

## MEMORANDUM

TO: Portsmouth Planning Board ("PB")

FROM: R. Timothy Phoenix, Esquire

RE: Conditional Use Permit Application  
Stephen M. Foster, Applicant  
Wentworth-Gardner & Tobias Lear Historic Houses Association  
Property Location: 49 Hunking Street  
Tax Map 103/Lot 39  
General Residence B (GRB District/Historic District)

DATE: March 27, 2019

On behalf of Stephen M. Foster ("Foster"), an individual with a keen interest in historic preservation, and with the grateful support of the Directors of the Wentworth-Gardner & Tobias Lear Historic Houses Association ("Wentworth" or the "Association"), we are pleased to present the following in support of Foster's request for a parking Conditional Use Permit ("CUP") to preserve and rehabilitate the historic Tobias Lear House and to subsequently operate it as an Inn. The proposed Inn will be managed by Foster in cooperation with the Association as part of a broader plan to keep the Tobias Lear House open to the public under the auspices of the Association. Both Foster and the Association believe that this plan is an innovative way of financing the rehabilitation and future maintenance of this historic property, all the while making the house accessible to the general public.

### **I. Exhibits**

- 1) Plan Set by Ambit Engineering, Inc.
  - 6/11/18 Standard Boundary Survey (Existing Conditions)
  - 3/25/19 Variance Plan
- 2) 8/28/16 Tobias Lear House Historic Building Assessment by Bedard Preservation & Restoration, LLC
- 3) 5/31/18 Deaccession Future Use Proposal by Stephen M. Foster.
- 4) 11/11/18 Deaccession/Request for Bids by Wentworth Lear Historic Houses.
- 5) 2/19/ Historic District Work Session Application/Exhibits by Brendan McNamara.
- 6) 11/30/18 Excerpts-Response to Request for Bids by Stephen M. Foster.
- 7) Satellite Area Photograph.
- 8) Tax Map 103.
- 9) 3/27/19 Proposed Floor Plans by Brendan McNamara.

## **II. Property/Project**

49 Hunking Street is the home of the Tobias Lear House, one of two historic houses currently owned by the Association. The Wentworth-Gardner house is located directly behind the Tobias Lear House, and faces Mechanic Street. As set forth in greater detail in the Historic District Commission Work Session submission (**Exhibit 5**), the Tobias Lear House was built in or about 1740 by ship captain Tobias Lear III. Several subsequent generations of the Lear family occupied the home including Tobias Lear V, who was personal secretary to president George Washington. Washington himself visited the home, during his 1789 New England tour.

The house remained in the Lear family until 1860, thereafter falling into a period of decline as a tenement. Modest preservation efforts were undertaken in the early 1900's after the house was acquired by noted Colonial Revivalist Wallace Nutting in 1917. The house was later sold in 1940 to the newly formed Wentworth-Gardner Tobias Lear Houses Association (the "Association"). In 1979, the Tobias Lear House was added to the National Historic Register as part of a newly created Wentworth-Gardner and Tobias Lear Houses Historic District. As the National Register nomination concluded, "Together these two structures represent two traditions of Georgian architecture in America: one a high-style aspiration after British precedents and the other a more simple, vernacular rendering. Their close proximity to one another underscores this contrast and contributes to the spectrum of Portsmouth's built environment." Foster and the Association intend that the present plan for the Tobias Lear House will enable future visitors to appreciate this dramatic contrast in architectural traditions as never before.

As the photographs depict (**Exhibits 2,5**), the Tobias Lear House has long remained in a state of disrepair. Despite its good intentions, the Association has been unable to raise the funds needed to preserve and revive this historic home and to adequately secure its future as a protected historic property. In late 2017, therefore, the Association reluctantly decided to deaccession the house. It initially envisioned setting up a bidding process to sell the house to a private buyer for likely use as a personal residence. In a May, 2018 letter to the Association (**Exhibit 3**), however, Foster outlined an alternative proposal. He expressed interest in purchasing the house not to use as a personal residence, but to operate as a lodging establishment as a means of making the house self-supporting financially, all the while preserving its historic character and permitting future general public access to this important historic property.

