# CITY OF PORTSMOUTH ZONING BOARD OF ADJUSTMENT APPLICATION NARRATIVE

Haven Properties LLC (Owner/Applicant) Tax Map 144, Lot 43 187 McDonough Street Portsmouth, NH 03801

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#### **INTRODUCTORY STATEMENT**

Haven Properties LLC (the "Applicant") is the owner of property located at 187 McDonough Street, Portsmouth, New Hampshire 03801, identified on Tax Map 144, as Lot 43 (the "Subject Property"). The Subject Property is in Portsmouth's General Residence C ("GRC") Zoning District. It is approximately 0.06 acres in size (1,868 square feet) and contains a single-family home that abuts railroad property to the rear.

The Applicant acquired the Subject Property in 2017. Prior to the Applicant acquiring the Subject Property, it was owned by one family for just under forty-eight (48) years. The existing home was originally built in 1856. It has fallen into significant disrepair. The home has structural issues and is in very poor condition overall. It has been unoccupied since the Applicant purchased it due to unsafe and inhabitable conditions. The existing home also has an outdated floor plan. Portions of the home encroach slightly into the abutting property to the left (west) and touch upon or cross slightly over the boundary to the rear (north), which land is owned by the railroad.

Restoring and modernizing the existing home and bringing into code compliance would be cost prohibitive. The existing boundary encroachments are also problematic, as the Applicant needs permission from the abutting landowners to legally maintain the building. As such, the Applicant is proposing to tear down the existing residence and construct a new modest-sized home that would be more centered on the Subject Property. The proposed home would have a modern floor plan consistent with what today's renters and home buyers desire. The Applicant would be creating off-street parking none exists.

The Applicant is presently under contract to purchase approximately 669 square feet of adjacent railroad land to the rear of the Subject Property, as depicted on the plans submitted with the variance application. The Applicant's purchase of the additional land hinges on receiving the necessary variances to construct the proposed home on the Subject Property. The Applicant has a current lot line adjustment application pending before the Planning Board that would increase the lot area of the property to 2,537 s.f. from the existing 1,868 s.f

### CHANGES TO PLANS FROM PRIOR APPLICATION (MAY 2019)

The Applicant previously submitted an Application for variance relief to the Board in May 2019 that was heard at the June meeting. This Application was ultimately denied. Since this time,

the Applicant has re-designed the home and revised his plans to address most if not all of the prominent concerns raised by certain Board members and abutters.

The following are a bulletin point list of the most significant changes that the Applicant has made to its building plans in response to concerns raised by the Board at its June hearing:

- The garage with elevated deck/balcony above previously proposed within 4 feet of the right (east) property boundary has been eliminated, thus allowing for a 12 feet setback. No right yard setback relief is needed with the current proposal.<sup>1</sup>
- The elevated deck/balcony features facing the abutter to the right have been eliminated, thus addressing the Board's concerns about the closest abutter's light, air, space, and privacy with the previously proposed right yard setback encroachment;
- The "bump-out" to the left side of the previously proposed building has been eliminated, thus creating greater setback conformity than what was previously proposed. The Board felt that this feature was unnecessary, thus the Applicant revised his plans to eliminate it. The proposed building will have a 4 foot left yard setback where 0 feet exists<sup>2</sup> and 2 feet was previously proposed;
- Proposed building coverage has been reduced from 49% to 43%.

The most significant concern raised with the prior application pertained to the attached garage previously proposed. The plans submitted to the Board called for an attached garage with elevated deck above it to be constructed within 4 feet of the abutting property boundary to the right (east). As part of the Applicant's re-design, this feature has been eliminated.

