

APPLICANT'S NARRATIVE
RICHARD P. FUSEGNI
201 Kearsarge Way, Portsmouth, New Hampshire
Tax Map 218, Lot 5

The Applicant, Richard P. Fusegni, is seeking to subdivide the existing lot located at 201 Kearsarge Way into three (3) single-family residential lots.

The property is in the SRB district. The lots will be conforming to the dimensional requirements of the ordinance with the exception of proposed Lot 3, which will have 83 feet of continuous street frontage where 100 feet is required. 10.521.

In the fall of 2019, this Board granted the Applicant a substantially identical variance. Planning Board approval of the subdivision was obtained. However, the necessary drainage system would have required the removal of a significant number of trees from the rear of the new lots. This was not acceptable to the Applicant, and he did not move forward with the plan. The approvals have now expired. The Applicant and engineer have modified the design to mitigate the impacts on the existing trees and the Applicant is now prepared to execute the three lot subdivision plan, as amended. As noted above, a frontage variance is necessary for Lot 3.

Submitted herewith are the following:

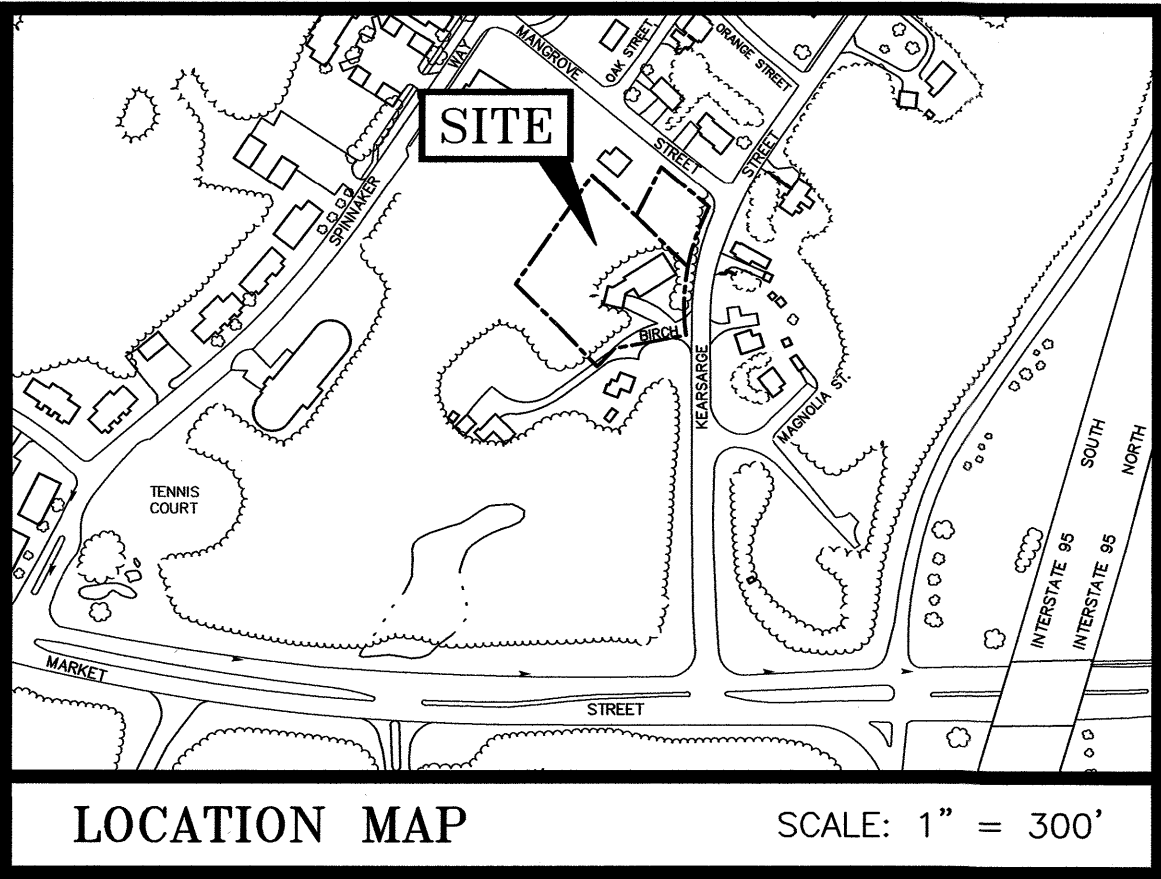
- A) Subdivision plan set revised July 20, 2022;
- B) Existing Conditions photos;
- C) Current tax map and existing conditions photos;
- D) Original application materials dated September 3, 2019;
- E) Minutes of September 17, 2019 BOA meeting;
- F) Board of Adjustment Notice of Decision dated September 24, 2019; and
- G) Planning Board Notice of Decision dated March 2, 2020.

Other than the passage of time, no significant change of conditions affecting the property or the zoning ordinance has occurred. Accordingly, for the reasons set forth in the original application and the decision of this Board granting the required relief, the Applicant respectfully submits that granting the requested variance is appropriate at this time.

Respectfully submitted,

Dated: July 21, 2022

Chris Mulligan
Christopher P. Mulligan, Esquire



- LEGEND:**
- N/F NOW OR FORMERLY
RP RECORD OF PROBATE
RCRD ROCKINGHAM COUNTY
RR SPK RAILROAD SPIKE
MAP 11/LOT 21
IR FND IRON ROD FOUND
IP FND IRON PIPE FOUND
IR SET IRON ROD SET
DH FND DRILL HOLE FOUND
DH SET DRILL HOLE SET
NHFB NHDOT BOUND FOUND
EDGE OF PAVEMENT
OVERHEAD WIRE
LEDGE OUTCROP

LINE TABLE

LINE	BEARING	DISTANCE
L1	N54°23'09"W	24.98'
L2	N55°04'52"W	24.98'
L3	N55°04'52"W	24.98'
L4	S55°04'52"E	24.98'

**DRIVEWAY EASEMENT
LOT 1, AREA A-519 S.F.
EASEMENT
LENGHT TABLE**

LINE	BEARING	DISTANCE
E1	N48°13'46"W	19.25'
E2	N41°46'14"E	23.59'
E3	S46°58'50"E	26.65'
T1*	S46°02'10"W	10.01'
T2**	S75°46'03"E	32.67'

*TIE TO ANGLE POINT AT BIRCH STREET
**TIE TO SE'LY CORNER OF LOT 2
BOTH LINES NOT BOUNDARY LINES

EASEMENT CURVE TABLE

CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING	DELTA ANGLE
EC1	70.00'	24.29'	24.17'	S59°35'11"W	19°52'46"

"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."

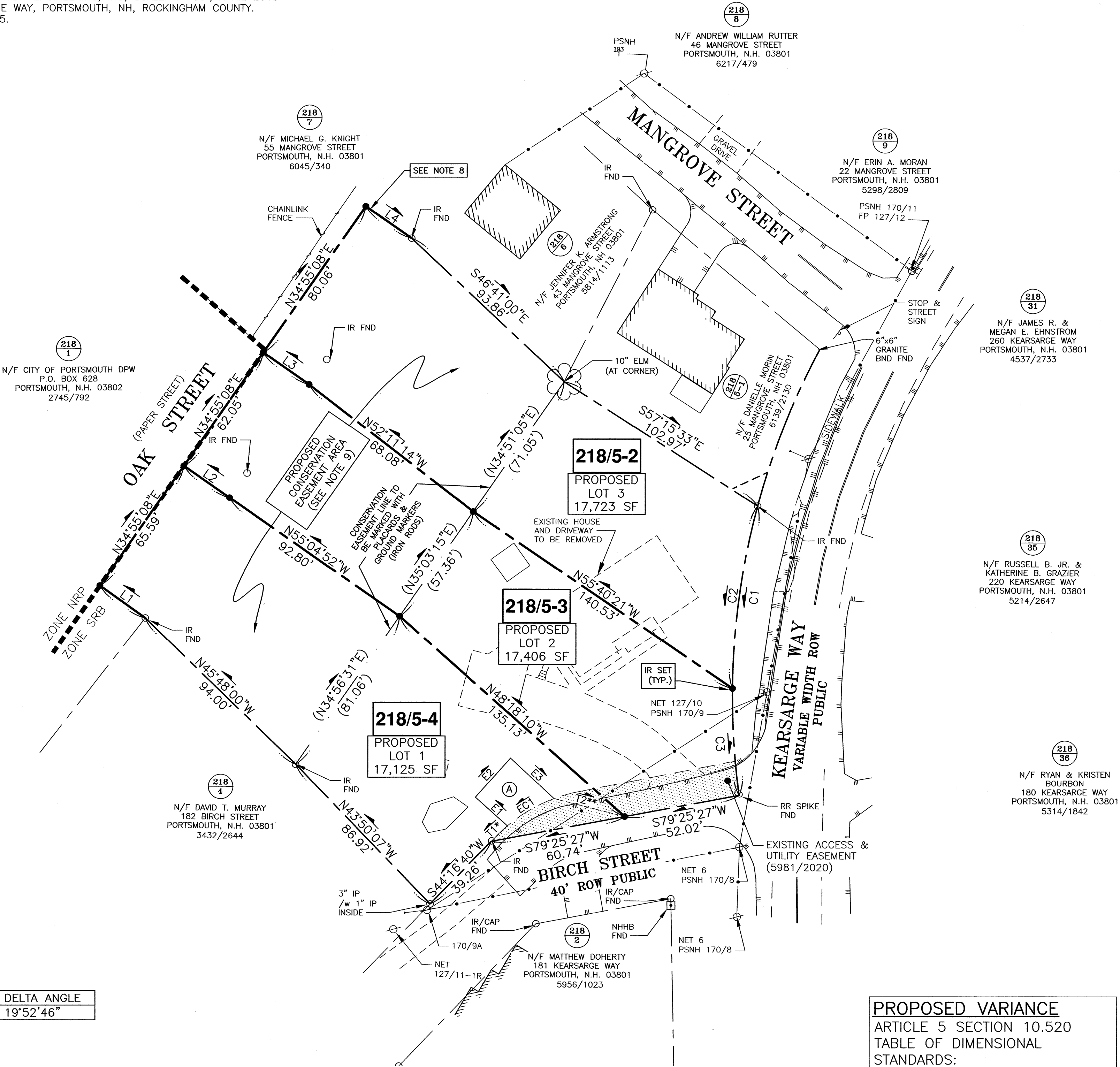
JOHN R. CHAGNON, LLS DATE 7.20.22

APPROVED BY THE PORTSMOUTH PLANNING BOARD

CHAIRMAN DATE

PLAN REFERENCES

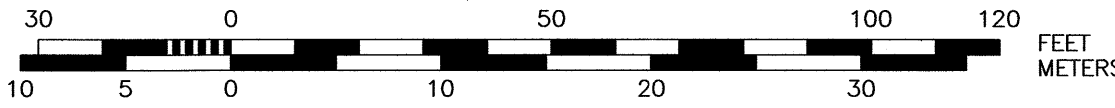
- 1) "SUBDIVISION PLAN TAX MAP 218--LOT 5, OWNER RICHARD P. FUSEGNI", BY AMBIT ENGINEERING, INC., SCALE: 1"=30', APRIL 2018
201 KEARSARGE WAY, PORTSMOUTH, NH, ROCKINGHAM COUNTY.
RCRD-D-41295.



