

BY: VIEWPOINT & HAND DELIVERY

November 21, 2022

City of Portsmouth
Attn: Peter Stith, 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**

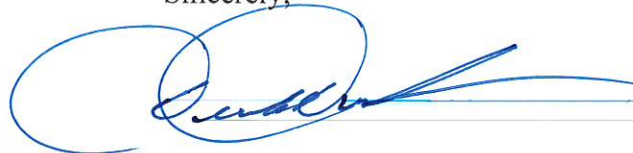
Dear Peter,

Our Office represents Stephen and Kathryn Singlar, owners of the property located at 43 Holmes Court. Enclosed for submission to the ZBA for its December 20th meeting, please find the following materials relative to the proposed improvements for 43 Holmes Court:

- 1) Landowner Letter of Authorization;
- 2) Narrative to Variance Application;
- 3) Site Plan;
- 4) Floor Plans and Elevations;
- 5) Tax Map with Zoning Overlay;
- 6) Tax Map;
- 7) 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.

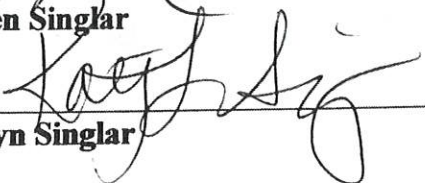
LANDOWNER LETTER OF AUTHORIZATION

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

**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 single-family residence that was originally constructed in or around the year 1749 but has undergone considerable modifications over time. It has a dysfunctional, segregated floor plan with very few redeeming qualities. The existing home has 2 bedrooms. The only bathroom in the home is located on the first floor. In addition, it is located within the AE Flood Zone with a flood elevation of 8’. This means that it is extremely prone to flooding given its low elevation and close proximity to the bank of the Piscataqua River. The public portion of the right-of-way known as Holmes Court terminates at the front (westerly) boundary of the property at 39 Holmes Court. The private portion of the right-of-way then continues through that property to the property at 43 Holmes Court. The home is uniquely situated, as there are no other homes immediately abutting it to the sides or rear. The abutting home to the front of it is also owned by the Applicants. All of the other properties on Holmes Court are zoned General Residence B (“GRB”) and almost all of the properties surrounding the Property, regardless of zoning designation, contain single-family residences.

Proposed Improvements

The existing home cannot be raised to mitigate current flood risks while also meeting current building and life safety codes. Therefore, the only feasible plan to effectively improve and modernize the Property is to demolish the existing home and re-construct it. Accordingly, the Applicants are proposing the construction of a new two-bedroom single-family home on the Property of a slightly larger dimension to the existing residence. The proposed home will still be quite small as a single-family home, with only approximately 1,297 square feet of finished living space once completed.

The new home would have a flood elevation of 11’ or greater, thus mitigating the risk of future flooding. The bottom floor of the home would have an open floor plan. The home would also contain an additional bathroom. The design of the home would maximize the limited amount of available living space.

It is important to point out that while the Applicants are requesting the variance relief necessary to construct a slightly larger home on the Property, they are proposing several offsetting improvements. For one, they will be removing a shed that is located within the left side yard setback along the northerly boundary of the Property. In addition, they will remove a stone patio to the rear of the existing home, which will be replaced by a deck that is under 18” and does not require a variance. The deck will be situated against the home whereas the existing patio extends much closer to the water. While these changes may be relatively minor, they will nonetheless improve the overall conditions of the Property.

Despite being zoned “WB”, almost all of the properties surrounding 43 Holmes Court contain single-family homes regardless of their zoning designation. The surrounding homes are generally of similar or slightly greater dimension to the proposed home.

If the variances being sought by the Applicants are approved, the project will still need HDC approval. As it stands now, the current design plans reflect what the Applicants believe the HDC is prepared to approve after having attended a prior work session with that board. In addition to ZBA and HDC approval, the Applicants will also need an NH DES Wetland Shoreland Permit since the entire property falls within the state-regulated shoreland zone. The current plans have been designed to comply with the buffer shoreland requirements, thus mitigating any environmental-related concerns.