### SUMMARY OF VARIANCE RELIEF

The Applicant seeks the following variances from Section 10.521 (Table of Dimensional Requirements) of the Zoning Ordinance:

- 1. To allow lot area of 2,537 s.f. where 3,500 s.f is the minimum required;
- 2. To allow lot area per dwelling unit of 2,537 s.f. where 3,500 s.f. is the minimum required;
- 3. To allow continuous street frontage of 48' where 70' is the minimum required;
- 4. To allow building coverage of 43% (+/-) where 35% is the maximum required;
- 5. To allow a 4' (+/-) left yard setback where 10' is the minimum required; and
- 6. To allow a 9' (+/-) rear yard setback where 20' is the minimum required.<sup>3</sup>

properties abutting railroad right-of-ways. The general standard is more stringent than the 15' standard set forth in 10.516.20, thus in exercising an abundance of caution, the Applicant has applied under the more stringent standard of relief.

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<sup>&</sup>lt;sup>1</sup> Prior to the Applicant purchasing the property, there was a porch with attached ramp encroaching into the right yard setback. The porch/ramp structure was located approximately 7.5 feet from the right (east) property boundary. The Applicant had this structure removed.

<sup>&</sup>lt;sup>2</sup> The existing building encroaches into the abutting property by approximately 2 feet.

<sup>&</sup>lt;sup>3</sup> Section 10.516.20 of the Ordinance reads: Notwithstanding any other provision of this Article, in any district where a rear yard or side yard is required, the minimum yard adjoining a railroad right of way shall be 15 feet.

The Applicant has applied for rear setback relief under the general standards given the differing standards set forth in the Ordinance for properties abutting railroad right of years. The control of the properties abutting railroad right of years.

#### VARIANCE CRITERIA

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

In the case of Chester Rod & Gun Club, Inc. v. Town of Chester, the Court observed that the requirements that a variance not be "contrary to the public interest" or "injure the public rights of others" are coextensive and are related to the requirement that the variance be consistent with the spirit of the ordinance. 152 N.H. 577 (2005). 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. "Mere conflict with the terms of the zoning ordinance is insufficient to constitute a violation of the ordinance's basic zoning objectives." Harborside Assoc v. Parade Residence Hotel, 162 N.H. 508, 514 (2011). "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." Id.

Consistent with most, if not all, of the properties in the section of McDonough Street between Dover and Cabot Streets, building coverage on the Subject Property exceeds the maximum amount allowed under Section 10.521 of the Zoning Ordinance. This is driven primarily by the small size of the lot. Because the lots in this area are very small, a significant percentage of them fall short of the minimum lot area requirements. This naturally leads to a situation where most of the properties also exceed the maximum allowable building coverages. In its existing condition, the Subject Property exceeds minimum lot coverage. If the relief requested is granted, the Subject Property will still contain similar of lesser lot coverage to that of many of the surrounding properties.

Of the eleven (11) other properties that have frontage on McDonough Street and are located between Cabot and Dover Streets, eight (8) have structures that encroach significantly into one or both side yard setbacks. Many of these properties also encroach into the rear yard setback. The Applicant has brought the left and rear yard setbacks into greater conformity with the Ordinance by eliminating the existing boundary encroachments. A fair argument can also be made that the Applicant has also improved the right yard setback over what has historically existed. Prior to the Applicant's purchase of the Subject Property, there was a porch/entryway with attached handicap ramp located 7.5 feet from the right (north) boundary on the Subject Property. The Applicant eliminated this structure. The new building proposed for the Subject Property would have a compliant right yard setback.

In addition to the above improvements, the Applicant has created off-street parking on the Subject Property where no legal spaces exist. With the boundary line adjustment proposed, the lot depth requirement of the Zoning Ordinance will be met with the additional land being added in the RECEIVED

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rear, whereas it is presently non-compliant. Lot area and lot area per dwelling unit will also be brought into greater conformity with the Zoning Ordinance.

The abutter to the left (west) will be directly benefited by the proposed construction, as they will no longer have a home encroaching into the right (east) side of their property. The reduction in left and rear yard setback encroachments will also benefit the Applicant, who will now have enough space to maintain the proposed home without needing permission from the abutting property owner. In addition, the residents of the neighborhood and general public will be benefited by the creation of off-street parking where none presently exists. Overall, with the zoning trade-offs proposed, the Applicant is bringing the Subject Property into greater conformity with the provisions of the Zoning Ordinance and bettering the situation with this lot. The proposed building design will maintain the street-front character fabric of the neighborhood.

