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**Also admitted in MA*

BY: HAND DELIVERY & EMAIL

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October 31, 2018

OCT 31 2018

City of Portsmouth
Zoning Board of Adjustment
Attn: Chairman David Reauhme
1 Junkins Avenue
Portsmouth, NH 03801

BY: _____

Email: mekoepenick@cityofportsmouth.com

**RE: Variance Application of Patrick Liam Hughes
65 Field Road, Tax Map 170, Lot 4**

Dear Chairman Reauhme,

Our Office represents Patrick Liam Hughes, owner of the property located at 65 Fields Road. Please find an original and eleven (11) copies of the following for consideration at the Zoning Board of Adjustment's November meeting:

- 1) Completed Variance Application with Checklist;
- 2) Narrative to Variance Application;
- 3) Landowner and Applicant Letters of Authorization;
- 4) Site Plan Depicting Proposed Use and Parking;
- 5) Floor Plan of proposed ADU;
- 6) Photographs of Property;
- 7) Tax Map Image of Property;
- 8) Confirmation of Building Permit Filing;
- 9) Check for \$150.00.

A copy of this submission package has been sent electronically to the email address above. Should you have any questions or concerns, regarding the enclosed application materials, do not hesitate to contact me at your convenience.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Derek R. Durbin', with a large, stylized loop at the end.

Derek R. Durbin, Esq.

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November 13, 2018

City of Portsmouth
Zoning Board of Adjustment
Attn: Chairman David Reaahme
1 Junkins Avenue
Portsmouth, NH 03801

Email: mekoepenick@cityofportsmouth.com

**RE: Variance Application of Patrick Liam Hughes
65 Field Road, Tax Map 170, Lot 4**



Dear Chairman Reaahme,

Enclosed herewith, please find a revised Site Plan associated with the above variance application. The only change made to the Site Plan is the area sketched in for additional parking. Previously, the Site Plan depicted additional parking on the property off of Sewall Road. The additional parking (proposed pavement) is now located to the left of the existing driveway off of Fields Road as opposed to Sewall.

In addition, I would just point out to the Board that the Narrative submitted with the application on October 31st discusses the need for a primary front yard setback variance. However, it was later determined that no setback variance is necessary per Article 10.516.20 of the Ordinance, as the average front yard setback of abutting properties on Fields Road is approximately 20'.

Thank you for your time and consideration.

Sincerely,

A blue ink signature of Derek R. Durbin, written in a cursive style.

Derek R. Durbin, Esq.

**CITY OF PORTSMOUTH
ZONING BOARD OF ADJUSTMENT
APPLICATION NARRATIVE**

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Patrick Liam Hughes (Owner/Applicant)
Tax Map 170, Lot 4
65 Field Road
Portsmouth, NH 03801

OCT 31 2018

BY: _____

INTRODUCTION

Patrick Liam Hughes is the owner of property located at 65 Fields Road in Portsmouth (Tax Map 170, Lot 4) (the "Property"). The Property is located in Portsmouth's Single-Family Residence B ("SRB") Zoning District.

HISTORY OF PROPERTY

In 1981, the owner of the Property at that time applied for and received a building permit from the Inspections department to construct an addition onto the existing home. Sometime thereafter, the owner of the Property unlawfully converted the addition into an "in-law apartment" (accessory dwelling unit). The addition on the Property was used in this manner for several years before the City became aware of the unlawful conversion. Subsequently, the City required the then-owner of the Property to rectify the situation. Rather than applying for the variance relief necessary to obtain a second dwelling unit on the Property, the then-owner agreed in writing to limit the use of the Property to a single-family home. The owner was permitted by the City to maintain the existing improvements associated with the addition, including the second kitchen that was installed, but the addition to the home that had been physically partitioned from the primary residence and could not be occupied separately. Since this time, the use of the Property has been limited to single-family occupancy.

PROPOSAL

Mr. Hughes desires to use a portion of the existing residence on the Property as an "Attached Accessory Dwelling Unit" ("AADU") as defined by Section 10.1530 of the Portsmouth Zoning Ordinance (the "Ordinance"). No construction or other renovation to the existing residential structure is being proposed.

