

**BY: VIEWPOINT & HAND DELIVERY**

April 30, 2024

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

**RE: Variance Application of Stephen and Kathryn Singlar  
43 Holmes Court, Tax Map 101, Lot 14**

Dear Stefanie,

Our Office represents Stephen and Kathryn Singlar, owners of the property located at 43 Holmes Court. The following materials have been submitted for consideration at the Zoning Board of Adjustment's May 2024 meeting:

- 1) Variance Application (filed through Viewpoint);
- 2) Landowner Letter of Authorization;
- 3) Narrative to Variance Application;
- 4) Variance Plan;
- 5) Floor Plans and Elevations;
- 6) Tax Map with Zoning Overlay;
- 7) Tax Map;
- 8) Photographs of the Property.

A copy of the application submission 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

**Stephen and Kathryn Singlar**, record owners of property located at 43 Holmes Court, Portsmouth, NH 03801, Tax Map 101, Lot 14 (the "Property"), hereby authorizes **Durbin Law Offices, PLLC, Altus Engineering, Inc. and Brendan McNamara, and their agents and representatives** 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.

  
\_\_\_\_\_  
**Stephen Singlar**


November 14, 2022

  
\_\_\_\_\_  
**Kathryn Singlar**

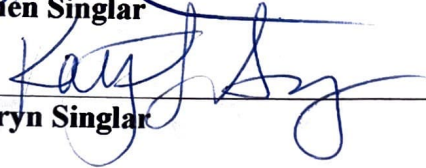
November 14, 2022

LANDOWNER LETTER OF AUTHORIZATION

**Stephen and Kathryn Singlar**, record owners of property located at 39 Holmes Court, Portsmouth, NH 03801, Tax Map 101, Lot 13 (the "Property"), hereby authorizes **Durbin Law Offices, PLLC, Altus Engineering, Inc. and Brendan McNamara and their agents and representatives** 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.

  
\_\_\_\_\_  
**Stephen Singlar**

November 14, 2022

  
\_\_\_\_\_  
**Kathryn Singlar**

November 14, 2022

**CITY OF PORTSMOUTH  
ZONING APPLICATION NARRATIVE**

Stephen Singlar and Kathryn Singlar  
(Owners/Applicants)  
Tax Map 101, Lot 14  
43 Holmes Court  
Portsmouth, NH 03801

**INTRODUCTION**

**The Property**

The Property at 43 Holmes Court, Portsmouth (the “Property”) is located in the Waterfront Business (WB) District. It contains a non-conforming two-bedroom single-family residence constructed around the year 1749. The home has undergone considerable modifications over time. Very little of the original structure remains. What does remain is in poor condition and has very few redeeming qualities. The home is also prone to flooding given its low elevation and proximity to the Piscataqua River. It does not comply with current flood zone requirements.

The Property is uniquely situated. The Property is landlocked in the sense that it has no frontage on a public street. It is accessed via a private right-of-way (“ROW”) across 39 Holmes Court, which is also owned by the Applicants. The surrounding neighborhood consists of single-family residences. All other properties on Holmes Court are zoned General Residence B (“GRB”) consistent with their existing use. **Exhibit A**.

**Procedural History**

On December 20, 2022, the Zoning Board of Adjustment (“Board”) granted several variances for the Property relative to the Applicants’ plans to demolish the existing home and construct a new one in its place. **Exhibit B**. One of the variances granted was to allow a 17’ front yard setback where 30’ is required under Section 10.521 of the Portsmouth Zoning Ordinance (“Ordinance”).

Following the Board’s decision, the Applicant submitted a Wetlands Permit application to the NH Department of Environmental Services (“NH DES”). The NH DES would not approve the Applicants’ Wetlands Permit unless they moved the home at least 1’ farther away from the shoreline of the river. Accordingly, the Applicants have modified their plans to allow for a 1’ greater setback to the river. This shift in the placement of the home means that the proposed setback to the front (westerly) property boundary decreased by 1’ to 16’ (+/-), thus requiring the Applicants to file a new variance application for the front yard setback. Otherwise, the Applicants’ plans for the home are substantially the same and all other variances granted to the Applicants carry forward and remain valid.

## **SUMMARY OF ZONING RELIEF**

The Applicants seek a variance from Section 10.521 of the Ordinance allow a front yard setback of 16'(+/-) where 19' exists and 30' is required.<sup>1</sup>

### **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." *152 N.H. 577 (2005)*.

Minimum building setback requirements are generally intended to create and preserve separation between buildings on abutting properties in order to maintain light, air, space and to protect against the spread of fire. The proposed home will impose no additional burden on surrounding properties. It will only extend 3' closer to the front (westerly) boundary than the existing home, which is a minimal difference. The distance between the homes on 39 Holmes Court and 43 Holmes Court will be approximately 19'. The other residences on Holmes Court are located much closer to one another than 19'.

If the Property were zoned consistently with others on Holmes Court, that are zoned GRB, no relief would be needed to construct the new home. The required setbacks would be: 5' (front); 10' (sides) and 25' (rear). 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)*.

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<sup>1</sup> The Property does not have a "front yard" by definition; therefore, a variance should not be required. The definition for "yard, front" under Section 10.1530 of the Ordinance says: [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.

Granting the variance will allow the Applicants to demolish a flood-prone home that is in poor condition and replace it with a new code-compliant structure at a higher elevation that is further from the river. The existing home cannot be elevated while meeting current building requirements. The NH DES has determined that having the home located farther from the river than what exists or what was previously proposed will improve the environmental conditions of the Property.

The aesthetic, structural and environmental improvements to the Property are in the best interest of the public and are consistent with the spirit of the Ordinance. For the foregoing reasons, granting the front yard setback variance will not alter the essential character of the area or threaten the public health, safety or welfare.

It is important to point out that when the Board approved the variances in December 2022, much of the discussion centered around the continued use of the Property for residential purposes. **Exhibit C**. There was little or no discussion concerning the dimensional relief sought. The Board did not express any concern with the proximity of the proposed home to the front property boundary. What is proposed is only 1' closer to the front boundary than what was approved in December 2022, a difference is inconsequential.

#### **B. Substantial Justice will be done in granting the variance relief sought.**

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 \(2007\)\*](#).

The existing home suffers from physical and functional obsolescence. Granting the front yard setback variance will allow for a more functionally designed home that complies with current building and life safety codes and flood elevation requirements. This will mitigate the risk of future flooding and structural damage. The structural integrity of the existing foundation is compromised due to water intrusion and poor construction. The floor plan is also dysfunctional. The home has only one bathroom which is located on the first floor.

Shrinking the house by 1' so that it complies with the front yard setback variance that was previously granted would compromise the integrity of the design, which has undergone rigorous review at the local and state levels due to its location. Moreover, it is not a realistic option for the Applicants, who are only proposing 1,297 square feet of livable space.

Denying the front yard setback variance will result in a loss to the landowner, who cannot feasibly renovate the home while meeting current flood elevation and building code requirements. This loss is not outweighed by any gain to the public. To the contrary, the public interest is served by granting the variance.

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

A newly constructed home with a tasteful design and modern amenities will only help to maintain and potentially improve surrounding property values. The home will be similar to or even slightly smaller in size than many of the homes that surround. The design is architecturally consistent with the character of the area and will be a natural fit for the neighborhood.

