hand and seal this seventeenth day of September in the year of our Lord ~~our thousand nine hundred and~~ 1930.

SIGNED, SEALED AND DELIVERED IN PRESENCE OF US:

John L. Mitchell

Lawrence W. Dowd (L.S.)

Elizabeth M. Dowd (L.S.)

STATE OF NEW HAMPSHIRE, ROCKINGHAM, SS. Sept. 17, A. D. 1930.
Personally appeared the above named Lawrence W. Dowd and Elizabeth Dowd and acknowledged the foregoing instrument to be their voluntary act and deed.

BEFORE ME,

... John L. Mitchell Justice of the Peace

Received and recorded. Sept. 25, 7:50 A.M. 1930. John W. A. Green Register.

1136 308

heirs and assigns, to their own use and behoof forever.

And I do hereby in my said capacity, covenant with the said Grantees, the survivor of them and his or her heirs and assigns, that I am duly authorized to make the sale of the premises afore-said; that in all proceedings in the sale hereof, I have complied with the requirements of the statute in such cases provided, and with the terms and conditions of my appointment as executrix, and that I will WARRANT AND DEFEND the same to said Grantees, the survivor of them and his or her heirs and assigns, against the lawful claims of all persons claiming by, from and under me in my said capacity.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 23rd day of July, A.D. 1949.

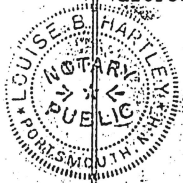
Signed, sealed and delivered in the Presence of

Louise B. Hartley *Eleanor H. Dowd*
Executrix of the Estate of
Oliver H. Dowd

STATE OF NEW HAMPSHIRE
Rockingham, ss.

July 23, 1949.

Then personally appeared the above named Eleanor H. Dowd and acknowledged the foregoing instrument by her subscribed to be her voluntary act and deed, both personally and as executrix aforesaid, before me,



Louise B. Hartley
Justice of the Peace
Notary Public

Received and recorded July 29, 9:25 A.M., 1949.

US Rev.
Stamps
\$6.60

1136 307



KNOW ALL MEN BY THESE PRESENTS, that I, Eleanor H. Dowd of Portsmouth, in the County of Rockingham and State of New Hampshire, as I am executrix of the Estate of Oliver H. Dowd, late of said Portsmouth, by appointment of the Honorable Probate Court of said County of Rockingham, by virtue and in execution of the authority conferred upon me in my said capacity by license of said Probate Court dated July 5, 1949, to sell the real estate of said estate, by private or public auction, as I shall deem proper, it appearing to me, the said executrix, that it is for the best interest of said estate that I sell the premises herein-after described by private sale, in consideration of the sum of SIX THOUSAND DOLLARS (\$6000.00), said sum being in my opinion the fair value of said premises, to me in hand, before the delivery hereof, well and truly paid by Calvin C. Wilder and Helen F. Wilder, both of said Portsmouth, receipt whereof I do hereby acknowledge, have granted, bargained and sold, and by these presents do hereby, in my said capacity, confirm unto the said Calvin C. Wilder and Helen F. Wilder, as joint tenants, with the right of survivorship, and not as tenants in common, the survivor of them and the heirs and assigns of the survivor of them, forever,

A certain parcel of land situate in said Portsmouth on the Easterly side of Kent Street and bounded and described as follows:

Beginning at a point which is the intersection of the Easterly side line of Kent Street and the Southerly side line of Rockland Street, said point being the Northwesterly corner of the within described premises; thence turning and running Easterly by said Rockland Street One Hundred One and One-half (101½) feet, more or less, to a point; thence turning and running Southerly by Langdon Park Fifty (50) feet, more or less, to the land of Z. Gertrude Young; thence turning and running Westerly One Hundred One and One-half (101½) feet by the land of said Young to Kent Street; thence turning and running Northerly by said Kent Street Fifty (50) feet, more or less, to the point of beginning.

Taxes for 1949 to be apportioned as of August 1, 1949. TO HAVE AND TO HOLD the same, with all the privileges and appurtenances thereto belonging to them, the said Calvin C. Wilder and Helen F. Wilder, the survivor of them and his or her

Return to:
Cynthia Austin Smith and Peter Smith
9 Kent Street
Portsmouth, NH 03801



LCHIP	ROA596509	25.00
TRANSFER TAX	RO111701	14,775.00
RECORDING		14.00
SURCHARGE		2.00

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, that Marilyn F. Jarest, Single, of 9 Kent Street, Portsmouth, NH 03801 and Kim Dawson, formerly known as Kim Davis, Married, of 121 Lost Mile Road, West Newfield, Maine 04095, for consideration paid grant(s) to Cynthia Austin Smith and Peter Smith, wife and husband, of 206 Court Street, Portsmouth, NH 03801, as joint tenants with rights of survivorship, with WARRANTY COVENANTS:

A certain parcel of land, together with any and all buildings and improvements thereon situate in Portsmouth, on the Easterly side of Kent Street, known as 9-11 Kent Street, Portsmouth, County of Rockingham and State of New Hampshire bounded and described as follows:

Beginning at a point which is the intersection of the Easterly side line of Kent Street and the Southerly side line of Rockland Street, said point being the Northwesterly corner of the within described premises; thence turning and running Easterly by said Rockland Street one hundred one and one-half (101 1/2) feet, more or less, to a point; thence turning and running Southerly by Langdon Park fifty (50) feet, more or less, to the land of Z. Gertrude Young; thence turning and running westerly one hundred one and one-half (101 1/2) feet by the land of said Young to Kent Street; thence turning and running Northerly by said Kent Street (50) feet, more or less, to the point of beginning.

Meaning and intending to describe and convey the same premises conveyed to John E. Jarest, Marilyn F. Jarest and Kim Davis, all as joint tenants with rights of survivorship, by deed recorded in the Rockingham County Registry of Deeds on June 17, 1988 in Book 2745, Page 1443. See death certificate of John E. Jarest, recorded in the said Registry of Deeds herewith.

I, Marilyn F. Jarest, hereby releases her homestead rights in the subject property. This is not homestead property of Kim Dawson or her spouse.

Executed this 24th day of November, 2021.

Marilyn F. Jarest

Marilyn F. Jarest

Kim Dawson

Kim Dawson, formerly known as Kim Davis

State of New Hampshire
County of Strafford

Then personally appeared before me on this 24th day of November, 2021, the said Marilyn F. Jarest and Kim Dawson and acknowledged the foregoing to be his/her/their voluntary act and deed.

Jessica Rozo

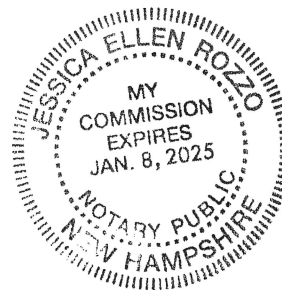
Notary Public

Jessica Rozo

Notary-Name Printed

My commission expires:

(seal)



HOEFLE, PHOENIX, GORMLEY & ROBERTS, PLLC

ATTORNEYS AT LAW

127 Parrott Avenue | Portsmouth, NH, 03801
Telephone: 603.436.0666 | Facsimile: 603.431.0879 | www.hpgrlaw.com

August 8, 2023

HAND DELIVERED

Peter Stith, Principal Planner
Portsmouth City Hall
1 Junkins Avenue
Portsmouth, NH 03801

Re: Peter Smith & Cynthia Austin Smith, Owners/Applicants
9 Kent Street
Tax Map 113/Lot 42
LU-23-119

Dear Mr. Stith & Zoning Board Members:

On behalf of Peter Smith & Cynthia Austin Smith, applicants, enclosed please find the following supplemental Exhibit in support of a request for zoning relief:

- Exhibit G – Landscape Plan

We will upload the supplemental exhibit to Viewpoint and hand deliver a hard copy. We look forward to presenting this application to the Zoning Board at its August 22, 2023 meeting.

Very truly yours,



R. Timothy Phoenix
Monica F. Kieser

Encl.

cc: Peter Smith & Cynthia Austin Smith
John Chagnon, Ambit Engineering, Inc. (email)
Jennifer Ramsey, Somma Studios (email)
Robbi Woodburn, Woodburn & Associates (email)

DANIEL C. HOEFLE	R. PETER TAYLOR	GREGORY D. ROBBINS	STEPHANIE J. JOHNSON
R. TIMOTHY PHOENIX	ALEC L. MCEACHERN	PETER V. DOYLE	OF COUNSEL:
LAWRENCE B. GORMLEY	KEVIN M. BAUM	MONICA F. KIESER	SAMUEL R. REID
STEPHEN H. ROBERTS	JACOB J.B. MARVELLEY	DUNCAN A. EDGAR	JOHN AHLGREN

II. NEW BUSINESS

- E. The request of **Caleb E. Ginsberg and Samantha L. Ginsberg (Owners)**, for property located at **303 Bartlett Street** whereas relief is needed to demolish the existing detached garage and construct an addition with attached garage which requires a Variance from Section 10.521 to allow a) seven (7) foot left yard where ten (10) feet is required, and b) two (2) foot right yard where ten (10) feet are required. Said property is located on Assessor Map 162 Lot 13 and lies within the General Residence A (GRA) District. (LU-23-120)

