

**APPLICATION OF O'BRIEN FAMILY REVOCABLE TRUST**  
**3 MOEBUS TERRACE, PORTSMOUTH**  
**Map 207, Lot 21**

**APPLICANT'S NARRATIVE**

I. **THE PROPERTY:**

The applicants, Kevin and Sandy O'Brien, acquired the property located at 3 Moebus Terrace, which consists of a single family dwelling with attached garage, last fall, after selling their previous home on Brigham Lane in Portsmouth, where they resided for over fifteen years. The property is in the SRB zone and is non-conforming as to lot area and lot area per dwelling unit. An existing elevated deck encroaches into the rear yard setback.

According to city tax records, the existing dwelling dates back to 1970. The dwelling is functionally obsolete. It has substandard insulation, unsafe and non-compliant windows, and mold. The existing dwelling is served by a private septic system in proximity to Little Harbor.

The O'Briens have considered carefully whether or not to renovate and remodel the existing structure to address these deficiencies, however, the cost to do so and appropriately modernize the dwelling would be prohibitive. Accordingly, we are proposing to raze the existing dwelling structure and replace it with a new dwelling which will meet all dimensional requirements under the zoning ordinance except for the pre-existing lot area deficiency, which cannot be remedied.

The existing elevated deck is approximately 8 feet high and encroaches into the 30 foot rear yard setback. By virtue of its height and the surrounding topography of the neighborhood, the deck significantly impacts the privacy of the property to the rear. The project will result in the deck being removed and the rear yard setback requirement being fully observed. The project will also result in the discontinuance of the existing septic system as the new home will be tied into city sewer.

The project requires relief from Section 10.521 – Table of Dimensional Standards, to permit lot area and lot area per dwelling of 10,823 square feet where 15,000 square feet is the minimum required. All other dimensional requirements of the ordinance are satisfied.<sup>1</sup>

We have submitted herewith a site plan and building plans which demonstrate the applicants' preferred building design elements. While the applicants are committed to this design, it remains possible that the exact location and dimensions of some of the proposed improvements may change slightly as the proposal moves forward. For example, as the site plan notes, the final configuration of the proposed patio and front

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<sup>1</sup> The front yard setback is determined by averaging the existing alignments of the principal buildings on the abutting properties under section 10.516.10, which would work out to a required 26 foot front yard.

steps will be determined in the field. Nevertheless, the project will meet all applicable setback, height and lot coverage requirements.

## **II. CRITERIA:**

The applicants believe the within Application meets the criteria necessary for the Board to grant the requested variance.

**Granting the requested variances will not be contrary to the spirit and intent of the ordinance nor will it be contrary to the public interest.** The “public interest” and “spirit and intent” requirements are considered together pursuant to Malachy Glen Associates v. Chichester, 152 NH 102 (2007). The test for whether or not granting a variance would be contrary to the public interest or contrary to the spirit and intent of the ordinance is whether or not the variance being granted would substantially alter the characteristics of the neighborhood or threaten the health, safety and welfare of the public.

The essentially residential characteristics of the neighborhood would not be altered by this project. The existing structure and lot are already non-compliant with the lot area and the identical non-conformity resulting from this project will in no way compromise the neighborhood.

Were the variances to be granted, there would be no change in the essential characteristics of the neighborhood, nor would public health, safety or welfare be threatened in any way, but would, in fact, be enhanced as a result of the elimination of the existing septic system and the removal of the existing, non-compliant elevated deck.

**Substantial justice would be done by granting the variance.** Whether or not substantial justice will be done by granting a variance requires the Board to conduct a balancing test. If the hardship upon the owner/applicant outweighs any benefit to the general public in denying the variance, then substantial justice would be done by granting the variance. It is substantially just to allow a property owner the reasonable use of his or her property.

In this case, there is no benefit to the public in denying the variances that is not outweighed by the hardship upon the owner. There is no way for the applicants to comply with the lot area requirements given the size of the lot. Accordingly, the loss to the applicant clearly outweighs any gain to the public if the applicants were required to conform to the ordinance.

**The values of surrounding properties will not be diminished by granting the variance.** The proposal will result in a brand new, code-compliant dwelling. This will increase the value of the applicants’ property and those around it. The property will become fully compliant with the rear yard setback by eliminating the raised deck facing the neighbor to the rear, which currently is the property most affected by the existing

setback nonconformities. The values of surrounding properties will not be negatively affected in any way.

**There are special conditions associated with the property which prevent the proper enjoyment of the property under the strict terms of the zoning ordinance and thus constitute unnecessary hardship.** The property is non-conforming as to lot area, lot area per dwelling, and rear yard setback. Any residential development of this property would require relief from the lot area requirements.

**The use is a reasonable use.** The proposal is a residential use in a residential zone.

**There is no fair and substantial relationship between the purpose of the ordinance as it is applied to this particular property.** The purpose of the lot area requirements is to prevent overcrowding of land. There has been a single family dwelling on this lot since at least 1970 without any negative impacts whatsoever.

Accordingly, the relief requested here would not in any way frustrate the purpose of the ordinance and there is no fair and substantial relationship between the purpose of the lot area requirements and their application to this property.

### **III. Conclusion.**

For the foregoing reasons, the applicants respectfully request the Board grant the variances as requested and advertised.

Respectfully submitted,

Dated: March 26, 2024

*John K. Bosen*  
John K. Bosen, Esquire



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

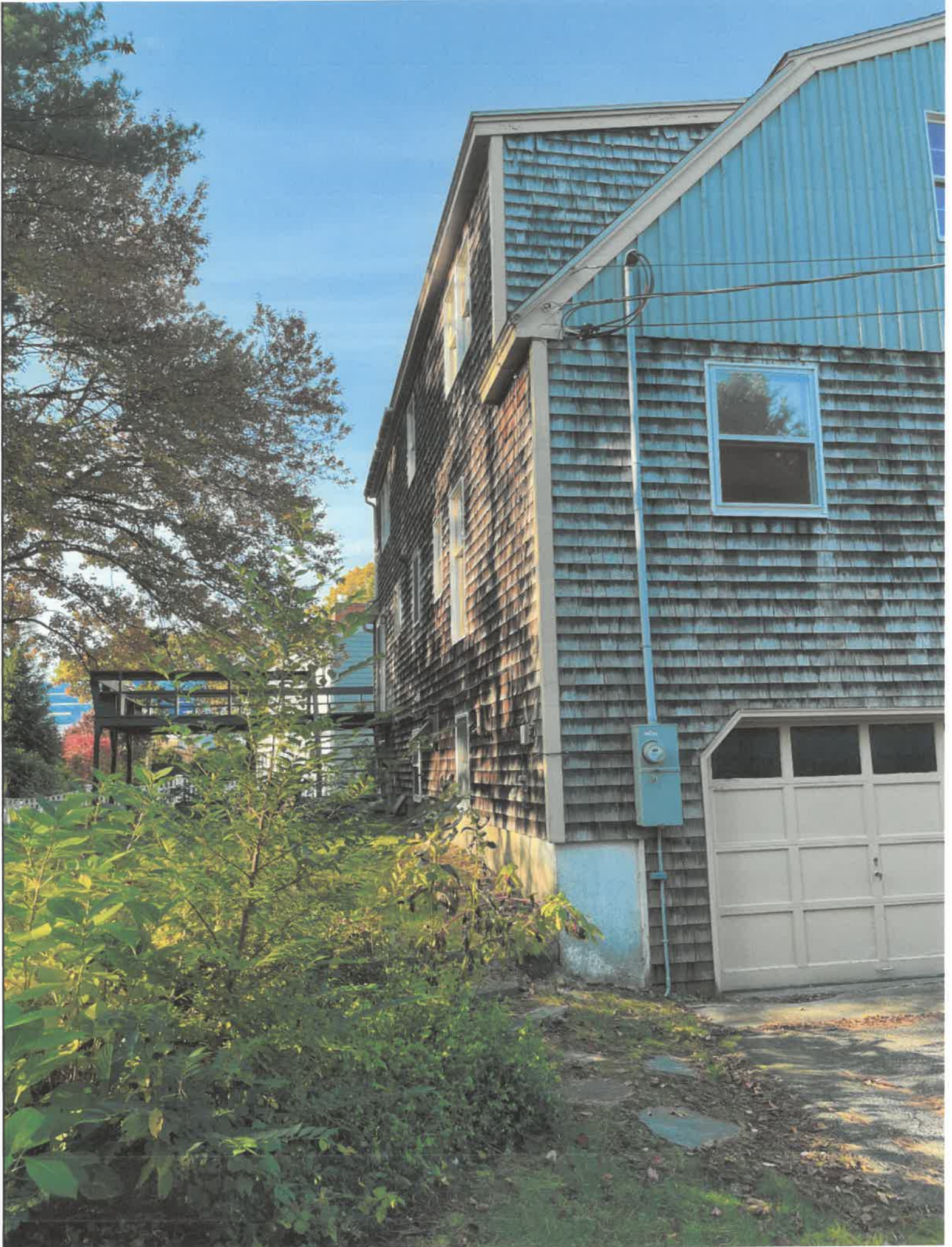
City of Portsmouth, NH makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.

