

**PORTSMOUTH ZONING BOARD OF ADJUSTMENT**  
**REQUEST FOR REHEARING**  
**4 Sylvester Street**  
**LU-23-27**

Now comes Jared Saulnier (“Saulnier”) and respectfully requests that the Zoning Board of Adjustment (“ZBA”) rehear and reverse its May 16, 2023 denial of the prerequisite dimensional relief required to create a new 6,421 sf. lot to support a single family home at 4 Sylvester Street<sup>1</sup>, retaining a parent lot with a right side setback of 9.1 ft. where 10 ft. is required.

**I. EXHIBITS**

1. 5/23/2023 ZBA Notice of Decision.<sup>2</sup>
2. Email from abutter David Moody.
3. Cabin photo dated 2011.

**II. INTRODUCTION**

4 Sylvester Street is a 16,067 s.f. lot with 200 ft. of frontage comprised of five (5) historic lots (40 ft. by 80 ft.) depicted on the 1903 Plan of Prospect Park, Annex #3 (the “Property”). **(Exhibits A & B to March 1, 2023 Submission)**. Although Sylvester Street is laid out on the Prospect Park Plan, it is not developed past the Property, the last on the left due to ledge. A single property on the opposite side of the ledge appears to be accessed from Marjorie Street. The Property is developed with a single family home and garage on the left side of the lot, and a shed and wood storage structure on the right side of the lot. A 20 ft. utility easement benefiting the City crosses the Property between the home and garage. The Property contains nearly twice the required frontage but, like nearly all the historic lots in the neighborhood, is 80 ft. deep, failing to conform to today’s lot depth requirements for the Single Residence B District.

Given the size and configuration of the Property, its location at the end of Sylvester Street, and the fact that the home and garage were located all the way on the left side of the lot, on May 16, 2023, Saulnier appeared before the ZBA proposing to subdivide the Property into two lots based on the historic lot lines (the “Project”). As presented, proposed Lot 1 would be three lots (228, 229, and 230) and contain the existing home and garage, and proposed Lot 2 would be two historic lots (226 and 227) combined measuring 80 ft. by 80 ft. The Project offered

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<sup>1</sup> Recently renumbered 6 Sylvester Street.

<sup>2</sup> Minutes of the May 6, 2023 Zoning Board of Adjustment Meeting are not yet posted.

the benefit of an additional, relatively affordable building lot in Portsmouth. The City’s housing opportunities are in high demand and many residential lots, particularly those surrounding the Property, fail to conform to current requirements for frontage, lot area, lot area/dwelling unit, and lot depth. **(Exhibit D to March 1, 2023 Submission)**. The following relief from the Portsmouth Zoning Ordinance (“PZO” or the “Ordinance”) was requested to create a lot prior to addressing further technical details of a subdivision with the Planning Board:

<u>Variance</u>	<u>Existing</u>	<u>Proposed</u>	<u>Comment</u>
<u>PZO §10.520/Table §10.521: Dimensional Standards</u> 15,000 s.f. Lot area 15,000 s.f. Lot area/dwelling unit	16,067 s.f.	Lot 1: 9,645 s.f. Lot 2: 6,421 s.f.	Compatible with surrounding lots
<u>PZO §10.520/Table §10.521: Dimensional Standards</u> 100’ Continuous Street Frontage	200.01’	Lot 1: 119.90’ (no relief) Lot 2: 40’ <sup>3</sup>	Compatible with surrounding lots
<u>PZO §10.520/Table §10.521: Dimensional Standards</u> <u>100’ Lot Depth</u>	80’	80’	Compatible with surrounding lots
<u>PZO §10.520/Table §10.521: Dimensional Standards</u> <u>10’ Side Yard</u>	Lot 1: 9.7’ (left side)	Lot 1: 9.1’ (right side)	Lot 1 home centered on lot.

After hearing, the ZBA denied the requested relief by a vote of 4-3 because granting the requested relief would not observe the spirit of the Ordinance. **(Exhibit 1, Notice of Decision)**. The ZBA did not find or vote that any of the four criteria of the Ordinance were not met. Respectfully, the ZBA overlooked the legal framework which guides its consideration of the Project with regard to the spirit of the ordinance and unlawfully discounted the character of the neighborhood comprised of identically sized lots. In addition, direct abutter David Moody at 11 Marjorie Street, attempted to upload a letter of support for the Project, which included direct

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<sup>3</sup> Sylvester Street was depicted on a 1903 Plan recorded at the Rockingham County Registry of Deeds. The undeveloped portion of Sylvester Street continues for approximately 80 ft.; however, **frontage** is defined as the horizontal distance measured along a lot line dividing a lot from a **street**. **Street** is defined as a road formally accepted by the Town, or a road shown on a plan approved by the Planning Board and constructed to the required specifications. Only the first 40 ft. along Lot 1 is paved, accordingly relief was requested. Presumably, in 1903, parking was not required, so the lack of frontage on a developed street is a prior nonconforming condition.

evidence that a dwelling previously existed on proposed Lot 2. This evidence, not available before the hearing, directly supports Saulnier's claim that the proposed lot suits the character of the neighborhood. Accordingly, the ZBA must grant rehearing.

### III. STANDARD OF REVIEW

Within 30 days after any... decision of the Zoning Board of Adjustment... any party to the action or proceedings... may apply for rehearing in respect to any matter determined in the action specifying in the motion for rehearing the grounds therefor; and the Board of Adjustment may grant such rehearing if in its opinion good reason therefor is stated in the motion. RSA 677:2.

A motion for rehearing. Shall set forth fully every ground upon which it is claimed that the decision or order complained of is unlawful or unreasonable. RSA 677:3, I.

The purpose of the statutory scheme is to allow the ZBA to have the first opportunity to pass upon any alleged errors in its decision so that the court may have the benefit of the board's judgment in hearing the appeal. Town of Bartlett Board of Selectmen v. Town of Bartlett Zoning Board of Adjustment, 164 NH 757 (2013). Rehearing is designed to afford local zoning boards of adjustment an opportunity to correct their own mistakes before appeals are filed with the courts. Fisher v. Boscawen, 121 NH 438 (1981). Rehearing is proper where the affected party can show technical error or produce new evidence that was not available at the time of the first hearing. Loughlin, 15 New Hampshire Practice, Land Use Planning and Zoning, Section 21.08 (4<sup>th</sup> Ed. 2010)(emphasis added).

### IV. FACTS

The 1903 Prospect Park Plan created a neighborhood of over one-hundred 40 ft. by 80 ft. lots on Lois, Marjorie, and Sylvester Streets. **(Exhibit A to March 1, 2023 Submission)**. Over time, lots were purchased in groups with many homes constructed on double 80 ft. by 80 ft. lots. Today, excluding the Chase Home lot bordering Sylvester Street, there are 30 lots between the western side of Lois Street and the western side of Sylvester Street, 24 of which are developed with homes: All (100%) have insufficient lot depth, mostly 80 ft. where 100 ft. is required; 20 (83%) do not conform with the 15,000 s.f. (.344 ac) lot size or lot size/dwelling unit requirements; and 11 (46%) do not conform with the frontage requirement. The two smallest lots in the neighborhood are .07 acres or approximately 3,049 s.f.; 11 developed lots are 80 ft. by 80 ft. and approximately 0.147 or 6,403 s.f., one is slightly larger at 6,534 s.f.. A recently

unmerged lot on Sylvester Street, directly across from the Property is 80 ft. by +/- 82 ft. and 6,713 s.f. (**Exhibits C and D to March 1, 2023 Submission**). In this one hundred plus year old neighborhood, a significant majority of the developed lots fail to meet the lot area, lot area per dwelling unit, frontage and/or depth requirements. Id. Clearly, this neighborhood is an area of significant noncompliance with zoning ordinance density, setback and/or depth requirements.

As depicted on the Plan, the Property includes a home, garage, and patio on the northerly side. A shed and covered roof structure exist on the southern half of the Property. At the time of the ZBA hearing, we advised the ZBA that the shed and covered roof structure on proposed Lot 2 had prompted us to seek a variance rather than unmerger, although we also relayed to the Board that we had just learned that a small home (“cabin”) previously existed on proposed Lot 2 and was fairly recently demolished.

After the meeting, we learned that Abutter David Moody provided additional detail in the form of an email to Mr. Saulnier, representing content Moody believed he had uploaded to the City Council through the City Website.<sup>4</sup> (**Exhibit 2**). The email to Saulnier, which was sent during the meeting, was not available to Counsel at the time the matter was presented to the ZBA. The historical information submitted by Moody, reasonably understood by Saulnier to have been submitted to the City, confirms that the cabin was a dwelling for many years. (**Exhibits 2**). The structure also continued to exist until approximately five years ago. (**See Exhibit 3 – image capture 2011**). Saulnier’s predecessor did not use it as a dwelling and demolished it in 2017. This information, unavailable at the time of the initial hearing, includes the support of a direct abutter as well as important historical context about the previous use of proposed Lot 2 which demonstrates the compatibility of an additional dwelling lot on Sylvester Street.

