

**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.

September 26, 2023

AGENDA

<p><u>PLEASE NOTE:</u> ITEMS (III.) D. THROUGH F. WERE POSTPONED AT THE SEPTEMBER 19, 2023 BOARD OF ADJUSTMENT MEETING.</p>
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I. NEW BUSINESS – PUBLIC HEARING

- D.** The request of **Marcella F. Hoekstra (Owner)**, for property located at **35 Whipple Court** whereas relief is needed in the form of an equitable waiver for 1) an accessory structure with an 8.5-foot right yard where 10 feet was permitted and an 8-foot rear yard where 17 feet was permitted; or in the alternative 2.a) Variance from Section 10.521 to allow an 8,324 SF lot area/dwelling unit where 15,000 SF is required; b) to allow a frontage of 45.83 feet where 100 feet is required; c) to allow an accessory structure with an 8.5 foot right yard where 10 feet is required; d) to allow an accessory structure with an 8 foot rear yard where 9 feet is required; and e) to allow a building coverage of 26% where 20% is allowed. Said property is located on Assessor Map 260 Lot 98 and lies within the Single Residence B (SRB) District. (LU-23-147)
- E.** The request of **Lawrence Brewer (Owner)**, for property located at **253 Broad Street** whereas relief is needed to construct an attached garage and add a second driveway, which requires the following: 1) Variance from Section 10.521 to allow a 7 foot side setback where 10 feet is required; and 2) Variance from Section 10.1114.31 to allow more than one driveway per lot. Said property is located on Assessor Map 131 Lot 16 and lies within the General Residence A (GRA) District (LU-23-148)
- F.** The request of **Prospect North (Owner)**, for property located at **815 Lafayette Road** whereas relief is needed for the demolition of the existing building and tower and the construction of three 4-story, 24-unit multi-family buildings (72 total units) with first floor parking and associated site improvements, which requires the following: 1)

Variance from Section 10.5B33.20 (Front Build-out) to permit a front build out of less than 50% of the total front yard width; and 2) Variance from Section 10.5B33.30 (Façade Orientation) to permit a façade orientation that is not parallel with the front property line. Said property is located on Assessor Map 245 Lot 3 and lies within the Gateway Corridor (G1) District and the FEMA 100yr flood and extended flood hazard area. (LU-23-149)

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_aJVHK-dmT6C2ymdGr7DWGA



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

MEMORANDUM

TO: Zoning Board of Adjustment
FROM: Jillian Harris, City Planner
DATE: September 20, 2023
RE: Zoning Board of Adjustment September 26, 2023

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

III. New Business

- D. 35 Whipple Court
- E. 253 Broad Street
- F. 815 Lafayette Road

III. NEW BUSINESS

- D. The request of Marcella F. Hoekstra (Owner), for property located at 35 Whipple Court whereas relief is needed in the form of an equitable waiver for 1) an accessory structure with an 8.5-foot right yard where 10 feet was permitted and an 8-foot rear yard where 17 feet was permitted; or in the alternative 2.a) Variance from Section 10.521 to allow an 8,324 SF lot area/dwelling unit where 15,000 SF is required; b) to allow a frontage of 45.83 feet where 100 feet is required; c) to allow an accessory structure with an 8.5 foot right yard where 10 feet is required; d) to allow an accessory structure with an 8 foot rear yard where 9 feet is required; and e) to allow a building coverage of 26% where 20% is allowed. Said property is located on Assessor Map 260 Lot 98 and lies within the Single Residence B (SRB) District. (LU-23-147)

Existing & Proposed Conditions

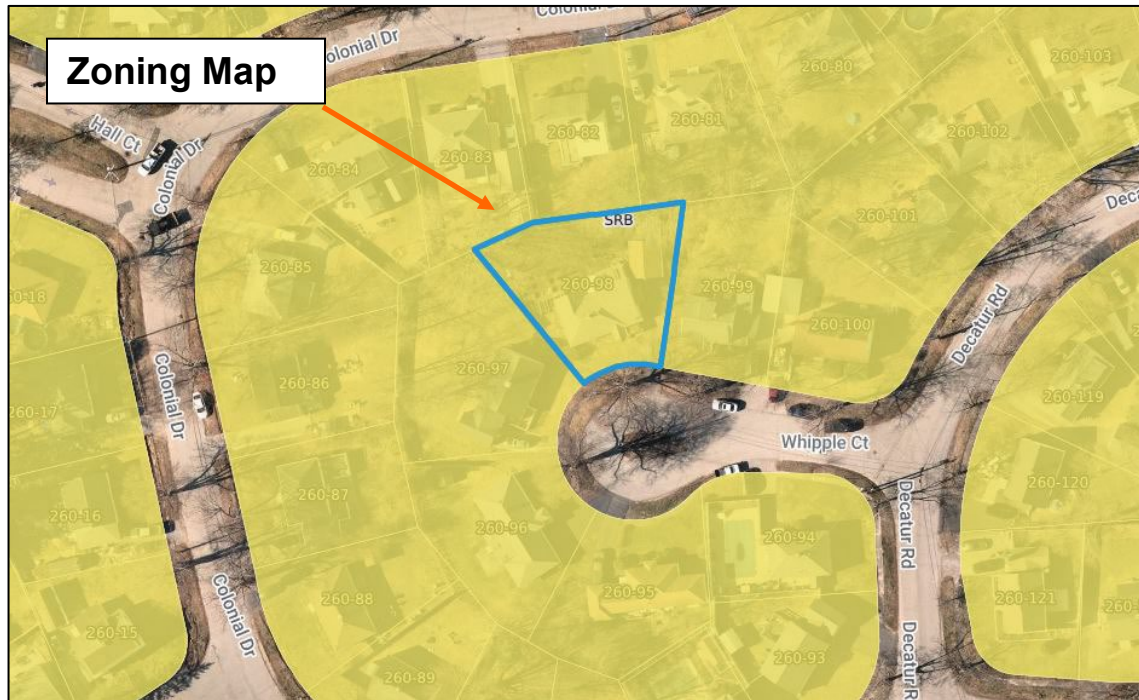
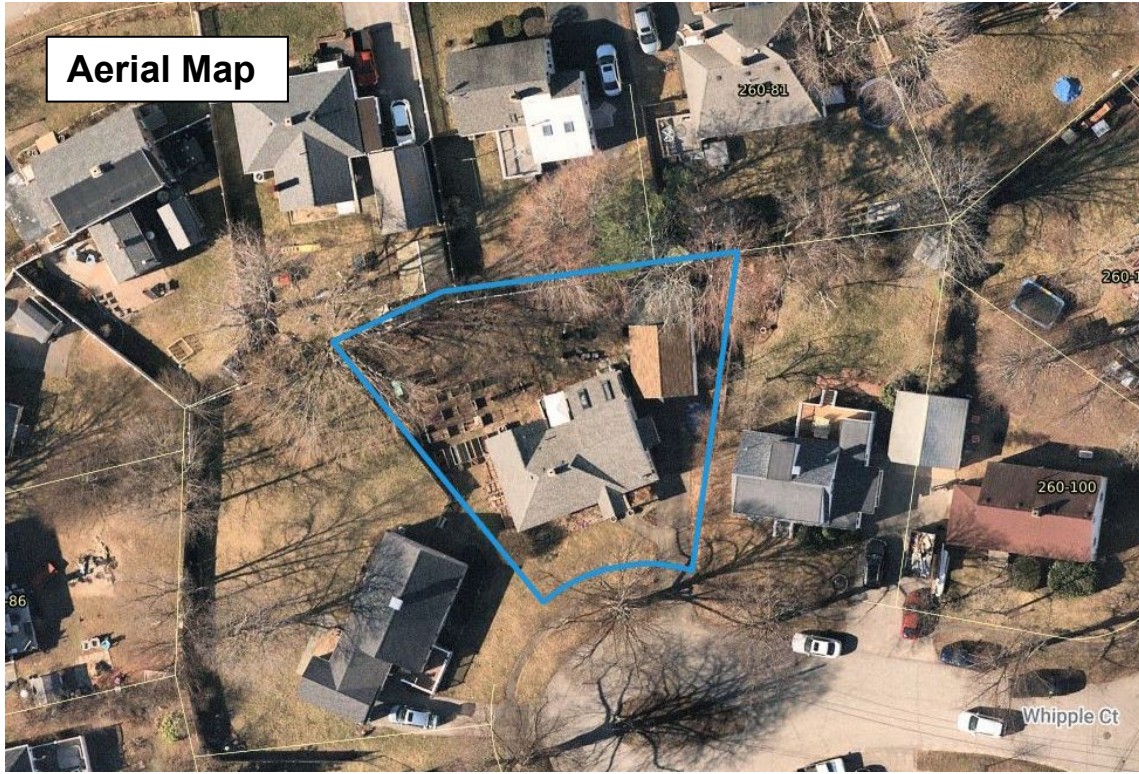
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use</u>	Single-family dwelling	Detached ADU	Primarily residential
<u>Lot area (sq. ft.):</u>	8,324	8,324	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	8,324	8,324	15,000 min.
<u>Street Frontage (ft.):</u>	45	45	100 min.
<u>Lot depth (ft.):</u>	101	101	100 min.
<u>Front Yard (ft.):</u>	N/A	>30	30 min.
<u>Right Yard (ft.):</u>	8.5	8.5	10 min.
<u>Left Yard (ft.):</u>	N/A	>10	10 min.
<u>Rear Yard (ft.):</u>	8	8	9 min.
<u>Height (ft.):</u>	N/A	<35	35 max.
<u>Building Coverage (%)</u> :	26	26*	20 max.
<u>Open Space Coverage (%)</u> :	66	66	40 min.
<u>Parking:</u>	3	2	3
<u>Estimated Age of Structure:</u>	1968	Variance request(s) shown in red.	

*June 2021 Variance granted for building coverage

Other Permits/Approvals Required

- DADU Conditional Use Permit
- Building Permit

Neighborhood Context



Previous Board of Adjustment Actions

September 25, 1968 – The Board **granted** the following variance:

- Section 19-105 B to construct a 22' by 18' one car garage with 10' side yard and 17' rear yard.

June 22, 2021 – The Board **granted** the following variance: Construct a 4' x 17' rear addition which requires the following: 1) A Variance from Section 10.521 to allow 26% building coverage where 20% is the maximum allowed. 2) A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged.

Planning Department Comments

The applicant is proposing to convert a portion of the existing detached garage to a detached accessory dwelling unit (DADU). The Zoning Board of Adjustment granted a variance in 1968 for the detached garage to be located 10' from the right property line and 17' from the rear property line. The accessory structure was constructed 8.5' from the right property line and 8' from the rear property line and appears to be a long-standing encroachment into the relief that was granted. The applicant seeks an equitable waiver for the existing garage to be located as it was constructed 8.5' from the right property line and 8' from the rear property line.

In the alternative, the applicant seeks the necessary variances for dimensional deficiencies of the structure/lot in order to proceed with the conversion of the DADU. Section 10.440 – Table of Uses permits a DADU up to 600 sq.ft. Gross Living Area (GLA) in an existing accessory structure that does not conform to the dimensional requirements of this Ordinance or includes the expansion of the existing accessory building, with a Conditional Use Permit granted by the Planning Board. It is the opinion of staff, after conferring with the Legal Department, that this applies to legal nonconforming accessory buildings and therefore an equitable waiver is required or the necessary variances in this instance.

Equitable Waiver of Dimensional Requirement ([RSA 674:33-a](#))

I. When a lot or other division of land, or structure thereupon, is discovered to be in violation of a physical layout or dimensional requirement imposed by a zoning ordinance enacted pursuant to RSA 674:16, the zoning board of adjustment shall, upon application by and with the burden of proof on the property owner, grant an equitable waiver from the requirement, if and only if the board makes all of the following findings:

- That the violation was not noticed or discovered by any owner, former owner, owner's agent or representative, or municipal official, until after a structure in violation had been substantially completed, or until after a lot or other division of land in violation had been subdivided by conveyance to a bona fide purchaser for value;*
- That the violation was not an outcome of ignorance of the law or ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith on the part of any owner, owner's agent or representative, but was instead caused by either a good faith error in measurement or calculation made by an owner or owner's agent, or by an error in ordinance interpretation or*

applicability made by a municipal official in the process of issuing a permit over which that official had authority;

- (c) That the physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property; and*
- (d) That due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected.*

II. In lieu of the findings required by the board under subparagraphs I(a) and (b), the owner may demonstrate to the satisfaction of the board that the violation has existed for 10 years or more, and that no enforcement action, including written notice of violation, has been commenced against the violation during that time by the municipality or any person directly affected.

III. Application and hearing procedures for equitable waivers under this section shall be governed by RSA 676:5 through 7. Rehearings and appeals shall be governed by RSA 677:2 through 14.

IV. Waivers shall be granted under this section only from physical layout, mathematical or dimensional requirements, and not from use restrictions. An equitable waiver granted under this section shall not be construed as a nonconforming use, and shall not exempt future use, construction, reconstruction, or additions on the property from full compliance with the ordinance. This section shall not be construed to alter the principle that owners of land are bound by constructive knowledge of all applicable requirements. This section shall not be construed to impose upon municipal officials any duty to guarantee the correctness of plans reviewed by them or property inspected by them.

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.

HOEFLE, PHOENIX, GORMLEY & ROBERTS, PLLC

ATTORNEYS AT LAW

127 Parrott Avenue, P.O. Box 4480 | Portsmouth, NH, 03802-4480
Telephone: 603.436.0666 | Facsimile: 603.431.0879 | www.hpgrlaw.com

August 30, 2023

HAND DELIVERED

Stefanie Casella, Planner II
Portsmouth Zoning Board of Adjustment
City Hall
1 Junkins Avenue
Portsmouth, NH 03801

Re: Zoning Relief
Applicant/Owner: Marcella Hoekstra
Property: 35 Whipple Court
Tax Map 260, Lot 98
Single Residence B Zone

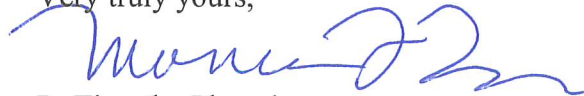
Dear Ms. Casella & Zoning Board Members:

On behalf of Applicant, Marcella Hoekstra enclosed please find the following:

- See Viewpoint Land Use Application uploaded today.
- Owner's Authorization
- 07/26/23 Memorandum in Support of Variance

We look forward to presenting this Application to the Zoning Board of Adjustment at its September 19, meeting.

Very truly yours,



R. Timothy Phoenix
Monica F. Kieser

Encl.

cc: Marcella Hoekstra

DANIEL C. HOEFLE
R. TIMOTHY PHOENIX
LAWRENCE B. GORMLEY
STEPHEN H. ROBERTS

R. PETER TAYLOR
KEVIN M. BAUM
GREGORY D. ROBBINS
MONICA F. KIESER

JACOB J.B. MARVELLEY
DUNCAN A. EDGAR
STEPHANIE J. JOHNSON

OF COUNSEL:
SAMUEL R. REID
JOHN AHLGREN

Monica Kieser

From: Marcella Hoekstra - Heirloom Pictures <marcella@heirloompictures.com>
Sent: Monday, May 24, 2021 7:20 PM
To: Monica Kieser
Subject: Authorization email.

I authorize Hoefle, Phoenix, Gormley & Roberts, PLLC to execute all applications before Portsmouth Land Use Boards and to take any and all actions necessary throughout the application and permitting process related to my property at 35 Whipple Court (Tax Map 260, Lot 98) including but not limited to attendance and presentation at public hearings.

Marcella Hoekstra

MEMORANDUM

TO: Portsmouth Zoning Board of Adjustment (“ZBA”)
FROM: Monica F. Kieser, Esquire
Stephanie J. Johnson, Esquire
DATE: August 30, 2023
RE: Marcella Hoekstra
Project Location: 35 Whipple Court
Tax Map 260/Lot 98
SRB Zone

Dear Chair Eldredge and Zoning Board Members:

On behalf of Marcella Hoekstra (“Hoekstra”), we are pleased to submit this memorandum and attached exhibits in support of Zoning Relief to be considered by the Zoning Board of Adjustment (“ZBA”) at its September 19, 2023 meeting.

I. EXHIBITS

- A. Plot Plan & Dimensions.
 - Existing Conditions
 - Setbacks & Parking
 - Zoomed-in Setbacks
- B. ADU Plan.
 - Floor Plan
 - Elevations with height
- C. Site Photographs.
- D. Tax Map 260.

II. PROPERTY/PROJECT

35 Whipple Court is an 8,324 s.f. lot in Pannaway Manner which contains a modest 1,543 s.f. one story single family home (1,143 s.f. living area) and 615 s.f. garage/shed outbuilding (the “Property”) (**Exhibits A, C**). The home dates back to 1940. In 1968, a 22 ft. by 18 ft. one car garage was approved with a 10 ft. right side yard and a 17 ft. rear yard. Because the accessory structure on the lot is larger than 22 ft. by 18 ft., and closer to both lots lines than what was previously approved, Hoekstra seeks an equitable waiver, or in the alternative, a variance to permit the structure that has existed on the lot – likely for decades. In addition, Hoekstra intends to convert a portion of the existing garage/shed outbuilding to a one bedroom, one bathroom Accessory Dwelling Unit (“ADU”) (the “Project”). No expansion of the structure will occur and the ADU will be served by municipal water and sewer. Relief from the Portsmouth Zoning Ordinance (“PZO”) is nonetheless required because the outbuilding is within the right side and rear yard setbacks and will be converted to an ADU.