Generally, an AADU is permitted by right within the SRB Zoning District so long as there is no more than one (1) dwelling unit presently existing on the Property, the principal dwelling and accessory dwelling will be held in common ownership, and the dimensional requirements of the Ordinance are met. Section 10.814. Presently, there is only one (1) legal dwelling unit on the Property. The principal dwelling and the AADU will be held in common ownership. There is an interior door that connects the principal residence to the proposed AADU with a partition in between. The area of the residence where the AADU is proposed contains one (1) bedroom in its existing condition. The Applicant will not be adding any bedrooms or living space.

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VARIANCE RELIEF

BY: _____

The Applicant seeks the following variance relief to legally convert the use of the addition on the Property to an AADU:

Article 10.521 ("Table of Dimensional Requirements"):

Lot Area: To allow 7,405.2 square feet of Lot Area where 15,00 is the minimum required in the SRB District. To extent necessary, this request is intended to encompass any relief needed for lot area per dwelling unit.

Rear Yard Setback: To allow a 16.9' rear yard setback where 30' is the minimum required in the SRB District.

Primary Front Yard Setback: To allow a primary front yard setback from Fields Road of 25.3' where 30' is the minimum required in the SRB District.

Secondary Front Yard Setback: To allow a secondary front yard setback from Sewall Road of 17.1' where 30' is the minimum required in the SRB District.

Building Coverage: To allow building coverage of 23.1% where 20% is the maximum required in the SRB District.

VARIANCE CRITERIA

10.233.21 / 10.233.22 – *The variance will not be contrary to the public interest and will observe the spirit of the Ordinance.*

In the case of *Chester Rod & Gun Club, Inc. v. Town of Chester*, the Court observed that the requirements that a variance not be "contrary to the public interest" or "injure the public rights of others" are coextensive and are related to the requirement that the variance be consistent with the spirit of the ordinance. 152 N.H. 577 (2005). 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. "Mere conflict with the terms of the zoning ordinance is insufficient to constitute a violation of the ordinance's basic zoning objectives." *Harborside Assoc v. Parade Residence Hotel*, 162 N.H. 508, 514 (2011). "There 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 provisions of the Ordinance applicable to the SRB District are intended to protect the single-family residential character of the area and provide for adequate air, light and space between structures on abutting lots. Accessory dwelling units are permitted within the SRB District so long

as the dimensional requirements set forth in Section 10.521 of the Ordinance are met. However, there are very few areas in the SRB District where the properties in the neighborhood meet all of the dimensional criteria, particularly lot area, thus reasonable accommodations under the Ordinance must be made through the granting of zoning relief. In the case of *Belanger v. Nashua*, the New Hampshire Supreme Court recognized that municipalities have an obligation to have their zoning ordinances reflect current characteristics of the neighborhood. 121 N.H. 389 (1981).

No new construction is being proposed on the lot. Therefore, there will be no additional encroachment into setbacks and building coverage will remain the same as it exists. The Property and improvements thereon are already non-conforming in their existing state with respect to lot area, building coverage and rear and front yard setbacks. The Property does meet the minimum open space, continuous street frontage, and side yard setback requirements set forth in the Ordinance.

What Mr. Hughes has proposed is a true accessory dwelling unit that is subordinate to the primary residence and will serve as your traditional "in-law" apartment (used as such in the 1980s). The AADU will be entirely housed within an already existing structure and is modest in size (760 sf.). It will share common utilities with the main residence and has a connecting door. The AADU will not add any bedrooms to the Property. It will contain one (1) bedroom that already exists, thus it is designed to accommodate a single person or a couple at most. Therefore, the intensity of use of the Property will remain the same as what exists.

There will be no change in appearance to the Property and there is adequate parking to accommodate three (3) or more vehicles on the Property. As a whole, the legal conversion of the residence will not alter the essential character of the neighborhood. Moreover, it will not threaten the health, safety and welfare of the public in any respect, as the AADU will not intensify the use of the Property or create any unreasonable demand on municipal services.

The State Legislature and the City of Portsmouth have determined that accessory dwelling units are a compatible use in single-family residential districts and that there is a public benefit to allowing them. Accordingly, the variances will not unduly or to a marked degree conflict with the basic objectives of the Ordinance.

