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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: 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

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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.

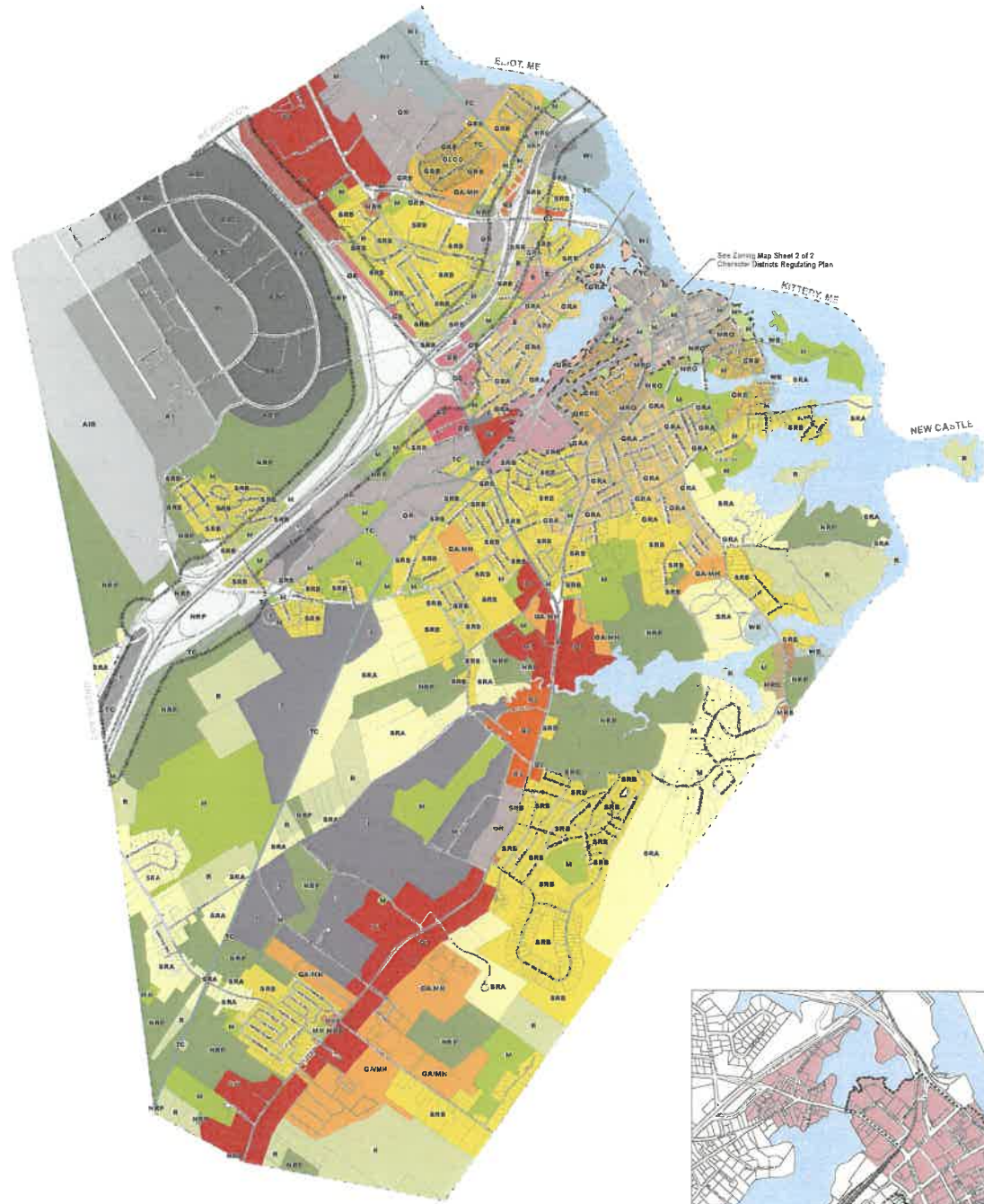
Enclosure 1



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

City of Portsmouth Zoning Map

Sheet 1 of 2



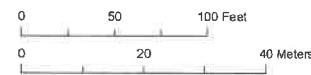
- Legend**
- Character Districts**
 [Symbol] Character-Based Zoning Area
 (Refer to Zoning Map Sheet 2 of 2 Character Districts Regulating Plan)
- Residential Districts**
- R Single Residence A
 - SRB Single Residence B
 - GRA General Residence A
 - GRB General Residence B
 - GRC General Residence C
 - GAMH Garden Apartment/Mobile Home Park
- Mixed Residential Districts**
- MRC Mixed Residential Office
 - MRS Mixed Residential Business
 - GI Gateway Center
 - GZ Gateway Center
- Business Districts**
- GB General Business
 - B Business
 - YWB Waterfront Business
- Industrial Districts**
- OR Office Research
 - I Industrial
 - WI Waterfront Industrial
- Airport Districts**
- AR Airport
 - AI Airport Industrial
 - PI Pease Industrial
 - ABC Airport Business Commercial
- Other Districts**
- M Municipal
 - NRP Natural Resource Protection
 - TC Transportation Corridor
- Overlay Districts**
- OLCD Overlay Landing Overlay District
 - HNOC Highway Noise Overlay District
 - DDO Downtown Overlay District (See Inset Map and Zoning Map Sheet 2 of 2 Character Districts Regulating Plan)
 - HD Historic District (See Inset Map)
 - FP Flood Plain District (See FEMA Flood Insurance Rate Map)