Existing & Proposed Conditions

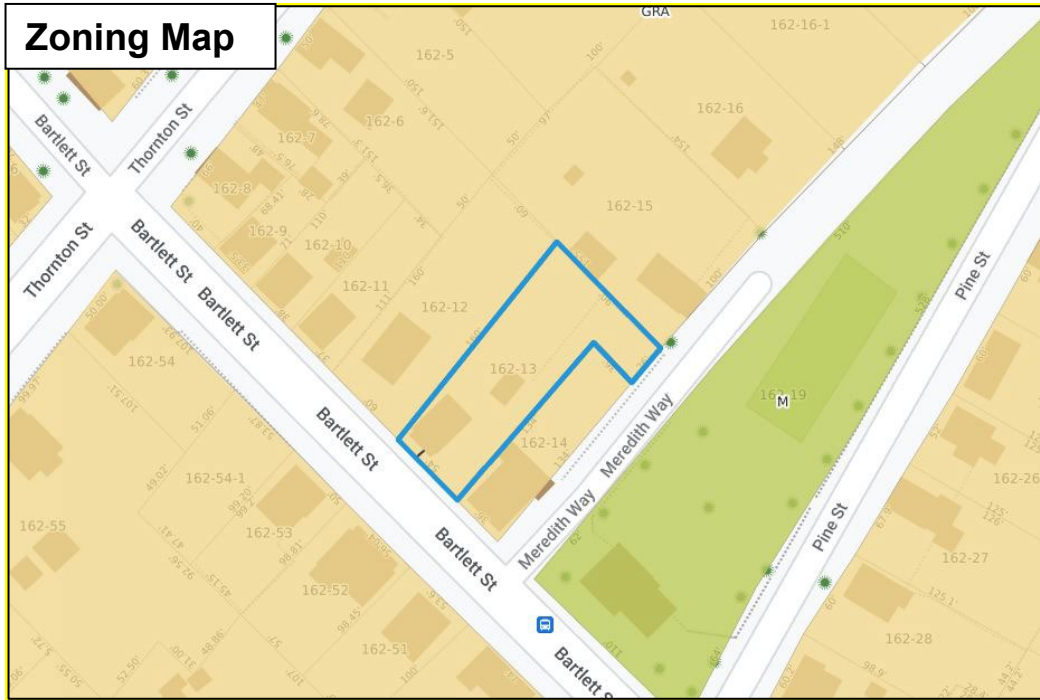
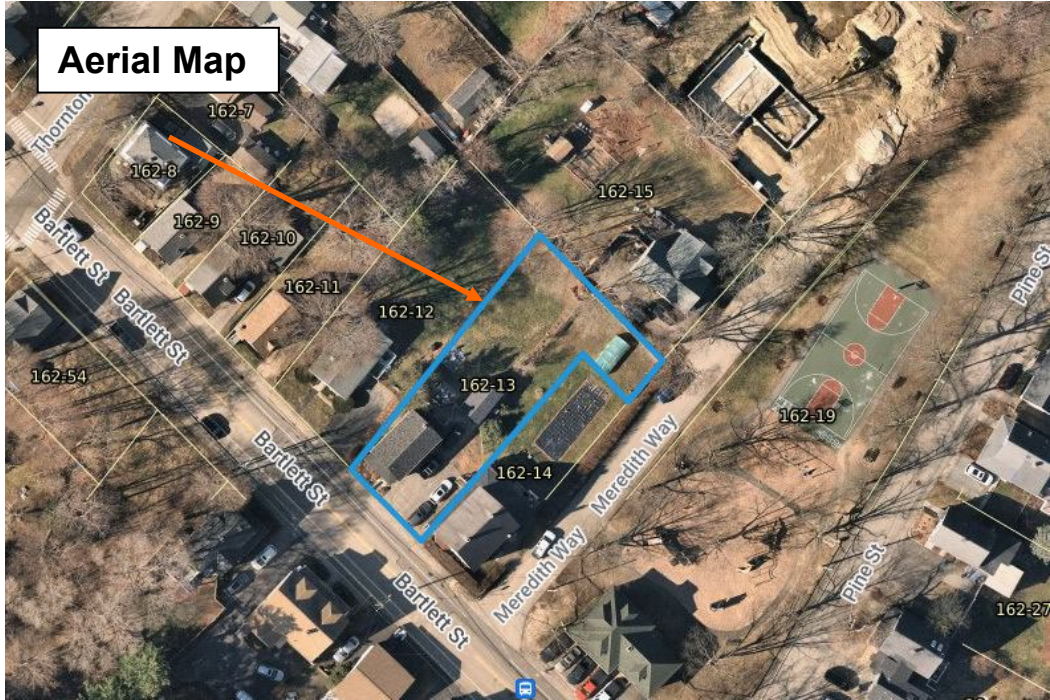
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family dwelling	Demo detached garage & addition	Primarily residential
<u>Lot area (sq. ft.):</u>	4,906	6,665	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	4,906	6,665	7,500 min.
<u>Street Frontage (ft.):</u>	36	37	100 min.
<u>Lot depth (ft.)</u>	160	160	70 min.
<u>Front Yard (ft.):</u>	5	5	15 min.
<u>Secondary Front Yard (ft)</u>	NA	NA	NA
<u>Left Yard (ft.):</u>	7	7	10 min.
<u>Right Yard (ft.):</u>	0.6	2	10 min.
<u>Rear Yard (ft.):</u>	>20	>20	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	28.5	27.5*	25 max.
<u>Open Space Coverage (%):</u>	51.8	57.9	30 min.
<u>Parking</u>	>2	2	2
<u>Estimated Age of Structure:</u>	1930	Variance request(s) shown in red.	

***Proposed Building Coverage exceeds the maximum permitted due to proposed addition**

Other Permits/Approvals Required

- Planning Board - LLA
- Building Permit

Neighborhood Context



Previous Board of Adjustment Actions

No previous BOA history found.

Planning Department Comments

The applicants request includes a lot line adjustment that will transfer 1,759 SF from Parcel A to Map 162, Lot 13 for a proposed lot size of 6,665 SF and 3,838 SF from Parcel A to Map 162, Lot 14 for a total lot size of 8,640 SF, as outlined on sheet 2 of the Lot Line Adjustment Plan. This project will require subdivision review and approval from the Planning Board for the proposed lot line adjustment. The proposed building coverage exceeds the 25% maximum permitted in the GRA District due to the proposed addition and therefore would require a variance. The applicant requested relief for a left side setback of 7 feet and a right side setback of 2 feet, but did not include the building coverage variance in their application materials. If the Board feels comfortable including it in a motion and wishes to approve this additional variance request, staff recommends the motion and conditions as listed below or similar language:

Sample Motion: Approve the variance requests with the following conditions:

- 1) ***Subdivision review and approval by the Planning Board is required for the proposed lot line adjustment.***
- 2) ***Maximum building coverage permitted is 27.5%***

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.

MEMORANDUM

TO: Portsmouth Zoning Board of Adjustment (“ZBA”)
FROM: R. Timothy Phoenix, Esquire
Monica F. Kieser, Esquire
DATE: July 26, 2023
RE: Caleb & Samantha Ginsberg (303 Bartlett Street/Map 162, Lot 13)
Peter & Donna Splaine (295/299 Bartlett Street/Map 162, Lot 14)
General Residence A Zone

Dear Chair Eldredge and Zoning Board Members:

On behalf of Caleb & Samantha Ginsberg (“Ginsbergs”) & Peter & Donna Splaine (“Splaines”) collectively (the “Parties”), we are pleased to submit this memorandum and attached exhibits in support of Ginsberg’s request for zoning relief to be considered by the Zoning Board of Adjustment (“ZBA”) at its August 15, 2023 meeting in anticipation of the Parties’ request for a Lot Line Adjustment.

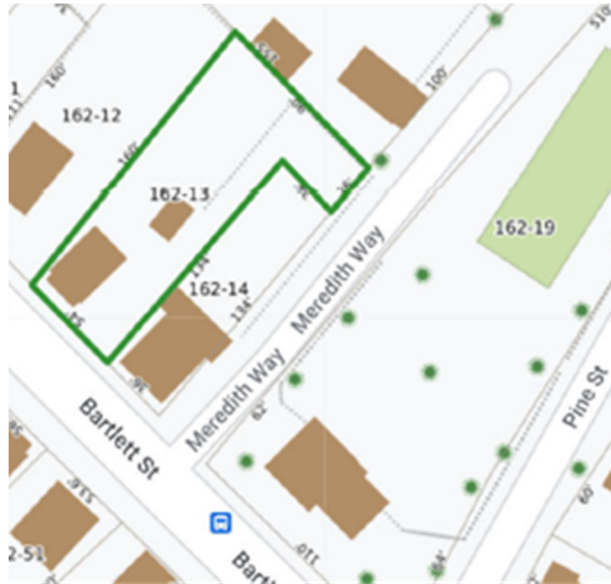
I. EXHIBITS

- A. Plan Set – issued by Ross Engineering, LLC.
- B. Architectural Plan Set – issued by Charles Hoyt Designs.
- C. Site Photographs.
- D. Abutter Support Letters.
- E. Tax Map 162.

II. PROPERTY/PROJECT

303 Bartlett Street (Map 162 Lot 13) is 4,906 s.f. narrow, existing single-family house lot with 36 ft. of frontage on Bartlett Street belonging to Ginsberg (the “Property” or “Lot 13”). The Property contains a single-family home occupying an approximate 1,085 s.f. footprint, including porches and rear deck and a detached 251 s.f. garage. The home and rear deck encroach on the left side yard setback and garage is located 0.6 ft. from the right side boundary line. 295/299 Bartlett Street is a 4,802 s.f. corner lot with a long existing duplex belonging to Splaine (“Splaine Lot” or “Lot 14”). Ginsbergs purchased Lot 13 in 2021 and seek to expand their home to connect with a new garage increasing living area to accommodate their growing family (the “Ginsberg Project”). They worked with the Splaines, their direct abutter to come up with an acceptable garage addition. Ginsbergs then commissioned a survey which revealed that the City Tax and GIS Maps incorrectly reflected the actual ownership of the land Ginsbergs, Splaines, and their respective predecessors had occupied for decades.

Below is the intersection of Bartlett Street and Meredith Way as depicted in the City's MapGeo GIS Mapping. Ginsberg's Lot (Lot 13) is outlined in green with Lot 14, belonging to Splaine on the right.



The zoomed in area of the preliminary survey reveals a light-blue, T-shaped parcel with 22.70 ft. of frontage on Bartlett vested in the Heirs of Martineau (See also **Exhibit A**):



Ginsbergs and Splaine have acquired title of the T-shaped parcel of land from the Heirs of Martineau and now seek to divide it between their respective lots to reflect the historical usage

of the T-shaped parcel, and accommodate the Ginsberg garage. Each lot will be rendered more conforming with respect lot size, lot size/dwelling unit and lot frontage as indicated below:

<u>Lot</u>	<u>Existing Lot Area/Frontage</u>	<u>Proposed Lot Area/Frontage</u>
Lot 13 (Ginsberg) (single family)	4,906 s.f./36.00' on Bartlett	6,665 s.f./37.00' on Bartlett
<u>Lot 14 (Splaine)</u> (duplex)	4,802 s.f./36.00' on Bartlett, 134' on Meredith	8,640 s.f./57.70' on Bartlett and 160' on Meredith

This unique set of circumstances and the Ginsberg Project has been reviewed by City Staff who directed the Parties to apply to the ZBA for the required dimensional relief for the Ginsberg Project in advance of a Planning Board the T-Shaped parcel between the Parties' respective lots. Staff has opined that the following relief is required:

III. RELIEF REQUIRED:

<u>Variance Section/Requirement</u>	<u>Existing</u>	<u>Proposed</u>
<u>PZO §10.520/Table §10.521:</u> <u>Dimensional Standards</u> <u>10' Side Yard</u>	3.6'/7.0' house (left) 9.3' deck (left) 0.6' garage (right)	3.6/7.0'/10.8' house (left) 2.0' garage addition (right)

IV. OTHER PERMITS REQUIRED

- Planning Board Subdivision/Lot Line Adjustment
- Building Permit

V. VARIANCE REQUIREMENTS

1. **The variances will not be contrary to the public interest.**
2. **The spirit of the ordinance is observed.**

The first step in the ZBA's analysis is to determine whether granting a variance is not contrary to the public interest and is consistent with the spirit and intent of the ordinance, considered together pursuant to Malachy Glen Associates, Inc. v. Town of Chichester, 155 N.H.

102 (2007) and its progeny. Upon examination, it must be determined whether granting a variance “would unduly and to a marked degree conflict with the ordinance such that it violates the ordinance’s basic zoning objectives”. Id. “Mere conflict with the zoning ordinance is not enough”. Id.

