

BY: VIEWPOINT & HAND DELIVERY

November 21, 2022

City of Portsmouth
Attn: Peter Stith, Planner
Zoning Board of Adjustment
1 Junkins Avenue
Portsmouth, NH 03801

**RE: Variance Application of Nissley LLC
915 Sagamore Avenue, Tax Map 223, Lot 31**

Dear Peter,

Enclosed for submission to the ZBA for its December 20th meeting, please find the following materials relative to the proposed improvements for property located at 915 Sagamore Avenue.

- 1) Landowner Letter of Authorization;
- 2) Narrative to Variance Application;
- 3) Site Plan;
- 4) Wetlands Comparison Plan;
- 5) Floor Plans and Elevations;
- 6) Tax Map;
- 7) Photographs of the Property.

A copy of the application submission is being delivered to the Planning Department. Should you have any questions or concerns regarding the enclosed application materials, do not hesitate to contact me at your convenience.

Sincerely,



Derek R. Durbin, Esq.

LANDOWNER LETTER OF AUTHORIZATION

Nissley LLC, record owner of property located at 915 Sagamore Avenue, Portsmouth, NH 03801, Tax Map 223, Lot 31 (the "Property"), hereby authorizes **Durbin Law Offices, PLLC** to file any building, zoning, planning or other municipal permit applications with the City of Portsmouth for said Property and to appear before its land use boards. This Letter of Authorization shall be valid until expressly revoked in writing.



Sign Name

GINGRICH, JAY

Print Name (Member, Duly Authorized)

November 14, 2022

VARIANCE APPLICATION NARRATIVE

915 Sagamore Avenue
Tax 223, Lot 31
Portsmouth, NH 03801

Nissley LLC
(Owner / Applicant)

Introduction

Nissley LLC is the owner of property located at 915 Sagamore Avenue, identified on Portsmouth Tax Map 223 as Lot 31 (the "Property"). The Property is located in the Waterfront Business ("WB") Zoning District. The Property is 1.02 acres in size and has approximately 270' of street frontage on Sagamore Avenue. It is also accessed via a 25' wide unpaved right-of-way (ROW) off of Sagamore Avenue, thus it has two access points and parking areas. As a result of the recent improvements to Sagamore Avenue, the Property is now served by municipal water and sewer.

The Property has a significant grade drop from Sagamore Avenue from east to west and from north to south towards Sagamore Creek. The Property contains wetlands along the western boundary, of which an area of approximately 3,603 square feet has been disturbed. A vast majority of the Property is within the regulated buffer. The southern portion of the Property that drops down to Sagamore Creek contains ledge and is wooded with a mixture of deciduous and evergreen trees.

There is a two (2) floor building on the Property that previously served as the business location for Portsmouth Scuba and retains its branding on the front. There is a mooring and/or machine shop business located on the first floor of the building which is accessed in the rear from the dirt/gravel parking area off of the 25' ROW. The second floor of the building contains some type of forestry-related commercial business which is accessed from the front paved parking area directly off of Sagamore Avenue.

There are inoperable vehicles, equipment, lobster traps and debris scattered throughout the Property. The Property as a whole has been neglected and is an "eyesore" in its current condition.

As shown on the map attached as Exhibit A, the Property is zoned WB but is surrounded by a mixture of residential and commercial uses and zoning districts. To the north, east and west, many of the properties are zoned for residential uses. To the south, many of the properties are zoned for business or municipal (public) uses. The mixtures of uses and zoning districts that the Property is surrounded by is reflective of the character of the area which cannot be defined by one particular use.

Proposed Improvements

The Applicant is proposing a three-story mixed-use building on the Property. The building would contain office space on all three floors and twelve residential units of equal dimension (780 sf) in total (4 on each floor). Each residential unit would contain one bedroom and a bathroom. The majority of off-street parking spaces would be located under or to the rear of the proposed building. There would be two ADA compliant parking spaces for the front of the building accessed by Sagamore Avenue. As part of the proposed improvement of the Property, the junk vehicles, equipment and debris will be removed. The approximately 3,602 square foot area of disturbed wetlands would also be restored.

The exact use of the office space has yet to be determined, but it is anticipated that the Applicant will locate his business operations in at least a portion of the space. The combination of residential units and office space in one building lends itself naturally to a future live-work environment. While the Property is “waterfront” per se and has a decent amount of legal frontage on “Sagamore Creek”, the water is essentially inaccessible due to the topography of the land. It is anticipated that the southern, forested quadrant of the Property will remain much as it is seen now.

If the variance request being sought by the Applicant is approved, he will also need site plan and conditional use permit approvals from the Planning Board. The improvements proposed for the Property will undergo review and scrutiny from the Conservation Commission in addition to the Planning Board. The Applicant will also need DES approvals for impacts within the wetland and shoreland buffers. The plans for the Property remain conceptual given the various hurdles the Applicant must overcome to develop the land but provide a realistic vision of how the Property would be built upon and utilized in the future.

Variance Criteria

Granting the variances will not be contrary to the public interest and will observe the spirit of the Ordinance.

In the case of *Chester Rod & Gun Club, Inc. v. Town of Chester*, the Court noted that since the provisions of all ordinances represent a declaration of public interest, any variance will, in some measure, be contrary to the ordinance, but to be contrary to the public interest or injurious to public rights of others, "the variance must 'unduly, and in a marked degree' conflict with the ordinance such that it violates the ordinance's 'basic zoning objectives.'" 152 N.H. 577. The Court observed that “[t]here are two methods of ascertaining whether granting a variance would violate an ordinance’s basic zoning objectives: (1) examining whether granting the variance would alter the essential character of the neighborhood or, in the alternative; and (2) examining whether granting the variance would threaten the public health, safety, or welfare.” 152 N.H. 577.

The Property is located within a very small pocket of properties zoned WB. The properties within this area are predominantly used for residential purposes. The properties in the adjacent zoning districts are used for a combination of residential and business-related purposes. The Property directly across Sagamore Creek is used for professional office space (Seacoast Mental Health). There is not one particular use that defines the area; however, it can be fairly said that it consists of a mixture of office, business, and residential uses. In the case of *Belanger v. Nashua*, the NH Supreme Court opined: “[w]hile we recognize the desired interrelationship between the establishment of a plan for community development and zoning, we believe that municipalities must also have their zoning ordinances reflect the current character of neighborhoods.” 121 N.H. 389 (1981).

