HOEFLE, PHOENIX, GORMLEY & ROBERTS, PLLC ATTORNEYS AT LAW

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May 26, 2021

HAND DELIVERED

Peter Stith, Principal Planner Kimberli Kienia, Administrative Assistant Portsmouth Zoning Board of Adjustment City Hall 1 Junkins Avenue Portsmouth, NH 03801

Zoning Relief Re:

Applicant: CPI Management, LLC

Owner: Stone Creek Realty Property: 53 Green Street Tax Map 119, Lot 2

Character District 5 (CD5)/Historic District/Downtown Overlay District/

North End Incentive District

Dear Mr. Stith, Ms. Kienia and Zoning Board Members:

On behalf of Applicant, CPI Management, LLC, enclosed please find the following:

- See Viewpoint Land Use Application (LU-55) uploaded today.
- Owner's Authorization
- Memorandum in Support of Variance (original and 11 copies)

We look forward to presenting this the Zoning Board of Adjustment at its June, 2021 meeting.

Very truly yours,

R. Timothy Phoenix Kevin M. Baum

Encl.

CPI Management, LLC cc:

Stone Creek Realty Tighe & Bond

DANIEL C. HOEFLE R. TIMOTHY PHOENIX LAWRENCE B. GORMLEY

STEPHEN H. ROBERTS

R. PETER TAYLOR

JOHN AHLGREN

KIMBERLY J.H. MEMMESHEIMER

KEVIN M. BAUM

GREGORY D. ROBBINS

MONICA F. KIESER

SAMUEL HARKINSON JACOB J.B. MARVELLEY DUNCAN A. EDGAR

OF COUNSEL: SAMUEL R. REID

MEMORANDUM

TO: Portsmouth Zoning Board of Adjustment ("ZBA")

FROM: R. Timothy Phoenix, Esquire

Kevin M. Baum

DATE: May 26, 2021

Re: Applicant: CPI Management, LLC ("CPI")

Owner: Stone Creek Realty Property: 53 Green Street Tax Map 119, Lot 2

Character District 5 (CD5)/Historic District/Downtown Overlay District

North End Incentive Overlay District

Dear Chairman Rheaume and Zoning Board members:

On behalf of Applicant CPI Management, LLC ("CPI") and Owner Stone Creek Realty ("Stone Creek"), we are pleased to submit this memorandum and exhibits in support of a variance request for limited dimensional relief to permit mixed-use redevelopment of 53 Green Street.

I. EXHIBITS

- 1. Plan Set
 - 5/19/21Proposed Mixed-Use Development Site Plan C-102.1- by Tighe & Bond
 - 5/20/21 Front Lot Line Buildout Exhibit- by Tighe & Bond
 - 5/19/21 Easement Plan- C-301- by Tighe &Bond
- 2. City of Portsmouth GIS map showing property and surrounding area.
- 3. Tax Map 119.
- 4. Site Photographs.
- 5. Site Renderings-by CJ Architects.
 - 1.0 North Mill Pond View
 - 4.0 Green Street view
- 6. Floor Plans & Building Elevations-by EMBARC.1

II. RELIEF REQUIRED

<u>Portsmouth Zoning Ordinance ("PZO") Article 5, §10.5A41.10D</u>- to provide 44.46 linear feet (42.89%) of front lot line buildout where 82.92 linear feet (80%) is required.

¹ The submitted floor plans and building renderings are preliminary and provided for informational purposes. The final building design and layout are subject to modification as CPI completes the municipal review process for the project and subject to site conditions.

III. PROPERTY/PROJECT

53 Green street as proposed is a large 77,579 sq. ft. lot with a mere 103.66 linear feet of frontage. While located in the CD5 and Downtown Overlay Districts, it is at the far northerly edge, with a railroad track running along the entire Green Street frontage. Presently on the site is a large L-shaped commercial building(s) located extremely close to the front lot line, the site serviced by a driveway entrance and large open parking lot to the north and east of the building.

Presently the subject of Portsmouth Land Use Permit LU-55, the project calls for demolition of the existing improvements replaced with a new five-story mixed-use building containing 48 apartment units and a +/-2,281 sq. ft. first-floor commercial unit facing Green Street. The project will provide 88 parking spaces, 85 of which are interior. Access to the lot and parking is via a 24 foot wide driveway which will provide fire department required access to all sides of the building. In cooperation with the City of Portsmouth's effort to provide a pedestrian/bicycle pathway ("pathway") along the North Mill Pond, CPI has agreed to provide an approximately 20 foot wide landscaped pathway from Green Street along the southwesterly lot line, linking with the proposed pathway toward the North Mill Pond. Additionally, the city has requested and CPI has agreed to provide a 15 foot wide sewer easement beginning in the area of the access driveway, running to the northerly property boundary.