In considering whether variances “in a marked degree conflict with the ordinance such that they violate the ordinance’s basic zoning objectives”. Malachy Glen, supra, also held:

One way to ascertain whether granting the variance would violate basic zoning objectives is to examine whether it would alter the essential character of the locality.... . Another approach to [determine] whether granting the variance violates basic zoning objectives is to examine whether granting the variance would threaten the public health, safety or welfare. (emphasis added)

Here, the Ginsberg and Splaine homes exist on very narrow lots with each family occupying a portion of a T-Shaped parcel located between the respective lots. The Project divides the T-Shaped parcel between the lots making each lot more conforming, as well as adding a garage addition for Ginsbergs. The area of the Ginsberg addition within the left side yard is essentially in the same location as the existing rear deck. The right-side yard setback to the garage increases to 2 ft. from approximately half a foot. All abutters approve of the proposal. **(Exhibit D)**. The acquisition of the T-shaped parcel and the construction of Ginsberg’s garage addition will neither “alter the essential character of the locality nor threaten the public health, safety or welfare.”

3. Substantial justice will be done by granting the variance.

If “there is no benefit to the public that would outweigh the hardship to the applicant” this factor is satisfied. Harborside Associates, L.P. v. Parade Residence Hotel, L.L.C, 162 N.H. 508 (2011). That is, “any loss to the [applicant] that is not outweighed by a gain to the general public is an injustice”. Malachy Glen, supra at 109. Ginsbergs are constitutionally entitled to the use of the lot as they see fit; including redevelopment of the Property for a permitted single-family home with an incorporated garage, fully zoning compliant except for lot size which cannot be changed. “The right to use and enjoy one's property is a fundamental right protected by both the State and Federal Constitutions.” N.H. CONST. pt. I, arts. 2, 12; U.S. CONST. amends. V, XIV; Town of Chesterfield v. Brooks, 126 N.H. 64 (1985) at 68. Part I, Article 12 of the New Hampshire Constitution provides in part that “no part of a man's property shall be taken from

him, or applied to public uses, without his own consent, or that of the representative body of the people.” Thus, our State Constitutional protections limit the police power of the State and its municipalities in their regulation of the use of property. L. Grossman & Sons, Inc. v. Town of Gilford, 118 N.H. 480, 482 (1978). “Property” in the constitutional sense has been interpreted to mean not the tangible property itself, but rather the right to possess, use, enjoy and dispose of it. Burrows v. City of Keene, 121 N.H. 590, 597 (1981). (emphasis added). The Supreme Court has held that zoning ordinances must be reasonable, not arbitrary and must rest upon some ground of difference having fair and substantial relation to the object of the regulation. Simplex Technologies, Inc. v. Town of Newington, 145 N.H. 727, 731 (2001); Chesterfield at 69.

Because the proposed addition matches existing conditions on the left side and increases the right-side yard setback, there is no benefit to the public from denying the variances. In comparison, Ginsbergs will suffer great harm because they will be unable to construct a garage addition with the assent of Splaine and all other abutters. Splaine and Ginsbergs will suffer great harm because they will be unable to present the Subdivision application to the Planning Board which will increase their respective lots. Clearly, there is no benefit to public outweighing the hardship to the applicant if the variances are denied.

4. Granting the variance will not diminish surrounding property values.

Ginsbergs have taken great pains to consult each abutter obtaining assent from all. Many homes in this neighborhood are constructed on small lots with homes or garages located in the side or rear yard setback. **(Exhibit E)**. The proposed addition will improve the functionality of the Ginsberg home, while the subsequent subdivision will increase the side of both Parties’ respective lots improving zoning compliance. Under these circumstances, it is clear that granting a variance for a garage addition with a greater right-side setback than then existing garage will not diminish surrounding property values.

5. Denial of the variances results in an unnecessary hardship.

a. Special conditions distinguish the property/project from others in the area.

At 4,906 s.f., the Ginsberg Property is significantly less than the required lot size and lot area per dwelling unit requirement of 7,500 s.f., Application of the 10 ft. side yard setback to the lot (36 ft. wide at the front increasing to 40 ft. at the rear) results in a building envelope only 16-20 ft. wide. These circumstances combine to create special conditions and drives the request for

side yard setback relief. Ginsberg's existing home, if built today, would require similar relief. Splaines' existing lot conforms to frontage requirements, but its present size is even less conforming than Ginsbergs' given the long-existing duplex. Here, both lots will be increased in size and become more conforming, with the Ginsberg lot increasing to 6,665 s.f. gaining a larger backyard. The Splaine lot will reach a conforming lot size of 8,640 s.f. and retain the parking needed to accommodate the duplex.

- b. No fair and substantial relationship exists between the general public purposes of the ordinance and its specific application in this instance.

Yard setbacks exist to promote air, light, separation between neighbors and to provide space for stormwater treatment. The existing garage is 0.6 ft. from the existing lot line and pitched to shed 50% of its stormwater very close to the existing lot line. Proposed conditions increase the distance the abutting lot and the roof sheds water toward the front and rear of the Ginsberg Lot, including onto a proposed pervious patio area which can infiltrate stormwater. Because the proposal improves over existing conditions, the purposes of these regulations are met, so there is no reason to apply the strict side setback requirements of the zoning ordinance.

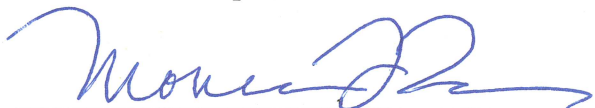
- c. The proposed use is reasonable.

If the use is permitted, it is deemed reasonable. Vigeant v. Hudson, 151 N.H. 747 (2005). Proposed is an addition to improve live-ability of a modest single-family home in the GRA District accompanied by a Subdivision of land long utilized and now owned by Ginsbergs and Splaines. Accordingly, the use is reasonable.

VI. CONCLUSION

For all of the reasons stated, Ginsbergs and Splaine respectfully requests that the Portsmouth Zoning Board of Adjustment grant the requested relief and allow this matter to proceed to the Planning Board.

Respectfully submitted,
Caleb & Samantha Ginsberg
Peter & Donna Splaine



By: R. Timothy Phoenix
Monica F. Kieser

LEGEND

- ◆ MONUMENT TO BE SET
- MONUMENT FOUND
- ⊕ UTILITY POLE
- FENCE
- VERTICAL GRANITE CURB
- WATER
- SEWER
- DRAIN

SEE NOTE 2



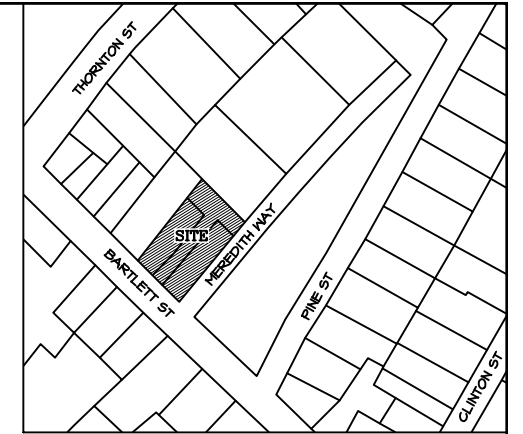
NOTES

- 1) OWNERS OF RECORD:
 CALEB E. & SAMANTHA L. GINSBERG
 TAX MAP 162, LOT 13
 303 BARTLETT ST
 PORTSMOUTH, NH 03801
 RCRD: 6256-0911
 AREA: 4,906 SF, 0.11 ACRES

 PETER D. & DONNA D. SPLAINE
 TAX MAP 162, LOT 14
 299 BARTLETT ST
 PORTSMOUTH, NH 03801
 RCRD: 3429-1079
 AREA: 4,802 SF, 0.11 ACRES

 PARCEL A WAS CONVEYED TO CALEB GINSBERG, SAMANTHA GINSBERG, PETER SPLAINE, & DONNA SPLAINE BY THE FOLLOWING DEEDS RECORDED IN THE ROCKINGHAM COUNTY REGISTRY OF DEEDS: 6493-1116, 6493-1118, 6493-1120, 6493-1122, 6493-1124, 6493-1126.

 PARCEL A AREA: 5,598 SF, 0.13 ACRES
- 2) BASIS OF BEARING HELD FROM PLAN REFERENCE #1.
- 3) PARCEL IS IN GENERAL RESIDENCE A (GRA) ZONE:
 MINIMUM LOT AREA.....7,500 SF
 MIN. LOT AREA PER DWELLING UNIT.....7,500 SF
 MINIMUM FRONTAGE.....100 FT
 MINIMUM DEPTH.....70 FT
 SETBACKS:
 FRONT.....15 FT
 SIDE.....10 FT
 REAR.....20 FT
 MAXIMUM BUILDING HEIGHT:
 SLOPED ROOF.....35 FT
 FLAT ROOF.....30 FT
 MAXIMUM BUILDING COVERAGE.....30%
 MINIMUM OPEN SPACE.....25%
- 4) THE PARCEL IS NOT WITHIN A FEMA FLOOD ZONE, AS PER FLOOD INSURANCE RATE MAP #33015C0259F, PANEL 259 OF 681, DATED JANUARY 29, 2021. VERTICAL DATUM IS NAVD 1988.
- 5) THE TAX MAP DOES NOT MATCH THE DEED DESCRIPTIONS. IT WOULD APPEAR THAT OVER TIME THE REMAINING MARTINEAU PARCEL "PARCEL A" WAS NOT INCLUDED IN THE TAX MAPS.
 TIMELINE OF EVENTS:
 DEED YEAR
 727-190 - 1919 - MARTINEAU IS GRANTED A PARCEL APPROXIMATELY 160'x90'
 1048-193 - 1946 - MARTINEAU GRANTS TOSI A PARCEL AT THE CORNER, 36'x134'x36'x134' (LOT 14 ON TAX MAP)
 1121-111 - 1948 - MARTINEAU GRANTS TOSI ANOTHER PARCEL, 36 FEET OF FRONTAGE ON BARTLETT, 124 FEET LONG
 1121-113 - 1948 - TOSI GRANTS BACK TO MARTINEAU THE CORNER PARCEL (1048-193), BOTH 1948 DEEDS ARE GIVEN TO CORRECT THE DESCRIPTION IN THE 1946 DEED
 PROBATE #46632 - 1964 DEATH OF JULIA MARTINEAU, WILL PASSES LAND ON TO HEIRS.
 6493-1116 TO 6493-1126 - 2023 - HEIRS OF MARTINEAU GRANT PARCEL A TO THE GINSBERGS AND SPLAINES.



LOCUS PLAN N.T.S.

REFERENCE PLANS

- 1) "TAX MAP 162 LOT 16 EXISTING CONDITIONS PLAN 2 LOT SUBDIVISION 77 MEREDITH WAY PORTSMOUTH, NEW HAMPSHIRE" BY TFM. DATED JULY 1, 2022. NOT RECORDED
- 2) "LOT LINE REVISION PINE STREET PORTSMOUTH, NEW HAMPSHIRE FOR JOYCE M. MAYO & CITY OF PORTSMOUTH" BY DURGIN, VERRA AND ASSOCIATES, INC. DATED JUNE 9, 1993. RCRD D-22643
- 3) "STREET PLAT OF SPARHAWK, BURKITT, STARK, CLINTON, AND PINE STREETS IN PORTSMOUTH, NEW HAMPSHIRE" BY JOHN W. DURGIN. DATED JULY 1980. FILE NO. 1080D, PLAN NO. 5874-SP. NOT RECORDED.

