

BY: VIEWPOINT & HAND DELIVERY

December 17, 2025

City of Portsmouth
Attn: Stefanie Casella, Planner
Zoning Board of Adjustment
1 Junkins Avenue
Portsmouth, NH 03801

**RE: Variance Application of Bretta Heilbut
21 Elwyn Avenue, Tax Map 113, Lot 28**

Dear Stefanie,

Please find a copy of the following materials relative to the above referenced variance application filed through Viewpoint for the property located at 21 Elwyn Avenue, Portsmouth:

- 1) Landowner Letter of Authorization
- 2) Narrative to Variance Application with Exhibits
- 3) Plans (Existing/Proposed Conditions, Architectural Plans and Elevations)
- 4) Photographs of Property

A copy of the above application materials is being delivered to the Planning Department. Should you have any questions or concerns regarding the enclosed application materials, do not hesitate to contact me at your convenience.

Sincerely,

Derek R. Durbin, Esq.

LANDOWNER LETTER OF AUTHORIZATION

Bretta Heilbut record owner of property located at **21 Elwyn Avenue, Portsmouth NH**, identified on **Portsmouth Tax Map 113, as Lot 28** (the “Property”), hereby authorizes **Durbin Law Offices PLLC** and **MDB Design Build LLC** each to file any building, zoning, planning or other municipal permit applications with the City of Portsmouth for said Property and to appear before its land use boards. This Letter of Authorization shall be valid until expressly revoked in writing.



Bretta Heilbut (Dec 11, 2025 16:21:07 EST)

Bretta Heilbut, Owner

Letter of Authorization - Heilbut 12-11-2025

Final Audit Report

2025-12-11

Created:	2025-12-11
By:	DARCY PEYSER (darcy@durbinlawoffices.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAhwk5CjBjeJdycHhSOCKjjHn8CjzH1uqx

"Letter of Authorization - Heilbut 12-11-2025" History

 Document created by Darcy PEYSER (darcy@durbinlawoffices.com)
2025-12-11 - 8:46:58 PM GMT

 Document emailed to Bretta Heilbut (heilbutb@gmail.com) for signature
2025-12-11 - 8:47:01 PM GMT

 Email viewed by Bretta Heilbut (heilbutb@gmail.com)
2025-12-11 - 9:20:32 PM GMT

 Document e-signed by Bretta Heilbut (heilbutb@gmail.com)
Signature Date: 2025-12-11 - 9:21:07 PM GMT - Time Source: server

 Agreement completed.
2025-12-11 - 9:21:07 PM GMT



Adobe Acrobat Sign

NARRATIVE VARIANCE APPLICATION

**21 Elwyn Avenue
Tax Map 113, Lot 28**

**Bretta Heilbut
(Owner/Applicant)**

INTRODUCTION

The Property – Existing Conditions

Bretta Heilbut (the “Applicant”), is the owner of the property located at 21 Elwyn Avenue, identified as Portsmouth Tax Map 113, Lot 18 (the “Property”). The Property is located within the General Residence A (“GRA”) Zoning District. It is a 5,017 square foot lot with a two-story single-family residence and 240 square foot detached garage on it. Per the City’s assessing records, the house was constructed in 1850. It is unclear when the garage in the rear of the Property was constructed.

The Property is presently nonconforming with respect to lot area, building coverage, and the side and rear yard setback requirements set forth in the Portsmouth Zoning Ordinance (the “Ordinance”) for the GRA Zoning District (see below).

Provision	Requirement	Existing Condition	Non-Conforming Feature
Lot Area / Lot Area per Dwelling Unit	7,500 sq. ft.	5,017 sq. ft.	Lot
Left Yard Setback	10'	8'	Garage
Rear Setback	20'	11'	Garage
Right Yard Setback	10'	2'	House

2020 Variance Application

Variance relief was granted to the prior owner of the Property in January 2020 meeting to allow the renovation and a small addition to the house. Nearly all the improvements completed at that time were constructed within the existing footprint. The small addition on the home at that time created a 24 square foot increase in total building coverage (less than 1%) in order to expand the kitchen and in-fill the space above on the second floor and add a master bedroom.

