

BY: VIEWPOINT & HAND DELIVERY

August 20, 2025

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

**RE: Variance Application of CABN Properties, LLC
409 Lafayette Road, Tax Map 230, Lot 22**

Dear Stefanie,

Please find a copy of the following materials relative to the above referenced variance application filed through Viewpoint for property located at 409 Lafayette Road, Portsmouth:

- 1) Landowner Letter of Authorization;
- 2) Narrative to Variance Application;
- 3) Subdivision Plan;
- 4) Photographs of Property.

A copy of the above application materials 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

CABN Properties, LLC, record owner of property located at **409 Lafayette Road, Portsmouth NH**, identified on **Portsmouth Tax Map 230, as Lot 22** (the "Property"), hereby authorizes **Durbin Law Offices PLLC and Altus Engineering**, 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.

CABN Properties, LLC

Kevin Coyle

Kevin Coyle (Aug 12, 2025 11:23:12 EDT)

Signature

Kevin Coyle
Print Name (Member, Duly Authorized)

CITY OF PORTSMOUTH VARIANCE APPLICATION NARRATIVE

**CABN Properties, LLC
(Owner/Applicant)**

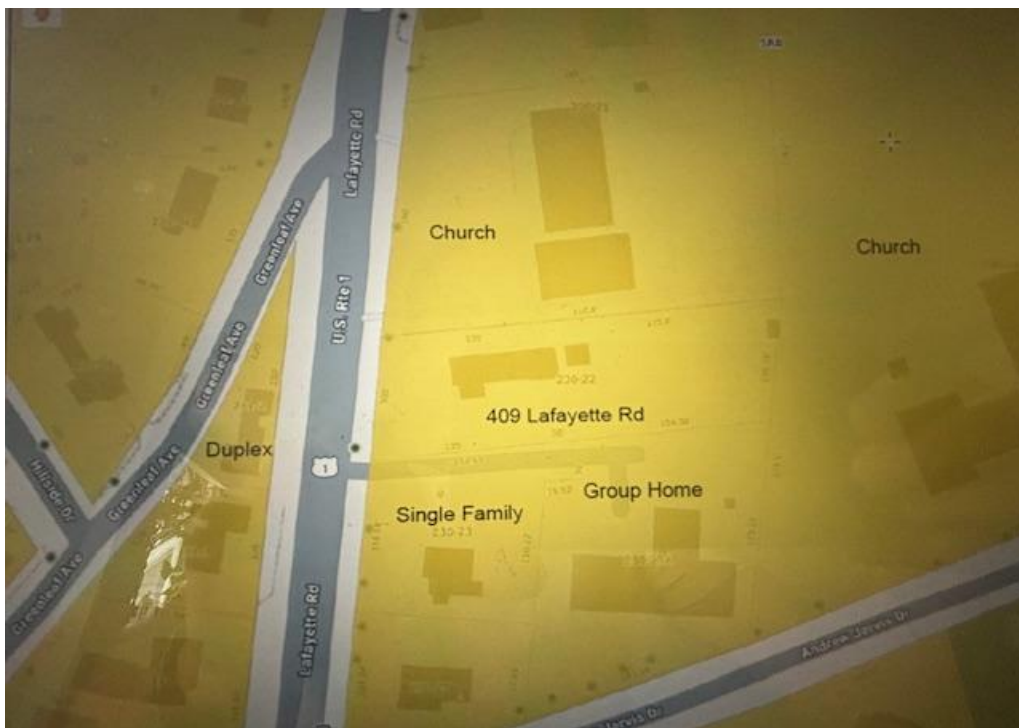
**409 Lafayette Road
Tax Map 230, Lot 22**

INTRODUCTION

Existing Conditions

The property at 409 Lafayette Road is a 30,473 square foot improved parcel of land (the “Property”). It lies within the Single-Family Residence B (“SRB”) zoning district. There is a single-family home on the Property that was owned by the Pettis family from 1968 until recently. The deed describes the Property as two separate parcels of land, but the City assesses it as one.

While the Property is zoned SRB, it is not part of any defined residential neighborhood and is primarily surrounded by commercial uses.