Also discussed at the hearing was the recent “subdivision” of Lot 43 resulting in Lot 43-1, 3 Sylvester Street. That lot was the product of an unmerger, and resulted in two 40 ft. by +/- 82 ft. lots being combined resulting in a 6,713 s.f. lot, just slightly larger than Saulnier proposed. In accordance with RSA 674:39-aa, V, then owner ARNE, LLC sought variances for lot size, depth, and frontage to enable building on the lot. A front yard setback variance was denied, but

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<sup>4</sup> Upon information and belief, Mr. Moody had attempted to submit this correspondence through the available email link to City Councilors but was having difficulty doing so and the correspondence was not received by the ZBA or Planning Staff.

a later rear yard setback variance invited by the ZBA was subsequently approved. 3 Sylvester Street now contains a 2,071 s.f., 4-bedroom 2.5 bath home with an incorporated two car garage and is well incorporated into the neighborhood.

The intent of Single Residence B District is “[t]o 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. As proposed, Lot 1 with one dwelling on 9,645 s.f. equals 2.29 units per acre. Lot 2 at 6,421 s.f. exceeds three units per acre, but it is similar in size to eight nearby lots, including lots behind it and across the street. Proposed Lot 2 is also twice the size of two of the historic developed lots (Lots 32, 44).

At the May 16, 2023 hearing, after public comment, questions by board members, board members began deliberations. Review of the video (City of Portsmouth Zoning Board of Adjustment meeting May 16, 2023,

<https://www.youtube.com/watch?v=YFFWjo2Xut8&t=9347s> reveals the following paraphrased comments of board members in support of or opposition to the requested relief including a reference to the timestamp that the comments begin:<sup>5</sup>

Member Margeson – Although the building envelope was approximately 1212 s.f., granting the variances would create a very small lot, and she was concerned about a subsequent request for relief due to the size of the lot. (Meeting video at 2:22)

Member Rossi – noted that granting the variances would transform a conforming lot and create two nonconforming lots which almost guarantees that subsequent relief will be required. (2:22:31)

Chair Eldredge – [in response] noted that that those nonconforming lots conform to the streetscape “really well”. (2:22:58)

Member Mannle – [moves to deny] (2:22:05), granting the variances does not observe the spirit of the Ordinance because a conforming lot with double the frontage and just over the required lot area is made into two non-conforming lots, the first of which has appropriate frontage and 2/3 the required lot area; the second is only 1/3 the required lot size with less than half the required street frontage. He opines that observing the spirit of the ordinance means the lots should be as conforming as possible or to “get them into conforming”. Observing the spirit of the Ordinance might involve making a non-conforming lot less non-conforming, it “certainly does not involve making two non-conforming lots”. (2:23:42)

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<sup>5</sup> Written minutes of the May 16, 2023 ZBA meeting have not been published as of the date of this filing.

Member Rossi – [Seconds Mannle’s Motion] adds that the proposal does not observe the spirit of the Ordinance because the intent of the SRB district is low to medium density 1-3 units – 15,000 s.f. and this would be creating something well below that requirement. (2:23:56). He adds that it is not appropriate to consider Marjorie Street as part of the neighborhood because it is a separate street with its own density. (2:24:26)

Member Mannle – [responding] relates the proposal to his neighborhood which has large and small lots and opines that smaller lots nearby does not mean one can subdivide his conforming lot. (2:24:51). He adds that he does not think the ZBA should be in the business of creating more nonconforming lots. (2:25:44)

Member Rheaume – (2:26:04) Cannot support the motion to deny. While it concerns him that the existing lot conforms to the required square footage, applicant has made the case that the lot is fully buildable, particularly averaging the front yard setback. Under the Manchester case cited by Applicant, which considers the nonconformities of neighborhood properties, the prevalence of nonconforming lots in the area, including on Marjorie Street in an identical configuration to that proposed, or in some cases smaller, indicate the ZBA is on “shaky ground” to deny based on the spirit of the Ordinance. He adds that the 40 ft. frontage might be concerning, but the unique hardship of the lot coupled with the fact that development of the road will be at the expense of the Property owner leads him to conclude there is no value in forcing further development of a road that “goes nowhere”.

Member Mattson – (2:29:56) appreciates that creating a new lot will create housing where a scarcity of housing exists, but is concerned about creating two nonconforming lots.

Member Geffert – (2:30:31) believes there is something to be said about looking to the surrounding lots and the fact that what is proposed is similar to many of the surrounding lots. In order to determine that the proposal is not contrary to the public interest, she asks if a condition can be added requiring development of the road at owner’s expense, but is advised by Planning Staff that this is a detail best left to the Technical Advisory Committee.

Member Mannle – (2:32:30) [responding] although the proposed lots can be seen as conforming to neighborhood, the existing lot also conforms to the neighborhood. The subdivision creates two non-conforming lots, one of which is grossly nonconforming.

The motion to deny was then approved by a 4-3 vote. Subsequently, a Notice of Decision issued which adopted Member Mannle’s reasoning that granting the variances transforming one conforming lot into two nonconforming lots: one 2/3 of the required size and a second 1/3 the size does not observe the spirit of the Ordinance, which is to make lots as conforming as possible or get them into conformance. **(Exhibit 1)**. Given the discussion and Notice of Decision

focused on lot size with less discussion about frontage, we must conclude that the lot depth and setback variances were approved. Similarly, the only basis for denial cited is the spirit of the Ordinance, we therefore assume all other criteria were met.

V. **Rehearing is required where a majority of the ZBA erroneously interpreted and applied the spirit of the ordinance prong of the variance criteria, overlooking the importance of the surrounding nonconforming lots.**

A review of the meeting video demonstrates that the ZBA, spent virtually all of its deliberation considering whether the Project observed the spirit of the Ordinance, separate from whether granting the variance is contrary to the public interest. The New Hampshire Supreme Court has held that the first two prongs of the variance criteria to be considered together (public interest and spirit of the ordinance). Malachy Glen Associates, Inc. v. Town of Chichester, 155 N.H. 102 (2007) and its progeny. The Malachy Court goes on to provide an analytical framework to evaluate a variance request, which the ZBA failed to apply to Saulnier's request. Malachy requires the ZBA to determine whether granting a variance "would unduly and to a marked degree conflict with the ordinance *such that it violates the ordinance's basic zoning objectives*". Id. (Emphasis added). "Mere conflict with the zoning ordinance is not enough". Id. The deliberations demonstrate that ZBA members focused on the size of the proposed lots, lot area/dwelling unit, and reduced frontage – the reasons for the requested variances – and impermissibly relied on these alone to deny the requested relief. (See Malachy Glen Associates, Inc. v. Town of Chichester, 155 N.H. 102 (2007) "The mere fact that the project encroaches on the buffer, which is the reason for the variance request, *cannot* be used by the ZBA to deny the variance." (Id. at 107; Emphasis added)). Therefore, the fact that Saulnier's requested relief creates two smaller lots which do not conform to the Ordinance, cannot alone be a basis for denial as a matter of law.

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)

The record reveals that the ZBA did not examine Portsmouth's zoning objectives, overlooked neighborhood conditions and/or erroneously discounted conditions on Marjorie Street finding the neighborhood was comprised solely of Sylvester Street. The Project meets Portsmouth's zoning objectives by creating two lots that definitively comply with the character of the neighborhood (i.e., small lots, insufficient frontage, etc.). PZO §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" and identifies the items regulated to achieve those goals:

1. 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 satisfy the need for additional housing with creation of an additional building lot on an underutilized area of land in a populated area where many similar sized lots exist. The respective sizes of Lot 1 and Lot 2 compare favorably with lot sizes in the surrounding neighborhood.
2. The intensity of land use, including lot sizes, building coverage, building height and bulk, yards and open space – Lot 2 has 40 ft. of frontage where 100 ft. is required, but is the last lot on a dead-street; though under the required 15,000 s.f., it can accommodate a modest sized home, similar to the home created in 2019 on an unmerged lot across the street without increasing the intensity of land use in the area. Many lots in the area are smaller than 15,000 s.f., lack 100 feet of frontage and/or depth, or required side yards, so the new lot fits in the area.
3. The design of facilities for vehicular access, circulation, parking and loading – Both lots will have sufficient space to accommodate appropriate facilities for these needs. Consultation with the Department of Public Works has already occurred to ensure the road is extended to City specifications.
4. The impact on properties on of outdoor lighting, noise, vibration, stormwater runoff and flooding – The creation of an additional residential lot which can accommodate a reasonably sized home meeting coverage requirements will not impact surrounding properties.
5. The preservation and enhancement of the visual environment – Allowance of an additional residential building lot at a dead end street among similarly sized developed lots will not negatively affect the visual environment.
6. The preservation of historic districts and building and structures of historic architectural interest – The Property is not located in the Historic Overlay District.
7. The protection of natural resources, including groundwater, surface water, wetlands, wild life habitat and air quality – Testimony established the property is not located within 100 ft. of the wetland. City water and sewer extend to the current home and need only be extended a short distance to serve proposed Lot 2. Accordingly, the granting of the variances will not undermine these purposes of the Ordinance.

The ZBA erred focusing only on the lots' characteristics conflict with the Ordinance at the expense of consideration of the Ordinance's basic objectives.



The record also lacks evidence supporting the conclusion that granting the variances would alter the essential character of the locality or threaten the public, health, safety or welfare. In fact, the evidence submitted demonstrates just the opposite phenomenon. As demonstrated in the original submission and summarized herein, a majority of the surrounding lots fail to conform to the required lot size, depth and frontage requirements and many are the 40 ft. by 80 ft. dimension here proposed. Mr. Moody's statements clearly indicate that the very lot which Saulnier seeks to create held an occupied home for many years. It follows that resumption of a residential use on proposed Lot 2 served by municipal water and sewer will not threaten the public health, safety, or welfare.

