

BY: VIEWPOINT & HAND DELIVERY

April 23, 2025

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

**RE: Variance Application of Jeannette MacDonald aka Jeannette McMaster
86 Farm Lane, Tax Map 236, Lot 74**

Dear Stefanie,

Please find the following submission materials in connection with Jeannette McMaster's variance application for property located at Farm Lane, Portsmouth:

- 1) Landowner Letter of Authorization.
- 2) Narrative to Variance Application (including Exhibits).
- 3) Subdivision Plan.
- 4) Photographs of Property.

The application and related materials have been submitted via Viewpoint. A copy of the materials is being delivered to the Planning Department. Should you have any questions or concerns, please do not hesitate to contact me at your convenience.

Sincerely,



Derek R. Durbin, Esq.

LANDOWNER LETTER OF AUTHORIZATION

Jeannette MacDonald a/k/a Jeannette McMaster, record owner of the property located at 86 Farm Lane, Tax Map 236, Lot 74, Portsmouth, NH (the “Property”), hereby authorizes **Durbin Law Offices, PLLC** to file any 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.

Jeannette McMaster
Jeannette McMaster (Mar 25, 2024 15:21 EDT)

March 25, 2024

Jeannette MacDonald a/k/a Jeannette McMaster






Landowner Authorization Form -3-25-2024

Final Audit Report

2024-03-25

Created:	2024-03-25
By:	Derek Durbin (derek@durbinlawoffices.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAgkBwkRm3OhToQAUHoVNNUiQow0YiBEjz

"Landowner Authorization Form -3-25-2024" History

-  Document created by Derek Durbin (derek@durbinlawoffices.com)
2024-03-25 - 6:34:24 PM GMT- IP address: 71.233.191.66
-  Document emailed to Jeannette McMaster (jemac86@gmail.com) for signature
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-  Document e-signed by Jeannette McMaster (jemac86@gmail.com)
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**CITY OF PORTSMOUTH
VARIANCE APPLICATION NARRATIVE**

**Jeannette MacDonald a/k/a Jeannette McMaster
(Owner/Applicant)**

**86 Farm Lane
Tax Map 236, Lot 74**

INTRODUCTION

Existing Conditions

The Property at 86 Farm Lane is a 39,846 *square foot*¹ property with a single-family home on it that Jeannette McMaster and her family reside in. The Property has been owned by different members of the McMaster family since it was created and first sold in the 1950s to her father, Samuel McMaster.

The Property is zoned Single-Family Residence B. It is significantly larger than most of the properties surrounding it. Of the properties that immediately surround 86 Farm Lane, the majority are 125' x 75' (9,375 sf.) or smaller lots that have 75' of continuous street frontage. **Exhibit A**. The Property has 162' of continuous street frontage on Farm Lane. In addition, it has 244' of frontage on a paper street colloquially referred to as Long Meadow Lane.