It can be fairly argued that the Property and those that immediately surround it are improperly zoned given the mixture of surrounding residential and non-marine business uses. There are very few marine-related uses in the area. The use that is proposed for the Property is consistent with the uses being made of surrounding properties. The size of the residential units and their location will make them inherently affordable to rent in the context of the Portsmouth market. The combination of office space and apartments within the same building lends itself to a future live-work environment. It is in the public’s interest to see that more housing opportunities are created within the City of Portsmouth, particularly those that are more affordable in nature. Opportunities such as this in Portsmouth remain scarce.

The topography of the Property and its location makes it inconducive to permitted waterfront business uses. Sagamore Creek is essentially inaccessible from the upland portion of the Property. Without easy access to Sagamore Creek, and the ability to dock boats on the Property, it has limited “waterfront” value. The limited amount of usable upland area also limits the potential marine-related uses that could be made of the Property. Even if the Property could be easily used for a marine-related purpose, that does not mean that it would be compatible to the surrounding area, which is predominantly residential with some business uses mixed in.

The overall conditions of the Property will be improved and the proposed use will be consistent with the character of the area. Access and parking on the Property will be improved beyond what exists and will allow for safe ingress and egress for emergency vehicles. For the foregoing reasons, granting the variance will not alter the essential character of the neighborhood or threaten public health, safety or welfare.

Substantial justice will be done by granting the variance relief.

Any loss to the individual that is not outweighed by a gain to the general public is an injustice. *New Hampshire Office of State Planning, The Board of Adjustment in New Hampshire, A Handbook for Local Officials* (1997); *Malachy Glen Assocs., Inc. v. Town of Chichester*, 155 N.H. 102 (2007).

Because of how it is presently zoned, there are limited uses that can be made of the Property. Most of the uses that are permitted for the Property under the Ordinance are not feasible given its challenging topography and its inaccessibility to Sagamore Creek. Granting the variance relief sought would allow the owner to make reasonable use of the land at little to no cost to the public. In the present case, the equitable balancing test for determining whether substantial justice is done weighs in favor of the Applicant.

The values of surrounding properties will not be diminished by granting the variance.

The Property is an eyesore in its existing condition. Any improvement and clean-up of the Property should only increase surrounding property values not diminish them. The building concept for the Property is tastefully designed and would be an aesthetic improvement over what exists.

Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship.

The Property has several special conditions that distinguish it from surrounding properties, most notably its topography and location. The Property is “waterfront” by definition and land use designation, but not in reality. The reality is that Sagamore Creek cannot be easily accessed from the Property. To access Sagamore Creek, you have to descend a steep hill comprised primarily of trees and ledge. If the tide is low, you would then have to cross a mudflat to reach the water. This severely restricts what permitted uses can be made of the Property since it is located in the WB Zoning District. The Property itself is quite large when considered in the context of the surrounding area but is almost entirely encumbered by wetland buffers which further restricts what uses can be made of it. The Property is also located in an area that consists primarily of residential and business related uses, including office space. For these reasons, there is no fair and substantial relationship between the general purposes of the Ordinance and its application to the Property.

Finally, the proposed use is reasonable. As stated above, the use is consistent and compatible with the uses of surrounding properties.

Conclusion

In conclusion, the Applicant submits that it has demonstrated that its application meets the five (5) criteria for granting the variance requested. Accordingly, it respectfully requests the Board’s approval.