A hardship may be found where similar nonconforming uses exist within the neighborhood and the proposed use will have no adverse effect on the neighborhood. See Walker v. City of Manchester, 107 N.H. 382, 386 (1966). In Walker, an applicant sought to convert the use of a large building to a dwelling and funeral home in a residential zone. Denied by the Manchester Zoning Board of Adjustment, the Trial Court and Supreme Court found that a hardship existed, thus the variances should have been granted, where numerous other large dwellings in the area had been converted to office or other business use, and numerous funeral homes existed in an otherwise residential district via the issuance of variances. Here, the density, frontage, and lot configuration resulting from the requested variances are similar to the conditions in the surrounding area with similar sized developed lots and this lot will match those conditions, thus having no adverse effect on the neighborhood. Walker, supra. A municipality's ordinance must also reflect the current character of the neighborhood, See Belanger v. City of Nashua, 121 N.H. 389, 393 (1981). Granting the requested variances allow the subject lot to be in keeping with the character of other residential uses in the vicinity. Thus, the variances in this instance will allow the Ordinance to reflect the character of the area.

Variances exist to provide a relief valve from the strict requirements of the ordinance. Given the nature of the lots and homes in that neighborhood, there could be no greater need for such a relief valve, particularly in view of the undisputed recognition that the permitted home will create much-needed housing within Portsmouth. For these same reasons, the public interest and spirit of the Ordinance is fully supported and protected by this project and the relief needed to proceed with it. Given the nature of the area and the location of the lot, it cannot reasonably be found that granting the requested relief "would unduly and to a marked degree conflict with

the ordinance such that it violates the ordinance's basic zoning objectives.” Malachy Glen Assoc. v. Town of Chichester 155 N.H. 102 (2007). Nor can it reasonably be found that granting the variances alters the essential character of the locality or threatens the public health, safety, or welfare. Id. Accordingly, the ZBA must grant rehearing.

**VI. Rehearing is required where the evidence demonstrates that substantial justice is done by granting the variances, granting the variances will not diminish the value of surrounding properties, and denial would result in an unnecessary hardship to Saulnier.**

**1. Granting the variances will not diminish surrounding property values.**

Board Members did not comment on this prong of the variance criteria and as it was not a basis for denial, we presume the Board determined this factor was satisfied. We address this element of the criteria in an abundance of caution as Abutters Matthew Turner and Taylor Andrews addressed the Board. Turner is located at 3 Marjorie Street and directly abuts proposed Lot 1, which is already developed. He claimed, without evidence, that creation of Lot 2 would diminish property values and that only a very tiny home could fit on the Lot, yet his lot is the same exact size as proposed Lot 2 (80 ft. by 80 ft.). Ms. Andrews resides upgradient from the Property toward Middle Street. She erroneously claimed that the Property's recent Accessory Dwelling Unit prohibits creation of what she deems essentially a third dwelling on the Property. She also claimed, without evidence, that removal of trees, increased stormwater and traffic would negatively affect the value of the other properties. Notably, Ms. Andrews moved to the neighborhood after the cabin was removed. She also may be unaware that her predecessor unmerged a nearly identically sized lot resulting in the new home at 3 Sylvester Street. In contrast, David Moody who abuts the entire length of proposed Lot 2, supported Saulnier's requested variances, although his attempt to email the City Staff did not get through.

The evidence presented at the hearing and in the attached email from David Moody clearly demonstrate a previous dwelling existed on proposed Lot 2 for decades. The testimony of Saulnier's expert, Eric Saari regarding the 1212 s.f. building envelope illustrates that proposed Lot 2 can accommodate a reasonably sized new home, enhancing the value of the Property and those around it. The unmerging of the similarly sized lot across the street from the Property and construction of a new dwelling at 3 Sylvester have apparently had no negative effect on the value of the surrounding properties. Accordingly, there is no evidence that resumption of a residential

use on a lot which previously accommodated a dwelling will diminish the value of surrounding properties.

**2. Denial of the variances clearly results in unnecessary hardship.**

Again, the Board made no findings relating to hardship, it was not a basis for denial; we therefore assume this factor was satisfied. We address this element of the criteria in an abundance of caution.

a. Special Conditions exist which distinguish the property/project from others in the area.

Evidence in our March 1 submission demonstrates that the Property currently exceeds the lot size and frontage requirements. However, the lot is currently developed only on one side, leaving the southern portion of the lot underutilized. The existence of nearby ledge prevented development of the road along the Property's entire front lot line. At the hearing, we advised the ZBA that we had learned that the proposed Lot 2 had previously accommodated a small home for many years. These factors combine to create special conditions. Only Member Rheume commented on the special conditions of the lot, specifically noting the hardship that exists regarding frontage because the ledge prevented the road from being fully developed along the full length of the Property. We note as well that hardship may be found where there are a number of surrounding nonconforming uses and the proposed use has no adverse effect on the neighborhood. Walker v. City of Manchester, 107 N.H. 382, 386 (1966). Accordingly, special conditions exist.

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

Density limits are intended to provide space, air, light, prevent overcrowding, protect against over bulking structures, maintain off street parking and protect against congestion. All eight of the lots directly abutting the Property are nonconforming with respect to lot depth; five of eight fail to conform to density, lot size, and frontage. The creation of an additional lot on a dead end street that both matches the surrounding area and accommodates parking and a reasonably sized building envelope will not overcrowd the land.

Setback and depth requirements are intended to provide adequate space between homes, sightlines, area for stormwater treatment, air, light and space. We note that the board declined to make any decision with respect to the requested setback or depth relief. Lot 1, holding the

existing home, requires nominal relief for a home 9 ft. from the side lot line where 10 ft. is required. Proposed Lot 2 provides a building envelope for a reasonably sized home which provides access to air, light, space, separation from neighbors, and meets the building coverage and open space requirements. There is also sufficient space for parking. Noting: the eclectic nature of the neighborhood, including several similarly sized lots developed with homes and driveways; the dead-end street, the common depth, lot size, lot size per dwelling unit and/or setback noncompliance in the area; and the permitted residential use, it cannot reasonably be found that there is a fair and substantial relationship between the purposes of these ordinance regulations and their application in this instance. Where the density is consistent with or better than many in the area, there is no fair and substantial relationship between the purpose of the regulations and its application to this proposal.

c. The proposed use is a reasonable one.

If the use is permitted, it is deemed reasonable. Vigeant v. Hudson, 151 N.H. 747 (2005). The proposed use is that of a permitted single-family residence in the Single Residence B District among other homes on similar lots. Accordingly, the evidence demonstrated, and the ZBA evidently found, that the proposed use is reasonable, denial results in an unnecessary hardship to Saulnier.

3. Substantial justice will be done by granting the variance.

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

A review of the hearing video and Notice of Decision reveals no commentary or support for denial on this basis. Accordingly, we assume the ZBA found this element of the criteria is satisfied by the Project. The public purposes of setback, density, lot area, and depth requirements to prevent overcrowding, provide separation between neighbors, adequate air, light and space, sightlines, and stormwater treatment are all met by the Project. Saulnier affirmed that road construction would be the responsibility of the property owner, so there is no harm to the taxpayer resulting from granting the variances. Denial of the relief will deprive the applicant and property owners of the value of the land and its development, and will deny a family from purchasing a home in Portsmouth where housing is in short supply. It cannot reasonably be

found that the "public" is harmed by granting the variances to a property with a clear hardship, where single homes are permitted, and where a significant number of lots in the area also fail to meet one or more of the zoning requirements for which relief is here requested.

Balancing the owner/applicant's constitutional rights to own and develop property against the harm to the general public if the variances are granted clearly demonstrates that denial of the requested relief was in error. "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 Supreme Court has held that zoning ordinances must be reasonable, not arbitrary and must rest upon some ground of difference having fair and substantial relation to the object of the regulation. Simplex Technologies, Inc. v. Town of Newington, 145 N.H. 727, 731 (2001). Given the location and configuration of this lot and the characteristics of the surrounding area, there is no rational basis for denial and the result is an unconstitutional taking. Accordingly, the evidence demonstrated, and the ZBA evidently found, that substantial justice is done by granting the variance.

## VI. CONCLUSION

For all of the foregoing reasons, and those presented in the previous submission and hearing, Saulnier respectfully requests that the ZBA grant rehearing.

Respectfully submitted  
**JARED SAULNIER**

By: \_\_\_\_\_



R. Timothy Phoenix  
Monica F. Kieser



# CITY OF PORTSMOUTH

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

EXHIBIT 1

## ZONING BOARD OF ADJUSTMENT

May 23, 2023

Jared J Saulnier  
4 Sylvester Street  
Portsmouth, New Hampshire 03801

**RE: Board of Adjustment request for property located at 4 Sylvester Street (LU-23-27)**

Dear Property Owner:

The Zoning Board of Adjustment, at its regularly scheduled meeting of **Tuesday, May 16, 2023**, considered your application for subdividing one lot into two lots which requires the following: Proposed Lot 1: 1) Variances from Section 10.521 to allow a) a lot area and lot area per dwelling of 9,645 square feet where 15,000 is required for each; b) 80 feet of lot depth where 100 feet is required; and c) a 9 foot right side yard where 10 feet is required. Proposed Lot 2: 1) Variances from Section 10.521 to allow a) a lot area and lot area per dwelling unit of 6,421 square feet where 15,000 is required for each; b) 40 feet of street frontage where 100 feet is required; and c) 80 feet of lot depth where 100 feet is required. Said property is shown on Assessor Map 232 Lot 36 and lies within the Single Residence B (SRB) District. As a result of said consideration, the Board voted to **deny** the application as presented because the request does not observe the spirit of the ordinance by creating 2 undersized lots with inadequate street access.