SUMMARY OF ZONING RELIEF

The Applicants seek the following variances from the Ordinance:

Section 10.521:

- 1) To allow a front yard setback of 17’ where 19’ exists and 30’ is required;¹
- 2) To allow a left yard setback of 14’ where 14’ exists and 30’ is required;
- 3) To allow a right yard setback of 14’ where 14’ exists and 30’ is required.

Section 10.321: To allow a non-conforming structure to be reconstructed without conforming to the terms of the Ordinance.

Section 10.331: To allow a lawful nonconforming use to be extended or enlarged without complying to the terms of the Ordinance.

¹ This variance has been applied for out of an abundance of caution. By definition under Section 10.1530 of the Ordinance, a “front yard” setback is measured between the street and the nearest point of a building; however, in the present instance, the public portion of Holmes Court ends at the front of 39 Holmes Court and then becomes a private drive. Therefore, there is more than 30’ of distance between the proposed home and the public portion of the right-of-way which would mean that no front yard variance is needed.

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

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 be slightly larger than what exists but will impose no additional burden on surrounding properties. It will extend 2' closer to the front (westerly) boundary than the existing home, which is a minimal difference, and will not extend any further into the side yard setbacks. The distance between the homes on 39 Holmes Court and 43 Holmes Court will be approximately 20'. The other residences on Holmes Court are located much closer to one another than 20'. The non-conforming shed located along the northerly boundary within the left yard setback will be removed, thus improving conditions along that side of the Property.

It is also equally important to point out that the WB Zoning in this particular area of Portsmouth does not reflect the prevailing character which consists mostly of single-family residences. Holmes Court can be characterized as a densely settled neighborhood. Many of the streets that surround it can be similarly characterized. The properties on Holmes Court and surrounding streets are predominantly used for single-family residential purposes and not those associated with WB Zoning. If the Property were zoned consistently with others on Holmes Court (GRB Zoned), the setbacks would be as follows: 5' (front); 10' (sides) and 25' (rear). If zoned consistently with the density and prevailing residential use of the area, the home re-build would not require any zoning relief.

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)

For the foregoing reasons, granting the variances will not alter the essential character of the area. The construction of the new home will observe the public health, safety and welfare purposes of the Ordinance by allowing the demolition of a dated home with very few redeeming qualities to be replaced by a new code-compliant structure at a higher elevation. Overall, the

aesthetic, structural and environmental improvements made to the Property are in the best interest of the public and are consistent with the spirit of the Ordinance.

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 demolition of the existing home and its reconstruction on a slightly larger footprint will allow for a more functionally designed home that complies with current building and life safety codes and is elevated to address future flood risks. The denial of the variances would make it infeasible to accomplish these goals, thus representing a loss to the landowner. This loss is not outweighed by any gain to the public. To the contrary, the public interest is served by allowing the reconstruction of the home as proposed.

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 number of special conditions that distinguish it from surrounding properties. For one, there is a non-conforming home on the Property that does not comply with any of the provisions of the Ordinance that the Applicants are requesting relief from. The buildable envelope of the Property is so small that nothing other than a small shed could be built on it without zoning relief under WB Zoning. The prevailing character of the area is inconsistent with the current WB Zoning designation. If the Property was zoned properly and consistently with the density and prevailing residential use of the area, the home re-build would not require any zoning relief. WB Zoning was intended to apply to larger tracts of land on the water that are more conducive to waterfront business operations. The property at 43 Holmes Court is too small and is surrounded by single-family homes which makes it inconducive for such a use.

The Property is situated at the end of a private drive which runs through the abutting property at 39 Holmes Court (also owned by the Applicants); therefore, it does not have a “front yard” by definition. The front yard setback restriction is intended 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.

The Property is also abutted to the rear by the Piscataqua River. There are no structures on abutting properties in close proximity to where the proposed home will be built. The proposed home will maintain the existing setbacks.

For the foregoing reasons, there is no fair and substantial relationship between the general purposes of the Ordinance provisions and their application to the Property.