Granting the variances requested for the Subject Property will not alter the essential characteristics of the neighborhood or create any threat to the public health, safety or welfare. This is a densely settled area where most of the surrounding properties have greater or similar building coverages and setback encroachments to what is proposed on the Subject Property.

In the case of *Belanger v. Nashua*, the New Hampshire Supreme Court recognized that municipalities have an obligation to have their zoning ordinances reflect current characteristics of the neighborhood. <u>121 N.H. 389</u> (1981). In the present instance, the dimensional standards applicable to the GRC District do not reflect the characteristics 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).

If the variances were to be denied, the Applicant would be left with a home that is presently inhabitable and in need of a complete renovation which would include significant structural work. The existing home is relatively small and contains a dysfunctional, outdated floor plan that would not appeal to most families or couples looking to rent or purchase in the area. The home that the Applicant is proposing to construct on the Subject Property would contain a more functional and desirable layout which would appeal to many modern renters and potential home buyers. The loss(es) to the Applicant in denying the variances would not be outweighed by any corresponding gain to the public.

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

Surrounding properties will not be negatively impacted by the construction of a new, modern single-family home on the Subject Property. To the contrary, the construction of new, tastefully designed home on the Subject Property is likely to increase the values of surrounding properties. It will have a direct benefit to the owners of 199 McDonough Street (Tax Map 144, ED)

Lot 42, who will no longer have another person's home encroaching into the right side of their property.

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

The Subject Property has special conditions that make it distinguishable from surrounding properties. Owing to these special conditions, there is no fair and substantial relationship between the general purposes of the Ordinance provision(s) and their application to the Property.

The Subject Property contains a small single-family home that is inhabitable in its current state, has a dysfunctional floor plan and structural issues with the foundation. The home encroaches into the neighboring property to the left (east) and touches upon or slightly crosses over the boundary in the rear (north), thus violating the left and rear yard setbacks. To gain permanent legal access rights to those portions of the existing building that encroach upon the property boundaries, the Applicant would need easements from the abutting property owners, which may or may not be achievable but would serve no long-term benefit to anyone. The Subject Property does not have any off-street parking and already exceeds the maximum allowable building coverage by 11%. In addition, the property to the rear (north) of the Subject Property is owned by the railroad and has tracks running through it; therefore, there are no residential structures immediately behind the proposed building. Taken together, these are special conditions that distinguish the Subject Property from surrounding properties.

Owing to its special conditions, there is no fair and substantial relationship between the general purposes of the GRC Zoning restrictions and their application to the Subject Property, as the Applicant could keep the home in its current location if the variance relief were denied. By adding land and constructing a new home in a different location on the Subject Property, the Applicant is improving conditions. The Applicant is eliminating the left and rear yard setback encroachments, eliminating the lot depth non-conformity, improving the lot area/lot area per dwelling unit non-conformity and providing off-street parking where none presently exists. The elimination of the left and rear boundary encroachments will allow the Applicant to maintain the proposed building without needing permission from abutting property owners. The Applicant will be able to create a modern, more attractive single-family home on the Subject Property without violating the spirit, intent and basic objectives of the Zoning Ordinance, which is intended to promote *medium* to *high* density in the GRC District.

#### The proposed use is reasonable.

The use of the Subject Property for a single-family home will be consistent with the spirit and intent of GRC Zoning, which promotes a mixture of single-family, two-family and multifamily uses. The Subject Property has always been used for single-family residential purposes. Accordingly, it can be objectively concluded that the proposed use is reasonable.

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#### PROPOSED CONDITION OF APPROVAL

In conjunction with the variances requested, the Applicant proposes the following condition of approval: This approval is expressly conditioned upon the Applicant receiving lot line adjustment approval from the Planning Board in substantial compliance with the plans presented to and approved by the Zoning Board of Adjustment.

