



CELEBRATING OVER 35 YEARS OF SERVICE TO OUR CLIENTS

LIZABETH M. MACDONALD
JOHN J. RATIGAN
DENISE A. POULOS
ROBERT M. DEROSIER
CHRISTOPHER L. BOLDT
SHARON CUDDY SOMERS
DOUGLAS M. MANSFIELD
KATHERINE B. MILLER
CHRISTOPHER T. HILSON
HEIDI J. BARRETT-KITCHEN
JUSTIN L. PASAY
ERIC A. MAHER
CHRISTOPHER D. HAWKINS
VASILIOS "VAS" MANTHOS
ELAINE L. HOEPPNER
WILLIAM K. WARREN

HAND DELIVERED

RETIRED
MICHAEL J. DONAHUE
CHARLES F. TUCKER
ROBERT D. CIANDELLA
NICHOLAS R. AESCHLIMAN

December 22, 2022

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

RE: 305 Peverly Hill Road, Map 255, Lot 5
Thomas & Marybeth Reis and James & Meegan Reis

Dear Chair Lee and Board Members:

Enclosed please find supporting materials to accompany the information submitted via the City's on-line permitting system for variance relief regarding the above referenced property. Please note that certain elements in the electronic filing, specifically the footprint of the structures, are based upon information contained on the tax card. We reserve the right to supplement this application if more detailed information becomes available to us.

We respectfully request that this matter be placed on the Board's January 17, 2023 agenda. In the meantime, if you have any questions or require additional information do not hesitate to contact me.

Very truly yours,
DONAHUE, TUCKER & CIANDELLA, PLLC

Sharon Cuddy Somers
SCS/sac
Enclosures

cc: Thomas & Marybeth Reis
James & Meegan Reis

DONAHUE, TUCKER & CIANDELLA, PLLC
16 Acadia Lane, P.O. Box 630, Exeter, NH 03833
111 Maplewood Avenue, Suite D, Portsmouth, NH 03801
Towle House, Unit 2, 164 NH Route 25, Meredith, NH 03253
83 Clinton Street, Concord, NH 03301

THOMAS & MARYBETH REIS AND JAMES & MEEGAN REIS
305 PEVERLY HILL ROAD
VARIANCE APPLICATION

The Applicant requests variances from Article 4, Section 10.440, 1.30 to permit a two family dwelling in the SRB zone and Article 5, Section 10.513 to permit more than one free standing dwelling on a lot in the SRB zone.

Introduction

Jim and Meegan Reis, together with Jim's brother Tom and Jim's sister-in-law Marybeth Reis, collectively own what is known as the "Hett Farm" located at 305 Peverly Hill Road and which lies in the Single Family B zone. The property contains what is believed to be the last working farm in the City of Portsmouth, and the entire family, including the children of Jim and Meegan Reis, actively assist in the running of the farm. The property was purchased in 2014 and it was the intention to construct a separate home on the portion of the property reserved for the farmhouse, hereafter referred to as the "Farmhouse Lot" for Jim and Meegan Reis and their family and to allow Tom and Marybeth Reis to reside in the existing farmhouse. In 2015, the owners obtained a variance from Article 5, Section 10.513 which indicates that "...no more than one free standing dwelling shall be built on any lot in a Rural, Single Family A or B or General Residence District A or B..." Unfortunately, that variance expired before the separate home could be constructed and so a variance is being sought again from this provision of the zoning ordinance.

Additionally, subsequent to obtaining the 2015 variance, Betsy Zehnder, the sister of Jim and Tom Reis, has also decided to reside on the property and assist with farming activities. In order to provide a private dwelling for Betsy Zehnder, the owners propose that the breezeway attached to the existing farmhouse be renovated to create a dwelling. The result would be to transform the existing farmhouse and breezeway into a two family structure. In turn, because the Single Family Residence (SRB) zone does not allow for a two family dwelling on the lot, then a variance from Article 4, Section 10.440, 1.30 is also required.