**D. Denying the variance would constitute an unnecessary hardship.**

The Property has a myriad of special conditions that distinguish it from surrounding properties. The Property does not have frontage on a public street, which means that it does not have a true “front yard”, as defined by Section 10.1530 of the Ordinance. It is accessed by a private drive across the property at 39 Holmes Court.

In addition to the Ordinance’s goals of preserving the light, air and space of abutting properties, the primary purpose behind requiring a certain front yard setback is to promote a consistent streetscape. In the present instance, the Property is at the end of a private ROW with no other homes on the same side of the “street”. Therefore, there is no streetscape to maintain consistency with. Other homes that are located on the public portion of the Holmes Court ROW are located much closer to the street than the proposed home because they are zoned GRB which only requires a 5’ front yard setback.

The Property is non-conforming in almost every respect to WB zoning standards. The buildable envelope of the Property is so small that nothing other than a small shed could be built upon it without requiring variances. In addition, the Property has historically contained a single-family home and been used for residential purposes, consistent with the surrounding neighborhood.

The Property is abutted to the rear by the Piscataqua River, which means that it is subject to multiple layers of state and local regulation that restrict the size and location of any structure to be built upon the Property. In the present instance, the NH DES would not allow the structure to be built in the location previously approved by the City.

As a result of the special conditions of the Property, there is no fair and substantial relationship between the general purposes of the front yard setback restriction and its application to the proposed building.

**CONCLUSION**

In conclusion, the Applicants have met the five (5) criteria for granting the front yard setback variance and respectfully request the Board's approval of their application.

Respectfully Submitted,

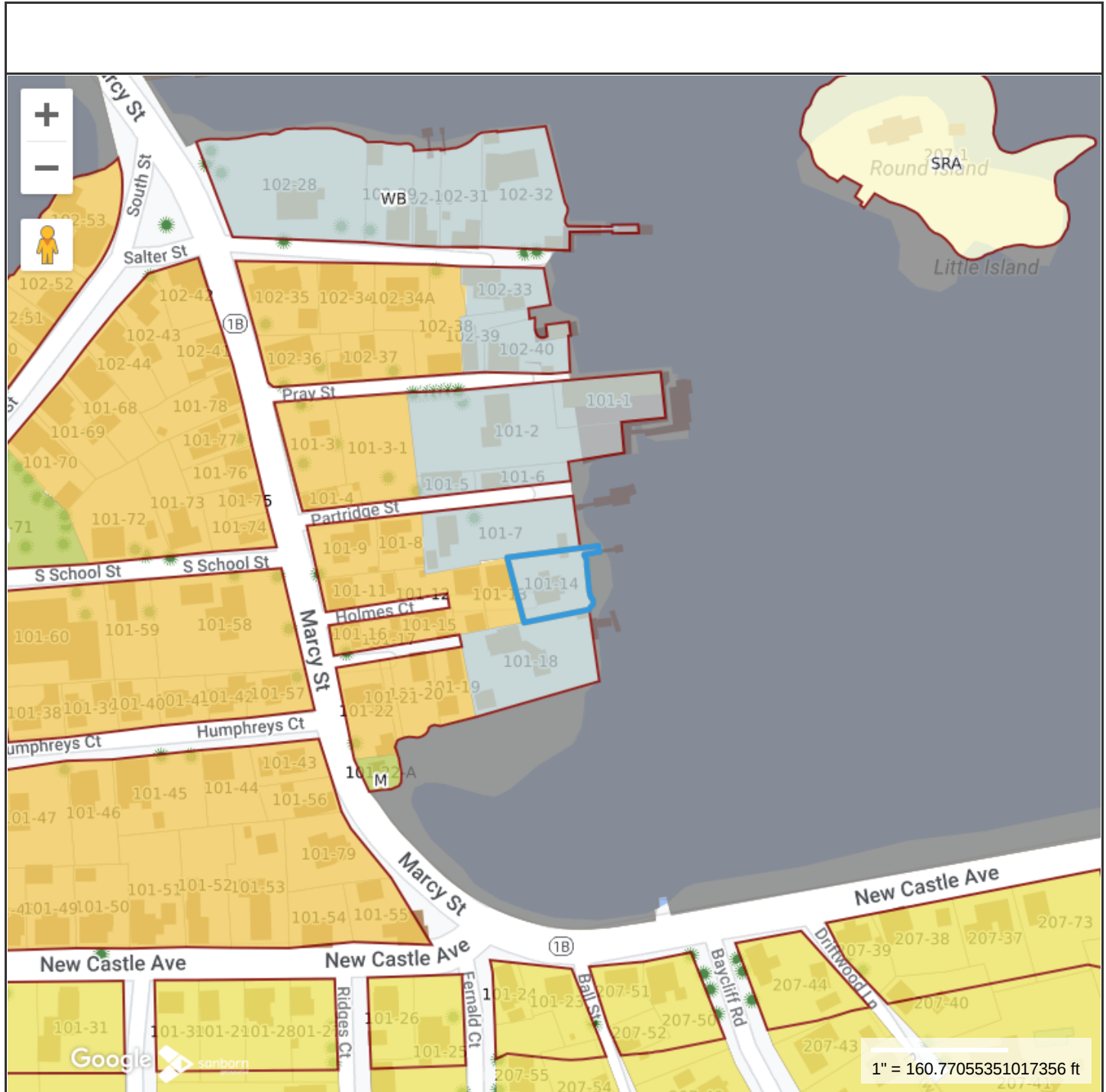
Stephen and Katheryn Singlar

Dated: April 30, 2024



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





**Property Information**

**Property ID** 0101-0014-0000  
**Location** 43 HOLMES CT  
**Owner** SINGLAR STEPHEN A & KATHRYN L



**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 08/24/2023  
Data updated 3/9/2022

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

# Map Theme Legends

## Zoning

### Residential Districts

	R	Rural
	SRA	Single Residence A
	SRB	Single Residence B
	GRA	General Residence A
	GRB	General Residence B
	GRC	General Residence C
	GA/MH	Garden Apartment/Mobile Home Park




### Mixed Residential Districts

	MRO	Mixed Residential Office
	MRB	Mixed Residential Business
	G1	Gateway Corridor
	G2	Gateway Center



### Business Districts

	GB	General Business
	B	Business
	WB	Waterfront Business



### Industrial Districts

	OR	Office Research
	I	Industrial
	WI	Waterfront Industrial






### Airport Districts

	AIR	Airport
	AI	Airport Industrial
	PI	Pease Industrial
	ABC	Airport Business Commercial


### Conservation Districts

	M	Municipal
	NRP	Natural Resource Protection


### Character Districts

	CD5	Character District 5
	CD4	Character District 4
	CD4W	Character District 4-W
	CD4-L1	Character District 4-L1
	CD4-L2	Character District 4-L2




### Civic District

	Civic District
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### Municipal District

	Municipal District
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### Overlay Districts

	OLOD	Osprey Landing Overlay District
	Downtown Overlay District	
	Historic District	

City of Portsmouth

## CITY OF PORTSMOUTH



Planning Department  
1 Junkins Avenue  
Portsmouth, New  
Hampshire 03801  
(603) 610-7216

### ZONING BOARD OF ADJUSTMENT

January 4, 2023

Stephen A and Kathryn L Singlar  
21 Elliot Street  
Exeter, 03833

**RE: Board of Adjustment request for property located at 43 Holmes Court (LU-22-227)**

Dear Property Owners:

The Zoning Board of Adjustment, at its regularly scheduled meeting of **December 20, 2022**, considered your application for demolishing the existing dwelling and constructing a new single-family dwelling which requires the following: 1) Variances from Section 10.531 to allow a) a lot area of 5,353 square feet where 20,000 square feet is required; b) 0 feet of street frontage where 100 feet is required; c) 75' of lot depth where 100 feet is required; d) a 17 foot front yard where 30 feet is required; e) a 14 foot left side yard where 30 feet is required; and f) a 14 foot right side yard where 30 feet is required. 2) A Variance from Section 10.440, Use # 1.10 to allow a single family dwelling where the use is not permitted.

