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January 26, 2022

Arthur Parrott, Chair
Zoning Board of Adjustment
City of Portsmouth
1 Junkins Avenue
Portsmouth, NH 03801

RE: Borthwick Avenue, Tax Map 234, Lot 7-4A
HCA Realty, Inc.

Dear Chair Parrott and Board Members:

Enclosed please find supporting materials to accompany the information submitted via the City's on-line permitting system for variance and special exception relief regarding the proposed remote parking area at the above referenced property.

We respectfully request that this matter be placed on the Board's February 15, 2022 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: HCA Realty, Inc.
Tighe & Bond

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VARIANCE and SPECIAL EXCEPTION APPLICATION FOR
HCA Realty, Inc. and the Portsmouth Regional Hospital (“HCA”, or the “Applicant”, or the
“Hospital” or “Portsmouth Hospital”)

The Applicant proposes to develop a satellite parking lot (the “**Proposed Parking Lot**” or the “**Parking Lot**”) on property it owns across the street from the Hospital on Borthwick Avenue which is identified as City Assessor Map 234, Lot 7-4A (the “**Property**”). To do so, as proposed by the Hospital and depicted on the enclosed Overall Parking Plan¹ and Satellite Parking Lot Plan² from Tighe & Bond, a Variance from Section 10.1113.41 of the Zoning Ordinance to permit a 35.4 ft front setback for the Parking Lot where 50 ft is required, and a Special Exception pursuant to Section 10.1113.20 is required.

A. Project Description and Overview (Applicable to Variance and Special Exception Applications)

Portsmouth Hospital is a 220-bed acute care hospital and is a part of HCA Healthcare, one of the nation’s largest providers of healthcare services. For decades, Portsmouth Hospital has provided essential medical services to the greater Seacoast area and beyond and has cultivated a long-standing community partnership with the City of Portsmouth. One of the region’s largest employers, the Hospital is the only Level II Trauma Center on the Seacoast and it holds several prestigious accreditations to include accreditation as a Chest Pain Center with PCI from the Society of Chest Pain Centers, The Joint Commission’s recognition as one of the Top Performers on Key Quality Measures TM, and accreditation as a Comprehensive Stroke Center. Portsmouth Hospital’s mission has been, and will remain, to serve the Seacoast and broader New Hampshire community through exceptional care and the expansion of services it provides to allow residents to keep their care local, and within New Hampshire.

The Hospital’s primary campus is situated at 333 Borthwick Avenue which is further identified as City Assessor Map 240, Lot 2-1, is approximately 20.87 acres in size, and is located in the City’s Office Research Zoning District (the “OR District”) (the “Hospital Property”). The Hospital Property is owned by HCA Health Services of New Hampshire Inc., C/O Portsmouth Regional Hospital. HCA³ also owns the Property in question, which is across the street from the Hospital Property.⁴

Despite the trying times that COVID-19 has presented to everyone, the Hospital has experienced growth and is continuing its investments in its facilities and in the community. More specifically, Hospital admissions, Emergency Room visits, and surgeries are increasing. Further, the Hospital is expanding its Intensive Care Unit and Stepdown Units this spring, recently became, as noted above, a comprehensive Stroke Center, has expanded to become one

¹ See Enclosure 1.

² See Enclosure 2.

³ The Property is held by HCA Realty, Inc., which is a sister company of HCA Health Services of New Hampshire Inc.

⁴ See Enclosure 1 and Enclosure 3, which consists of City Assessor Map 240 and 234.

of only two hospitals in the State to offer Extracorporeal Membrane Oxygenation services (“ECMO Service”)⁵ and continues to expand its cardiovascular services.

Despite these very positive developments, the Hospital’s off-street parking accommodations are woefully inadequate. For example, Portsmouth Hospital’s existing facility on the Hospital Property, which includes an overall footprint of approximately 173,916 sf, incorporates a Hospital use comprising approximately 430,495 sf, and a Medical Office use comprising 46,665 sf.⁶ Based on its gross floor area, the Medical Office use requires 187 parking spaces.⁷ The parking demand for the Hospital use is based on a Parking Demand Analysis conducted by Tighe & Bond which indicates that 965 parking spaces at minimum are required for the existing Hospital use.⁸ Collectively, the minimum total parking spaces required for the Medical Office and Hospital Use is 1,152 parking spaces under the City’s Zoning Ordinance. The maximum number of parking spaces permitted under the Zoning Ordinance is 1,382 parking spaces.⁹

Currently, however, the Hospital only has 783 total parking spaces, inclusive of 29 ADA spaces.¹⁰ In other words, the Hospital is operating with 32% less parking than the minimum amount that is appropriate under the Zoning Ordinance, and 43% less parking than the maximum permitted under the Zoning Ordinance.¹¹ This reality, and the reality that the Hospital Property is already built-out, necessitated the Hospital to explore providing parking on the Property, which, as described below, is reasonable and logical under the unique circumstances of this case.

The Property is oddly configured and burdened by its physical and legal circumstances. First, despite its relatively large size (9.09 acres) compared to other properties in its immediate vicinity, and ample frontage along Borthwick Avenue (1,313 ft), the Property is relatively shallow, and is burdened on its eastern end by considerable City of Portsmouth jurisdictional wetlands.¹² On its western end, the Property is burdened by Eileen Dondero Foley Avenue, which is a private road that provides access over the Boston & Maine Railroad to property identified as City Assessor Map 241, Lot 25 (the “Private Road”). Further, in the central portion of the Property there is a 100 ft electric easement which runs diagonally from the Hospital Property, across Borthwick Avenue, and onto the Property. By the terms of that easement, New Hampshire Electric Company has broad rights to enter onto, construct, repair and maintain necessary electric distribution facilities to include poles, towers, wires, etc., and has broad rights to keep the easement area clear (the “Electric Easement”).¹³ Between the wetlands to the east,

⁵ ECMO is an advanced technology that functions as a replacement for a critically ill child’s heart and lungs. The technology is used to support a child who is awaiting surgery, or to give a child’s vital organs time to recover from heart surgery or disease.

⁶ See Enclosure 1.

