



**BY: VIEWPOINT & HAND DELIVERY**

October 27, 2021

City of Portsmouth  
Zoning Board of Adjustment  
1 Junkins Avenue  
Portsmouth, NH 03801

**RE: Variance Application of Artwill LLC  
Woodbury Avenue, Tax Map 229, Lot 1**

Dear Chairman Rheume,

Our Office represents Artwill LLC, the owner of property located at 437 Lafayette Road. Enclosed herewith, please find the following materials for submission to the Zoning Board of Adjustment for consideration at its next regularly scheduled meeting:

- 1) Landowner Letter of Authorization;
- 2) Narrative to Variance Application;
- 3) Plan D-02637 (1958 Plan);
- 4) Conceptual Subdivision Plan;
- 5) Tax Map; and
- 6) Photographs of the Property.

Twelve (12) copies of the application submission are being hand-delivered to the City. 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.

## LETTER OF AUTHORIZATION

**Artwill LLC**, the owner of the property located at 437 Lafayette Road, identified on Tax Map 229, as Lot 1, hereby authorizes Durbin Law Offices PLLC to act as its agent and representative in connection with its application for zoning relief to the City of Portsmouth Zoning Board of Adjustment. Said Letter of Authorization shall be valid until expressly revoked in writing.

*Nicola Douglass*

dotloop verified  
10/26/21 5:02 PM EDT  
BV8L-30MX-HPVJ-DXVM

10/26/2021

Printed Name: Nicola Douglass

Date

Duly Authorized

**CITY OF PORTSMOUTH  
ZONING BOARD OF ADJUSTMENT  
APPLICATION NARRATIVE**

Artwill LLC  
Portsmouth, NH 03801  
437 Lafayette Road  
Tax Map 229, Lot 1  
(Owner/Applicant)

**INTRODUCTORY STATEMENT**

Artwill LLC is the owner of the property shown on Portsmouth Tax Map 229 as Lot 1 (the "Property"). The Property is located within the SRB Zoning District and consists of approximately 1.5 acres of land and contains a single-family home. It is bounded to the north by Andrew Jarvis Drive, to the west by Lafayette Road, and to the south by Artwill Avenue (private drive).

The Property has an interesting, yet unclear history. A recorded surveyed plan from 1940 (revised through 1957) shows the Property as four (4) separate lots, numbered 7-10. *See* Plan D-02637. The Plan was signed by the Portsmouth Planning Board Chairman in 1958 and subsequently recorded (the "1958 Plan"). The lot containing the existing house is identified on the 1958 Plan as Lot 9. In each conveyance of the Property after the 1958 Plan was recorded, the deeds describe the land area containing the 4 lots as a "a certain parcel of land". The City also appears to have historically taxed the Property as a single parcel of land.

While the owners of the Property may not have intended for it to be treated as a single parcel of land following the 1958 Plan recording, the history is unclear. What is clear is that the use of the Property has remained relatively unchanged since the 1958 Plan recording, except for some additions made to the existing house and the construction of a garage structure on former Lot 8 (now "Lot 3"). Rather than attempt to seek "un-merger" of the Property pursuant to RSA 674:39-aa, the Applicant has opted to pursue the zoning relief necessary to "re-subdivide" the Property into 4 single-family home lots with an adjusted configuration that will achieve greater conformity with the Zoning Ordinance.<sup>1</sup> Specifically, the house lot, former Lot 9 (now "Lot 2"), failed to conform to the Ordinance's 100' minimum street frontage and 15,000 square foot lot area requirements. This lot is now conforming under the Applicant's proposed subdivision plan.

As proposed, all 4 lots will meet the minimum 15,000 square foot lot area requirement. Former Lots 7 and 8 (now "Lots 4 and 3") are the only lots that remain non-conforming in any respect. As proposed, Lots 3 and 4 will have approximately 60.6' and 67.2' of street frontage on Andrew Jarvis Drive where 100' is required by the Ordinance. Former Lot 7 (now "Lot 4") previously had 51' of street frontage while former Lot 8 (now "Lot 3") had 80' of road frontage.

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<sup>1</sup> The variance application submission and the statements made herein shall not be construed as an admission that the 4 lots shown on the 1958 Plan were voluntarily merged or that the Applicant does not have vested rights in 4 separate lots as shown on the 1958 Plan.

The Applicant's proposed subdivision plan for the Property remains in keeping with the spirit and intent of the 1958 Plan but allows for improved, more uniform lot configurations.

### **SUMMARY OF ZONING RELIEF**

The Applicant is requesting variance relief from Section 10.521 of the Ordinance (Table of Dimensional Requirements) as follows:

- 1) To allow a lot with 60.6' +/- of continuous street frontage where 100' is the minimum required; and
- 2) To allow a lot with 67.2' +/- of continuous street frontage where 100' is the minimum required.