Dated: November 21, 2022

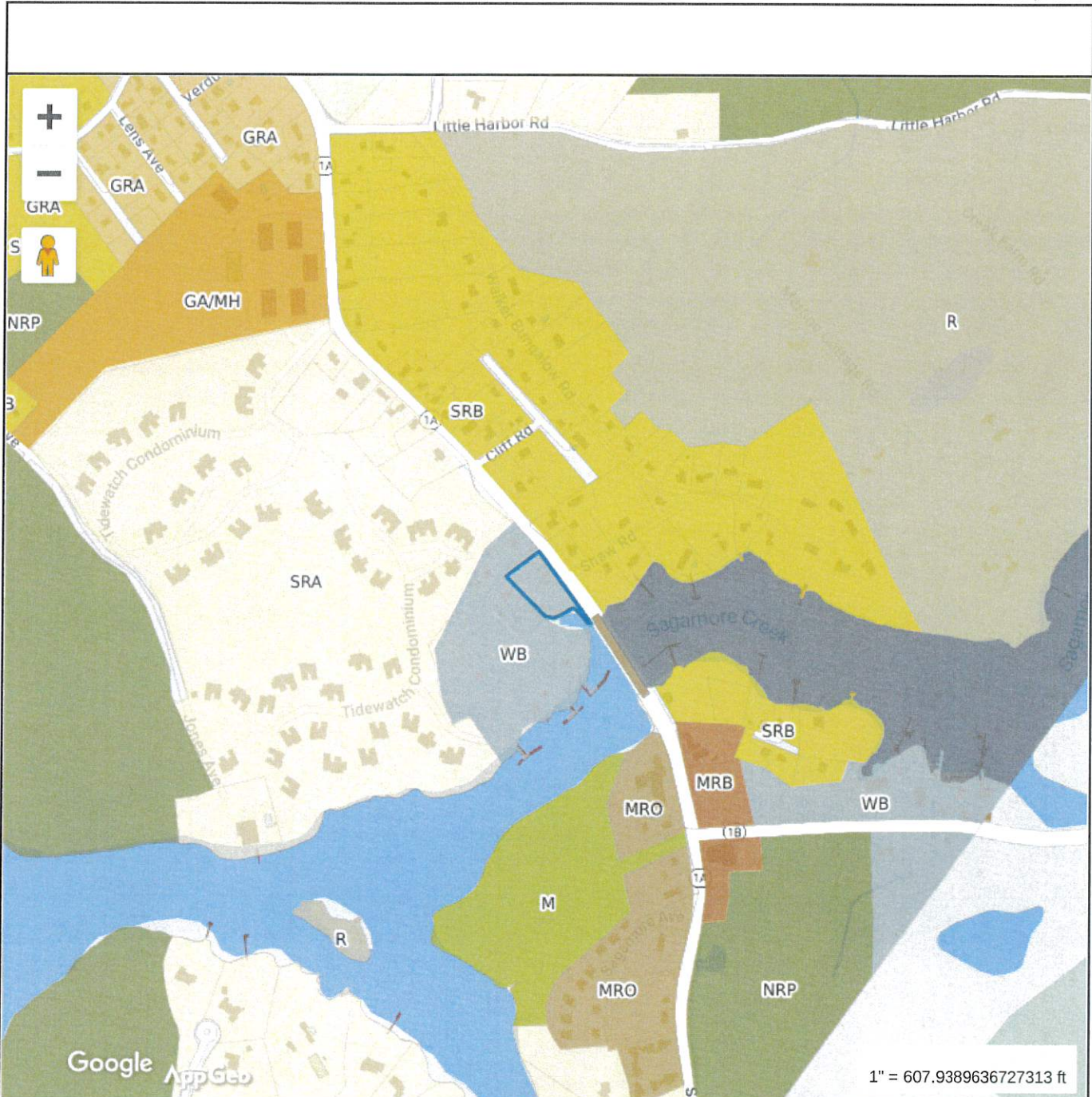
Respectfully Submitted,

Nissley LLC

By and Through,
Durbin Law Offices PLLC



By: Derek R. Durbin, Esq.
144 Washington Street
Portsmouth, NH 03801
(603)-287-4764
derek@durbinlawoffices.com



Property Information

Property ID 0223-0031-0000
 Location 915 SAGAMORE AVE
 Owner NISSLEY LLC



**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.

Map Theme Legends

Zoning




Residential Districts

	R	Rural
	SRA	Single Residence A
	SRB	Single Residence B
	GRA	General Residence A
	GRB	General Residence B
	GRC	General Residence C
	GA/MH	Garden Apartment/Mobile Home Park

Mixed Residential Districts

	MRO	Mixed Residential Office
	MRB	Mixed Residential Business
	G1	Gateway Corridor
	G2	Gateway Center

Business Districts

	GB	General Business
	B	Business
	WB	Waterfront Business

Industrial Districts

	OR	Office Research
	I	Industrial
	WI	Waterfront Industrial






Airport Districts

	AIR	Airport
	AI	Airport Industrial
	PI	Pease Industrial
	ABC	Airport Business Commercial


Conservation Districts

	M	Municipal
	NRP	Natural Resource Protection


Character Districts

	CD5	Character District 5
	CD4	Character District 4
	CD4W	Character District 4-W
	CD4-L1	Character District 4-L1
	CD4-L2	Character District 4-L2

Civic District

		Civic District
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Municipal District

		Municipal District
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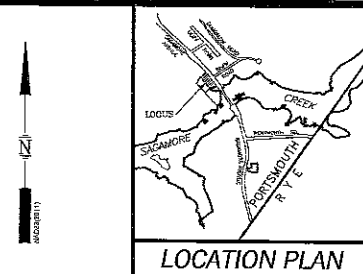
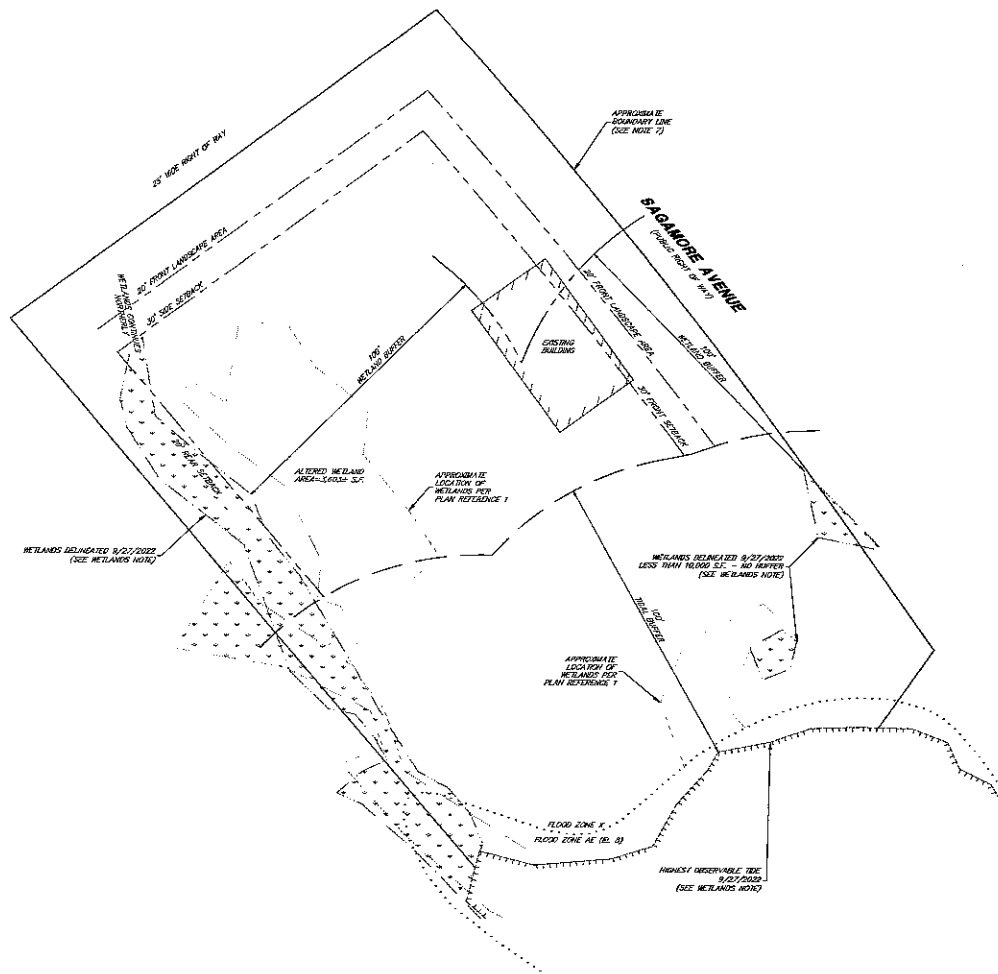
Overlay Districts

	OLOD	Osprey Landing Overlay District
		Downtown Overlay District
		Historic District

City of Portsmouth

WETLANDS DEPICTED ON THIS PLAN WERE DELINEATED ON SEPTEMBER 27, 2002 BY JASON R. AUBE CWS #313. THE WETLANDS WERE DELINEATED ACCORDING TO THE CORPS OF ENGINEERS WETLAND DELINEATION MANUAL (JANUARY 1989) AND THE REGIONAL SUPPLEMENT TO THE U.S. CORPS OF ENGINEERS WETLAND DELINEATION MANUAL: NORTHCENTRAL AND NORTHEAST REGION, VERSION 2.0 (JANUARY 2002).