The Applicant’s predecessor in title, a developer, renovated only the single-family home on the Property in 2020 and subsequently sold the Property to the Applicant. Nothing was done with the small, 240 square foot detached garage on the Property. The existing garage is too small to fit most modern vehicles and is primarily used for storage of personal belongings and outdoor items.

Proposed Conditions

The Applicant seeks to demolish the existing, undersized garage and construct a larger, more functional structure in its place. The first floor of the structure will serve as a garage space that a modern vehicle can fit into while the second floor will serve as an artist studio for the owner, who is a professional artist.

The footprint of the proposed garage structure will be 336 square feet, a 96 square foot increase over the existing garage (excluding the exterior stairs). The second floor studio will be accessed by a 3'3" wide set of exterior stairs to the rear of the structure.

The new structure will encroach slightly further into the left and rear yard setbacks than the existing structure. It will encroach by an additional 2' into the left yard setback and 6' into the rear yard setback. However, just over 3' of the additional encroachment into the rear yard setback is associated with the exterior stairs, not the garage itself. Building coverage on the Property will increase from 3% (31.4% to 34.4%). This calculation includes the exterior stairs.

ZONING RELIEF SUMMARY

The Applicant seeks the following variance approvals from the Board:

Section 10.521

1. To allow a 6' (+/-) left yard setback for an expanded garage where 10' is required and 8' (+/-) exists.¹
2. To allow a 5' (+/-) rear yard setback where 18.75' (+/-) is required and 11' exists.²
3. To allow 34.4% (+/-) building coverage where 25% is allowed and 31.4% exists.

Section 10.321

4. To allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance.

VARIANCE CRITERIA

¹ Note: The Design Standards Table on the Variance Plan submitted herewith notes a 2' side yard setback. This pertains to the right yard setback associated with the existing home, not the proposed garage. The house is not being modified.

² Per Section 10.570 of the Ordinance, "An accessory building or structure more than 10 feet in height or more than 100 square feet in area shall be set back from any lot line at least the height of the building or the applicable yard requirement, whichever is less." The proposed garage is 18'9" in height.

Granting the variances will not be contrary to the spirit and intent of the Zoning Ordinance or the public interest.

In the case of Chester Rod & Gun Club, Inc. v. Town of Chester, the Court noted that since the provisions of all ordinances represent a declaration of public interest, any variance will, in some measure, be contrary to the ordinance, but to be contrary to the public interest or injurious to public rights of others, "the variance must 'unduly, and in a marked degree' conflict with the ordinance such that it violates the ordinance's 'basic zoning objectives.'" "Id. The Court observed that "[t]here are two methods of ascertaining whether granting a variance would violate an ordinance's basic zoning objectives: (1) examining whether granting the variance would alter the essential character of the neighborhood or, in the alternative; and (2) examining whether granting the variance would threaten the public health, safety, or welfare." Id.

The primary purpose of minimum setback standards is to ensure that adequate light, air and space between abutting properties and the structures thereon. The primary purpose of the maximum building coverage standard is to protect against the overcrowding of structures on land.

Building Coverage Variance / Expansion of a Non-Conforming Structure

The requested increase in building coverage and the expansion of the existing non-conforming structure is reasonable in light of the existing conditions on the Property and the character of the neighborhood. The Property is undersized at 5,017 square feet. On a compliant property of 7,500 square feet, what is being proposed (1,726 square feet of coverage) would amount to about 23% building coverage. It is important to point out that the GRA Zoning standards are not reflective of the conditions and character of most properties in this area of Portsmouth where lot sizes fall well under the 7,500 sq. ft requirement. A search of properties along Elwyn Avenue turned up only one property, technically located on Lincoln Avenue, which has the requisite lot size (104-112 Lincoln Ave., which has been converted to multiple condominium units). Any reasonably sized addition to either structure on the Property necessitates building coverage relief.