⁷ See Zoning Ordinance, Section 10.1112.321(6.20) (Table of Minimum Off-Street Parking Requirements for Non-Residential Uses) which requires 1 space per 250 sf of GFA).

⁸ See Enclosure 4, which is the Parking Demand Analysis. See also, Zoning Ordinance, Section 10.1112.321 (6.10).

⁹ See Zoning Ordinance, Section 10.1112.51. See also Enclosures 1 and 2.

¹⁰ See Enclosure 1.

¹¹ Id.

¹² See Enclosures 1 and 2.

¹³ See Easement recorded at Book 1230, Page 222 of the Rockingham County Registry of Deeds.

the Private Road to the west, and the Electric Easement in the central portion of the Property, conventional OR District development is not feasible.

The physical and legal constraints of the Property make it an attractive site for the Hospital to expand off-street parking accommodations particularly in light of the fact that the Hospital Property is built-out and there is no other viable property in the area to accommodate a parking lot. Specifically, the parcel immediately to the west of the Property and more directly across the street from the Hospital Property (330 Borthwick Avenue/City Assessor Map 240, Lot 2), is occupied and built-out by the Jackson Gray Medical Building (the “Jackson Gray Building”). The parcel immediately to the east of the Hospital Property (445 Borthwick Avenue/City Assessor Map 234, Lot 7-3) is owned by the City of Portsmouth and largely encumbered by wetlands. Similarly, the large unimproved parcel identified as City Assessor Map 240, Lot 2-2-1, which is also across the street from the Hospital Property, is owned by the City and is encumbered by considerable wetlands. In fact, all of the parcels along Borthwick Avenue to the west towards Route 33, and to the east towards Route 1, are privately owned, built-out, or otherwise unavailable for the Hospital’s off-street parking needs.

To address the Hospital’s parking problem, the Applicant proposes to construct a 520-space parking lot on the Property as depicted in **Enclosures 1 and 2** to accommodate over-flow patient and visitor parking. With the additional 520 spaces, the Hospital will enjoy a total of 1,303 total spaces across its campus which is more than the minimum it is permitted under the Zoning Ordinance (1,152 spaces), but less than the maximum amount it is authorized (1,382).¹⁴ As depicted in **Enclosure 2**, the Parking Lot will avoid City of Portsmouth jurisdictional wetland impacts on the eastern side of the Property¹⁵, will avoid conflict with the Private Road on the western side of the Property and will not conflict with the Electric Easement. Moreover, the Proposed Parking Lot will provide tasteful vegetative screening along Borthwick Avenue and Eileen Dondero Foley Avenue, will provide a walking path for patients and visitors to traverse the Parking Lot or access the proposed Shuttle Pick-Up / Drop-Off area depicted on the Plans, will provide cross-walk improvements over Borthwick Avenue and traffic safety improvements like pedestrian signals to facilitate safe access to the Hospital Property, and will otherwise be subjected to the review and scrutiny of the City’s Technical Advisory Committee (“TAC”) and Planning Board should the Hospital be fortunate to receive the Zoning relief requested herein. As depicted in the plans, portions of the Proposed Parking Lot will be within the applicable 50 ft setback requirement from the Front Lot Line.

In many respects, the Proposed Parking lot will be consistent with the large satellite parking lot owned by Liberty Mutual and sited on property identified as City Assessor Map 240, Lot 3 which serves the Liberty Mutual campus sited across the street at 225 Borthwick Avenue, which property is further identified as City Assessor Map 240, Lot 1 (“Liberty Mutual’s Satellite Parking Lot”).¹⁶

¹⁴ See **Enclosure 2**.

¹⁵ We note that the Applicant was encouraged to design the site as depicted in **Enclosures 1 and 2** via discussion and collaboration with City Staff which recommended that the Applicant design the Project in a manner to avoid the City of Portsmouth jurisdictional wetlands on the eastern portion of the Property.

¹⁶ See **Enclosure 5**, which is an aerial view of the Liberty Mutual Satellite Parking Lot.

B. Variance Request

The contents of Section A, above, are incorporated herein by reference.

Pursuant to Article 2, Section 10.233 of the Zoning Ordinance, and RSA 674:33, to obtain a variance in New Hampshire, an applicant must show that: (1) the variance will not be contrary to the public interest; (2) the spirit of the ordinance is observed; (3) substantial justice is done; (4) the values of surrounding properties are not diminished; and (5) literal enforcement of the provisions of the ordinance would result in an unnecessary hardship, where said term means that, owing to special conditions of the property that distinguish it from other properties in the area: no fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and the Proposed use is a reasonable one; or if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

In this case, the Hospital requests a Variance Section 10.1113.41 of the Zoning Ordinance to permit a front setback of 35.4 ft where 50 ft is required. The Variance criteria in this case are satisfied as described below.

1. The variance 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.

Section 10.1113.41 of the Zoning Ordinance, which states that off-street parking areas, accessways, maneuvering areas and traffic isles serving uses in the OR District must be setback a minimum of 50 ft from the Front Lot Line, does not have an express purpose referenced. Common sense dictates that the 50 ft setback requirement applicable to off-street parking in the OR District, which mirrors the ordinary building setback in the OR District, is intended to achieve a uniformity and consistency of aesthetic in the district, particularly when you consider the provisions of Section 10.1113.20, which prohibits off-street parking between a principal building and a street. Further, this implied purpose of Section 10.1113.41 is consistent with the

general purpose and intent of the Zoning Ordinance, which is to promote the health, safety and general welfare of Portsmouth through reasonable zoning regulations.¹⁷

Based on the clear intent of the regulation in question and the general purpose and intent of the Zoning Ordinance, and as a threshold consideration under this prong of the Variance criteria, the Applicant's proposal does not unduly conflict in a marked degree with the regulation in question such that it violates the Zoning Ordinance's basic objectives, because the Proposed Parking Lot will not compromise the uniformity of the surrounding properties' aesthetic, nor jeopardize in any way the public health, safety or general welfare. On the contrary, the Hospital's proposal is consistent with the area. For example, the Jackson Gray Building immediately next door already has considerable parking in the front of the building, the Hospital Property has a large parking lot between the Hospital building itself, and Borthwick Avenue and the Liberty Mutual Satellite Parking Lot is right down the street. In this sense, the Proposed Parking Lot will have very minor and nearly indiscernible differences with its surroundings and will thus be advancing Section 10.1113.41's implied purpose of achieving aesthetic consistency. It will also help advance the public's health and wellbeing by helping facilitate the continued growth and investment the Hospital is making in its facility, its services, and the community at large. Providing greater access to the Hospital is a public benefit. Certainly, the Hospital's proposal does not cause marked conflict with the basic zoning objectives of the Ordinance.