Set forth below is a discussion of the property, the conservation easement applicable to the property and the arguments which support why each of the variance criteria are met for both of the ordinance provisions, along with reference to relevant enclosures. Following your review of the submitted materials, we respectfully request that both variances be granted as presented.

The Property

The Reis property is located at 305 Peverly Hill Road. It consists of 39.7 acres and all but 2.1 of those acres are subject to a conservation easement deed which is held by the City of Portsmouth. The area reserved from the conservation easement, hereinafter referred to as the "Farmhouse Lot" is situated at the crest of a hill on the property and is zoned SRB, while the remainder of property subject to the conservation easement is zoned Natural Resource Protection District. The property currently contains an existing farmhouse constructed in 1810 as well as several

outbuildings, some of which are visible from the street. The last owner of the property, John Hett also constructed a barn in the early 1990's after the conservation easement was created and at a time when he was in his late 90's; he did so in an effort to ensure that farming operations would continue on site.

The property has approximately 500 feet of frontage and contains fields, pasture, and forest. The Farmhouse Lot, with 91,476 sq. ft., contains enough space to allow for three dwellings where density of 15,000 sq. ft. is required. No setback or other dimensional relief is required for the creation of the proposed two family dwelling or the freestanding dwelling.

The Conservation Easement

It would be difficult to truly appreciate the unique nature of this property without having a complete understanding of the conservation easement which burdens all of the property except the Farmhouse Lot. The variance application of 2015 prepared by Attorney Peter Loughlin contains extensive information concerning the property. Reference to the history of the property can be found in Attorney Loughlin's application, but the highlights of the history include the fact that the Hett Farm is the last working farm in Portsmouth and was first farmed starting in the 1630's by Thomas Walford. In 1940, the late John and Maud Hett acquired the property and John Hett farmed the property until close to the time of his death.

In 1989, John and Maud Hett were able to consummate their efforts to preserve the farm from future development efforts by others and submitted all but the Farmhouse Lot to the conservation easement conveyed to the City in 1989¹. The use of the portion of the property subject to the conservation easement is limited to agriculture and forestry.

SECTION I **TWO FAMILY DWELLING VARIANCE** **FROM ARTICLE 4, SECTION 10.440, 1.30**

1. The Variance will not be contrary to the public interest

Granting the variance will not be contrary to the public interest. To be contrary to the public interest, the variance must unduly, and to a marked degree, violate the relevant ordinance's basic zoning objectives. Determining whether the basic objective of the ordinance is violated can be measured by whether the variance will alter the essential character of the locality, or by whether it would threaten public health, safety or welfare.

The purpose of the SRB district described in Article 4, Section 10.410 is "...to provide areas for single family dwellings at low to medium densities (approximately 1 to 3 dwellings per acre).

¹ The total acreage of the conservation easement is 55.4 acres. Of that, 37.7 acres of the Reis property is subject to the conservation easement. The remaining 17.7 acres subject to the conservation easement are located on the abutting Map 255, Lot 3 currently owned by the Walter Hett Trust.

The objective of the ordinance is arguably to keep the category of housing limited to single family homes but also to regulate the density of housing. The character of the locality, as shown on Exhibit 2, is comprised of single family homes along with a residential condominium and several small businesses situated on the easterly side of Peverly Hill Road. The Reis family proposes to have one building which will contain two dwellings, the existing dwelling in the existing farmhouse together with a renovated breezeway which will become the second dwelling. The configuration of the existing farmhouse and the proposed second dwelling is such that it will replicate what is present on site currently, and therefore will not alter the essential character of the locality.

Renovating the existing breezeway to create a second dwelling, while retaining the existing farmhouse such that both dwellings will be in one dwelling will not threaten the public health, safety or welfare.