Said property is shown on Assessor Map 101 Lot 14 and lies within the Waterfront Business (WB) and Historic District. As a result of said consideration, the Board voted to **grant** the variances as presented and advertised.

The Board's decision may be appealed up to thirty (30) days after the vote. Any action taken by the applicant pursuant to the Board's decision during this appeal period shall be at the applicant's risk. Please contact the Planning Department for more details about the appeals process.

Approvals may also be required from other City Commissions or Boards. Once all required approvals have been received, applicant is responsible for applying for and securing a building permit from the Inspection Department prior to starting any project work.

This approval shall expire unless a building permit is issued within a period of two (2) years from the date granted unless an extension is granted in accordance with Section 10.236 of the Zoning Ordinance.

*The Findings of Fact associated with this decision are available: attached here or as an attachment in the Viewpoint project record associated with this application and on the Zoning Board of Adjustment Meeting website:*

<https://www.cityofportsmouth.com/planportsmouth/zoning-board-adjustment/zoning-board-adjustment-archived-meetings-and-material>

The minutes and audio recording of this meeting are available by contacting the Planning Department.

Very truly yours,

A handwritten signature in cursive script that reads "Beth I Margeson".

Beth Margeson, Acting Chair of the Zoning Board of Adjustment

cc: Shanti Wolph, Chief Building Inspector

Rosann Maurice-Lentz, City Assessor

Derek Durbin, Durbin Law Offices PLL

# Findings of Fact | Variance

## City of Portsmouth Zoning Board of Adjustment

Date: December 20, 2022

Property Address: 43 Holmes Court

Application #: LU-22-227

Decision: **Granted**

### Findings of Fact:

Effective August 23, 2022, amended RSA 676:3, I now reads as follows: The local land use board shall issue a final written decision which either approves or disapproves an application for a local permit and make a copy of the decision available to the applicant. **The decision shall include specific written findings of fact that support the decision. Failure of the board to make specific written findings of fact supporting a disapproval shall be grounds for automatic reversal and remand by the superior court upon appeal, in accordance with the time periods set forth in RSA 677:5 or RSA 677:15, unless the court determines that there are other factors warranting the disapproval.** If the application is not approved, the board shall provide the applicant with written reasons for the disapproval. If the application is approved with conditions, the board shall include in the written decision a detailed description of the all conditions necessary to obtain final approval.

The proposed application meets/does not meet the following purposes for granting a Variance:

Section 10.233 Variance Evaluation Criteria	Finding (Meets Criteria)	Relevant Facts
10.233.21 Granting the variance would not be contrary to the public interest.	<b>YES</b>	<ul style="list-style-type: none"> <li>The existing use is residential and will not be changing.</li> </ul>
10.233.22 Granting the variance would observe the spirit of the Ordinance.	<b>YES</b>	<ul style="list-style-type: none"> <li>The property has existed as residential and the surrounding properties are residential. Creating a commercial business on the property would be disruptive to the entire street and neighborhood.</li> </ul>
10.233.23 Granting the variance would do substantial justice.	<b>YES</b>	<ul style="list-style-type: none"> <li>The nature of Holmes Court is such that it would be impractical to justify that it would contribute to the</li> </ul>

		<p>waterfront business district.</p> <ul style="list-style-type: none"> <li>The existing use will remain residential.</li> </ul>
<p>10.233.24 Granting the variance would not diminish the values of surrounding properties.</p>	<p><b>YES</b></p>	<ul style="list-style-type: none"> <li>The existing use will remain residential.</li> <li>The property has existed as residential and the surrounding properties are residential. Creating a commercial business on the property would be disruptive to the entire street and neighborhood.</li> </ul>
<p>10.233.25 Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship.</p> <p>(a)The property has special Conditions that distinguish it from other properties in the area. AND (b)Owing to these special conditions, a fair and substantial relationship does not exist between the general public purposes of the Ordinance provision and the specific application of that provision to the property; and the proposed use is a reasonable one. OR Owing to these special conditions, the property cannot be reasonably used in strict conformance with the Ordinance, and a variance is therefore necessary to enable a reasonable use of it.</p>	<p><b>YES</b></p>	<ul style="list-style-type: none"> <li>The property has existed as residential and the surrounding properties are residential. Creating a commercial business on the property would be disruptive to the entire street and neighborhood.</li> </ul>

<b>Stipulations</b>
1.
2.
3.
4.

Holmes Court for access to 43 Holmes Court. He said they wanted the 2-ft setback for the dormer out of caution. In answer to further questions from Mr. Rheume, Mr. McNamara said the dormer was visually recessed from the continuation of the side wall, which was driven by appeals to the HDC. He said the heat pump would be placed on the side of the house vs. the back so that it wouldn't annoy the neighbors and that there would be sufficient space between the heat pump and the building for air ventilation.

Acting-Chair Margeson opened the public hearing.

### **SPEAKING TO, FOR, OR AGAINST THE PETITION**

No one spoke, and Acting-Chair Margeson closed the public hearing.

### **DECISION OF THE BOARD**

*Mr. Rossi moved to **grant** the variances as presented and advertised, seconded by Mr. Rheume.*

Mr. Rossi said granting the variances would not be contrary to the public interest, supported by the fact that the design called for the addition of a dormer, which didn't really change the footprint of the structure itself. He said the only place where the change would be visible would be the adjacent property that was owned by the same owner. He said granting the variances would do substantial justice because there would be no gain to the public by denying the request and there would be an advantage to the owner and to the property's value by approving the variances. He said granting the variances would not diminish the values of surrounding properties, noting that the closest affected property was owned by the same owner and he was in the best position to judge whether the changes on one of his properties would diminish its value. He said the special condition of the property was that it was already nonconforming and there was nothing being done that would change the degree of nonconformance other than the heat pumps. He said he did not believe that the intent of the ordinance was to prevent the modernization of HVAC systems in antique homes. Therefore, he said he didn't think there was any relationship between the installation of heat pumps and the intent of the ordinance.

Mr. Rheume concurred. He said that type of New Englander lent itself to those types of roof dormers and it was a common way for homeowners to add extra square footage. He said normally the Board was concerned about setbacks and light and air to abutting properties, but the applicant owned both properties. He said window units were allowable but tended to be noisier than modern heat pumps condensers. He said zero-foot setbacks made him nervous but in this case it was common ownership and it sounded like the applicant did his research and was trying to make the noise go toward his own property. He said he recommended approval.

