

BY: VIEWPOINT & HAND DELIVERY

November 20, 2024

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

**RE: Variance Application of 111 Front Street, LLC
65 Griffin Road (Tax Map 258, Lot 31)**

Dear Stefanie,

Please find a copy of the following submission materials in connection with the variance application filed on behalf of 111 Front Street, LLC.

- 1) Landowner Letter of Authorization;
- 2) Narrative to Variance Application;
- 3) Surveyed Site Plan;
- 4) Photographs of Property.

A copy of the above application materials is being delivered to the Planning Department today. 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

111 Front Street, LLC, owner of property located at 65 Griffin Road, Portsmouth, NH (the "Property), hereby authorizes **Durbin Law Offices, PLLC** to file any zoning board, planning board, historic district commission 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.

111 Front Street, LLC

Paul Godbout dotloop verified
11/19/24 3:22 PM EST
KP8E-Y7KK-NNVH-GLPQ

Paul Godbout, Member, Duly Authorized

September 25, 2024

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

111 Front Street, LLC
(Owner/Applicant)
Tax Map 258, Lot 31
65 Griffin Road
Portsmouth, NH 03801

INTRODUCTORY STATEMENT

The Property

The Property at 65 Griffin Road is a 16,121 square foot lot located in the SRB Zoning District (the “Property or “Applicant’s Property”). The Property contains a single-family residence. The Property is bordered to the West by a commercial complex consisting primarily of medical and professional offices, and to the North by land owned by the City of Portsmouth. The properties to the East and South contain single-family homes.

Renovation/Additions to Home

The home on the Property was recently renovated. As part of the renovation, a farmer’s porch was added to the front of the home and a deck was added to the rear. The owner received building permits for construction of both features. A building permit was issued allowing for the construction of the front porch on May 17, 2024. **Exhibit A**. A building permit was issued for the rear deck construction on July 23, 2024. **Exhibit B**.

Mistaken Boundaries/Setbacks

Following substantial completion of the work, Brian Allen, who acted as the general contractor for the renovation and has an ownership interest in the Property, discovered that the easterly boundary of the Property was in a different location than he believed it to be when he applied for the permits. When he measured the building setbacks for purposes of his permit applications, he used a fence running along the Easterly side of the Property and some rebar and an iron pin near the street as his reference points. At the time, the neighboring landowner to the East (49 Griffin Road) also confirmed their belief that the fence represented the common boundary.

Mr. Allen’s belief that the fence ran along the easterly boundary of the Property was also consistent with a Lot Line Adjustment plan recorded in the Rockingham County Registry of Deeds between the properties at 49 and 65 Griffin Road. **Exhibit C**. Much to Mr. Allen’s chagrin, he discovered that no deed was ever recorded conveying the subject land to the owners of 65 Griffin Road. Mr. Allen subsequently met with the Planning Department, knowing that his findings would likely render the front porch non-conforming. He agreed to conduct a survey of the Property and apply for any zoning relief needed.

Setback Encroachments

A survey of the Property was completed in October. The survey demonstrates that portions of the farmer's porch and rear deck encroach in the setbacks. It also demonstrates that the house was non-conforming prior to construction of the front porch and rear deck, as more specifically discussed below.

Preexisting Non-conformities

The house was lawfully non-conforming with respect to the front and left side yard setbacks prior to construction of the farmer's porch and rear deck. The right front corner of the house and former stairs accessing the front door encroached into the front yard setback. **Exhibit D**. Much of the left side of the house, including a bulkhead, encroach into the left side yard setback. In addition, much of the existing garage is located within the rear yard setback.

Honest Mistake

In retrospect, Mr. Allen is regretful of his decision to proceed with construction on the Property without having a survey done first. The mistake he made, however, was an honest one that not even anyone in the Inspections Department picked up on before issuing the building permits. Mr. Allen now seeks after-the-fact variance relief for the front porch and rear deck non-conformities.

SUMMARY OF VARIANCE RELIEF

The Applicants seek the following variances from the Portsmouth Zoning Ordinance (the "Ordinance") relative to the front porch and rear deck:

Section 10.521 (Table of Dimensional Regulations)

Front Porch

1. To allow 21.9' front yard setback where 30' is the minimum required.
2. To allow a 6.6' left side yard setback where 10' is the minimum required.

