

# BRUTON & BERUBE, PLLC

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April 9, 2024

Attn: Zoning Board of Adjustment  
City of Portsmouth, New Hampshire  
1 Junkins Avenue  
Portsmouth, NH 03801

**Re:** Variance Application to Exceed Percentage of Building Coverage and Encroach Front and Rear Setbacks  
**Applicant:** Josh & Emily Lanzetta  
**Owner:** Josh & Emily Lanzetta  
**MBLU:** 250/16  
**Address:** 255 McKinley Road, Portsmouth, NH 03801  
**Parcel Size:** 9,860 SQFT  
**Zone:** SRB

Dear Zoning Board Members:

The purpose of this letter is to submit a Variance Application (the "Application") to construct a residential addition at real property located at Map 250, Lot 16, otherwise identified as 255 McKinley Road in Portsmouth, New Hampshire (the "Property"), on behalf of Josh and Emily Lanzetta (the "Applicant").

Under R.S.A. 674:33(I)(b)(1) – (5)<sup>1</sup> and the Zoning Ordinance of the City of Portsmouth, New Hampshire<sup>2</sup>, the Applicant seeks variances to build a residential addition encroaching the front and rear setbacks (the "Encroachment")<sup>3</sup> and minimally exceeding the percentage of building coverage ("Coverage")<sup>4</sup> provided in the Ordinance's Table of Dimensional Standards (the "Project").<sup>5</sup> The Applicant respectfully requests that the Zoning Board of Adjustment ("ZBA") review and grant the Application at the upcoming ZBA meeting on April 30, 2024.

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<sup>1</sup> RSA 674:33(I)(b)(1) – (5).

<sup>2</sup> Portsmouth, N.H., Rev. Ordinances Ch. 10 (2023) (the "Ordinance").

<sup>3</sup> See footnote 8 below.

<sup>4</sup> The Application proposes 23% building coverage where 20% is required.

<sup>5</sup> Ordinance at Ch. 10, Art. 5, § 10.520.

## I. ENCLOSED DOCUMENTS

Please find 1-copy of the following documents enclosed:

- a. Application dated April 9, 2024;
- b. Abutters List dated April 9, 2024;
- c. Letters of Support from the following Abutters:
  - i. Chris & Rachel Delisle dated March 25, 2024;
  - ii. Brianna Harvey dated March 25, 2024; and
  - iii. Bob & Pam Smith dated March 25, 2024.
- d. Conceptual Elevation Plan dated April 1, 2024; and
- e. Site Plan prepared by Civilworks New England dated March 8, 2024 (the "Plans").

## II. NARRATIVE & ANALYSIS

The Property includes a 960 square foot; brick, single story ranch; situated on a .23 acre, triangularly shaped lot in Portsmouth's "Elwyn Park" neighborhood. The Applicants live at the Property with their 9-year-old son, and 9-month-old son.

The Applicant's family is rapidly expanding, and they seek to enlarge the family's tiny-house to allow them to stay in the neighborhood, where their 9-year-old attends Dondero Elementary School as part of a court ordered custody agreement.<sup>6</sup>

The Application proposes enlarging the west side of existing ranch while maintaining the house's architectural character. As proposed, the expansion allows the Applicant to enlarge the house while accounting-for the Property's uniquely shaped triangular lot, and the house's existing floorplan including bedrooms to the east, and a living room, garage, entrances, and renovated kitchen to the west.<sup>7</sup>

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<sup>6</sup> The custody order mandates the Applicant remain in the Dondero Elementary School district and limits the Applicant's ability to relocate to a larger house.

<sup>7</sup> The location of the proposed addition results from the house's original brick construction and existing floorplan including a cathedral ceiling spanning the entire west side of the house. The area under the cathedral ceiling includes an open-concept kitchen and living room renovated in 2018. As proposed, the addition maximizes use of the irregular lot, allows the family to live in the house during the renovation, utilizes existing structural components, and honors the existing architecture of the house and surrounding neighborhood.

### III. LEGAL ANALYSIS

The project substantially complies with the Ordinance, the Application, and the 5-variance criteria set forth in NH RSA 674:33.

The variance criteria are enumerated and *italicized* below with the Applicant's responses following in plain text.

#### *A. The variance is not contrary to the public interest.*

The Applicant respectfully asserts the variance (i.e., allowing the Applicant to construct the Encroachment while minimally expanding Coverage) represents a reasonable use of the Property, and serves the public interest by permitting the orderly development of property in Portsmouth's SRB Zone. Here, the proposed additions mirror existing encroachments (i.e., setbacks) directly abutting the Property to the west (22 Harrison Avenue) and north (24 Harrison Avenue); the expansion of Coverage is *de minimus*; and similar encroachments and building coverages are found throughout the SRB Zone and neighborhood. As proposed, the Project does not 1) alter the essential character of the surrounding neighborhood, 2) impact abutters, and/or 3) affect the public in any way.<sup>8</sup>

#### *B. The spirit of the ordinance is observed.*

The spirit of the ordinance is observed because the project encourages the most appropriate use of land in the SRB Zone and upholds the purpose and intent of the Ordinance.<sup>9</sup> Allowing the Applicant to build the Encroachments while expanding Coverage is reasonable when juxtaposed with the existing floorplan, structural design, lot size, lot shape, density, aesthetics, and architecture. This Project does not increase the intensity of use on the Property, and the Encroachments mirror encroachments found on directly abutting properties.