The Board's decision may be appealed up to thirty (30) days after the vote. Please contact the Planning Department for more details about the appeals process.

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:

Erik Saari, Altus Engineering, Inc.  
R. Timothy Phoenix, Hoefle, Phoenix, Gormley & Roberts, PLLC

# Findings of Fact | Variance

## City of Portsmouth Zoning Board of Adjustment

Date: 5-16-2023

Property Address: 4 Sylvester Street

Application #: LU-23-27

Decision: **Deny**

### Findings of Fact:

Effective August 23, 2022, amended RSA 676:3, I 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 the 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.		
10.233.22 Granting the variance would observe the spirit of the Ordinance.	<b>NO</b>	<ul style="list-style-type: none"> <li>• Granting the variances will not observe the spirit of the ordinance by changing a conforming single-family lot into two nonconforming lots. The first lot is two-thirds the size with appropriate street frontage and the second lot is a third with less than half of the street frontage.</li> <li>• The spirit of the ordinance is to have the lots be as conforming as possible or to get them in conformance.</li> </ul>
10.233.23 Granting the variance would do substantial justice.		
10.233.24 Granting the variance would not diminish the values of surrounding properties.		

<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</p> <p>(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</p> <p>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>		
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Jared Saulnier &lt;jared.saulnier@gmail.com&gt;

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## 4 Sylvester st

1 message

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**David Moody** <davemoody11@gmail.com>  
To: jared.saulnier@gmail.com

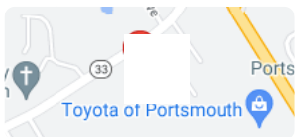
Tue, May 16, 2023 at 7:37 PM

Dear City of Portsmouth City Council,  
My name is David A Moody and I own and reside at 11 Marjorie st Portsmouth NH. I am unable to attend tonights meeting do to work conflict. My property directly abuts the full length Mr.Saulnier's land.. I am very familiar with his Property as I have lived at My address My entire life.. It was My childhood home as well as the childhood home of My Father John W Moody (Deceased) whom lived at this address his entire life from 1942 until 2005.. The Home was build By My GrandFather in 1921 and the address in question 4 Sylvester st was built around the same time by My Great Uncle Linc Moody... I have a lots of history told to Me from many of the old timers that have since passed on... To the business at hand.. I do not object to Mr. Saulnier's request to divide his current property that it may possibly be built on. In fact up until less the 10 years ago there was House on the land in question that was lived in most of My life.. Small in nature and eventually was abandoned and fell into decay . The previous owner tore it down.. I have provided Mr. Saulnier with a photo of this building as it once stood taken taken in 1948 with My Father and his cousin Jackie sitting on the stoop.... This neighborhood is known as the Prescott Park annex and all of the lots of land on all 3 streets were originally designed and sold off as 40x80 parcels.. Some Buyers purchased several lots ( 2 and or 3 to give themselves a larger area to build or to just enjoy the extra yard space. 1 Marjorie st in itself is an existing home on a 40 x 80 lot and this new lot would be nearly double in size. I feel that there is plenty of land to build a very reasonable home that can fit the aesthetics of the current neighborhood..

David A Moody  
[11 Marjorie st](#)  
[Portsmouth NH](#)



Image capture: Sep 2011 © 2023 Google





# CITY OF PORTSMOUTH

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Municipal Complex  
1 Junkins Avenue  
Portsmouth, New Hampshire 03801  
(603) 431-2000

July 6, 2023

**CERTIFIED MAIL    7017 2620 0000 4312 3682**

Jared J. Saulnier  
4 Sylvester Street  
Portsmouth, NH 03801

**RE:    Notice of Violation, Non-Permitted USE, Short Term Rental Business**

Dear Mr. Saulnier,

Your property located at 6 Sylvester Street, Portsmouth, NH, is located in the Single Residence B, (SRB) Zone and is operating a business, Short term rentals, in violation of the Zoning Ordinance of the City of Portsmouth.

In particular, Article 2, Section 10.220 sub-section, 10.221.10, "No construction, reconstruction or alteration of a building or change of use of a structure or parcel of land requiring a building permit by the Code Official shall be commenced without such permit."

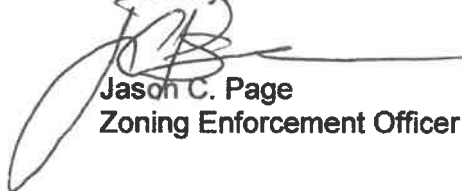
The business use of the property for Short term rentals, is being advertised and arranged on an internet rental website. (Airbnb)

Accordingly, you are hereby instructed to Cease and Desist any further business use of the property located at 6 Sylvester Street in violation of the City's Zoning Ordinance within Ten (10) days of receipt of this notice.

VARIANCES AND APPEALS, any order, requirement, and decision of the Code Official made under this ordinance may be appealed to the Zoning Board of Adjustment as set forth in RSA 676:5.

Should you require any additional information on this matter, please call me at 603-610-7279

Sincerely,



Jason C. Page  
Zoning Enforcement Officer

cc:    Susan Morrell, City Attorney  
       Planning Department

## II. OLD BUSINESS

- B. The request of **Jared J Saulnier (Owner)**, for property located at **4 Sylvester Street** whereas relief is needed to subdivide one lot into two lots which requires the following: Proposed Lot 1: 1) Variances from **Section 10.521** to allow a) a lot area and lot area per dwelling of 9,645 square feet where 15,000 is required for each; b) 80 feet of lot depth where 100 feet is required; and c) a 9 foot right side yard where 10 feet is required. Proposed Lot 2: 1) Variances from Section 10.521 to allow a) a lot area and lot area per dwelling unit of 6,421 square feet where 15,000 is required for each; b) 40 feet of street frontage where 100 feet is required; and c) 80 feet of lot depth where 100 feet is required. Said property is located on Assessor Map 232 Lot 36 and lies within the Single Residence B (SRB) District. (LU-23-27)

### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>		<u>Permitted / Required</u>
<u>Land Use:</u>	Single Family Home	Lot 1	Lot 2	Primarily residential
<u>Lot area (sq. ft.):</u>	16,067	<b>9,645</b>	<b>6,421</b>	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	16,067	<b>9,645</b>	<b>6,421</b>	15,000 min.
<u>Lot depth (ft.):</u>	80	<b>80</b>	<b>80</b>	100 min.
<u>Street Frontage (ft.):</u>	200.01	119.9	<b>40</b>	100 min.
<u>Primary Front Yard (ft.):</u>	7.95	7.95	n/a	30 min.
<u>Right Yard (ft.):</u>	>10	<b>9</b>	10	10 min.
<u>Left Yard (ft.):</u>	9.7	9.7	10	10
<u>Rear Yard (ft.):</u>	33.9	33.9	30	30 min.
<u>Height (ft.):</u>	21.75	21.75	n/a	35 max.
<u>Building Coverage (%):</u>	11.1	18.5	0	20 max.
<u>Open Space Coverage (%):</u>	78.8	67.2	100	40 min.
<u>Parking:</u>	2	2	n/a	2
<u>Estimated Age of Structure:</u>	1910		<b>Variance request(s) shown in red.</b>	

### Other Permits/Approvals Required

- Subdivision Review and Approval – TAC and Planning Board

### Neighborhood Context



4 Sylvester Street

## Previous Board of Adjustment Actions

No previous BOA history found.

## Planning Department Comments

The applicant is proposing to divide the existing lot into two 2 lots. As the road dead ends at the applicant's property the applicant is proposing to extend the public road by 40 feet to provide access to the new lot.

## Review Criteria

This application must meet all five of the statutory tests for a **variance** (see Section 10.233 of the Zoning Ordinance):

1. *Granting the variance would not be contrary to the public interest.*
2. *Granting the variance would observe the spirit of the Ordinance.*
3. *Granting the variance would do substantial justice.*
4. *Granting the variance would not diminish the values of surrounding properties.*
5. *The "unnecessary hardship" test:*
  - (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**

  - (c) *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.*

## 10.235 Certain Representations Deemed Conditions

Representations made at public hearings or materials submitted to the Board by an applicant for a special exception or variance concerning features of proposed buildings, structures, parking or uses which are subject to regulations pursuant to Subsection 10.232 or 10.233 shall be deemed conditions upon such special exception or variance.

# HOEFLE, PHOENIX, GORMLEY & ROBERTS, PLLC

ATTORNEYS AT LAW

127 Parrott Avenue | Portsmouth, NH, 03801  
Telephone: 603.436.0666 | Facsimile: 603.431.0879 | www.hpgrlaw.com

March 1, 2023

## HAND DELIVERED

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

Re: Jared J. Saulnier, Owner/Applicant  
4 Sylvester Street  
Tax Map 232/Lot 36

Dear Mr. Stith & Zoning Board Members:

On behalf of Jared J. Saulnier (“Saulnier”), enclosed please find the following in support of a request for zoning relief:

- Digital Application submitted via Viewpoint earlier today.
- Owner Authorization.
- 3/1/2023 – Memorandum and exhibits in support of variance application.