#### **CONCLUSION**

In conclusion, the Applicant has demonstrated that the proposed plans meet the five (5) criteria for granting each of the variances requested. Accordingly, it respectfully requests that the Board approve its Variance Application.

Respectfully Submitted,

Dated: July 31, 2019

Haven Properties LLC Jeffrey Demers, Member

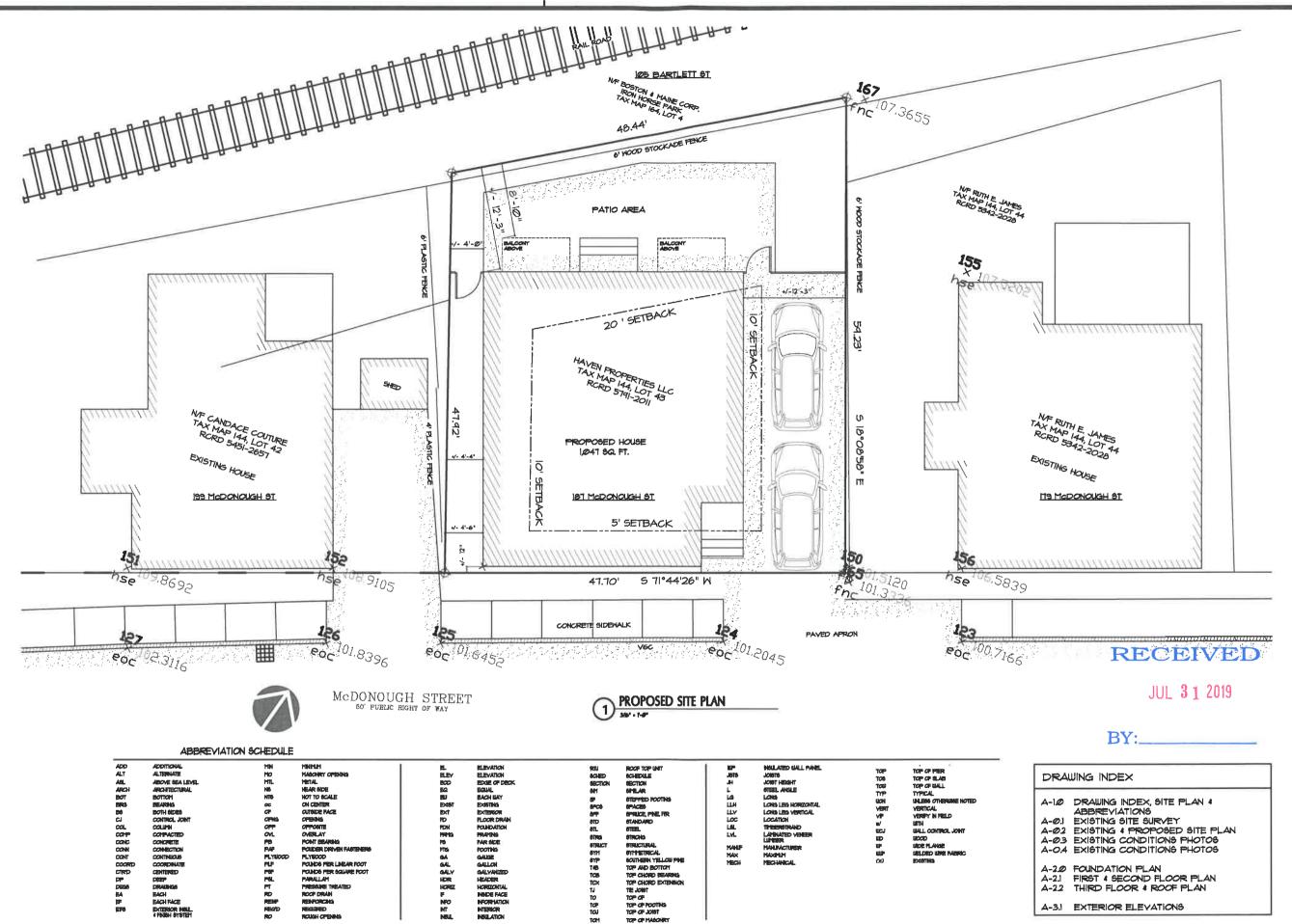
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DRAWING INDEX SITE PLAN & **ABBREVIATIONS** 