Geometry updated 08/24/2023  
Data updated 3/9/2022

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

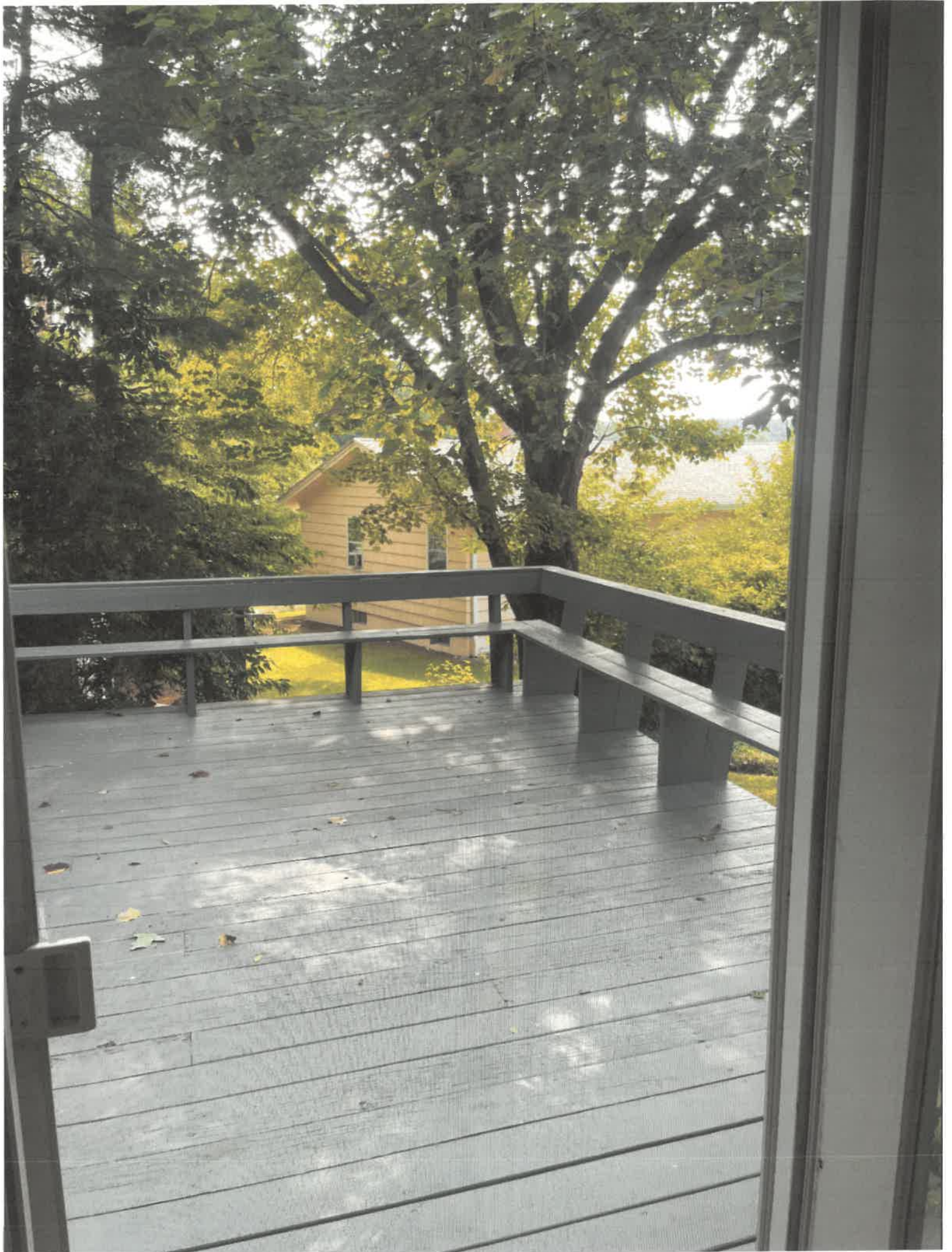














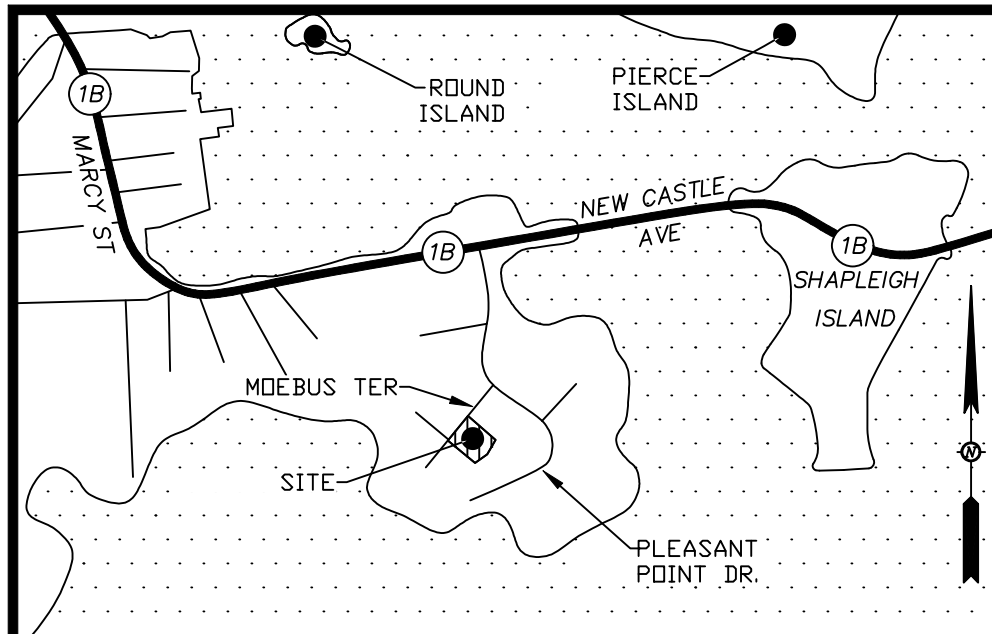




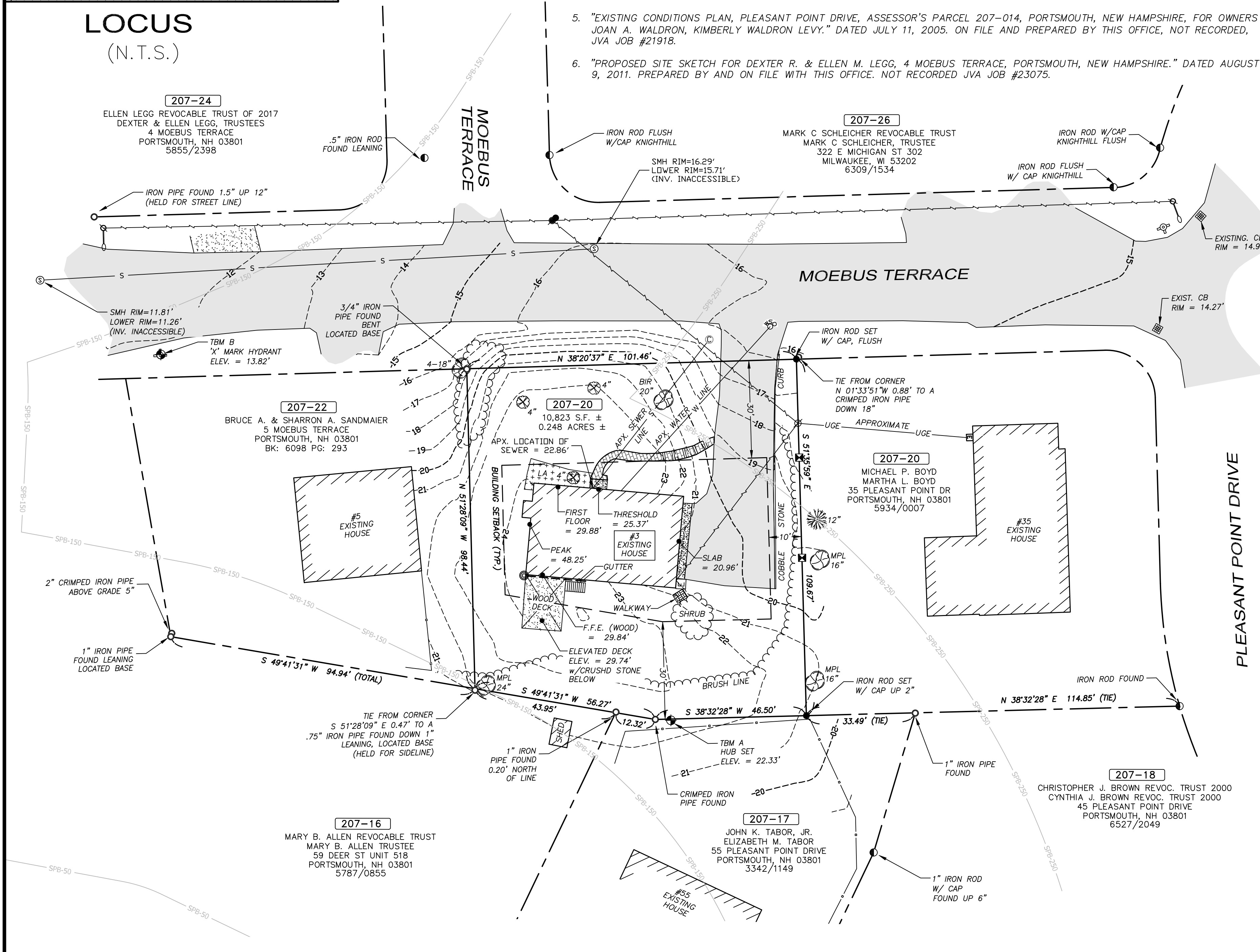








**LOCUS**  
(N.T.S.)

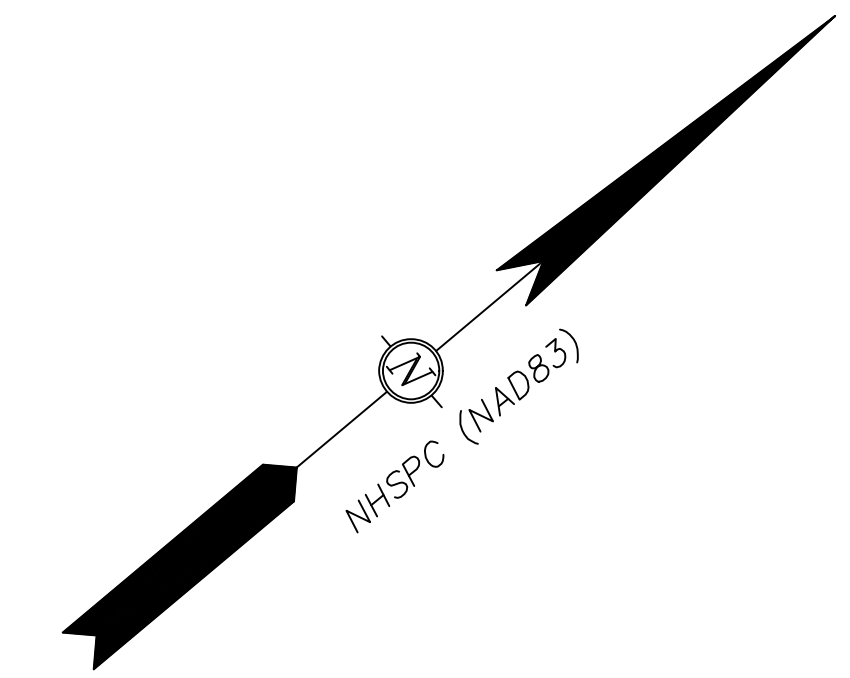


**REFERENCE PLANS:**

- "PLAN OF LOTS, NEWCASTLE AVENUE, PORTSMOUTH NH, FOR ROBERT A. MOEBUS & HENRY C. SIVK." DATED OCT. 1952 AND PREPARED BY JOHN W. DURGIN CIVIL ENGINEERS RCRD PLAN #02160-B.
- "LOT LINE ADJUSTMENT PLAN, FOR LAND OWNED BY STEPHEN J. LITTLE, KNOWN AS TAX MAP 207 LOT 25, LOCATED ALONG 2 MOEBUS TERRACE, & FOR ADJOINING LAND OWNED BY DONALD H. SARGENT LIVING TRUST, KNOWN AS TAX MAP 207 LOT 26, LOCATED ALONG 33 PLEASANT POINT DRIVE, PORTSMOUTH, N.H. COUNTY OF ROCKINGHAM." LAST REVISED OCTOBER 14, 2008 AND PREPARED BY KNIGHT HILL LAND SURVEYING SERVICES INC. RCRD PLAN #D-35680.
- "PLAN OF LOTS, NEWCASTLE AVENUE, PORTSMOUTH NH, FOR ROBERT A. MOEBUS & HENRY C. SIVK." LAST REVISED JULY 1955 PREPARED BY JOHN W. DURGIN CIVIL ENGINEERS. NOT RECORDED, AND ON FILE WITH THIS OFFICE. JWD FN: 2239, PN: 7187.
- "PLAN OF LOT, PLEASANT POINT DRIVE, PORTSMOUTH, N.H." DATED JULY 1970 AND PREPARED BY JOHN W. DURGIN, CIVIL ENGINEERS. NOT RECORDED AND ON FILE WITH THIS OFFICE. JWD FN: 2239.
- FIELD NOTES, WORKSHEETS, AND PLANS BY JOHN W. DURGIN. NOT RECORDED AND ON FILE WITH THIS OFFICE. JWD FN: 2239.
- "EXISTING CONDITIONS PLAN, PLEASANT POINT DRIVE, ASSESSOR'S PARCEL 207-014, PORTSMOUTH, NEW HAMPSHIRE, FOR OWNERS JOAN A. WALDRON, KIMBERLY WALDRON LEVY." DATED JULY 11, 2005. ON FILE AND PREPARED BY THIS OFFICE, NOT RECORDED, JVA JOB #21918.