Beyond this, the Proposed Parking Lot satisfies the case law requirements because it will not alter the essential character of the neighborhood, nor threaten the public health, safety or welfare. Specifically, as referenced above, the Parking Lot will appear for all intents and purposes, vastly similar, if not identical to the parking lots serving the Jackson Gray Building, the Hospital Property and Liberty Mutual via Liberty Mutual's Satellite Parking Lot. The Parking Lot will be landscaped and screened from Borthwick Avenue and Eileen Dondero Foley Avenue as depicted in **Enclosure 2**. Further, there is no threat to the public's health or safety here. The Proposed Parking Lot will be subjected to TRC and Planning Board scrutiny and review, and will be subjected further to State jurisdiction under its dredge and fill and alteration of terrain regulations. These additional processes will ensure compatibility with applicable laws City regulations. The Hospital will also install crosswalks and pedestrian signals to ensure safe access to the Hospital Property which protects public health and safety.

As the Applicant's Proposed Parking Lot will be consistent with and advance the implied purpose of the regulation in question and the general purpose and intent of the Zoning Ordinance, and because it will be consistent with the character of the neighborhood and not threaten the public health and safety, it would be reasonable and appropriate for the Board of Adjustment to conclude that granting the Variance will not be contrary to the public interest.

2. The spirit of the Ordinance is observed.

As referenced in Section 1, above, the requested variance observes the spirit of the ordinance in question and New Hampshire jurisprudence regarding the "public interest" prong of the variance criteria. 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

¹⁷ See Zoning Ordinance, Section 10.121.

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 Variance is consistent with the spirit of the ordinance in question because of the reasons stated in Section 1. 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 stand to gain anything from denying the Variance requested because the relief is minor in nature and will be difficult to discern, and because the essential character of the area will remain the same. On the contrary, the public will gain considerably if the Hospital has more adequate off-street parking facilities to accommodate visitors and patients alike. The public also gains via the minimization of impacts to the City’s jurisdictional wetlands on the Property which are avoided by the Hospital’s proposal, and by the continued expansion and growth of the Hospital and the services it provides, which constitutes an investment in the public and the public’s health and wellbeing.

Certainly, the Hospital will gain if the Variance is granted because it will be able to reasonably use its property which is otherwise burdened by wetlands, a Private Road and the Electric Easement which make development of the same a challenge. Granting the requested Variance will also help the Hospital accommodate growth and expansion of its facilities and services so that it may continue to support the greater Seacoast area for years to come.

As there is no gain to the general public from denying the Variance that outweighs the loss to the Applicant from its denial, granting the requested Variance will accomplish substantial justice.

4. The proposal will not diminish surrounding property values.

Given the nature of the uses along Borthwick Avenue and particularly, the nature of the parking lot configurations on the Jackson Gray Property, Hospital Property, and Liberty Mutual Properties, and the nature and ownership interests of the surrounding properties, none of the surrounding properties will suffer any diminution in value as a result of granting this Variance. Certainly, the Applicant is aware of no evidence to the contrary. Accordingly, the Applicant

respectfully requests that the Board of Adjustment find that the requested Variance will not diminish surrounding property values.

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 Applicants respectfully remind the ZBA that the mere fact that the Applicants are seeking variances 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.”¹⁸ 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,

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

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

The second prong of the First Hardship Test analysis, pertaining to the relationship between the public purpose of the ordinance provision in question, and its application to the specific property in question, is the codified vestige of a New Hampshire Supreme Court case called Simplex Technologies, Inc. v. Town of Newington (“Simplex”).¹⁹ To summarize, the ZBA’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 ZBA can 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 ZBA 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.”²⁰ This standard is no longer the required standard in New Hampshire. The Applicant does not have an obligation to affirmatively prove that the underlying Property cannot be reasonably used without the requested variance modification. Rather, the critical question under the First Hardship Test is whether the purpose of the Zoning Ordinance is fairly and substantially advanced by applying it to the Applicant’s Property considering the Property’s unique setting and environment. This approach is consistent with the Supreme Court’s pivot away from the overly restrictive pre-Simplex hardship analysis “to be more considerate of the constitutional right to enjoy property”.²¹

The Second Hardship Test 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 and the Board may consider the Property’s existing physical improvements in this context. See Harborside. Here, as discussed at length in Section A, the Property does have special conditions that distinguish it from others in the area to include the size of the lot which is bigger than many

¹⁹ 145 N.H. 727 (2001).

²⁰ 15 Loughlin, 24.16.

²¹ Id. citing Simplex, 145 N.H. at 731.

of those in the immediate vicinity, the shallow nature of the Property and its long frontage along Borthwick Avenue, the Private Road on the Property, the existence of the Electric Easement, and the significant City of Portsmouth jurisdictional wetlands, all of which, particularly when considered in the collective, severely compromise the Applicant's ability to develop the Property in a manner consistent with the OR District. Further, the Property is uniquely situated to accommodate the Hospital's additional required parking and is the only Property in the area that could reasonable do so.

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 provision in question, and its application to the specific property in question. To summarize, the ZBA must determine whether the purpose of the underlying ordinance is advanced by applying it to the property in question.

Here, as discussed above, the implied purpose of Section 10.1113.41 is to achieve a uniformity and consistency of aesthetic in the district. This implied purpose is consistent with the general purpose and intent of the Zoning Ordinance, which is to promote the health, safety and general welfare of Portsmouth through reasonable zoning regulations.