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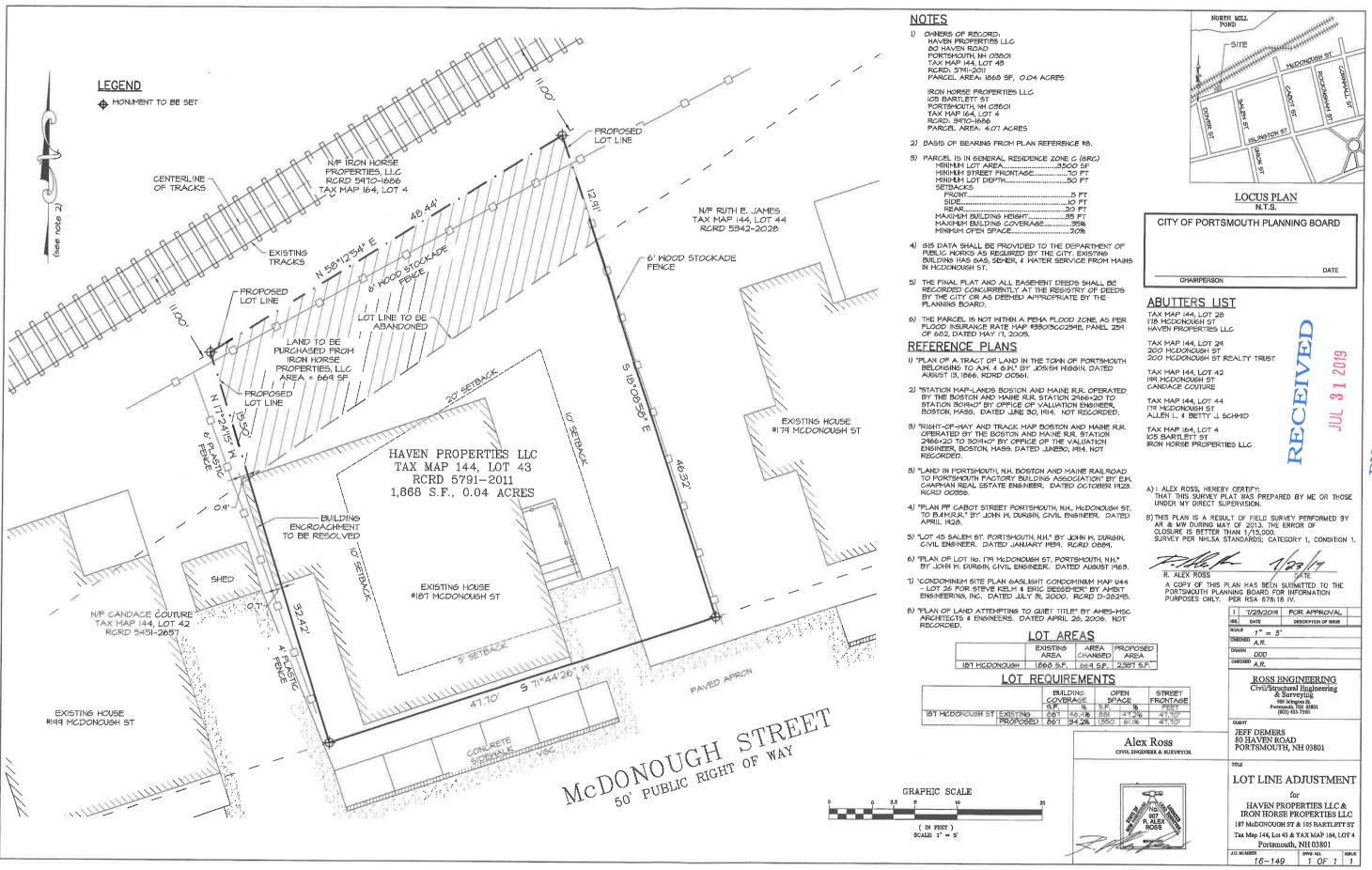
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A-20 FOUNDATION PLAN A-2.1 FIRST 4 SECOND FLOOR PLAN A-2.2 THIRD FLOOR 4 ROOF PLAN