III. RELIEF REQUIRED

After conferring with the City Planning Department staff, it has been determined that the following is required:

<u>PZO Requirement</u>	<u>Existing</u>	<u>Proposed</u>
<u>PZO §10.520/Table §10.521 & §10.814.131</u> <u>SRB Dimensional Standards</u> <u>15,000 s.f. lot area/dwelling unit</u>	8,324 s.f. existing lot with single family home.	Single-family home and ADU
<u>PZO §10.520/Table §10.521:</u> <u>SRB Dimensional Standards¹</u> <u>10' Side Yard</u>	Accessory structure 8.5' (right)	1-BR ADU 8.5' (right)
<u>PZO §10.520/Table §10.521:</u> <u>SRB Dimensional Standards²</u> <u>30' Rear Yard</u>	Accessory structure 8.16'/8.83	1-BR ADU 8.16'/8.83
<u>PZO §10.1112.311 – Parking</u> <u>2.3 spaces (1.3 spaces + 1 ADU)</u>	1 indoor space, 2 in driveway	2 driveway spaces.

Given the long-standing existence of the accessory structure, we request an equitable waiver. If the Board does not see fit to grant an equitable waiver for the existing garage, in the alternative, we request a variance. In addition, Staff have opined that a variance is nonetheless required to permit conversion of a portion of the existing garage to an ADU.

IV. EQUITABLE WAIVER

Given the long standing existence of the accessory structure, we pursuant to RSA 674:33-a, I:

When a lot or other division of land, or structure thereupon, is discovered to be in violation of the physical layout or dimensional requirement imposed by the zoning ordinance... the zoning board of adjustment shall, upon application by and with the burden of proof upon

¹ See also PZO§10.573 An accessory building or structure more than 10 feet in height or more than 100 square feet in area shall be set back from any lot line at least the height of the building or the applicable yard requirement, whichever is less. The existing outbuilding is 10.91' at its highest point, so the applicable side yard requirement is 10 ft.

² Pursuant to PZO §10.573, the applicable rear yard setback for the accessory structure is 30 ft. because the accessory structure is taller than 10 ft. and occupies an area greater than 100 s.f.

the property owner, grant an equitable waiver from the requirement, if and only if the Board makes all of the following findings:

- (a) that the violation was not noticed or discovered by any owner former owner or his agent or representative or municipal official until after a structure in violation had been substantially completed... .

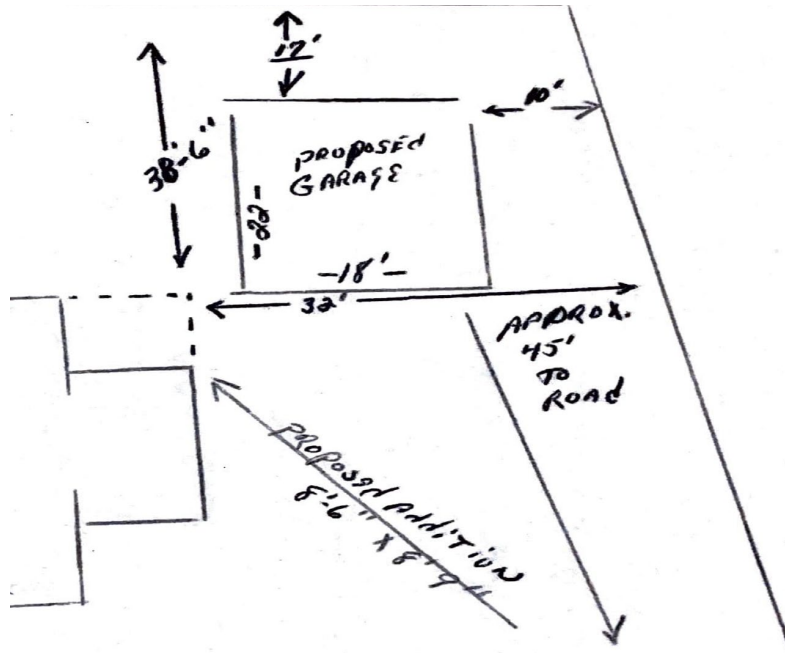
Response – The accessory structure on the Property was constructed in 1968 after the then-owner obtained a variance from the ZBA to permit an 18 ft. x 22 ft. garage. The existing accessory structure is larger (615 s.f.) and closer (8.5 ft.) to the right side lot line than previously approved (10 ft.). The extended portion has a roof lower than the garage, and its separate space utilized as a shed. Given the lack of subsequent permits and the 2014 listing photo and description (“Large garage with separate room and plenty of storage and room for all the toys.”), it appears that the shed area (in red below) has been present since the garage was constructed.



<https://www.redfin.com/NH/Portsmouth/35-Whipple-Ct-03801/home/87964994>

- (b) that the violation was not an outcome of ignorance of the law or ordinance, failure to inquire, obfuscation, misrepresentation or bad faith on the part of any owner, owner’s agent or representative, but was instead caused by either a good-faith error in measurement or calculation made by an owner or owner’s agent, or by an error in or misinterpretation or applicability made by a municipal official in the process of issuing a permit over which that official had authority.

Response - Hoekstra did not realize that the presence of the attached shed area was not permitted, or violated the PZO, as the shed area has been present since she purchased the Property in 2014. The drawings submitted to the ZBA in 1968 evidently misjudged the angle of the right side lot line (Compare below to Exhibit A).



Note that RSA 674:33-a, II, provides that, “[I]n lieu of the findings required by the board under subparagraphs I(a) and (b), the owner may demonstrate to the satisfaction of the board that the violation has existed for 10 years or more, and that no enforcement action, including written notice of violation, has been commenced against the violation during that time by the municipality or any person directly affected.” Undersigned Counsel has reviewed the building, planning, and zoning files and finds no record of any enforcement action of any kind related to 35 Whipple Court.

(c) that the physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of such property;

Response – The longer garage with shed area is not noticeable from the front of the Property, and the garage conforms to the appearance of homes in the surrounding neighborhood. Landscaping and a fence screen the garage from the right side and rear abutting lots. The structure has clearly existed for more than 10 years. Thus, the existence of the accessory structure in the right and rear yard setbacks does not present a nuisance, a diminishment of the value of other properties, nor an adverse effect to present or future use of neighboring properties.

(d) that due to the degree of past construction or investment made in ignorance of the facts constituting the violation, cost of correction so far outweighs any public benefit to be gained that it would be inequitable to require the violation to be corrected.

Response – Given the long existing nature of the garage, its minimal encroachment on the right side over what was approved, and the screening between it and the abutting properties, it would be an unnecessary and extreme expense to remove the nonconforming parts of the accessory structure. The garage with shed extension has existed for decades, is not noticeable to the public, and does not negatively impact surrounding properties. The cost of correction clearly outweighs any public benefit to be gained from a correction, thus it is inequitable to require.

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.

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”:

1. The use of land, buildings and structures for business, industrial, residential and other purposes – The Project repurposes an existing, underutilized, accessory building to provide a modest ADU.
2. The intensity of land use, including lot sizes, building coverage, building height and bulk, yards and open space – The lot is nonconforming as to lot size, coverage and side yard. Accordingly, no increase in footprint is proposed. Instead, the Project utilizes the existing structure.
3. The design of facilities for vehicular access, circulation, parking and loading – Given the small home and ADU, the two proposed parking spaces on the lot are sufficient.
4. The impacts on properties of outdoor lighting, noise, vibration, stormwater runoff and flooding – The structure exists now. The interior renovation and addition of a single modest dwelling unit in it will not negatively affect abutting properties compared to existing conditions.
5. The preservation and enhancement of the visual environment – The Project will renovate the existing structure on the Property improving its appearance and value while retaining existing air, light, and space.

6. The preservation of historic districts, and buildings and structures of historic or architectural interest – The Property is not located in the Historic District; however, the Project will preserve the existing accessory structure.
7. The protection of natural resources, including groundwater, surface water, wetlands, wildlife habitat and air quality – The area is intensely developed and in close proximity to Interstate 95, repurposing the existing accessory building in place has no impact compared to existing conditions.

Additionally, PZO §10.814.11 states as follows:

The purpose of this section is to provide for additional dwelling units within single-family neighborhoods in order to: increase the supply of smaller, more affordable housing units with less need for more municipal infrastructure or further land development; contribute to local housing needs; and provide opportunities for adapted reuse of existing accessory structures. The standards in this section are intended to integrate more housing options into the community with minimal impact on the surrounding neighborhood.

The Project, which repurposes an existing accessory structure and provides a modest housing unit, clearly fulfills the purposes of the Ordinance.

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 a modest one-story home and garage exist on a lot that is slightly more than half the required lot size of the SRB Zone; upward expansion is prohibitively expensive. The garage has existed within the side and rear yard setbacks for decades, no physical expansion of the structure is proposed, and municipal water and sewer are available. Like the existing home, the proposed 353 s.f. ADU is very modest, intended in the short run for an aging parent. Given the very small size of the home and ADU, two parking spaces are sufficient. Accordingly, allowing the existing accessory structure to remain and converting part of it into a modest ADU 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. Hoekstra is constitutionally entitled to the use of the Property as she sees fit; including retention of a long-existing accessory structure in a nonconforming location and conversion of a portion of it to a modest ADU.

“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 existing home is quite small, the accessory structure has existed in its present location for decades, and a modest ADU is proposed in a portion of it, there is no benefit to the public from denying the variances. In comparison, Hoekstra will suffer great harm if she is unable to add an ADU to her property. Clearly, there is no benefit to public outweighing the hardship to the applicant if the variances are denied. Accordingly, substantial justice is done by granting the variances.

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

The lot has existed since Pannaway Manor was first developed with the home dating back to approximately 1940. The accessory structure was constructed after a 1968 variance, though

due to an error on the part of the then-owner, the as-built location did not conform to the approval. The accessory structure has existed for decades as it sits and will not be expanded. The Project proposes a modest ADU in keeping the very small existing home. The driveway provides sufficient parking for two cars, which is adequate to support the occupants and municipal water and sewer will serve the ADU. Under these circumstances, it is clear that granting a variance to allow conversion of the garage into an ADU 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 8,324 s.f., the Property is just over half the size of the required lot size for the SRB Zone, yet already developed with a modest home and garage which will not be expanded. The existing lot lines are angled toward each other resulting in 45 ft. of frontage, less than half of the rear lot line. These circumstances combine to create special conditions and make it impossible for a proposed ADU to conform with the lot size and lot size per dwelling unit requirements of a single family home lot in the SRB. The configuration of the lot and angled lot lines makes it difficult to place structures on the lot in a manner that conforms to the side yard requirements. Were the existing home and garage constructed today, relief would be required, therefore even conversion of the existing garage into an ADU no expansion requires identical relief.

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

The purpose of lot area, lot size per dwelling unit, yard requirements exist to prevent overcrowding of land or people, and to maintain air, light, space for abutters as well as and separation for stormwater treatment. Parking requirements exist to ensure streets are free from excess parked cars and traffic is not impeded. The existing accessory structure has existed in its current location for decades without complaint. It is screened by fences and plantings. No physical expansion is proposed so the Project has no effect on existing yard setbacks. The Project proposes a very small ADU serving a modest home. Given the size of both units, the two parking spaces provided will adequately serve the Property. Accordingly, there is no reason to apply the strict dimensional requirements of the zoning ordinance.

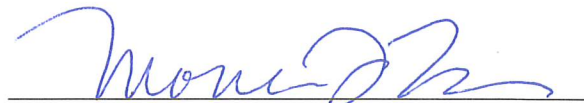
c. The proposed use is reasonable.

If the use is permitted, it is deemed reasonable. Vigeant v. Hudson, 151 N.H. 747 (2005). A permitted residential use is proposed. An existing accessory structure repurposed to accommodate a modest ADU serving a small home is reasonable and fulfills the purpose of the Ordinance. For all these reasons, the proposed use is reasonable, and denial results in an unnecessary hardship.

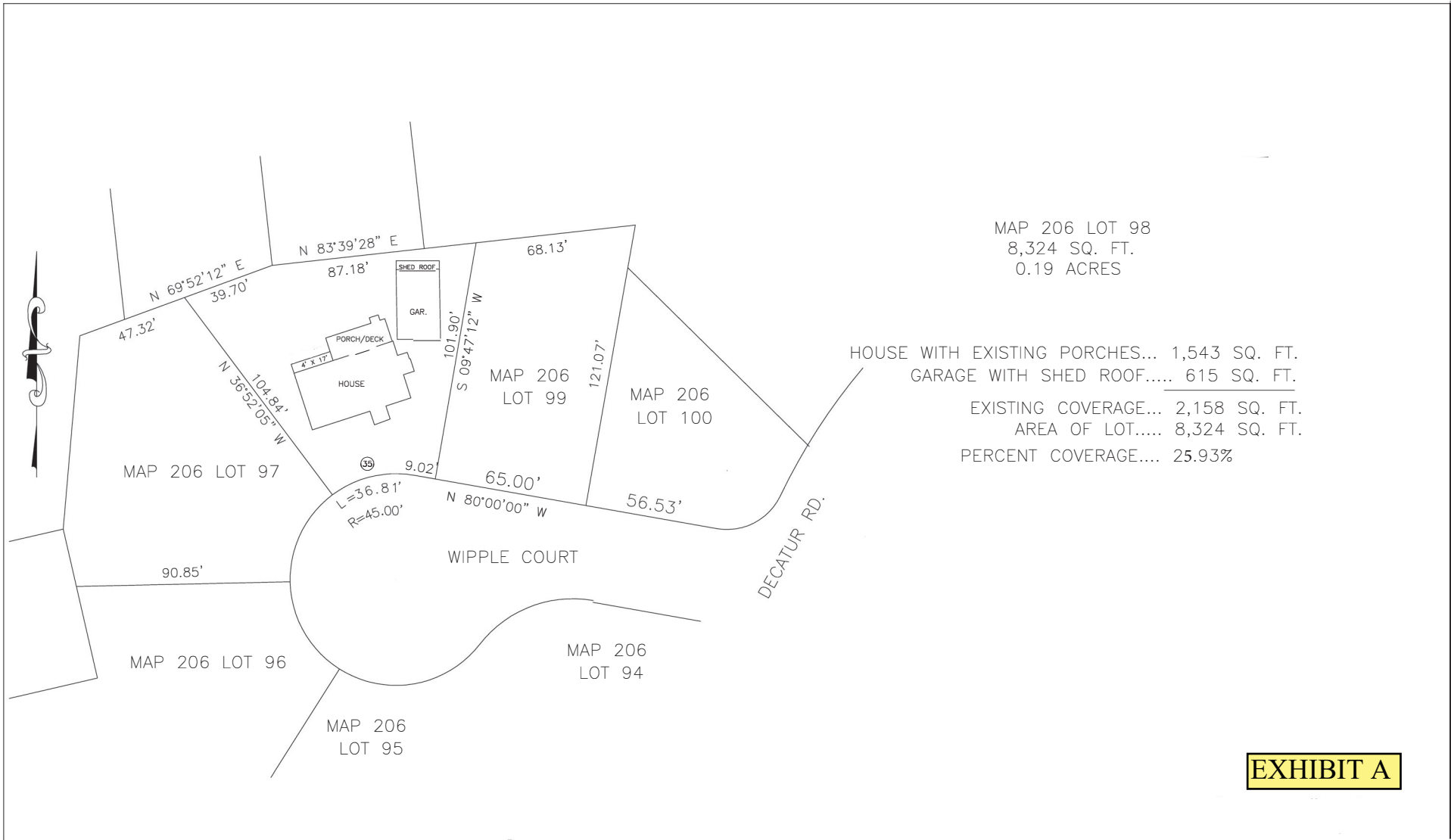
VI. CONCLUSION

For all of the reasons stated, Hoekstra respectfully requests that the Portsmouth Zoning Board of Adjustment grant the submitted variance and equitable waiver requests.