We look forward to presenting this application to the Zoning Board at its March 21, 2023 meeting.

Very truly yours,



R. Timothy Phoenix  
Monica F. Kieser

Encl.

cc: Jared J. Saulnier  
Altus Engineering (email)

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

**OWNER'S AUTHORIZATION**

I, Jared J. Saulnier, Owner/Applicant of 4 Sylvester Street, Tax Map 232/Lot 36, hereby authorize law firm Hoefle, Phoenix, Gormley & Roberts, PLLC to represent me before any and all City of Portsmouth Representatives, Boards and Commissions for permitting the project.

Respectfully submitted,

Date: 01-11-2023

*Jared Saulnier*  
\_\_\_\_\_  
Jared J. Saulnier



## MEMORANDUM

**TO:** Portsmouth Zoning Board of Adjustment (“ZBA”)  
**FROM:** R. Timothy Phoenix, Esquire  
Monica F. Kieser, Esquire  
**DATE:** March 1, 2023  
**RE:** Jared J. Saulnier, Owner/Applicant  
4 Sylvester Street  
Tax Map 232/Lot 36  
Single Residence B District

Dear Chair Eldridge and Zoning Board Members:

On behalf of the Owner/Applicant, Jared J. Saulnier (“Saulnier”), we are pleased to submit this memorandum and attached exhibits in support of Zoning Relief for the subdivision of the existing lot to be considered by the ZBA at its March 21, 2023 meeting.

### I. EXHIBITS

- A. Prospect Park, Annex #3, 1903 – Rockingham County Registry of Deeds #00225
- B. Plat of Land & Limited Elevations – issued by James Verra & Associates, Inc.
- C. ZBA Plan – issued by Altus Engineering.
- D. Map of area depicting lots with less than required area, frontage, and/or depth.
- E. Site Photographs.
  - Satellite view
  - Street views
- F. Tax Map 233.

### II. PROPERTY/PROJECT

4 Sylvester Street is a 16,067 s.f. lot with 200 ft. of frontage comprised of five (5) historic lots (40 ft. by 80 ft.) depicted on the 1903 Plan of Prospect Park, Annex #3 (the “Property”).

**(Exhibits A & B).** Although Sylvester Street is laid out on the Prospect Park Plan, it does not continue past the Property, which is the last house on the left, but continues on the other side of a wooded area with access from Marjorie. The Property is developed with a single family home and garage on the left side of the lot, and a shed and wood storage structure on the right side of the lot. A 20 ft. utility easement benefitting the City crosses the Property between the home and garage. The garage was constructed outside that easement area and is therefore 9.7 ft. from the left side lot line. The Property contains nearly twice the required frontage but like nearly all the historic lots, is 80 ft. deep, failing to conform to today’s Single Residence B District Requirements.

Saulnier proposes to subdivide the Property into two lots, Lot 1 containing 9,645 s.f., and

119.90 ft. of frontage and the existing home and barn, and Lot 2 containing 6,421 s.f., 80 ft. of frontage and an existing lot depth of 80 ft. (the “Project”). **(Exhibit C)**. The Project confers the benefit of an additional buildable lot in Portsmouth, where housing opportunities are in high demand and many lots fail to conform to current requirements for frontage, lot area, lot area/dwelling unit, and lot depth. **(Exhibit D)**. In anticipation of a Subdivision Application, Saulnier seeks variances to permit two lots with less than 15,000 s.f., one with a side yard of less than 10 ft., and one lot with less than 100 ft. of frontage and less than 100 ft. lot depth.

**III. RELIEF REQUIRED**

<u>Variance Section/Requirement</u>	<u>Existing</u>	<u>Proposed</u>
<u>PZO §10.520/Table §10.521:</u> <u>Dimensional Standards</u> 15,000 s.f. Lot area 15,000 s.f. Lot area/dwelling unit	16,067 s.f.	Lot 1: 9,645 s.f. Lot 2: 6,421 s.f.
<u>PZO §10.520/Table §10.521:</u> <u>Dimensional Standards</u> 100’ Continuous Street Frontage	200.01’	Lot 1: 119.90’ (no relief) Lot 2: 80.11’ ft.
<u>PZO §10.520/Table §10.521:</u> <u>Dimensional Standards</u> 100’ Lot Depth	80’	80’
<u>PZO §10.520/Table §10.521:</u> <u>Dimensional Standards</u> 10’ Side Yard	Lot 1: 9.7’ (left side)	Lot 1: 9.1’ (right side)

**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 is not contrary to the public interest and is 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 a variance “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:

1. 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 satisfy the need for additional housing with creation of additional building lot on an underutilized area of land in a populated area where many similar sized lots exist.
2. The intensity of land use, including lot sizes, building coverage, building height and bulk, yards and open space – Lot 2 has 80.11 ft. of frontage where 100 ft. is required, but is the last lot on a dead-street; though under the required 15,000 s.f., it can accommodate a modest sized home without increasing the intensity of land use in the area. Many lots in the area are smaller than 15,000 s.f., lack 100 feet of frontage and/or depth, or required side yards, so the new lot fits in the area.
3. The design of facilities for vehicular access, circulation, parking and loading – Both lots will have sufficient space to accommodate appropriate facilities for these needs.
4. The impact on properties on of outdoor lighting, noise, vibration, stormwater runoff and flooding – The creation of an additional residential lot will not impact surrounding properties.
5. The preservation and enhancement of the visual environment – Allowance of an additional residential building lot among similarly sized developed lots will not negatively affect the visual environment.
6. The preservation of historic districts and building and structures of historic architectural interest – The Property is not located in the Historic Overlay District.
7. The protection of natural resources, including groundwater, surface water, wetlands, wild life habitat and air quality – The granting of the variances will not undermine these purposes of the Ordinance.

The intent of Single Residence B District is “[t]o 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 is comprised of five lots depicted on a plan recorded prior to zoning. The proposal meets the intentions of the Single Residence B District by providing another residential building lot that is consistent with many in the area. Given these factors, granting the limited requested variances 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)

Notably, there are several properties in the immediate area with lot areas less than 15,000 s.f., less than 100 ft. of frontage, **and** less than 100 ft. lot depth; more yet lack required lot area **or** frontage, **or** depth. **(Exhibit D)**. The minimal deviation from the required side yard is not noticeable and also matches yard setbacks of the small lots nearby. Given the existence of many similar lots in the area, granting the variances for a lot on a major thoroughfare in this area will not alter the essential characteristics of the neighborhood.

Similarly, there will be no threat to the public health, safety or welfare by granting the requested variances when the relief required is for a building lot size, frontage, depth, and side yard comparable to several existing in the surrounding area. Allowance of an additional residential building lot in a populated residential zone satisfies the need for additional housing and affords Saulnier the highest and best use of his land.

The requested variances neither alter the essential character of the locality nor threaten the public health safety or welfare. Accordingly, none of the variances are contrary to the public interest and all observe the spirit of the ordinance.

**3. Granting the variance will not diminish surrounding property values.**

Granting the requested variances will not diminish surrounding property values. The proposal will satisfy the need for housing in Portsmouth through creation of an additional building lot on Sylvester Street comparable to others in the surrounding area. The later addition of a modest home on a lot similar in size to many in the area 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.

The Property contains nearly twice the required frontage and is comprised of five historic lots. The home and garage are located on the left side of the lot separated by a 20 ft. utility easement. This configuration under-utilizes prospective Lot #2 as an additional yard, when a more productive use would be as an additional residential building lot. A hardship may be found where similar nonconforming uses exist within the neighborhood and the proposed use

will have no adverse effect on the neighborhood. See Walker v. City of Manchester, 107 N.H. 382, 386 (1966). In Walker, an applicant sought to convert the use of a large building to a dwelling and funeral home in a residential zone. Denied by the Manchester Zoning Board of Adjustment, the Trial Court and Supreme Court found that a hardship existed, thus the variances should have been granted, where numerous other large dwellings in the area had been converted to office or other business use, and numerous funeral homes existed in an otherwise residential district via the issuance of variances. Here, the density, frontage, and lot configuration resulting from the requested variances are similar to the conditions in the surrounding area with similar sized developed lots and will have no adverse effect on the neighborhood, thus a hardship exists. Walker, supra.

Finally, a municipality's ordinance must reflect the current character of the neighborhood, See Belanger v. City of Nashua, 121 N.H. 389, 393 (1981). Granting the requested variances allow the subject lot to be in keeping with the character of other residential uses in the vicinity. Thus, the variances in this instance will allow the Ordinance to reflect the character of the area. In light of these conditions and restrictions, special conditions exist at the Property.

- 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 dimensional requirements is to regulate density and prevent overcrowding of land and population. The purpose of frontage requirements is to provide air, light and promote visibility for motorists, cyclists, and pedestrians. The requested variances do not undermine the purpose of the Ordinance, particularly in the context of the Property's location at the end of Sylvester among many similar sized properties.

- 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 and the creation of Lot 2 is consistent with the overall intent of the zoning district and similar conditions in the neighborhood. Thus, the improvements and variances required for them are reasonable.