Amendments

- June 21, 2018 - Repeal of Assessor's Map 201, Lots 8-8-B, Baginette Drive from Waterfront Business (WB) to Single Residence (R) District.
- October 14, 2018 - Update Assessor's Map 205, Lot 17, 2700 Lyndale Road from Municipal Office (MO) to Office Research (OR) District.
- June 6, 2019 - Repeal of Assessor's Map 140, Lots 1-4, 1000-1005, 1010-1015, 1020-1025, 1030-1035, 1040-1045, 1050-1055, 1060-1065, 1070-1075, 1080-1085, 1090-1095, 1100-1105, 1110-1115, 1120-1125, 1130-1135, 1140-1145, 1150-1155, 1160-1165, 1170-1175, 1180-1185, 1190-1195, 1200-1205, 1210-1215, 1220-1225, 1230-1235, 1240-1245, 1250-1255, 1260-1265, 1270-1275, 1280-1285, 1290-1295, 1300-1305, 1310-1315, 1320-1325, 1330-1335, 1340-1345, 1350-1355, 1360-1365, 1370-1375, 1380-1385, 1390-1395, 1400-1405, 1410-1415, 1420-1425, 1430-1435, 1440-1445, 1450-1455, 1460-1465, 1470-1475, 1480-1485, 1490-1495, 1500-1505, 1510-1515, 1520-1525, 1530-1535, 1540-1545, 1550-1555, 1560-1565, 1570-1575, 1580-1585, 1590-1595, 1600-1605, 1610-1615, 1620-1625, 1630-1635, 1640-1645, 1650-1655, 1660-1665, 1670-1675, 1680-1685, 1690-1695, 1700-1705, 1710-1715, 1720-1725, 1730-1735, 1740-1745, 1750-1755, 1760-1765, 1770-1775, 1780-1785, 1790-1795, 1800-1805, 1810-1815, 1820-1825, 1830-1835, 1840-1845, 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10030-10035, 10040-10045, 10050-10055, 10060-10065, 10070-10075, 10080-10085, 10090-10095, 10100-10105, 10110-10115, 10120-10125, 10130-10135, 10140-10145, 10150-10155, 10160-10165, 10170-10175, 10180-10185, 10190-10195, 10200-10205, 10210-10215, 10220-10225, 10230-10235, 10240-10245, 10250-10255, 10260-10265, 10270-10275, 10280-10285, 10290-10295, 10300-10305, 10310-10315, 10320-10325, 10330-10335, 10340-10345, 10350-10355, 10360-10365, 10370-10375, 10380-10385, 10390-10395, 10400-10405, 10410-10415, 10420-10425, 10430-10435, 10440-10445, 10450-10455, 10460-10465, 10470-10475, 10480-10485, 10490-10495, 10500-10505, 10510-10515, 10520-10525, 10530-10535, 10540-10545, 10550-10555, 10560-10565, 10570-10575, 10580-10585, 10590-10595, 10600-10605, 10610-10615, 10620-10625, 10630-10635, 10640-10645, 10650-10655, 10660-10665, 10670-10675, 10680-10685, 10690-10695, 10700-10705, 10710-10715, 10720-10725, 10730-10735, 10740-10745, 10750-10755, 10760-10765, 10770-10775, 10780-10785, 10790-10795, 10800-10805, 10810-10815, 10820-10825, 10830-10835, 10840-10845, 10850-10855, 10860-10865, 10870-10875, 10880-10885, 10890-10895, 10900-10905, 10910-10915, 10920-10925, 10930-10935, 10940-10945, 10950-10955, 10960-10965, 10970-10975, 10980-10985, 10990-10995, 11000-11005, 11010-11015, 11020-11025, 11030-11035, 11040-11045, 11050-11055, 11060-11065, 11070-11075, 11080-11085, 11090-11095, 11100-11105, 11110-11115, 11120-11125, 11130-11135, 11140-11145, 11150-11155, 11160-11165, 11170-111



- 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

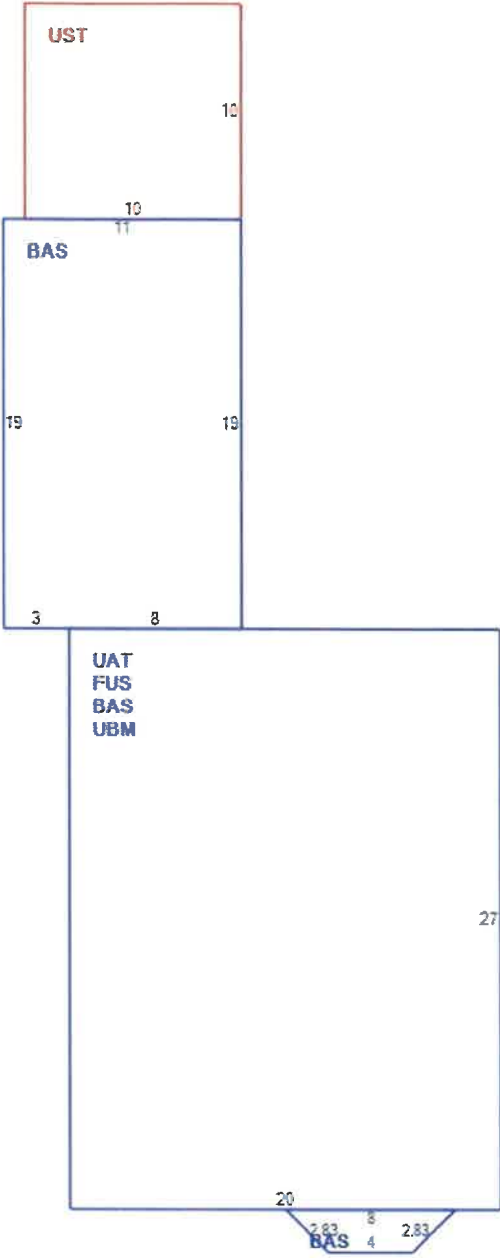
Building Attributes	
Field	Description
Style:	Conventional
Model	Residential
Grade:	C+
Stories:	2
Occupancy	1
Exterior Wall 1	Asbest Shingle
Exterior Wall 2	
Roof Structure:	Gable/Hip
Roof Cover	Asph/F Gls/Cmp
Interior Wall 1	Plastered
Interior Wall 2	
Interior Flr 1	Pine/Soft Wood
Interior Flr 2	Carpet
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:

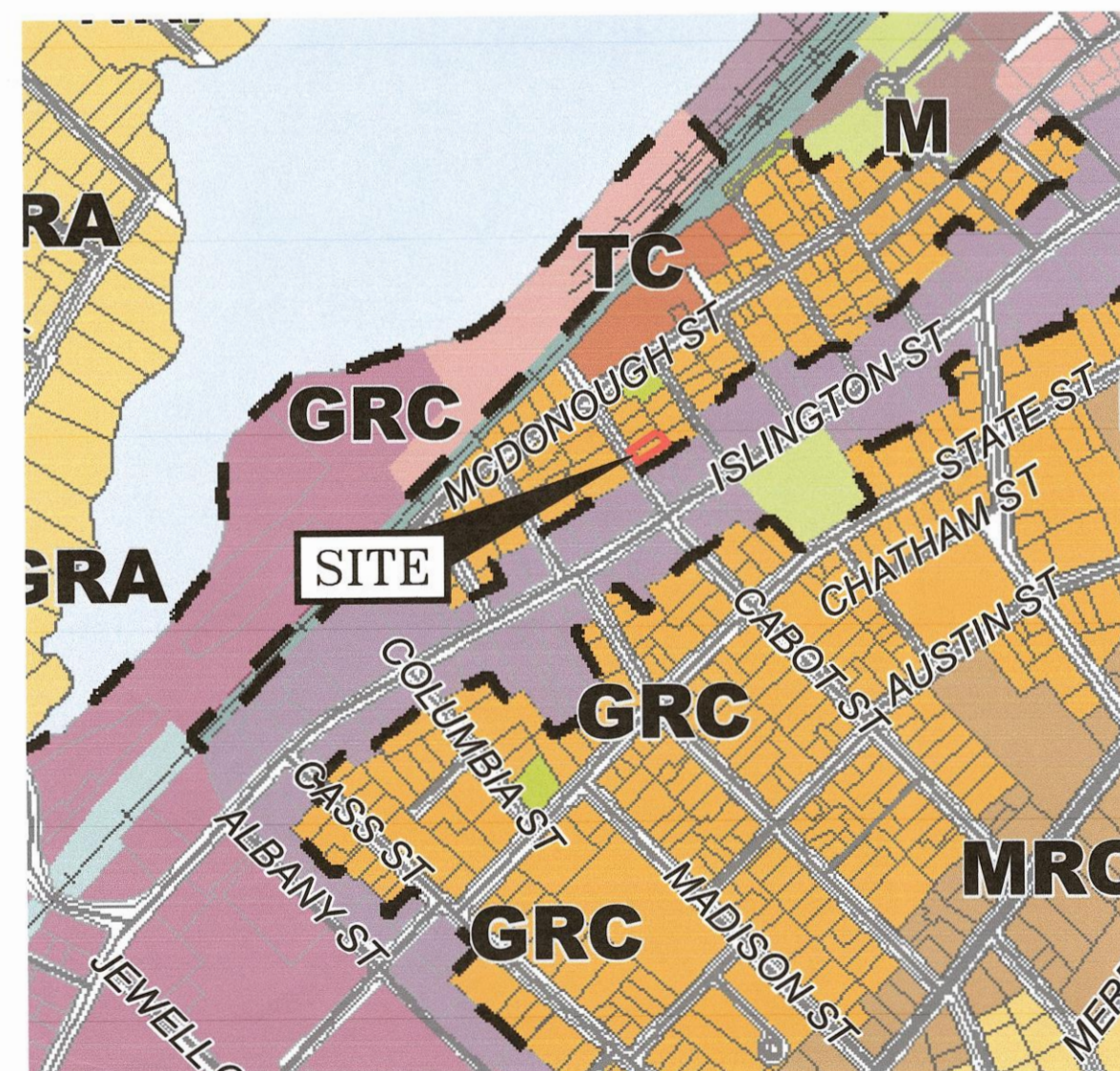
AMBIT ENGINEERING, INC.
A DIVISION OF HALEY WARD, INC.
200 GRIFFIN ROAD, UNIT 3
PORTSMOUTH, N.H. 03801
Tel. (603) 430-9282
Fax (603) 436-2315

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

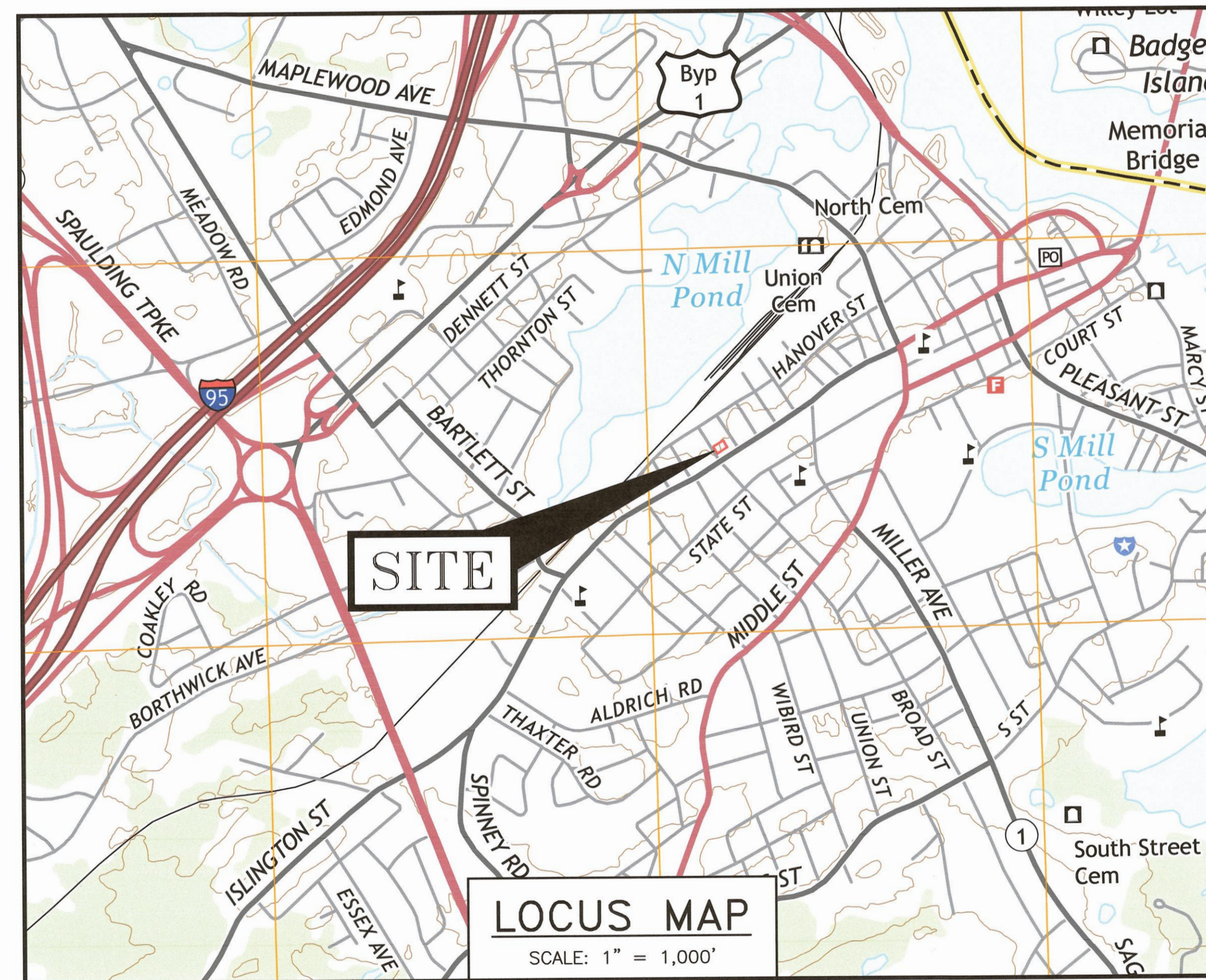
Character Districts
[---] Character-Based Zoning Area
(Refer to Zoning Map Sheet 2 of 2
Character Districts Regulating Plan)

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

Mixed Residential Districts

- MRO Mixed Residential Office
- MRB Mixed Residential Business



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



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.



