

HOEFLE, PHOENIX, GORMLEY & ROBERTS, PLLC
ATTORNEYS AT LAW

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January 27, 2021

HAND DELIVERED

Peter Stith, Planner
City of Portsmouth
1 Junkins Ave.
Portsmouth, NH 03801

Re: Gregory & Amanda Morneault, Owner
Darrell Moreau, Applicant
137 Northwest Street
Portsmouth, New Hampshire, 03801
Tax Map 122, Lot 2, Gen. Residence A (GRA) District

Dear Peter:

Attached please find our Memorandum with exhibits in support of an Application for Variances in order to subdivide one lot into and to add a single-family home on the subdivided lot. We have uploaded on the application and documents. We will also deliver the original and eleven (11) copies as required.

We look forward to presenting this the Zoning Board of Adjustment at its February 16, 2021 meeting.

Please let us know if you have any questions or comments.

Very truly yours,



R. Timothy Phoenix
Monica F. Kieser

Encl.

cc: Darrell Moreau
Gregory & Amanda Morneault
Ambit Engineering, Inc.
Artform Architecture, Inc

DANIEL C. HOEFLE	R. PETER TAYLOR	GREGORY D. ROBBINS	DUNCAN A. EDGAR
R. TIMOTHY PHOENIX	JOHN AHLGREN	MONICA F. KIESER	OF COUNSEL:
LAWRENCE B. GORMLEY	KIMBERLY J.H. MEMMESHEIMER	SAMUEL HARKINSON	SAMUEL R. REID
STEPHEN H. ROBERTS	KEVIN M. BAUM	JACOB J.B. MARVELLEY	

MEMORANDUM

TO: Portsmouth Zoning Board of Adjustment (“ZBA”)
FROM: R. Timothy Phoenix, Esquire
Monica F. Kieser, Esq.
DATE: January 27, 2021
RE: Gregory and Amanda Morneault, Owners
Darrell Moreau, Applicant
Property Location: 137 Northwest Street, Portsmouth, NH 03801
Tax Map 122, Lot 2, GRA and Historic Districts

Dear Chair Rheaume and Zoning Board Members:

On behalf of Gregory and Amanda Morneault, owners and Darrell Moreau, applicant (“Moreau” or “Applicant”), we are pleased to submit this memorandum and the attached exhibits in support of variances to subdivide a single lot into two lots, and add a duplex on the newly created lot.

I. Exhibits

1. 1/27/2021 Plan Set – issued by Ambit Engineering, Inc.
 - Subdivision Plan
 - Variance Plan
2. 1/27/2021 Elevations and Floor Plan Set – issued by Artform Architecture, Inc.
 - Front Elevation
 - First Floor Plan
 - Second Floor Plan
 - Foundation Plan
 - Side Elevations
 - Rear Elevation
3. Site Photographs.
4. Tax Map 122 (subject), 123, 141 (area).
5. Minutes, Portsmouth Zoning Board of Adjustment Meeting, November 24, 2020.

II. Property/Project History

137 Northwest St. is 18,134 ft. lot sandwiched between Northwest Street and the Route 1 Bypass. With frontage of approximately 536 feet, and a depth ranging from less than 20 feet to approximately 70 feet, the lot is very long and narrow. The existing home is located at the far west (left) end of the lot, leaving a significant area presently undeveloped except for a City of Portsmouth sewer pump station and access area located at the far easterly (right) end of the lot.

The project intent is to subdivide the single lot into two lots. Lot 1 will hold the existing home. Lot 2 will hold a proposed single-family home. The Lot 2 rear lot line is about 30 feet and down a steep hill from the Bypass. The Project was previously before the ZBA in November

with a plan to construct a duplex on Lot 2. That plan required variances from front/rear yard setbacks, lot depth requirements, and the 7,500 s.f. per dwelling unit requirements to permit the duplex on Lot 2. The revised single family home proposal and building incorporates feedback received from the board and is reasonable development for this property. The existing home and other nearby homes close to boundary lines on small lots also support the reasonableness of the request. It is widely known there are is demand for few relatively reasonably priced homes in in Portsmouth. This project will allow Moreau to offer new construction for a family in downtown Portsmouth at a comparatively reasonable price.

As proposed, each lot will meet the 7500 ft. minimum lot size requirement, frontage and side setback requirements. Relief is required for both lots because the depth of Lot 1 will be slightly reduced, and Lot 2 does not meet the front/rear yard and depth requirements.

III. Relief Required

Lot 1

PZO§10.521-Table of Dimensional Standards¹

Lot Depth - 44.7 feet where 51.1 feet exists and 70 feet is required.

Lot 2

PZO§10.521 Table of Dimensional Standards

Front yard – 3.2 feet (closest point) where 15 feet is required.

Rear Yard – 6.9 feet (closest point) 20 feet is required.

Lot Depth- 25.4² feet where 70 feet is required.

IV. Fisher v. Dover Analysis

As stated, the ZBA previously considered and denied the owners' application for variances to permit the slight reduction in the depth of Lot 1 and a duplex structure within the front/rear yard setback on newly created Lot 2, which also required relief from the lot depth requirement and 7,500 s.f. per dwelling unit requirement. Some board members acknowledged the inherent hardship of the lot, but a majority could not support the previously proposed duplex opining that it would alter the essential character of the area and diminish the value of the surrounding property values. The fact that the status of a historically used "turnaround" at one

¹ We question whether Lot 1 variances are required since the noncompliant lot depth is a prior nonconforming condition; however, we request the variances in an abundance of caution at the recommendation of the Planning staff.

² Approximately 35 feet at proposed single-family home.

end of the property was unresolved added to Board Member concerns regarding ample space on the lot for two families.

In Fisher v. City of Dover, 120 N.H. 187, 190 (1980), the Supreme Court held that once an applicant makes a request to the ZBA and is denied, the ZBA may hear a subsequent variance request only upon a finding “a material change of circumstances” or unless it “materially differs in nature and degree from its predecessor.” The court based its decision on concerns that absent a material change in circumstances or the application, there would be no finality to ZBA proceedings, thus threatening “the integrity of the zoning plan.” Id. In cases subsequent to Fisher, however, the court clarified that this restriction does not apply to “a subsequent application explicitly or implicitly invited by the ZBA and modified to address its concerns.” Hill-Grant Living Trust Small v. Kearsarge Lighting Precinct, 159 N.H. 529, 536 (2009) (citing Morgenstern v. Town of Rye, 147 N. H. 558 (2002)).

The instant application meets both the “material difference” and the “explicit or implicit invitation” requirements. The proposed structure is now a single-family home on a 10,634 s.f. lot, so a density variance is no longer required. Accordingly, the size of the home has also been reduced increasing the yard setbacks over the previous proposal. The City and the Applicant have worked together regarding a proposed easement at the east end of the property, which will take up less space than the existing “turnaround” but still permit a maintenance truck to turn around and will allow snow storage. Thus, the new proposal thus clearly meets the “material change” requirement of Fisher.

In addition, the minutes of the November 24, 2020 ZBA meeting (**Exhibit 5**) reflect comments pursuant to which board members implicitly or explicitly invited changes of the sort now presented:

Member Mulligan – “asked whether there was an easement for the vehicle turnaround on the eastern edge of Lot 2...He asked why there were two units proposed instead of one, noting that it did not look like there was a lot of outdoor space for two families to enjoy.” (Minutes p. 2)

Member Hagaman – “asked how big the yard would be on each side...asked if the applicant had discussed working out an easement with the City.” (Minutes p. 2). “Mr. Hagaman said he was leery because the property-size-per-dwelling-unit was misleading if more than half the property was taken up by a turnaround and the Board didn’t know if there would be an easement.” (Minutes p. 3).

Acting-Chair Johnson – “said the property had a hardship due to the dimensional setbacks and its proximity to the bypass but that he was having a harder time with the use....[I]t was hard to justify why two units were needed instead of one.” (Minutes p. 3).

Member McDonell – “disagreed with the Applicant that one should look to the density of the property along Maplewood Avenue. There would be a change in the micro neighborhood that would cause diminution of property values across the street and possibly up and down the street, notwithstanding the fact that it might be good for the City as a whole to have a duplex with more affordable units...He said he didn't think there was a hardship, although there were special conditions that distinguished it from other lots in the area.” (Minutes p. 3).

Clearly, the primary concerns of those board members who voted against the previously proposed duplex related to the density, the yard area per unit, and the unresolved status of an area of the lot historically used by the City and the public as a turnaround. The instant single-family proposal with increased yard setbacks and a clearly delineated easement area clearly complies with the requirement for ZBA consideration of a “subsequent proposal explicitly or implicitly invited by the ZBA and modified to address its concerns.” Hill-Grant, supra.

V. **Variance Requirements**

1. **The variances will not be contrary to the public interest.**
2. **The spirit of the ordinance is observed.**

These two requirements are considered together pursuant Malachy Glen Associates, Inc. v. Town of Chichester, 155 N.H. 102 (2007) and its progeny. The test is whether granting a variance “would unduly and to a marked degree conflict with the ordinance such that violates the ordinance’s basic zoning objectives.” *Id.* Mere conflict with the ordinance is not enough. *Id.* The analysis begins with the purposes of the GRA District and the general purposes of the ordinance.