Similar to the relief sought for the main dwelling in 2020, the increase in building coverage in this instance is minimal. The proposed garage accounts for only 96 square feet of additional coverage behind what exists. The stairs account for the rest. The 3% increase in coverage seems larger proportionally due to the small size of the lot. However, the additional space is necessary to make full use of the structure as a modern garage and as an artisan studio above. Many similarly sized properties in the neighborhood, most of which are non-conforming as to building coverage, have 1.5 or 2 story detached garages. This expanded garage, tucked toward the rear of the Property, would be aesthetically in keeping with the surrounding homes and as such have no effect on the essential character of the neighborhood.

Setback Variances

The requests for left yard and rear yard setback relief are necessary to allow for the small expansion of the garage footprint. The garage is presently non-conforming as to the left and rear yard setback requirements, so any proposed expansion would necessitate relief.

The Property, as well as the abutting lot to the north, were under common ownership until approximately 2020. The dwelling and garage predate the separate conveyance of each lot as well as the adoption of current zoning standards. They were not sited to conform with the setback requirements when they were constructed. As such the house encroaches substantially into the right yard setback, and the garage lies about 50% within the left and rear yard setbacks. There is no feasible way to expand the garage outside of the setback area as it cannot be moved any closer to the house. The exterior staircase to the rear of the garage leading to the upstairs studio is necessary because the small footprint of the garage does not allow for an interior staircase while also maintaining adequate storage space.

The reconstructed garage will not negatively impact the light, air and space of the abutting properties. The height of the proposed structure will be well below the dimensional requirement and remain clearly subordinate to the dwelling. The neighboring property at 11 Elwyn Avenue has a large, attached garage which lies within only 2-3 feet of the common boundary to the north. The proposed garage will be adjacent to this. The property at 11 Elwyn Avenue has approximately 41% building coverage according to assessing records, along with structures that encroach into the setbacks. If anything, the garage on 11 Elwyn will act as a buffer to any impact which this proposed renovation might have. The owners of that property have expressed their support for the proposed garage.

The Property is naturally buffered from the abutting properties on Kent Street by a dense treeline along the common boundary(ies). The property at 18 Kent Street, which is one of the two abutting properties to the rear, also has a detached garage that encroaches into the rear setback. Accordingly, granting the setback variances will have little impact on the air, light and space of abutters and is in keeping with the character of the neighborhood.

Substantial Justice will be done in granting the variances.

To determine whether substantial justice is done, the Board must balance the equities between the rights of a private landowner and the public interest in deciding whether to grant or deny a variance request. The “only guiding rule is that any loss to the individual that is not outweighed by a gain to the general public is an injustice.” New Hampshire Office of State Planning, The Board of Adjustment in New Hampshire, A Handbook for Local Officials (1997); [Malachy Glen Assocs., Inc. v. Town of Chichester, 155 N.H. 102 \(2007\)](#).

It would represent a loss to the Applicant for the Board to deny the variances necessary to modestly expand the existing garage to create a more functional garage and a small artist’s studio on the second floor. The small increase in building coverage and encroachment into the setbacks does not alter the character of the neighborhood, which consists mostly of undersized lots with encroaching structures. Many properties in this area have detached garages, several of which have been converted to 1.5 or 2-story accessory structures. Accordingly, there would be no gain to the

public by denying the variances. In balancing the equities, it would constitute an injustice to deny the variances. It would deprive the Applicant of the ability to make reasonable use of her property.

Surrounding property values will not be diminished by granting the variances.

The neighborhood is characterized by undersized lots with detached garages that encroach into one or more of the yard setbacks. The reconstructed garage will only encroach minimally further into the left and rear yard setbacks beyond than the existing garage. It will not negatively impact the light, air and space of the homes on abutting properties, which is the most relevant consideration in the context of determining whether surrounding property values will be negatively impacted. A new, tastefully designed more functional garage should only help to preserve or enhance surrounding property values.