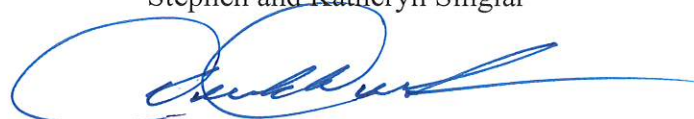
CONCLUSION

In conclusion, the Applicants have demonstrated that the five (5) criteria for granting the variances have been met. Therefore, the Applicants respectfully request that the Board approve their application.

Respectfully Submitted,

Stephen and Katheryn Singlar

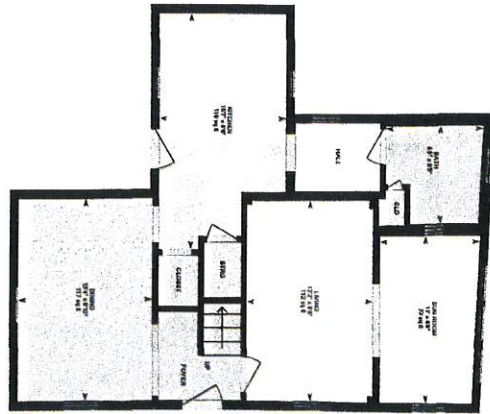
Dated: November 21, 2022



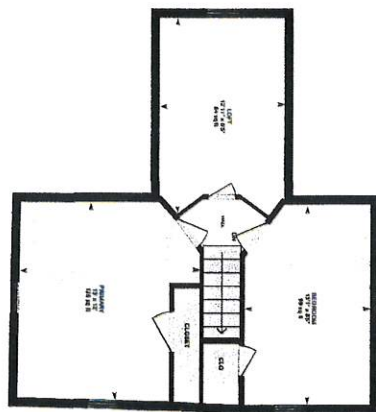
By: Derek R. Durbin, Esq.
DURBIN LAW OFFICES PLLC
144 Washington Street
Portsmouth, NH 03801
(603)-287-4764
derek@durbinlawoffices.com

43 Holmes Ct, Portsmouth, NH

Main Building



Main Floor
Interior Area: 57,475 sq ft



3rd Floor
Interior Area: 30,005 sq ft

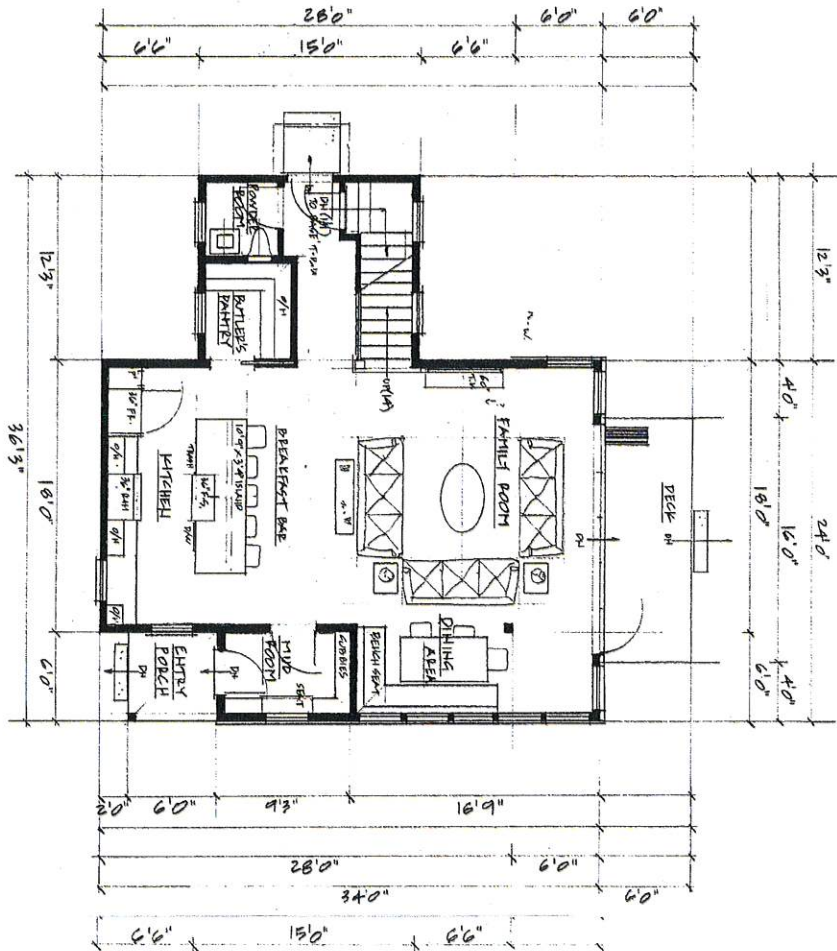


When regions are excluded from total floor area by GC/UCS floor plans, all room dimensions and floor areas must be considered approximate and are subject to independent verification.