Rear Deck

3. To allow a 29.3'+/- rear yard setback where 30' is the minimum required.

Section 10.321 (Non-Conforming Structures)

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

Granting the variances 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. "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." *Harborside Assoc v. Parade Residence Hotel*, 162 N.H. 508, 514 (2011)

A general objective behind requiring minimum building setbacks is to protect abutting properties from unreasonable encroachments into their light, air and space.

Rear Deck

Only a small corner of the rear deck, approximately 8" in length, encroaches into the rear yard setback. **Exhibit E**. The encroachment is so de minimis that it almost falls within the plus/minus margin of error afforded to permit applicants. It does not intrude upon the light, air and space of the abutting property to the rear.

Front Porch

In addition to protecting abutting properties from unreasonable intrusions into their light, air and space, front yard setback restrictions are intended to regulate the location of structures in relation to the street (not the ROW). There is an area of land associated with the Griffin Road ROW that is assimilated into the Applicant's front yard. While the farmer's porch encroaches into the front yard setback, it is more than 30' from the street itself. It does not have any tangible impact upon the light, air and space of surrounding properties. The property across Griffin Road is owned by the City and remains mostly undeveloped. It is a considerable distance from the farmer's porch. **Exhibit F**. The farmer's porch enhances the appearance of the Property and is consistent with the character of the residential properties surrounding it.

For the foregoing reasons, granting the variances requested will not alter the essential character of the neighborhood or otherwise threaten the public's health, safety or welfare.

Substantial justice will be done by granting the variances.

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).

The public does not benefit from requiring the Applicant to tear off the front porch and reconstruct a small section of the rear deck to bring the house into greater compliance with the Ordinance. The home was an eyesore in its prior condition that detracted from surrounding properties. The farmer's porch and rear deck additions have improved the appearance of the house and have added elements of functionality to it that did not previously exist. The improved appearance of the Property is a benefit to the neighborhood. Requiring removal of the porch and deck will result in a financial hardship to the Applicant that is not outweighed by any corresponding gain to the public.

The values of surrounding properties will not be diminished by granting the variances.

Aesthetically, the appearance of the Property has been significantly improved with the front porch and rear deck additions. If anything, these improvements have added to surrounding property values, not diminished them.

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

There are several special conditions of the Property that distinguish it from surrounding properties such that there is no fair and substantial relationship between the general purposes of the setback provisions of the Ordinance and their application to the farmer's porch and rear deck.

Farmer's Porch

For one, the owners of 49 and 65 Griffin Road have always treated the fence as the boundary between their properties and the area between the house and the fence as the side yard of the Applicant's Property. The common belief that the fence is the boundary between the properties is derived from an agreement that was entered into by the prior owners of the two properties to adjust their lot lines, as evidenced by the recorded Lot Line Adjustment Plan attached as **Exhibit C**. The fence follows the adjusted boundary line shown on the plan. Unfortunately, no deed was ever conveyed memorializing the lot line adjustment. Had the land been conveyed, the home (other than the bulkhead) and the farmer's porch would conform to the left side yard setback requirement.

A second special condition relates to the land associated with the Griffin Road ROW that has been assimilated into the Applicant's Property. This land area cannot be utilized when measuring the setback of the farmer's porch. In the present case, the farmer's porch is located more than 30' from the street at its closest angle, which is consistent with the spirit and intent of the front setback restriction.

Rear Deck

Only a small corner of the newly constructed rear deck approximately 8” in length encroaches into the rear setback. Most of the deck conforms to the 30’ setback requirement. This non-conforming aspect of the deck does not create any impact upon the nearest abutting property, nor does it render the Property more non-conforming than it already is. There is already a detached garage situated almost entirely within the rear yard setback. The garage presumably has a much greater impact upon the nearest abutting Property.

The proposed use of the Property is reasonable. The Property will continue to be used for single-family residential purposes, consistent with the objectives of SRB Zoning.

CONCLUSION

In conclusion, for the reasons set forth herein, the application satisfies the five (5) criteria for each of the variances being requested. Accordingly, the Applicants respectfully request that the Board approve their Variance Application.