- "PROPOSED SITE SKETCH FOR DEXTER R. & ELLEN M. LEGG, 4 MOEBUS TERRACE, PORTSMOUTH, NEW HAMPSHIRE." DATED AUGUST 9, 2011. PREPARED BY AND ON FILE WITH THIS OFFICE. NOT RECORDED JVA JOB #23075.

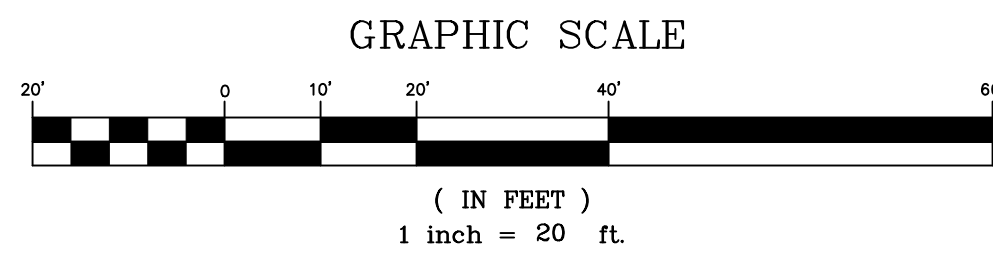
**NOTES:**

- OWNER OF RECORD.....O'BRIEN FAMILY REVOCABLE TRUST OF 2018  
PAUL K. & SANDRA C. O'BRIEN TRUSTEES  
ADDRESS.....20 BRIGHAM LANE PORTSMOUTH, NH 03801  
DEED REFERENCE.....BK: 6510 PG: 2487  
TAX SHEET / LOT.....207/21
- ZONED: .....SINGLE RESIDENCE B (SRB)  
MINIMUM LOT AREA .....15,000 S.F. FRONT YARD SETBACK .....30'  
FRONTAGE .....100' SIDE YARD SETBACK .....10'  
SLOPED ROOF HEIGHT ...35' REAR YARD SETBACK .....30'  
BUILDING COVERAGE .....20%
- THE LOCATION OF ALL UNDERGROUND UTILITIES SHOWN HEREON ARE APPROXIMATE AND ARE BASED UPON THE FIELD LOCATION OF ALL ABOVE GROUND VISIBLE STRUCTURES (IE CATCH BASINS, MANHOLES, WATER GATES ETC.) AND INFORMATION COMPILED FROM PLANS PROVIDED BY UTILITY COMPANIES AND GOVERNMENTAL AGENCIES. ALL CONTRACTORS SHOULD NOTIFY, IN WRITING, SAID AGENCIES PRIOR TO ANY EXCAVATION WORK AND CALL DIG-SAFE @ 1-888-DIG-SAFE. THE CITY OF PORTSMOUTH DOES NOT HAVE MUCH INFORMATION ON MOEBUS TERRACE, AND WAS UNABLE TO PROVED ANY CERTAINTY TO THE EXISTING LINES.
- HORIZONTAL DATUM: NAD83, VERTICAL DATUM: NAVD88. ESTABLISHED BY SURVEY GRADE GPS OBSERVATION AND PROCESSED BY OPUS.
