



Wyskiel,
Boc,
Tillinghast
& Bolduc, P.A.
Attorneys at Law

*Michael J. Bolduc

**Thomas G. Ferrini

*William R. Phipps

***D. Lance Tillinghast

*Christopher A. Wyskiel

William E. Boc - Retired

* also admitted in Maine

**also admitted in MA & VT

***also admitted in MA, ME & VT

January 22, 2025

ORIGINAL HAND DELIVERED

And

Copy Uploaded as Attachment to Online Application Submittal

City of Portsmouth
Zoning Board of Adjustment
c/o Planning Department
1 Junkins Avenue, 3rd Floor
Portsmouth, NH 03801

RE: Application for Equitable Waiver of Dimensional Requirement
By Paula J. Reid, Trustee of the Paula J. Reid 2003 Revocable Trust
410 Richards Avenue
Tax Map 112, Lot 10
General Residence A ("GRA") zone

Dear Board Members:

This office represents Paula J. Reid, Trustee of the Paula J. Reid Revocable Trust, owner of the above referenced property. See Landowner Letter of Authorization Exhibit A. This letter supplements the online Land Use Application form submitted by the undersigned on Paula's behalf.

By Notice of Decision dated December 26, 2023, Portsmouth Case LU-23-198 (copy attached with Findings of Fact as Exhibit B), the Portsmouth ZBA granted variances to Paula Reid to tear down an existing dilapidated garage on her property in order to build a new one conforming to the dimensional requirement relief granted by the approved variances.

The variances granted allowed building a longer and slightly higher pitched garage, maintaining a pre-existing 3.5 foot right side yard setback. The variances were needed to lengthen the garage and keep an existing 3.5 foot right yard setback (where 10 feet is required) and slightly enlarge building coverage.

This application focuses on an encroachment to the variance allowed 3.5 foot right side yard setback.

Excavation, foundation pouring and subsequent construction were all planned, measured and laid out intending to conform to the granted variances, specifically the 3.5 right side yard setback. When the foundation was completed and garage construction underway, a City required foundation certification was completed by McEneaney Survey Associates of New England, the same surveyor who surveyed the lot and submitted plans for the variance applications. McEneaney's January 7, 2025 foundation certificate survey (copy attached as Exhibit C) shows the front corner of the garage encroaching four inches into the variance allowed 3.5 foot right yard setback. It shows the rear corner of the garage encroaching one inch into the same 3.5 foot right yard setback.

Paula's application qualifies for an Equitable Waiver of Dimensional Requirement. The elements are set forth in RSA 674:33-a, I (copy attached as Exhibit D). These facts support all four required elements:

- a. The violation was not noticed until the structure was completed. The violation was discovered after an "as built" survey was completed for a City required foundation certification. By the time that survey was completed the garage was fully framed and roofed with 85% of the siding applied. See photograph attached as Exhibit E. Further work on the garage stopped.
- b. The violation was the result of a good faith error in measurement. The general contractor staked the foundation appropriately for the excavators and the foundation company. Due to the space constraints of the project, the stakes were moved by the excavation company (there was no room to dig with the stakes in place). When the stakes were replaced, the excavators measured off the fence – using the back side off the fence as a point rather than the front side of the fence. This is because a.) the fence is depicted as a bold line on the survey and b.) because the fence sits on the property line, they assumed it was my fence and not my neighbors. In fact, the encroachment at the rear of the garage is less than that of the front of the garage because in fact, a portion of my neighbor's fence is on my property.
- c. The physical or dimensional violation does not constitute a public or private nuisance nor diminish the value of other property in the area. The violation is 4 inches on the front corner and 1 inch on the back corner. It is not enough to visually notice. The garage is simply closer to a fence, not to a structure nor the neighbor's open yard.
- d. Due to the degree of past construction and investment, the cost of correction far outweighs the public benefit. The garage is fully framed as depicted in the attached photo.

The requested Equitable Waiver of Dimensional Requirements is well supported by the above and the attached. It should be granted. It is reasonable to do so.

On advice of City Planning Staff, this Application is simultaneously submitted with a Variance Application to amend the above referenced previously approved Variance to allow setback relief consistent with the Exhibit C Foundation Certification Survey. The recommendation to do that is in case this requested waiver is not approved.

