

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

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June 29, 2022

HAND DELIVERED

Peter Stith, Principal Planner
Portsmouth City Hall
1 Junkins Avenue
Portsmouth, NH 03801

Re: Jeffrey and Melissa Foy, Owner/Applicant
67 Ridges Court
Tax Map 207/Lot 59
Single Residence B District

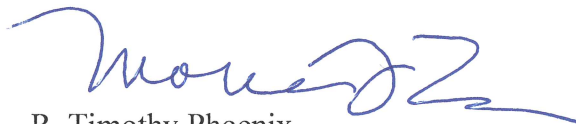
Dear Mr. Stith & Zoning Board Members:

On behalf of Jeffrey and Melissa Foy (“Foy”), enclosed please find the following in support of a request for zoning relief:

- Digital Application submitted via Viewpoint earlier today.
- Owner’s Authorization.
- 6/29/2022 – Memorandum and exhibits in support of Variance Application

We look forward to presenting this application to the Zoning Board at its July 19, 2022 meeting.

Very truly yours,



R. Timothy Phoenix
Monica F. Kieser
Stephanie J. Johnson

Encl.

cc: Jeffrey and Melissa Foy
Ambit Engineering, Inc.
Destefano Mangel

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

OWNER'S AUTHORIZATION

We, Jeffrey & Melissa Foy, Owners/Applicants of 67 Ridges Court, Tax Map 207/Lot 59, hereby authorize law firm Hoefle, Phoenix, Gormley & Roberts, PLLC to represent me before any and all Portsmouth Representatives, Boards and Commissions for permitting the project.

Respectfully submitted,

Date:

Jeffrey Foy



Date:

Melissa Foy



MEMORANDUM

TO: Portsmouth Zoning Board of Adjustment (“ZBA”)
FROM: R. Timothy Phoenix, Esquire
Monica F. Kieser, Esquire
Stephanie J. Johnson, Esquire
DATE: June 29, 2022
Re: Jeffrey and Melissa Foy, Owner/Applicant
Property Location: 67 Ridges Court
Tax Map 207, Lot 59
Single Residence B (“SRB”)

Dear Chairman Parrott and Zoning Board Members:

On behalf of Jeffrey and Melissa Foy, Owner/Applicant (“Foy”), we are pleased to submit this memorandum and attached exhibits in support of zoning relief to allow a garage addition to be added onto the existing home at 67 Ridges Court, to be considered by the Portsmouth Zoning Board of Adjustment (“ZBA”) at its July 19, 2022 meeting.

I. EXHIBITS

- A. Site Plan Set – issued by Ambit Engineering, Inc.
 - Existing Conditions Plan
 - Variance Plan
- B. Architectural Plans – issued by Destefano Mangel.
 - Elevations – North and West
 - Elevations – South and East
 - Lower Level Floor Plans
 - First Floor Plans
 - Second Floor Plans
- C. Site Photographs.
- D. Tax Map 207.

II. PROPERTY/PROJECT

67 Ridges Court is a 16,500 s.f. lot located at the end of Ridges Court on Little Harbor in the Single Residence B Zoning District. Upon the lot is a 1.75 story, 1,591 s.f., 3-bedroom, 3 ½ bathroom Cape Cod style home and detached shed located on the left/northerly side of the lot, a dock extending into Little Harbor, and two driveways (the “Property”). Most of the lot is located in the 100 ft. tidal buffer zone from Little Harbor with a corner of the existing home and one of the paved driveways in the tidal buffer zone. The existing home also encroaches on the required 30’ front yard. Foy plans to add a 718 s.f. addition to the existing home incorporating a lower

level 2-car garage with a deck/porch, expanded living room, and an additional bedroom above (the “Project”).

The 718 s.f. expansion meets building coverage requirements, reduces impervious coverage, and complies with open space requirements. In advance of required Conservation Commission Review and Planning Board Approval of a Conditional Use Permit, Foy seeks a variance for an addition 15.8 ft. from the front lot line.

III. RELIEF REQUIRED

<u>Variance Section</u>	<u>Required</u>	<u>Existing</u>	<u>Proposed</u>
<u>PZO §10.521 Table of Dimensional Standards – Residential and Mixed Residential Districts – Minimum Yard Dimensions</u>	Front 30’	13.6’ Home	15.8’ Addition

IV. VARIANCE REQUIREMENTS

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

The first step in the ZBA’s analysis is to determine whether granting the variances are not contrary to the public interest and are consistent with the spirit and intent of the ordinance, considered together pursuant to Malachy Glen Associates, Inc. v. Town of Chichester, 155 N.H. 102 (2007) and its progeny. Upon examination, it must be determined whether granting the variances “would unduly and to a marked degree conflict with the ordinance such that it violates the ordinance’s basic zoning objectives.” Id. “Mere conflict with the zoning ordinance is not enough.” Id.

Portsmouth Zoning Ordinance (“PZO”) Section 10.121 identifies the general purposes and intent of the ordinance “to promote the health, safety, and general welfare of Portsmouth...in accordance with the...Master Plan” This is accomplished by regulating:

- The use of land, buildings and structures for business, industrial, residential and other purposes – The intended use of the property is and will remain residential. The requested relief will allow Foy to add a garage and increase living space while meeting building coverage and open space requirements, and reducing impervious coverage,.

2. The intensity of land use, including lot sizes, building coverage, building height and bulk, yards and open space – The lot and intensity of its use will not change, as it will continue to be used as a single-family residence. The addition is set back further from the front lot line than the existing home, preserving pedestrian and sight lines on the dead-end street. Building coverage requirements and open space requirements are also met by the Project, which reduces impervious coverage compared to existing conditions.
3. The design of facilities for vehicular access, circulation, parking and loading – The garage will be located where the current paved driveway is situated, ensuring a straight route to the street, eliminating the need for turning radius and additional impervious surfaces.
4. The impact on properties of outdoor lighting, noise, vibration, stormwater runoff and flooding – The proposal removes asphalt and decreases the size of the current driveway, replacing it with the garage addition. There will be no increase in noise or lighting and no change to existing stormwater management. The existing stone walls and landscaping on the Property will not be disturbed by the garage addition.
5. The preservation and enhancement of the visual environment – The design places the garage on the lower level and incorporates a deck and trellis above the end garage bay, allowing sightlines to Little Harbor to be preserved.
6. The preservation of historic districts and building and structures of historic architectural interest – The Property is not in the Historic Overlay District.
7. The protection of natural resources, including groundwater, surface water, wetlands, wildlife habitat and air quality – Granting the variances will not undermine these purposes of the Ordinance where the existing landscaping will not be disturbed by the Project, impervious coverage will be reduced from 26.6% to 25.1%, well below the required 40% open space minimum requirement.

The intent of the SRB Zone is to “provide areas for single-family dwellings at low to medium densities (approximately 1 to 3 dwellings per acre), and appropriate accessory uses.” PZO §10.410. The Property, like many in the neighborhood, contains a home which does not comply with front setback requirements. **(Exhibit C & D)**. The proposal meets the intent of the SRB Zone because it does not change the intensity of the use and allows Foy to add covered parking and gain more living space. Given these factors, granting the requested variance will not conflict with the basic zoning objectives of the PZO.

In considering whether variances “in a marked degree conflict with the ordinance such that they violate the ordinance’s basic zoning objectives,” Malachy Glen, supra, also held:

One way to ascertain whether granting the variance would violate basic zoning objectives is to determine 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)

There are numerous other properties in the immediate area that include main or accessory structures that encroach on front, side, or rear setbacks. **(Exhibits C & D).** The garage will be placed in the current paved driveway area, resulting in a slight decrease to impervious coverage and slight increase to open space. The Project is located further back from the front lot line than the existing home located on the last residentially developed lot on the east side of this dead-end street. Given the number of buildings in the area encroaching on front, side, or rear setbacks, the proposal is in keeping with the surrounding area. Granting the variance neither alters the essential character of the locality nor threatens the public health, safety, or welfare. Accordingly, granting the variance to allow construction of a garage and increased living space is not contrary to the public interest and observes the spirit of the ordinance.

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

The Project adds covered parking/storage, a main bedroom suite, and increases indoor and outdoor living space, thus improving the value of the Property and those around it. The lower level two car garage contains a deck/trellis over one of the garage bays preserving access to air and light. The use of the structure and its impacts will match existing conditions. Accordingly, the variances will not diminish surrounding property values.

4. Denial of the variances results in an unnecessary hardship.

a. Special conditions distinguish the property from others in the area.

More than half the Property is burdened by the 100 ft. tidal buffer zone, and the existing home located on the far left/northern side of the lot in the front yard setback drives the location of the proposed garage addition. These circumstances combine to create special conditions

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

The purpose of setback requirements is to prevent overcrowding and overburdening of land, improve sightlines for pedestrians and motorists, ensure adequate light and air circulation, and provide sufficient area for stormwater treatment. The Project is located further back from the lot line than the existing home in the front yard setback, and incorporates a deck/trellis over a portion of the addition allowing ample open space and light and preventing overbulking. Given its location at the end of a dead-end street with minimal traffic, adequate sight lines for

pedestrian and vehicular access is maintained. The Project also complies with building coverage requirements and removes excess asphalt on the Property, reducing impervious coverage and improving stormwater management compared to existing conditions. Accordingly, there is no fair and substantial relationship between the purposes of the ordinance and its application in this instance.

c. The proposed use is reasonable.

If the use is permitted, it is deemed reasonable. Vigeant v. Hudson, 151 N.H. 747 (2005). Residential use is permitted in the SRB Zone and includes accessory buildings incidental to the permitted use. The proposed garage is reasonably sized, does not decrease open space on the Property, and results in a more functional living space for the Foy family.