Accordingly, the relevant question under the second analysis of the First Hardship Test is whether or not denying the Applicant's Variance request would advance these purposes and in this case, such a denial would not. Denying the requested Variance will not help achieve a uniformity and consistency of aesthetic in the area because the primary developed properties in the immediate vicinity to include the Jackson Gray Property, the Hospital Property, and the Liberty Mutual properties have either large parking lots between the buildings on the properties and Borthwick Avenue, or employ the use of satellite parking lots. To the extent there are deviations between the proximity of those parking lots and Borthwick Avenue, they will be virtually indiscernible by virtue of the existing conditions along Borthwick and the nature of the Hospital's proposal, which includes vegetated screening along Borthwick Avenue. Denying the Variance request will also not protect the public health or safety because the Proposed Parking Lot poses no threat to the public health and safety, because the design will incorporate specific safety measures like crosswalks and pedestrian signals, and because the design will be reviewed and vetted by the TRC, Planning Board and New Hampshire DES. 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 Parking Lot would be consistent with the essential character of the neighborhood and is a use permitted by Special Exception under the Zoning Ordinance. The Parking Lot would also fulfill a critical need of the Hospital, which is serving the community, which also makes the use reasonable.

On these facts, the Applicant respectfully submit that its Variance request satisfy the final prong of the statutory variance criteria.

C. Special Exception Request

The provisions of Sections A and B, above, are incorporated herein by reference.

Pursuant to Section 10.1113.112 of the Zoning Ordinance, the Board of Adjustment may authorize a Special Exception for the provision of required parking on another lot in the same ownership as the lot in question and within 300 feet of the property line of the lot in question. Pursuant to Section 10.232.10 of the Zoning Ordinance, the Board shall grant requests for Special Exception which are in harmony with the general purpose and intent of the Zoning Ordinance and which meet the express standards of Subsection 10.232.20. Here, the two lots in question are under common ownership, and are within 300 ft of one another.

As a threshold matter, and before addressing the specific standards of Subsection 10.232.20 of the Zoning Ordinance, the Applicant's proposed use will be in harmony with the general purposes and intent of the Zoning Ordinance which are, as mentioned above, to promote the health, safety and the general welfare of Portsmouth.²² In this case, the Proposed Parking Lot will help meet a critical need at the Hospital in light of its current and expanding services. In this sense, and by definition, the Proposed Parking will advance the public health, safety and general welfare by facilitating greater access to the Hospital by all people.

The Applicant's proposal also satisfies the express conditions of Subsection 10.232.20 of the Zoning as follows:

- 1. Standards as provided by this Ordinance for the particular use permitted by special exception. See Zoning Ordinance, Subsection 10.232.21.**

The Applicant's proposal meets all standards as provided by the Zoning Ordinance for the particular satellite parking lot use aside for the requirements of Section 10.1113.41, from which Variance relief is sought by this application. On this information this initial prong of the Special Exception criteria is satisfied.

- 2. No hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials. See Zoning Ordinance, Subsection 10.232.22.**

The Proposed Parking Lot poses no threat or hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials.

- 3. No detriment to property values in the vicinity or change in the essential characteristics of any area including residential neighborhoods or business and industrial districts on account of the location or scale of buildings and other structures, parking areas, accessways, odor, smoke, gas, dust, or other pollutant, noise, glare, heat, vibration, or unsightly outdoor storage of equipment, vehicles or other materials. See Zoning Ordinance, Subsection 10.232.23.**

²² See Zoning Ordinance, Section 10.121.

The Proposed Parking Lot will be sited in a manner which is substantially consistent with the parking lots on surrounding properties to include the Jackson Gray Property and the Hospital Property. The essential character of the area will be preserved, and there will be no production of odor, smoke, gas, dust or other pollutant or nuisance which could reasonably be interpreted as tending to reduce surrounding property values.

Common sense dictates that the Applicant's use, as proposed, will not detriment surrounding property values and the Applicant is not aware of any evidence to the contrary in the record. On this evidence the Applicant submits that Subsection 10.232.23 is satisfied.

4. No creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity. See Zoning Ordinance, Subsection 10.232.24.

The Proposed Parking Lot will accommodate visitor and patient parking at the Hospital and will be accessed via Eileen Dondero Foley Avenue and Borthwick Avenue. The Applicant does not anticipate that the Parking Lot will create a traffic safety hazard or substantial increase in the level of traffic congestion in the area. Further, the Parking Lot will incorporate specific public safety measures like crosswalks and pedestrian signals to ensure safe access to the Hospital Property and protect the public. Finally, the Parking Lot will be subjected to review and scrutiny by TAC and the Planning Board which will ensure compliance with applicable Site Plan Review Regulations regarding traffic impact.

The Project contemplates reasonable development of the large 9+ acre Property in a manner that will compliment the Hospital and address a critical need, and be consistent with the surrounding nature of Borthwick Avenue. Under the circumstances, the Applicant submits that Subsection 10.232.24 is satisfied.

5. No excessive demand on municipal services, including, but not limited to, water, sewer, waste disposal, police and fire protection and schools. See Zoning Ordinance, Subsection 10.232.25.

The Proposed Parking Lot will not place any demand on municipal services like water, sewer, waste disposal, police and fire protection, or schools,. Under the circumstances, the Applicant submits that Subsection 10.232.25 is satisfied.