The simultaneous Variance Application is submitted with it's own brief supplemental explanatory letter, incorporating by reference the facts of this Waiver Application and it's exhibits, and the Applicant's original November 29, 2023 Variance Application granted by Exhibit B attached (including all original Exhibits filed with it).

Sincerely

A handwritten signature in black ink, appearing to read "Christopher A. Wyskiel". The signature is written in a cursive, somewhat stylized font.

Christopher A. Wyskiel

CAW/lew

Enclosures

cc: Paula J. Reid

H:\RE & BUS\REID - PAULA - Portsmouth Variance\New Variance - 2025\Letter to Portsmouth ZBA 1-21-2025.docx

City of Portsmouth
Zoning Board of Adjustment
1 Junkins Avenue, 3rd Floor
Portsmouth, NH 03801

LETTER OF AUTHORIZATION

Re: ZBA Application(s) re: 410 Richards Avenue, Portsmouth, NH
Owners: Paula J. Reid, Trustee of the Paula J. Reid 2003 Revocable Trust

Dear Sir/Madam:

Paula J. Reid, individually and as Trustee of the Paula J. Reid 2003 Revocable Trust, authorize my attorney, Christopher A. Wyskiel of Wyskiel, Boc, Tillinghast & Bolduc, P.A. to represent me, individually and in my landowning trustee capacity, before the Zoning Board of Adjustment regarding applications for Equitable Waiver of Developmental Requirements and/or an amended variance for the above referenced property.

Sincerely,

Dated: January 17, 2025



Paula J. Reid, Individually and as Trustee
of the Paula J. Reid 2003 Revocable Trust

H:\RE & BUS\REID - PAULA - Portsmouth Variance\New Variance - 2025\Authorization 1-17-2025.docx

Exh. A



CITY OF PORTSMOUTH

Planning Department
1 Junkins Avenue
Portsmouth, New
Hampshire 03801
(603) 610-7216

ZONING BOARD OF ADJUSTMENT

December 26, 2023

Paula J. Reid 2003 Revocable Trust
410 Richards Avenue
Portsmouth, New Hampshire 03801

RE: Board of Adjustment request for property located at 410 Richards Avenue (LU-23-198)

Dear Property Owner:

The Zoning Board of Adjustment, at its regularly scheduled meeting of **Tuesday, December 19, 2023**, considered your application for demolishing and removing the existing detached garage and constructing a new detached garage and associated drainage improvements, which requires the following: 1) Variance from Section 10.521 to permit a) 3.5 foot right side yard where 10 feet is required, and b) 30% building coverage where 25% is the maximum allowed; and 2) Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 112 Lot 10 and lies within the General Residence A (GRA) District. As a result of said consideration, the Board voted to **approve** the requested variances from Section 10.521 and acknowledge that the request does not require relief from Section 10.321.

The Board's decision may be appealed up to thirty (30) days after the vote. Any action taken by the applicant pursuant to the Board's decision during this appeal period shall be at the applicant's risk. Please contact the Planning Department for more details about the appeals process.

Approvals may also be required from other City Commissions or Boards. Once all required approvals have been received, applicant is responsible for applying for and securing a building permit from the Inspection Department prior to starting any project work.

This approval shall expire unless a building permit is issued within a period of two (2) years from the date granted unless an extension is granted in accordance with Section 10.236 of the Zoning Ordinance.

The Findings of Fact associated with this decision are available: attached here or as an attachment in the Viewpoint project record associated with this application and on the Zoning Board of Adjustment Meeting website:

<https://www.cityofportsmouth.com/planportsmouth/zoning-board-adjustment/zoning-board-adjustment-archived-meetings-and-material>

Exh B

The minutes and audio recording of this meeting are available by contacting the Planning Department.

Very truly yours,



Phyllis Eldridge, Chair of the Zoning Board of Adjustment

cc: Shanti Wolph, Chief Building Inspector

Rosann Maurice-Lentz, City Assessor

Christopher A Wyskiel, Attorney, Wyskiel, Boc, Tillinghast and Bolduc P.A.