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

If “there is no benefit to the public that would outweigh the hardship to the applicant” this factor is satisfied. Harborside Associates, L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508 (2011). That is, “any loss to the [applicant] that is not outweighed by a gain to the general public is an injustice.” Malachy Glen, supra at 109.

Foy is constitutionally entitled to the use of the lot as they see fit; including the addition of a garage and expansion of living space, subject only to its effect on the dimensional requirements. “The right to use and enjoy one's property is a fundamental right protected by both the State and Federal Constitutions.” N.H. CONST. pt. I, arts. 2, 12; U.S. CONST. amends. V, XIV; Town of Chesterfield v. Brooks, 126 N.H. 64 (1985) at 68. Part I, Article 12 of the New Hampshire Constitution provides in part that “no part of a man's property shall be taken from him, or applied to public uses, without his own consent, or that of the representative body of the people.” Thus, our State Constitutional protections limit the police power of the State and its municipalities in their regulation of the use of property. L. Grossman & Sons, Inc. v. Town of Gilford, 118 N.H. 480, 482 (1978). “Property” in the constitutional sense has been interpreted to mean not the tangible property itself, *but rather the right to possess, use, enjoy and dispose of it.* Burrows v. City of Keene, 121 N.H. 590, 597 (1981) (emphasis added).

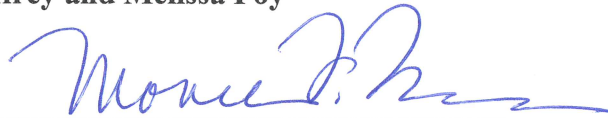
The Project retains the same use and offers expanded garage/storage and increased living space while complying with building coverage and reducing impervious coverage. In addition, the Project preserves access to air, light, and maintains sight lines on a waterfront lot at the end of a dead-end street, so there is no harm to the public in granting the variance. Conversely, Foy

will be greatly harmed by denial of the variance because they will be unable to expand parking, storage, and living space. Without question, substantial justice will be done by granting the variance.

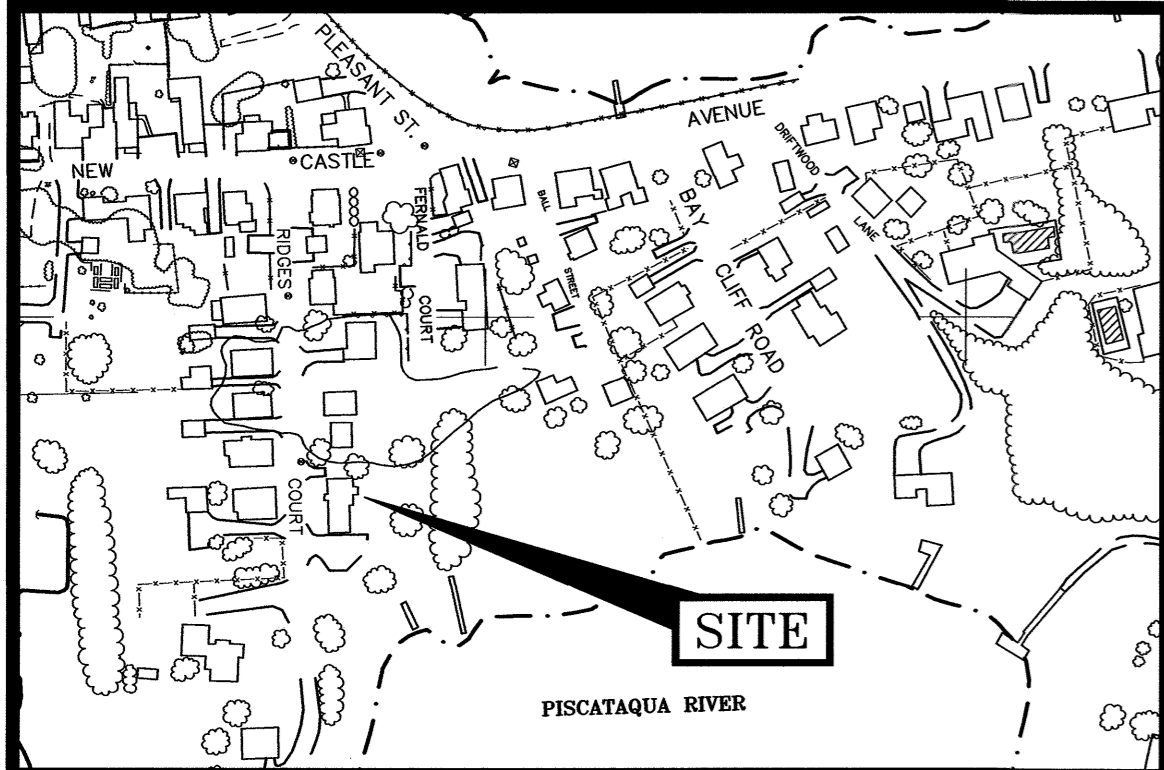
VI. CONCLUSION

For all of the reasons stated, Jeffrey and Melissa Foy respectfully request that the Portsmouth Zoning Board of Adjustment grant the requested variance.

Respectfully submitted,
Jeffrey and Melissa Foy



By: R. Timothy Phoenix
Monica F. Kieser
Stephanie J. Johnson



LOCATION MAP SCALE 1" = 200'

LEGEND:

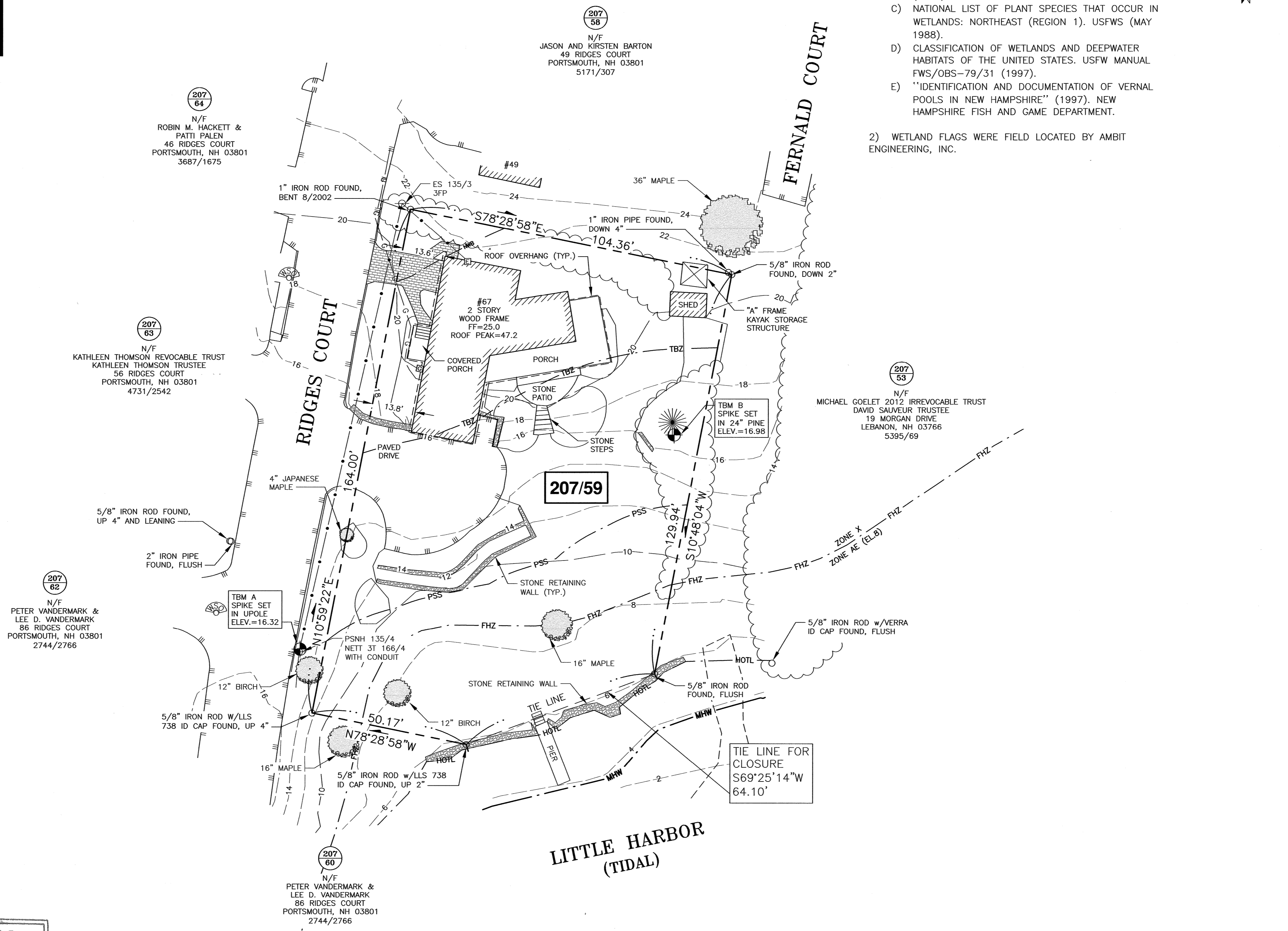
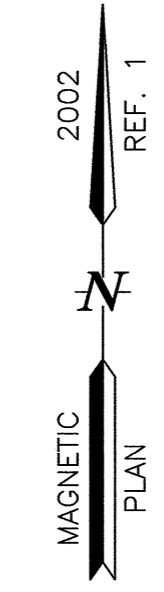
N/F	NOW OR FORMERLY
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RCRD	ROCKINGHAM COUNTY REGISTRY OF DEEDS
(11/21)	MAP 11 / LOT 21
○	RAILROAD SPIKE FOUND
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○	DRILL HOLE FOUND
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PLAN REFERENCES:

- 1) PROPOSED ADDITIONS, CHARLES MCLEOD, 67 RIDGES COURT PORTSMOUTH, NH, PROPOSED SITE PLAN. PREPARED BY AMBIT ENGINEERING, INC. DATED SEPTEMBER 2002. NOT RECORDED.
- 2) PLAN OF LOTS, RIENZI RIDGE. PREPARED BY JOHN W. DURGIN. DATED MARCH 1976. R.C.R.D. PLAN #0188.