THE HIGHEST OBSERVABLE TIDE LINE (HOTL) DEPICTED ON THIS PLAN WAS DETERMINED ON DECEMBER 27, 2022, BY COASTAL PROFESSIONAL JASON R. ALLEG. THE HOTL WAS DETERMINED IN ACCORDANCE WITH THE NODDS WETLANDS BUREAU ADMINISTRATIVE RULES. UNDER THE NODDS WETLANDS BUREAU ADMINISTRATIVE RULES, THE HOTL IS THE FARTHEST LANDWARD LINE OF THE HIGHEST OBSERVABLE TIDE LINE MEANS A LINE DEFINING THE FARTHEST LANDWARD LINE OF THE TIDE FLOW INCLUDING STORM EVENTS THAT CAN BE RECOGNIZED BY INDICATORS SUCH AS THE PRESENCE OF A STRAND LINE OF FLOTTING AND DEBRIS, THE LANDWARD MARGIN OF SALT-TOLERANT VEGETATION, OR A PHYSICAL BARRIER THAT BLOCKS INLAND FLOW OF THE TIDE.



1. THE PARCEL IS LOCATED IN THE WATERFRONT BUSINESS (WB) ZONING DISTRICT.
2. THE PARCEL IS SHOWN ON THE CITY OF ASSESSOR'S MAP 223 AS LOT J1.
3. THE PARCEL IS LOCATED IN ZONES AE (ELB) & ZONE X, PER NAVD83, AS SHOWN ON NATIONAL FLOOD INSURANCE PROGRAM (NFIP), FLOOD INSURANCE RATE MAPS (FIRM) ROCKINGHAM COUNTY, NEW HAMPSHIRE, PANELS 270F & 286F OF 601, MAP NUMBER 330310C0, WITH AN EFFECTIVE DATE

4. DIMENSIONAL REQUIREMENTS:	REQUIRED:
MINIMUM LOT DIMENSIONS:	
LOT AREA:	20,000 S.F.
LOT AREA PER DWELLING UNIT:	NR
CONTIGUOUS STREET FRONTAGE:	100'
DEPTH:	100'
MINIMUM YARD DIMENSIONS:	
FRONT:	30'
SIDE:	30'
REAR:	20'
MAXIMUM STRUCTURE DIMENSIONS:	
BUILDING HEIGHT:	5'
ROOF APPURISANCE HEIGHT:	10'
BUILDING COVERAGE:	NR
FLOOR AREA RATIO:	30%
MINIMUM OPEN SPACE:	

5. OWNER OF RECORD: MAP 223 LOT 211.
RECEIVED 11/2
613 MAIN STREET
PORTLAND, ME 04101
RUE 104001 (P) 603623
6. PARCELS AREA:
MAP 223 LOT 211
1.05 ACRES (PER PLAN REFERENCE 1).
7. THE INTENT OF THIS PLAN IS TO SHOW THE APPROXIMATE LOCATION OF TAX MAP 223 LOT 211, THE LOCATION OF TAX MAP 223 LOT 30 AS DEPICTED ON THIS PLAN HAS BEEN COMPILED FROM PROVIDED AND UNPROVIDED SOURCES AND STATE FIELD EVIDENCE; IT IS NOT THE RESULT OF A PROFESSIONAL SURVEY AND IT IS NOT AN ATTEMPT TO DEFINE THE EXTENT OF OWNERSHIP OR DEFINE THE LIMITS OF TITLE.
8. THE PURPOSE OF THIS PLAN IS TO SHOW THE APPROXIMATE BOUNDARY LINES, LIMITED SITE DIMENSIONS, AND A COMPARISON OF THE INCULCATED PLOT PLAN REFERENCE AND THE METRICALLY DETERMINED SURVEYED BY DATE 2/26/2011 FROM MAP 223 LOT 211.
9. FIELD SURVEY COMPLETED BY DATE 2/26/2011 IN OCTOBER, 2002, USING A LEICA TS-15, A TOPCON TOTAL STATION AND CANTON DATA COLLECTOR.
10. HORIZONTAL DATUM IS NAD83 (1983) PER NETWORK KNOT GPS OBSERVATIONS.
11. ENCLOSURES, RIGHTS, AND RESTRICTIONS SHOWN OR REFERENCED ARE THOSE WHICH WERE FOUND DURING RESEARCH PERFORMED AT THE BIRMINGHAM COUNTY RECORDS DEPARTMENT. OTHER RIGHTS, RESTRICTIONS OR ENCUMBRANCES MUST EXIST WHEN A TITLE EXAMINATION OF SUBJECT PARCELS WOULD DEVELOP.
12. THE LOCATION OF ANY UNDERGROUND UTILITY INFORMATION SHOWN ON THIS PLAN IS APPROXIMATE. THE OWNER ASSUMES NO LIABILITY FOR ACCURACY OR COMPLETENESS OF UNDERGROUND UTILITIES SHOWN PRIOR TO ANY EXCAVATION ON THE SITE. THE CONTRACTOR SHALL CONTACT THE UTILITIES AGENCIES PRIOR TO ANY EXCAVATION.

1. "PROPOSED ADDITION PORTSMOUTH SCUBA 915 SACANDRE AVENUE PORTSMOUTH, N.H." BY AMET ENGINEERING, INC. DATED FEBRUARY 2002, WITH REVISIONS. (PLAN NOT RECORDED).