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<sup>8</sup> **Front Setback.** Under the Ordinance, the Applicant may add 8' to the front of the existing house, by right, before encroaching the front setback. However, after evaluating multiple designs with a licensed architect, it is evident that adding 8' to the existing house will not reasonably provide the space required to minimally expand the living room, front entrance, and garage. This Application seeks a variance to encroach 12' into the front setback, and the Proposed 20' addition (8' by right, 12' by variance) 1) exactly mirrors the front setback encroachment of the directly abutting house located at 22 Harrison Avenue (22 Harrison Avenue fronts both McKinley Road and Harrison Avenue), and 2) allows the Applicant to create an entrance and living space using existing openings already supported by structural steel lintels. As proposed, there is no other location in the house that allows the applicant to create an entrance into the existing living space or a garage fronting the existing driveway. Additionally, most houses on McKinley Road encroach the front setback and are located approximately 20' from their front lot line, and most properties in the neighborhood include setback encroachments that do not comply with the SRB Zone's underlying requirements.

**Rear Setback.** The house (as built in 1961) encroaches the rear lot line because of the Property's unique triangular shape, which makes it impossible to build on the west side of the property without a variance. Here, the proposed rear-addition 1) mirrors the rear setback encroachment of the directly abutting house to the north at 24 Harrison Avenue, 2) provides marked privacy between the rear properties, and 3) allows the Applicant to reasonably create a rear entrance using the existing structural design of the 63-year-old brick home. As proposed, the location of the rear addition allows the Applicant to create an entrance using existing openings already supported by structural steel lintels, and there is no other location in the house that allows the applicant to create an entrance into the existing living space.

<sup>9</sup> *Ordinance* at Ch. 10, Art. 1, § 10.120.

*C. Substantial justice is done.*

Substantial justice is done by granting the variance because it allows the Property to be reasonably used by a growing family considering abutting and other property uses in the SRB Zone, including but not limited to setback encroachments, percentage of building coverage, lot sizes, lot shapes, and the surrounding growth and construction in the neighborhood and the City of Portsmouth. This Project does not burden the public in any way, and substantially benefits the Applicant by allowing them to reasonably use their Property considering the given footprint and house design and has no detrimental effect to surrounding properties or the neighborhood.

*D. The values of surrounding properties are not diminished.*

The Applicant respectfully asserts that all surrounding real property has an associated value premised on the existence of structures and features like those found on the Property. Here, the Project will not affect abutting neighbors in a negative way, is consistent with the purpose of the Ordinance, and aligns with nearby uses, coverages, and encroachments.<sup>10</sup>

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

*a) Owing to special conditions of the property that distinguish it from other properties in the area:*

*i. No fair and substantial relationship exists between the public purposes of the ordinance provision and the specific application of the provision to the property because:*

Encroachment. There is no is no fair and substantial relationship between the general public purpose of the Ordinance's provision limiting the front and rear setbacks and the specific application of the setback provision to the Property when:

1. The proposed front setback encroachment:

- a. Exactly matches the front setback encroachment of directly abutting property located at 22 Harrison Avenue;
- b. Approximates existing front setback encroachments found among directly abutting and other neighbors living on the same block, on McKinley Road, and in the neighborhood;

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<sup>10</sup> The proposed additions positively impact abutters and the general public by adding privacy and increasing property values.

- c. Does not change or impact existing site distances on McKinley Road;
  - d. Provides the only location in the front of the house that allows access to the existing living space; and
  - e. Enables the Applicant to use existing openings in a brick house that are already supported by structural steel lintels.
2. The proposed rear setback encroachment:
- a. Exactly matches the rear setback encroachment of directly abutting property located at 24 Harrison Avenue;
  - b. Is approximate to existing rear setback encroachments found in the neighborhood;
  - c. Enables the Applicant to use existing openings in a brick house already supported by structural steel lintels;
  - d. Provides the only location in the rear of the house that allows access to the existing living space;
  - e. Provides new and marked backyard privacy for all abutting neighbors; and
  - f. Maintains backyard ingress and egress by allowing vehicular access around the entire house.
3. Most homes in the neighborhood encroach a setback (front, rear, or side);
4. The Project allows a growing family to utilize a uniquely shaped, nonconforming lot, including a nonconforming house, and difficult structure/floor plan in most reasonable, economical, and safest manner; and
5. The proposed Encroachment does not undermine the Ordinance or harm the public in any way.

Coverage. There is no fair and substantial relationship between the general public purpose of the Ordinance's Coverage rule (i.e., 20%) and the specific application of the Coverage provision to the Property when:

1. 3% constitutes *de minimus* expansion;
2. The proposed square footage specifically considers existing and abutting setbacks and lot coverages;
3. The proposed square footage intentionally weigh's the Property's unique shape against the limits of the existing house's location, aesthetic, and structural design;
4. The house's proposed footprint and square footage aligns with house sizes, footprints, and square footages found throughout the neighborhood; and
5. The proposed square footage does not undermine the SRB Zone or the Ordinance and does not harm the public in any way.

*ii. The proposed use is reasonable.*

It is reasonable to grant the variance because it promotes the safest and best use of an oddly shaped lot given:

1. The house has encroached in the setback since Portsmouth's adoption of a zoning ordinance;
2. The proposed additions match abutting front and rear encroachments;
3. The expansion of Coverage is *de minimus*;
4. There is no other way to reasonably expand the footprint; and
5. The abutting neighbors support the Application.