EXHIBIT A - Rev.

ISS.	DATE	DESCRIPTION OF ISSUE
5	8/1/2023	REVISIONS
4	7/26/2023	ZBA SUBMITTAL
3	6/15/2023	PRELIMINARY
2	5/11/2023	PRELIMINARY

SCALE 1" = 20'

CHECKED: A.ROSS

DRAWN: D.D.D.

CHECKED:

ROSS ENGINEERING, LLC
 Civil/Structural Engineering & Surveying
 909 Kingston St.
 Portsmouth, NH 03801
 (603) 433-7560

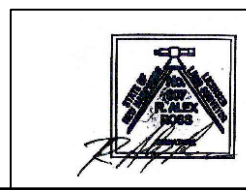
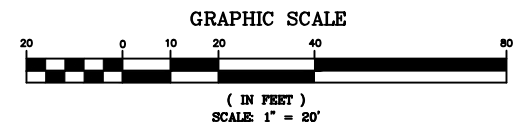
CLIENT:
 CALEB E. & SAMANTHA L. GINSBERG
 303 BARTLETT ST
 PORTSMOUTH, NH 03801

TITLE:

EXISTING CONDITIONS

303 BARTLETT ST
 PORTSMOUTH, NH 03801
 TAX MAP 162, LOT 13

JOB NUMBER: 22-041 DWG. NO.: 1 OF 3 ISSUE: 5



LENGTH TABLE

	BEARING	DISTANCE
L1	S 44°52'12" E	4.99'
L2	N 44°52'12" W	1.55'

LOT AREAS

	EXISTING AREA	CHANGE IN AREA	PROPOSED AREA
LOT 13	4,906 S.F.	+ 1,759 S.F.	6,665 S.F.
LOT 14	4,802 S.F.	+ 3,838 S.F.	8,640 S.F.

NOTES

1) OWNERS OF RECORD:
 CALEB E. & SAMANTHA L. GINSBERG
 TAX MAP 162, LOT 13
 303 BARTLETT ST
 PORTSMOUTH, NH 03801
 RCRD: 6256-0911
 AREA PROPOSED: 6,665 SF, 0.15 ACRES
 AREA EXISTING: 4,906 SF, 0.11 ACRES

PETER D. & DONNA D. SPLAINE
 TAX MAP 162, LOT 14
 299 BARTLETT ST
 PORTSMOUTH, NH 03801
 RCRD: 3429-1079
 AREA PROPOSED: 8,640 SF, 0.20 ACRES
 AREA EXISTING: 4,802 SF, 0.11 ACRES

2) PARCEL IS IN GENERAL RESIDENCE A (GRA) ZONE:
 MINIMUM LOT AREA.....7,500 SF
 MIN. LOT AREA PER DWELLING UNIT.....7,500 SF
 MINIMUM FRONTAGE.....100 FT
 MINIMUM DEPTH.....70 FT
 SETBACKS:
 FRONT.....15 FT
 SIDE.....10 FT
 REAR.....20 FT
 MAXIMUM BUILDING HEIGHT:
 SLOPED ROOF.....35 FT
 FLAT ROOF.....30 FT
 MAXIMUM BUILDING COVERAGE.....30%
 MINIMUM OPEN SPACE.....25%

3) GIS COORDINATES

	NORTHING	EASTING
A - SW CORNER LOT 13	210257.6108	1222455.2493
B - SE CORNER LOT 14	210190.8394	1222522.4010

LEGEND

- ◆ MONUMENT TO BE SET
- MONUMENT FOUND
- ⊕ UTILITY POLE
- FENCE
- VERTICAL GRANITE CURB
- WATER
- SEWER
- DRAIN

ISS.	DATE	DESCRIPTION OF ISSUE
5	8/1/2023	REVISIONS
4	7/26/2023	ZBA SUBMITTAL
3	6/15/2023	PRELIMINARY
2	5/11/2023	PRELIMINARY

SCALE 1" = 20'

CHECKED: A.ROSS
 DRAWN: D.D.D.
 CHECKED:

ROSS ENGINEERING, LLC
 Civil/Structural Engineering
 & Surveying
 909 Kingston St.
 Portsmouth, NH 03801
 (603) 433-7560

CLIENT
 CALEB E. & SAMANTHA
 L. GINSBERG
 303 BARTLETT ST
 PORTSMOUTH, NH 03801

TITLE
**LOT LINE
 ADJUSTMENT
 PLAN**
 303 BARTLETT ST
 PORTSMOUTH, NH 03801
 TAX MAP 162, LOT 13

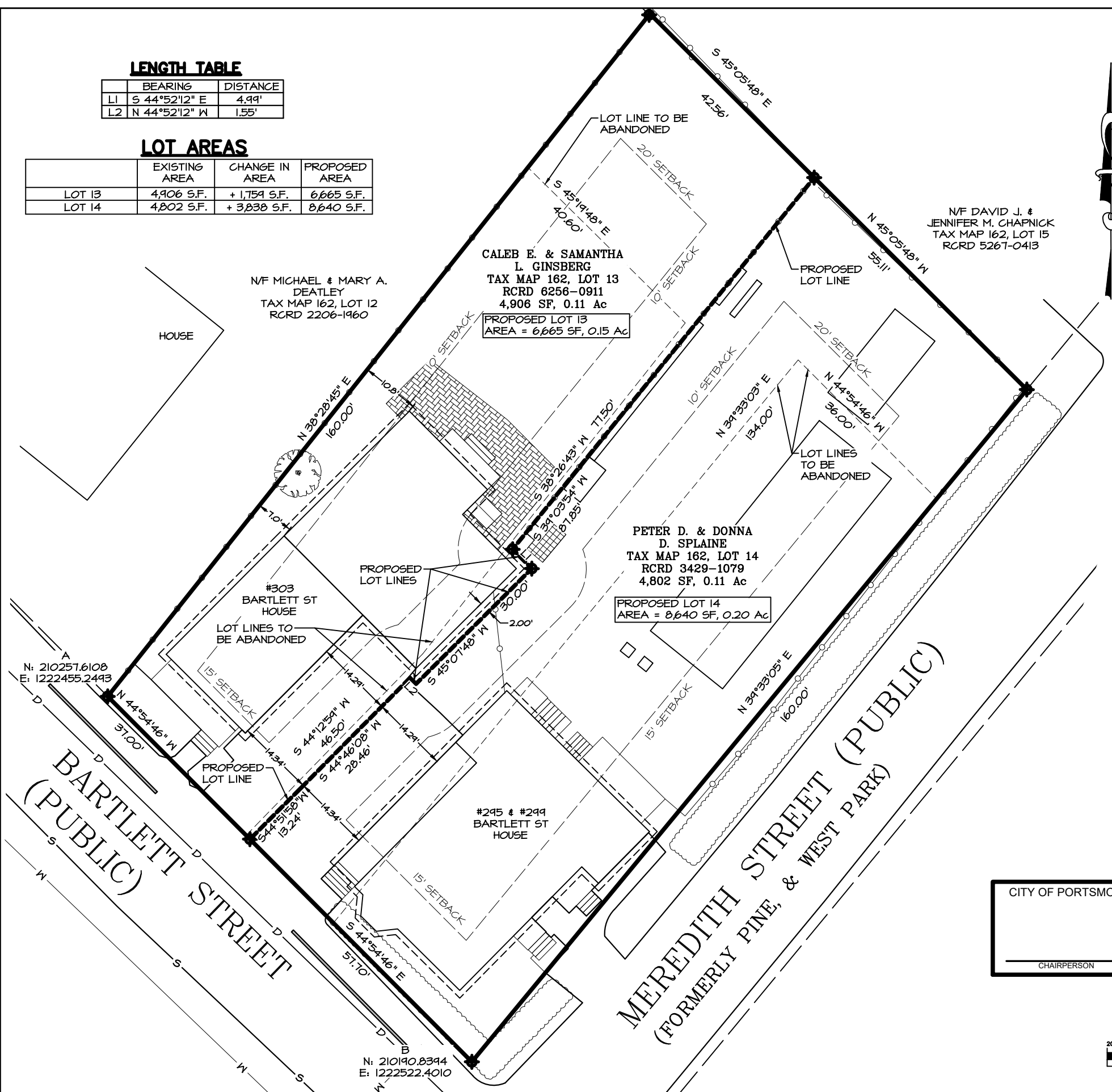
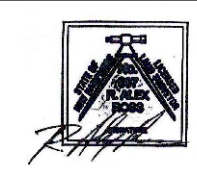
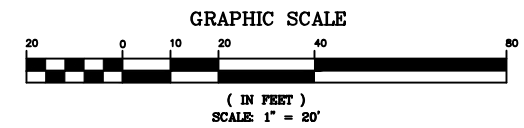
JOB NUMBER	DWG. NO.	ISSUE
22-041	2 OF 3	5

I, ALEX ROSS, HEREBY CERTIFY:
 A) THAT THIS SURVEY PLAT WAS PREPARED BY ME OR THOSE UNDER MY DIRECT SUPERVISION.
 B) THIS PLAN IS A RESULT OF FIELD SURVEY PERFORMED BY DDD, & ICA DURING JULY OF 2022. THE ERROR OF CLOSURE IS BETTER THAN 1/15,000. SURVEY PER NHLSA STANDARDS; CATEGORY 1, CONDITION 1.

CITY OF PORTSMOUTH PLANNING BOARD

CHAIRPERSON _____ DATE _____

R. ALEX ROSS _____ DATE _____



LENGTH TABLE

	BEARING	DISTANCE
L1	S 44°52'12" E	4.99'
L2	N 44°52'12" W	1.55'

LOT AREAS

	EXISTING AREA	CHANGE IN AREA	PROPOSED AREA
LOT 13	4,906 S.F.	+ 1,759 S.F.	6,665 S.F.
LOT 14	4,802 S.F.	+ 3,838 S.F.	8,640 S.F.