PREPARED: 2021/11/05
iGUIDE

EXISTING CONDITIONS

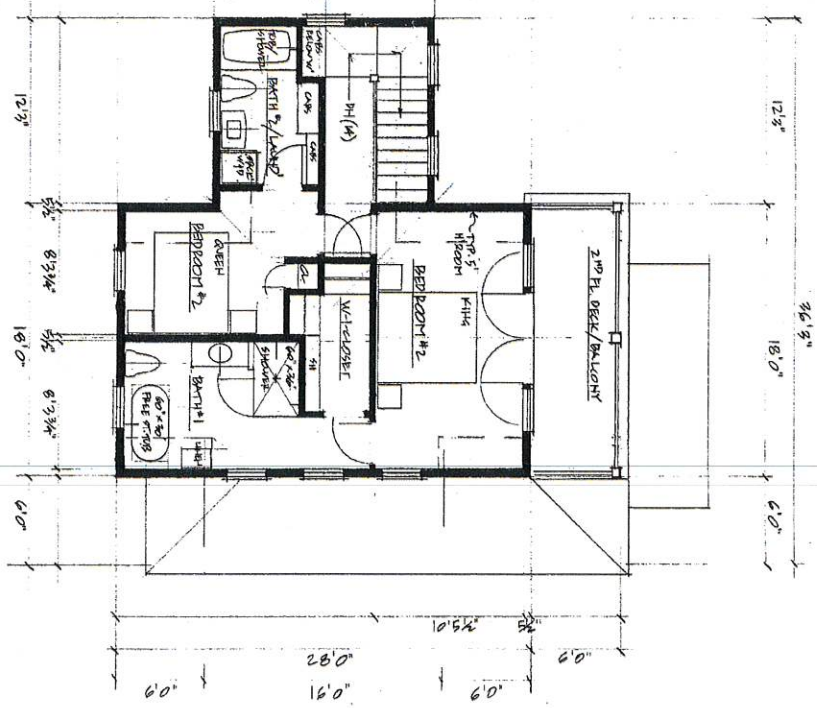
$4 \frac{1}{8}'' = 1'0''$



PROPOSED FIRST FLOOR PLAN

3.31.2022
 HOUSE AREA = 952 sq. ft.
 PORCH AREA = 316 sq. ft.
 DECK AREA = 1,084 sq. ft.
 TOTAL

1/8" = 1'0"



PROPOSED SECOND FLOOR PLAN

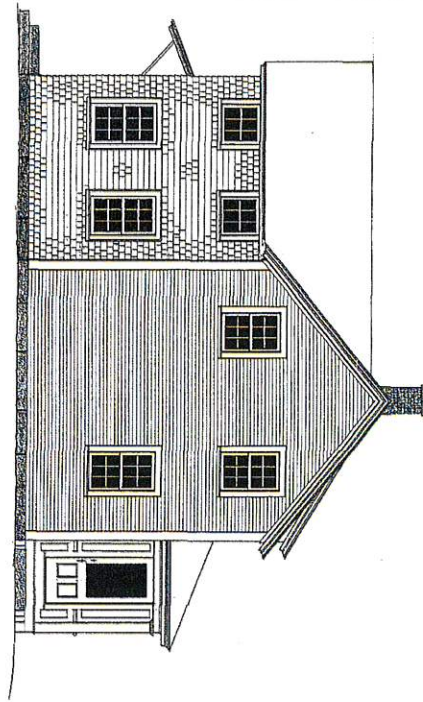
3.31.2022

1/8" = 1'0"