### **VARIANCE CRITERIA**

***Granting the variances will not be contrary to the public interest and will observe the spirit of the Ordinance.***

"There 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." *Harborside Assoc v. Parade Residence Hotel*, 162 N.H. 508, 514 (2011).

Like the lot area requirement, the minimum frontage requirement is primary intended as a density control. It is also intended to ensure that sufficient access is provided for emergency vehicles to enter and exit the Property safely. In the present case, the Applicant has sufficient lot area (65,568 sf.) to create 4 buildable lots that will conform to all of the SRB's dimensional requirements, except that proposed Lots 3 and 4 fail to meet the 100' minimum street frontage requirement. The lots will conform to the density goal of the Ordinance and will have sufficient frontage whether off of Andrew Jarvis Drive or Artwill Avenue to provide for safe emergency vehicle ingress and egress. Therefore, it follows that the general public, health and welfare will not be threatened by the creation of the new lots.

Andrew Jarvis Drive serves as the access street to Portsmouth High School. Most of the properties off of Andrew Jarvis Drive are used for commercial purposes that are inconsistent with and fail to conform to SRB Zoning and have no relationship to the school. In fact, proposed Lots 3 and 4 are abutted to the east by the Greek Orthodox Church and to the north by the Friends of Lafayette House.

Granting the variance relief requested gives the City a unique opportunity to create 4 new single-family house lots off of a street that is predominantly comprised of commercial uses that are inconsistent with SRB Zoning and the surrounding neighborhood. The new lots are likely to attract families that have an interest in locating themselves close to the high school for ease of access and convenience. Granting the variance relief requested will allow for the creation of 4

new single-family home lots that meet the spirit and intent of SRB Zoning. Accordingly, granting the variances will not negatively alter the essential character of the neighborhood.

***Substantial justice will be done by granting the variance relief.***

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 gain to the public in denying the variance relief sought by the Applicant. Despite the fact that the Applicant's deed and those preceding it describe a single parcel of land, there is a legitimate legal argument to be made that the Applicant has 4 individual lots of record and vested development rights in each by virtue of the 1958 Plan. Aside from some additions made to the house on former Lot 9 (now Lot 2) and the construction of a garage on former Lot 9 (now Lot 3), no development has occurred on former Lots 7 and 10. The use of the Property has remained unchanged since the 1958 Plan was recorded.

The public would have little to gain by the Board denying the frontage relief requested. Denying the variance relief would merely result in lot sizes that are significantly larger than what is required by the Ordinance, which in turn would lead to the construction of larger more expensive homes. In the present instance, the loss to the Applicant clearly outweighs any potential gain to the public in denying the variance relief.

***The values of surrounding properties will not be diminished by granting the variance relief.***

Granting the frontage relief requested to create proposed Lots 3 and 4 will have no impact upon surrounding property values, as the lots will comply with the 15,000 square foot lot area requirement, thus conforming to the underlying density goal behind SRB Zoning. Likewise, the construction of 4 new single family homes off of Andrew Jarvis Drive will only benefit surrounding property values. Joe Caldarola (Smithfield Construction, Inc.), who is one of the two principals of Artwill LLC, has a proven history of constructing tastefully designed single family homes in Portsmouth that are architecturally consistent with their surroundings. The other principal of Artwill LLC, Nikki Douglass, is a well-reputed local real estate agent with a focus on land development in and around Portsmouth. She is retaining one of the lots to construct her own residence upon it. Therefore, there is ample evidence to suggest that granting the variance relief requested can only lead to an increase in surrounding property values.

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

The Property contains 65,568 square feet of lot area and has approximately 340' of continuous street frontage on Andrew Jarvis Drive, 120' on Lafayette Road, and 378' on Artwill Avenue. Because Artwill Avenue is considered to be a private drive, it is not considered legal "frontage" for the Property, although it has 4 curb cuts providing access to 3 different residences, including the home on the Property. The Property has an abundance of street frontage regardless

of whether it qualifies as such by definition. The street frontage and size of the lot are unique conditions that make the Property distinguishable from surrounding properties.

The Property is also unique because there is a recorded plan, which was signed by the Portsmouth Planning Board Chairman, that shows it as 4 individual lots. Based on the 1958 Plan, it would appear that the intent was always to have 4 separate buildable house lots in the future. Aside from the home on former Lot 9 (now Lot 2) and the garage that was constructed on former Lot 8 (now Lot 3), the remainder of the Property (former Lots 7 and 10) remains undeveloped.

Putting aside the intent behind the 1958 Plan and the history following it, the Property has sufficient lot area and frontage to adequately support 4 new single family home lots that conform to the spirit and intent of SRB Zoning. If the variance relief were denied, it would only be for the sake of requiring strict compliance with the Ordinance. A denial would result in the creation of 3 new single family home lots that would be much larger than what is required by Ordinance. This would have no benefit to the public or to the City of Portsmouth, as the larger lot sizes would naturally lead to larger, more expensive homes in order for the development economics to work.