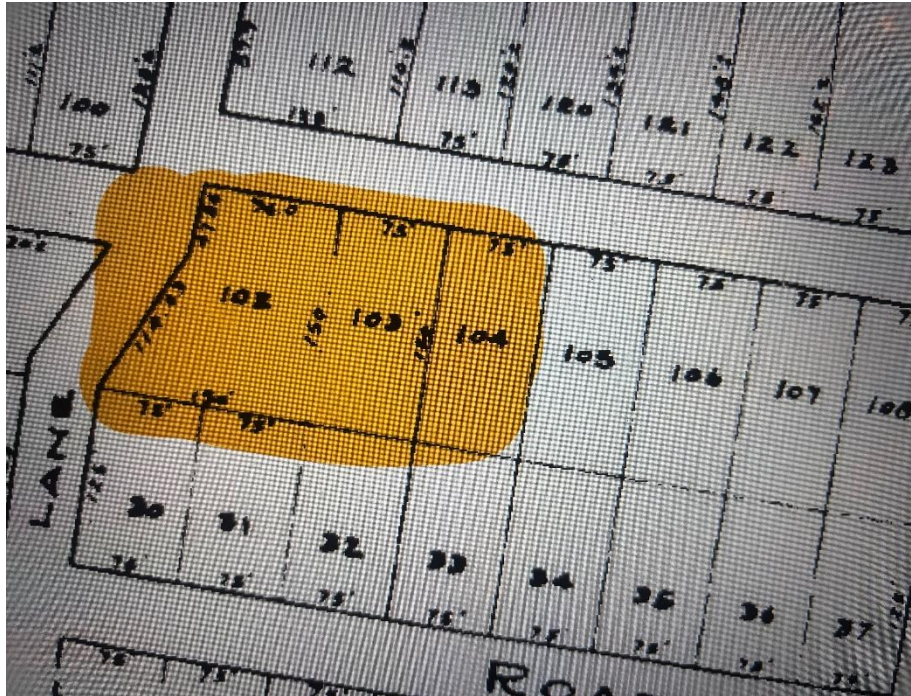
Paper Street

The City has taken the position that the paper street is a public street by virtue of having installed public utilities in it. The City bases its position on the common law theory of "implied acceptance". Mrs. McMaster disagrees with the City's position and claims ownership of the land to the centerline of the paper street in accordance with RSA 231:51. **Exhibit B**. It is important to note that the City has never maintained the easement area and the public has never utilized it for access. Mrs. McMaster and the abutting property owners at 88 Farm Lane (TM 274-75) have utilized and have installed vegetation, fencing and driveways within the paper street. In a prior letter from Robert Sullivan, Esq. City Attorney, to Norman Axler, Planning Director, Attorney Sullivan determined that the City had not accepted the unpaved portion of the paper street. **Exhibit C**. Mrs. McMaster contends that her lot area is actually 45,980 square feet (not 39,846 sq. ft.), which is more than 3x the lot area requirement for the SRB Zoning District.

¹ The Applicant claims that she has 45,980 sq. ft of total lot area. See "Paper Street discussion herein.

Subdivision Plan of 1954

The Property is comprised of what were once three (3) distinct lots identified as Lots 102, 103 and 104 on a recorded subdivision plan from 1954. **Exhibit D**. Lots 102 and 103 were merged either voluntarily or involuntarily, while Lot 104 was annexed to the Applicant's lot as part of a lot line adjustment approved by the City in 2007.



Proposed Conditions

The Applicant is proposing a subdivision of the Property into three (3) separate single-family home lots. Proposed Lot 236-74, which contains the family homestead, would be approximately 15,997 sf. in size. Proposed Lots 236-74-1 and 236-74-2 would have 10,664 sf. and 11,250 sf. of lot area respectively.² The three (3) proposed lots are configured similarly to those shown in the 1954 Subdivision Plan but slightly modified to allow the initial section of the proposed ROW to into a portion of the front two (2) lots to avoid potential impacts to the abutting property owners' driveway, hedges and fence which are situated either within the westerly portion of the paper street. Approximately 10' of the proposed ROW extending through Lots 236-74 and 236-71-1 would be unpaved shoulder area. The constructed or paved portion of the ROW would be approximately 22' in width and would provide public street access to the newly created lots.

² The lot area, setback, building coverage and open space calculations shown on the subdivision plan assumes that any area shown as part of the proposed public ROW will be conveyed in fee simple title to the City, although it remains possible that the City would only require an easement in all or a portion of the ROW. Accordingly, the resulting lot areas, setbacks, building coverages and open spaces associated with each proposed lot may be greater than represented. Conservative figures have been utilized for purposes of the foregoing variance requests.

SUMMARY OF ZONING RELIEF

The Applicant seeks the following variances* from Article 10.521 of the Portsmouth Zoning Ordinance (the “Ordinance”), as identified by proposed lot number:

Proposed Lot 236-74

1. To allow a 28’ rear yard setback where 30’ is required.
2. To allow a 23’ secondary front yard setback where 30’ is required.³

Proposed Lot 236-74-1

3. To allow 10,664 sf. of lot area where 15,000 sf. is required.
4. To allow 10,664 sf. of lot area per dwelling unit where 15,000 sf. is required.
5. To allow 75’ of continuous street frontage where 100’ is required.