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

The Property has special conditions that distinguish it from surrounding properties such that there is no fair and substantial relationship between the general purposes of the building coverage and setback requirements and their application to the Property.

The small size of the property (5,017 sf.) and the location of the structures on it, and the spatial relation of those structures to structures on the abutting properties, are all special conditions of the Property that drive the location of the proposed garage. It would make little practical sense to relocate the garage to another area of the Property are a result of these special conditions. It would also make little sense aesthetically. The abutting properties have structures close to the boundaries of the Property which minimize the impact of the proposed garage. By way of example, the property at 11 Elwyn Avenue has a large dwelling structure with an attached garage which backs up to the left sideline of the Property. The property at 18 Kent Street also has a garage that backs up against the rear boundary of the Property. The proposed garage is a reasonable expansion of what exists. If the lot met the minimum area requirement (7,500 sf.), the total building coverage of the Property would be only 23%. The practical reality is that the character of the neighborhood is defined by properties that do not comply with the building coverage requirement and have garage or similar structures that are similarly sized and located. **Exhibit A.**

The proposed use of the Property is also reasonable. The Property will continue to be used for single-family residential purposes and the detached structure will be used as a garage and home studio, uses which are all permitted within the GRA Zoning District.

CONCLUSION

The Applicant, Bretta Heilbut, thanks you for your time and consideration of the application and respectfully requests your approval of the variances being requested.