WETLAND NOTES:

- 1) HIGHEST OBSERVABLE TIDE LINE DELINEATED BY STEVEN D. RIKER, CWS ON 7/1/20 IN ACCORDANCE WITH THE FOLLOWING STANDARDS:
 - A) U.S. ARMY CORPS OF ENGINEERS WETLANDS DELINEATION MANUAL, TECHNICAL REPORT Y-87-1 (JAN. 1987). AND REGIONAL SUPPLEMENT TO THE CORPS OF ENGINEERS WETLAND DELINEATION MANUAL: NORTHCENTRAL AND NORTHEAST REGION, VERSION 2.0, JANUARY 2012.
 - B) FIELD INDICATORS OF HYDRIC SOILS IN THE UNITED STATES, VERSION 8.2, USDA-NRCS, 2018 AND (FOR DISTURBED SITES) FIELD INDICATORS FOR IDENTIFYING HYDRIC SOILS IN NEW ENGLAND, VERSION 4. NEIWPCC WETLANDS WORK GROUP (2019).
 - C) NATIONAL LIST OF PLANT SPECIES THAT OCCUR IN WETLANDS: NORTHEAST (REGION 1), USFWS (MAY 1988).
 - D) CLASSIFICATION OF WETLANDS AND DEEPWATER HABITATS OF THE UNITED STATES. USFW MANUAL FWS/OBS-79/31 (1997).
 - E) "IDENTIFICATION AND DOCUMENTATION OF VERNAL POOLS IN NEW HAMPSHIRE" (1997). NEW HAMPSHIRE FISH AND GAME DEPARTMENT.
- 2) WETLAND FLAGS WERE FIELD LOCATED BY AMBIT ENGINEERING, INC.



NOTES:

- 1) PARCEL IS SHOWN ON THE PORTSMOUTH ASSESSOR'S MAP 207 AS LOT 59.
- 2) OWNERS OF RECORD:
JEFFREY M. & MELISSA FOY
4 FOX HOLLOW COURT
EAST KINGSTON, N.H. 03827
6325/1066
- 3) PORTIONS OF THE PARCEL ARE IN A SPECIAL FLOOD HAZARD AREA AE (EL.8) AS SHOWN ON FIRM PANEL 33015C0278F. EFFECTIVE JANUARY 29, 2021.
- 4) EXISTING LOT AREA:
16,500± S.F. (PLAN REF. 1)
0.3788± ACRES (PLAN REF. 1)
- 5) PARCEL IS LOCATED IN THE SINGLE RESIDENCE B (SRB) ZONING DISTRICT.
- 6) DIMENSIONAL REQUIREMENTS:
MIN. LOT AREA: 15,000 S.F.
FRONTAGE: 100 FEET
SETBACKS: FRONT 30 FEET
SIDE 10 FEET
REAR 30 FEET
MAXIMUM STRUCTURE HEIGHT: 35 FEET
MAXIMUM STRUCTURE COVERAGE: 20%
MINIMUM OPEN SPACE: 40%
- 7) THE PURPOSE OF THIS PLAN IS TO SHOW THE EXISTING CONDITIONS ON ASSESSOR'S MAP 207 LOT 59 IN THE CITY OF PORTSMOUTH.
- 8) VERTICAL DATUM IS NAVD88. BASIS OF VERTICAL DATUM IS REDUNDANT RTN GNSS OBSERVATIONS (±0.2').

Exhibit A

PROPOSED GARAGE
FOY RESIDENCE
67 RIDGES COURT
PORTSMOUTH, N.H.

NO.	DESCRIPTION	DATE
1	ADD FEMA FHZ	6/27/22
0	ISSUED FOR COMMENT	5/18/22

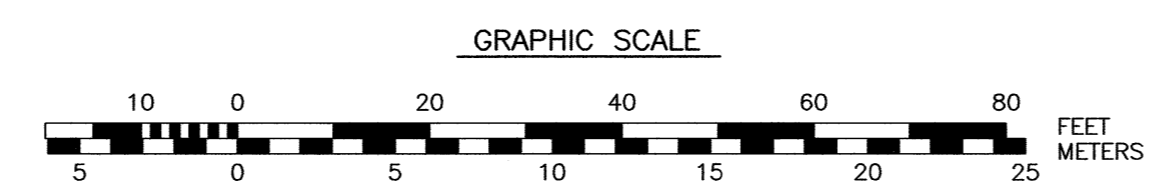
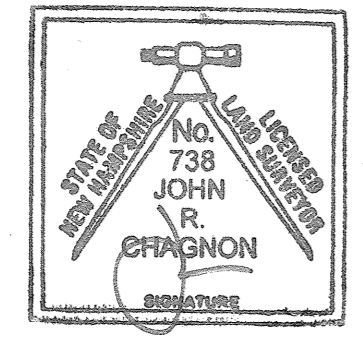


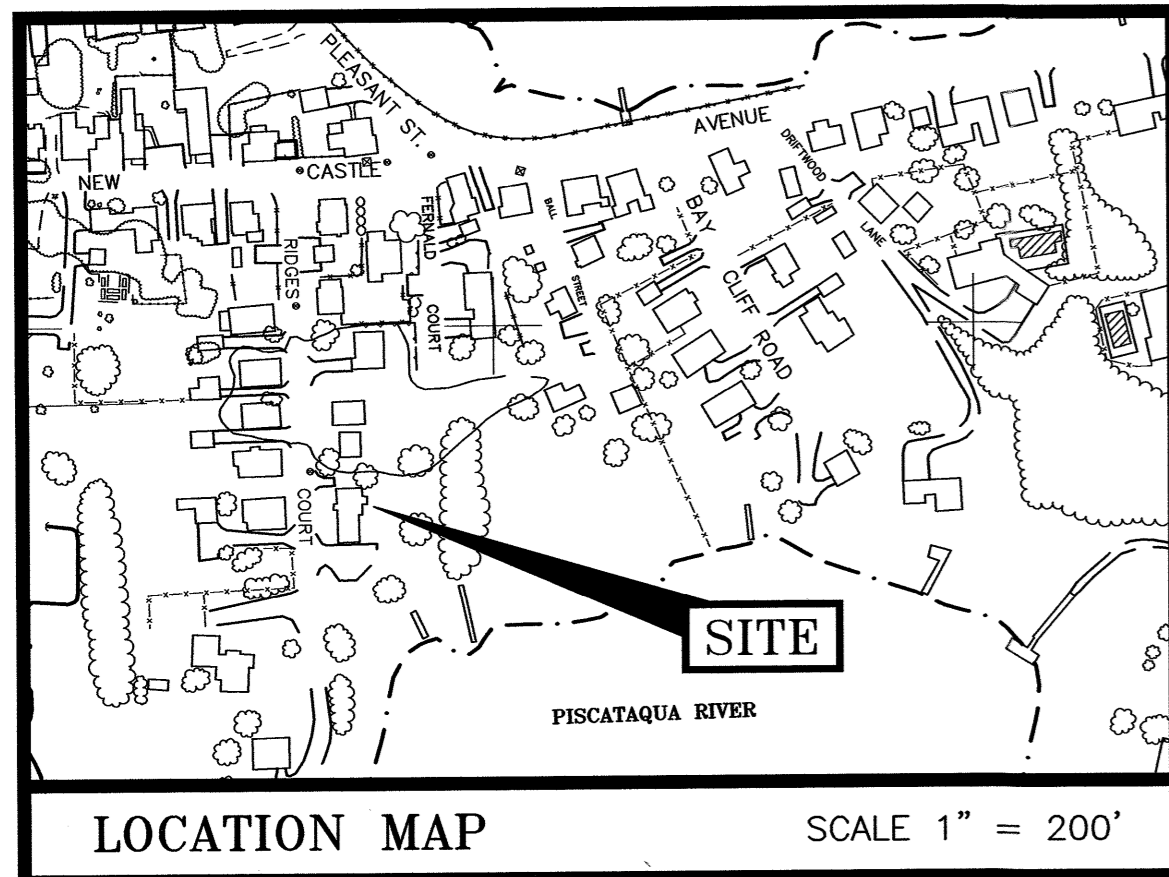
SCALE 1"=20' MAY 2022

EXISTING CONDITIONS PLAN C1

"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."

