NARRATIVE IN SUPPORT OF ADMINISTRATIVE APPEAL RE 58 HUMPHREYS COURT

This administrative appeal is filed on behalf of the following individuals (collectively, the "Appellants"):

Ben & Andrea St. Jean (54 Humphreys Court) Braden & Robyn Ferrari (44 Humphreys Court) Bob & Laura Gunning (43 Humphreys Court) Mike & Zoe Daboul (53 Humphreys Court) Tim & Kim Sullivan (63 Humphreys Court) Jamie & Amy Baker (75 Humpreys Court)

The Appellants appeal the October 21, 2025 zoning determination by Peter Britz, Director of Planning and Sustainability, regarding the classification of the side and rear lot lines for the proposed subdivision at 58 Humpreys Court. A copy of that determination letter is attached hereto as Exhibit A.

By way of background, 58 Humphreys Court (the "Property") is a 0.23 acre property in the General Residence B Zoning District and the Historic Overlay District. It contains a single-family home. Robert Snover and Darcy Davidson (collectively, the "Developers") recently purchased the Property, and have proposed to demolish the existing home, subdivide the Property into two lots, and build two new single-family homes. A copy of the proposed subdivision plan is attached hereto as Exhibit B. 1 The Property cannot be lawfully subdivided in compliance with the Portsmouth Zoning Ordinance, due to deficiencies in frontage and lot area. Our understanding is that the Developers intend to seek variances from this Board to allow the creation of substandard house lots.

Following several iterations of the proposed subdivision plan, and several meetings before the Technical Advisory Committee, Mr. Britz issued the October 21 zoning determinations. Mr. Britz first determined that the Property lacks sufficient land area to create two conforming house lots. The Appellants agree with that determination. Second, Mr. Britz made a number of determinations regarding the front, side and rear lot lines on one of proposed lots (Lot 1). Specifically, Mr. Britz concluded:

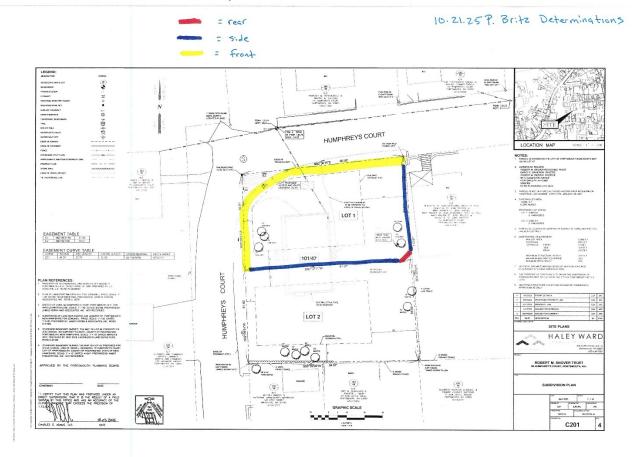
In determining yards on this lot, the front lot line is the area of the public way that has a curve where it comes together off of the two legs of Humphreys Court. It is from the center of that curve that the rear lot is determined. In this case, the rear lot line is the area that comes to a point at the opposite side of the lot from the curve. (The area shown on the Haley Ward plan as EC1). Using the Zoning Ordinance interpretation of rear lot lines in the case of a lot which comes to a point for the rear lot line, a line 10 feet in length drawn from the rear corner shall

¹ Note that Exhibit B does not reflect Mr. Britz's October 21 zoning determinations with respect to lot line classification. Exhibit B depicts a rear lot line on the easterly boundary of proposed Lot 1, with a corresponding rear yard setback. Mr. Britz's determination reclassifies that boundary as a side lot line.

serve as the rear lot line. All the other portions of the lot (not fronting on Humphreys Ct) are determined to be side yards.

See Oct. 21, 2025 Letter, p. 2-3 (attached as Exhibit B).

Based on Mr. Britz's determinations, the lot lines would be as shown below:



As shown, the front lot line would be the entirety of the frontage along Humphreys Court (highlighted yellow); the rear lot line would be a 10' long segment at the southeast corner of the lot (highlighted red); and the side lot lines would be the easterly and southerly lot lines (highlighted blue).