For the foregoing reasons, there is no fair and substantial relationship between the general purposes of the frontage requirements and their application to the Property. Once created, the individual house lots will be used for single-family residential purposes which is permitted by right and encouraged in the SRB Zoning District. Accordingly, the proposed use is reasonable.

### **CONCLUSION**

In conclusion, the Applicant has demonstrated that its application meets the five (5) criteria for granting the Variance relief sought and respectfully requests that the Board approve its application.

Respectfully Submitted,

ARTWILL LLC

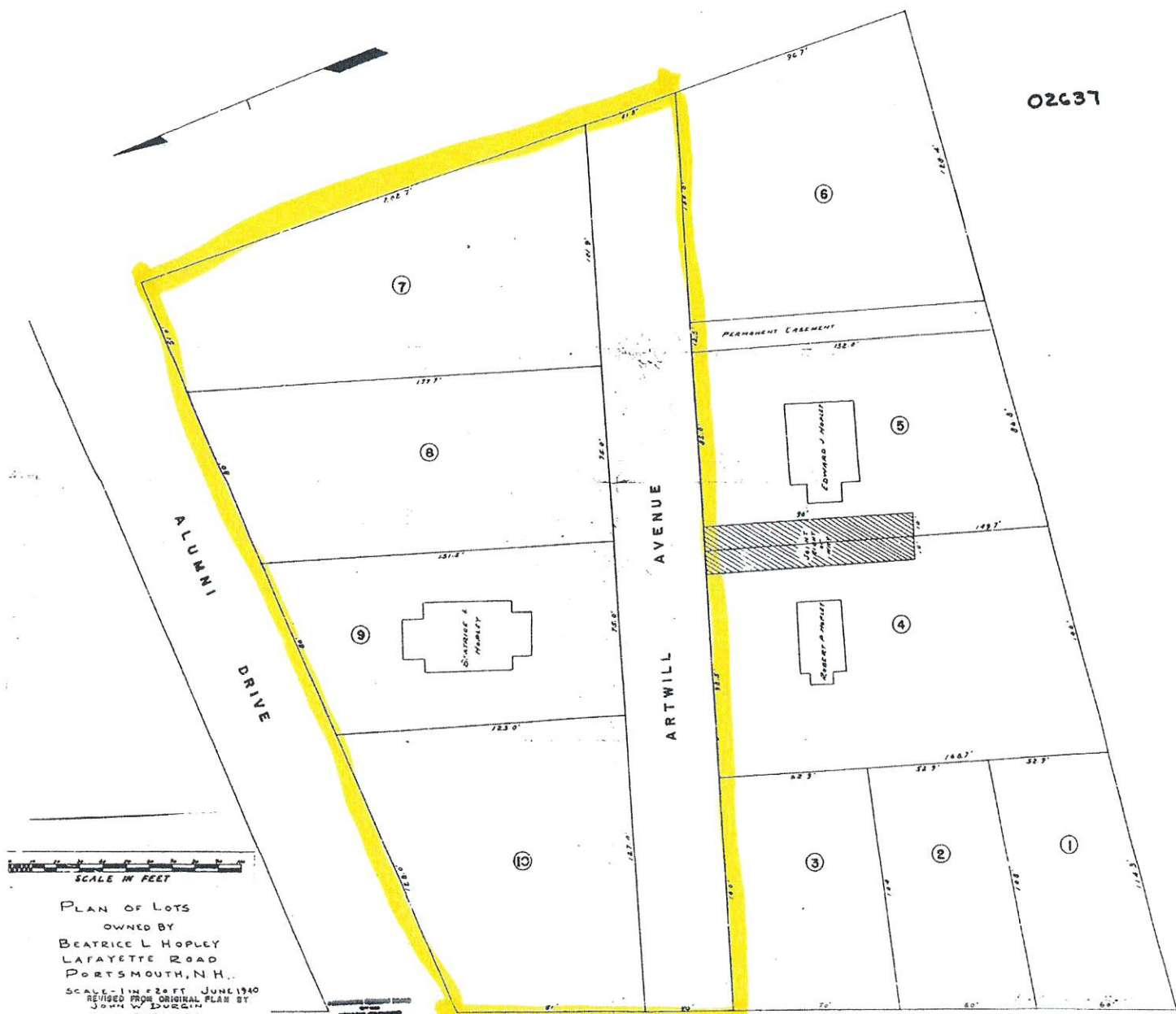
By and Through Its Attorneys,

Durbin Law Offices PLLC



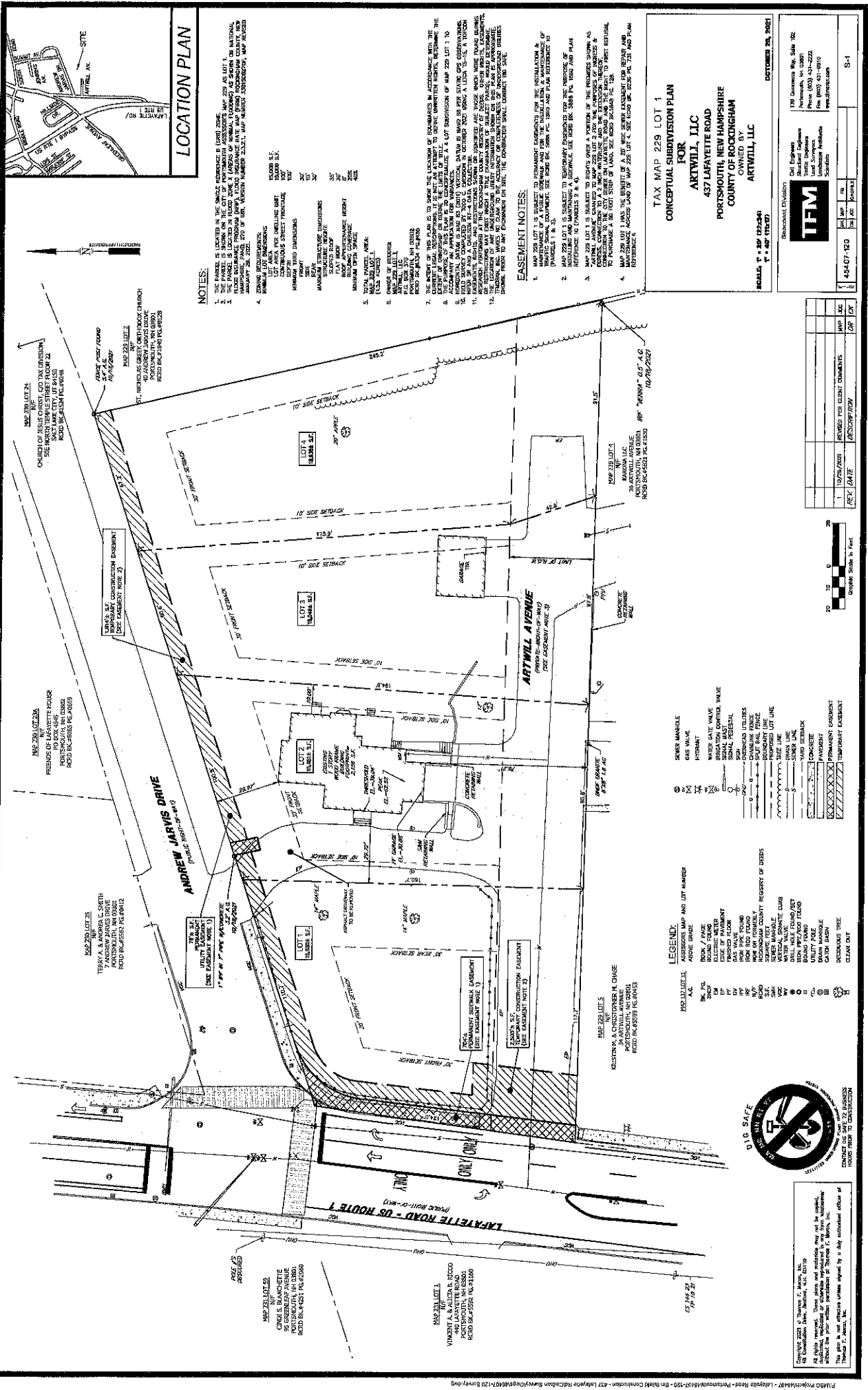
By: Derek R. Durbin, Esq.  
144 Washington Street  
Portsmouth, NH 03801  
(603)-287-4764  
derek@durbinlawoffices.com

02637



*No Jurisdiction*  
*Robert Crowley, Chairman*  
*8/29/1958*

FILE NO 2249  
PLAN No 704



LOCATION PLAN

NOTES:

1. THE PARCEL IS LOCATED IN THE SINGLE RESIDENCE B ZONE. MAP 229 LOT 1 IS A 1.071 ACRE PARCEL. THE PARCEL IS LOCATED IN THE SINGLE RESIDENCE B ZONE. MAP 229 LOT 1 IS A 1.071 ACRE PARCEL. THE PARCEL IS LOCATED IN THE SINGLE RESIDENCE B ZONE. MAP 229 LOT 1 IS A 1.071 ACRE PARCEL.
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EASEMENT NOTES:

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**TAX MAP 229 LOT 1**  
**CONCEPTUAL SUBDIVISION PLAN**  
**FOR**  
**ARTWILL, LLC**  
**437 LAFAYETTE ROAD**  
**PORTSMOUTH, NEW HAMPSHIRE**  
**COUNTY OF ROCKINGHAM**  
**OWNED BY**  
**ARTWILL, LLC**