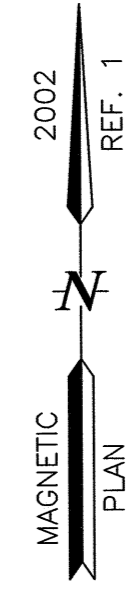
John R. Chagnon
JOHN R. CHAGNON, LLS
6-27-22
DATE





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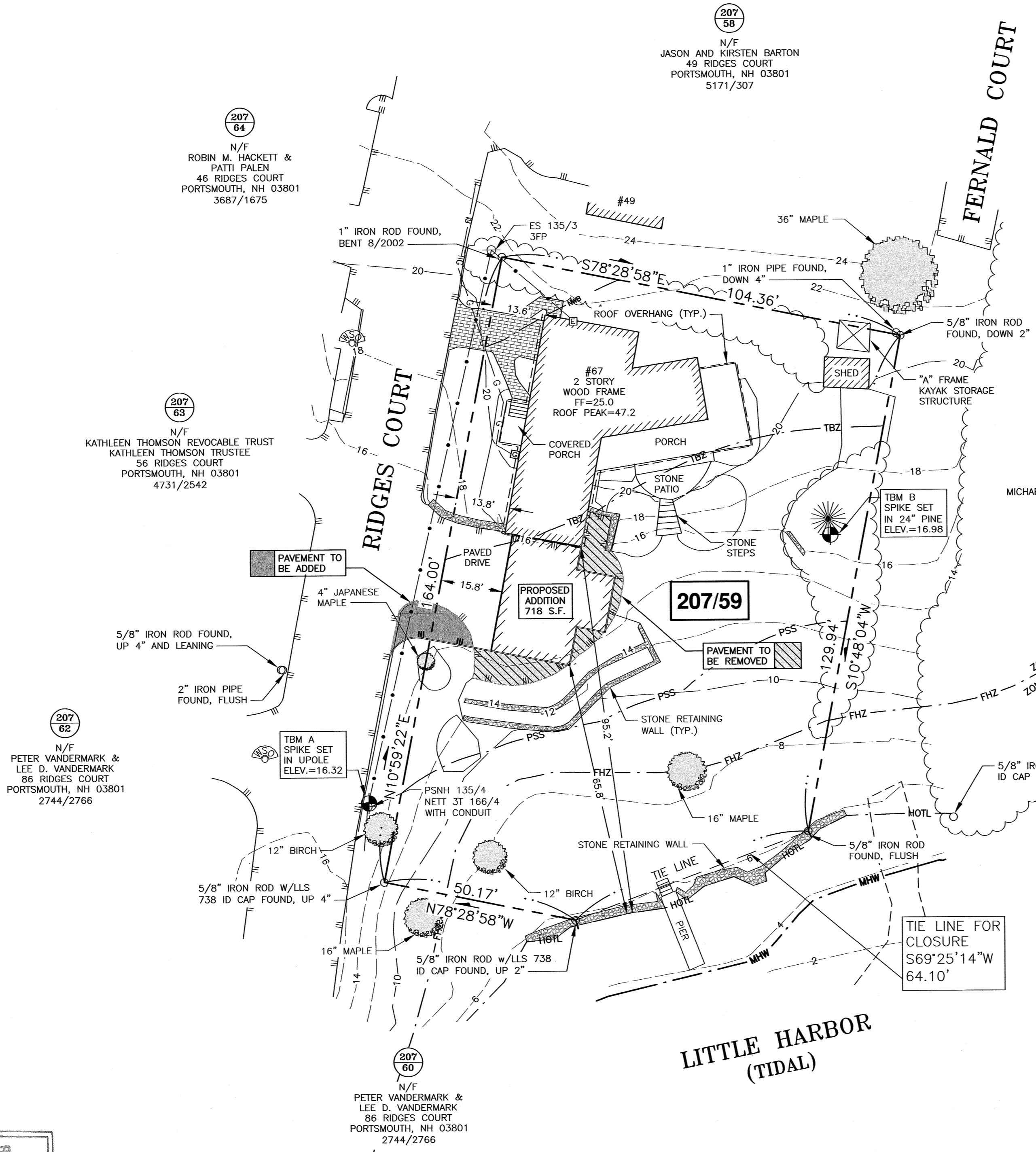
AMBIT ENGINEERING, INC.
 Civil Engineers & Land Surveyors
 200 Griffin Road - Unit 3
 Portsmouth, N.H. 03801-7114
 Tel (603) 430-9282
 Fax (603) 436-2315

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 - VERTICAL DATUM IS NAVD88. BASIS OF VERTICAL DATUM IS REDUNDANT RTN GNSS OBSERVATIONS (±0.2').
 - PROPOSED GARAGE FROM PLAN BY DESTEFANO MAGUEL ARCHITECTS DATED JUNE 14, 2022.

REQUESTED VARIANCE:
 ARTICLE 5 SECTION 10.520 TABLE 10.521 FRONT YARD SETBACK OF 15.8 FEET WHERE 13.6 FEET EXISTS AND 30 FEET IS REQUIRED.

LEGEND:

N/F	NOW OR FORMERLY
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○	IRON ROD/IRON PIPE FOUND
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97x3	SPOT ELEVATION
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---	WOODS / TREE LINE
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○	WELL
GW	METER (GAS, WATER, ELECTRIC)
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FF	FINISHED FLOOR
INV.	INVERT
TBM	TEMPORARY BENCHMARK
TYP.	TYPICAL
LSA	LANDSCAPED AREA



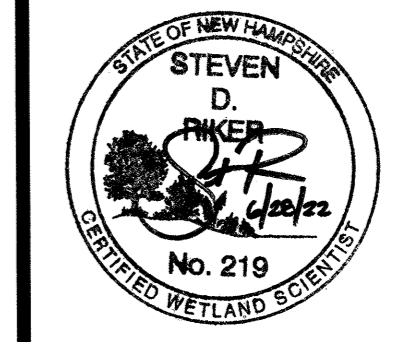
IMPERVIOUS SURFACE AREAS (TO PROPERTY LINE)

STRUCTURE	PRE-CONSTRUCTION IMPERVIOUS (S.F.)	POST-CONSTRUCTION IMPERVIOUS (S.F.)
MAIN STRUCTURE	1,591	2,309
SHED	91	91
PORCHES	513	513
STAIRS	123	123
WALKWAYS	231	231
PAVEMENT	1452	490
RETAINING WALL	212	212
PATIO	109	109
CONCRETE	17	17
EXTERIOR STORAGE	50	50
TOTAL	4389	4145
LOT SIZE	16,500	16,500
% LOT COVERAGE	26.6%	25.1%

PROPOSED BUILDING COVERAGE:
 MAIN STRUCTURE: 2,309 S.F.
 SHED: 91 S.F.
 PORCHES: 513 S.F.
 STAIRS: 123 S.F.
 TOTAL: 3,036 S.F./18.4%

**PROPOSED GARAGE
 FOY RESIDENCE
 67 RIDGES COURT
 PORTSMOUTH, N.H.**

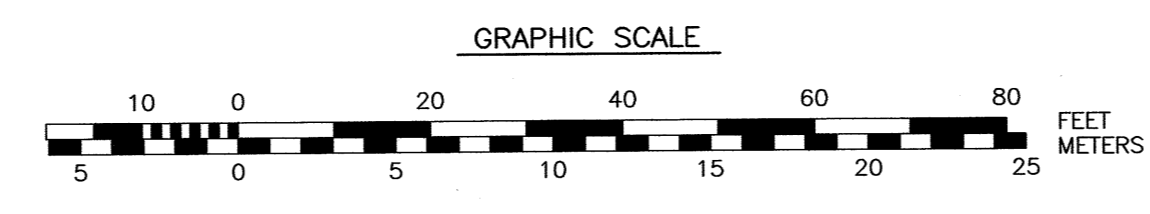
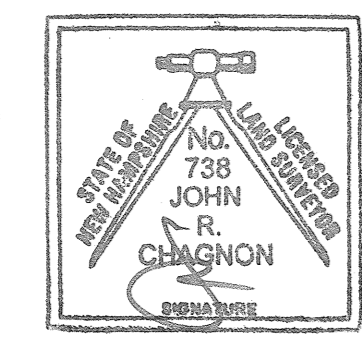
NO.	DESCRIPTION	DATE
0	ISSUED FOR COMMENT	6/27/22
REVISIONS		