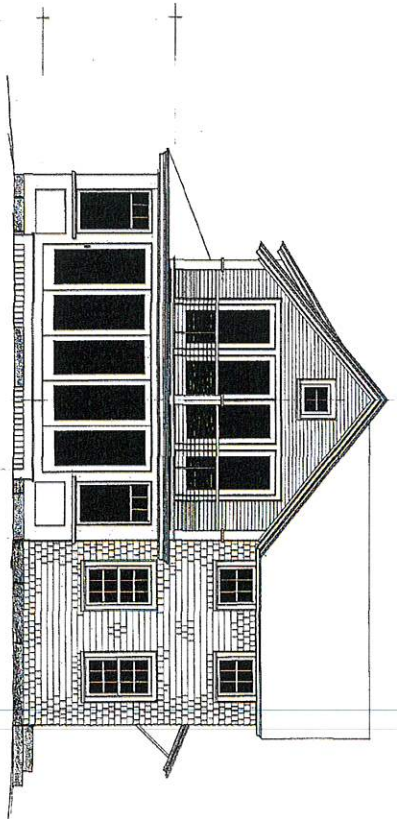
PROPOSED NEW STRUCTURE
 AT 43 HOLMES COURT
 PORTSMOUTH, NH

TITLE: PROPOSED FLOOR PLANS
 SCALE: 1/8" = 1'0"
 DATE: 4.12.2022

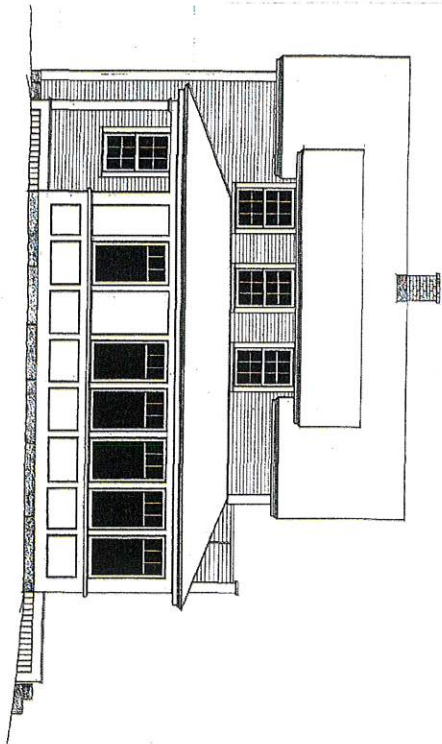
REVISIONS:



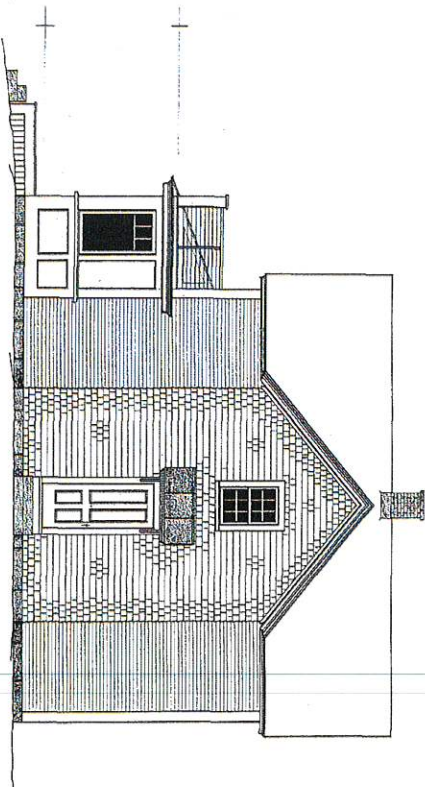
WEST (ROAD SIDE) ELEVATION



PROPOSED EAST (RIVER SIDE) ELEVATION



PROPOSED SOUTH (RIGHT SIDE) ELEVATION



PROPOSED NORTH (LEFT SIDE) ELEVATION

PROPOSED NEW STRUCTURE
 AT 43 HOLMES COURT
 PORTSMOUTH, NH

TITLE: PROPOSED ELEVATIONS

SCALE: 1/8" = 1'0" (FOR 11x17)