Respectfully submitted,
Marcella Hoekstra



By: Monica F. Kieser
Stephanie J. Johnson



MAP 206 LOT 98
 8,324 SQ. FT.
 0.19 ACRES

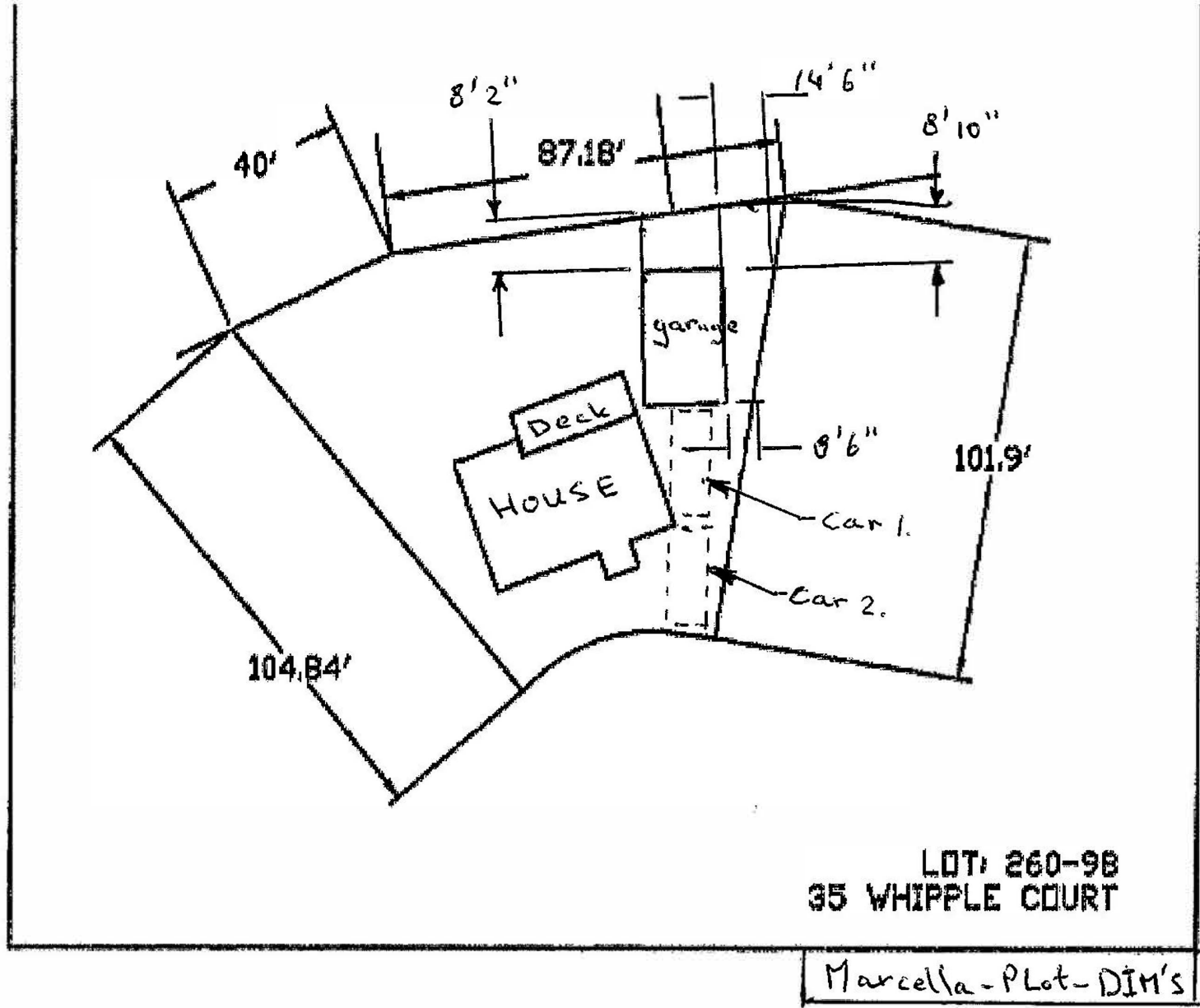
HOUSE WITH EXISTING PORCHES... 1,543 SQ. FT.
 GARAGE WITH SHED ROOF..... 615 SQ. FT.
 EXISTING COVERAGE... 2,158 SQ. FT.
 AREA OF LOT..... 8,324 SQ. FT.
 PERCENT COVERAGE.... 25.93%

EXHIBIT A

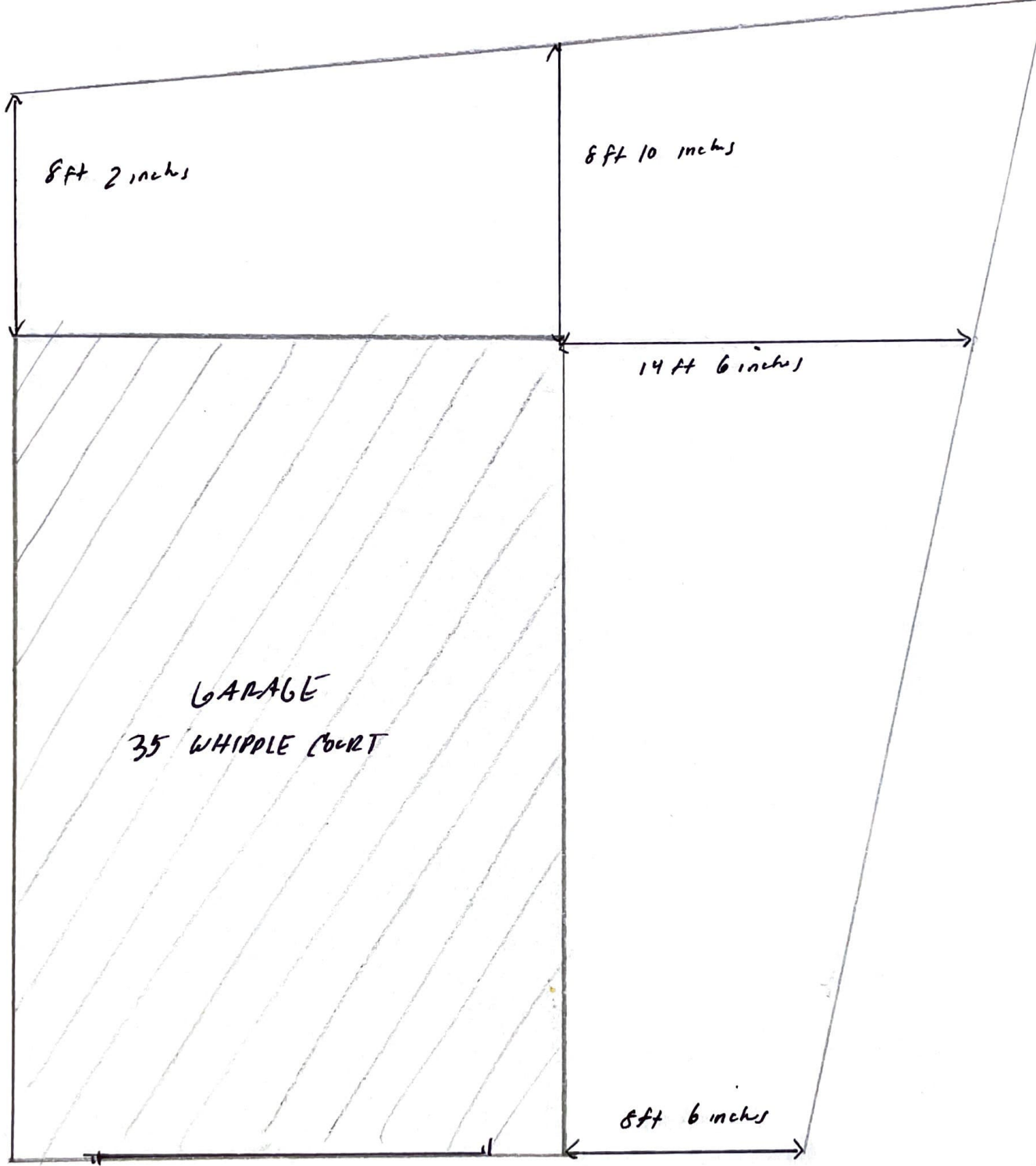
REV.	DATE	NOTE	INT.

Legend	
● Iron Pipe/Steel Pin Fnd	----- Boundary
⊙ Iron Rod Set	----- Bldg Setbacks
⊙ Iron Rod Fnd	----- Edge of Tar
■ Granite/Concrete Bnd Fnd	----- Culvert
⊙ Drill Hole Set	----- Stonewall
⊙ Drill Hole Fnd	----- Wetland Flagging
⊙ Utility Pole	----- Wetland Setback

TAX MAP 260 LOT 98
 35 WHIPPLE COURT
 PORTSMOUTH, NH
 SCALE: 1" = 20'



Existing and proposed dimensions from existing garage to side and rear lot lines & illustration of parking placement.



GARAGE
35 WHIPPLE COURT

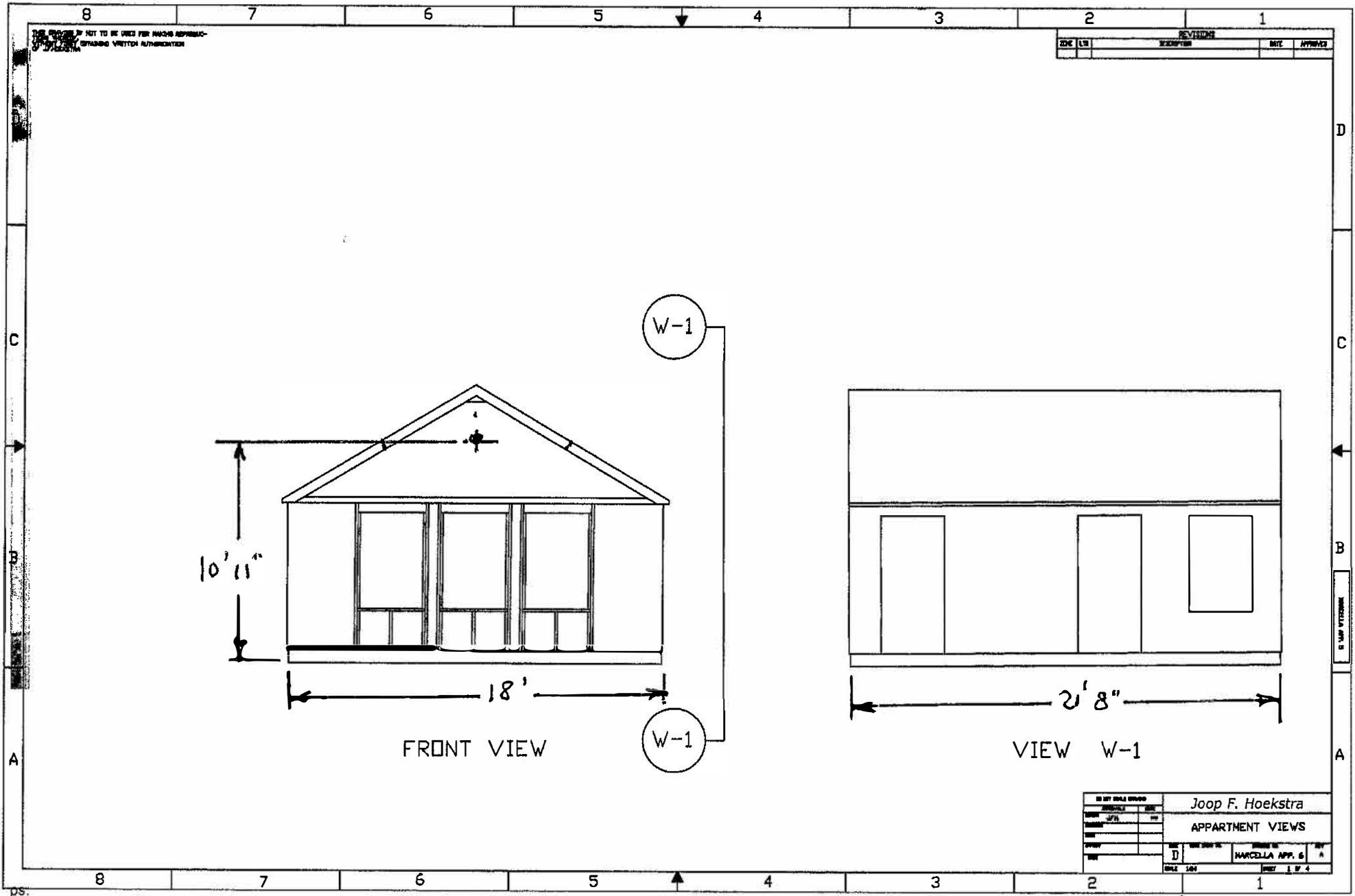
8 ft 2 inches

8 ft 10 inches

14 ft 6 inches

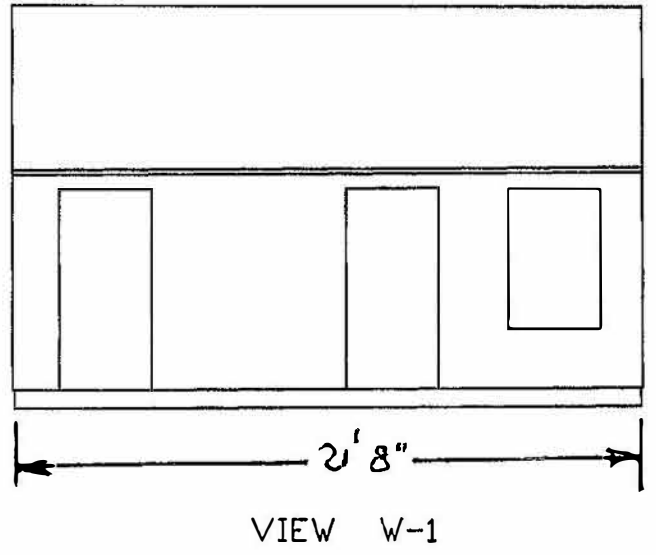
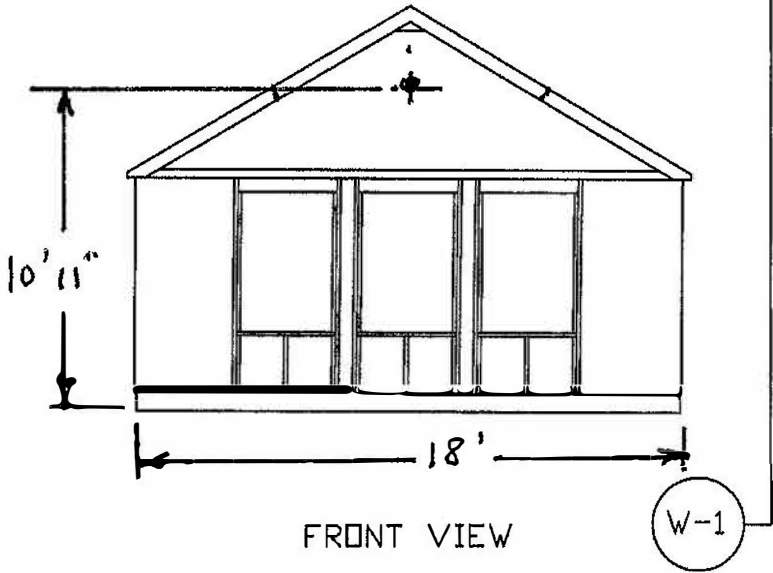
8 ft 6 inches

Zoomed in existing and proposed dimensions from garage to side and rear lot lines



THIS DRAWING IS NOT TO BE USED FOR ANY OTHER PURPOSES WITHOUT THE WRITTEN AUTHORIZATION OF THE ARCHITECT.

REVISED		DATE	APPROVAL
NO.	DESCRIPTION		



JOOP F. HOEKSTRA		Joop F. Hoekstra	
ARCHITECT		ARCHITECT	
APARTMENT VIEWS			
DATE	NO.	DATE	NO.

Google Maps 35 Whipple Ct

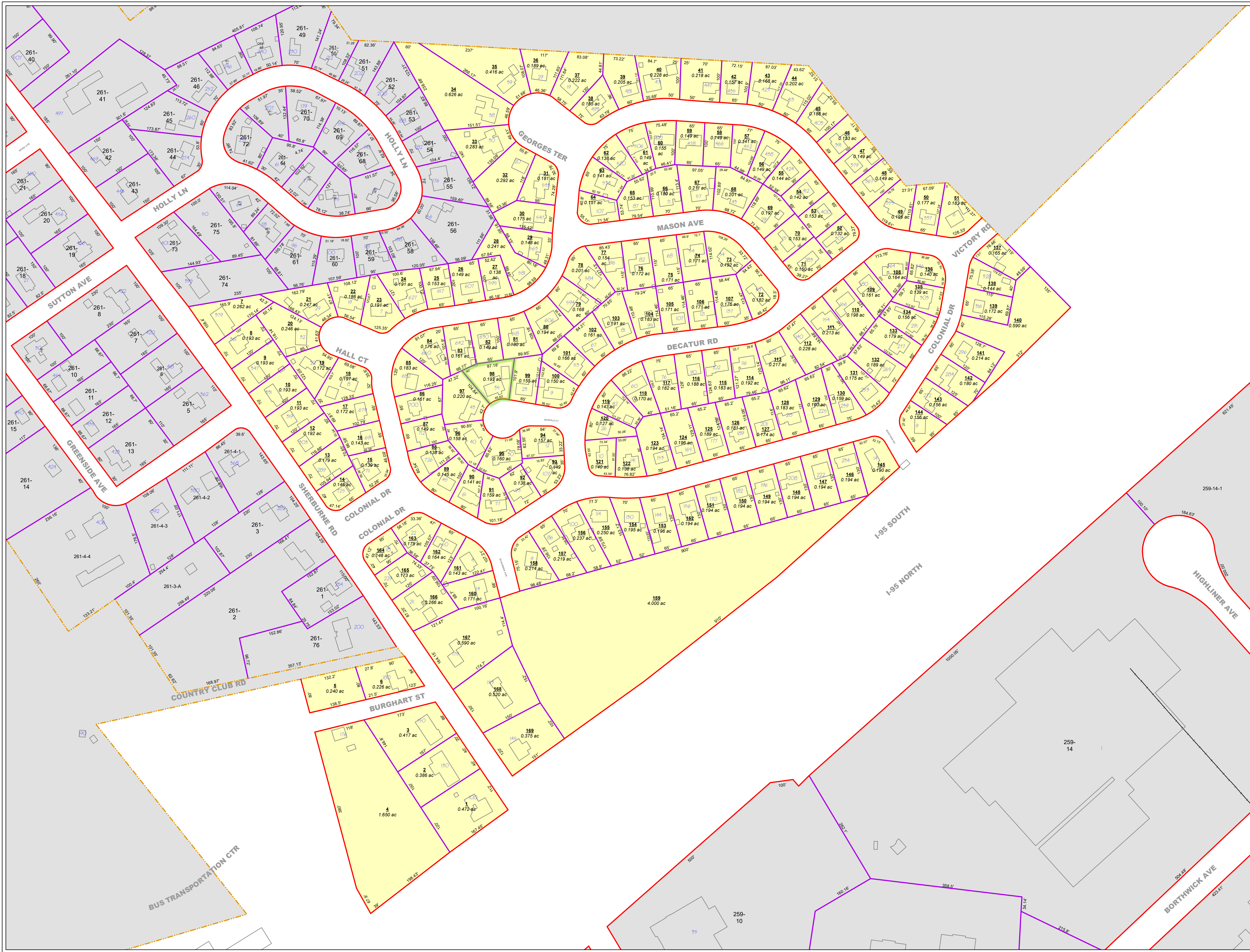


Imagery ©2021 Google, Imagery ©2021 Maine GeoLibrary, U.S. Geological Survey, Map data ©2021 20 ft