SCALE: 1" = 20' (12/25/21)  
DATE: 10/19/2021

Prepared by: TFM Engineering  
1700 Cummings Way, Suite 102  
Portsmouth, NH 03801  
Phone: (603) 434-2222  
Fax: (603) 434-2222  
www.tfmeng.com

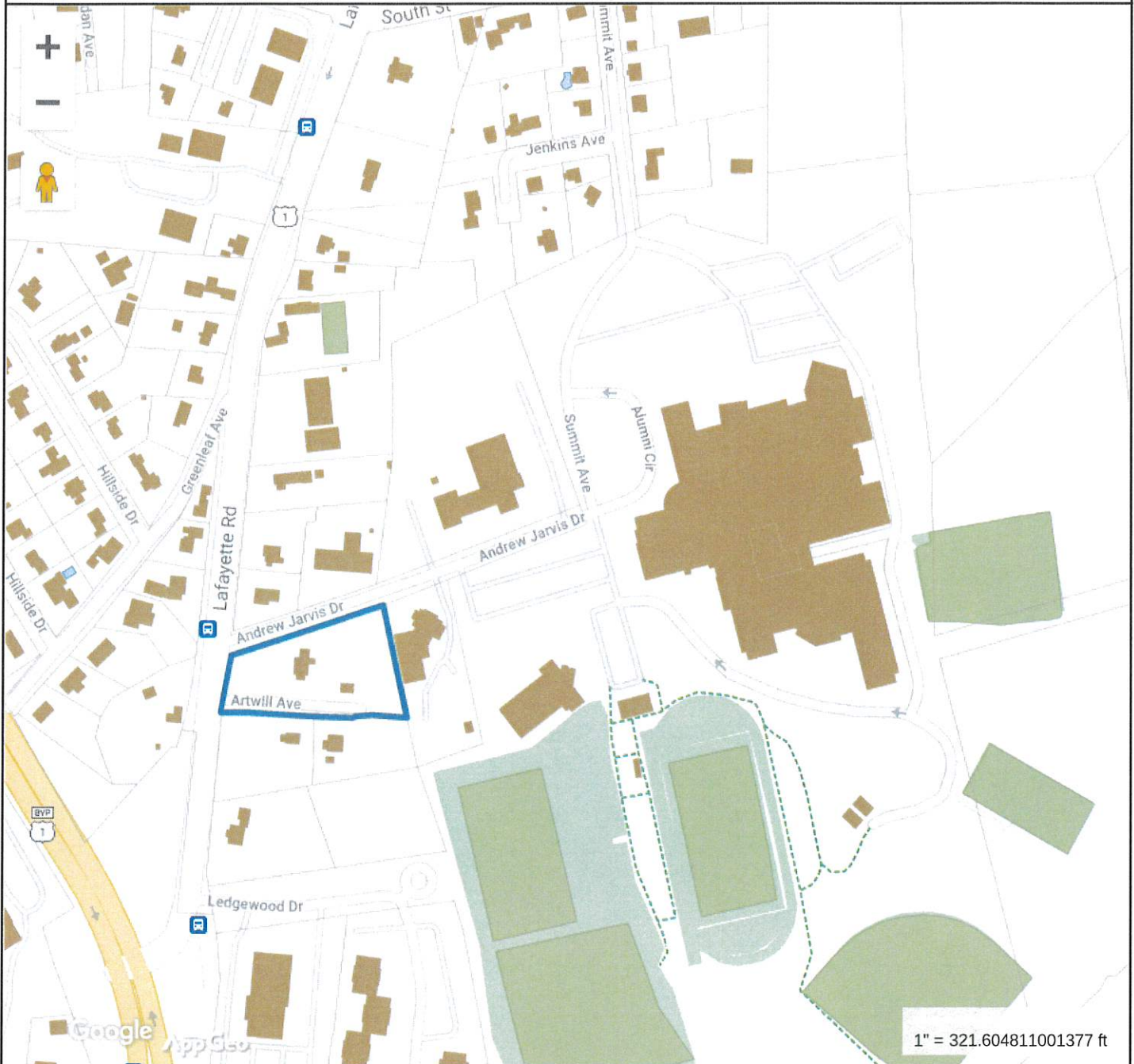
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**LEGEND:**