Respectfully Submitted,

Dated: November 20, 2024

111 Front Street, LLC

By:



Derek R. Durbin, Esq.
DURBIN LAW OFFICES PLLC
144 Washington Street
Portsmouth, NH 03801
(603)-287-4764
derek@durbinlawoffices.com



City of Portsmouth Building Permit

Inspection Department
1 Jenkins Avenue
Portsmouth, NH 03801
603-610-7243

EXHIBIT B.

Permit Number:
BLDG-24-520
Date of Issue:
July 23, 2024
Expires:
July 23, 2025
Const. Cost:
\$ 8,000

Owner: 111 front st llc
Applicant: Brian Allen
Contractor: Brian Allen , Allen Properties Phone #: 6034986994
Location: 65 GRIFFIN RD

Description of Work: Add rear 16x12 deck on 12" sono tubes with a carrying beam that the deck will cantilever, replace siding.

Map/Lot: 0258--0031--0000-

Occupancy Classification: Residential Other- (See R-3) Single Family

Design Occupancy Load: N/A

Total # of Dwelling Units: 0

Use Group: Addition

Constr. Type: Type V-B

Bldg. Code: IRC Edition: 2018

Remarks: * Per City Ord. Sec. 11.502 (F) Street/Unit Number must be affixed to Main Structure as to be plainly visible from the street. Construction sites must post the address clearly on the property. No site activity allowed before 7:00AM or after 6:00PM. No weekend construction allowed.

Please call the office @603-610-7243 and the front staff will assist you in scheduling an inspection.

Residential Renovation, some structural change, no change in occupancy classification.

*LINK TO THE CODES <https://www.nh.gov/safety/boardsandcommissions/bldgcode/nhstatebldgcode.html>

STREET NUMBER

* Per City Ord. Sec. 11.502 (F) Street/Unit Number must be affixed to Main Structure as to be plainly visible from the street. Construction sites must post the address clearly on the property. No site activity allowed before 7:00AM or after 6:00PM. No weekend construction allowed.

* Separate Electric Permit May Be Required

* All stairs, handrails and guard systems shall be constructed to building code requirements for strength, geometry, graspability, fall protection and other code required dimensional features. NOTE: Contractor assumes all responsibility for code conformance.

* R311.7.6 Landings for stairways. There shall be a floor or landing at the top and bottom of each stairway. The minimum width perpendicular to the direction of travel shall be no less than the width of the flight served. Landings of shapes other than square or rectangular shall be permitted provided the depth at the walk line and the total area is not less than that of a quarter circle with a radius equal to the required landing width. Where the stairway has a straight run, the minimum depth in the direction of travel shall be not less than 36 inches (914 mm).

* Deck ledger shall be attached to house band joists per IRC Section R507 and Table R507.2.1(1) or shall be freestanding and structurally independent of house.

*Flashing shall not be aluminum or have aluminum separated from contact with pressure treated lumber

*Frost protection of a minimum of 48 inches below grade is required for all non-freestanding or for decks that serve the required egress, the use of any alternative method of frost protected footings, such as pile, screws or steel bearing pin methods may limit the future ability to convert the deck/porch space to an interior living space without modifications to the frost protection method.

* Vent terminations- Deck addition cannot cover or alter existing vent terminations. If required venting shall be relocated to meet minimum code clearances. Separate review and permitting required.

Construction Safeguards

* Adjoining public and private property shall be protected from damage during construction, remodeling, and demolition work, per IBC Section 3307

*Required means of egress shall be maintained at all times during construction, demolition, remodeling or alterations and additions to any building.

* Structures under construction, alteration or demolition shall be provided with no fewer than one approved portable fire extinguisher in accordance with Section 906, and located in accordance with IBC § 3309

*Pedestrians shall be protected during construction, remodeling and demolition activities as required by IBC § 3306

*Any blocking of street or sidewalk will require an **Encumbrance Permit** from the Department of Public Works at 603-427-1530

GENERAL NOTES

* The administrative agency responsible for performing inspections has, to the best of its ability, verified governing code compliance for this project. However, issuance of this Certificate of Occupancy or Certificate of Completion, does not relieve the contractor of any obligation as outlined under NH RSA 155-A:2 VII for governing code compliance issues that may be discovered after the issuance date of this document.

