

**PROSPECT NORTH 815, LLC**  
**APPLICATION FOR VARIANCE**

**I. INTRODUCTION**

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

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

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

**II. REQUEST OF THE APPLICANT FOR VARIANCES**

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

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

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

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

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

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

### **III. VARIANCE CRITERIA**

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

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

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

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

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

#### **B. The spirit of the ordinance is observed.**

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **IV. CONCLUSION**

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







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



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



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



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



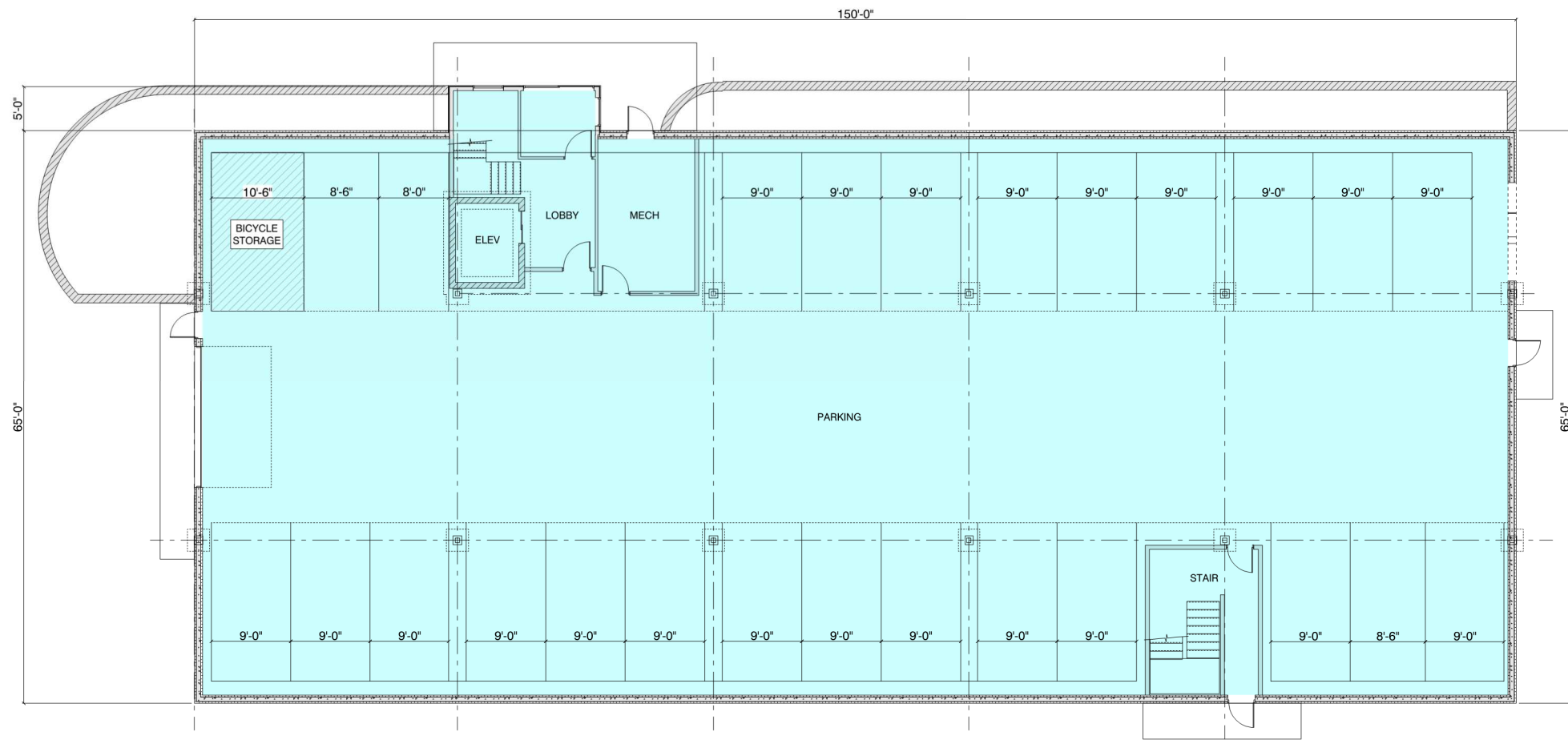
PROPOSED APARTMENT BUILDING - 815 LAFAYETTE ROAD  
PORTSMOUTH, NEW HAMPSHIRE

BOA SUBMISSION

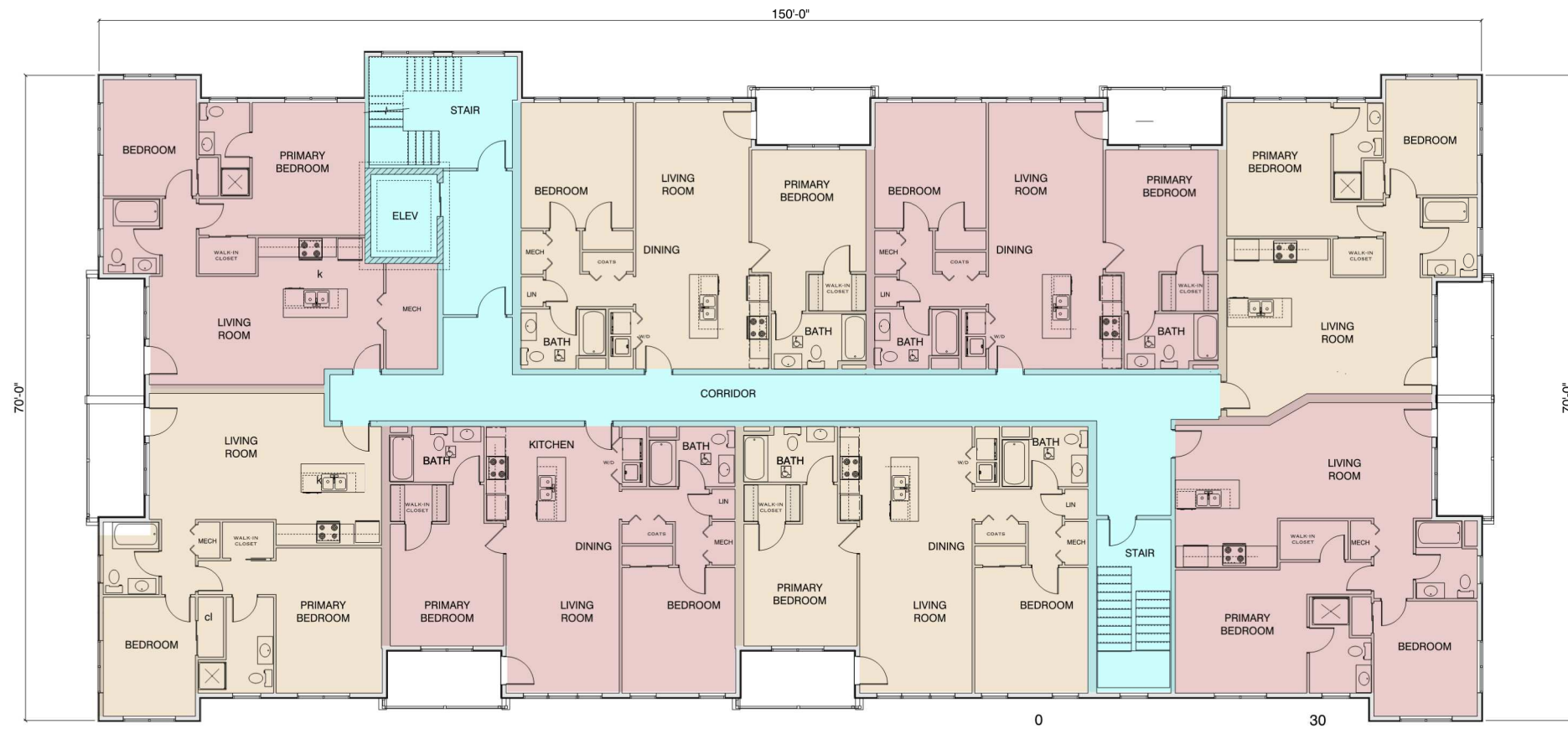
8/29/2023

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



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

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