- THE PARCEL SHOWN HEREON LIES WITHIN ZONE X (AREA OF MINIMAL FLOOD HAZARD) AS IDENTIFIED ON FLOOD INSURANCE RATE MAP, ROCKINGHAM COUNTY, NEW HAMPSHIRE, MAP NUMBER 33015C0278F, EFFECTIVE DATE 1/29/2021 BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY.
- CONTRACTOR TO VERIFY SITE BENCHMARKS BY LEVELING BETWEEN 2 BENCHMARKS PRIOR TO THE ESTABLISHMENT OF ANY GRADES OR ELEVATIONS. DISCREPANCIES ARE TO BE REPORTED TO JAMES VERRA AND ASSOCIATES, INC.
- SHORELAND PROTECTION BUFFER SHOWN BASED ON AERIAL PHOTOGRAPHY FROM GRANIT, AND IS NOT THE RESULT OF A FIELD SURVEY BY THIS OFFICE.



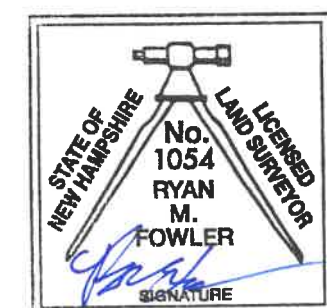
**LEGEND:**

- ..... IRON REBAR SET
- ..... IRON ROD FOUND
- ..... IRON PIPE FOUND
- ..... WOOD FENCE
- ▒ ..... BRICK
- ..... CONCRETE
- ..... UTILITY POLE
- ..... GUY
- ..... OVERHEAD WIRES
- ..... UTILITY POLE WITH ARM & LIGHT
- ⊞ ..... ELECTRIC METER
- RCRD ..... ROCKINGHAM COUNTY REGISTRY OF DEEDS
- 101-03 ..... TAX SHEET / LOT NO.
- LA ..... LANDSCAPED AREA
- ..... CATCH BASIN
- ..... SEWER MANHOLE
- W ..... WATER
- S ..... SEWER
- ..... WATER SHUT OFF VALVE
- ..... HYDRANT
- ..... DECIDUOUS TREE
- ..... CONIFEROUS TREE
- ..... STONE WALL
- ⊕ ..... TEMPORARY BENCHMARK
- ..... SHRUB
- ..... CLEANOUT
- SPB ..... SHORELAND PROTECTION BUFFER
- BIR ..... BIRCH
- MPL ..... MAPLE
- UGE ..... UNDERGROUND ELECTRIC



**SURVEYOR'S CERTIFICATION**

"I HEREBY CERTIFY THAT THIS SURVEY AND PLAT WERE PREPARED BY ME OR THOSE UNDER MY DIRECT SUPERVISION AND IS THE RESULT OF AN ACTUAL FIELD SURVEY MADE ON THE GROUND AND HAS AN ERROR OF CLOSURE OF GREATER ACCURACY THAN ONE PART IN FIFTEEN THOUSAND (1:15,000)."