NOTES

- OWNERS OF RECORD:**
 CALEB E. & SAMANTHA L. GINSBERG
 TAX MAP 162, LOT 13
 303 BARTLETT ST
 PORTSMOUTH, NH 03801
 RCRD: 6256-0911
 AREA PROPOSED: 6,665 SF, 0.15 ACRES
 AREA EXISTING: 4,906 SF, 0.11 ACRES

 PETER D. & DONNA D. SPLAINE
 TAX MAP 162, LOT 14
 299 BARTLETT ST
 PORTSMOUTH, NH 03801
 RCRD: 3429-1079
 AREA PROPOSED: 8,640 SF, 0.20 ACRES
 AREA EXISTING: 4,802 SF, 0.11 ACRES
- PARCEL IS IN GENERAL RESIDENCE A (GRA) ZONE:**
 MINIMUM LOT AREA.....7,500 SF
 MIN. LOT AREA PER DWELLING UNIT.....7,500 SF
 MINIMUM FRONTAGE.....100 FT
 MINIMUM DEPTH.....70 FT
 SETBACKS:
 FRONT.....15 FT
 SIDE.....10 FT
 REAR.....20 FT
 MAXIMUM BUILDING HEIGHT:
 SLOPED ROOF.....35 FT
 FLAT ROOF.....30 FT
 MAXIMUM BUILDING COVERAGE.....30%
 MINIMUM OPEN SPACE.....25%
- #303 BARTLETT ST, LOT 13 COVERAGES**
BUILDING COVERAGE
 EXISTING
 HOUSE.....692 SF
 PORCH/DECK.....434 SF
 GARAGE.....251 SF
 STAIRS > 18".....20 SF
 COVERAGE 1397 SF/4906 SF = 28.5%

PROPOSED
 HOUSE.....628 SF
 PORCH/DECK.....134 SF
 ADDITION.....1,024 SF
 BULKHEAD.....20 SF
 STAIRS > 18".....4 SF
 COVERAGE 1810 SF/6665 SF = 27.2%

OPEN SPACE
 EXISTING
 BUILDING COVERAGE.....1,397 SF
 GRAVEL.....120 SF
 ASPHALT.....798 SF
 PAVERS.....4 SF
 STAIRS < 18".....44 SF
 LOT COVERAGE 2363 SF/4906 SF = 48.2%
 OPEN SPACE = 100% - 48.2% = 51.8%

PROPOSED
 BUILDING COVERAGE.....1,810 SF
 ASPHALT.....632 SF
 PERVIOUS PAVER PATIO.....344 SF
 STAIRS < 18".....22 SF
 LOT COVERAGE 2808 SF/6665 SF = 42.1%
 OPEN SPACE = 100% - 42.1% = 57.9%
- #295 & #299 BARTLETT ST, LOT 14 COVERAGES**
BUILDING COVERAGE
 EXISTING
 HOUSE.....1,324 SF
 PORCH/DECK.....183 SF
 STAIRS > 18".....33 SF
 COVERAGE 1540 SF/4802 SF = 32.1%

PROPOSED
 HOUSE.....1,375 SF
 PORCH/DECK.....341 SF
 SHED.....4 SF
 STAIRS > 18".....47 SF
 COVERAGE 1767 SF/8640 SF = 20.5%

OPEN SPACE
 EXISTING
 BUILDING COVERAGE.....1,540 SF
 TARPED SHED.....1 SF
 ASPHALT.....88 SF
 CONCRETE.....15 SF
 STAIRS < 18".....32 SF
 LOT COVERAGE 1676 SF/4802 SF = 34.9%
 OPEN SPACE = 100% - 34.9% = 65.1%

PROPOSED
 BUILDING COVERAGE.....1,767 SF
 TARPED SHED.....185 SF
 ASPHALT.....698 SF
 CONCRETE.....15 SF
 PATIO.....26 SF
 STAIRS < 18".....41 SF
 LOT COVERAGE 2732 SF/8640 SF = 31.6%
 OPEN SPACE = 100% - 31.6% = 68.4%
- GIS COORDINATES**
 NORTHING EASTING
 A - SW CORNER LOT 13 210257.6108 1222455.2493
 B - SE CORNER LOT 14 210190.8394 1222522.4010

LEGEND

- ◆ MONUMENT TO BE SET
- MONUMENT FOUND
- UTILITY POLE
- FENCE
- VERTICAL GRANITE CURB
- WATER
- SEWER
- DRAIN

NO	DATE	REVISIONS
5	8/1/2023	REVISIONS
4	7/26/2023	ZBA SUBMITTAL
3	6/15/2023	PRELIMINARY
2	5/11/2023	PRELIMINARY
1		

ISS: DATE DESCRIPTION OF ISSUE

SCALE 1" = 20'

CHECKED A.ROSS

DRAWN D.D.D.

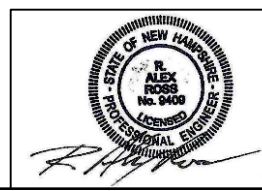
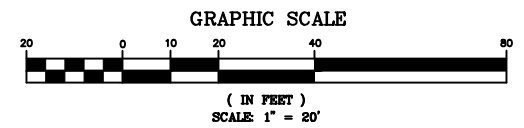
CHECKED

ROSS ENGINEERING, LLC
 Civil/Structural Engineering
 & Surveying
 909 Kingston St.
 Portsmouth, NH 03801
 (603) 433-7560

CLIENT
 CALEB E. & SAMANTHA
 L. GINSBERG
 303 BARTLETT ST
 PORTSMOUTH, NH 03801

TITLE
SITE PLAN
 303 BARTLETT ST
 PORTSMOUTH, NH 03801
 TAX MAP 162, LOT 13

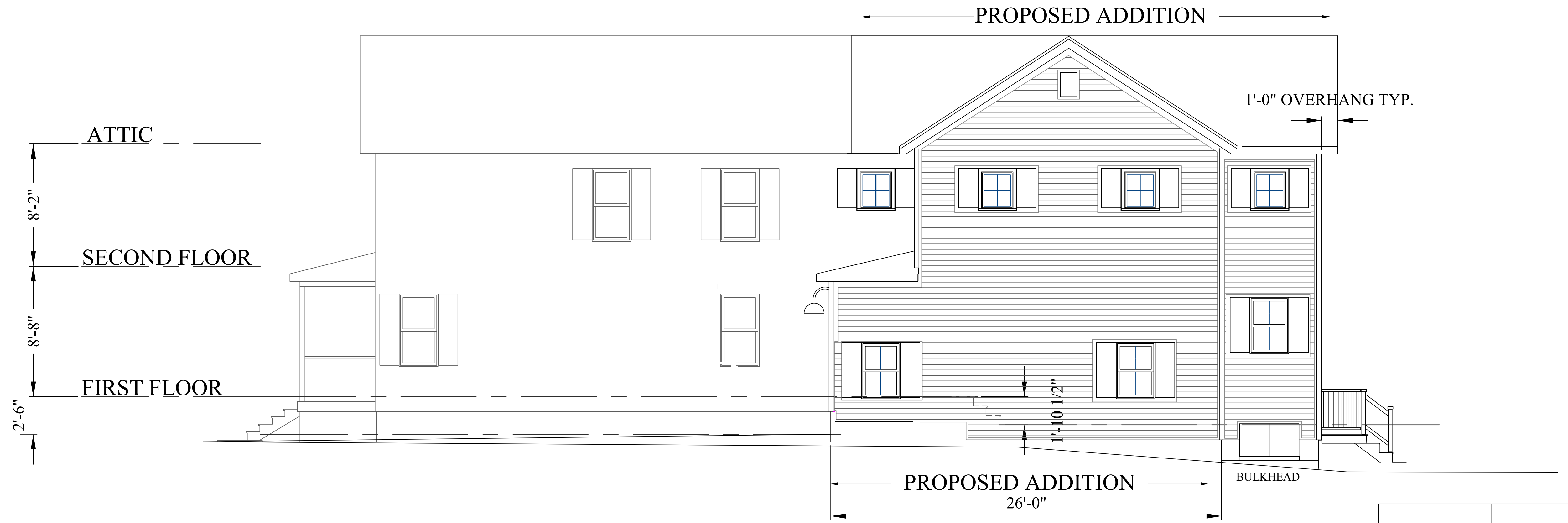
JOB NUMBER 22-041 DWG. NO. 3 OF 3 ISSUE 5