EXHIBIT C

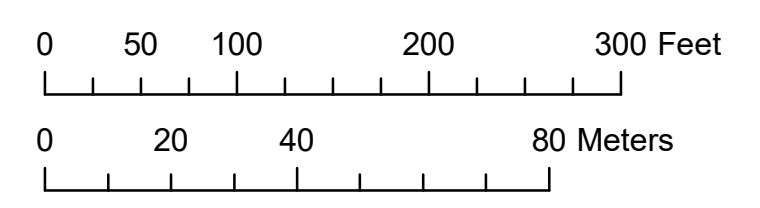




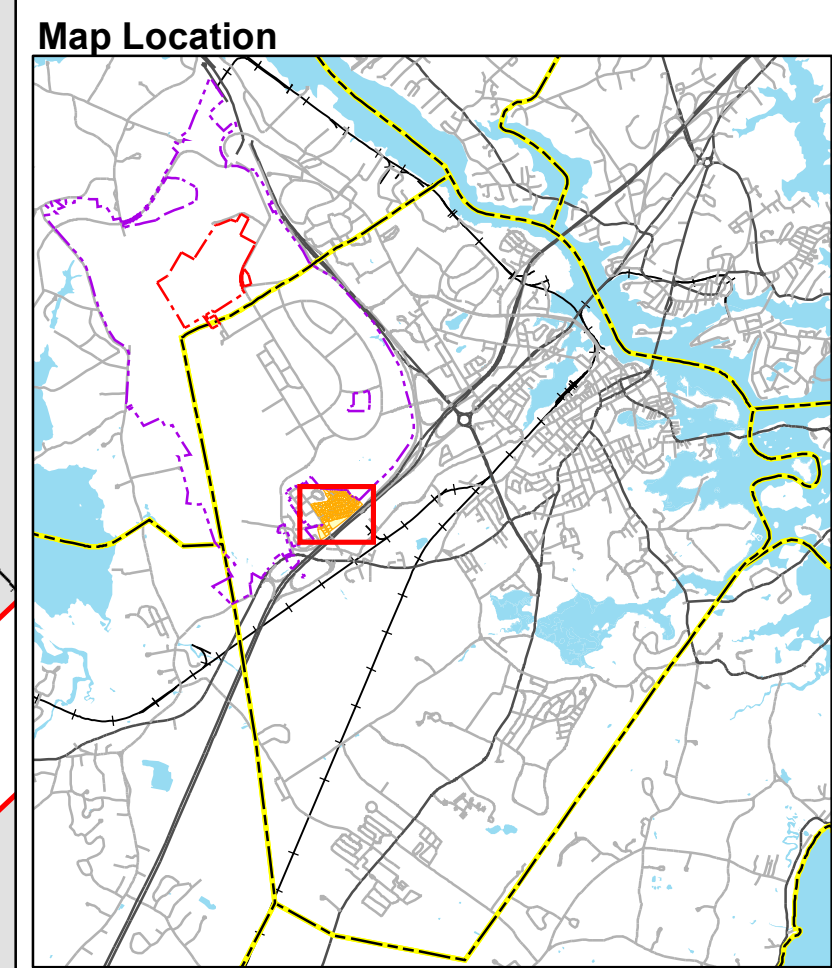
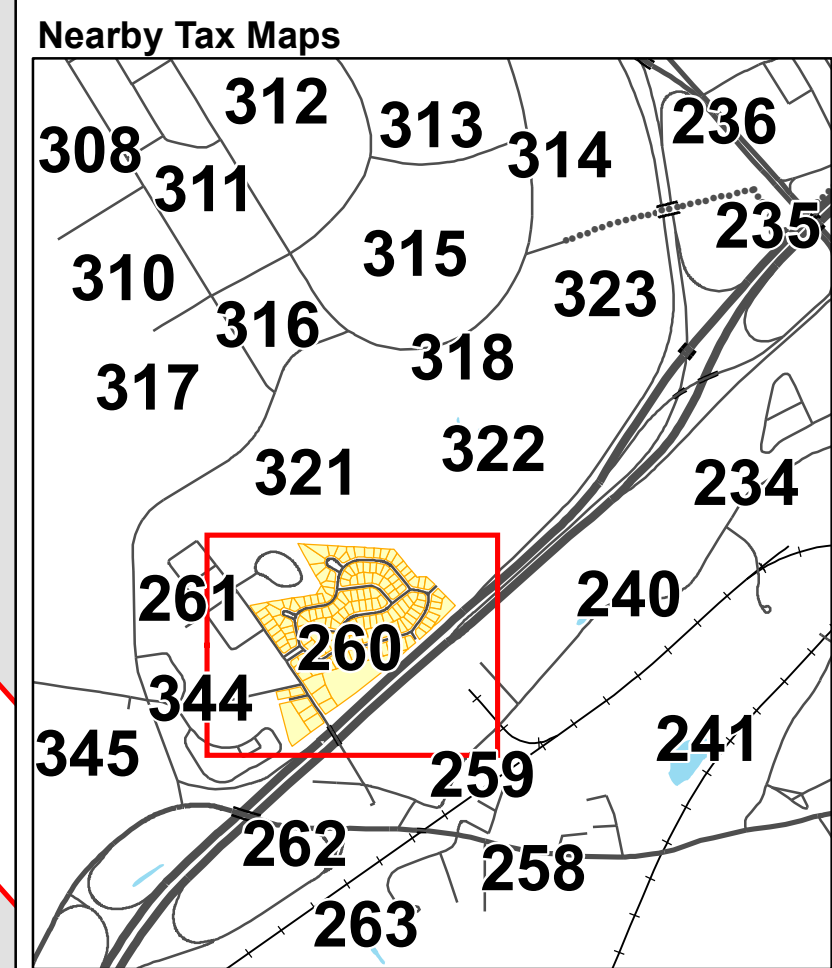


- Partial Legend**
 See the cover sheet for the complete legend.
- 7-5A** Lot or lot-unit number
 - 2.56 ac Parcel area in acres (ac) or square feet (sf)
 - 25 Address number
 - 233-137 Parcel number from a neighboring map
 - 68' Parcel line dimension
 - SIMS AVE Street name
 - Parcel/Parcel boundary
 - 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 D



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 260

III. NEW BUSINESS

E. The request of Lawrence Brewer (Owner), for property located at 253 Broad Street whereas relief is needed to construct an attached garage and add a second driveway, which requires the following: 1) Variance from Section 10.521 to allow a 7 foot side setback where 10 feet is required; and 2) Variance from Section 10.1114.31 to allow more than one driveway per lot. Said property is located on Assessor Map 131 Lot 16 and lies within the General Residence A (GRA) District (LU-23-148)

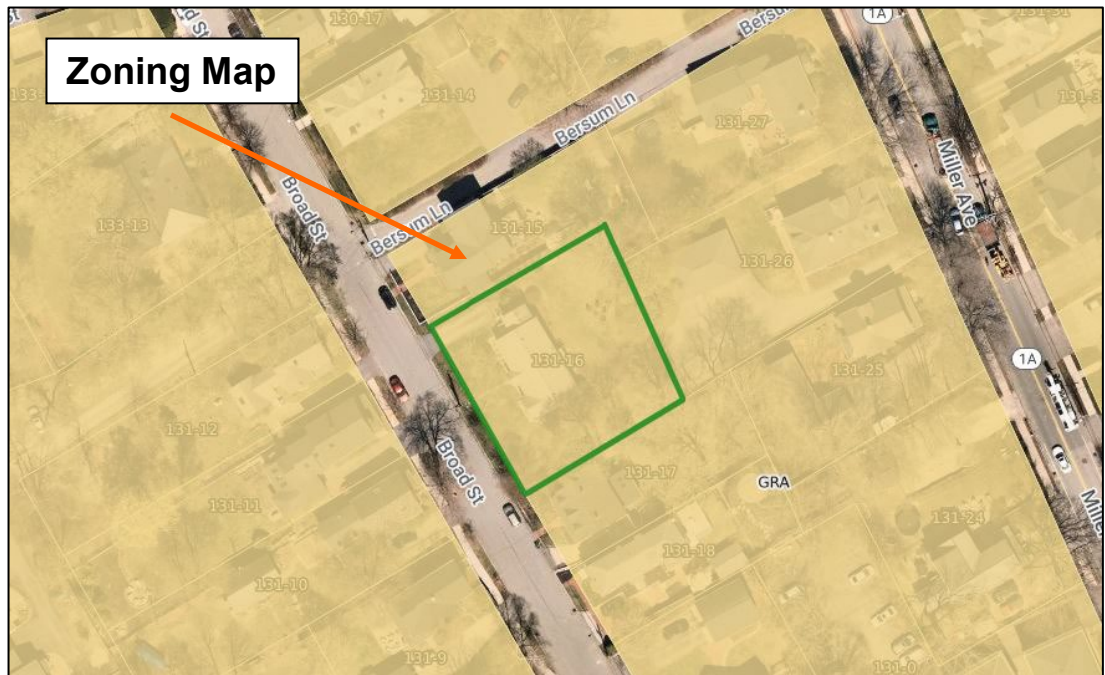
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use</u>	Single-family dwelling	Attached garage and 2 nd driveway	Primarily residential
<u>Lot area (sq. ft.):</u>	12,196	12,196	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	12,196	12,196	7,500 min.
<u>Street Frontage (ft.):</u>	110	110	100 min.
<u>Lot depth (ft.):</u>	105	105	70 min.
<u>Front Yard (ft.):</u>	>15	>15	15 min.
<u>Right Yard (ft.):</u>	>10	>10	10 min.
<u>Left Yard (ft.):</u>	20	7	10 min.
<u>Rear Yard (ft.):</u>	>20	>20	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%)</u> :	12.5	17.5	25 max.
<u>Open Space Coverage (%)</u> :	84	79	30 min.
<u>Parking:</u>	2	4	2
<u>Estimated Age of Structure:</u>	N/A	Variance request(s) shown in red.	

Other Permits/Approvals Required

- Building Permit
- ADU Conditional Use Permit

Neighborhood Context



Previous Board of Adjustment Actions

No previous BOA history found.

Planning Department Comments

The applicant is requesting to construct an attached garage 7' from the left lot line where 10' is required. In addition, the applicant is requesting relief for a second driveway on the lot to accommodate a future addition and attached ADU. Staff recommends voting on each variance request separately.

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.

253 Broad St - Garage variance request

In November of 2022, we purchased this property after living on S. School Street for the previous 11 years. We would like to take this opportunity to modernize our new home on Broad Street by adding a 2 car garage, creating a primary bedroom suite, bringing laundry to the first floor, adding a full bathroom, updating the landscaping and outdoor space, and looking at the possibility of an attached ADU in the basement. We refer to this as phase 2, as we would need to review the building requirements specific to our site and verify the feasibility before proceeding with a Phase 2.

We have been in the house for nearly a year now, and are getting a feel for the property, neighborhood, and existing home. We believe this is the best use of the available area, adherence to the spirit of the existing home style, and conformance to lot coverage, with one of the 4 setbacks from which we request a variance.

We would like to add a 2 car garage, single door, to the north side of the house. In order to accomplish a garage, we are seeking a variance to encroach into the 10' setback up to 3 feet. The driveway would be widened to accommodate the access to the new garage, approximately 23' wide. The 2 car garage addition is expected to be approximately 23' wide by 27' deep. We are planning to add a mudroom to the rear corner of the garage to connect to the existing structure. On the south side of the existing home, a conforming addition would be added approximate 18' wide by 25' deep into the yard to create a primary bedroom suite with full bathroom.

In addition, we would like to petition for a variance to add a second driveway to the south side of our lot where there already exists a curb cut. This would be a conforming driveway, approximately 16' wide by 50' long that would allow access to the Phase 2 ADU.

■ **2. 10.233.21 *The variance will not be contrary to the public interest;***

- We believe that no harm will be done to our neighbors or the neighborhood. We have discussed our preliminary plans with them, specifically Dan and Maureen Indoe, the adjacent neighbors. By the addition of a garage, we will help to reduce the number of vehicles parked on the street and will help to enhance the property values. Also, many other homes in the neighborhood have buildings that are within the setback limit, including the Indoe's. We have included screenshots of a few with our application. The second driveway would be to allow for adequate offstreet parking to a potential ADU.

■ 3. **10.233.22 *The spirit of the Ordinance will be observed;***

- We are asking for up to 3' of variance from the 10' setback to the side of our property adjacent to the Indoe property. A normal 2 car garage would be 24' wide and we would like to accommodate for 22'-23'. We have planned to recess the entrance to the garage such that it will not block light or views from the Indoe home and their addition which sits **on** the property line. Also, the pitch of the roof on the garage will not impede on any light to the backyard of the Indoe residence, as we are currently planning for the height of the garage roof to be a maximum of approximately 12'. The request for the second driveway would be conforming. We ask for the variance to only add a second driveway to the property.

■ 4. **10.233.23 *Substantial justice will be done;***

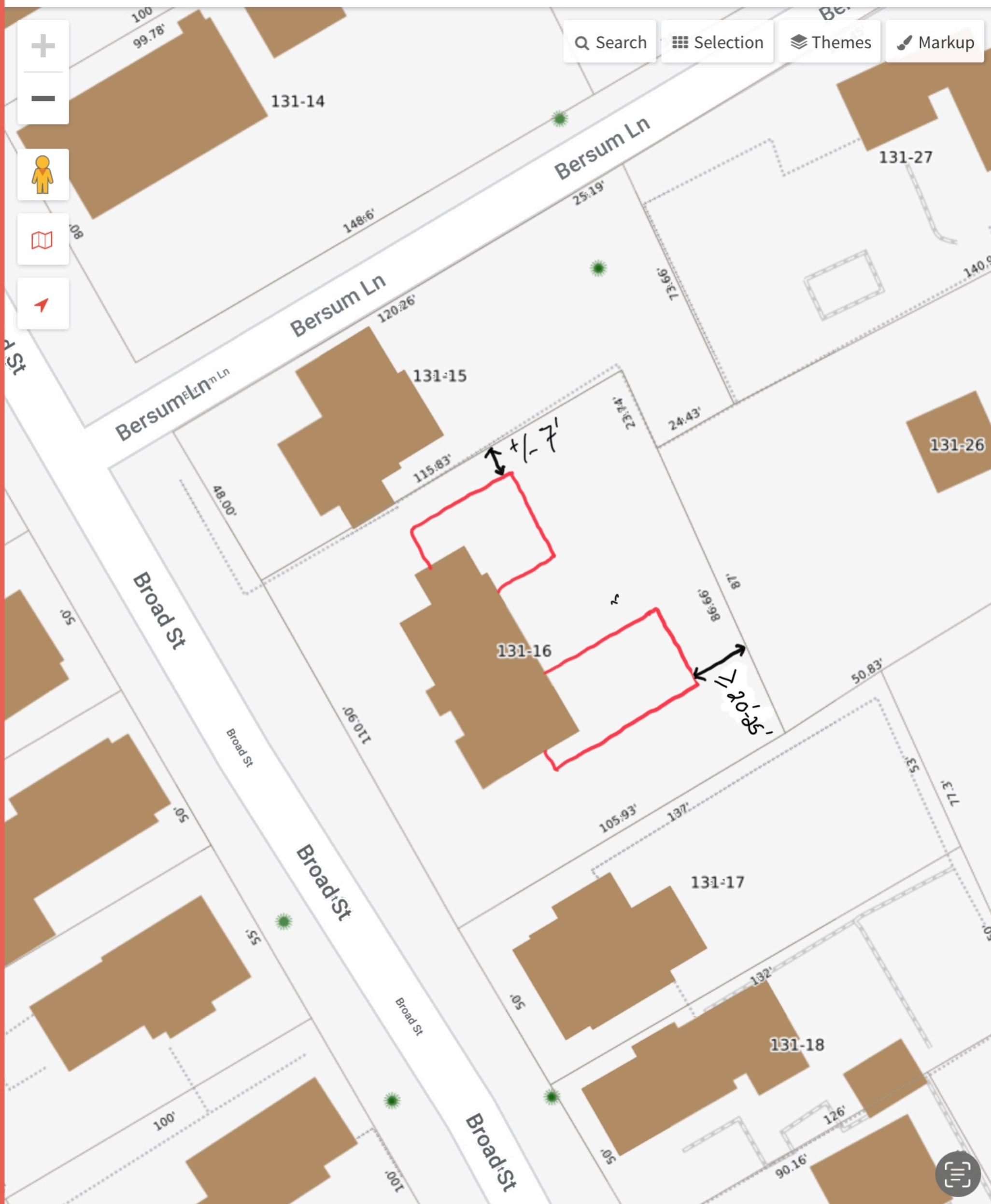
- When we started to look at the home to create a garage, a long, conforming tandem 2 car garage would have to sit more toward the front of the property and extend deeper into the back yard. We believe this would block the Indoe residence more. By allowing a 2 car garage, within up to 3' of the setback line, we accommodate both parties needs with minimum disruption.