The purpose of the GRA District is “to provide for areas of single-family, two-family and multifamily dwellings with appropriate accessory uses, at moderate to high densities (ranging from approximately 5 to 12 dwelling units per acre), together with appropriate accessory uses and limited services. ” PZO§10.440 Residential District Purposes. This purpose is met by Lot 1 with one dwelling on 7500 ft. equaling 5.8 units per acre and exceeded by a single dwelling on Lot 2 with 10,634 s.f. lot which translates to per unit translates to 4.20 units per acre.

The general purposes of the ordinance pursuant to PZO§10.121 is “to promote the health, safety and the general welfare of Portsmouth and its region in accordance with the city’s Master Plan... by regulating:

1. The use of land, buildings and structures for business, industrial, residential and other purposes – It is widely known that home prices in Portsmouth are quite high. Relatively modestly priced homes are difficult to find, leaving many young people and or moderate income earners to live in other communities. Adding a single home on a lot sandwiched between Northwest Street and the bypass adds to housing stock in downtown Portsmouth.
2. The intensity of land use, including lot sizes, building coverage, building height and bulk, yards and open space – The Lot 1 home presently exists. Accordingly, the depth and front and rear setbacks cannot be changed. Frontage, side setbacks, and area are compliant. Nothing can be built on proposed Lot 2 absent front, rear setback and depth variances. The location, size and characteristics of the lot leave it suitable for a single-family home and provides sufficient yard area while still providing the City a place for its vehicles to turn around and an area for snow storage.
3. The design of facilities for vehicular access, circulation, parking and loading – Lot 1 will not change. Lot 2 provides two garaged parking spaces for the single family home and off-street parking. An identified easement area will afford the City continued use of a smaller area for its maintenance trucks to turn around and for snow storage.
4. The impact on properties of outdoor lighting, noise, vibration, stormwater runoff and flooding – Lot 1 will not change. The Lot 2 single-family home will have no negative effect on lighting, noise, vibration or flooding. Stormwater will be vetted in the subdivision process before the Planning Board.
5. The preservation and enhancement of the visual environment – Lot 1 will not change. Lot 2 will hold a tastefully designed single-family home.
6. The preservation of historic districts and buildings and structures of historic or architectural interest – Lot 1 will not change. Lot 2 will be subject to Historic District Commission review.
7. The protection of natural resources, including groundwater, surface water, weapons, wildlife habitat and air quality – Lot 1 will not change. Lot 2 is presently vacant and somewhat overgrown. There will be no negative effect upon groundwater or wildlife habitat or air quality. Surface water will be the vetted by the Planning Board.

In considering the public interest and spirit of the ordinance tests for determination of whether granting variances violates basic zoning objectives, the Malachy Glen court further held:

One way to ascertain whether granting the variance would violate basic zoning objectives is to examine whether it would alter the essential character of the locality... . Another approach to [determine] whether granting the variance violates basic zoning objectives is to examine whether granting the variance would threaten the public health, safety or welfare. (emphasis added)

Lot 1 and the house upon it already exist in the locality. The lot depth is only slightly reduced over existing conditions. The home is on a compliant sized lot so will neither alter the essential character of the locality nor threaten the public health, safety or welfare. The single-

family on Lot 2 will be built to code, and will benefit from vetting by the Planning Board. The area includes compliant and numerous non-compliant sized lots many with structures very close to lot lines. (Exhibit 4). It follows that granting the subdivision and variances will neither alter the essential character nor threaten the public health, safety or welfare.

3. Granting the variance will not diminish surrounding property values.

Northwest Street itself has relatively few houses. Those existing are an eclectic mix of various sized lots/houses with various distances from the road. Some have water access, some do not. The larger area includes homes along Maplewood Avenue many of which are on small lots. The width of Lot 2 provides significant separation from neighbors and the proposed single family home incorporates garage and off-street parking. There is but one home directly across the street. Like many old homes in town, it is too close to the street. The nature and location of Northwest Street, this lot, and the tastefully designed home, which will receive HDC review, will not diminish surrounding property values.

4. Denial of the variance result in unnecessary hardship.

a. Special conditions exist which distinguish the property/project from others in the area.

The lot is over 500 feet in length but only 19-70 feet deep, sandwiched between Northwest Street and the Bypass. The length and shallow nature of the lot create special conditions. These conditions support relief from yard setbacks and lot depth which would be required for any structure on the Lot.

b. No fair and substantial relationship exists between the general purposes of the ordinance and its specific application in this instance.

Setbacks and lot depth requirements are intended to provide adequate space between homes, sightlines, and area for stormwater treatment. Lot 1 complies with density requirements and Lot 2 exceeds the 7,500 s.f. per dwelling unit requirement. The Lot 1 setbacks for front and rear are very close to lot lines and will not change. The depth of Lot 2 and the front and rear yard setbacks are entirely a function of the long, narrow shape of the existing lot. The proposed setbacks for Lot 2 are similar to that of Lot 1 and other homes in the area. Given the location abutting the bypass, the substantial width of the lot, there is ample separation of neighbors, space between homes, sightlines and area for stormwater management, which will be vetted by the Planning Board via the subdivision process. Accordingly, there is no justifiable reason to apply the strict requirements of the ordinance.

c. The proposed use is reasonable.

Single-family homes are permitted in the GRA Zone. The front and rear setbacks are similar to those in the neighborhood. Numerous other homes in the general area are on small lots and close to lot lines. As such, this residential use in a residential zone is reasonable.

5. Substantial justice will be done by granting the variance.

If "there is no benefit to the public that would outweigh the hardship to the applicant, this factor is satisfied." Harborside Associates, LP v. Parade Residents Hotel, LLC 162 NH 508(2011). That is, "any loss to the[applicant] not outweighed by again to the general public is an injustice." Malachy Glen, supra at 109.

The extreme width of the subject lot with the existing home far to the left, leaves a large expanse of land lying fallow. Given its location immediately abutting the bypass, a duplex, which will permit the owners to sell the lot, and the applicant to build the homes, will provide a family with relatively affordable housing in downtown Portsmouth. Since the immediate area of Northwest Street has relatively few homes, many close to the front and/or rear lot lines, allowing the subdivision and variances to build the permitted single-family home will cause no harm whatsoever to the general public. Denial, however, will prevent the owners from selling a portion of the lot, and will prevent the Applicant from providing, and potential residents from owning brand-new construction at reasonable cost in downtown Portsmouth. Clearly, there is no benefit to the public from denial that outweighs the hardship to the Applicant and the loss to the Applicant far outweighs any gain to the general public.

VI. Conclusion

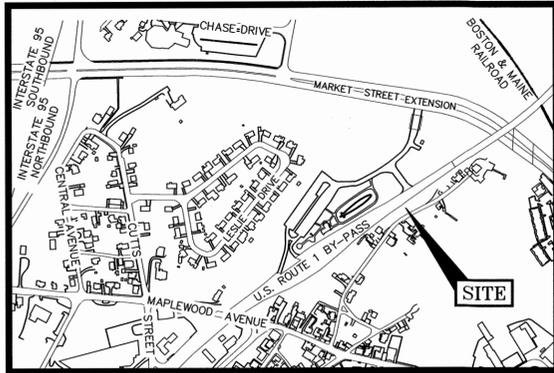
For all the foregoing reasons, the property owners and Applicant respectfully request that the Zoning Board of Adjustment grant all requested relief.

Respectfully submitted

Darrell Moreau

By: 

R. Timothy Phoenix
Monica F. Kieser



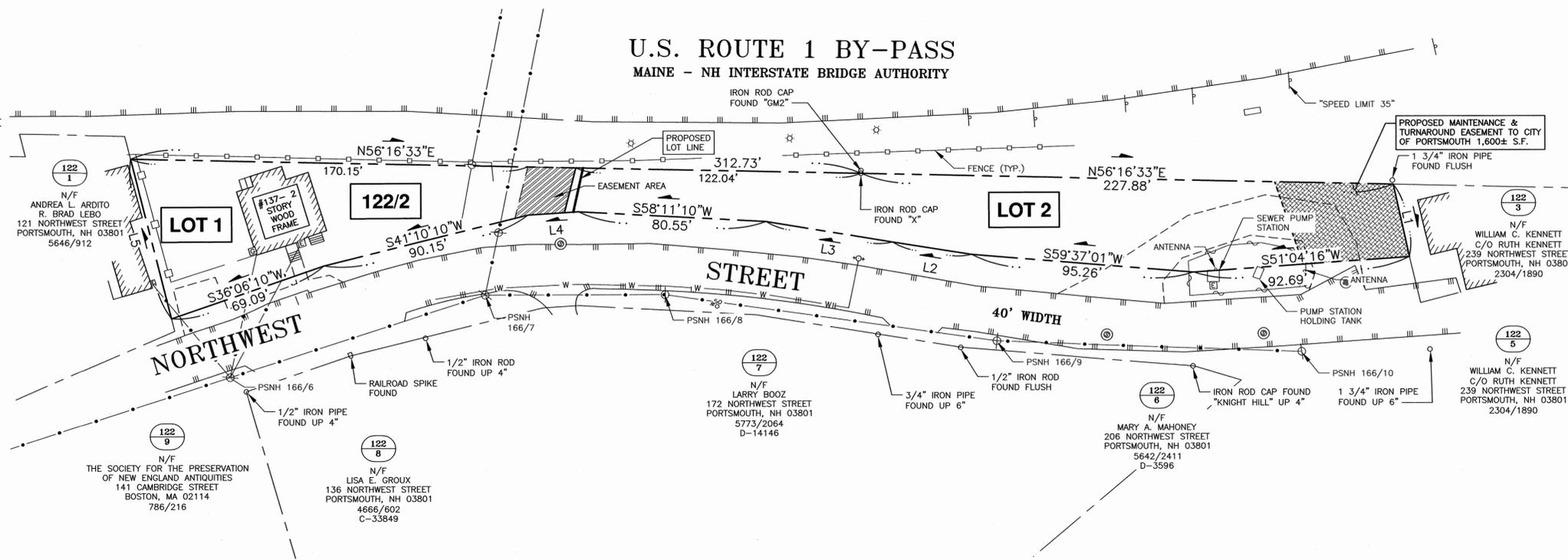
LOCATION MAP SCALE: 1" = 500'