200 Griffin Road, Unit 3
Portsmouth, NH 03801
603.430.9282
WWW.HALEYWARD.COM
REV 8-3-23
PLAN SET SUBMITTAL DATE: 24 JULY 2023

APPROVED BY THE PORTSMOUTH ZONING BOARD

CHAIRMAN _____ DATE _____



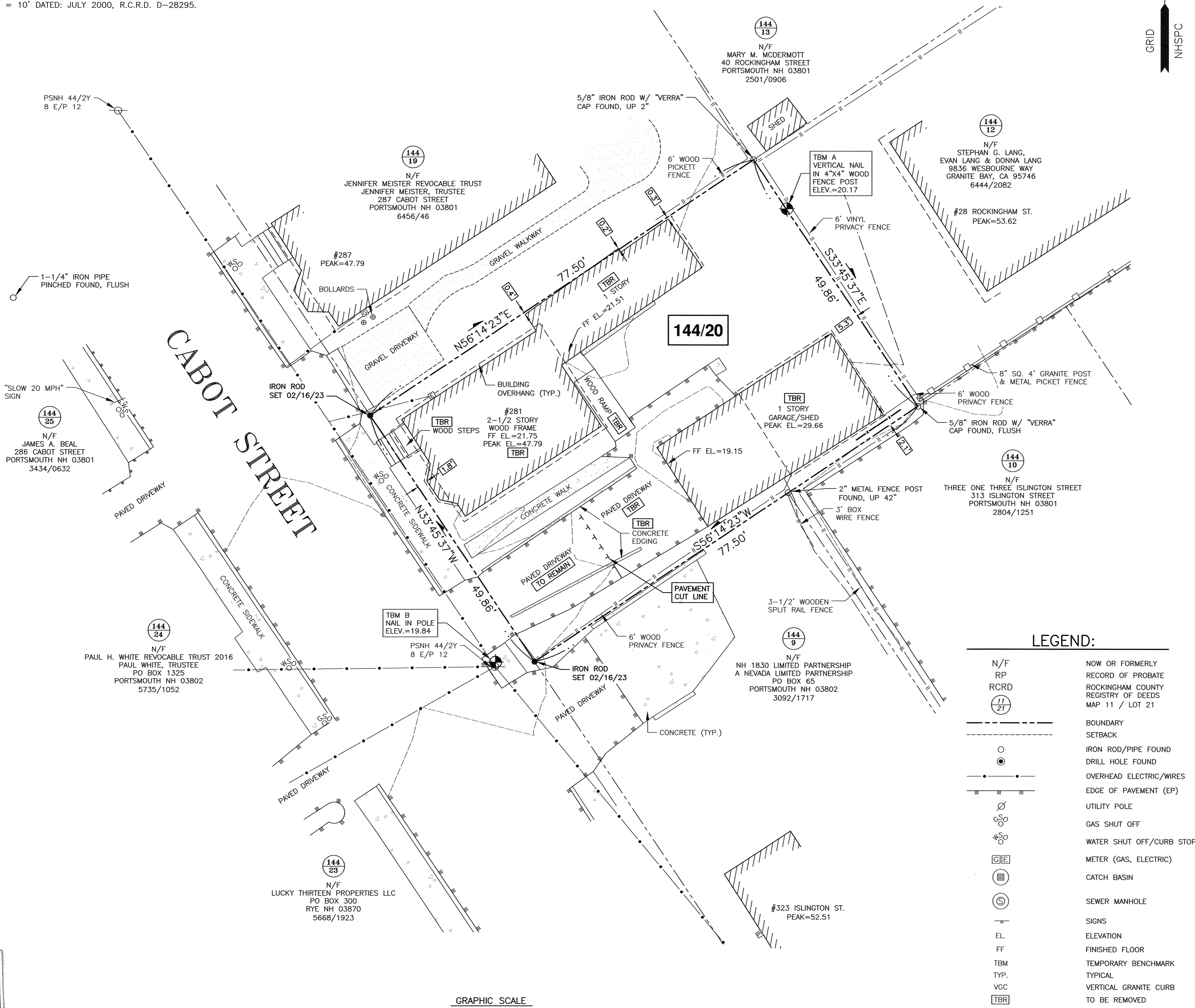
LOCATION MAP SCALE: 1"=200'

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:

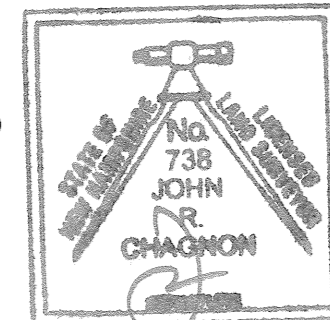
- 1) EASEMENT PLAN OF LAND IN PORTSMOUTH, NH PREPARED FOR GETTY REALTY CORP., SCALE: 1"=20', DATED: 4/20/04, PREPARED BY HANCOCK ASSOCIATES, R.C.R.D. PLAN C-31604
- 2) PLAN OF ROCK FIELD IN THE TOWN OF PORTSMOUTH, SCALE: 40 FEET TO 1 INCH, DATED: 1815, PREPARED BY BENJAMIN AKERMAN, R.C.R.D. PLAN# 00562
- 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.



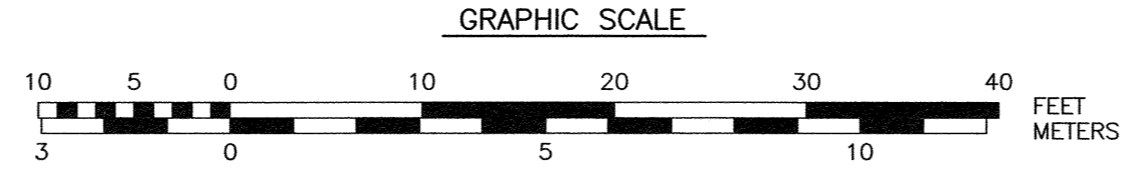
LEGEND:

- N/F NOW OR FORMERLY
- RP RECORD OF PROBATE
- RCRD ROCKINGHAM COUNTY
- 11/21 REGISTRY OF DEEDS
- 21 MAP 11 / LOT 21
- BOUNDARY
- - - SETBACK
- IRON ROD/PIPE FOUND
- DRILL HOLE FOUND
- OVERHEAD ELECTRIC/WIRES
- EDGE OF PAVEMENT (EP)
- UTILITY POLE
- GAS SHUT OFF
- WATER SHUT OFF/CURB STOP
- METER (GAS, ELECTRIC)
- CATCH BASIN
- SEWER MANHOLE
- SIGNS
- EL ELEVATION
- FF FINISHED FLOOR
- TBM TEMPORARY BENCHMARK
- TYP. TYPICAL
- VGC VERTICAL GRANITE CURB
- TBR TO BE REMOVED

"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 5.24.23



AMBIT ENGINEERING, INC.
A DIVISION OF HALEY WARD, INC.
200 Griffin Road, Unit 3
Portsmouth, NH 03801
603.430.9282
WWW.HALEYWARD.COM

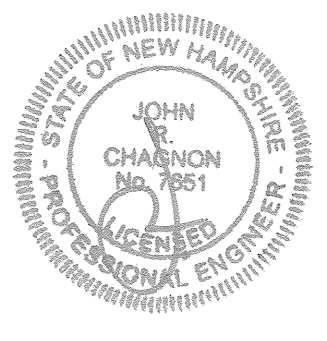
- NOTES:**
- 1) PARCEL IS SHOWN ON THE CITY OF PORTSMOUTH ASSESSOR'S MAP 144 AS LOT 20.
 - 2) OWNERS OF RECORD:
KARYN S. DENICOLA REVOCABLE TRUST OF 2015
KARYN S. DENICOLA TRUSTEE
198 ISLINGTON STREET, APT. 4
PORTSMOUTH, NH 03801
6461/1119
 - 3) PARCEL IS NOT IN A SPECIAL FLOOD HAZARD AREA AS SHOWN ON 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