A-3.1 EXTERIOR ELEVATIONS

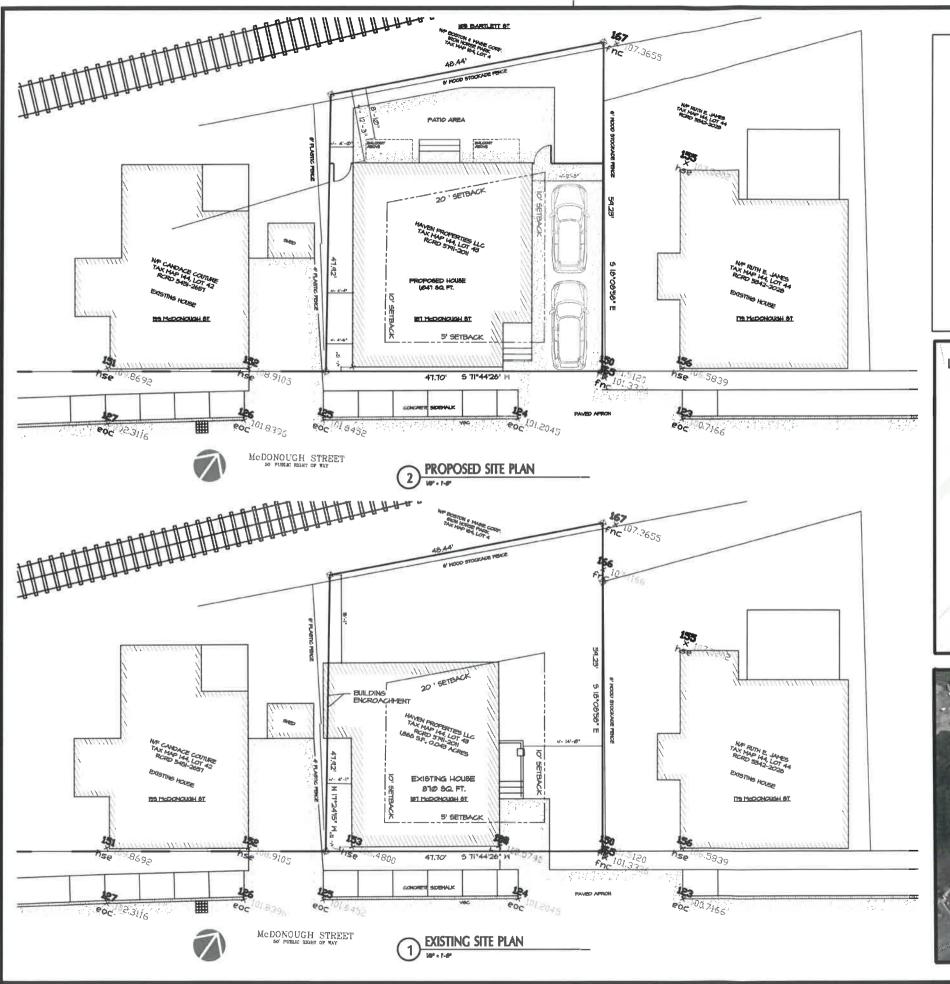
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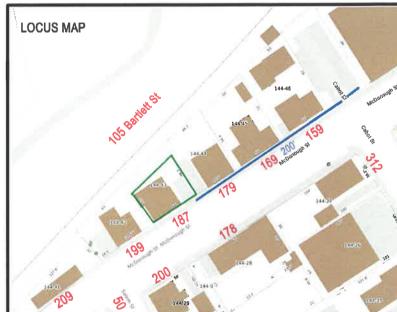
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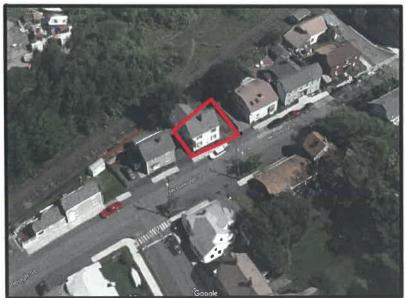