**TAX MAP 223 LOT 31
WETLANDS COMPARISON PLAN
PORTSMOUTH SCUBA
915 SAGAMORE AVENUE
PORTSMOUTH, NEW HAMPSHIRE
COUNTY OF ROCKINGHAM
OWNED BY
NISSLEY, LLC**

SCALE. T = 20' (22x34)
T = 40' (11x17)

OCTOBER 19, 2022



Civil Engineers
Structural Engineers
Traffic Engineers
Land Surveyors
Landscape Architects
Scientists

170 Commerce Way, Suite 102
Pentamouth, NH 03001
Phone (603) 431-2222
Fax (603) 431-0910
www.jlmoren.com

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48 Constitution Drive, Bedford, N.H. 03110

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This plan is not effective unless signed by a duly authorized officer of
 ITW Corp. Inc.



CONTACT DUG SAFE 72 BUSINESS HOURS PRIOR TO CONSTRUCTION

[illegible]



SAGAMORE AVENUE ELEVATION

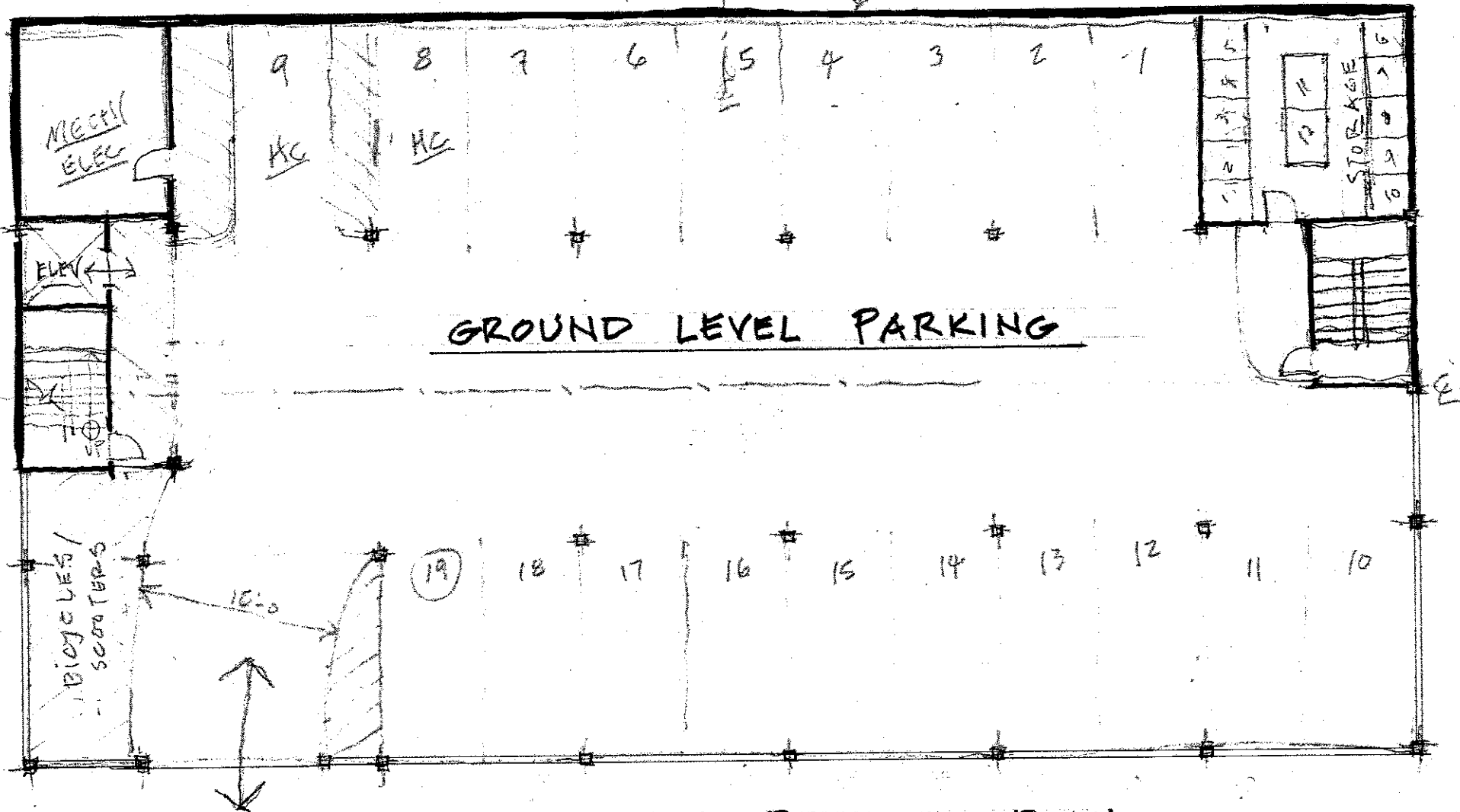
CONCEPTUAL BUILDING PLANS

915 SAGAMORE AVENUE

OWNER: NISSLEY LLC

DATE: 17 NOV. 2022

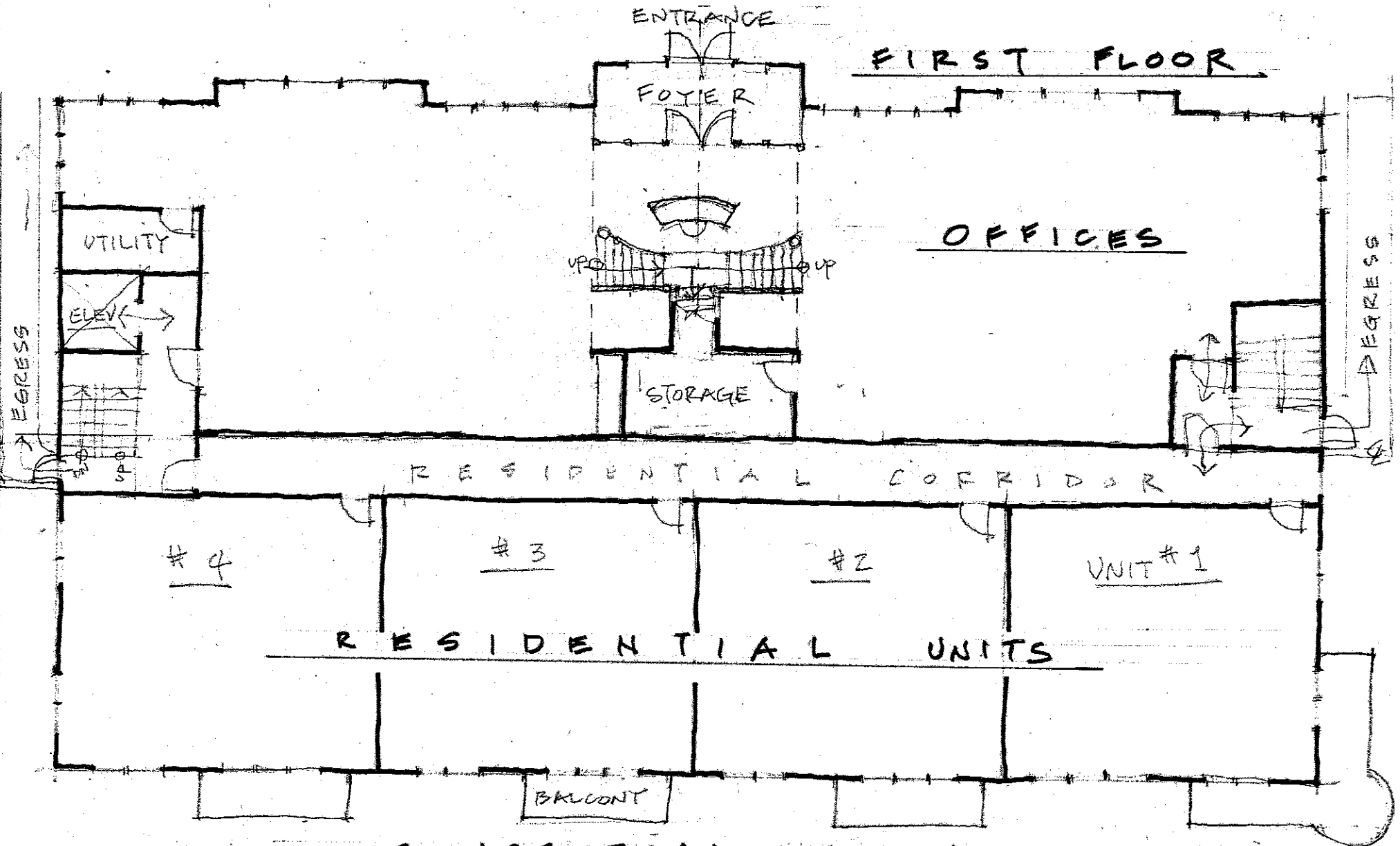