PLAN REFERENCES:

- 1) MAINE NEW HAMPSHIRE INTERSTATE BRIDGE AUTHORITY PISCATAQUA RIVER BRIDGE KITTERY, MAINE - PORTSMOUTH, NEW HAMPSHIRE RIGHT OF WAY MAP - N.H. APPROACH, SCALE: 1" = 50', PREPARED BY HARRINGTON AND CORTELYOU CONSULTING ENGINEERS KANSAS CITY, MO., DATED DECEMBER 1938, SHEET 1 OF 11, NOT RECORDED
- 2) MAINE - NEW HAMPSHIRE INTERSTATE BRIDGE AUTHORITY PISCATAQUA RIVER BRIDGE KITTERY, MAINE - PORTSMOUTH, NEW HAMPSHIRE RIGHT OF WAY MAPS N.H. APPROACH, RE-SURVEYED BY: MOULTON ENGINEERING CO. KITTERY, MAINE 1954, SCALE: 1" = 50', SHEET 1 OF 5, NOT RECORDED
- 3) US ROUTE 1 BYPASS & SUBMARINE WAY RIGHT OF WAY LAYOUT PLANS CITY OF PORTSMOUTH JULY 17, 2019, OWNER OF RECORD: STATE OF NEW HAMPSHIRE, STATE PROJECT NO. 13455, SCALE: 1" = 50', PREPARED BY GM2 ASSOCIATES, SHEETS 3 & 4 OF 6, RCRD D-41603
- 4) PLAN OF LAND PORTSMOUTH, N.H. FOR ESTATE OF GRACE L. HOYT, SCALE: 1" = 20' DATED DEC. 1972 REV. MAR. 1973, PREPARED BY JOHN W. DURGIN CIVIL ENGINEERS, RCRD D-3596
- 5) CONDOMINIUM SITE PLAN FOR GANTRY REALTY TRUST 172 NORTHWEST STREET COUNTY OF ROCKINGHAM PORTSMOUTH, N.H. SCALE: 1" = 20', DATED SEPT. 11, 1985 REV OCT. 1, 1985, PREPARED BY RICHARD P. MILLETTE AND ASSOCIATES, SHEET 1 OF 3, RCRD D-14146
- 6) STANDARD PROPERTY SURVEY AND CONDOMINIUM SITE PLAN OF LAND OF LOT 4 TAX MAP U-22 250 NORTHWEST STREET PORTSMOUTH, NEW HAMPSHIRE COUNTY OF ROCKINGHAM, SCALE: 1" = 10', DATED 9-9-96, PREPARED BY CIVILWORKS DOVER, N.H., RCRD D-24961
- 7) PLAN OF LAND IN THE NAME OF THE SUSAN M. REED REVOCABLE TRUST OF TAX MAP 122 / LOT 8 LOCATED AT #136 NORTHWEST STREET COUNTY OF ROCKINGHAM PORTSMOUTH, NH, SCALE: 1" = 20' DATED MAY 23, 2006, PREPARED BY DAVID W. VINCENT, LLS RCRD C-33849

LEGEND:

- N/F NOW OR FORMERLY
- RP RECORD OF PROBATE
- RCRD ROCKINGHAM COUNTY
- RR SPK RAILROAD SPIKE
- MAP 11/LOT 21
- IR FND IRON ROD FOUND
- IP FND IRON PIPE FOUND
- IR SET IRON ROD SET
- DH FND DRILL HOLE FOUND
- DH SET DRILL HOLE SET
- NHDB NHDOT BOUND FOUND
- TOWN BOUND TOWN BOUND
- TB BOUND WITH DRILL HOLE
- BND w/DH BOUND WITH DRILL HOLE
- ST BND w/DH STONE BOUND WITH DRILL HOLE



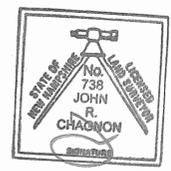
AMBIT ENGINEERING, INC.
Civil Engineers & Land Surveyors
200 Griffin Road - Unit 3
Portsmouth, N.H. 03801-7114
Tel: (603) 430-9282
Fax: (603) 436-2315

- NOTES:**
- 1) PARCEL IS SHOWN ON THE CITY OF PORTSMOUTH ASSESSOR'S MAP 122 AS LOT 2.
 - 2) OWNERS OF RECORD:
GREGORY J. MORNEAULT
AMANDA B. MORNEAULT
137 NORTHWEST STREET
PORTSMOUTH, N.H. 03801

APPLICANT:
DARRELL MOREAU
1B JACKSON HILL ROAD
PORTSMOUTH, NH 03801
 - 3) PARCEL IS NOT IN A SPECIAL FLOOD HAZARD AREA AS SHOWN ON FIRM PANEL 33015C0259E. EFFECTIVE DATE MAY 17, 2005.
 - 4) EXISTING LOT AREA:
18,134 S.F.
0.4163 ACRES

PROPOSED LOT AREAS:
LOT #1 7,500 S.F. 0.1722 ACRES
LOT #2 10,634 S.F. 0.2441 ACRES
 - 5) THE PURPOSE OF THIS PLAN IS TO SHOW THE SUBDIVISION OF ONE LOT INTO TWO LOTS.
 - 6) ZONING DISTRICTS:
GENERAL RESIDENCE A (GRA) AND HISTORIC DISTRICT.
 - 7) DIMENSIONAL REQUIREMENTS:
LOT AREA: 7,500 S.F.
FRONTAGE: 100'
DEPTH: 70'
SETBACKS: FRONT: 15', SIDE: 10', REAR: 20'.
MAXIMUM STRUCTURE HEIGHT: 35'
MAXIMUM BUILDING COVERAGE: 25%
MINIMUM OPEN SPACE: 30%
 - 8) PROPOSED LOT 1 DIMENSIONAL CALCULATIONS:
LOT AREA: 7,500 S.F.
FRONTAGE: 179'
DEPTH: 44.7' AVERAGE
SETBACKS:
FRONT: 13.8'
SIDE: 40.5'
REAR: 1.8'
BUILDING COVERAGE: 1,029 S.F. - 14%
OPEN SPACE: 6,246 S.F. - 83%

EXHIBIT 1

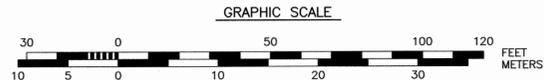


I CERTIFY THAT THIS PLAN WAS PREPARED UNDER MY DIRECT SUPERVISION, THAT IT IS THE RESULT OF A FIELD SURVEY BY THIS OFFICE AND HAS AN ACCURACY OF THE CLOSED TRAVERSE THAT EXCEEDS THE PRECISION OF 1:15,000.

John R. Chagnon
JOHN R. CHAGNON, LLS 738
DATE: 1-27-21

APPROVED BY THE PORTSMOUTH PLANNING BOARD

CHAIRMAN DATE



LENGTH TABLE

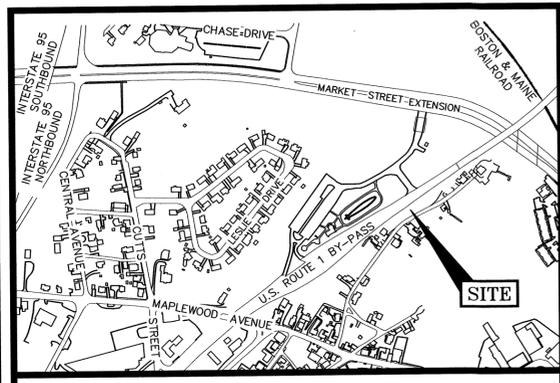
LINE	BEARING	DISTANCE
L1	S 47°28'51" E	31.75'
L2	S 64°01'21" W	34.26'
L3	S 64°19'54" W	54.79'
L4	S 51°20'10" W	21.35'
L5	N 49°16'35" W	70.45'

EASEMENT LENGTH TABLE

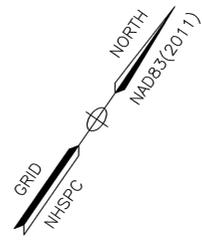
LINE	BEARING	DISTANCE
E1	N 56°16'33" E	20.54'
E2	S 20°36'02" E	19.73'
E3	S 51°20'10" W	15.48'
E4	S 41°10'10" W	5.99'
E5	N 20°36'02" W	22.71'

NO.	DESCRIPTION	DATE
3	REVISE PER COMMENTS	1/27/21
2	ZONING INFO; SETBACKS	10/22/20
1	ADDED ZONING REQUIREMENTS	10/13/20
0	ISSUED FOR COMMENT	9/30/20

SUBDIVISION PLAN
TAX MAP 122 - LOT 2
OWNERS:
GREGORY J. MORNEAULT & AMANDA B. MORNEAULT
137 NORTHWEST STREET
CITY OF PORTSMOUTH
COUNTY OF ROCKINGHAM
STATE OF NEW HAMPSHIRE