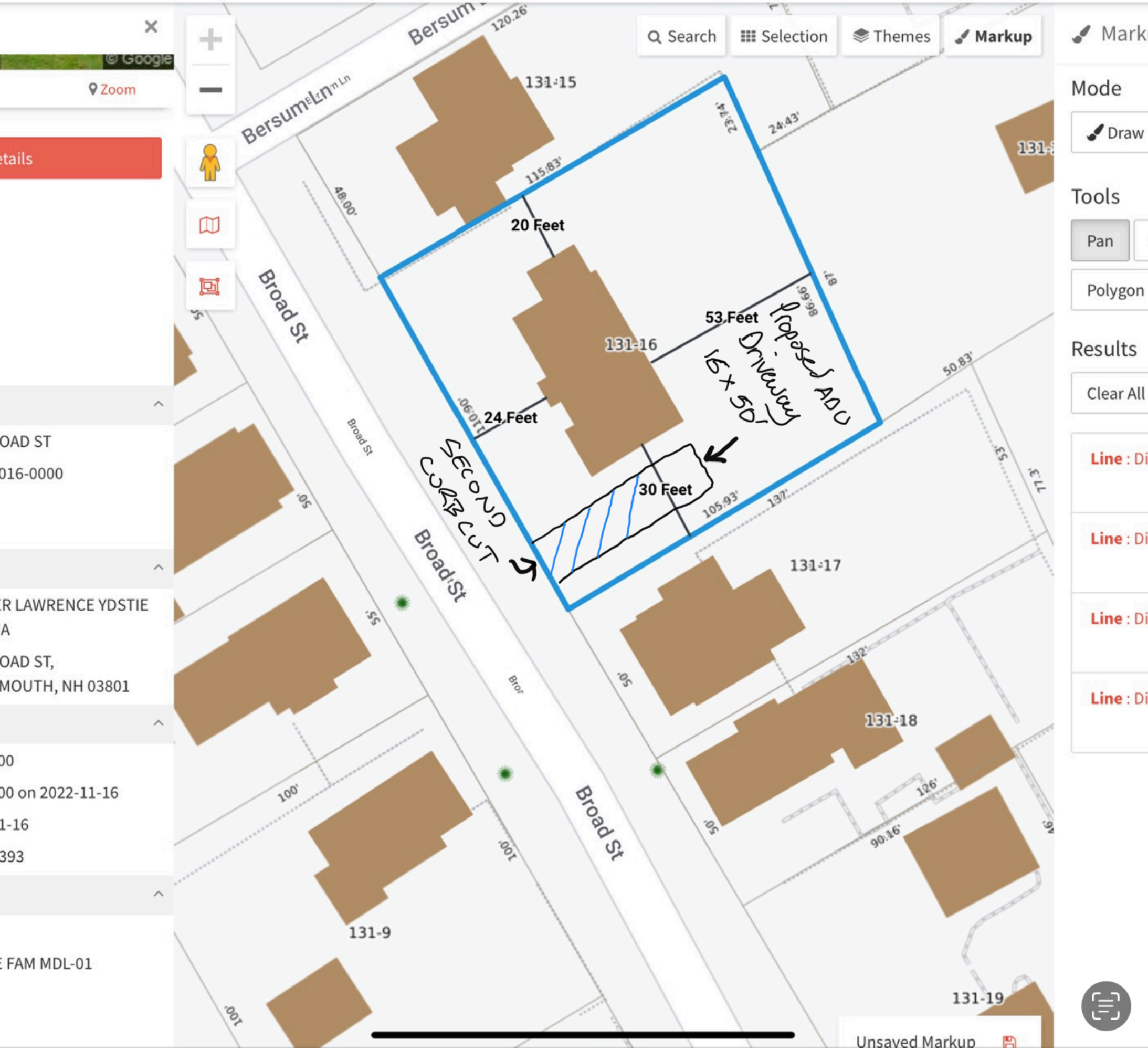
■ 5. **10.233.24 *The values of surrounding properties will not be diminished***

- Our intent is to modernize the home and property, and bring it up to the values that are sustained by the current residences in the neighborhood. The addition of a garage, enabling more off street parking, and a full bathroom for a primary bedroom suite, on a single level will only enhance the neighborhood.

- 6. ***10.233.25 Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship.***

- Enforcement of the provision would mean that hardship would be multi-faceted. We would again look at a tandem single car garage which would block light and views to the Indoe home. In addition, it would likely leave less driveway space, forcing more cars to be parked on the street when guests are visiting, which is already congested on both sides. Approving our request for variance would allow for more driveway spaces as well as the two car garage.





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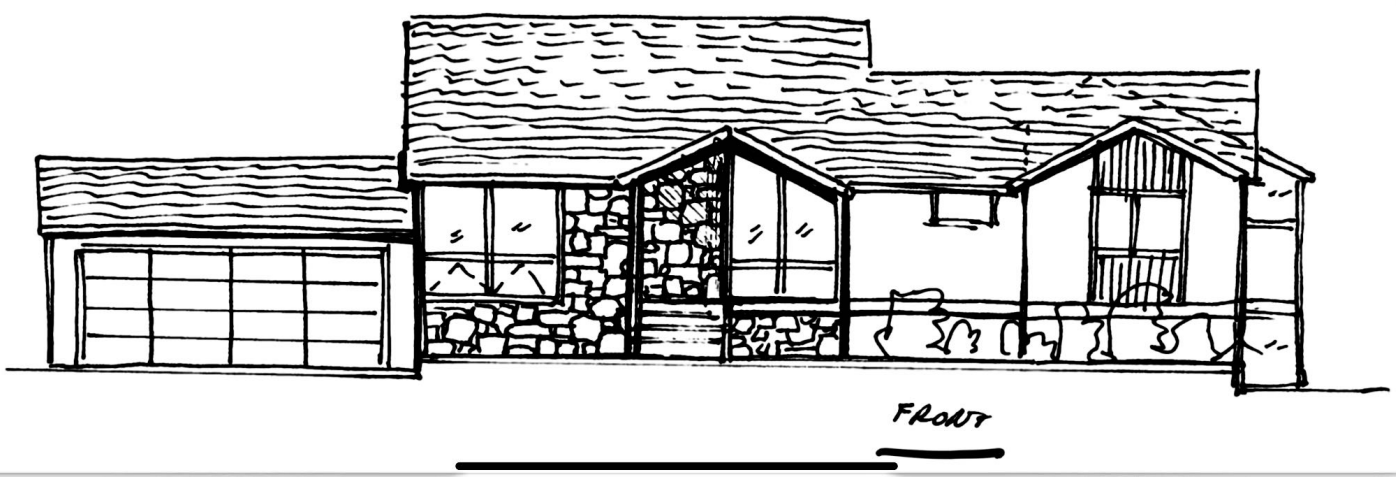
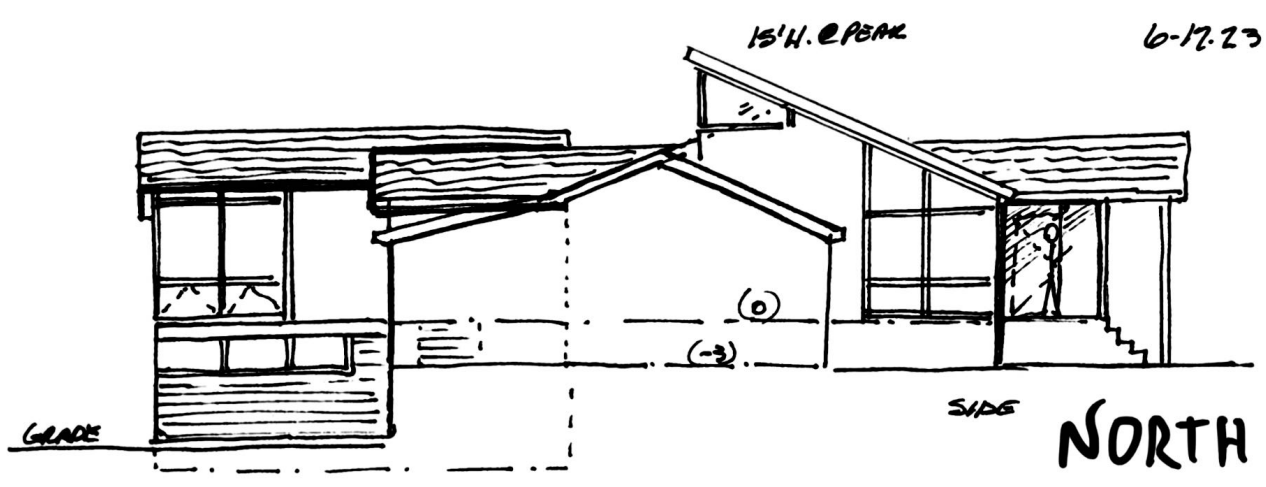
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MOUTH, NH 03801

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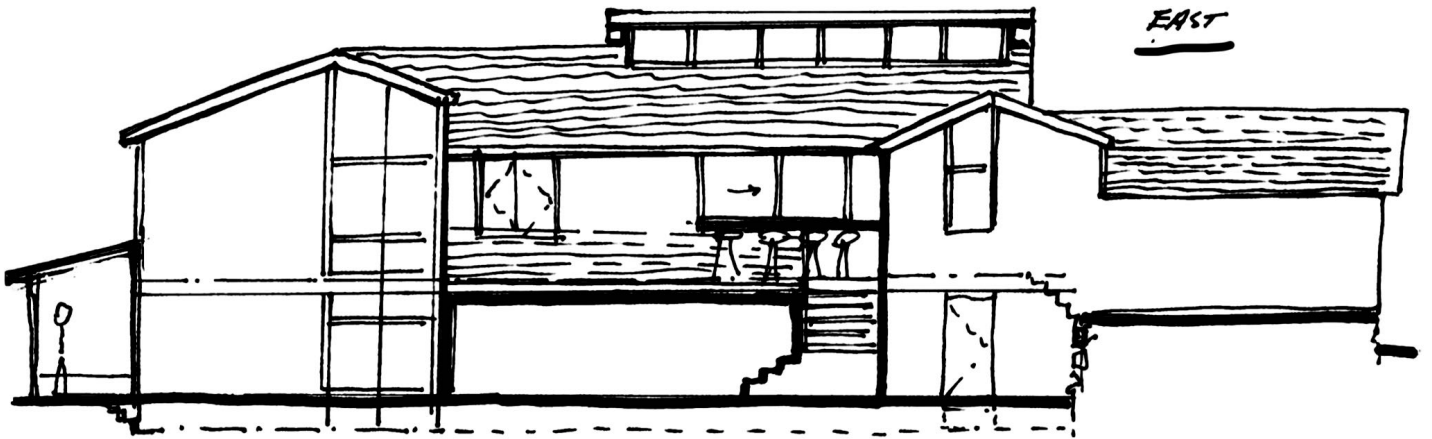
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6-17-23

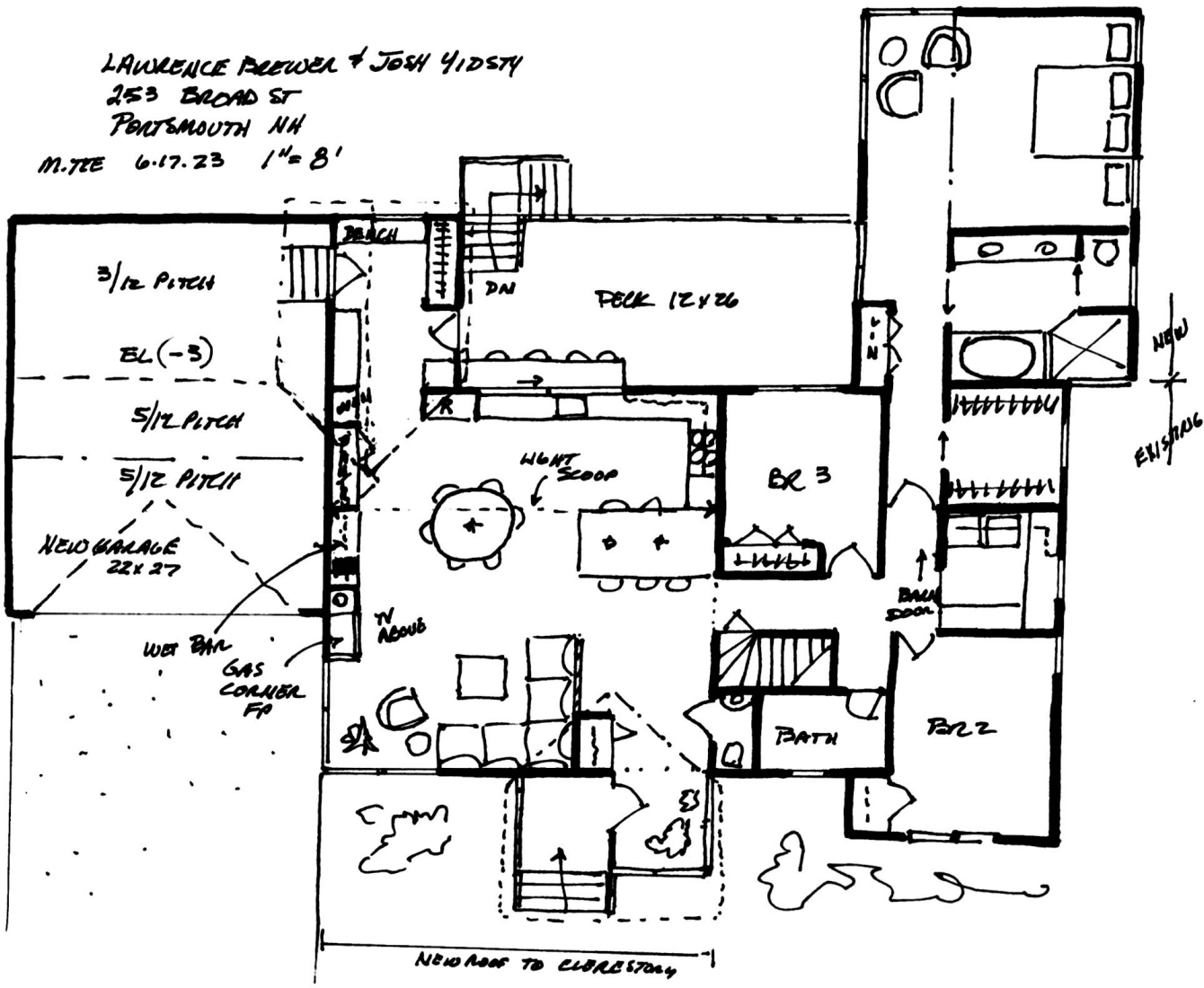
EAST



SOUTH



LAWRENCE BREWER + JOSH YIDSTY
253 BROAD ST
PORTSMOUTH NH
M.TE 6.17.23 1" = 8'