Respectfully, the Appellants disagree with Mr. Britz's classification of the side and rear lot lines. Article 15 of the Zoning Ordinance provides the following definitions:

"Lot line, rear" is defined as:

A boundary of a lot that is opposite and most distant from the front lot line. If the rear lot line is less than 10 feet in length, or if the lot forms a point at the rear, the rear lot line shall be deemed to be a line 10 feet in length within the

lot, parallel to and at the maximum distance from the front lot line.

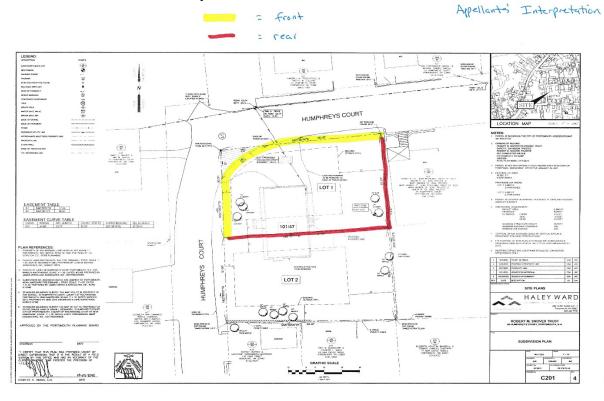
"Lot line, front" is defined as:

A boundary of lot that separates the lot from a public place. A corner lot, through lot or a waterfront lot shall have multiple front lot lines. In the case of a corner lot, through lot or a waterfront lot, the principal front yard shall be the line bordering a public place on which the lot has its address as defined by the City.

"Lot line, side" is defined as:

Any boundary of a lot that is not a front lot line or a rear lot line.

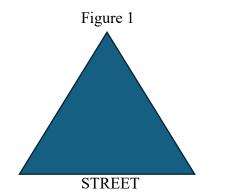
Pursuant to these definitions, the front lot lines are both the westerly and northly boundaries, along both sides of Humphreys Court. The rear lot lines are those which are "opposite and most distant from the front lot line." The easterly boundary of the property is opposite and most distant from the westerly front lot line, and the southerly boundary is opposite and most distant from the northerly front lot line, as shown below:

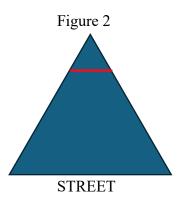


Mr. Britz incorrectly concludes that the lot forms a point at the rear, and based on that faulty conclusion, creates an artificial 10' rear lot line across the southeasterly corner of the lot. Mr. Britz's interpretation essentially eliminates both rear lot lines, and substitutes a 10' diagonal

segment in their place. The ordinance cannot be rationally interpreted to reach that result. The definitions of lot lines make clear that there are always front and rear lot lines. There may or may not be any side lot lines, as side lot lines are defined to be anything that is not a front or rear lot line.

The definition of "lot line, rear" does include a provision to impose an artificial 10' rear lot line where a lot forms a point at the rear, or where the rear lot line is less than 10' long. However, this provision is designed to create a rear lot line where none otherwise exists, or where it is so short as to not create a meaningful rear yard. It would come into play, for example, with a triangular-shaped lot, like the one below:





In Figure 1 above, the lot forms a point in the rear, resulting in no rear lot line. In that case, the ordinance would impose the artificial 10' rear lot, as shown in Figure 2. The purpose of that provision is to impose a 10' minimum rear lot line length, to ensure that at least some minimal rear yard is provided on every lot. Mr. Britz's interpretation turns that purpose on its head, and eliminates what would otherwise be two rear lot lines and corresponding rear yards, to create a small diagonal rear lot line, and rear yard that serves no functional purpose.

Critically, in follow-up communications, Mr. Britz acknowledged that if the corner of Humphreys Court were the intersection of two streets, rather than the continuation of one, either the southerly or easterly boundary would be a rear lot line, and he would not impose the artificial 10' diagonal line at the corner. This interpretation illustrates the flaws in the October 21 determination letter. If the east/west portion of Humphreys Court had a different street name than the north/south portion, then Mr. Britz would recognize one of the rear boundaries as a rear lot line, with a corresponding rear yard setback from it. But because both segments of the street have the same name, no rear yard setback is required along any of the existing boundaries.