In November, 2018, after receiving approval from the 10<sup>th</sup> Circuit Court-Probate Division, the Association issued a Notice of Intent to deaccession and opened a bidding process in order to sell the Tobias Lear House. The Association's bid requirements included the following stipulation:

Any exterior renovations will be required to retain design, form, and architectural detail of the House as it currently stands. There must be harmony within the historic neighborhood and it is especially important that the adjacent Wentworth-Gardner house (C.1760), which is widely regarded as one of the most perfect examples of Georgian architecture in the country, be protected within its current environment. More flexibility will be permitted for interior renovation but these two will be limited as described in the attached Preservation Restriction Agreement.

In his bid for the Tobias Lear House, Foster presented to the Association extensive evidence of his previous experience in preserving and rehabilitating Wilton, a 1763 plantation house in Middlesex County Virginia, an effort that has received praise from many quarters (see **Exhibit 6**, Excerpts Re: Preservation of the Wilton House in Virginia), and he pledged to bring the same level of effort and commitment of resources to the Tobias Lear House. In December 2018, the Association accepted Foster's bid as the one best suited to ensure proper preservation and rehabilitation of this historic home.

Foster is eager to proceed with the preservation and rehabilitation of the Tobias Lear House, to make it a proud companion of the Wentworth-Gardner House and a worthy neighbor in the City's South End. His preliminary plans have been submitted to the Historic District Commission ("HDC") for a Work Session (**Exhibit 5**). In that submission, Foster reiterated his pledge "to undertake a preservation and rehabilitation of the Tobias Lear House that meets the highest standards for such work." But just as importantly, Foster noted, "before closing on the transaction, the Association will place detailed historic preservation easements on the entire house, inside and out, to be held and enforced by Historic New England, thus ensuring that the historic and material integrity of the Tobias Lear House will be protected in perpetuity."

The lynchpin for Foster's plan, wholeheartedly backed by the Association, is the ability to operate the Tobias Lear House as an Inn. The proposed Inn will be very modest in terms of accommodations, with only two bedrooms, but it will be a grand lodging for its guests. Indeed, based on his previous experience at Wilton House, Foster expects that guests are likely to be

historic preservation enthusiasts themselves, including families with children who will want to book both rooms and have the run of the house while exploring historic Portsmouth. Foster believes this will generate sufficient income to justify the expense of preserving and rehabilitating this historic home and to ensure its ability to be self-supporting in the future.

Historic preservation and rehabilitation of a house such as the Tobias Lear House means preserving as much as possible of the historic fabric of the home, all the while rehabilitating it for modern use. In the case of the Tobias Lear House, rehabilitating the house for use as an Inn is essentially the same as it would be to rehabilitate it as a residence. Part of the attraction of the Inn, of course, is that it will be like lodging in an historic residence, and the rehabilitation will reflect that. Looking long-term, moreover, it makes sense to rehabilitate the house as an attractive modern residence to ensure that this always remains a viable alternative for the house. The Tobias Lear House is already 280 years old. It makes sense for the house to be prepared to be used as a residence again at some future date, even if, as both the Association and Foster hope, the Tobias Lear House has a long successful run as an Historic Inn.

The current plan for the house should prepare it for the future, and it does that. That means modern bathrooms, a kitchen with modern appliances, and, of course, modern heating/cooling, plumbing and electric facilities, none of which exist at present. The plan is to have two guest bedrooms upstairs. One will be a two-room suite, encompassing the two eastern bed chambers currently joined by an interior passageway. Across the central hallway, the Southwest chamber will be the other bedroom, and the Northwest chamber to its rear will be used to create two full bathrooms, one *en suite* to the adjacent Southwest chamber and the other bath to be accessed from the hallway. (**Exhibit 9**)