*iii. If the criteria [above] are not established, explain how, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it:*

In the alternative, the Property is unique, and it is reasonable to grant the variance because:

1. The lot is triangular and oddly shaped;

2. As built in 1961, the house is located 8' behind the prescribed front setback line. This locus creates a rear setback encroachment that requires a variance for all rear construction on the west side of the house;
3. The house is extremely small and is not a similar size to abutting houses, neighboring houses, or new construction in the SRB Zone;
4. The Property is not built to full capacity;
5. A cathedral ceiling spans 2/3rds of the house and prevents reasonable upward expansion of the existing footprint;
6. Expansion of Coverage is *de minimus* when juxtaposed against existing square footage and lot coverage in the neighborhood;
7. The house's original brick construction is difficult and costly to renovate, and it is reasonable to renovate where existing door openings already include structural steel lintels;
8. The house's plumbing system is in the western portion of the house. Adding plumbing to the eastern side of the house is cost prohibitive and requires dismantling previously renovated spaces.

#### IV. RELIEF REQUESTED

Pursuant to NH RSA 674:33, the Applicant respectfully requests the ZBA:

1. Approve the Application; and
2. Grant all relief necessary to affect this request.

Please do not hesitate to contact me with questions or concerns at [josh@brutonlaw.com](mailto:josh@brutonlaw.com) or 603-777-0579.

Sincerely,

/s/ Josh Lanzetta  
**Joshua P. Lanzetta, Esq.**

/s/ Emily Lanzetta  
**Emily J. Lanzetta**

**ABUTTER'S LIST**

April 9, 2024

**Re:** Supplement to Variance Application to Minimally Exceed Percentage of Building Coverage and Encroach Front and Rear Setbacks  
**Applicant:** Josh Lanzetta  
**Owner:** Josh Lanzetta  
**MBLU:** 250/16  
**Address:** 255 McKinley Road, Portsmouth, NH 03801  
**Parcel Size:** 9,860 SQFT  
**Zone:** SRB

**Owner/ Applicant**

Josh Lanzetta  
255 McKinley Road  
Portsmouth, NH 03801

**Abutters**

Marcia Marchese  
265 McKinley Road  
Portsmouth, NH 03801

Chris & Rachel Delisle  
250 McKinley Road  
Portsmouth, NH 03801

Bob & Pam Smith  
250 McKinley Road  
Portsmouth, NH 03801

Brianna Harvey  
22 Harrison Avenue  
Portsmouth, NH 03801

Kevin Quealy  
Morgan Seney  
24 Harrison Avenue  
Portsmouth, NH 03801

Johanna Wolstencroft  
26 Harrison Avenue  
Portsmouth, NH 03801

Christopher Matrumalo  
Kristin Sullivan  
4 Van Buren Avenue  
Portsmouth, NH 03801



**LETTERS OF SUPPORT**

April 9, 2024

**Re:** Supplement to Variance Application to Minimally Exceed Percentage of Building Coverage and Encroach Front and Rear Setbacks  
**Applicant:** Josh Lanzetta  
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**Address:** 255 McKinley Road, Portsmouth, NH 03801  
**Parcel Size:** 9,860 SQFT  
**Zone:** SRB

1. Letter from Chris and Rachel Delisle dated March 25, 2024;
2. Letter from Brianna Harvey dated March 25, 2024; and
3. Letter from Bob and Pam Smith dated March 25, 2024.

Chris & Rachel Delisle  
250 McKinley Road  
Portsmouth, NH 03801

March 25, 2024

City of Portsmouth, New Hampshire  
Attn: Zoning Board of Adjustment  
1 Junkins Avenue  
Portsmouth, NH 03801

**Re: Support for Variance to Construct Addition in Front and Rear Setback**  
**Applicant: Josh Lanzetta**  
**Owner: Josh Lanzetta**  
**MBLU: 250/16**  
**Address: 255 McKinley Road, Portsmouth, NH 03801**

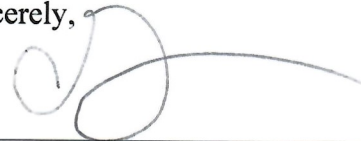
Dear Board Members:

We, the undersigned owners of the above referenced real property located in Portsmouth, New Hampshire, submit this letter in support of Josh Lanzetta's Variance Application to construct an addition encroaching in the front and rear setback at 255 McKinley Road in Portsmouth, New Hampshire (the "Application").

After examining the plans submitted with the Application and accounting for our proximity and knowledge of the neighborhood, we remain in complete support of the proposal and believe that it will add value and character to our neighborhood.

Thank-you for considering our letter of support.

Sincerely,



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Chris Delisle



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Rachel Delisle

Brianna Harvey  
22 Harrison Avenue  
Portsmouth, NH 03801

March 25, 2024

City of Portsmouth, New Hampshire  
Attn: Zoning Board of Adjustment  
1 Junkins Avenue  
Portsmouth, NH 03801

**Re: Support for Variance to Construct Addition in Front and Rear Setback**  
**Applicant: Josh Lanzetta**  
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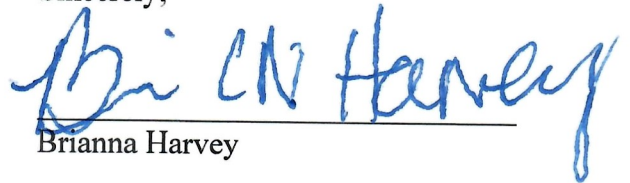
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Thank-you for considering our letter of support.