* Please tell us about your experience with our Inspection Team. Email comments to Shanti R. Wolph, Inspection Director at srwolph@cityofportsmouth.com or to Jessica Griffin, assistant to the City Manager at jsgriffin@cityofportsmouth.com . We would love to hear from you with accolades, or learn how we can improve.

TABLE R507.2
DECK LEDGER CONNECTION TO BAND JOIST^{a, b}
 (Deck live load = 40 psf, deck dead load = 10 psf, snow load ≤ 40 psf)

CONNECTION DETAILS	JOIST SPAN						
	6' and less	6'1" to 8'	8'1" to 10'	10'1" to 12'	12'1" to 14'	14'1" to 16'	16'1" to 18'
	On-center spacing of fasteners						
1/2-inch diameter lag screw with 1/2-inch maximum sheathing ^d	30	23	18	15	13	11	10
1/2-inch diameter bolt with 1/2-inch maximum sheathing ^d	36	36	34	29	24	21	19
1/2-inch diameter bolt with 1-inch maximum sheathing ^e	36	36	29	24	21	18	16

For SI: 1 inch = 25.4 mm, 1 foot = 304.8 mm, 1 pound per square foot = 0.0479 kPa.

- a. Ledgers shall be flashed in accordance with Section R703.4 to prevent water from contacting the house band joist.
- b. Snow load shall not be assumed to act concurrently with live load.
- c. The tip of the lag screw shall fully extend beyond the inside face of the band joist.
- d. Sheathing shall be wood structural panel or solid sawn lumber.
- e. Sheathing shall be permitted to be wood structural panel, gypsum board, fiberboard, lumber or foam sheathing. Up to 1/2-inch thickness of stacked washers shall be permitted to substitute for up to 1/2 inch of allowable sheathing thickness where combined with wood structural panel or lumber sheathing.

TABLE R507.2.1
PLACEMENT OF LAG SCREWS AND BOLTS IN DECK LEDGERS AND BAND JOISTS

	MINIMUM END AND EDGE DISTANCES AND SPACING BETWEEN ROWS			
	TOP EDGE	BOTTOM EDGE	ENDS	ROW SPACING
Ledger ^a	2 inches ^d	3/4 inch	2 inches ^b	1 5/8 inches ^b
Band Joist ^c	3/4 inch	2 inches	2 inches ^b	1 5/8 inches ^b

For SI: 1 inch = 25.4 mm.

- a. Lag screws or bolts shall be staggered from the top to the bottom along the horizontal run of the deck ledger in accordance with Figure R507.2.1(1).
- b. Maximum 5 inches.
- c. For engineered rim joists, the manufacturer's recommendations shall govern.
- d. The minimum distance from bottom row of lag screws or bolts to the top edge of the ledger shall be in accordance with Figure R507.2.1(1).

The PERMIT HOLDER has read this permit, the permit application, and the Building Official's marked-up plans and agrees to perform the work authorized including any conditions or requirements indicated thereon; and any stipulations imposed by a Land Use Board in conjunction with the project. The CONTRACTOR shall be responsible for notifying the Inspection Department 48 hours in advance, for FOUNDATION, FRAMING, and FINAL inspections. A Certificate of Occupancy is required for all Building Permits. Buildings shall not be occupied until ALL inspections (BUILDING, ELECTRICAL, PLUMBING, MECHANICAL, and FIRE) are complete and Occupancy has been issued. By signing this permit, the owner or his/her representative (Permit Holder), authorizes property access by city officials to conduct interior and exterior inspections and property tax assessments during and/or after the construction process.

The Permit Card Shall Be Posted and Visible From the Street During Construction.

* Per City Ord. Sec. 11.502 (F) Street/Unit Number must be affixed to Main Structure as to be plainly visible from the street. Construction sites must post the address clearly on the property. No site activity allowed before 7:00AM or after 6:00PM. No weekend construction allowed.