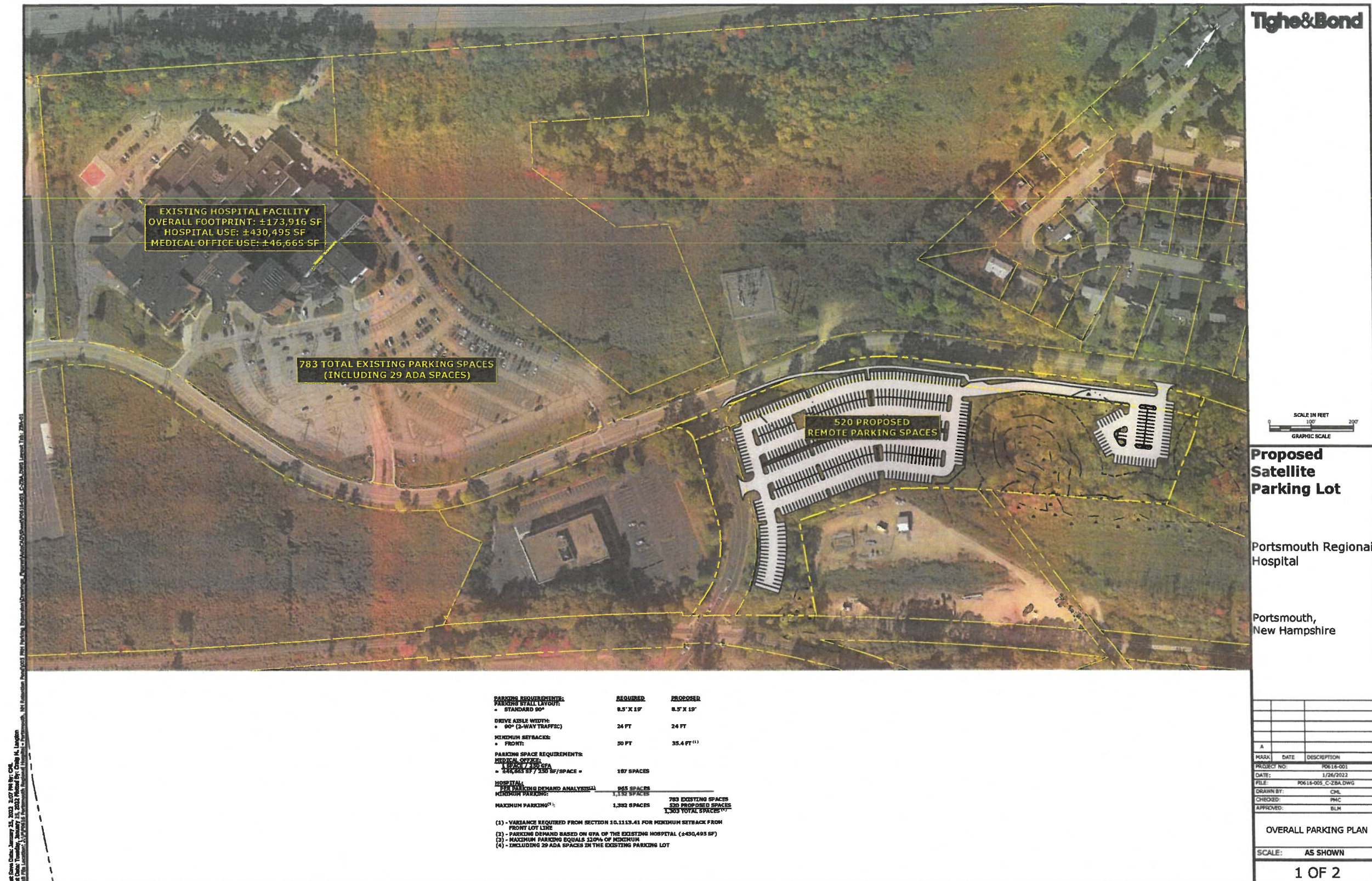
6. No significant increase of stormwater runoff onto adjacent property or streets. See Zoning Ordinance, Subsection 10.232.26.

The Proposed Parking Lot will be designed with stormwater management infrastructure which will collect and treat drainage from the Property on-site in a manner that is consistent with applicable City and State regulations, which facilities will undergo technical review with TAC and the Planning Board. Accordingly, there will be no significant increase to stormwater runoff onto adjacent property or streets and Subsection 10.232.26 is satisfied.

D. Conclusion

The Applicant respectfully submits that Special Exception Criteria found within Section 10.232.20 have been satisfied and that its application should be approved.