10.233.23 – *Substantial justice will be done.*

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 gain to the public by denying the variance relief sought. The AADU that is proposed would have no impact upon the neighborhood given the fact that the Property will accommodate the same level of foot traffic as it does now. There would be a loss to the Applicant, however, if the variances were denied. The existing single-family residence has a dysfunctional configuration as a result of modifications made to the Property and ultimately approved by the City in the 1980s under one of the prior owners. There is a partition wall separating the single-

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level portion of the house from the two-story portion. The area proposed for the AADU was constructed as a separate apartment with its own facilities (kitchen, bathroom, and bedroom). To modify the current design configuration of the home would be expensive and likely cost-prohibitive. Accordingly, the substantial justice “balancing test” weighs in favor of the Applicant, Mr. Hughes.

10.233.24 – *The values of surrounding properties will not be diminished.*

Surrounding property values will not be diminished by granting the variance relief proposed. The legislature has found that the allowance of accessory dwelling units in single family residential districts has “minimal negative impact”. In the present instance, the legal conversion of the home would be unnoticeable to surrounding neighbors, as the 760 sf.+/- area that would become the AADU already exists as living space and contains a bedroom for sleeping. The appearance and intensify of use of the Property will not change.

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

- A. There are special conditions that distinguish the Property from surrounding properties.

The Property is a corner lot, which means that it has two (2) “front yards” within the context of the Ordinance and that each must comply with the 30’ setback requirement, making it uniquely burdened. The area of the residence proposed for the AADU is an addition to the original home that built out in the 1980s, thus the dimensional non-conformities associated with the Property are lawfully pre-existing. More importantly, and as discussed above, the configuration, layout and design of the existing residence is dysfunctional for use as a traditional single-family home. The addition was designed and built out as a separate dwelling unit connected to the main residence. However, it cannot be used as such absent zoning relief. Together, these factors constitute special conditions that make the Property distinguishable from others in the neighborhood.

- B. There is no fair & substantial relationship between the general purposes of the ordinance provisions and their specific application to the Property.

In the end, the Board’s denial of the relief would not change the non-conformities associated with the Property or its primary use as a single-family home. The area proposed for the AADU would remain as living space, as it currently exists, and would continue to contain a bedroom, bathroom and kitchen. Accordingly, the use of the Property would be no less intense than it would be by granting the variance relief. As such, there is no fair and substantial relationship between the general purposes of the ordinance provisions and their specific application to this Property.

- C. The proposed use of the Property is reasonable.

The primary use of the Property will remain single-family residential, which is a use permitted within the SRB Zoning District. Accessory dwelling units are permitted within the SRB Zoning District as a subordinate use. Therefore, the use of the Property is reasonable.

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CONCLUSION

For the foregoing reasons, Mr. Hughes has demonstrated that he has met the five (5) criteria for granting each of the variances requested. Accordingly, he respectfully requests the Board grant the relief being sought.