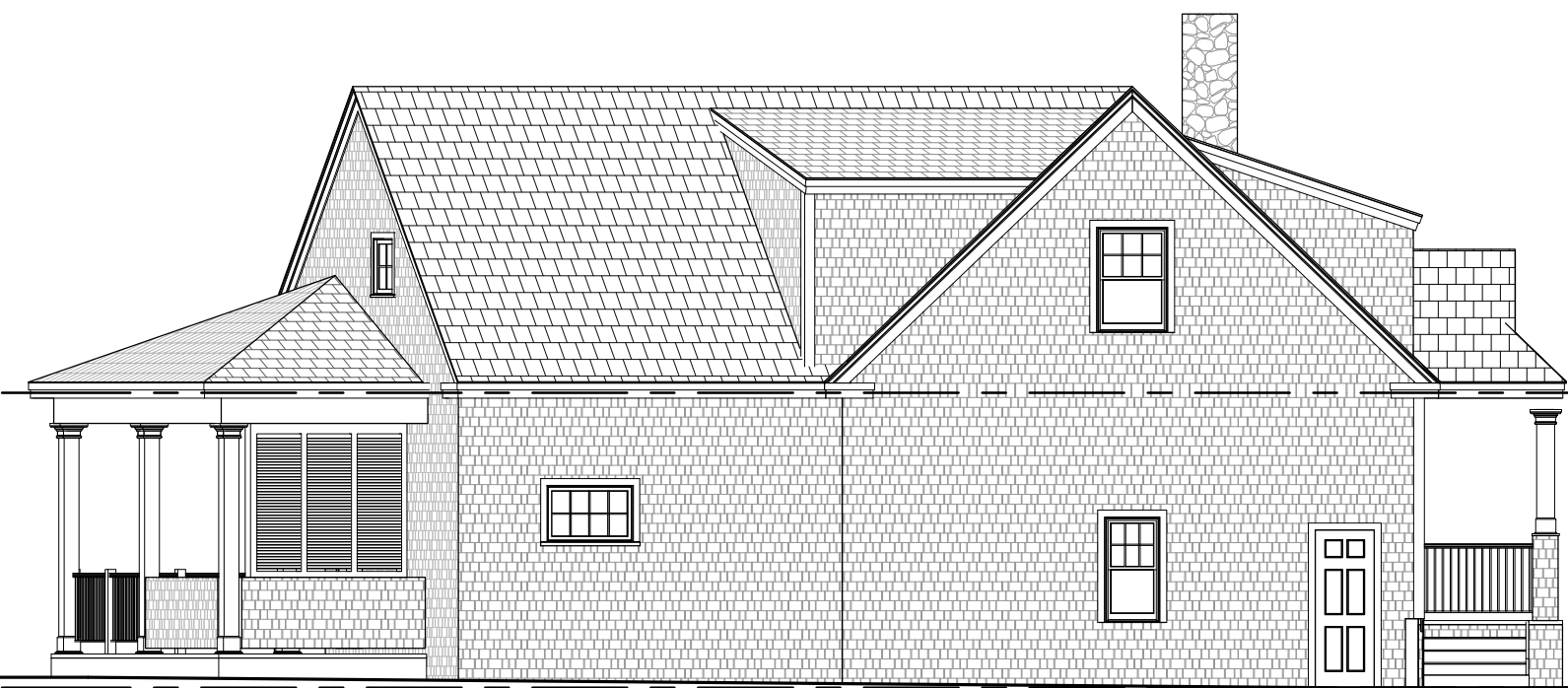
SCALE 1"=20' JUNE 2022

VARIANCE PLAN **C2**

"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, LLS DATE 6-27-22



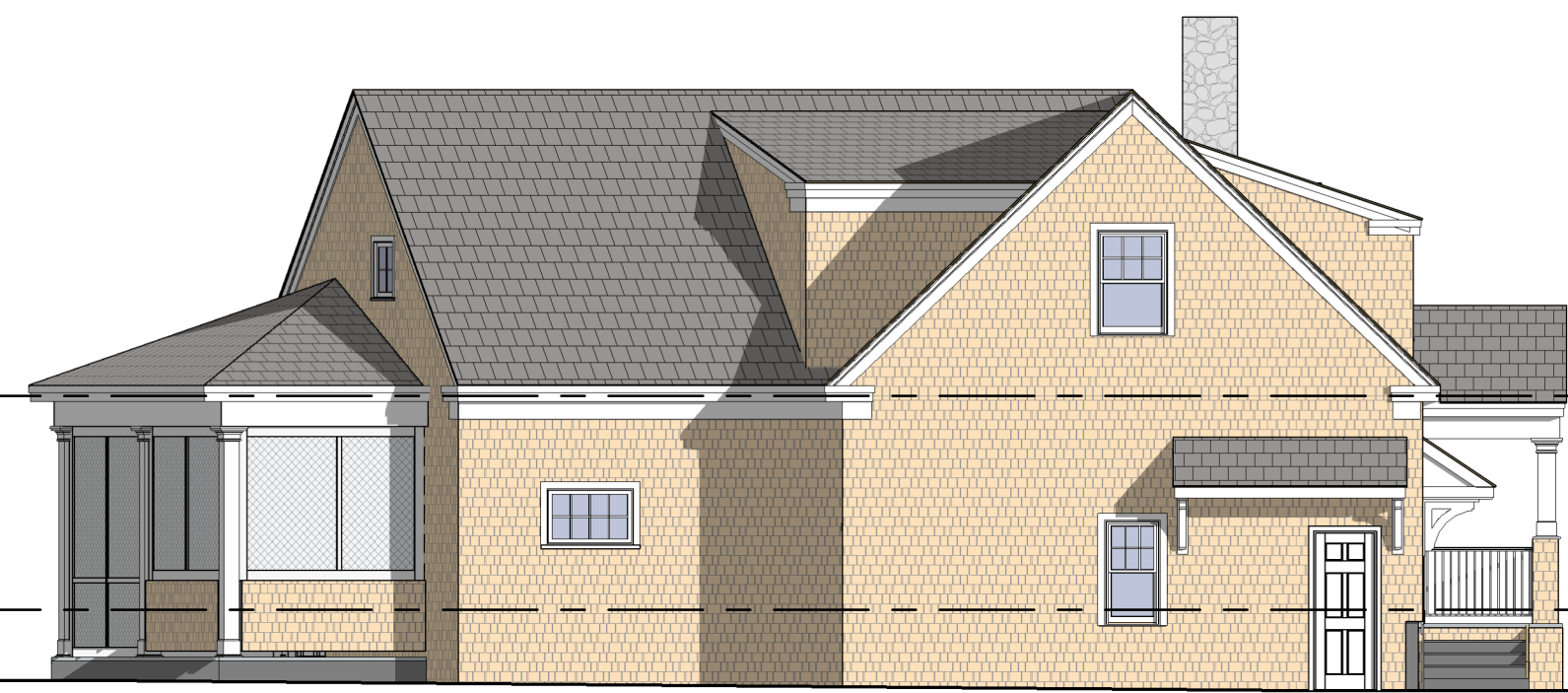
A:\PROJECTS\1100\1100.dwg (11/20/2022) Building Address: Piscataqua River & Spectator St 13152. 15-Bowling Way, 03053032 102519.MAK, Canon TX-9000 Plotter



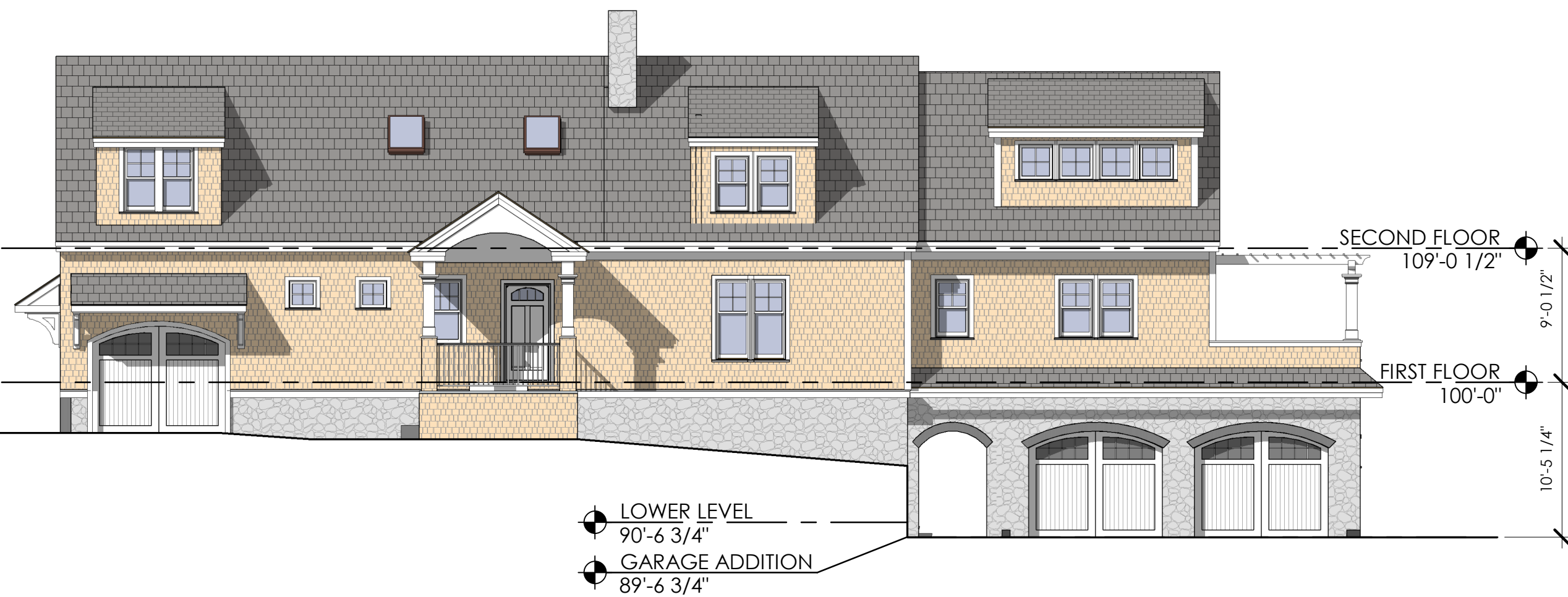
EXISTING NORTH ELEVATION



EXISTING WEST ELEVATION



PROPOSED NORTH ELEVATION ①
1/8" = 1'-0"



PROPOSED WEST ELEVATION ②
1/8" = 1'-0"

DESIGN DEVELOPMENT FOR
FOY RESIDENCE
 67 RIDGES CT
 PORTSMOUTH, NH

ELEVATIONS
 1/8" = 1'-0"