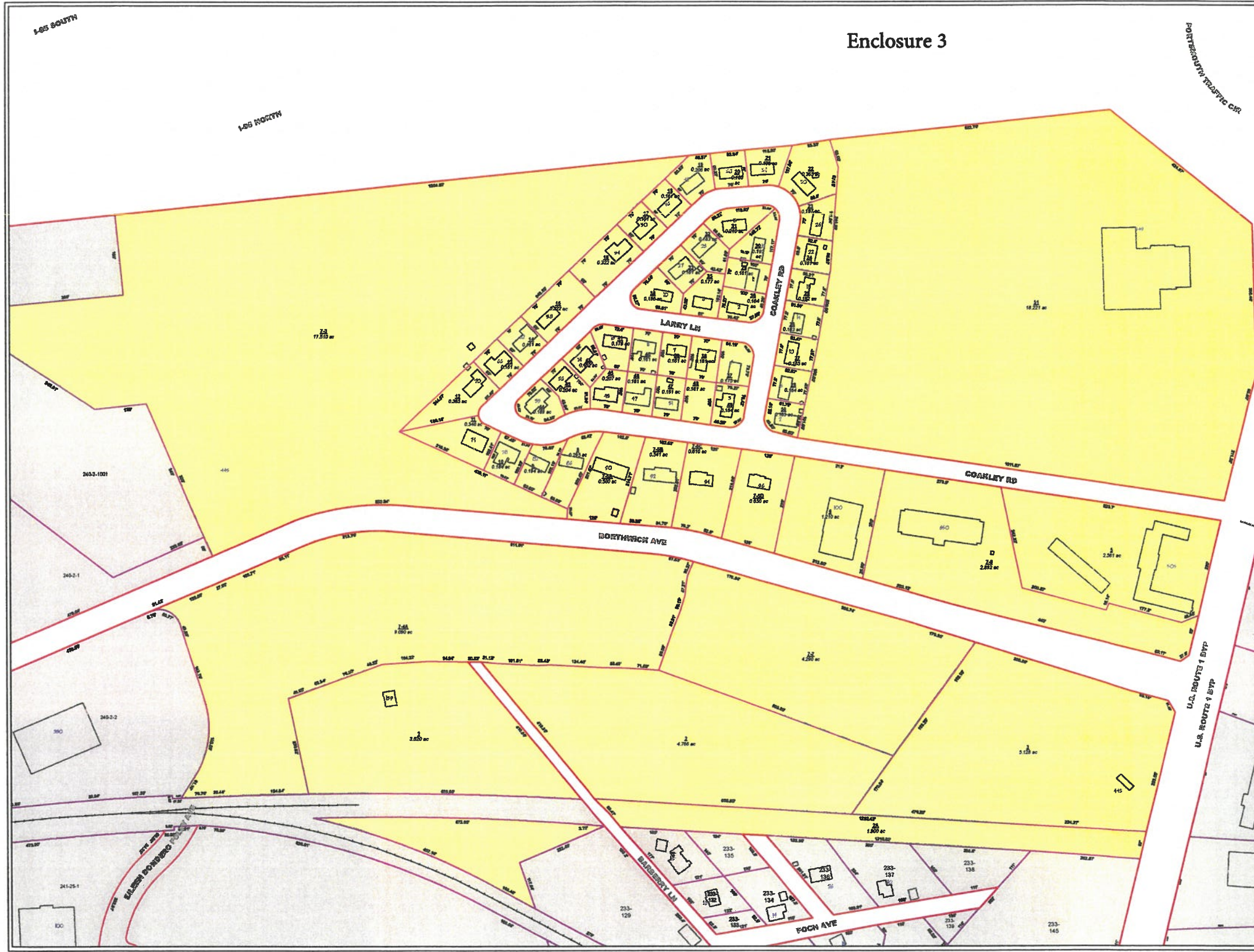
Enclosure 1



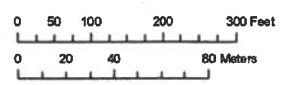
Enclosure 2



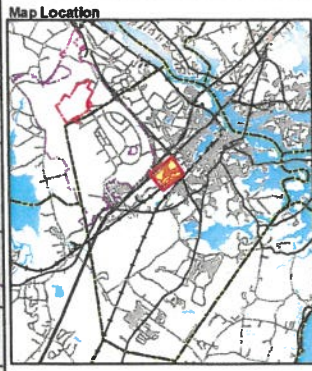
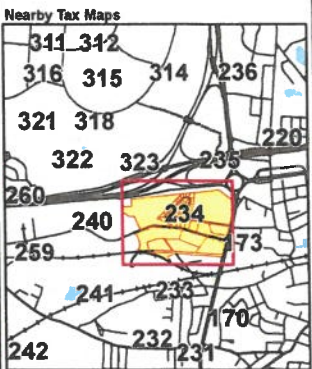
Enclosure 3



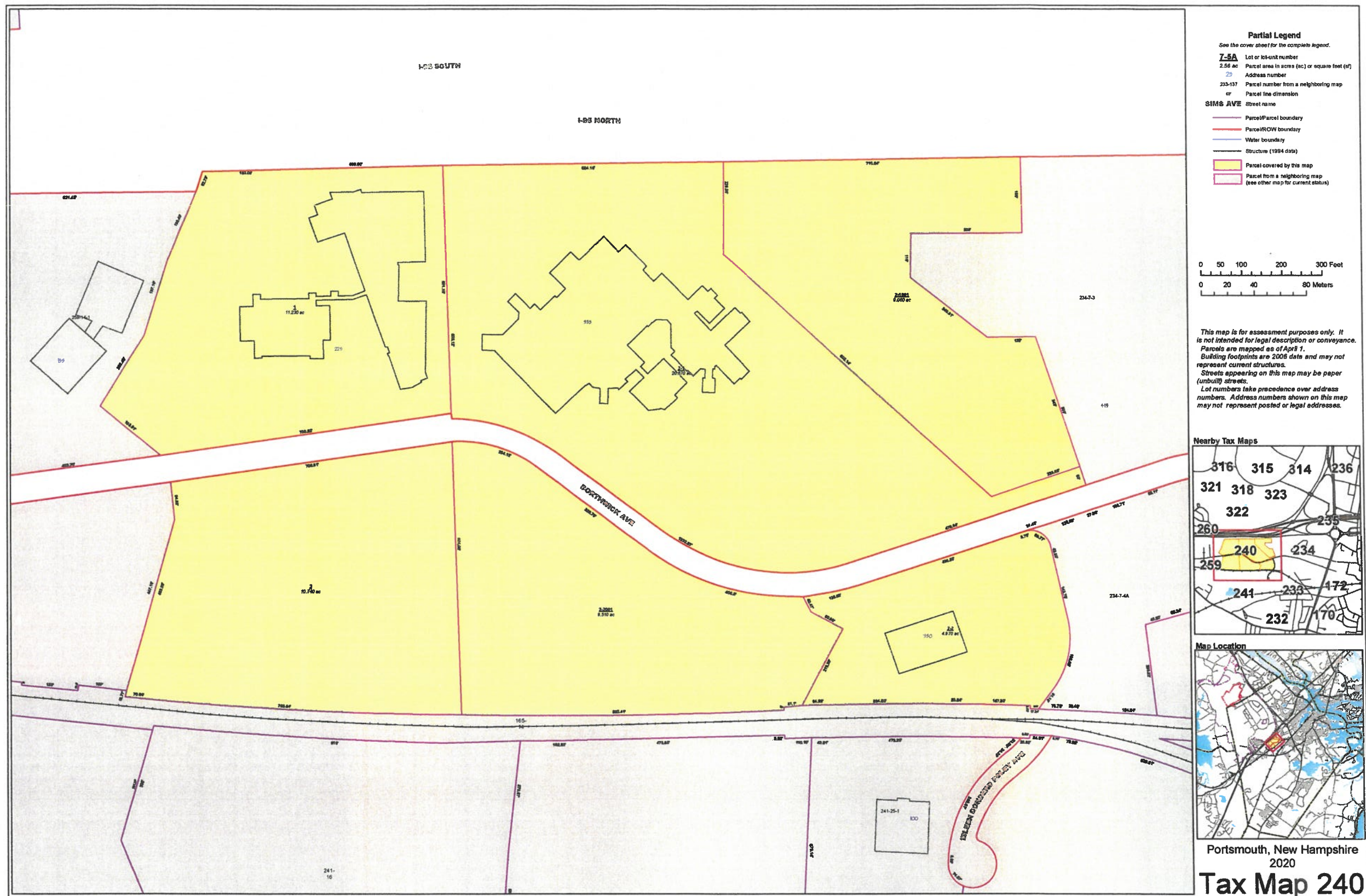
- Partial Legend**
See the cover sheet for the complete legend.
- 7-5A** Lot or lot-unit number
 - 2.54 ac** Parcel area in acres (ac) or square feet (sf)
 - 25** Address number
 - 233-157** Parcel number from a neighboring map
 - 40** Parcel line dimension
 - SIMS AVE** Street name
 - Parcel/Parcel boundary
 - Parcel/ROW boundary
 - Water boundary
 - Structure (1994 data)
 - Parcel covered by this map
 - Parcel from a neighboring map (see other map for current status)