Respectfully Submitted,

Dated: October 31, 2018

PATRICK LIAM HUGHES



By: Derek R. Durbin, Esq.
DURBIN LAW OFFICES PLLC
144 Washington Street
Portsmouth, NH 03801
(603)-287-4764
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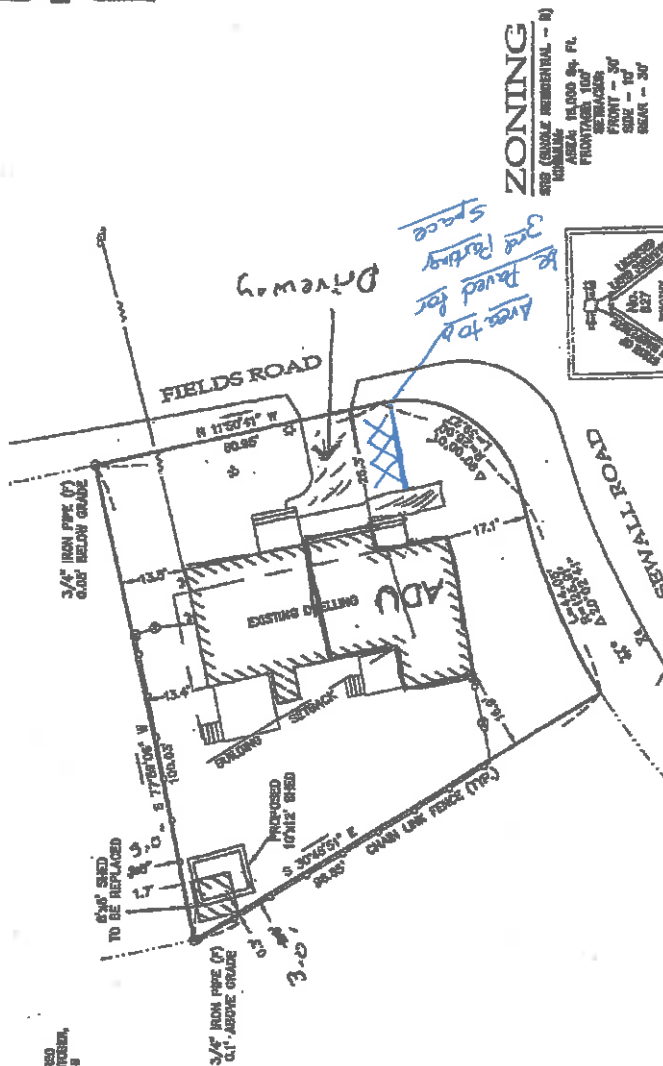
BY: _____

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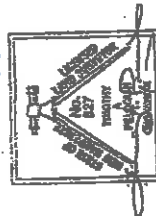
1) THE PURPOSE OF THIS PLAN IS TO DEPICT THE EXISTING PLOT CONFORMANCE AND PROPOSED SITES ON MAP 170 LOT 4, 85 FIELDS ROAD, PORTSMOUTH, NEW HAMPSHIRE.

PLAN OF REFERENCE

1) PLAN OF PART OF WINDFIELD PARK, PORTSMOUTH, N.H., PREPARED FOR RECORD 3, TOWN PREPARED BY JOHN W. CURRIE, DATED OCTOBER, 1994, SCALE 1"=100'. SEE ROCKINGHAM COUNTY RECORDS OF DEEDS, (RCRD) PLAN NO. 00000.



ZONING
 RPD (SINGLE RESIDENTIAL - R)
 AREA: 15,000 Sq. Ft.
 FRONTAGE: 100'
 SETBACKS:
 FRONT - 30'
 SIDE - 10'
 REAR - 30'



NO.	DATE	REVISION DESCRIPTION	BY
1	SEPT. 07, 2016	SCALE 1"=100'	
2	PLS. JOB # 2336	PLOT PLAN	

OWNER OF RECORD:
 ALL REAL ESTATE, LLC
 4 CURRIE CIRCLE
 LYNNFIELD, MA 01840
 RCRD 5705/0335

MAP 170 LOT 4
 CERTIFIED PLOT PLAN AT
 85 FIELDS ROAD
 PORTSMOUTH, NEW HAMPSHIRE



Promised Land Survey, LLC
 200 Southwestern Road
 Derry, New Hampshire 03025
 Tel: (603) 424-1111 Fax: (603) 424-1112
 Email: info@promisedlandsurvey.com
 Land Surveying • Mapping • Planning • Consulting • Layout

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 By _____

PATRICK HUGHES
65 FIELDS RD
PORTSMOUTH, N.H.

SCALE: 1/4" = 1'-0"



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Front exterior of entire house



Front exterior of proposed ADU (living window on left of door, bedroom window on right of door)

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Rear exterior of entire house



Rear exterior of proposed ADU (bathroom window on left, patio door in middle, kitchen window on right)

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Side exterior of proposed ADU (kitchen window visible, living room window partially hidden by tree)



Front entryway and living room

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BY: _____



Kitchen and rear patio door



Bedroom

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OCT 31 2018

BY: _____

**Property Information**

Property ID 0170-0004-0000
Location 65 FIELDS RD
Owner HUGHES PATRICK LIAM



**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.

Parcels updated 01/04/2018
Properties updated 10/27/2018

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