On the first floor, in the small northwest parlor, a much smaller bath will be created from an existing passageway to serve as a downstairs powder room and auxiliary bath. The other major modern element in the downstairs will be a modern kitchen. The house contains a kitchen room, to be sure, but this room is one of the gems of the house and should be preserved as an historic feature. Accordingly, it is planned to place the modern kitchen in the back shed which sits adjacent to the historic kitchen. (See **Exhibits 1, 5 (photos), 9**). The existing attached shed is too small to house a fully modern kitchen, so a modest expansion of the shed footprint is proposed. The shed will be expanded from 7 ft. x 12 ft. to 10ft. x 16ft 3 inches, still at 5.7ft. from

right-side lot line, requiring a variance for expansion and the additional three feet of rearward extension along the lot line.

Because the Tobias Lear House is located in the GRB Zoning District, its use as an Inn also requires a variance.<sup>1</sup> Before submitting this application and the HDC request for Work Session Foster and his team met with members of the Planning Department staff. Consideration of the Tobias Lear House operation as a Bed and Breakfast and an Inn was reviewed and discussed. It was agreed that the most appropriate use under the Portsmouth Zoning Ordinance is as a two-bedroom Inn:

A building offering lodging for transient boarders with up to 15 sleeping rooms. An Inn may have a caretaker residence but does not have to be occupied by the Owner, and shall not serve food to the public.

The Inn requires three parking spaces (PZO Sec. 10.1112.321 (10.30-10.40) -1.25 per guest room x 2 rooms equals 2.5 rounded to 3). Foster intends to preserve and maintain not only the building, but also the grounds of the Tobias Lear House, and both Foster and the Association agree that it would detract from both the Tobias Lear House and the Wentworth-Gardner House. to place parking on the lot. Accordingly, Foster will enter into a formal agreement with the Association to lease three of the 13 lined parking spaces owned by the Association along Mechanic street directly in front of the Wentworth-Gardner house. In addition, the two parties intend to coordinate the development of their respective landscaping plans, and they anticipate that the Inn will be managed by the resident caretaker of the Wentworth-Gardner House.

Foster appears before the Planning Board with the preliminary informal favorable response to the project by the Historic District Commission, support of the Association and upon information and belief many of the nearby neighbors. In addition to ZBA and HDC review and approval, the project will require site review approval by the Planning Board including the TAC process.

### **III. Relief Required**

PZO Sec. 10.1112.14.141-144 and 10.1112.321, Table of Uses, 10.30, 10.40- to allow zero on-site parking spaces where three are required, with three leased parking spaces on Mechanic Street owned by Wentworth Gardner House.

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<sup>1</sup> A ZBA hearing will be scheduled for April 16, 2019.

#### **IV. CUP Requirements**

PZO Sec. 10.1112.14, the Planning Board may grant a Conditional Use Permit to allow a building or use to provide less than a minimum number of off-street parking spaces required by Section 10.1112.30... as applicable....

Sec. 10.1112.141, an application for a Conditional Use Permit under this section shall include a parking demand analysis, which shall be reviewed by the City's Technical Advisory Committee prior to submission to the Planning Board, demonstrating that the proposed number of off street parking spaces is sufficient for the proposed use.

The Tobias Lear House is a significant historic structure and grounds to be preserved and rehabilitated by Foster. In order to justify the cost of same, and to maintain the structure and grounds in the future, an income stream is required. Foster has proposed a 2-bedroom Inn with minor variances to be considered by the Zoning Board of Adjustment on April 16, 2019. From a historical and use perspective, it is inadvisable to provide on-site parking on the grounds of the Tobias Lear House. As Foster noted in his bid application, "... I would not want to devote what little space there is on this small lot to create... [parking] .... That space should be reserved for making every effort to show off the house to the best historical advantage." (**Exhibit 6**, p.8) The purpose and intent of the zoning ordinance requirement for three spaces is fully met via a lease between the Wentworth Gardner & Tobias Lear Historic Houses Association, providing three spaces of its 14 located just around the corner on Mechanic Street.