DATE: 4.12.2022

REVISIONS:



Property Information

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

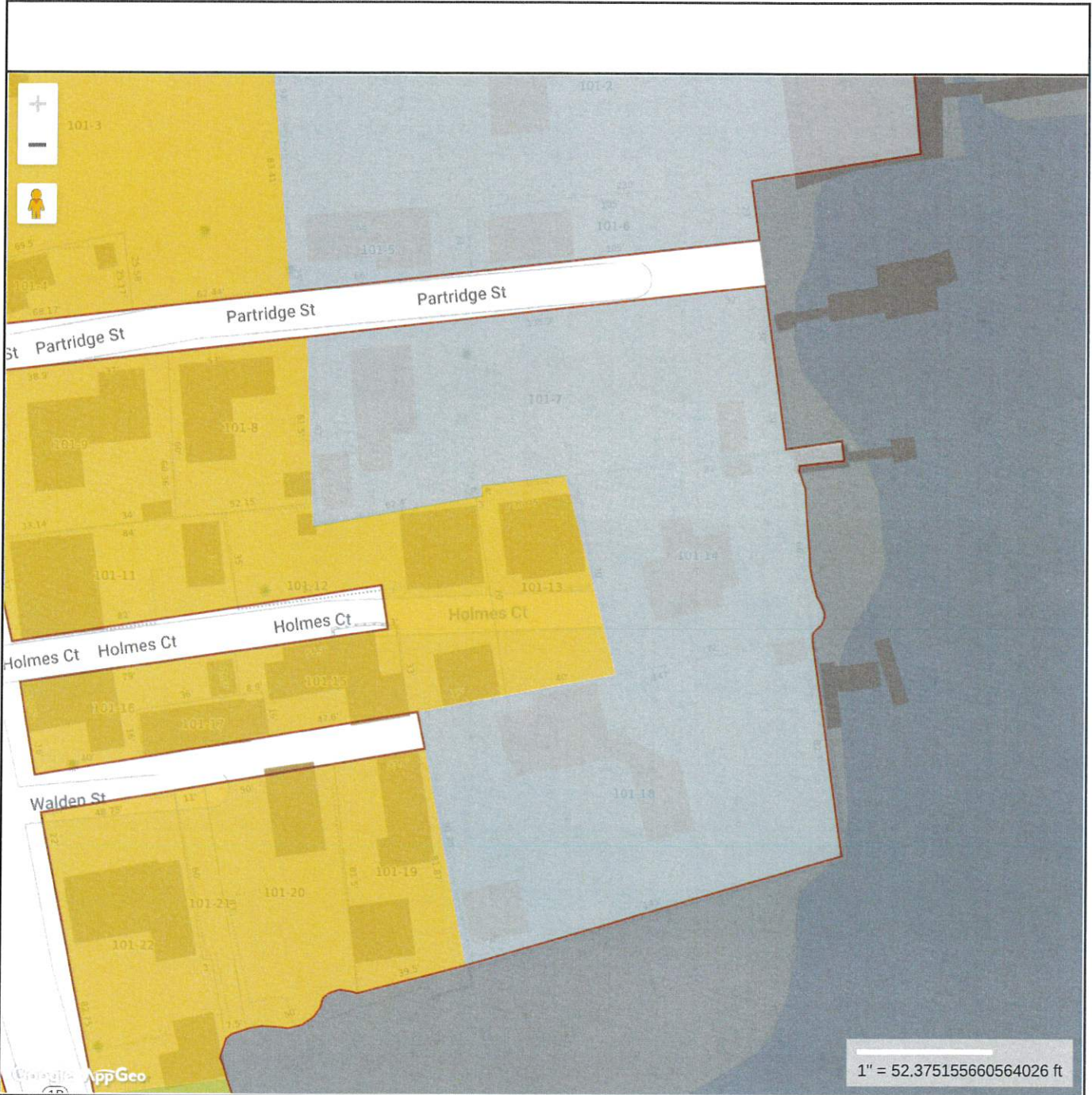


**MAP FOR REFERENCE ONLY
 NOT A LEGAL DOCUMENT**

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 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.