3/20/2024  
DATE

LICENSED LAND SURVEYOR

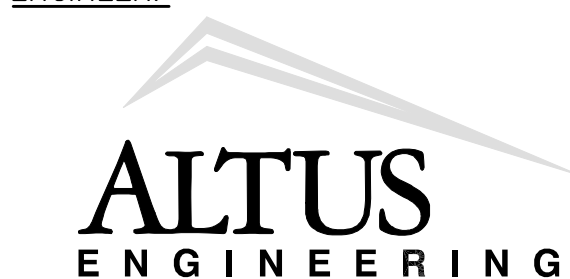
SURVEYOR:



101 SHATTUCK WAY, SUITE 8,  
NEWINGTON, N.H., 03801-7876  
603-436-3557

JOB NO: 23-2099

ENGINEER:



133 Court Street Portsmouth, NH 03801  
(603) 433-2335 www.altus-eng.com

ISSUED FOR:

ZBA SUBMITTAL

ISSUE DATE:

3/20/24

REVISIONS

NO.	DESCRIPTION	BY	DATE
1			

DRAWN BY:

TAW/RMF

APPROVED BY:

RMF

DRAWING FILE:

23-2099EXCON.DWG

SCALE:

22" x 34" - 1" = 20'  
11" x 17" - 1" = 40'

APPLICANT:

O'BRIEN FAMILY TRUST OF 2018  
TRUSTEES  
PAUL K. & SANDRA C. O'BRIEN  
20 BRIGHAM LANE  
PORTSMOUTH, NH 03801

OWNER:

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PORTSMOUTH, NH 03801

PROJECT:

**3 MOEBUS  
TERRACE  
TAX MAP 207  
LOT 21  
PORTSMOUTH, NH**

TITLE:

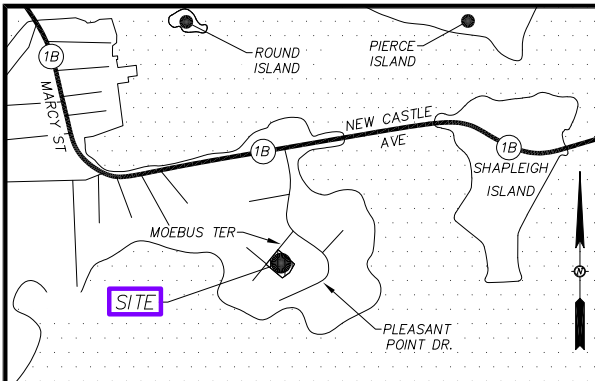
**EXISTING  
CONDITIONS  
PLAN**

SHEET NUMBER:

**S-1**

ALTUS JOB#5503





**REFERENCE PLAN**

"EXISTING CONDITIONS PLAN, TAX MAP 207, LOT 21, 3 MOEBUS TERRACE, PORTSMOUTH, NH", BY JAMES VERRA AND ASSOCIATES, INC., DATED DECEMBER 6, 2023.

**ZONING SUMMARY**

ZONE: SRB (SINGLE RESIDENCE B) – EXISTING RESIDENCE TO BE REPLACED WITH SAME  
 EXISTING LOT AREA: 0.248 AC ± (10,823 S.F. ±)

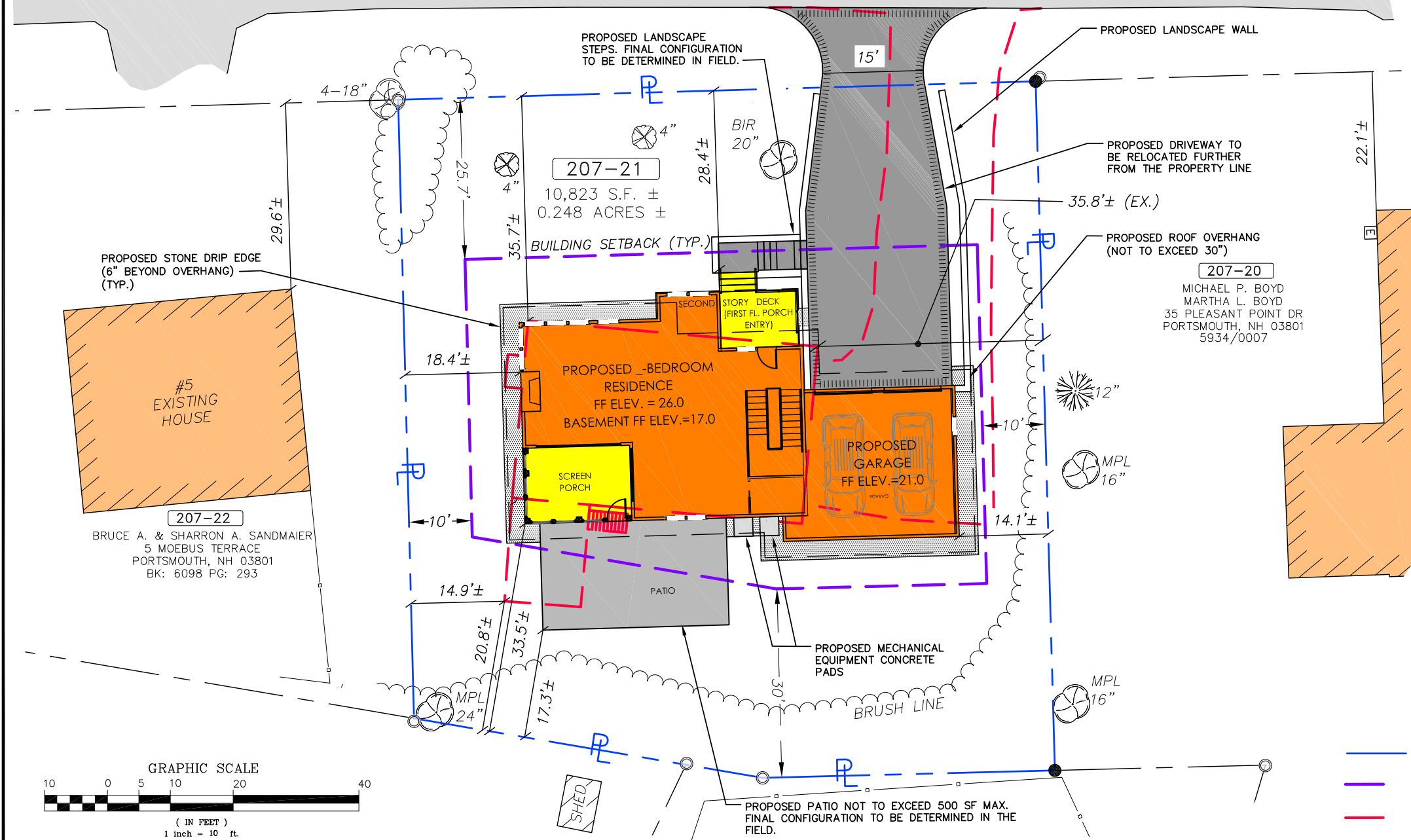
**DIMENSIONAL REQUIREMENTS**

	REQUIRED	EXISTING	PROPOSED
MIN. LOT AREA:	15,000 S.F.	10,823 S.F. ±	10,823 S.F. ±
MIN. LOT AREA PER DWELLING UNIT:	15,000 S.F.	10,823 S.F. ±	10,823 S.F. ± **
DWELLING UNITS:	–	1	1
MIN. STREET FRONTAGE:	100'	101'+	101'+
MIN. LOT DEPTH:	100'	103.5' ± (AVERAGE)	103.5' ± (AVERAGE)
FRONT SETBACK: *	30' (25.7')	35.7' ±	28.4' ± (NEW STEPS)
SIDE SETBACK (LEFT):	10'	35.8' ±	14.1' ±
SIDE SETBACK (RIGHT):	10'	14.9' ±	18.4' ±
REAR SETBACK:	30'	20.8' ±	33.5' ±
MAX. HEIGHT (SLOPED ROOF):	35'	<35'	<35' (PROP.)
MAX. BUILDING COVERAGE:	20 %	14.3 % ± (INCL. DECK)	19.8 % ± (INCL. DECK, PORCH, STEPS)
MIN. OPEN SPACE:	40 %	67.9 % ±	62.2 % ±

\* FRONT SETBACK CAN BE THE AVERAGE OF ABUTTING PROPERTIES (29.6' + 22.1' / 2 = 25.7')  
 \*\* "STEPS/DECK" ARE ALLOWED 5' INTO THE FRONT SETBACK. THE PROP. STEPS MEET THIS REQ. WITH ADJUSTED SETBACK BASED ON AVERAGE ADJACENT FRONT SETBACKS  
 \*\* EXISTING LOT OF RECORD

LOCUS (N.T.S.)