Thus far, the project has undergone the following review:

Planning Board	TAC	Conservation Commission	HDC
1/21/21 Preliminary Consult	2/9/21 Work Session 4/6/21 Meeting 5/4/21 Meeting 6/1/21 Meeting	2/10/21 Work Session 4/14/21 Meeting (unanimous approval)	2/10/21 Meeting 3/10/21 Meeting 4/14/21 Meeting 5/12/21 Meeting

Despite its very large size at 1.78 acres, the lot has but 103.66 linear feet of frontage on Green Street. The CD 5 zoning district requires lots to provide 80% buildout along the front lot line, here equal to 82.93 feet. It is impossible to provide the required front lot line buildout because the 24 foot wide access driveway must be deducted from the buildable area. Reduction of the driveway width alone requires a variance (103.66-24=79.66/103.66=76.85%). Providing the public access pathway, which also helps to address the HDC comments preferring less

massing on Green Street leaves +/-44,46 linear feet (42.89%) along Green Street available for front lot line buildout where 82.92 linear feet (80%) is required.

IV. VARIANCE REQUIREMENTS

- 1. The variances will not be contrary to the public interest.
- 2. The spirit of the ordinance is observed.

The first step in the ZBA's analysis is to determine whether granting a variance is not contrary to the public interest and is consistent with the spirit and intent of the ordinance, considered together pursuant to *Malachy Glen Associates, Inc. v. Town of Chichester*, 155 N.H. 102 (2007) and its progeny. Upon examination, it must be determined whether granting a variance "would unduly and to a marked degree conflict with the ordinance such that it violates the ordinance's basic zoning objectives." *Id.* "Mere conflict with the zoning ordinance is not enough." *Id.*

The purpose of the Portsmouth Zoning Ordinance as set forth in PZO §10.121 is "to promote the health, safety and the general welfare of Portsmouth and its region in accordance with the City of Portsmouth Master Plan... [by] regulating":

- 1. The use of land, buildings and structures for business, industrial, residential and other purposes It is impossible to meet front lot line buildout requirements while providing the +/-24 foot wide driveway and sewer easement. Application of the pathway to and along the North Mill Pond, in furtherance of the City's efforts to provide public amenities consistent with the Master Plan further reduces available frontage for buildout. No structure can be erected on the site which meets the 80% front lot line buildout.
- The intensity of land use, including lot sizes, building coverage, building height and bulk, yards and open space – The redevelopment of this very large lot at the edge of the CD5 district meets all zoning requirements except front lot line buildout. Thus, the intensity is in keeping with the zoning ordinance and Master Plan.
- The design of facilities for vehicular access, circulation, parking and loading –
 The proposal with significant underground parking and emergency access meets
 this requirement.
- 4. The impacts on properties of outdoor lighting, noise, vibration, stormwater runoff and flooding The variance from the front lot line buildout requirements will not negatively affect these impacts. The project is being fully vetted by the Portsmouth Planning Board which will deal with each of these issues.
- 5. The preservation and enhancement of the visual environment The aesthetics of the site will be greatly enhanced via removal of the existing improvements and construction of the proposed five-story mixed-use building. This alone will enhance the visual environment. Moreover, the path to the North Mill Pond

further enhances both the visual environment and use of property for public purposes.

 The preservation of historic districts, and buildings and structures of historic or architectural interest – The project requires Historic District Commission review and approval.

7. The protection of natural resources, including groundwater, surface water, wetlands, wildlife habitat and air quality – Front lot line buildout where relief has no negative effect.

Based upon the foregoing, none of the variances "in a marked degree conflict with the ordinance such that they violate the ordinance's basic zoning objectives." *Malachy Glen*, *supra*, which also held:

One way to ascertain whether granting the variance would violate basic zoning objectives is to examine whether it would alter the essential character of the locality.... Another approach to [determine] whether granting the variance violates basic zoning objectives is to examine whether granting the variance would threaten the public health, safety or welfare. (emphasis added)

The shortfall is caused exclusively by the requirement for a driveway that alone requires a front lot line buildout variance, and by CPI's effort to assist in providing the significant public benefit of a pedestrian/bicycle access from this location toward the North Mill Pond. The public is unlikely to notice that the front lot line buildout is short of the requirement. Clearly, granting this variance in order to provide a driveway for access/parking and public safety together with a pathway for the ultimate benefit of the public neither alters the essential character of the locality nor threatens the public health, safety or welfare.

3. Granting the variance will not diminish surrounding property values.

The existing rather pedestrian buildings and exposed parking will be removed in favor of a more aesthetically pleasing five-story mixed-use building with predominantly underground parking. The subject lot, together with the entire area will be further enhanced by the public-use pathway to the North Mill Pond. Combined, these factors clearly demonstrate that surrounding property values will not be negatively affected by granting this minor variance.

4. Denial of the variances results in an unnecessary hardship.

a. Special conditions distinguish the property/project from others in the area.

The subject is a very large lot with a very short 103.66 feet of frontage on Green Street. A +/-24 foot wide access driveway is required for parking and emergency access around the building, reducing available front lot line buildout to less than the required 80% CPI further provides the public-use pathway, which further reduces the front lot line buildout frontage on Green Street. Additionally, CPI is providing for the benefit of the City a 15 foot wide sewer easement across the driveway entrance up to the northerly property line. These factors combine to create special conditions that distinguish the property from others in the area.