*The motion **passed** by unanimous vote, 6-0.*

**F. The request of Stephen A and Kathryn L Singlar (Owners), for property located at 43 Holmes Court** whereas relief is needed to demolish the existing dwelling and construct

a new single-family dwelling which requires the following: 1) Variances from Section 10.531 to allow a) a lot area of 5,353 square feet where 20,000 square feet is required; b) 0 feet of street frontage where 100 feet is required; c) 75' of lot depth where 100 feet is required; d) a 17 foot front yard where 30 feet is required; e) a 14 foot left side yard where 30 feet is required; and f) a 14 foot right side yard where 30 feet is required. 2) A Variance from Section 10.440, Use # 1.10 to allow a single family dwelling where the use is not permitted. Said property is located on Assessor Map 101 Lot 14 and lies within the Waterfront Business (WB) and Historic District. (LU-22-227)

## **SPEAKING TO THE PETITION**

Attorney Derek Durbin was present on behalf of the applicant to review the petition, with project architect Brendan McNamara via Zoom and project engineer Erik Weinrieb. He noted that the 1749 single-family home was in poor shape and located in a flood zone. He said it couldn't be raised and that the only feasible thing to do was demolish it. Mr. McNamara said once a level of expenditure was exceeded on a home, it must meet current code and it would have to meet the flood zone requirements. He said lifting it up would exceed the expenditure, which would then initiate the rest of the house to meet existing code. He said the project got favorable feedback from the HDC work session. Attorney Durbin said the only nonconformance that would increase was the front yard setback. He reviewed the criteria and said they would be met.

Mr. Rossi asked if the grayed-out lots on the diagram were waterfront businesses except for one. Attorney Durbin agreed. Mr. Rossi said if the Board granted the variance, they would be continuing to restrict the small amount of waterfront available for business use, and he struggled with the propriety of doing that. Attorney Durbin said the home would be dysfunctional otherwise and would mitigate the flood risk. Mr. Rossi asked if the fact that it was already a residential use was a special condition of the property that created a hardship, and Attorney Durbin agreed. Acting-Chair Margeson said the flood zone was at eight feet and the City added a foot over that. She asked why the applicant didn't apply for a variance for relief for the extra foot to get out of the flood zone. Attorney Durbin said the true intent and best approach was to improve the property by demolishing the home and building a new one at a higher elevation. Mr. Weinrieb said the flood ordinance stated if there was substantial renovation, the building had to be lifted to one foot above, but new construction was two feet above. He said the buffer wasn't just for the new FEMA ordinances but also climate changes. It was further discussed.

Acting-Chair Margeson said she knew the HDC would deal with the property's demolition, but one of the criteria of the BOA when the property was in the Historic District was preservation of historic structures in the Historic District. She asked why the home had to be demolished. Attorney Durbin said it was in such rough shape that there wasn't a lot to salvage, and there was the floor elevation issue. Mr. McNamara said a site walk was done with the HDC and the exterior appearance of the house was of the late 1800s. He said the house had been reworked a few times and there was very little of the original structure left, except for the interior first floor. He said the concrete foundation was falling apart. He said the building code's requirements drove the need for demolition. Acting-Chair Margeson asked why the building couldn't be converted to a commercial use. Attorney Durbin said it would have to be a small waterfront marine-related use. He said the



area felt like a residential neighborhood and the applicant's property would be a nuisance and would have to be accessed via a residential property.

Acting-Chair Margeson opened the public hearing.

### **SPEAKING TO, FOR, OR AGAINST THE PETITION**

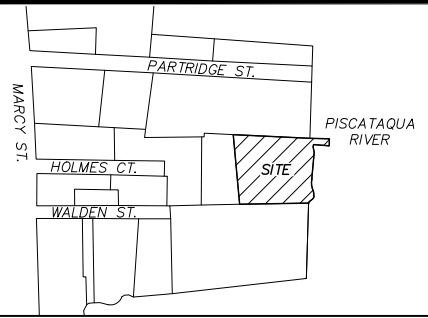
No one spoke, and Acting-Chair Margeson closed the public hearing.

### **DISCUSSION AND DECISION OF THE BOARD**

Mr. Rossi said the argument that the building already had a residential use was compelling. Mr. Rheume said that only so many properties could fall into the waterfront business. He said he was an advocate of protecting every square inch of that waterfront but the applicant's property was so different and so isolated. He said the intent when it and the neighboring property was included in the waterfront district was that there might be some way of redoing it, but from a practical standpoint, he thought it would be negative to squeeze some business from a place that hadn't any had for a very long time. He said the nature of Holmes Court was such that it would be impractical to justify saying that it really contributed to the character of the waterfront businesses. He said it was a great thing for the City to try to preserve as much of the waterfront and keep that vibrancy aspect, but in the applicant's case, it didn't work and it made sense for the property to remain a residential use. (See meeting recording 2:55:07 for full summary). Acting-Chair Margeson said she would not support the application. She said demolition was within the HDC's purview but she didn't find the applicant's argument for demolishing persuasive. She said many buildings had different elements from different time periods and many foundations had to be lifted and replaced with new ones. She said she felt that the application failed the spirit and intent of the ordinance.

*Mr. Rossi moved to **grant** the variances as presented and advertised, seconded by Ms. Eldridge.*

Mr. Rossi said the overarching issue was the fact that the Board was trying to judge the compliance of the residential use property according to the standards of the Waterfront Business Use Zone criteria, which he felt was a misapplication of those standards. He said the property wasn't one that lent itself to the intended purpose of waterfront business, so he thought it should be judged more in accordance with the residential use in the surrounding zone areas. He said that was the relevant fact that spoke to all the variance evaluation criteria and that he wouldn't repeat them one by one. Ms. Eldridge concurred and said granting the variances would not be contrary to the public interest because the residential use on a residential street area seemed appropriate. She said it would observe the spirit of the ordinance and would do substantial justice to what the property had been over the years. She said it didn't seem right to suggest that the property really belonged in another zoning district, given the concerns of the neighborhood and the private road. She said granting the variances would not diminish the values of surrounding properties and would most likely increase them. She said there were the flood plain concerns and the weakness of the structure, and the fact that the HDC had allowed demolition. She said there was a reason that the building could be torn down and she felt that a new building would increase property values. She said the hardships were many. Mr. Rossi added that the special condition of the property was that it was landlocked and the