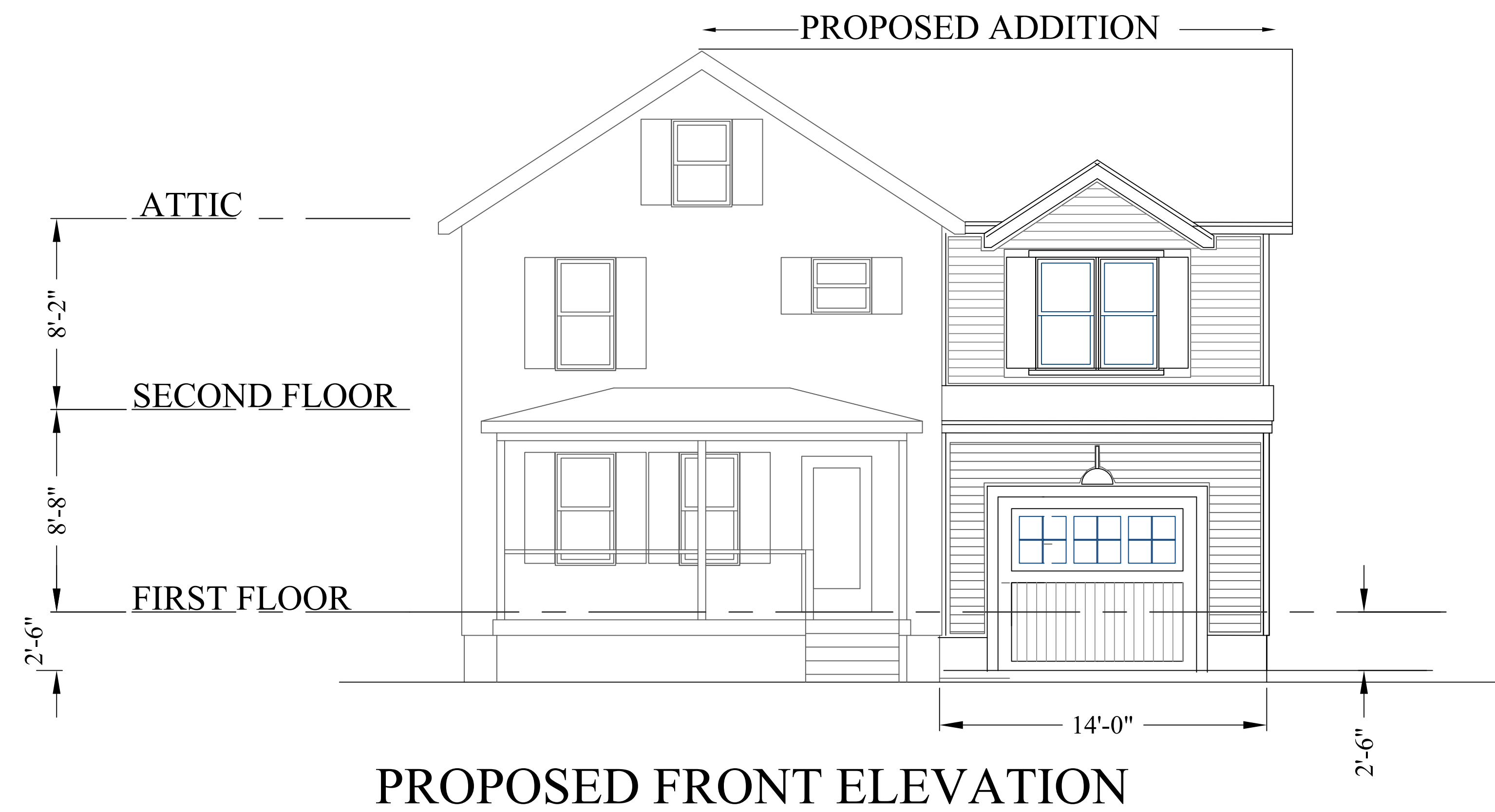


ADDITION AND RENOVATIONS TO THE GINSBERG RESIDENCE

INDEX		303 BARTLETT STREET PORTSMOUTH, NH	COVER SHEET
A0	COVER SHEET		
A1	PROPOSED FRONT & RIGHT ELEVATIONS		
A2	PROPOSED LEFT & REARELEVATIONS		
A3	PROPOSED 1ST & 2ND FLOOR PLANS		
E1	EXISTING PLANS		
E2	EXISTING ELEVATIONS		
SQUARE FOOT CALCULATIONS			
EXISTING 1ST FLOOR SQ. FT.: 680 EXISTING 2ND FLOOR SQ.FT.: 620 PROPOSED 1ST FLOOR SQ. FT.: 660 PROPOSED 2ND FLOOR SQ.FT.: 958 COMBINED EXISTING & PROPOSED 1ST FLOOR SQ. FT.: 1340 COMBINED EXISTING & PROPOSED 2ND FLOOR SQ. FT.: 1578 EXISTING GARAGE SQ FT.: 250 PROPOSED GARAGE SQ FT.: 364			
<div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 0 auto;"> <p style="text-align: center; margin: 0;">LEGEND</p> <p style="margin: 2px 0;">EXISTING </p> <p style="margin: 2px 0;">DEMO. </p> <p style="margin: 2px 0;">PROPOSED </p> <p style="margin: 2px 0;">1 HOUR FIRE RATED WALL </p> </div>			
		A0	05-12-23



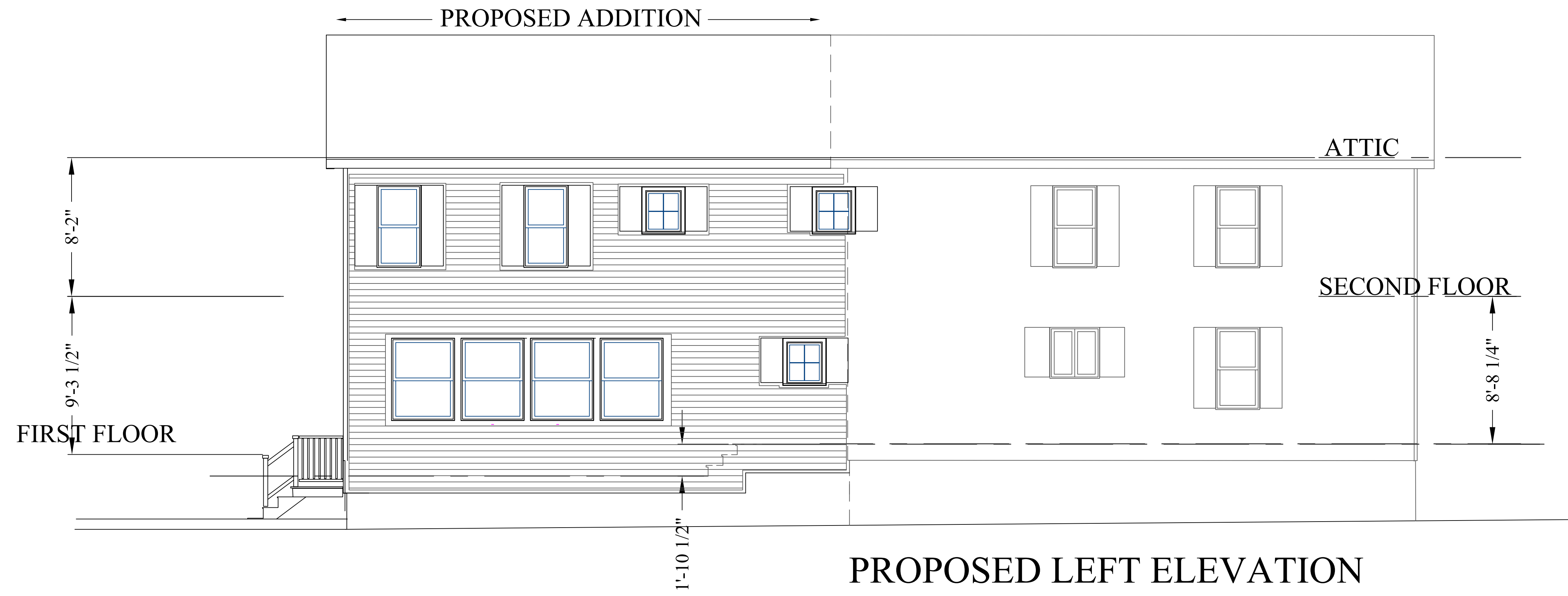
PROPOSED RIGHT ELEVATION



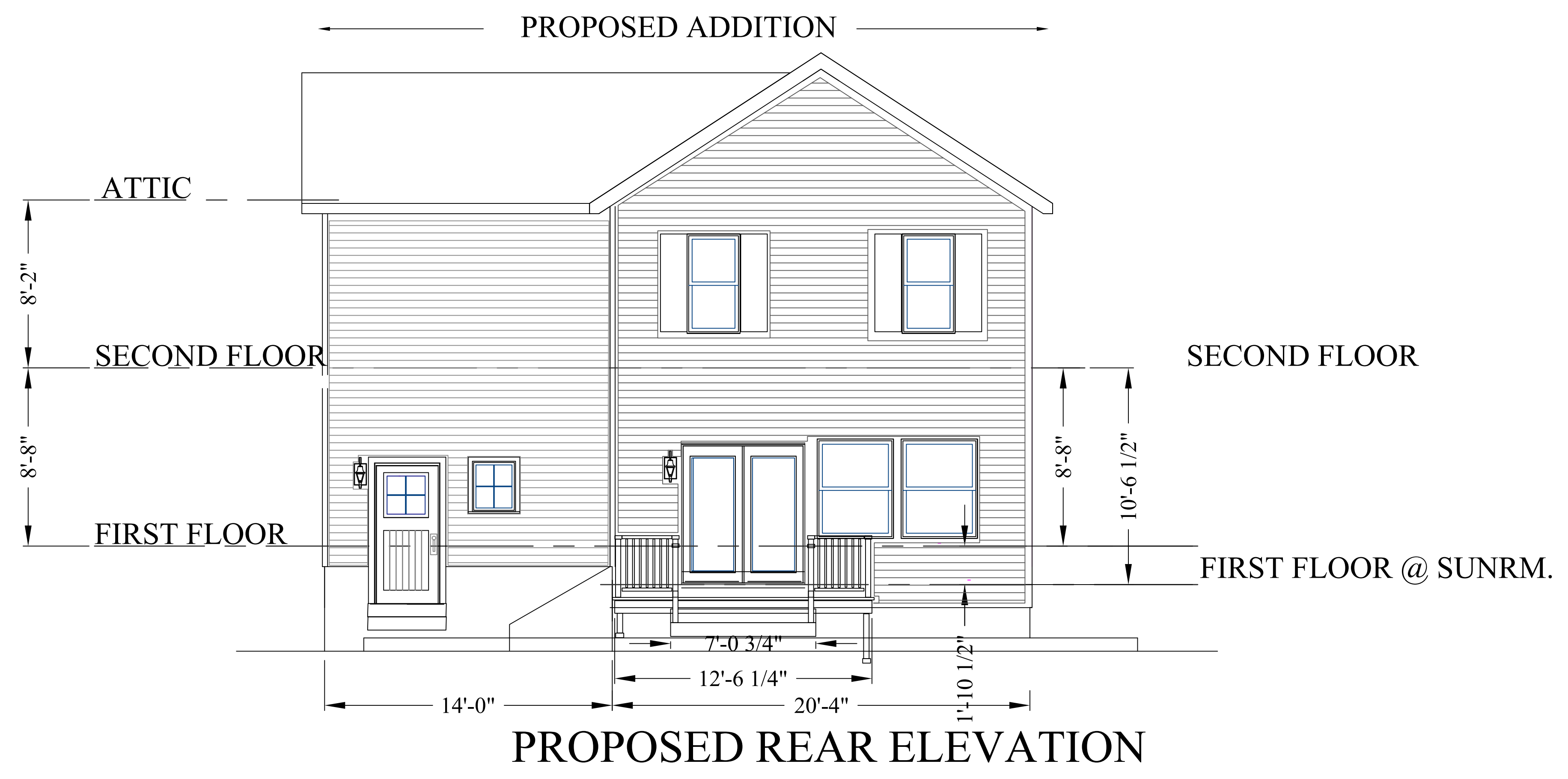
PROPOSED FRONT ELEVATION

ZBA SET

<p>303 BARTLETT STREET PORTSMOUTH, NH</p>	<p>PROPOSED FRONT & RIGHT ELEVATIONS SCALE: 1/4"=1'-0" on 24" x 36" SCALE: 1/8"=1'-0" on 11" x 17"</p>
<p>CHARLES HOYT DESIGNS Shingle Style Architecture P.O. BOX 526 Beach, NH 02871 (603) 872-8016 charshoytdesigns@bournival.com</p>	<p>7-19-23 A1</p>