December 17, 2025

Respectfully Submitted,
Bretta Heilbut

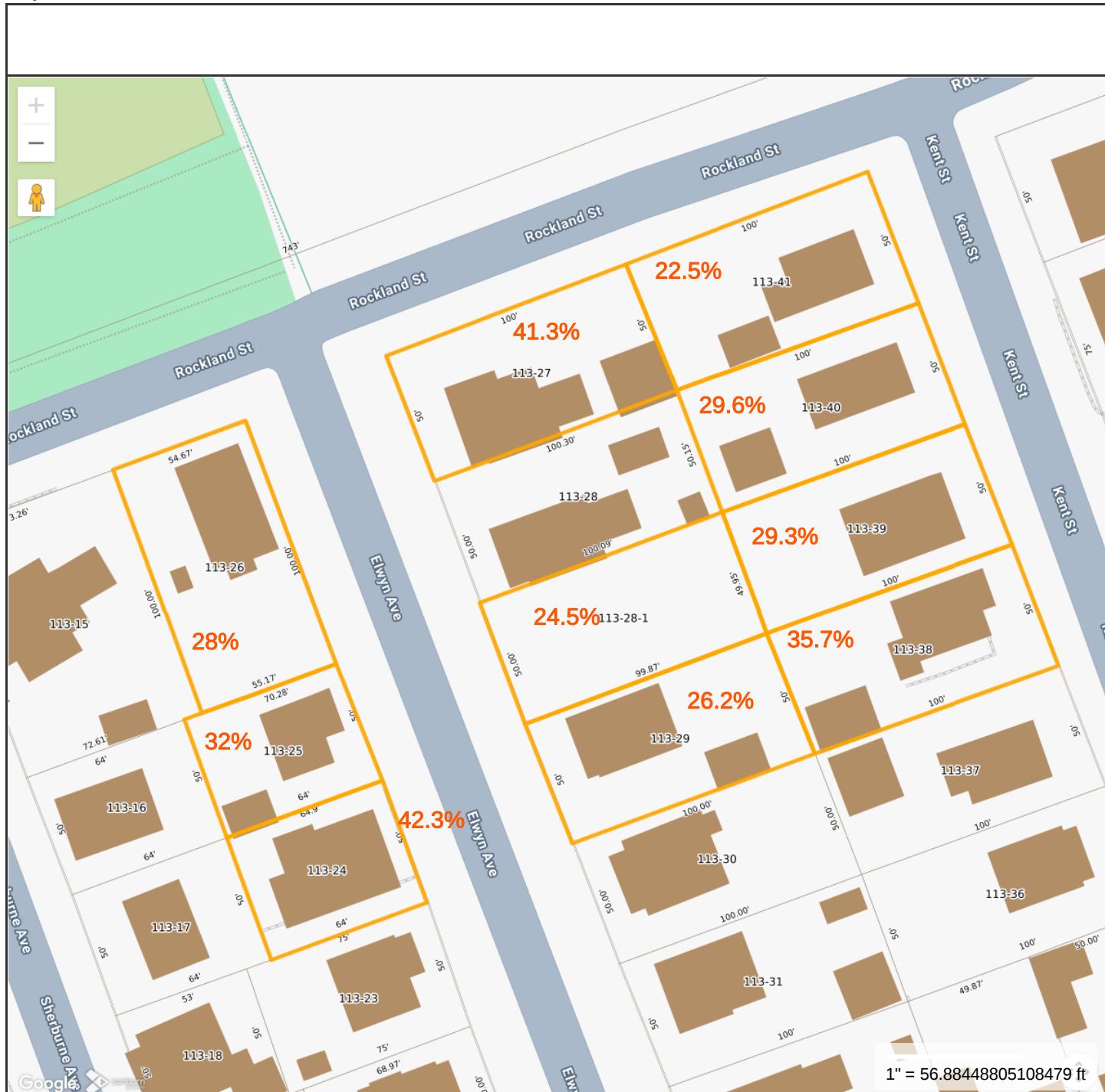


By: Derek R. Durbin, Esq.
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derek@durbanlawoffices.com

EXHIBIT A