CURVE TABLE

CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING	DELTA ANGLE
C1	330.00'	131.02'	130.16'	S03°34'31"W	22°44'52"
C2	330.00'	82.84'	82.62'	S07°45'28"W	14°22'59"
C3	330.00'	48.18'	48.13'	S03°36'58"E	8°21'53"

GRAPHIC SCALE



PROPOSED VARIANCE

ARTICLE 5 SECTION 10.520
TABLE OF DIMENSIONAL
STANDARDS:
STREET FRONTAGE:
* PROPOSED LOT 3:
FRONTAGE OF 83 FEET WHERE
100 FEET IS REQUIRED

PREVIOUSLY APPROVED
9/17/2019



AMBIT ENGINEERING, INC.
Civil Engineers & Land Surveyors
200 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 218 AS LOT 5.
- 2) OWNER OF RECORD:
RICHARD P. FUSEGNI
201 KEARSARGE WAY
PORTSMOUTH, N.H. 03801
5476/2661 (5979/2783)
RCRD PLAN 0245
- 3) PARCEL IS NOT IN A FLOOD HAZARD ZONE AS SHOWN ON FIRM PANEL 33015C0259F, EFFECTIVE JANUARY 29, 2021.
- 4) EXISTING LOT AREA:
52,253 S.F.
1.1996 AC.
- 5) PARCEL IS LOCATED IN THE SINGLE RESIDENCE B (SRB) DISTRICT & PARTIALLY IN THE NOISE OVERLAY DISTRICT.
- 6) DIMENSIONAL REQUIREMENTS:
MIN. LOT AREA: 15,000 S.F.
FRONTAGE: 100 FT.
SETBACKS: FRONT: 30 FT.
SIDE: 10 FT.
REAR: 30 FT.
MAXIMUM STRUCTURE HEIGHT: 35 FT.
MAXIMUM STRUCTURE COVERAGE: 20%
MINIMUM OPEN SPACE: 40%
- 7) THE PURPOSE OF THIS PLAN IS TO SHOW THE SUBDIVISION OF TAX MAP 218 LOT 5 INTO 3 LOTS.
- 8) OAK STREET WAS CREATED BY A PLAN DATED 1919 AND WAS NEVER CONSTRUCTED. BY OPERATION OF LAW THE AREAS SHOWN BELONG TO THE RESPECTIVE LOTS BY WAY OF APPROPRIATION OF REVERSION RIGHTS.
- 9) PROPOSED CONSERVATION EASEMENT AREA RESTRICTIONS SUBJECT TO REVIEW AND APPROVAL BY THE CITY OF PORTSMOUTH.
- 10) MAP 218 LOT 5-2 (PROPOSED LOT 1) WILL GRANT AN EASEMENT TO THE CITY OF PORTSMOUTH TO TURN AROUND IN DRIVEWAY OF LOT 5-2 FOR PLOWING AND ACCESS
- 11) STREET ADDRESSES SHALL MATCH DRIVEWAY LOCATIONS.
- 12) DURING CONSTRUCTION ON LOTS 1 AND 2, ACCESS TO EXISTING PROPERTIES ON BIRCH STREET SHALL BE MAINTAINED.

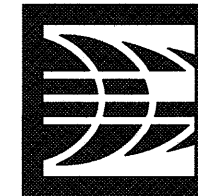
NO.	DESCRIPTION	DATE
1	ISSUED FOR APPROVAL	7/20/22
0	ISSUED FOR COMMENT	6/1/2022

**SUBDIVISION PLAN
TAX MAP 218 - LOT 5**

OWNER
RICHARD P. FUSEGNI
201 KEARSARGE WAY
CITY OF PORTSMOUTH
COUNTY OF ROCKINGHAM
STATE OF NEW HAMPSHIRE

SCALE: 1" = 30'

JUNE 2022



AMBIT ENGINEERING, INC.

Civil Engineers & Land Surveyors

200 Griffin Road - Unit 3
Portsmouth, N.H. 03801-7114
Tel (603) 430-9282
Fax (603) 436-2315

NOTES:

- 1) THE CONTRACTOR SHALL NOTIFY DIG SAFE AT 1-888-DIG-SAFE (1-888-344-7233) AT LEAST 72 HOURS PRIOR TO COMMENCING ANY EXCAVATION ON PUBLIC OR PRIVATE PROPERTY.
- 2) UNDERGROUND UTILITY LOCATIONS ARE BASED UPON BEST AVAILABLE EVIDENCE AND ARE NOT FIELD VERIFIED. LOCATING AND PROTECTING ANY ABOVEGROUND OR UNDERGROUND UTILITIES IS THE SOLE RESPONSIBILITY OF THE CONTRACTOR AND/OR THE OWNER. UTILITY CONFLICTS SHOULD BE REPORTED AT ONCE TO THE DESIGN ENGINEER.
- 3) CONTRACTOR SHALL INSTALL AND MAINTAIN EROSION CONTROL MEASURES IN ACCORDANCE WITH THE "NEW HAMPSHIRE STORMWATER MANUAL, VOLUME 3, EROSION AND SEDIMENT CONTROLS DURING CONSTRUCTION. (NHDES DECEMBER 2008).
- 4) THE PURPOSE OF THIS PLAN IS TO SHOW THE EXISTING CONDITIONS ON TAX MAP 218 LOT 5.
- 5) EXISTING HOUSE AND SHED TO BE REMOVED. SEE DEMOLITION PLAN.
- 6) DURING CONSTRUCTION, ACCESS TO EXISTING PROPERTIES ON BIRCH STREET SHALL BE MAINTAINED.

**SITE DEVELOPMENT
201 KEARSARGE WAY
PORTSMOUTH, N.H.**

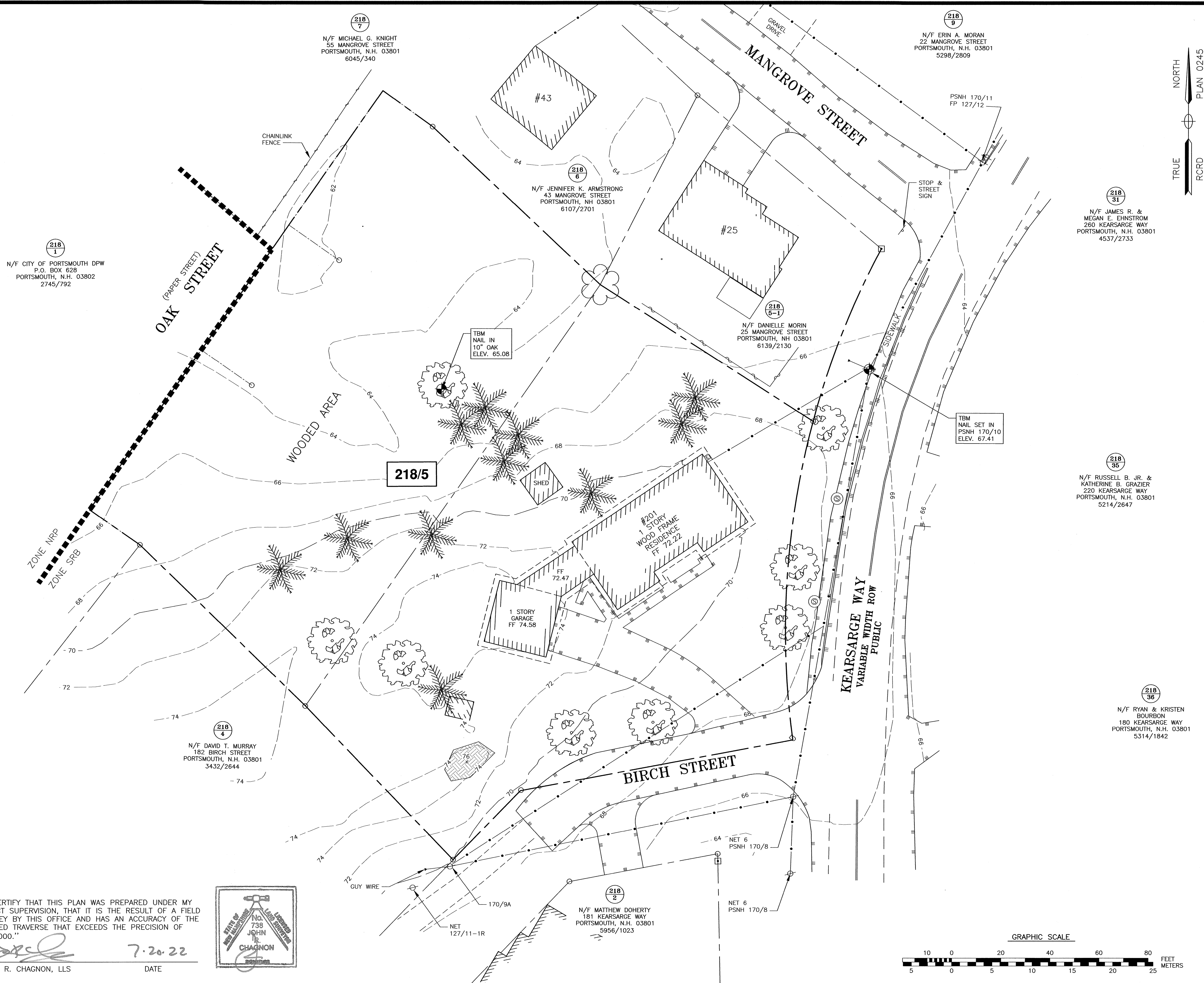
REVISIONS		
NO.	DESCRIPTION	DATE
1	ISSUED FOR APPROVAL	7/20/22
0	ISSUED FOR COMMENT	5/19/21

SCALE: 1" = 20'

MAY 2021

**EXISTING CONDITIONS
PLAN**

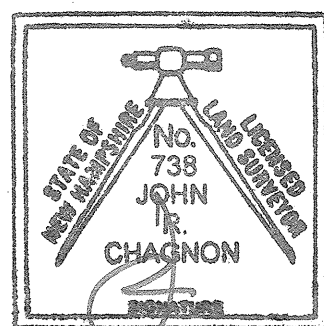
C1



"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."