LOCATION MAP SCALE: 1" = 500'

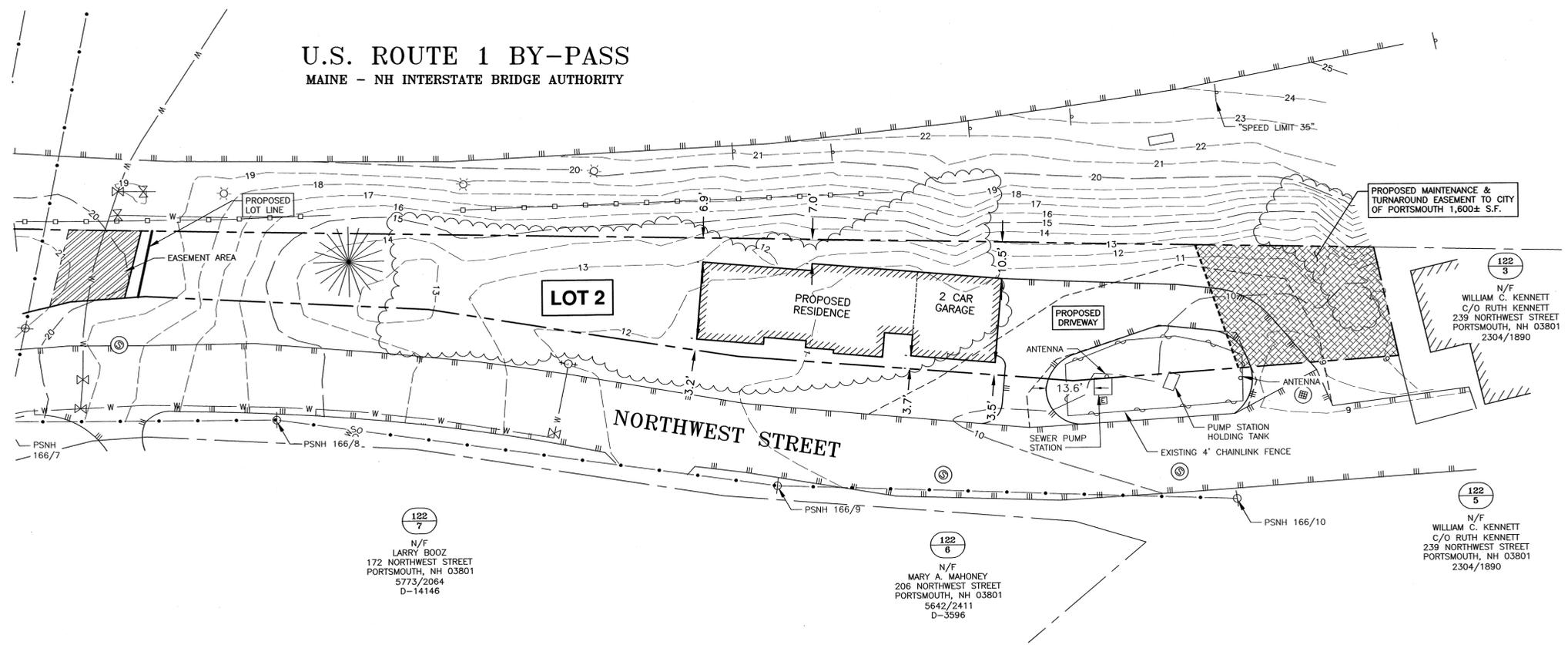


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- 1) PARCEL IS SHOWN ON THE CITY OF PORTSMOUTH ASSESSOR'S MAP 122 AS LOT 2.
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 APPLICANT:
 DARRELL MOREAU
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 - 3) PARCEL IS NOT IN A SPECIAL FLOOD HAZARD AREA AS SHOWN ON FIRM PANEL 33015C0259E. EFFECTIVE DATE MAY 17, 2005.
 - 4) EXISTING LOT AREA:
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 0.4163 ACRES
 PROPOSED LOT AREAS:
 LOT #1 7,500 S.F. 0.1722 ACRES
 LOT #2 10,634 S.F. 0.2441 ACRES
 - 5) THE PURPOSE OF THIS PLAN IS TO SHOW THE PLACEMENT OF A PROPOSED RESIDENCE ON LOT 2 OF THE PROPOSED SUBDIVISION.
 - 6) ZONING DISTRICTS:
 GENERAL RESIDENCE A (GRA) AND HISTORIC DISTRICT.
 - 7) DIMENSIONAL REQUIREMENTS:
 LOT AREA: 7,500 S.F.
 FRONTAGE: 100'
 DEPTH: 70'
 SETBACKS: FRONT: 15', SIDE: 10', REAR: 20'.
 MAXIMUM STRUCTURE HEIGHT: 35'
 MAXIMUM BUILDING COVERAGE: 25%
 MINIMUM OPEN SPACE: 30%
 - 8) PROPOSED LOT 2 DIMENSIONAL CALCULATIONS:
 LOT AREA: 10,634 S.F.
 FRONTAGE: 357'
 DEPTH: 25.4 AVERAGE
 SETBACKS:
 FRONT: 3.2'
 SIDE: 105.9'
 REAR: 6.9'
 STRUCTURE HEIGHT: <35'
 BUILDING COVERAGE: 1,920 S.F. (20%)
 OPEN SPACE: 7,328 S.F. (69%)

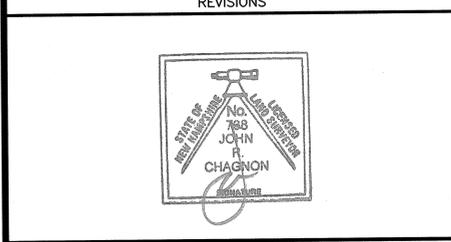
LEGEND:

N/F	NOW OR FORMERLY
RP	RECORD OF PROBATE
RCRD	ROCKINGHAM COUNTY
	REGISTRY OF DEEDS
	MAP 11 / LOT 21
---	BOUNDARY
---	SETBACK
○	RAILROAD SPIKE FOUND
○	IRON ROD/PIPE FOUND
○	DRILL HOLE FOUND
□	STONE/CONCRETE BOUND FOUND
○	RAILROAD SPIKE SET
○	IRON ROD SET
○	DRILL HOLE SET
□	GRANITE BOUND SET
S	SEWER LINE
G	GAS LINE
D	STORM DRAIN
W	WATER LINE
---	UNDERGROUND ELECTRIC
---	OVERHEAD ELECTRIC/WIRES
---	CONTOUR
○	SPOT ELEVATION
---	EDGE OF PAVEMENT (EP)
---	WOODS / TREE LINE
○	UTILITY POLE (w/ GUY)
○	GAS SHUT OFF
○	WATER SHUT OFF/CURB STOP
○	GATE VALVE
○	HYDRANT
○	METER (GAS, WATER, ELECTRIC)
○	CATCH BASIN
○	TELEPHONE MANHOLE
○	SEWER MANHOLE
○	DRAIN MANHOLE
○	AIR CONDITIONER UNIT
○	SIGNS
AC	ASBESTOS CEMENT PIPE
CI	CAST IRON PIPE
CMP	CORRUGATED METAL PIPE
CMU	CONCRETE MASONRY UNIT
COP	COPPER PIPE
DI	DUCTILE IRON PIPE
PVC	POLYVINYL CHLORIDE PIPE
RCP	REINFORCED CONCRETE PIPE
VC	VITRIFIED CLAY PIPE
EL	ELEVATION
EP	EDGE OF PAVEMENT
F.F.	FINISHED FLOOR
INV.	INVERT
TBM	TEMPORARY BENCHMARK
TYP.	TYPICAL
VGC/SGC	VERTICAL/SLOPED GRANITE CURB
CCB	CAPE COD BERM
LSA	LANDSCAPED AREA



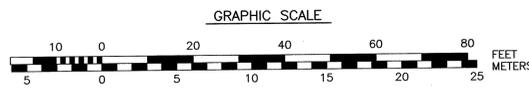
**PROPOSED HOUSING
 TBD NORTHWEST ST.
 PORTSMOUTH, NH**

NO.	DESCRIPTION	DATE
1	REVISE PER COMMENTS	1/27/21
0	ISSUED FOR COMMENT	1/21/21



APPROVED BY THE PORTSMOUTH ZONING BOARD

CHAIRMAN _____ DATE _____



SCALE 1" = 20' JANUARY 2021

VARIANCE PLAN **C1**

1/27/2021

Victoria with Wing

040.127.v6 GR

(1/27/2021)