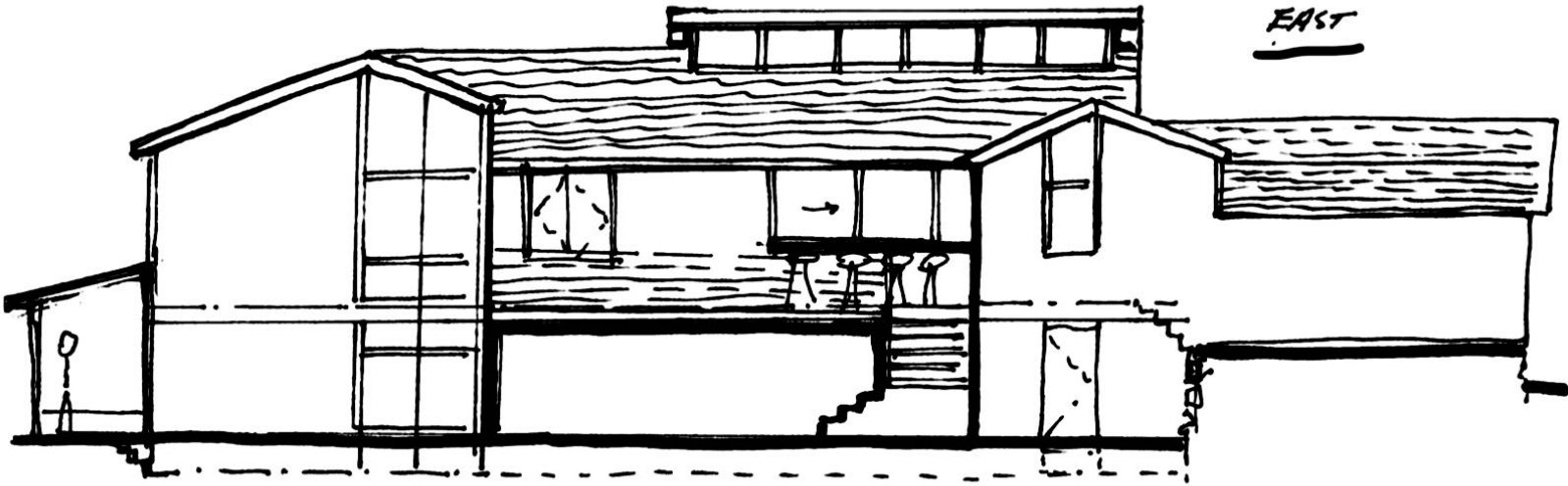
Proposed East-South View



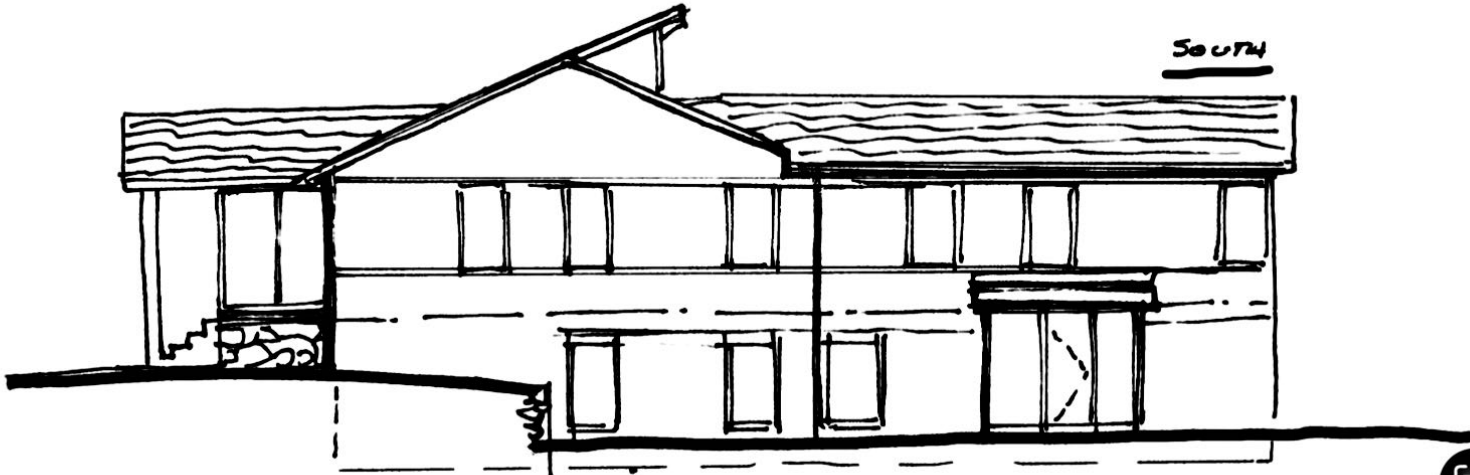
Done

6-17.23

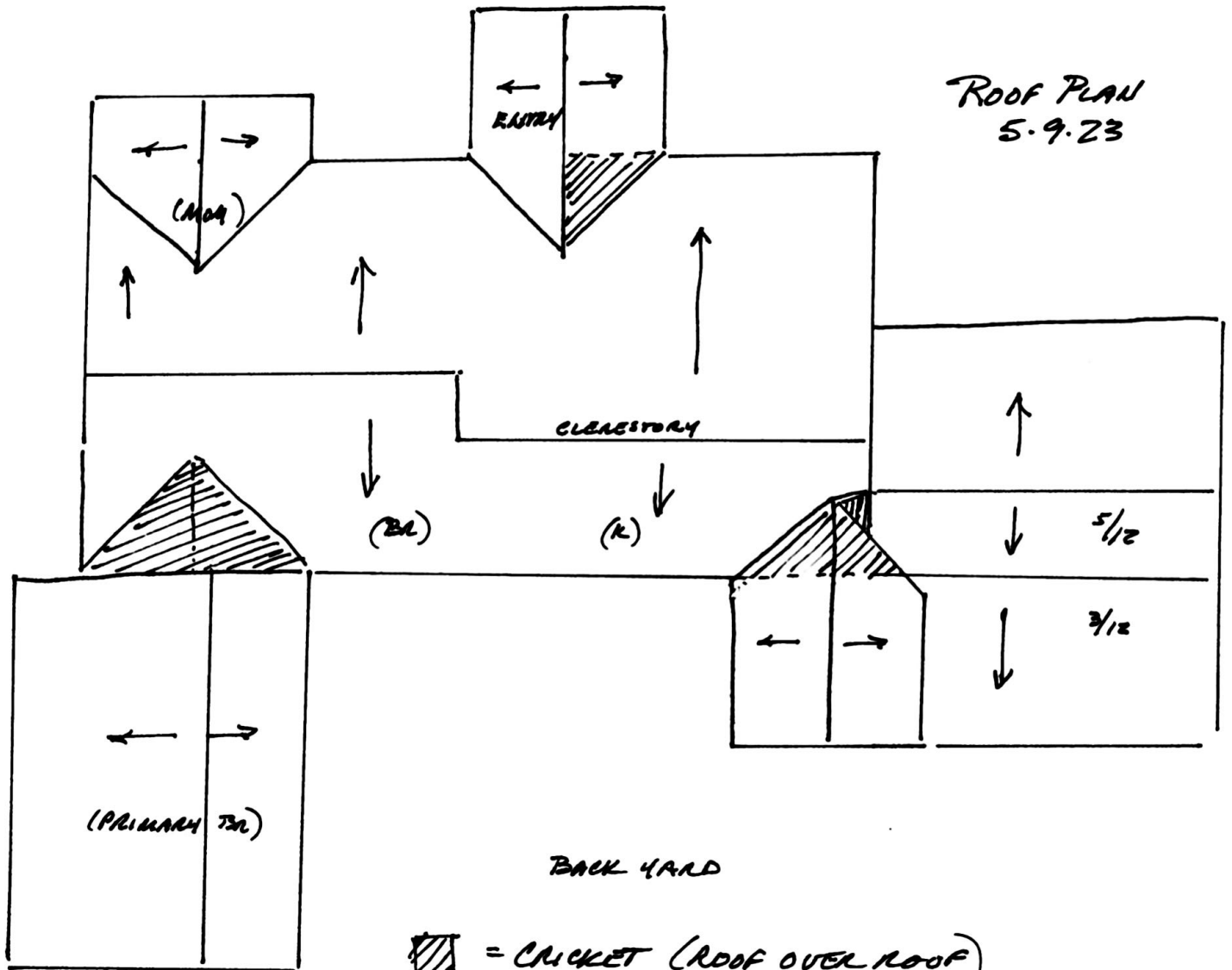
EAST



SOUTH

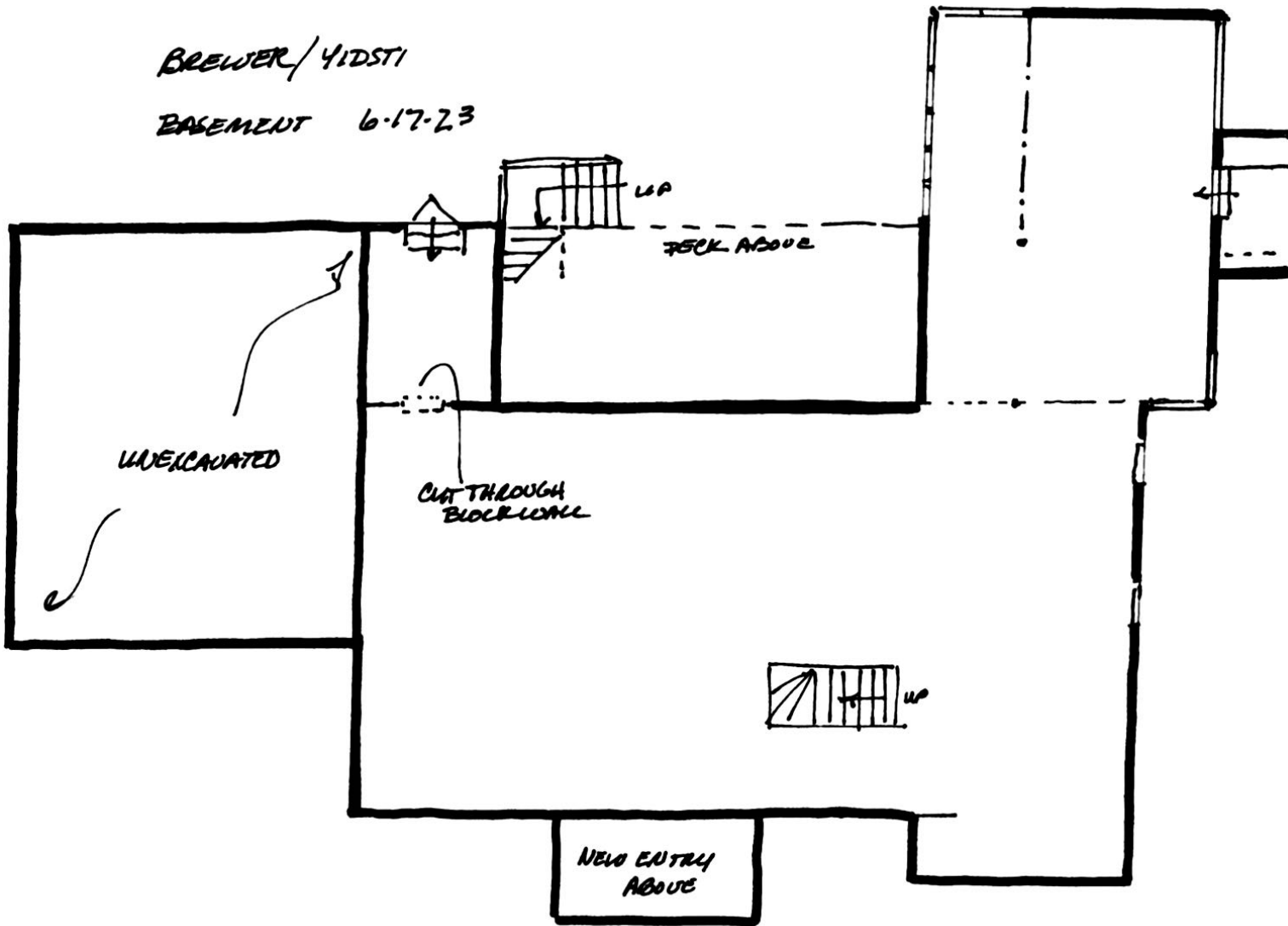


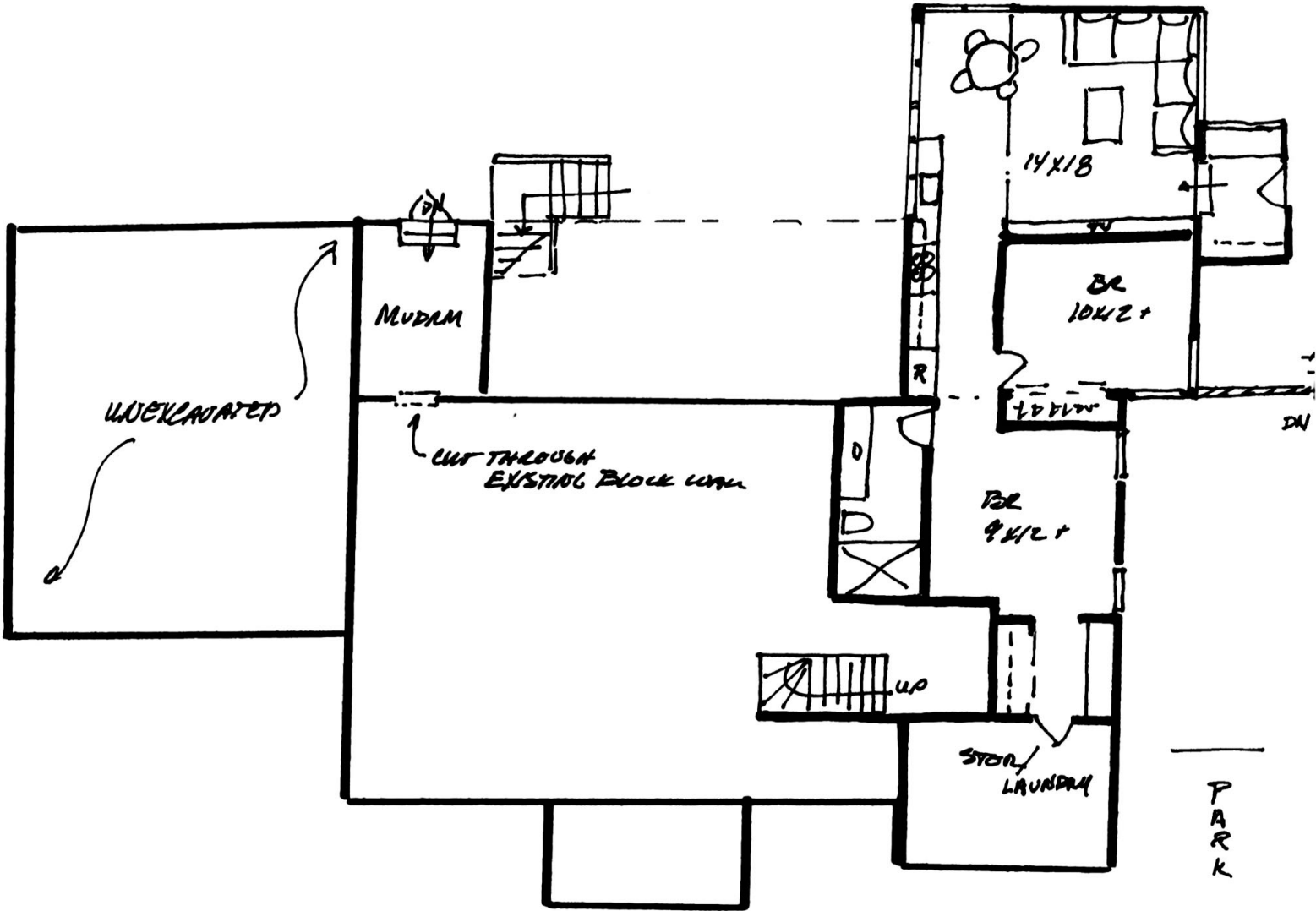
ROOF PLAN
5.9.23



BACK YARD

 = CRICKET (ROOF OVER ROOF FOR DRAINAGE)





9:11 AM Mon Jul 3

87%

AA portsmouthnh.mapgeo.io

Mom ▾ Sewing ▾ Boating ▾ Aviation ▾ Apple Airlines ▾ Netjets ▾ Entertainment ▾ Household ▾ Vacation Ideas ▾ Recipes ▾

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City of Portsmouth, NH

Property

253 Broad st

Search

Advanced Search

Download Results More

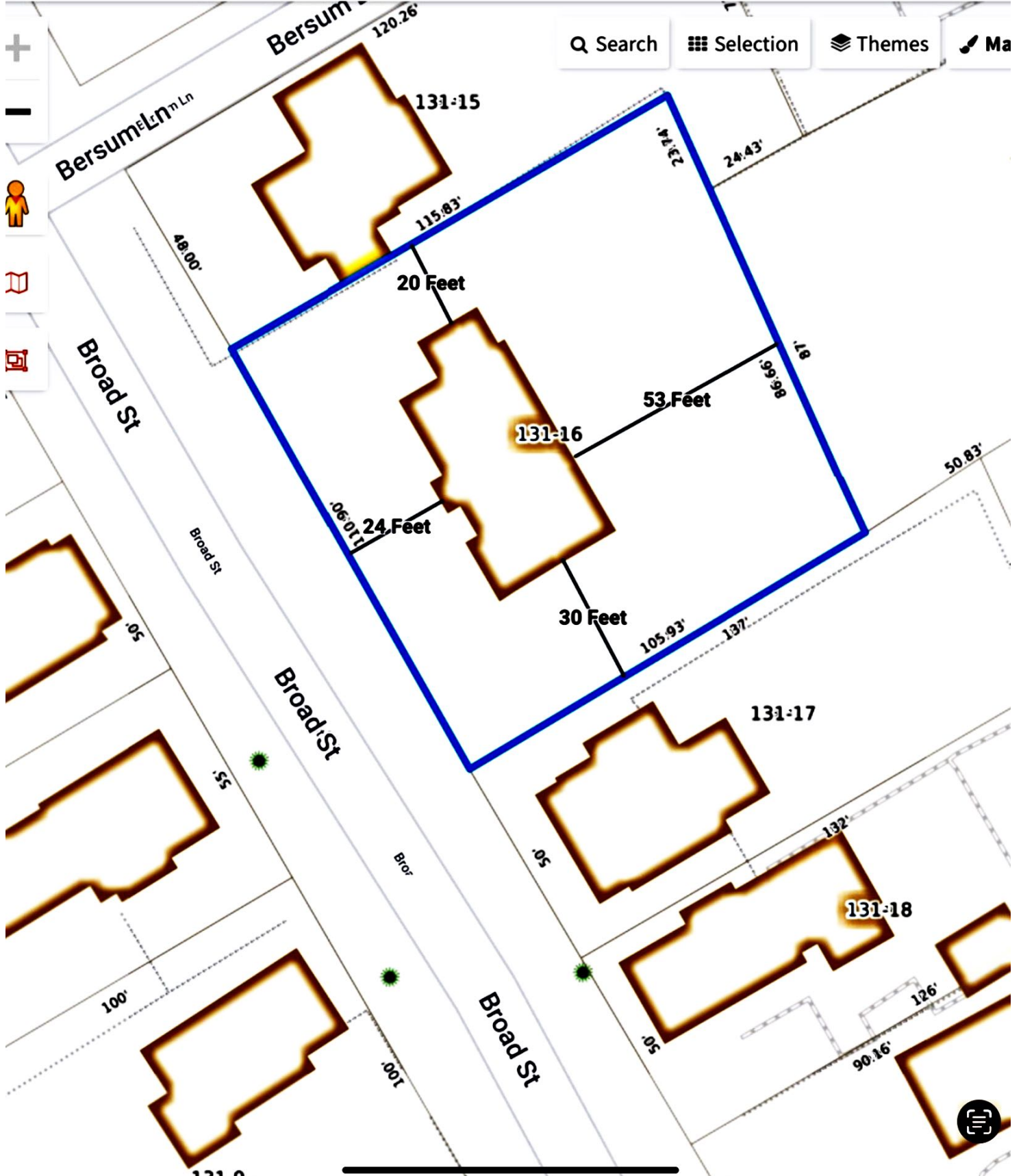
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253 BROAD ST
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Zoom To Share



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Scheduling Meeting..