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**Property Information**

Property ID 0229-0001-0000  
 Location 437 LAFAYETTE RD  
 Owner ARTWILL LLC



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

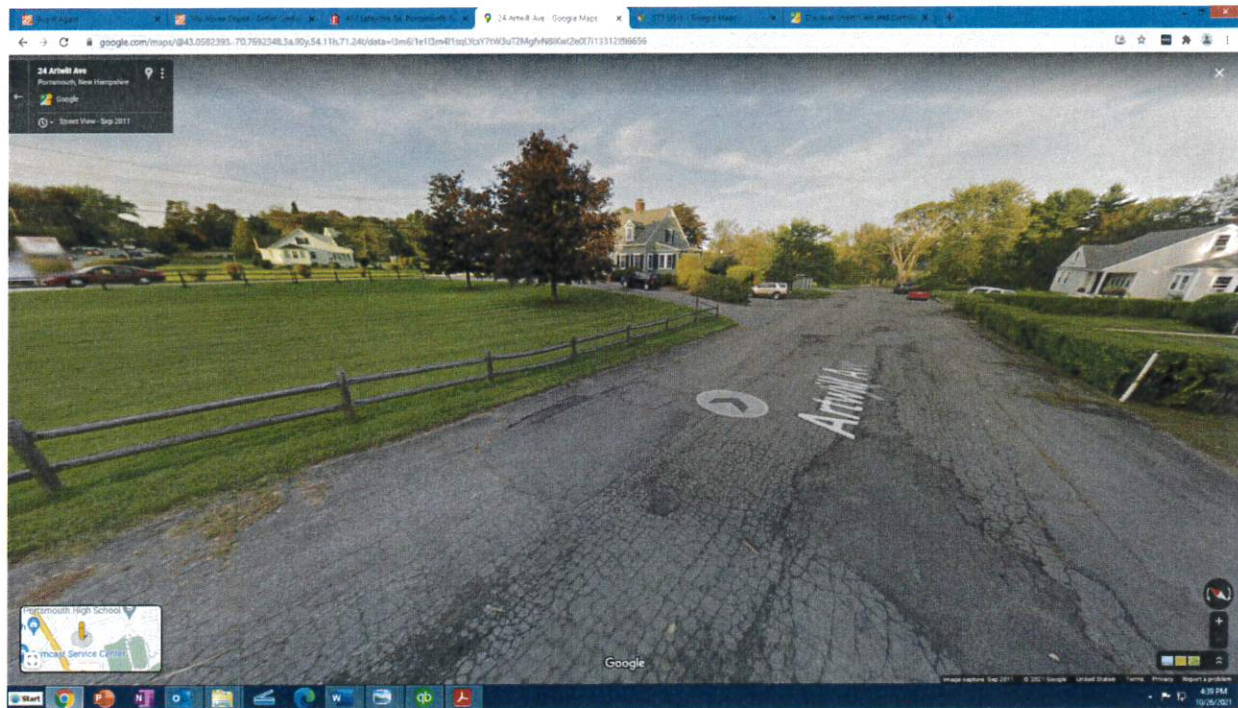
City of Portsmouth, NH makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.