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 2008 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
2020
Tax Map 234



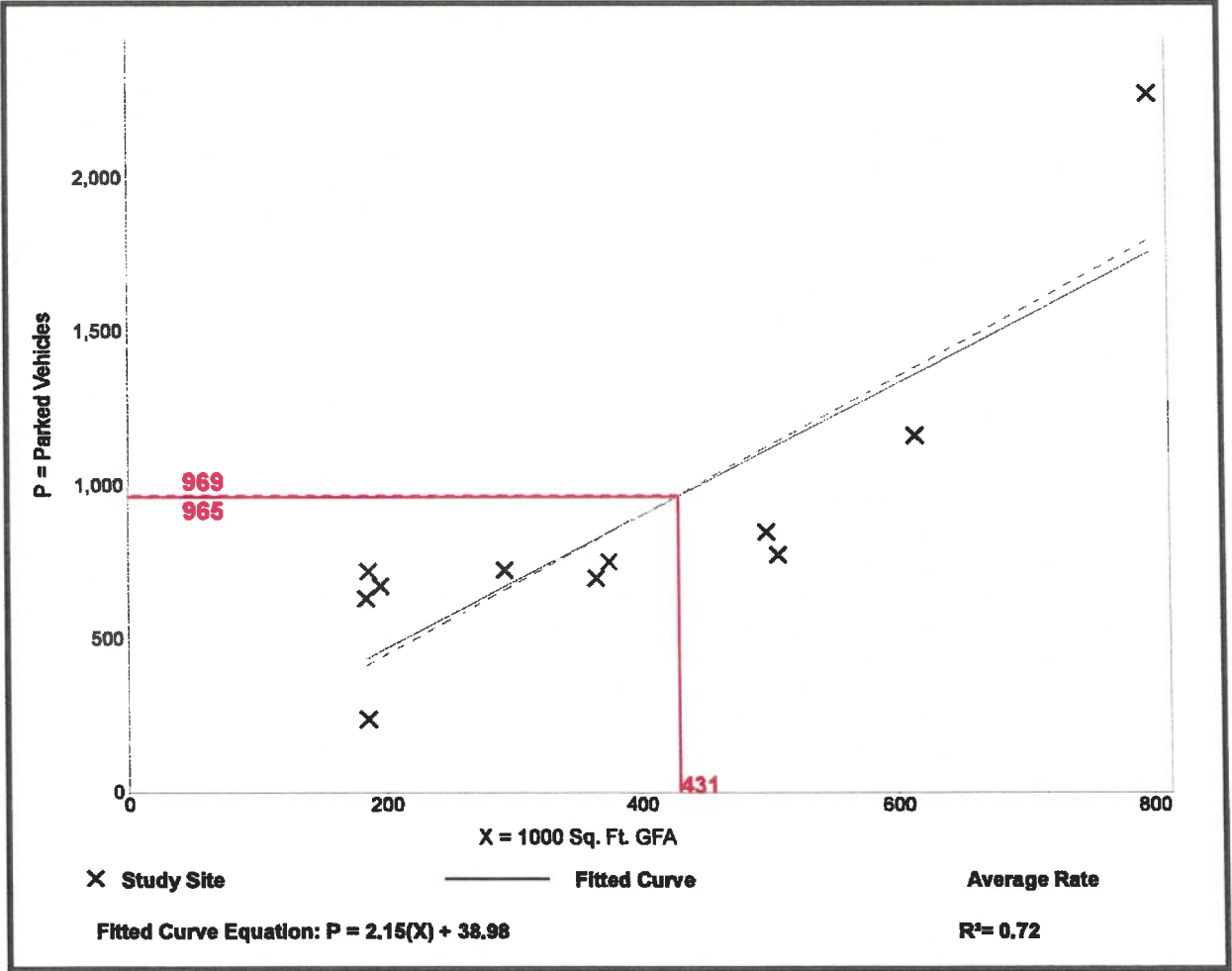
Hospital
(610)

Peak Period Parking Demand vs: 1000 Sq. Ft. GFA
On a: Weekday (Monday - Friday)
Setting/Location: General Urban/Suburban
Peak Period of Parking Demand: 9:00 a.m. - 4:00 p.m.
Number of Studies: 11
Avg. 1000 Sq. Ft. GFA: 383

Peak Period Parking Demand per 1000 Sq. Ft. GFA

Average Rate	Range of Rates	33rd / 85th Percentile	95% Confidence Interval	Standard Deviation (Coeff. of Variation)
2.25	1.28 - 3.83	1.88 / 3.50	***	0.73 (32%)

Data Plot and Equation



Land Use: 610 Hospital

Description

A hospital is any institution where medical or surgical care and overnight accommodations are provided to non-ambulatory and ambulatory patients. However, the term “hospital” does not refer to medical clinics (facilities that provide diagnoses and outpatient care only) or nursing homes (facilities devoted to the care of persons unable to care for themselves), which are covered elsewhere in this report. Surgery center (Land Use 612) and clinic (Land Use 630) are related uses.

Time of Day Distribution for Parking Demand

The following table presents a time-of-day distribution of parking demand on a weekday at 29 study sites.

