

RECEIVED

AUG 28 2019

**Peter J. Loughlin**

ATTORNEY AT LAW

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August 27, 2019

David Rheame, Chair  
Portsmouth Zoning Board of Adjustment  
Municipal Complex  
1 Junkins Avenue  
Portsmouth, NH 03801

**Re: 125 Austin Street, Tax Map 137, Lot 1**

Dear Chairman Rheame and Members of the Board of Adjustment:

**Relief Requested**

This letter is being written in support of the application of the Roman Catholic Bishop of Manchester and Corpus Christi Parish for relief from Section 10.1113.20 of the Portsmouth Zoning Ordinance which provides as follows:

10.1113.20 Location of Parking Facilities on a Lot

*Required off-street parking spaces shall not be located in any required front yard, or between a principal building and a street (including on a corner lot). This restriction shall not apply to required off-street parking for a single-family dwelling or two-family dwelling.*

**Background**

A decade or so ago, the Diocese of Manchester and Corpus Christi Parish began an extensive analysis of the real estate owned by the Church in the City of Portsmouth. It was determined that it was no longer feasible to maintain all of the properties owned by the Church. During this period of analysis, the City advised the Parish that the St. Patrick school building at 125 Austin Street had

reached the point that it's lack of code compliance no longer permitted the occupancy of the building for school purposes.

After the completion of the new St. Patrick Academy building on Banfield Road, the structure at 125 Austin Street became vacant and the Parish completed the City of Portsmouth Demolition Review Committee process allowing it to remove the school building. At the request of the Demolition Review Committee, an architectural history/documentation of the building is being prepared. A Site Plan and Landscape Plan for 125 Austin Street is in the process of being completed.

### **Parking Lot Location**

During discussions regarding the redevelopment of the site, the Planning Department staff advised that because the proposed additional parking on the Immaculate Conception Church Campus would be located "between a principal building and a street (including a corner lot)," a variance from Section 10.1113.20 would be required.<sup>1</sup>

### **The Requirements for Variance Relief are Satisfied**

- (1) *The granting of variance relief will not result in the diminution in value of surrounding properties.*

The creation of additional parking for the Church Campus is a permitted accessory use. At the present time, there is a 9,000 square-foot, 2-1/2 story building within a few feet of Austin and Winter Streets. The creation of an attractively landscaped parking lot will not diminish the value of surrounding properties, but will add to the attractiveness of the neighborhood while, at the same time, reducing the impact on surrounding streets during the times of church services.

- (2) *The granting of the variance relief will not be contrary to the public interest.*

In *Harborside Associates v. Parade Residence Hotel, LLC*, 162 N.H. 508 (2011), the New Hampshire Supreme Court upheld variance relief granted by the Portsmouth Zoning Board of Adjustment and, in the process, further collapsed

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<sup>1</sup> Since the Church Campus is a grandfathered use, the proposed parking is not "required" under the terms of the Ordinance, however, the Parish has deferred to the direction of the Planning staff and is seeking variance relief.

the public interest and spirit of the Ordinance tests into one. The Court pointed out that there are two methods of ascertaining whether granting a variance would violate the Ordinance's "basic zoning objectives." One way is to examine whether the granting of the variance would "alter the essential character of the neighborhood." Another approach is to examine whether the granting of the variance would threaten the public health, safety or welfare.

Allowing parking between the surrounding streets and the Church will not be contrary to the public interest or injurious to the public rights of others and will not, in any way, threaten the public health, safety or welfare.

(3) *The granting of the requested relief will do substantial justice.*

In *Malachy Glen Associates v. Town of Chester*, 155 N.H. 102, 109 (2007), the New Hampshire Supreme Court [Quoting 15 New Hampshire Practice, Land Use Planning and Zoning, § 24.11] held that "the only guiding rule [in determining whether the requirement for substantial justice is satisfied] is that any loss to the individual that is not outweighed by a gain to the general public is an injustice."

If the modest amount of relief requested by the Applicant is not granted, the deprivation to the Parish and its parishioners would be significant. On the other hand, preventing the construction of an attractive landscaped parking lot will result in no gain to the public.