**LOCUS**  
(N.T.S.)

**ZONING SUMMARY**

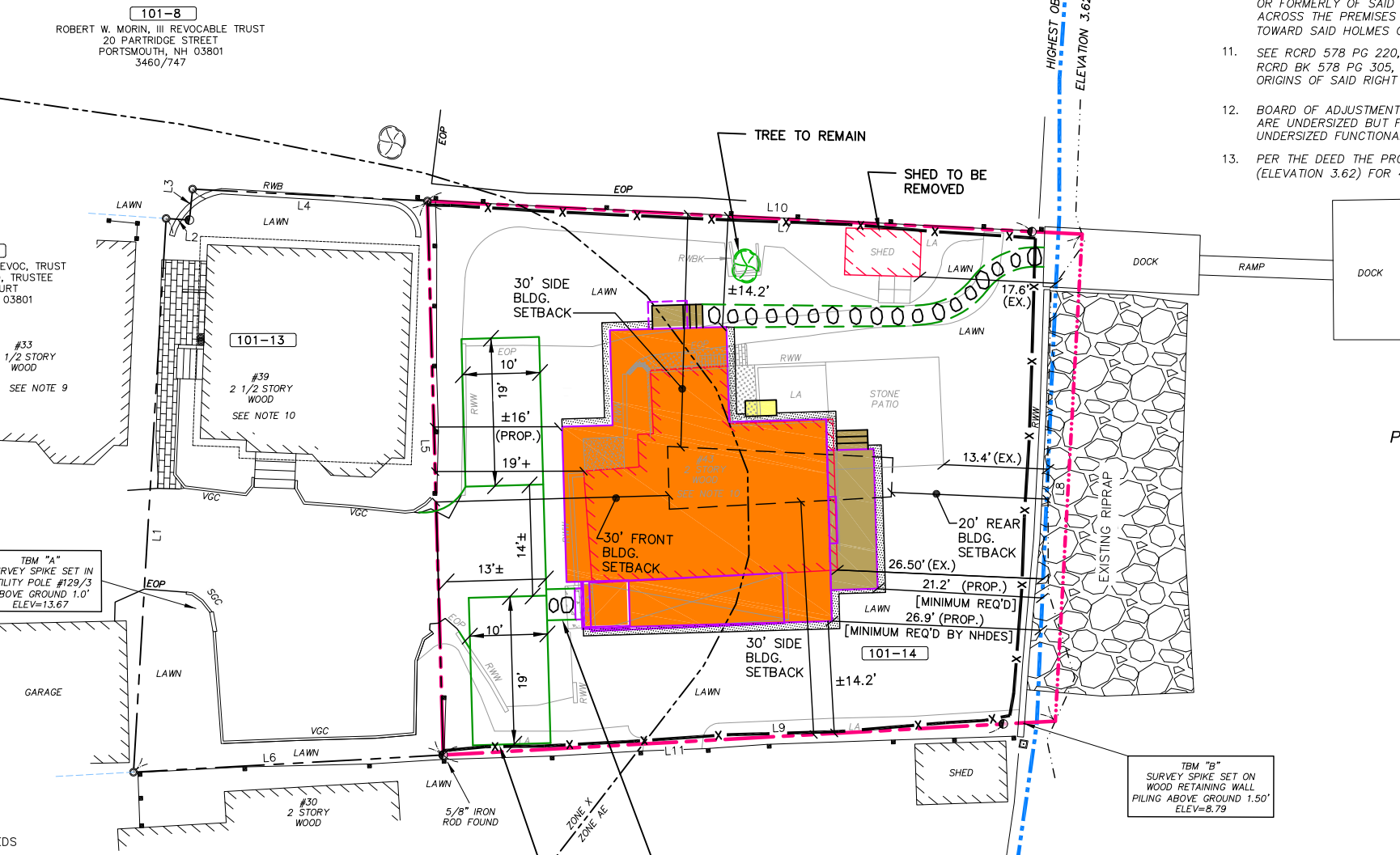
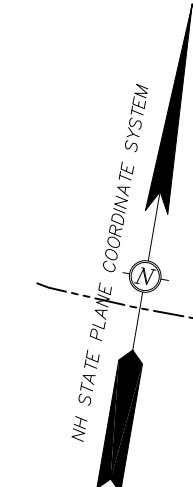
ZONE: WATERFRONT BUSINESS (WB) – SINGLE FAMILY RESIDENCE – EXISTING, TO BE REPLACED WITH SINGLE FAMILY RESIDENCE \*\*  
EXISTING LOT AREA: 5,353 S.F.± (0.12 AC.±)

DIMENSIONAL REQUIREMENTS	REQUIRED	EXISTING	PROPOSED
MIN. LOT AREA:	20,000 S.F.	±5,353 S.F.	±5,353 S.F. **
MIN. STREET FRONTAGE:	100'	0' (EX.) (HOLMES)	±0' (EXISTING) (NON-CONFORMING) **
DEPTH:	100'	±75'	±75' **
FRONT SETBACK:	30'	19'+ (EX.)	±16' (PROPOSED) *
SIDE SETBACK:	30'	±14.2' (EX.)	±14.2' (PROPOSED) **
REAR SETBACK:	20'	±26'+ (EX.)	±26'+ (PROPOSED RESIDENCE)/20'+ (PR. DECK) **
MAX. HEIGHT:	35'	<25' (EX.)	<25' (PROP. RESIDENCE)
MAX. BUILDING COVERAGE:	30%	±16.7% (EX.) (±895 SF)	±21.7% (±1,160 S.F.)
MIN. OPEN SPACE:	20%	±59.1% (±3,164 SF)	±64.1% (±3,434 SF)

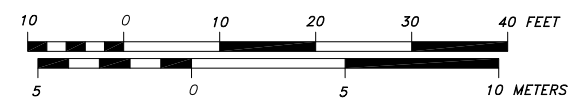
\* ZONING RELIEF REQUIRED  
\*\* ZONING RELIEF PREVIOUSLY GRANTED

**NOTES:**

- OWNER OF RECORD.....STEPHEN A. SINGLAR and KATHRYN L. SINGLAR  
ADDRESS.....21 ELLIOT STREET, EXETER, NH 03833  
DEED REFERENCE.....6393/1443  
TAX SHEET / LOT.....101-14  
PARCEL AREA.....5,353 S.F.±(TO ELEV. 3.62)
- ZONED:.....WATERFRONT BUSINESS FRONT YARD SETBACK.....30'  
MINIMUM LOT AREA..20,000 S.F. SIDE YARD SETBACK.....30'  
FRONTAGE.....100' REAR YARD SETBACK.....20'
- THE RELATIVE ERROR OF CLOSURE WAS LESS THAN 1 FOOT IN 15,000 FEET.
- THE LOCATION OF ALL UNDERGROUND UTILITIES SHOWN HEREON ARE APPROXIMATE AND ARE BASED UPON THE FIELD LOCATION OF ALL VISIBLE STRUCTURES (IE CATCH BASINS, MANHOLES, WATER GATES ETC.) AND INFORMATION COMPILED FROM PLANS PROVIDED BY UTILITY COMPANIES AND GOVERNMENTAL AGENCIES. ALL CONTRACTORS SHOULD NOTIFY, IN WRITING, SAID AGENCIES PRIOR TO ANY EXCAVATION WORK AND CALL DIG-SAFE @ 1-888-DIG-SAFE.
- HORIZONTAL DATUM: NAD 1983 ESTABLISHED BY SURVEY GRADE GPS OBSERVATION AND NGS "OPUS" SOLUTION. REFERENCE FRAME: NAD83 (2011)(EPOCH: 2010.0000), US SURVEY FOOT.  
VERTICAL DATUM: NAVD 1988. PRIMARY BENCHMARK: CITY OF PORTSMOUTH "ROBE".
- CONTRACTOR TO VERIFY SITE BENCHMARKS BY LEVELING BETWEEN 2 BENCHMARKS PRIOR TO THE ESTABLISHMENT OF ANY GRADES OR ELEVATIONS. DISCREPANCIES ARE TO BE REPORTED TO JAMES VERRA AND ASSOCIATES, INC..
- THE PARCELS SHOWN HEREON LIES WITHIN ZONE AE (ELEVATION 8) & ZONE X (AREA OF MINIMAL FLOOD HAZARD) AS IDENTIFIED ON FLOOD INSURANCE RATE MAP, ROCKINGHAM COUNTY, NEW HAMPSHIRE, MAP NUMBER 33015C0278F, EFFECTIVE DATE 1/29/2021 BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY.
- THE HIGHEST OBSERVABLE TIDE LINE WAS DELINEATED BY MICHAEL CUOMO, NEW HAMPSHIRE CERTIFIED WETLAND SCIENTIST #004 ON MAY 20, 2022 & RECORDED BY JAMES VERRA AND ASSOCIATES, INC. UNDER THE DIRECTION OF MICHAEL CUOMO. NO FLAGS WERE SET.
- 33 HOLMES COURT IS "SUBJECT TO THE RIGHT OF WAY ACROSS SAID PREMISES FROM THE EASTERLY END OF HOLMES COURT." SEE RCRD BK 5838 PG 1715.
- 39 HOLMES COURT IS CONVEYED "TOGETHER WITH A RIGHT OF WAY ACROSS LAND NOW OR FORMERLY OF SAID CATLIN TO HOLMES COURT AND SUBJECT TO THE RIGHT OF WAY ACROSS THE PREMISES HEREBY CONVEYED FROM LAND NOW OR FORMERLY OF DOWNS TOWARD SAID HOLMES COURT." SEE RCRD BK 5829 PG 1412.
- SEE RCRD 578 PG 220, 10/17/1900, J. CORNELIUS COAKLEY TO JAMES FAY AND RCRD BK 578 PG 305, 11/12/1900, J. CORNELIUS COAKLEY TO MARGARET FOX FOR THE ORIGINS OF SAID RIGHT OF WAYS.
- BOARD OF ADJUSTMENT NOTE: THE TWO EXISTING PARKING SPACES ON THE PARCEL ARE UNDERSIZED BUT FUNCTIONAL SPACES. THEY ARE BEING REPLACED WITH ONE UNDERSIZED FUNCTIONAL SPACE AND ONE STANDARD SIZE PARKING SPACE.
- PER THE DEED THE PROPERTY BOUNDARY LINE EXTENDS TO THE LOW WATER MARK (ELEVATION 3.62) FOR 43 HOLMES COURT.