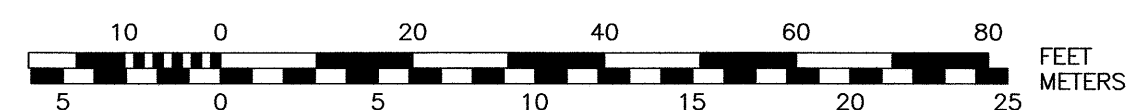
JOHN R. CHAGNON, LLS

DATE



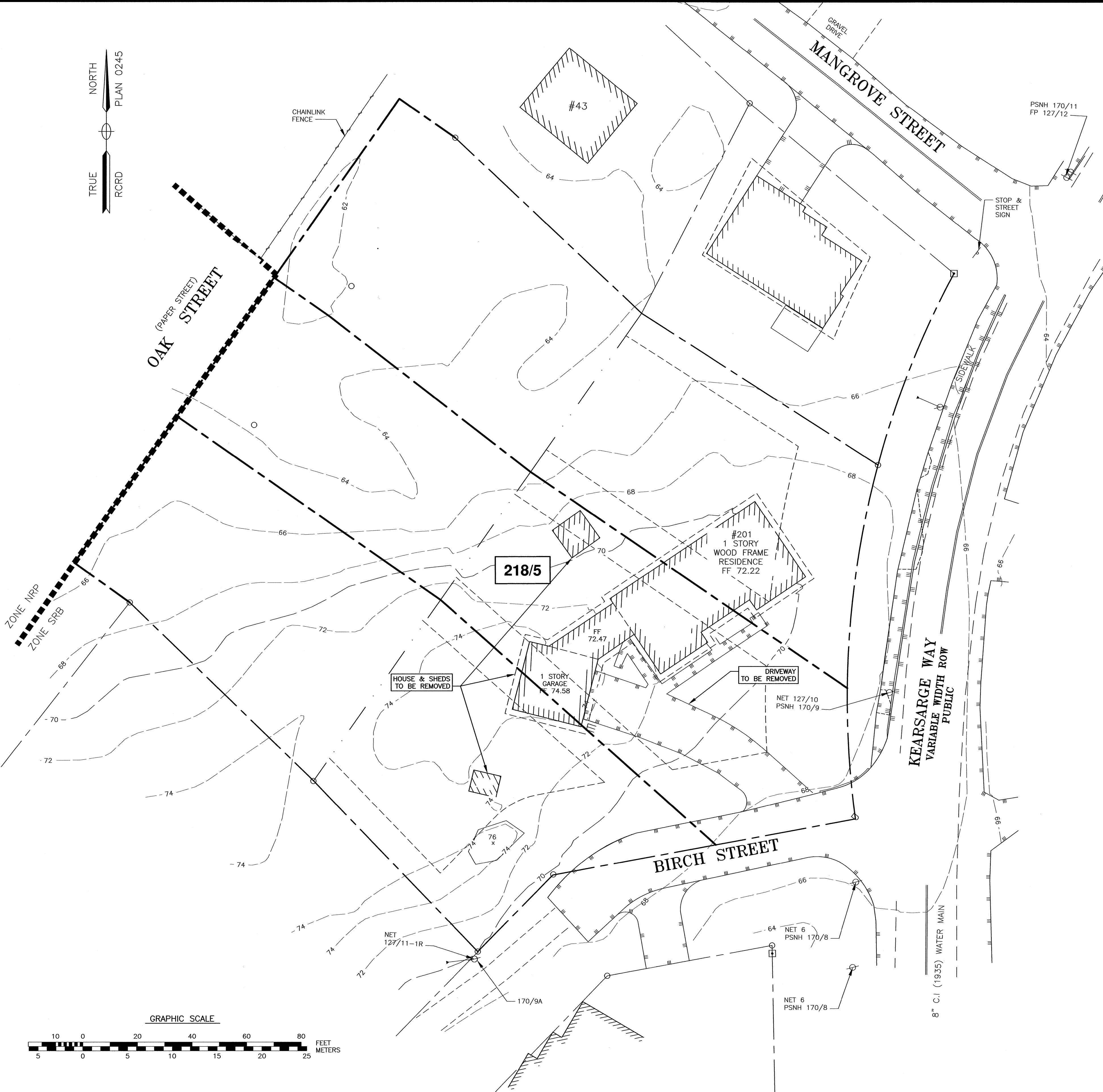
7-20-22

GRAPHIC SCALE



DEMOLITION NOTES

- A) THE LOCATIONS OF UNDERGROUND UTILITIES ARE APPROXIMATE AND THE LOCATIONS ARE NOT GUARANTEED BY THE OWNER OR THE DESIGNER. IT IS THE CONTRACTORS' RESPONSIBILITY TO LOCATE UTILITIES AND ANTICIPATE CONFLICTS. CONTRACTOR SHALL REPAIR EXISTING UTILITIES DAMAGED BY THEIR WORK AND RELOCATE EXISTING UTILITIES THAT ARE REQUIRED TO BE RELOCATED PRIOR TO COMMENCING ANY WORK IN THE IMPACTED AREA OF THE PROJECT.
- B) ALL MATERIALS SCHEDULED TO BE REMOVED SHALL BECOME THE PROPERTY OF THE CONTRACTORS UNLESS OTHERWISE SPECIFIED. THE CONTRACTOR SHALL DISPOSE OF ALL MATERIALS OFF-SITE IN ACCORDANCE WITH ALL FEDERAL, STATE, AND LOCAL REGULATIONS, ORDINANCES AND CODES. THE CONTRACTOR SHALL COORDINATE REMOVAL, RELOCATION, DISPOSAL, OR SALVAGE OF UTILITIES WITH THE OWNER AND APPROPRIATE UTILITY COMPANY.
- C) ANY EXISTING WORK OR PROPERTY DAMAGED OR DISRUPTED BY CONSTRUCTION/ DEMOLITION ACTIVITIES SHALL BE REPLACED OR REPAIRED TO THE ORIGINAL EXISTING CONDITIONS BY THE CONTRACTOR AT NO ADDITIONAL COST TO THE OWNER.
- D) THE CONTRACTOR SHALL VERIFY LOCATION OF ALL EXISTING UTILITIES AND CALL DIG SAFE AT LEAST 72 HOURS PRIOR TO THE COMMENCEMENT OF ANY DEMOLITION/CONSTRUCTION ACTIVITIES.
- E) SAWCUT AND REMOVE PAVEMENT ONE FOOT OFF PROPOSED EDGE OF PAVEMENT TRENCH IN AREAS WHERE PAVEMENT IS TO BE REMOVED.
- F) IT IS THE CONTRACTOR'S RESPONSIBILITY TO FAMILIARIZE THEMSELVES WITH THE CONDITIONS OF ALL THE PERMIT APPROVALS.
- G) THE CONTRACTOR SHALL OBTAIN AND PAY FOR ADDITIONAL CONSTRUCTION PERMITS, NOTICES AND FEES NECESSARY TO COMPLETE THE WORK AND ARRANGE FOR AND PAY FOR ANY INSPECTIONS AND APPROVALS FROM THE AUTHORITIES HAVING JURISDICTION. THE CONTRACTOR SHALL BE RESPONSIBLE FOR ANY ADDITIONAL AND OFF-SITE DISPOSAL OF MATERIALS REQUIRED TO COMPLETE THE WORK.
- H) THE CONTRACTOR SHALL REMOVE AND DISPOSE OF ALL EXISTING STRUCTURES, CONCRETE, UTILITIES, VEGETATION, PAVEMENT, AND CONTAMINATED SOIL WITHIN THE WORK LIMITS SHOWN UNLESS SPECIFICALLY IDENTIFIED TO REMAIN. ANY EXISTING DOMESTIC / IRRIGATION SERVICE WELLS IN THE PROJECT AREA IDENTIFIED DURING THE CONSTRUCTION AND NOT CALLED OUT ON THE PLANS SHALL BE BROUGHT TO THE ATTENTION OF THE OWNER AND ENGINEER FOR PROPER CAPPING / RE-USE.
- I) ALL WORK WITHIN THE CITY OF PORTSMOUTH RIGHT OF WAY SHALL BE COORDINATED WITH THE CITY OF PORTSMOUTH DEPARTMENT OF PUBLIC WORKS (DPW).
- J) REMOVE TREES AND BRUSH AS REQUIRED FOR COMPLETION OF WORK. CONTRACTOR SHALL GRUB AND REMOVE ALL SLUMPS WITHIN LIMITS OF WORK AND DISPOSE OF OFF-SITE IN ACCORDANCE WITH FEDERAL, STATE, AND LOCAL LAWS AND REGULATIONS.
- K) CONTRACTOR SHALL PROTECT ALL PROPERTY MONUMENTATION THROUGHOUT DEMOLITION AND CONSTRUCTION OPERATIONS. SHOULD ANY MONUMENTATION BE DISTURBED, THE CONTRACTOR SHALL EMPLOY A NH LICENSED LAND SURVEYOR TO REPLACE THEM.
- L) PROVIDE INLET PROTECTION BARRIERS AT ALL CATCH BASINS WITHIN CONSTRUCTION LIMITS AND MAINTAIN FOR THE DURATION OF THE PROJECT. INLET PROTECTION BARRIERS SHALL BE HIGH FLOW SILT SACK BY ACF ENVIRONMENTAL OR APPROVED EQUAL. INSPECT BARRIERS WEEKLY AND AFTER EACH RAIN OF 0.25 INCHES OR GREATER. CONTRACTOR SHALL COMPLETE A MAINTENANCE INSPECTION REPORT AFTER EACH INSPECTION. SEDIMENT DEPOSITS SHALL BE REMOVED AFTER EACH STORM EVENT OR MORE OFTEN IF WARRANTED OR FABRIC BECOMES CLOGGED. EROSION CONTROL MEASURES SHALL BE INSTALLED PRIOR TO THE START OF ANY CLEARING OR DEMOLITION ACTIVITIES.
- M) THE CONTRACTOR SHALL PAY ALL COSTS NECESSARY FOR TEMPORARY PARTITIONING, BARRICADING, FENCING, SECURITY AND SAFETY DEVICES REQUIRED FOR THE MAINTENANCE OF A CLEAN AND SAFE CONSTRUCTION SITE.
- N) ANY CONTAMINATED MATERIAL REMOVED DURING THE COURSE OF THE WORK WILL REQUIRE HANDLING IN ACCORDANCE WITH NHDES REGULATIONS. CONTRACTOR SHALL HAVE A HEALTH AND SAFETY PLAN IN PLACE, AND COMPLY WITH ALL APPLICABLE PERMITS, APPROVALS, AUTHORIZATIONS, AND REGULATIONS.
- O) DURING CONSTRUCTION ACCESS WILL BE PROVIDED TO ALL EXISTING PROPERTIES LOCATED ON BIRCH ST.



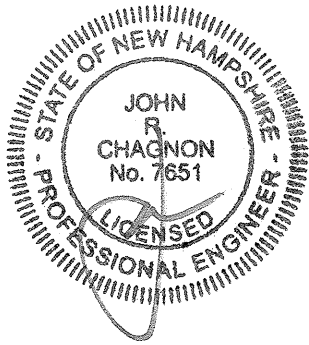
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PROPOSED SUBDIVISION
201 KEARSARGE WAY
PORTSMOUTH, N.H.