Exh. B

Findings of Fact | Variance

City of Portsmouth Zoning Board of Adjustment

Date: 12-19-2023

Property Address: 410 Richards Avenue

Application #: LU-23-198

Decision: **Grant**

Findings of Fact:

Effective August 23, 2022, amended RSA 676:3, It now reads as follows: The local land use board shall issue a final written decision which either approves or disapproves an application for a local permit and make a copy of the decision available to the applicant. **The decision shall include specific written findings of fact that support the decision. Failure of the board to make specific written findings of fact supporting a disapproval shall be grounds for automatic reversal and remand by the superior court upon appeal, in accordance with the time periods set forth in RSA 677:5 or RSA 677:15, unless the court determines that there are other factors warranting the disapproval.** If the application is not approved, the board shall provide the applicant with written reasons for the disapproval. If the application is approved with conditions, the board shall include in the written decision a detailed description of all conditions necessary to obtain final approval.

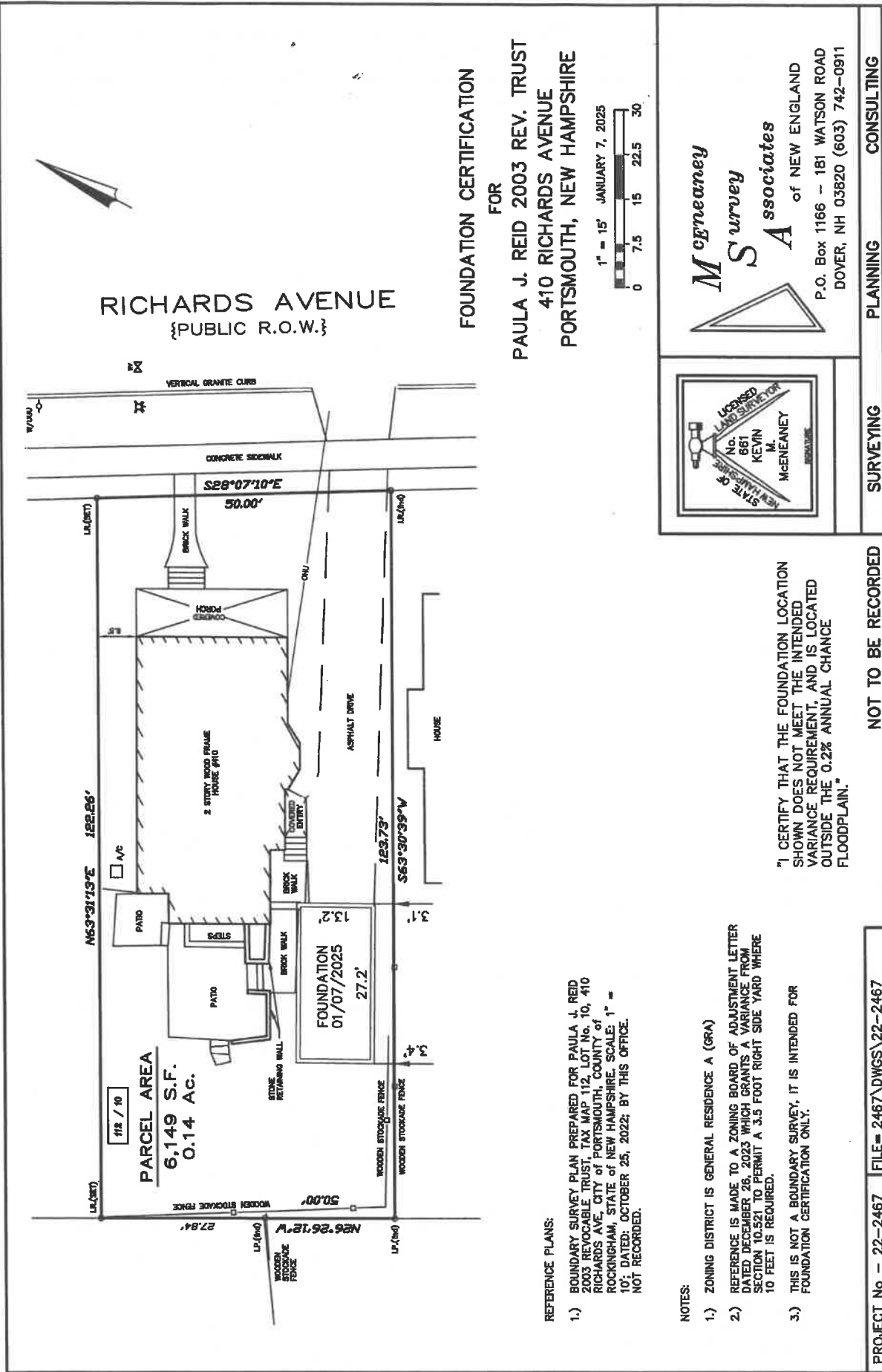
The proposed application meets/does not meet the following purposes for granting a Variance:

Section 10.233 Variance Evaluation Criteria	Finding (Meets Criteria)	Relevant Facts
10.233.21 Granting the variance would not be contrary to the public interest.	YES	<ul style="list-style-type: none"> It is in the public interest to deal with drainage, given the climate changes.
10.233.22 Granting the variance would observe the spirit of the Ordinance.	YES	<ul style="list-style-type: none"> The Board didn't think the minor variation in lot coverage was outside of it and that adding a garage is like what every other property in the neighborhood did.
10.233.23 Granting the variance would do substantial justice.	YES	<ul style="list-style-type: none"> The property owner will avoid an issue that has arisen and there is no contrary interest in preserving the zoning ordinance for the property without the variance granted.
10.233.24 Granting the variance would not diminish the values of surrounding properties.	YES	<ul style="list-style-type: none"> The neighbor has said it is a fine change and there is no evidence that it will diminish anyone's property value in the immediate area.

Exh. B

<p>10.233.25 Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship.</p> <p>(a) The property has special Conditions that distinguish it from other properties in the area. AND (b) Owing to these special conditions, a fair and substantial relationship does not exist between the general public purposes of the Ordinance provision and the specific application of that provision to the property; and the proposed use is a reasonable one. OR Owing to these special conditions, 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.</p>	<p>YES</p>	<ul style="list-style-type: none"> • The property has special conditions of drainage issues and the garage is a hazard because the walls aren't straight, and the specific application of the ordinance provisions to the property will result in an unnecessary hardship.
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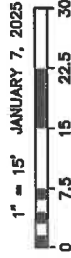
Exh. B



RICHARDS AVENUE
{PUBLIC R.O.W.}

FOUNDATION CERTIFICATION
FOR

PAULA J. REID 2003 REV. TRUST
410 RICHARDS AVENUE
PORTSMOUTH, NEW HAMPSHIRE



McEneaney
Survey Associates
of NEW ENGLAND

P.O. Box 1166 - 181 WATSON ROAD
DOVER, NH 03820 (603) 742-0911

SURVEYING PLANNING CONSULTING

REFERENCE PLANS:

- BOUNDARY SURVEY PLAN PREPARED FOR PAULA J. REID 2003 REVOCABLE TRUST, TAX MAP 112, LOT No. 10, 410 RICHARDS AVE, CITY OF PORTSMOUTH, COUNTY OF ROCKINGHAM, STATE OF NEW HAMPSHIRE. SCALE: 1" = 10'; DATED: OCTOBER 25, 2022; BY THIS OFFICE. NOT RECORDED.

NOTES:

- ZONING DISTRICT IS GENERAL RESIDENCE A (GRA)
- REFERENCE IS MADE TO A ZONING BOARD OF ADJUSTMENT LETTER DATED DECEMBER 26, 2023 WHICH GRANTS A VARIANCE FROM SECTION 10.521 TO PERMIT A 3.5 FOOT RIGHT SIDE YARD WHERE 10 FEET IS REQUIRED.
- THIS IS NOT A BOUNDARY SURVEY. IT IS INTENDED FOR FOUNDATION CERTIFICATION ONLY.