Sincerely,

  
Brianna Harvey

Bob & Pam Smith  
240 McKinley Road  
Portsmouth, NH 03801

March 25, 2024

City of Portsmouth, New Hampshire  
Attn: Zoning Board of Adjustment  
1 Junkins Avenue  
Portsmouth, NH 03801

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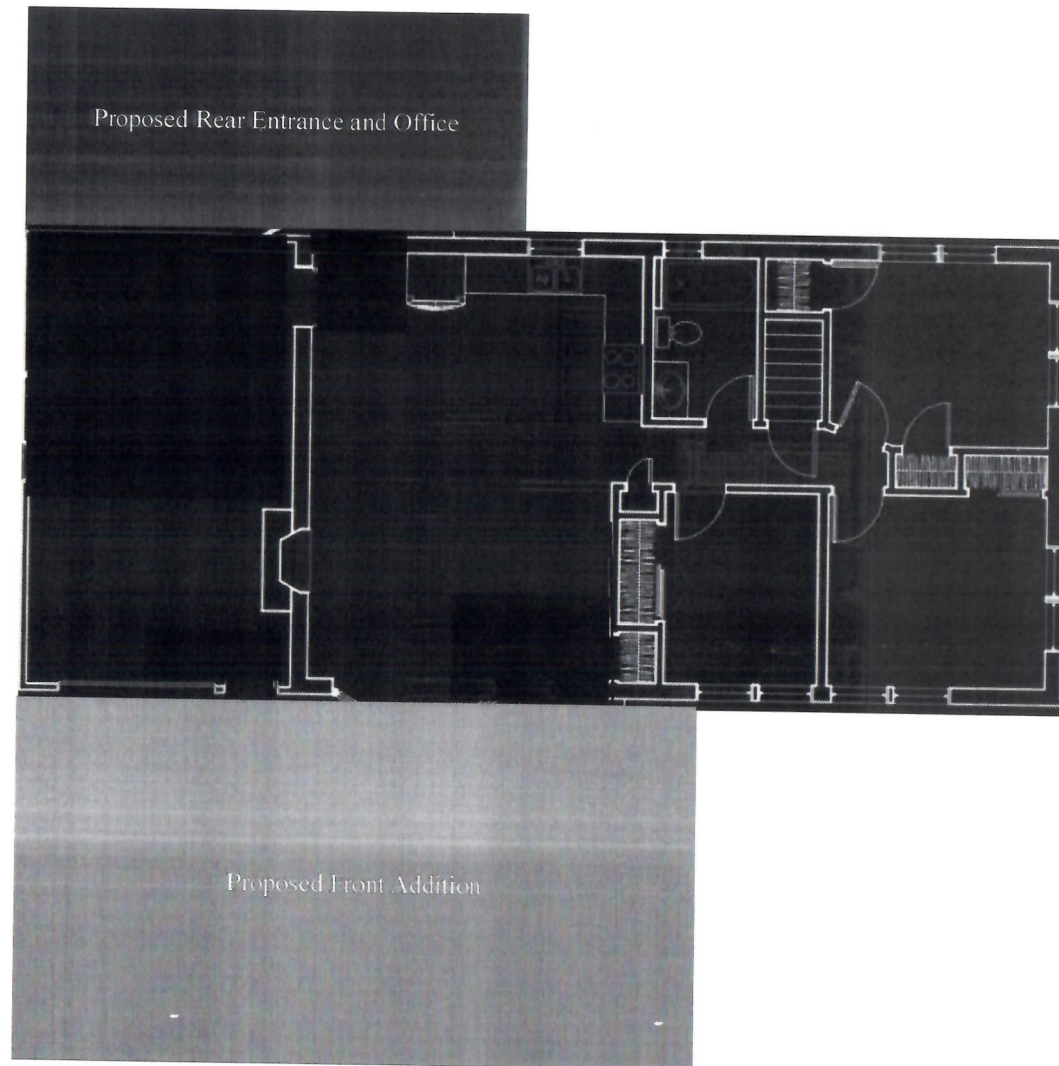
Bob Smith