The Property is accessed by a paved drive within a 50' wide private right-of-way ("ROW") that runs from Lafayette Road through the abutting property to the right at 417 Lafayette Road (Tax Map 230-23). The driveway is also serves as the primary access to the property at 417 Lafayette Road and the Friends of Lafayette House property at 413 Lafayette Road (Tax Map 230-23A).

The Applicant is proposing a two-lot subdivision of the Property. The primary access to the Property would be achieved via the existing paved drive. Accordingly, a frontage variance is needed for the proposed lot to the rear - **Lot 22-2**. The proposed lots have been purposely configured to achieve compliance with all the other dimensional requirements set forth in the Zoning Ordinance (the "Ordinance").¹

SUMMARY OF ZONING RELIEF

The Applicant seeks a variance from Article 10.521 of the Portsmouth Zoning Ordinance (the "Ordinance") to 0' of continuous street frontage where 100' is required.

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." Id.

The purpose behind minimum street frontage requirements is multifaceted but the primary reasons such standards are adopted are to ensure safe and convenient access to property, promote orderly development (i.e. a uniform streetscape), and regulate density.

In the present instance, there is a 50' wide ROW that has existed for several decades and was created to provide safe and convenient access to the Property as well as two other properties that are adjacent to it. Allowing a fourth lot off the existing paved drive will not negatively alter the "streetscape" or otherwise affect the character of the "neighborhood", which consists of both residential and non-residential uses. The proposed lots will be at least 15,000 square feet and thus meet the density goal of the Ordinance. The proposed lots will each contain single-family homes, a use which aligns with and is permitted by right within the SRB zoning district. For these reasons, granting the frontage variance will not alter the essential character of the neighborhood or

¹ Had the Applicant followed the description of the parcels described in the current deed to the Property, additional variances would have been required for lot area and lot area per dwelling unit.

otherwise threaten public health, safety or welfare.

Substantial Justice will be done in granting the variances.

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 \(2007\)](#).

There would be no legitimate public interest served by denying the frontage variance that has been requested. However, it would constitute a loss to the Applicant to deny the variance when considering that the Property is over 30,000 square feet in size and already benefits from a 50’ wide ROW and paved drive that runs the length of the property. In addition, the current deed already describes the Property as two separate parcels of land despite how it has been historically assessed. In the present case, the equitable balancing test for determining whether substantial justice is done weighs heavily in favor of the Applicant.

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

Proposed Lot 22-2 will be situated directly across from the Friends of Lafayette House group home. It will be accessed from an established paved drive that already serves as primary access to three existing properties and is wider than most City streets. The creation of a new house lot will result in minimal impact on surrounding properties and will not otherwise alter the character of the area.

Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship.

There are several conditions associated with the Property that distinguish it from surrounding properties. The Property contains more than 30,000 square feet of land area and is accessed via an established, paved ROW that functions as a street and runs the length of the easterly boundary. In addition, the Property has been historically described as two parcels of land. Owing to these special conditions of the Property, there is no fair and substantial relationship between the general purposes of the frontage requirement, as more specifically discussed above, and their relationship to the Property. The proposed single-family use of the Property is also reasonable, as it is permitted by right within the SRB Zoning District.

CONCLUSION

The Applicant has demonstrated that its application meets the five (5) criteria for granting the variance requested. Thank you for your time and consideration.

Respectfully Submitted

August 20, 2025

CABN Properties, LLC
By and Through Its Attorney,

A handwritten signature in black ink, appearing to read "Derek R. Durbin", enclosed within a large, loopy oval shape.

By: Derek R. Durbin, Esq.
DURBIN LAW OFFICES PLLC
144 Washington Street,
Portsmouth, NH 03801
derek@durbinlawoffices.com



Private ROW off of Lafayette Road



West Elevation of House at 409 Lafayette Road



East Elevation of House at 409 Lafayette Road from Rear Yard



South Elevation of House at 409 Lafayette Road



Property at 413 Lafayette Road (Tax Map 230-23A)
Friends of Lafayette House



Property at 417 Lafayette Road (Tax Map 230-23)
Single-Family Home



**Rear Yard - 409 Lafayette Road
View of 65 Andrew Jarvis Drive (Tax Map 230-24)
Church of Jesus Christ**



410 Lafayette Road (Tax Map 231-2)
2-Family Home (Green Building)



**397 Lafayette Road (Tax Map 230-21)
Seacoast Community Church**