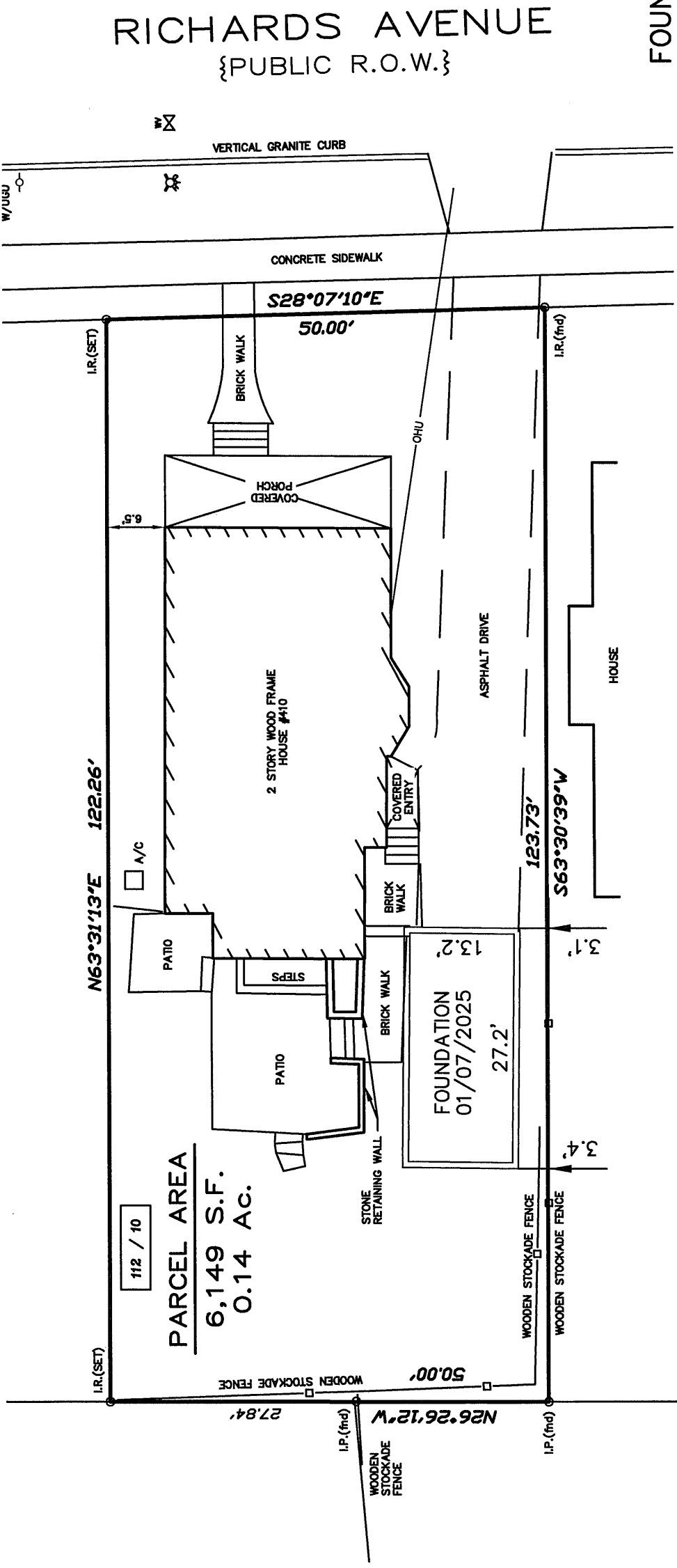
I CERTIFY THAT THE FOUNDATION LOCATION SHOWN DOES NOT MEET THE INTENDED VARIANCE REQUIREMENT, AND IS LOCATED OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN.

PROJECT No - 22-2467 FILE# 2467\DWGS\22-2467

NOT TO BE RECORDED

see pdf also

Exh. C

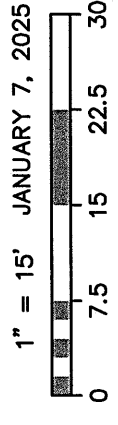


RICHARDS AVENUE
 {PUBLIC R.O.W.}

FOUNDATION CERTIFICATION

FOR

PAULA J. REID 2003 REV. TRUST
 410 RICHARDS AVENUE
 PORTSMOUTH, NEW HAMPSHIRE



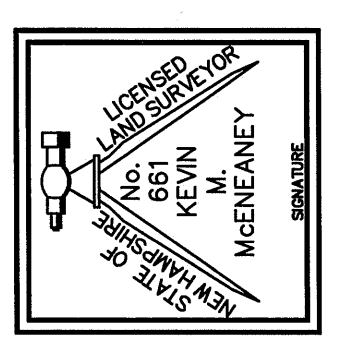
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"I CERTIFY THAT THE FOUNDATION LOCATION SHOWN DOES NOT MEET THE INTENDED VARIANCE REQUIREMENT, AND IS LOCATED OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN."