 No fair and substantial relationship exists between the general public purposes of the ordinance and its specific application in this instance.

Front lot line buildout requirements are intended to provide nearly block-length storefronts in the downtown area where many lots contain connected buildings. Here, the required 80% is unnecessary given the location of the building at the far edge of "downtown" with no connecting lots/buildings. The required driveway for parking and public safety as well as the significant public benefit provided by the pathway to the North Mill Pond, demonstrate that there is simply no reason to apply the strict requirements of the ordinance.

c. The proposed use is reasonable.

If the use is permitted, it is deemed reasonable. <u>Vigeant v. Hudson</u>. The five-story mixed-use building is permitted. Thus the use is reasonable.

5. Substantial justice will be done by granting the variance.

If "there is no benefit to the public that would outweigh the hardship to the applicant" this factor is satisfied. Harborside Associates, L.P. v. Parade Residence Hotel, L.L.C, 162 N.H. 508 (2011). That is, "any loss to the [applicant] that is not outweighed by a gain to the general public is an injustice." Malachy Glen, supra at 109. In providing a driveway access for parking and public safety, nothing can be built on the lot in compliance with the 80% front lot line buildout requirement. Relief is requested in order to construct a building. Additionally, here, the public will also be harmed greatly if the variance is denied via loss of the pathway. It is thus abundantly clear that substantial justice will be done by granting the variance while a substantial injustice will be done to the public if it is denied.

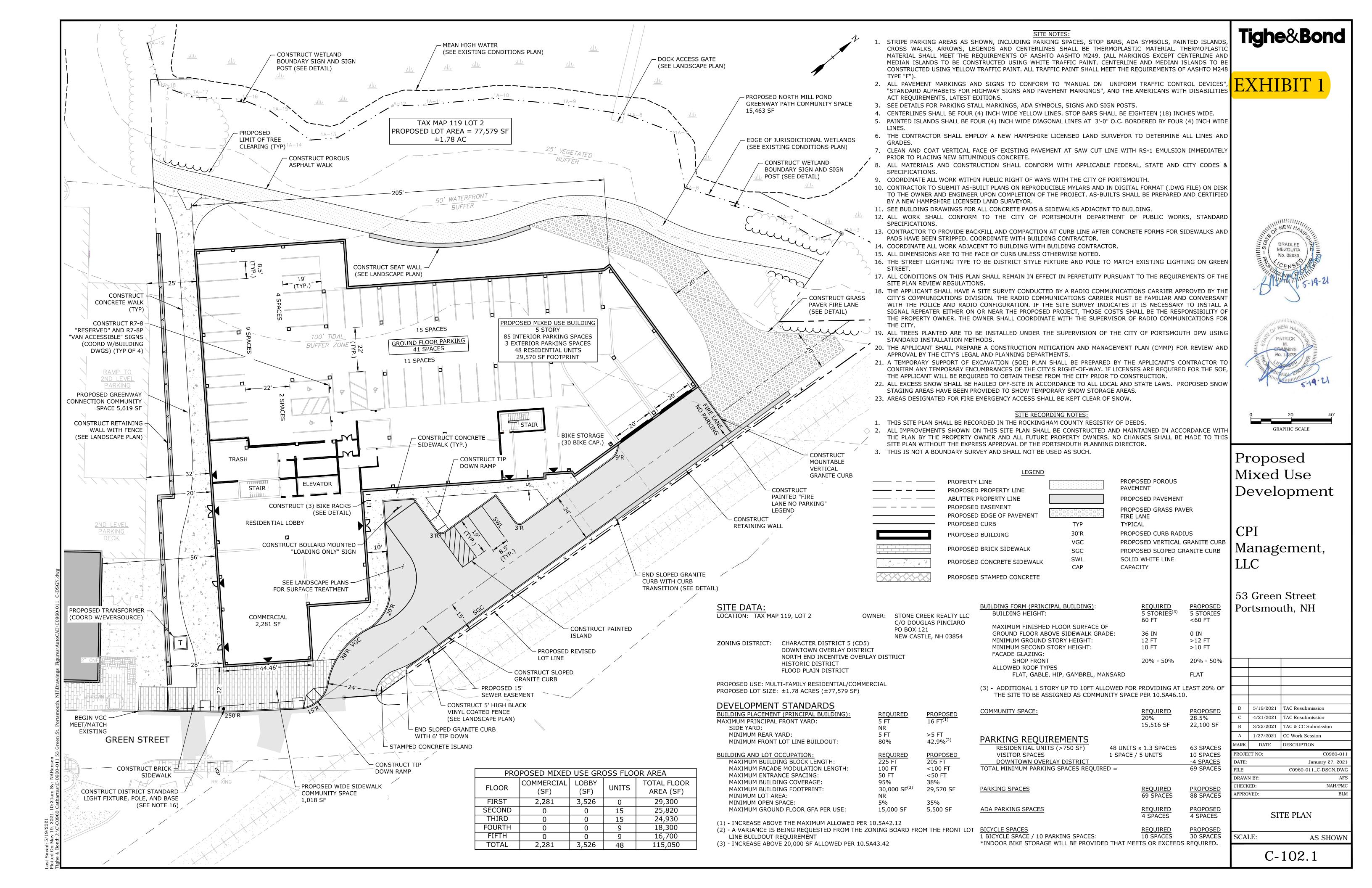
V. CONCLUSION

For all the reasons stated herein, CPI respectfully request that the Portsmouth Zoning Board of Adjustment grant the requested variance.