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Mon Jul 3



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portsmouthnh.mapgeo.io

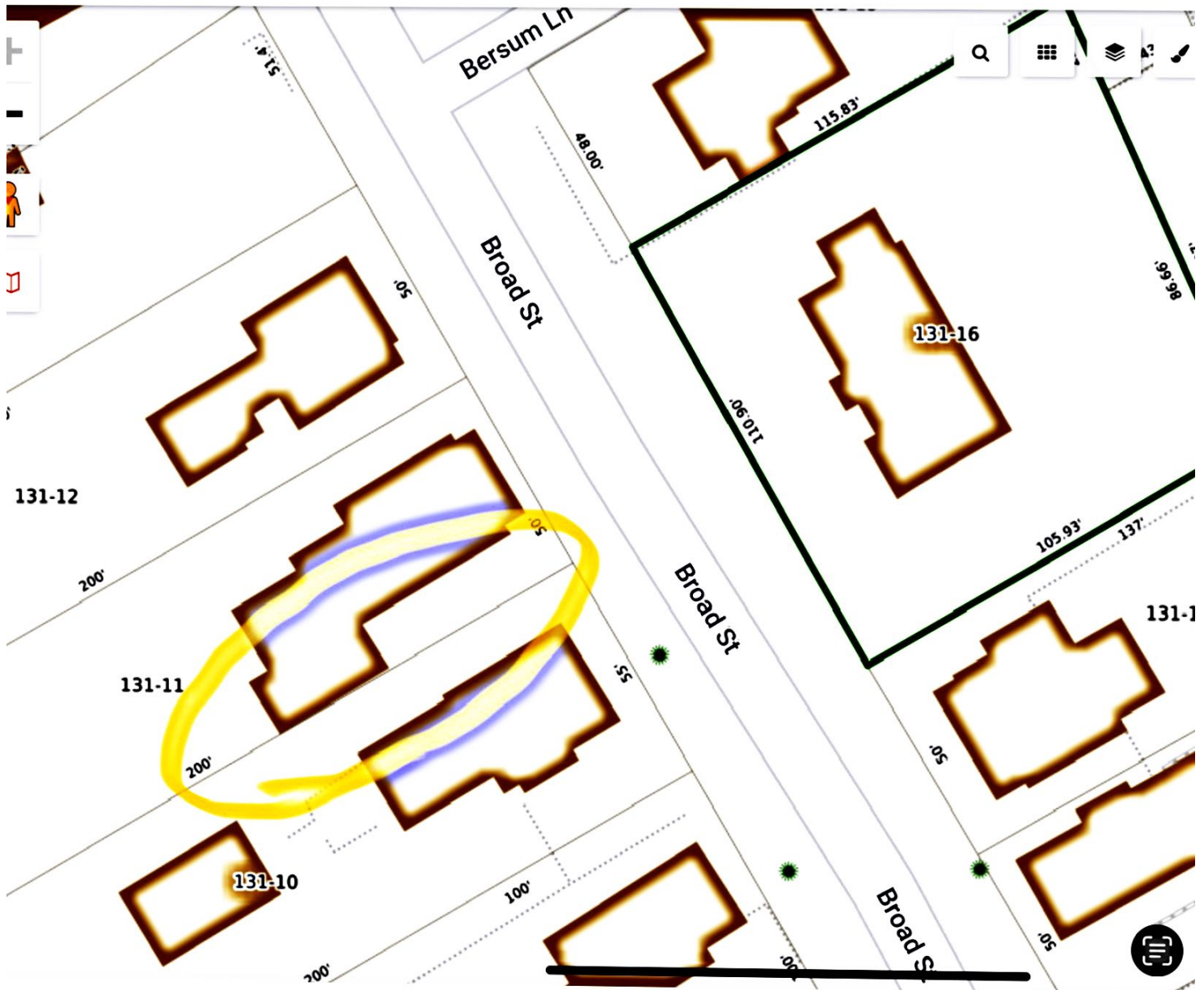
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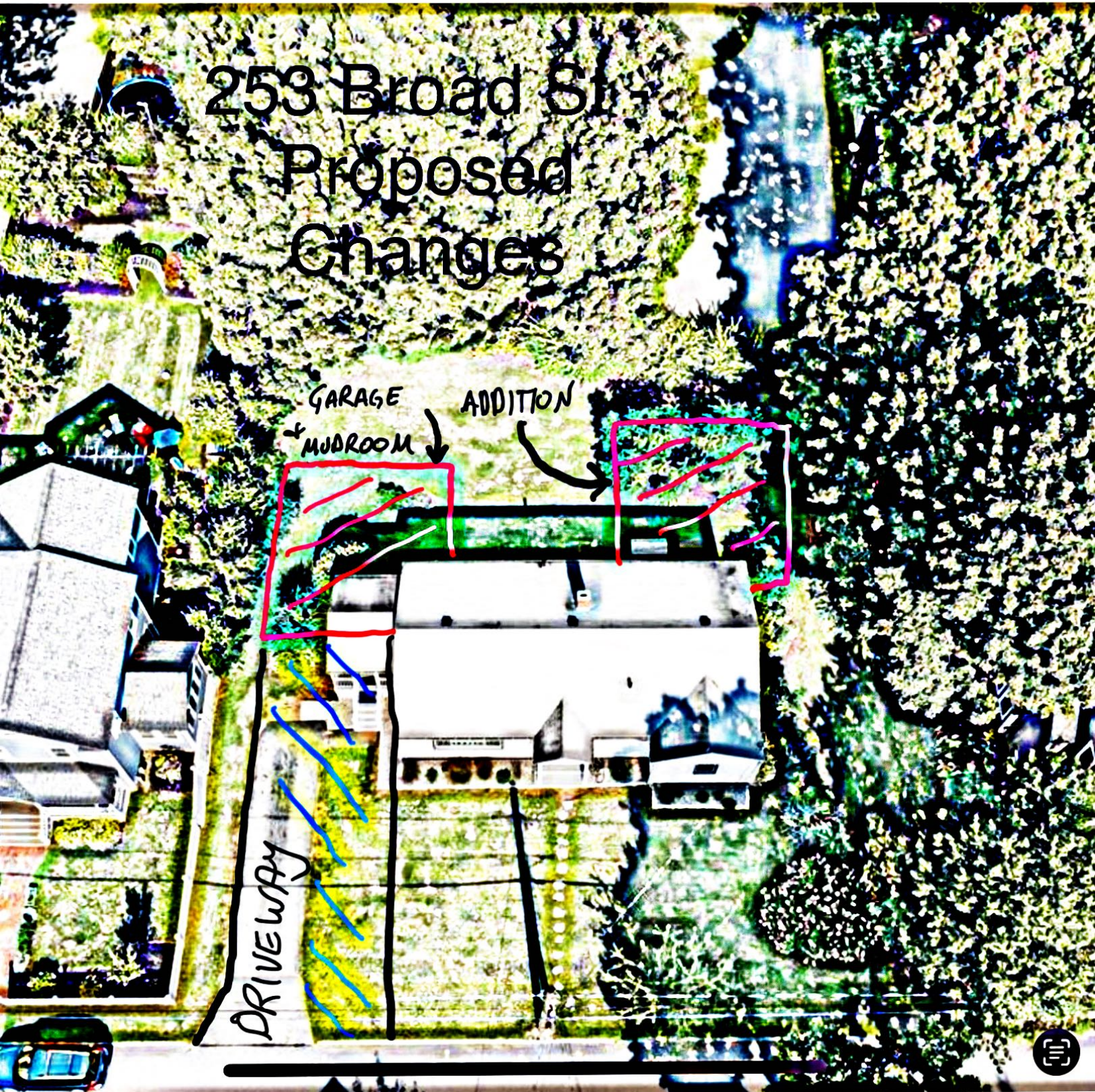
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y of Portsmouth, NH

Property

Zoom To Share







253 Broad St -
Proposed
Driveway







253 Broad St -Rear1







253 Broad St - Rear 2



253 Broad St - South





253 Broad St - Street View



III. NEW BUSINESS

- F. The request of Prospect North (Owner), for property located at 815 Lafayette Road whereas relief is needed for the demolition of the existing building and tower and the construction of three 4-story, 24-unit multi-family buildings (72 total units) with first floor parking and associated site improvements, which requires the following: 1) Variance from Section 10.5B33.20 (Front Build-out) to permit a front build out of less than 50% of the total front yard width; and 2) Variance from Section 10.5B33.30 (Façade Orientation) to permit a façade orientation that is not parallel with the front property line. Said property is located on Assessor Map 245 Lot 3 and lies within the Gateway Corridor (G1) District and the FEMA 100yr flood and extended flood hazard area. (LU-23-149)

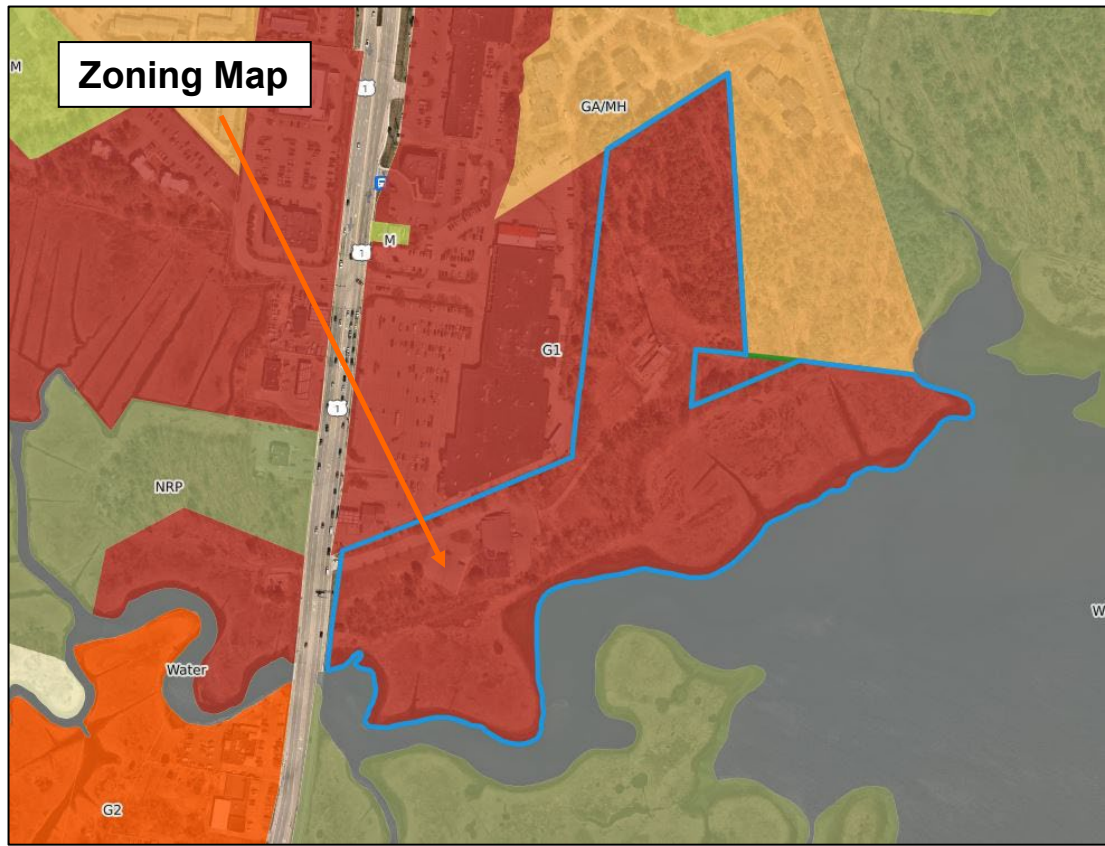
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Commercial Building and Radio Tower	3 4-story, 24-unit apartment buildings	Mixed Uses
<u>Lot area (sq. ft.):</u>	853,776	853,776	10,000 min.
<u>Street Frontage (ft.):</u>	271	271	75 min.
<u>Lot depth (ft.):</u>	971	971	100 min.
<u>Front Yard (ft.):</u>	>90	90	70-90 max.
<u>Left Yard (ft.):</u>	NA	56	15 min.
<u>Right Yard (ft.):</u>	NA	>15	15 min.
<u>Rear Yard (ft.):</u>	NA	>20	20 min.
<u>Height (ft.):</u>	NA	50	50 max.
<u>Building Coverage (%)</u>	NA	3.6	50 max.
<u>Open Space Coverage (%)</u>	NA	91	20 min.
<u>Front Lot Line Build Out (%)</u>	NA	0	50
<u>Façade Orientation</u>	NA	Perpendicular	Parallel
<u>Parking</u>	118	118	109
<u>Estimated Age of Structure:</u>	NA	Variance request(s) shown in red.	

Other Permits/Approvals Required

- Planning Board Site Plan Review/Conditional Use Permit

Neighborhood Context



Previous Board of Adjustment Actions

No previous BOA history found.

Planning Department Comments

The applicant is proposing to demolish the existing commercial building and tower along Sagamore Creek and to construct three 4-story, 24-unit multi-family buildings (72 total units) with first floor parking. The property is located in the Gateway (G1) District and will require variances for the following deviations from the general standards for all buildings and development in the gateway neighborhood mixed use districts:

- 1) Section 10.5B33.20 (Front Build-Out) – to permit a front build-out of less than 50% of the total front yard width.
- 2) Section 10.5B33.30 (Façade Orientation) – to permit a front façade orientation that is not parallel with a front property line.

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.

PROSPECT NORTH 815, LLC
APPLICATION FOR VARIANCE

I. INTRODUCTION

The property subject to this application is located at 815 Lafayette Road in Portsmouth, New Hampshire and is depicted on the Portsmouth City Tax Maps as Map 245, Property 3 (hereinafter the “Property”). The Property is located in the Gateway (G1) District. The Property is owned by the Applicant and contains the former WHEB radio station which no longer operates at this location and contains approximately 19.6 acres. The Property is bound to the west by Route 1 and the abutting Lafayette Plaza shopping center property, to the north and east by the Winchester Place property and to the south by Sagamore Creek.

The proposed project consists of the demolition of the existing building and tower along Sagamore Creek and the construction of three 4-story, 24-unit multi-family buildings (72 total units) with first floor parking. The project will include associated site improvements such as parking, pedestrian access, community space in the form of a park with public access, utilities, stormwater management, lighting and landscaping. The site will be accessed via the driveway on Route 1. The proposed concept will be an environmental improvement from the existing condition. This concept eliminates approximately 12,000 SF of existing impervious surface that is located within the 100-foot wetland buffer by removing the existing building, tower and pavement located along Sagamore Creek. Almost all of the previously disturbed areas will be re-established with vegetation to provide buffer enhancement.

The frontage of the Property is burdened by a certain Drainage Easement, as shown on the attached plan, and by a 100-foot wetland buffer that cannot be built within. Thus, the Applicant is limited to only 106’ of usable frontage. Within the City of Portsmouth Zoning Ordinance, Section 10.5B33.20 requires a front property line build out of 50% for residential building types. The front property line buildout is defined as the width of the front façade of the building or buildings as a percentage of the total property width of the front yard. In this case, the Property has 276’+/- of front yard property width, which would require 138’ of façade build out. Due to the unique characteristic of the Property with its odd shape, with a narrow portion of land that serves as a front yard and given an existing DOT drainage easement and the 100-foot wetland buffer along the front property line, the Property has only 114’+/- of “usable” front yard width, where 58’+/-, or 51% of useable front yard will be built out. The remainder of the usable front yard width is to provide safe vehicular and pedestrian access to the Property.

II. REQUEST OF THE APPLICANT FOR VARIANCES

For the purposes set forth herein, the Applicant is requesting the following variances:

- 1. Relief from 10.5B33.20 (Front Build-Out)** within the Portsmouth Zoning Ordinance to permit a front build out of less than 50% of the total front yard width.

Rationale for Request: This parcel is unique given its odd shape which is with a narrow portion of land that serves as a front yard and given an existing DOT drainage easement and the 100-foot wetland buffer. Given these restrictions and the need to locate adequate

and safe access to the Property, the relief is reasonable and necessary to avoid building within the DOT drainage easement and/or the 100-foot wetland buffer.

2. **Relief from** 10.5B33.30 (Façade Orientation) within the Portsmouth Zoning Ordinance to permit a front façade orientation that is not parallel with the front property line.