McEneaney
Survey Associates
 of NEW ENGLAND

P.O. Box 1166 - 181 WATSON ROAD
 DOVER, NH 03820 (603) 742-0911

PROJECT No - 22-2467

FILE= 2467\DWGS\22-2467

NOT TO BE RECORDED

SURVEYING

PLANNING

CONSULTING

TITLE LXIV

PLANNING AND ZONING

CHAPTER 674

LOCAL LAND USE PLANNING AND REGULATORY POWERS

Zoning Board of Adjustment and Building Code Board of Appeals

Section 674:33-a

674:33-a Equitable Waiver of Dimensional Requirement. –

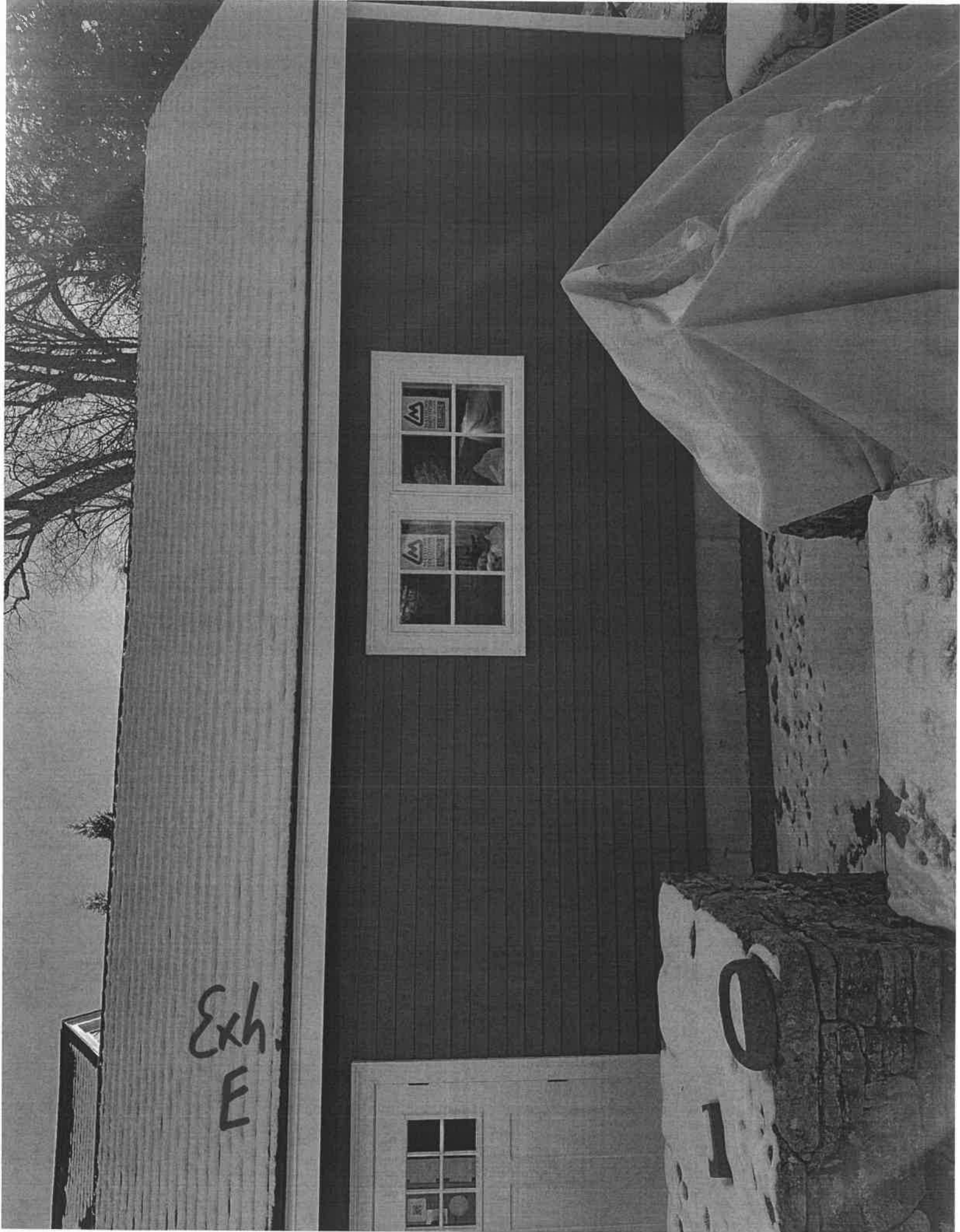
- I. When a lot or other division of land, or structure thereupon, is discovered to be in violation of a physical layout or dimensional requirement imposed by a zoning ordinance enacted pursuant to RSA 674:16, the zoning board of adjustment shall, upon application by and with the burden of proof on the property owner, grant an equitable waiver from the requirement, if and only if the board makes all of the following findings:
- (a) That the violation was not noticed or discovered by any owner, former owner, owner's agent or representative, or municipal official, until after a structure in violation had been substantially completed, or until after a lot or other division of land in violation had been subdivided by conveyance to a bona fide purchaser for value;
 - (b) That the violation was not an outcome of ignorance of the law or ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith on the part of any owner, owner's agent or representative, but was instead caused by either a good faith error in measurement or calculation made by an owner or owner's agent, or by an error in ordinance interpretation or applicability made by a municipal official in the process of issuing a permit over which that official had authority;
 - (c) That the physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property; and
 - (d) That due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected.
- II. In lieu of the findings required by the board under subparagraphs I(a) and (b), the owner may demonstrate to the satisfaction of the board that the violation has existed for 10 years or more, and that no enforcement action, including written notice of violation, has been commenced against the violation during that time by the municipality or any person directly affected.
- III. Application and hearing procedures for equitable waivers under this section shall be governed by RSA 676:5 through 7. Rehearings and appeals shall be governed by RSA 677:2 through 14.
- IV. Waivers shall be granted under this section only from physical layout, mathematical or dimensional requirements, and not from use restrictions. An equitable waiver granted under this section shall not be construed as a nonconforming use, and shall not exempt future use, construction, reconstruction, or additions on the property from full compliance with the ordinance. This section shall not be construed to alter the principle that owners of land are bound by constructive knowledge of all applicable requirements. This section shall not be construed to impose upon municipal officials any duty to guarantee the correctness of plans reviewed by them or property inspected by them.