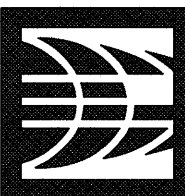
NO.	DESCRIPTION	DATE
1	ISSUED FOR APPROVAL	7/20/22
0	ISSUED FOR COMMENT	6/1/22



SCALE: 1" = 20' JULY 2022

DEMOLITION PLAN

C2



AMBIT ENGINEERING, INC.
Civil Engineers & Land Surveyors

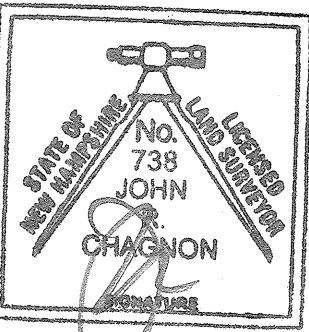
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- 4) THE PURPOSE OF THIS PLAN IS TO SHOW A CONCEPTUAL DEVELOPMENT LAYOUT ON THE PROPERTY.
- 5) EXISTING HOUSE AND SHED TO BE REMOVED. SEE DEMOLITION PLAN.
- 6) DURING CONSTRUCTION ON LOTS 1 AND 2, ACCESS TO EXISTING PROPERTIES ON BIRCH STREET SHALL BE MAINTAINED.

**PROPOSED SUBDIVISION
201 KEARSARGE WAY
PORTSMOUTH, N.H.**

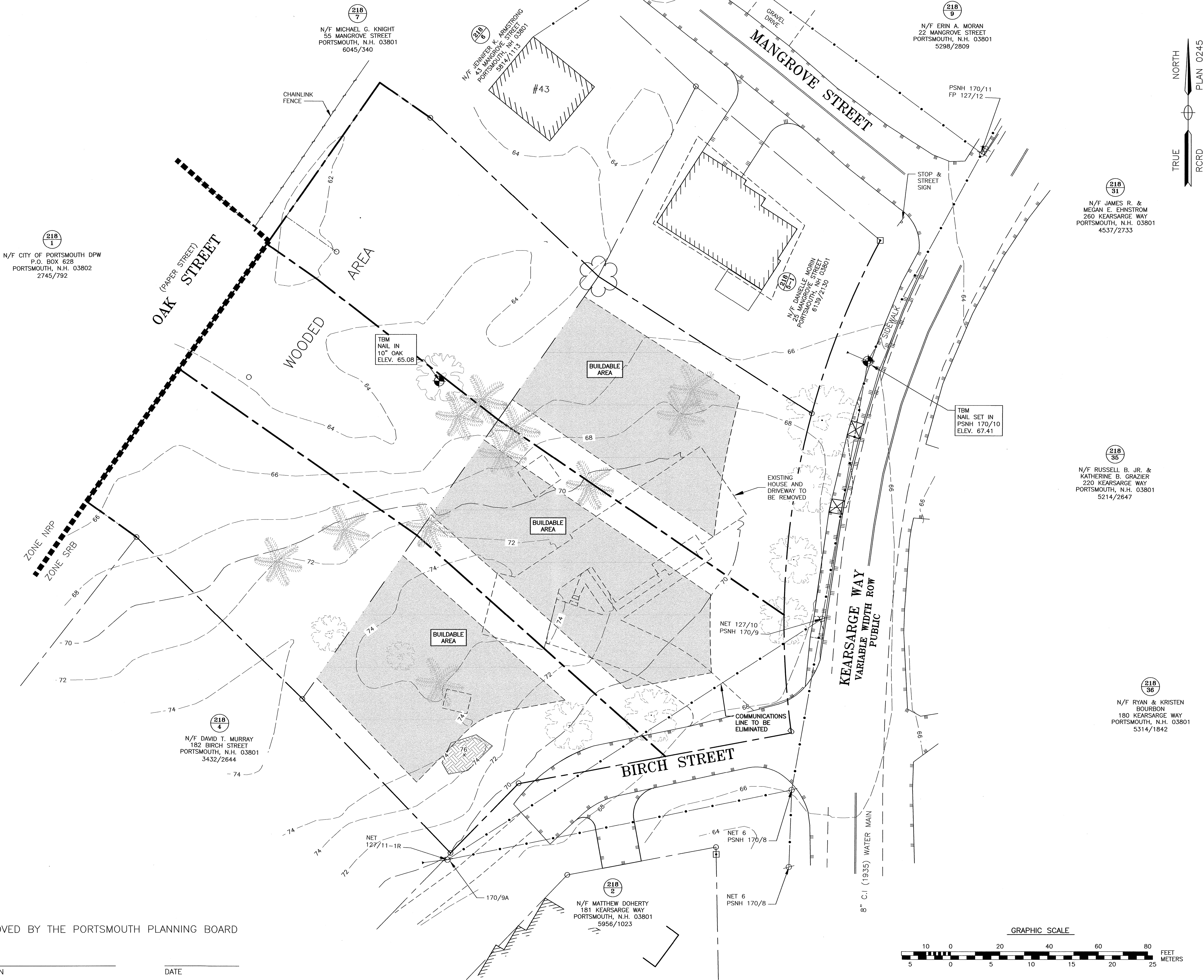
NO.	DESCRIPTION	DATE
1	ISSUED FOR APPROVAL	7/20/22
0	ISSUED FOR COMMENT	6/1/2022
REVISIONS		



SCALE: 1" = 20' JULY 2022

**SUBDIVISION
SITE PLAN**

C3

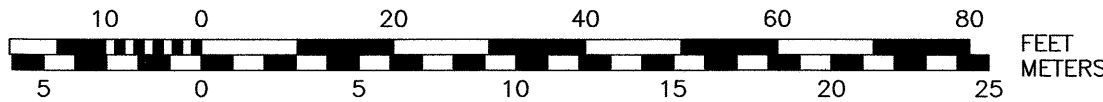


APPROVED BY THE PORTSMOUTH PLANNING BOARD

CHAIRMAN

DATE

GRAPHIC SCALE



NORTH
PLAN 0245
TRUE
RCRD

218
1
N/F CITY OF PORTSMOUTH DPW
P.O. BOX 628
PORTSMOUTH, N.H. 03802
2745/792

218
7
N/F MICHAEL G. KNIGHT
55 MANGROVE STREET
PORTSMOUTH, N.H. 03801
6045/340

218
6
N/F JENNIFER K. ARISTON
43 MANGROVE STREET
PORTSMOUTH, N.H. 03801
5847/113

218
9
N/F ERIN A. MORAN
22 MANGROVE STREET
PORTSMOUTH, N.H. 03801
5298/2809

218
31
N/F JAMES R. &
MEGAN E. EHNSTROM
260 KEARSARGE WAY
PORTSMOUTH, N.H. 03801
4537/2733

218
36
N/F RUSSELL B. JR. &
KATHERINE B. GRAZIER
220 KEARSARGE WAY
PORTSMOUTH, N.H. 03801
5214/2647

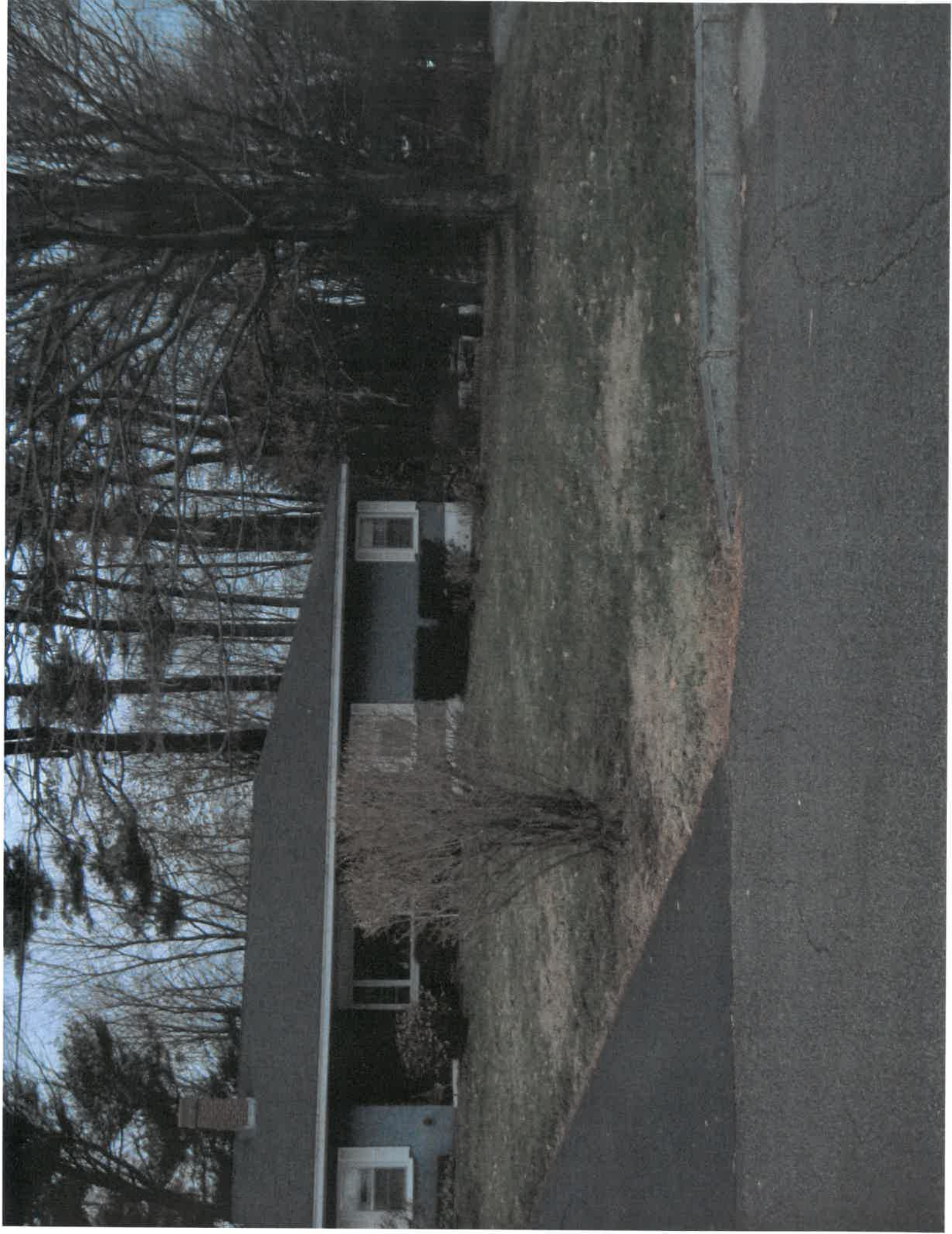
218
36
N/F RYAN & KRISTEN
BOURBON
180 KEARSARGE WAY
PORTSMOUTH, N.H. 03801
5314/1842