Respectfully submitted, CPI Management, LLC

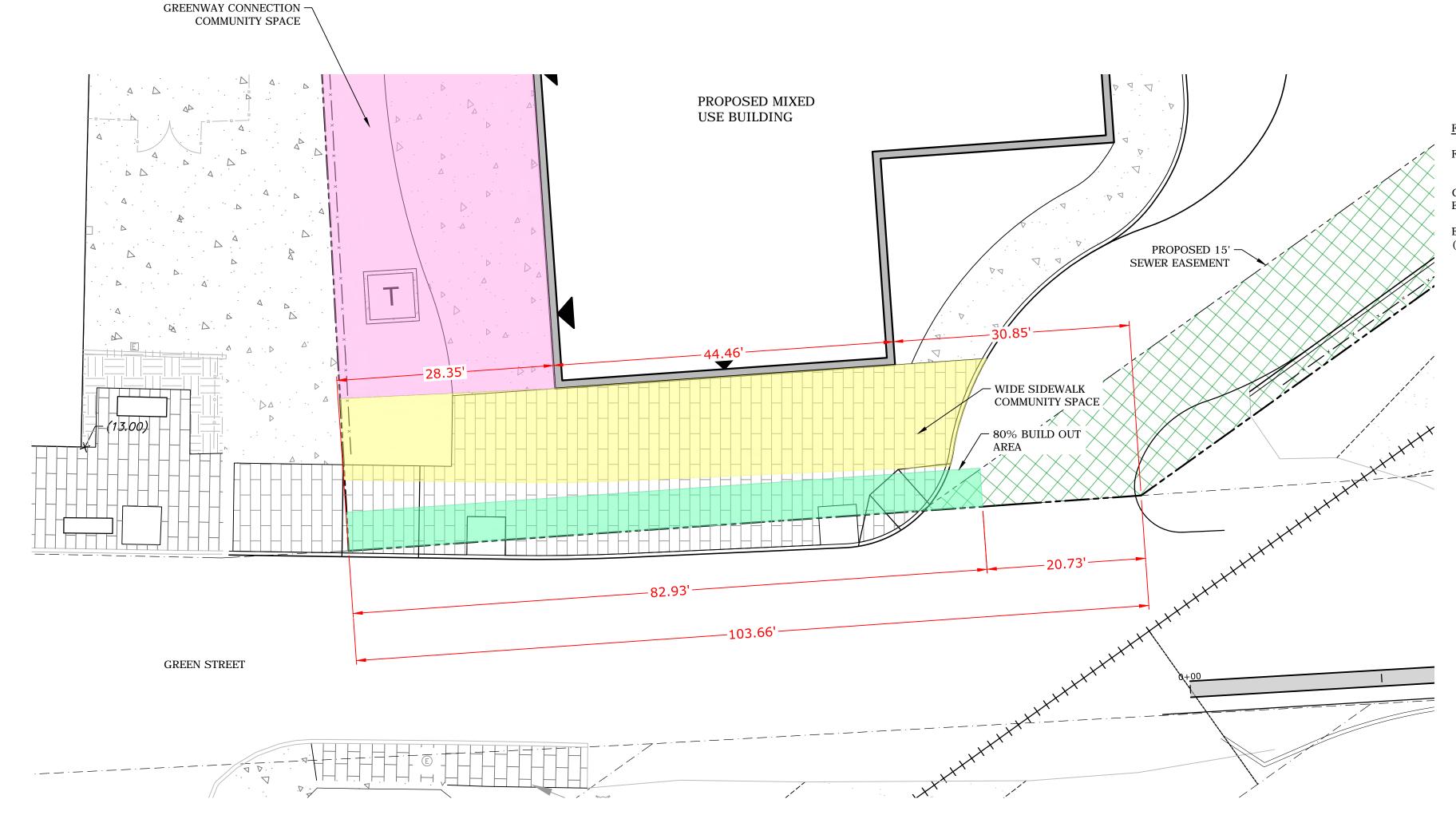
By:

R. Timothy Phoenix, Esquire Kevin M. Baum, Esquire



PROPOSED MIXED USE DEVELOPMENT 53 GREEN STREET PORTSMOUTH, NEW HAMPSHIRE

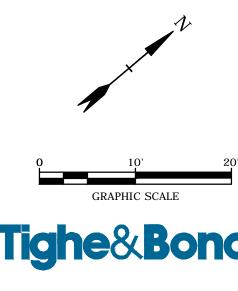
FRONT LOT LINE BUILD OUT EXHIBIT



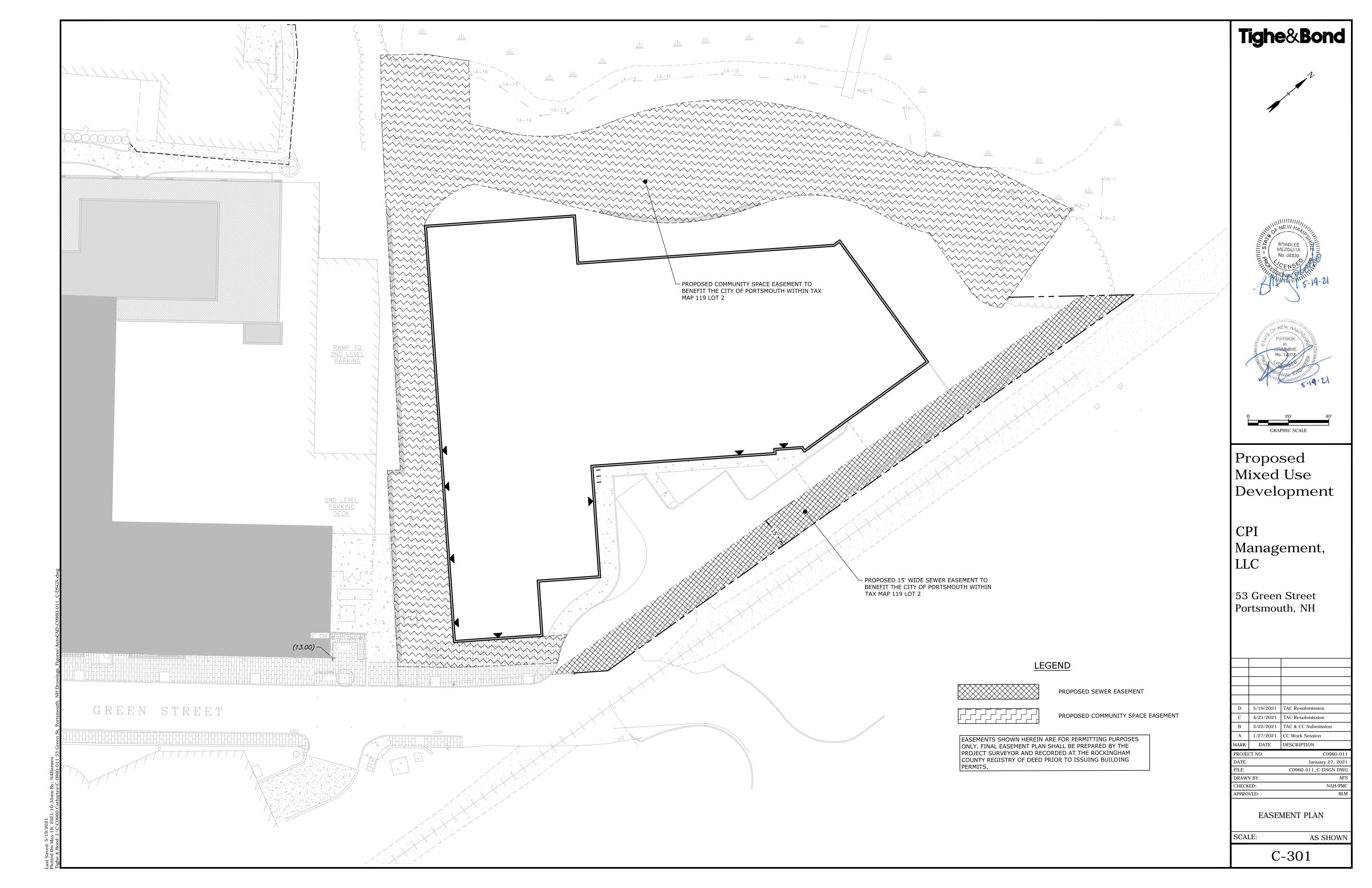
FRONT LOT LINE BUILD OUT:

FRONT LOT LINE = 103.66 FT * 80%GATEWAY CONNECTION COMMUNITY SPACE = 28.07 FTENTRANCE DRIVEWAY & WIDE SIDEWALK= 30.85 FTEFFECTIVE FRONT LOT LINE = (103.66 FT - 28.35 FT - 30.85 FT) = 44.46 FT80%
35.57 FT

100%



May 20, 2021 C0960-011_C-FIGS.dwg



City of Portsmouth, NH May 20, 2021 **EXHIBIT 2** Property Information
Property ID 0119-0002-0000 Location 53 GREEN ST Owner STONE CREEK REALTY LLC Nattet St 119-4 Russell S. Russell St 119-3 MAP FOR REFERENCE ONLY NOT A LEGAL DOCUMENT City of Portsmouth, NH makes no claims and no 123-14 119-2 warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this Geometry updated 4/1/2019 Data updated 7/17/2019 Green St 124-9 Russell St Print map scale is approximate. Critical layout or measurement activities should not be done using this resource. 124-10 124-12 Greenst sta 124-8-1