Rationale for Request: This parcel is unique given its odd shape which is with a narrow portion of land that serves as a front yard and given an existing DOT drainage easement and the 100-foot wetland buffer. Given these unique restrictions, the orientation of the proposed buildings will be angled in a way that will not start with a façade that will be parallel to the front property line, resulting in a single orientation, which will present as a typical building structure when viewed by the general public from Lafayette Road.

III. VARIANCE CRITERIA

New Hampshire RSA 674:33, I (a)(2) and Section 10.233 of the Portsmouth Zoning Ordinance sets forth five criteria upon which variances may be granted. The application of these criteria to the Applicant's proposal is discussed hereafter and applicable to both variances requested by the Applicant.

A. Granting the variances will not be contrary to the public interest.

To be contrary to the public interest or injurious to public rights, the variances must unduly and in a marked degree conflict with the basic zoning objectives of the ordinance. See *Chester Rod & Gun Club*, 152 N.H. at 581. In making the determination, the Board should determine whether the variance would “alter the essential character of the locality or threaten public health, safety or welfare.”

Section 10.121 of the Portsmouth Zoning Ordinance states that, “[t]he purpose of this Ordinance is to promote the health, safety and general welfare of Portsmouth and its region in accordance with the City of Portsmouth Master Plan.

Granting the variance would result in the maximum, and only, front build-out and accessway that is possible given the unique shape of the Property. The wetland buffer represents a greenway that is visible to the public and, as such, the build-out along the frontage will present naturally as a maximum build-out, satisfying the intent of the zoning provision. In addition, with removal of approximately 12,000 SF of impervious parking and a structure currently in the 100-foot wetland buffer, the public interests are enhanced. In light of the foregoing, it is respectfully submitted that the grant of the variance will not alter the essential character of the neighborhood. There is no negative aspect of the request that could threaten public health, safety or welfare.

B. The spirit of the ordinance is observed.

Given that the front-buildout and orientation of the front building will remain symmetrical with the remainder of the necessary orientation of the proposed buildings, the spirit of the ordinance, which promotes orderly, rather than disjointed construction, will be observed. In addition, the removal of existing encroachments within the 100-foot wetland buffer serves the spirit and intent of the zoning ordinance. Further, when considering whether the granting of the

variances will observe the spirit of the ordinance, the New Hampshire Supreme Court has indicated this review is substantially related, and similar to the review regarding public interest. See *Harborside Associates, L.P. v. Parade Resident Hotel, LLC*, 162 NH 508, 514 (2011). Thus, the Applicant submits that the rationale set forth above regarding “public interest” is equally applicable to the Board’s review as to whether the spirit of the ordinance is observed with the grant of the variance.

C. The granting of the requested relief will do substantial justice.

In *Malachy Glen Associates v. Town of Chester*, 155 N.H. 102, 109 (2002), the New Hampshire Supreme Court held that, “the only guiding rule [in determining whether the requirement for substantial justice is satisfied] is that any loss to the individual that is not outweighed by a gain to the general public is an injustice.” In this instance, the grant of the variance would result in substantial justice as that would allow the proposed permitted residential uses on the Property, with the relief protecting the wetlands along the frontage of the Property and removal of approximately 12,000 SF of impervious parking and structures within the 100-foot wetland buffer within the Property. The proposed build-out of the Property and orientation as to the front lot line does not create a negative aspect from which the public will suffer. Thus, denial of the variances would result in a loss to the Applicant that is not outweighed by any gain to the general public. As such, granting of the requested relief would result in substantial justice.

D. Granting the variance will not result in the diminution on value of the surrounding properties.

It is respectfully submitted that all surrounding properties have a value associated with them which is premised upon the existence of the existing buildings within the surrounding area. In this instance, it is believed, and therefore averred, that the aesthetic development of the proposed permitted residential uses on the Property and considering the existing uses of the Property, permitting less of a front yard build-out and non-parallel orientation of the buildings will not result in a diminution of surrounding property values. Currently, there exists structures constructed on a piece-by-piece basis with an inconsistent design. The proposed structures will represent an upgraded and uniform design of permitted uses.

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

An unnecessary hardship exists when, owing to special conditions of the property that distinguish it from other property, no fair and substantial relationship exists between the public purposes of the ordinance provisions and the specific application of those provisions to the property and the proposed use is a reasonable one. (Section 10.233.31 of Zoning Ordinance).

As set forth herein, the Property is distinguished from other properties in the area as, primarily due to the existing wetland buffer, the usable portion of the Property is narrowly shaped at the front line and the Property is narrow as is follows Sagamore Creek.

The proposed structures will not pose a conflict with the general purpose of the ordinance as the uses proposed are permitted, inclusive of the density requirements. As set forth herein, the project will result in the removal of approximately 12,000 SF of impervious encroachment of

parking and structures within the 100-foot wetland buffer. The variance would allow for over 50% front build-out of the usable frontage and would avoid the structures being in the existing front line 100-foot wetland buffer and NH DOT Drainage Easement. The orientation of the buildings would be symmetrical to the extent the facade of the first building is not parallel to the front line. The spirit of the ordinance is not compromised at all with the grant of the variances, and, as such, there is no substantial need and/or relationship between the spirit of the ordinance and the imposition of those restrictions for this Property and proposed development.

The Applicant respectfully submits, for the reasons set forth herein, the denial of the requested variance would result in an unnecessary hardship to the Applicant.

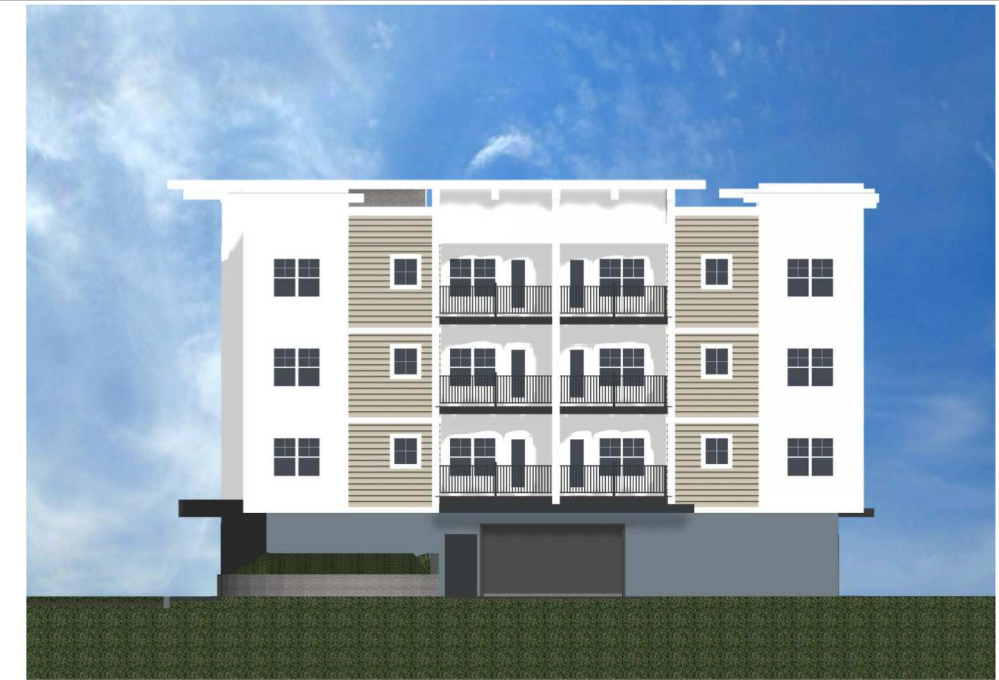
For the specific reasons set forth above, the Applicant respectfully submits that the uses proposed are reasonable.

IV. CONCLUSION

For the reasons set forth above Prospect North 815, LLC respectfully requests that the relief requested herein be granted.



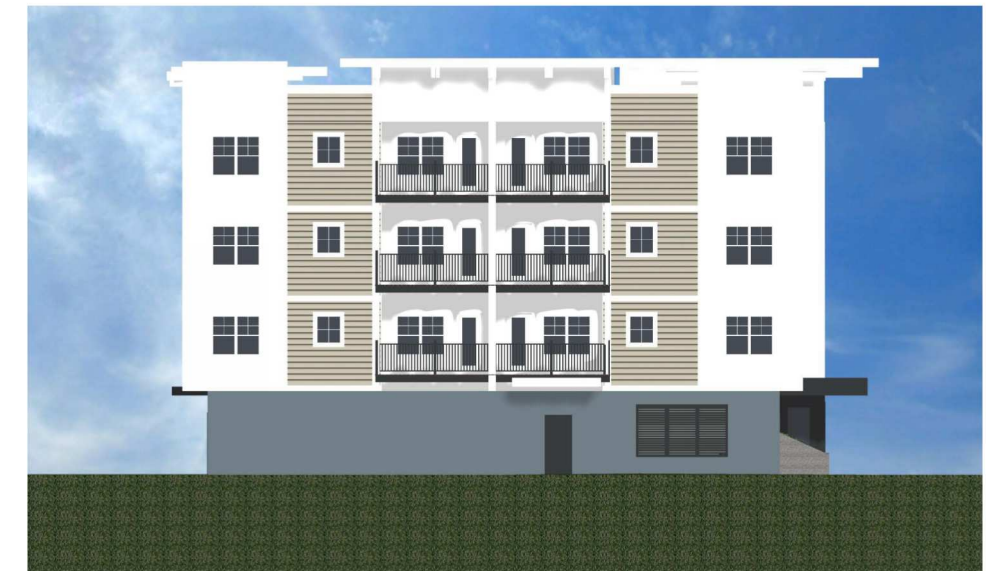
SOUTH ELEVATION
SCALE: 1" = 10'-0"



WEST ELEVATION
SCALE: 1" = 10'-0"



NORTH ELEVATION
SCALE: 1" = 10'-0"



EAST ELEVATION
SCALE: 1" = 10'-0"



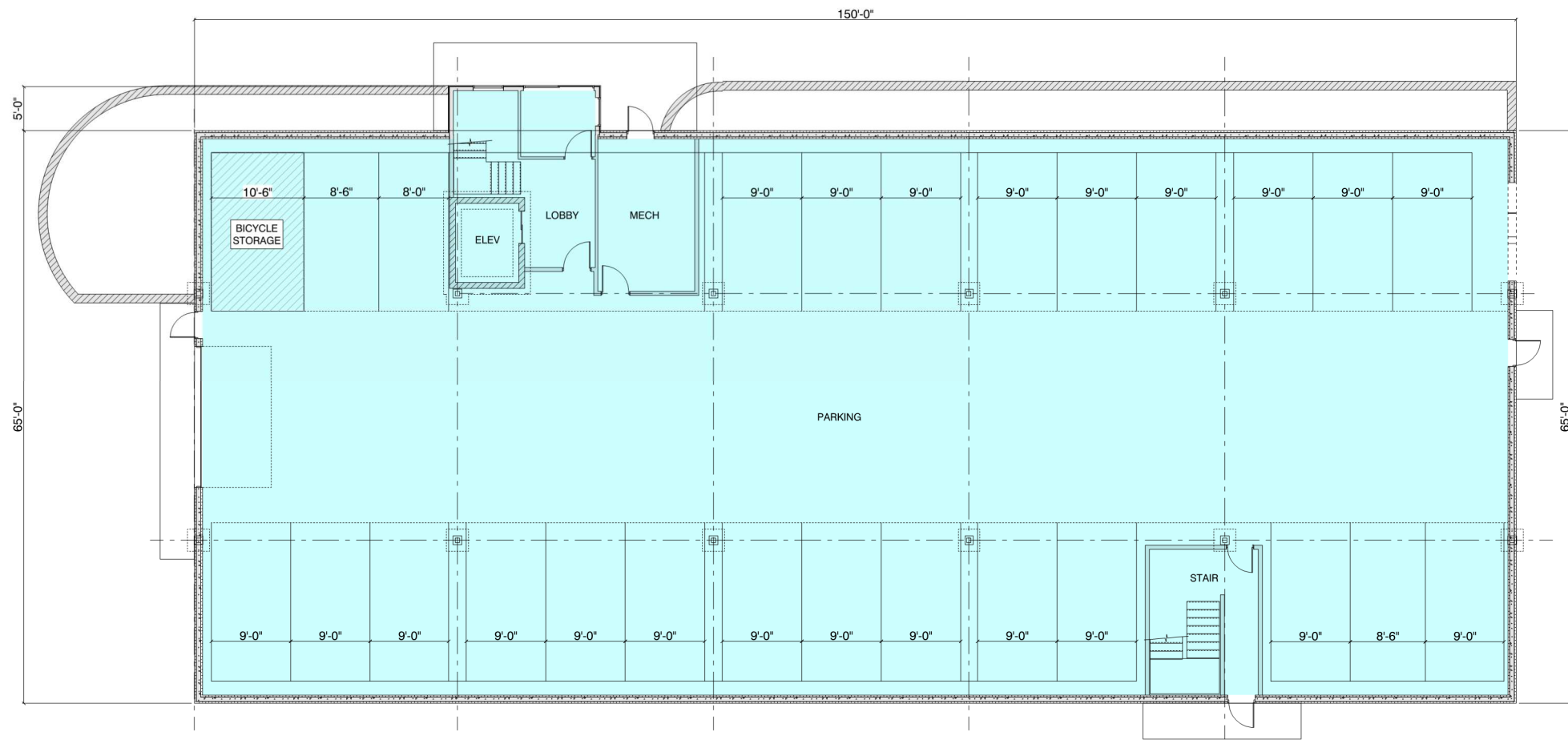
PROPOSED APARTMENT BUILDING - 815 LAFAYETTE ROAD
PORTSMOUTH, NEW HAMPSHIRE

BOA SUBMISSION

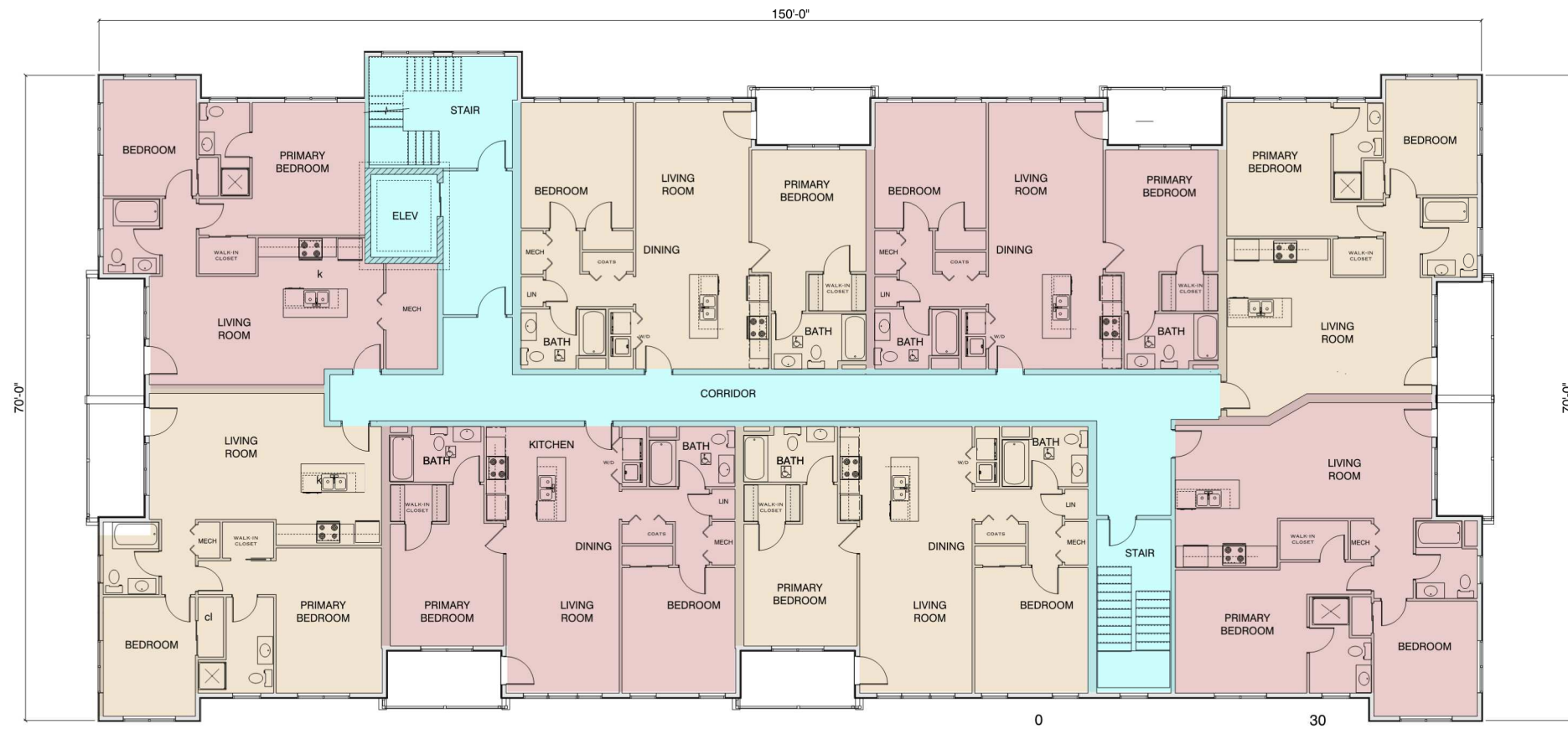
8/29/2023

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GARAGE LEVEL PLAN
SCALE: 1/8" = 1'-0"



TYPICAL FLOOR PLAN 2-4
SCALE: 1/8" = 1'-0"

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2