Geometry updated 4/1/2019  
 Data updated 7/17/2019

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



## 437 Lafayette Road Pictures

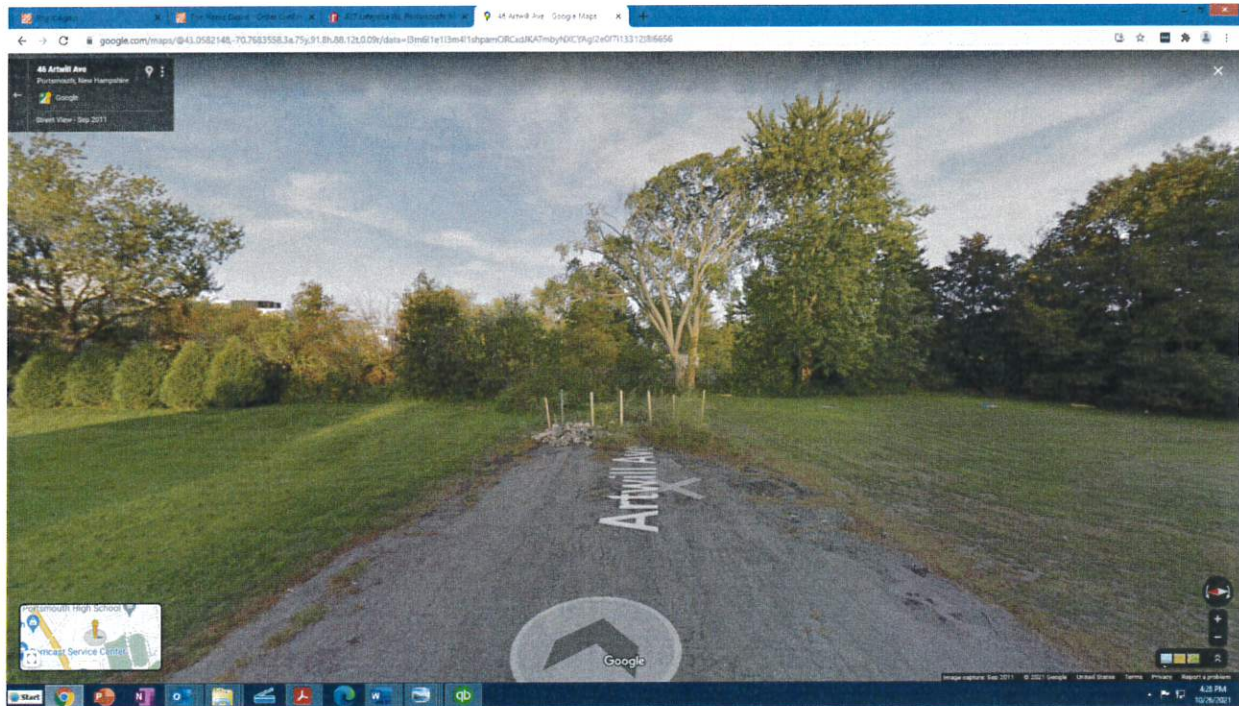


Artwill from Lafayette Road

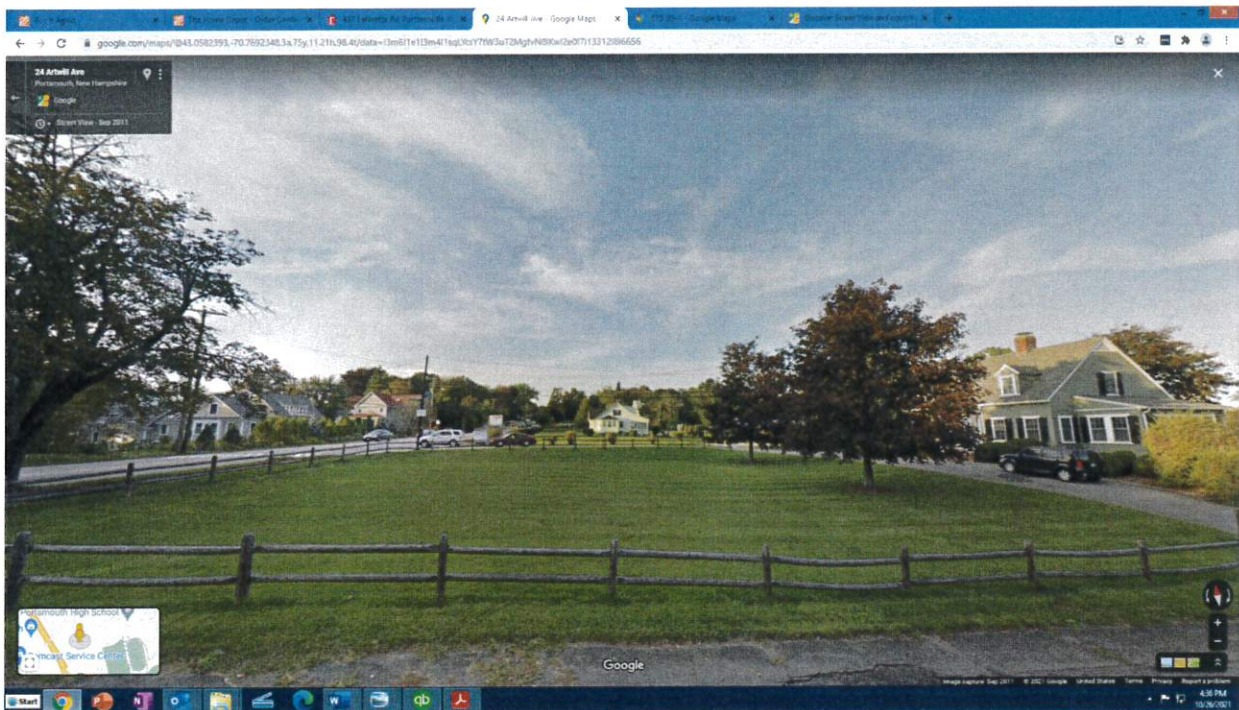


Artwill toward Lafayette Road and Existing Home





Artwill looking toward end



Lafayette Road end of parcel from Artwill showing existing home and the area of proposed lot 1