NO.	DESCRIPTION	DATE
REVISIONS		



SCALE: 1" = 10' JANUARY 2023

EXISTING CONDITIONS & DEMOLITION PLAN C1

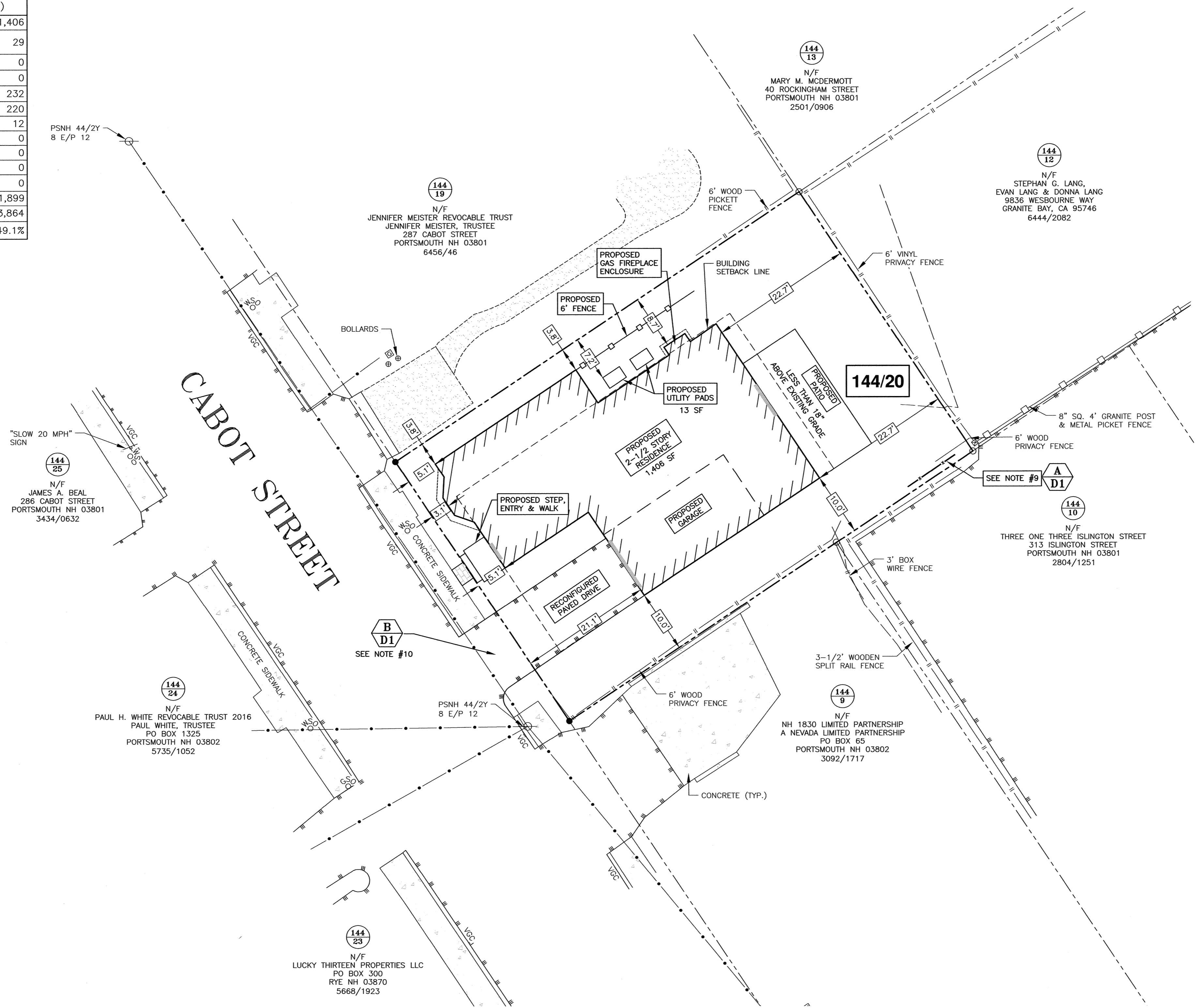
**IMPERVIOUS SURFACE AREAS
(TO PROPERTY LINES)**

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
 6461/1119
 - 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.
 0.0887 ACRES
 - 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