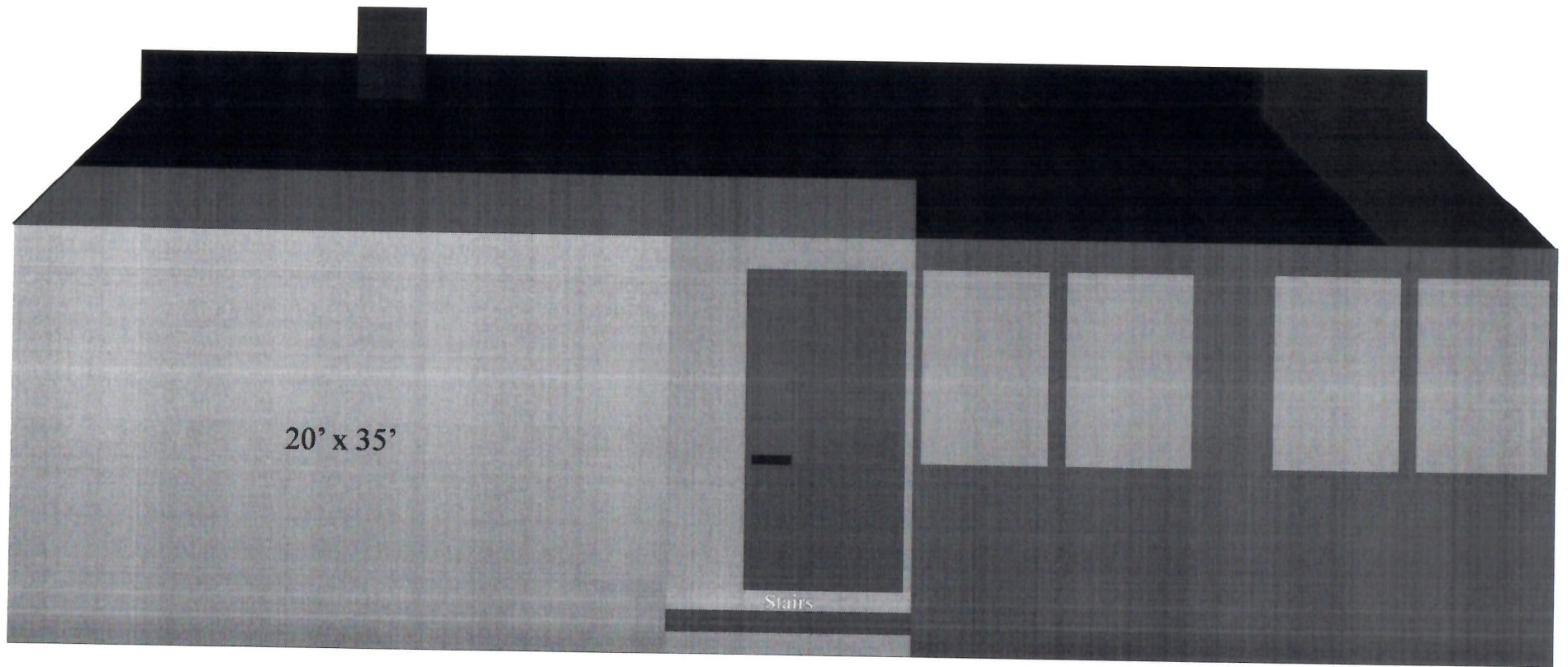
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Pam Smith

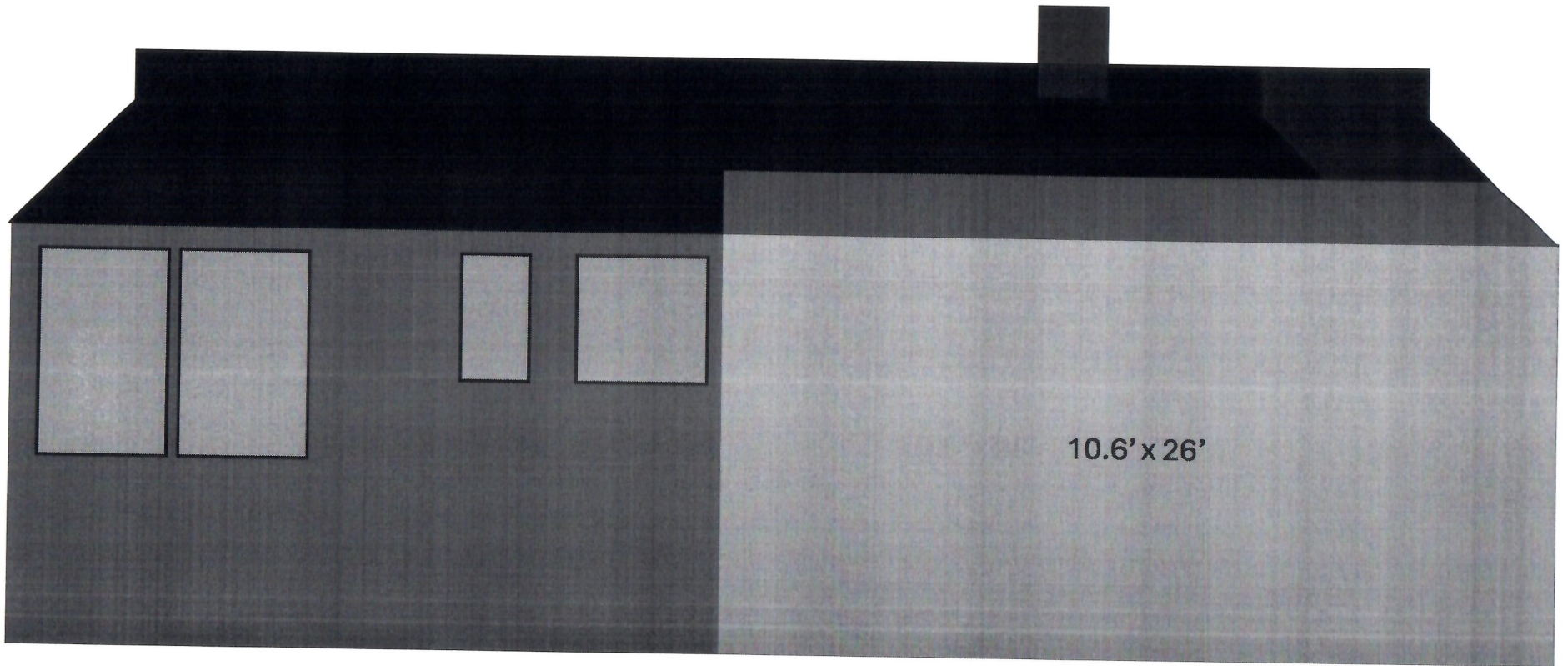
Conceptual Elevation Plan  
April 1, 2024