RETAINING WALL 7



CONCEPTUAL BUILDING PLANS

915 SAGAMORE AVENUE

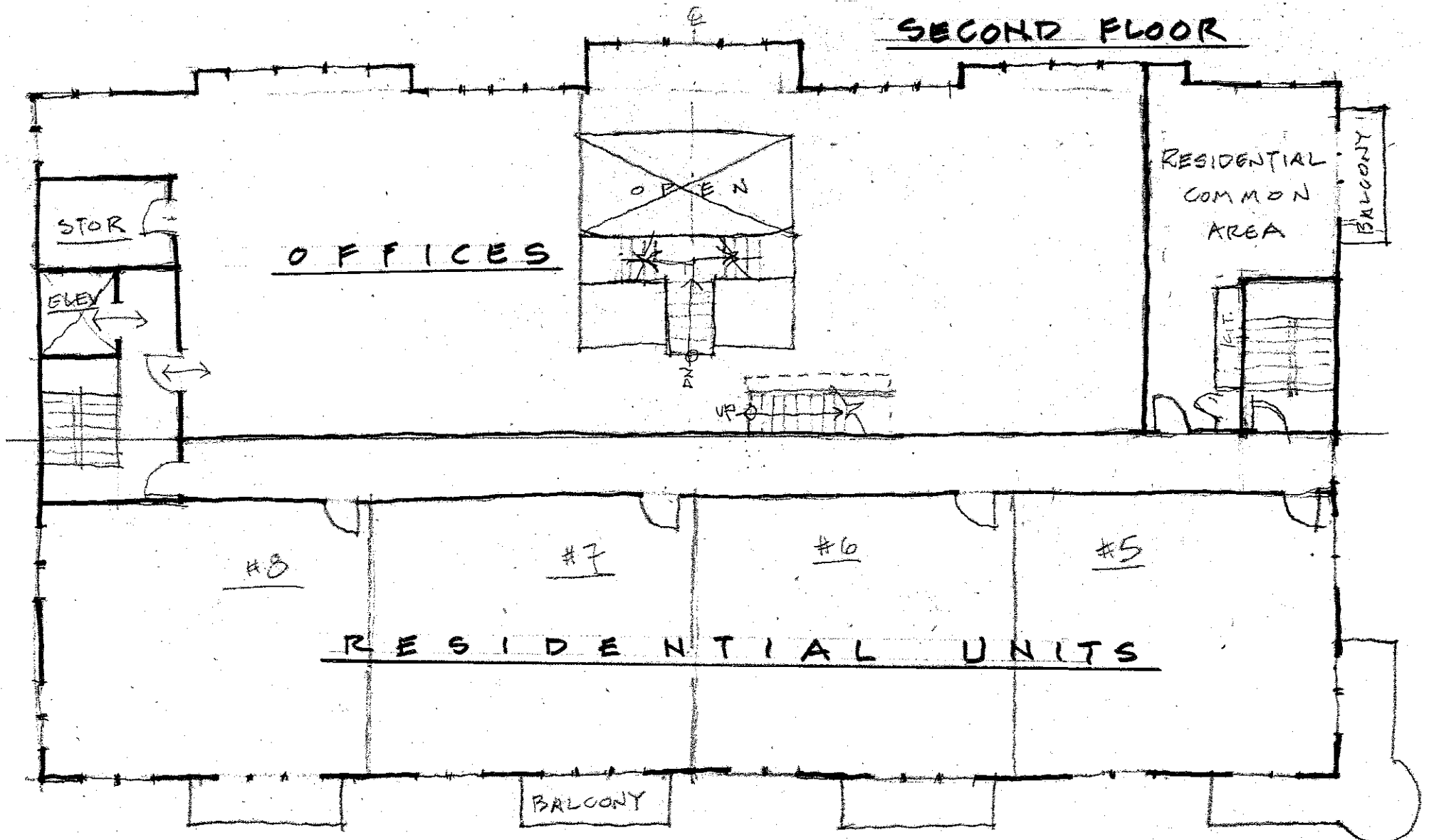
OWNER: NISSLEY LLC 17 NOV 2022



CONCEPTUAL BUILDING PLANS

915 SAGAMORE AVE

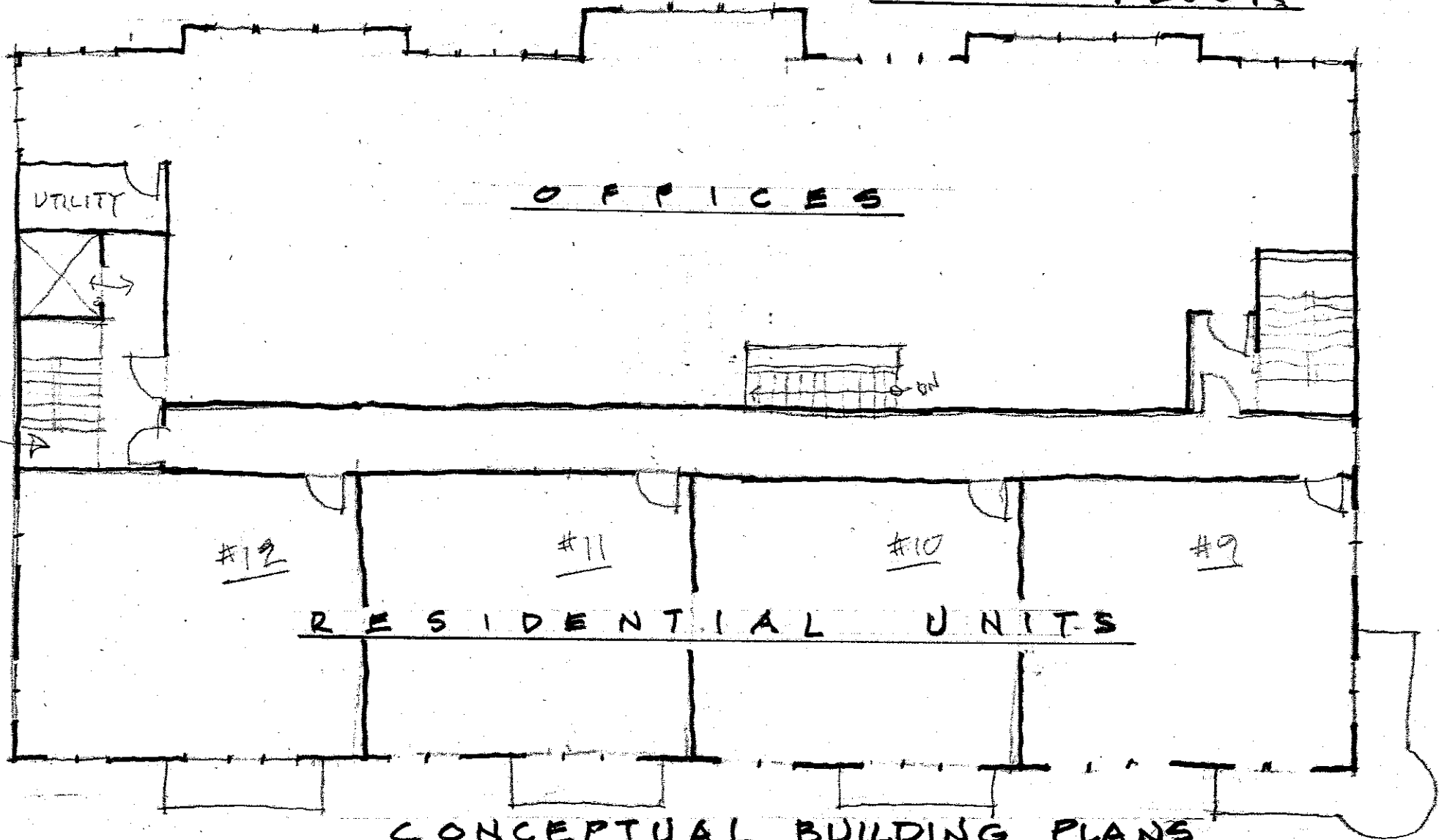
17 NOV. 2022



CONCEPTUAL BUILDING PLANS

915 SAGAMORE AVE 17 NOV 2022

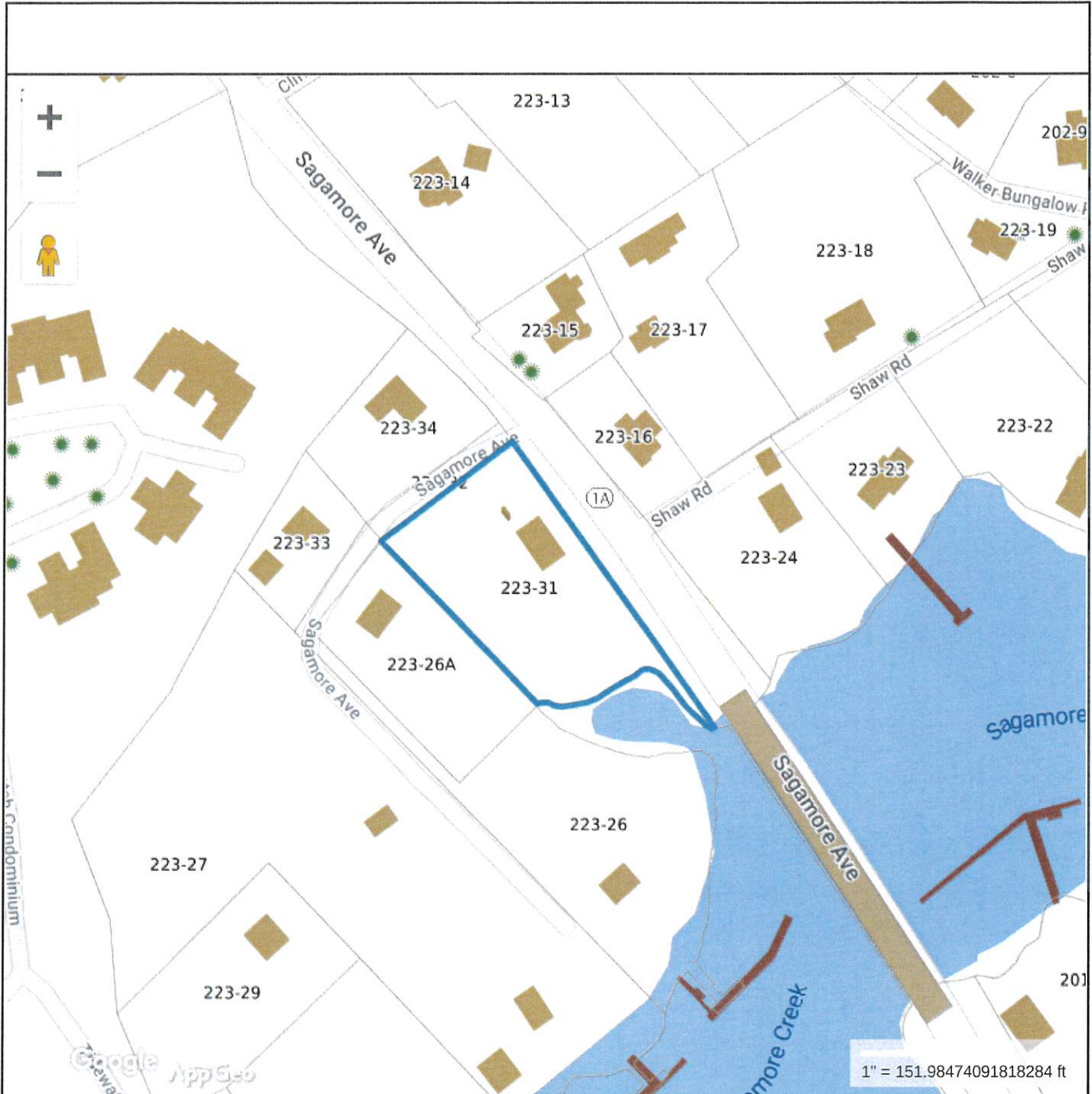
THIRD FLOOR



CONCEPTUAL BUILDING PLANS

915 SAGAMORE AVE

17 NOV 2022

**Property Information**

Property ID 0223-0031-0000