£124-13 6

Google Apple

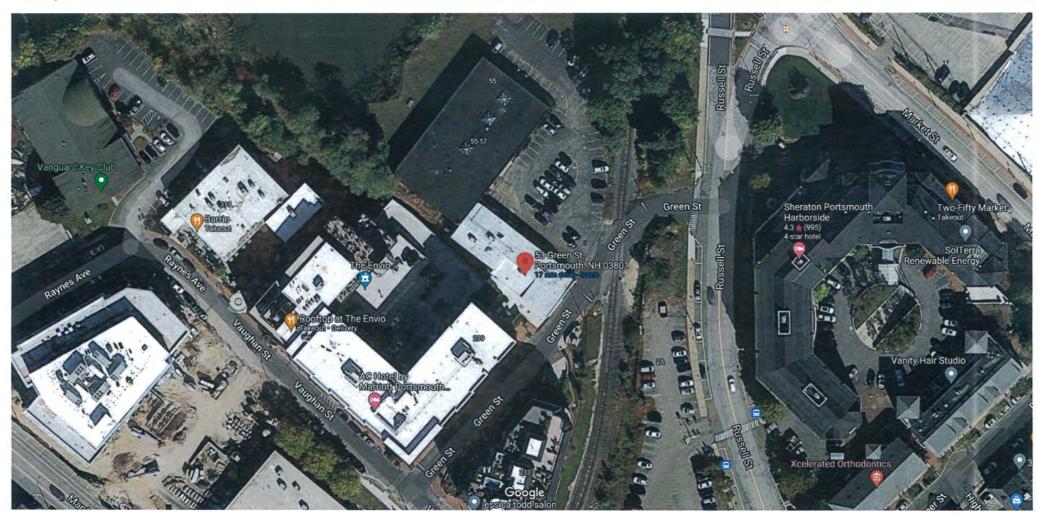
1" = 71 ft

Russ



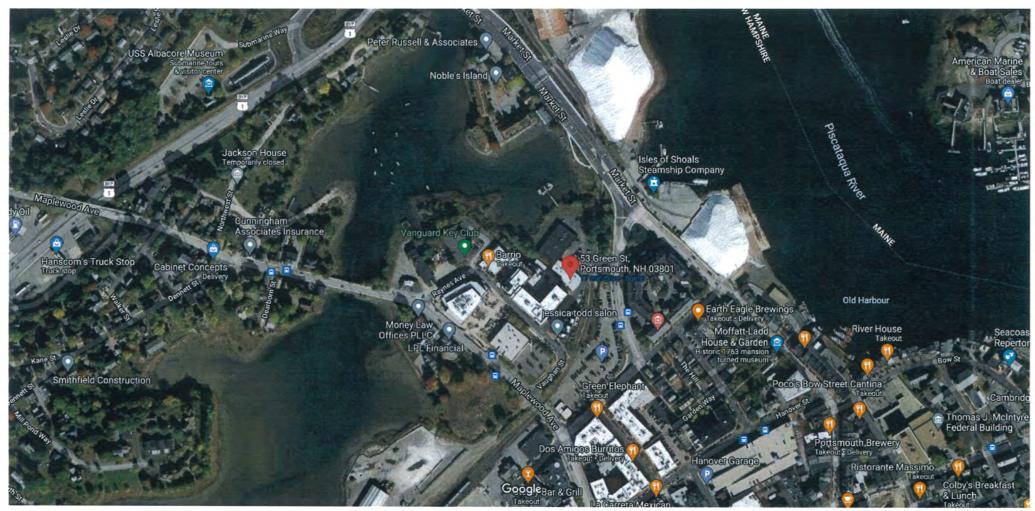
5/18/2021 53 Green St - Google Maps

Google Maps 53 Green St



Imagery @2021 Maine GeoLibrary, Maxar Technologies, U.S. Geological Survey, Map data @2021 50 ft

53 Green St



Imagery ©2021 Maine GeoLibrary, Maxar Technologies, U.S. Geological Survey, USDA Farm Service Agency, Map data ©2021 200 ft