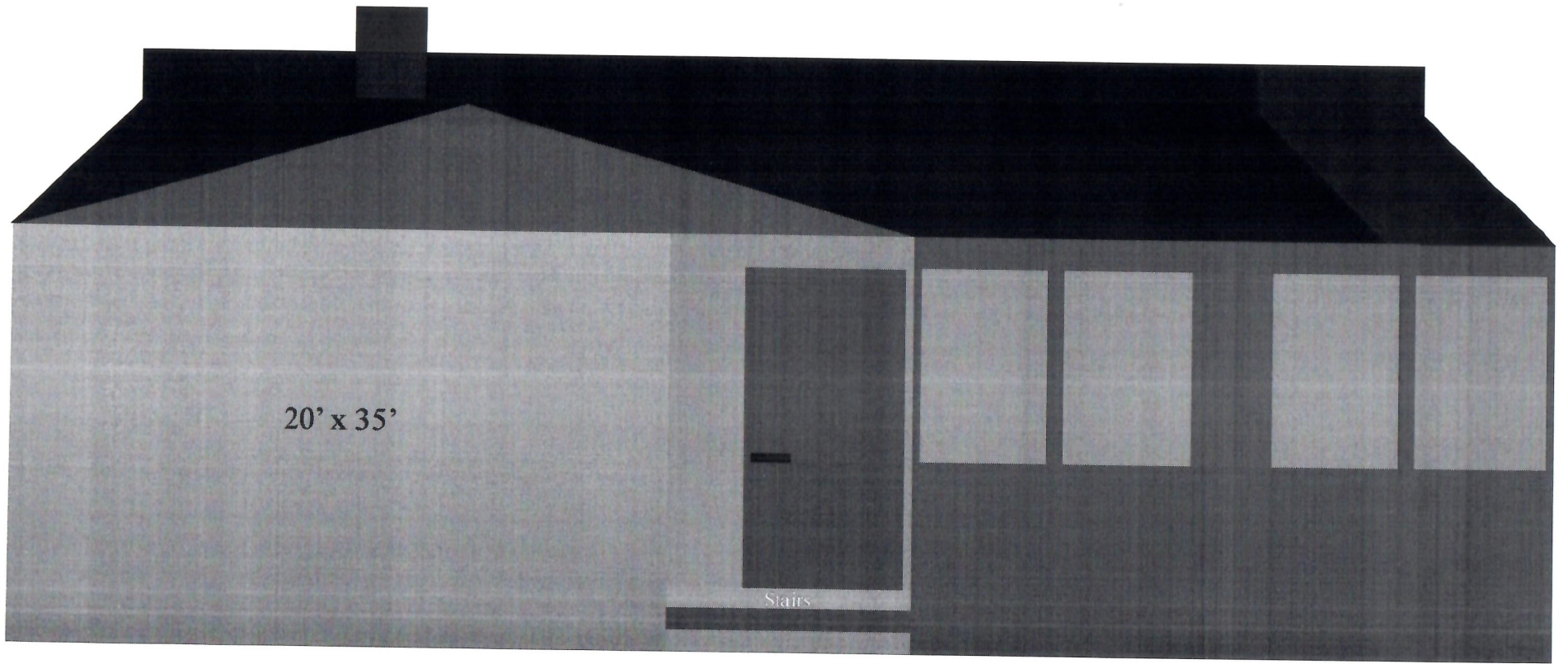
Front Conceptual Design 1: 0 to 6 Pitch or Flat Roof