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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

Municipal District

- Municipal District

Overlay Districts

- OLOD Osprey Landing Overlay District
- Downtown Overlay District
- Historic District

City of Portsmouth



WEST SIDE, VIEW FROM HOLMES CRT.
(14' WIDE GABLE END)



NORTH SIDE VIEW
FROM SANDERS LOGSTER CO.
(10' WIDE GABLE)



SOUTH SIDE (RIGHT
SIDE) NOTE DORMERS



SOUTH EAST VIEW,
REAR, WATER SIDE

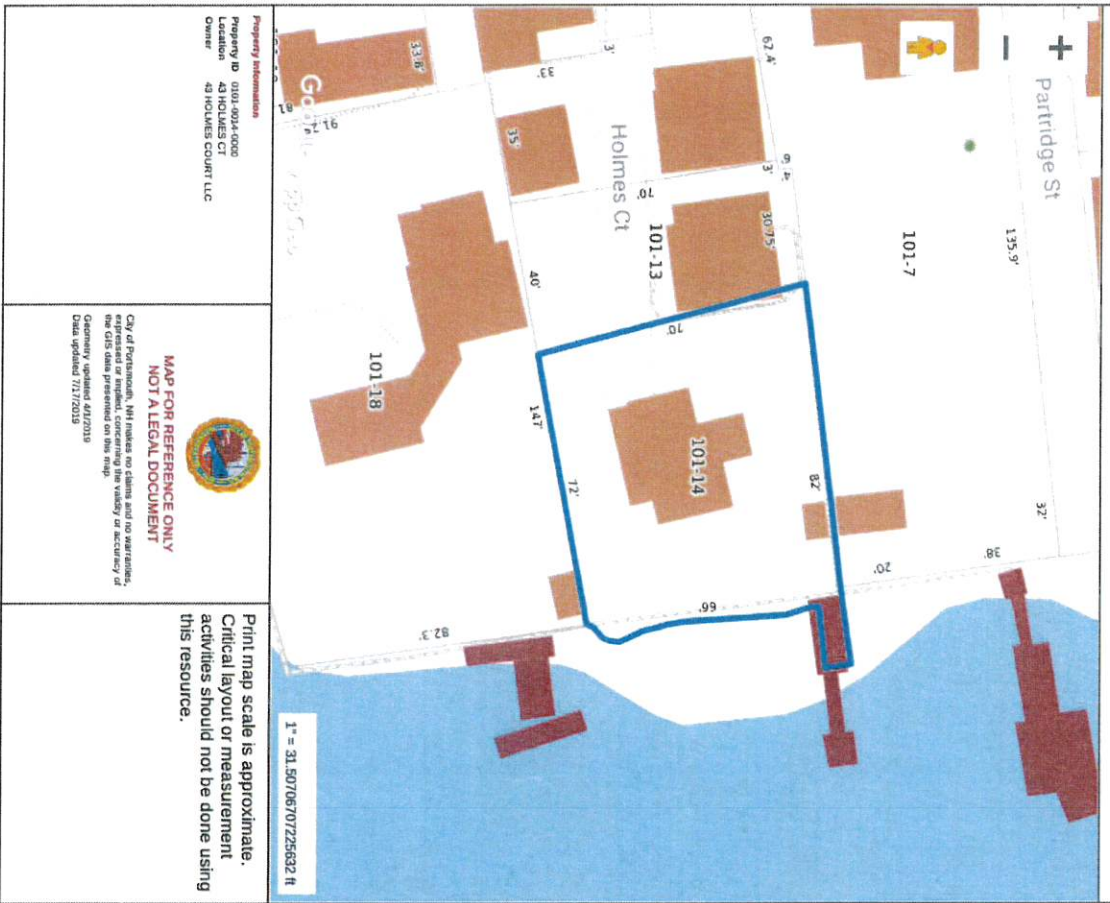


SOUTH WEST VIEW,
REAR WATER SIDE

PROPOSED NEW STRUCTURE
AT 43 HOLMES COURT
PORTSMOUTH, NH

TITLE: PHOTOS, EXIST' CONDITIONS.
SCALE: -
DATE: 4.12.2022

REVISIONS:



LOCATION MAP



FLOOD MAP



Front Elevation View



Left Elevation View



Rear Elevation View



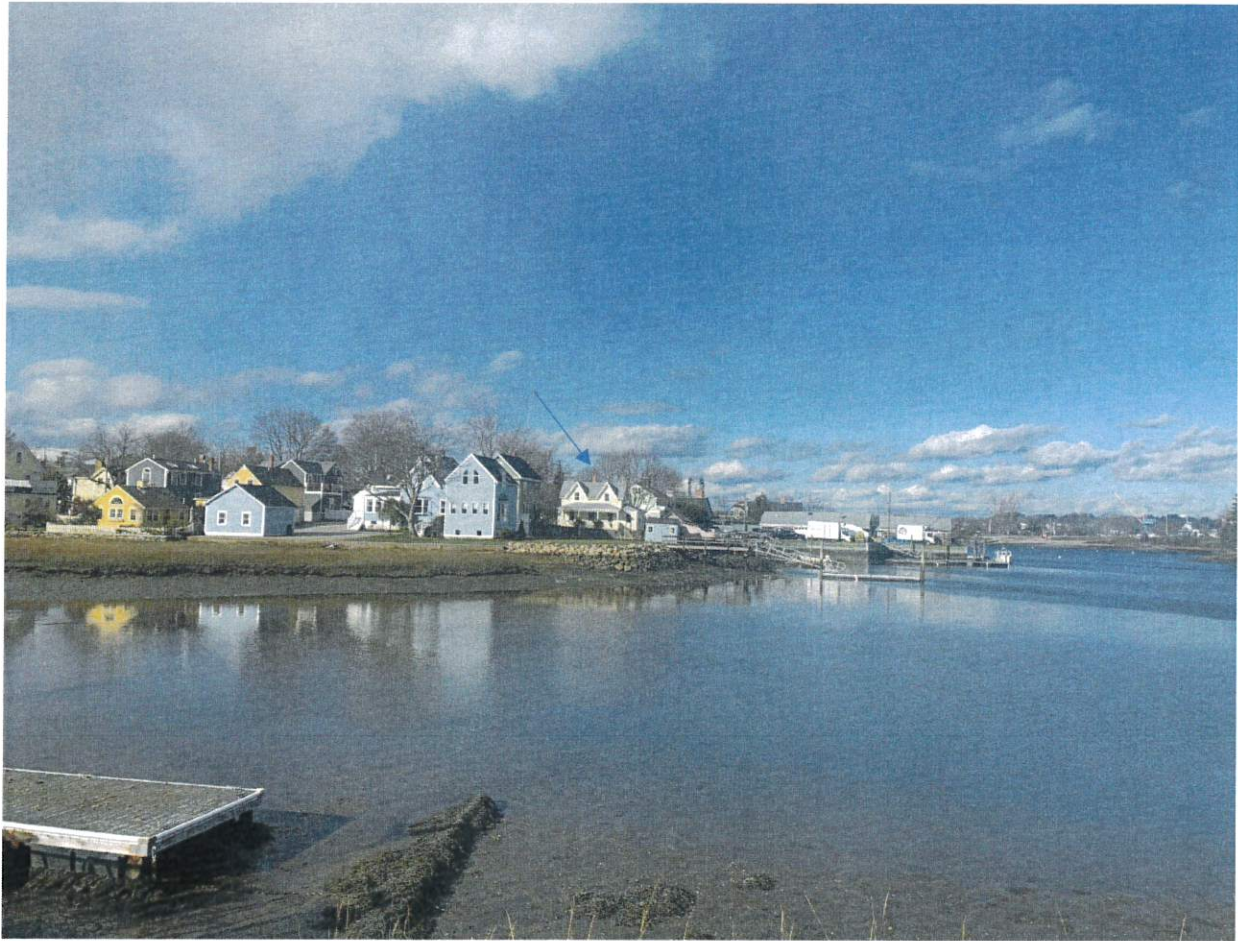
View of Rear Yard



Right Elevation View



View of Parking Area



View of 43 Holmes Court from New Castle Avenue



View of Holmes Court