218
4
N/F DAVID T. MURRAY
182 BIRCH STREET
PORTSMOUTH, N.H. 03801
3432/2644

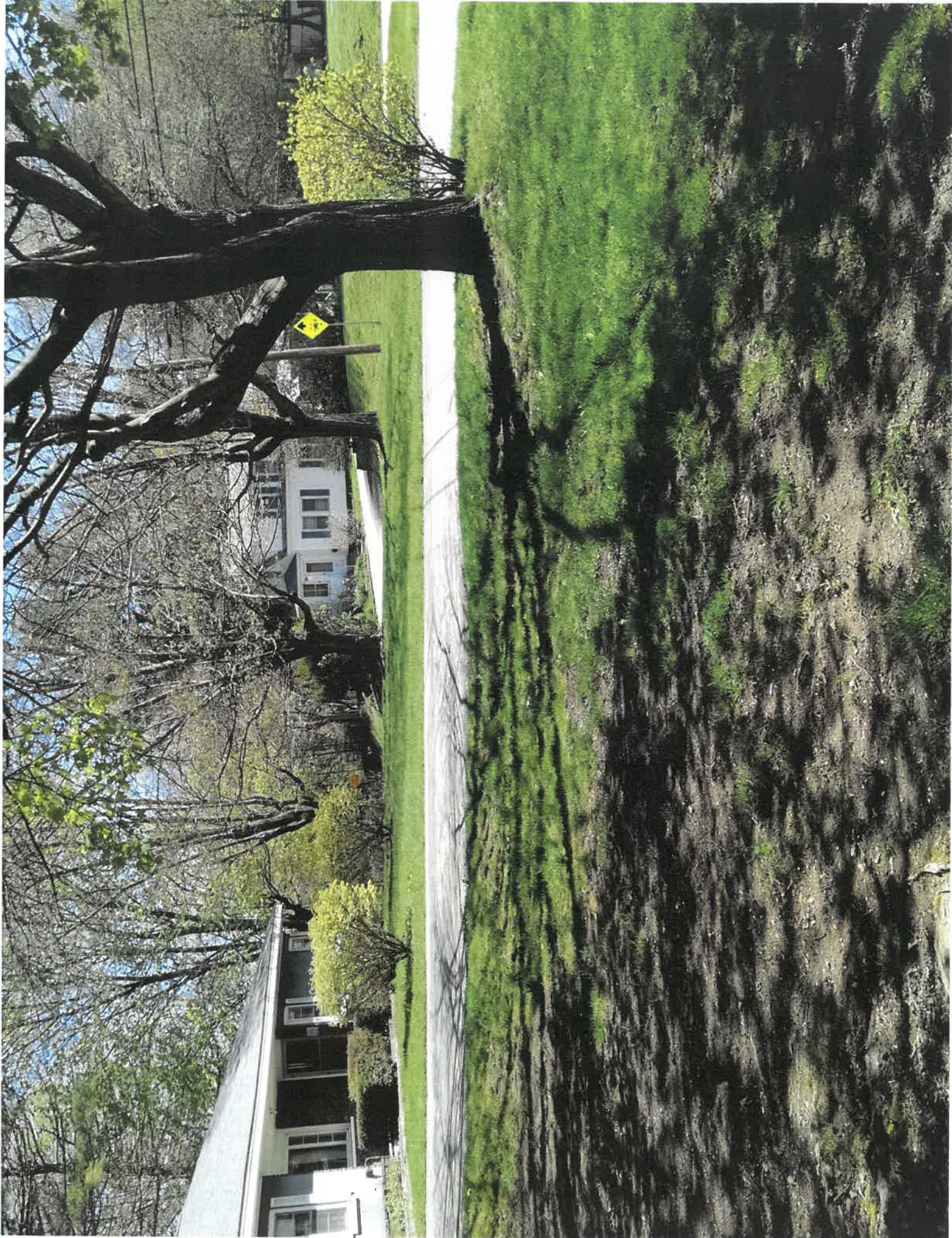
218
2
N/F MATTHEW DOHERTY
181 KEARSARGE WAY
PORTSMOUTH, N.H. 03801
5956/1023

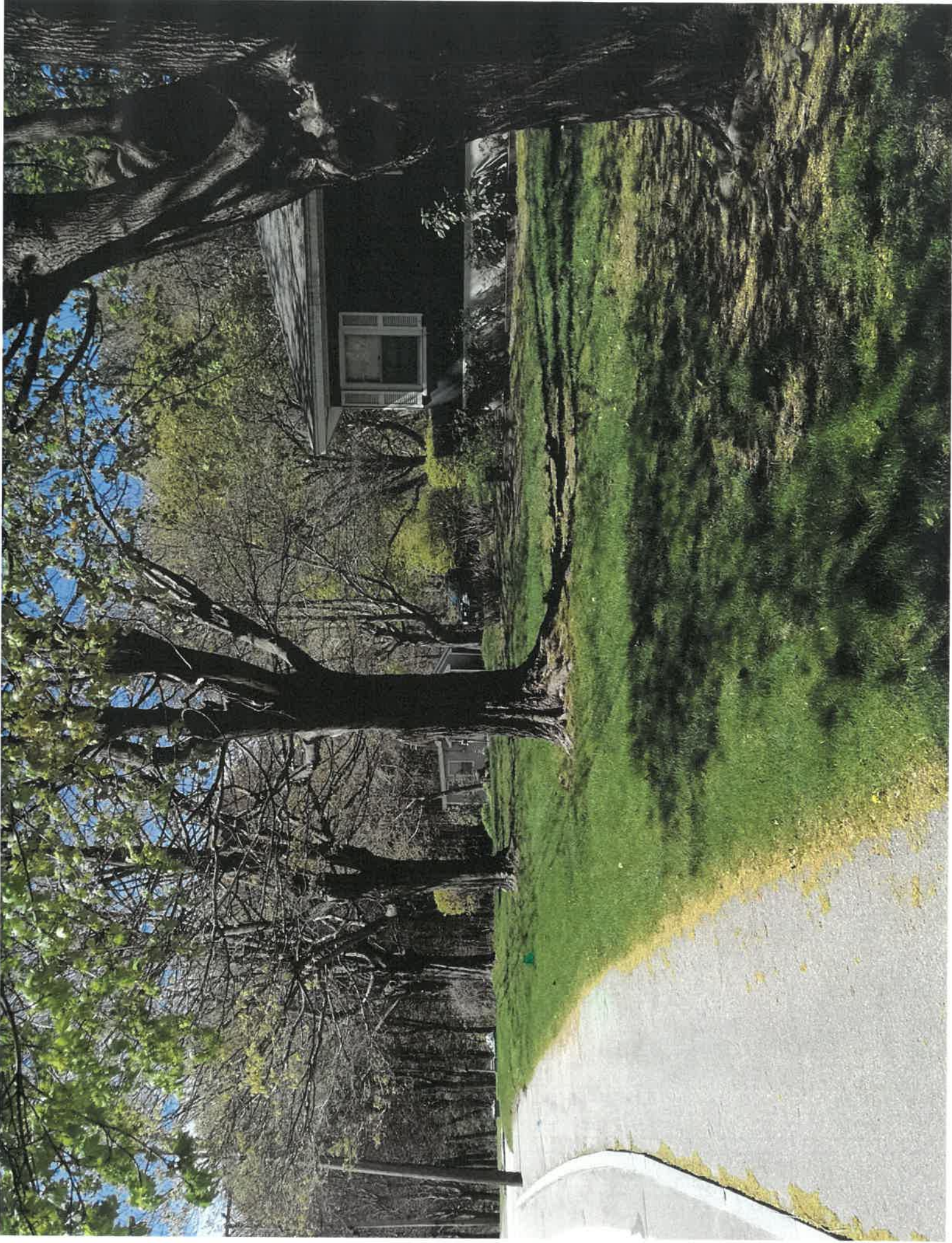
Exhibit B





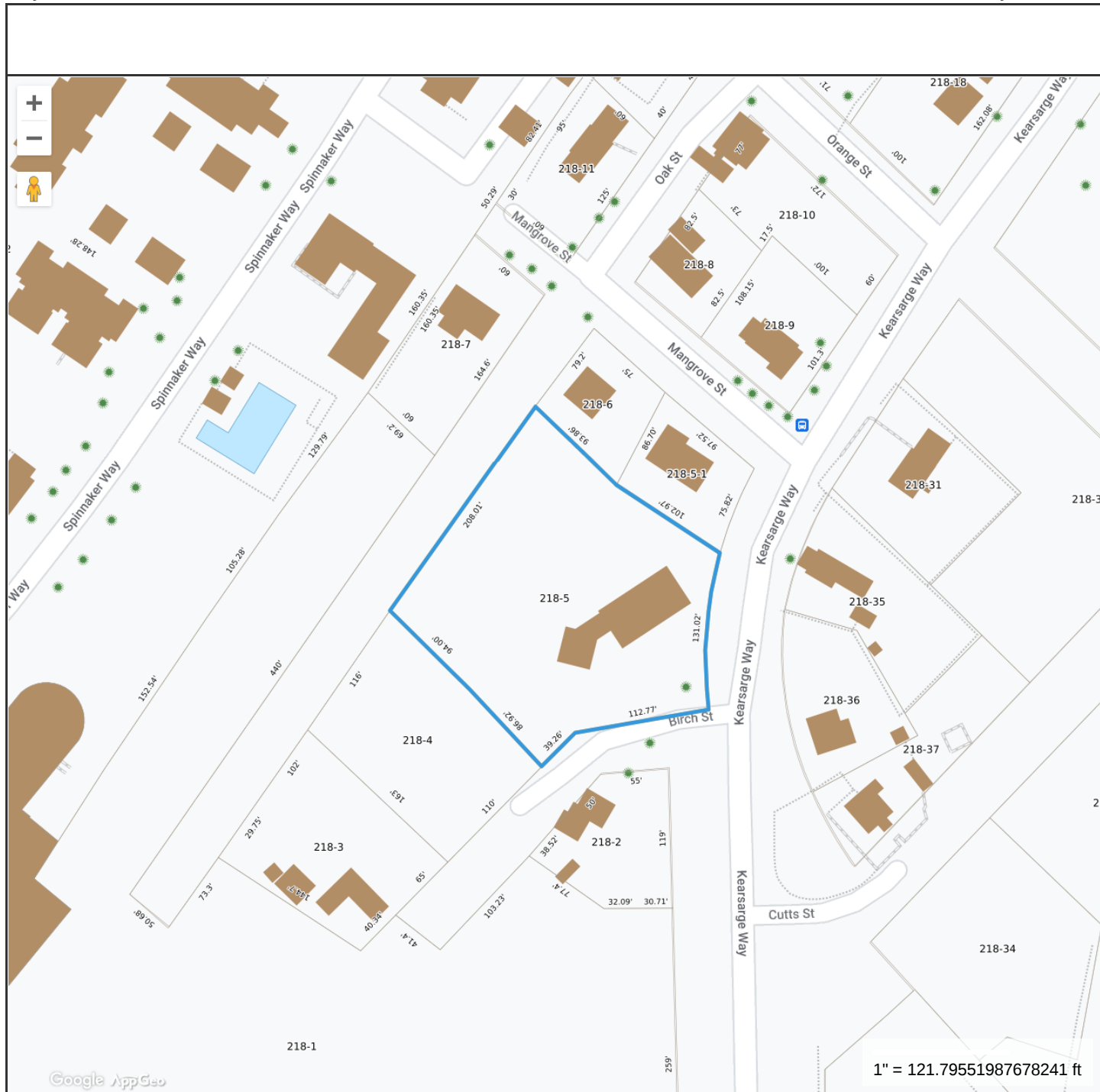












Property Information

Property ID 0218-0005-0000
Location 201 KEARSARGE WAY
Owner FUSEGNI RICHARD P



**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 3/9/2022
Data updated 3/9/2022

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

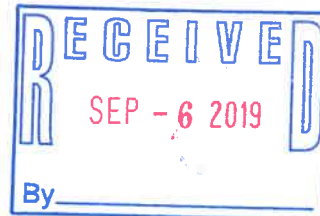
Exhibit D

CITY OF PORTSMOUTH

ZONING BOARD OF ADJUSTMENT

APPLICATION OF RICHARD FUSEGNI
201 KEARSARGE WAY

APPLICANT'S NARRATIVE



I. THE PROPERTY

Richard Fusegni is the owner of the property located at 201 Kearsarge Way. The lot consists of a single-family residence on a lot containing 47,062 square feet. The lot is shown on Assessor's Map 218 as Lot 5. The parcel is located in the Single Residence B District.