Rear Conceptual Design 1: 0 to 6 Pitch or Flat Roof

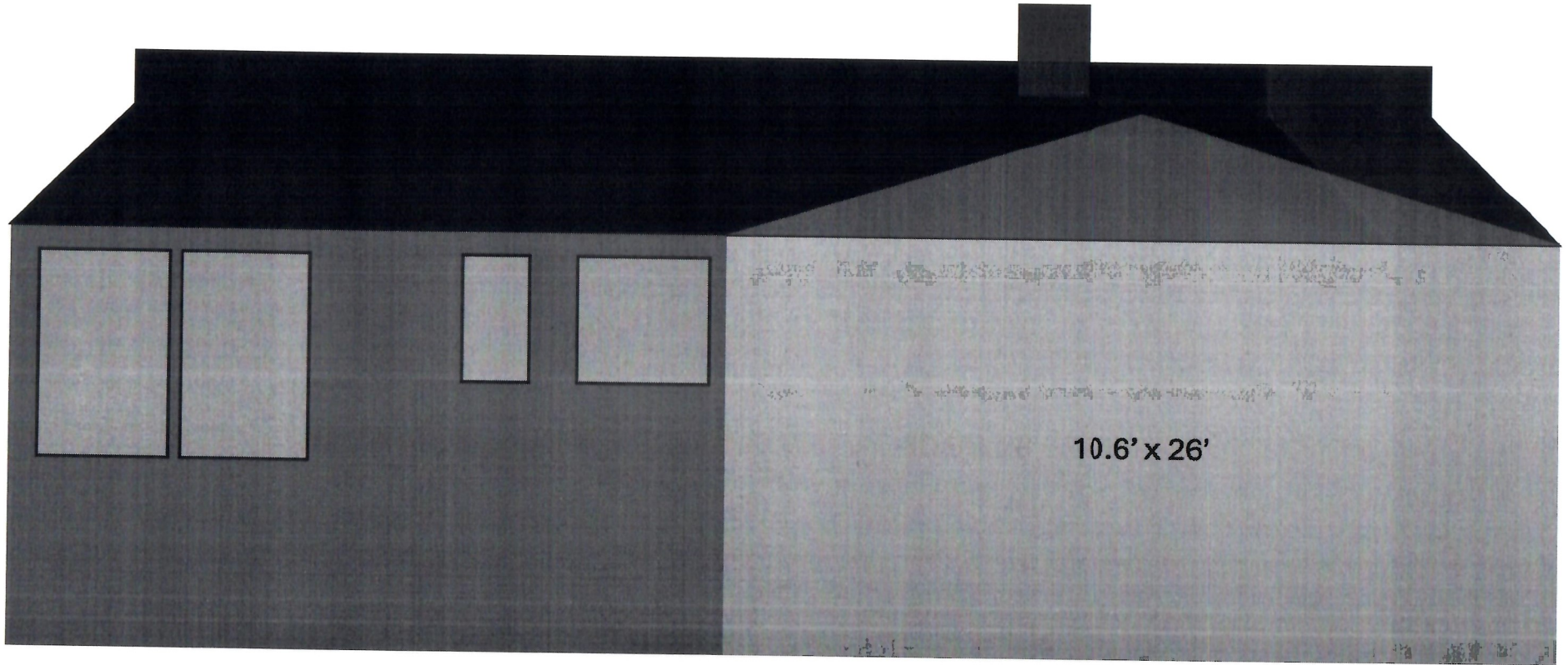


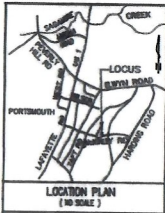
Front Conceptual Design 2: Peaked Roof



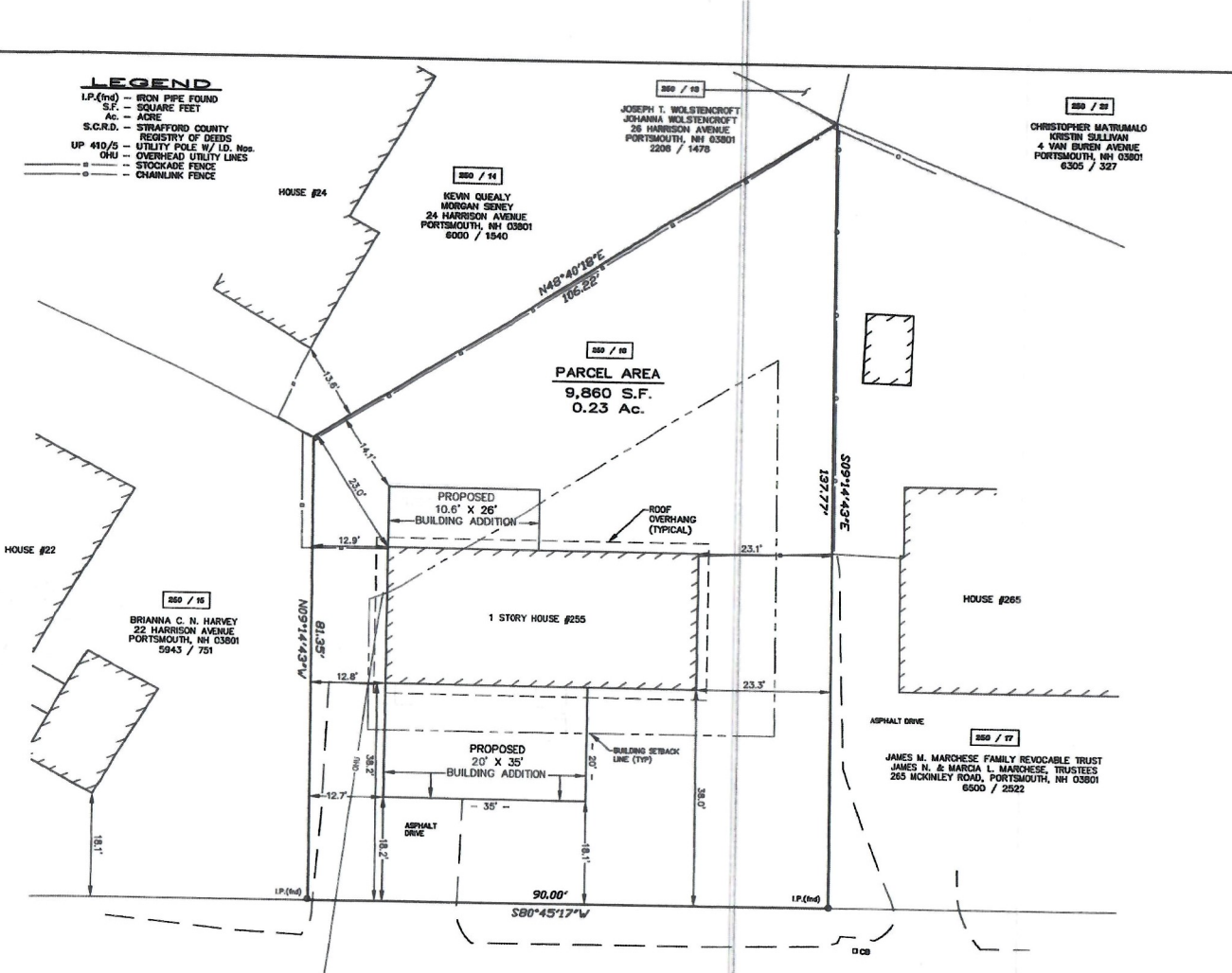


Rear Conceptual Design 2: Peaked Roof





**LEGEND**  
 I.P.(nd) - IRON PIPE FOUND  
 S.F. - SQUARE FEET  
 Ac. - ACRE  
 S.C.R.D. - STRAFFORD COUNTY  
 REGISTRY OF DEEDS  
 UP 410/5 - UTILITY POLE W/ LD. Nos.  
 OHU - OVERHEAD UTILITY LINES  
 - STOCKRADE FENCE  
 - CHAINLINK FENCE



- NOTES:**
- OWNER OF RECORD:  
 JOSHUA P. LANZETTA  
 255 MCKINLEY ROAD  
 PORTSMOUTH, NEW HAMPSHIRE 03801  
 R.C.R.D. VOLUME 5793, PAGE 16
  - 250 / 18 - DENOTES TAX MAP AND PARCEL NUMBER.
  - PARCEL AREA = 9,860 S.F. / 0.23 Ac.
  - THE INTENT OF THIS PLAN IS TO DEPICT PROPOSED BUILDING ADDITIONS FOR A VARIANCE APPLICATION.
  - ZONING DISTRICT IS SRB  
 DIMENSIONAL REQUIREMENTS:  
 MINIMUM LOT AREA = 15,000 S.F.  
 MINIMUM FRONTAGE = 100 FEET  
 BUILDING YARD REQUIREMENTS:  
 FRONT SETBACK = 30 FEET  
 SIDE SETBACK = 10 FEET  
 REAR SETBACK = 30 FEET  
 MAXIMUM BUILDING HEIGHT = 35 FEET (SLOPED)  
 MINIMUM BUILDING COVERAGE = 30 FEET (FLAT)  
 MINIMUM OPEN SPACE = 20 PERCENT  
 = 40 PERCENT
  - THE SUBJECT PARCEL IS OUTSIDE OF THE 0.2 PERCENT ANNUAL CHANCE FLOODPLAIN AS SHOWN ON FLOOD INSURANCE RATE MAP COMMUNITY NUMBER 330136, PANEL 0270; SUFFIX F; MAP NUMBER 3301SC0270F; EFFECTIVE DATE JANUARY 29, 2021.
  - BASES OF BEARING IS NH STATE PLANE (NAD83) AND VERTICAL DATUM IS NAVD88 BASED ON GPS OBSERVATION DATED NOVEMBER 29, 2023.