Proposed Lot 236-74-2

6. To allow 11,250 sf. of lot area where 15,000 sf. is required.
7. To allow 11,250 sf. of lot area per dwelling unit where 15,000 sf. is required.
8. To allow 75’ of continuous street frontage where 100’ is required.

*It is assumed that a (+/-) applies to all dimensional relief indicated above.

³ The Applicant has listed a 23’ secondary front yard setback as one of the variances sought for Proposed Lot 236-74 out of an abundance of caution; however, a variance may not be required based on the definition for “yard, front” contained in Section 10.1530 of the Ordinance, *[a] yard extending across the full width of a lot between the street right of way line and nearest point of any building. Front yard dimensions are to be measured from the street where a plan of the street is on file with the Rockingham County Registry of Deeds or in City records, or in the absence of such plan, from a line 25 feet from and parallel to the center line of the traveled way.*

VARIANCE CRITERIA

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.

Lot Area Variances

The purpose of the SRB Zoning District is "to provide areas for **single-family dwellings** at low to medium densities (approximately 1 to 3 **dwellings** per acre), and appropriate **accessory uses**." P.Z.O. at Section 10.410. The primary purpose behind the 100' minimum street frontage requirement is to promote the SRB goal of providing low to medium residential density. The implementation of lot area and frontage standards are two of the most often utilized mechanisms for controlling density. In this case, most of the surrounding properties have less than the minimum street frontage and lot area required by the Ordinance.

In the case of *Belanger v. Nashua*, the NH Supreme Court opined: "[w]hile we recognize the desired interrelationship between the establishment of a plan for community development and zoning, we believe that municipalities must also have their zoning ordinances reflect the current character of neighborhoods." 121 N.H. 389 (1981). In the present case, the frontage and lot area requirements associated with SRB zoning do not reflect the character of the neighborhood, which was established with the recording of the 1954 subdivision plan prepared by John W. Durgin.

Notwithstanding, the SRB goal of preserving low to medium density is served by granting the variances necessary to allow the subdivision of the Property into three (3) lots. Proposed Lots 236-74-1 and 236-74-2 are larger than most surrounding properties, a majority of which are 125' x 75' or 100' x 75', consistent with the original layout of the neighborhood.

Setback Variances (Proposed Lot 236-74)

The rear yard setback variance requested for proposed Lot 236-74 is a minor 2' deviation from what the Ordinance requires and is associated with a very small bump out to the rear of Jeannette's house. The bulk of the house is situated outside of the 30' setback. The bump-out will not impose in any way upon the light, air and space of the lot immediately to the rear.

To the extent that a variance is needed, the request for secondary front yard setback relief is also a benign request which is only necessitated by the creation of a new public ROW along the westerly boundary of the Property. The reality is that it is the side yard of the Property, as the front of the existing house faces Farm Lane. The left side of the existing house will only encroach into the secondary front yard by 7' and will not have any detrimental impact upon the newly created streetscape or the light, air and space of abutting properties.

For the foregoing reasons, granting the variances requested will not alter the essential character of the neighborhood or otherwise represent a threat to public health, safety or welfare.

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 \(2007\)](#).

There would be no public interest served by denying the variances, but it would constitute a loss to the Applicant when considering that the Property arguably has 3x the land area required by the Ordinance while most of the surrounding lots do not comply with the lot area and frontage requirements and are dimensioned similarly to Proposed Lots 236-74-1 and 236-74-2. It should also be noted that many properties in the immediate neighborhood also have structures that encroach into the building setbacks. The character of the neighborhood contrasts with how it is zoned. For these reasons, denying the variances would constitute a loss to the Applicant that is not outweighed by any gain to the public.