**MOEBUS TERRACE**

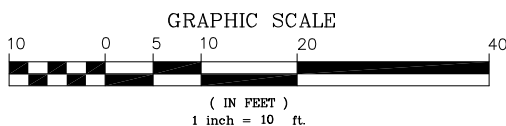


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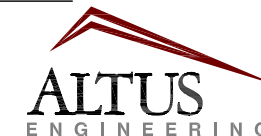
- THE SOLE PURPOSE OF THIS PLAN IS TO OBTAIN A BOARD OF ADJUSTMENT SITE PLAN APPROVAL TO REPLACE THE EXISTING RESIDENCE WITH A SLIGHTLY LARGER RESIDENCE WHILE CORRECTING A SETBACK DEFICIENCY (DECK TO BE REMOVED).
- THERE ARE NO WETLANDS ON THE PROPERTY.
- THE MAJORITY OF THE PARCEL IS LOCATED IN THE 150-FOOT TO 250-FOOT PORTION OF THE NHDES SHORELAND PROTECTION BUFFER.
- BUILDING COVERAGE CALCULATIONS:  
 EX. RESIDENCE (1,325 SF±) + EX. DECK (225 SF±) = 1,550 SF±  
 1,550 SF ± / 10,823 SF = 14.3% ±  
 PROP. RESIDENCE (1,805 SF±) + PROP. FR. PORCH & STAIRS (130 SF±) + PROP. SCREEN PORCH (205 SF±) = 2,140 SF±  
 2,140 SF ± / 10,823 SF = 19.8% ± (FLEXIBILITY OF 25 SF)
- IMPERVIOUS COVERAGE/OPEN SPACE CALCULATIONS:  
 EX. BLDG/DECK (1,550 SF ±) + DRIVEWAY (1,700 SF±) + FRONT WALK & STEP (120 SF±) + COBBLESTONE CURB (30 SF±) + EX. WALK & CONCRETE SLAB (72 SF±) = 3,472 SF± = 32.1%  
 THEREFORE OPEN SPACE IS 67.9%  
 PROP. BLDG/DECK/PORCHES (2,140 SF±) + PROP. DRIVEWAY (1,265 SF±) + PROP. PATIO (500 SF±) + CONC. HVAC PADS (20 SF±) + RETAINING WALL/STONE/PAVER STEPS (150 SF±) = 4,075 SF± = 37.8% ±  
 THEREFORE 62.2% ± OPEN SPACE

**LEGEND:**

- ..... IRON REBAR SET
- ..... IRON ROD FOUND
- ..... IRON PIPE FOUND
- ..... WOOD FENCE
- ▒ ..... BRICK
- ▒ ..... CONCRETE
- RCRD ..... ROCKINGHAM COUNTY REGISTRY OF DEEDS
- 101-03 ..... TAX SHEET / LOT NO.
- LA ..... LANDSCAPED AREA
- ⊗ ..... DECIDUOUS TREE
- ⊗ ..... CONIFEROUS TREE
- ..... TREE LINE
- ..... SHRUB
- SPB ..... SHORELAND PROTECTION BUFFER
- BIR ..... BIRCH
- MPL ..... MAPLE
- ..... PROPERTY LINE
- ..... BUILDING SETBACK LINE
- ..... EXISTING BUILDING (TBR)



ENGINEER:



133 Court Street Portsmouth, NH 03801  
 (603) 433-2335 www.altus-eng.com

ISSUED FOR:

APPROVAL

ISSUE DATE:

MARCH 25, 2024

REVISIONS

NO.	DESCRIPTION	BY	DATE
0	INITIAL SUBMISSION	EDW	03/25/24

DRAWN BY:

RLH

APPROVED BY:

EDW

DRAWING FILE:

5503.DWG

SCALE:

22" x 34" - 1" = 10'  
 11" x 17" - 1" = 20'

APPLICANT:

O'BRIEN FAMILY TRUST OF 2018 TRUSTEES  
 PAUL K. & SANDRA C. O'BRIEN  
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 PORTSMOUTH, NH 03801  
 OWNER:  
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 PAUL K. & SANDRA C. O'BRIEN  
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 PORTSMOUTH, NH 03801

PROJECT:

**3 MOEBUS TERRACE**  
**TAX MAP 207**  
**LOT 21**  
**PORTSMOUTH, NH**

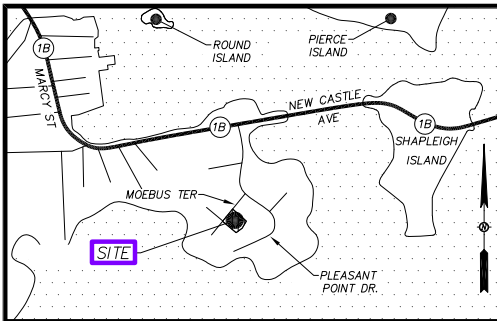
TITLE:

**BOARD OF ADJUSTMENT SITE PLAN**

SHEET NUMBER:

C - 1

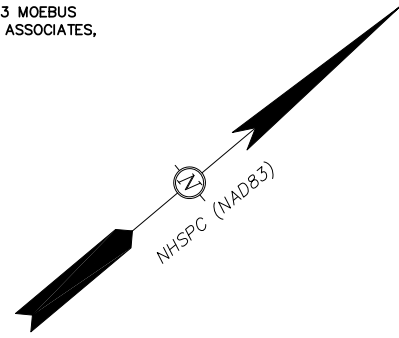
P5503



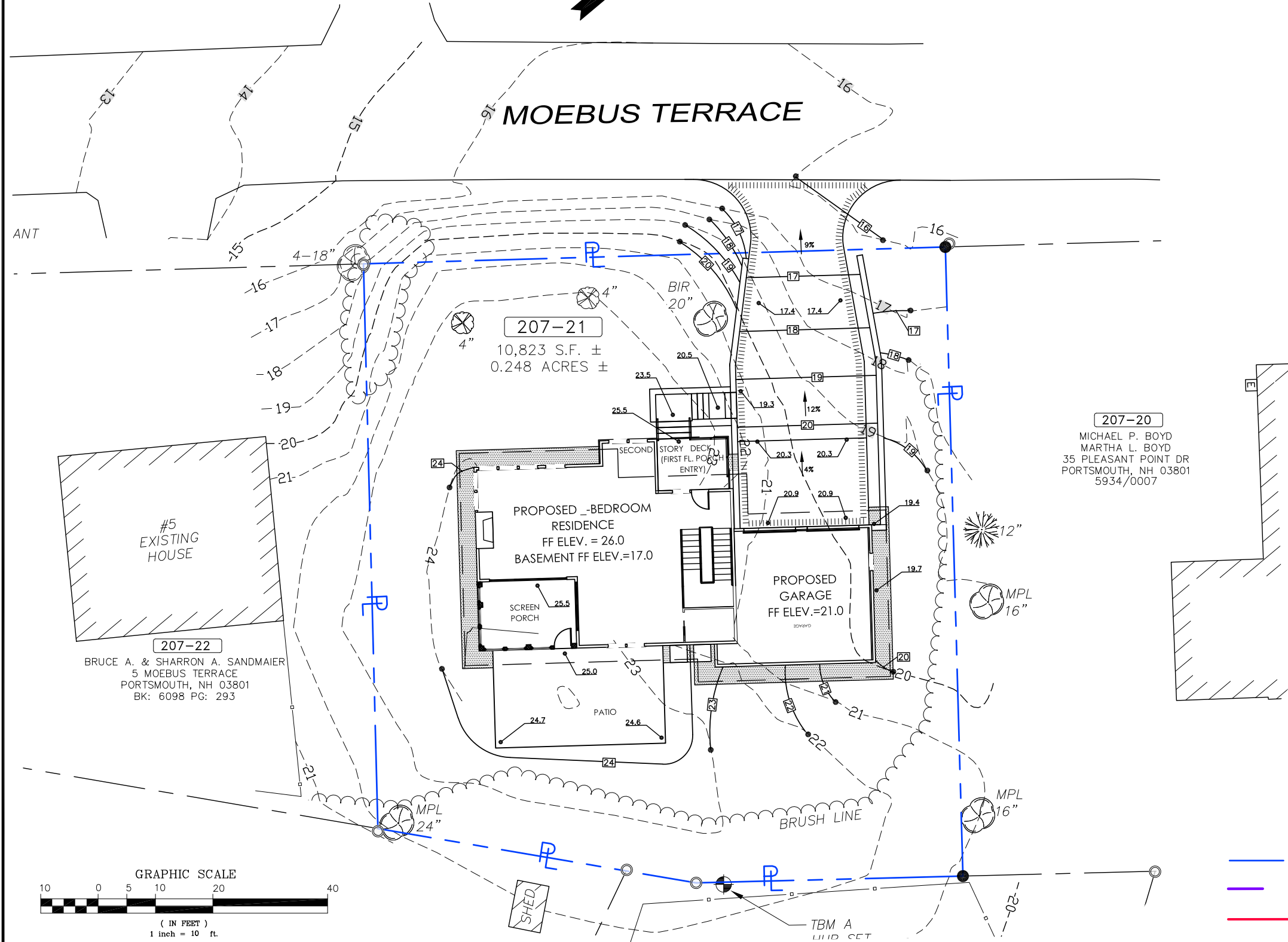
**REFERENCE PLAN**

"EXISTING CONDITIONS PLAN, TAX MAP 207, LOT 21, 3 MOEBUS TERRACE, PORTSMOUTH, NH", BY JAMES VERRA AND ASSOCIATES, INC., DATED DECEMBER 6, 2023.

LOCUS (N.T.S.)

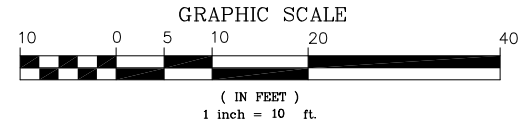


**MOEBUS TERRACE**



**207-20**  
MICHAEL P. BOYD  
MARTHA L. BOYD  
35 PLEASANT POINT DR  
PORTSMOUTH, NH 03801  
5934/0007

**207-22**  
BRUCE A. & SHARRON A. SANDMAIER  
5 MOEBUS TERRACE  
PORTSMOUTH, NH 03801  
BK: 6098 PG: 293



**NOTES:**

1. THE SOLE PURPOSE OF THIS PLAN IS TO OBTAIN APPROVAL FOR A BOARD OF ADJUSTMENT SITE PLAN APPROVAL TO REPLACE THE EXISTING RESIDENCE WITH A SLIGHTLY LARGER RESIDENCE & REMEDY A SETBACK DEFICIENCY (DECK TO BE REMOVED).
2. THERE ARE NO WETLANDS ON THE PROPERTY.
3. THE MAJORITY OF THE PARCEL IS LOCATED IN THE 150-FOOT TO 250-FOOT PORTION OF THE SHORELAND PROTECTION BUFFER.

ENGINEER:

133 Court Street Portsmouth, NH 03801  
(603) 433-2335 www.altus-eng.com

ISSUED FOR: **APPROVAL**

ISSUE DATE: **MARCH 25, 2024**

REVISIONS

NO.	DESCRIPTION	BY	DATE
0	INITIAL SUBMISSION	EDW	03/25/24

DRAWN BY: \_\_\_\_\_ RLH  
APPROVED BY: \_\_\_\_\_ EDW  
DRAWING FILE: \_\_\_\_\_ 5503.DWG

SCALE:  
22" x 34" - 1" = 10'  
11" x 17" - 1" = 20'

APPLICANT:  
O'BRIEN FAMILY TRUST OF 2018 TRUSTEES  
PAUL K. & SANDRA C. O'BRIEN  
20 BRIGHAM LANE  
PORTSMOUTH, NH 03801