**5. Substantial justice will be done by granting the variance.**

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, L.L.C., 162 N.H. 508

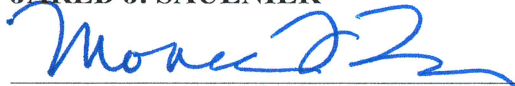
(2011). That is, “any loss to the [applicant] that is not outweighed by a gain to the general public is an injustice.” Malachy Glen, *supra* at 109. The variances needed to create a building lot for a modestly sized residential home in a residential zone satisfy the need for housing and result in a lot comparable to many others in the surrounding area, so will not impact the general public. Conversely, Saulnier will be greatly harmed by denial of any of the variances, as he will lose the ability to create needed housing in Portsmouth. Without question, substantial justice will be done by granting each variance while a substantial injustice will be done by denying any of them.

V. **CONCLUSION**

For all of the reasons stated, Jared J. Saulnier respectfully requests that the Portsmouth Zoning Board of Adjustment grant each variance request.

Respectfully submitted,

**JARED J. SAULNIER**



By: R. Timothy Phoenix  
Monica F. Kieser

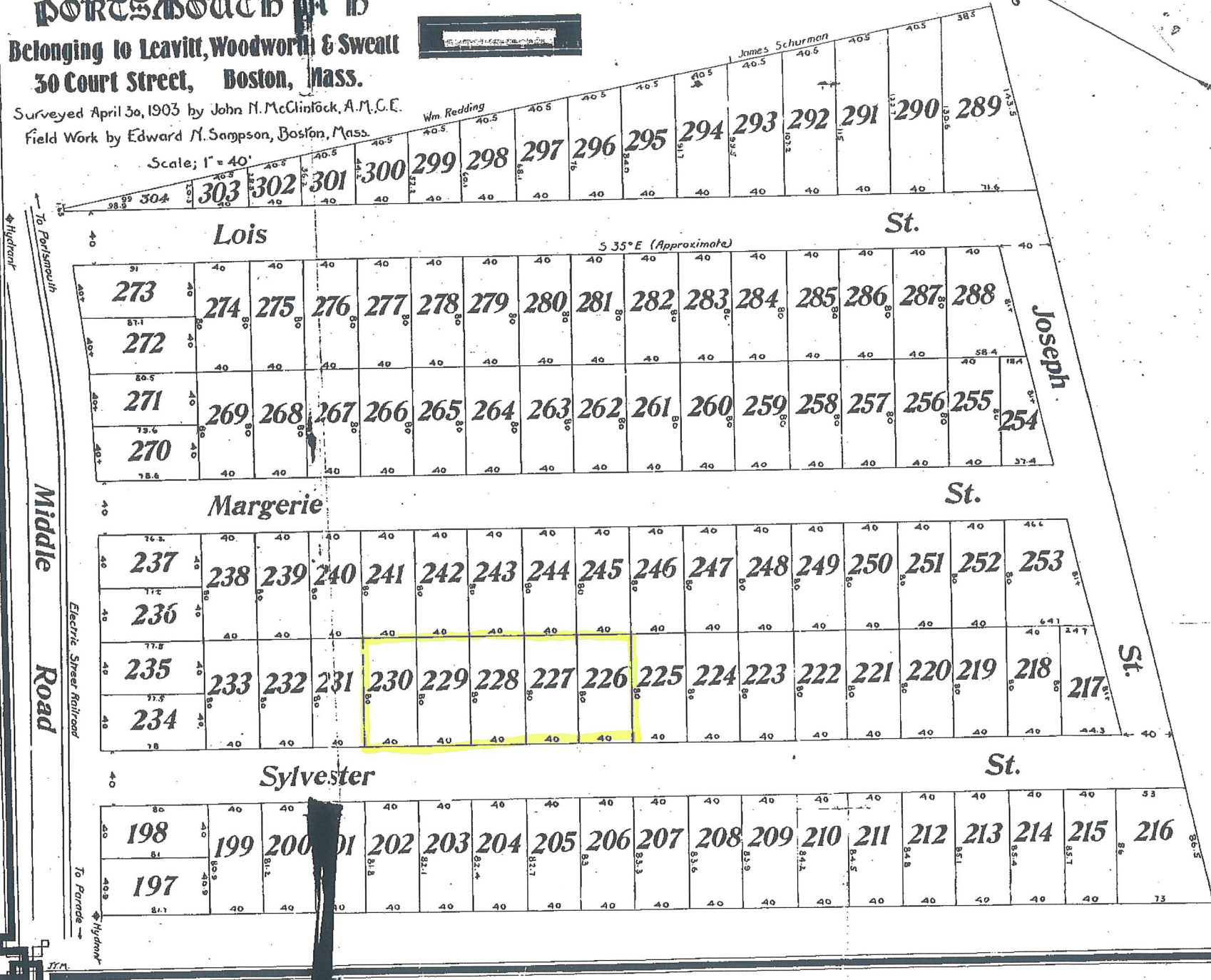
# PROSPECT PARK PORTSMOUTH N.H.

Belonging to Leavitt, Woodworth & Sweatt  
30 Court Street, Boston, Mass.

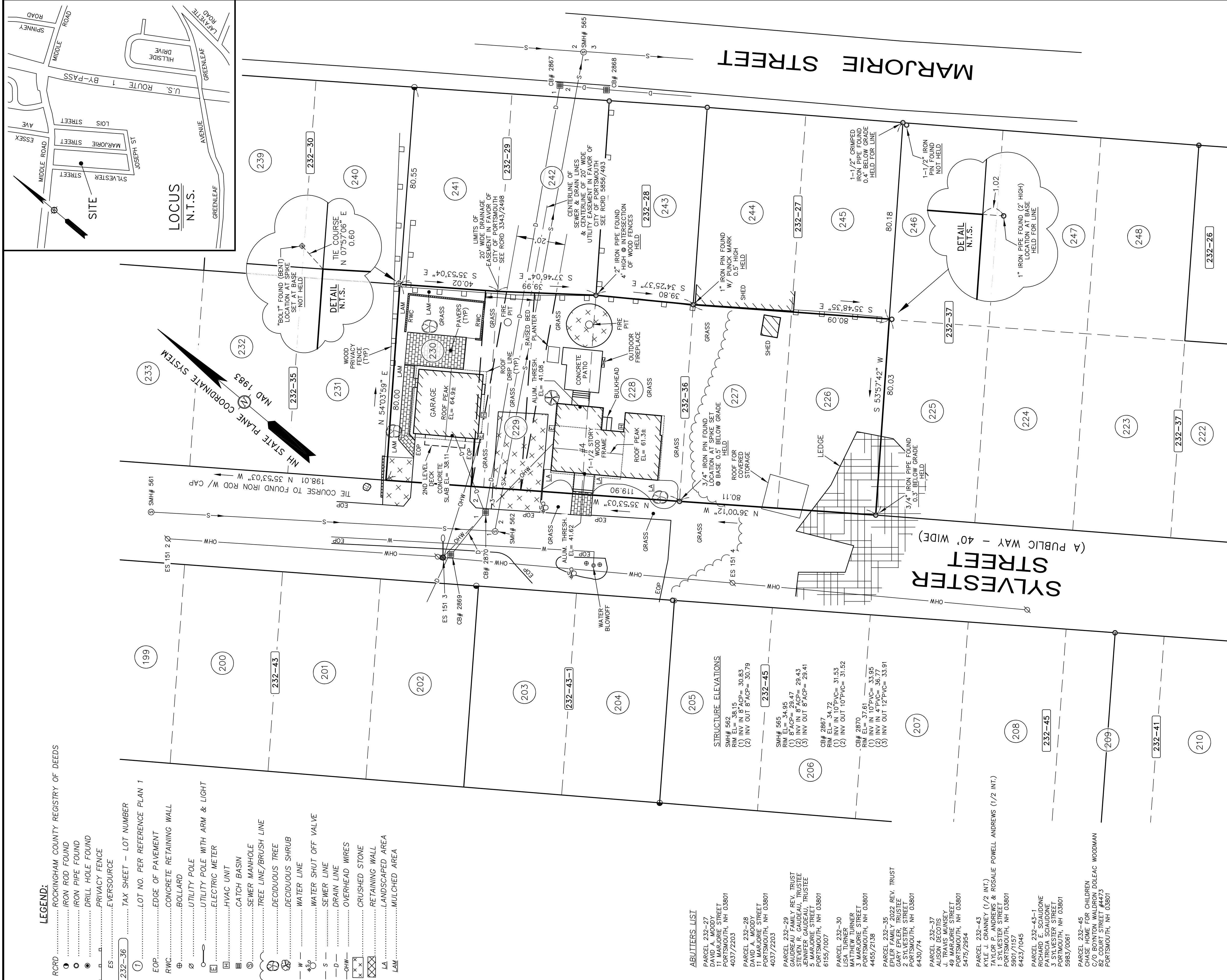
ANNEX NO. 3.

Surveyed April 30, 1903 by John N. McClintock, A.M.C.E.  
Field Work by Edward N. Sampson, Boston, Mass.