City of Portsmouth, NH

December 11, 2025



MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT

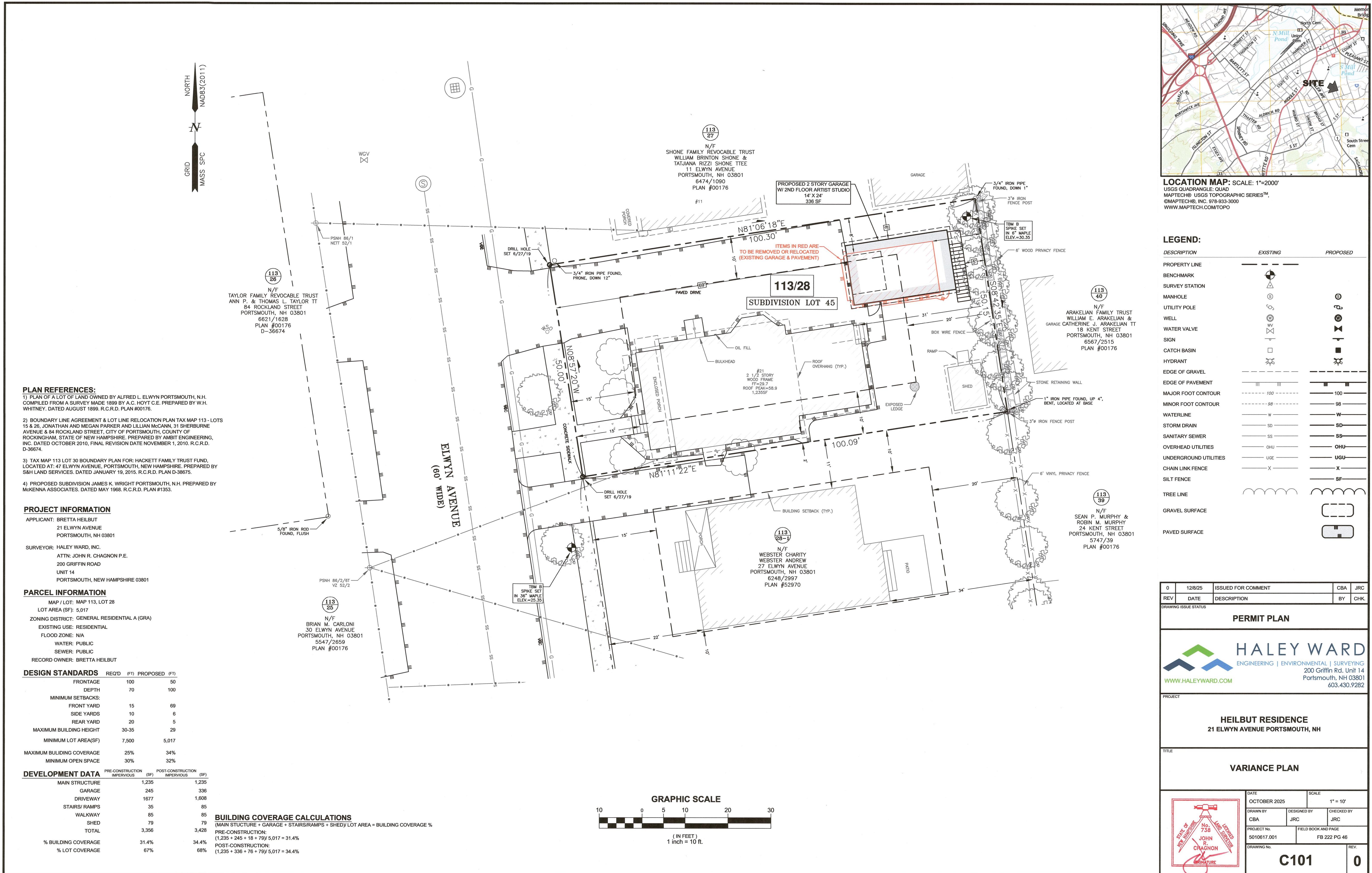
City of Portsmouth, NH makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.