Code Official:



This is an e-permit. To learn more, scan this barcode or visit portsmouthnh.viewpointcloud.com/#/records/83741

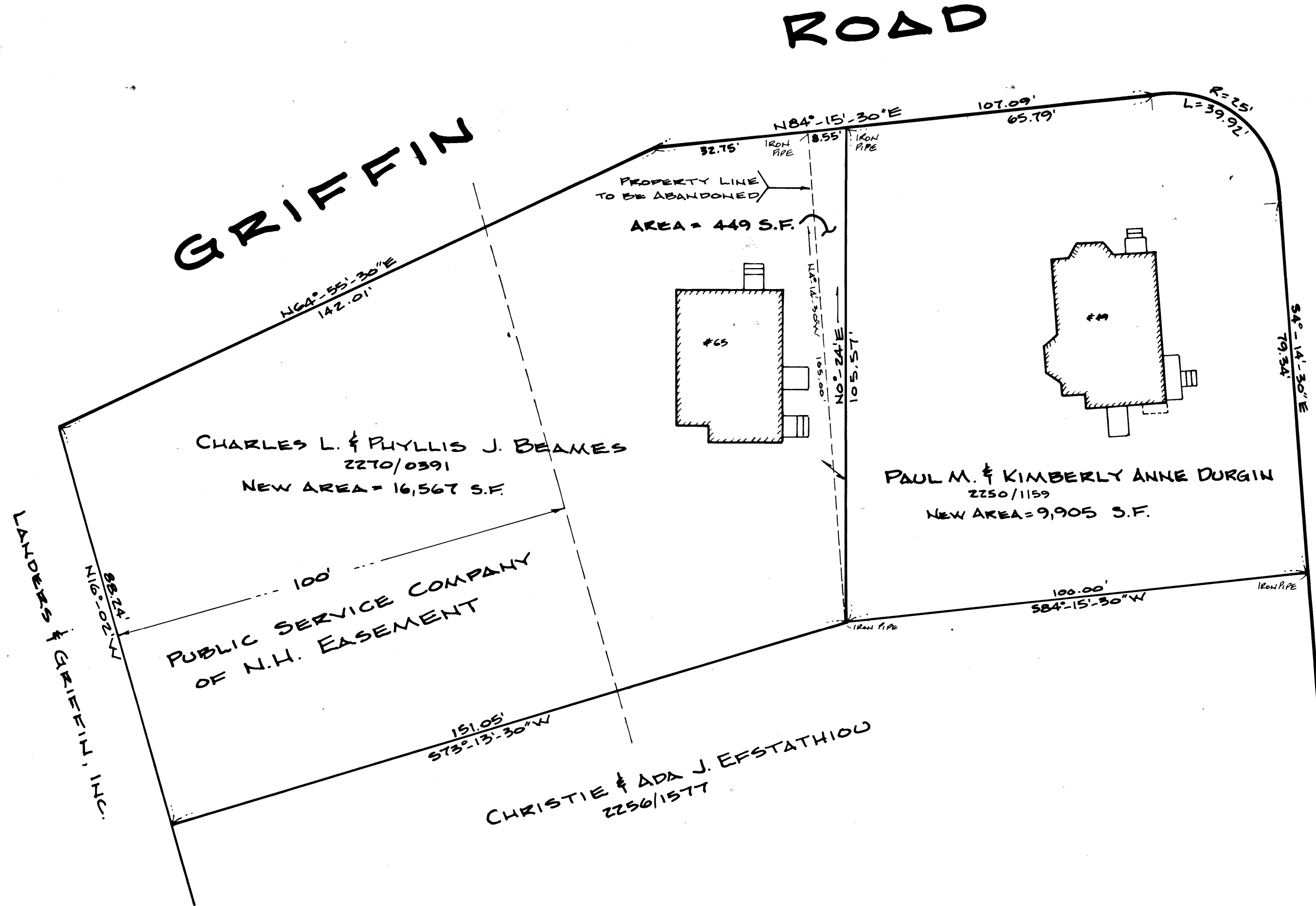


APPROVED FOR RECORD

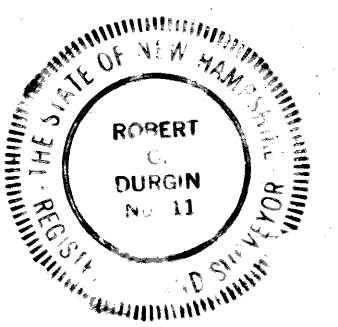
WILLIAM L. SHEA *William L. Shea* 9/15/77
CHAIRMAN, PORTSMOUTH, N.H. PLANNING BOARD

EXHIBIT C

'77 SEP 23 P.M. 24
REGISTRY OF DEEDS



DAVIS ROAD



LOT LINE REVISION
Nos. 49 & 65 GRIFFIN ROAD
PORTSMOUTH, N.H.