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

It would be illogical to conclude that surrounding property values could be negatively affected by granting the variances necessary to subdivide the Property into three (3) single-family homes lots. When evaluating whether surrounding property values would be diminished by granting the variance, the Board must consider the context of the surrounding neighborhood. The area is characterized by substandard single-family home lots that are less than 10,000 square feet in size and do not comply with the 100' continuous street frontage requirement. Many of these lots also have structures that encroach into one or more of the applicable setbacks.

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

The Property is distinguishable from surrounding properties based on its size and the amount and type of street frontage it has. It has 3-4x the lot area of most of the surrounding properties. It has 162' of continuous street frontage on Farm Lane and an additional 244' along the paper street referred to as Long Meadow Lane. In total, it has 406' of *non-continuous* street frontage. Most surrounding properties are under 10,000 square feet in size and have around 75' of street frontage. In part, the decision rendered by the NH Supreme Court in the case of *Belanger* stands for the proposition that the Board must consider the character of surrounding properties and the overall lack of conformity as part of its hardship analysis.

In addition to the special conditions cited to above, the City treats the Property as a "corner lot" which renders the existing home non-conforming with respect to the secondary front yard setback to Long Meadow Lane, a condition of the Property which exists and should not require a variance. The only new setback non-conformity proposed relates to a small bump out in the rear of the house which only encroaches into the setback by 2'. When considering the special conditions of the Property, there is no fair and substantial relationship between the general purpose of the Ordinance provisions and their application to the Property.

The proposed use is reasonable. Single-family home lots are permitted and encouraged in the SRB zoning district. The proposed lots will be used for residential purposes consistent with the objectives of the Ordinance.

CONCLUSION

The Applicant has demonstrated that her application meets the five (5) criteria for granting the variance requested. She thanks the Board for its time and consideration of her application and respectfully requests its approval of the variances sought.