Location 915 SAGAMORE AVE
Owner NISSLEY LLC

**MAP FOR REFERENCE ONLY
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Geometry updated 09/21/2022
Data updated 3/9/2022

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activities should not be done using
this resource.



Front Elevation View



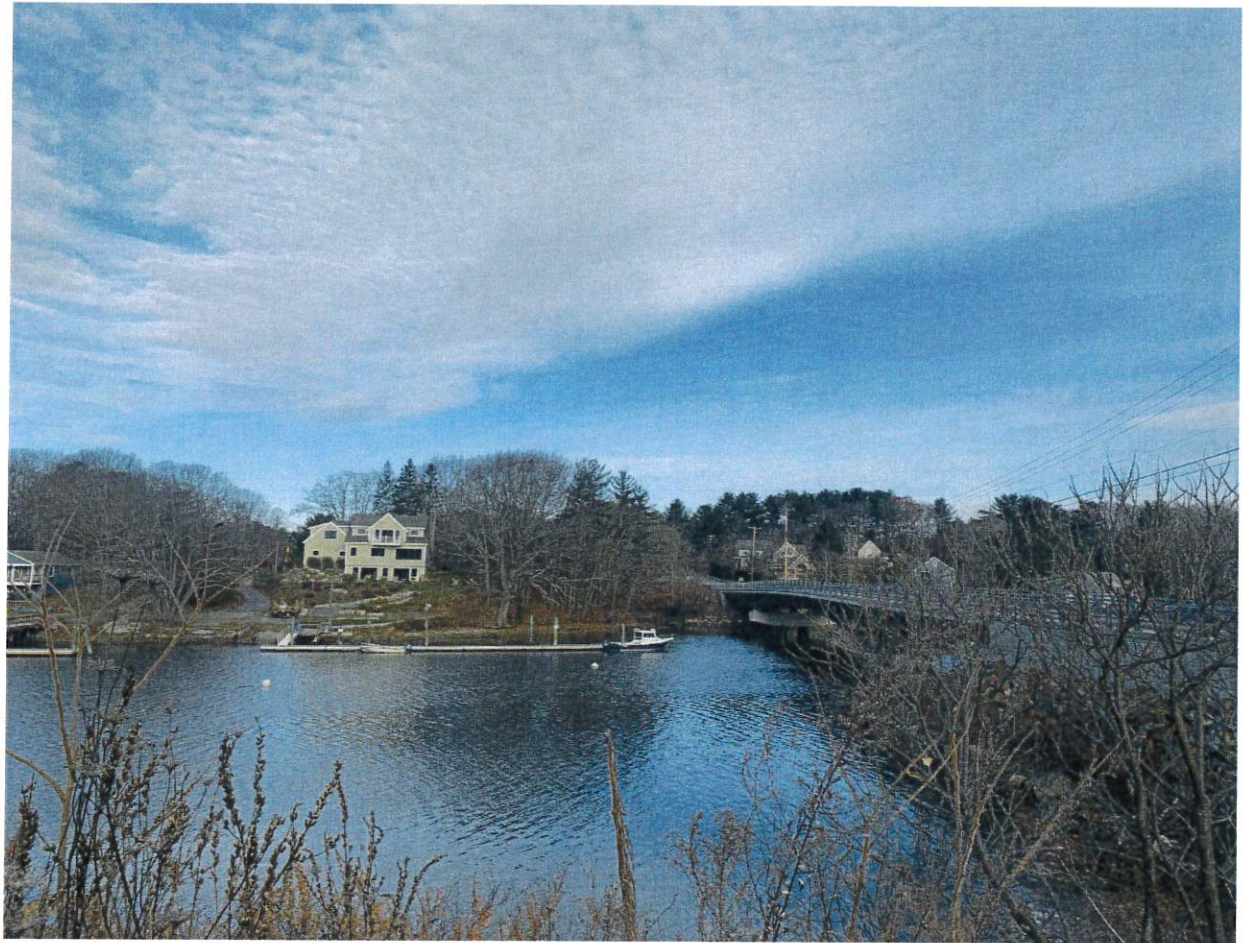
Rear Elevation View



Right Elevation View



Right Elevation View



Left Elevation View (Across Water)



View from Sagamore Road