Google Maps 43 Green St

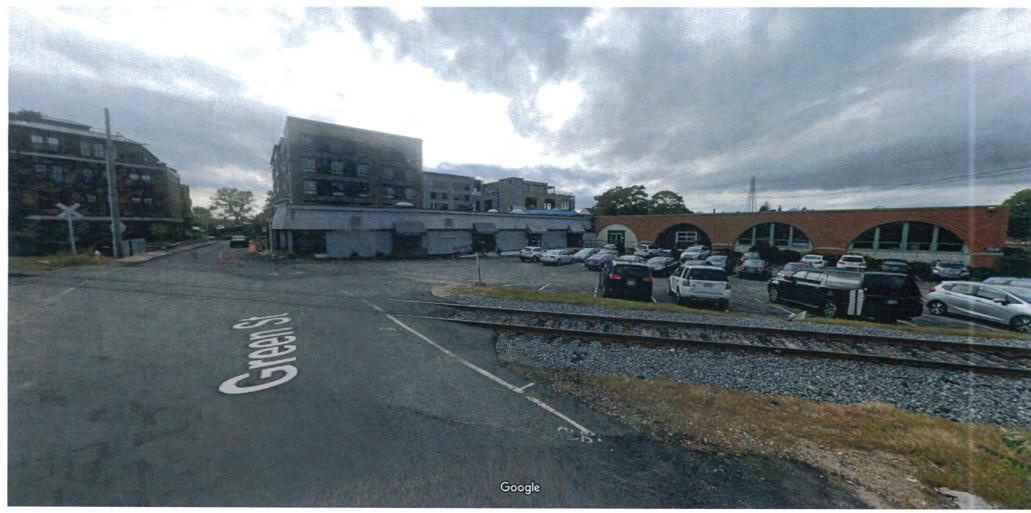


Image capture: Sep 2019 © 2021 Google



Street View



Portsmouth, New Hampshire



C. RUSSELL STREET VIEW



D. VIEW FROM MARKET STREET













VIEW NORTH

53 GREEN STREET

PORTSMOUTH, NEW HAMPSHIRE

3 SITE AND SURROUNDINGS VIEWS FROM THE SITE

HISTORIC DISTRICT COMMISSION WORK SESSION: FEBRUARY 3, 2021

III CATHARTES **EMBARC**







VIEW FROM VAUGHAN STREET



VIEW TO NORTH MILL POND





7

VIEW FROM RUSSEL STREET

CATHARTESEMBARC



53 GREEN STREET

PORTSMOUTH, NEW HAMPSHIRE

SITE AND SURROUNDINGS
STREET VIEWS

HISTORIC DISTRICT COMMISSION WORK SESSION: FEBRUARY 3, 2021

EXHIBIT 5



53 GREEN STREET
PORTSMOUTH, NEW HAMPSHIRE

RENDERING

CATHARTESEMBARC





53 GREEN STREET

PORTSMOUTH, NEW HAMPSHIRE



OWNER

CONSULTANTS

SUBMISSION ZBA

REVISIONS

DRAWING INFORMATION

DATE: <u>May 25, 2021</u> PROJECT #: 20055 SCALE: 1/16" = 1'-0"

DRAWING TITLE

BASEMENT FLOOR PLAN

DRAWING NUMBER

OWNER CATHARTES

CONSULTANTS

STREET

SUBMISSION

53 GREEN
PORTSMOUTH, NH ZBA REVISIONS

DRAWING INFORMATION

DATE: <u>May 25, 2021</u> PROJECT #: 20055 SCALE: 1/16" = 1'-0"

DRAWING TITLE SECOND FLOOR

PLAN

DRAWING NUMBER

OWNER

CATHARTES

CONSULTANTS

STREET

SUBMISSION

53 GREEN
PORTSMOUTH, NH ZBA REVISIONS

DRAWING INFORMATION

DATE: <u>May 25, 2021</u> PROJECT #: 20055 SCALE: 1/16" = 1'-0"