JUNE 14, 2022

Exhibit B

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EXISTING SOUTH ELEVATION



EXISTING EAST ELEVATION



DD - SOUTH
1/8" = 1'-0" 3



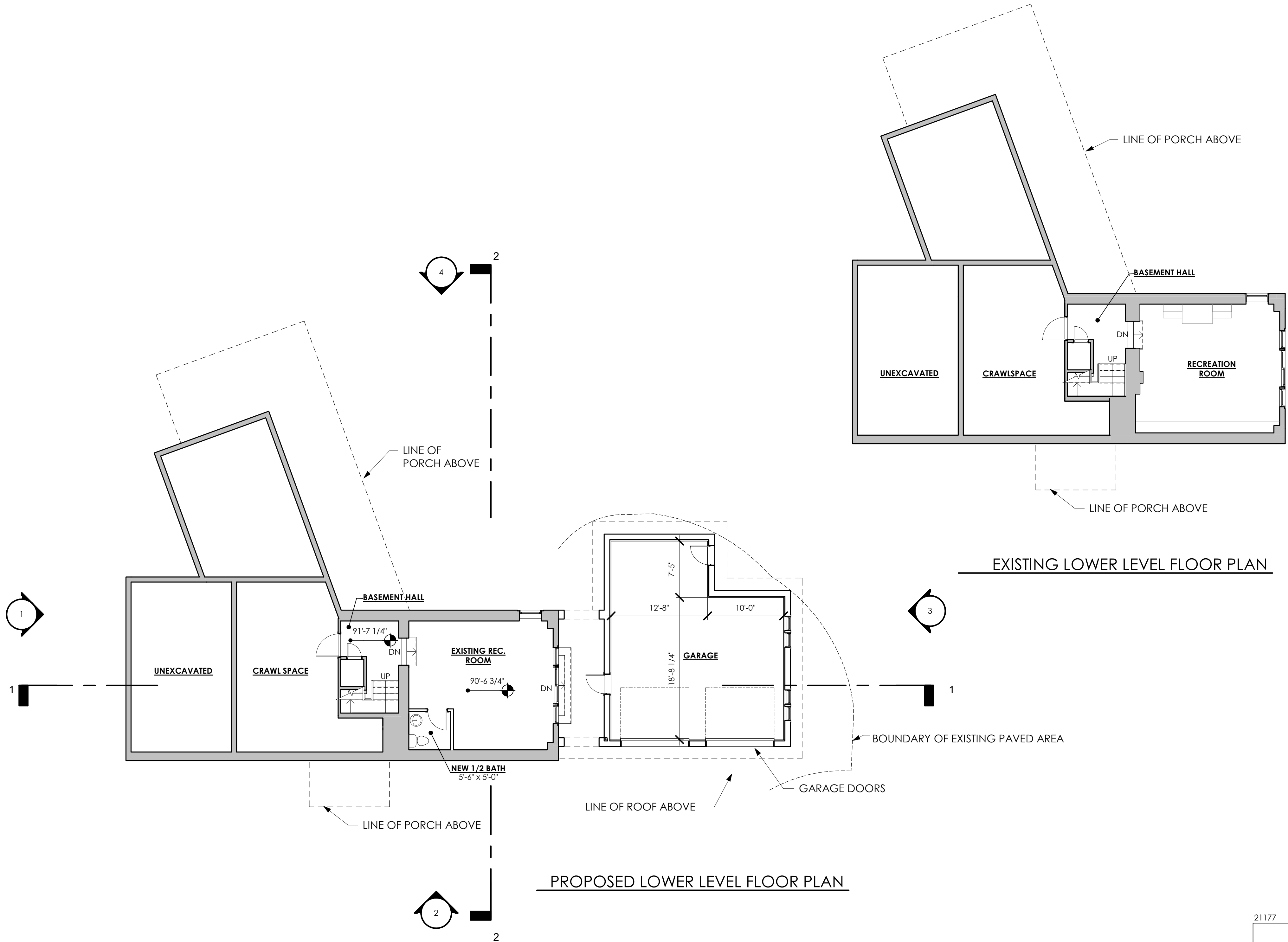
PROPOSED EAST ELEVATION
1/8" = 1'-0" 4

DESIGN DEVELOPMENT FOR
FOY RESIDENCE
67 RIDGES CT
PORTSMOUTH, NH

ELEVATIONS
1/8" = 1'-0"

JUNE 14, 2022

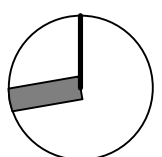
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DESIGN DEVELOPMENT FOR
FOY RESIDENCE
 67 RIDGES CT
 PORTSMOUTH, NH

LOWER LEVEL FLOOR PLANS
 1/8" = 1'-0"

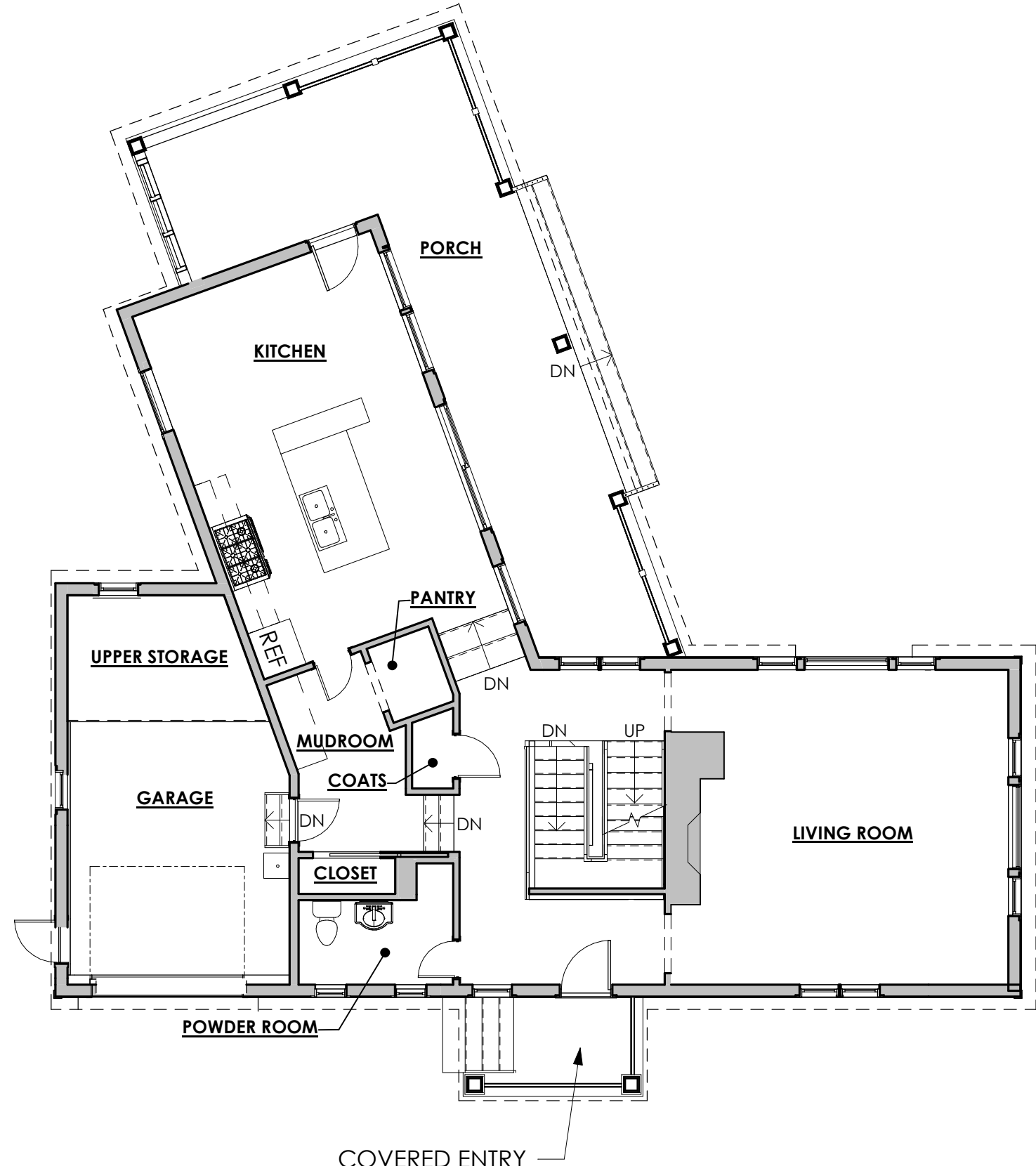
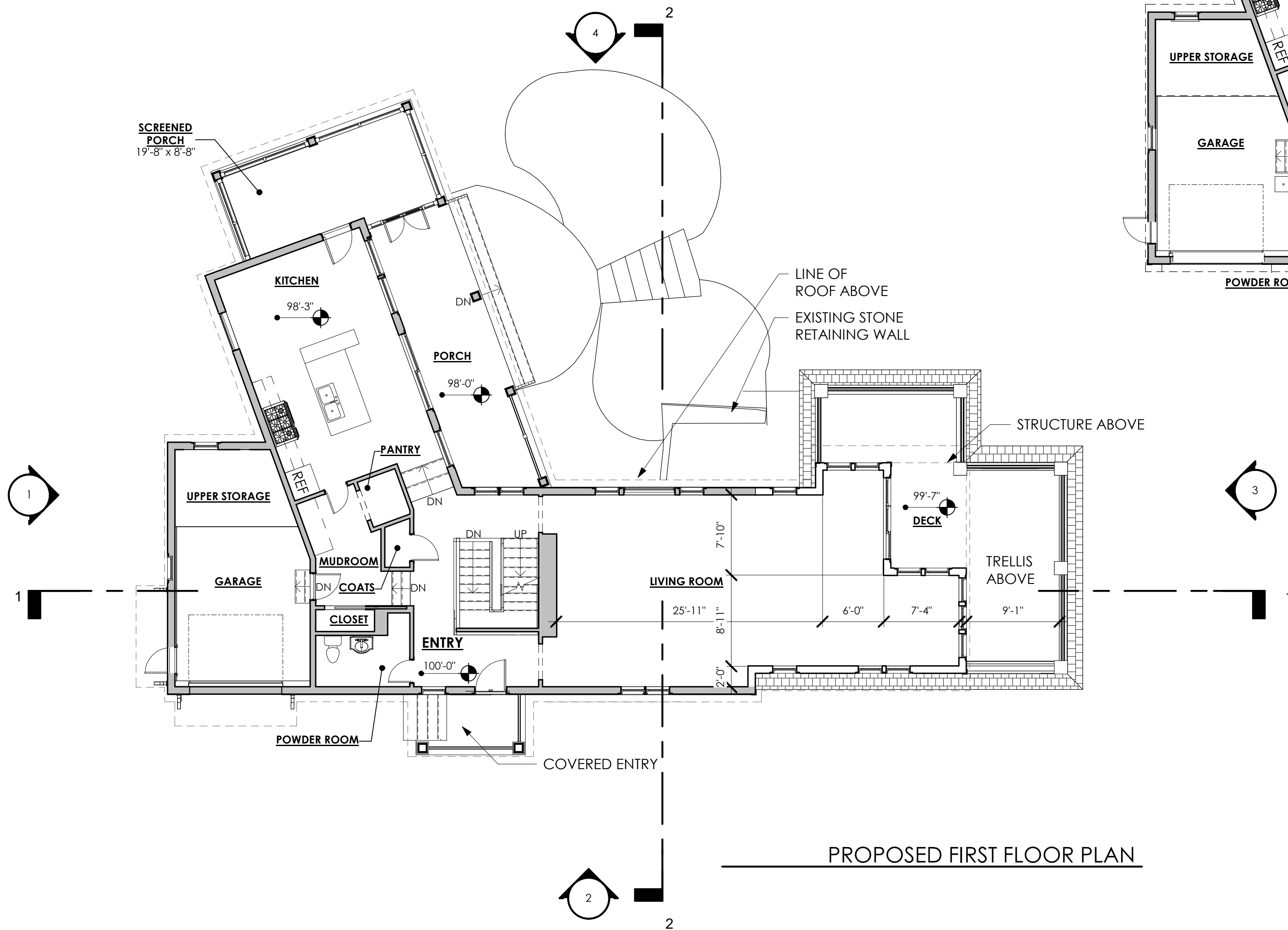
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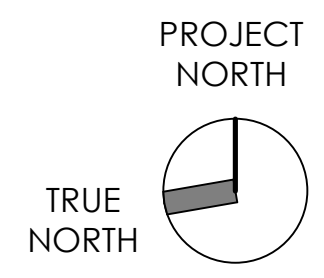