2. The spirit of the Ordinance will be observed

Under New Hampshire law, this variance criteria is essentially merged with the “public interest” criteria. As stated above, the spirit of the ordinance is to regulate density. For the reasons stated above, the spirit of the ordinance will be observed if the variance is granted.

3. The values of surrounding properties are not diminished

Granting the variance to allow a two family dwelling will not diminish property values. The existing farmhouse has been on the property for many years and the breezeway portion of the existing farmhouse will be replaced with the attached second dwelling which should have little to no visual impacts to abutting property. As a result, no property values will be diminished.

The applicant is not aware of any information or evidence that would suggest that the presence of a second dwelling will decrease the value of surrounding property.

4. Substantial justice will be done

The relevant analysis under this element of the variance criteria is whether the benefit to the applicant of granting this variance will be outweighed by a detriment or loss to the individual or to the public at large. Here the benefit to the applicant in granting the variance is that allowing a two family dwelling within the Farmhouse Lot will provide adequate space and privacy for all those who currently, or in the future, are residing on site and who may assist with agricultural activities.

Conversely, there is no known detriment to any individuals. There is adequate parking on site to accommodate the needs for the two family dwelling and no significant traffic will be added to Peverly Hill Road by virtue of the second dwelling to be added. Individuals on neighboring properties will be unable to discern any real difference in having a second dwelling because it will simply replace the existing “breezeway” structure which is currently attached to the existing farmhouse and the height of the second dwelling will be consistent with that of the existing

farmhouse. Further, as shown on Exhibit 2, the distance between the proposed second dwelling and the abutting properties is over 350 feet, so it is unlikely that the second dwelling will even be visible to any individuals.

There is also no known detriment to members of the public by allowing the variance.

5. Unnecessary Hardship:

A. Owing to special conditions of the property that distinguish it from other properties:

The lot on which the Farmhouse Lot sits is extraordinarily large in comparison to neighboring properties and consists of 37.9 acres. In addition to the physical aspects of the property which make it unique, there are also special conditions related to the use of the property which make it unique. The uses of the land burdened by the conservation easement are limited to agriculture and forestry as further described in Use Limitations, Section (A) (i) of the conservation easement and the overarching goal of the conservation easement is to preserve open space.

The nature of the conservation easement restrictions means that, as a practical matter, the fee owners of the conservation easement and Farmhouse Lot, and the City, as easement holder, can reasonably expect that those residing on the Farmhouse Lot would likely participate in the management of whatever agricultural or forestry activities may be occurring with the conservation easement. Additionally, given the sheer size of the land area to be managed, it is reasonable to expect that there is a need for a healthy number of people to perform the management and that those people can most effectively manage if they reside on site. Collectively, these factors constitute special conditions regarding the use of the property and such special conditions distinguish it from other properties.

B. No fair and substantial relationship exists between the general public purposes of the Ordinance provision and the specific application of that provision to the property

The general public purpose of the ordinance is to provide for single family dwellings with low to moderate density of 1-3 dwellings per acre. As applied to the 2.1 acre portion of the property known as the "Farmhouse Lot", a two family dwelling will still be adhering to the rule of low to moderate density of 1-3 dwellings and therefore there is no fair and substantial relationship which exists between the public purpose of the ordinance and the specific application of the ordinance to this property.

C. The proposed use is reasonable

The property is subject to a conservation easement which benefits the City of Portsmouth by keeping intact the promise of open space and by providing in the twenty first century the opportunity to pursue agriculture and forestry at the last working farm in Portsmouth. The Reis family is committed to providing the labor necessary to keep agriculture and forestry alive, but they need appropriate accommodations to do so. Therefore, the addition a two family dwelling is reasonable. Further, even if a future owner of the property chose not to engage in agriculture or

forestry, the size of the property, the distance to abutting properties and the compliance with density objectives all means that the request for a second dwelling is reasonable.