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603-431-9559



CRS 040.127.v6 GR Victoria with Wing

EXHIBIT 2

1/27/2021

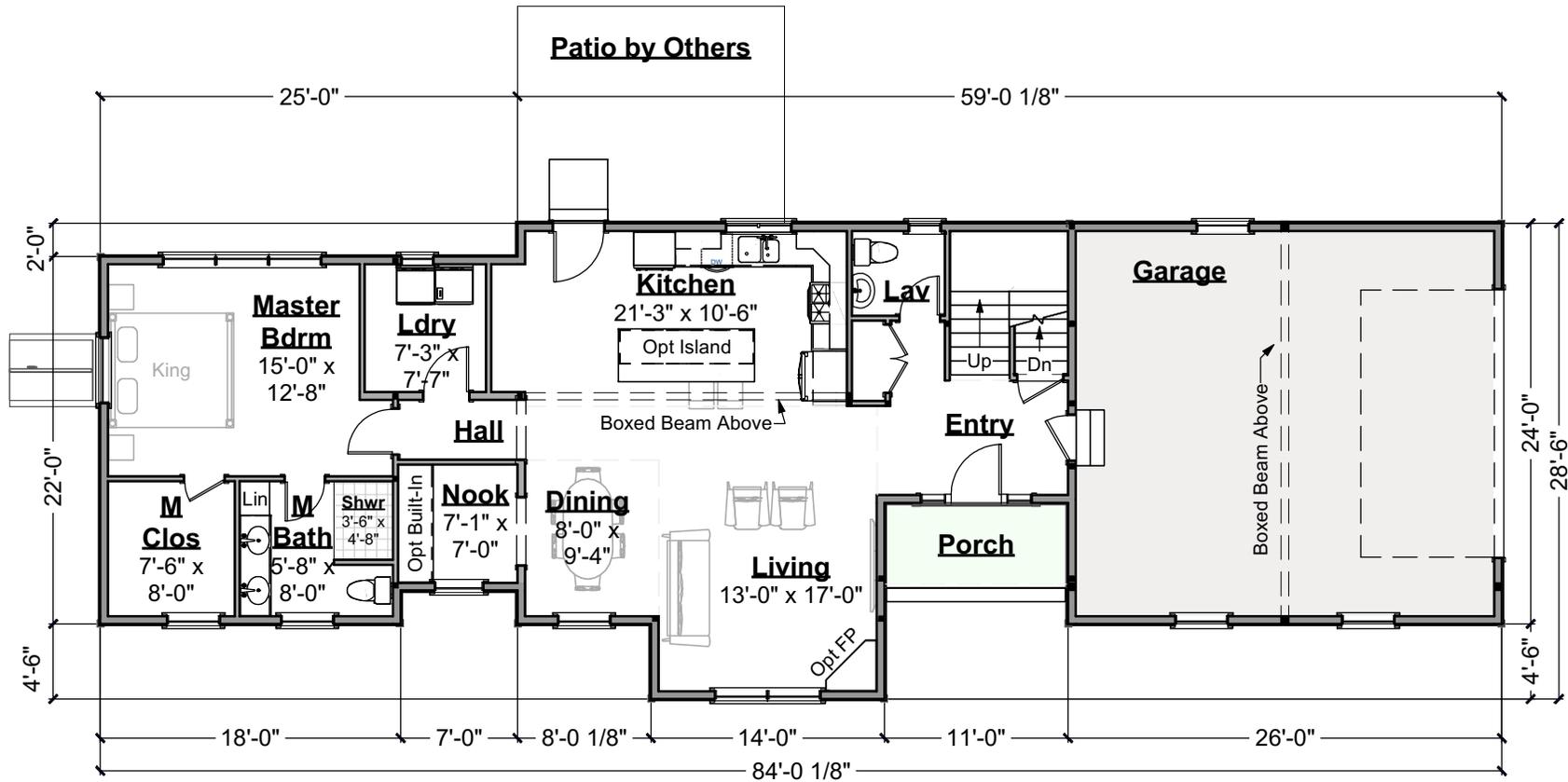
Victoria with Wing

040.127.v6 GR
(1/27/2021)

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First Floor Plan
Scale: 3/32" = 1'-0"

1/27/2021

Victoria with Wing

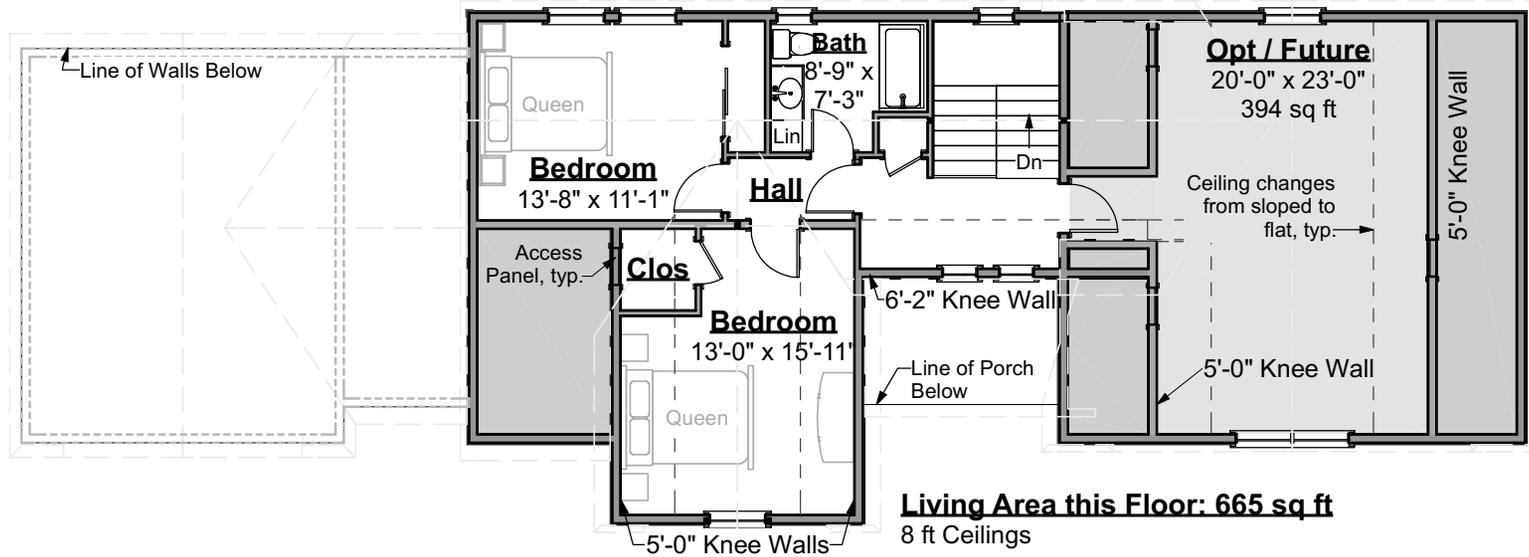
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Second Floor Plan

Scale: 3/32" = 1'-0"

Victoria with Wing

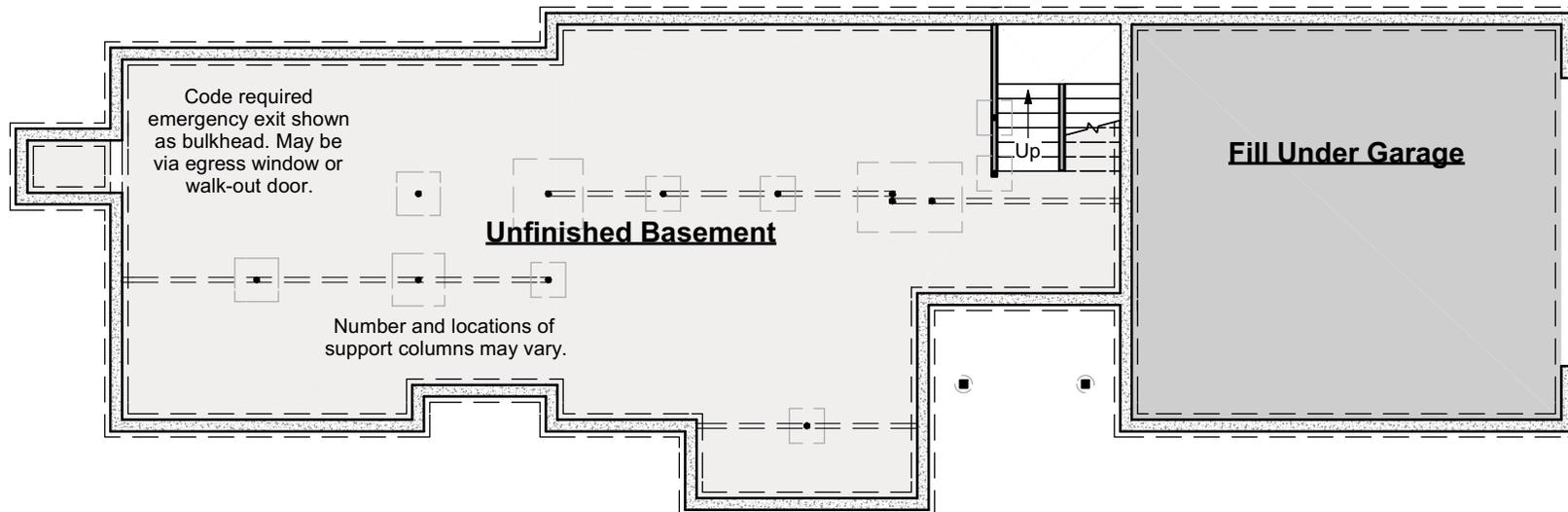
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IMPORTANT BASEMENT NOTES:

- Unless an area is specifically designed as "no posts", additional posts may be required.
- Unless specifically noted otherwise, basement beams will be framed below the floor joists.
- Basement spaces accommodate utilities, mechanical equipment and the horizontal movement of plumbing pipes, electrical wires and heating ducts. Both as part of any Construction Drawings produced based on this design and as future decisions made by the builder, changes to accommodate these items must be expected.
- Basement window locations are dependent on site conditions and utility locations. Clarify number and location with your builder.