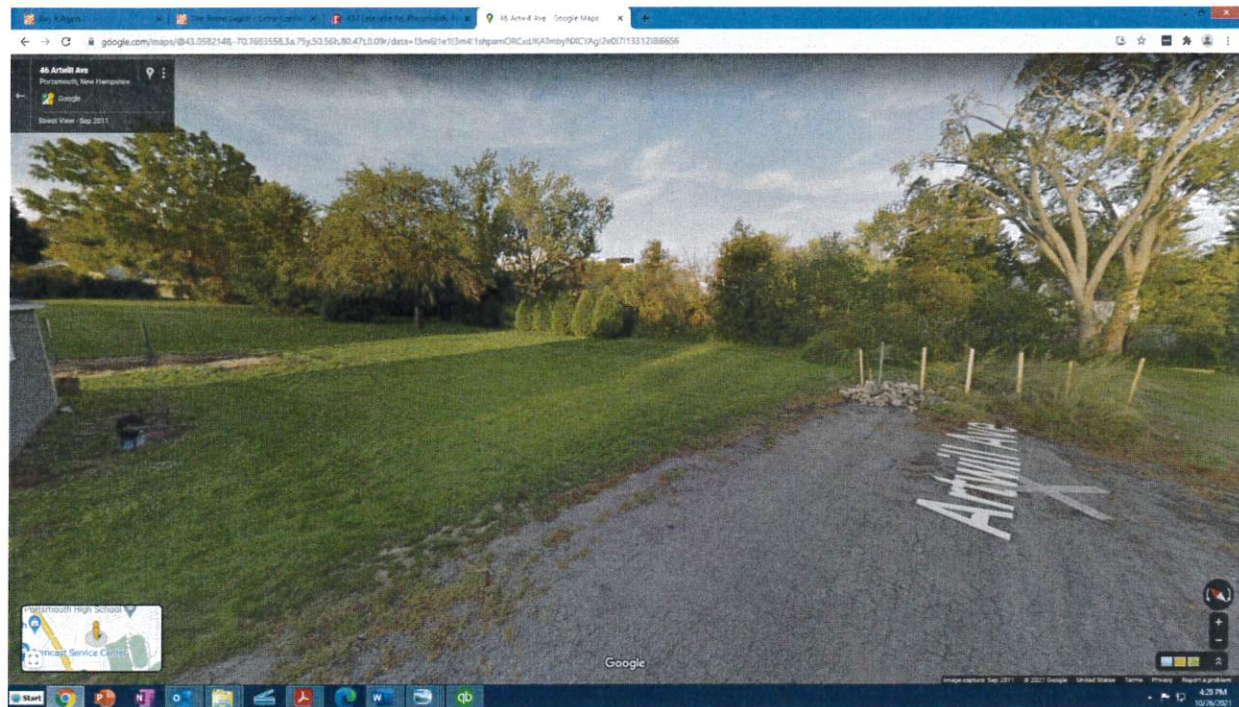


Lafayette Road end from Andrew Jarvis



Rear of parcel opposite Lafayette-Area of Proposed Lots 3 and 4



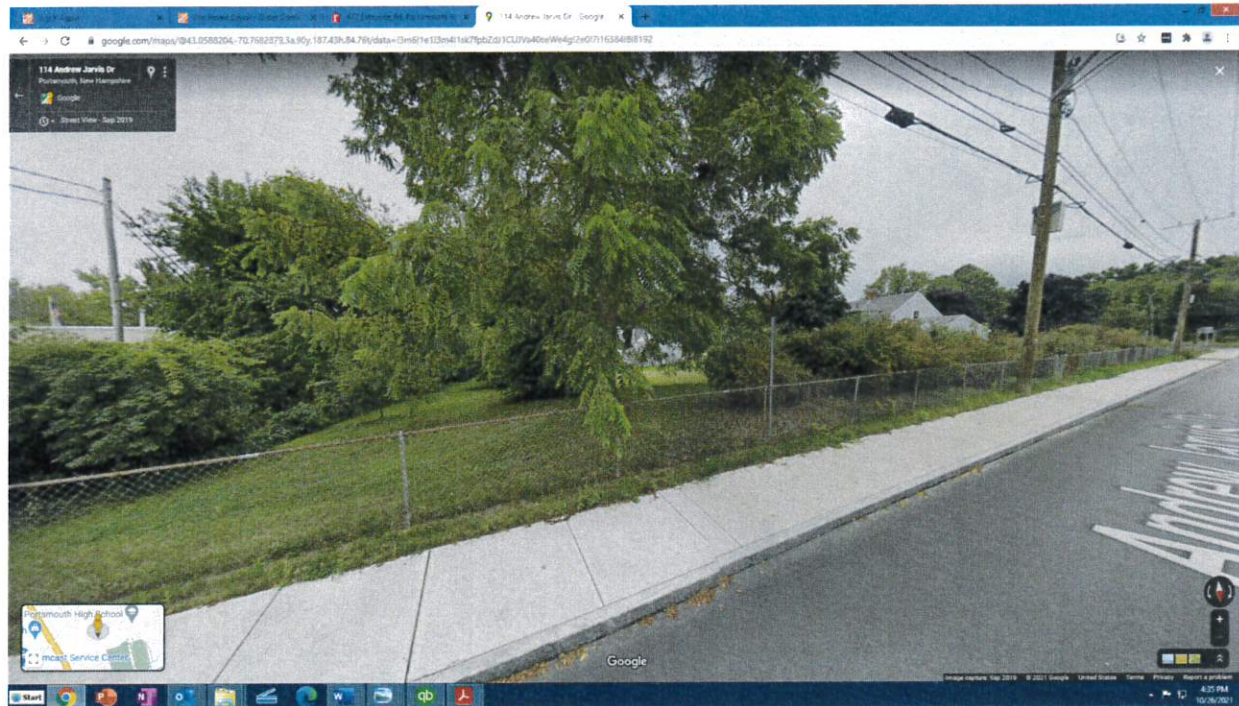


Area of Proposed lot 4



Exiting Home from Andrew Jarvis





Rear Portion from Andrew Jarvis



Abutters on Artwill