Sec. 10.1112.142, an application for a Conditional Use Permit under this section shall identify permanent evidence-based measures to reduce parking demand, including but not limited to, provision of ride share/micro transit services or bike share station(s) servicing the property, proximity to public transit, car/van pool incentives, alternative transit subsidies, provisions for tele-working and shared parking on a separate lot subject to the requirements of 10.1112.62.

The Tobias Lear House is within walking distance of public parking at the Parrott Avenue lot, on Parrott Avenue itself, and the High-Hanover Parking Lot. A Zagster station is located at the Parrott Avenue lot. Given the very low parking requirement, none of the other requirements of this section apply. The intent for parking, including the shared parking provision of this section, is met via the leased parking arrangement.

Sec. 10.1112.143, the Planning Board may grant a Conditional Use Permit only if it finds that the number of off street parking spaces required or allowed by the permit will be adequate and appropriate for the proposed use of the property. In making this determination, the Board may accept, modify or reject the findings of the Applicant's parking demand analysis.

Three parking spaces around the corner where three are required will be adequate and appropriate for the proposed use of the property as a two-bedroom Inn.

Sec. 10.1112.144, at its discretion, the Planning Board may require more off street parking spaces than the minimum number requested by the Applicant, or may allow fewer spaces than the maximum number requested by the Applicant.

This section does not apply.

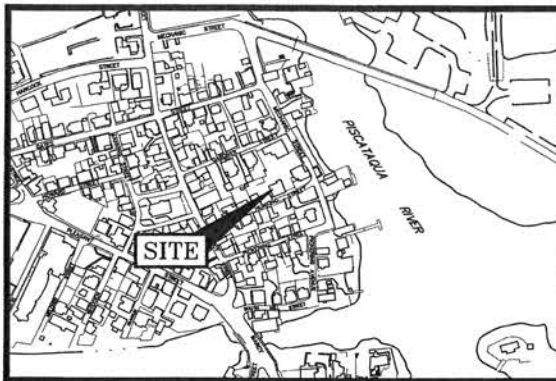
**V. Conclusion**

For all of the foregoing reasons, Foster respectfully requests that the Planning Board grant a Conditional Use Permit for zero parking spaces on site, with a leased parking arrangement with the Association for three spaces on nearby Mechanic Street.

Respectfully submitted,  
Stephen M. Foster

By:   
R. Timothy Phoenix

RTP/msw  
Encl.



LOCATION MAP

SCALE 1"=300'

LEGEND:

N/F NOW OR FORMERLY  
RP RECORD OF PROBATE  
RCRD ROCKINGHAM COUNTY  
REGISTRY OF DEEDS  
RR SPK RAILROAD SPIKE  
MAP 11/LOT 21  
IRON ROD FOUND  
IRON PIPE FOUND  
IRON ROD SET  
DRILL HOLE FOUND  
DRILL HOLE SET  
NHDOT BOUND FOUND  
TOWN BOUND  
BOUND WITH DRILL HOLE  
STONE BOUND WITH DRILL HOLE