Source. 1996, 226:4, eff. Jan. 1, 1997.

Exh. D



Exh. E



Exh
E

LIST OF ABUTTERS

Applicant: Paula J. Reid, Trustee of the Paula J. Reid 2003 Revocable Trust
 410 Richards Avenue, Portsmouth, NH
 Tax Map 112, Lot 10

<u>Property Address</u>	<u>Tax Map/Lot No.</u>	<u>Owner(s)</u>	<u>RCRD Deed Ref.</u>
420 Richards Avenue	Map 112, Lot 9	Amy E. Dutton Rev. Trust of 2003, Amy E. Dutton Murphy, Trustee	5225/39
390 Richards Avenue	Map 112, Lot 11	Stebbins Family Trust, John R. & Bridget M. Stebbins, Trustees	5636/563
399 Richards Avenue	Map 112, Lot 18	Barbara E. Collier Rev. Trust, Barbara E. Collier, Trustee	6315/246
409 Richards Avenue	Map 112, Lot 19	Stephen C. Buzzell Rev. Trust, Stephen C. Buzzell, Trustee, and and Jody E. Buzzell Rev. Trust, Jody E. Buzzell, Trustee	6035/840
419 Richards Avenue	Map 112, Lot 20	Thomas A. Nies Rev. Trust of 2010 and Denise M. Nies Rev. Trust of 2010, Thomas A. & Denise M. Nies, Trustees	5192/1225
295 Miller Avenue	Map 130, Lot 9	Kristen B. Mullen Rev. Living Trust, Kristen B. Mullen, Trustee	5699/1271
303 Miller Avenue	Map 130, Lot 10	The Twombly Trust, Dorothy C. Twombly, Trustee	2762/2766

Engineer/Surveyor:

Kevin M. McEaney
 McEaney Survey Associates of New England
 P. O. Box 681
 Dover, NH 03821

Attorney:

Christopher A. Wyskiel
 Wyskiel, Boc, Tillinghast & Bolduc, P. A.
 561 Central Avenue
 Dover, NH 03820