Scale; 1" = 40'



- LEGEND:**
- RCRD ..... ROCKINGHAM COUNTY REGISTRY OF DEEDS
  - ..... IRON ROD FOUND
  - ..... IRON PIPE FOUND
  - ⊙ ..... DRILL HOLE FOUND
  - ..... PRIVACY FENCE
  - ES ..... EVERSOURCE
  - 232-36 ..... TAX SHEET - LOT NUMBER
  - ① ..... LOT NO. PER REFERENCE PLAN 1
  - EOP ..... EDGE OF PAVEMENT
  - RWC ..... CONCRETE RETAINING WALL
  - ⊕ ..... BOLLARD
  - ⊕ ..... UTILITY POLE
  - ⊕ ..... UTILITY POLE WITH ARM & LIGHT
  - ⊕ ..... ELECTRIC METER
  - ⊕ ..... HVAC UNIT
  - ⊕ ..... CATCH BASIN
  - ⊕ ..... SEWER MANHOLE
  - ⊕ ..... TREE LINE/BRUSH LINE
  - ⊕ ..... DECIDUOUS TREE
  - ⊕ ..... DECIDUOUS SHRUB
  - ..... WATER LINE
  - ..... WATER SHUT OFF VALVE
  - ..... SEWER LINE
  - ..... DRAIN LINE
  - ..... OVERHEAD WIRES
  - ..... CRUSHED STONE
  - ..... RETAINING WALL
  - LA ..... LANDSCAPED AREA
  - LAM ..... MULCHED AREA



- ABUTTERS LIST**
- PARCEL 232-27  
DAVID A. MOODY  
11 MARJORIE STREET  
PORTSMOUTH, NH 03801  
4037/2203
  - PARCEL 232-28  
DAVID A. MOODY  
11 MARJORIE STREET  
PORTSMOUTH, NH 03801  
4037/2203
  - PARCEL 232-29  
CAROL E. FAHEY REV. TRUST  
JENNIFER GAUDEAU, TRUSTEE  
5 MARJORIE STREET  
PORTSMOUTH, NH 03801  
6155/1007
  - PARCEL 232-30  
US44 WILSON TURNER  
3 MARJORIE STREET  
PORTSMOUTH, NH 03801  
4455/2138
  - PARCEL 232-35  
EPLER FAMILY 2022 REV. TRUST  
GARY EPLER, TRUSTEE  
5 MARJORIE STREET  
PORTSMOUTH, NH 03801  
6430/74
  - PARCEL 232-37  
JAMES SAULNIER  
J. TRAVIS MUNSEY  
49 MARJORIE STREET  
PORTSMOUTH, NH 03801  
5475/2984
  - PARCEL 232-43  
KYLE J. CRANNEY (1/2 INT.)  
TAYLOR P. ANDREWS & ROSALIE POWELL ANDREWS (1/2 INT.)  
5901/1157  
6423/1045
  - PARCEL 232-43-1  
RICHARD E. SGAUDONE  
PATRICIA SGAUDONE  
3 SYLVESTER STREET  
PORTSMOUTH, NH 03801  
5983/081
  - PARCEL 232-45  
CHASE HOME FOR CHILDREN  
WILLIAM J. DOLEAC WOODMAN  
52 COURT STREET #423  
PORTSMOUTH, NH 03801

- STRUCTURE ELEVATIONS**
- SMH# 562  
RIM EL= 38.15  
(1) INV IN 8"ACP= 30.83  
(2) INV OUT 8"ACP= 30.79
  - SMH# 565  
RIM EL= 34.95  
(1) INV IN 8"ACP= 29.47  
(2) INV IN 8"ACP= 29.43  
(3) INV OUT 8"ACP= 29.41
  - CB# 2867  
RIM EL= 34.72  
(1) INV IN 10"PVC= 31.51  
(2) INV OUT 10"PVC= 31.52
  - CB# 2870  
RIM EL= 37.61  
(1) INV IN 4"PVC= 33.95  
(2) INV IN 4"PVC= 35.77  
(3) INV OUT 12"PVC= 33.91

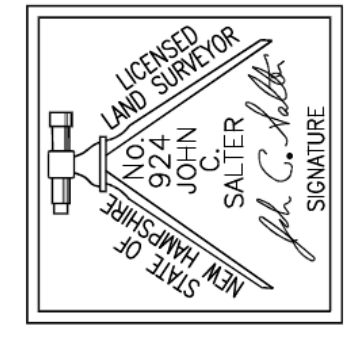
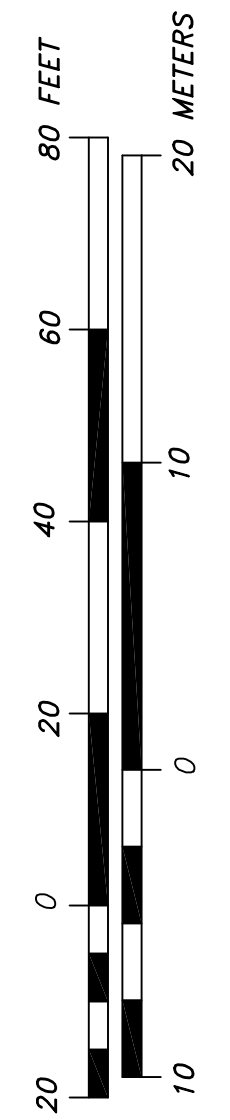
**NOTES:**

1. OWNER OF RECORD..... JARED J. SAULNIER  
ADDRESS..... 4 SYLVESTER ST, PORTSMOUTH, NH 03801  
DEED REFERENCE..... 6155/1007  
TAX SHEET / LOT..... 232-36  
PARCEL AREA ..... 16,067 S.F.
2. ZONED..... SRB  
MINIMUM LOT AREA 15,000 S.F.  
FRONTAGE..... 100'
3. 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.
4. THIS PLAN IS BASED ON A FIELD SURVEY PERFORMED 8/2022 & 11/2022. ON SITE CONTROL ESTABLISHED USING SURVEY GRADE GPS UNITS.  
HORIZONTAL DATUM: NAD 1983 (2011) (EPOCH 2010.0000)  
VERTICAL DATUM: NAVD 1988  
PRIMARY BM: CITY CONTROL POINT "ROBE"
5. PARCEL 232-36 IS SUBJECT TO 2'0" WIDE UTILITY EASEMENTS IN FAVOR OF THE CITY OF PORTSMOUTH AS SHOWN HEREON.
6. PARCEL 232-36 LIES IN ZONE X (NO SCREEN). AREA OF MINIMAL FLOOD HAZARD AS SHOWN ON FLOOD INSURANCE RATE MAP 33015C0270F, REVISED 1/29/2021, BY FEMA.

**REFERENCE PLANS:**

1. PROSPECT PARK, ANNEX NO. 3, PORTSMOUTH, NH, BELONGING TO LEAVITT, WOODWORTH & SHEATT, SURVEYED 4/30/1903, RCRD PLAN 00223.
2. PLAN OF LAND, PORTSMOUTH, N.H., FOR MAX MILTON, SCALE: 1"=30', DATED 7/1974, FILE NO. 72A, PLAN NO. 4336, BY JOHN W. DURGIN, CEPA, NOT RECORDED.
3. A PLAN OF LAND IN PORTSMOUTH, N.H., FOR THE CHASE HOME FOR CHILDREN; SCALE: 1"=60', DATED 9/10/1980, BY JOHN W. DURGIN ASSOCIATES, INC., NOT RECORDED.
4. EASEMENT PLAN, ACCESS EASEMENT, MARJORIE STREET, PORTSMOUTH, NH, DATED 3/2013, RCRD PLAN D-37716.
5. PLAT OF LAND PREPARED FOR ARNE, LLC, 3 SYLVESTER STREET, PORTSMOUTH, NH, DATED 2/15/2019, RCRD PLAN D-41324.

**EXHIBIT B**



**PLAT OF LAND & LIMITED ELEVATIONS**  
**4 SYLVESTER STREET**  
**PORTSMOUTH, NEW HAMPSHIRE**  
**ASSESSOR'S PARCEL 232-36**

for  
**JARED J. SAULNIER**  
 and ASSOCIATES, INC.

JAMES VERRA and ASSOCIATES, INC.  
 101 SHATTUCK WAY  
 SUITE 8  
 NEWINGTON, N.H. 03801-7876  
 603-436-3597

DATE: 12/13/2022  
 JOB NO: 24021  
 SCALE: 1" = 20'  
 DWG NAME: 24021  
 PLAN NO: 24021  
 SHEET: 1 OF 1



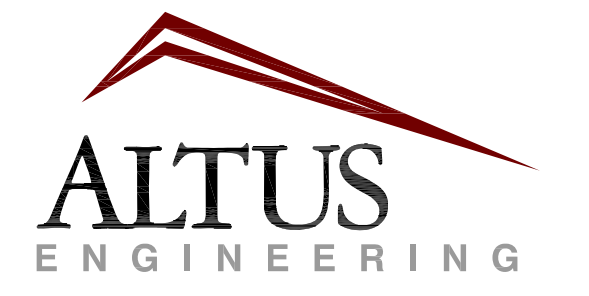


**SITE NOTES**

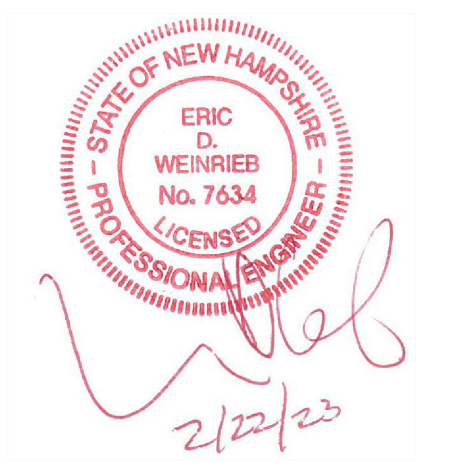
- DESIGN INTENT – THIS PLAN SET IS INTENDED TO DEPICT THE REESTABLISHMENT OF AN ABANDONED LOT LINE TO SUBDIVIDE LOT 232-36 INTO TWO RESIDENTIAL HOUSE LOTS.
- LOT AREA: 16,067 S.F. (±0.37 AC.)
- ZONE: SINGLE RESIDENCE B (SRB)
- DIMENSIONAL REQUIREMENTS:
 

	REQUIRED	EXIST.	LOT 1	LOT 2
MIN. LOT AREA:	15,000 S.F.	16,067	9,645	6,421
MIN. STREET FRONTAGE:	100'	200.01'	119.90'	80.11'
MIN. LOT DEPTH:	100'	80.02'	80.15'	80.17'
FRONT SETBACK*:	30'	7.95'	7.95'	30' MIN.
(*MAY BE REDUCED TO AVERAGE WITHIN 200' ON SAME SIDE OF STREET)				
SIDE SETBACK:	10'	±9.7'	±9.1'	10' MIN.
REAR SETBACK:	30'	±33.9'	±33.9'	30' MIN.
MAX. BUILDING HEIGHT:	35'	±21.75'	±21.75'	35' MAX.
MAX. BLDG. COVERAGE:	20%	11.1%	18.5%	20% MAX.
MIN. OPEN SPACE:	40%	78.8%	67.2%	40% MIN.