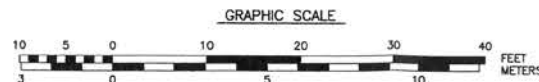
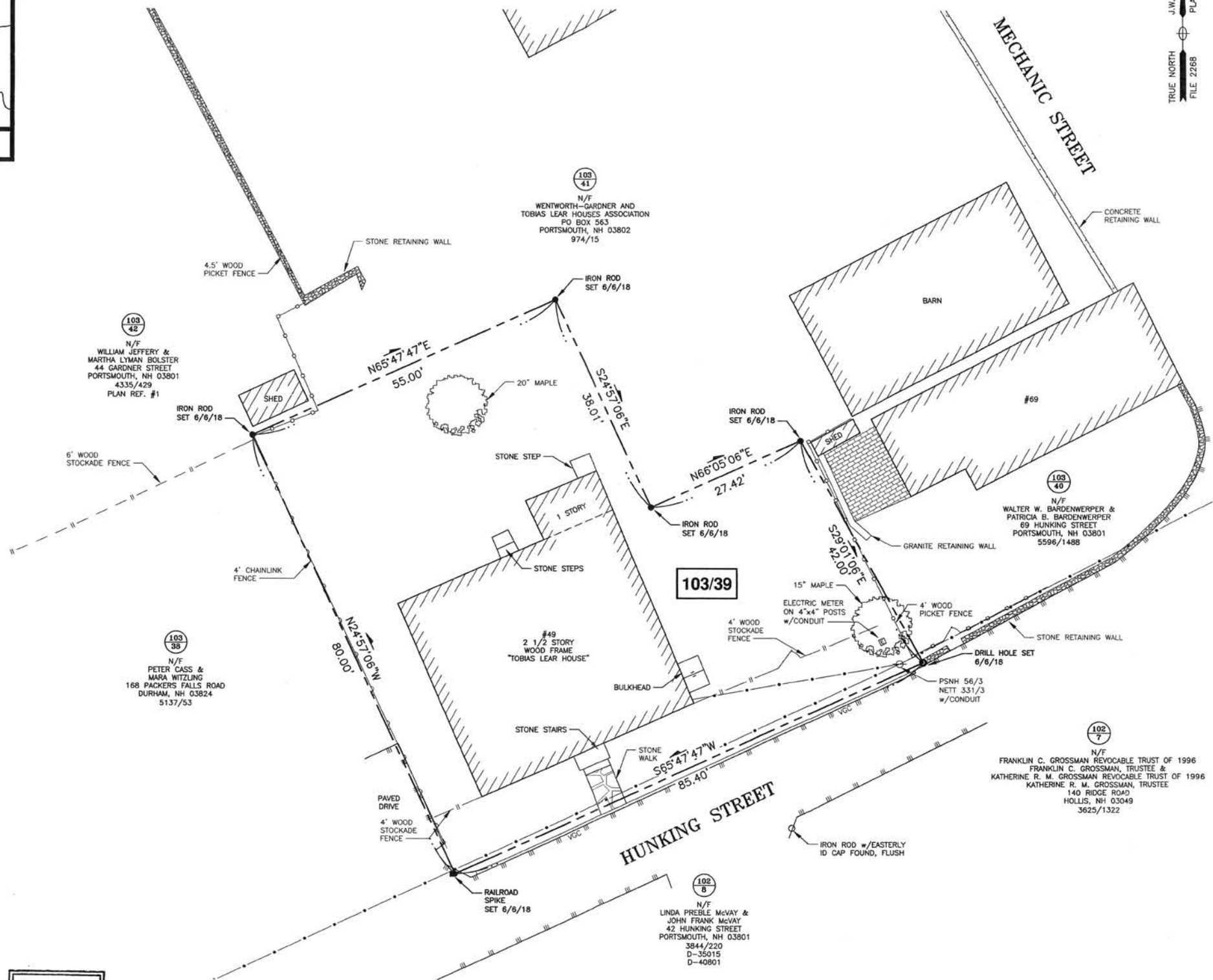
PLAN REFERENCES:

- 1) PLAN OF LAND FOR JOHN WACKMAN & SUSAN SINNOTT 44 GARDNER STREET PORTSMOUTH, N.H. COUNTY OF ROCKINGHAM. PREPARED BY AMBIT SURVEY. DATED APRIL 1998. NOT RECORDED.
- 2) STANDARD PROPERTY SURVEY FOR PROPERTY AT 25 HUNKING STREET PORTSMOUTH ROCKINGHAM COUNTY, MAINE, OWNED BY THE DENNETT M. PAGE REVOCABLE TRUST OF 2005 DENNETT M. PAGE, TRUSTEE THE HUGH E. JENCKS REVOCABLE TRUST OF 2005 HUGH E. JENCKS, TRUSTEE 42 HUNKING STREET PORTSMOUTH, NH 03801. PREPARED BY EASTERLY SURVEYING, INC. DATED SEPTEMBER 13, 2007. R.C.R.D. PLAN D-35016.
- 3) STANDARD PROPERTY SURVEY FOR PROPERTY AT 16 HUNKING STREET PORTSMOUTH, ROCKINGHAM COUNTY, NEW HAMPSHIRE OWNED BY HELEN C. BREWSTER 16 HUNKING STREET PORTSMOUTH, NH 03801. PREPARED BY EASTERLY SURVEYING, INC. DATED SEPTEMBER 13, 2007. R.C.R.D. PLAN D-35072.