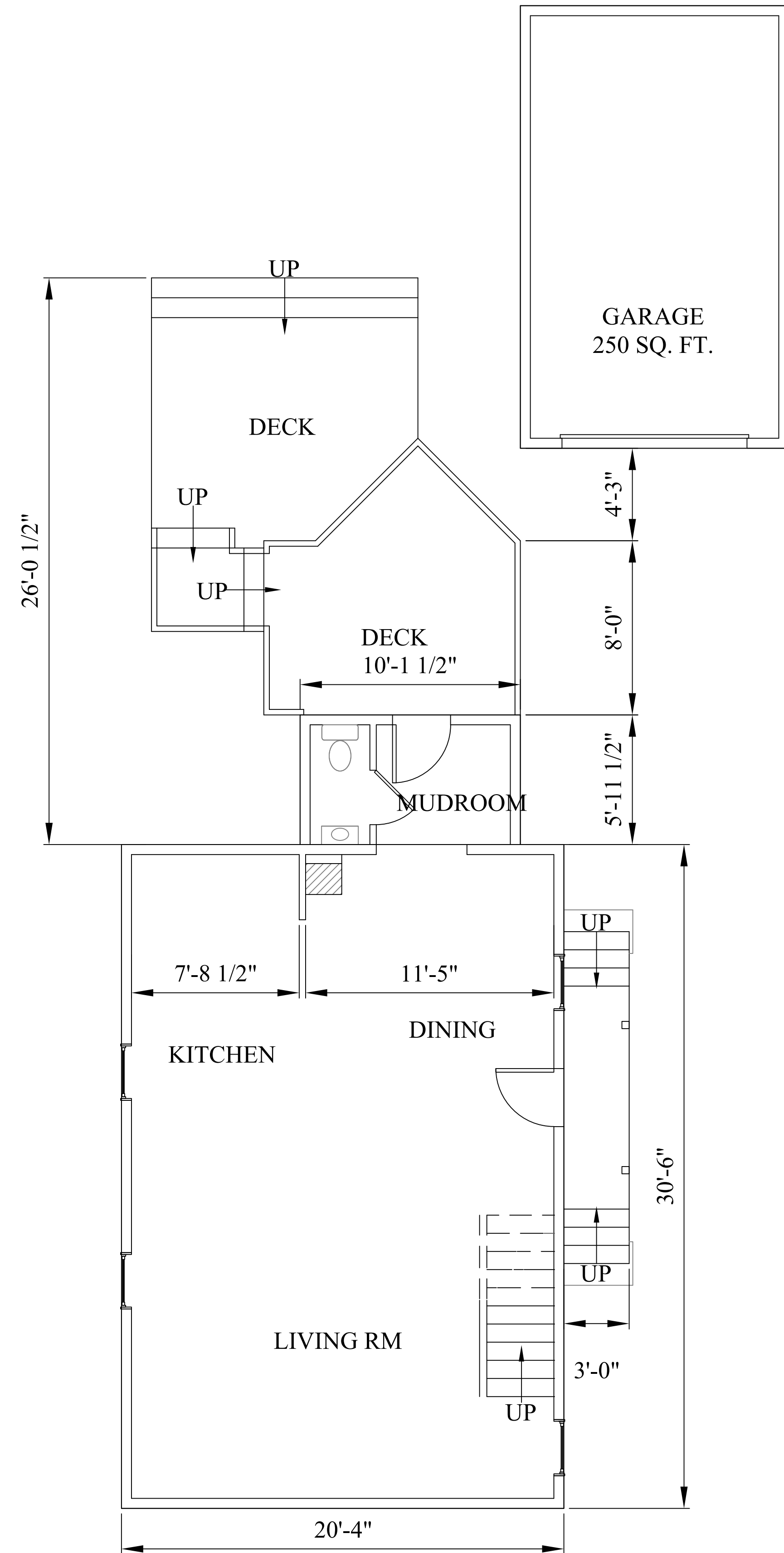
PROPOSED LEFT ELEVATION



PROPOSED REAR ELEVATION

ZBA SET

<p>303 BARTLETT STREET PORTSMOUTH, NH</p>	<p>PROPOSED LEFT & REARELEVATIONS SCALE: 1/4"=1'-0" on 24" x 36" SCALE: 1/8"=1'-0" on 11" x 17"</p>
<p>CHARLES HOYT DESIGNS Shingle Style Architecture P.O. BOX 526 Beach, NH 03871 (603) 812-8016 charleshoytdesigns@hotmail.com</p>	<p>A2 7-19-23</p>



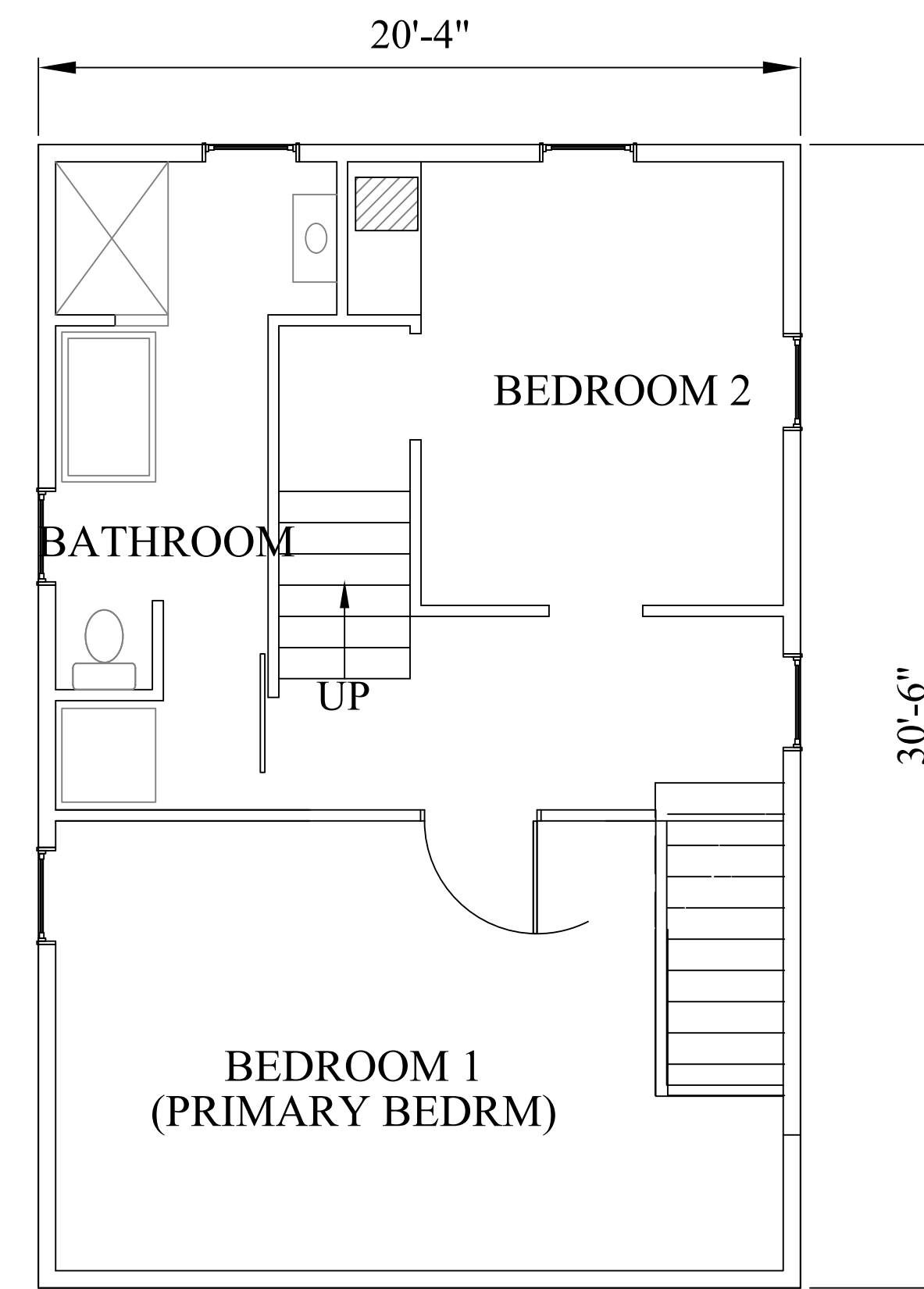
EXISTING FIRST FLOOR

EXISTING FIRST FLOOR
680 GROSS SQ FT

EXISTING SECOND FLOOR
620 GROSS SQ FT

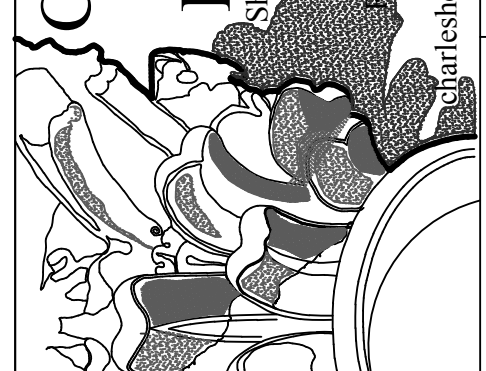


EXISTING RIGHT ELEVATION



EXISTING SECOND FLOOR

ZBA SET

 <p>CHARLES HOYT DESIGNS Shingle Style Architecture P.O. BOX 576 Beach, NH 03871 (603) 812-8016 charleshoymail.com</p>	<p>303 BARTLETT STREET PORTSMOUTH, NH</p>	<p>EXISTING FLOOR PLANS SCALE: 1/4"=1'-0" on 24" x 36" SCALE: 1/8"=1'-0" on 11" x 17"</p>
	<p>E1</p>	<p>7-19-23</p>