- THE FOLLOWING VARIANCES FROM THE PORTSMOUTH ZONING ORDINANCE ARE REQUIRED:
  - SECTION 10.520, TABLE 10.521 – VARIANCE REQUIRED TO ALLOW A LOT SIZE LESS THAN THE REQUIRED MINIMUM (9,645 S.F. AND 6,421 S.F. VS. 15,000 S.F.).
  - SECTION 10.520, TABLE 10.521 – VARIANCE REQUIRED TO ALLOW LOT FRONTAGE LESS THAN THE REQUIRED MINIMUM (80.11' VS. 100')
  - SECTION 10.520, TABLE 10.521 – VARIANCE REQUIRED TO ALLOW LOT DEPTH LESS THAN THE REQUIRED MINIMUM (80.17' VS. 100').
  - SECTION 10.520, TABLE 10.521 – VARIANCE REQUIRED TO ALLOW A SIDE SETBACK LESS THAN THE REQUIRED MINIMUM (9.1' VS. 10').



133 Court Street Portsmouth, NH 03801  
(603) 433-2335 www.altus-eng.com



NOT FOR CONSTRUCTION

ISSUED FOR: ZBA

ISSUE DATE: FEBRUARY 21, 2023

NO.	DESCRIPTION	BY	DATE
0	ZBA	EBS	02/21/23

**EXHIBIT C**

DRAWN BY: EBS  
APPROVED BY: EBS  
DRAWING FILE: 5313-SUB.dwg

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

OWNER:  
JARED SAULNIER  
4 SYLVESTER STREET  
PORTSMOUTH, NH 03801

APPLICANT:  
JARED SAULNIER  
4 SYLVESTER STREET  
PORTSMOUTH, NH 03801

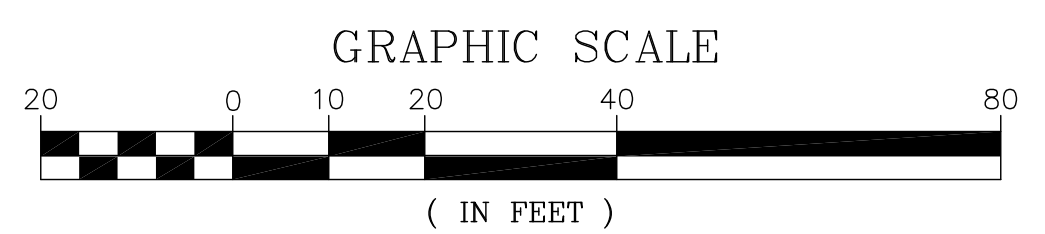
PROJECT:  
SAULNIER  
SUBDIVISION  
TAX MAP 232 LOT 36  
4 SYLVESTER STREET  
PORTSMOUTH, NH

TITLE:

ZBA PLAN

SHEET NUMBER:

C-1



### Lots with less than the required Lot Area/Frontage/Depth



## EXHIBIT D



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.

- Subject Property
- Lots with Insufficient Frontage
- Lots under 15,000 s.f.
- Lots with Insufficient Depth

1" = 176.5429167011476 ft



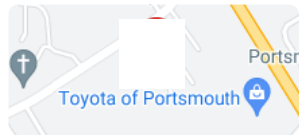
Imagery ©2023 Google, Imagery ©2023 Maine GeoLibrary, Maxar Technologies, U.S. Geological Survey, USDA/FPAC/GEO, Map data ©2023 100 ft

Portsmouth, New Hampshire  
Google Street View  
Sep 2019 See more dates



Google

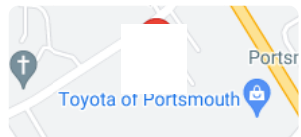
Image capture: Sep 2019 © 2023 Google

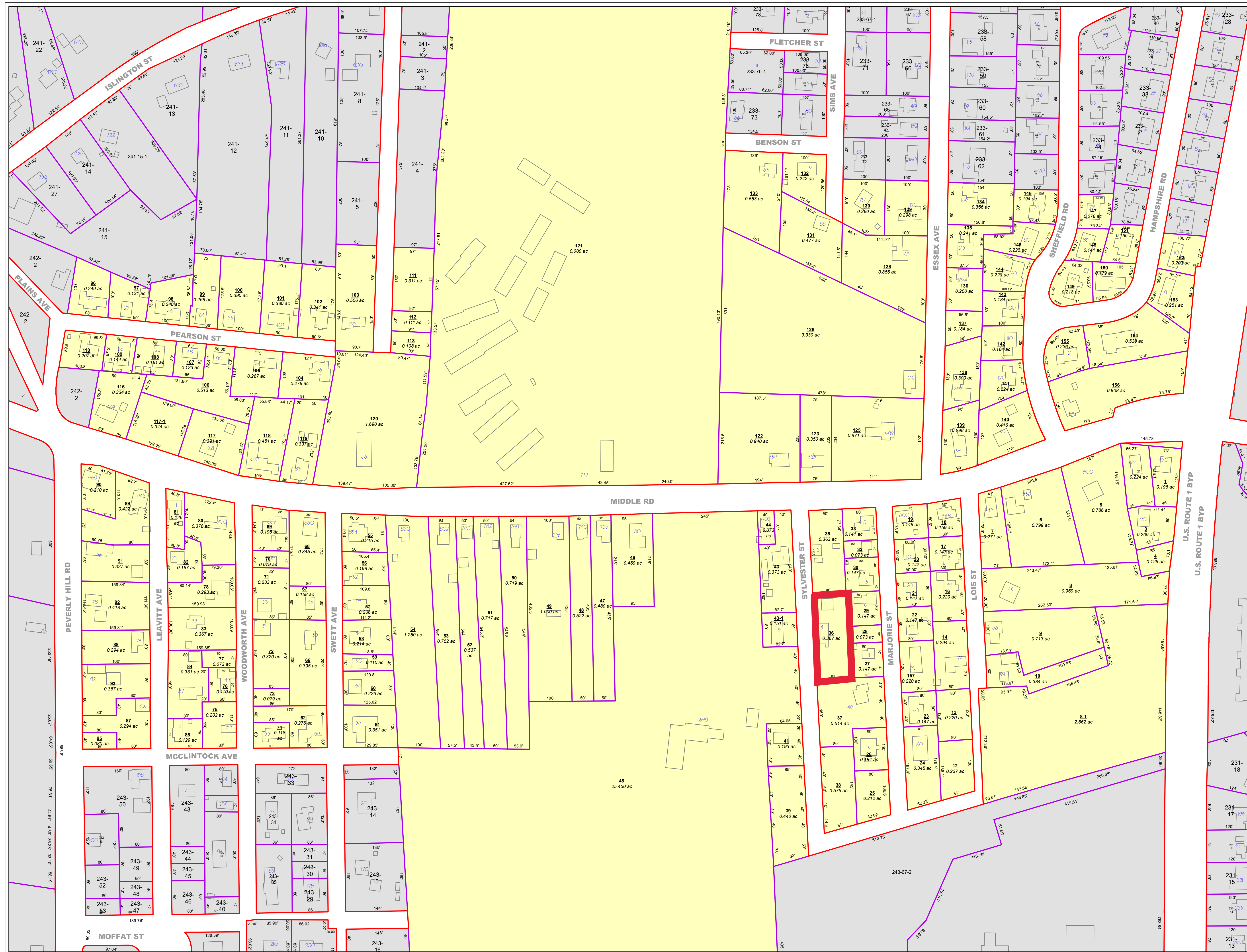


Portsmouth, New Hampshire  
Google Street View  
Sep 2019 See more dates



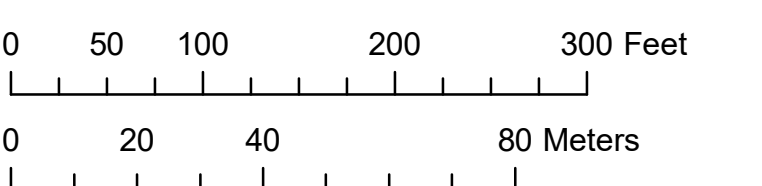
Image capture: Sep 2019 © 2023 Google





- 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
  - 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)

**EXHIBIT F**



*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.*