SECTION II
MORE THAN ONE FREE STANDING DWELLING PER LOT VARIANCE
FROM ARTICLE 5, SECTION 10.513

1. The Variance will not be contrary to the public interest

Granting the variance will not be contrary to the public interest. To be contrary to the public interest, the variance must unduly, and to a marked degree, violate the relevant ordinance's basic zoning objectives. Determining whether the basic objective of the ordinance is violated can be measured by whether the variance will alter the essential character of the locality, or by whether it would threaten public health, safety or welfare.

The ordinance is silent as to the purpose behind restricting the number of free standing dwellings within the SRB district. However, looking at the purpose of the SRB district itself as described in Article 4, Section 10.410 is helpful. Here, the purpose of the district is "...to provide areas for single family dwellings at low to medium densities (approximately 1 to 3 dwellings per acre). The objective of the ordinance is arguably to keep the category of housing limited to single family homes but also to regulate the density. The minimum lot area in the SRB district is 15,000 sq. ft. Here, there will be 576,444 sq. ft. per dwelling unit on the entire lot and 29,040 sq. ft. per dwelling unit if you exclude the area subject to the conservation easement; nearly twice the required lot area per dwelling unit.

The presence of an additional free standing dwelling unit on the property will not threaten the public health, safety or welfare.

2. The spirit of the Ordinance will be observed

Under New Hampshire law, this variance criteria is essentially merged with the "public interest" criteria. As stated above, the spirit of the ordinance is to regulate density. For the reasons stated above, the spirit of the ordinance will be observed if the variance is granted.

3. The values of surrounding properties are not diminished

Granting the variance to allow more than one free standing dwelling on the property will not diminish property values. The proposed free standing dwelling unit on the property as shown on Exhibit 1 will be a residential use consistent with the existing use on site as well as existing uses on surrounding properties. Further, the location of the free standing dwelling will be over 350 feet from surrounding residential properties and therefore will have little visibility. The footprint and height of the proposed free standing dwelling will be consistent with existing structures, thus not standing out in any way, and will likely appear to be one of the structures associated with the farmhouse and barns.

The applicant is not aware of any information or evidence that would suggest that having more than one free standing dwelling situated on the “Farmhouse Lot” portion of the property will diminish surrounding property values.

4. Substantial justice will be done

The arguments presented for substantial justice for the two family dwelling variance apply with equal force to the variance for a free standing dwelling. Therefore, the arguments presented on this topic for the two family variance are restated and incorporated into the presentation for the free standing dwelling.

5. Unnecessary Hardship:

The arguments presented for unnecessary hardship for the two family dwelling variance apply with equal force to the variance for unnecessary hardship. Therefore, the arguments presented on this topic for the two family dwelling variance are restated and incorporated into the presentation for the free standing dwelling.



↓ Approximate boundary of 2 acre buildable lot (shown in red).

↓ Proposed 32x24 home (for Betsy Zehnder)

↓ Existing home (for Tom/Marybeth Reis)

↓ Proposed 38x28 home (for James/Meegan Reis)