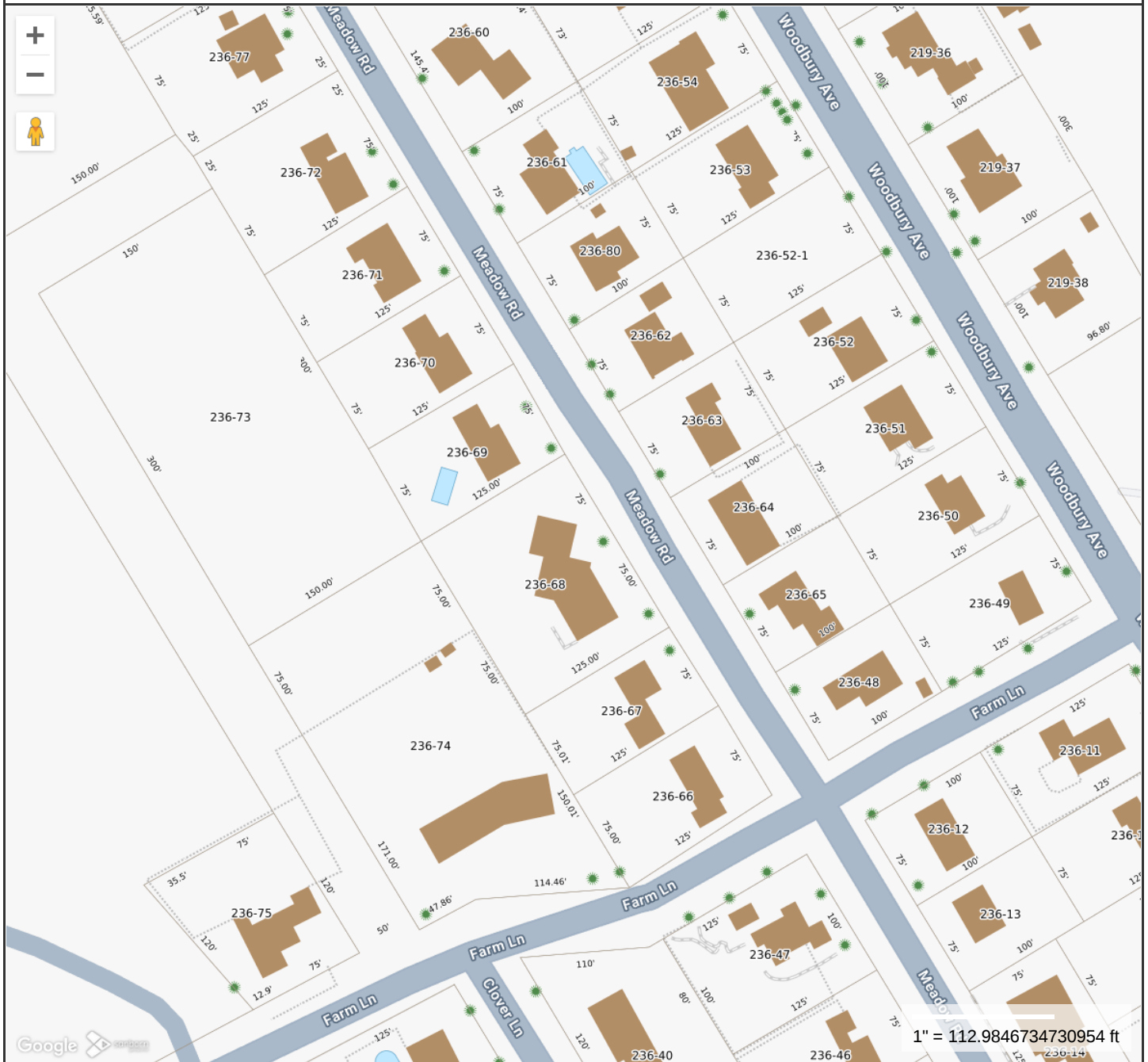
Respectfully Submitted

April 23, 2025

Jeannette MacDonald aka
Jeannette McMaster



By: Derek R. Durbin, Esq.
DURBIN LAW OFFICES PLLC
144 Washington Street,
Portsmouth, NH 03801
derek@durbinlawoffices.com

EXHIBIT A

**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 09/26/2024

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

TITLE XX TRANSPORTATION

CHAPTER 231 CITIES, TOWNS AND VILLAGE DISTRICT HIGHWAYS

Discontinuance of Class IV, V and VI Highways

Section 231:51

231:51 Dedicated Ways. – Any street, lane or alley within this state which has been dedicated to public use by being drawn or shown upon a plan of lands platted by the owner, and the sale of lots in accordance with such plan, may be released and discharged from all public servitude by vote of the governing body of a city or town if such street, lane, or alley has not been opened, built, or used for public travel within 20 years from such dedication.

Source. 1913, 121:1. PL 79:5. RL 95:5. 1945, 188:1, part 9:7. RSA 238:7. 1981, 87:1. 1989, 131:1, eff. July 16, 1989.



EXHIBIT C

COPY

City of Portsmouth, New Hampshire 03801

CITY HALL . . . 126 DANIEL STREET

Legal Department

603-431-2000

Ext. 203 / 204

October 7, 1982

MEMO #82-11

TO: NORMAN AXLER, PLANNING DIRECTOR

FROM: ROBERT P. SULLIVAN, CITY ATTORNEY

RE: BETTY'S DREAM

You have referred to me three questions concerning the above project which I answer as follows:

I. The first question is: Is the Betty's Dream project subject to local zoning regulations? In answer to this first question the applicable facts are contained in a letter to you from Housing Consultant Robert J. Obenland dated September 13, 1982, copy of which has been supplied to me, and a letter from Susan Avery, Planning Director for the New Hampshire Developmental Disabilities Council to Attorney Gerald Taube, a copy of which was received by me on September 24, 1982. These documents indicate that Betty's Dream is a non-profit corporation which proposes to construct a housing project in Portsmouth for the purpose of housing persons with developmental disabilities in accordance with a State plan to provide such services.