DRAWING TITLE THIRD FLOOR PLAN

DRAWING NUMBER

OWNER

CONSULTANTS

STREET

SUBMISSION GREEN TSMOUTH, NH

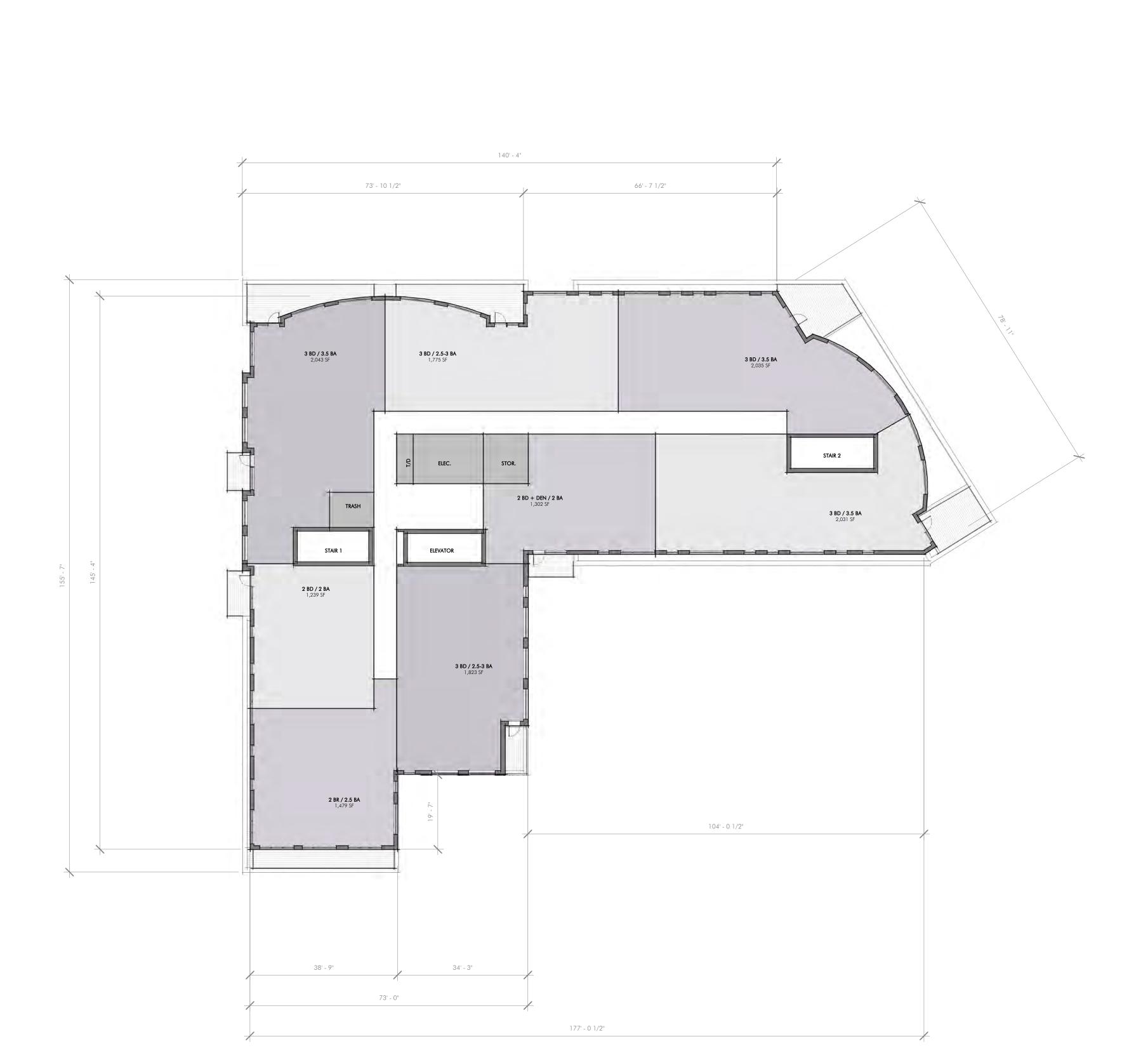
ZBA 53 PORT REVISIONS

DRAWING INFORMATION

DATE: <u>May 25, 2021</u> PROJECT #: 20055 SCALE: 1/16" = 1'-0"

DRAWING TITLE FOURTH FLOOR PLAN

DRAWING NUMBER



OWNER

CATHARTES

CONSULTANTS

STREET 53 GREEN
PORTSMOUTH, NH

SUBMISSION

ZBA

revisions

DRAWING INFORMATION

DATE: <u>May 25, 2021</u>

PROJECT #: 20055 SCALE: 1/16" = 1'-0"

DRAWING TITLE

FIFTH FLOOR PLANS

DRAWING NUMBER

OWNER CATHARTES

CONSULTANTS

STREET

SUBMISSION GREEN TSMOUTH, NH 53 PORT revisions

DRAWING INFORMATION

ISSUE: ZBA SUBMISSION DATE: <u>May 25, 2021</u>

PROJECT #: 20055 SCALE: 1/16" = 1'-0"

DRAWING TITLE

ROOF PLAN

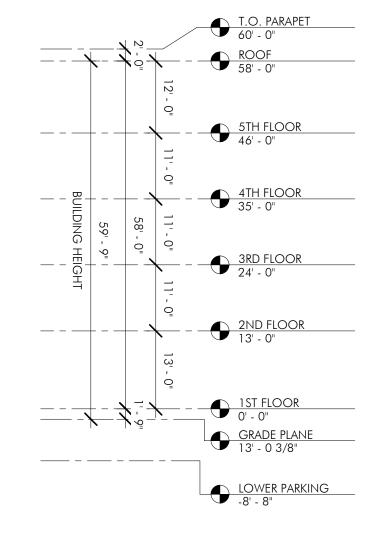
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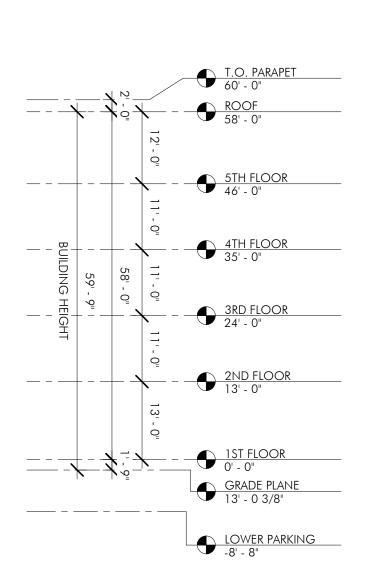


GREEN STREET ELEVATION



REAR (WATERFRONT) ELEVATION





| ARCHITECT EMBARC 60 K STREET, 3RD FLOOR BOSTON, MA 02127 O: 617.766.8330 www.embarcstudio.com CATHARTES CONSULTANTS

STREET

SUBMISSION GREEN REVISIONS DRAWING INFORMATION

PROJECT #: 20055

DRAWING TITLE

BUILDING ELEVATIONS

DRAWING NUMBER