PARCEL IS IN GENERAL RESIDENCE ZONE C (GRC)

A record to the contract of the contract	MINIMUM	EXISTING		PROPOSED
SITE INFORMATION LOT AREA STREET FRONTAGE LOT DEPTH	3,500 SF 10 FT 50 FT	1,868 SF 48 FT 46 FT		2,531 <del>SF</del> 48 FT 59 FT
SETBACKS FRONT RIGHT SIDE LEFT SIDE REAR	1 FT 10 FT 10 FT 20 FT	1 FT +/-14 FT Ø FT +/-15 FT	+/-	FT  2 FT 4 FT 9 FT
OPEN SPACE	20%	+/- 47%	+/-	20%
OFF STREET PARKING	2 SPACES	Ø SPACES		2 SPACES
	MAXIMUM	EXISTING		PROPOSED
BUILDING HEIGHT BUILDING COVERAGE	35 FT 35%	32 FT 38% 46%		34 FT 43%







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# EXISTING & PROPOSED SITE PLAN

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187 McDonough Southeast





187 McDonough Southeast



187 McDonough Northwest



187 McDonough Northeast

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179 & 169 McDonough EAST



50 SHAW RD

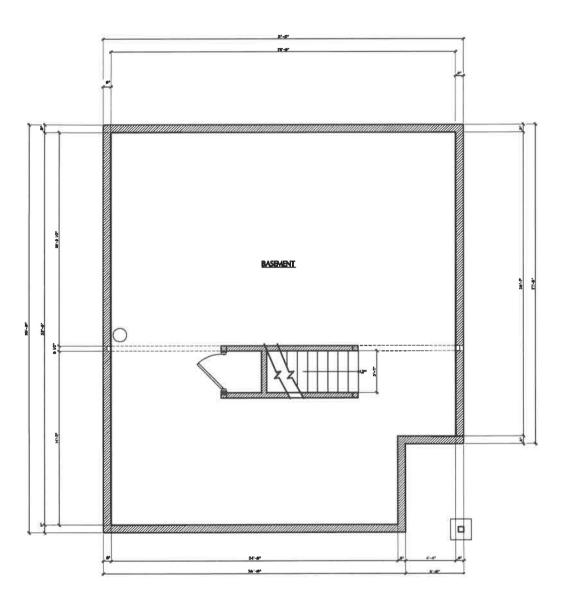


169 McDonough Northeast



178 McDonough West

TAX MAP 144, LOT 43

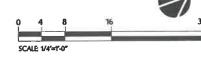


FOUNDATION PLAN

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PROPOSED BASEMENT FLOOR PLAN