As you are aware, within the last two years, the Supreme Court of New Hampshire has decided two cases; Region 10 Client Management, Inc. v. Town of Hampstead, 120 N.H. 885 (1980) and Northern New Hampshire Mental Health Housing, Inc. v. Town of Conway at 121 N.H. 811 (1981), the effect of which cases is to emasculate local zoning control over land use which effectuates a State purpose. In those two cases, local zoning ordinances were specifically overridden to allow for housing of developmentally-impaired individuals and for mentally ill individuals. The Betty's Dream application is not precisely analogous to either Region 10 Client Management application or the Northern New Hampshire Mental Health Housing, Inc. application. However, it is very similar in most material aspects. The housing for developmentally-impaired people

proposed by Betty's Dream is being done under contract with a State agency, New Hampshire Developmental Disabilities Council, pursuant to carrying out a State plan which New Hampshire has become obligated to adopt as a result of the acceptance of federal money for this purpose. As I read the two cited cases, I note that they are written in extremely broad fashion. I note, for example, that in the Northern New Hampshire Mental Health Housing, Inc. case, although the town proved numerous distinctions between the housing for the mentally ill which was proposed for Conway, and the earlier proposal that the Supreme Court had upheld in the Town of Hampstead (Region 10), the Supreme Court summarily dismissed each such distinction. It becomes quite clear in reading the language of the Northern New Hampshire case that the Supreme Court considers the concept embodied in Region 10 to be a broad restriction on local zoning control over land use. A very logical extension of these cases goes beyond housing for any type of disabled person or any type of handicapped person and goes, in fact, to any State purpose whatsoever. On the basis of the foregoing, it is my opinion that the Zoning Ordinance of the City of Portsmouth simply does not apply to Betty's Dream project.

II. The second question which I have been asked concerning the Betty's Dream project is whether or not so-called Longmeadow Road, which is the 100 foot long tarred access point to the New England Fishing Gear property is a "street" within the meaning of Section 10-302 of the Zoning Ordinance such as the frontage requirements of the Subdivision Regulations would be met and further, whether or not the said Longmeadow Road "shall have been accepted or opened, or otherwise received the legal status of a public street" such that the City can grant a building permit under the provisions of RSA 36:26. The definition of "street" in the Zoning Ordinance is quite broad and it is plain that if Longmeadow Road meets the definition of a "public street" as contemplated by RSA 36:26, then perforce, it is a street in terms of the Zoning Ordinance. Therefore, it is only necessary to analyze the RSA 36:26 question alone. This statute requires that Longmeadow Road be a "public street". The statute has been interpreted such that the term "public street" means "streets and highways as defined in RSA 231:1. Blevens v. City of Manchester, 103 N.H. 285 (1961). By recodification of the highway laws, this statute is now identified as RSA 229:1. The applicable portion of this law reads as follows:

"...roads which have been dedicated to the public use and accepted by the city or town in which such roads are located or, roads which have been used as such for public travel other than travel to and from a toll bridge or ferry for twenty years prior to 1968..."