The Fusegni lot is actually comprised of several smaller lots which were created in 1919 as part of the Buckminster Subdivision.

Those small lots were involuntarily merged through the years. The home was constructed in the 1950's by Mr. Fusegni's father.

In 2018, Mr. Fusegni received a variance to create a 7,834 sq. ft. lot by subdividing the then lot of 54,896 sq. ft. into 2 lots. Subdivision approval was then granted and construction of a single family home is ongoing on the lot created in 2018.

Mr. Fusegni has attempted to sell the existing lot with the large single family home, but to no avail. Thus, the within application seeks a variance to allow creation of a 15,723 Sq. ft. lot which has 83 lineal feet of frontage on Kearsarge Way. Two additional conforming lots having 15,000+ Sq. Ft. of area and 100 lineal feet of frontage are also proposed. As can be seen on the proposed Subdivision Plan, prepared by Ambit Engineering, Mr. Fusegni would place a conservation easement on the rear portion of each lot to protect a large stand of mature trees.

II. ARGUMENT

It is the Applicant's position that the within Application meets the five (5) criteria necessary for the Board to grant the requested variance. The proposed Lot 3 would be a lot on Kearsarge Way which meets the minimum lot size requirements of the ordinance. There would be 83' of frontage on Kearsarge Way. The resulting lot would have a buildable area sufficient for a single-family home. The lot would be comparable or larger in size to the surrounding lots. As can be seen from the Tax Map, the lots along Mangrove Street, Oak Street, and Orange Street, as well as many of the lots across Kearsarge Way are non conforming as to lot size or frontage.

Granting the requested variance would not substantially alter the characteristics of the neighborhood or threaten public health, safety or welfare. Thus, the test set forth by the

Supreme Court in the case of Malachy Glen v. Town of Chichester, 155 NH 102 (2007) is met for whether or not granting the variance would be contrary to the spirit and intent of the ordinance or contrary to the public interest.

Substantial justice will be done by granting the requested variance as the hardship upon the owner is certainly not outweighed by some benefit to the general public should the variance request be denied. The hardship upon the Applicant would not be outweighed by a benefit to the public in denying the variance. There is no benefit to the general public in denying the requested variance as there is adequate access for emergency vehicles, adequate space to build a home and adequate light and air. The addition of a lot would benefit the public from a housing need and property tax prospective.

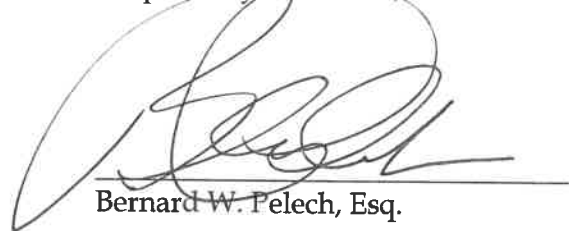
There would be no diminution in value to surrounding properties. A newly constructed code compliant home on the proposed lot on Kearsarge Way would certainly not diminish surrounding property values, but would in fact enhance surrounding property values.

Finally, there is a hardship created by the special conditions of the Fusegni property. As can be seen from the Tax Map in comparison to surrounding lots, the Fusegni lot is considerably larger than most surrounding lots. The lot is surrounded on 4 sides by either paper streets or public streets. Birch Street abuts the lot to the south, Kearsarge Way to the east, Mangrove Street to the north, and Oak Street, a paper street to the west. There is no fair and substantial relationship between the intent of the ordinance as it relates to this particular property as the minimum frontage requirement is not reflective of the majority of the lots in the area. The intent of the ordinance is to provide for lots with adequate light and air and access for emergency vehicles. Given the fact that the lot is 15,000 + Sq. Ft., there is certainly adequate light and air and access for emergency vehicles. A home can be constructed within the setbacks which would be compliant with the zoning ordinance with all respects. The use on the proposed lot of a single-family residence is a use allowed by the ordinance. Therefore, the Applicant's proposal meets the hardship criteria given the special conditions of this lot and its location with regard to the public streets and paper streets and the fact that there is no fair and substantial relationship between the purpose of the ordinance as applied to the proposed lot.

IV. CONCLUSION

In conclusion, it is the Applicant's position that the variance request meets the five (5) criteria necessary for the Board to grant the requested variance are met by the within Application and it is respectfully requested that the Application be granted as presented and advertised.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Bernard W. Pelech', is written over a horizontal line. The signature is fluid and cursive.

Bernard W. Pelech, Esq.

Dated: September 3, 2019

This is an aerial map of the 21800 block in San Antonio, Texas. The map shows a grid of property lots, many of which are numbered. Key streets include Spinnaker Way, Kearsarge Way, Paper St, and Blue Star Turnpike. Handwritten annotations in black ink are present, including 'G-2' written multiple times, 'Paper St', and 'Kearsarge Way'. A scale bar at the bottom right indicates that 1 inch on the map equals 234 feet. The map also shows various landmarks, including a large building complex on the left and a yellow area representing a park or undeveloped land on the right.

218-25100

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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.

G-2 GATEWAY. 2
ZONING DISTRICT

EXHIBIT B

EXHIBIT C

TAX MAP + LOT #	ADDRESS	LOT SIZE
218-5-1	25 MANGROVE	7,834 #
218-2	181 KEARSARGE	10,018 #
218-3	182 BIRCH	17,859 #
218-4	BIRCH ST	19,602 #
218-6	43 MANGROVE	7,405 #
218-7	65 MANGROVE	9,583 #
218-8	96 MANGROVE	5,662 #
218-9	22 MANGROVE	9,083 #
218-10	275 KEARSARGE	11,325 #
218-11	11 OAK ST	7,405 #
218-12	15 OAK ST	4,791 #
218-13	17 OAK ST	3,049 #
218-14	21 OAK ST	9,142 #
218-15	OAK ST	2,613 #
218-16	OAK ST	2,613 #
218-17	20 OAK ST	10,890 #
218-18	333 KEARSARGE	15,681 #
218-21	373 KEARSARGE	20,037 #
218-22	KEARSARGE	13,068 #
218-23	374 KEARSARGE	10,018 #
218-26	352 KEARSARGE	23,522 #
218-27	322 KEARSARGE	27,442 #
218-31	260 KEARSARGE	13,503 #
218-35	220 KEARSARGE	13,503
218-36	180 KEARSARGE	10,018
218-37	156 KEARSARGE	11,325

EXHIBIT D

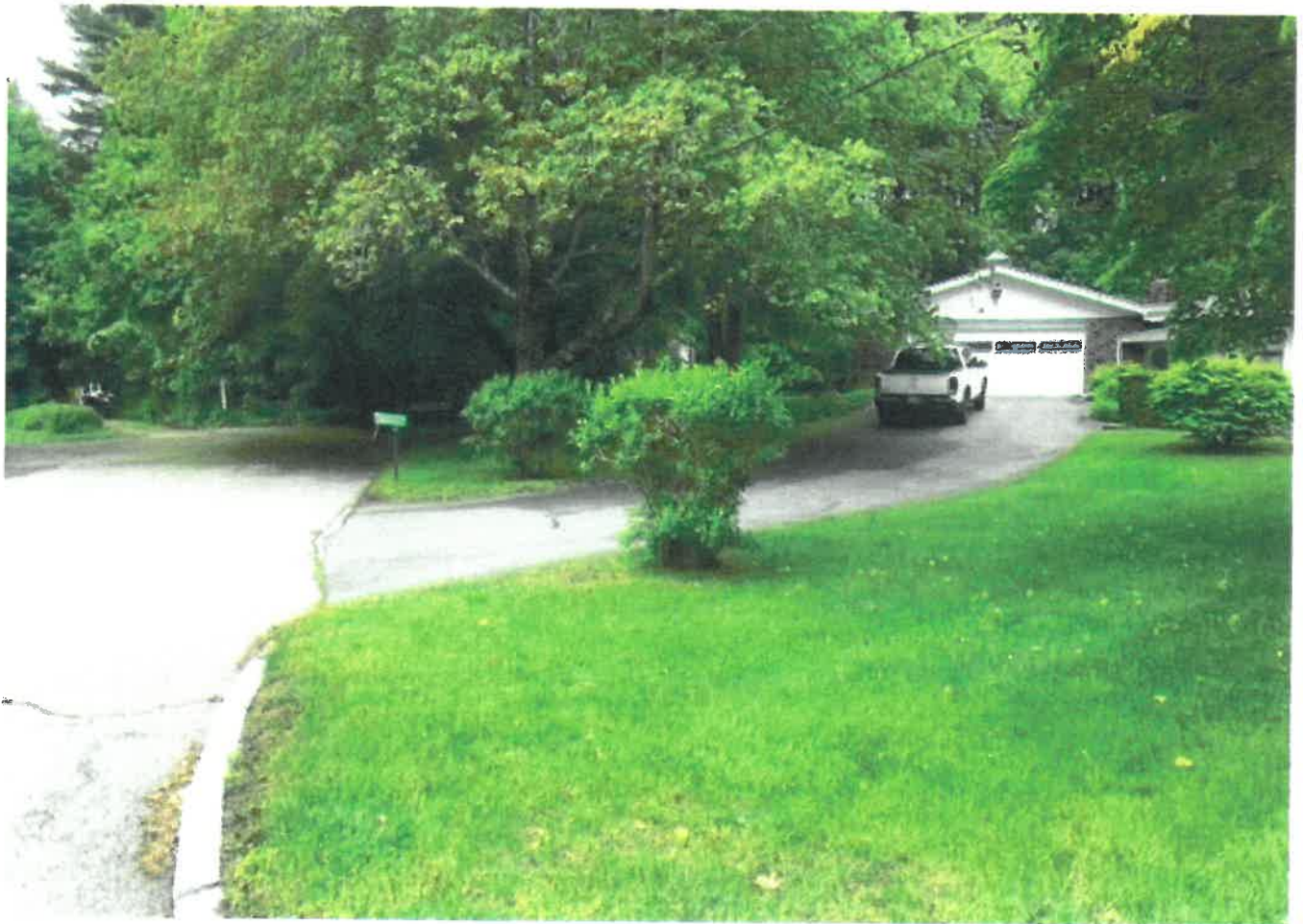
FUSEGNI EXISTING LOT IS:
47,062 #

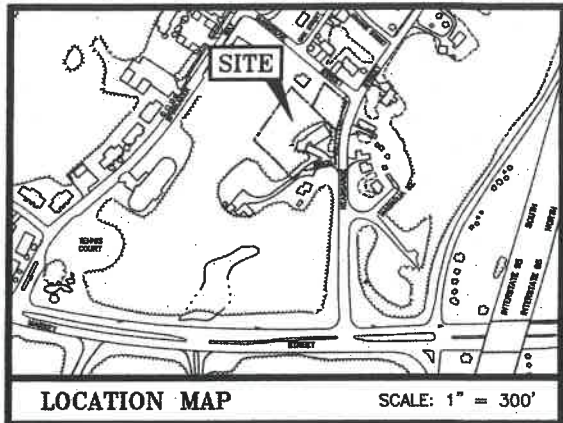
26 LOTS ON EXHIBIT C AVERAGE
LOT SIZE IS: 10,903 #