Foundation Plan

Scale: 3/32" = 1'-0"

1/27/2021

Victoria with Wing

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Front Elevation
Scale: 3/32" = 1'-0"

1/27/2021

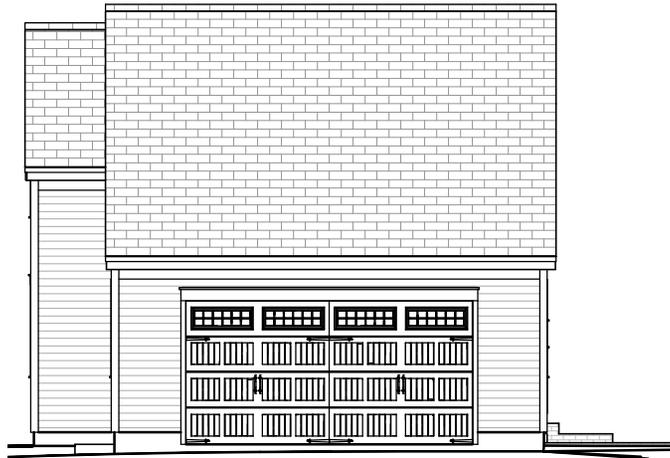
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Right Elevation
Scale: 3/32" = 1'-0"



Left Elevation
Scale: 3/32" = 1'-0"

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137 Northwest St



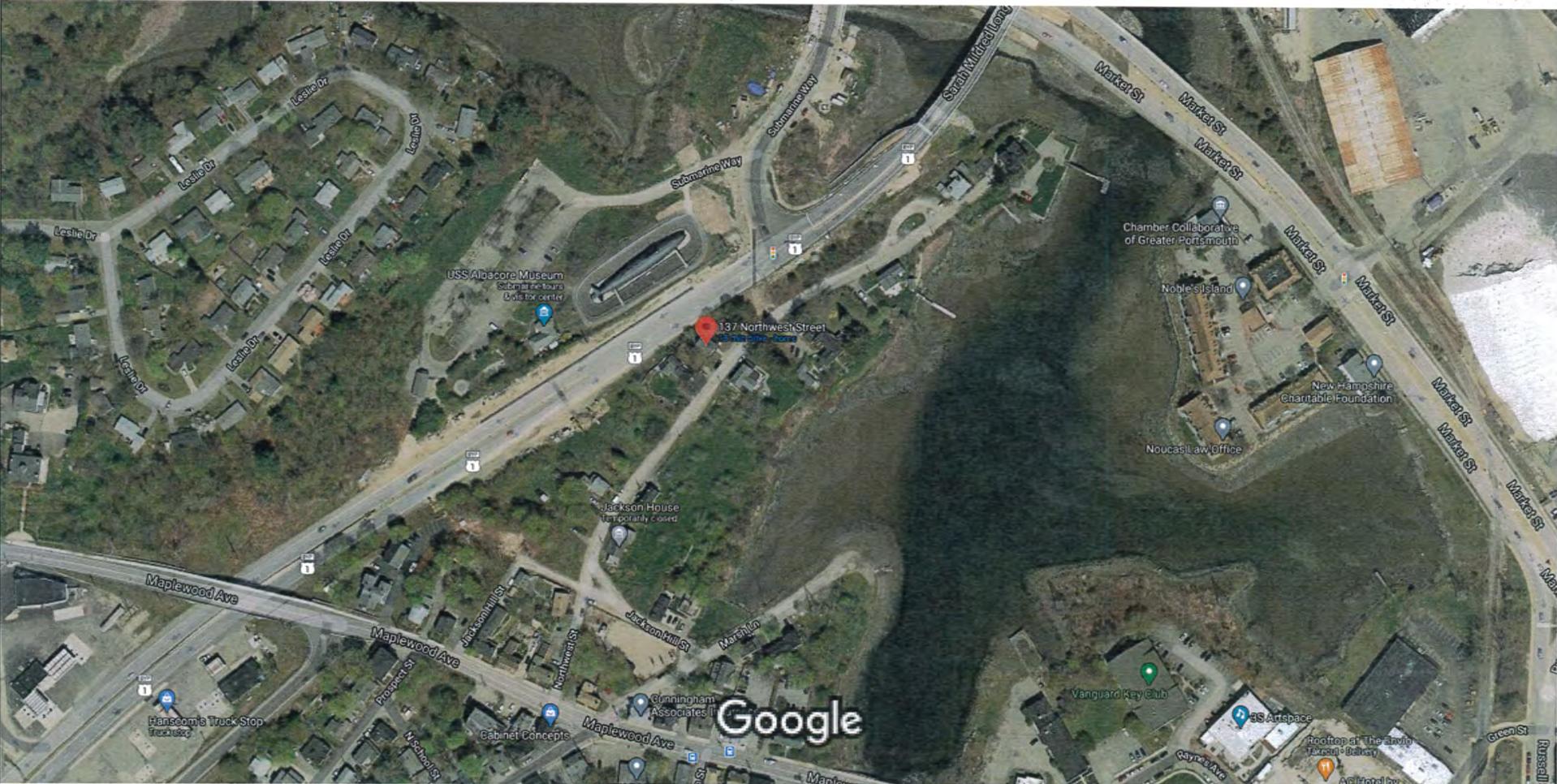
Imagery ©2020 Maine GeoLibrary, Maxar Technologies, U.S. Geological Survey, Map data ©2020 50 ft



Google Maps 137 Northwest St



Google Maps 137 Northwest St



Imagery ©2020 Maine GeoLibrary, Maxar Technologies, U.S. Geological Survey, USDA Farm Service Agency, Map data ©2020

100 ft 

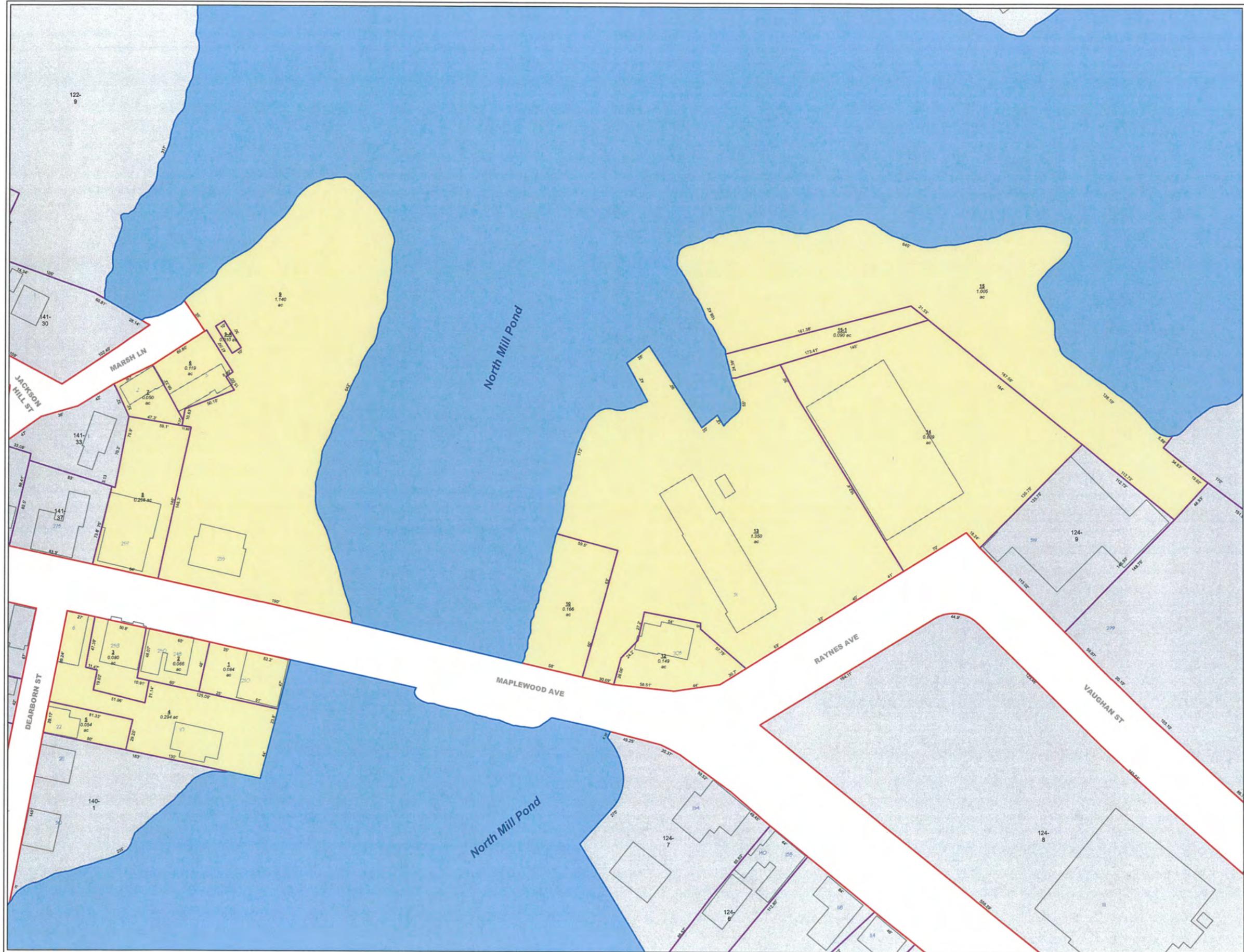
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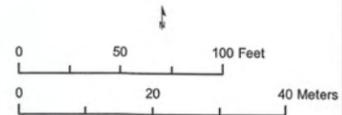
Image capture: Sep 2011 © 2020 Google