ATTIC
8'-2"
SECOND FLOOR
8'-8"
FIRST FLOOR



EXISTING LEFT ELEVATION

ATTIC
8'-2"
SECOND FLOOR
8'-8"
FIRST FLOOR



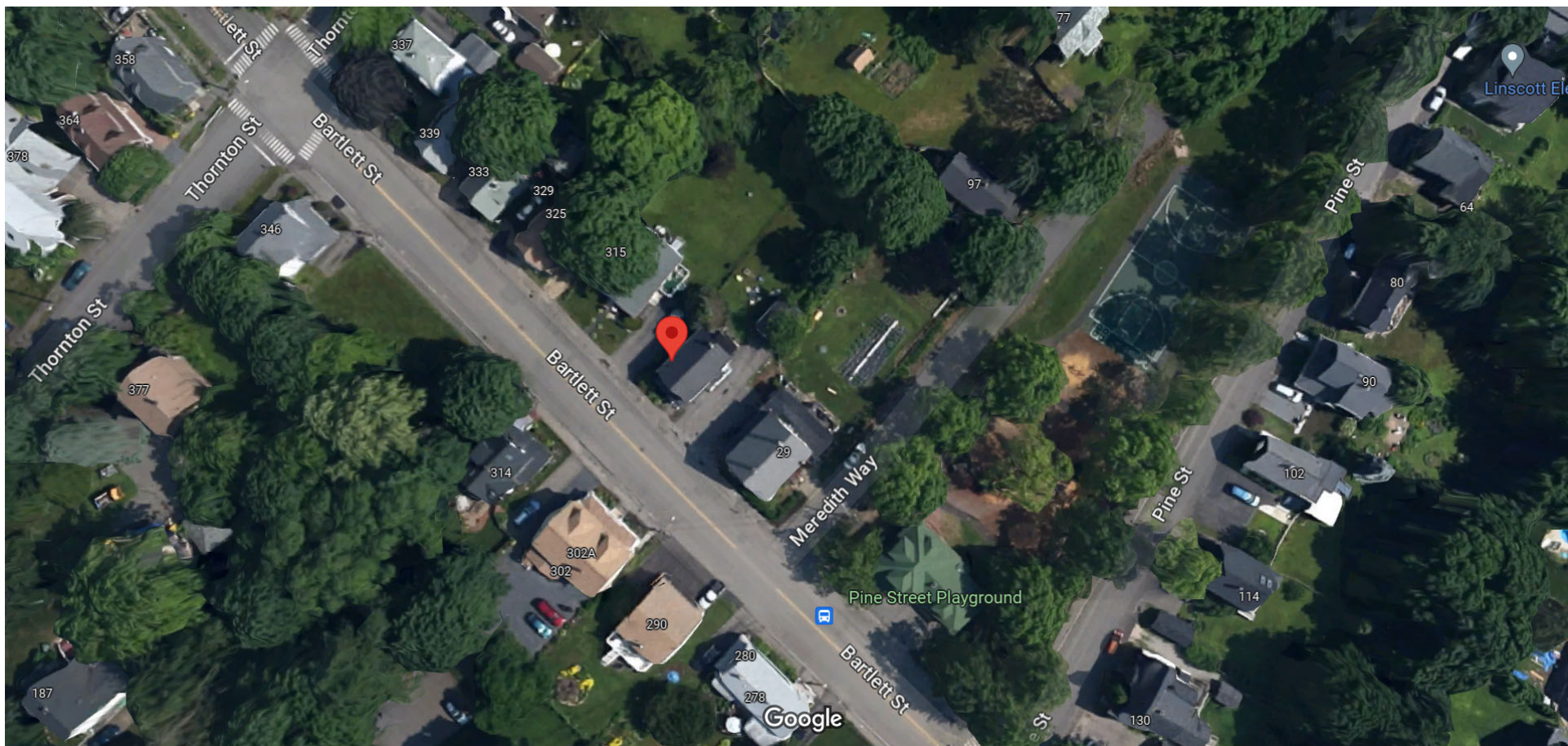
EXISTING REAR ELEVATION



EXISTING FRONT ELEVATION

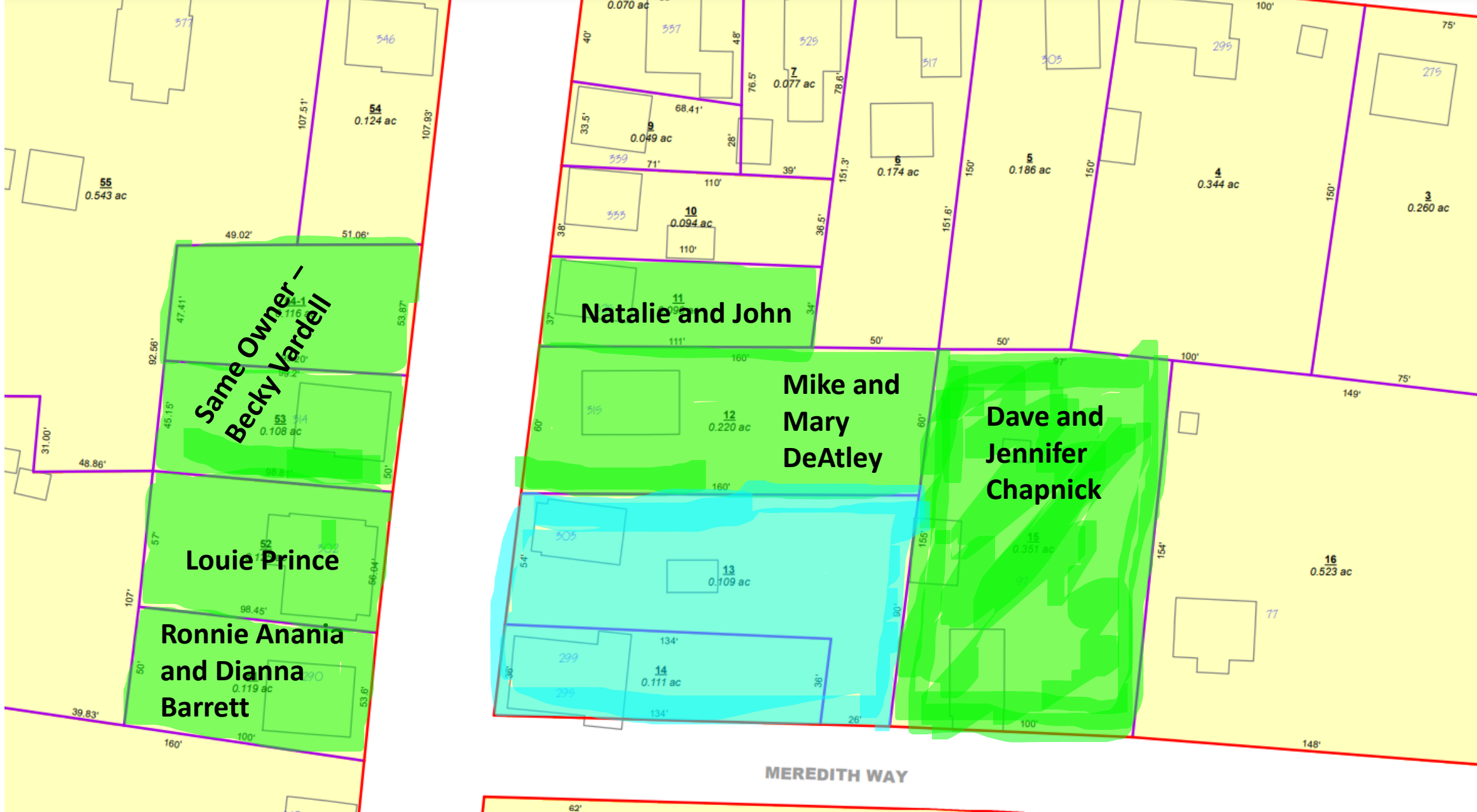
ZBA SET

<p>303 BARTLETT STREET PORTSMOUTH, NH</p>	<p>EXISTING ELEVATIONS SCALE: 1/4"=1'-0" on 24" x 36" SCALE: 1/8"=1'-0" on 11" x 17"</p>
<p>CHARLES HOYT DESIGNS Shingle Style Architecture P.O. BOX 526 Beach, NH 03871 (603) 812-8016 charleshoytdesigns@hotmail.com</p> 	<p>7-19-23 E2</p>



Imagery ©2023 Google, Imagery ©2023 Airbus, Maine GeoLibrary, Maxar Technologies, U.S. Geological Survey, Map data ©2023 50 ft





 = Signed Letters of Approval

 = Our Properties

July 2023

Re: Abutter Support of Lot Line Adjustment and Home Addition Project (299/303 Bartlett Street)

To Whom It May Concern,

We are Portsmouth residents and homeowners currently living at 290 Bartlett Street. Our property abuts 299 and 303 Bartlett Street (directly across Bartlett Street from 299). We have been informed as to the details of the proposed (1) lot line adjustment between the Splaine and Ginsberg residences at 299 and 303 Bartlett Street, and (2) home addition project the Ginsberg family is planning at 303 Bartlett Street. We offer this letter to confirm our full support of both proposals. We think that both the lot line adjustment and the Ginsberg's home addition project are in the best interest of the neighborhood at large.

Thanks very much your time and consideration of our perspective. Please let us know if you have any questions or concerns.

Sincerely,

D Barrett Ronald Anania

Dianna Barrett & Ronald Anania
290 Bartlett Street
Portsmouth, New Hampshire 03801

July 2023

Re: Abutter Support of Lot Line Adjustment and Home Addition Project (299/303 Bartlett Street)

To Whom It May Concern,

We are Portsmouth residents and homeowners currently living at 325 Bartlett Street. Our property indirectly abuts 299 and 303 Bartlett Street (we are two doors down from 303). We have been informed as to the details of the proposed (1) lot line adjustment between the Splaine and Ginsberg residences at 299 and 303 Bartlett Street, and (2) home addition project the Ginsberg family is planning at 303 Bartlett Street. We offer this letter to confirm our full support of both proposals. We think that both the lot line adjustment and the Ginsberg's home addition project are in the best interest of the neighborhood at large.

Thanks very much your time and consideration of our perspective. Please let us know if you have any questions or concerns.

Sincerely,



Natalie & John
325 Bartlett Street
Portsmouth, New Hampshire 03801

July 2023

Re: Abutter Support of Lot Line Adjustment and Home Addition Project (299/303 Bartlett Street)

To Whom It May Concern,

We are Portsmouth residents and homeowners currently living at 315 Bartlett Street. Our property directly abuts 303 Bartlett Street. We have been informed as to the details of the proposed (1) lot line adjustment between the Splaine and Ginsberg residences at 299 and 303 Bartlett Street, and (2) home addition project the Ginsberg family is planning at 303 Bartlett Street. We offer this letter to confirm our full support of both proposals. We think that both the lot line adjustment and the Ginsberg's home addition project are in the best interest of the neighborhood at large.

Thanks very much your time and consideration of our perspective. Please let us know if you have any questions or concerns.

Sincerely,

Michael and Mary Ann DeAtley
15 Bartlett Street
Portsmouth, New Hampshire 03801



July 2023

Re: Abutter Support of Lot Line Adjustment and Home Addition Project (299/303 Bartlett Street)

To Whom It May Concern,

We are Portsmouth residents and homeowners currently living at 97 Meredith Way. Our property directly abuts 299 and 303 Bartlett Street. We have been informed as to the details of the proposed (1) lot line adjustment between the Splaine and Ginsberg residences at 299 and 303 Bartlett Street, and (2) home addition project the Ginsberg family is planning at 303 Bartlett Street. We offer this letter to confirm our full support of both proposals. We think that both the lot line adjustment and the Ginsberg's home addition project are in the best interest of the neighborhood at large.

Thanks very much your time and consideration of our perspective. Please let us know if you have any questions or concerns.

Sincerely,

DocuSigned by:

David Chapnick

David & Jennifer Chapnick

97 Meredith Way

Portsmouth, New Hampshire 03801

July 2023

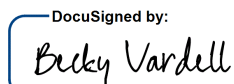
Re: Abutter Support of Lot Line Adjustment and Home Addition Project (299/303 Bartlett Street)

To Whom It May Concern,

I am a Portsmouth resident and homeowner currently living at 314 Bartlett Street. My property abuts 299 and 303 Bartlett Street (I am directly across Bartlett Street from 303). I have been informed as to the details of the proposed (1) lot line adjustment between the Splaine and Ginsberg residences at 299 and 303 Bartlett Street, and (2) home addition project the Ginsberg family is planning at 303 Bartlett Street. I offer this letter to confirm my full support of both proposals. I think that both the lot line adjustment and the Ginsberg's home addition project are in the best interest of the neighborhood at large.

Thanks very much your time and consideration of my perspective. Please don't hesitate to reach out with any questions or concerns.

Sincerely,

DocuSigned by:

Becky Varden

314 Bartlett Street
Portsmouth, NH 03801

July 2023

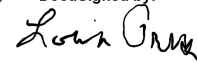
Re: Abutter Support of Lot Line Adjustment and Home Addition Project (299/303 Bartlett Street)

To Whom It May Concern,

I am a Portsmouth resident and homeowner currently living at 302 Bartlett Street. My property abuts 299 and 303 Bartlett Street (I am directly across Bartlett Street from 303 and 299). I have been informed as to the details of the proposed (1) lot line adjustment between the Splaine and Ginsberg residences at 299 and 303 Bartlett Street, and (2) home addition project the Ginsberg family is planning at 303 Bartlett Street. I offer this letter to confirm my full support of both proposals. I think that both the lot line adjustment and the Ginsberg's home addition project are in the best interest of the neighborhood at large.

Thanks very much your time and consideration of my perspective. Please don't hesitate to reach out with any questions or concerns.

Sincerely,

DocuSigned by:

FA74DDBAFCB4BE...

Louie Prince

302 Bartlett Street

Portsmouth, NH 03801