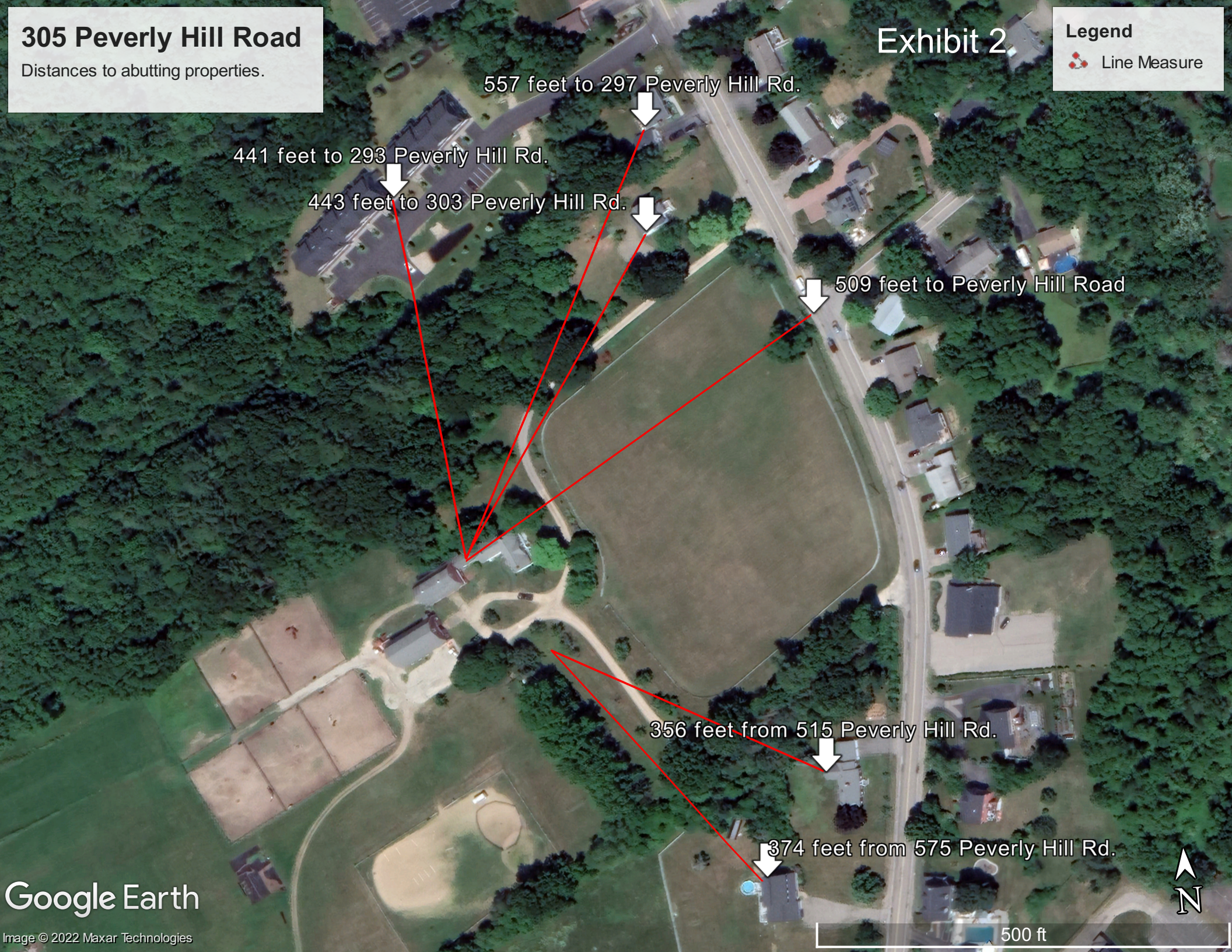
305 Peverly Hill Road

Distances to abutting properties.

Exhibit 2

Legend

Line Measure





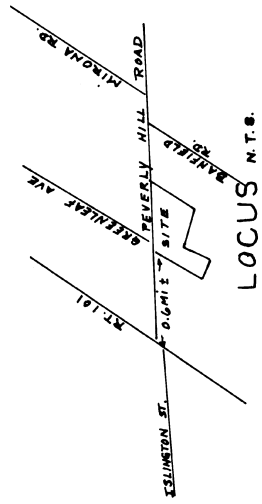
**MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT**

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 09/21/2022
Data updated 3/9/2022