- LEGEND:**
- IRON ROD (AS NOTED)
  - IRON PIPE FOUND
  - GRANITE POST FOUND
  - △ SURVEY NAIL (AS NOTED)
  - 101-14 TAX SHEET / LOT NO.
  - WOOD FENCE
  - VINYL FENCE
  - UTILITY POLE
  - UTILITY POLE W/ TRANSFORMER
  - GUY
  - UTILITY POLE WITH ARM & LIGHT
  - OHW OVERHEAD WIRES
  - EOP EDGE OF PAVEMENT
  - LA LANDSCAPED AREA
  - RWB LANDSCAPE BLOCK RETAINING WALL
  - RWBK BRICK RETAINING WALL
  - VGC VERTICAL FACED GRANITE CURB
  - RCRD ROCKINGHAM COUNTY REGISTRY OF DEEDS
  - CONCRETE
  - BRICK PAVERS
  - CRUSHED STONE
  - RIP RAP
  - RETAINING WALL



PISCATAQUA RIVER  
(TIDAL)  
EBB →

- PLAN REFERENCES:**
- "EXISTING CONDITIONS PLAN" DATED 8/15/22, BY JAMES VERRA AND ASSOCIATES, INC.
  - PORTSMOUTH G.I.S. (MAPGEO) DATA BASE.
  - SITE OBSERVATIONS BY ALTUS ENGINEERING, INC. OCTOBER 2022.

**PLAN INTENT:**

THE SOLE PURPOSE OF THIS PLAN IS TO OBTAIN AN ADDITIONAL ±1-FOOT OF RELIEF FROM THE FRONT SETBACK (17' + PREVIOUSLY APPROVED, ±16- FEET PROPOSED) SO AS TO ALLOW THE OWNER TO CONSTRUCT THE SINGLE FAMILY RESIDENCE AS APPROVED BY ZBA ON 12/20/22 WHILE MEETING MINIMUM REQUIRED SETBACK FROM HIGHEST OBSERVABLE TIDE LINE (HOTL) AS REQUIRED BY NHDES-WETLANDS BUREAU IN THEIR APPROVAL DATED 04/05/24.

ENGINEER:

133 Court Street  
(603) 433-2335

Portsmouth, NH 03801  
www.altus-eng.com

ISSUED FOR:  
**BOARD OF ADJUSTMENT**

ISSUE DATE:  
**APRIL 25, 2024**

REVISIONS

NO.	DESCRIPTION	BY	DATE
0	INITIAL SUBMISSION	EBS	10/25/22
1	ADJUST LOCATION OF PROP. BLDG BASED ON NHDES WETLANDS REQUIREMENTS	EBS	04/25/24

DRAWN BY: \_\_\_\_\_ RLH  
APPROVED BY: \_\_\_\_\_ EBS  
DRAWING FILE: 5328-BOA.DWG

SCALE:  
22" x 34" - 1" = 10'  
11" x 17" - 1" = 20'

OWNER/APPLICANT:  
**STEPHEN A. & KATHRYN L. SINGLAR**  
21 ELLIOT STREET  
EXETER, NH 03833

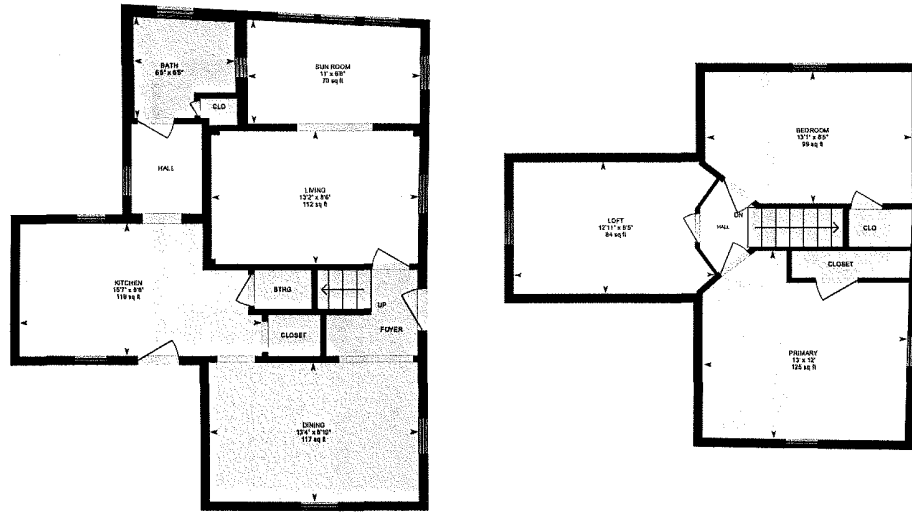
PROJECT:  
**PROPOSED SITE DEVELOPMENT PLANS**  
#43 HOLMES COURT  
PORTSMOUTH, NH  
ASSESSOR'S PARCEL MAP 101-LOT 14