EXISTING FIRST FLOOR PLAN

PROPOSED FIRST FLOOR PLAN

DESIGN DEVELOPMENT FOR
FOY RESIDENCE
 67 RIDGES CT
 PORTSMOUTH, NH

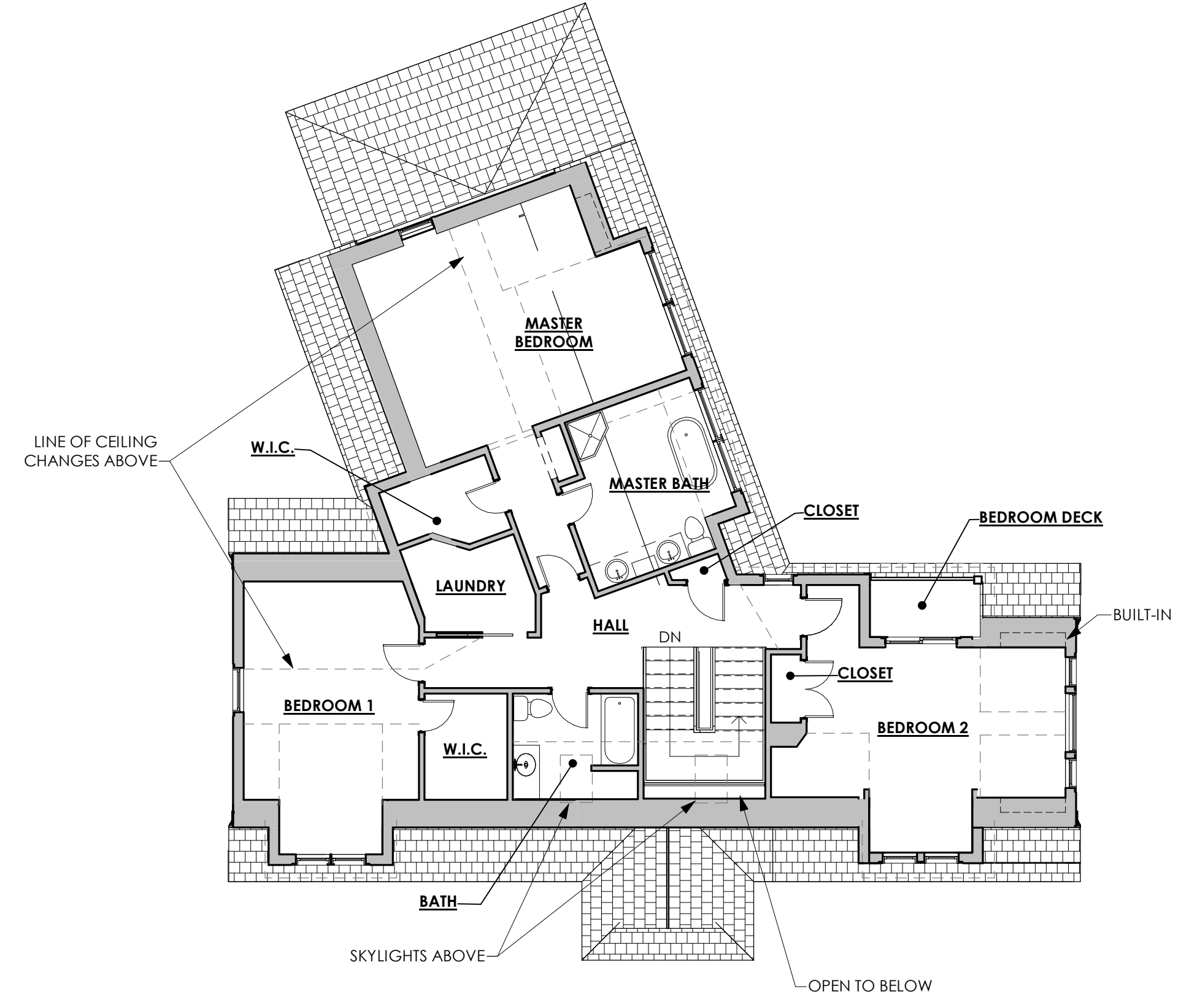
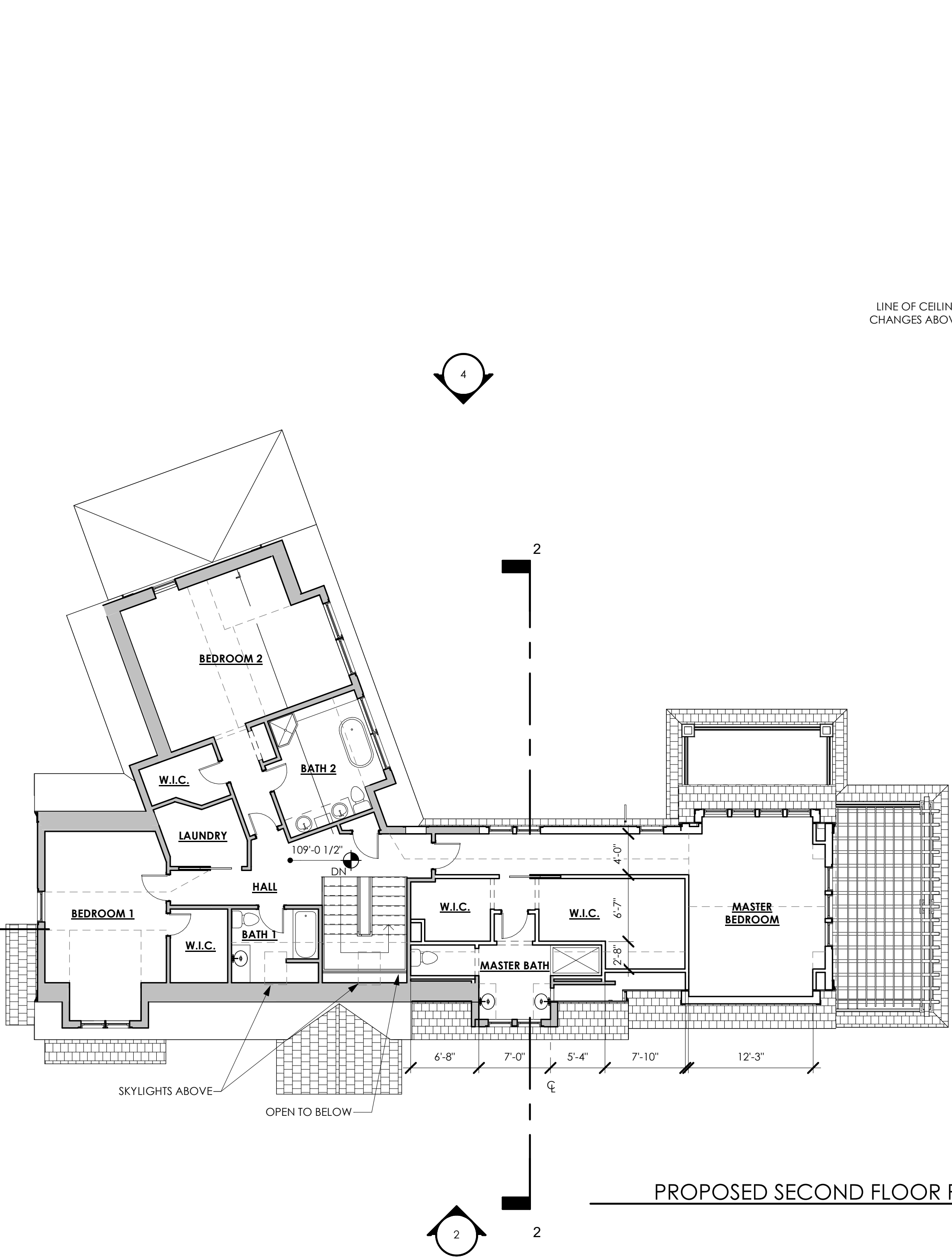
FIRST FLOOR PLANS
 1/8" = 1'-0"