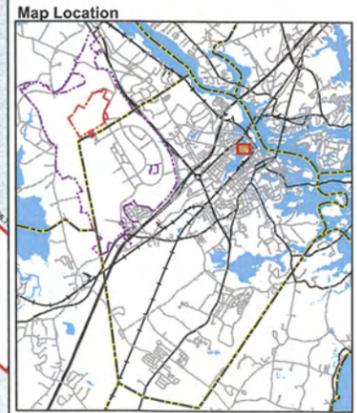
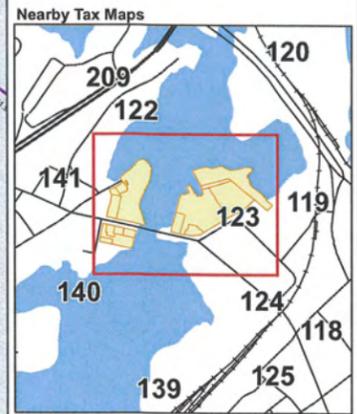




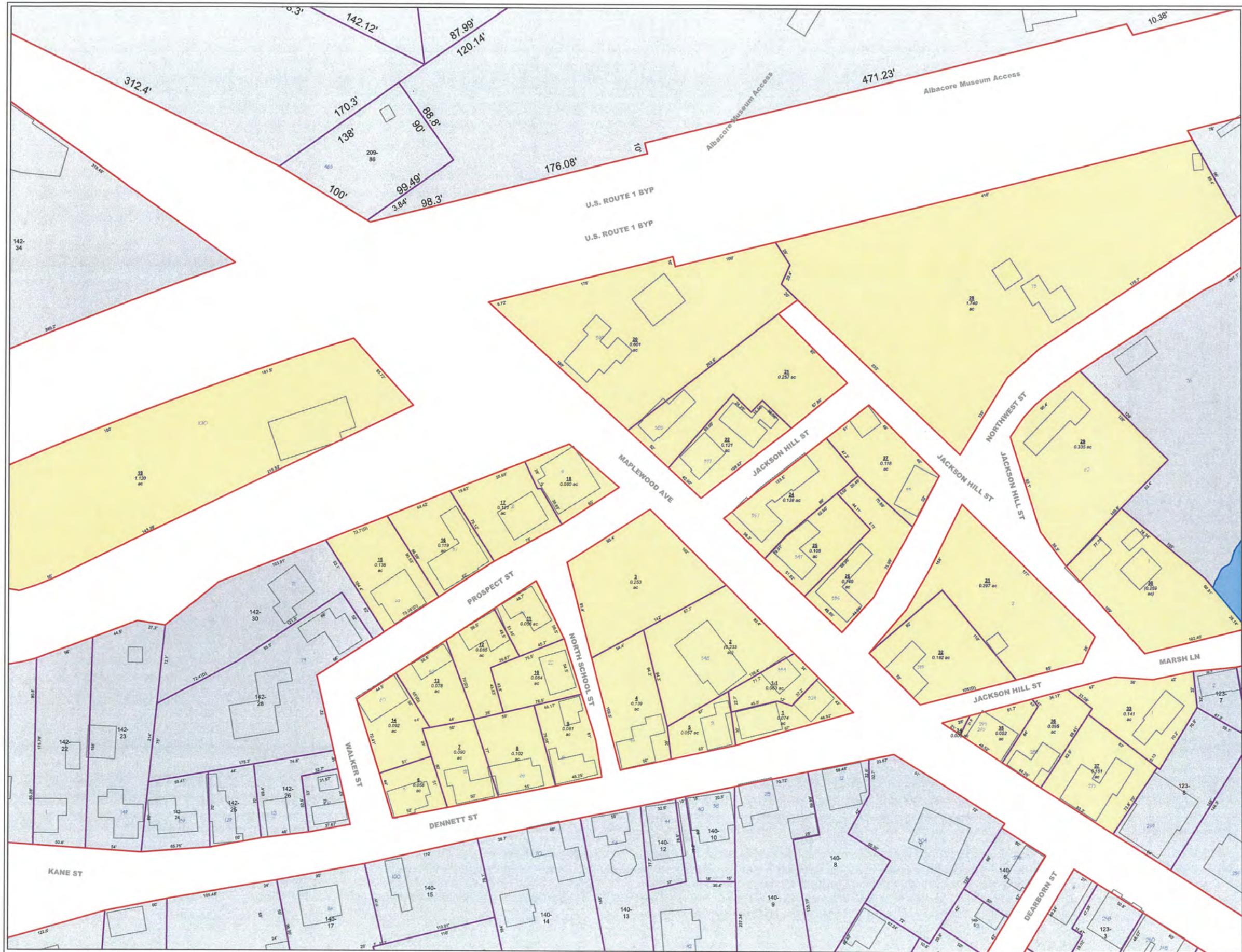
- Partial Legend**
 See the cover sheet for the complete legend.
- 7-5A** Lot or lot-unit number
 - 2.56 ac Parcel area in acres (ac) or square feet (sf)
 - 23 Address number
 - 233-137 Parcel number from a neighboring map
 - 66 Parcel line dimension
 - SIMS AVE Street name
 - Parcel/Parcel boundary
 - Parcel/ROW boundary
 - Water boundary
 - Structure (1994 data)
 - Parcel covered by this map
 - Parcel from a neighboring map (see other map for current status)



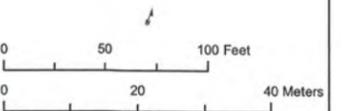
This map is for assessment purposes only. It is not intended for legal description or conveyance. Parcels are mapped as of April 1. Building footprints are 2006 data and may not represent current structures. Streets appearing on this map may be paper (unbuilt) streets. Lot numbers take precedence over address numbers. Address numbers shown on this map may not represent posted or legal addresses.



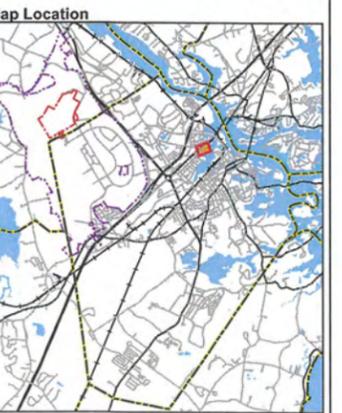
Portsmouth, New Hampshire
 2019
Tax Map 123



- Partial Legend**
See the cover sheet for the complete legend.
- 7-5A** Lot or lot-unit number
 - 2.56 ac Parcel area in acres (ac) or square feet (sf)
 - 25 Address number
 - 233-137 Parcel number from a neighboring map
 - 6r Parcel line dimension
 - SIMS AVE Street name
 - Parcel/Parcel boundary
 - Parcel/ROW boundary
 - Water boundary
 - Structure (1994 data)
 - Parcel covered by this map
 - Parcel from a neighboring map (see other map for current status)



This map is for assessment purposes only. It is not intended for legal description or conveyance. Parcels are mapped as of April 1. Building footprints are 2006 data and may not represent current structures. Streets appearing on this map may be paper (unbuilt) streets. Lot numbers take precedence over address numbers. Address numbers shown on this map may not represent posted or legal addresses.



Portsmouth, New Hampshire
2019
Tax Map 141

**BOARD OF ADJUSTMENT MEETING
PORTSMOUTH, NEW HAMPSHIRE**

Remote Meeting via Zoom Conference Call

7:00 P.M.

NOVEMBER 24, 2020

MINUTES

MEMBERS PRESENT: Chairman David Rheume, Vice-Chairman Jeremiah Johnson, Jim Lee, Peter McDonell, Christopher Mulligan, Arthur Parrott, Alternate Phyllis Eldridge, Alternate Chase Hagaman

MEMBERS EXCUSED: John Formella

ALSO PRESENT: Peter Stith, Planning Department

I. PUBLIC HEARINGS – NEW BUSINESS

Chairman Rheume recused himself from the following petition, and Vice-Chair Johnson took his place as Acting Chair. Alternates Ms. Eldridge and Mr. Hagaman took voting seats.

A) Petition of **Gregory & Amanda Morneault, Owners**, for property located at **137 Northwest Street** wherein relief was needed from the Zoning Ordinance to subdivide one lot into two lots and construct a new two family dwelling which requires the following: 1) Variances from Section 10.521 to allow: a) a lot depth of 44.7 feet for Lot 1 and 23.4 feet for Lot 2 where 70 feet is required for each; b) a lot area per dwelling unit of 5,317 square feet for proposed Lot 2 where 7,500 square feet per dwelling is required; c) a 2.5 foot front yard for proposed Lot 2 where 15 feet is required; and d) a 4 foot rear yard for proposed Lot 2 where 20 feet is required. Said property is shown on Assessor Map 122 Lot 2 and lies within the General Residence A (GRA) District.

SPEAKING TO THE PETITION

Attorney Tim Phoenix was present on behalf of the applicant. Also present were the owners Gregory and Amanda Morneault, lot purchasers Darrell and Reggie Moreau, project engineer Paul Dobberstein, and City Staff Attorney Trevor McCourt. Attorney Phoenix reviewed the petition and explained why the variances were needed. He said the project was a reasonable use for the land, noting that there were many existing homes on nearby small lots that didn't meet the density requirements or were too close to the lot line, and that allowing a duplex would let two families buy a home at the market rate and let the existing owners recoup the long and narrow lot. He reviewed the criteria and said they would be met. He said the applicant would also go before the Planning Board and the Historic District Commission (HDC).