FUSEGNI PROPOSED LOT SIZES ARE:

LOT 1	15,755 #
LOT 2	15,584 #
LOT 3	15,723 #







LEGEND:

- N/F NOW OR FORMERLY
RP RECORD OF PROBATE
RCRD ROCKINGHAM COUNTY
RR SPK RAILROAD SPIKE
MAP 11/LOT 21
IR FND IRON ROD FOUND
IP FND IRON PIPE FOUND
IR SET IRON ROD SET
DH FND DRILL HOLE FOUND
DH SET DRILL HOLE SET
NHDOT BND FOUND NHDOT BOUND FOUND
EOP EDGE OF PAVEMENT
OWH OVERHEAD WIRE
LO LEDGE OUTCROP
PRL PAVEMENT REMOVAL LINE

CURVE TABLE

CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING	DELTA ANGLE
C1	330.00'	131.02'	130.16'	S03°34'31"W	22°44'52"

EASEMENT TABLE

CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING	DELTA ANGLE
EC1	70.00'	42.94'	42.27'	N61°51'03"E	35°08'47"
EC2	330.00'	15.51'	15.51'	S06°27'08"E	2°41'34"

LINE	BEARING	DISTANCE
E1	N44°16'40"E	3.45'
E2	N78°50'37"E	70.76'

"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."

JOHN R. CHANNON, JLS

5-21-19

DATE

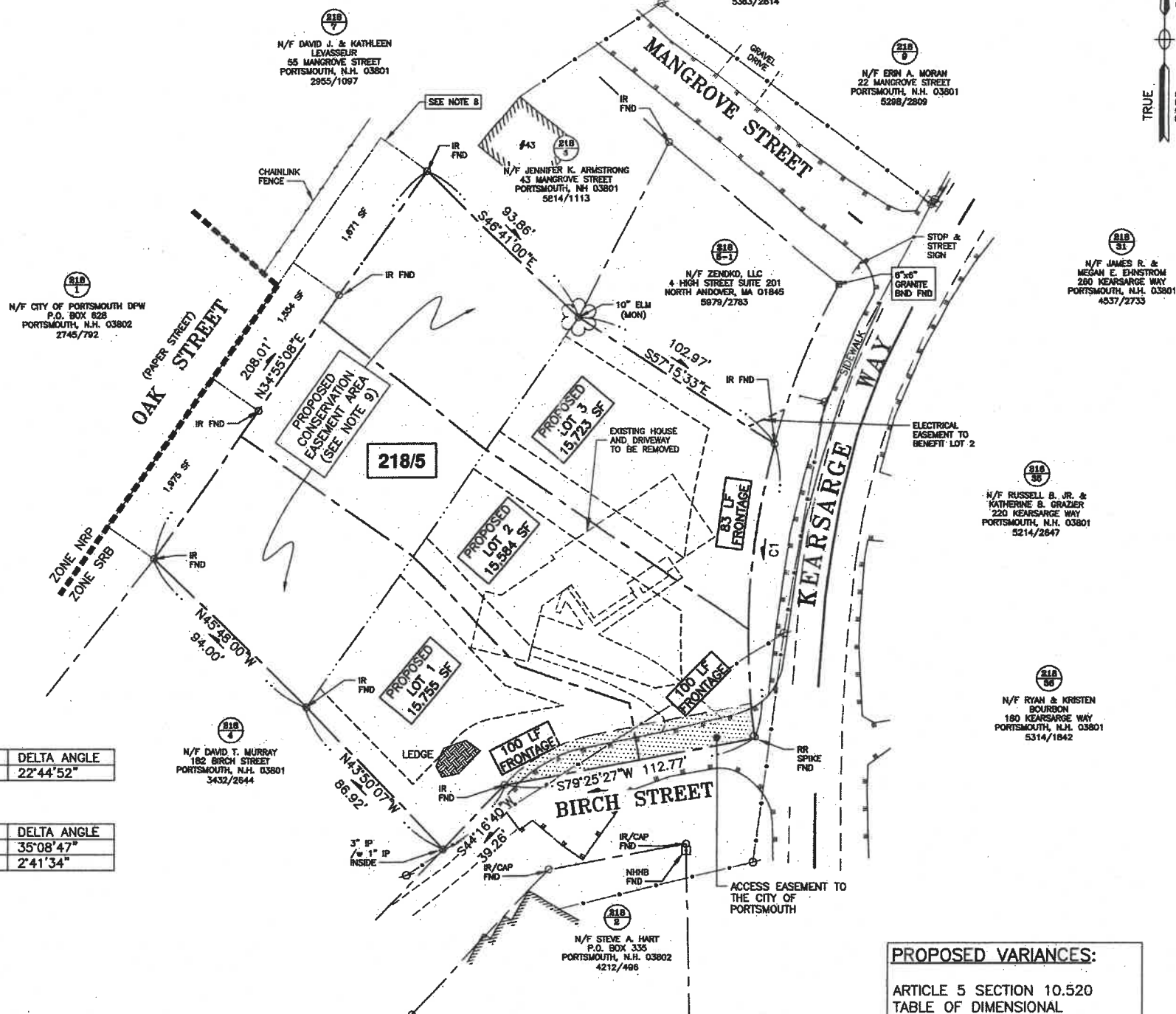
APPROVED BY THE PORTSMOUTH ZONING BOARD

CHAIRMAN

DATE

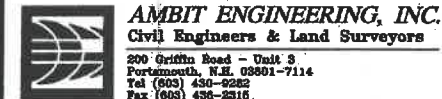
PLAN REFERENCES

- 1) "SUBDIVISION PLAN TAX MAP 218-LOT 5, OWNER RICHARD P. FUSEGNI, BY AMBIT ENGINEERING, INC. SCALE: 1"=30', APRIL 2018 201 KEARSARGE WAY, PORTSMOUTH, NH, ROCKINGHAM COUNTY. RCRD-D-41295



PROPOSED VARIANCES:

ARTICLE 5 SECTION 10.520
TABLE OF DIMENSIONAL
STANDARDS:
STREET FRONTAGE:
* PROPOSED LOT 3:
FRONTAGE OF 83 FEET WHERE
100 FEET IS REQUIRED



NOTES:

- 1) PARCEL IS SHOWN ON THE CITY OF PORTSMOUTH ASSESSOR'S MAP 218 AS LOT 5.
- 2) OWNER OF RECORD:
RICHARD P. FUSEGNI
201 KEARSARGE WAY
PORTSMOUTH, N.H. 03801
5476/2661
RCRD PLAN 0245
- 3) PARCEL IS NOT IN A FLOOD HAZARD ZONE AS SHOWN ON FIRM PANEL 33915C0259E, EFFECTIVE MAY 17, 2005.
- 4) EXISTING LOT AREA:
47,082 S.F.
1.0804 AC
- 5) PARCEL IS LOCATED IN THE SINGLE RESIDENCE B (SRB) DISTRICT.
- 6) DIMENSIONAL REQUIREMENTS:
MIN. LOT AREA: 15,000 S.F.
FRONTAGE: 100 FT.
SETBACKS: FRONT: 30 FT.
SIDE: 10 FT.
REAR: 30 FT.
MAXIMUM STRUCTURE HEIGHT: 35 FT.
MAXIMUM STRUCTURE COVERAGE: 20%
MINIMUM OPEN SPACE: 40%
- 7) THE PURPOSE OF THIS PLAN IS TO SHOW A SUBDIVISION OF TAX MAP 218 LOT 5.
- 8) OAK STREET WAS CREATED BY A PLAN DATED 1919 AND WAS NEVER CONSTRUCTED. BY OPERATION OF LAW THE AREAS SHOWN BELONG TO THE RESPECTIVE LOTS BY WAY OF APPROPRIATION OF REVERSION RIGHTS. AREAS SHOWN ARE NOT INCLUDED IN EXISTING LOT AREA.
- 9) PROPOSED CONSERVATION EASEMENT AREA RESTRICTIONS SUBJECT TO REVIEW AND APPROVAL BY THE CITY OF PORTSMOUTH. CONSERVATION EASEMENT RESTRICTIONS WILL ALLOW FOR INSTALLATION AND MAINTENANCE OF PROPOSED DRAINAGE.

RECEIVED

SEP 10 2019

BY:

NO.	DESCRIPTION	DATE
2	REVISED PER CLIENT	5/21/19
1	REVISED FOR SUBMISSION	5/15/19
0	ISSUED FOR COMMENT	4/16/19

SUBDIVISION PLAN TAX MAP 218 - LOT 5

OWNER

RICHARD P. FUSEGNI
201 KEARSARGE WAY
CITY OF PORTSMOUTH
COUNTY OF ROCKINGHAM
STATE OF NEW HAMPSHIRE

SCALE: 1" = 30'

APRIL 2019

FB 311, PG 1

2258

Exhibit E

**MINUTES OF THE
BOARD OF ADJUSTMENT MEETING
EILEEN DONDERO FOLEY COUNCIL CHAMBERS
MUNICIPAL COMPLEX, 1 JUNKINS AVENUE
PORTSMOUTH, NEW HAMPSHIRE**

7:00 P.M.

SEPTEMBER 17, 2019

MEMBERS PRESENT: Chairman David Rheaume, Vice-Chairman Jeremiah Johnson, John Formella, Jim Lee, Peter McDonell, Chris Mulligan, Arthur Parrott, Alternate Phyllis Eldridge, Alternate Chase Hagaman

MEMBERS EXCUSED: Peter Stith, Planning Department

ALSO PRESENT: Juliet Walker, Planning Director

Planning Department Representative Peter Stith was absent from the meeting, and Planning Director Juliet Walker was present in his place.

I. APPROVAL OF MINUTES

A) August 20, 2019

*It was moved, seconded and passed by unanimous vote to **approve** the August 20, 2019 minutes as amended.*

B) August 27, 2019

*It was moved, seconded and passed by unanimous vote to **approve** the August 27, 2019 minutes as amended.*

II. REQUEST FOR EXTENSION

Mr. Mulligan recused himself from the petition, and Alternate Ms. Eldridge took a voting seat.

A) Request for Extension regarding property located at **621 Islington Street**.

DECISION OF THE BOARD

The motion passed by unanimous vote, 6-0.

Mr. Mulligan recused himself from the petition, and Alternate Mr. Hagaman took a voting seat.