Hour Beginning	Percent of Weekday Peak Parking Demand
12:00–4:00 a.m.	–
5:00 a.m.	–
6:00 a.m.	–
7:00 a.m.	49
8:00 a.m.	75
9:00 a.m.	94
10:00 a.m.	98
11:00 a.m.	98
12:00 p.m.	97
1:00 p.m.	98
2:00 p.m.	100
3:00 p.m.	96
4:00 p.m.	76
5:00 p.m.	58
6:00 p.m.	–
7:00 p.m.	–
8:00 p.m.	–
9:00 p.m.	–
10:00 p.m.	–
11:00 p.m.	–

Additional Data

The average parking supply ratios for the study sites with parking supply information are as follows:

- In a general urban/suburban setting, 2.6 spaces per 1,000 square feet GFA (11 sites), 0.75 spaces per employee (29 sites), and 4.2 spaces per bed (52 sites)
- In a dense multi-use urban setting, 2.1 spaces per 1,000 square feet GFA (3 sites), 0.73 spaces per employee (10 sites), and 4.0 spaces per bed (13 sites)
- In a center city core setting, 0.63 spaces per employee (one site) and 2.7 spaces per bed (one site)

The sites were surveyed in the 1980s, the 1990s, and the 2000s in Alabama, Arizona, British Columbia (CAN), California, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Nebraska, New Jersey, North Carolina, Ohio, Oklahoma, Ontario (CAN), Pennsylvania, Puerto Rico, Saskatchewan (CAN), Tennessee, Texas, Wisconsin, and West Virginia.

Source Numbers

37, 38, 48, 49, 53, 56, 168, 170, 208, 210, 211, 212, 293, 313, 315, 431, 438

/@43.0634068,-70.7916821,687m/data=!3m1!1e3

ENCLOSURE 5

Maps SECNAV PORTAL FLTMS Flank Speed Transiti... NHQS

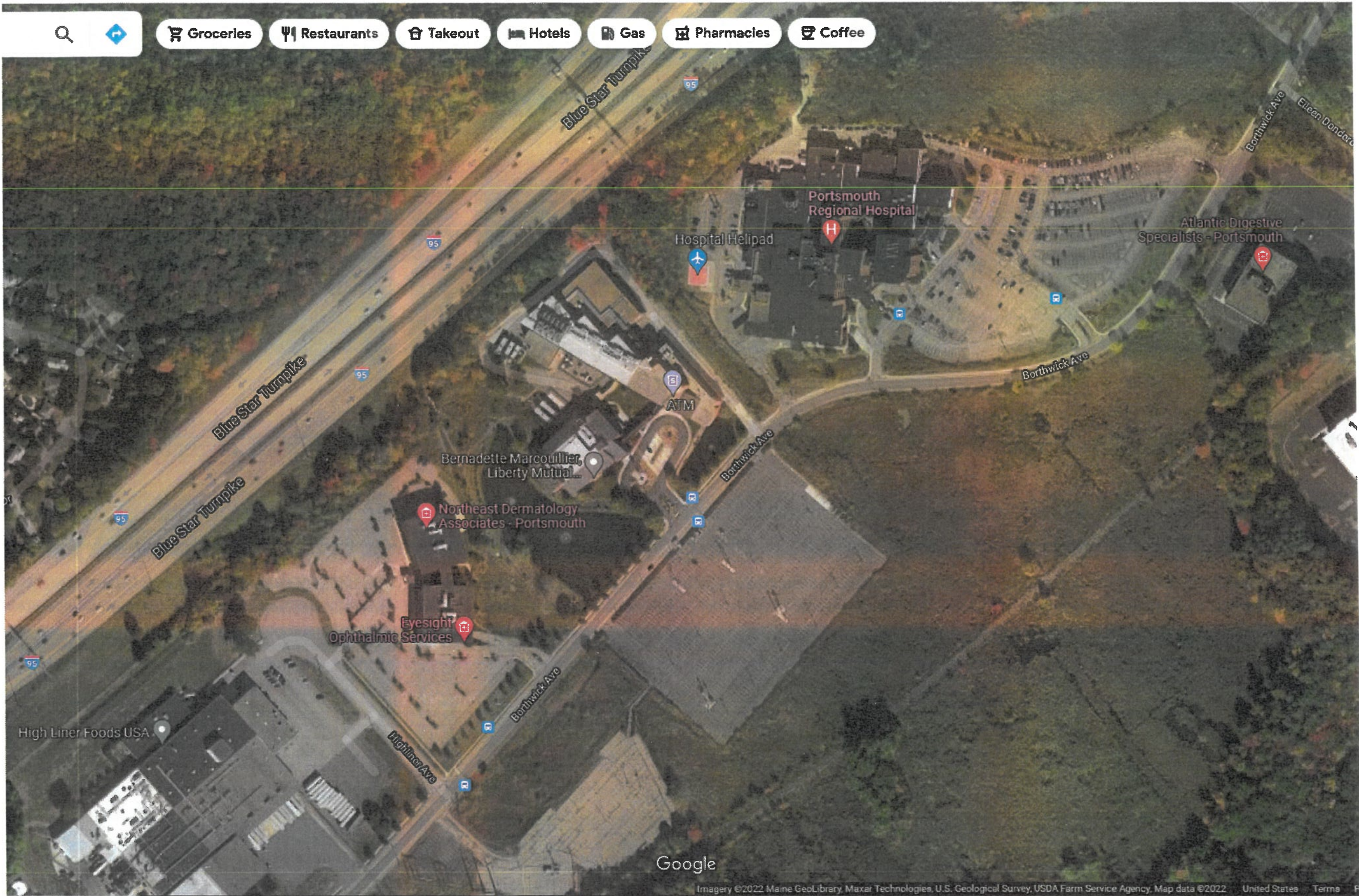




Photo 1: Looking North East towards Borthwick Avenue



Photo 2: Looking West along power lines from Borthwick Avenue



Photo 3: Looking West towards intersection at Borthwick Avenue



Photo 4: Looking South West along Borthwick Avenue



Photo 5: Looking North East along Borthwick Avenue



Photo 6: Looking South West along Borthwick Avenue



Photo 7: Looking South East at intersection of Borthwick Avenue