Geometry updated 10/23/2025

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

Coverage Analysis: 21 Elwyn Ave

Address	Tax Lot	Zone	Size (AC)	Size (Sq Ft)	Bedroom	Bath	Footprint (w/		Coverage %	Year
							outbuildings)			
11 Elwyn	113-27	GRA	0.11	4791.6	3	2		1977	41.26%	1900
36 Kent	113-38	GRA	0.11	4791.6	3	2		1712	35.73%	1900
24 Kent	113-39	GRA	0.11	4791.6	4	2		1402	29.26%	2002
18 Kent	113-40	GRA	0.11	4791.6	3	2		1419	29.61%	1898
10 Kent	113-41	GRA	0.11	4791.6	3	1		1,079	22.52%	1902
27 Elwyn	113-28-1	GRA	0.11	4791.6	3	2		1176	24.54%	2020
35 Elwyn	113-29	GRA	0.11	4791.6	4	2		1256	26.21%	1909
40 Elwyn	113-24	GRA	0.07	3049.2	4	4		1289	42.27%	1900
30 Elwyn	113-25	GRA	0.07	3049.2	2	1		978	32.07%	1940
84 Rockland	113-26	GRA	0.13	5662.8	3	1		1586	28.01%	1920



CONSULTANTS

HEILBUT RESIDENCE

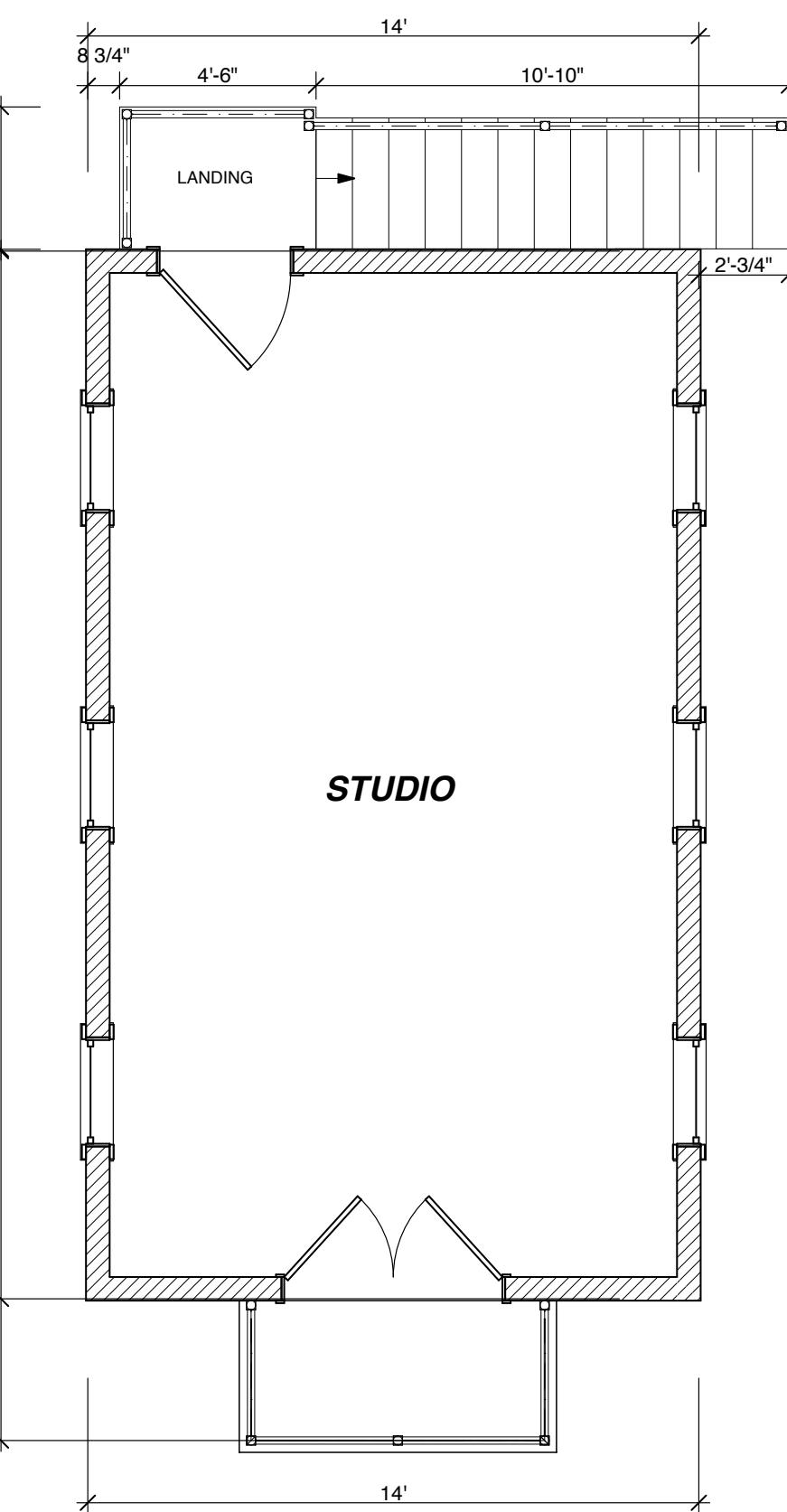
NEW GARAGE/STUDIO
ELWYN AVE
PORTSMOUTH, NH 03801

1/4" = 1'-0"