B) Case 8-1. Petition of Richard Fusegni for property located at **201 Kearsarge Way** wherein relief was required from the Zoning Ordinance to subdivide one lot into three lots one of which will be nonconforming including the following variance from Section 10.521: a) to allow 83' of continuous street frontage where 100' is required. Said property is shown on Assessor Plan 218, Lot 5 and lies within the Single Residence B District. *(This petition was postponed at the August 20, 2019 meeting.)*

SPEAKING IN FAVOR OF THE PETITION

Attorney Bernie Pelech was present on behalf of the applicant. He distributed a petition signed by neighbors in support of the project. He reviewed the petition, noting that the variance was denied several months before and that it was now a *de novo* case. He reviewed the petition and the criteria and said the criteria would be met.

Mr. Hagaman asked how much square footage per lot was buildable with the easement. Attorney Pelech said there was 7,500 square feet of buildable lot area. Chairman Rheume said the case was about street frontage and the concern was about creating a rhythm in the neighborhood that would be different by having three houses close together. Attorney Pelech said the lots on Mangrove Street were oriented toward Mangrove Street, and the house on Kearsarge Way and Orange Street had more frontage but was a 1,500-s.f. lot. He said the lot behind it had frontage on Oak Street but not Orange Street. He noted that they were also corner lots that had to meet both frontage requirements. In response to further questions from Chairman Rheume, Attorney Pelech said if the Board found that the granted variance would not alter the character of the neighborhood or wouldn't threaten the public's health, safety, or welfare, then the petition met the criteria. Chairman Rheume said the Board had the opportunity to look at either one.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one rose to speak, and Chairman Rheume closed the public hearing.

DISCUSSION OF THE BOARD

Vice-Chair Johnson said the amount of relief sought in the layout of the three proposed lots was reasonable and would fit into the neighborhood's character. He said the area was different from others on Kearsarge Street because there were a lot of odd-shaped properties. He said he would support a motion to approve. Mr. Lee agreed. He said the neighbors approved the project, and he felt that an 83-ft frontage next to a 100-ft frontage would be indistinguishable.

Mr. McDonell disagreed, noting that 83 feet was close to 100 feet, but the way it was achieved was more misleading than just looking at the numbers. He said there would be three compliant lots by square footage, but the fact that a large portion of each of those lots would be encumbered by the conservation easement left relatively small lots that were similar to lots on Mangrove Street and Oak Street. He said the neighborhood was more like what was seen on Kearsarge Way. He concluded that the way the lines of the three lots had to be set up would alter the character of the neighborhood, and he found no hardship. Mr. Hagaman agreed and explained why he hadn't heard anything new stating that the application didn't fail on two criteria. Chairman Rheume said he previously had a lot of concerns about the way the property lines ended up, even though he understood the reasons why and the Planning Board's concern. He said that part of it also was that the Board was looking at a frontage variance and it came down to the rhythm of the neighborhood. He said Kearsarge Way was wider and more open than Mangrove Street with its narrow lots, but an argument could be made that the entrance to Kearsarge Way had a cluster of four homes that was tight. He concluded that he could support the case upon rehearing and rethinking the way it would meet the criteria. Vice-Chair Johnson said if the property were split into lots, two houses in a row could be built that would be significantly bigger than all the other houses, which would alter the neighborhood's character more. Mr. Lee said the proposal was not contrary to public interest because he felt that the petition signed by the neighborhood residents carried more weight than the public at large. Mr. Formella said he would support a motion to approve because he felt that the applicant was not asking for enough relief that would alter the neighborhood's character.

DECISION OF THE BOARD

Mr. Lee moved to grant the variance for the application as presented. Mr. Formella seconded.

Mr. Lee said granting the variance would not be contrary to the public interest because it was an opportunity to have three modest-sized houses, which would not violate the spirit of the ordinance. He said substantial justice would be done by allowing three modest houses to be built on those lots. He said granting the variance wouldn't diminish the value of surrounding properties because three new houses would be an enhancement. He said the hardship was that the lot was configured such that there was no fair and substantial relationship between the purpose of the ordinance and its specific application. He said the proposed use was a reasonable one.

Mr. Formella concurred, adding that granting the variance would not alter the essential character of the neighborhood and would result in lot sizes that were complimentary to the rest of the neighborhood. He said it wasn't an either/or test because it had to satisfy both prongs. He said substantial justice would be done and that he didn't see any gain to the public by denying the petition but could see a loss to the applicant. He also thought the configuration and size of the lot distinguished it from others in the neighborhood.

Chairman Rheume said he would support the motion, noting that the relief requested on the lot was within the boundaries of the spirit of the ordinance in terms of separation and distance between the properties.

The motion passed by a vote of 5-2, with Mr. McDonell and Mr. Hagaman voting in opposition.

Mr. Mulligan and Mr. Parrott recused themselves from the petition, and Alternates Ms. Eldridge and Mr. Hagaman assumed voting seats.

C) Case 8-4. Petition of Seacoast Veterans Properties, LLC for property located at **41 Salem Street** to demolish existing structure and construct four townhouse residential units in two buildings wherein the following variance is required: a) from Section 10.521 to allow a lot area per dwelling unit of 2,726 s.f. where 3,500 s.f. is required. Said property is shown on Assessor Plan 144, Lot 31 and lies within the General Residence C District. *(This petition was postponed at the August 20, 2019 meeting.)*

SPEAKING IN FAVOR OF THE PETITION

Attorney Bernie Pelech was present on behalf of the applicants. He reviewed the petition, noting that the two townhouses would face one another. He reviewed the criteria in detail.

Mr. Hagaman asked what drove the desire for four units versus three units that would not require a variance. Attorney Pelech said the esthetics wouldn't be pleasing and that they had also considered a duplex but the existing home's condition wasn't capable of rehabilitation.

Mr. McDonell said the hardship argument included special conditions that the lot was large with a lot of open space. Attorney Pelech agreed, noting that it was the only lot of comparable size and open space. Mr. McDonell said that, due to the special conditions of the lot, the Board had to say there was no relationship between the purpose of the ordinance and its application to the lot. Attorney Pelech said the zoning shouldn't reflect what actually existed on the ground that included several properties that were less than 3,500 square feet.

Chairman Rheame agreed that the properties along Islington Street were probably not compliant with the new zoning, but he said they were in a separate zoning district that had a lesser requirement of 3,000 square feet per dwelling unit. Attorney Pelech said there were several multi-family homes in that district with small lot areas per dwelling unit. He said the proposed living area of each townhouse unit was about 2,100 square feet.

Chairman Rheame opened the public hearing.

SPEAKING IN OPPOSITION TO THE PETITION

Charles Cocchiario of 45 Salem Street said he had lived in his home for 68 years and thought it would be difficult to live next to two tall buildings. He said the project would change the neighborhood's character.

Exhibit F



CITY OF PORTSMOUTH

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

ZONING BOARD OF ADJUSTMENT

September 24, 2019

Richard P. Fusegni
201 Kearsarge Way
Portsmouth, New Hampshire 03801

RE: Variance for property located at 201 Kearsarge Way

Dear Applicant:

The Zoning Board of Adjustment, at its regularly scheduled meeting of **Tuesday, September 17, 2019**, considered your application for Variance from Section 10.521 to allow a lot with 83' of frontage where 100' is required. Said property is shown on Assessor Map 218, Lot 5 and lies within the Single Residence B District. As a result of said consideration, the Board voted to **grant** the application as presented.

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

Very truly yours,

David Rheume, Chairman of the Zoning Board of Adjustment

cc: Robert Marsilia, Chief Building Inspector

Rosann Maurice-Lentz, City Assessor

Bernard W. Pelech, Esq., John Bosen & Associates



CITY OF PORTSMOUTH

Planning Department
1 Junkins Avenue
Portsmouth, New Hampshire
03801

(603) 610-7216

PLANNING BOARD

March 02, 2020

Richard Fusegni
201 Kearsarge Way
Portsmouth, NH 03801

RE: Preliminary and Final Subdivision approval for property located at 201 Kearsarge Way

Dear Mr. Fusegni:

The Planning Board, at its regularly scheduled meeting of Thursday, February 27, 2020, considered your application for Preliminary and Final Subdivision approval to demolish the existing single family home and subdivide a lot with an area of 47,062 s.f. and 205' of continuous street frontage into three (3) lots as follows: proposed Lot 1 with an area of 15,482 s.f. and 100' of continuous street frontage; proposed Lot 2 with an area of 15,856 s.f. and 100.2' of continuous street frontage; and Proposed Lot 3 with an area of 15,723 s.f. and 82.84' of continuous street frontage. Said property is shown on Assessor Map 218 Lot 5 and lies within the Single Residence B (SRB) District. As a result of said consideration, the Board voted to determine that the application is complete according to the Subdivision Rules and Regulations and accept the application for consideration and to **grant** Preliminary and Final Subdivision approval with the following stipulations:

- 1) The drainage for the houses shall be incorporated into the back yard areas where they can be maintained without impacting the portion of the property designated to be a conservation area along with the following conditions:
 - 1-1) Drainage easements shall be provided across lot 3 for lot 2 and 1 drainage and across lot 2 for lot 1 drainage. Maintenance responsibilities for the storm-tech systems shall be included in the easement language or otherwise addressed through a maintenance agreement;
 - 1-2) Plans shall be updated and approved by the Department of Public Works to show grading around Catch Basin 1;
 - 1-3) Plans shall be updated to note stabilized construction entrances shall be installed for all 3 lots;
 - 1-4) Department of Public Works final review and approval shall confirm that the drainage across Birch Street will not increase flow onto the abutting properties.
- 2) Birch Street shall be reclaimed and reconstructed to City standards after installation of utilities and plans shall be updated to include a cross-section for review and approval by Department of Public Works, which shall also confirm if any additional modifications are required to improve drainage;
- 3) The plans shall note that during construction, access will be provided to all existing properties located on Birch Street;
- 4) Owner shall provide an easement to allow the City to turn around in the driveway of Lot 5-2 for the purpose of snow plowing and the easement shall be reviewed and approved by

the Planning and Legal Departments prior to acceptance by the City Council;

5) The location of gas, electric, and communication lines shall be added to the subdivision plans;

5-1) For underground electric and communication lines, the sidewalk from Birch Street to the driveway of Lot 5-2 shall be widened to provide 5.5' clear.

6) Sheets C2 and C3 shall be reviewed and approved by Department of Public Works for confirmation of stormwater, grading and utility updates and standard details;

7) Lot numbers as determined by the Assessor shall be added to the final plat;

8) Property monuments shall be set as required by the Department of Public Works prior to the filing of the plat;

9) GIS data shall be provided to the Department of Public Works in the form as required by the City;

10) The final plat shall be recorded at the Registry of Deeds by the City or as deemed appropriate by the Planning Department.

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.

All stipulations of subdivision approval, including recording of the plat as required by the Planning Department, shall be completed within six (6) months of the date of approval, unless an extension is granted by the Planning Director or the Planning Board in accordance with Section III.D of the Subdivision Rules and Regulations. If all stipulations have not been completed within the required time period, the Planning Board's approval shall be deemed null and void.

This subdivision approval is not final until the Planning Director has certified that the applicant has complied with the conditions of approval imposed by the Planning Board.

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

Very truly yours,



Dexter R. Legg, Chairman of the Planning Board

cc: Rosann Maurice-Lentz, City Assessor
Bernie Pelech, Bosen & Associates