(4) *The granting of the variance will not be contrary to the spirit or intent of the Ordinance.*

The purpose of Section 10.1113.20 is to encourage new building construction to occur closer to municipal rights-of-way so that pedestrians, passing motorists and abutters on the opposite side of the street will hopefully see attractive buildings rather than a sea of parking. The removal of the existing St. Patrick School building will open up vistas of the very stately church on top of the Summer Street hill, while providing needed parking in an attractive setting.

(5) *The literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship.*

- **No Fair and Substantial Relationship:**

RSA 674:33, I(b)(5)(A) provides that for purposes of the variance criteria test, "'unnecessary hardship' means that owing to special conditions of the property that distinguish it from other properties in the area;"

- i. no fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of the provision to the property; and
- ii. the proposed use is a reasonable one.

It is reasonable to conclude that the drafters of this Ordinance had in mind new construction of commercial buildings in the downtown and in the Business Districts of the City. The Ordinance has a draconian impact on any already developed urban property that is surrounded on four sides by existing streets. Its application would essentially mean that not a single parking space could ever be added to an already developed lot surrounded by City streets.

Given the very unique circumstances impacting this particular lot, there is no fair and substantial relationship between the general public purpose of the Ordinance provision and the specific application of the provision to this property.

- **The Proposed Use is a Reasonable One:**

The applicant has obtained approval through the Portsmouth Demolition Review Committee process to remove the existing building. Accessory parking for this existing Church is a permitted use. The use of this portion of the urban campus of the Immaculate Conception Church for landscape parking is a reasonable use.

## CONCLUSION

The New Hampshire Supreme Court has made it clear that:


When the restriction as applied to a particular piece of land is unnecessary to accomplish a legitimate public purpose or the gain to the public is slight but the harm to the citizen and his property is great, the exercise of the police power becomes arbitrary and unreasonable and this court will afford relief under the Constitution of this State.

David Rheume, Chair  
August 27, 2019  
Page 5

The facts in this case present a classic example why (legally and practically) Zoning Boards of Adjustment were created to prevent the unanticipated and unfair application of a particular ordinance to a particular property. It is respectfully requested that the Board grant the variance relief to allow the proposed parking.

Respectfully submitted,  
THE ROMAN CATHOLIC BISHOP OF  
MANCHESTER AND CORPUS  
CHRISTI PARISH

By their attorney,

A handwritten signature in black ink, appearing to read "Peter", written over a large, loopy circular flourish.

Peter J. Loughlin

## AUTHORIZATION

This document authorizes Peter Loughlin and Altus Engineering to represent the Roman Catholic Bishop of Manchester regarding all permitting matters related to property located at 125 Austin Street, Portsmouth, Street in Portsmouth, New Hampshire.

By:

8-28-2019

Date



Rella McFall Bryant  
Finance Officer / Secretary for Temporalities











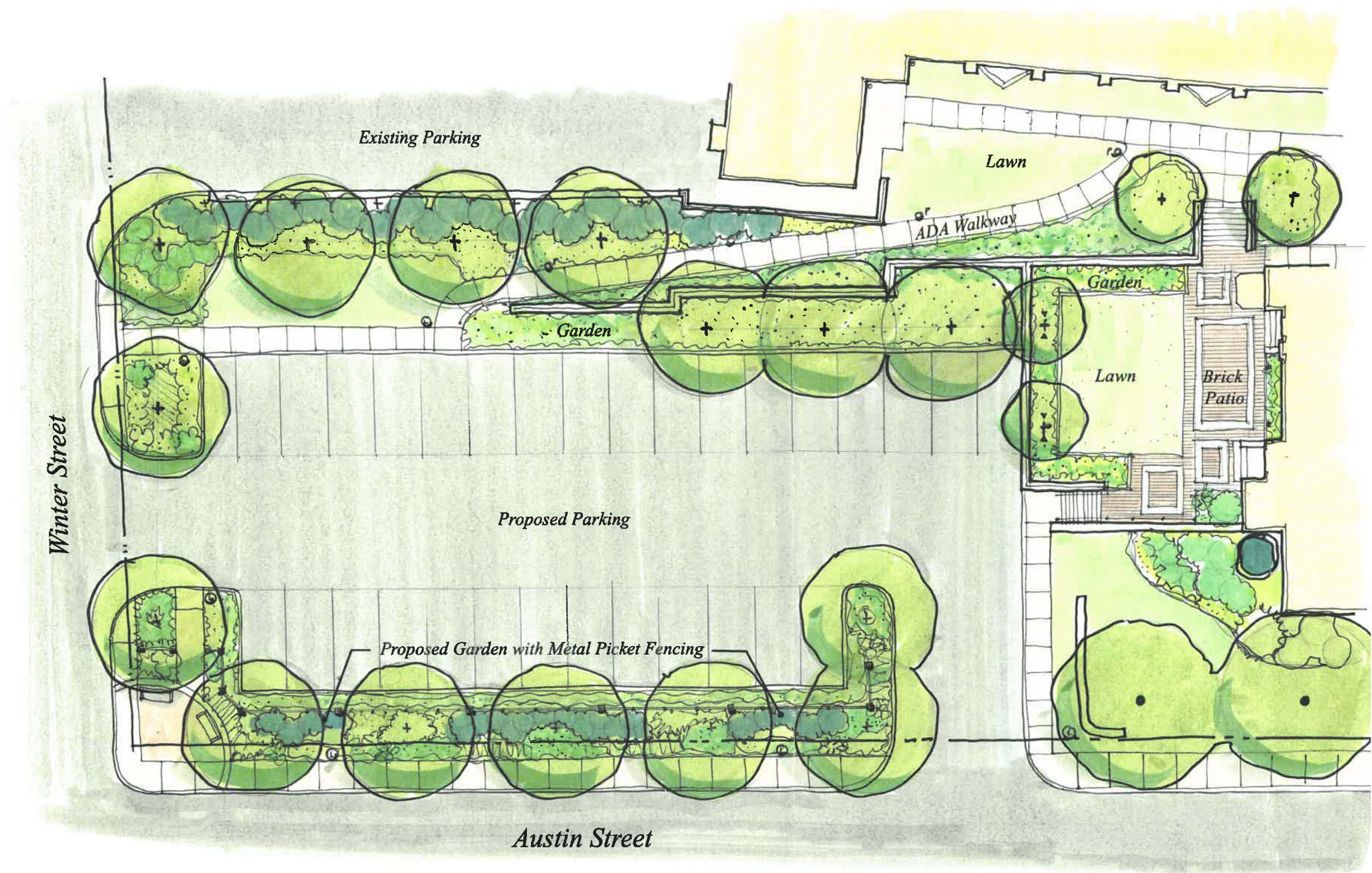












Winter Street

Existing Parking

Proposed Parking

Proposed Garden with Metal Picket Fencing

Austin Street

Lawn

ADA Walkway

Garden