To satisfy the provisions of RSA 36:26, Longmeadow Road must come within this provision. In the case of Betty's Dream, Inc. and Longmeadow Road it appears that the twenty year provision is not met. However, the entirety of Longmeadow Road from Woodlawn Circle through to Farm Lane was apparently dedicated to the City of Portsmouth for public use by the recording in 1954 of a plan identified as "Plan of Lots, Portsmouth, N.H. for Paul C. and Orville Badger, John W. Durgin, Civil Engineers", which plan was recorded in the Rockingham County Registry of Deeds in Plat Book 66 at page 15 and the subsequent sale of at least two lots from that plan. This recording constitutes a dedication of the street property pursuant to RSA 231:51. RSA 229:1 would then require that the property underlying the road be accepted in some fashion or another by the municipality in order for the public servitude to arise. On this question of acceptance I have examined City records to determine whether or not there was ever a formal acceptance by the City Council of Longmeadow Road, and I find that no such formal acceptance has ever occurred. However, the statutory provisions and the case law allow that dedication of a road to public servitude may be accepted by implication as well as by express act of the City. See Stevens v. Nashua, 46 N.H. 192 (1865). On the question of such acceptance I discussed the matter with Keith Noyes of the City Engineering Department and with a long-time resident of Woodlawn Circle residing in the area of Longmeadow Road. I am informed by both of these people that at least since 1958 the tarred portion of Longmeadow Road has been at all times utilized as a public highway by citizens of the City. Mr. Noyes states that to the best of his investigation the City has treated approximately the first 100 feet of Longmeadow Road from Woodlawn Circle as being a public highway from that time to the present. Snow plowing, for example, has been done for that time. The 100 feet roughly corresponds to that portion of Longmeadow Road which is now tarred. On the basis of the foregoing, I am of the opinion that the RSA 36:26 requirement that Longmeadow Road be a public street before a building permit could be issued for Betty's Dream has been met and that perforce, that portion of Longmeadow Road is also a street within the meaning of our local Zoning Ordinance such that frontage requirements are satisfied.

III. The third question which I have been asked is a request to determine the status of the non-tarred portion of Longmeadow Road as indicated on the 1954 plan. This is a far more open question than that answer under II. To begin with, it is quite clear that whatever dedication occurred as a result of the recording of the 1954 plan and the sale of lots thereon, occurred not only to the tarred portion of Longmeadow Road, but to the entire Longmeadow Road going through from Woodlawn Circle to Farm Lane. As I noted earlier, no portion of Longmeadow Road was at any time expressly accepted by the municipality. Therefore, whether or not an acceptance has ever occurred of the dirt portions of Longmeadow Road is a question of fact to be determined basically by an answer to the question of whether or not such dirt portion was "built or used for public travel within twenty years from such dedication", RSA 231:51. I am informed

by Mr. Noyes that Public Works does not consider the dirt portion of Longmeadow Road to have been accepted by the municipality; it is not maintained or plowed by the City. However, I understand that on numerous occasions since 1958, various individuals have been observed using the dirt portion of Longmeadow Road for one purpose or another. The use of this dirt portion of the road could be sufficient to maintain some form of servitude less than acceptance of the dirt portion as a public highway. I believe that the case which governs the answer to this question is Young v. Prenderville, 112 N.H. 190. This case stands for the proposition that indefinite and occasional public use of such a paper street as the dirt portion of Longmeadow Road after its dedication is insufficient to constitute public acceptance of the street. It seems, therefore, that whereas the municipality and the public-at-large has treated the tarred portion of Longmeadow Road as having been accepted virtually since its dedication, neither the municipality nor the public-at-large have made the same use of the dirt portion of Longmeadow Road.