TITLE:  
**BOARD OF ADJUSTMENT SITE PLAN**

SHEET NUMBER:  
**1 OF 1**

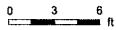
43 Holmes Ct, Portsmouth, NH

Main Building



Main Floor  
Interior Area 574.76 sq ft

2nd Floor  
Interior Area 369.05 sq ft



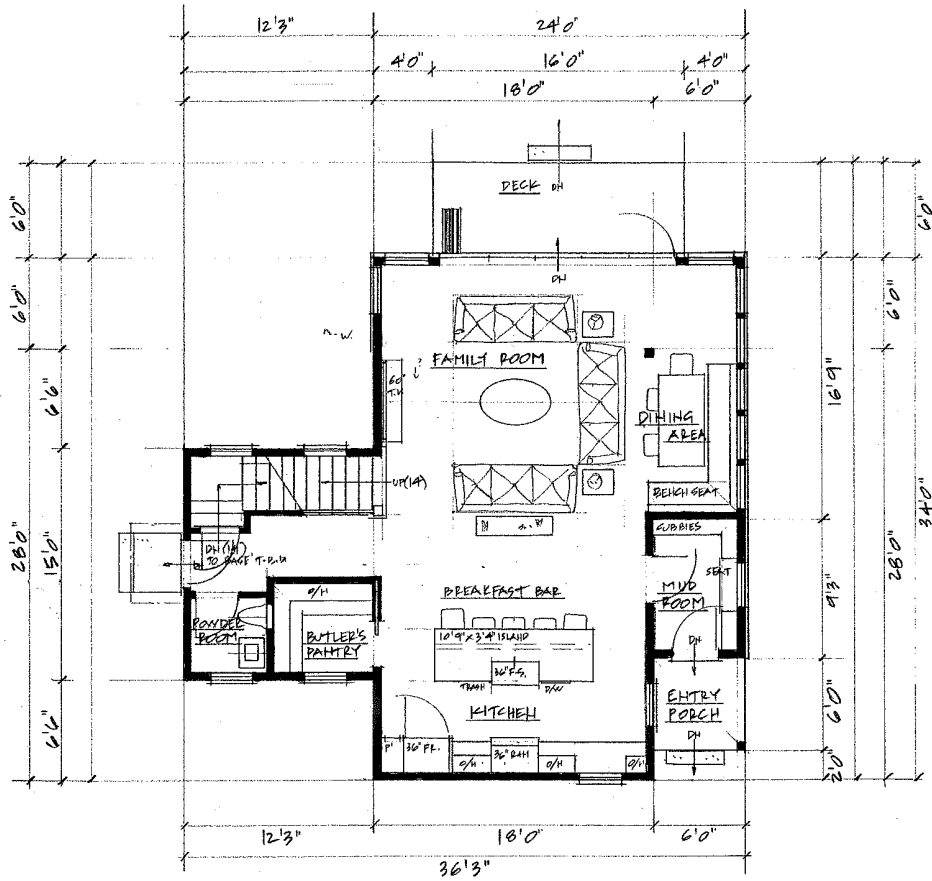
PREPARED: 2021/11/05

White regions are excluded from total floor area in iGUIDE floor plans. All room dimensions and floor areas must be considered approximate and are subject to independent verification.



EXISTING CONDITIONS

$\pm 1/8" = 1'0"$

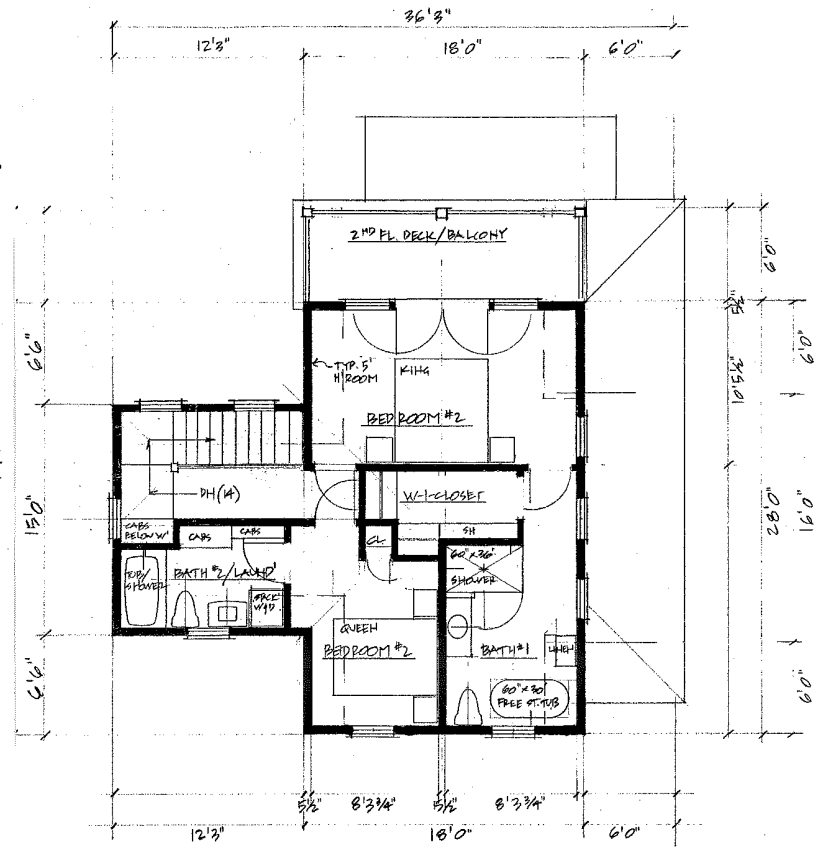


PROPOSED FIRST FLOOR PLAN

3.31.2022

1/8" = 1' 0"

HOUSE AREA = 952 sf.  
 PORCH AREA = 36 sf.  
 DECK AREA = 96 sf.  
 TOTAL = 1,084 sf.