Lawn

Brick  
Patio

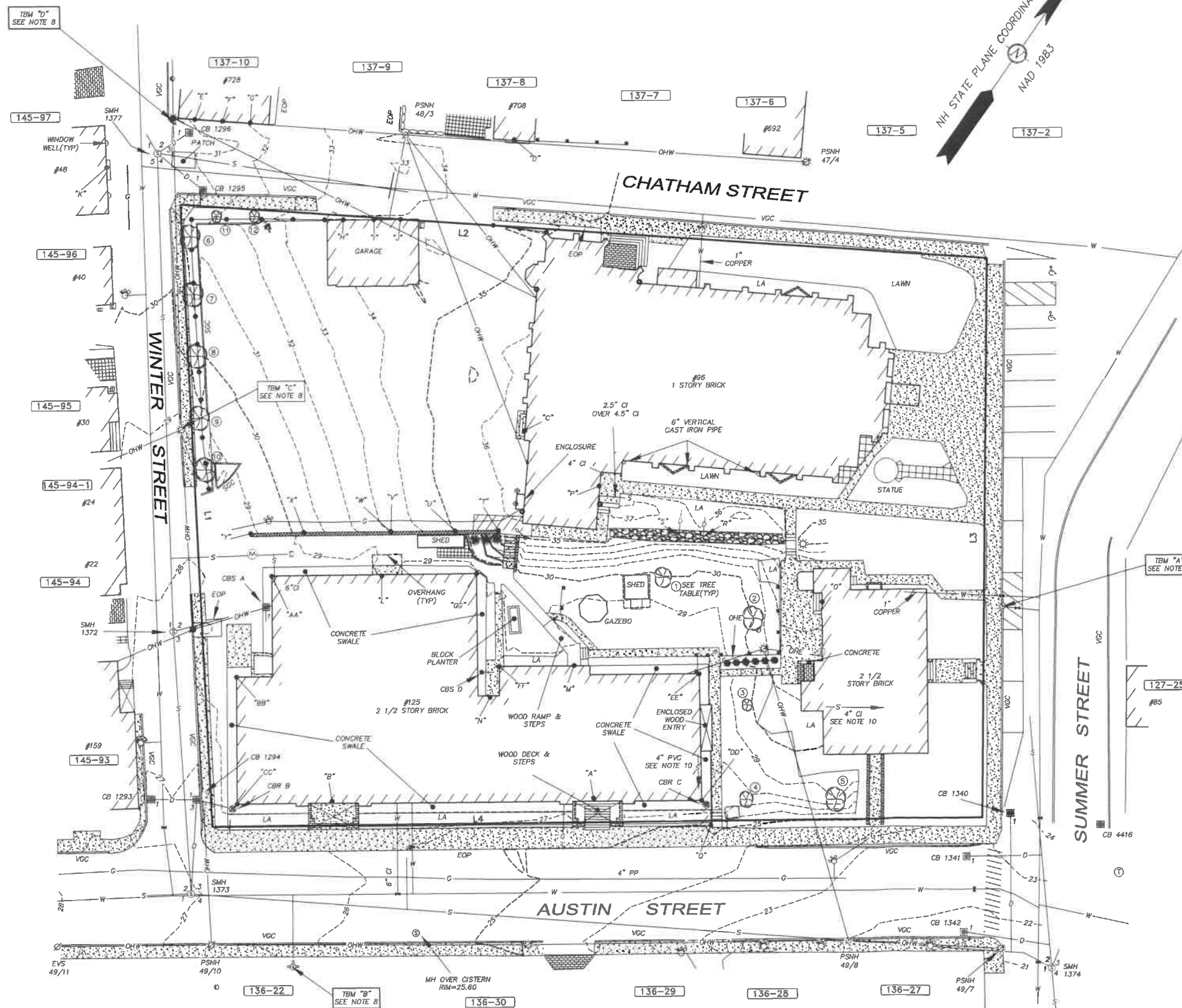
0 2 5 10 20



**Corpus Christi Parish**  
**Parking Area - Master Plan Concept Sketch**  
Summer Street Portsmouth New Hampshire

Drawn By: VM  
Checked By: RW  
Scale: scale  
Date: 2019-08-07  
Revisions:





NOTES:

- OWNER OF RECORD.....ROMAN CATHOLIC BISHOP OF MANCHESTER  
ADDRESS.....153 ASH STREET, MANCHESTER, NH 03104  
DEED REFERENCE.....455/230, 494/466, 502/48, 554/298,  
722/246, 1145/78, 1697/81  
TAX SHEET / LOT.....137-01  
PARCEL AREA.....56,078 S.F. 1.29 ACRES
- ZONED.....GENERAL RESIDENCE C FRONT YARD SETBACK....5'  
MINIMUM LOT AREA.....3,500 S.F. SIDE YARD SETBACK.....10'  
FRONTAGE.....70' REAR YARD SETBACK.....20'
- THE RELATIVE ERROR OF CLOSURE WAS LESS THAN 1 FOOT IN 15,000 FEET.
- THE LOCATION OF ALL UNDERGROUND UTILITIES SHOWN HEREON ARE APPROXIMATE AND ARE BASED UPON THE FIELD LOCATION OF ALL VISIBLE STRUCTURES (IE CATCH BASINS, MANHOLES, WATER GATES ETC.) AND INFORMATION COMPILED FROM PLANS PROVIDED BY UTILITY COMPANIES AND GOVERNMENTAL AGENCIES. ALL CONTRACTORS SHOULD NOTIFY, IN WRITING, SAID AGENCIES PRIOR TO ANY EXCAVATION WORK AND CALL DIG-SAFE @ 1-888-DIG-SAFE.
- HORIZONTAL DATUM: NAD 1983 ESTABLISHED BY SURVEY GRADE GPS OBSERVATION AND NGS "OPUS" SOLUTION. REFERENCE FRAME: NAD83 (2011)(EPOCH: 2010.0000), US SURVEY FOOT.  
VERTICAL DATUM: NAVD 1988. PRIMARY BENCHMARK: CITY OF PORTSMOUTH "ROBE"
- CONTRACTOR TO VERIFY SITE BENCHMARKS BY LEVELING BETWEEN 2 BENCHMARKS PRIOR TO THE ESTABLISHMENT OF ANY GRADES OR ELEVATIONS. DISCREPANCIES ARE TO BE REPORTED TO JAMES VERRA AND ASSOCIATES, INC..
- THE PARCEL SHOWN HEREON LIES WITHIN ZONE X (AREAS OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN) AS IDENTIFIED ON FLOOD INSURANCE RATE MAP, ROCKINGHAM COUNTY, NEW HAMPSHIRE, MAP NUMBER 33015C0295E, EFFECTIVE DATE MAY 17, 2005 BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY.
- DESCRIPTIONS OF THE SITE BENCHMARKS:  
TBM "A": MARKED X TOP FLANGE BOLT ON HYDRANT ELEVATION=32.78  
TBM "B": MARKED X TOP FLANGE BOLT ON HYDRANT ELEVATION=29.24  
TBM "C": SURVEY NAIL SET IN UTILITY POLE #PSNH 48/3 1.0' ABOVE GRADE ELEV.=30.39  
TBM "D": SURVEY NAIL SET IN UTILITY POLE #PSNH 47/4 1.0' ABOVE GRADE ELEV.=31.79
- THE LOCATION OF WATER, SEWER AND DRAIN LINES OUTSIDE THE BUILDINGS COULD NOT BE DETERMINED.
- LOCATION & DIRECTION OF SEWER AS IT PENETRATES CONCRETE FLOOR. FINAL EXIT LOCATION COULD NOT BE DETERMINED.

LEGEND:

- .....IRON ROD (AS NOTED)
- △ .....SURVEY NAIL (AS NOTED)
- CHAIN LINK FENCE
- WOOD FENCE
- .....CEMENT CONCRETE PAD
- .....BRICK PAVERS/WALLS
- .....RIP RAP
- .....CONCRETE RETAINING WALL
- .....CONCRETE PAVERS
- .....UTILITY POLE
- ☆ .....UTILITY POLE W/TRANSFORMER
- .....GUY
- OH— OVERHEAD WIRES
- OE— OVERHEAD ELECTRIC
- OC— OVERHEAD COMMUNICATION WIRES
- RCRD .....ROCKINGHAM COUNTY REGISTRY OF DEEDS
- 137-01 .....TAX SHEET / LOT NO.
- EOP .....EDGE OF PAVEMENT
- LA .....LANDSCAPED AREA
- .....CATCH BASIN
- .....CATCH BASIN
- .....MONITORING WELL
- .....SEWER CLEANOUT
- .....TELEPHONE MANHOLE
- .....SEWER MANHOLE
- .....SEWER CLEAN OUT
- W— .....WATER LINE
- S— .....SEWER LINE
- D— .....DRAIN LINE
- G— .....GAS LINE
- .....WATER GATE VALVE
- .....WATER SHUT OFF VALVE
- .....HYDRANT
- SGC .....SLOPED FACED GRANITE CURB
- VGC .....VERTICAL FACED GRANITE CURB
- RWW .....WOOD RETAINING WALL
- RWG .....GRANITE RETAINING WALL
- PSNH .....PUBLIC SERVICE CO. OF NH
- EVS .....EVERSOURCE
- PP/PL .....PLASTIC GAS LINE
- .....GAS METER
- ☆ .....LIGHT POLE
- .....HANDICAP SPACE
- .....DECIDUOUS TREE
- .....CONIFEROUS SHRUB



ENGINEER:



135 COURT STREET PORTSMOUTH, NH 03801  
(603) 433-2335 www.ALTUS-ENG.com

SURVEYOR:

& James Verra  
Associates, Inc.