The classification of the rear and side lots lines is significant because a rear lot line requires a 25' setback, but a side lot line only requires a 10' setback. See Zoning Ordinance §10.521. When the easterly and southerly boundaries of proposed Lot 1 are properly classified as

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² The Appellants also respectfully disagree with Mr. Britz's conclusion in that hypothetical scenario that there would be only 1 rear lot line, as the Zoning Ordinance clearly defines rear lot lines to be opposite of front lot lines, and therefore there would still be two rear lot lines.

rear lot lines, and the corresponding 25' rear yard setbacks are applied to each, the remaining buildable area is so small that the lot is likely unbuildable. This further illustrates that the Developers are attempting to fit too much onto this existing .23 acre single-family house lot.

For these reasons, we respectfully request that the ZBA reverse Mr. Britz's October 21, 2025 determination, and rule that both the southerly and easterly boundaries of proposed Lot 1 are rear lot lines.

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Exhibit A

CITY OF PORTSMOUTH



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

Rober Snover and Darcy Davidson 60 TJ Gamester Avenue Portsmouth, NH 03801

October 21, 2025

Dear Mr. Snover:

This letter is to serve as a follow up to our meeting on September 23 where we discussed the Planning & Sustainability Department's interpretation of the zoning on your property at 58 Humphrey's Court. You are proposing to subdivide a single property known as Map 101 Lot 47 into two parcels. Staff's interpretation of the zoning for this lot determines that a variance is required to allow the subdivision in order to create two buildable lots.

This parcel's frontage wraps around the 90 degree turn in Humphreys Ct. effectively creating one continuous front yard. At the point of the 90 degree turn the City street overlaps on the parcel creating a curve along the front lot line and an area of City street overlapping with a portion of what your survey has indicated as the lot area. The area of street amounts to 163 square feet, the curved edge of which borders a public place or City street and is not part of the Lot area for this parcel. Simply, this area is not included in the overall lot area because it is not part of the useable lot for this parcel as defined by the zoning ordinance where a front lot line is defined as:

Lot Line, front

A boundary of lot that separates the lot from a public place. A corner lot, through lot or a waterfront lot shall have multiple front lot lines. In the case of a corner lot, through lot or a waterfront lot, the principal front yard shall be the line bordering a public place on which the lot has its address as defined by the City

The dimensions of the entire lot is shown on a Haley Ward Subdivision Plan from 10/3/2025 as being 10,005 square feet with an area of travelled way (effectively City street) being 163 square feet. It is staff's determination that this 163 square foot area cannot be counted as lot area because it is in the street outside of the front lot line. The lot area for Map 101 Lot 47 is determined to be 10,005 square feet minus 163 square feet of public way or 9,842 square feet as shown on the Haley Ward plan. Therefore, there is no way to subdivide this parcel with two conforming lots having a required lot area of 5,000 square feet or greater.

In determining yards on this lot, the front lot line is the area of the public way that has a curve where it comes together off of the two legs of Humphreys Ct. It is from the center of that curve that the rear lot line is determined. In this case, the rear lot line is the area that comes to a point at the opposite side of the lot from the curve. (The area shown on the Haley Ward plan as EC1). Using the Zoning Ordinance interpretation of rear lot lines in the case of a lot which comes to a point for the rear lot line, a line 10 feet

in length drawn from the rear corner shall serve as the rear lot line. All the other portions of the lot (not fronting on Humphreys Ct) are determined to be side yards.

If you have questions or would like to discuss this matter further, please not hesitate to contact me.