**REFERENCE PLANS:**  
 1.) PLAN OF LOTS - PANS "A" - ELWYN PARK, PORTSMOUTH, N.H.  
 S.M.E. 1" = 40'; DATED: MAY 1956; BY: JOHN W. DURGIN,  
 CIVIL ENGINEERS. RECORDED R.C.R.D. PLAN 02530.

NO.	DATE	DESCRIPTION	BY	CHK
23-256#		BOUNDARY	23-12	1-3
PROJECT NO		TYPE	FIELDBOOK & PAGES	

250 / 19  
 ROBERT W. SMITH  
 PAMELA W. SMITH  
 240 MCKINLEY ROAD  
 PORTSMOUTH, NH 03801  
 3067 / 1136

250 / 17  
 CHRISTOPHER J. DELISLE  
 RACHEL A. DELISLE  
 250 MCKINLEY ROAD  
 PORTSMOUTH, NH 03801  
 5622 / 2670

250 / 16  
 RICHARD D. BRABAZON  
 LOUISE M. BRABAZON  
 260 MCKINLEY ROAD  
 PORTSMOUTH, NH 03801  
 3003 / 2547

**VARIANCE PLAN**  
 PREPARED FOR  
**JOSHUA LANZETTA**  
 TAX MAP 250, LOT No. 16  
 255 MCKINLEY ROAD  
 CITY OF PORTSMOUTH  
 COUNTY OF ROCKINGHAM  
 STATE OF NEW HAMPSHIRE

DRAWN BY: JDF FILE: MSA\2564\DV23-2564  
 SCALE: 1" = 10' DATE: MARCH 8, 2024

1" = 10'  
 0 10 20 30 40

**Moganeary Survey Associates**  
 of NEW ENGLAND  
 P.O. Box 681 - 24 CHESTNUT STREET  
 DOVER, NH 03820 (603) 742-0811

SURVEYING - PLANNING - CONSULTING

" I HEREBY CERTIFY THAT THIS PLAN IS BASED ON AN ACTUAL GROUND SURVEY PERFORMED WITH A TOTAL STATION, BY ME OR THOSE UNDER MY DIRECT SUPERVISION AND THAT, TO THE BEST OF MY KNOWLEDGE AND BELIEF, SAID SURVEY MEETS OR EXCEEDS THE MINIMUM PRECISION REQUIREMENTS FOR SURVEY CLASSIFICATION "U" AS SET FORTH IN TABLE 5001.1 OF THE NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES OF THE BOARD OF LICENSEURE FOR LAND SURVEYORS."