Mr. Mulligan asked whether there was an easement for the vehicle turnaround on the eastern edge of Lot 2. Attorney McCourt said there was no easement and that the City's Public Works department wanted to keep the turnaround as a full or hammerhead turnaround but was willing to work with the applicant. Mr. Mulligan said the design could be reconfigured once it got to the HDC. He asked why there were two units proposed instead of one, noting that it didn't look like there was a lot of outdoor space for two families to enjoy. Attorney Phoenix said it had to do with the balance of the location and the costs of acquisition and construction. He said the buyers Darrell and Reggie thought two homes would make more sense, given that the location included the bypass and a lot of density. He said each unit could sell for a bit less than a single-family home, which made it more affordable as a starter home.

Mr. Hagaman asked how big the yard would be on each side of the duplex. Mr. Dobberstein said the gravel drive would come close to Unit 2, but there would be some room in the back and that the turnaround might be reconfigured. He said the project would go before the Technical Advisory Committee (TAC) and that the drive may be eliminated. Mr. Hagaman asked if the applicant had discussed working out an easement for the turnaround. Attorney Phoenix said the City seemed to be willing to work with the applicant on an easement.

Acting-Chair Johnson opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

No one was present to speak.

SPEAKING IN OPPOSITION TO THE PETITION

Attorney Joseph Russell said he represented Mary Ann Mahoney of 206 Northwest Street who lived directly across from the proposed structure. He said Ms. Mahoney felt that the project did not meet any of the five criteria. He said the front of the structure would be 27 feet from her front door and that the 2.9-ft setback would align with her driveway, so there would be negative impacts from noise and light, and her health, safety and welfare would be impacted. He said the project would not preserve the essential character of the District because the historic homes on the street ranged from 1664 to 1870, and a duplex with a 4-car garage would not fit. He said she also had concerns about emergency access to her home and about her property's value and thought the only hardship was created by the subdivision.

Katie Petrin of 239 Northwest Street said she and her husband recently bought their house and were concerned that their property's value would be diminished by the project.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Attorney Phoenix said the City wanted to work with the applicant to deal with access issues and allow a greater yard. He said the lot was presently overgrown, which related to the public interest, and that the project would fall in line with the other houses on the street. He said the

project was consistent in terms of density and setbacks in the overall area and that the ages of the surrounding homes were not a factor.

No one else was present to speak, and Acting-Chair Johnson closed the public hearing.

DISCUSSION OF THE BOARD

Mr. Hagaman asked how far the house was from the street. Mr. Stith said it was about twenty feet from the garage to the edge of the pavement. Mr. Hagaman said he was leery because the property-size-per-dwelling unit was misleading if more than half of the property was taken up by a turnaround and the Board didn't know if there would be an easement. Acting-Chair Johnson said the property had a hardship due to the dimensional setbacks and its proximity to the bypass but that he was having a harder time with the use. He said the density variance was backed into by the use and that it was hard to justify why two units were needed instead of one, but he thought there would be a dramatic change to the look of the structure once the HDC was done with its review. Mr. Parrott said there was practically no traffic on Northwest Street and there were topography challenges, both of which were factors that caused him to support the project. He said he had spent time looking at the property and thought the proposed use of the vacant lot was appropriate. Mr. Lee agreed, adding that the property was burdened by the bypass, with all its shining headlights and traffic light, and that the location had a special hardship.

Mr. McDonell said he generally agreed with the points made by Mr. Parrott and Mr. Lee and thought the project might change once the HDC reviewed it, but he didn't think the application met a lot of the criteria. He said the Board had to judge it on whether it would be a change to the character of the neighborhood. He said he disagreed with the applicant that one should look to the density of the property along Maplewood Avenue. He said there would be change in the character of the micro neighborhood that would cause diminution of property values across the street and possibly up and down the street, notwithstanding that it might be good for the City as a whole to have a duplex with more affordable units. He said he didn't think there was a hardship, although there were special conditions that distinguished it from other lots in the area. He said it had to meet the criteria of having no fair and substantial relationship between the purpose of the ordinance and the way its provisions were applied, and he felt that the density and setback requirements in the ordinance were reasonable. He said he did not think that the proposed residential use in a residential area was reasonable in that particular location. He said the petition failed quite a few criteria and that he could not support it.

Mr. Lee disagreed about the diminution of property values in that area. He said that a vacant lot carried no guarantee that it would always be vacant, and he thought that placing a reasonably-priced duplex on it would not diminish property values in the neighborhood. Ms. Eldridge agreed but had trouble believing that the petition would look the same once it was reviewed by the HDC. Acting-Chair Johnson said he had the same concern.

DECISION OF THE BOARD

*Mr. Parrott moved to **grant** the variances for the petition as presented, and Ms. Eldridge seconded.*

Mr. Parrott referred to his earlier comments. He said the ordinance was designed to deal with the odd situation that did not meet the zoning requirements, and he thought the lot complied in spades with that. He said granting the variances would not alter the essential characteristics of the neighborhood because the homes in the neighborhood were old but didn't have much in common, and the structure would look entirely different from them, like any new construction. He said he was having trouble with the public rights in the area because the property was off an embankment to the highway and was seldom used. He said granting the variances would do substantial justice because the applicant had a great deal to gain, whereas the public didn't have much interest in the little-used area. He said he understood that the neighbors were fond of the area but that it was a vacant overgrown lot that would not change the experience of folks in that area. He said the building would be three feet to the property line and not three feet off the street. He said granting the variances would not diminish the values of surrounding properties, noting that the Board hadn't heard expert testimony that they would, other than Mr. Lee's experience as a realtor, and that after the proposed structure was built and the area was landscaped, there would not be a change in the value of surrounding properties. He said the hardship was the physical property itself that was an unusually long and narrow lot and right up against public property, the embankment to the highway, and against a dead-end street, so it was hard to find how it related to other similar properties. He said the use of the vacant lot was appropriate and met the criteria.

Ms. Eldridge concurred and had nothing to add.

Mr. Hagaman said he would not support the motion. He said the City did need additional housing but that he didn't think the property was the right place to squeeze a duplex in. He said the shape of the property was long and narrow, but half of it couldn't have a house and the other half had a public use that wasn't known if it would change or not. He said the duplex would be sandwiched between a road and a berm up against the bypass, and the spirit of the ordinance was to ensure that properties like that were being properly utilized. He said it was the wrong thing to do with the property. Mr. Lee said that building a duplex was a very creative use on a very challenging property and that it would be an asset to the area and the City, so he would support the motion.

*The motion was **denied** by a vote of 4-3, with Mr. Hagaman, Mr. McDonell, Mr. Mulligan, and Acting-Chair Johnson voting against the motion to approve.*

Acting-Chair Johnson asked for another motion.

*Mr. McDonell moved to **deny** the variance requests, and Mr. Hagaman seconded.*

Mr. McDonell said he would incorporate his previous comments. He said the proposed duplex would alter the essential characteristics of the neighborhood because there was nothing else like it in the area, notwithstanding the fact that there was more dense development in a few places down the street and on Maplewood Avenue. He said the project would diminish surrounding property values, especially the value of the home directly across the street, and in general most

of the properties up and down the street. He said there was no hardship because the special conditions did not have a fair relationship between the purpose of the ordinance and its application to the property. He said it was an economically-driven request but that it wasn't enough. He said he didn't think one could get over the hump of the density and setback requirements, and he didn't think the duplex use in that location was a reasonable one. Mr. Hagaman concurred and said he would incorporate his remarks from the previous motion.

*The motion **passed** by a vote of 4-3, with Ms. Eldridge, Mr. Lee, Mr. Parrott voting in opposition to the motion.*

Chairman Rheaume assumed his seat as Chair, Acting-Chair Johnson resumed his seat as Vice-Chair, and Mr. Hagaman returned to alternate status.

B) Petition of **111 Maplewood Avenue, LLC, Owner**, for property located at **145 Maplewood Avenue** wherein relief was needed from the Zoning Ordinance for signage for new building which requires the following: 1) A Variance from Section 10.1251.20 to allow a 57 square foot freestanding sign where 20 square feet is the maximum allowed. 2) A Variance from Section 10.1242 to allow wall signs above the ground floor on all sides of the building. 3) A Variance from Section 10.1242 to allow wall signs above the ground floor on a side of a building not facing a street. 3) A Variance from Section 10.1144.63 to allow illuminated signs above 25 feet from grade. Said property is shown on Assessor Map 124 Lot 8-1 and lies within the Character District 5 (CD5) District.

SPEAKING TO THE PETITION

Attorney Chris Boldt was present on behalf of the applicant. The Chief Operating Officer of the Kane Company Eric Nelson and the project architect Chris Lizotte were also present.

Mr. Lizotte reviewed the petition. He said the building would be a 4-story multi-tenant building and that most of the tenants wanted signage that was associated with their uses. He said the building would also have mounted lights that were previously approved by the HDC. Attorney Boldt noted that the textual signs were less square footage than technically allowed and that the lighted signs were classified by the ordinance as signs and were approved by the HDC. He said they also needed approval from the Board for a freestanding sign. He said the special conditions of the building included its location and having three fronts, with a fourth not being on a street. He reviewed the criteria and said they would be met.

Chairman Rheaume verified all the sign locations with Attorney Boldt to see which ones were below street level, at street level, or above street level. Mr. Hagaman asked whether each sign for a particular tenant faced the street or was a potential entry point for the tenant or the public. Attorney Boldt said the main entrance was off the pedestrian alley, which most people would use. He said there were two potential tenant spaces on the first floor and a lower-level tenant on the Vaughan Street elevation that would each have an outside door. Mr. Hagaman asked why