I CERTIFY THAT THIS PLAN WAS PREPARED UNDER MY DIRECT SUPERVISION, THAT IT IS THE RESULT OF A FIELD SURVEY BY THIS OFFICE AND HAS AN ACCURACY OF THE CLOSED TRAVERSE THAT EXCEEDS THE PRECISION OF 1:15,000.

I CERTIFY THAT THIS SURVEY PLAT IS NOT A SUBDIVISION PURSUANT TO THIS TITLE AND THAT THE LINES OF STREETS AND WAYS SHOWN ARE THOSE OF PUBLIC OR PRIVATE STREETS OR WAYS ALREADY ESTABLISHED AND THAT NO NEW WAYS ARE SHOWN.

PAUL A. DOBBERSTEIN, LLS #1000  
DATE 6/11/2018



AMBIT ENGINEERING, INC.  
Civil Engineers & Land Surveyors  
280 Griffin Road - Unit 3  
Portsmouth, N.H. 03801-7114  
Tel (603) 430-9282  
Fax (603) 436-2315

NOTES:

- 1) PARCEL IS SHOWN ON THE CITY OF PORTSMOUTH ASSESSOR'S MAP 103 AS LOT 39.
- 2) OWNER OF RECORD:  
THE WENTWORTH-GARDNER AND  
TOBIAS LEAR HOUSES ASSOCIATION  
PO BOX 563  
PORTSMOUTH, NH 03802  
972/67
- 3) PARCEL IS NOT IN A SPECIAL FLOOD HAZARD AREA AS SHOWN ON FIRM PANEL 33015C0259E. EFFECTIVE DATE MAY 17, 2005.
- 4) EXISTING LOT AREA:  
5,612 S.F.  
0.1288 ACRES
- 5) PARCEL IS LOCATED IN THE GENERAL RESIDENCE B (GRB) ZONING DISTRICT AND IS WITHIN THE HISTORIC DISTRICT.
- 6) DIMENSIONAL REQUIREMENTS:  
MIN. LOT AREA: 5,000 S.F.  
FRONTAGE: 80 FEET  
SETBACKS: FRONT 5 FEET  
SIDE 10 FEET  
REAR 25 FEET  
MAXIMUM STRUCTURE HEIGHT: 35 FEET  
MAXIMUM BUILDING COVERAGE: 30%  
MINIMUM OPEN SPACE: 25%
- 7) THE PURPOSE OF THIS PLAN IS TO SHOW THE RESULT OF A STANDARD BOUNDARY SURVEY OF TAX MAP 103 LOT 39 IN THE CITY OF PORTSMOUTH.

EXHIBIT

1

NO.	DESCRIPTION	DATE
1	ADD MONUMENTS AS SET	6/11/18
0	ISSUED FOR COMMENT	5/29/18

REVISIONS

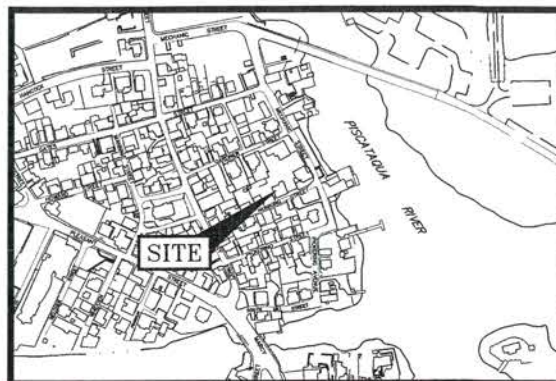
STANDARD BOUNDARY SURVEY  
TAX MAP 103 - LOT 39  
THE TOBIAS LEAR HOUSE  
OWNER  
THE WENTWORTH-GARDNER  
AND TOBIAS LEAR HOUSES  
ASSOCIATION  
49 HUNKING STREET  
CITY OF PORTSMOUTH  
COUNTY OF ROCKINGHAM  
STATE OF NEW HAMPSHIRE