SCALE: 1 INCH = 20 FEET

AUGUST 1977

JOHN W. DURGIN
 CIVIL ENGINEERS
 PROFESSIONAL ASSOCIATION
 PORTSMOUTH & ROCHESTER, N.H.

C-7251

FILE NO. 1498
 PLAN NO. 4519

Mail to: Ritco

THE PREMISES SHOWN ARE LOTS 2 & 3 ON "PLAN OF LOTS, PORTSMOUTH, N.H., FOR RALPH R. & ELINOR L. DAVIS", BY JOHN W. DURGIN CIVIL ENGINEERS - APPROVED BY THE PORTSMOUTH, N.H. PLANNING BOARD ON MAY 7, 1970.

EXHIBIT D



EXHIBIT E



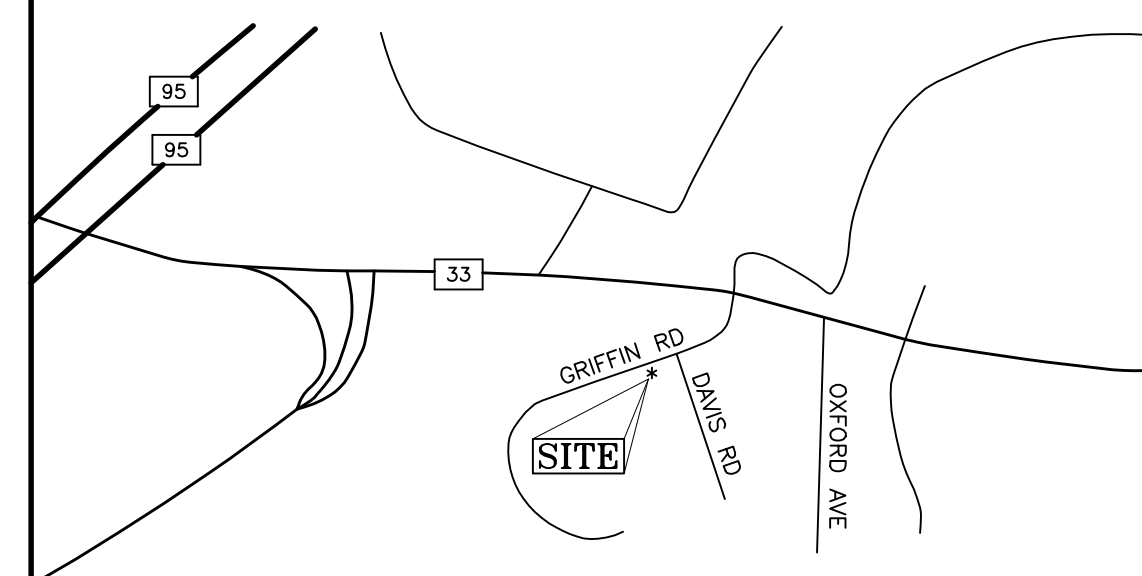
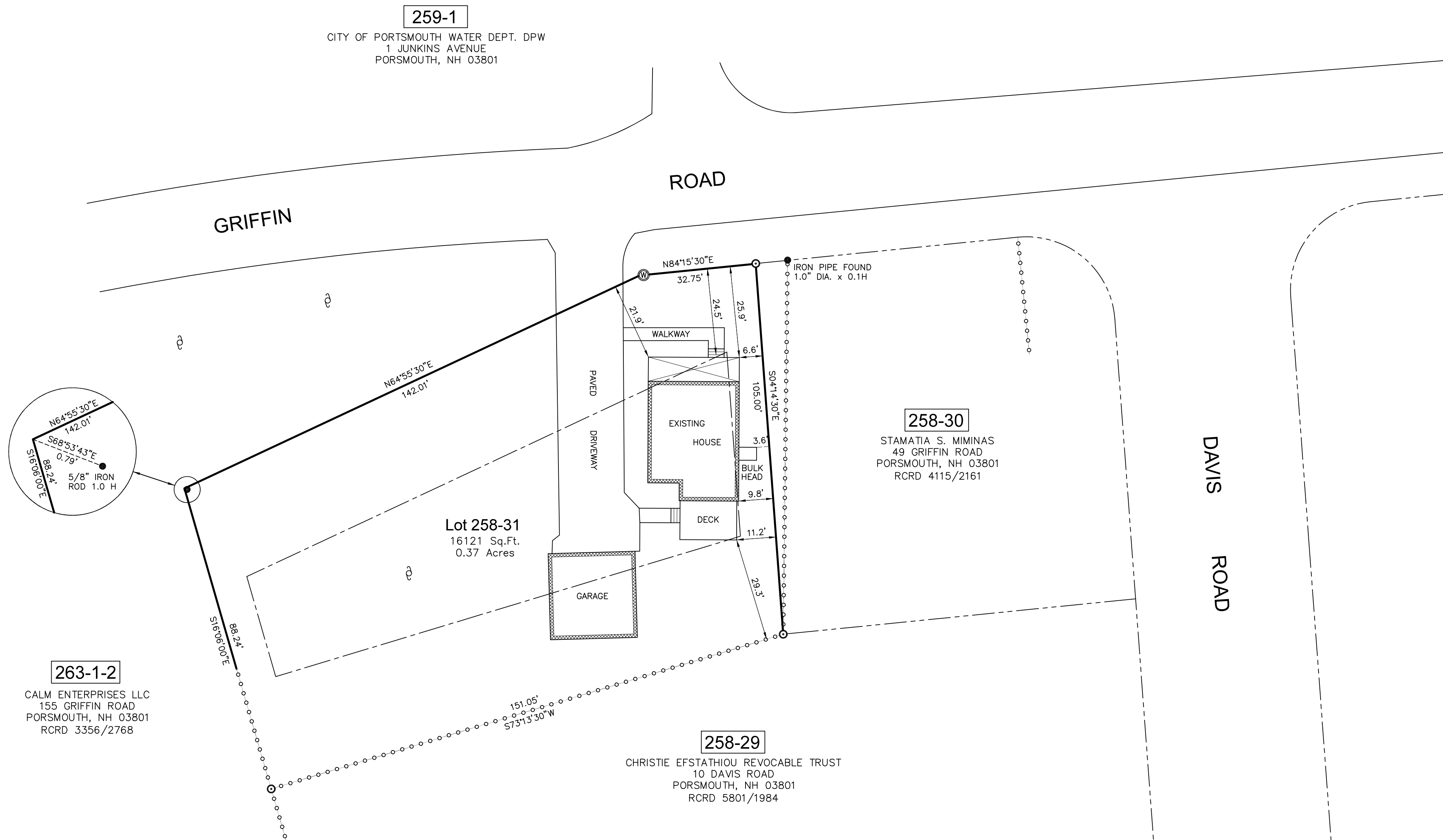
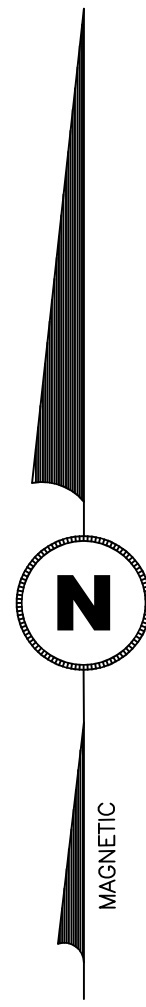


**MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT**

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.