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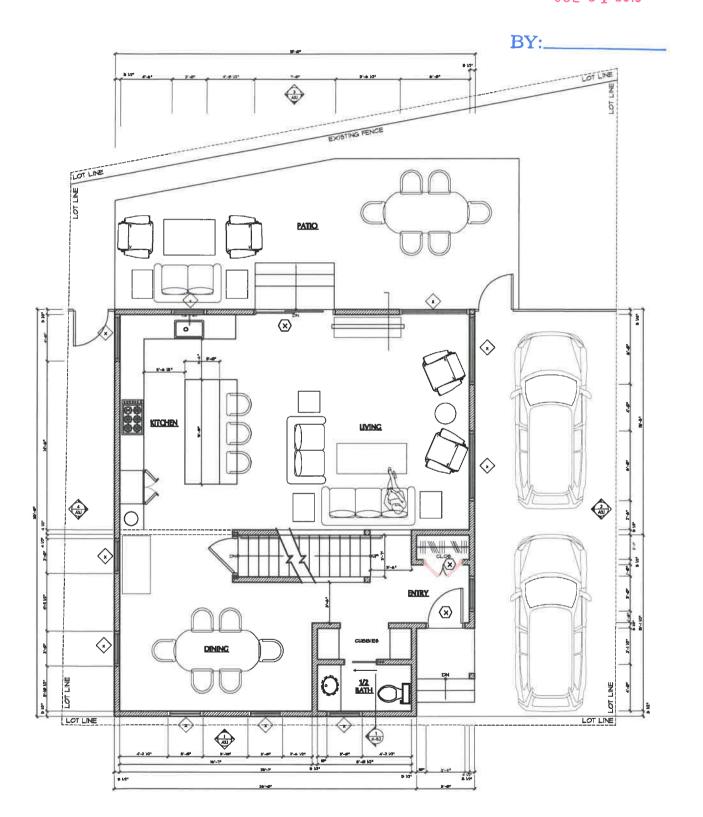
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ROCKINGHAM COUNTY
TAX MAP 144, LOT 43

PROPOSED 1ST & 2ND FLOOR PLAN

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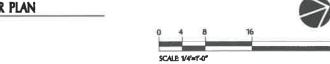
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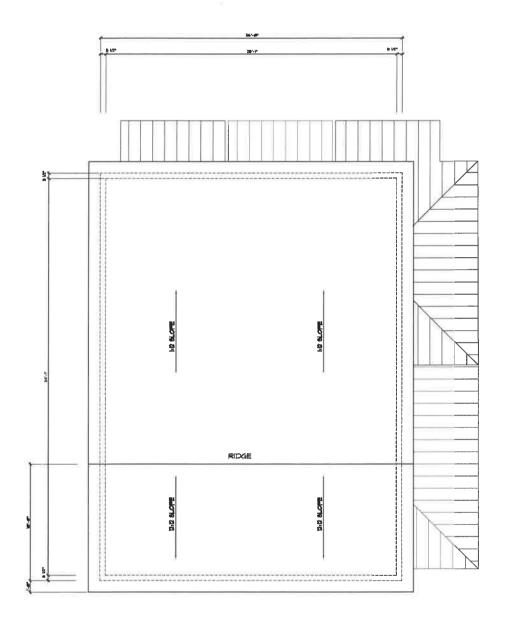
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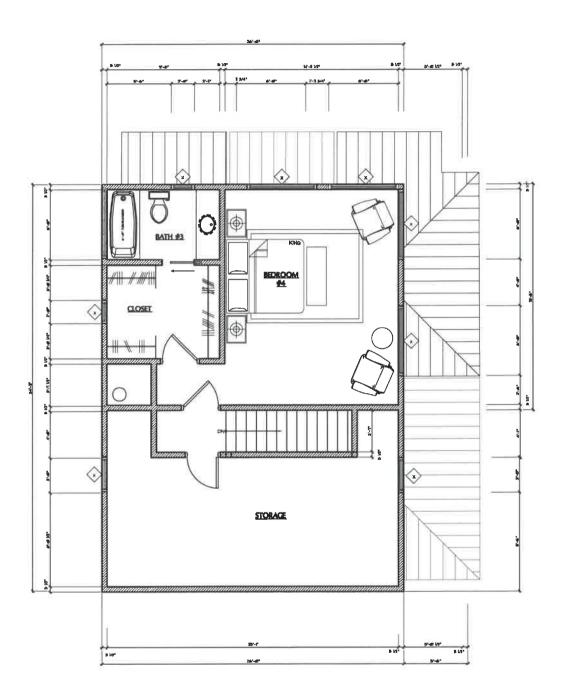
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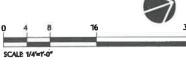
2 ROOF PLAN



THIRD FLOOR PLAN

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PROPOSED EXTERIOR ELEVATIONS

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