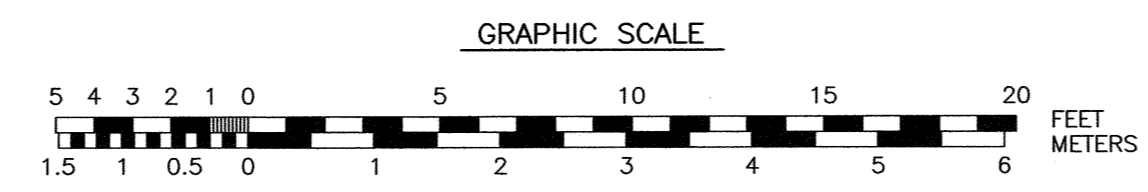
REVISIONS

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

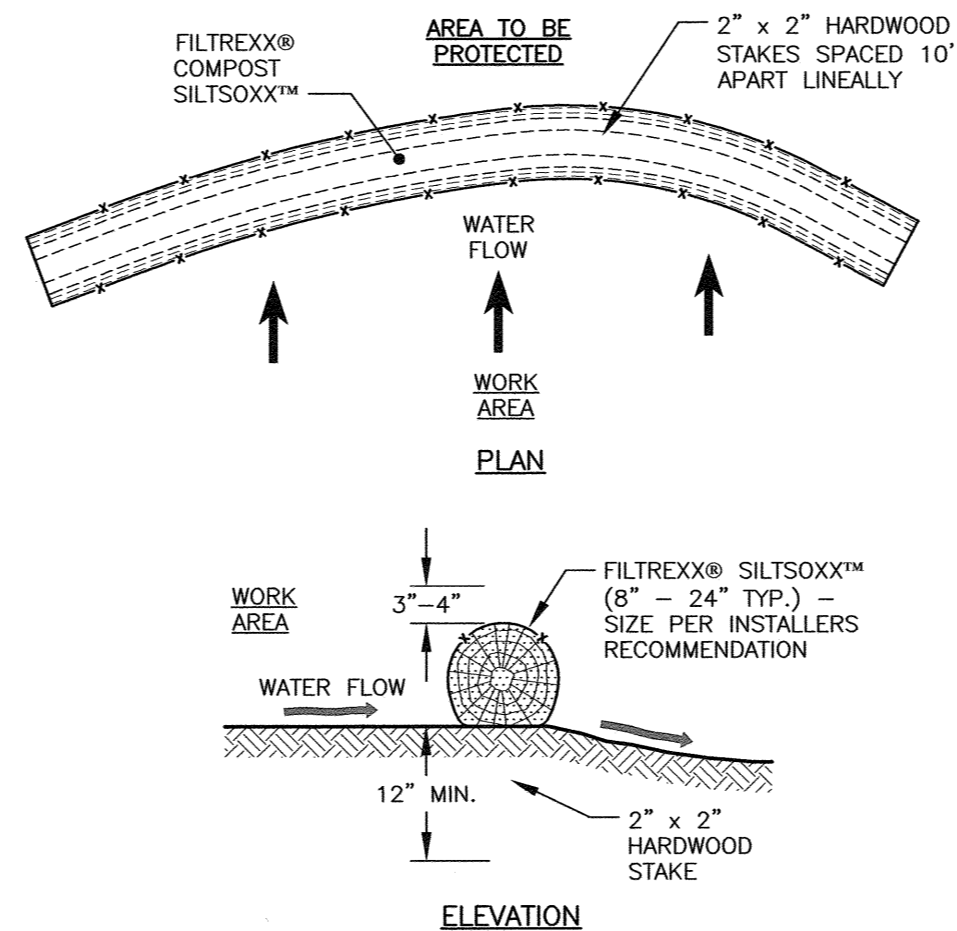
1. FIRE-FIGHTING ACTIVITIES;
2. FIRE HYDRANT FLUSHING;
3. WATERS USED TO WASH VEHICLES WHERE DETERGENTS ARE NOT USED;
4. WATER USED TO CONTROL DUST;
5. POTABLE WATER INCLUDING UNCONTAMINATED WATER LINE FLUSHING;
6. ROUTINE EXTERNAL BUILDING WASH DOWN WHERE DETERGENTS ARE NOT USED;
7. PAVEMENT WASH WATERS 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.



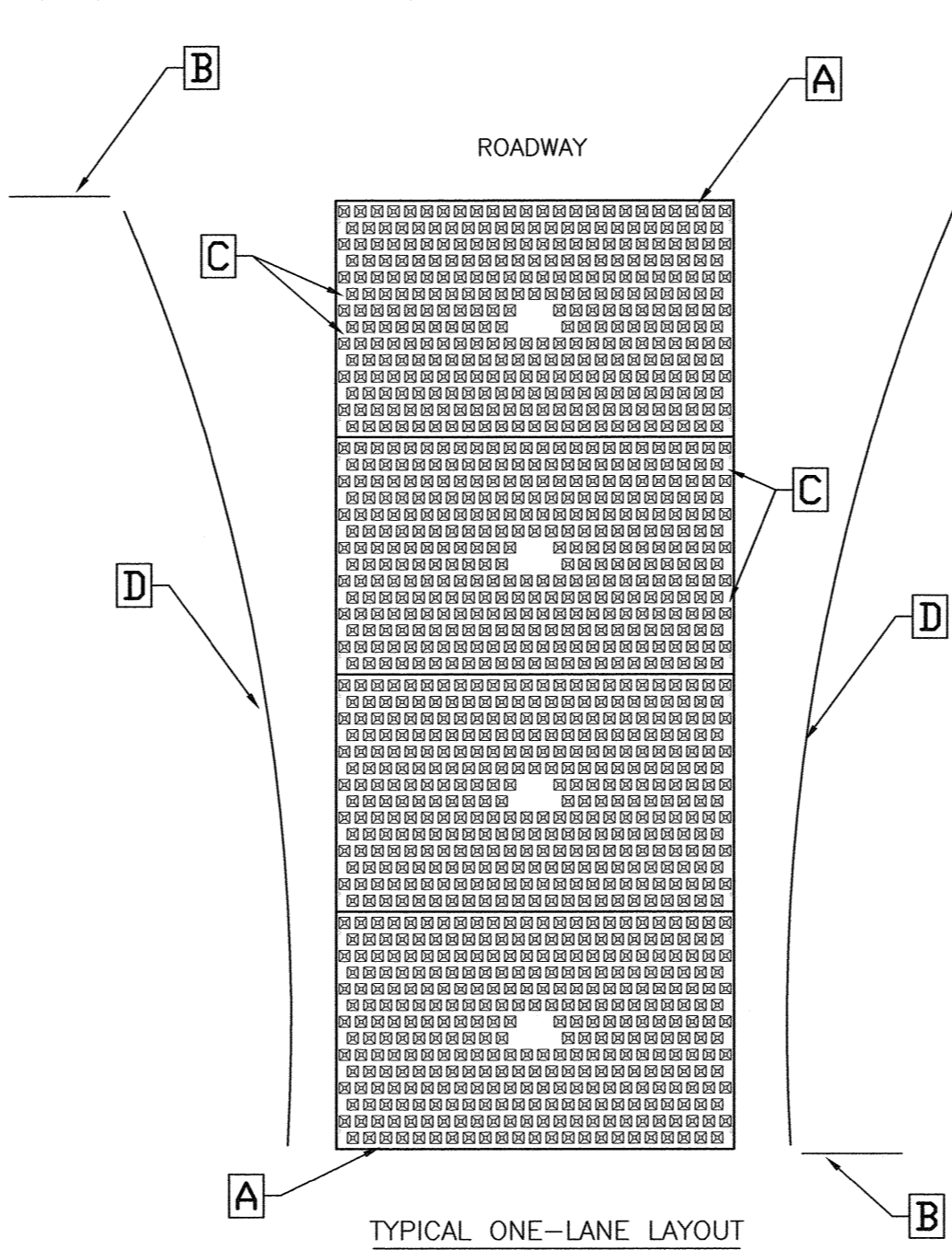
FODS TRACKOUT CONTROL SYSTEM

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:

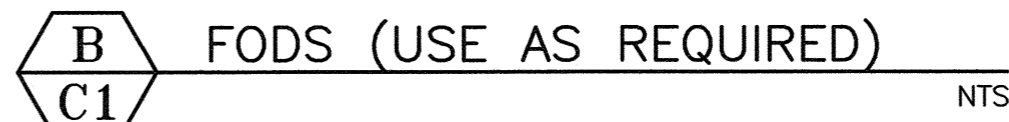
1. THE SITE WHERE THE FODS TRACKOUT CONTROL SYSTEM IS TO BE PLACED SHOULD CORRESPOND TO BEST MANAGEMENT PRACTICES AS MUCH AS POSSIBLE. THE SITE WHERE FODS TRACKOUT CONTROL SYSTEM IS PLACED SHOULD ALSO MEET OR EXCEED THE LOCAL JURISDICTION OR STORM WATER POLLUTION PREVENTION PLAN (SWPPP) REQUIREMENTS.
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. NEXT 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:

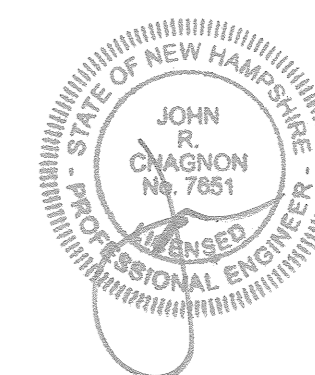
- 1) THE CONTRACTOR SHALL NOTIFY DIG SAFE AT 1-888-DIG-SAFE (1-888-344-7233) AT LEAST 72 HOURS PRIOR TO COMMENCING ANY EXCAVATION ON PUBLIC OR PRIVATE PROPERTY.
- 2) UNDERGROUND UTILITY LOCATIONS ARE BASED UPON BEST AVAILABLE EVIDENCE AND ARE NOT FIELD VERIFIED. LOCATING AND PROTECTING ANY ABOVEGROUND 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.