SCALE 1"=10'

MAY 2018

FB 308 PG 33

2546



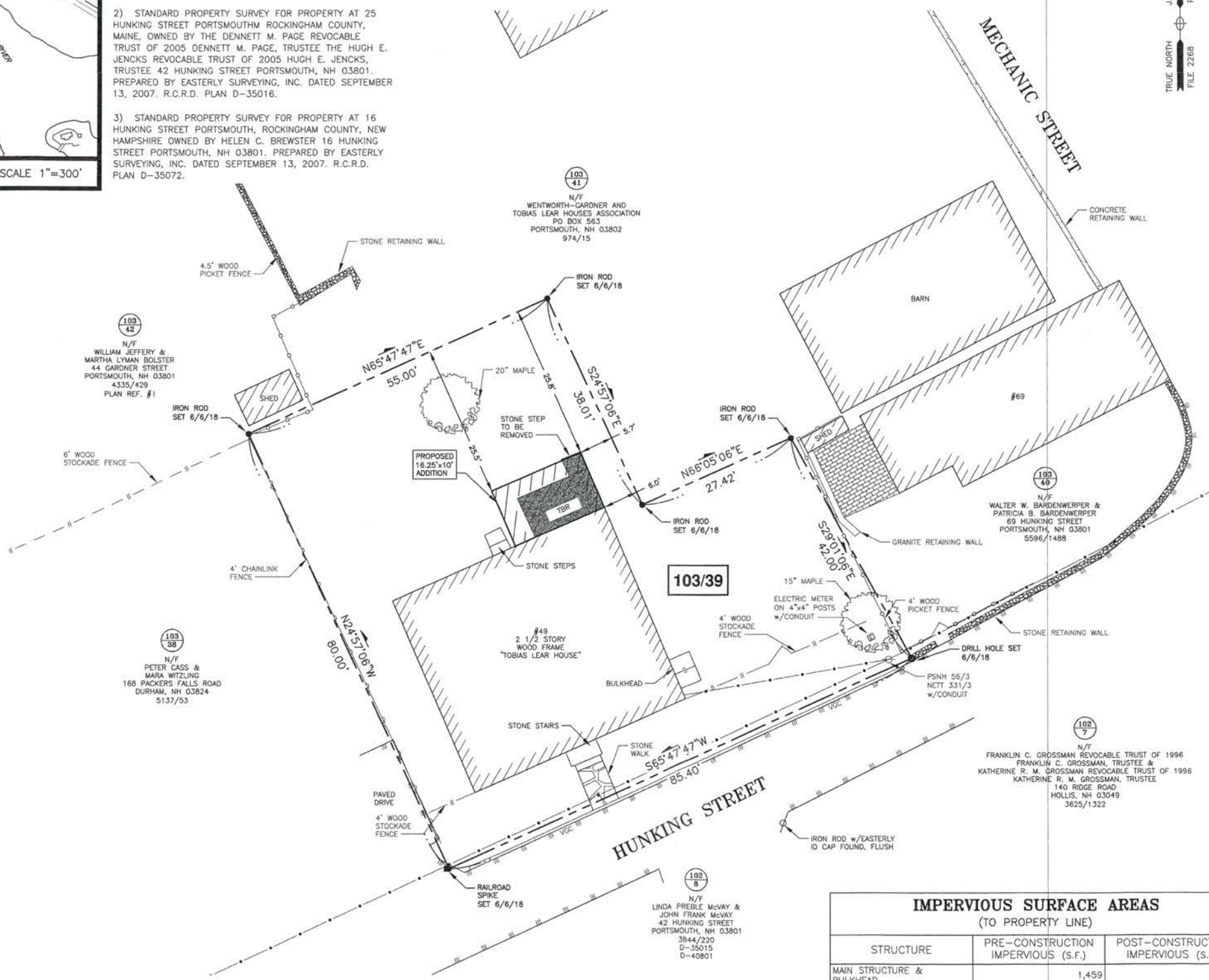
LOCATION MAP SCALE 1"=300'