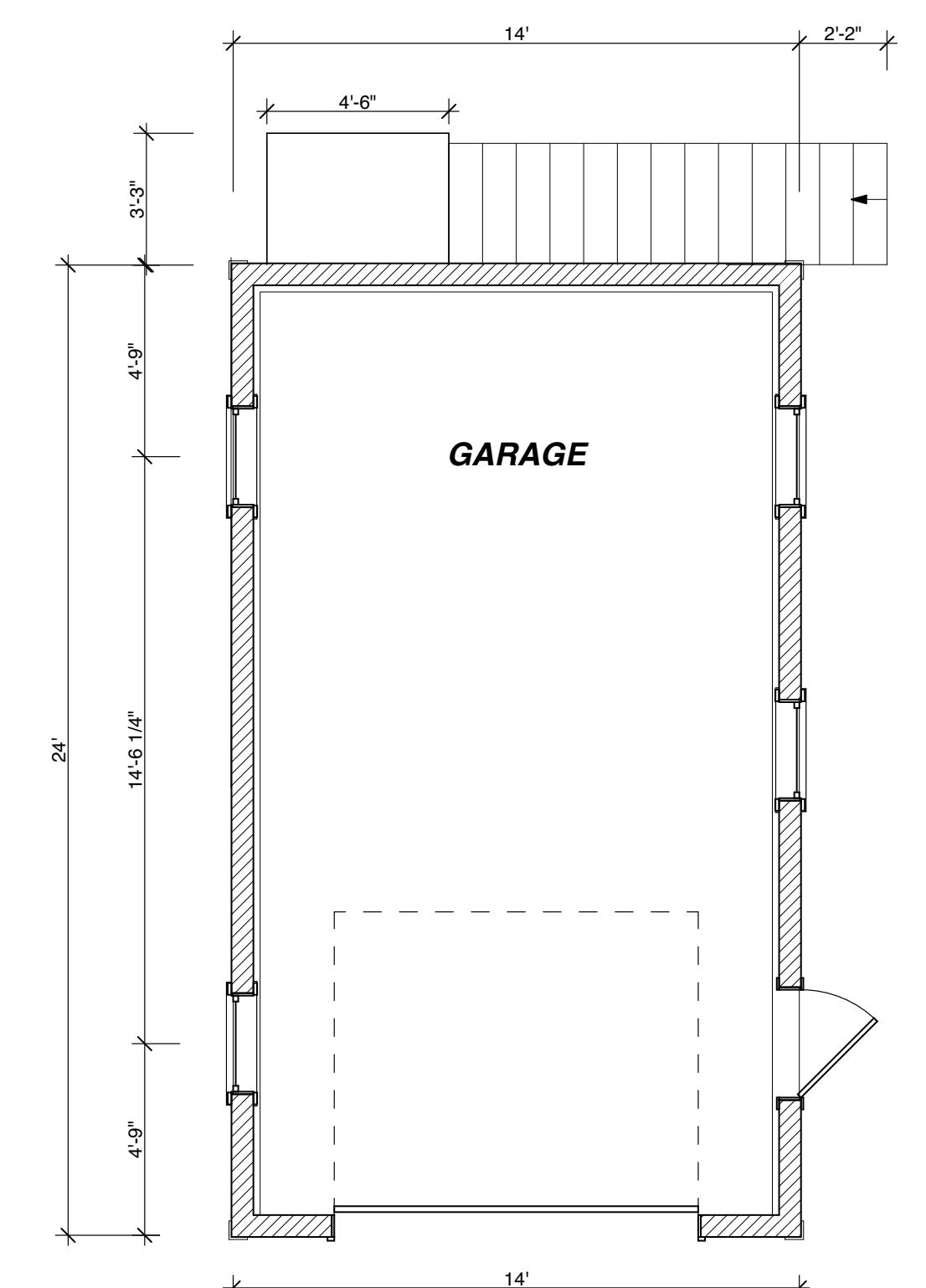


ELEVATIONS

3



STUDIO LEVEL 1/4" = 1'-0"



GARAGE LEVEL 1/4" = 1'-0"

11/10/25 PRELIMINARY DRAWINGS
MARK DATE DESCRIPTION

PROJECT NO:
MODEL FILE:
DRAWN BY:
CHK'D BY:
COPYRIGHT

SHEET TITLE

PROPOSED PLANS

A1



21 Elwyn Avenue
(Existing 1-Story Garage)



21 Elwyn Avenue
(Street View)



21 Elwyn Avenue & 11 Elwyn Avenue
(Street View)



11 Elwyn Avenue
(South Elevation)



35 Elwyn Avenue
(2 story garage)



36 Kent Street
(1.5 story garage)