OWNER:  
O'BRIEN FAMILY TRUST OF 2018 TRUSTEES  
PAUL K. & SANDRA C. O'BRIEN  
20 BRIGHAM LANE  
PORTSMOUTH, NH 03801

PROJECT:  
**3 MOEBUS TERRACE  
TAX MAP 207  
LOT 21  
PORTSMOUTH, NH**

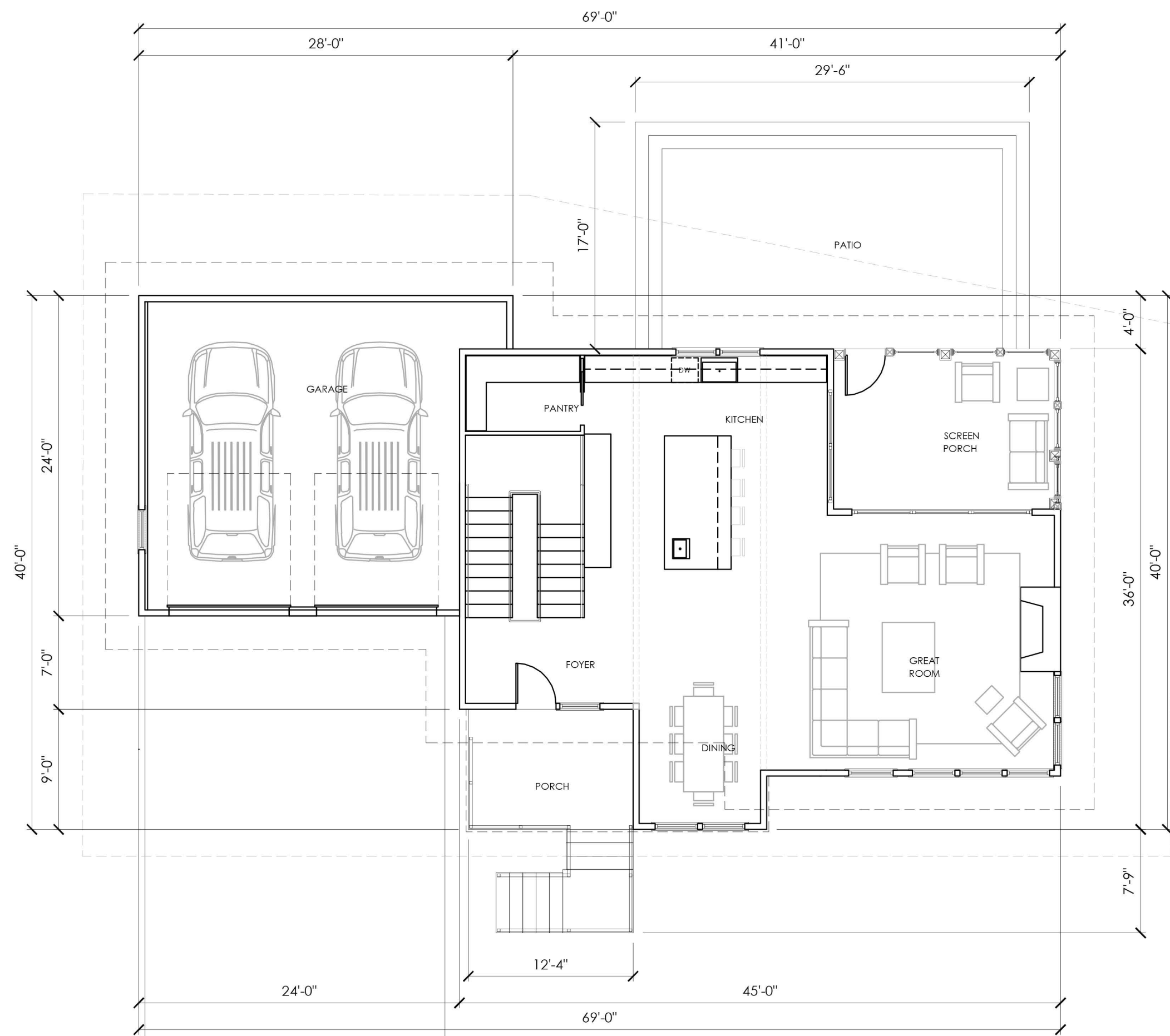
TITLE:  
**PRELIMINARY GRADING PLAN**

SHEET NUMBER:  
**C - 2**

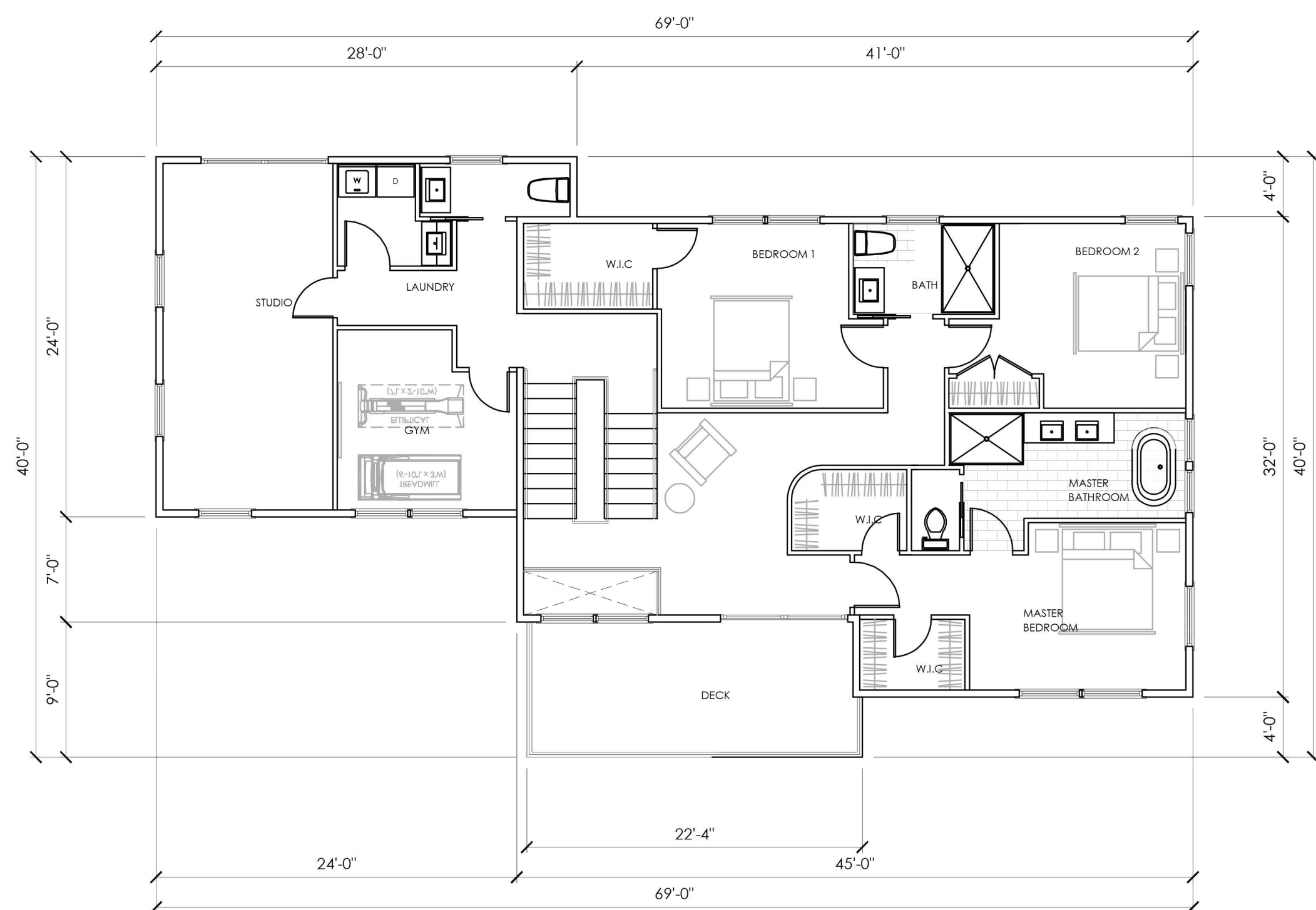
LEGEND:

- ..... IRON REBAR SET
- ..... IRON ROD FOUND
- ..... IRON PIPE FOUND
- ..... WOOD FENCE
- ▒ ..... BRICK
- ▒ ..... CONCRETE
- RCRD ..... ROCKINGHAM COUNTY REGISTRY OF DEEDS
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- BIR ..... BIRCH
- MPL ..... MAPLE
- ..... PROPERTY LINE
- ..... BUILDING SETBACK LINE
- ..... EXISTING BUILDING (TBR)

P5503



FIRST FLOOR PLAN  
1/8" = 1'-0"



SECOND FLOOR PLAN  
1/8" = 1'-0"



RIGHT ELEVATION  
1/8" = 1'-0"



FRONT ELEVATION  
1/8" = 1'-0"



LEFT ELEVATION  
1/8" = 1'-0"



BACK ELEVATION  
1/8" = 1'-0"

REVISIONS:

O'BRIEN RESIDENCE  
3 MOEBUS TERRACE  
PORTSMOUTH, NEW HAMPSHIRE



CJ ARCHITECTS  
233 VAUGHAN STREET  
SUITE 101  
PORTSMOUTH, NH 03801  
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