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

May 26 1 27 PM '89



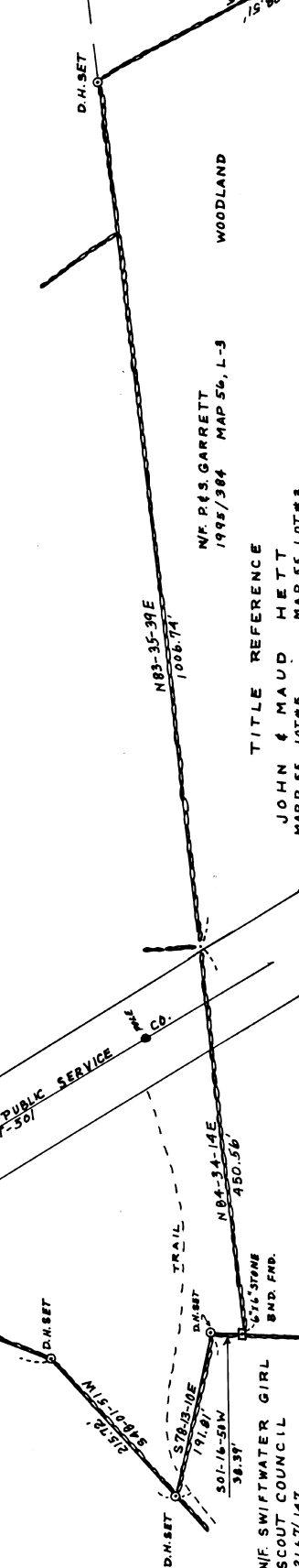
N.F. S. STOKEL
679/034
MAP R-42, L-4
PLAN #0171 (1896)

LOCUS N.T.S.



WOODLAND
CONSERVATION EASEMENT TO CITY OF PORTSMOUTH
WET HAY FIELD

N.F. S. STOKEL
679/034
MAP 42, L-4



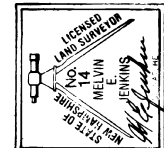
N.F. SWIFTWATER GIRL
SCOUT COUNCIL
2167/147
MAP R56, L-1

N.F. P.S. GARRETT
1995/384 MAP 56, L-3

TITLE REFERENCE

JOHN & MAUD HETT	MAP 55 LOT#3	966/257	5-7-1940	PISCATAQUA BANK	969/032	2-28-1940	ALBERT D. FOSTER, TREAS.	912/432	12-1-1925	CHARLES H. UMSTEAD	800/277	12-26-1925	FLORENCE B. CUMMINGS	661/007	6-24-1911	BENJ. F. GARDNER	648/454	9-22-1909	FRANCES E. GARDNER
MAP 55 LOT#3	2057/493	3-2-1971	ATWIGGIN REC. EST. OF	GEO. T. WIGGIN	659/118	9-26-1910	JAMES SHURMAN	575/325	5-8-1900	GEORGE BOSS	548/404	4-4-1900	JOHN E. GARDNER	640/066	1-24-1911	A.M. GARDNER			

I CERTIFY THAT THIS SURVEY & PLAN
WAS PREPARED BY ME OR THOSE UNDER
MY DIRECT SUPERVISION
M.E. Jenkins



PLAN OF LAND FOR
JOHN & MAUD HETT
PORTSMOUTH, N.H.
DEC. 1988 SCALE 1 in. = 100 ft.
SURVEY BY M.E. JENKINS, LEE, N.H.

View from proposed
house site



View from Peverly Hill Road



View from Peverly Hill Road



View from Peverly Hill Road



View from 515 Peverly Hill Road



View from 575 Peverly Hill Road



LETTER OF AUTHORIZATION

We, Thomas Reis, Marybeth Reis, James Reis and Meegan Reis, owners of property depicted on Tax Map 255, Lot 5, do hereby authorize Donahue, Tucker and Ciandella, PLLC, to execute any land use applications to the City of Portsmouth and to take any action necessary for the application and permitting process, including but not limited to, attendance and presentation at public hearings, of the said property.

Dated: December 14, 2022

/s/ Thomas E. Reis

Thomas Reis

/s/ Marybeth Reis

Marybeth Reis

/s/ James B. Reis

James Reis

/s/ Meegan C. Reis

Meegan Reis