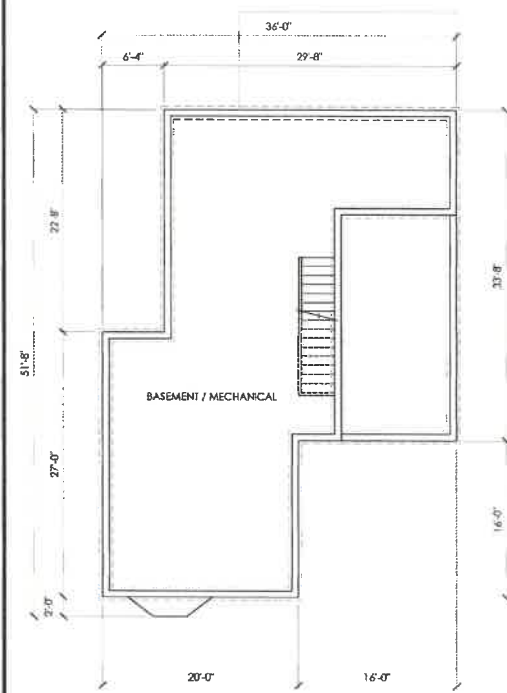
NO.	DESCRIPTION	DATE
1	REVISED NOTES	5/24/23
0	ISSUED FOR COMMENT	5/8/23
REVISIONS		



SCALE: 1" = 10' MAY 2023

EROSION CONTROL NOTES & DETAILS

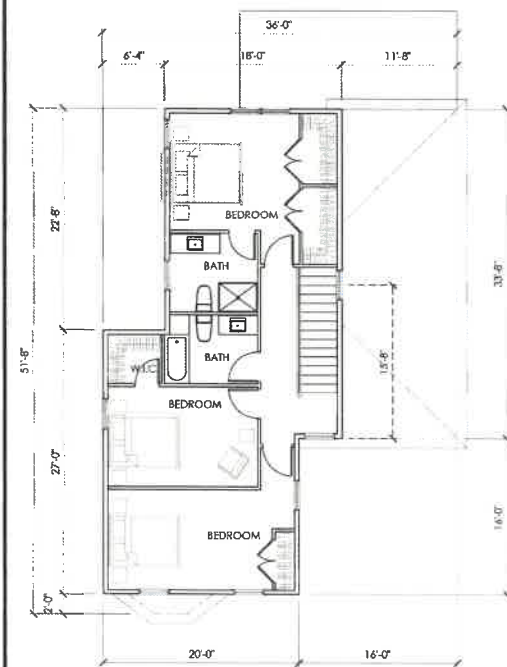
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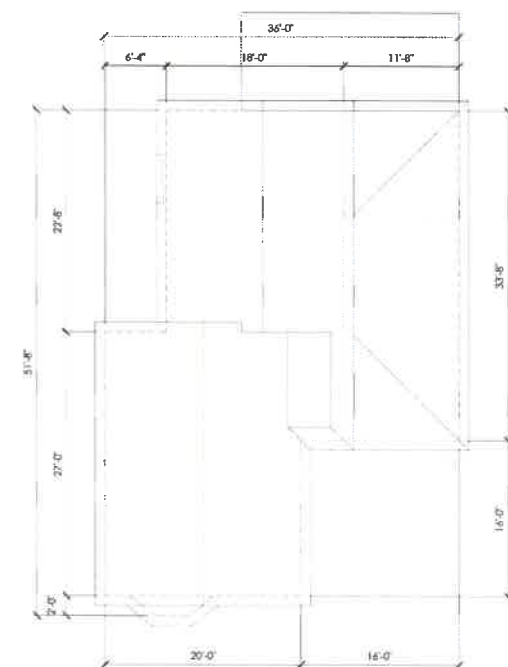
1 LOWER LEVEL PLAN
1/8" = 1'-0"



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

CJ
 CJ ARCHITECTS
 233 VAUGHAN STREET
 SUITE 101
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www.cjarchitects.net