JUNE 14, 2022

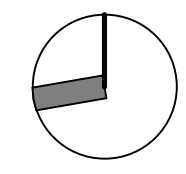
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DESIGN DEVELOPMENT FOR
FOY RESIDENCE
 67 RIDGES CT
 PORTSMOUTH, NH

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

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 JUNE 14, 2022
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Imagery ©2022 Maine GeoLibrary, Maxar Technologies, U.S. Geological Survey, Map data ©2022 50 ft

Exhibit C

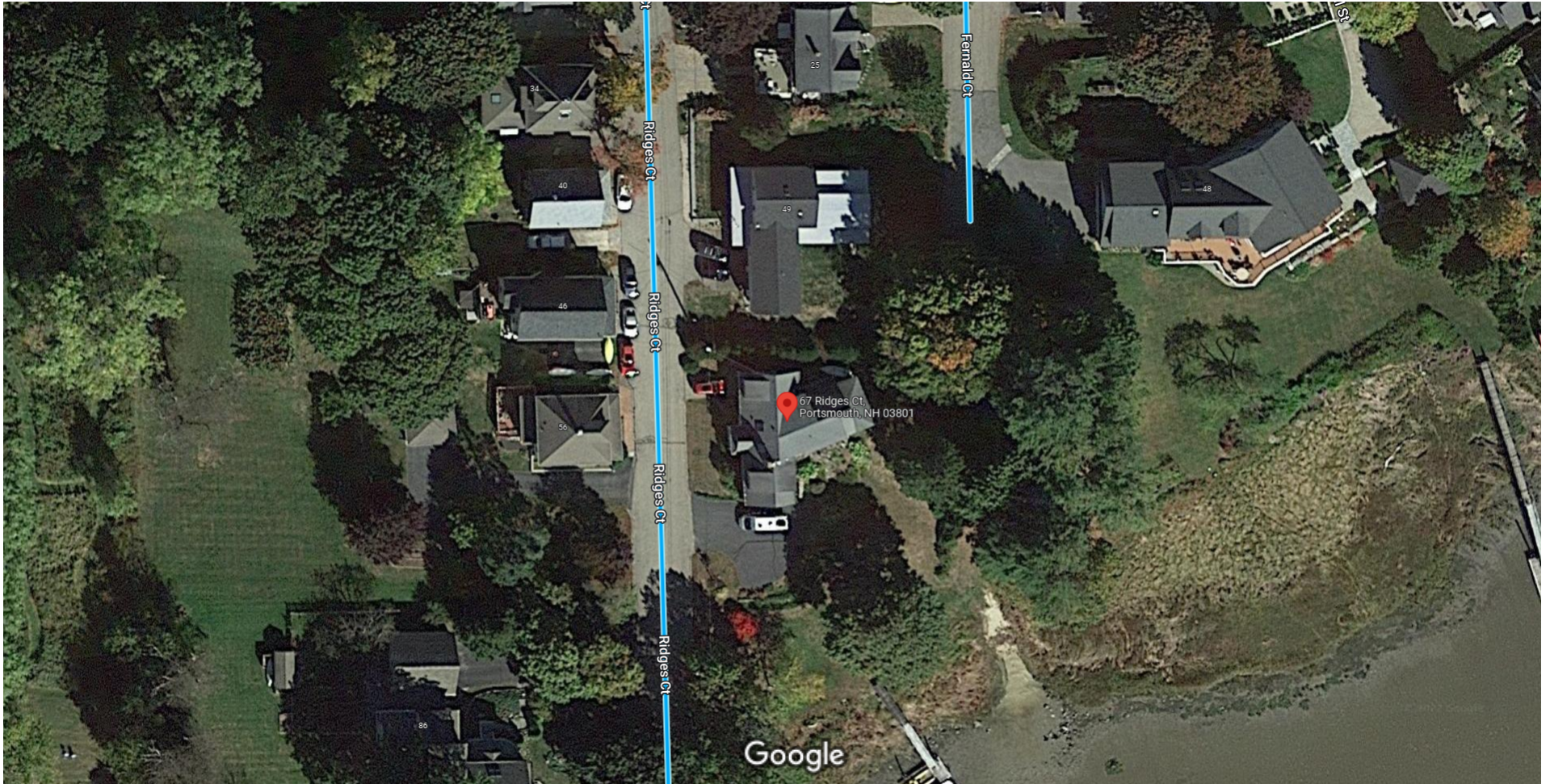




Image capture: Sep 2011 © 2022 Google

Portsmouth, New Hampshire

Google

Street View - Sep 2011



Image capture: Sep 2011 © 2022 Google

Portsmouth, New Hampshire

Google

Street View - Sep 2011



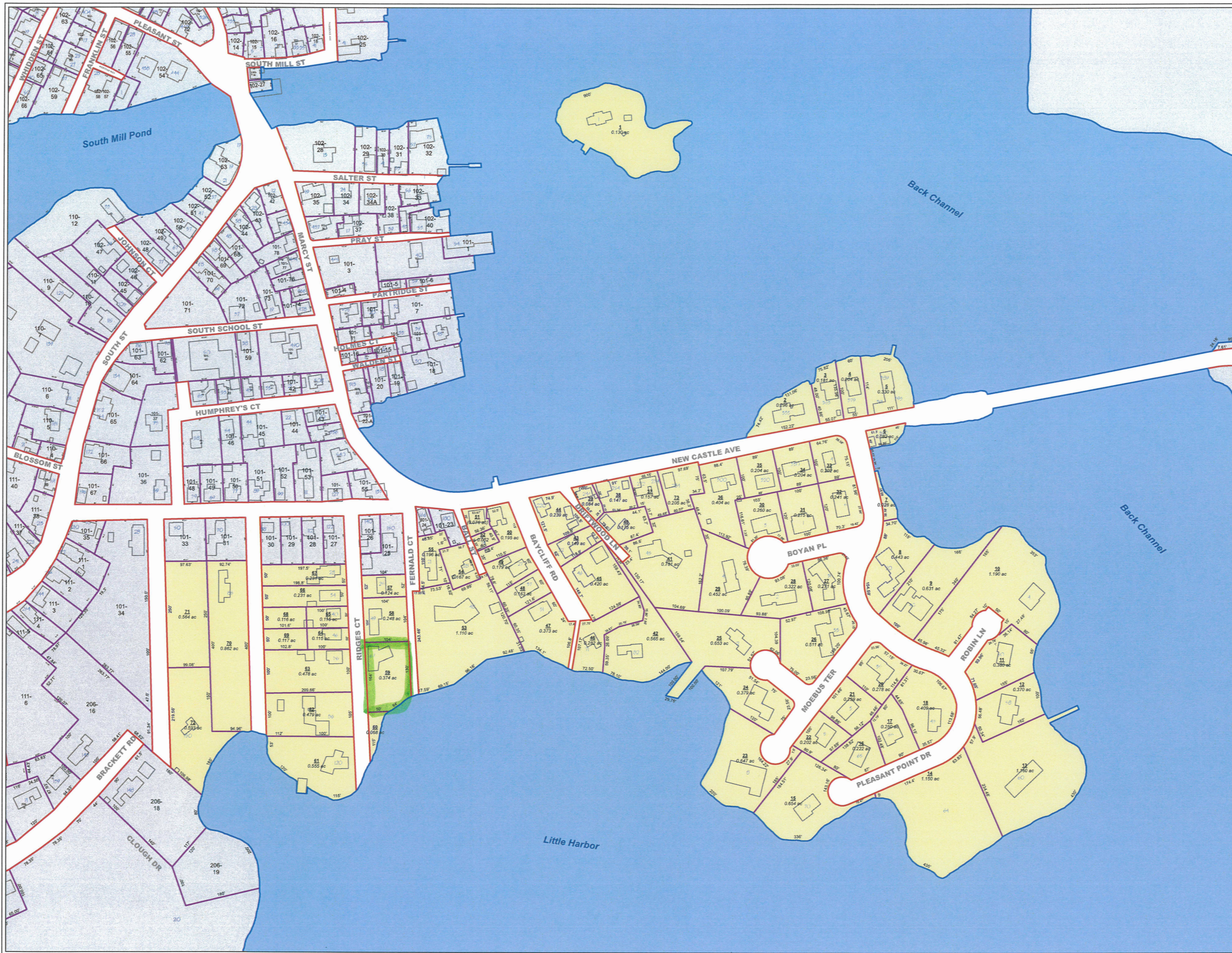


Image capture: Sep 2011 © 2022 Google

Portsmouth, New Hampshire

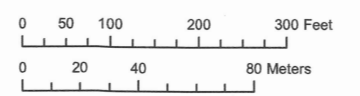
Google

Street View - Sep 2011



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
- 68' 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.