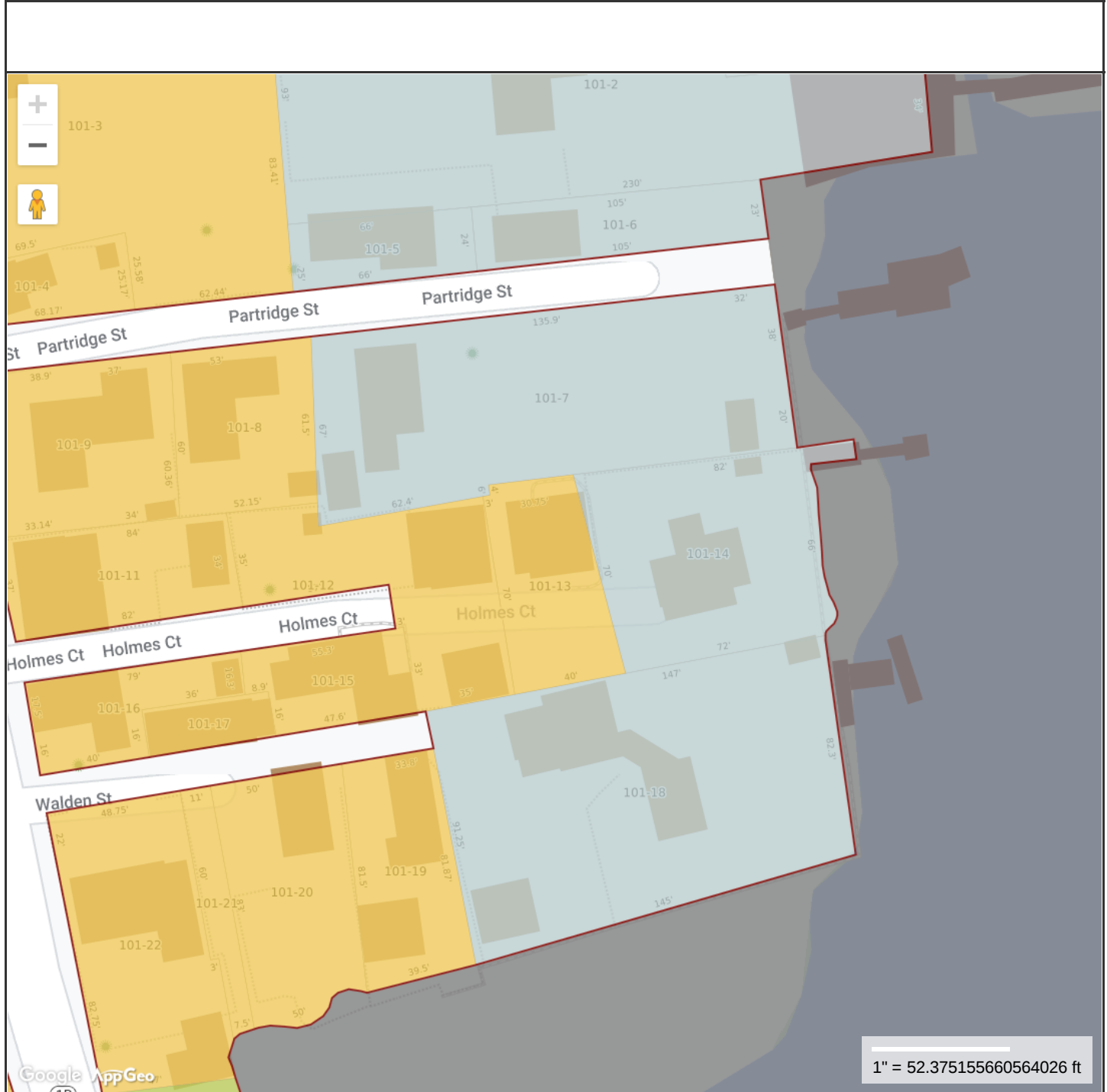
PROPOSED SECOND FLOOR PLAN

3.31.2022

1/8" = 1' 0"

PROPOSED NEW STRUCTURE TITLE: PROPOSED FLOOR PLANS  
 AT 43 HOLMES COURT SCALE: 1/8" = 1' 0"  
 PORTSMOUTH, NH DATE: 4.12.2022

REVISIONS:



**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 09/21/2022  
Data updated 3/9/2022

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

# Map Theme Legends

## Zoning

### Residential Districts

	R	Rural
	SRA	Single Residence A
	SRB	Single Residence B
	GRA	General Residence A
	GRB	General Residence B
	GRC	General Residence C
	GA/MH	Garden Apartment/Mobile Home Park




### Mixed Residential Districts

	MRO	Mixed Residential Office
	MRB	Mixed Residential Business
	G1	Gateway Corridor
	G2	Gateway Center



### Business Districts

	GB	General Business
	B	Business
	WB	Waterfront Business



### Industrial Districts

	OR	Office Research
	I	Industrial
	WI	Waterfront Industrial






### Airport Districts

	AIR	Airport
	AI	Airport Industrial
	PI	Pease Industrial
	ABC	Airport Business Commercial


### Conservation Districts

	M	Municipal
	NRP	Natural Resource Protection


### Character Districts

	CD5	Character District 5
	CD4	Character District 4
	CD4W	Character District 4-W
	CD4-L1	Character District 4-L1
	CD4-L2	Character District 4-L2




### Civic District

	Civic District
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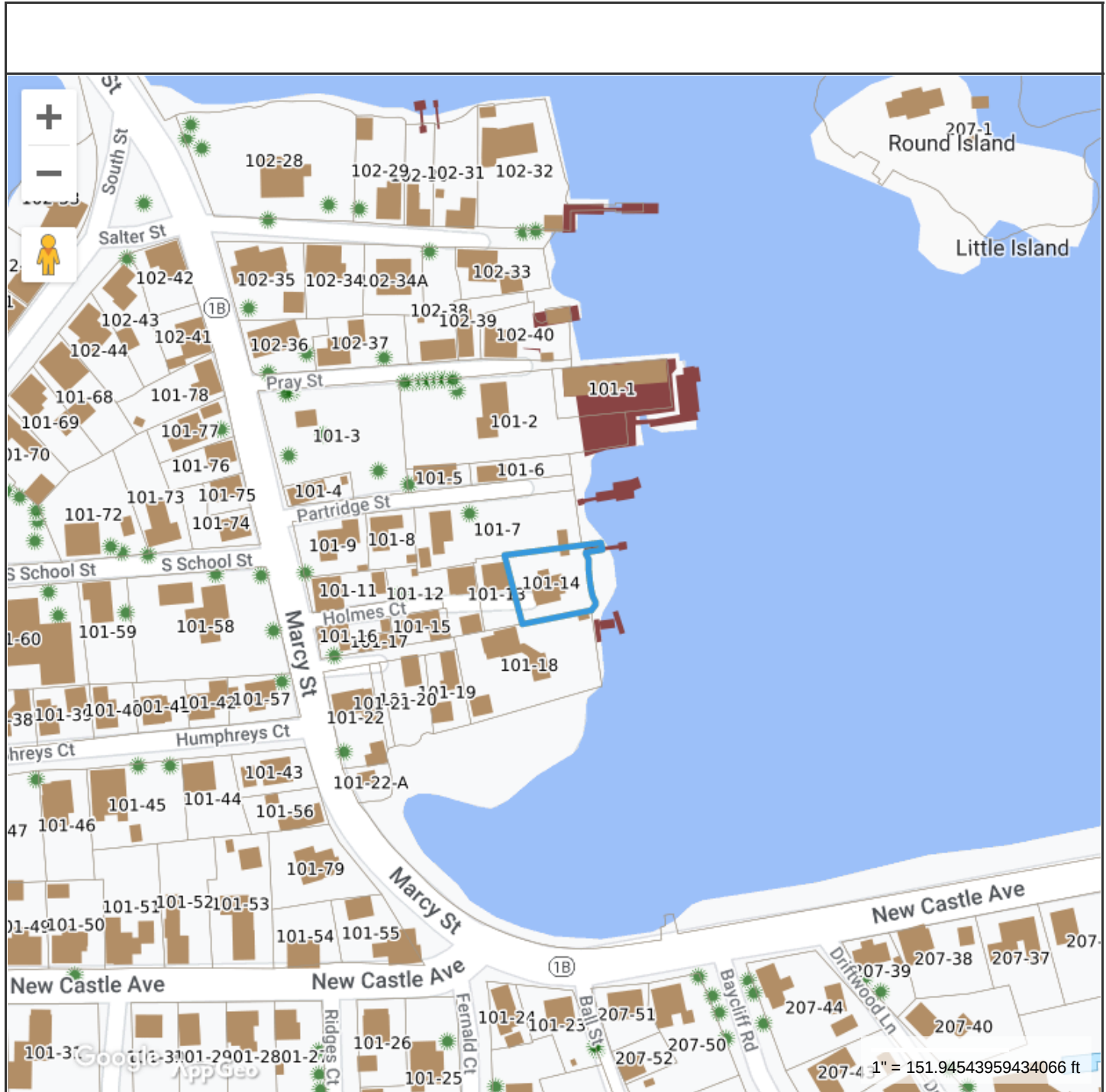
### Municipal District

	Municipal District
-------------------------------------------------------------------------------------	--------------------

### Overlay Districts


	OLOD	Osprey Landing Overlay District
	Downtown Overlay District	
	Historic District	

City of Portsmouth



**Property Information**

Property ID	0101-0014-0000
Location	43 HOLMES CT
Owner	SINGLAR STEPHEN A & KATHRYN L



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Geometry updated 09/21/2022  
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Front Elevation View





Left Elevation View



Rear Elevation View





View of Rear Yard



Right Elevation View





View of Parking Area





View of Holmes Court





View of 43 Holmes Court from New Castle Avenue