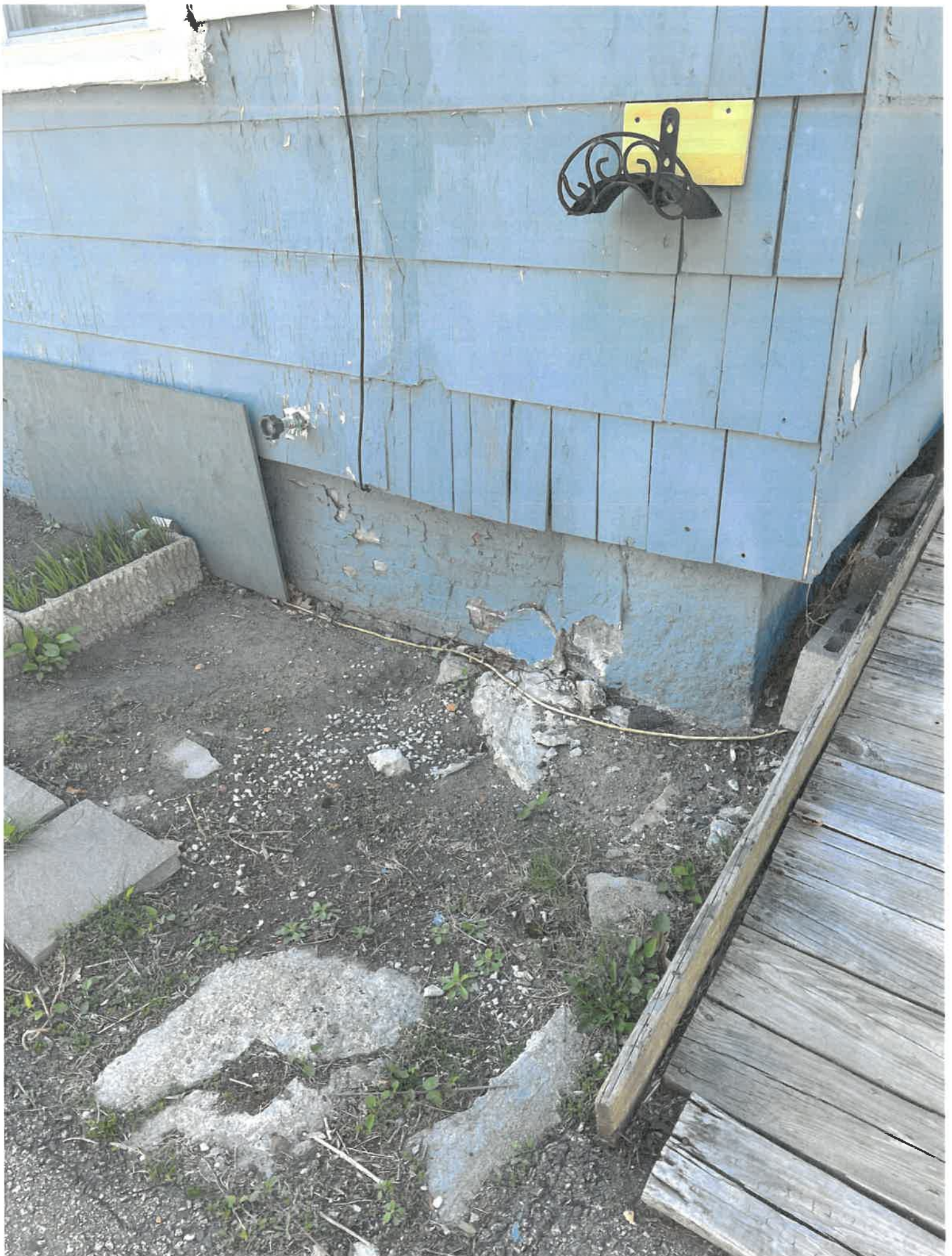
EXISTING &
 PROPOSED
 VIEWS

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

A2







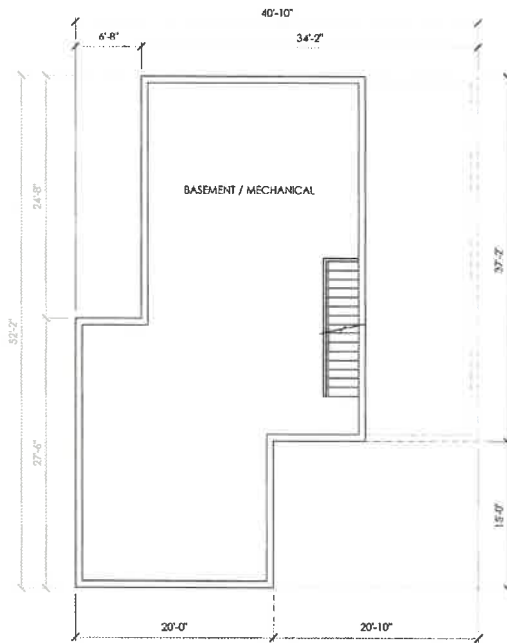




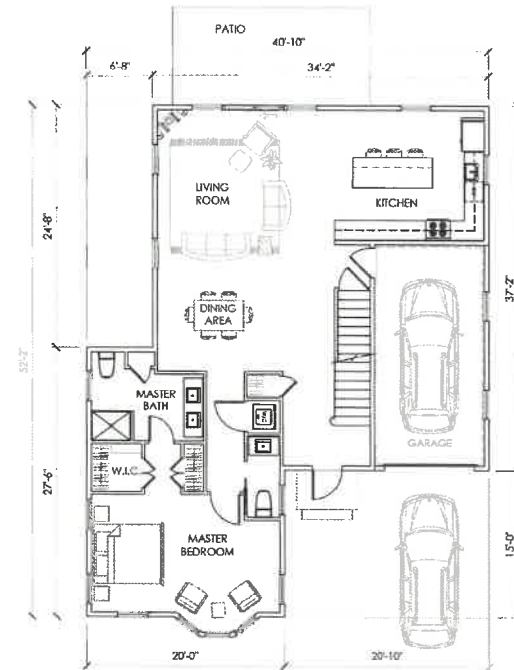








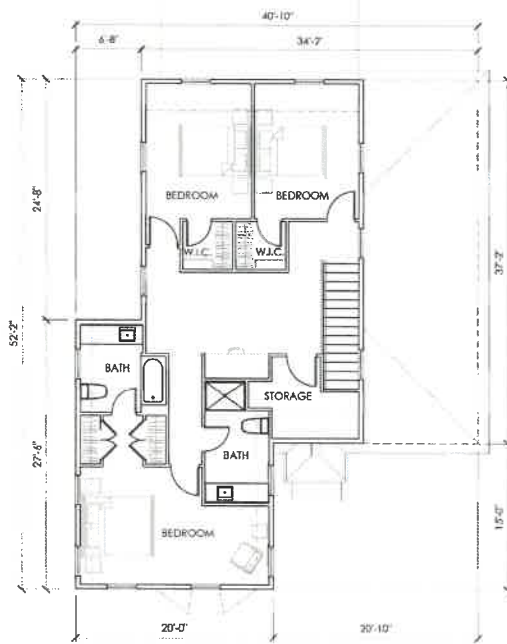
LOWER LEVEL FLOOR PLAN
1/8"=1'-0"



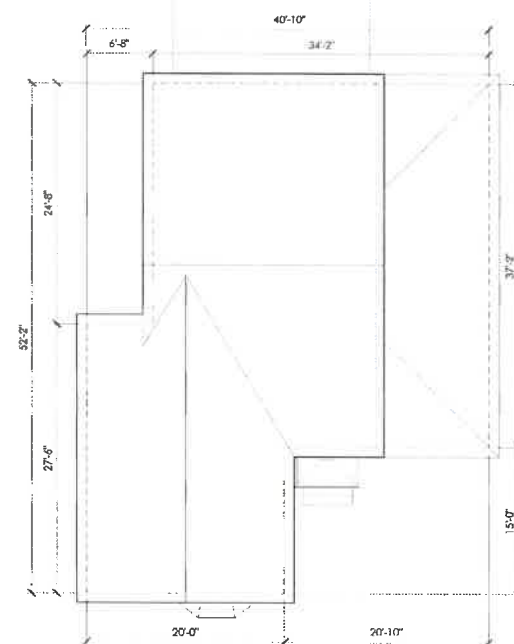
FIRST FLOOR PLAN
1/8"=1'-0"



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
281 CABOT STREET
PORTSMOUTH, NH



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

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
 SUITE 101
 PORTSMOUTH, NH 03801
 (603) 431-2808
 www.cjarchitects.com

EXISTING & PROPOSED VIEWS

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

A2

NOT FOR CONSTRUCTION

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 Rheame; 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. Rheame asked who owned each of the units. Mr. Beaulieu said he did, as the developer and condo association. Mr. Rheame 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. Rheume 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