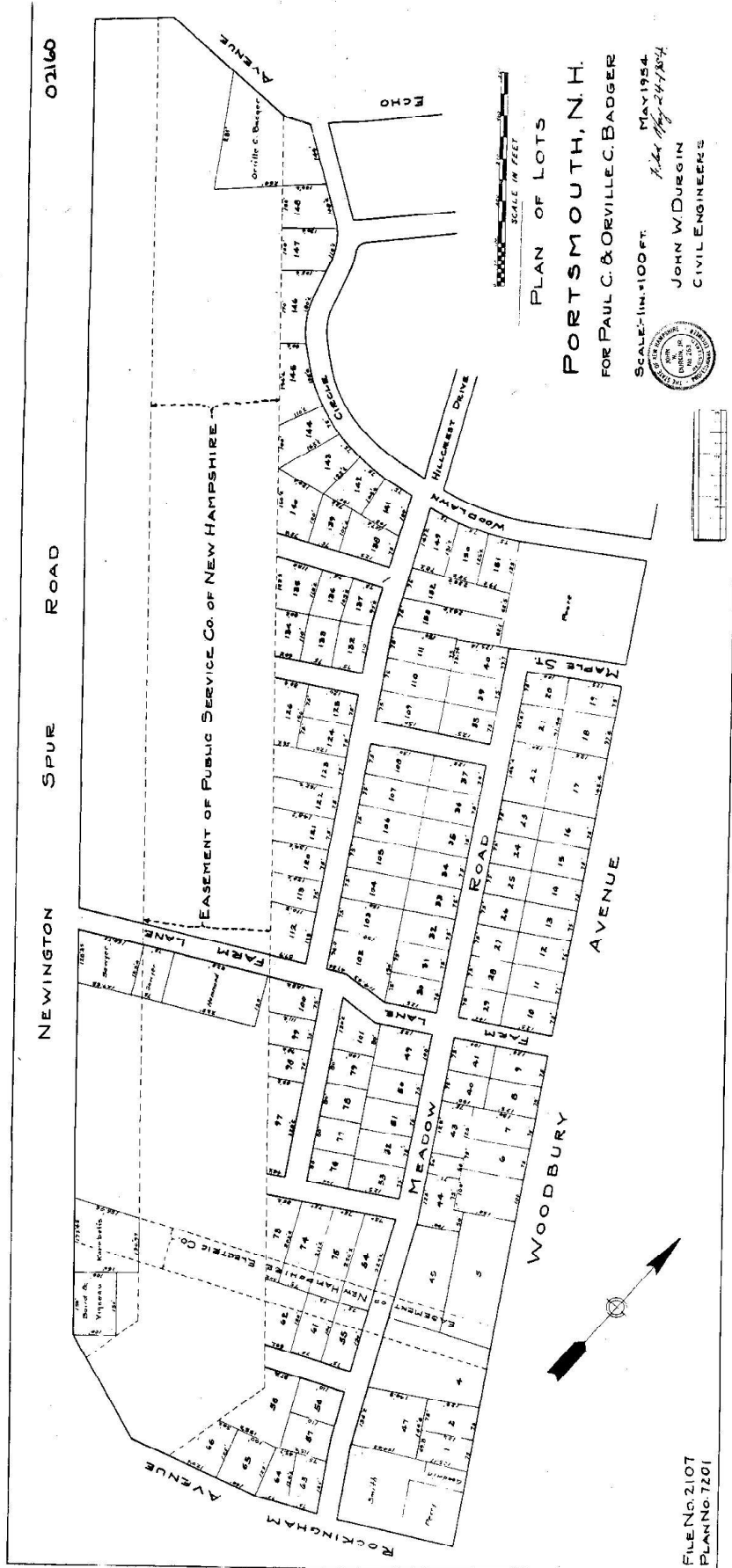
Therefore, it is my opinion as indicated in II herein that while the tarred portion of Longmeadow Road has been accepted and is thus a public street within the meaning of RSA 36:26 and a public highway generally, the dirt portion of Longmeadow Road has not been subject to acceptance. This being true, RSA 231:51 comes into operation and the dirt portion of Longmeadow Road is thus discharged from public servitude because twenty years have passed since its dedication without it being open, built, or used for public travel.

I note for the benefit of those individuals who live in the area of Longmeadow Road, however, that simply because Longmeadow Road does not rise to the level of a public street or highway does not mean that individuals who have been using that property for some particular purpose for sufficient length of time, do not have some interest to continue such use of the property. This, however is a question to be decided between those individuals and the current owner of the property underlying the dedicated portion of Longmeadow Road. It is not subject matter in which the City should be involved.



Robert P. Sullivan,
City Attorney

RPS:bh



FILE NO. 2107
PLAN NO. 7201

F



Front View from Farm Lane (South Elevation View)



Front View from Farm Lane (South Elevation View)



View of Rear Yard from South
(showing portion of paper street formerly known as Longmeadow Lane)



**Alternate View of Rear Yard from South
(showing paper street formerly known as Longmeadow Lane)**



View of Rear Yard from West