LAND SURVEYORS

101 SHATTUCK WAY - SUITE 8  
NEWINGTON, N.H. 03801-7876  
603-436-3557  
JOB NO: 23799

ISSUED FOR:

APPLICATION

ISSUE DATE:

PRELIMINARY

REVISIONS

NO.	DESCRIPTION	BY	DATE
0	APPLICATION	JVA	

DRAWN BY:

GTD

APPROVED BY:

DRAWING FILE: 23799.DWG

SCALE:

22" x 34" - 1" = 20'  
11" x 17" - 1" = 40'

APPLICANT:

CORPUS CHRISTI PARISH  
125 AUSTIN STREET  
PORTSMOUTH, NH 03801

OWNER:

ROMAN CATHOLIC BISHOP  
OF MANCHESTER  
153 ASH STREET  
MANCHESTER, NH 03104

PROJECT:

FORMER ST. PATRICKS  
SCHOOL  
TAX MAP 137,  
LOT 01  
125 AUSTIN STREET  
PORTSMOUTH, NH

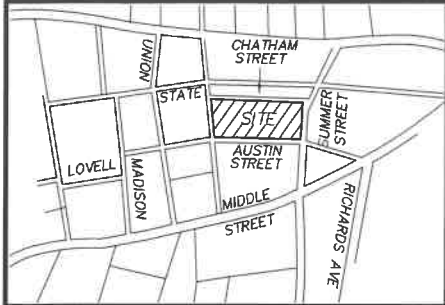
TITLE:

LIMITED  
EXISTING  
CONDITIONS PLAN  
AUSTIN, WINTER &  
CHATHAM STREETS  
PORTSMOUTH, NH

SHEET NUMBER:

EX-1





LOCUS  
(N.T.S.)

BUILDING ELEVATION TABLE

LOCATION	DESCRIPTION	ELEVATION
"A"	WOOD THRESHOLD	31.55
"B"	ALUM. THRESHOLD	29.25
"C"	CONCRETE FLOOR	38.58
"D"	WOOD FLOOR	34.95
"E"	CONCRETE FLOOR	31.14
"F"	CONCRETE FLOOR	31.62
"G"	ASPHALT FLOOR	32.13
"H"	CONCRETE FLOOR	34.85
"I"	CONCRETE FLOOR	34.64
"J"	CONCRETE FLOOR	34.62
"K"	WOOD THRESHOLD	31.70
"L"	ALUM. THRESHOLD	29.25
"M"	WOOD THRESHOLD	32.19
"N"	WOOD THRESHOLD	32.33
"O"	BRICK THRESHOLD	34.81
"P"	ALUM. THRESHOLD	39.16

MISC. ELEVATION TABLE

LOCATION	DESCRIPTION	ELEVATION
"Q"	TOP CONC. WALL	25.90
"R"	INV 4" PVC	35.98
"S"	INV 3.5" ACP	35.80
"T"	TOP CONC. WALL	37.05
"U"	TOP CONC. WALL	36.99
"V"	TOP CONC. WALL	34.71
"W"	TOP CONC. WALL	33.91
"X"	TOP CONC. WALL	31.34
"Y"	TOP CONC. WALL	29.49
"AA"	BLDG. CORNER	30.06
"BB"	BLDG. CORNER	28.51
"CC"	BLDG. CORNER	28.71
"DD"	BLDG. CORNER	28.61
"EE"	BLDG. CORNER	28.82
"FF"	BLDG. CORNER	28.78
"GG"	BLDG. CORNER	28.77