LOCATION PLAN

263-1-2
 CALM ENTERPRISES LLC
 155 GRIFFIN ROAD
 PORTSMOUTH, NH 03801
 RCRD 3356/2768

259-1
 CITY OF PORTSMOUTH WATER DEPT. DPW
 1 JUNKINS AVENUE
 PORTSMOUTH, NH 03801

258-30
 STAMATIA S. MIMINAS
 49 GRIFFIN ROAD
 PORTSMOUTH, NH 03801
 RCRD 4115/2161

258-29
 CHRISTIE EFSTATHIOU REVOCABLE TRUST
 10 DAVIS ROAD
 PORTSMOUTH, NH 03801
 RCRD 5801/1984

Lot 258-31
 16121 Sq.Ft.
 0.37 Acres

LEGEND

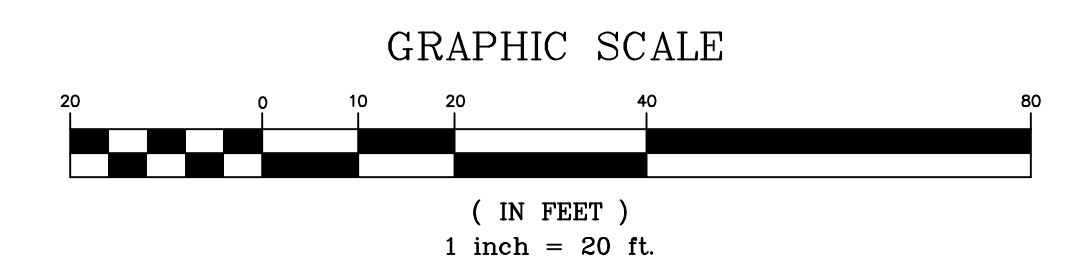
- 5/8" IRON ROD w/ID CAP TO BE SET
- IRON ROD OR PIPE AS NOTED
- ⊕ UTILITY POLE
- ⊗ WATER SHUT-OFF
- R.C.R.D. ROCKINGHAM COUNTY REGISTRY OF DEEDS
- BUILDING SETBACK LINE
- - - - - ABUTTERS APPROXIMATE LOT LINE
- CHAIN LINKED FENCE

TOWN of PORTSMOUTH ZONING BOARD APPROVAL	

NOTES

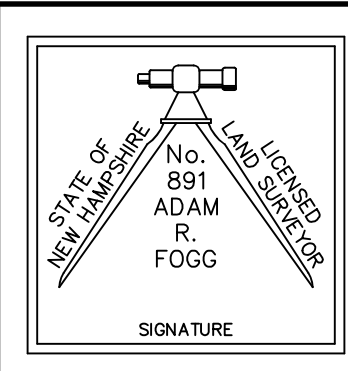
1. RANDOM TRAVERSE ERROR OF CLOSURE IS LESS THAN 1 PART IN 10,000.
2. OWNER OF RECORD:
 111 FRONT STREET LLC
 111 FRONT STREET
 MANCHESTER, NH 03102
 PROPERTY LOCATION:
 65 GRIFFIN ROAD
 PORTSMOUTH, NH 03801
 TAX MAP 258, LOT 31
 R.C.R.D. BOOK 6534, PAGE 797
3. REFERENCE PLAN:
 "PLAN OF LOTS-PORTSMOUTH, N.H. FOR RALPH R. & ELINOR L. DAVIS"
 BY JOHN W. DURGIN DATED MAY 1970.
 R.C.R.D. PLAN No. D-1778
4. ZONING DIMENSIONAL AND DENSITY REQUIREMENTS ARE AS FOLLOWS:
 - a. ZONING DISTRICT: SRB
 - b. MINIMUM LOT SIZE IS 15,000 S.F.
 - c. MINIMUM LOT FRONTAGE IS 100 FT.
 - d. BUILDING SETBACKS:
 FRONT: 30'
 REAR: 30'
 SIDE: 10'
 - e. BUILDING COVERAGE MAXIMUM: 20%
 BUILDING COVERAGE ACTUAL: 1,790 S.F./16,121 S.F. = 11%
 - f. OPEN SPACE MINIMUM: 40%
 OPEN SPACE ACTUAL: 4,490 S.F./16,121 S.F. = 28%

ISSUE	DATE	DESCRIPTION	BY	CHKD.	APP.



ATLANTIC
 SURVEY CO, LLC
 25 Nute Road, Dover, New Hampshire 03820

PREPARED BY:
 SURVEYORS
 PLANNERS
 SEPTIC DESIGNERS
 603-659-8939



DATE:	October, 2024
FIELDWORK BY:	AF
DESIGNED BY:	AF
CAD FILE:	24132
PROJECT No.:	24132
SHEET	1 OF 1

PLAN of LAND
 PREPARED FOR
111 Front Street LLC
 Tax Map 258 Lot 31 - R.C.R.D. Book 6534 Page 797
 LOCATED AT
 65 Griffin Road, Portsmouth, N.H.



Front View of House



Left Side Yard



Rear Yard View of Deck