July

Sincerel

Director Planning and Sustainability

Cc: Derek Durbin

Peter Stith

Trevor McCourt

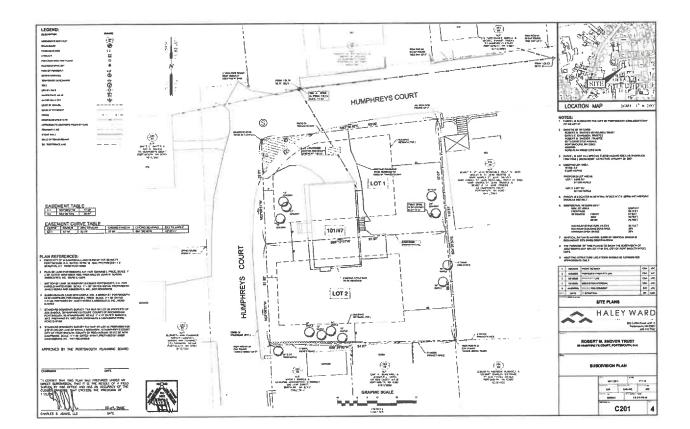
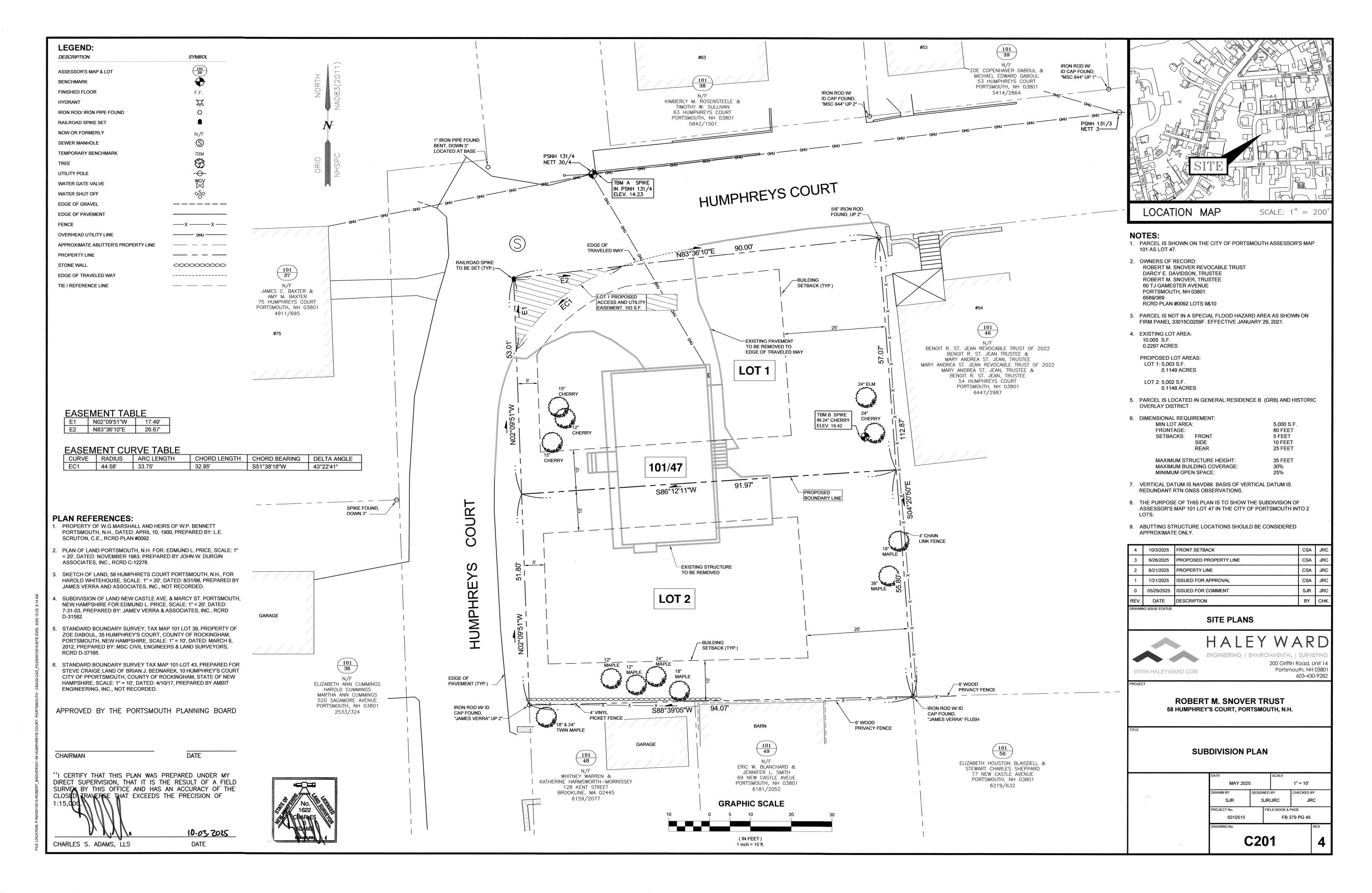


Exhibit B



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