RIM AND INVERT DATA

CB #1293 RIM = 26.79 INV 6" PVC = 25.24± SUMP = 24.59	SMH #1372 RIM = 27.82 (1) INV (8" VCP) = 21.4± (2) INV (8" VCP) = 21.6± (3) INV (8" VCP) = 21.42
CB #1294 RIM = 26.69 (1) INV (8" PVC) = 23.99 (2) INV (8" PVC) = 24.37 (3) INV (8" PVC) = 23.74 SUMP = 22.39	SMH #1373 RIM = 27.05 (1) INV (8" VCP) = 20.06 (2) INV (8" VCP) = 20.23 (3) INV (8" VCP) = 20.9 (4) INV (8" VCP) = 20.6
CB #1295 RIM = 30.76 (1) INV (6" PVC) = 27.66 SUMP = 25.76	SMH #1374 RIM = 21.04 (1) INV (8" VCP) = 16.04± (2) INV (8" VCP) = 16.04± (3) INV (8" VCP) = 16.04± (4) INV (8" VCP) = 16.04±
CB #1296 RIM = 30.82 (1) INV (6" PVC) = 27.54 SUMP = 25.76	SMH #1377 RIM = 30.64 (1) INV (8" VCP) = 25.22 (2) INV (8" VCP) = 26.75 (3) INV (8" VCP) = 26.92 (4) INV (8" VCP) = 26.71 (5) INV (8" VCP) = 25.69
CB #1340 RIM = 23.90 (1) INV (6" VCP) = 20.00 SUMP = 19.90	
CB #1341 RIM = 22.51 (1) INV (10" VCP) = 18.86 SUMP = 18.00	
CB #1342 RIM = 21.56 (1) INV (4.5" VCP) = 19.04 SUMP = 18.56	

SMALL CATCH BASIN DATA TABLE

CBS #A RIM = 28.31 (1) INV (6" VCP) = 26.0±	CBS #C RIM = 28.03 INV (INACCESSIBLE)
CBS #B RIM = 28.12 INV (INACCESSIBLE)	CBS #D RIM = 28.30 (1) INV (6" VCP) = 26.90

TREE IDENTIFICATION TABLE

TREE	TYPE	SIZE	SPREAD
①	TWIN OAK	12"	50'
②	MAPLE	24"	44'
③	MAPLE	8"	24'
④	MAPLE	16"	30'
⑤	MAPLE	24"	34'
⑥	MAPLE	7"	12'
⑦	MAPLE	8"	12'
⑧	MAPLE	11"	16'
⑨	MAPLE	8"	12'
⑩	MAPLE	8"	10'
⑪	MAPLE	8"	16'
⑫	MAPLE	11"	9'

BOUNDARY LINE TABLE

LINE	BEARING	DISTANCE
L1	N 37°58'51" W	216.45
L2	N 58°46'24" E	280.28
L3	S 34°36'19" E	194.39
L4	S 54°17'07" W	267.10

REFERENCE PLANS:

- PLAN OF LAND NO. 119 SUMMER STREET, PORTSMOUTH, N.H. BY JOHN W. DURGIN DATED OCT. 1948, FILE NO. 2274, PLAN NO. 1-372
- STANDARD BOUNDARY SURVEY, PLAT OF LOT, KNOWN AS TAX MAP U-37 LOT 2 OWNED BY PATTERSON CHATHAM STREET REVOCABLE TRUST, DATED JULY 1996 RCRD PLAN #D-24875.
- APPENDIX C-SITE PLAN, 728 STATE STREET CONDOMINIUMS, PORTSMOUTH, NH DATED JANUARY 1984 RCRD PLAN #D-24875.
- CONDOMINIUM SITE PLAN, MAP 145-LOT 93, AUSTIN STREET CONDOMINIUM FOR LYNN M. MCCARTHY & DYLAN M. KIMMEL, DATED APRIL 2002 RCRD PLAN #D-29891.
- PLAN OF FIFTEEN HOUSE LOTS, PORTSMOUTH, BELONGING TO THE HEIRS OF MATTHEW S. MARSH, 1848, PORTSMOUTH RECORDS, BK 7. PG 354