LEGEND:

- N/F NOW OR FORMERLY  
RP RECORD OF PROBATE  
RCRD ROCKINGHAM COUNTY  
RR SPK RAILROAD SPIKE  
MAP 11/LOT 21  
IRON ROD FOUND  
IRON PIPE FOUND  
IRON ROD SET  
DRILL HOLE FOUND  
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J.W. DURGIN  
TRUE NORTH  
FILE 2268  
PLAN 3287

**AMBIT ENGINEERING, INC.**  
Civil Engineers & Land Surveyors  
290 Griffin Road - Unit 3  
Portsmouth, N.H. 03801-7114  
Tel (603) 430-9282  
Fax (603) 436-2315

NOTES:

- 1) PARCEL IS SHOWN ON THE CITY OF PORTSMOUTH ASSESSOR'S MAP 103 AS LOT 39.  
2) OWNER OF RECORD:  
THE WENTWORTH-GARDNER AND  
TOBIAS LEAR HOUSES ASSOCIATION  
PO BOX 563  
PORTSMOUTH, NH 03802  
972/67  
APPLICANT:  
STEPHEN FOSTER  
1924 47TH STREET, NW  
WASHINGTON, D.C. 20007  
3) PARCEL IS NOT IN A SPECIAL FLOOD HAZARD AREA AS SHOWN ON FIRM PANEL 33015C0259E. EFFECTIVE DATE MAY 17, 2005.  
4) EXISTING LOT AREA:  
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SIDE 10 FEET  
REAR 25 FEET  
MAXIMUM STRUCTURE HEIGHT: 35 FEET  
MAXIMUM BUILDING COVERAGE: 30%  
MINIMUM OPEN SPACE: 25%  
7) THE PURPOSE OF THIS PLAN IS TO SHOW THE ADDITION OF A SHED/KITCHEN ON TAX MAP 103 LOT 39 IN THE CITY OF PORTSMOUTH.

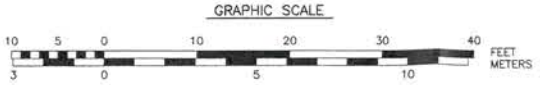
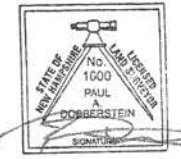
TOBIAS LEAR HOUSE  
CHANGE OF USE  
49 HUNKING STREET  
PORTSMOUTH, N.H.

0	ISSUED FOR COMMENT	3/25/19
NO.	DESCRIPTION	DATE
REVISIONS		

IMPERVIOUS SURFACE AREAS (TO PROPERTY LINE)		
STRUCTURE	PRE-CONSTRUCTION IMPERVIOUS (S.F.)	POST-CONSTRUCTION IMPERVIOUS (S.F.)
MAIN STRUCTURE & BULKHEAD	1,459	1,531
PAVEMENT (APPURTENANT TO TAX MAP 103 LOT 38)	8	8
WALKWAY	27	27
STAIRS AND STEPS	42	31
TOTAL	1,536	1,597
LOT SIZE	5,612	5,612
% LOT COVERAGE	27.4%	28.5%

"I CERTIFY THAT THIS PLAN WAS PREPARED UNDER MY DIRECT SUPERVISION, THAT IT IS THE RESULT OF A FIELD SURVEY BY THIS OFFICE AND HAS AN ACCURACY OF THE CLOSED TRAVERSE THAT EXCEEDS THE PRECISION OF 1:15,000."

PAUL A DOBBERSTEIN, LLS  
DATE 3/25/2019



SCALE: 1"=10' MARCH 2019  
VARIANCE PLAN  
C1