ABUTTER'S LIST

127-23  
ADVENT CHRISTIAN CHURCH  
634 STATE STREET  
PORTSMOUTH, NH 03801

127-24  
SUSAN A. CERRO  
53 WENTWORTH STREET  
PORTSMOUTH, NH 03801  
5580/449

127-25  
NANCY R. BECK REV. TRUST  
NANCY R. BECK, TRUSTEE  
43 AUSTIN STREET  
PORTSMOUTH, NH 03801  
4556/648

136-22  
SOCIETY PRESERVATION, NE  
ANTIQUITIES OF MA.  
141 CAMBRIDGE STREET  
BOSTON, MA 02114  
2395/1115

136-27  
DONALD M. &  
MARY SAARI  
72 SUMMER STREET  
PORTSMOUTH, NH 03801  
2373/1805

136-28  
ROBERT GOWELL C. WALLIS  
110 AUSTIN STREET  
PORTSMOUTH, NH 03801  
2397/114

136-29  
TRISHA BALLESTERO  
45 EVANS ROAD  
MADBURY, NH 03823  
5550/1043

136-30  
NANDREA J. MORRIS  
122 AUSTIN STREET  
PORTSMOUTH, NH 03801  
3071/1301

137-2  
MARK D. GRAY  
140 SUMMER STREET  
PORTSMOUTH, NH 03801  
3515/636

137-5  
JOHN F. LEITH  
83 WOODBURY AVENUE  
PORTSMOUTH, NH 03801  
2947/2701

137-6  
VICTORIA WILLINGHAM  
& ROBERT BOWSER  
692 STATE STREET  
PORTSMOUTH, NH 03801  
3269/2978

137-7  
ALISON K. &  
JAMES FORBES  
698 STATE STREET  
PORTSMOUTH, NH 03801  
3306/1370

137-8  
THOMAS J. & LONGI M.  
SCHLADENHAUFEN  
708 STATE STREET  
PORTSMOUTH, NH 03801  
3098/698

137-9  
CONDOMINIUM AT  
GOODWIN PARK  
8 STATE STREET  
PORTSMOUTH, NH 03801  
5306/1187

137-10  
MARK GRIFFEN  
728 STATE STREET  
CONDOMINIUM  
PORTSMOUTH, NH 03801

136-30  
NANDREA J. MORRIS  
122 AUSTIN STREET  
PORTSMOUTH, NH 03801  
3071/1301

145-93  
AUSTIN STREET  
CONDOMINIUM  
159-161 AUSTIN STREET  
PORTSMOUTH, NH 03801

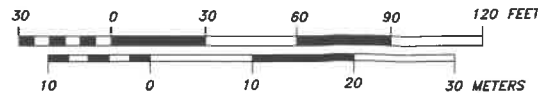
145-94  
WILLIAM & LUCINDA CLARKE REV. TRUST  
WILLIAM & LUCINDA CLARKE, TRUSTEES  
22 WINTER STREET  
PORTSMOUTH, NH 03801  
5152/1881

145-94-1  
DONNA MELLLO REVOC. TRUST  
DONNA MELLLO, TRUSTEE  
24 WINTER STREET  
PORTSMOUTH, NH 03801  
4723/1275

145-95  
WILLIAM J. &  
REBECCA M. HARTGLASS  
30 WINTER STREET  
PORTSMOUTH, NH 03801  
5235/1781

145-96  
COLLEEN M. COOK  
40 WINTER STREET  
PORTSMOUTH, NH 03801  
5738/898

145-97  
PAUL D. STRAND  
& DEANNA HAND  
48 WINTER STREET  
PORTSMOUTH, NH 03801  
2819/1696



ENGINEER:

ALTUS  
ENGINEERING, INC.

133 COURT STREET PORTSMOUTH, NH 03801  
(603) 433-2335 www.ALTUS-ENG.com

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JOB NO: 23799

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PORTSMOUTH, NH 03801

OWNER:

ROMAN CATHOLIC BISHOP  
OF MANCHESTER  
153 ASH STREET  
MANCHESTER, NH 03104

PROJECT:

FORMER ST. PATRICKS  
SCHOOL  
TAX MAP 137,  
LOT 01

125 AUSTIN STREET  
PORTSMOUTH, NH

TITLE:

LIMITED  
EXISTING  
CONDITIONS PLAN  
AUSTIN, WINTER &  
CHATHAM STREETS  
PORTSMOUTH, NH

SHEET NUMBER:

EX-2